

Manual for Palestinian Law Enforcement Officers



Palestinian Centre for
Strategic Studies and
Researches



Geneva Centre for the
Democratic Control of
Armed Forces (DCAF)

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Introduction

Providing human security is one of the most basic functions of the state. Human security is concerned with empowering nations to protect them from dangers that threaten the safety, livelihood and dignity of their citizens. Safeguarding human security not only enables socio-economic development, but it also helps enhance the legitimacy of the state in the eyes of its citizens. This is particularly true in conflict or post-conflict settings.

The democratic state gives broad powers to police and security forces while at the same committing them to the rule of law. Without the rule of law, the broad powers given to police and security forces will become a threat to the citizens' rights and freedoms. Hence, all state institution must strive to provide security to the citizens in an equitable manner and based on the rule of law. This means that police, armed and security forces work in an effective, efficient and transparent fashion and are properly overseen by the elected authorities.

Particularly in new democracies, building the rule of law is a key challenge. Palestine is no exception in this regard. The Palestinian security sector legislation is not yet fully developed and suffers from gaps and contradictions. Moreover, there are still multiple legal orders in place, including Ottoman, British Mandate, Jordanian and Egyptian legislation. Above anything else, Palestinians are still under Israeli occupation. It is hoped that this manual will make a contribution to enhancing the rule of law despite the political, legal and social challenges that the Palestinian people are facing.

What is the objective of this manual?

The **Manual for Palestinian Law Enforcement Officers** has two aims. Firstly, the manual is a practical reference for law enforcement officers, intended to help them in their daily work. It includes the basic elements of the Palestinian constitutional order, the rights and duties of law-enforcement officers, as well as the functions and competencies of law enforcement officers during the criminal justice process.

Secondly, the manual can be used as a training tool for Palestinian law enforcement officers, whether during basic or specialized training. The manual therefore includes international legal standards and good practice in the rule of law. By this, the **Manual for Palestinian Law Enforcement Officers** hopes to make a useful contribution to developing the rule of law in Palestine.

However, the manual is not a comprehensive guide on the legal framework of the Palestinian police and security forces. It also does not address the internal working procedures of these forces.

How is this manual structured?

The **Manual for Palestinian Law Enforcement Officers** is divided into three chapters:

Chapter 1 is an introduction to the constitutional order of the Palestinian National Authority (PNA), the constitutional rights and freedoms, as well as the mandates and tasks of the Palestinian police and security forces in line with that constitutional order. It includes an introduction to the management and oversight functions of the Executive, the Palestinian Legislative Council, and the Judiciary, in line with the principle of the separation of powers.

Chapter 2 explains the rights and duties of Palestinian law enforcement officers. The chapter also explains the disciplinary and criminal procedures, as provided in relevant legislation, to prosecute violations committed by law enforcement officers.

Chapter 3 explains the functions and competencies of law enforcement officers in the Palestinian criminal justice process, both in terms of civil and military criminal procedures. This includes the competencies of law enforcement officers tasked with judicial duties, as well as the relevant procedures to receive complaints, secure the crime scene, and conduct arrests and searches. The chapter also explains the function and competencies of the Public Prosecution.

Each chapter contains illustrative boxes in red as follows:



International Legal Standards



Best Practice



Need to Know Information

Citations of relevant Palestinian legislation are found in grey boxes.

Who is this manual for?

The **Manual for Palestinian Law Enforcement Officers** is intended as a reference document for all law enforcement officers and in particular those tasked with judicial duties. It may also be used as a reference by representatives of the General Prosecution and the Military Prosecution. Secondly, it may be used by those responsible for training, whether at the ministerial level, at the level of police and security forces, or at the level of the prosecution bodies.

What are the references used in this manual?

The legal references for the **Manual for Palestinian Law Enforcement Officers** are the following Palestinian laws:

- ◆ The Amended Basic Law of 2003;
- ◆ The Law of Service in the Palestinian Security Forces No. 8 of 2005;
- ◆ The Law of Penal Procedures No. 3 of 2001;
- ◆ The General Intelligence Law No. 17 of 2007;
- ◆ The Decree Law Concerning the Preventive Security of 2007;
- ◆ The Law of Correction and Rehabilitation Centre ('Prisons') No. 6 of 1998;
- ◆ The PLO Revolutionary Penal Procedures Law of 1979;
- ◆ The PLO Revolutionary Penal Law of 1979.

The manual points out legal gaps or contradictions between legal provisions, insofar as they arise. However, the manual does not aim to suggest legal remedies, nor can it, by definition, offer binding interpretations in case of concurring norms. This is

solely the responsibility of Palestinian lawmakers and judges.

References to international standards are taken from relevant international treaties and guidelines, such as the Universal Declaration of Human Rights (1948), the International Covenant of Civil and Political Rights (1966), the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (1988), and the UN Code of Conduct for Law Enforcement Officials (1979).

Examples of best practice are taken from relevant publications and case studies undertaken by the Geneva Centre for the Democratic Control of Armed Forces (DCAF).

How was this manual developed?

The **Manual for Palestinian Law Enforcement Officers** was developed by a working group of experts established by the Palestinian Center for Strategic Studies and Researches (PCSSR) in cooperation with the Office of the President, the Ministry of Interior, the Ministry of Justice, the General Prosecution, the Military Judicial Commission, the Civil Police, the Preventive Security, the General Intelligence, and the Military Intelligence. The working group included representatives of the above institutions and organizations, as well as a number of academic experts. The Geneva Centre for the Democratic Control of Armed Forces (DCAF) supported the working group through comparative expertise and international good practice. PCSSR and DCAF would like to express their gratitude to the members of the working group, as well as to their superiors, whose support made the development of this manual possible.

Chapter 1

The Constitutional Order of the Palestinian National Authority (PNA)

Objective of the Chapter:

This chapter explains the constitutional and legal framework in which the police and security forces of the Palestinian National Authority (PNA) perform their work. It describes the tasks and mandates of the police and security forces, command-and-control structures, and accountability mechanisms.

Structure of the Chapter:

Chapter 1.1 Principles of Governance and Institutional Framework

Chapter 1.2 Hierarchy of PNA Legislation

Chapter 1.3 Constitutional Rights and Freedoms

Chapter 1.4 Police and Security Forces

Chapter 1.1 Principles of Governance and Institutional Framework

Until the establishment of an independent Palestinian state, the Amended Basic Law of 2003 and its amendments regulate the system of governance of the Palestinian National Authority (PNA). The Amended Basic Law of 2003 determines the principles of governance. There are three key principles. The first is **democratic governance**:

‘The governing system in Palestine shall be a democratic parliamentary system based upon political and party pluralism. The President of the National Authority shall be directly elected by the people. The Government shall be accountable to the President and the Palestinian Legislative Council.’

(Amended Basic Law of 2003, Article 5)



What is democracy?

‘Democracy in its ideal sense is the notion that ‘the people’ should have control of the government ruling over them. This ideal is pursued by implementing a system of voting such that the majority of people rule, either directly or indirectly through elected representatives. Democracies may be ‘liberal’, where fundamental

rights of individuals in the minority are protected by law (...).’

(Definition of basic concepts and terminologies in governance and public administration, United Nations, Economic and Social Council, E/C.164/2006/)

The second principle is the **separation of powers**:

‘(...) Power shall be exercised through the legislative, executive, and judicial authorities based upon the principle of separation of power (...).’

(Amended Basic Law of 2003, Article 2)



What is the separation of powers?

‘The doctrine of the separation of powers divides the institutions of government into three branches: legislative, executive and judicial. The legislature makes the laws; the executive put the laws into operation; and the judiciary interprets the laws. The powers and functions of each are separate and carried out by separate personnel. No single agency is able to exercise complete authority, each being interdependent on the other. Power thus divided should prevent authoritarian rule or corruption arising from the opportunities that unchecked power offers. The doctrine can be extended to enable the three branches to act as checks and balances on each other. Each branch’s independence helps keep the others from exceeding their power, thus ensuring the rule of law and protecting individual rights.’

(<http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/0/E88B2C638DC23E51CA256EDE00795896>)

The third principle is the **rule of law**:

‘The principle of the rule of law shall be the basis of government in Palestine. All governmental powers, agencies, institutions and individuals shall be subject to the law.’

(Amended Basic Law of 2003, Article 6)



What is the rule of law?

‘The rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and

independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.'

(Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, United Nations (S/2004616/))

In accordance with these three principles – **democratic governance, separation of powers, and the rule of law** –, the institutional framework of the Palestinian National Authority is as follows:

Executive Authority: The Executive includes the President and the Council of Ministers. The President is elected by direct and general vote and appoints and dismisses the Prime Minister. The President promulgates laws sent to him by the Palestinian Legislative Council (PLC).

The Prime Minister heads the Council of Ministers and selects its members. The Council of Ministers is the highest executive and administrative instrument of the Palestinian National Authority and is accountable to the PLC.

Palestinian Legislative Council: The PLC is elected by the people and has the power to issue laws, including the budget law, and to oversee the work of the Council of Ministers and the ministries. The PLC holds the Council of Ministers and its members accountable through inquiries, hearings, fact-finding committees and votes of non-confidence. The PLC also approves the composition of the Council of Minister through a vote of confidence.



Prerogatives of the president

The President of the PNA has the right to object draft laws approved by the PLC and to declare the state of emergency. If the PLC is not in session, the President can issue decrees that have the power of law. These decrees must be submitted to the PLC for approval in the first session it convenes after they were issued, otherwise they cease to have the power of law. The PNA therefore combines elements of a presidential and a parliamentary democracy.

Judiciary: The judicial authority is a composed of the High Judicial Council, the Public Prosecution, and the court system. The judiciary is fully independent. It settles disputes and monitors the work of the Executive and the Palestinian Legislative Council.

The High Judicial Council is responsible for running the administrative affairs of the judiciary. The Attorney-General, heading the Public Prosecution, is appointed by the President upon the recommendation of the High Judicial Council. The courts include Personal Status Courts, Magistrate Courts, Courts of First Instance and the High Court, which also serves to adjudicate administrative matters and the constitutionality of laws, bylaws and regulations. The judiciary also includes military courts. The jurisdiction of Palestinian military courts is strictly limited to military matters.

'Military courts shall be established by special laws. Such courts shall not have any jurisdiction beyond military affairs.'

(Amended Basic Law of 2003, Article 101.2)



Jurisdiction of military courts

In many democratic countries, the jurisdiction of military courts is now strongly limited. The military jurisdiction is mostly status-based (covering only members of the armed forces), service-connected (covering only crimes related to military service) or based on the notion of 'purely military crimes' (covering only crimes of military character). However, different elements can combine with each other in different national legal orders. Status-based military jurisdiction means that all members of the armed forces - or personnel with a comparable status - are tried by military courts, irrespective of the committed offence. Such jurisdiction may also be limited to military personnel on active service. Service-connected jurisdiction means that all offences related to military life and to an effective functioning of the military institution are dealt with by military courts. If the notion of 'purely military crimes' is a key to jurisdiction, the military courts will be competent to deal with those offences that are of strictly military nature. The concept of military crimes may be narrower than the concept of service-connected offences. All three approaches have in common that civilian are excluded from military jurisdiction,

except for those who work in the military in some countries.

(DCAF, Guidebook Understanding Military Justice, 2010, p. 22)

Chapter 1.2 Hierarchy of PNA Legislation

Until the adoption of the constitution of the Palestinian state, the Amended Basic Law of 2003 is the highest source of PNA legislation. It may only be changed by a two-thirds majority of PLC members.

Ordinary laws are the second highest source of legislation. In case of necessity and if the PLC is not in session, the President may issue decree laws. Decree laws must be approved by the PLC in the first session after their issuance, otherwise they lose their legal power.

Further down in the hierarchy are bylaws, which are instruments for implementing ordinary legislation.

Next in line are executive decisions, which fall into three types:

- ◆ **Presidential decrees:** These are intended to facilitate the work of the executive institutions.

- ◆ **Presidential decision:** Presidential decisions are similar to presidential decrees. The Executive so far has failed to make sharp distinction between both types of legislation.

- ◆ **Decisions by the Council of Ministers and the High Judicial Council:** These are administrative regulations to facilitate the work of the government and the judiciary respectively.

Next to PNA laws, there is also legislation issued by the Palestinian Liberation Organisation (PLO). PLO laws continue to be applied in matters for which the PNA has not yet issued legislation.

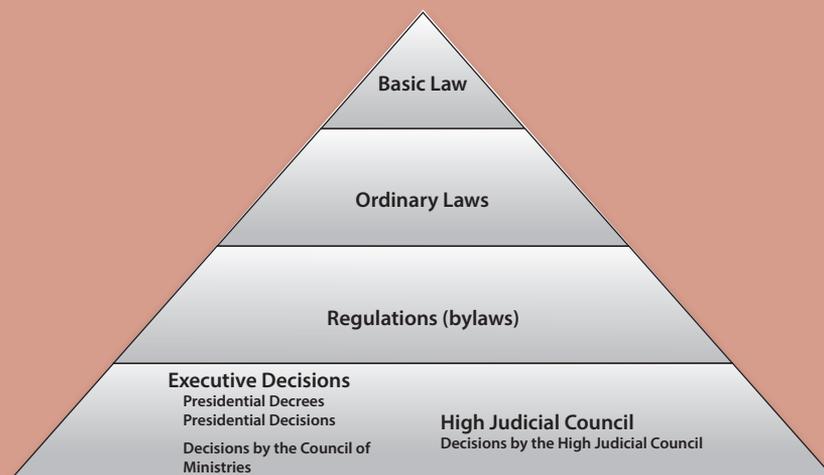
Chapter 1.3 Constitutional Rights and Freedoms

The Amended Basic Law of 2003 guarantees that Palestinian citizens enjoy basic rights and freedoms, including:

- ◆ **Equality before the law (Article 9):** Palestinians shall be equal before the law and the Judiciary, without distinction based upon race, sex, color, religion, political views or disability.
- ◆ **Protection of human rights (Article 10.1):** Basic human rights and liberties shall be protected and respected.



Hierarchy of PNA Legislation



- ◆ **Protection of personnel freedom (Article 11):** Personnel freedom is a natural right and shall be guaranteed and may not be violated. This includes the prohibition of arrest, search, imprisonment, restrictions of freedom of movement, except by judicial order pursuant to the law.
- ◆ **Prohibition of torture (Article 13):** No person shall be subject to torture or cruel treatment.
- ◆ **Right to be presumed innocent (Article 14):** An accused shall be considered innocent until proven guilty in a court of law. The accused shall have the right to legal counsel for defence.
- ◆ **Prohibition of collective punishment (Article 15):** Punishment shall be personal only. Crime and punishment shall be determined only by the law. An accused person shall be considered innocent until proven guilty by a court of law.
- ◆ **Inviolability of homes (Article 17):** Homes shall be inviolable and may not be subject to surveillance or search except pursuant to valid judicial order and pursuant to the law.
- ◆ **Freedom of belief and worship (Article 18):** Freedom of belief and worship shall be protected.
- ◆ **Freedom of opinion (Article 19):** Freedom of opinion may not be violated. Every person shall have the right to express his or her opinion and circulate it orally, in writing or any form or expression or art, pursuant to the provisions of the law.
- ◆ **Freedom of movement (Article 20):** Freedom of residence and movement shall be guaranteed within the limits of the law.
- ◆ **Right to political participation (Article 26):** Palestinians have the right to participate in political life, both individually and collectively. They shall have the right to:
 - ◆ Form and establish unions, associations, societies, clubs and popular institutions in accordance with the law;
 - ◆ Vote and nominate candidates and run as candidates for election, in order to have representatives elected through universal suffrage in accordance with the law;
- ◆ Hold public office and positions in accordance with the principle of equal opportunities;
- ◆ Conduct private meetings with the presence of police members and conduct public meetings, gatherings and processions within the limits of the law.
- ◆ **Freedom of the press (Article 27):** The establishment of newspapers and all media means shall be a right for all. Freedom of audio, visual and written media, as well as freedom to print, publish, distribute and transmit, together with the freedom of individuals working in this field, shall be protected. Censorship shall be prohibited. No warning, suspension, confiscation, cancellation, restriction shall be imposed upon the media, except by the law and pursuant to a judicial decision.
- ◆ **Right to judicial redress (Article 30):** Filing an action before a court shall be a protected right for all persons. Every Palestinian shall have the right to seek redress in the judicial system.



Rights and freedoms during the state of emergency

The state of emergency is declared by the President in case of threats to national security through war, military invasion, armed insurgency, or in case of natural disasters. The state of emergency must only last 30 days. It may be extended for another 30 days, but only if the PLC approves this. During the state of emergency, constitutional rights and freedoms, as a matter of principle, may not be restricted:

'It shall be prohibited to impose restriction upon fundamental rights and freedoms when declaring a state of emergency except to the extent necessary to fulfil the purpose set forth in the decree declaring the state of emergency.'

(Amended Basic Law of 2003, Article 111)

Chapter 1.4 Police and Security Forces

In general terms, police, armed and security forces implement governmental decisions in their specific areas of responsibility: (1) Upholding law and order and combating crime; (2) defending the state against external aggression, and (3)

gathering security-related information for the state. In a democracy, police, armed and security forces are managed by the government, overseen by Parliament, and monitored by the courts. In accordance with the principle of the rule of law, police, armed and security forces must work on the basis of legislation that specifies their mandates and tasks. The law must also define their subordination to the government and parliament, as well as the respective command and control-mechanisms.



What is the security sector?

Legal & Policy Framework



The security sector consists of the core security and justice providers and their management and oversight institutions. The legal and policy framework regulates their tasks, authorities and structures.

Core security and justice providers:

- ◆ Security forces (armed forces, police, intelligence and security services, but also liberation armies and insurgency groups)
- ◆ Justice and law enforcement institutions (courts, prosecution services, prisons, traditional justice systems)

Management and oversight institutions:

- ◆ Executive management and oversight bodies (Presidency, Council of Ministers, ministries of defence, interior, justice and finance)
- ◆ Legislative management and oversight bodies (Parliament and its committees, ombudspersons)
- ◆ Informal oversight institutions (civil society organisations, media, research and advocacy organisations)



What is good security sector governance?

Good security sector governance means that:

- ◆ Police, armed and security forces work on the basis of the rule of law.
- ◆ Police, armed and security forces protect and guarantee the human rights and fundamental freedoms of the people.
- ◆ Police, armed and security forces deliver their services to all people in an equitable, effective and efficient manner. They are sensitive to the concerns and wishes of the people.
- ◆ There is transparency in security decision-making. Transparency means that the government and its police, armed and security forces actively seek to inform the public and provide relevant information on their activities, plans and problems. Such information must be clear, consistent, and comprehensible. Transparency also means that there is freedom of information and that journalists, researchers and citizens can request and receive information on security matters, interpret it and distribute it.
- ◆ There is accountability. Accountability means that government officials and commanders of police, armed and security forces must reveal, explain and justify their actions. Accountability also means that these officials can be summoned to answer for their actions by government bodies, parliament, and the courts.



What are the five levels of oversight?

Oversight and control are important to prevent police, military and security officers, as well as government officials, from abusing their power and violating the rights of the citizens. At the same time, oversight protects the constitutional and professional rights of police, military and security officers themselves and allows them to perform their work under professional conditions.

There are five different levels of oversight:

Internal control by the police, armed and security forces themselves through legalising their functioning by law (enacted by parliament),

internal mechanisms, regulations and orders, and stimulating a professional work attitude;

Executive control by the government, which exercises direct control, determines the budget, and sets general guidelines and priorities for the activities of the police, armed and security forces;

Legislative oversight through Parliament by passing laws that define and regulate the police, armed and security forces, as well as their special powers and by adopting the corresponding budgetary appropriations;

Judicial monitoring by the courts that oversee the special powers of the police, armed and security forces and prosecutes wrong-doing by their employees;

Public oversight through civil society groups, media, think-tanks and research institutes which monitor the set-up and functioning of the police, armed and security forces, primarily on the basis of public sources. Individual citizens may restrain the use of special powers by police, armed and security forces via special tribunals, independent ombudsmen or commissioners/inspectors-general, as well as national and international courts.

(Born, Hans and Leigh, Ian, Making Intelligence Accountable: Legal Standards and Best Practice, p. 15.)

What is the constitutional framework of the PNA police and security forces?

The Amended Basic Law of 2003 determines that the police and security forces of the Palestinian National Authority work on the basis of the rule of law:

‘The Security Forces and Police shall be regular forces. They shall be the armed forces in the country. Their functions shall be limited to defending the country, serving the people, protecting society and maintaining public order, security and morals. They shall perform their duties within the limits determined by the law, with full respect for rights and freedoms. The law shall regulate the Security Forces and the Police.’

(Amended Basic Law of 2003, Article 84)

The police and security forces are subordinate to the Higher Commander, who is the President of the Palestinian National Authority:

‘The President of the National Authority is the Higher Commander of the Palestinian Forces.’

(Amended Basic Law of 2003, Article 39)

The responsibility for maintaining public order and internal security rests with the Council of Ministers:

‘The Council of Ministers shall exercise the following powers: (...) To be responsible for maintaining public order and international security.’

(Amended Basic Law of 2003, Article 69)



What is executive control?

In modern states, police, armed and security forces are under the control of the elected civilian government. It is essential that the various forces and their commanders and members be under democratic control, rather than be accountable to themselves. It is the elected politicians who are the visible custodians of public office in a democracy.

The ultimate authorities and legitimacy of police, armed and security forces rests upon the legislative approval of their powers, operations and expenditure. However, for practical reasons, effective external control of these forces must rest with the government – the Executive.

Effective external control does not mean direct managerial responsibility for operations of police, armed and security forces. Both to prevent abuse and as a prerequisite of effective control, the respective competences of the responsible ministers and the heads of the forces should be clearly determined by law.

Competency of the Minister	Duty of the Force
Formulating policy on security matters (policing, defense, intelligence)	Duty to implement government policy
Receiving reports from the forces	Duty to report to ministers
Approving matters of political sensitivity or undertakings that affect fundamental rights	Duty to seek approval of specified sensitive matters

What are the mandates of the PNA police and security forces?

The Palestinian National Authority has not yet developed a comprehensive legal framework for its police and security forces. There is no overarching law that defines the mandates, tasks, competencies, and command-and-control structures of the various police and security forces. The Law of Service in the Palestinian Security Forces No. 8 of 2005 spells out the structure of the police and security forces in very general terms. Today, the security forces of the Palestinian National Authority consist of three branches:

'The security forces shall be comprised of:

1. The National Security Forces and the Palestinian National Liberation Army.
2. The Internal Security Forces.
3. The General Intelligence.

Any other force or forces which are existent or to be established shall be part of the above three forces.'

(Law of Service in the Palestinian Security Forces No. 8 of 2005, Article 3)

1. National Security Forces

National Security Forces:

'The National Security [sic!] is a regular military body, which performs its functions and commences its jurisdictions under the presidency of the Minister of National Security and under the command of the Commander-In-Chief, who shall issue forth the decisions necessary for the administration of its work and regulation of all of its affairs, in accordance with the provisions of the Law and regulations issued therewith.'

(Law of Service in the Palestinian Security Forces No. 8 of 2005, Article 7)

There is no law yet that regulates the mandate, tasks and organizational structure of the National Security Forces and those of subordinate or affiliated military bodies, such as the Military Intelligence or the Presidential Guard. These forces operate under administrative regulations, decisions and orders.



What is the role of armed forces?

Security developments after the end of the Cold War have greatly affected the armed forces around the globe. The military were given new assignments while being asked to perform their old core tasks in a different manner. Today, it is quite common for the militaries around the world to be involved in the following five functions:

1. Protection of a country's independence, sovereignty and territorial integrity, or more broadly its citizens;
2. International peacekeeping or peace enforcement missions;
3. Disaster relief;
4. Internal security tasks (assistance to civilian law enforcement authorities to maintain order in exceptional cases if it has broken down);
5. Participation in nation-building (social function).

The degree to which the military performs these functions varies from one state to another, depending on the national legal framework and on the perceived security situation.

Examples of Constitutional Provisions of Armed Forces:

Spain: Constitution:

'(1) The Armed Forces, comprising the Army, the Navy and the Air Force, have as their mission the guarantee of the sovereignty and Independence of Spain, the defence of its territorial integrity and the constitutional order.' (Article 8.1)

Romania: Constitution:

'(1) The Armed Forces shall be exclusively subordinated to the will of the people, to guarantee the sovereignty, independence and unity of the state, the country's territorial integrity, and constitutional democracy.' (Article 117)

2. Internal Security Forces:

Internal Security Forces:

'The Internal Security [sic!] is a regular security body, which performs its functions

commences its jurisdictions under the presidency of the Minister of Interior and under the command of the Director General of the Internal Security, who shall issue forth the decisions necessary for the administration of its work and regulation of all of its affairs.'

(Law of Service in the Palestinian Security Forces No. 8 of 2005, Article 10)

According to Article 12 of the Law of Service in the Palestinian Security Forces No. 8 of 2005, the Internal Security Forces consist of the **Civil Police**, the **Preventive Security** and the **Civil Defence**.

The PNA has issued laws for the Civil Defence and the Preventive Security, but not yet for the Civil Police.

Civil Police

Although there is no law for the Police as a whole, a specific department of the Police, the Judicial Police Force, was established by Decision of the Council of Ministers No. 99 of 2005 Concerning the Establishment of a Judicial Police Force. This force reports to the Director of the Police. The functions of the Judicial Police Force are as follows:

'To implement final decisions of the courts, as well as the decisions of the Public Prosecution;

To protect the buildings housing the courts, judges, the Public Prosecution, and the officials therein;

To transport and protect persons held in custody and convicts;

To draft summons issued by the courts to witnesses and accused to attend sessions;

To make legal notifications.'

(Decision of the Council of Ministers No. 99 of 2005 Concerning the Establishment of a Judicial Police Force, Article 2)



What is the role of the police?

The police are an instrument of the executive branch and enjoy a virtual monopoly of legitimate coercion within the society. The key function of the police is to uphold the law, maintain public order, and combat crime.

The police must at all times operate within the rule of law. The police are the gatekeeper of the criminal justice system. Yet, the role of the police is and should be distinct from the other key institutions in the criminal justice system. The police are the security institution that most impacts on people's daily lives.

Examples of Police Mandates:

South Africa: South African Police Service Act No. 68 of 1995:

'(...) a police service throughout the national territory to a) ensure the safety and security of all persons and property in the national territory; b) uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution; c) ensure cooperation between the Service and the community it serves in the combating of crime; d) reflect respect for victims of crime and an understanding of their needs (...).' (Preamble)

Sweden: Swedish Police Act, 1984:

'It is the duty of the police to 1.) prevent crime and other disturbances of public order and safety; 2.) prevent disturbances of the same and take action when disturbances occur; 3.) carry out investigations and surveillance in connection with indictable offences; 4.) provide the public with protection, information and other kinds of assistance, whenever such assistance is best given by the police, and to 5.) perform such duties as are incumbent on the police pursuant to special regulations.' (Section 2)

Preventive Security

The Decree Law Concerning the Preventive Security of 2007 defines the mandate of the Preventive Security as follows:

'In a manner that does not contradict the laws in force, the Directorate-General of the Preventive Security shall have the following responsibilities:

1. Working to protect the Palestinian internal security;
2. Following upon crimes which threaten the internal security of the National Authority and/or those imposed thereon, as well as working towards their prevention;

3. Uncovering crimes which target governmental departments and public bodies and institutions, as well as the employees thereof.’

(Decree Law Concerning the Preventive Security of 2007, Article 6)

The Preventive Security is subordinate to the Ministry of Interior:

‘The agency of the Preventive Security is a regular security directorate-general within the Internal Security Forces which is affiliated with the (...) Ministry and works in the field of security.’

(Decree Law of 2007 Concerning the Preventive Security, Article 2)

Civil Defence

The Civil Defence Law No. 3 of 1998 defines the mandate of the Civil Defence as follows:

‘The Civil Defence shall perform all measures necessary to protect civilians and their property, secure the safety of all types of communications, guarantee the regular functioning of public authorities, and protect public and private buildings, installations and institutions from risks of air raids and other war operations, as well as risks of natural catastrophes, fire, maritime rescue and all other risks.’

(Civil Defence Law No. 3 of 1998, Article 2)

The Civil Defence is subordinate to the Ministry of Interior:

‘The Directorate-General [of the Civil Defence] shall be attached to the Ministry [of Interior].’

(Civil Defence Law No. 3 of 1998, Article 3)

3. General Intelligence

General Intelligence:

‘The General Intelligence is an independent regular security body, which reports to the President and performs its functions and commences its jurisdictions under the presidency of its head and under his command, who shall also issue forth the decisions necessary for the administration of its work and regulation of all of its affairs.’

(Law of Service in the Palestinian Security Forces No. 8 of 2005, Article 13)

The General Intelligence works on the basis of the General Intelligence Law No. 17 of 2005. The functions of the General Intelligence are:

‘Take measures necessary to prevent acts that may endanger the security and safety of Palestine and expedient measures against their perpetrators pursuant to the provisions of the law;

Reveal external dangers which may jeopardize the Palestinian national security in the fields of espionage, collusion and sabotage, and any other acts which may threaten the unity, security and independence, and resources of the homeland;

Jointly cooperate with similar agencies of friendly states to fight all acts which may threaten the joint peace and security or any fields of external security, upon the conditions of reciprocal treatment.’

(General Intelligence Law No. 17 of 2005, Article 9)

The General Intelligence is the external intelligence agency of the Palestinian National Authority. The agency may perform specific tasks inside Palestine as well:

‘The Intelligence shall be officially assigned to exercise security activities and duties beyond the geographical boundaries of Palestine. The Intelligence shall exercise specific security duties within the geographical boundaries of the State of Palestine to complete measures and activities commenced beyond these boundaries.’

(General Intelligence Law No. 17 of 2005, Article 8)



What is the role of intelligence agencies?

Intelligence agencies provide the executive with independent analysis of information relevant to the security of the state and society and to the protection of its vital interests. The very nature of intelligence agencies is to collect information. Intelligence agencies represent a very wide field of diverse organizations, their common trait being that they process (often classified) information analytically to produce intelligence. Most countries have more than one intelligence agency with specific responsibilities. These include internal and external intelligence, tactical and strategic intelligence, criminal intelligence, civilian and military intelligence, and signals intelligence. Defining their mandates

and tasks clearly in law is of key importance. Some intelligence agencies have forms of police authorities to search arrest or detain people. However, it has become international standard that they forego these powers and pass their intelligence to police or customs, who are better placed to conduct investigations that could lead to prosecutions. It has become international standard that intelligence agencies are not allowed to arrest or detain people.

Examples of Intelligence Mandates:

South Africa: National Strategic Intelligence Act, 1994:

'The functions of the National Intelligence Agency shall (...) be a) to gather, correlate, evaluate and analyse domestic intelligence, in order to (i) identify any threat or potential threat to the security of the Republic or its people; (ii) supply intelligence regarding any such threat to National Intelligence Co-ordinating Committee; b) to fulfil national counter-intelligence responsibilities and for this purpose to conduct and co-ordinate counter-intelligence and to gather, correlate, evaluate, analyse and interpret information regarding counter-intelligence in order to (i) identify any threat or potential threat to the security of the Republic or its people; (ii) inform the President of any such threat; (iii) supply (where necessary) intelligence relating to any such threat to the South African Police Service for the purposes of investigating any offence or alleged offence (...).' (Article 2)

Bosnia and Herzegovina: Law on the Intelligence and Security Agency, 2004:

'The Agency is responsible for gathering intelligence both within and outside Bosnia and Herzegovina regarding threats to the security of Bosnia and Herzegovina, analyzing such intelligence, and disseminating such intelligence to the officials and bodies listed in (...) this Law, as well as gathering, analyzing, and disseminating intelligence for the purpose of providing assistance to authorized officials as defined in criminal procedure codes in Bosnia and Herzegovina and other competent bodies in Bosnia and Herzegovina, where necessary to prevent threats to the security of Bosnia and Herzegovina.' (Article 5)



Measures to safeguard the impartiality of the intelligence agency

Bosnia and Herzegovina: Law on the Intelligence and Security Agency, 2004:

'Employees shall not be members of political parties, take instructions from political parties or perform any remunerative activity or other public or professional duties incompatible with work in the Agency.' (Article 39)

'The Agency shall be apolitical, and shall not be involved in furthering, protecting or undermining the interests of any political party, lawful political organisation or any constituent people. The Agency may not investigate acts of protest, advocacy or dissent that are organised and carried out in a lawful manner.' (Article 56)

Argentine: National Intelligence Law No. 25520:

'No intelligence agency shall:

1. Perform repressive activities, have compulsive powers, fulfil police functions or conduct criminal investigations unless so required by justice on account of a judicial proceeding or when so authorised by law.
2. Obtain information, collect intelligence or keep data on individuals because of their race, religion, private actions, and political ideology, or due to their membership in partisan, social, union, community, cooperative, assistance, cultural or labour organisations, or because of legal activities performed within any field.
3. Exert influence over the institutional, political, military, police, social, and economic situation of the country, its foreign policies, and the existence of legally formed political parties, or influence public opinion, individuals, the media, or any kind of associations whatsoever.' (Article 4)

How are the heads of PNA police and security forces appointed?

It is the Law of Service in the Palestinian Security Forces No. 8 of 2005 that determines the appointments of security commanders.

How is the Commander-in-Chief appointed?

'The Commander-in-Chief shall be appointed by the President. The appointment of the Commander-in-Chief shall last for three years, which may be extended for one year only.'

(Law of Service in the Palestinian Security Forces No. 8 of 2005, Article 8)



What is the difference between the Higher Commander and Commander-in-Chief?

The former is the President of the Palestinian National Authority in his capacity of the Higher Commander of the Security Forces, whilst the latter is the Commander-in-Chief of the National Security Forces.

In the National Security Forces, heads of units and directors of directorates, area commanders, and military attachés are appointed by the decision of the Minister of National Security upon the nomination by the Commander-in-Chief and upon the recommendation of the Committee of Officers.

How is the Director-General of Internal Security appointed?

'The Director-General of Internal Security shall be appointed by a decision of the President and upon a recommendation of the Council of Ministers. The appointment of the Director-General of Internal Security shall last for three years, which may be extended for one year only.'

(Law of Service in the Palestinian Security Forces No. 8 of 2005, Article 11)

The Director-Generals of the Police, the Preventive Security and the Civil Defence, their deputies, and the heads of units and directorates are appointed by the President following the decision of the Minister of Interior, after prior nomination by the Director-General of Internal Security and recommendation by the Committee of Officers.

How is the Head of the General Intelligence appointed?

'The Head of the General Intelligence shall be appointed by a decision by the President. The appointment of the Head of the General Intelligence shall last for three years, which may be extended for one year only.'

(Law of Service in the Palestinian Security Forces No. 8 of 2005, Article 14)

The General Intelligence Law No. 17 of 2005 gives the Head of the General Intelligence the rank of a minister.

The Deputy Head of the General Intelligence is appointed by the President upon the nomination of the Head of the General Intelligence. Directors of department in the General Intelligence are appointed by the Head of the Intelligence upon the nomination of the Committee of Officers.



What is the Committee of Officers?

The Committee of Officers, provided for in the Law of Service in the Palestinian Security Forces No. 8 of 2005, deals with all matters pertaining to the professional development of officers in the security forces. This includes appointment, promotion, transfer, selection for training courses and service medals, as well as termination of service and disciplinary sanctions. It consists of the Commander-in-Chief, the Director-General of Internal Security, the Director-Generals of the Police, Preventive Security, and Civil Defence, the Deputy Head of the General Intelligence, the Director of the Administration of Officers' Affairs, the Commissioner-General of Political Guidance, in addition to two members appointed by the President. Sub-committees of officers have been established on the level of the three security branches.

Chapter 2

Rights, Duties and Accountability of Palestinian Law Enforcement Officers

Objective of the Chapter:

This section identifies the rights and duties of police and security officers in accordance with the Law of Service in the Palestinian Security Forces No. 8 of 2005. It also describes the disciplinary and military offences and the concurrent penalties according to the legislation in force.

Structure of the Chapter:

Chapter 2.1 Rights and Duties of Palestinian Law Enforcement Officers

Chapter 2.2 Prohibited Acts and Penalties

Chapter 2.1 Rights and Duties of Palestinian Law Enforcement Officers

What rights for police and security officers?

In modern states, personnel of police, armed and security forces are, like any other citizen, entitled to all rights and freedoms prescribed by international law, in particular covenants and conventions which safeguard respect of human rights. Though members of police, armed and security forces, officers are also citizens who enjoy constitutional rights. Without being deprived of any of their human and constitutional rights, security personnel are subject to certain constraints and conditions, which are governed by the law. Concerning the military, in some countries this is called the 'citizen in uniform' approach. It implies that armed forces personnel are entitled to the same rights and protections as all other persons, subject to certain limitations imposed by military life.



What are human rights?

Human rights are indivisible and an entitlement of being human. The modern law of human rights is based on the Charter of the United Nations (UN) (especially Preamble and Articles 1.3, 55 and 56), supplemented by the Universal Declaration of Human Rights (1948), the International Covenant

of Civil and Political Rights (ICCPR) (1966) and the International Covenant on Economic, Social and Cultural Rights (1966). The ICCPR is supplemented by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1975). In addition, there are UN conventions and declarations dealing with discrimination against vulnerable and marginalised populations; these include, but are not limited to, the Convention on the Rights of the Child (1989); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention on the Rights of Persons with Disabilities (2006); and the Convention on the Elimination of All Forms of Racial Discrimination (1965). Furthermore, there are conventions dealing with the rights of refugees and stateless persons, including the Convention Relating to the Status of Refugees (1951) and the Convention Relating to the Status of Stateless Persons (1954).

Human rights are complemented during times of war by International Humanitarian Law (IHL). The main treaties concerned with IHL are the four Geneva Conventions (1949) and the Additional Protocols (1977) to these conventions.

A number of other international conventions and declarations also protect human rights by dealing with the criminal liability of individuals, rather than state liability, especially during times of conflict. These include treaties on genocide, slavery, and sexual violence, including the Rome Statute of the International Criminal Court (2002) and UN Security Council Resolutions 1325 (2000) and 1820 (2008), which deal with protection of women against violence.

What are non-derogatory human rights?

Human rights may be adapted or limited only under specific conditions and situations. The exercise of some human rights cannot be limited at all. However, the exercise of other human rights may be adapted or limited under specific conditions and situations.

Non-derogatory human rights include:

1. The right to life;
2. The prohibition of torture or cruel, inhumane or degrading treatment or punishment;
3. The prohibition of slavery;

4. The prohibition of imprisonment for failure of fulfilling contractual obligations;
5. The prohibition of being found guilty of any criminal offence, when the act committed did not constitute a criminal offence under national or international law at the time that it was perpetrated;
6. The right to be recognized as a person before the law;
7. The freedom of thought, conscience and religion.

(International Covenant on Civil and Political Rights, Article 4.2)



How can constitutional rights be restricted?

Legislation is necessary where it is intended to qualify or restrict constitutional rights of individuals in the security interests of the state. This can occur in two distinct ways. The first is through the regular limitation of human rights to take account of societal interests. The restriction of the freedom of expression of intelligence officials to preserve secrecy concerning their work is an obvious example. Secondly, in emergency situations where the security of the state is gravely affected, temporary restriction of some rights by way of derogation may be permitted on an exceptional basis.

Taking the example of armed forces personnel, members of the military, unlike any other group of citizens, in the course of their official duties, may be called upon to kill other people and to sacrifice their own lives. Military life may involve serving under harsh or extreme conditions. These special factors, distinctive to life in the armed forces, confirm the need for placing limitations on the human and constitutional rights of armed forces personnel.

Do Palestinian police and security officers have constitutional rights?

Police and security officers of the Palestinian National Authority enjoy the same human and constitutional rights as any other Palestinian citizen. This is determined by the Amended Basic Law of 2003:

'Basic human rights and liberties shall be protected and respect.'

(Amended Basic Law of 2003, Article 10)

In addition to that, the Declaration of Independence of the Palestinian Liberation Organisation (PLO) of 1988 commits the PLO to international human rights standards:

'The State of Palestine proclaims its commitment to the principles and purposes of the United Nations, and to the Universal Declaration of Human Rights.'

(Declaration of Independence of the Palestinian Liberation Organisation of 1988)

The service-related rights and duties of police and security officers are determined by the Law of Service in the Palestinian Security Forces No. 8 of 2005. The law underlines the special status of the citizens serving in the police and security forces of the Palestinian National Authority:

'The public function in any of the security forces shall be an assignment to those performing it. It shall aim at the service of the homeland and citizens in implementation of the public interest pursuant to the laws, bylaws, decisions, and regulations.'

(Law of Service in the Palestinian Security Forces No. 8 of 2005, Article 89)

What are the rights of Palestinian police and security officers?

According to the Law of Service in the Palestinian Security Forces No. 8 of 2005, officers serving in the police and security forces of the Palestinian National Authority have the following rights:

1. Police and security officers have the right to receive salaries in accordance with the provisions of the law. They may receive increments and allowances, such as for spouse and children, professional specialization, command function, area of deployment, risk, and transportation. (Articles 67-75, 151-157)
2. Police and security officers have the right to vacation in accordance with the provisions of the law. This includes ordinary leave, compassionate leave, leave for commanders, sick leave, one-time leave for Hajj, maternity leave, exceptional leave and unpaid leave. (Articles 76-87, 158-166)

3. Police and security officers have the right to assume, with salary or remuneration, custodianship, guardianship, or agency on behalf of absentees, or judicial assistance if the person under custodianship or guardianship, the absentee or the person to whom judicial assistance is given is linked to them up to the fourth degree. Officers must inform their commands about such acts. (Article 91.2/4, 170.2/4)
4. Police and security officers have the right to assume, with salary or remuneration, custodianship over the properties in which the officer is a partner, an owner of interest, or which are owned by those to whom the officer is linked by kinship up to the fourth degree. Officers must inform their commands about such acts. (Article 91.3/4, 170.3/4)
5. Police and security officers have the right to be provided with adequate clothing, shelter and arms by the Palestinian National Authority. (Article 205)
6. Police and security officers and the family members who they are legally assigned to support have the right to medical treatment free of charge at military and governmental hospitals and institutions. (Article 209)



Ombudsman

The institution of ombudsman operates separately from the military justice system. However, it can substantially contribute to protecting soldiers' individual rights. By supporting civilian oversight of the military, military ombudsman institutions promote accountability and administrative effectiveness.

An ombudsman usually deals with individual grievances submitted by members of the armed and security forces, investigates possible human rights violations by them and issues recommendations on how to prevent further violations of individual rights of soldiers, and how to improve the functioning of the military institution. Such recommendations usually are not legally binding, but can produce considerable political pressure on the armed and security forces or be fed into parliament to improve the respect for the rights of soldiers.

Canada: Ministerial Directives, National Defence and Canadian Forces Ombudsman:

- i. The Ombudsman shall, on the Minister's behalf
 1. act as a neutral and objective sounding board, mediator, investigator and report on matter related to the Department of National Defence and Canadian Forces;
 2. act as a direct source of information, referral and education to assist individuals in accessing existing channels of assistance and redress within the Department of National Defence and Canadian Forces;
 3. serve to contribute to substantial and long-lasting improvements in the welfare of employees and members of the Department of National Defence and Canadian Forces.
- ii. The Ombudsman shall be independent from the management and chain of command of the Department of National Defence and Canadian Forces and shall report directly to and be accountable to the Minister.' (Article 3)

'The Ombudsman (...) shall investigate any matter referred to the Ombudsman by written direction of the Minister (...).' (Article 4)

'Any of the following persons may bring a complaint to the Ombudsman, directly and free of charge, where the matter complained about relates directly to Department of National Defence or the Canadian Forces:

1. a member or former member;
2. a member or former member of the Cadets;
3. an employee or former employee;
4. an employee or former employee of the Staff of Non-Public Funds, Canadian Forces;
5. a person who applies to become a member;
6. a member of the immediate family of a person referred to in paragraphs (a) to (e); or
7. a person who, pursuant to law or pursuant to an agreement between Canada and the state in whose armed forces the person is

serving, attached or seconded as an officer or non-commissioned member to the Canadian Forces.' (Article 12)

What are the duties of police and security officers?

According to the Law of Service in the Palestinian Security Forces No. 8 of 2005, officers serving in the police and security forces of the Palestinian National Authority have the following duties:

1. Police and security officers must heed the provisions of the Law of Service in the Palestinian Security Forces No. 8 of 2005 and the bylaws, decisions and regulations issued in pursuance thereof. (Articles 89, 168)
2. Police and security officers must perform the work assigned to them in an accurate and trustworthy manner and allot the time of the official work for the performance of the duties of their functions. They may be assigned to work at times other than the official working hours, in addition to the allotted time, if the interest of the work thus requires. (Articles 89.1, 168.1)
3. Police and security officers must cooperate with their colleagues in the performance of urgent duties that are necessary for the work progress and the implementation of public service. (Articles 89.2, 168.2)
4. Police and security officers must execute orders issued to them in an accurate and trustworthy manner within the limits of the laws, bylaws, and regulations in force. Each officer bears responsibility for the orders issued by him or her and is held responsible for the smooth progress of work within the limits of his or her jurisdiction. (Articles 89.3, 168.3)
5. Police and security officers must preserve the dignity of their functions in accordance with public tradition and act in a manner conforming to the respect due thereto. (Articles 89.4, 168.4)
6. Police and security officers must adhere to confidentiality to work-related matters, even after the end of their service. (Articles 90.5, 169.5)

7. Officers must serve in the particular units in the force that they serve in. (Article 62)
8. Officers must defend their position, centre or station. (Article 98)

Further duties may be determined by codes of conduct developed by the Palestinian National Authority. For example, the General Intelligence Law No. 17 of 2005 in Article 24.2 provides for a code of conduct and ethics to be developed.



Codes of conduct and codes of ethics

Many states have adopted codes of conduct and codes of ethic to improve the performance of their armed and security forces, in particular in their dealings with the citizens. Codes of conduct and codes of ethic are not hard laws, but voluntary commitments. They may be referred to as moral laws.

What is a code of conduct?

A code of conduct is a set of principles of conduct of an organization that guide the decisions, procedures and rules of behavior of its members **vis-à-vis external stakeholders**. The purpose of the code of conduct is to improve the welfare of key stakeholders and respects the rights of those affected by its operations. Examples are the UN Code of Conduct for Law-Enforcement Officials (1979) or Code of Conduct for Armed and Forces and Security Services in West Africa (2006).

What is a code of ethics?

A code of ethics is a set of principles of conduct **within an organization** that guide decision-making and behavior. The purpose of the code is to provide members and other interested persons with guidelines for making ethical choices in the conduct of their work. Professional integrity is the cornerstone of many employees' credibility. An example is the European Code of Police Ethics (2001).

South African Code of Conduct for Intelligence Employees

The following Code of Conduct was part of the 1994 White Paper on Intelligence and applies to each employee of the South African intelligence services. (Republic of South Africa, White Paper on Intelligence (October 1994), Annex A)

The Code of Conduct makes provision for inter alia:

- ◆ Declaration of loyalty to the State and the Constitution;
- ◆ Obedience to the laws of the country and subordination to the rule of law;
- ◆ Compliance with democratic values such as respect for human rights;
- ◆ Submission to an oath of secrecy;
- ◆ Adherence to the principle of political neutrality;
- ◆ Commitment to the highest degree of integrity, objectivity and unbiased evaluation of information;
- ◆ Commitment to the promotion of mutual trust between policy-makers and intelligence professionals.

The Code of Conduct also determines that intelligence agencies agree to execute their tasks in the following manner:

- ◆ They should accept as primary, the authority of the democratic institutions of society, and those constitutional bodies mandated by society to participate in and/or monitor the determination of intelligence priorities;
- ◆ They should accept that no changes will be made to the doctrines, structures and procedures of the national security framework unless approved of by the people and their representative bodies;
- ◆ They should bind themselves to the contract entered into with the electorate through a mutually agreed set of norms and code of conduct.

Chapter 2.2 Prohibited Acts and Penalties

In modern states, there are two kinds of military offences: military crimes and disciplinary violations. Military crimes and disciplinary violations carry different legal procedures and penalties.



What is a military crime?

Military crimes can be defined as serious violations directed against military capability, combat readiness and discipline and

effectiveness. Military crimes may include but are not limited to: Avoiding military service; absence without leave; desertion; treason; murder; and crimes committed during wartime, such as surrendering to the enemy and violations of international humanitarian law. These offences can only be committed by members of the armed forces and are directly linked to service.

(DCAF, Guidebook Understanding Military Justice, 2010, p. 22f)



What is a disciplinary violation?

Disciplinary violations are minor offences that can be dealt with by a military superior or military court in summary proceedings or by disciplinary tribunals. Typically, military crimes are more serious offences. However, when certain minor offences are committed in wartime or repeatedly, and seriously disrupt the functioning of the armed forces, they may be characterized as military crimes. Disciplinary offences may include but are not limited to: Failure to salute; quarreling with another member of the armed forces; drunkenness on duty; and insubordination.

(DCAF, Guidebook Understanding Military Justice, 2010, p. 22f)

Palestinian legislation makes security personnel liable for disciplinary and criminal action. It should be noted that Palestinian legislation considers all security personnel, including that of civilian bodies such as the police and civilian intelligence agencies, as military personnel:

'Any officer violating the duties set under this law or in decisions issued by the competent minister, deviating from the requirements of duty in his or her function, or behaving or appearing in a manner that may infringe upon the dignity of his function, shall be punished in a disciplinary manner, without prejudice to further civil or criminal action, as occasion may require.'

(Law of Service in the Palestinian Security Forces No. 8 of 2005, Article 94)

'Any non-commissioned officer or member of personnel violating the duties set under this law or in decisions issued by the competent minister, deviating from the requirements of duty in his or her function, or behaving or appearing in a manner that may infringe upon the dignity of his function, shall be punished in a disciplinary manner, without

prejudice to further civil or criminal action, as occasion may require.'

(Law of Service in the Palestinian Security Forces No. 8 of 2005, Article 173)

'The Military Courts shall impose penalties pursuant to the law if the officer commits (...) crimes (...).'

(Law of Service in the Palestinian Security Forces No. 8 of 2005, Article 98)

'Any person who deviates from the requirements of the functional obligation, or commits any of the prohibited acts set forth under this law and its bylaw, or appears in a manner that violates the dignity of the function and its requirements shall be punished pursuant to the penal law in force.'

(General Intelligence Law No. 17 of 2005, Article 31)



Crimes under the Amended Basic Law of 2003

Violations of Basic Rights and Freedoms (Article 31):

'Any violation or personal freedoms, of the sanctity of the private life of human beings, or any of the rights or freedoms that are guaranteed by the law or by the Amended Basic Law. Such violations are a crime and carry criminal and civil liability not subject to any statute of limitations.'

Non-Implementation of Court Decisions (Article 106):

'Refraining from or obstructing the implementation of judicial decisions in any manner whatsoever shall be considered a crime carrying a penalty of imprisonment or dismissal from position if the accused individual is a public official or assigned to public service.'

Prohibited Acts

What are the military crimes?

The **Law of Service in the Palestinian Security Forces No. 8 of 2005** in Article 98 determines the following military crimes:

1. Leaving a position, centre, or station or handing over any of them, or forcing or inciting any commander or person to leave a position, centre, or station or to hand over any of them;
2. Leaving weapons, ammunition, or equipment to the enemy;
3. Corresponding with the enemy, treason, or waiving the flag of truce to the enemy by means of treason or cowardice;
4. Supplying the enemy with weapons, ammunition or supplies, or receiving an enemy or protecting him in an intentional manner whilst such enemy is not a prisoner;
5. Serving the enemy or assisting him in a voluntary manner after being taken prisoner;
6. Conducting an act by the officer that intends to obstruct the victory of the security forces wholly or any unit of it during field service;
7. Misbehaving or tempting others to misbehave in front of the enemy by manner of cowardice.

What are the disciplinary offences?

The **PLO Revolutionary Penal Law of 1979** in Article 187 determines the following disciplinary offences:

1. Contravention of orders and directives;
2. Hesitation in the implementation of orders;
3. Refusal to receive the function or tardiness to receive it;
4. Forsaking of the function before having completed it and handing it over to the successor without agreement of the official;
5. Sleep during the service;
6. Negligence;
7. Being absent from the unit for a period of one month or less;
8. Surpassing the vacation for a period of one month or less;
9. Treatment of individuals and others in a manner that is void of respect;
10. Feigning of illness;
11. Causing of riot or disorder or annoyance in public places;
12. Contempt, libel or slander;

13. Disdain or threatening;
 14. Quarrel;
 15. Beating or simple harm;
 16. Intriguing;
 17. Lodging of false complaints;
 18. False testimony before the commander;
 19. Uttering of expressions breaching public ethics;
 20. Contravening of public ethics in camps;
 21. Consuming of alcoholic beverages in camps;
 22. Gambling in camps;
 23. Frequenting of prohibited places;
 24. Possessing of prohibited materials;
 25. Taking of others' belongings without their consent;
 26. Receiving of things that are more than the prescribed salary;
 27. Not being heedful of or not maintaining trust;
 28. Losing the trust the value of which exceeds fifty pounds;
 29. Losing the identity [card] or other revolutionary documents;
 30. Firing bullets in weddings and other parties;
 31. Traffic violations;
 32. Any other contravention that prejudices the smooth revolutionary system.
3. Purchasing movable or immovable properties which are bid by administrative or judicial parties for sale at the department or unit in which the officer works in, if such purchase is related thereto. (Articles 93.1, 172.1)
 4. Practicing commercial or industrial works of any kind, particularly having interest in works, contracting works, or tenders linked to his or her function. (Articles 93.2, 172.2)
 5. Renting land, buildings, or any other real state with the intention to exploit them at the department that the officer works in. (Articles 93.3, 172.3)
 6. Take part in the incorporation of companies or in the membership of their boards of directors or in any other position, unless the officer is being delegated on behalf of the police and security forces. (Articles 93.4, 172.4)
 7. Speculate in stock exchange markets. (Articles 93.5, 172.5)
 8. Gamble in clubs or halls allocated for offices or in public places or cabarets. (Articles 93.6, 172.6)

The Law of Service in the Palestinian Security Forces No. 8 of 2005 in Articles 90 and 169 determines that the following acts are prohibited for police and security officers during service:

1. Expressing political opinions and working in politics or affiliating with parties, entities, associations, or organizations with political objectives.
2. Participating in demonstrations or disturbances.
3. Taking part in organizing partisan meetings or electoral campaigns.
4. Holding meeting to criticize actions of the National Authority.
5. Revealing information or clarifications about subjects which are confidential due to their nature or by special directive.
6. Keeping documents, official papers or copies thereof, even if they belong to work assigned personally.
7. Violating the procedures of private or public security.
8. Appointing persons as intermediaries or accepting favouritism in any matter related

What other acts are prohibited for police and security officers?

In addition to the above, the Law of Service in the Palestinian Security Forces No. 8 of 2005 determines that the following acts are prohibited for police and security forces officers outside the context of service:

1. Performing acts for a third party with or without payment. (Articles 91, 170)
2. Being married to a non-Arab spouse without special permission by the competent minister and prior license of the marriage. (Articles 92, 171)

to the function of service, or acting as an intermediary for a private dispute or another employee in any matter pertaining thereto.

9. Contacting any non-Palestinian party, except pursuant to the instructions of the competent authorities.
10. Issuing statements to the media without official authorization by the competent minister.

The Law of the General Intelligence No. 17 of 2005 in Article 25 determines that the following acts are prohibited for officers of the General Intelligence:

1. Combining work at the Intelligence with any other work, unless the interest of the work so requires and by decision of the Head of the Intelligence.
2. Negligence or failure due to which a right of the state may be lost.
3. Revealing data pertaining to the matters of work to the media, whether during service or after, except through authorized persons.
4. Performing any political or media activity.
5. Affiliating with associations, institutions or clubs, unless the interest of the Intelligence requires so and by decision of the Head of the Intelligence.
6. Exploiting the function in order to achieve personal goals.
7. Keeping official documents, even if pertaining to activities that the officer was assigned.
8. Violating security measures as specified by the competent authority.
9. Concealing errors or violations by fellow officers.
10. Communicating or establishing special relationships with foreign nationals or members of embassies and missions accredited by the Head of State, unless the interest of the work requires so and by decision of the Head of the Intelligence.

What command responsibility?

The Law of Service in the Palestinian Security Forces No. 8 of 2005 determines that officers

are legally responsible for crimes committed by subordinate members of the security forces:

'Each officer bears responsibility for the orders issued by him or her and is held responsible for the smooth progress of work within the limits of his or her jurisdiction.'

(Articles 89.3, 168.3)

'An officer shall not be exempted from penalty based upon an order by his or her commander or superior, unless his or her violation is proven to have been the execution of an order issued to him or her by such commander or superior despite having brought the violation to the attention of his or her commander or superior. In such case, responsibility shall be borne by the issuer of the order alone.'

(Article 94)

'A non-commissioned officer or member of personnel shall not be exempted from penalty based upon an order by his or her commander or superior, unless his or her violation is proven to have been the execution of an order issued to him or her by such commander or superior despite having brought the violation to the attention of his or her commander or superior. In such case, responsibility shall be borne by the issuer of the order alone.'

(Article 173)



Command responsibility

Command responsibility means the responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflicts. The Rome Statute of the International Criminal Court (2002) determines command responsibility as follows:

'(...) a superior shall be criminally responsible for a crime (...) committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- (i) the superior either knew, or consciously disregarded information which clearly indicated that the subordinates were committing or about to commit crimes;

- (ii) the crimes concerned activities that were within the effective responsibility and control of the superior;
- (iii) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.' (Article 28 b)

However, command responsibility does not absolve subordinates from criminal liability:

'The fact that a crime (...) has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

- a) the person was under legal obligation to obey orders of the Government or the superior in question;
- b) the person did not know that the order was unlawful;
- c) the order was not manifestly unlawful.' (Article 33.1)

Penalties

What are the penalties for prohibited acts?

The penalties imposed on police and security officers of the Palestinian National Authority for the above mentioned offences are codified in the Law of Service of the Palestinian Security Forces No. 8 of 2005 and the PLO Revolutionary Penal Law of 1979. The Law of Service of the Palestinian Security Forces No. 8 of 2005 in Article 95 distinguishes between three different penalties:

1. Disciplinary sanctions against officers, non-commissioned officers and personnel imposed by direct commanders and superiors.
2. Disciplinary sanctions against officers imposed by the Committee of Officers.
3. Penalties against officers, non-commissioned officers and personnel imposed by the Military Courts pursuant to the PLO Revolutionary Penal Law of 1979.

What are the disciplinary sanctions imposed by direct commanders and superiors?

Disciplinary penalties imposed by direct commanders and superior are codified in the PLO Revolutionary Penal Law of 1979, as well as the Decision of the Minister of Interior No. 192 of 2009. They are restricted to:

- ◆ Admonition.
- ◆ Warning.
- ◆ Deduction from salary of up to 10 days.

- 'A. Commanders of forces, brigades, and support and services may impose the penalties of admonition and warning upon all officers subordinate to them.
- B. Commanders of units may impose the penalties of deprivation from the weekly and monthly vacation or a surplus function as an additional penalty.'

(PLO Revolutionary Penal Law of 1979, Article 195)

'The following summary procedures shall be conducted in the disciplinary offences in a verbal manner:

- A. The accused shall appear before the commander, who inquires him or her about whether he or she confessed the charge ascribed to him or her. If the officer confessed it, he or she [the commander] shall impose upon him or her the penalty which is necessitated by his or her act. If the officer denied it, he or she [the commander] shall read unto him or her the reports and records stated against him or her. Then, he or she shall hear the testimonies of the prosecution following the oath as well as the defence of the accused.
- B. The commander of the unit shall rule for innocence when the act is not proved and for penalty which his or her act necessitates and shall record it on the paper of the judgement and sign it.
- C. The commander of the unit shall execute the judgement through the deputy of the force and shall notify the competent authorities thereof.'

(PLO Revolutionary Penal Procedures Law of 1979, Article 280)

What are disciplinary sanctions for officers imposed by the Committee of Offices?

These penalties are prescribed by the Law of Service in the Palestinian Security Forces No. 8 of 2005 in Article 96. They are imposed on officers only by the Committee of Officers, based on the approval of the competent minister, or, in the case of the termination of service, by the approval of the President. They include the following:

- ◆ Termination of delegation.
- ◆ Remaining in the rank for a period not to exceed two years (ban of promotion).
- ◆ Deprivation from the regular increment or the increment of command.
- ◆ Transfer to provisional retirement.
- ◆ Termination of service.

What are the penalties imposed by military courts?

Penalties imposed by military courts are codified in the PLO Revolutionary Penal Law of 1979. They include the following:

Ordinary criminal penalties:	<ul style="list-style-type: none"> • Death penalty. • Hard labour for life. • Temporary hard labour. • Life imprisonment. • Temporary imprisonment. (Article 12)
Political criminal penalties:	<ul style="list-style-type: none"> • Life imprisonment. • Temporary imprisonment. • Suspension for life. (Article 13)
Ordinary misdemeanant penalties:	<ul style="list-style-type: none"> • Penal servitude. • Simple confinement. • Fine. (Article 14)
Political misdemeanant penalties:	<ul style="list-style-type: none"> • Simple confinement. • Temporary suspension. (Article 15)
Penalties of contraventions:	<ul style="list-style-type: none"> • Vexatious confinement. • Fine. (Article 16)



Abolishment of death penalty

More than two-thirds of the countries of the world have abolished the death penalty in law or in practice. While 58 countries retained the death penalty in 2009, most did not use it. The community of states has adopted four international treaties specifically providing for the abolition of the death penalty. Through the years, several UN bodies discussed and adopted measures to support the call for the worldwide abolition of the death penalty.

In December 2007 and 2008 the United Nations General Assembly (UNGA) adopted resolutions 62/149 and 63/168, calling for a moratorium on the use of the death penalty. Since then, other regional bodies or civil society coalitions adopted resolutions and declarations advocating for a moratorium on executions as a step towards global abolition of the death penalty. These resolutions are not legally binding on governments, but represent important milestones for the abolitionist movement and constitute a continued progress towards the total exclusion of capital punishment from international law.

(www.amnesty-international.org/en/death-penalty)

Chapter 3

Functions and Competencies of Law Enforcement Officers in the Criminal Justice Process

Objective of the Chapter:

This section identifies the competencies of law enforcement officers in line with the Law of Penal Procedures No. 3 of 2001. This law is the cornerstone of the criminal justice process of the Palestinian National Authority. The aim of the section is to help law enforcement officers, in particular those tasked with judicial duties, understand their mandate and competencies, as well as the relevant procedures of the criminal justice process. Additional regulations are prescribed by the Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998. At the end of each sub-chapter, the section also identifies the relevant provisions of military penal procedures in accordance with the PLO Revolutionary Penal Procedures Law of 1979, in particular the functions of military judicial officers in the military criminal justice process.

Structure of the Chapter:

Chapter 3.1 The PNA Criminal Justice Process

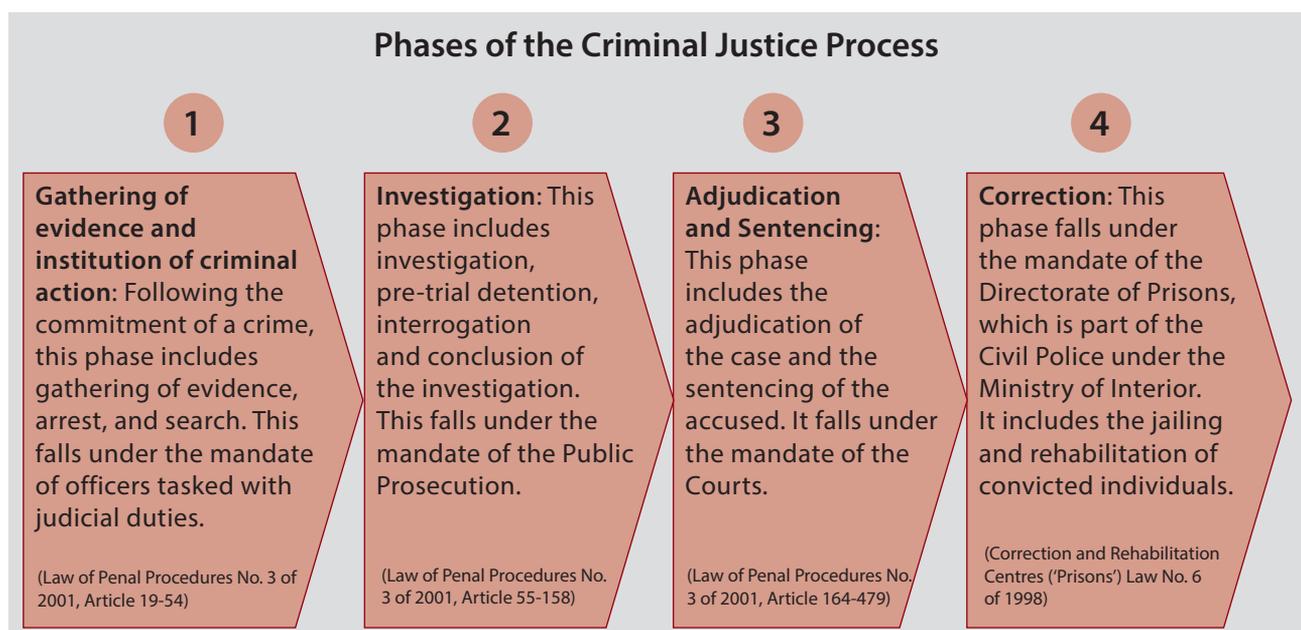
Chapter 3.2 Functions and Competencies of Law Enforcement Officers tasked with Judicial Duties

Chapter 3.3 Functions and Competencies of the General Prosecution

Chapter 3.1 The PNA Criminal Justice Process

According to the Law of Penal Procedures of No. 3 of 2001 and the Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998, the criminal justice process is divided into four phases:

1. **Gathering of evidence and institution of criminal action:** Following the commitment of a crime, this phase includes gathering of evidence, arrest, and search. This falls under the mandate of law enforcement officers tasked with judicial duties. (Law of Penal Procedures No. 3 of 2001, Article 19-54)
2. **Investigation:** This phase includes investigation, pre-trial detention, interrogation and conclusion of the investigation. This falls under the mandate of the Public Prosecution. (Law of Penal Procedures No. 3 of 2001, Article 55-158)
3. **Adjudication and Sentencing:** This phase includes adjudicating the case and sentencing the accused. It falls under the mandate of the Courts. (Law of Penal Procedures No. 3 of 2001, Article 164-479)
4. **Correction:** This phase falls under the mandate of the Directorate of Prisons, which is part of the Civil Police under the Ministry of Interior. It includes the jailing and rehabilitation of convicted individuals. (Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998)





What is the criminal justice system?

A criminal justice system is a set of legal and social institutions for enforcing the criminal law in accordance with a defined set of procedural rules and limitations. The criminal justice system consists of three main parts: (1) law enforcement (police); (2) adjudication (courts); and (3) corrections (jails, prisons, probation and parole). In a criminal justice system, these distinct agencies operate together both under the rule of law and as the principal means of maintaining the rule of law within society.



Palestinian military criminal procedures

Criminal procedures for military personnel of the Palestinian National Authority follow the same stages and have the same distribution of responsibilities as the criminal procedures for civilians. Military criminal procedures are based on the PLO Revolutionary Law of Penal Procedures of 1979:

‘Member of the Revolutionary Judicial Police shall be assigned to investigate offences, collate respective evidence, arrest perpetrators and bring them to the courts (...).’

(PLO Revolutionary Law of Penal Procedures of 1979, Article 10)

‘The [Military] Attorney-General and members of the Public Prosecution, including prosecutors and assistants to prosecutors, shall perform the functions of the Judicial Police. He shall be assisted in the conducting of the function of the Judicial Police by those mentioned (...) below, each within its sphere of jurisdiction (...).’

(PLO Revolutionary Law of Penal Procedures of 1979, Article 11)

administrative function aims at preventing crime, whereas the judicial function aims at helping the Public Prosecution in prosecuting crime.

It is important for states to have a clear legal framework that allows law enforcement agencies to fulfill both preventive and repressive functions. For the judicial or repressive function, the Palestinian legislator established a legal framework through the Law of Penal Procedures of No. 3 of 2001. The main competencies of officers tasked with judicial duties are limited to the phase of gathering of evidence and institution of criminal action:

‘Officers tasked with judicial duties shall search for and gather facts concerning crimes and their perpetrators and collect evidence necessary for the investigation of the case.’

(Law of Penal Procedures No. 3 of 2001, Article 19.2)

Administrative (Preventive) Function	
Scope	Preventive measures before a crime occurs.
Objective	Prevent occurrence of crime.
Control and supervision	Officers tasked with administrative duties report to the administrative authority, particularly the Police.
Judicial (Repressive) Function	
Scope	Judicial measures after the crime occurs.
Objective	Prepare criminal case for the Public Prosecution, through gathering evidence and arresting the suspect.
Control and supervision	Officers tasked with judicial duties report to the Public Prosecution.

Chapter 3.2 Function and Competencies of Law Enforcement Officers tasked with Judicial Duties

Preventing and detecting crime is one of the key functions of law enforcement agencies. To fulfill their duties, law enforcement agencies have administrative and judicial functions. The

Who are officers tasked with judicial duties?

Officers tasked with judicial duties are official functionaries of the Palestinian National Authority. As prescribed by the Law of Penal Procedures No. 3 of 2001, officers tasked with judicial duties include the following:

1. The Director of the Police, his/her deputies, his/her assistants, police directors of the governorates, and directors of the various departments of the police.
2. Police officers and non-commissioned officers in line with their bailiwick.
3. Commanders of naval vessels and aircraft.
4. Employees that have been given the authority of officers tasked with judicial officers according to the law.'

(Law of Penal Procedures No. 3 of 2001, Article 21)

Article 21.4 of the law thus allows for granting judicial duties to security officers other than police officers. Such officers may include members of the intelligence agencies, customs, or the ministries of interior and health. However, these bodies do not have general judicial duties like the Police and the Public Prosecution but only special ones limited to their mandate. For instance, the Civil Defence has judicial duties in the area of civil protection:

'The employees of the Ministry of Interior and others who are delegated by the Minister shall have the capacity of judicial officers to enforce the provisions of this law and execute decisions thereof.'

(Civil Defence Law No. 3 of 1998, Article 23)

Current PNA legislation also gives judicial duties to the General Intelligence and the Preventive Security:

'The Intelligence, in the cause of the commencement of its jurisdiction set forth under this law, shall have the capacity of judicial officers.'

(General Intelligence Law No. 17 of 2005, Article 12)

'The officers and non-commissioned officers of the Preventive Security, in the cause of the commencement of its jurisdiction set forth the under this law, shall have the capacity of judicial officers.'

(Decree Law of 2007 Concerning the Preventive Security, Article 7)

The judicial duties of the General Intelligence and the Preventive Security are special judicial duties and strictly limited to their mandate. Also, in exercising judicial duties, personnel of both agencies must adhere to the provisions of the Law of Penal Procedures No. 3 of 2001.



Should intelligence agencies have judicial duties?

In modern states, intelligence agencies do not have judicial duties. Their role is strictly limited to collecting, processing and analyzing information for decision-makers. Yet, in some countries, governments have claimed that a clear distinction between intelligence and law enforcement powers is no longer tenable, in particular after the events of 11 September 2001. They have demanded that intelligence agencies need new powers to interrogate, arrest and detain people. However, such shift may ultimately endanger the rule of law, as the collection of intelligence and the collection of evidence about criminal acts becomes more and more blurred. This may lead to a situation where governments begin preferring to use undisclosed evidence gathered by intelligence agents in administrative proceedings over attempts to prove guilt beyond reasonable doubt in a criminal trial.

According to international law and as an exception, granting judicial power to intelligence agencies may be lawful only if:

1. Intelligence agencies comply with all relevant human rights standards regarding arrest and detention;
2. Intelligence agencies comply with domestic constitutional and other provision prescribed for ordinary law enforcement agencies.

(Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the rights to development. Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, United Nations General Assembly, Human Rights Council, A/HRC/10/3, 4 February 2009)



Officers tasked with military judicial duties

According to the PLO Revolutionary Law of Penal Procedures of 1979, officers tasked with military judicial duties include:

1. Officers and non-commissioned officers of the security, units and agencies.
2. Officers and non-commissioned officers of the Military Police.
3. Officers of the forces of the Armed Palestinian Revolution.

4. The individuals who are granted such an authority by the Higher Commander or whom he or she authorises of the functions delegated to them.
5. The person who is authorised with such a capacity in accordance with other laws or regulations arising therefrom.
6. Commanders of the units, formations and locations.
7. Commanders of the Centres of the Palestinian Armed Struggle.'

(PLO Revolutionary Law of Penal Procedures of 1979, Article 12)

Who supervises officers tasked with judicial duties?

Judicial duties are the original competence of the Public Prosecution. The Public Prosecution supervises the officers tasked with judicial duties in the performance of their function:

'The Public Prosecution shall be exclusively competent to investigate crimes and to take action in this regard.'

(Law of Penal Procedures No. 3 of 2001, Article 55.1)

'The members of the Public Prosecution shall exercise judicial authorities and supervise officers tasked with judicial duties (...).'

(Law of Penal Procedures No. 3 of 2001, Article 19.1)

'The Attorney-General shall supervise the officers tasked with judicial duties, who shall be subject to his or her control in the exercise of the functions of their positions.'

(Law of Penal Procedures No. 3 of 2001, Article 20.1)

Officers tasked with judicial duties thus act as subordinates to the Public Prosecution, which is solely authorized to conduct investigations. They perform their duties by delegation of the Public Prosecution and are restricted to the duties and competencies set forth in the Law of Penal Procedures of No. 3 of 2001.



Exceptional duties of officers tasked with judicial duties

The competencies of officers tasked with judicial duties are restricted to guarding the crime scene, collecting and preserving the evidence and

taking preliminary statements from witnesses. Officers tasked with judicial duties help the Public Prosecution in conducting the investigation, but do not conduct investigations or interrogations of witnesses.

There are two exceptions that allow officers tasked with judicial duties to act without waiting for orders issued by the Deputy-Prosecutor:

1. Prior delegation by the Public Prosecution:

'The Attorney-General or the competent Deputy-Prosecutor may delegate a competent member of the judicial officer corps to perform any act of investigation in a specific case (...).'

(Law of Penal Procedures No. 3 of 2001, Article 55.2)

2. Flagrant felony or misdemeanour:

In case of a flagrant crime, the officer tasked with judicial duties immediately proceeds to the crime scene to examine it and preserve evidence.

'The officer shall establish the condition of the premises, the persons, and everything that may serve as evidence and shall hear statements of whoever is present at the scene or any person capable of providing information regarding the crime and its perpetrators. The officer shall notify the Public Prosecution immediately.'

(Law of Penal Procedures No. 3 of 2001, Article 27)

'The judicial officer who proceeds to the crime scene of a flagrant crime may prevent those present from leaving the scene or from distancing themselves from it until the written report is completed. The judicial officer may immediately summon and hear all persons capable of providing him or her with information regarding the incident.'

(Law of Penal Procedures No. 3 of 2001, Article 28.1)



What is a flagrant crime?

The characteristics of flagrant crime pertain to the circumstances of its uncovering, not to the nature of the crime. A crime is flagrant in any of the following circumstances:

1. While it is being committed or shortly after it was committed.
2. If the perpetrator of a crime is pursued by the victim or by public clamour in the wake of its commission.

3. If the perpetrator is found shortly after the commission of a crime in possession of tools, weapons, effects, papers, or other items which indicate that he or she committed or participated in the crime, or if he or she exhibits traces or marks thereof.'

(Law of Penal Procedures No. 3 of 2001, Article 26)

Officers tasked with judicial duties must visibly identify the circumstances indicating a flagrant crime and abide by the procedures stated in the Law of Penal Procedures No. 3 of 2001 when acting. Illegal procedures, such as unlawful arrests, will not stand before the court, even if undertaken in the case of a flagrant crime.

What are the responsibilities of officers tasked with judicial duties?

Officers tasked with judicial duties have four main responsibilities:

1. **Receiving complaints** (Law of Penal Procedures No. 3 of 2001, Article 22).
2. **Gathering evidence relating to the crime** (Law of Penal Procedures No. 3 of 2001, Article 22).
3. **Arresting suspects** (Law of Penal Procedures No. 3 of 2001, Article 30).
4. **Searching persons and houses** (Law of Penal Procedures No. 3 of 2001, Article 39).

They fulfil these responsibilities as subordinates of the Public Prosecution and to help the Public Prosecution conduct the investigation into the crime. Any other task requires a specific delegation by the Public Prosecution:

'The Attorney-General or the competent Deputy-Prosecutor may delegate a competent member of the corps of officers tasked with judicial duties to perform any act of investigation in a specific case, except for the interrogation of the suspect in a felony.'

(Law of Penal Procedures No. 3 of 2001, Article 55.2)

'The delegation must not be general.'

(Law of Penal Procedures No. 3 of 2001, Article 55.3)

1. Receiving complaints

What is a complaint?

A complaint is the reporting of a crime to the competent authority. A complaint can be verbal, written or by telephone.

What are the duties of officers tasked with judicial duties in processing complaints?

Officers tasked with judicial duties must not reject any complaint of a crime that a citizen may submit to them.

'Judicial officers (...) accept reports and complaints addressed to them regarding crimes and present them without delay to the Public Prosecution.'

(Law of Penal Procedures No. 3 of 2001, Article 22.1)

Processing the complaint includes the following steps:

1. Registering the personal data of the complainant or the victim and verify the correctness of these data.
2. Putting a serial number to the record of the complaint in line with the numbering system of the police station. Such number must include date and time when the complaint was received.
3. Documenting the content of the complaint in a clear, comprehensive and detailed manner in line with the chronological sequence of events.
4. Notifying the Public Prosecution about the complaint without delay.



Questions to be answered in the record of the complaint

In order to be useable for further procedures, the record of the complaint must address a number of questions:

1. Did the crime indeed take place?
2. What are the personnel details of the complainant? (Name, Address, ID number etc.)
3. What happened to the complainant/the victim (in detail)?

4. When did the crime occur (i.e. date and time; day or night)?

5. What was the venue and object of the crime (in detail)?

In case of theft: Description of the stolen objects, including shape, type and number.

In case of crimes committed against persons:

- What injuries have occurred?
- Who caused the injuries?
- How were the injuries caused?
- Did the victim see a doctor?
- Did the victim receive a medical report?
- Does the victim still suffer from the injuries?

6. How was the crime committed?

In case of crime against properties: How was the object stolen or damaged?

In case of crime against persons: What instrument was used to cause the injury?



Standards for receiving victim or witness complaints involving violence against women

In case the complainant is a female and has suffered from gender-based violence, such as harassment, beating or rape, law enforcement agencies should take specific steps to deal with the victims/the witnesses:

1. Waiting room and places for registration of complaints must ensure confidentiality and enable complete separation of victim and aggressor. Accompanying minors must be put in separate places.
2. If the victim must be transported, this must happen in appropriate vehicles. Accompanying minors must be transported appropriately.
3. Whenever possible, it is advisable to listen to the victim if she wishes to express her feelings.
4. Police stations should have updated lists of public and private organizations and

welfare services for women who are victims of violence, including addresses and phone numbers.

5. Police officers involved should inform the victim of all her rights and the services she is entitled to, including the right to have a social worker with her while at the police, in hospital or at court. They should encourage her to contact with the social and welfare services involved.

6. Officers in charge of registering the complaint should collect the minimum data necessary to define and decide on protection for the victim and identification. The data gathered should be clearly defined, ensuring that those who register complaints have experience and proper training.

7. When identifying a case of gender-based violence, law enforcement agencies should work towards determining:

- What is the factor relating to the violence suffered by the victim?
- What is the relationship with the offender?
- What are the offender's background and his environment?
- What are the family, social, economic and work circumstances of the victim and the offender?
- Are there children living in this context of violence?
- What other circumstances are there that may effect the evolution of the case (filing or withdrawing of complaints, the decision to live together again, etc.)?

8. In order to reduce the effect of the attack on the woman, a decision should be taken on the ideal time to register the complaints. An attempt should be made to take the witnesses' testimony as soon as possible and in a very comprehensive way.

9. Inspection at the crime scene should be conducted as soon as possible, since in many cases it will make it possible to detect hard evidence of violence by the offender at that place.

(Council of the European Union, European Union Handbook of Best Police Practice on Tackling Violence Against Women, 78810/2/, Brussels, 9 April 2010)



Palestinian military criminal procedures

Procedures for complaints of security personnel follow the same procedures as the Law of Penal Procedures No. 3 of 2001:

‘Each person who finds himself/herself to have been aggrieved due to a crime or misdemeanour shall be entitled to file a complaint in which he/she takes the capacity of personal prosecution to the Public Prosecutor (...).’

(PLO Law of Revolutionary Penal Procedures of 1979, Article 40)

‘In the centres where a Public Prosecutor does not exist, members of the Judicial Police mentioned under Article 12 above shall receive the notices pertaining to the offences committed in the locations where they exercise their functions and shall immediately notify the competent Public Prosecutor of the flagrant offences on time.’

(PLO Law of Revolutionary Penal Procedures of 1979, Article 13)

‘The notice shall be drawn up by its respective informant or his/her deputy or the Public Prosecutor in the event he/she was thus requested. Each page shall be signed by the Public Prosecutor and the complainant or his/her deputy.’

(PLO Law of Revolutionary Penal Procedures of 1979, Article 25 a)

2. Gathering evidence

What is gathering evidence?

Gathering of evidence refers to all procedures taken by law enforcement officials to assist in establishing what offence has been committed, gathering evidence of the crime, and searching for clues to identify or confirm the identity of the offender. All legal procedures prescribed for gathering evidence must be strictly abided by. Otherwise, the evidence is invalid before the courts.

‘For the minutes to have probative force, they must fulfill the following conditions:

1. They must comply with the formal requirements.
2. They must be transcribed by the person who investigated the incident himself/herself or who was personally notified thereof.

3. The person who transcribed them must have acted within the limits of his/her authority and in performance of the functions of his/her position.’

(Law of Penal Procedures No. 3 of 2001, Article 213)

What are the duties of officers tasked with judicial duties in gathering evidence?

Upon receiving the complaint, officers tasked with judicial duties must take two steps:

1. Notify the Public Prosecution and implement the instructions issued by the respective Deputy-Prosecutor.

‘Judicial officers (...) accept reports and complaints addressed to them regarding crimes and present them without delay to the Public Prosecution.’

(Law of Penal Procedures No. 3 of 2001, Article 22.1)

2. Move to the crime scene and to secure it, take preliminary statements of witnesses and offenders, and write the crime scene report.

‘Judicial officers (...)

2. Conduct examinations and searches and obtain all necessary clarification to assist the investigation, as well as seek the assistance of experts and witnesses without administering the oath.
3. Take all necessary measures to preserve the evidence of a crime.
4. Transcribe all the procedures taken in official minutes signed by them and by the party concerned.’

(Law of Penal Procedures No. 3 of 2001, Article 22)

What are the duties in securing the crime scene?

Officers tasked with judicial duties must take all necessary measures to protect the crime scene (Law of Penal Procedures No. 3 of 2001, Article 22.3). They must not allow persons present (including members of the victim’s family) to enter the crime scene. They must prevent persons present from touching, altering the position or removing objects present at the crime scene. Importantly, officers tasked with judicial duties must not touch or alter the position of evidence

and wait for the arrival of the Deputy-Prosecutor. Taking fingerprints, identifying bullet casings or any other act of crime scene investigation are part of investigation procedures and fall under the jurisdiction of the Public Prosecution, unless the Prosecution specifically delegates an officer tasked with judicial duties to perform such acts.

How must the crime scene report look like?

Officers tasked with judicial duties must write a crime scene report to be signed by them and the concerned party (Law of Penal Procedures No. 3 of 2001, Article 22.4). This report forms the basis for the investigation carried out by the Public Prosecution.

The crime scene report must include an accurate description of anything related to the crime scene. Such report must be as detailed and comprehensive as possible. The crime scene report must include all procedures implemented and anything of relevance seen or heard by the officer. The report must also include the reasons why it was written, as well as venue and time of the crime. The officer must list all the objects confiscated, including the instrument of the crime, narcotics, or any other piece of evidence.

Officers tasked with judicial duties must refer all records pertaining to the crime, such as witness/suspects statements, confiscated object reports, and crime scene reports, to the Public Prosecution immediately after they are completed.



Question to be answered in the crime scene report

1. Where did the crime take place? (Name of the city, area, street and building)
2. How does the crime scene look like? (This must include all objects found at the crime scene; the crime scene description should start from a given point in clockwise direction)

In case of crimes against persons:

What is the victim's condition? (detailed description)

In case of killings:

- What is the state of the dead body? (sex, age, detailed description, identification if possible)

- What is the location of the dead body? (exact position in relation to the four directions, face down or on back etc.)
- What is the apparent cause of death? (number and position of shot wounds, stab wounds etc.)

In case of crimes against properties:

What is the state of the property? (detailed description)

In case of narcotics crimes:

What is type and amount of drugs confiscated?

Photographs must be taken of the crime scene, and a sketch must be drawn up.

How to take preliminary statements of witnesses and suspects?

Officers tasked with judicial duties take statements of witnesses and suspects, in case the latter is known. While present at the crime scene, officers must prevent any person present from leaving the scene until their personal information is recorded (Law of Penal Procedures No. 3 of 2001, Articles 22.3, 27, 28). Statements of witnesses/suspects must be added to the crime scene report. Taking witness and suspect statements include the following steps:

1. Register the personal data of the witness or suspect.
2. Put a serial number on the statement in line with the numbering system of the police station. Such number must include date and time at which the statement was taken.
3. Document the information related to the crime in a clear, comprehensive and detailed manner in line with the chronological sequence of events.
4. Read out the report to the witness/suspect and have him/her signing it. The reading out must be confirmed in the report. An illiterate person may use his/her fingerprint. The person who refuses to sign on the record will also be stated on the record.
5. Sign the witness/suspect statement.



Questions to be answered in a witness statement

In order to be useable for further procedures, the witness and suspect statement must address a number of questions. The concrete nature of the questions will depend on the nature of the crime:

1. What are the personal details of the witness/suspect? (Name, Address, ID number etc.)
2. Where was the witness/suspect during the occurrence of the crime?
3. What did the witness/suspect see or hear (in detail)?
4. Did the witness see the occurrence of the crime?
5. How was the crime committed?
 - In case of crimes against properties: How was the object stolen or damaged?
 - In case of crimes against persons: What instrument was used to cause the injury/killing?
6. Questions pertaining to witnesses:
 - Is there a relation of kinship or dispute between you and parties to the conflict?
 - Why are you present at the crime scene?
 - Did you see the suspect before the incident?
 - Did you see the victim before the incident?
7. Questions addressed to the suspect:
 - Why does the complainant claim that you perpetrated the crime against him/her?
 - What is your role and that of others in perpetrating the crime? (in case the suspect confesses)
 - How exactly did you perpetrate the crime?
 - With respect to the motive (i.e. the immaterial element): Is there any relation of kinship or dispute between you and the complainant (i.e. the victim)?



Palestinian military criminal procedures

Procedures for gathering evidence related to crimes committed by security personnel follow the same procedures as the Law of Penal Procedures No. 3 of 2001.

‘[Members of the judicial police] shall (...) be bound in the event of a flagrant crime or if the house owner calls them to write a record, hear the statements of witnesses and the persons apprehended, conduct the inquiries, search houses, and [perform] all proceedings that are under such circumstances among the functions of the Public Prosecutor. They shall also document them on records to be signed by them, stating the hour and date and place of their occurrence, and submit them with seized objects to the relevant Public Prosecutor through the unit commanders immediately upon the completion of the investigation.’

(PLO Law of Revolutionary Penal Procedures of 1979, Article 13 b)

3. Arresting suspects

What is arrest ('qabd')?

Arrest means the act of apprehending a person for the alleged commission of an offence or by the action of an authority (UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly, A/RES/43/173, 9 December 1988). In Palestinian law, the period of arrest includes the apprehending of a person and subsequent police custody of up to 24 hours.

When can officers tasked with judicial duties arrest persons?

Unlawful arrests, i.e. arrests without judicial order, are forbidden by Palestinian and international law:

‘It shall be prohibited to arrest, (...) imprison, restrict the freedom or prevent the movement of any person, except by judicial order pursuant to the provisions of the law.’

(Amended Basic Law of 2003, Article 11.2)

‘No person may be arrested or imprisoned except by order of the competent authority (...).’

(Law of Penal Procedures No. 3 of 2001, Article 29)



Right to liberty and security of the person

'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedure as are established by law.'

(ICCPR, Article 9)

'Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.'

(UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, General Assembly, A/RES/439,173/ December 1988, Principle 2)

Ordering arrests is the sole competence of the Public Prosecution. Officers tasked with judicial duties may request arrest warrants from the Public Prosecution in two cases (Law of Penal Procedures No. 3 of 2001, Article 31):

1. If the accused is not present.
2. If there is sufficient evidence to charge the accused with a felony or misdemeanour punishable by imprisonment for more than six months.

Officers tasked with judicial duties may arrest persons without a warrant in five specific cases. These cases require that there is sufficient evidence to charge the suspect:

- ◆ In case of flagrant felonies or misdemeanours punishable by imprisonment for more than six months (Law of Penal Procedures No. 3 of 2001, Article 30.1).
- ◆ In case the person to be arrested resists the officer in performing his/her duties (Law of Penal Procedures No. 3 of 2001, Article 30.2).
- ◆ In case the person was lawfully detained and escaped or tried to escape from the place of detention (Law of Penal Procedures No. 3 of 2001, Article 30.2).
- ◆ In case the person is suspected to have committed a crime by the officer tasked with judicial duties and refuses to give name and address or has no known or permanent address in Palestine (Law of Penal Procedures No. 3 of 2001, Article 30.3).

- ◆ In case of traffic violations committed in the presence of the officer, including:
 - ◆ Driving a vehicle without license plate;
 - ◆ Driving a vehicle without driving license;
 - ◆ Causing accidents resulting in physical injuries;
 - ◆ Driver refuses to give name, address, driver's license, or vehicle's license
 - ◆ Assault by the driver in word or deed;
 - ◆ Driving under the influence of alcohol or narcotics. (Traffic Law No. 5 of 2000, Article 1)



Citizens' arrest

'Any person who witnesses a flagrant felony and misdemeanour has the right to arrest the perpetrator and take him/her to the nearest police station without waiting for an arrest warrant by the Public Prosecution.'

(Law of Penal Procedures No. 3 of 2001, Article 32)

The General Intelligence and the Preventive Security, insofar as they have been given the authority of judicial officers by law, are bound by the arrest procedures of the Law of Penal Procedures No. 3 of 2001.

'Pursuant to the provisions of the law, the Intelligence shall conduct preliminary investigations into incidents ascribed to the detained person; exercise oversight; search; investigate and inspect; may request the attachment of properties and the detention of individuals; may summon and interrogate individuals and hear their statement; and may request data, information or documents from any person or keep them and takes such actions as it deems necessary in their regard, pursuant to the law.'

(General Intelligence Law No. 17 of 2005, Article 14)

'The Directorate-General of the Preventive Security must respect the rights, freedoms and guarantees set forth in the Palestinian law (...).'

(Decree Law of 2007 Concerning the Preventive Security, Article 8)

Moreover, officers of the General Intelligence and the Preventive Security must abide by all rights and

guarantees set forth by the Amended Basic Law of 2003 and the relevant provisions of international law:

‘The Intelligence must heed the rights and guarantees set forth in the Palestinian laws and the rules of international law in this domain.’

(General Intelligence Law No. 17 of 2005, Article 13)

‘The Directorate-General of the Preventive Security must respect the rights, freedoms and guarantees set forth in the Palestinian law, as well as international charters and treaties.’

(Decree Law of 2007 Concerning the Preventive Security, Article 8)



Arrests by intelligence agencies

In modern states, intelligence agencies do not have the power to arrest people. However, in some countries, intelligence agencies have acquired legal powers to arrest and detain people who are expected to have information about terrorist activities. Preventive detention for public security reasons, including interrogation by intelligence agencies for intelligence purposes, may be under very exceptional circumstances a proportionate interference with the right to liberty, if

1. The arrest and detention have a clear and accessible basis in law;
2. Information on the reasons for arrest and detention have been given; and
3. Arrest and detention are subject to effective judicial review.

Such arrest and detention must under no circumstances be arbitrary and include compensation in the case of unjustified detention. Situations where persons are detained for a long period of time or repeatedly for the sole purpose of intelligence-gathering or on broad grounds in the name of prevention are an arbitrary deprivation of liberty and forbidden by international law.

(Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the rights to development. Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, United Nations General Assembly, Human Rights Council, A/HRC/104,3/ February 2009)

What types of arrest orders?

Officer tasked with judicial duties must execute judicial orders by the Public Prosecution entailing arrest. There are three types of judicial orders according to the Law of Penal Procedures No. 3 of 2001:

1. **Arrest warrants:** Arresting a suspect in a crime (Article 31).
2. **Subpoenas:** Issued by the Public Prosecution to bring an accused to appear before it for investigation (Article 106, 111). There are two types:
 - ◆ **Writ of summons:** Ordering an accused to appear for investigation (Article 106). In this case, the Deputy-Prosecutor must interrogate the accused immediately (Article 107).
 - ◆ **Writ of attachment:** Ordering an accused that fails to appear or is feared to flee. Such accused may be brought by force (Article 106, 111, 112). The accused must be delivered to the Deputy-Prosecutor within 24 hours (Article 107). Also, the Deputy-Prosecutor must interrogate the accused within 24 hours from the date of the arrest (Article 107).
 - ◆ Writs of summons and attachment must be executed immediately and remain in full effect until executed (Article 109). Writs of attachment expire after three months unless extended by the person who issued it (Article 109).
 - ◆ Writs must be signed by the legally competent authority, stamped with the official seal and include the following: Surname, given name, and description of the accused, the crimes imputed on him/her and the applicable articles of the law, the full address and the period of detention if any. (Article 110)
 - ◆ Writs shall be read out to the person to be arrested and they must be allowed to read it (Article 112). They are executory in Palestine at any hour (Article 113).
3. **Bills of indictment:** Issued by the competent court to bring an accused for trial (Article 185, 187).



What is an accused?

The Law of Penal Procedures No. 3 of 2001 in Article 8 defines an accused as follows:

'Any person against whom a criminal action is instituted shall be called an accused.'



Suspect and accused

In many legal systems a difference is made between a suspect and an accused.

What is a suspect?

A suspect is a person who is under suspicion of having committed a crime. Probable cause for an arrest exists when the facts and circumstances within the knowledge of the arresting officer are sufficient to warrant a prudent person to believe that a suspect has committed, is committing, or is about to commit a crime.

What is an accused?

Accused is the generic name for the defendant in a criminal case. A person becomes accused only at the point at which either formal indictment or information has been returned against him or her, or when he or she becomes subject to actual restraints on liberty imposed by arrest, whichever occurs first.

What are the procedures for arrest and custody?

Officers tasked with judicial duties must follow the following procedures during the arrest process:

1. Search the arrested person

'The judicial officer (...) arresting an accused has the right to strip him/her of weapons and tools found in his/her possession and to deliver them to the competent authority pursuant to the law.'

(Law of Penal Procedures No. 3 of 2001, Article 36)

2. Confiscate objects and write a report

'In the cases in which the law allows an accused to be arrested, the judicial officer may (...) draw up a list of seized objects. The list must be signed by the accused and deposited in the place designated therefore. The accused shall be given

a copy of the list of objects seized if he/she so requests.'

(Law of Penal Procedures No. 3 of 2001, Article 38.1/2)

3. In case of arrest without warrant: Investigate the reasons for arrest

'If the arrested person arrives at the police station without a writ of attachment, the officer in charge shall immediately investigate the reasons for the arrest.'

(Law of Penal Procedures No. 3 of 2001, Article 116)

4. Keep the arrested in custody:

'The officer in charge may keep the arrested person in custody if the person has committed a felony or tried to escape from a place of detention or has no know or established domicile in Palestine.'

(Law of Penal Procedures No. 3 of 2001, Article 117)

What is the duration of custody?

Officers tasked with judicial duties must not keep an arrested person for longer than 24 hours. After the expiration of 24 hours, the arrested person must be either released or sent to the Public Prosecution:

'The officers tasked with judicial duties shall hear the statement of the arrested person immediately, and if such person fails to come forward with a justification for his/her release, shall send him/her within 24 hours to the competent Deputy-Prosecutor.'

(Law of Penal Procedures No. 3 of 2001, Article 34)



Palestinian military criminal procedures

Procedures for arresting security personnel follow the largely the same procedures as the Law of Penal Procedures No. 3 of 2001. However, the time-limit during which officers tasked with judicial duties must refer the arrested person to the Public Prosecution is here 48 hours and not 24 hours:

'The member of the Judicial Police must immediately hear the statements of arrested person. In case he/she was convinced thereof, he/she shall send him/her with forty eight hours to the competent (...) Prosecutor.'

The (...) Prosecutor must interrogate him/her within a period of twenty four hours, then order to detain or release him/her.'

(PLO Revolutionary Penal Procedures of 1979, Article 79)



Duration of Arrest

The laws of many countries recognize the vulnerability of the accused during the period immediately after arrest, by requiring police to produce a suspect before a court 'promptly' or at least within 48 hours. The understanding is that, once a decision has been made by the court, the suspect will either be released (discharged, diverted or released on bail) or transferred to a pre-trial detention facility designed for a longer term stay.

Where must the arrested person be kept in custody?

Palestinian legislation prescribes that during the 24 hours of custody, the arrested person must be kept either at the police station or in a Correction and Rehabilitation Centre ('Prison'). In theory, the law allows for arrested persons to be kept in detention facilities other than the police station or the prison. However, the law does not determine what such detention facilities are.

'Imprisonment or detention shall only be permitted in places that are subject to laws related to the organization of prisons.'

(Amended Basic Law of 2003, Article 11)

'Any individual who is detained, arrested, held in custody or deprived of his liberty pursuant to the law shall be admitted to one of the Centres (...) under this law.'

(Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998, Article 7)

'If the arrested person arrives at the police station without a writ of attachment, the officer in charge shall immediately investigate the reasons for the arrest.'

(Law of Penal Procedures No. 3 of 2001, Article 116)

'No person may be detained or confined in except in the Correction and Rehabilitation Centre ('Prison') and in the places of detention designated by the law.'

(Law of Penal Procedure No. 3 of 2001, Article 125)



Standards of police custody

Custody cells

According to international standards, police custody cells are designed for short-term occupancy of up to 48 hours, i.e. until the suspect is brought before a court. In some countries, there are also separate holding cells where arrested persons are held for 10 to 12 hours, i.e. not for overnight stays. Cells for overnight stay should be of reasonable size, adequate lighting (to read by), adequate ventilation, a chair, a table, and bed. Arrested persons should have a clean mattress and blankets at night. They should have ready access to sanitary facilities and drinking water and be provided with adequate food (including hot food) at regular intervals.

Custody register

The custody register should include the following information:

- Full name of the arrested person
- Time and reason for arrest
- Time when the person was taken into police custody
- Time when the arrested person was informed of his/her rights
- Signs of injury or mental disorder
- Contact with family, lawyer, doctor, consular representative
- Questioning
- Identity of the law enforcement officers concerned
- First appearance before judicial authority
- Release or transfer to pre-trial detention facility

What are the guarantees of the arrested person?

Officers tasked with judicial duties must immediately inform arrested persons of the reasons for their arrest and allow them to contact a lawyer:

'Every arrested or detained person shall be promptly informed of the reasons for his/her arrest or detention. He/she shall

be promptly informed, in a language he/she understands, of the nature of the charges brought against him/her. He/she shall have the right to contact a lawyer and to be tried before a court without delay.'

(Amended Basic Law of 2003, Article 12)

Officers tasked with judicial duties must treat arrested persons in a humane and dignified manner and not violate their rights. Torture or any inhumane, cruel or degrading treatment are strictly forbidden by the Amended Basic Law of 2003, the Law of Penal Procedures No. 3 of 2001, and by international law.

1. No person shall be subject to any duress or torture. Accused and all persons deprived of their freedom shall receive proper treatment.

2. All statements or confessions obtained through violations of the provisions set for the under paragraph 1 of the Article shall be null and void and of no force or effect.'

(Amended Basic Law, Article 13)

'(...) Person (...) arrested (...) must be treated in a manner that preserves his/her dignity and may not be physically or morally harmed.'

(Law of Penal Procedures No. 3 of 2001, Article 29)



Rights of persons in custody

In terms of protecting a person's legal rights and safeguarding against ill-treatment and torture, there are a number of fundamental safeguards that must apply from the outset of a person's arrest and custody. The **International Covenant on Civil and Political Rights (ICCPR)**, signed and ratified by most countries, is the foremost expression of hard law in this regard:

Article 7, ICCPR:

'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

Article 9, ICCPR:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his/her arrest and shall be promptly informed of any charges against him/her.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his/her liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.'

Article 10, ICCPR:

'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'

Furthermore, the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**, elaborating on Article 7 of the ICCPR, determines:

Article 13, CAT:

'Each State Party shall ensure that any individual who alleges he/she has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his/her case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his/her complaint or any evidence given.'

Article 14.1, CAT:

'Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full

rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his/her dependants shall be entitled to compensation.'

Article 15, CAT:

'Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.'

Further rights are stated in the **UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:**

Principles 10, 13, and 14: The right to be informed immediately about the reasons for arrest and rights under the law, in a language they understand.

Principle 11: The right to be brought "promptly" before a judge for a determination of the legality of the detention and whether it may continue. While no precise definition for promptly exists, more than 72 hours is generally considered excessive and is the maximum established.

Principle 16: The right to inform a close relative or someone else of the detained person's choice of his/her situation immediately.

Principle 17: The right of immediate access to a lawyer.

Principle 24: The right to a medical examination and the right of access to a doctor, ideally of the detainee's own choice, at all times, in addition to any official medical examination.



What are the guarantees of International Humanitarian Law according to Article 3 common to the four Geneva Conventions?

Article 3, common to the four Geneva Conventions, marked a breakthrough, as it covered, for the first time, situations of non-international armed conflicts. These types of conflicts vary greatly. They include traditional civil wars, internal armed conflicts that spill over into other States or internal conflicts in which third States or a multinational force intervenes alongside the government. Common Article 3 establishes fundamental rules from which no derogation is permitted. It is like a mini-Convention within the Conventions as it contains the essential rules of the Geneva Conventions in a condensed format and makes them applicable to conflicts not of an international character:

- ◆ It requires humane treatment for all persons in enemy hands, without any adverse distinction. It specifically prohibits murder, mutilation, torture, cruel, humiliating and

degrading treatment, the taking of hostages and unfair trial.

- ◆ It requires that the wounded, sick and shipwrecked be collected and cared for.
- ◆ It grants the ICRC the right to offer its services to the parties to the conflict.
- ◆ It calls on the parties to the conflict to bring all or parts of the Geneva Conventions into force through so-called special agreements.
- ◆ It recognizes that the application of these rules does not affect the legal status of the parties to the conflict.

Given that most armed conflicts today are non-international, applying Common Article 3 is of the utmost importance. Its full respect is required.

(www.icrc.org)

How can force be used during the arrest?

Officers tasked with judicial duties may use force during arrest only when strictly necessary and proportionally, i.e. to the extent required for the performance of their duty, and if this is the only means to achieve this goal.

'If the person to be arrested resists or attempts to evade arrest or if he/she tried to escape, the officer tasked with judicial duties shall have the

right to resort to all means as may reasonable by required to arrest him/her'

(Law of Penal Procedures No. 3 of 2001, Article 35)

'If the accused does not appear or if is feared that he /she will flee, the Deputy-Prosecutor may issue a bill of indictment order the suspect to brought by force.'

(Law of Penal Procedures No. 3 of 2001, Article 106.2)

What is the continuum of the use of force?

1. When undertaking the arrest, officers must inform the person to be arrested in a loud and understandable voice that he or she will be arrested (Verbalisation).
2. Force may be used only when necessary and according to the principle of proportionality. Means of force may include:
 - ◆ Physical movements (empty-hand control).
 - ◆ Clubs (intermediate weapon).
 - ◆ Handcuffs (intermediate weapon).
 - ◆ Water hoses (intermediate weapon).
 - ◆ Tear gas (intermediate weapon).
 - ◆ Police dogs that are trained for purposes of preserving public order and security in order to deter any existent or imminent attack against any person, the life or health conditions of persons, or vital institutions, facilities, interests and properties of the society (intermediate weapon).
 - ◆ Firearms (using force likely to cause permanent injury or death to a subject).



Use of force during arrest

Law enforcement officers may use force during arrest as follows:

1. Force should only be used when necessary.
2. The nature or amount of force used should be proportional to the need, i.e., no more than necessary.
3. If the person attempts to resist or escape, firearms may be used in the following manner:
 - ◆ If officers fear that the person escapes, they must warn him/her in a loud voice that they will use firearms.
 - ◆ The warning must be repeated for the second time.
 - ◆ Three bullets must be fired in the air by way of warning.

- ◆ Fire must be opened towards the legs with due care to avoid serious injuries.
- ◆ Immediate medical assistance must be provided. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

(See: www2.ohchr.org/english/law/codeofconduct.htm)

Procedures for the use of firearms are regulated in the Law of Correction and Rehabilitation Centers ('Prisons') No. 6 of 1998:

'If a firearm is used to warn, scare or deter the escaping person, three warning shots shall be fired. If the escaping person does not comply, shots shall be fired at his/her legs with due care to avoid serious injuries. Necessary first aid and treatment shall be provided to the injured.'

(Law of Correction and Rehabilitation Centers ('Prisons') No. 6 of 1998, Article 21)

'Firearms may not be used in cases where the lives of others are exposed to danger.'

(Law of Correction and Rehabilitation Centers ('Prisons') No. 6 of 1998, Article 22)



Use of firearms in self-defence

Officers tasked with judicial duties may use firearms in self-defence under the following conditions:

1. The aggression is immediate, i.e. the use of force coincides with the aggression in time.
2. The aggression must be direct, i.e. it should be directed against the person himself or herself.
3. Use of firearms must be necessary in order to deter the aggression, i.e. it must be proportionate with the act of aggression.

The rule of use of firearms follow the rule described above.



UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)

Principle 4: 'Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.'

Principle 5: 'Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.'

Principle 6: 'Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors (...).'

Principle 7: 'Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.'

Principle 8: 'Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.'

Principle 9: 'Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting

their authority, or to prevent his/her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.'

Principle 10: 'In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.'

Principle 11: 'Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.'



Handling juveniles

Due to the particularly harmful effects of arrest and detention on juveniles, law enforcement officers must apply special procedures when dealing with juveniles.

What are juveniles?

While a child is a human being under the age of 18, internationally, the term juvenile is used for

those children under the age of 18 over whom a court may assume criminal jurisdiction. In many countries, children below the age of 12 are excluded from criminal jurisdiction.

'No child should be deprived of his/her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a matter of last resort and for the shortest period of time.' (UN Convention on the Rights of the Child, Article 37)

What are the special conditions applying to juvenile arrestees and detainees?

While enjoying the same rights as adult arrestees and detainees, there are special standards for juveniles under arrest and detention. These are contained in the **United Nations Standard Minimum Rules for the Administration of Juvenile Justice («The Beijing Rules»)** (1985):

Principle 10. Initial contact

'10.1 Upon the apprehension of a juvenile, her/his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her/him, with due regard to the circumstances of the case.'

Principle 11. Diversion

'11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or his/her parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.'

Principle 13. Detention pending trial

'13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.'

4. Searching persons and houses and intercepting communications

Searching persons and houses and intercepting communications are grave interferences with the rights of the citizens. All measures related thereto must be based on law in order to be legally valid.

'Basic human rights shall be protected and respected.'

(Amended Basic Law of 2003, Article 10)

'No one shall be subjected to arbitrary interference with his/her privacy, family, home or correspondence, nor to attacks upon his/her honour and reputation. Everyone has the

right to the protection of the law against such interference or attacks.'

(Universal Declaration of Human Rights, Article 12)

What is search?

Search is the examination of a person's house, premises or body, for the purpose of discovering proof of his/her guilt in relation to an offence of which he/she is accused.

What is intercepting communications?

Intercepting communications is the physical, aural or other acquisition of the contents of any wire, electronic, written or oral communication through the use of any electronic, mechanical, or other devices.

Searching persons

Searches of persons are a part of the investigation and thus fall under the jurisdiction of the Public Prosecution. Searches of persons may only be undertaken under the following circumstances:

- ◆ During arrest of an accused (Law of Penal Procedures No. 3 of 2001, Article 36).
- ◆ During house searches, if there is a suspicion that persons present in the place being searched conceal objects being sought for (Law of Penal Procedures No. 3 of 2001, Article 44).

How must the search of a person be conducted?

Officers tasked with judicial duties must follow the following procedures when undertaking searches of persons:

- ◆ Search for weapons and tools in the possessions of the searched person and confiscate them (Law of Penal Procedures No. 3 of 2001, Article 36).
- ◆ Write a list of the confiscated items, which has to be signed by the officer and the searched person. The searched person must be given a copy of this list if he/she so requests (Law of Penal Procedures No. 3 of 2001, Article 38).
- ◆ A female may not be searched except by a female officer tasked with judicial duties (Law of Penal Procedures No. 3 of 2001, Article 47).



Searching females by females

'Whenever it is necessary to cause a woman to be searched the search shall be made by another woman with strict regard to decency.'

(Malaysian Criminal Procedure Code (CPC), Section 19.2)



Searching of vehicles

Searching of vehicles is subject to the same conditions as searching persons.

Searching Houses

Unlawful searches of houses, that means searches without judicial order, are forbidden by Palestinian and international law:

'Homes shall be inviolable; the home may not be subject to surveillance, broken into or searched, except pursuant to a valid judicial order and in accordance with the provisions of the law. Any legal consequence resulting from violation of this article shall be null and void.'

(Amended Basic Law of 2003, Article 17)

1. No one shall be subjected to arbitrary or unlawful interference with his/her privacy, family, home or correspondence, nor to unlawful attacks on his/her honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.'

(ICCPR, Article 17)

Searches of homes are a part of the investigation and thus fall under the jurisdiction of the Public Prosecution. Searches of homes may only be undertaken based on an arrest warrant by the Public Prosecution or in its presence:

'The entering or searching of homes shall be an act of investigation which may not be conducted except pursuant to a search warrant by the Public Prosecution or in its presence (...).'

(Law of Penal Procedures No. 3 of 2001, Article 39)

The Public Prosecution issues search warrants in two cases:

1. If there is a criminal charge against the person living in the house for committing or participating in a felony or misdemeanour (Law of Penal Procedures No. 3 of 2001, Article 39).
2. If there is compelling evidence that person living in the house is in possession of items related to a crime (Law of Penal Procedures No. 3 of 2001, Article 39).



Entering houses by Civil Defence officers

'Officers of the Civil Defence, in the capacity of judicial officers within their mandate, have the right to access house and buildings to verify the implementation of civil protection measures.'

(Civil Defence Law No. 3 of 1998, Article 23).

What are the criteria of a legally valid search warrant?

In order to be legally valid, the search warrant must fulfill the following conditions set out in the Law of Penal Procedures No. 3 of 2001 (Articles 39, 40):

1. The search warrant must be substantiated.
2. The search warrant must include the names of the officer or officers tasked with judicial duties.
3. The search warrant must be signed by the Public Prosecution.
4. The search warrant must include:
 - a. The full name (surname/family name) of the owner of the house to be searched;
 - b. The address of the house to be searched;
 - c. The object of search;
 - d. The validity period of the search warrant;
 - e. The date and hour it was issued by the Public Prosecution.

Under which conditions can officers enter houses without a search warrant?

Officers tasked with judicial duties may, in four cases, enter houses without a search warrant.

According to the Law of Penal Procedures No. 3 of 2001, these cases are:

1. If there is request for assistance from inside the house (Article 48).
2. If there is fire in the house or a case of drowning (Article 48).
3. If there is a flagrant crime being committed in the house (Article 48).
4. If a person who is to be arrested or escaped from a place where he was legally detained is followed to the house (Article 48, 112).

How must the house search be conducted?

Officers tasked with judicial duties must strictly follow the legal procedures when undertaking house searches. According to the Law of Penal Procedures No. 3 of 2001, these procedures include:

- ◆ The search must be conducted by day. House searches by night are forbidden except in the case of a flagrant crime or if special circumstance so demand. (Article 41)
- ◆ The search must be conducted in the presence of the accused or the owner of the house. If this is not possible, two witnesses from relatives or neighbours must be present. (Article 43)
- ◆ If there is suspicion that a person present at the house during the search conceals objects sought for, the officer may submit him/her to body search. (Article 44)
- ◆ The search must be limited to objects connected to the crime in question. However, if officers tasked with judicial duties during the search find objects the possession of which itself is a crime or that is related to other crimes, they may be confiscated. (Article 50.2)
- ◆ All objects related to the crime that are found must be confiscated, inventoried and sealed. (Article 50.2)
- ◆ Sealed documents found during the search may not be opened. (Article 50)
- ◆ The officers in charge must write a report that includes:
 - ◆ An inventory of all confiscated objects, including detailed description and

location where they were found. (Article 50)

- ◆ A statement whether the search was conducted in presence of the suspect/ the owner of the house or two witnesses. (Article 43)
- ◆ The officer must sent all confiscated items and the report to competent authorities. (Article 50)

Can force be used during house searches?

Officers tasked with judicial duties may use force to gain admission to the house in case the owner or person responsible for the premises bans entry (Law of Penal Procedures No. 3 of 2001, Article 42). If required, officers tasked with judicial duties may request the support of police or military forces during the search operation (Law of Penal Procedures No. 3 of 2001, Article 49).

Can a body search be made during house searches?

Officers tasked with judicial duties may subject a person present in the house to a body search in case there is strong evidence that he/she is concealing objects. (Law of Penal Procedures No. 3 of 2001, Article 44)

Can an arrest be made during house searches?

Officers tasked with judicial duties may detain persons present in the house if they are feared to obstruct or delay the search. They must be released upon the end of the search. (Law of Penal Procedures No. 3 of 2001, Article 45)

Intercepting communications

Intercepting communications is a grave infringement on the basic rights of the citizen and requires a legal basis and authorisation by the judicial authorities. Intercepting communications, such as letters or parcels, is the sole right of the Public Prosecution and may not be conducted by officers tasked with judicial duties. Wire-tapping may only be undertaken by the Attorney-General on basis of the authorization of a magistrate judge and in felonies or misdemeanours punishable by more than one year of prison. Such authorization is only valid for 15 days and may be renewed only

once. (Law of Penal Procedures No. 3 of 2001, Article 51)



Searching military installations

Procedures for searching security personnel follow the same procedures as the Law of Penal Procedures No. 3 of 2001. However, special conditions are exclusive to military quarters:

1. A search without a substantiated warrant is restricted to the Military Police.
2. The commander of unit to be searched must be notified.
3. The accused must attend the search process in case the quarter which is being searched or its contents belong to him/her.
4. The officer on duty or the assigned officer must be present in the quarter to be searched.
5. In the event the commander of the unit rejects the search, judicial officers must report to the Director General of the Military Intelligence and the Attorney-General, who issued forth the search warrant.



UN Code of Conduct for Law-Enforcement Officials (1979)

Article 1

'Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.'

Article 2

'In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.'

Article 3

'Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.'

Article 4

'Matters of a confidential nature in the possession of law enforcement officials shall

be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.'

Article 5

'No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.'

Article 6

'Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.'

Article 7

'Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.'

Article 8

'Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them. Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.'

Chapter 3.3 Functions and Competencies of the General Prosecution

A main function of the Public Prosecution is to conduct investigations. Only the Public Prosecution is authorized to make investigations into crimes:

'The Public Prosecution shall be exclusively competent to investigate crimes and to take action in this regard.'

(Law of Penal Procedures No. 3 of 2001, Article 55.1)

The Public Prosecution may delegate functions of investigation to officers tasked with judicial duties. Such delegation must be specific. The Public Prosecution may not delegate the function of interrogating suspects in felony crimes.

'The Attorney-General or the competent Deputy-Prosecutor may delegate a competent member of the corps of officers tasked with judicial duties to perform any act of investigation in a specific case, except for the interrogation of the suspect in a felony.'

(Law of Penal Procedures No. 3 of 2001, Article 55.2)

'The delegation must not be general.'

(Law of Penal Procedures No. 3 of 2001, Article 55.3)

While conducting the investigation, the Deputy-Prosecutor must:

1. Act promptly upon learning of the crime. (Law of Penal Procedures No. 3 of 2001, Article 56)
2. Be accompanied in all acts by a clerk to document the procedures in writing and countersign them. (Law of Penal Procedures No. 3 of 2001, Article 58)
3. Not divulge the procedures and the results. Divulging such information is a crime punishable by law. (Law of Penal Procedures No. 3 of 2001, Article 59).

The investigation includes the following elements:

1. **Pre-trial detention**
2. **Interrogation**
3. **Hearing witnesses**
4. **Commissioning experts**
5. **Handling confiscated objects**



Palestinian military criminal procedures

Investigating military offences falls under the authority of commanders of units and the Military Prosecution as follows:

'The commander of the unit or any of the officers reporting to him/her whom he/she delegates shall be entitled to take all the measures of investigation into the offences falling under his/her jurisdiction. Also, he/she shall have the right to dispose thereof in the following manner:

- A To disregard the case; or

- B. To penalise the struggler in a disciplinary manner; or
- C. Remit the case to his superior commander; or
- D. Refer the case to the (...) Prosecution in case the offence was beyond his jurisdiction.'

(PLO Revolutionary Penal Procedures Law of 1979, Article 280)

'The (...) Prosecutor shall draw up a record on the incident, the manner in which it occurred and its place. The Prosecutor shall also record the statements of those who witnessed it and those who had information thereon or any information that is useful for the investigation.'

(PLO Law of Revolutionary Penal Procedures of 1979, Article 28 a)

'The (...) Prosecutor shall seize the weapons and all that appears to have been used in the perpetration of the offence or prepared for such a purpose. The Prosecutor shall also seize all the effects of the offence which he/she sees as well as all the objects which help reveal the truth.'

(PLO Law of Revolutionary Penal Procedures of 1979, Article 30)

'If it appeared from the nature of the offence that the papers and objects which are in the possession of the accused may be a subject of evidence on his/her perpetration of the offence, the Public Prosecutor or the person whom he/she deputises shall be entitled to move immediately to the residence of the accused and search for the objects which he deems to lead to the divulgence of the truth. In case papers or objects that support the charge or innocence were located in the residence of the accused, the Public Prosecutor or his/her deputy must request them and draw up a record thereon, after having presented them to the accused.'

(PLO Law of Revolutionary Penal Procedures of 1979, Article 31 a/b)

1. Detention ('Tawqeef')

What is detention?

Detention includes the deprivation of personal liberty prior to adjudication, police custody, custody of other law enforcement agencies, prisons, or pre-trial detention facilities. In Palestinian law, the period of detention starts from

the referral of the arrested person to the Public Prosecution and end with the start of the trial.

What are the time-limits of detention?

After officers tasked with judicial duties hand the arrested to the Public Prosecution, the Deputy-Prosecutor may detain him/her for **48 hours**.

'The Deputy-Prosecutor may, after interrogation of the suspect, detain him/her for a period of 48 hours.'

(Law of Penal Procedures No. 3 of 2001, Article 108)

The extension of detention beyond 48 hours requires the authorization of a court (Law of Penal Procedures No. 3 of 2001, Article 108). By authorization of a Magistrate Judge, the detainee may be held for another **15 days**.

'If the procedures of the investigation entail the detention of the arrested person for a period exceeding 24 hours, the Deputy-Prosecutor may request that a Magistrate Judge extend the detention for a period not to exceed 15 days.'

(Law of Penal Procedures No. 3 of 2001, Article 119)

The Magistrate Judge must hear the statements of the Public Prosecution and the accused and then either release him/her or order the detention for the aforementioned 15 days or less. After the end of the 15 days, the judge may order the renewal of detention for **up to 45 days**.

'The Magistrate Judge may, upon hearing the (...) Public Prosecution and the accused, release or detain the accused for a period not to exceed 15 days. The Magistrate Judge may renew the detention for other periods not to exceed an aggregate maximum of 45 days.'

(Law of Penal Procedures No. 3 of 2001, Article 120.1)

After the end of the 45 days, the accused must be released, unless the Attorney-General or his/her assistants request a Court of First Instance for further detention. Then the accused may be held for another **45 days**.

'No person may be detained for a period exceeding the one set forth in Paragraph 1 above, unless a petition is filed by the Attorney-General or any of his/her assistants to a Court of First Instance. In such case, the period of detention may not exceed 45 days.'

(Law of Penal Procedures No. 3 of 2001, Article 120.2)

In case of extension of the detention by a court, the Public Prosecution must present the accused to the competent court before the end of the **90 days**. The competent court may then extend the detention until the end of the trial. However, such period of detention must **not exceed 6 months**. After 6 months the accused must be released immediately or referred to the competent court for trial.

'The Public Prosecution shall present the accused to the competent court before expiration of a period of 3 months set forth under the two preceding paragraphs, so that the court may extend the detention for further periods until the trial is completed.'

(Law of Penal Procedures No. 3 of 2001, Article 120.3)

'Under no circumstance shall the period of detention set forth under the three preceding paragraphs exceed a period of 6 months, at the end of which the accused must be released immediately, unless he/she is referred to the competent court for trial.'

(Law of Penal Procedures No. 3 of 2001, Article 120.4)

Where must the detainee be kept?

Palestinian legislation prohibits detention in any place other than a Correction and Rehabilitation Centre ('Prison'). In theory, the law allows for arrested persons to be kept in detention facilities other than the police station or the prison. However, the law does not determine what such detention facilities are.

'Imprisonment or detention shall only be permitted in places that are subject to laws related to the organization of prisons.'

(Amended Basic Law of 2003, Article 11)

'Any individual who is detained, arrested, held in custody or deprived of his liberty pursuant to the law shall be admitted to one of the Centres (...) under this law.'

(Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998, Article 7)

'No person may be detained or confined in except in the Correction and Rehabilitation Centre ('Prison') and in the places of detention designated by the law.'

(Law of Penal Procedure No. 3 of 2001, Article 125)



Time-limits for detention

Below are the time-limits for detention according to the Law of Penal Procedure No. 3 of 2001:

24 hours

Arrest and Custody of Law Enforcement Body (Article 34)

After 24 hours: Referral to Public Prosecution (Article 34)

48 hours

Detention by the Public Prosecution (Article 108)

15 days

Extension of detention by Magistrate Judge based upon request of Deputy-Prosecutor (Article 119)

30 days

Second Extension of detention by Magistrate Judge (Article 120.1)

45 days

Extension of detention by Court of First Instance based upon request Attorney-General or his/her assistant (Article 120.2)

After 90 days: Referral to competent court (Article 120.3)

3 months

Extension of detention by competent court (Article 120.4)

After 6 months: Release or referral to competent court (Article 120.3)



Standards of detention

If a court decides that a suspect must be held in detention until his/her trial and sentence, then he/she must be transferred from police custody to a pre-trial detention facility or prison, managed by the prison service and not the law enforcement agency. Persons should only be detained if there is reasonable suspicion that they have committed an offence and substantial reasons for believing that, if released, they would either abscond or commit a serious offence or interfere with the course of justice. Pre-detention should only be used if there is no alternative measures to be used to address the concerns that justify detention. Importantly, detainees must be presumed innocent until convicted and have special needs and rights relating to their legal status, in particular regarding access to lawyers and contact with their families. Detainees should be kept separate from convicted prisoners and have single rooms. (for the standards of accommodation see Box 'Standards of police custody' on p. 50).

All detainees admitted to any detention facility must be registered. The register must include:

- All details of the detainee (name, date of birth, gender, identifying features, address, nationality, language)
- Legal authority for detention
- Dates of admission, next appearance before the court or other competent legal authority
- Details of next of kin
- List of personal property (distinguishing between the items that the person can keep in possession and those stored by the authorities)
- Signatures (of the staff member who completed the forms and of the detainees to confirm that he/she was informed about his/her rights)

There must be a separate medical record.

What are the guarantees of the detainee?

Detainees must immediately be informed of the reasons for their detention, be allowed to contact

a lawyer and be brought promptly before a court:

'Every arrested or detained person shall be promptly informed of the reasons for his/her arrest or detention. He/she shall be promptly informed, in a language he/she understands, of the nature of the charges brought against him/her. He/she shall have the right to contact a lawyer and to be tried before a court without delay.'

(Amended Basic Law of 2003, Article 12)

Detainees must be treated in a humane and dignified manner. Torture or any inhumane, cruel or degrading treatment are strictly forbidden by the Amended Basic Law of 2003, the Law of Penal Procedures No. 3 of 2001, the Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998, and international law.

1. No person shall be subject to any duress or torture. Accused and all person deprived of their freedom shall receive proper treatment.
2. All statement or confessions obtained through violations of the provisions set for the under paragraph 1 of the Article shall be null and void and of no force or effect.'

(Amended Basic Law, Article 13)

'It shall be prohibited to torture an inmate or to use force against him/her (...). It shall be prohibited to insult an inmate or address him/her in a degrading manner.'

(Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998, Article 37)

'(...) Person (...) arrested (...) must be treated in a manner that preserves his/her dignity and may not be physically or morally harmed.'

(Law of Penal Procedures No. 3 of 2001, Article 29)



Rights of persons in detention

See page 51.

Ordinary Palestinian legislation provides the following rights for detainees:

1. **The right to contact their families** (Law of Penal Procedures No. 3 of 2001, Article 123; Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998, Article 53).

2. **The right to consult with their legal counsel** (Law of Penal Procedures No. 3 of 2001, Article 123; Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998, Article 54).
3. **The right to perform religious duties and rites** (Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998, Article 14).
4. **No detainee must be forced to private work** (Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998, Article 37).
5. **Cells of detainees may not be entered at night, unless occasion requires this and in the presence of the director of the prison or detention centre or the person he/she delegates** (Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998, Article 37).
6. **File a written or oral complaint to the Public Prosecution through the Director of the Correction and Rehabilitation Centre ('Prisons')** (Law of Penal Procedures No. 3 of 2001, Article 127).



Compensation for unlawful detention

Every detainee held unlawfully or whose rights have otherwise been violated has the right to receive compensation from the Palestinian National Authority:

'Any violation of personal freedoms, of the sanctity of the private life of human beings, or any of the rights or freedoms that are guaranteed by the law or this Basic Law shall be considered a crime. Criminal and civil actions resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage.'

(Amended Basic Law of 2003, Article 32)

What are the mechanisms for detention oversight?

To ensure that rights and guarantees of detainees, are heeded, there are various levels of oversight:

1. Directors of Prisons may not accept any detainee without judicial order signed by the competent authority, nor retain them longer than the period stated in this order. Detainees must have their identity checked,

give fingerprints, and undergo physical examination. (Law of Penal Procedures No. 3 of 2001, Article 125, 129)

2. The Minister of Interior or Justice, or whomever either of them delegates, have the right to inspect prisons and detention centres (Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998, Article 10).
3. The Public Prosecution, the Presidents of Courts of First Instances and the High Court, as well Governors have the right to visit prison and detention centres to ensure that no detainee is held illegally. They can view the register of the centre, the arrest warrants, writs of attachment, copy them, contact detainees and hear their complaints. Director of prisons and detention centres must provide them with all assistance they require. (Law of Penal Procedures No. 3 of 2001, Article 126)
4. Any person learning of a detainee held illegally has the right to report to the Attorney-General or any of his/her assistants, who shall order an investigation and the release of the detainee (Law of Penal Procedures No. 3 of 2001, Article 128).



Palestinian military criminal procedures

Procedures for detaining security personnel follow the same procedures as the Law of Penal Procedures No. 3 of 2001. Military detainees enjoy the same rights and guarantees as civilian detainees (PLO Revolutionary Criminal Procedures Law of 1979, Articles 14 83-89, 345-354). They must be held in designated detention facilities:

'No person may be confined except in the centres designated thereto. The director of the correction centre may not admit any person except under an order that is signed by the competent authority, nor may he/she retain him/her following the period designated under such an order.'

(PLO Revolutionary Criminal Procedures Law of 1979, Article 384)

Implementing judicial orders involving detention within military units and facilities falls upon military commanders:

'The writs shall be effective in the units and agencies of the Revolution and Palestinian localities. The commanders of units and agencies as well as the officers of the Military Police, Public

Security and Armed Struggle shall be assigned to execute provisions of the judicial writs within the sphere of their jurisdiction.'

(PLO Revolutionary Criminal Procedures Law of 1979, Article 85)

Detention of officers with the rank of major and above require the approval of the Higher Commander:

'The writs of commitment regarding the commanders and officers in the rank of major and above shall be issued forth upon the approval of the Higher Commander or the person whom he/she deputises. The (...) Prosecutor shall notify the commander of the unit of the accused, in the event he/she was a private, immediately upon his/her detention.'

(PLO Revolutionary Criminal Procedures Law of 1979, Article 89)

2. Interrogation

What is interrogation?

'Interrogation shall be a systematic questioning of the accused regarding the deeds imputed on him/her, during which he/she shall be confronted with the facts, questions, and suspicions related to the accusation and asked to respond thereto.'

(Law of Penal Procedures No. 3 of 2001, Article 94)

Interrogations of suspects in felony cases are mandatory, whereas interrogations in misdemeanours are at the discretion of the Public Prosecution (Law of Penal Procedures No. 3 of 2001, Article 95).

Time-limit: The interrogation must be undertaken within 24 hours from the date that suspect is sent to the Public Prosecution (Law of Penal Procedures No. 3 of 2001, Article 105).

What are the procedures of interrogation?

The Law of Penal Procedures No. 3 of 2001 determines the procedures of interrogation as follows:

1. The Deputy-Prosecutor records the identity, name, address and occupation of the accused (Article 96).

2. The Deputy-Prosecutor notifies the accused of his/her rights to assistance by a legal counsel (Article 96).
3. The Deputy Prosecutor warns the accused that all he/she says may be used as evidence against him/her (Article 96).
4. The Deputy-Prosecutor must physically examine the accused to confirm that no visible injuries have been sustained. Any physical injury must be documented in the record. In case the Deputy-Prosecutor deems it necessary, he/she must order a medical or psychological examination of the accused. (Article 99, 100)
5. The Deputy-Prosecutor questions the accused on imputed charge and demands that he/she responds to it (Article 96).
6. All questions and the accused's answers must be recorded. This shall include any statement of defense or names of witnesses given by the accused in the case. This shall also include a request by the legal counsel to speak during interrogation. (Article 96, 101, 102)
7. In case of felonies, the Deputy-Prosecutor may decide to ban communication with the accused for a period of 10 days. This ban may be renewed once. This ban does not apply to the legal counsel. (Article 103)



Presumption of innocence

'An accused person shall be considered innocent until proven guilty in a court of law.'

(Amended Basic Law of 2003, Article 14)

What are the rights of the accused during interrogation?

The Law of Penal Procedures No. 3 of 2001 gives the accused the following rights during interrogation:

1. The accused has the right to remain silent (Article 98).
2. The accused has the right to legal counsel (Article 96, 102).
3. The accused has the right to postpone the interrogation for 24 hours if the legal counsel has not yet arrived. If the counsel fails to appear after 24 hours or the accused does not appoint a legal counsel, the interrogation

may begin without further delay. The Deputy-Prosecutor may interrogate the accused without legal counsel in the following cases:

- a. In the case of a flagrant crime;
- b. In case of urgency or necessity;
- c. In case of fear that evidence may be lost.

The fact that the interrogation was conducted without legal counsel must be documented in the record. (Article 97, 98)

4. The accused has the right to medical or psychological examination (Article 100).
5. The accused has the right to submit a plea of non-competence or non-admissibility of the case before the Attorney-General within 24 hours. Such plea may be appealed before a Court of First Instance. (Article 104)



Unlawfully gained evidence is invalid before the court

The Law of Penal Procedures No. 3 of 2001 determines that reports of officers tasked with judicial duties must fulfil the following conditions to be lawful and admissible before the court:

1. They must comply with the formal requirements.
2. They must be transcribed by the person who investigated the incident himself/herself or who was personally notified thereof.
3. The person who transcribed them must have acted within the limits of his/her authority and in performance of the functions of his/her position.' (Article 213)

The Amended Basic Law of 2003 prohibits the use of evidence gained under torture before the court:

1. No person shall be subject to any duress or torture. (...)
2. All statements and confessions obtained through violation of the provisions of Paragraph 1 of this Article shall be nullified and of no force or effect.' (Article 13)

The Law of Penal Procedures No. 3 of 2001 determines that confessions must fulfil the following conditions to be lawful and admissible before the court:

'For a confession to be valid it must fulfil the following conditions:

1. It must be made voluntarily and freely, without material or moral pressure or coercion, promise, or threat.
2. It must correspond to the circumstances of the deed.
3. It must be an expressive and conclusive acknowledgement by the accused that he or she committed the crime.' (Article 214)

What are the rights of the legal counsel during interrogation?

The Law of Penal Procedures No. 3 of 2001 gives the legal counsel of the accused the following rights during interrogation:

1. The counsel has the right to read the statement of the accused after the end of the interrogation (Article 98).
2. The counsel has the right to demand medical or psychological examination of the accused (Article 100).
3. The counsel has the right to ask the Deputy-Prosecutor to speak during interrogation. This may or may not be granted by the Deputy Prosecutor. (Article 102)
4. The counsel has the right to review the documents of investigation before the interrogation (Article 102).
5. The counsel has the right to submit a memorandum with his/her comments (Article 103).
6. The counsel may communicate with the accused at any time during provisional detention (Article 103).



Palestinian military criminal procedures

Procedures for interrogating security personnel follow the same procedures as the Law of Penal Procedures No. 3 of 2001 (See PLO Revolutionary Criminal Procedures Law of 1979, Articles 83-89).

3. Hearing witnesses

What is hearing of witnesses?

Hearing is the calling of witnesses and the taking of their testimony.

What are the procedures of hearing witnesses?

The Law of Penal Procedures No. 3 of 2001 determines the procedures of hearing witnesses as follows:

1. The Deputy-Prosecutor or the delegated investigator summon the witness to appear. The Deputy-Prosecutor must order the competent authorities to deliver the summons to the witness at least 24 hours before the scheduled hearing. (Article 77, 78)
2. The Deputy-Prosecutor must record the identity of the witness, including his/her name, age, occupation, address, relation to the accused, before the hearing begins. (Article 79)
3. The Deputy-Prosecutor must take the oath of the witness before the hearing begins. Persons younger than 15 years may not be heard under oath but only for information purposes. Parents, children or spouse of the accused do not have to swear the oath, unless the crime was committed against one of them. If swearing the oath contradicts the religious beliefs of the witness, he/she may be heard without oath after asserting that he/she will tell the truth. Religious persons may have the oath administered by a religious superior or bishop. (Article 80, 83, 89, 90)
4. All questions and witness's answers must be recorded (Article 80).
5. The Deputy-Prosecutor shall hear witnesses separately. Witnesses may be heard jointly or in the presence of the accused only if needed. (Article 80, 84)
6. If a witness does not follow the summons, he/she can be summoned a second time. If he/she still fails to appear, the Deputy-Prosecutor shall issue at writ of attachment against him/her. (Article 85)
7. If a witness cannot appear for health reasons, he/she may be heard at home. If the witness

is deemed as not being so ill as not to appear, the Deputy-Prosecutor may issue at writ of summons against him/her. (Article 86, 87)

8. Erasures or insertions in the statement of the witness must be signed by the Deputy-Prosecutor, the clerk and the witness (Article 91).
9. Parties, attorneys and civil claimants have the right to read the statement of a witness (Article 92).



Palestinian military criminal procedures

Procedures for hearing witnesses in cases involving security personnel follow the same procedures as the Law of Penal Procedures No. 3 of 2001 (See PLO Revolutionary Criminal Procedures Law of 1979, Articles 52-61).

4. Commissioning experts

What is the commissioning of experts?

'The Deputy-Prosecutor may seek the assistance of a competent physician or other experts to establish the conditions of the crime committed.'

(Law of Penal Procedures No. 3 of 2001, Article 64)

Experts work under the supervision of the authority conducting the investigation. The investigator may attend the work performed by experts. (Law of Penal Procedures No. 3 of 2001, Article 64)

What are the procedures of commissioning experts?

The Law of Penal Procedures No. 3 of 2001 determines the procedures of commissioning experts as follows:

1. The expert must swear an oath to undertake his/her task diligently and impartially, unless he/she is legally accredited as an expert (Article 68).
2. The expert must submit a technical report on his/her work to the Deputy-Prosecutor within the time-frame set by him/her. The report

must be substantiated and signed on each page.
(Article 66, 69)

The accused has the right to seek the assistance of an expert and request that he/she is allowed to review the documents of case. The accused also has the right to request the recusal of an expert. Such request must be submitted to the Attorney-General or his/her assistants through the Deputy-Prosecutor; the Attorney-General decides on the request within 3 days. (Article 70, 71)

5. Handling confiscated objects

What are the procedures of handling confiscated objects?

The Law of Penal Procedures No. 3 of 2001 determines the procedures of handling seized objects as follows:

1. Confiscated objects must be placed in sealed and referenced containers (Article 72).
2. The containers must be placed at the warehouse of the Public Prosecution or any other place it may design (Article 72).
3. Confiscated objects must be returned to the person from whom they were seized, unless their retention is necessary for the judicial examination (Article 73).



Competencies of officers tasked with judicial duties in the trial and post-trial phase

The trial stage and the post-trial stage of the criminal justice process are regulated in the Law of Penal Procedures No. 3 of 2001. This phase includes adjudicating the case and sentencing the accused. It falls under the mandate of the Courts (Article 164-479). In this phase, officers tasked with judicial duties have the following competencies:

1. Serving judicial instruments:

'Judicial instruments shall be served by a process-server or a policeman upon the person to be notified or at his/her domicile, pursuant to the rules set forth in the Law of Civil Procedure (...).'

(Law of Penal Procedures No. 3 of 2001, Article 185)

2. Execution of judgements:

'The Public Prosecution shall execute a judgement issued in a criminal action pursuant to the provisions of this law and may directly request the police force, as occasion may require.'

(Law of Penal Procedures No. 3 of 2001, Article 395)

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