



**Implementation of the Convention
Against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment
under the Palestinian Authority and Hamas**



An alternative report prepared
for the United Nations Convention Against Torture



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The Jerusalem Institute of Justice (JIJ) does not present this report as a denial of human rights violations charged against Israel, since materials are readily available on that subject. JIJ itself has litigated human rights cases within Israel for more than a decade. This report covers largely unreported, often censored, violations by Palestinian governing authorities against Palestinians, so their voices may be heard and that facts might replace distorted misunderstandings of the regional situation.

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Introduction

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 5, The Universal Declaration of Human Rights

In this report, the Jerusalem Institute of Justice (JIJ) examines the observance of the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment (UNCAT) signed by the Palestinian Authority (PA). Through research and personal interviews, JIJ evaluates human rights deficiencies throughout the territories under the control of the Palestinian Authority in light of international legal norms. Despite the Palestinian Authority’s formal commitment to international human rights standards, this report documents a broad array of continuing abuses.

Article 5 of the Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights declare that no person shall be subjected to torture, or cruel, inhuman or degrading treatment or punishment. The UN’s 1984 Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment affirms the statement and furthermore declares that each state shall take effective legislative, administrative, judicial or other measures to prevent acts of torture, including under exceptional circumstances like war, occupation, and political instability.¹

Since 1984, 155 states have ratified the UNCAT. Amnesty International has researched 142 of these states and their implementation of the UNCAT, and in 2014 observed that at least 79 of these states still carry out acts of torture. An additional 40 UN states have not adopted the Convention, however the global legal ban on torture still binds them.² According to Amnesty International, many governments are betraying their responsibility, despite ratification of the Convention.³

Torture is universally condemned and the prohibition of torture is the concern not only of those countries that have ratified particular treaties, but is also a rule of general or customary international law⁴, known as *jus cogens*, which binds all states even in the absence of treaty ratification. In fact, the prohibition of torture is generally regarded as having the special status of a ‘peremptory norm’ of international law, and states cannot choose to disregard or deviate from it.

¹ United Nations, available on <http://www.un.org/documents/ga/res/39/a39r046.htm>, accessed on September 29, 2015

² Amnesty International, May 13, 2015, Global crisis on torture exposed by new worldwide campaign, available on <https://www.amnesty.org/en/latest/news/2014/05/amnesty-international-global-crisis-torture-exposed-new-worldwide-campaign/>, accessed October 1, 2015

³ Ibid. available on <http://www.amnesty.org.uk/issues/Stop-Torture>, accessed on October 1, 2015

⁴ Customary international law refers to international obligations arising from established state practice, as opposed to obligations arising from formal written international treaties.

Freedom from torture and abuse is an inalienable human right. In the case of the Palestinian people, they have been subject to numerous, severe violations of this basic right, not primarily at the hands of Israelis, but at the hands of their own leaders. Additionally, in the cases mentioned in this report, the victims suffered torture, both physical and psychological.

Both international and local human rights organizations working in the West Bank and Gaza Strip are aware of human rights violations committed by the Palestinian authorities against Palestinians, but their focus is predominantly concentrated on violations committed by Israel. Consequently, violations by the PA often go unreported.⁵

This report focuses on providing a better understanding of the current situation within the territories controlled by the Palestinian Authority, where the violations of the UNCAT are committed by the PA. With the information contained in this report, JIJ urges the international community to hold the Palestinian leadership accountable for respecting and protecting the right of individuals not to be subjected to torture or inhuman or degrading treatment at the hands of their government.

Methodology

The information presented in this report derives from reputable news sources and non-governmental organizations (NGOs). Some information and statistics were obtained from materials produced by either Palestinian governmental bodies or several NGOs that affiliate themselves with the Palestinian people. Furthermore, English-language interviews were conducted personally, or by phone and e-mail with individuals who work professionally on issues of torture or other related human rights issues. To protect the safety and privacy of such individuals, names and identifying information have been removed and records of interviews maintained internally by the Jerusalem Institute of Justice.

The UN Convention against Torture consists of 33 Articles. However, this report specifically discusses those articles where blatant violations by the Palestinian Authority and Hamas have occurred. This should not be interpreted as indicating that the Palestinian Authority and Hamas are in compliance with the UNCAT articles not mentioned in this report. Only topics for which a sufficient quantity of reliable information was available have been addressed. It is recommended that the reader of this report also read UNCAT in its entirety to more fully understand its demands.⁶

⁵ Jerusalem Institute of Justice, March 2015, Hidden Injustices, available on <http://jjj.org.il/wp-content/uploads/2015/03/Palestinian-Human-Rights-Violations-in-West-Bank-and-Gaza.pdf>, accessed on October 4, 2015

⁶ See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

Accession to the UN Convention Against Torture (UNCAT)

State of Palestine - April 2, 2014

The Palestinian Authority's status in the United Nations has evolved considerably over the last half-century. Beginning as an Observer Mission of a National Liberation Organization, the United Nations recognized National Liberation Movements and granted them "non-member observer status" on November 29, 2012.

The "Observer State" status granted to the Palestinians by the United Nations in November 2012 gave them access to join various international conventions and organizations. However, the State of Palestine remains committed in their pursuit to obtain full United Nations membership.⁷ The decision of the Palestinian Authority was to accede, without reservation, to multiple international conventions and treaties regarding human rights, humanitarian law, and diplomatic relations.⁸

Consequently, the Palestinian Authority has obliged itself to comply with international human rights law, and implement the provisions laid out in the following conventions:

- The Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land 1907
- The Convention on the Prevention and Punishment of the Crime of Genocide 1948
- The Four Geneva Conventions of 12 August 1949 and the First Protocol Additional to the Geneva Convention
- The Vienna Convention on Diplomatic Relations 1961
- The Vienna Convention on Consular Relations 1963
- The International Convention on the Elimination of All Forms of Racial Discrimination 1965
- The International Covenant on Civil and Political Rights 1966
- The International Covenant on Economic, Social and Cultural Rights 1966
- The Vienna Convention on the Law of Treaties 1969
- The International Convention on the Suppression and Punishment of the Crime of Apartheid 1973
- The Convention on the Elimination of All Forms of Discrimination against Women 1979

⁷ Permanent Observer Mission of The State of Palestine to the United Nations New York, Status of Palestine, August 1, 2013, available on <http://palestineun.org/status-of-palestine-at-the-united-nations/>, accessed September 24, 2015

⁸ UN News Centre, *UN confirms receipt of Palestinian applications to join global conventions, treaties*, available on <http://www.un.org/apps/news/story.asp?NewsID=47490#.VgOoJNKqqko>, accessed September 24, 2015

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- The Convention on the Rights of the Child/Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 1990/2000
- The United Nations Convention against Corruption 2003
- The Convention on the Rights of Persons with Disabilities 2006

Furthermore, on December 31, 2014, the Palestinian Authority ratified another 20 international treaties and conventions. The State of Palestine, having signed all of these conventions, should submit initial reports on the status of human rights in Palestine and the procedures adopted to improve human rights.⁹ However, no reports have yet been submitted.

On December 18, 2002, the General Assembly of the United Nations adopted an Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which took effect on June 22, 2006. This protocol is an addition to the UNCAT and, according to its first article, the objective is to establish a system of regular visits undertaken by independent international and national bodies to places in the West Bank and Gaza, where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.¹⁰

Thus far, the State of Palestine has not signed the Optional Protocol of UNCAT (OPCAT).¹¹ However, “the Palestinian Ministry of Foreign Affairs has this Protocol on the list of treaties they want to sign.”¹² A United Nations official stated that “According to local sources there is still torture taking place in Palestine, both in West Bank and in Gaza and potential reasons for not yet ratifying OPCAT is because [it would allow] open access to an international body to look into all places of detention. If certain conditions [that] violate international standards prevail in these places, maybe it is easier not to [have them] open for public international scrutiny.”¹³ In other words, ratifying OPCAT would open the doors to investigation in places that the authorities would rather have under lock and key.

⁹ Independent Commission for Human Rights, available on <http://www.ichr.ps/en/2/6/1360/ICHR-20th-Annual-Report-ICHR-20th-Annual-Report.htm>, accessed on September 30, 2015

¹⁰ OHCHR, available on <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>, accessed September 21, 2015

¹¹ See <http://indicators.ohchr.org/>, accessed September 21, 2015

¹² Interview with X., ICHR, Ramallah, November 25, 2015

¹³ Interview via e-mail with N., November 2, 2015

The State of Palestine and Other Human Rights Declarations

The Palestinian National Authority became a party to the international declarations and covenants that protect human rights, and as a member of the Organization of Islamic Cooperation,¹⁴ has adopted both the Cairo Declaration on Human Rights in Islam (CDHRI) and The Arab Charter on Human Rights (ACHHR).

Regarding the issue of torture, Article 20 of the CDHRI states that it is not tolerable, without legitimate reason, to arrest an individual, restrict his freedom, or to exile or punish him. It is not permissible to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity.¹⁵

Additionally, Article 8 of the ACHHR states that no one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.¹⁶

Both Declarations proclaim that torture should be banned, and both of them say that all the rights and freedoms stipulated in these declarations are subject to Islamic Sharia Law. Article 4.2 of the Amended Palestinian Basic Law clearly says the principles of Sharia shall serve as the main source of legislation.¹⁷ Further, there is public backing for this, as the Pew Research Centre says 89% of Palestinians support Sharia law and think it should become the official law in the State of Palestine.¹⁸

“Sharia law is against torture or any act, which degrades any person. The punishment of such an act is Qisas, which means that the criminal would be punished with the same act he/she did (eye for eye, tooth for tooth, etc.) However, Jordanian Criminal Law from 1960, which is currently valid in the West Bank, says that acts of torture are punishable by anywhere from 3 months to 3 years of imprisonment.”¹⁹

Since Sharia law is considered the main source for legislation, this indicates that torture would be practiced against those who themselves have committed acts of torture. This contravenes the provisions set out in UNCAT and as long as this form of retribution is in action, adherence to the UNCAT is almost impossible.

During a personal interview, with an independent investigative journalist, reporting on the situation in the West Bank and Gaza, he remarked: “The Sharia law, right now

¹⁴ The Organisation of Islamic Cooperation (OIC) is the second largest inter-governmental organization after the United Nations, and composed of 57 member states spread over four continents. The Organisation aims to safeguard and protect the interests of the Muslim states and aims at promoting international peace and harmony.

¹⁵ To read CDHRI, see <http://www.oic-oci.org/english/article/human.htm>

¹⁶ To read ACHHR, see <http://www.jus.uio.no/english/services/library/treaties/02/2-01/arab-human-rights-revised.xml>

¹⁷ See <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

¹⁸ <http://www.pewforum.org/2013/04/30/the-worlds-muslims-religion-politics-society-exec/>, accessed on November 18, 2015

¹⁹ Interview via e-mail with A., Professor of Law, Birzeit University, November 30, 2015

proposed for the Palestinian Authority is a monstrous law which basically is an Islamic dictatorship.”²⁰

Arguments Against Torture

Many experts consider torture to be immoral and impractical as the information obtained through acts of torture is often false.²¹ Persons undergoing torture are not often concerned with supplying accurate information. Rather, their main goal is simply to bring an end to the torture. Because of this, while torture is often used to extract a confession, this aim is rarely achieved.²²

Hunsinger, in his book on torture and morality (2008) argues, “torture is a moral issue and remains a despicable practice, which dehumanizes people.”²³ It can be understood as one of the most severe forms of dehumanization.²⁴

Human Rights Watch holds a similar opinion about the prohibition of torture, stating it “to be a bedrock principle of international law. Torture, as well as cruel, inhuman or degrading treatment, shall be banned at all times, in all places, including in times of war. No national emergency, however dire, ever justifies its use.”²⁵

Despite this prohibition, Amnesty International, Human Rights Watch, and the U.S. State Department, along with representatives from national independent Palestinian human rights organizations, report that torture and cruel punishment occur on a regular basis in both the West Bank and the Gaza Strip, sometimes resulting in death.²⁶

As Rejali, in his book *Torture and Democracy* (2007) argues, “genuine democracy and torture could not go together.”²⁷ Thus the State of Palestine, if considered a democracy, must begin to respect and ensure freedom from torture, at all times and within every territory under its power, as stated in the UNCAT.

²⁰ Interview with J., Jerusalem, November 12, 2015

²¹ See <http://www.debate.org/torture/>, accessed on October 28, 2015

²² Ibid.

²³ Hunsinger G., 2008, *Torture is a moral issue. Christian, Jews, Muslims, and people of conscience speak out*, William B. Eerdmans, Cambridge UK, available on https://books.google.co.il/books?id=9fGxzaln4QIC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=snippet&q=despicable&f=false, accessed on October, 14, 2015

²⁴ Ibid.

²⁵ Human Rights Watch, *Torture*, available on <https://www.hrw.org/topic/torture>, accessed on October 27, 2015

²⁶ Jerusalem Institute of Justice, *Hidden Injustices*, March 2015, available on <http://jij.org.il/wp-content/uploads/2015/03/Palestinian-Human-Rights-Violations-in-West-Bank-and-Gaza.pdf> and <http://www.hrw.org/en/news/2010/10/20/westbank-reports-torturepalestinian-detention>, accessed March 2, 2015.

²⁷ Rejali D., 2007, *Torture and Democracy*, Princeton University Press, available on https://books.google.co.il/books?id=L8GtJY_J00C&pg=PA411&lpg=PA411&dq=rejali,+genuine+democracy&source=bl&ots=uevb5JAQYX&sig=TtjbysFsnt7AKQbwpttNmjKyfQ&hl=en&sa=X&ved=0CCwQ6AEwA2oVChMIg7OSi7fQyAIVBVQUCh34FQt6#v=onepage&q&f=false, accessed on October 16, 2015



Article 1 – Definition of Torture and Concurrent Abuses

The United Nations Convention against Torture describes torture as,

“Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

According to this definition, four conditions have to be met for an act to constitute torture:

- It must be intentional
- It must cause severe pain or suffering
- It must be intended to achieve one of the purposes mentioned
- It must be done by, or with the acquiescence of, a public official

The second condition could create problems and disagreements. Sophisticated types of interrogation do not necessarily cause severe pain and suffering, and therefore, these acts do not have to be considered as torture by some states.²⁸ However, no duress, either slight or moderate, can be used against any person, as Palestinian Basic Law clearly states under Article 13.

Violations of human rights and freedoms of Palestinian people increased in 2014 and the situation did not improve throughout 2015. According to the Independent Commission for Human Rights (ICHR), which has been monitoring the situation both in the West Bank and Gaza Strip, there have been many complaints of torture and ill-treatment. In 2014, ICHR registered 1,274 complaints of violations of the right to freedom from torture and ill-treatment, of which 287 were in the West Bank and 996 in the Gaza Strip.²⁹ These abuses have continued on a daily basis throughout 2015, despite the ratification of UNCAT. Table 1 below shows the data collected from January to July 2015.

²⁸ B'tselem, Torture & Abuse under Interrogation, January 2011, available on http://www.btselem.org/torture/international_law, accessed on October 28, 2015

²⁹ Independent Commission for Human Rights, available on <http://www.ichr.ps/en/2/6/1360/ICHR-20th-Annual-Report-ICHR-20th-Annual-Report.htm>, accessed on November 19, 2015

Table 1.

	Complaints of torture and ill-treatment	West-Bank	Gaza Strip
January 2015	56	15	41
February 2015	60	21	39
March 2015	60	8	52
April 2015	54	7	47
May 2015	48	14	34
June 2015	18	12	6
July 2015	45	6	39
Total	341	83	258

Source: ICHR/Monthly Reports/2015

Ratification of the UNCAT convention was a huge step forward in preventing and stopping torture, “but torture still exists in the West Bank and Gaza. Even one case is enough. If there is one case of torture, then torture still exists.”³⁰

Amnesty International states in its *International Report 2014/2015* that authorities in the West Bank and Gaza restricted freedoms of expression and peaceful assembly, carried out arbitrary arrests and detentions, in addition to torturing and otherwise ill-treating detainees with impunity.³¹ A Human Rights Watch Report from 2015 affirms

³⁰ Interview with F., Ramallah, November 23, 2015

³¹ Amnesty International, *Amnesty International Report 2014/2015*, available on <https://www.amnesty.org/en/countries/middle-east-and-north-africa/palestine-state-of/>, accessed on September 26, 2015

the statement of Amnesty International and proclaims that in the West Bank, Palestinian Authority security services beat peaceful demonstrators, detained and harassed journalists, and arbitrarily detained hundreds of people.³²

According to Gatestone Institute, in 2015 Palestinian security officers in the West Bank beat Palestinian journalist Muaz al-Amleh after he posted critical remarks against a Fatah official on social media. The Palestinian Authority has continued to intimidate journalists, because it does not tolerate any kind of criticism.³³ According to another article by Gatestone Institute, ICHR received complaints regarding the detention of 35 Palestinian journalists by the Palestinian Authority and Hamas.³⁴ Another article revealed that in August 2015 alone there were at least 12 detainees claiming to have been tortured by Palestinian interrogators.³⁵ This happens to both Palestinian and foreign journalists. There are clear dangers when criticizing authorities and fears about discussing issues of torture, assaults on innocent civilians, and freedom of speech.³⁶

According to one journalist directly involved in Palestinian Authority policies and issues, “the articles about torture and corruption are not easy to publish and a journalist must be very careful. In Gaza, there are journalists being tortured. There is torture considered as a common procedure. Those, who experienced torture fear to talk about what happened to them and will never talk about it.”³⁷

Both Hamas in Gaza and Fatah in the West Bank are putting journalists in jail and beating them, effectively banning the freedom of expression.³⁸



Article 2 – Prevention of Torture and Abuse

“Each state shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

The State of Palestine ensures freedom from torture under Amended Palestinian law in Article 13, stating, “No person shall be subject to any duress or torture.” However, the

³² Human Rights Watch, World Report 2015: Israel/Palestine, available on <https://www.hrw.org/world-report/2015/country-chapters/israel/palestine>, accessed on September 28, 2015

³³ Toameh A.K, *Hamas, Palestinian Authority Step Up Human Rights Violations* Gatestone Institute, International Policy Council, 2015, available on <http://www.gatestoneinstitute.org/5019/hamas-palestinian-authority-human-rights>, accessed October 6, 2015

³⁴ Toameh, Khaled Abu., January 8, 2016, *Palestinian Authority, Hamas, Responsible for Torture*, Gatestone Institute, available on <http://www.gatestoneinstitute.org/7192/palestinians-torture>, accessed on January 10, 2016

³⁵ Tawil B., November 25, 2015, *Who Is Jailing and Torturing Palestinian Journalists?*, Gatestone Institute, <http://www.gatestoneinstitute.org/6941/palestinian-journalists-persecution>, accessed on November 29, 2015

³⁶ Ibid. <http://www.gatestoneinstitute.org/2770/palestinian-hero>

³⁷ Interview via phone with K., October 25, 2015

³⁸ Phone interview with I., Jerusalem, August 12, 2015

data above and the findings of internationally recognized NGOs show that freedom from torture is not fully ensured and protected by the State of Palestine.

The Arab Organization for Human Rights in London (AOHR UK) has documented examples of the torture of Palestinians at prisons in Bethlehem, Jericho and Juneid, a neighboring town to Nablus. According to one article by the Middle East Monitor, “the headquarters of the Palestinian Authority intelligence services in Bethlehem is a “slaughter house” used for torturing prisoners.”³⁹ “The Intelligence services in Bethlehem prison have witnessed the worst cases of torture.”⁴⁰ Furthermore, the organization revealed several testimonies documenting cases of torture in 2015 at Palestinian intelligence centers in the West Bank.

On June 18, 2015, a young Palestinian student at Al-Najah University, Awni Mazen Al-Shaksheer from Nablus, was arrested and tortured by the Intelligence services at Juneid Prison because of his student activism. He experienced torture, where he was beaten up with sticks and power cables, punched, kicked and slapped, leaving him with bruises all over his body. He was also subjected to sleep deprivation (psychological torture). After several days, he was transferred to Bethlehem prison for more than two weeks, where he was tortured for one week and spent the rest of the time in a prison cell before he was moved back to Juneid prison again. He was never charged, nor allowed to appear before a judge, but instead was told that he was being detained at the discretion of the Director of Intelligence Services and the Governor of Nablus.⁴¹

On June 22, 2015, a 30-year old Palestinian man, Mahmoud Mazen Freij from Tulkarm, was arrested. According to his statement, he was beaten on the back with a water hose at Juneid Prison in Nablus. Despite a court decision ordering his release, he remains in custody.⁴²

In June 2015, another Palestinian man, Muhammad Ahmad Salah, was detained for 65 days, during which he was tortured and mistreated by Palestinian Intelligence officers. The officers accused him of preparing attacks against Palestinian officials and organizing armed militias. Both the Prosecutor General in Nablus and the Magistrate

³⁹ Middle East Monitor, Attempts to take PA to international courts over allegations of torture, September 1, 2015, available on <https://www.middleeastmonitor.com/news/middle-east/20754-attempts-to-take-pa-to-international-courts-over-allegations-of-torture>, accessed on November 9, 2015

⁴⁰ Arab Organisation for Human Rights in UK, Palestinian Authority security forces summon and arrest 194 in August, September 5, 2015, available on <http://aohr.org.uk/index.php/en/all-releases-2/4573-palestinian-authority-security-forces-summon-and-arrest-194-in-august.html>, accessed on November 9, 2015

⁴¹ Ibid. August 7, 2015, available on <http://aohr.org.uk/index.php/en/all-releases-2/4390-palestinians-routinely-tortured-by-bethlehem-and-nablus-intelligence-services.html>, accessed on November 9, 2015

⁴² Ibid, accessed on November 9, 2015

Court extended his detention. After spending two months in prison, he was eventually released.⁴³

In July 2015, according to the Palestinian Information Centre, the Palestinian Authority Security Forces arrested and detained 250 Palestinians because of their political affiliation. Some of the detainees held in Palestinian Authority jails went on hunger strikes, while others were subjected to severe torture.⁴⁴

These personal cases and statements demonstrate how the justice system in the territories is failing, as torture is still prevalent in Palestinian prisons. Credible allegations of the torture of Palestinians by the Palestinian Authority's security services persist. These are not unique incidents, but rather a repetitive and normal practice throughout the Palestinian territories.

Addameer, the Palestinian Human Rights Organization for Prisoner Support claims that torture was proven to have been committed against political prisoners during detention and interrogation.⁴⁵ The consistent commission of torture by Palestinian Intelligence services shows the brutality of their violent acts, which abuse the dignity of human beings and undermine the right to freedom from torture. According to the Palestinian Centre for Human Rights' (PCHR) Annual Report 2014, security officers in the West Bank and Gaza have continued to practice torture as a primary means of obtaining information when dealing with prisoners and detainees in detention centers.⁴⁶

The human rights situation in the Palestinian territories has evidently not improved, despite the ratification of several conventions and treaties. According to Al-Haq, an independent Palestinian NGO, this situation occurs because of a lack of political will to implement the provisions of these accords.⁴⁷

⁴³ Al-Haq, A Failed Justice System: Torture and Ill-Treatment in Palestinian Prisons. September 7, 2015, available on <http://www.alhaq.org/documentation/weekly-focuses/957-a-failed-justice-system-torture-and-ill-treatment-in-palestinian-prisons>, accessed on October 26, 2015

⁴⁴ The Palestinian Information Centre, *250 political detainees held in PA jails*, July 16, 2015, available on <http://english.palinfo.com/site/pages/details.aspx?itemid=72597>, accessed on November 9, 2015

⁴⁵ Memo Middle East Monitor, 'Attempts to take PA to international courts over allegations of torture', September 1, 2015, <https://www.middleeastmonitor.com/news/middle-east/20754-attempts-to-take-pa-to-international-courts-over-allegations-of-torture>, accessed on November 22, 2015

⁴⁶ Palestinian Centre for Human Rights (PCHR), 2014, available on http://www.pchrgaza.org/files/2015/annual_pchr_eng_2014.pdf p.19, accessed on October 27, 2015

⁴⁷ Ibid. *Legal Analysis*, accessed on November 24, 2015

Fatah vs. Hamas

The relationship between Fatah and Hamas is not on its way to reconciliation, rather it is worsening. There were several attempts at reconciliation after Hamas took over the Gaza Strip in 2007. Eventually, in 2014, Hamas and Fatah reached an agreement that guaranteed the future establishment of an interim government; however, they failed to cooperate. Further tensions and mutual accusations have persisted between these two movements.⁴⁸

Fatah, the governing faction in the West Bank, is practicing the "worst kind of torture" against Hamas members.⁴⁹ "The Hamas leadership, the more violent faction of the Palestinian National Authority, dominating the Gaza strip, repeatedly calls for rights and justice for Palestinians. However, they do not act in a manner that reflects respect for rights, justice, and the rule of law."⁵⁰ The Amnesty International report states that Hamas carried out a "brutal campaign of abductions, torture and unlawful killings against Palestinians accused of collaborating with Israel and others."⁵¹

The armed groups in Gaza in August 2014 summarily executed at least 25 Palestinians, of whom they accused collaboration with Israel.⁵² Collaborating with Israel is considered to be a serious crime. Selling land, or merely being involved in property sales to an enemy state, or one of its subjects, usually referring to Jews, is a forbidden capital offense. In fact, in January 2016 an undercover operation by Israeli activists uncovered and exposed that members of Israeli-Palestinian human rights NGO's, who receive foreign funding, and claim to be "pro-Palestinian", have actually been acting as an arm of the Palestinian security forces, entrapping Palestinians attempting to sell land to Jews, and turning them into the authorities to be killed after being "beat up a lot."⁵³

⁴⁸ Winer S., June 10, 2015, The Times of Israel, 'Egypt said working to reconcile divided Fatah, Hamas', available on <http://www.timesofisrael.com/egypt-said-working-to-reconcile-divided-fatah-hamas/>, accessed on December 13, 2015

⁴⁹ Memo Middle East Monitor, 'Hamas: Fatah tortures Hamas prisoners in West Bank', January 6, 2015, available on <https://www.middleeastmonitor.com/news/middle-east/16179-hamas-fatah-tortures-hamas-prisoners-in-west-bank>, accessed on September 25, 2015

⁵⁰ Amnesty International, 'Gaza: Palestinians tortured, summarily killed by Hamas forces during 2014 conflict', May 27, 2015, available on <https://www.amnesty.org/en/press-releases/2015/05/gaza-palestinians-tortured-summarily-killed-by-hamas-forces-during-2014-conflict-1/>, accessed on September 28, 2015

⁵¹ The New American, 'Report Says Hamas Tortured Israeli "Collaborators" and Fatah Members in Gaza', May 28, 2015, available on <http://www.thenewamerican.com/world-news/asia/item/20963-report-says-hamas-tortured-israeli-collaborators-and-fatah-members-in-gaza>, accessed on September 25, 2015

⁵² Human Rights Watch, World Report 2015, available on <https://www.hrw.org/world-report/2015>, accessed on September 26, 2015

⁵³ Jacobson, William A., *Legal Insurrection*, 'Israeli leftist brags turned in Palestinians who sell land to Jews, risking their death and torture', January 9, 2016, available on <http://legalinsurrection.com/2016/01/israeli-leftist-brags-he-turned-in-palestinians-who-sell-land-to-jews-risking-their-death-and-torture/>, accessed on January 11, 2016

According to an article by *The Times of Israel*, Palestinians living in East Jerusalem were kidnapped in the city and tortured to death in Ramallah by the Palestinian Authority's Preventive Security Agency because of their involvement in property sales. "One would rather die than sell his honor and betray the most sacred land in the world. Those traitors are destined to die a humiliating death," said Fatah spokesman, Osama Al-Qawasmi."⁵⁴

In general, disputes over land between Jews and Palestinians seem unresolvable, which reveals the continuously tense relationship between Muslims and Jews. Religion plays an important role in this issue as violent acts often occur against the Christian minority in the Palestinian territories; more specifically, against converts from Islam to Christianity.

According to JIJ's report on freedom of religion, "living openly as a convert leads to imprisonment or threats."⁵⁵ An interview conducted with the leader of an educational institution in the West Bank revealed that the Palestinian Authority "takes measures to punish the convert in order to appease the Muslim majority."⁵⁶

Contesting Torture Under the UNCAT Articles

As indicated in this report, the State of Palestine does not appear to take proper measures to prevent acts of torture in the territories under its jurisdiction. Even though Article 13 of the Amended Palestinian Basic Law states that no person shall be subjected to any duress or torture, the U.S. Department of State Report 2014, with the help of Human Rights Watch, reported several complaints of abuses. These complaints included victims being forced to stand in uncomfortable stress positions, flogging, hand binding, suspension, blindfolding, punching, and beatings with clubs, electric cables, or hoses. Moreover, the Palestinian Authority security forces also reportedly used these tactics against Palestinian minors.⁵⁷

The Independent Commission for Human Rights reported in its monthly report from January 2015 that in the West Bank, a number of the detainees were children between

⁵⁴ The Times of Israel, 'Abbas toughens law against Palestinians selling land to Jews', October 21, 2014, available on <http://www.timesofisrael.com/abbas-toughens-law-against-palestinians-selling-land-to-jews/> accessed on November 7, 2015

⁵⁵ Jerusalem Institute of Justice, 'Freedom of religion', available on <http://jjj.org/wp-content/uploads/2013/10/Palestinian-Freedom-of-Religion.pdf>, accessed on November 22, 2015

⁵⁶ Ibid.

⁵⁷ U.S. Department of State, Diplomacy in Action, Israel and The Occupied Territories - The Occupied Territories, available on http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=236604&year=2014#wrapper, accessed on October 21, 2015

16-17 years of age. Complainants claim they were subjected to different forms of torture, such as:

- Slapping in the face, beating, kicking and punching-
- Using car batteries to conduct electro-shocks
- Threatening to open the contents of a gas cylinder into the victims' mouths
- Burning the detainee with cigarettes
- Flogging
- Blindfolding and being forced to stand in an uncomfortable position
- Pouring cold water on the victims and forcing them to remove their clothes⁵⁸



Article 4 – Torture as a Criminal Offence

“Each State Party shall ensure that all acts of torture are to be considered offences under its criminal law.”

“Each State Party shall make the offences punishable by appropriate penalties which take into account their grave nature.”

According to Article 32 of the Amended Palestinian Basic Law, any violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime.⁵⁹

The Jordanian Penal Code No. 74 of 1960, which is still applied in the West Bank, criminalizes acts of torture conducted by an official aiming to obtain a confession of a crime. However, such acts are not actually referred to as “torture”, but rather as crimes that meet the definition of torture, as defined in Article (1) of the Convention against Torture.⁶⁰ The criminal is punished with anywhere from three months to three years imprisonment. The punishment will be aggravated if the torture resulted in any injury or sickness;⁶¹ and six months to three years imprisonment unless the acts committed beg for more severe punishment. According to this statement, the State of Palestine clearly defines in its current criminal law that torture is punished and considered a crime, which must be punished by law.

⁵⁸ Independent Commission for Human Rights, available on <http://www.ichr.ps/en/2/5/1308/January-2015-Report-of-Human-Rights-Violations-January-2015-Report-of-Human-Rights-Violations.htm>, accessed on November 19, 2015

⁵⁹ See <http://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>

⁶⁰ Palestinian Centre for Human Rights (PCHR), 2014, available on http://www.pchrgaza.org/files/2015/annual_pchr_eng_2014.pdf p.27, accessed on January 7, 2016

⁶¹ Interview with A. Professor of Law, Birzeit University, November 30, 2015

However, cases revealed in this report, show that torture is widely in use in the State of Palestine and no punishment has yet been enforced. Generally, most acts of torture are committed in hidden places or in prisons. According to Human Rights Watch, no Palestinian security official has ever been convicted for abusing those in his custody.⁶² This may be, in part, to blame on the problematic language as well as on the fact that not all torture is prohibited by the Penal Code. Torturous acts not used to obtain information and/or confessions are not criminalized, neither are psychological torture or inhumane and degrading treatment, and some acts of torture are labeled “prohibited by law,” which indicates that other acts of torture are permissible. Additionally, Article 333 of the Penal Code states, “Any individual who wilfully [sic] beats, cuts or harms another with any means of violence; and as a result of the assault, the victim suffered of a sickness or an inability to work for more than 20 days, is punishable by imprisonment ranging between 3 months and 3 years.”⁶³ Therefore, beating, cutting, or harming an individual which renders them unable to work for a period of less than 20 days goes unpunished. Regardless, the minimum punishments for those who impose bodily injury on another (three to six months in prison) do not meet the severity of the crime of torture, and do not achieve justice for the victims.



Article 10 – Education on the Prohibition of Torture

“Each state shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement, civil, military or medical personnel, public officials and other persons, who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, including this prohibition in the rules and instructions.”

The Palestinian Authorities generally deny that torture occurs, or admit only isolated incidents while insisting that those responsible are disciplined. In addition, the Palestinian Authorities maintain that security personnel be explicitly instructed that

⁶² Human Rights Watch, “Palestinian Authority: No Justice for Torture Death in Custody”, February 16, 2011, available on <https://www.hrw.org/news/2011/02/16/palestinian-authority-no-justice-torture-death-custody>, accessed October 16, 2015

⁶³ Palestinian Centre for Human Rights (PCHR), 2014, available on http://www.pchrgaza.org/files/2015/annual_pchr_eng_2014.pdf p.28, accessed on January 7, 2016

torture is prohibited.⁶⁴ “All of the personnel know that torture is forbidden. Not all of them know that it is against [a] human rights convention.”⁶⁵

“There are training courses for security forces, and courses on human rights. This is part of the standard education. However, torture is still a phenomenon. One of the reasons is that security forces lack advanced technology or forensic equipment, so they rely on putting pressure on suspects through torture. It’s also important to unify the code of conduct for all security forces. The effective measure is increasing the measures for [the] prevention of torture through regular visits in detention centers, where most of [the] torture occurs. Even more important is to conduct spontaneous visits, which is still not possible.”⁶⁶

While it is purported that the personnel of the Palestinian Authority know that torture is forbidden, there are hundreds of torture incidents reported yearly in the West Bank and Gaza, and these numbers have increased in the past two years, according to the ICHR. Sadly, this is often excused or justified based on claims that the security forces and investigators lack the technological tools necessary to facilitate the proof of alleged crimes, such as DNA testing and eavesdropping equipment, and thus must resort to torture.⁶⁷ Obviously this is a poor excuse, and does not account for the fact that the money pouring⁶⁸ into the State of Palestine from the international community each year could be used, at least in part, to purchase ample technological tools.



Article 12 – Investigations of Torture

“Each state party must conduct investigations when there is reasonable ground to believe an act of torture has been committed.”

“In the West Bank, detainees alleged that they were tortured or otherwise ill-treated by police, military and other security officials. In Gaza, at least three men died in custody allegedly from torture by Internal Security officials. Both authorities failed to

⁶⁴ Human Rights Watch, *Israel, The Occupied West Bank and Gaza Strip, and The Palestinian Authority Territories*, available on <http://www.hrw.org/reports/2001/pa/isrpa1101.pdf>, accessed on September 29, 2015

⁶⁵ Interview with C., The Civil Commission for the Independence of Judiciary and Rule of Law, Ramallah, November 23, 2015

⁶⁶ Interview with X., ICHR, Ramallah, November 25, 2015

⁶⁷ Toameh, Khaled Abu., January 8, 2016, *Palestinian Authority, Hamas, Responsible for Torture*, Gatestone Institute, available on <http://www.gatestoneinstitute.org/7192/palestinians-torture>, accessed on January 10, 2016

⁶⁸ ProCon.org, *Israeli-Palestinian Conflict*, available on <http://israelipalestinian.procon.org/view.answers.php?questionID=000592>, accessed on January 20, 2016

protect detainees from torture and other ill-treatment, investigate allegations or hold those responsible to account.”⁶⁹

The Times of Israel published a case about the Palestinian Authority, who have been accused of torturing a man, Ahmad Bilal Abd al-Malak al-Deekm, for criticizing the government on his social media profile. He reported that he was subjected to various forms of torture: sleep deprivation, beatings with sticks and batons, verbal abuse and was forced to perform humiliating acts (psychological torture).⁷⁰ The Civil Commission for the Independence of the Judiciary and the Rule of Law are working directly on this case claiming \$1,000,000 in compensation. They have stated: “We think that the government did not do any serious investigation about this issue. There has been found good evidence, together with medical reports. Even if the government would do serious investigations, it does not respect the Court’s decision. And the courts are not completely independent in the State of Palestine.”⁷¹ Unsurprisingly, this case is ongoing.

In the 2013 Annual Report of the United Nations High Commissioner for Human Rights and reports of the office of the High Commissioner and the Secretary General, the Human Rights Council of the UN General Assembly put certain recommendations in place regarding investigations into violations of international human rights. The protections and assurances being sought for by the UN at that time would protect Palestinian civilians from such court grievances ensuring compliance with the standards of impartiality, independence, thoroughness, effectiveness, and promptness, transparency, accountability of responsible parties, compensation of victims, and accountability for crimes without discrimination for investigations into any allegations of international human rights abuses.⁷² Based on the most recent reports, statistics, and interviews obtained and presented in this report, this has yet to become a reality. It has already been established that torture is viewed internationally as abuse, thus in these cases of alleged torture, the UN recommendations of 2013 should be applied and upheld indiscriminately; but currently there is no sign of such advances.

⁶⁹ Amnesty International, PALESTINE (STATE OF) REPORT, available on <https://www.amnesty.org/en/countries/middle-east-and-north-africa/palestine-state-of/report-palestine-state-of/>, accessed on November 24, 2015

⁷⁰ Time of Israel, *Palestinian rights group sues PA over prison torture*, August 13, 2015, available on <http://www.timesofisrael.com/palestinian-rights-group-sues-pa-over-prison-torture/>, accessed on November 9 2015

⁷¹ Interview with C., The Civil Commission for the Independence of the Judiciary and Rule of Law, Ramallah, November 23, 2015

⁷² United Nations General Assembly, Annual Report of the United Nations High Commissioner for Human Rights and reports of the office of the High Commissioner and the Secretary General, August 22, 2013, available on www.ohchr.org/EN/HRBodies/HRC/.../A_HRC_24_30_ENG.doc, accessed January 10, 2016



Article 13 – Right to Complain

“Each State must also ensure that any individual who alleges he has been subjected to torture, has the right to complain to, and to have his case examined by, its competent authorities.”

According to the Executive Director of the Civil Commission for the Independence of the Judiciary and the Rule of Law, “security or military courts are the places to whom individuals can complain. We discover a lot of legal problems in the way, and it needs a lot of time to possibly succeed.”⁷³ “Victims of torture can also go to tribunal. There has been a case of a man tortured by Palestinians. It happened three or four years ago and is still in the court.”⁷⁴ Forcing victims of torture to wait many years to even complete the legal process does not satisfy the UN recommendations or the requirements of due process. This problem is additionally complicated by the fact that “the courts are not completely independent in the State of Palestine.”⁷⁵

According to statements such as these, it appears as though the State of Palestine does not consider torture cases as important in its territories and therefore any form of reconciliation or investigation is a lengthy process. The courts are not entirely independent and going to the court is a hard, long process as mentioned by the Executive Director of the Civil Commission for the Independence of the Judiciary and the Rule of Law, which causes complaints to either be subject to corruption or to remain unresolved.

As long as Palestinians do not have reliable, impartial, uncorrupted authorities to whom they can complain, then agreement and adherence to this provision can never be achieved. Additionally, this indicates that the Palestinian judicial system is not in compliance with the recommendations made to the Government of the State of Palestine *in the 2013 Annual Report of the United Nations High Commissioner for Human Rights and reports of the office of the High Commissioner and the Secretary General*. The fact that the courts are not fully independent obviously violates the recommendation of independence. Cases are vulnerable to corruption or doomed to remain unresolved, as seen in the case that has been held up in the tribunal process for three to four years, which postulates a violation of the recommendations of indiscriminate accountability, transparency, impartiality, and promptness. As long as the courts are able to conduct themselves in this manner, the 2013 recommendations can never be achieved.

⁷³ Ibid.

⁷⁴ Interview with F., Ramallah, November 23, 2015

⁷⁵ Interview with The Civil Commission for the Independence of the Judiciary and Rule of Law, Ramallah, November 23, 2015



Article 14 – Right to Redress

“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, incl. full rehabilitation as possible.”

Article 13 of the Amended Palestinian Basic Law states that “no person shall be subject to any duress or torture. Indictes and all persons deprived of their freedom shall receive proper treatment. All statements or confessions obtained through any duress or torture shall be considered null and void.”

“Although the Palestinian Basic Law ensures that violations shall be compensated, in practice this does not work. The government does not compensate those who have been tortured and does not provide them with psychological support, in case they need it. This is weak.”⁷⁶ Often the cases are either held up in the courts for years or remain completely unresolved. Victims cannot expect to be granted redress, compensation, or rehabilitation as long as cases continue to be mishandled in an untimely and discriminatory fashion. Not only does this make this aspect of the law unreachable, it also violates the UN 2013 recommendations regarding how victims of human rights violations investigations should be treated and the investigations handled.

In the case of Ahmad Bilal Abd al-Malak al-Deekm⁷⁷, the State of Palestine is not willing to provide any redress to him even if the Amended Palestinian law guarantees it. “We know that [the compensation of] \$1,000,000 is a big number, but the important thing now is to [educate] people [so] they can ask for their rights in the court. We encourage the people to ask for their rights. If the government does not want to pay money, it has to pay the victims in other value for violations [that have] occurred to them.”⁷⁸

The Palestinian Authority should encourage citizens to know their rights and take part in the judicial process. As individuals are made aware of their rights and take part in the judicial process, the truth regarding court violations of such rights should then become more public, which should, in turn, result in public demand for accountability to the UN recommendations. However, as long as the courts are not independent of the Palestinian government and continue to operate habitually with abuse and corruption, victims of torture can hardly expect to begin receiving compensation, redress, rehabilitation, or justice.

⁷⁶ Interview with X., Ramallah, ICHR, November 25, 2015

⁷⁷ Please refer to an earlier part of this report: The Civil Commission for the Independence of the Judiciary and the Rule of Law under d) Article 12 – Torture Investigation.

⁷⁸ Interview with C., The Civil Commission for the Independence of the Judiciary and Rule of Law, Ramallah, November 23, 2015



Article 16 – Other Acts of Ill-Treatment

“Each state shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment, which do not amount to torture.”

A UN official stated that, “the other acts of cruel, inhuman or degrading treatment or punishment are acts that do not fully fulfill the requirements in the definition of torture, for instance, because the harm is not intended (prison conditions) or the pain and suffering is less than what is required in the definition of torture”⁷⁹

Today, there are a wide variety of torture methods that are not considered torture by some states and therefore do not have to be punished. “For Palestinian security forces, hitting “softly” can be normal, not torture.”⁸⁰ There exist many acts of torture, which could be categorized into physical or psychological groups, both of which cause different forms of suffering. All acts of torture have traumatic consequences on health. According to one psychiatrist who aids victims of torture in the State of Palestine, the victims suffer from not only Post Traumatic Stress Disorder, but also what they refer to as “Continuing Traumatic Stress Disorder”. “The victims come to undertake treatment for one trauma, but after a year they come back with another trauma. Everything about the treatment of victims has been reported to the Palestinian Authority, but we can do nothing more alone, there is no democracy.”⁸¹

Psychological methods are mostly not regarded as torture. “In this category belong prolonged sleep deprivation, having to witness the torture of family members, solitary confinement, fear and humiliation, constant taunting, verbal abuse, severe sexual and cultural humiliations, the use of threats and phobias to induce fear of death or injury, use of other ‘techniques’ such as forced nudity, exposure to cold temperatures, light deprivation, etc.”⁸²

Not regarding psychological methods as torture is absurd considering that the damage left by psychological torture has the potential to far outlast the damage resulting from physical torture, manifesting in the psyche and neurological systems of victims for years to come. Psychological illnesses such as depression, post-traumatic stress disorder (PTSD) and anxiety, in addition to insomnia, nightmares, hallucinations and flashbacks are chronic effects of the various forms described as psychological torture.

⁷⁹ Interview via e-mail with N., November 2, 2015

⁸⁰ Interview with L., Ramallah, November 24, 2015

⁸¹ Interview with F., Ramallah, November 23, 2015

⁸² Reyes H., 2007, International Review of the Red Cross, *The worst scars are in the mind: psychological torture*, available on <https://www.icrc.org/eng/assets/files/other/irrc-867-reyes.pdf>, accessed on November 1, 2015

Psychological illnesses can, and often do, result in the victims reliving their experiences, which worsens the damage each and every time, and makes recovery long and difficult. Additionally, physical illness can result from psychological torture. High stress levels resulting from psychological torture, pose a severe threat to the autonomic nervous system and gastrointestinal and circulatory system functioning,⁸³ and sleep deprivation specifically, is likely to cause cardiovascular diseases, hypertension, speech impairments and inflexible thinking.⁸⁴ Additional symptoms, such as memory loss, strong negative emotions (guilt, worry, shame, etc.), loss of sense of self, withdrawal and avoidance, not only pose a threat to self-worth and function, but also make reintegration with one's daily life and relationships extremely hard. Victims of psychological torture also have an increased risk of suicide⁸⁵, which proves that psychological torture can result in "severe injury" and even death. Based on the clear suffering and harm experienced by victims of psychological torture, the methods classified as such should be recognized by law as torture, which would eliminate the legal gap that allows these types of abuses to go uncategorized and unpunished.



Article 19 – Submission of the Annual Report

"Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention within one year after the entry into force of the Convention for the State Party concerned."

The Palestinian Authority ratified the UNCAT on April 2, 2014. The report should have been submitted within a year and the deadline was May 2015. No report has been submitted.

According to a UN official, "they have not submitted any of the reports to the treaties they have ratified. In general, this may be because of lack of capacity in the administration or because it is not priority."⁸⁶

⁸³ Kramer, Daniel (June 2010), *The effects of psychological torture*, available on [https://www.law.berkeley.edu/files/EffectsofPsychologicalTorturepaper\(Final\)11June10.pdf](https://www.law.berkeley.edu/files/EffectsofPsychologicalTorturepaper(Final)11June10.pdf), accessed January 20, 2016

⁸⁴ The Center for Victims of Torture, *Effects of psychological torture*, available on http://www.cvt.org/sites/cvt.org/files/u18/CVT_EffectsOfPsychologicalTorture_August2011.pdf, accessed on January 20, 2016

⁸⁵ The Center for Victims of Torture, *Effects of psychological torture*, available on http://www.cvt.org/sites/cvt.org/files/u18/CVT_EffectsOfPsychologicalTorture_August2011.pdf, accessed on January 20, 2016

⁸⁶ Interview via e-mail with N., November 2, 2015

The ICHR holds a similar opinion, claiming “there are many treaties altogether and the State of Palestine has no experience writing such reports. However, torture is still practiced.”⁸⁷

According to the director of the Civil Commission for the Independence of the Judiciary and the Rule of Law, “The Palestine Authority understands these agreements, but they do not want to use it. It [the PA] did not want to show respect to human rights and agreements. If they want to forbid torture or respect human rights, they must report and publish all agreements and consider them as the law.”⁸⁸

“In the State of Palestine, the issue of the applicability of international treaties and the legal system is not clear. The Palestinian Basic law does not say anything about this, so the question is if this treaty is enforceable before courts. The judges here do not tend to accept the direct implementation of international treaties. It is important that national laws be changed in order to become consistent with the treaties, and the problem in [the] Palestinian Authority is that we do not have a functioning legislative council. This means, the President has the legislative power. The President is not supposed to be a legislator.”⁸⁹

The ratification of the UNCAT and other conventions by the Palestinian Authority, does not seem to have sufficient legal significance in order to stop the abuse of human rights. As long as the Palestinian Authority does not respect the Convention and continues to allow torture and ill treatment, there will never be freedom, and a constant fear of the occurrence of torture without redress, will persist.

⁸⁷ Interview with X., ICHR, Ramallah, November 25, 2015

⁸⁸ Interview with C., The Civil Commission for the Independence of Judiciary and Rule of Law, Ramallah, November 23, 2015

⁸⁹ Interview with X., ICHR, Ramallah, November 25, 2015

Recommendations

- The Palestinian Authority and Hamas should arrange for independent task forces to conduct thorough reviews of all laws in the West Bank and Gaza pertaining to torture. It should be ensured that the laws are consistent with one another and uphold the rights of victims of torture according to international standards. Laws should be revised, and more consistently enforced to ensure just punishment for those who commit crimes of torture, and authorities should undertake independent and fair investigations. Additionally, all the prisons in the State of Palestine should enable spontaneous visits by independent NGOs working for the enhancement of human rights in this territory.
- The Palestinian Authority and Hamas, as well as their respective security forces, must take effective measures to put a stop to all acts of torture, both physical and psychological.
- Laws should be changed to ensure that torture would not be punished with torture as according to Sharia law, (eye for eye, etc....). Rather, the law should require that torture be punished appropriately by the current Criminal Law. Other acts of cruel, inhuman or degrading treatment or punishment must be prohibited and made punishable in accordance with UNCAT.
- The Palestinian Authority should endorse the ratification of the OPCAT and submit an annual report in accordance with Article 19 of UNCAT as soon as possible.
- The Palestinian Authority and Hamas should establish, in conjunction with NGOs, special long-term educational programs for all personnel who may be involved in torture (civil, military, medical). Such programs should include educational curricula, developed by experts on torture and its related issues, which are to be fully implemented throughout the West Bank and Gaza.
- The Palestinian Authority and Hamas should provide funding to NGOs working in the area of torture, and protect victims of torture by providing them full redress and compensation. The competent authorities, to whom victims of torture can complain, should not be subject to improper influence by other branches of government.



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