

## Committee against Torture

### Concluding observations on the initial report of the State of Palestine\*

1. The Committee against Torture considered the initial report of the State of Palestine<sup>1</sup> at its 1921st and 1924th meetings,<sup>2</sup> held on 19 and 20 July 2022, and adopted the present concluding observations at its 1932<sup>nd</sup> and 1933rd meetings, held on 26–27 July 2022.

#### A. Introduction

2. The Committee welcomes the submission of the initial report of the State party, along with the supplementary information provided during the consideration of the initial report. It regrets, however, that the report was submitted more than four years late.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party's delegation and the responses provided to the questions and concerns raised during the consideration of the initial report.

4. The Committee recognizes that the ongoing Israeli occupation of the territory of the State party, the expansion of settlements and the continued blockade of the Gaza Strip, which are illegal under international law,<sup>3</sup> pose severe challenges for the State party in fully implementing its obligations under the Convention and lead to grave violations of the rights of Palestinians, such as arbitrary detention, torture and ill-treatment, excessive use of force and abuse by Israeli security forces, acts of violence by Israeli settlers, restrictions on freedom of movement, forced displacement and evictions, seizure of private land, house demolitions and illegal settlements, restrictions on gaining access to health-care services and denial of access to humanitarian aid. The Committee recalls the obligations of Israel, as the occupying Power, under international humanitarian law and international human rights law.<sup>4</sup> It recognizes that the above-mentioned challenges limit the State party's effective control of its jurisdiction over its own territory and its capacities to effectively prevent and combat torture and ill-treatment. However, it reminds the State party that the Convention is applicable in its

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\* Adopted by the Committee at its seventy-fourth session (12–29 July 2022).

<sup>1</sup> [CAT/C/PSE/1](#).

<sup>2</sup> See [CAT/C/SR.1921](#) and [CAT/C/SR.1924](#).

<sup>3</sup> See the United Nations Security Council Resolution [2334](#) (2016) on the illegality of Israeli Settlements in Palestinian Territory Occupied Since 1967, as well as other relevant resolutions, including resolutions [242](#) (1967), [338](#) (1973), [446](#) (1979), [452](#) (1979), [465](#) (1980), [476](#) (1980), [478](#) (1980), [1397](#) (2002), [1515](#) (2003), [1850](#) (2008) and [1860](#) (2009); see also the [Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#) (2004); further see the United Nations Human Rights Council Resolution [A/HRC/S-9/L.1](#) (2009) on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip; and the United Nations Human Rights Council Resolution [A/HRC/RES/S-12/1](#) (2009) on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem.

<sup>4</sup> See the Committee's previous concluding observations on Israel, [CAT/C/ISR/CO/5](#).

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entire territory and that the State party should take all possible measures to implement it in all parts of the territory. In that regard, the Committee regrets that, notwithstanding the agreement between the Fatah and Hamas movements to end Palestinian division signed on 12 October 2017, the State party has made limited progress in resolving internal political issues that negatively affect the full enjoyment by Palestinians in the West Bank, including East Jerusalem, and the Gaza Strip of their rights under the Convention and contribute to the political and geographic fragmentation of the State party's territory. It notes that, owing to this fragmentation, Palestinians continue to be subjected to multiple legal systems that impede the full realization of their rights under the Convention.<sup>5</sup>

### C. Positive aspects

5. The Committee welcomes the accession to or ratification of the following international instruments by the State party since its accession to the Convention:

(a) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 10 April 2019;

(b) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 18 March 2019;

(c) The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on 29 December 2017;

(d) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 29 December 2017;

(e) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 29 December 2017;

(f) The Rome Statute of the International Criminal Court, on 2 January 2015;

(g) The United Nations Convention against Transnational Organized Crime, on 2 January 2015;

(h) The International Covenant on Civil and Political Rights, on 2 April 2014;

(i) The International Covenant on Economic, Social and Cultural Rights, on 2 April 2014;

(j) The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, on 2 April 2014 and on 10 April 2019, respectively;

(k) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 2 April 2014 and on 10 April 2019, respectively;

(l) The International Convention on the Elimination of All Forms of Racial Discrimination, on 2 April 2014;

(m) The Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict, on 2 April 2014;

(n) The International Convention on the Suppression and Punishment of the Crime of Apartheid, on 2 April 2014.

6. The Committee welcomes the State party's initiatives to revise and introduce legislation in areas of relevance to the Convention, including the adoption of the following:

(a) Amendments to the Personal Status Law, in 2019, which increase the minimum age of marriage for girls and boys to 18 years;

(b) The decree-law No. 4 on the protection of Palestinian juveniles, in 2016.

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<sup>5</sup> CERD/C/PSE/CO/1-2, paras. 3-4; CRC/C/PSE/CO/1, paras. 4-5; CEDAW/C/PSE/CO/1, paras. 9-10.

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7. The Committee commends the State party's initiatives to amend its policies and procedures in order to afford greater human rights protection and to apply the Convention, in particular the following:

- (a) The strategic plan for the protection of children (2018–2022) and the sectoral strategy on juvenile justice;
- (b) The inter-sectoral plan for gender equality and justice (2017–2022);
- (c) The national observatory to study violence against women, in 2016;
- (d) The national strategy for justice and rule of law (2014–2016);
- (e) The strategic plan for combating violence against women (2011–2019);
- (f) The Special Prosecutor's Office to combat gender-based violence against women and girls.

## **D. Principal subjects of concern and recommendations**

### **Legal status of the Convention**

8. While commending the State party for ratifying the Convention without reservations, the Committee is concerned about the interpretation of the Supreme Constitutional Court, in its decisions No. 4 (2017) of 19 November 2017 and No. 5 (2018) of 12 March 2018, according to which international treaties acceded to by the State party take precedence over national legislation only insofar as they are consistent with the national, religious and cultural identity of the Palestinian Arab people, which may impede the enjoyment of the rights set forth in the Convention. The Committee is also concerned that the Convention has not yet been published in the Official Gazette to make it enforceable in the State party<sup>6</sup> (arts. 2 and 4).

### **9. The State party should:**

- (a) Fully and expeditiously incorporate the provisions of the Convention into its national law, including through publication in the Official Gazette, and take all possible measures to ensure its implementation throughout its territory;**
- (b) Ensure that the interpretation of the Supreme Constitutional Court, in its decisions No. 4 of 19 November 2017 (2017) and No. 5 (2018) of 12 March 2018 and their application, do not prevent people living in the territory of the State party from fully enjoying their rights under the Convention.**

### **Harmonization of legislation and compliance with the Convention**

10. While welcoming the establishment, in 2017, of a legislative harmonization committee to review all laws to ensure their compliance with the human rights treaties to which the State party has acceded, including the Convention, the Committee is concerned that this committee has only reviewed selected laws and that no timeline has been established to fully harmonize domestic legislation with the provisions of the Convention. The Committee is also concerned that:

- (a) The Palestinian Legislative Council was dissolved by the Supreme Constitutional Court, in its decision No. 10 on 12 December 2018;
- (b) Since the Council's suspension in 2006, the State party legislates by decree-laws issued by the President, which are neither recognized nor enforced in the Gaza Strip, leading to further exacerbation of the fragmentation of the legal system and subjecting Palestinians in the Gaza Strip and the West Bank, including East Jerusalem, to multiple sets of laws affording varying levels of protection;

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<sup>6</sup> CERD/C/PSE/CO/1-2, paras. 9-10; CRC/C/PSE/CO/1, paras. 6-7; CEDAW/C/PSE/CO/1, paras. 12-13.

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(c) No time frame has been set for the review and adoption of draft laws, such as the draft penal code, the draft criminal procedure code, the draft decree-law on family protection, the draft personal status code and the draft decree-law on the rights of persons with disabilities<sup>7</sup> (arts. 2 and 4).

11. **The Committee urges the State party to:**

(a) **Restore a democratic legislative process to facilitate the harmonization of the different sets of laws implemented in the Gaza Strip and the West Bank, including East Jerusalem, to ensure that all persons living under the jurisdiction of the State party are protected equally under the law;**

(b) **Adopt a clear time frame for the completion of the review of the existing legislative framework, in collaboration with civil society organizations, to ensure compliance with the provisions of the Convention;**

(c) **Expedite the review of draft laws, including the draft penal code, the draft criminal procedure code, the draft decree-law on family protection and the draft decree-law on the rights of persons with disabilities to ensure their compliance with the Convention and their adoption.**

**Definition and criminalization of torture**

12. The Committee notes that torture is explicitly prohibited under article 13.1 of the Palestinian Basic Law 2003 and that such prohibition may be inferred from a number of existing laws.<sup>8</sup> It also notes that a comprehensive definition of torture in conformity with that provided for in article 1 of the Convention was included in the Decree-Law No. 25 on the National Commission against Torture, which was published in the Official Gazette on 25 May 2022. However, the Committee is concerned that torture is considered a misdemeanour and that punishments are not commensurate with the gravity of the acts and are subject to amnesty as well as to statutes of limitations (arts. 1 and 4).

13. **The State party should ensure that its criminal legislation, including the draft penal code, encompasses a definition of torture that covers all the elements contained in article 1 of the Convention. The State party should also ensure that acts of torture are punishable by appropriate penalties that take into account their grave nature, in accordance with article 4 (2) of the Convention, and are not subject to amnesty or pardon. Moreover, the State party should ensure that the scope of the definition of torture is extended to anyone who attempts to commit torture or who is complicit or participates in torture. In that regard, the Committee wishes to draw the State party's attention to its general comment No. 2 (2007) on the implementation of article 2, in which it pointed out that serious discrepancies between the definition in the Convention and the definition in domestic law created actual or potential loopholes for impunity. Furthermore, the State party is invited to amend its domestic legislation to incorporate a provision on the non-applicability of statutes of limitations to the crime of torture.**

**Absolute prohibition of torture**

14. The Committee is concerned that there is no clear provision in the State party's legislation to ensure that the prohibition against torture is absolute and non-derogable. It is also concerned that, according to the Jordanian Penal Code of 1960 and the British Mandate Penal Code of 1936, which are applicable in the West Bank and the Gaza Strip, respectively, as well as the Palestinian Revolutionary Penal Code of 1979, which is applicable in both the West Bank and the Gaza Strip, a person may be exempt from criminal liability for acts of torture or ill-treatment if such acts are perpetrated while obeying an order issued by a competent authority that must be obeyed by law, unless that order is illegal. The Committee regrets the lack of information on whether mechanisms or procedures for protecting

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<sup>7</sup> CERD/C/PSE/CO/1-2, paras. 13-14; CRC/C/PSE/CO/1, paras. 8-9; CEDAW/C/PSE/CO/1, paras. 14-15.

<sup>8</sup> Such as the Penal Procedures Law (3) of 2001, the General Intelligence Law (17) of 2005, the Law Relating to Reformatory and Rehabilitation Centers "Prisons" (No.6) of 1998, the Law of the Palestinian Child No. 7 of 2004 and the Decree-Law No. (4) of 2016 on the protection of juveniles.

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subordinates from reprisals exist so as to enable them to refuse to obey illegal orders in practice (art. 2).

15. **The State party should ensure that the principle of absolute prohibition of torture is incorporated into its legislation and that it is strictly applied, in accordance with article 2 (2) of the Convention. The State party should also ensure that an order from a superior-ranking officer may not be invoked as justification of torture and, to that end, establish a mechanism for the protection of subordinates who refuse to obey such an order, and ensure that all law enforcement officers are informed of the prohibition against obeying unlawful orders and made aware of the protective mechanisms put in place.**

#### **State of emergency**

16. While taking note of the state of emergency declared by the State party on 5 March 2020 to protect public health following the onset of the coronavirus disease (COVID-19) pandemic, the Committee is concerned that the continuous extension of the state of emergency to date, through the regular adoption of new declarations by presidential decrees and decree-laws, does not meet the requirements set forth in the Basic Law of 2003,<sup>9</sup> raising concerns about the legality of the emergency measures taken in response to the pandemic. It is also concerned at allegations that human rights defenders, journalists, political opponents and government critics have been subjected to excessive use of force and arbitrary arrest and detention under such emergency measures (art. 2).

17. **The State party should limit the declaration and duration of a state of emergency to situations in which it is strictly necessary, and at all times respect the provisions of the Convention, recalling that no exceptional circumstances may be invoked as a justification of torture.**

#### **National Human Rights Commission**

18. While noting that the Independent Commission for Human Rights has been granted A status by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions since 2015, the Committee is concerned that the draft law formalizing the establishment of the Commission has not yet been adopted notwithstanding its submission to the Palestinian Legislative Council in 2005.<sup>10</sup> It is also concerned that the resources allocated to the Commission are insufficient to allow it to perform all its functions effectively, notably its role in conducting visits to places of detention and in receiving and investigating complaints about alleged human rights violations. Moreover, it is concerned that the mandate of the Independent Commission for Human Rights does not allow it to conduct unannounced visits to places of deprivation of liberty. It is further concerned about the lack of information regarding concrete measures taken by the State party to ensure effective implementation of the Commission's recommendations, in particular with regard to the follow-up investigations, prosecutions and the outcome of cases referred by the Commission to prosecution services concerning torture allegations (art. 2(1)).

19. **The State party should formalize in law the establishment of the Independent Commission for Human Rights and take the necessary measures to ensure the Commission's functional independence by guaranteeing it an adequate budget that allows it to fulfil the mandate entrusted to it, in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The State party should also ensure that the Commission is able to conduct unannounced and regular visits to all detention facilities in the State party. Lastly, the State party should take all necessary measures to ensure effective implementation of the Commission's recommendations and, in particular, follow up on complaints of torture lodged with the Commission, undertake effective investigations and prosecutions of perpetrators and provide redress to victims.**

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<sup>9</sup> Article 110 of the Basic Law of 2003 permits the state of emergency to be declared for a maximum of 60 days with the approval of two-thirds of the members of the Palestinian Legislative Council.

<sup>10</sup> CERD/C/PSE/CO/1-2, paras. 15-16; see also the OHCHR briefing note on the ICHR.

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## Fundamental legal safeguards

20. While taking note of the procedural safeguards to prevent torture and ill-treatment that are enshrined in the Basic Law of 2003 and Criminal Procedure Code of 2001, the Committee regrets the absence of an explicit provision on the right to have access to a lawyer immediately upon arrest and that articles 97 and 98 of the Criminal Procedure Code allow the interrogation of detainees without the presence of a lawyer “in the event of a flagrant crime, necessity, urgency, or fear that the evidence may be lost”. It is also concerned about reports indicating that persons in custody are not routinely afforded all fundamental legal safeguards from the very outset of deprivation of liberty, in practice, in both the West Bank and the Gaza Strip. In that respect, it has been reported that: (a) lawyers are sometimes not allowed to meet with their clients during the period of the investigation; (b) timely access to an independent medical examination is not a standard practice aimed at uncovering signs of torture and ill-treatment, in particular for persons in pretrial detention; (c) the right to notify a relative or a person of one’s choice is often delayed; and (d) arrested persons are often brought before the competent authority several days or even weeks after their arrest, well beyond the 24-hour legal limit, extendable for another 48 hours, which may leave suspects vulnerable to an increased risk of torture or ill-treatment. The Committee is further concerned about reports that, in February 2022, the President of the State party signed five Decree-Laws amending the Criminal Procedure Code No. 3 of 2001, the Civil Procedure Code No. 2 of 2001, Law on Evidence No. 4 of 2001, Law on Formation of Courts No. 5 of 2001 and the Judicial Authority Law No. 1 of 2002, which raise concerns regarding the protection of the principle of presumption of innocence, the renewal of pretrial detention without the presence of the defendant or his or her lawyer, the right of defence, and the imposition of a higher accountability threshold for crimes committed by public servants and law enforcement officials (art. 2).

### 21. The State party should:

(a) **Ensure that all persons deprived of their liberty are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their detention, including notably: (i) to be informed of the reasons for the arrest and the nature of any charges against them, in a language that they understand; (ii) being informed of and having their right guaranteed to unimpeded access to an independent lawyer of their choice or, if necessary, to free legal aid of adequate quality, including during the initial interrogation and inquiry; (iii) having the right to request and receive an independent and confidential medical examination, free of charge, or by a doctor of their choice upon request; (iv) having their medical record immediately brought to the attention of a prosecutor as an object of investigation whenever the findings or allegations may indicate torture or ill-treatment; (v) being able to notify a family member, or any other person of their choice, of their detention immediately after apprehension; (vi) being brought before a judge within the time frame prescribed by law; (vii) being registered at the place of detention; (viii) being able to challenge the legality of their detention at any stage of the proceedings;**

(b) **Establish a central register of detention for all detainees at all stages of their deprivation of liberty, including during transfers to different places of detention, and indicate the type of information recorded and the specific measures taken to ensure accurate record-keeping as an important safeguard against incommunicado detention and enforced disappearance;**

(c) **Review the five Decree-Laws amending the Criminal Procedure Code No. 3 of 2001, the Civil Procedure Code No. 2 of 2001, Law on Evidence No. 4 of 2001, Law on Formation of Courts No. 5 of 2001 and the Judicial Authority Law No. 1 of 2002, in consultation with the Independent Commission for Human Rights and civil society organizations, to ensure compliance with the provisions of the Convention;**

(d) **Provide information to the Committee on the number of complaints received regarding failure to respect fundamental legal safeguards and on the outcome of such complaints, including disciplinary measures taken against officials who fail to afford fundamental legal safeguards, in the next periodic report.**

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### Arbitrary detention

22. The Committee is concerned about reported cases of persons detained in the West Bank under the custody of the Joint Operations Committee<sup>11</sup> who were kept in detention despite release orders issued by courts. It is concerned that those detainees were only released once a written approval was provided by the President of the Palestinian Authority or the Prime Minister for their release (arts. 2, 11 and 16).

**23. The State party should take all necessary measures to ensure that all judicial orders to release individuals from detention are promptly implemented, including those concerning individuals detained under the custody of the Joint Operations Committee.**

### Administrative detention

24. The Committee is highly concerned at the continuous recourse to administrative detention by the State party under the Jordanian Crimes Prevention Act of 1954, which is applicable in the West Bank and allows for detention without charge and raises issues about the separation of powers between the executive and judicial branches. It is particularly concerned at the increasing number of persons held in administrative detention and for long periods, during which detainees are deprived of procedural guarantees. It is also concerned that administrative detention is used against women and girls who are victims of violence, under the pretext of protecting them (arts. 1, 2, 11 and 16).

**25. The State party should abolish the practice of “protective custody” in cases of gender-based violence. It should also ensure that all detainees, including those kept in any form of administrative detention, are afforded, in law and in practice, all fundamental procedural safeguards from the very outset of their deprivation of liberty. The State party should develop and implement alternatives to administrative detention and should use detention only as a last resort, and when detention is necessary and proportionate, for as short a period as possible. The State party should take immediate measures to amend or repeal the Jordanian Crimes Prevention Act of 1954 with a view to bringing it into compliance with international human rights standards and with the State party’s obligations under the Convention.**

### Unofficial places of detention

26. The Committee is concerned about reports that individuals are held in unlawful and incommunicado detention by Palestinian armed groups, including Hamas’ military wing Al Qassam brigades and Islamic Jihad’s military wing Saraya Al Quds, for “collaboration with the enemy” and criticizing armed groups. It is further concerned about allegations of torture and ill-treatment being perpetrated in such unofficial places of detention (arts. 2 and 11).

**27. The State party should take all possible measures to ensure that no one is held in unofficial places of detention on its territory, including by non-State actors. The Committee urges the State party to investigate the existence of any unofficial detention places and identify who establish and maintain them and engage in practices of torture.**

### Allegations of widespread torture or ill-treatment and the lack of accountability

28. The Committee is concerned about consistent reports indicating that persons in custody, including in the facilities under the authority of security forces and intelligence services in both the West Bank and the Gaza Strip, are subjected to torture or ill-treatment, in particular during the investigation stage of proceedings. It observes that the mechanisms established by the State party to receive and investigate complaints of torture and ill-treatment by officials lack confidentiality and fail to protect complainants and witnesses, while existing investigation bodies, principally the public prosecutor, lack the necessary independence as they belong to the same structure that employs the alleged perpetrators. The Committee is also concerned that only a few complaints of torture and ill-treatment have led

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<sup>11</sup> The Joint Operations Committee (formerly known as the Joint Security Committee) serves as a joint-structure of Palestinian security services, with a stated aim of centralizing the investigation of security-related crimes and those involving members of the security forces.

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to prosecution and almost none to conviction of the perpetrators, which contributes to a climate of impunity (arts. 2, 11-13 and 16).

29. **The State party is urged to immediately adopt measures to ensure accountability for all acts of torture or ill-treatment involving all perpetrators by undertaking prompt, impartial and effective investigations into complaints through an independent mechanism that complies with the requirement of institutional independence in order to avoid conflict of interest in the investigation of complaints by peers, by prosecuting perpetrators of such violence and by punishing them with appropriate penalties. The State party is also urged to ensure, in practice and as required under applicable law, that persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation. The State party should conduct investigations on its own initiative, whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, put in place an independent, effective, confidential and accessible complaints mechanism in all places of detention, including police custody facilities and prisons, ensure that complainants are protected against any ill-treatment, intimidation or reprisals as a consequence of their complaint. The State party should also compile and disseminate up-to-date statistics on the complaints filed, investigations conducted, prosecutions initiated and convictions handed down in cases involving allegations of torture and ill-treatment.**

#### **Confessions obtained through torture and ill-treatment**

30. The Committee is concerned about reports indicating that, despite the existing legal provisions set forth in article 13.2 of the Basic Law regarding the inadmissibility of evidence obtained by torture and duress, coerced confessions are reportedly admitted as evidence in court. Moreover, the information before the Committee suggests that the allegations of forced confessions under torture or ill-treatment made before a trial or appeal judge are often ignored and not thoroughly pursued and that serious shortcomings in documenting signs of physical and psychological torture are often caused by the lapse of time between the alleged event and its belated investigation (art. 15).

31. **The State party should ensure in practice that confessions obtained through torture or ill-treatment are ruled inadmissible, except when they are used as evidence against a person accused of committing torture, and that such cases are investigated; expand specialized training programmes for both judges and prosecutors to ensure their ability to effectively identify torture and ill-treatment and investigate all allegations of such acts; develop training modules for law enforcement officers on non-coercive interviewing and investigation techniques; provide the Committee with information on any cases in which confessions were deemed inadmissible on the grounds that they had been obtained through torture or ill-treatment; and, indicate whether any officials have been prosecuted and punished for extracting such confessions.**

#### **Excessive use of force against demonstrators**

32. The Committee is concerned about the allegations of the excessive use of force in both the West Bank and the Gaza Strip, notably the use of lethal weapons resulting in deaths and injuries, including of children, arbitrary arrests, incommunicado detention and torture and ill-treatment of peaceful protesters by security forces, as well as by unidentified armed elements in the context of demonstrations that have occurred while enforcing measures designed to control the coronavirus disease (COVID-19) pandemic and in the aftermaths of the postponement of national elections in April 2021 and Nizar Banat's death in custody in June 2021. The Committee is also concerned about the reported excessive use of force by the Palestinian security forces, including the use of tear gas and sound bombs, in Palestinian refugee camps. The Committee takes note of the State party's commitment to ensuring accountability for the above acts. However, it regrets the lack of public reports on the investigations carried out into those incidents, the limited progress made on investigations and the fact that only a handful of prosecutions have been undertaken to date (arts. 2, 12-14 and 16).

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33. **The State party should:**

(a) **Review domestic legislation on the use of force and weapons and develop clear guidelines, if necessary, incorporating the principles of lawfulness, necessity and proportionality and the precautionary principle, bring the laws and regulations governing the use of force into line with international standards, in particular the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, and provide systematic training to all law enforcement officers on these international standards;**

(b) **Ensure that law and order is maintained, to the greatest extent possible, by civilian authorities and ensure that all officers can be effectively identified at all times when carrying out their functions to help to ensure individual accountability and protection against acts of torture and ill-treatment;**

(c) **Ensure that prompt, impartial and effective investigations are undertaken into all allegations relating to the excessive use of force by State and non-State actors and ensure that the perpetrators are prosecuted and that the victims or their families receive full redress.**

**Human rights defenders, journalists and political opponents**

34. The Committee is concerned that human rights defenders, including advocates for women's rights, journalists, bloggers, political opponents and government critics continue to report acts of intimidation, harassment, violence, arbitrary arrest and detention, prosecution and torture or ill-treatment by the security forces and intelligence agencies in both the West Bank and the Gaza Strip. It is concerned by the lack of effective protection provided by the State party to human rights defenders, journalists, political opponents and civil society actors at risk, including by promptly, effectively and impartially investigating, prosecuting and punishing such crimes. It also regrets the lack of information about measures to ensure the promotion of civic space where individuals can meaningfully exercise their right to freedom of expression and association and promote human rights in a safe environment (arts. 2, 12, 13 and 16).

35. **The State party should ensure that human rights defenders, including women human rights defenders, journalists, bloggers, political opponents and government critics are protected from acts of intimidation, harassment, violence, arbitrary arrest and detention, prosecution and torture or ill-treatment to which they may be exposed because of their activities, and take all measures to promptly, effectively and impartially investigate any such allegations and punish those responsible. It should also take additional measures to promote civic space.**

**Conditions of detention**

36. While acknowledging the steps taken by the State party to improve conditions in places of detention, the Committee is concerned about reports indicating overcrowding and poor material conditions of detention in places of deprivation of liberty, in particular insalubrity and inadequate hygiene, lack of ventilation, water supply and sanitation problems, the poor quality of the food provided, shortages in medical and health-care services, including mental health care, and limited recreational or educational activities to foster rehabilitation. Of particular concern are the unsuitable material conditions of detention for women and girls, notably pregnant women and women with babies, in the West Bank and the Gaza Strip. The Committee is further concerned about reported prolonged use of solitary confinement and ill-treatment of those detained in the Gaza Strip for drug-related offences, suspected collaboration with Israel or alleged affiliation with Fatah and Salafist groups. It regrets the lack of comprehensive official data on the number of pretrial detainees and convicted prisoners and the location and occupancy rate of all places of deprivation of liberty, disaggregated by the facilities under the auspices of all relevant ministries or other authorities (arts. 2, 11 and 16).

37. **The Committee calls upon the State party to intensify its efforts to bring conditions of detention into line with the United Nations Standard Minimum Rules for**

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the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The State party should, in particular:

(a) Take all measures to reduce overcrowding in prisons, including by making more use of alternatives to detention and continuing to implement plans to develop and renovate the infrastructure of prisons and other detention facilities;

(b) Guarantee that the basic needs of persons deprived of their liberty are satisfied, including with regard to water, sanitation and food, and increase the number of trained and qualified prison staff, including medical staff, to ensure the proper medical and health care of prisoners, in accordance with rules 24 to 35 of the Nelson Mandela Rules;

(c) Facilitate access to recreational and cultural activities in places of detention, as well as vocational training and education, with a view to supporting detainees' rehabilitation in the community;

(d) Ensure that female prisoners, in particular those who are pregnant or with babies, have access to adequate health facilities and hygienic services and are detained in gender-sensitive conditions;

(e) Ensure that prisons are adapted to the needs of detainees with disabilities;

(f) Bring its legislation and practice on solitary confinement into line with international standards, particularly rules 43 to 46 of the Nelson Mandela Rules;

(g) Ensure that prompt, impartial and effective investigations are undertaken into all allegations relating to acts of torture and ill-treatment by prison personnel and that the alleged perpetrators are prosecuted and adequately punished;

(h) Provide the requested data on the number of pretrial detainees and convicts in all facilities in its next periodic report.

#### **Pretrial detention**

38. The Committee is concerned about the reported high number of people placed in pretrial detention, many of them in prolonged pretrial detention. It is also concerned that, as a result, on-remand inmates are not systematically separated from convicted prisoners, nor women from men and children from adults (arts. 2, 11 and 16).

39. **The State party should ensure that the regulations governing pretrial detention are scrupulously respected and that such detention is resorted to only in exceptional circumstances and for limited periods and in accordance with the law, taking into account the principles of necessity and proportionality. It should further ensure the separation of pretrial detainees from convicted prisoners, women from men and children from adults, in all places of detention.**

#### **Monitoring of detention facilities**

40. The Committee welcomes the State party's accession to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on 29 December 2017, and that a number of governmental institutions, international organizations and civil society actors are invested with powers of supervision over places of detention and custody. It also takes note of the publication in the Official Gazette of the Decree-Law No. 25 on the National Commission against Torture on 25 May 2022. However, the Committee is concerned that the Decree-Law provides for the establishment of a government-led national preventive mechanism whose members are to be selected and appointed by the President of the Palestinian Authority upon the recommendations of the Council of ministers, which is likely to affect the Commission's functional independence. It further regrets the lack of information on steps taken by the State party to follow-up on visit reports as well as on measures taken to implement the recommendations put forward by monitoring bodies (arts. 2, 11 and 16).

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41. **The State party should:**

(a) **Promptly review, in consultation with the Independent Commission for Human Rights and civil society organizations, the Decree-Law No. 25 on the National Commission against Torture to ensure its full operational independence and financial autonomy, in line with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the guidelines of the Subcommittee on the Prevention of Torture on national preventive mechanisms (CAT/OP/12/5);**

(b) **Take all possible measures to ensure that international and national monitors are able to undertake regular, independent and unannounced visits to all places of deprivation of liberty in the State party and to speak confidentially to all detained persons;**

(c) **Take appropriate steps to implement the recommendations put forward by monitoring bodies following their visits to detention facilities, in particular where allegations of torture or ill-treatment are raised in the reports.**

**Deaths in custody**

42. The Committee regrets the lack of reliable information and statistical data on the total number of deaths in custody for the period under review, disaggregated by place of detention, the sex, age and ethnicity or nationality of the deceased and the cause of death. It is also concerned about the allegations that causes of death in custody include torture and the lack of health care, and regrets the lack of information on investigations undertaken in that regard. The Committee is particularly concerned about the case of Nizar Banat who died in custody in June 2021 after being arrested and allegedly severely beaten and tortured in detention by the Hebron preventative security forces. It is further concerned that the State party has so far failed to ensure accountability for Nizar Banat's death, as the 14 officers initially charged for his death by a military court were temporarily released in June 2022 (arts. 2, 11 and 16).

43. **The State party should:**

(a) **Compile and provide to the Committee detailed information on the cases of death in all places of detention, in both the West Bank and the Gaza Strip, their causes and the outcome of the investigations into the deaths;**

(b) **Ensure that all deaths in custody are promptly and impartially investigated by an independent entity, including by means of independent forensic examinations, and, where appropriate, apply the corresponding sanctions, in line with the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016);**

(c) **Assess and evaluate the existing programmes for the prevention, detection and treatment of chronic, degenerative and infectious diseases in prisons, and review the effectiveness of strategies for the prevention of suicide and self-harm;**(d)

**Ensure that all those responsible for the torture and killing of Nizar Banat, including higher ranked officials who may be involved in the incident, are duly prosecuted and punished with appropriate sanctions imposed by a civil court with due process and fair trial guarantees.**

**Mental health institutions**

44. The Committee is concerned that the State party failed to adopt and implement legislation prohibiting forced medical treatments, physical and chemical restraints and solitary confinement of persons with psychosocial or intellectual disabilities in psychiatric institutions. It also notes with concern that there are no measures taken to enable persons deprived of their liberty in such facilities to have access to mechanisms designed to investigate allegations of human right violations, in particular torture or ill-treatment. Furthermore, it is concerned about reports of ill-treatment and possible torture of persons with disabilities within residential care settings, including physical violence, intimidation and abuse. Moreover, it regrets the lack of information on the number of persons with disabilities deprived of their liberty, their legal status and the conditions in which they reside, as well as

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on the work of oversight mechanisms responsible for inspecting and monitoring psychiatric institutions (art. 2, 11 and 16).

45. **The State party should expeditiously adopt the draft decree-law on the rights of persons with disabilities as well as a comprehensive law on mental health to explicitly prohibit forced medical treatments, physical and chemical restraints and solitary confinement of persons with psychosocial or intellectual disabilities in psychiatric institutions. It should also train health-care professionals on the rights of persons with disabilities, specifically on the right to free and informed consent. It should further ensure that instruments of restraint and force can only be used in accordance with the law and under appropriate supervision and for the shortest time necessary, and that their use is limited to that which is strictly necessary and proportionate. Finally, it should ensure that psychiatric institutions are adequately monitored and that effective safeguards are in place to prevent any torture or ill-treatment of persons in such facilities.**

### **Juvenile justice**

46. While welcoming the adoption of the Decree-Law No. 4 of 2016 on the protection of Palestinian juveniles, the Committee is concerned about reports that it is not being enforced in the Gaza Strip. It is also concerned that the Palestinian Children's Act of 2004 (as amended in 2012) and the Decree-Law on the protection of Palestinian juveniles of 2016, applicable in the West Bank, set the minimum age of criminal responsibility at 12 years, while the Juvenile Offenders' Law No. 2 of 1937, applicable in the Gaza Strip, sets it at 9 years. Furthermore, the Committee is concerned that children are sometimes held in detention centres for adults, that children in detention, both in the West Bank and in the Gaza Strip, are reportedly ill-treated and that there is limited information on the use of non-custodial measures<sup>12</sup> (arts. 2, 11 and 16).

47. **The State party should take all possible measures to implement the Decree-Law No. 4 of 2016 on the protection of Palestinian juveniles and international juvenile justice standards, in particular the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), in all parts of the State party. It should also: (i) raise the minimum age of criminal responsibility to an internationally acceptable standard; (ii) promote non-custodial and non-judicial measures, such as diversion, probation, mediation, counselling or community service, wherever possible, for all child offenders; (iii) ensure that ill-treatment of children in places of deprivation of liberty does not occur, and (iv) provide qualified and independent legal aid free of charge to children in conflict with the law and offer child-friendly and accessible complaint mechanisms.**

### **Death penalty**

48. While welcoming the accession of the State party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 18 March 2019, and the de facto moratorium on the implementation of the death penalty in the West Bank, where no executions have been carried out since 2005, the Committee is concerned that the Palestinian legislation continues to provide for the death penalty for a range of relatively less serious offences, in contravention of international legal standards which limit its application to crimes of extreme gravity involving intentional killing.<sup>13</sup> It is also concerned that death sentences are still handed down in the Gaza Strip, including by military courts against civilians without due process and fair trial guarantees, and that executions are still held. It is further concerned that death row inmates face conditions of detention that, in and of themselves, can amount to ill-treatment. Moreover, it is concerned that, given the current political divide between the Palestinian authorities in the West Bank and the de facto authorities in Gaza, those sentenced to death in Gaza may not be

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<sup>12</sup> CRC/C/PSE/CO/1, paras. 58-59.

<sup>13</sup> See article 6.2 of the International Covenant on Civil and Political Rights and paragraph 35 of the general comment No. 36 (2019) of the Human Right Committee on article 6: the right to life, [CCPR/C/GC/36](#).

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able to exercise their right to seek a pardon or have their sentence commuted by the President of the Palestinian National Authority, as provided for in article 109 of the Basic Law of 2003 (arts. 2, 11 and 16).

49. **The State party should take affirmative steps to formalize the moratorium on the death penalty with a view to abolishing the death penalty in law in both the West Bank and the Gaza Strip, in line with its obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. It should also intensify its efforts to commute all death sentences into alternative penalties, ensure that conditions of detention for condemned prisoners do not constitute cruel, inhuman or degrading punishment or treatment, strengthen legal safeguards and guarantees of due process in all phases of the proceedings and concerning all offences and take all possible measures to prohibit military courts from exercising jurisdiction over civilians in the Gaza Strip.**

#### **Gender-based violence**

50. The Committee welcomes the State party's measures to combat violence against women, including the adoption of Decree Law No. 5 in March 2018 repealing article 308 of the Jordanian Penal Code of 1960, which is applicable in the West Bank and which exonerated perpetrators of the crime of rape if they married the victim, and the repeal of article 340 of the Jordanian Penal Code, and the revisions to articles 98 and 99 thereof, which provided for mitigating factors in cases of homicide of women or so-called "honour killings". However, the Committee is concerned about:

- (a) The delay in the adoption of the draft family protection law, although it has already been reviewed by the legislative harmonization committee;
- (b) The increased number of femicide cases since the outbreak of the coronavirus disease (COVID-19) pandemic in 2020 and the persistence of so-called "honour-killings" and domestic and sexual violence, which remain socially accepted and underreported due to the stigma suffered by victims;
- (c) Arbitrary arrest and detention of women, including victims of gender-based violence, on discriminatory charges of sexual offences such as adultery and "moral misconduct";
- (d) The lack of family protection units in the Gaza Strip, despite the high incidence of gender-based violence against women, including domestic violence (arts. 2, 12–14 and 16).<sup>14</sup>

51. **The State party should:**

- (a) **Expedite the adoption of the draft family protection law and the draft penal code to ensure that all cases of gender-based violence, especially those that engage the international responsibility of the State party under the Convention, in particular femicides, so-called "honour crimes" and sexual and domestic violence, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately and that the victims or their families receive redress, including adequate compensation and rehabilitation, and have access to legal assistance, safe shelters and the necessary medical care and psychosocial support.**
- (b) **Intensify efforts to raise awareness among both men and women, including through educational and media campaigns, of the criminal nature of gender-based violence against women in order to challenge its social acceptance, and address the stigma discouraging victims from reporting;**
- (c) **Amend its legislation to ensure that victims of sexual abuse are not punished if they press charges, and immediately release and compensate women and girls who have been convicted of sexual offences such as adultery and "moral misconduct";**

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<sup>14</sup> CEDAW/C/PSE/CO/1, paras. 26-27.

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**(d) Take concrete steps to establish adequately resourced family protection units in the Gaza Strip to provide services to women and girls who are victims of gender-based violence, including domestic violence.**

#### **Redress, including compensation and rehabilitation**

52. The Committee is concerned about the lack of explicit provisions in domestic legislation that provides for the right of victims of torture and ill-treatment to fair and adequate compensation, including the means for as full medical and psychosocial rehabilitation as possible, as required by article 14 of the Convention. It also regrets that the State party failed to provide comprehensive information on redress afforded to victims of torture or their families by the courts or other State bodies since the entry into force of the Convention in the State party (arts. 14).

**53. The State party should review its legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and as full a rehabilitation as possible, and ensure that victims may, inter alia, seek and obtain prompt, fair and adequate compensation, including in cases where the civil liability of the State party is involved, in accordance with the Committee's general comment No. 3 (2012) on the implementation of article 14. It should also compile and disseminate up-to-date statistics on the number of victims of torture and ill-treatment who have obtained redress, including medical or psychosocial rehabilitation and compensation, as well as on the forms of such redress and the results achieved.**

#### **Training**

54. The Committee acknowledges the efforts made by the State party to develop and implement education and training programmes in human rights, including modules on the Convention covering the absolute prohibition of torture, for the judges, prosecutors and members of the security forces. However, it regrets the lack of training on the contents of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol as revised). The Committee also regrets that no mechanism for evaluating the effectiveness of training programmes has been established, as well as the absence of specific training for military, intelligence agency and relevant medical personnel (art. 10).

**55. The State party should:**

**(a) Further develop mandatory initial and in-service training programmes to ensure that all public officials are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that violations will not be tolerated and will be investigated, and that those responsible will be prosecuted and on conviction, appropriately punished;**

**(b) Ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol as revised).**

**(c) Develop and apply a methodology for assessing the effectiveness of educational and training programmes in reducing the number of cases of torture and ill-treatment and in ensuring the identification, documentation and investigation of such acts, as well as the prosecution of those responsible.**

#### **Follow-up procedure**

56. The Committee requests the State party to provide, by 29 July 2023, information on follow-up to the Committee's recommendations on the definition and criminalization of torture, the National Human Rights Commission and the monitoring of detention facilities (see paras. 13, 19 and 41 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

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**Other issues**

57. **The Committee encourages the State party to consider making the declarations under articles 21 and 22 of the Convention.**

58. **The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.**

59. **The Committee also invites the State party to submit a core document in accordance with the requirements for the common core document contained in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/GEN/2/Rev.6, chap. I and III) and paragraph 16 of General Assembly resolution 68/268.**

60. **The Committee requests the State party to submit its next periodic report, which will be its second, by 29 July 2026. To that end, the Committee invites the State party to accept, by 29 July 2024, the simplified reporting procedure consisting of the Committee's transmittal to the State party of a list of issues prior to the submission of the report. The State party's replies to that list of issues would then constitute its second periodic report under article 19 of the Convention.**

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