**Mandela’s Contribution to the UN Committee Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (70th Session) on the state of Qatar (LOIPR).**

* **Preamble**

On December 8, 2016, Qatar submitted its third periodic report to the UN Committee Against Torture (CAT), which reviewed it at the 63rd Session, held between May 1 and May 2, 2018[[1]](#footnote-1). Qatar is scheduled to submit its fourth periodic report to the CAT before May 18, 2022.[[2]](#footnote-2) The State Party has responded to some of the issues mentioned by the present Committee in its concluding observations on the third periodic report. However, the State did not address some critical issues that form the basis of the Convention Against Torture. In addition, Qatar has, up to that time, overlooked the legislative deficiencies in its national laws, especially the Penal Code and the Code of Criminal Procedure, which often contribute to impunity for the crime of torture, and in the best scenarios, a light penalty may be imposed on the perpetrators of the crime.

Accordingly, **Mandela Foundation for Rights and Democracy** submits this report, in which addressing the deficiencies in the legal framework related to torture in the State of Qatar, the continuing human rights violations and abuse that prisoners continue to suffer at the hands of the prison administration figures and law enforcement officials, which in many cases may lead to death, as well as the corporal punishment as a form of torture practiced in the State of Qatar, especially against domestic workers.

* **First: the legal framework in Qatar**

Torture is a blatant violation of the right to physical integrity, which is guaranteed by international covenants and treaties. International human rights law categorically prohibits torture and imposes a maximum penalty on law enforcement forces or public officers practicing torture against citizens. Qatar joined the International Convention against Torture on January 11, 2000;[[3]](#footnote-3) however, it has neither ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, nor has it established a monitoring mechanism to observe, document and receive complaints of cases of torture in compliance with the CAT and pursuant to the recommendation of the Working Group on Arbitrary Detention upon its visit to the State of Qatar last year.[[4]](#footnote-4)

In the same context, the Qatari legislator has taken no serious steps that would reduce and address the several loopholes found in the Qatari laws and legislations, which makes it possible for law enforcement and public officials to practice torture on a large scale in contradiction to Qatar's obligations that it has ratified under the aforementioned convention.[[5]](#footnote-5) Even the recent amendment introduced by Qatar to the Penal Code No. 11 of 2004 by Law No. 8 of 2010 did neither totally prohibited the crime of torture nor did it strengthen the punishment for the crime, in line with the Convention against Torture.

Article 159 bis of the Penal Code (Amended) provides that: “Whoever, being a public servant or any other person who acts in an official capacity, uses torture or instigates, agrees or consents to torture another person shall be punished with imprisonment for a term not exceeding five years. The penalty shall be imprisonment up to a term not exceeding ten years if the torture causes permanent disability. The penalty shall be capital punishment or life imprisonment if the torture results in death.”

**Torture is any act which results in severe pain or suffering, whether physical or psychological**, which is inflicted on purpose against someone for the purposes of getting information or a confession, or to punish him for an action he did, or was suspected of doing by himself or someone else, or to intimidate him or force him or any other person, or when such pain and suffering are due to solitary captivity of any kind. This shall not include the pain or suffering arising only from legal penalties or attachments to such penalties, which may be accidental results thereof.[[6]](#footnote-6)

Two things are noted on the text of the added article; the first is that the five-year period as the maximum penalty imposed by the law on whoever, being a public servant or any other person who acts in an official capacity, uses torture or instigates, agrees or consents to torture another person, does not constitute a deterrent punishment for practicing this crime. As for the second, the aforementioned article that defines torture does not include the pain or suffering arising from legal penalties or attachments to such penalties, which may be accidental results thereof. This indeed opens the door wide to violating the rights of prisoners who spend their terms in Qatari prisons, whether by way of administrative detention or otherwise, and make them more vulnerable to torture, violation of physical integrity, and exposure to all kinds of psychological and physical harm without being considered as acts of torture, according to the law.

In light of the above, under Article 92 of the Penal Code, a court may reduce a capital sentence to as little as five years imprisonment if the circumstances of the crime call for mercy,[[7]](#footnote-7) contributing to impunity for some perpetrators of the act of torture. Article 14 of the Criminal Procedure Law No. 23 of 2004, which limits the statute of limitations for the crime of torture to only ten years, a period that does not correspond to the act committed, especially in the case that torture results in the death of the victim.[[8]](#footnote-8)

Therefore, the legislative framework for torture in Qatar does not categorically prohibit the crime of torture, nor does it strengthen the punishment thereof, as stated in the second paragraph of Article 2 of the Convention against Torture, which provides that no exceptional circumstances whatsoever may be invoked as a justification for torture. Thus, under no circumstances may any order from a superior officer, or circumstances in a state or threat of war, or internal political instability be a justification for torture.”[[9]](#footnote-9)

**Recommendations:**

* Mandela recommends the Committee against Torture, in its report, to pay attention to the issue of Qatar's accession to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as it complements the Convention against Torture.
* Establishing a monitoring mechanism for torture in Qatari prisons and detention centers, as the Working Group on Arbitrary Detention stated upon its visit to the State of Qatar. This mechanism shall be affiliated with the National Human Rights Commission, while ensuring that its appointed members enjoy impartiality, independence and competence.
* Amending the text of Article 159 bis of the Qatari Penal Code, which punishes the crime of torture by a period of five years. Mandela foundation demands that the punishment for the perpetrator of the crime of torture be strengthened in Qatar, and to be amended as follows *“Whoever, being a public servant or any other person who acts in an official capacity, uses torture or instigates, agrees or consents to torture another person shall be punished with imprisonment for a term not less than fifteen years. The penalty shall be imprisonment up to a term not less than twenty years if the torture causes permanent disability. The penalty shall be capital punishment or life imprisonment if the torture results in death.”*
* Adding a text in the Code of Criminal Procedure that explicitly states the absolute prohibition of torture and amending Article 92 of the Penal Code so that the judge does not have the discretionary power to reduce the punishment of the perpetrator in the crime of torture.
* Not to apply a statute of limitations to the crime of torture, so that the perpetrator of this crime does not escape punishment in relation to the investigation of acts of torture and the prosecution and punishment of the perpetrators, as indicated by the Committee against Torture in its last report on the State of Qatar.
* The need for a clear, explicit and non-interpretable text in Qatari laws, especially the Code of Criminal Procedure, and the Penal Code absolutely prohibiting torture in accordance with the second paragraph of Article 2 of the Convention against Torture.
* **Second: The involvement of Qatar’s Security Service in the torture of Qatari citizens**

The legislative deficiencies in Qatari laws, especially the Criminal Procedure Law and the Penal Code, imply the lack of adequate judicial guarantees for arbitrarily detained persons in the State of Qatar, which makes them vulnerable at many times to torture by law enforcement officials in the State of Qatar. In addition to that, hundreds of detainees in Qatar face the risk of death, torture, and medical negligence that may lead to death. In April 2020, the engineer, writer and opposition activist Fahd Bohendi, the former director of the Cultural Creativity Center at Qatar State TV, died after he was arrested in August 2017 by Qatar’s Security Service, for his writing on social media criticizing the policies of the Qatari government and the Emir of the State of Qatar, Tamim bin Hamad. Bohendi has spent three years arbitrarily detained in the Qatari “Bohamor” prison. Some days after internal disturbances in the prison due to fears of the outbreak of the new Coronavirus, human rights organizations stated that the Qatari journalist died due to torture and several kinds of physical abuse.[[10]](#footnote-10)

It was reported that two members of the Qatari National Security Agency were involved in the torture. Bohendi had succeeded in communicating with a human rights organization after one of the guards agreed to cooperate with him and he informed them about the bad conditions he is suffering from inside the prison and the prisoners’ poor condition, especially in light of the outbreak of the new Coronavirus. Unfortunately, a prison officer found out about the call and reported it to the officials. After that, Bohendi was subjected to various kinds of torture and intimidation. He was denied access to food for several days, and prevented from communicating with his family. Moreover, it was reported that the National Security Service aimed by this punishment to terrorize prisoners of conscience. So that, they would never be able to communicate with human rights organizations and disclose the conditions of their detention. Meanwhile, neither the Qatari Ministry of Interior nor the Qatari Attorney General has clarified the circumstances of the death of the journalist Bohendi until this moment.[[11]](#footnote-11)

Nearly one month after the death of the Qatari journalist "Bohendi", another victim of torture has been reported in the Qatari detention centers. The Qatari citizen Ahmed Tahoud, who was on a hunger strike and died as a result of sever torture by police officers on orders from the prison administration. This demonstrates the poor procedures taken by the Qatari Prisons to combat the outbreak of the Coronavirus pandemic[[12]](#footnote-12). On May 28 2020, Mr. Erzaikwas forcibly disappeared from his residence in Al Luqta City in Qatar, after three people dressed in civilian clothes has reportedly abducted and took him to an unknown location. Since then, Erzaik’s family has lost contact with him. Thanks to the pressure exerted by civil society organizations, Erzaikwas allowed after three months from enforced disappearance to make a phone call to his family for a few seconds, telling them that he is still alive. Erzaik’s family has filed several complaints to the Qatari authorities to report the incident of his suspicious arrest and disappearance, demanding them to disclose his whereabouts and immediately release him. However, he kept disappeared until August 2020. Erzaik spent about 103 days in a row forcibly disappeared in Qatari prisons, amid fears of being subjected to physical and psychological abuse that would threaten his life, especially in light of being denied access to a lawyer or being brought to trial.

The case of “Erzaik” is not separated from the two previous incidents. His life is still in danger and he would die if the Qatari government did not promptly intervene and released him or at least allowed him the right to a fair trial in accordance with international standards that the State of Qatar claims to adhere to. However, reality suggests the otherwise; as Qatar violates these standards, and attributes these violations in part to the broad powers that the State of Qatar grants for administrative detention, without adequate judicial guarantees during the period of detention, which opens the door for further violations of the right of prisoners and make them more vulnerable to torture. As according to Article 23 of the Anti-Terrorism Law No. 27 of 2019, suspects can be detained for up to 15 days, which can be extended to six months, and Article 7 of State Security Law No. 5 of 2003 allows for detention for a period of 30 days before the appearance before the Public Prosecutor. Article 2 of the Law on Community Protection allows pre-trial detention, with the approval of the Prime Minister, for one years in crimes related to state security, morals and public decency, which are broad terms that can be interpreted in various ways to serve the desire and orientations of the executive bodies, in a way that harms the detainees and makes them vulnerable to various kinds of punishment and torture, leading to their eventual death.

**Recommendations:**

* Opening an investigation into the killing of the engineer and writer Fahd Bohendi and the citizen Ahmed Tahoud, revealing the circumstances of their deaths and bringing those involved in their torture to trial, with the need for the Committee Against Torture to consider the case of the Syrian citizen Abdul Razzak Ahmed Erzaik, and to pressure the State of Qatar to ensure that the largest possible amount of fair trial is guaranteed for him.
* The Committee against Torture should pressure Qatari government to provide all basic legal guarantees to all detainees. These guarantees include the right to obtain legal aid and access medical examination and the right to contact their relatives and be referred to a judge within a period of time, in consistent with international standards. While strengthening the resources of the National Human Rights Commission to ensure that it performs its duties in an optimal manner.
* Conducting unannounced visits to places of detention in Qatar, including those belonging to the Qatari State Security Service, and appointing independent individuals to carry out these tasks, with the results of these visits announced upon completion.
* **Third: Corporal punishment in Qatar as a form of torture**

The right not to be subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment, including corporal punishment, is one of the basic rights guaranteed by international human rights law. Corporal punishment is one of the violations that still alarmingly exist in Qatari society, which calls for the prompt intervention of the legislator to intensify the penalties for perpetrators. Qatar has previously complied with the recommendations made to it in the UPR and prohibited corporal punishment in schools, especially in the pre-university stage of education, as the Code of Conduct for Schools stipulated that corporal punishment should not be used in Qatari schools under any circumstances. However, there is no explicit prohibition of corporal punishment in alternative care homes for young and older children. Law No. (1) of 2014 on nursery affairs does not prohibit the use of corporal punishment in institutions for young people, in accordance with the Global Initiative to End All Corporal Punishment of Children.

In addition, domestic workers in Qatar are still subjected to a wide range of corporal punishment, such as spitting, slapping, and severe beatings, and in some cases, it may amount to sexual abuse, without the provision of, or access to, fair remedy. All this in light of Qatar's issuance of Law No. 15 of 2017 on domestic workers which guarantees protection for them. But reality indicates that Qatari laws that contain basic guarantees for domestic workers are only exist on paper, and the law does not usually take its course, allowing for further violations of the rights of domestic workers in the State of Qatar.[[13]](#footnote-13)

**Recommendations:**

* Qatari authorities should absolutely prohibit corporal punishment in alternative care facilities, and amend Law No. 1 of 2014 on nursery affairs to prohibit all kinds of corporal punishment.
* Qatari authorities should ensure the existence of impartial monitoring of violations against foreign females working in Qatari homes, with the need to provide them with fair remedies and urgent legal protection.

1. متاح على الرابط التالي: <https://bit.ly/2LH1uAD> [↑](#footnote-ref-1)
2. متاح على الرابط التالي: <https://bit.ly/39iJxAP> [↑](#footnote-ref-2)
3. أنظر الرابط التالي: <https://bit.ly/2LDLxvi> [↑](#footnote-ref-3)
4. قطر: فريق خبراء الأمم المتحدة يدعو لإلغاء قوانين تقيد الحريات العامة، العربي الجديد، 14 نوفمبر 2019، للمزيد على الرابط التالي: <https://bit.ly/3nDj3za> [↑](#footnote-ref-4)
5. الاتفاقية الدولية لمناهضة التعذيب وغيرها من ضروب المعاملة القاسية أواللا إنسانية، او الحاطة بالكرامة، اعتمدتها الجمعية العامة للأمم المتحدة في ديسمبر 1984، ودخلت حيز التنفيذ في يونيو 1987 [↑](#footnote-ref-5)
6. أنظر، قانون رقم (8) لسنة 2010 بتعديل بعض أحكام قانون العقوبات الصادر بالقانون رقم (11) لسنة 2004، المادة 2، على الرابط التالي: <https://bit.ly/2LAhuEO> [↑](#footnote-ref-6)
7. أنظر المادة 92 من قانون العقوبات القطري، على الرابط التالي: <https://bit.ly/35ty401> [↑](#footnote-ref-7)
8. أنظر، قانون رقم (23) لسنة 2004 بإصدار قانون الإجراءات الجنائية، المادة 14، علي الرابط التالي: <https://bit.ly/3i0czJb> [↑](#footnote-ref-8)
9. مصدر سبق ذكره، على الرابط التالي: <https://www.ohchr.org/ar/professionalinterest/pages/cat.aspx> [↑](#footnote-ref-9)
10. إدانات حقوقية لتعذيب صحفي حتى الموت بسجن الهامور القطري، سكاي نيوز عربية، 26 أبريل 2020، للمزيد على الرابط التالي: <https://bit.ly/3bwu0jD> [↑](#footnote-ref-10)
11. تورط ضابطين بجهاز الأمن الوطني القطري بتعذيب وقتل الصحفي فهد بوهندي، الجمهورية أونلاين، 28 أبريل 2020، للمزيد علي الرابط التالي: <https://bit.ly/3s9JFLr> [↑](#footnote-ref-11)
12. مقتل سجين قطري في عملية تعذيب جديدة بالدوحة، الدستور، 2 مايو 2020، للمزيد على الرابط التالي: <https://bit.ly/3bwyDu1> [↑](#footnote-ref-12)
13. قطر: العاملات المنزليات يروين قصصاً مروعة حول الأذى والاستغلال، العفو الدولية، 20 أكتوبر 2020، للمزيد على الرابط التالي: <https://bit.ly/2LAOZ9S> [↑](#footnote-ref-13)