

الإئتلاف الفلسطيني لمناهضة التعذيب



Briefing by the Palestinian Coalition against Torture to the Committee against Torture on the list of issues on the second periodic report of the State of Palestine

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21 May 2025 – Palestine

Introduction

1. The Palestinian Coalition against Torture (“Coalition”) submits¹ the present briefing to the Committee against Torture (“Committee”) on the adoption of the list of issues in relation to the second periodic report of the State of Palestine at its upcoming 82nd session, based on the Committee concluding observations on its review of the initial report of the State of Palestine. This report is premised on information documented by the Coalition institutions, as well as monitoring of the measures and actions taken by the State of Palestine to implement the provisions of the Convention at legislative, procedural and practical levels.

Definition and criminalisation of torture and ill-treatment

1. In reference to the Committee’s concluding observations to the State of Palestine on its initial report, in particular Paragraphs 11-15, the Coalition recommends that the Committee request the State of Palestine to outline the legislative measures taken to amend procedural laws, specifically Articles 351 and 319 of the 1979 Revolutionary Penal Procedure Law concerning pardons and amnesties in torture cases, Articles 321-323 of the same Law on the prescription of criminal and civil cases, and Articles 248-250 of the same Law, which provide powers to suspend, annul and reduce penalties prescribed for torture crimes by the authorities responsible for endorsing sentences entered by military courts.
2. The Coalition recommends that the Committee request the State of Palestine to lay out the actions taken to amend the Penal Procedure Law No. 3 of 2001, in particular, to introduce legal provisions on cases where detained persons make statements before courts about their being subjected to torture. The State of Palestine will also describe the nature of procedures taken by the courts and Public Prosecution in relation to such

¹ Established in early 2009, the Palestinian Coalition Against Torture has a membership of a number of Palestinian civil society organisations that work in the human rights sphere in the West Bank and Gaza Strip. The Coalition mainly seeks to ensure respect for international human rights principles, compliance with the International Human Rights Law, and enforcement of the Convention against Torture. Its work is grounded in combating the crimes of torture committed by the Israeli occupying authorities against the Palestinian people as well as by agencies of the State of Palestine. To this avail, the Coalition carries out advocacy at international and local levels to reduce the crimes of torture, hold perpetrators to account, and provide redress to victims. The Coalition includes: Al-Haq, Treatment and Rehabilitation Centre for Victims of Torture (TRC), Center for Defense of Liberties and Civil Rights (Hurriyat), Addameer Prisoner Support and Human Rights Association (Addameer), Jerusalem Legal Aid and Human Rights Center (JLAC), Gaza Community Mental Health Programme, Human Rights and Democracy Media Center (SHAMS), Civil Commission for the Independence of the Judiciary and the Rule of Law (ISTIQLAL), and Independent Commission for Human Rights (ICHR) as an observer member.

statements and the method of referral to, and obligation of, the Military Prosecution to open a criminal investigation into alleged cases of torture.

3. The Coalition recommends that the Committee request the State of Palestine to provide information on the legal value of forensic reports on cases of torture and actions taken on these reports after they are issued and submitted to the Public Prosecution. Also, information will be submitted on the Forensic Medicine Law and the character of the obligations of forensic pathologists. Information will be further provided on the legal nature, legal terms of reference and role of the Military Medical Services agency in uncovering cases of torture, the nature and legal value of the reports issued by this agency, and accountability of Military Medical Services personnel in cases where torture crimes are covered up.

Fundamental legal safeguards

4. The Coalition recommends that the Committee request the State of Palestine, based on Committee Recommendations No. 20-21, to provide information on any new measures taken by the State Party to ensure that all detained persons enjoy, by law and in practice, all fundamental legal safeguards from the moment they are deprived of their liberty. In particular, please provide information on any measures to: (a) ensure detention is in line with the law, guarantees of arrest and detention, right of detained persons to be informed of the reasons for their detention, nature of the charges imputed against them, and their rights, both orally and in writing, in a language they understand and, if necessary, by way of interpretation; (b) facilitate their access to independent counsel of their choice without delay and in complete confidentiality, or provide free legal aid to those who do not have sufficient resources to pay for legal representation; (c) notify a relative or other person of their choice of their detention and whereabouts; (d) require that they undergo a confidential medical examination, free of charge by an independent physician or one of their choice; and (e) be promptly brought - within 24 hours, as provided by law - before a judge and the legality of their arrest and detention be examined by court, in accordance with international standards. Please also provide information on the measures taken to ensure that complete and detailed information is recorded on registers, including details on interrogation sessions and incidents in detention, medical files of each detained person, and that such registers are accessible to the detained person's lawyer at any time, with the consent of their client. Please also indicate the control measures taken, including disciplinary sanctions, to ensure that law enforcement or other officials respect, in practice, all fundamental legal safeguards for persons in detention from the moment they are deprived of their liberty. Please notify the Committee of the percentage of places of deprivation of liberty and interrogation rooms with a video surveillance system, as well as the efforts made to make them available in all such facilities.

Arbitrary detention

5. The Coalition recommends that the Committee request the State of Palestine to provide information on the extent to which the State organs are committed to implementing the decision of the Supreme Constitutional Court (SCC) on the repealing of the Jordanian Crime Prevention Law of 1954, which allows Governor-ordered detention, and the actions taken by the State in cases where the SCC ruling has not been maintained. Further, information will be provided on the persons detained by the security agencies without trial and without being brought to court, particularly those held in the Security Committee's centres in Jericho and Nablus.
6. The Coalition recommends that the Committee request the State of Palestine to provide information on the extrajudicial detention of persons, especially cases involving failure to execute court decisions on the release of detained persons, and the number of cases in which those responsible have been brought to trial on charges of non-execution of court decisions. Please provide information on the actions taken in relation to security agencies' compliance with the implementation of court decisions and the means effected by the State to that end. Information will be given on cases reportedly referred to as "revolving door" policy. By this, the Public Prosecution files new bills of indictment against detained persons, in whose favour release orders are rendered, to the same courts in order to issue new arrest warrants against them. As such, pretrial detention is used as a retaliatory punishment, particularly against persons detained on political grounds and in connection with the freedom of opinion and expression.
7. The Coalition recommends that the Committee request the State of Palestine, based on Recommendation No. 21(D), to provide information to the Committee on the number of individual complaints and reports of human rights organisations regarding failure to uphold fundamental legal safeguards, as well as on the outcome of such complaints, including the disciplinary actions taken against officials who do not provide basic legal safeguards.

National Preventive Mechanism

8. In reference to Recommendation No. 40 of the Committee's concluding observations, the Coalition recommends that the State of Palestine be requested to provide information on the actions taken to amend the Law by Decree on the National Preventive Mechanism (NPM). It will state the reasons preventing necessary legislative amendments, establishment and operation of the NPM in line with the Optional Protocol. It will indicate the amendments it intends to introduce to the NPM law, ensuring financial, administrative and functional independence of the NPM and enabling it to carry out its functions in tandem with international standards for the establishment of NPMs.

Cases of torture, ill-treatment and extracted confessions

9. The Coalition institutions recommend that the Committee request the State of Palestine to provide a detailed breakdown of the number of complaints it has received on alleged cases of torture and ill-treatment, the number and outcome of investigations, disciplinary actions and prosecutions, and the number of convictions. The Committee will also request the State Party to submit clarification on the steps it must take to adopt a special regulation for the protection of whistleblowers and witnesses of allegations of torture and ill-treatment, in line with the recommendations made to the State of Palestine by the Committee under Paragraphs 21 and 29.
10. The Coalition recommends that the Committee request the State of Palestine to make clear whether the State Party has established a dedicated, effective, accessible and independent system that ensures confidentiality to file complaints to an independent agency in all places of detention, state the measures in place to guarantee confidentiality, and provide remedies to complainants when the competent authorities refuse to investigate their cases. It will further indicate the measures taken to ensure that complainants are duly informed of any progress made in the processing of their complaints and their respective results. The State of Palestine will also spell out the existing mechanisms for protecting victims of torture and their relatives against any form of intimidation or reprisal for their complaints.
11. While monitoring the judicial system, the Coalition institutions documented that some of the accused declared to courts that they had been subjected to torture and ill-treatment. In some cases, courts merely documented the statements on torture made by detained persons in the records of court proceedings. In certain cases, courts referred the accused to a medical committee for examination. A follow-up exercise did not demonstrate that these procedures were upheld. In many cases, detention was extended without release. In line with the Committee's recommendations to the State of Palestine in its initial report under Paragraph 31, the Coalition recommends that the Committee request the State of Palestine to provide information on the situation of the Judicial Authority and Public Prosecution. It will also provide the Committee with information on the actions taken by the judiciary and Public Prosecution to address statements made by accused persons on torture and ill-treatment.

Detention conditions

12. The Committee Recommendation No. 37 to the State of Palestine in its initial report states that detention conditions must be in conformity with relevant international norms and standards. However, during their visits to detention facilities after the concluding observations were issued, the Coalition institutions documented that these facilities appear to be incompatible with the detention conditions prescribed by the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). Detention centres are overcrowded, poorly ventilated, highly humid, and

unsuited to the needs of persons with disabilities. Sometimes, persons in detention are denied access to telephone calls or family visits. Solitary confinement cells do not conform to international standards, particularly Rules 43-46 of the Nelson Mandela Rules. Therefore, the Coalition institutions recommend that the Committee request the State of Palestine to provide clarification on the actions and measures it has taken to improve and bring detention conditions in line with relevant international standards and norms.

Violence against women

13. The Coalition recommends that the Committee request the State of Palestine to provide information on the legislative procedures and measures taken since the initial report on the protection of women from violence, reasons why the Family Protection Law have not been enacted, and measures taken to protect women whose lives are in grave danger.

Cases of murder and use of lethal force

14. Since the initial report of the State of Palestine, the Coalition institutions have documented the death of 31 citizens during raids and dispersal of protests by Palestinian security agencies in various cities of the West Bank. The Coalition recommends that the Committee request the State of Palestine to provide detailed information on the number of killings and the nature of the measures taken, including the number and findings of criminal investigations, the number of accused security personnel who have been referred to competent judicial authorities, measures taken to apply the law to the use of force, and disciplinary and penal actions instituted against personnel who have violated these procedures.
15. The Coalition recommends that the Committee request the State of Palestine to provide information on the number of cases in which trials of security personnel have taken place and/or are being conducted, the nature and outcome of trial proceedings, the sentences entered against the accused, and execution of those sentences.
16. The Coalition recommends that the Committee request information on the security campaign launched by security agencies in the Jenin refugee camp, which resulted in the death of a group citizens by security agencies as well as the death of security personnel. Information will be provided on cases of torture of and assault with excessive force on citizens, security personnel taking photographs of detained persons in humiliating and degrading positions, and citizens taken hostage so that their relatives surrender themselves to security agencies. Information will also be submitted on the actions taken to open any investigations into these abuses and any relevant prosecutions or disciplinary actions implemented to that effect.

Accountability for torture crimes

17. The Coalition recommends that the Committee request the State of Palestine to provide more detailed information on the authorities competent to initiate and conduct investigations, at both criminal and disciplinary levels, when there is reason to believe that law enforcement officials, security personnel, prison staff or military officers commit acts of torture or ill-treatment, demonstrating how these are treated by the authorities during investigations.
18. The Coalition recommends that the Committee request the State of Palestine to provide information on whether the Public Prosecution is required to initiate an investigation *ex officio* when there is reason to believe that an act of torture or ill-treatment has been committed, request that the alleged victim undergo a forensic medical examination, whether the alleged offender is suspended *sua sponte* from service during the criminal and/or disciplinary investigation and is prohibited from any further contact with the alleged victim, the measures taken and resources allocated to strengthen the Judicial Authority so that victims can safely obtain redress before courts and ensure that all those who have violated the human rights law or committed abuses are brought to justice.
19. The Coalition recommends that the Committee request the State of Palestine to provide information on the measures taken to practically ensure that victims of torture or ill-treatment, including those who suffer permanent disability as a result of torture, are capable of seeking prompt, fair and adequate compensation and receiving as full rehabilitation as possible, including in cases where the State Party bears civil liability. Statistical data will be provided on redress and compensation measures, including rehabilitation, ordered by courts or other State agencies and actually provided to victims of torture or ill-treatment or their families during the period under review. It will be made clear whether the State Party has taken legislative and administrative measures to ensure that victims of torture and ill-treatment have access to effective remedies, stating what programmes are underway to rehabilitate victims of torture and ill-treatment as well as the resources allocated to them.

Deaths in detention centres

20. In reference to the Committee's Concluding Recommendation No. 42, the Coalition recommends that the Committee request the State of Palestine to provide detailed information on deaths in detention centres, disaggregated by sex and age, actions taken on investigations and investigation findings, and actions and measures taken to reduce these deaths. The Coalition also recommends that the State be requested to provide information on procedures and measures for health monitoring, health screening and

medical history of detained persons upon their arrest, treatment of chronic diseases and provision of primary and necessary healthcare.

21. The Coalition recommends that the Committee request the State of Palestine to provide information on the progress of the trial proceedings involving activist Nizar Banat, the causes of prolonged proceedings, and reasons preventing speedy trial. The State of Palestine will also be requested to provide information on the failure to bring any security officials to trial and hold them to account in this case.