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Committee against Torture

REFERENCE: Follow-up/CAT – State of Palestine

5 September 2024

Excellency,

In my capacity as Rapporteur for Follow-up to Concluding Observations of the Committee against Torture, I have the honour to refer to the follow-up to the examination of the initial report of the State of Palestine, in accordance with the Guidelines for follow-up to concluding observations (CAT/C/55/3).

At the end of its 74th session held from 12 to 29 July 2022, the Committee transmitted its concluding observations to your Permanent Mission. The Committee's concluding observations (CAT/C/PSE/CO/1, para. 56) requested the State party to provide within one year further information on the specific areas of concern identified in paragraphs 13, 19 and 41 of the concluding observations.

On behalf of the Committee, allow me to express appreciation for your letter of 6 February 2024 providing your Government's response to the above-mentioned paragraphs (CAT/C/PSE/FCO/1) and to make the following comments:

Definition and criminalization of torture (para. 13 of the Committee's concluding observations)

The Committee notes the publication in issue No. 206 of the Official Gazette on 25 September 2023 of three decree-laws amending the Jordanian Criminal Code (Act No. 16 of 1960), as amended, the British Mandate Penal Code (Act No. 74 of 1936), as amended, 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. It also notes the information provided by the State party that these decree-laws contain a definition of torture that is in line with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, the Convention) and that extends to anyone who is complicit or participates in torture, and provide for an absolute prohibition of torture and the

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inadmissibility of justification on the basis of exceptional circumstances or orders issued by superior officers or a public authority, aggravated penalties if the act of torture is committed by forensic doctors or treating physicians and against certain categories of vulnerable persons or are motivated by discrimination, and the non-applicability of amnesties and statutes of limitations to the crime of torture. However, the Committee is concerned about the lack of information on the measures taken to 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. Moreover, it is concerned about reports that the abovementioned decree-laws do not include any provision that criminalizes the attempt to commit the crime of torture. Furthermore, it is concerned that, since the suspension of the Palestinian Legislative Council in 2006, the State party has legislated by decree-laws issued by the President, which are not recognized in the Gaza Strip, leading to further 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 (2/B1).

National human rights commission (para. 19 of the Committee's concluding observations)

The Committee takes note of the series of consultations held by the Public Prosecution Service and the Independent Commission for Human Rights to discuss ways to improve cooperation in order to facilitate the implementation of the Commission's recommendations. In this regard, the Committee takes note of the draft memorandum of understanding between the Commission and the Public Prosecution Service, which provides for the establishment of a mechanism for following up on complaints of torture and ill-treatment lodged with the Commission and referred to the human rights unit of the Public Prosecution Service, whereby the Commission is kept informed about the measures taken by the competent prosecutorial body and about the outcome of court proceedings in such cases. However, the Committee is concerned that, due to the dissolution of the Palestinian Legislative Council by the Supreme Constitutional Court, in its decision No. 10 on 12 December 2018, the draft law formalizing the establishment of the Independent Commission for Human Rights has not yet been adopted. Moreover, it is concerned about reports that the resources allocated to the Commission remain insufficient to ensure its functional independence and allow it to perform all its functions effectively, and that the Commission is still not mandated and is unable, in practice, to conduct unannounced visits to places of deprivation of liberty (1/B2).

Monitoring of detention facilities (para. 41 of the Committee's concluding observations)

The Committee notes that, on 27 November 2022, a draft decree-law aimed at amending Decree-Law No. 25 of 25 May 2022 on the National Commission against Torture was endorsed by the Council of Ministers and referred to the President of the Palestinian Authority for approval. However, it is concerned about reports that Decree-Law No. 25 on the National Commission against Torture is not in line with the Optional Protocol to the Convention and the Guidelines of the Subcommittee on the Prevention of Torture on national preventive mechanisms (CAT/OP/12/5), as it provides for the establishment of a government-led national preventive mechanism, which is likely to

affect the operational independence and financial autonomy of the Commission. In this regard, the Committee takes note of the information provided by the State party that, due to the current armed conflict in the Gaza Strip, all efforts in reviewing Decree-Law No. 25 and the subsequent draft decree-law have been suspended. The Committee also notes that several governmental bodies and international organizations are invested with powers of supervision over places of detention and custody. However, it regrets the lack of information on the measures taken 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 speak confidentially to all detained persons. Finally, the Committee notes the steps taken by the Public Prosecution Service to enhance cooperation with monitoring bodies operating in the West Bank to implement the recommendations they put forward following their visits to detention facilities, including a plan of action establishing a system for referring complaints of torture and ill-treatment lodged with these monitoring bodies to the Office of the Public Prosecutor. Nevertheless, it is concerned at reports that the State party did not take sufficient steps to ensure that the recommendations put forward by monitoring bodies, including non-governmental organizations, are duly taken up and implemented, in particular where allegations of torture or ill-treatment are raised (2/B1).

Implementation plans (para. 56 of the Committee's concluding observations)

Lastly, the Committee welcomes the adoption, in May 2023, of a national plan of action for the implementation of its concluding observations and appreciates the additional information provided by the State party on the implementation of the recommendations contained in paragraphs 9, 11, 15, 17, 21, 25, 29, 31, 33, 37, 39, 43, 47, 51 and 55 (A).

The Government of the State of Palestine is encouraged to provide additional information, if there is any, which would further contribute to the Committee's analysis of the progress made regarding the specific issues of concern cited above. This additional information may be provided in any subsequent report by the State party pursuant to the Committee's request in its concluding observations on the initial report of the State of Palestine or other future periodic reports.

The Committee looks forward to a continued constructive dialogue with the authorities of the State of Palestine on the implementation of the Convention.

Accept, Excellency, the assurances of my highest consideration.



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Rapporteur for Follow-up to Concluding Observations
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