



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture Seventy-fourth session

### Summary record of the 1921st meeting\*

Held at the Palais Wilson, Geneva, on Tuesday, 19 July 2022, at 10 a.m.

*Chair:* Mr. Heller

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\* No summary record was issued for the 1920th meeting.

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*The meeting was called to order at 10 a.m.*

**Consideration of reports submitted by States parties under article 19 of the Convention** *(continued)*

*Initial report of the State of Palestine (CAT/C/PSE/1)*

1. *At the invitation of the Chair, the delegation of the State of Palestine joined the meeting.*
2. **Mr. Habalreeh** (State of Palestine), introducing his country's initial report (CAT/C/PSE/1), said that the report had been drafted by a team led by the Ministry of the Interior, which had also consulted with international partners as well as with civil society groups in the West Bank, including Jerusalem, and in the Gaza Strip. The dialogue with the Committee represented a historic moment which, he was confident, would contribute to enabling Palestinians to enjoy the fundamental rights that they had long been denied by an imperialist foreign occupation.
3. The Committee should take account of the systematic torture the Palestinian people suffered at the hands of the Israeli occupiers and of the cruel and degrading treatment they endured on a daily basis as a consequence of the blockade of Gaza and the military checkpoints across the West Bank. His delegation would seek to explain not only the legislation, laws and strategies enacted by the State with a view to combating torture, but also the plight of the Palestinian people under Israeli occupation; in particular, the situation of Palestinian prisoners in Israeli jails and specific policies of the occupying Power, such as the destruction of homes and the refusal to return the bodies of martyred Palestinians. In fact, Israel extended its persecution of Palestinians even to the dead and was currently holding the bodies of 105 Palestinians in cold storage while a further 256 – including 9 children and 3 women – were buried in numbered graves. Israel, moreover, was the only country in the world where the courts had upheld the legality of torture.
4. The democratic and pluralistic values enshrined in the 1988 Palestinian Declaration of Independence and the 2003 Palestinian Basic Law underpinned the country's political system and informed every aspect of its social, economic and cultural life. However, when considering the efforts made by Palestine to combat torture and promote rights and freedoms, it was important again to bear in mind the impact the occupation had on the lives of Palestinians, whose only desire was to enjoy their inalienable rights to self-determination, independence and sovereignty in a democratic and pluralistic Palestinian State with Jerusalem as its capital. Yet, as a result of its ongoing struggle to control its own wealth and resources, Palestine was deprived of the fundamental requirements it needed to build its institutions. For its part Israel – in order to consolidate its imperialist occupation and the apartheid system it imposed on the Palestinians – not only failed to implement international humanitarian law and human rights treaties in Palestinian territory, it also actively sought to prevent national institutions from operating freely and undermined efforts by the State of Palestine to protect human rights on its own territory.
5. The Government had developed strategies and policies intended to ensure security, stability and the rule of law and to regulate law enforcement activities in line with international human rights treaties and standards. In particular, it had developed a body of laws, regulations and codes of conduct to govern the work of the Ministry of the Interior and the duties and responsibilities of security agencies. In consultation with government agencies, civil society groups and international partners, the Ministry had drafted a bill for the creation of a national torture prevention mechanism, which had been duly enacted as Decree-Law No. 25 on 25 May 2022. Further consultations were currently ongoing to canvass the views of civil society on the implementation of the Decree-Law so that it could be amended as necessary.
6. The State was careful to ensure the accountability and transparency of human rights protection mechanisms. With a view to preventing torture and other human rights violations, those mechanisms made both regular and unannounced visits to State bodies that operated in the field of criminal justice and to places of deprivation of liberty. The Government had also authorized certain local and international bodies, including the International Committee of the Red Cross (ICRC) and the Office of the United Nations High Commissioner for Human

Rights (OHCHR), to visit places of detention, meet with inmates and submit comments and proposals to the competent bodies. As a way of monitoring the operation of security agencies and the work of law enforcement personnel, the State had set up complaints units, which citizens could contact freely and without fear of reprisal. The units also produced operational plans and procedural guides, ran training courses and workshops, and developed computer programs for the submission and handling of complaints.

7. The State provided mandatory anti-torture training for security forces. It had produced a package of human rights training materials intended for use by law enforcement personnel and it had developed a guide on relations between journalists and security forces in the field. Human rights training covered the following areas: the rights of women; gender roles in the security forces; families, children and adolescents; persons with disabilities; prisons and the rights of inmates; monitoring and accountability mechanisms; crowd control and use of force; search and arrest procedures; complaints mechanisms; and international law and treaties. Interaction between law enforcement agencies, prosecutors and the courts had been harmonized with a view to streamlining arrest procedures and improving human rights safeguards.

8. Freedom of assembly and association were considered to be fundamental human rights. The procedures for creating, registering and dissolving civil society groups were set forth in clear legal provisions, the purpose of which was to regulate such groups but in no way impede their activities. In fact, the State worked to promote partnership and dialogue with government agencies and with civil society institutions, which it strove to protect against the action often directed against them by the Israeli occupying authorities. It also cooperated with partners abroad so that Palestinian security forces could benefit from international expertise and capacity-building in law enforcement techniques.

9. **Mr. Touzé** (Country Rapporteur) said that the Committee recognized that the territory of the State party had been under occupation since 1967 and that Israel, the occupying Power, could not evade its obligations under international humanitarian law and international human rights law. In fact, Israeli actions such as the imposition of movement restrictions, the destruction of homes, the creation of illegal settlements and ill-treatment and excessive use of force on the part of its security forces made it difficult for the Palestinian authorities to fulfil their obligations under the Convention. In addition, the ongoing political and geographical divisions within the State party meant that persons continued to be subject to different juridical systems, which greatly affected the full exercise of their rights under the Convention. In that regard, the Committee had been disappointed to note that the 2017 Agreement between the Fatah and Hamas movements to end Palestinian division had not substantially healed the country's internal political rifts.

10. As Palestine had acceded to the Convention in 2014 and to the Optional Protocol in 2017, he wondered why the State had so far failed to publish either instrument in its Official Gazette. He would welcome information about any steps taken to integrate the Convention into domestic law, to involve civil society organizations in its implementation and to make its contents known to the public at large. The Committee was concerned by the inadequate definition of torture in domestic legislation where it was identified not as a serious offence but as a less serious offence, something that was clearly inconsistent with the Convention. Moreover, the differing definitions of torture given in the various pieces of criminal legislation applicable in different parts of Palestinian territory – the Jordanian Criminal Code, the British Mandate-era Criminal Code and the 1979 Revolutionary Criminal Code – were too narrow. They failed to criminalize psychological torture or inhuman and degrading treatment and were restricted to instances where torture was practised in order to obtain information or extract a confession. He would be interested to hear of any plans to unify and harmonize those provisions and to bring them into line with the Convention.

11. The State party had established a committee tasked with bringing its existing legislation into line with the international treaties by which it had consented to be bound. However, that committee had so far only reviewed a small number of laws, such as legislation on cybercrime and family protection. Furthermore, no overall work to harmonize the various national laws had been done, especially those relating to criminal procedure, criminal law and personal status.

12. With regard to paragraph 23 of the State party's report, he wished to know whether the Government planned to review the Security Forces Service Act to bring it into line with the provisions on superior orders set out under the Convention and in the Committee's general comment No. 2 (2008) on the implementation of article 2 by States parties.

13. He would also like to know what measures the State party planned to take to ensure that the penalties that applied to law enforcement officials accused of torture or inhuman or degrading treatment were commensurate with the offence; according to paragraph 38 of the report, the existing penalties were insufficient and did not currently conform with international conventions. The scope of the existing legislation on torture should be extended to include cases involving the initiation of, incitement to and participation or complicity in an act of torture. The Committee would welcome information on any steps taken to affirm the non-applicability of statutory limitations to the crime of torture and to prohibit any justification, excuse or impunity for acts of torture.

14. He would appreciate the delegation's comments on allegations that acts of ill-treatment and torture, including physical violence, the prolonged use of solitary confinement, insults, threats, sexual violence and humiliating interrogations were still being perpetrated at places of deprivation of liberty. Any light that the delegation could shed on the many allegations of acts committed at Palestinian police premises in Ramallah, Bethlehem and Hebron, at the detention centre used by the joint operations committee in Jericho and at facilities run by the General Intelligence Service would be of particular interest to the Committee.

15. The Committee was concerned that the right to legal counsel was not being effectively upheld in the State party. It had been informed that there was a shortage of lawyers and that those available were sometimes not called or were unable to travel to geographically isolated facilities. Furthermore, lawyers had informed the Committee that they had been made to wait several days before meeting clients who had been detained and that they were sometimes unable to discuss the details of the case with them in privacy. In the West Bank, some lawyers who had agreed to represent persons arrested on political or freedom of expression charges had even claimed to be targeted and harassed by security forces, while prisoners had reported that they had been asked to change lawyers as a prerequisite for their release. He wished to know whether the State party was aware of those issues and what steps it was taking to ensure that, in practice, persons detained always enjoyed the right to legal counsel. He also failed to understand why it was stated under the Palestinian Code of Criminal Procedure that, if necessary, State authorities were allowed to question accused persons without the presence of a lawyer. It was not clear which circumstances would justify that violation of the right to legal counsel.

16. The Committee had received reports that prisoners were being denied their right to receive a medical examination. He therefore wished to know what measures the State party had taken to ensure that right was upheld in practice. It would be helpful to learn more about the conditions of medical examinations, including when they took place, who performed them and what follow-up action was taken once the resulting medical report had been issued.

17. Several reports obtained by the Committee contained allegations concerning the use of incommunicado detention at facilities, above all in the Gaza Strip. It was claimed that detainees were not being informed of the grounds for their arrest and were being prevented from making telephone calls during the first two weeks of their detention. The Committee would welcome any information the delegation could provide in relation to those allegations, since it was important to ascertain whether, in practice, persons held in custody were always able to inform the outside world of their arrest and detention.

18. There had been reports that, following their arrest, people were sometimes being held in pretrial detention for up to several months without being formally questioned or appearing before a judge. Such practices suggested that pretrial detention was being used by the State as a punitive measure. Under national legislation, courts were permitted to extend the pretrial detention of arrested persons when they were unable to appear before a judge due to a case of force majeure. He wished to know what constituted a case of force majeure in such circumstances and how that legal provision was interpreted in practice.

19. In relation to allegations concerning the State party's use of arbitrary detention, the Committee would welcome further information on the steps taken to ensure that citizens, including political opponents and human rights defenders, were not arrested on political grounds or for exercising their rights to freedom of expression, association and religion. It would be helpful if the delegation could confirm that all persons deprived of their liberty were informed of their rights to legal counsel and to postpone their interrogation pending the arrival of their lawyer, were able to obtain legal assistance in a timely manner, including by contacting family members and organizations offering legal services, were able to inform a family member or another person of their choice about their detention immediately following arrest, were able to request an independent medical examination, either free of charge or by a doctor of their choice at their own expense, and to bring the doctor's findings to the attention of the competent authority, and were systematically brought before a court to review their detention within 48 hours of arrest.

20. According to the reports received by the Committee, a form of administrative detention appeared to be used in the West Bank as an alternative to criminal prosecution. People had been held for months on the orders of governors without having their cases reviewed and without receiving any indication from the authorities of the charges that they intended to press against them. In other cases, defendants who had been released owing to a lack of evidence had been immediately rearrested, again on the orders of governors. The Committee would welcome further information on those alleged practices, including on the nature of any specific cases, the number of people who had been detained and were currently being held, and the legal framework governing administrative detention. He also wished to know why certain release orders issued by courts in the West Bank had apparently not been carried out.

21. Under article 126 of the Code of Criminal Procedure, in order to ensure that nobody was being held illegally, the Office of the Public Prosecutor and courts of first instance and appeal were authorized to visit places of deprivation of liberty to hear the complaints of prisoners and to request information from members of staff. It would be useful to learn more about the procedure under which such visits were organized. He wished to know how often the visits were carried out and what action was taken by the State party in response to the resulting observations and recommendations.

22. There was a lack of information on detention conditions in the State party's report. He would therefore welcome any general information the delegation could provide on prisons, detention centres and any pretrial facilities that might exist in the State party. It would be helpful to know how many men, women and children were currently detained and how many of them were still awaiting trial. The Committee understood that the Independent Human Rights Commission had conducted nearly 2,000 visits to places of deprivation of liberty during the reporting period but that no meaningful action had been taken in response to its recommendations. He would like to know whether the State party had taken any steps to ensure effective follow-up to the findings in the Commission's reports.

23. Overall, the Committee was seriously concerned that the State party was failing to comply with international standards regarding detention conditions. It had received reports concerning the overcrowding of tiny cells at temporary facilities used by the General Intelligence Service, at police detention centres in the West Bank and at temporary police detention centres in the Gaza Strip. Facilities were inadequately ventilated and prisoners were not given access to appropriate medical care. He wondered whether the State party would consider taking urgent measures to improve material conditions at all places of deprivation of liberty with a view to ensuring full compliance with the international standards laid down in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and to ensure that judicial review of detention was carried out without fail and in a timely manner. He wondered whether the State party was willing to place more emphasis on non-custodial measures in the pretrial period, with the aim of reducing the number of persons in pretrial detention and overcrowding in detention facilities.

24. It would be interesting to learn what was being done to improve detention conditions for women, in particular with regard to overcrowding, the lack of hygiene products and health care, especially mental health care, and the conditions for pregnant women and mothers of small children.

25. He wished to know what steps were being taken to ensure that persons who had been tortured or subjected to ill-treatment enjoyed the right to lodge a complaint with the appropriate authorities, especially given the complex tangle or juxtaposition of regulations that were applicable, depending on the territory in question, and authorities who did not exercise the same powers throughout the country. He failed to understand how the complaints mechanism, if it existed, worked in practice. The Palestinian Basic Law of 2003 provided that written authorization from the Office of the Public Prosecutor was required for bringing any legal proceedings against law enforcement officials. There could be no right to file a complaint if the Prosecutor's permission was required. The statistics provided in the tables in paragraph 43 in the State party report regarding the number of complaints of ill-treatment or extraction of information by force, the number of complaints investigated and the number of convictions reached between 2016 and 2018 were at variance with those in a number of third-party reports, which stated that there had been some 346 complaints, 48 established cases and only 1 conviction, which had entailed 10 days' imprisonment. How did the delegation account for such a discrepancy?

26. As various pieces of legislation in effect in the State party appeared to permit capital punishment, he wished to know whether any death sentences had been carried out during the period under review or whether there was a moratorium in place, how many persons were currently awaiting execution, what crimes those persons had committed, how executions were conducted and in what conditions of detention persons sentenced to death were held.

27. The law adopted pursuant to Decree No. 25 of 2022 on the establishment of a national preventive mechanism did not take into account the views of civil society and did not meet the standards of independence and impartiality required of the mechanism. The ties established between the mechanism and government authorities were too close. He wondered whether the Government would consider amending that legislation to make the mechanism truly independent in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

28. **Ms. Maeda** said that it would be interesting to know how many women and children were living in State shelters for victims of gender-based violence and whether such shelters were open to women accused of sexual or moral offences. She wondered what budget was allocated to the shelters, how many counsellors worked at the shelters and what training staff members received. Given the continued prevalence of gender-based violence in the State party, she also wondered what laws were in place to combat violence against women, including domestic violence, how gender-based discrimination was defined in the law, what the status of the family protection bill was and whether there was a timetable for its enactment and what measures had been taken to raise awareness among men and women about the illegality of gender-based violence. She would welcome statistics on the number of cases of domestic violence.

29. In the light of the different legal systems that applied to the West Bank and the Gaza Strip, she would welcome information of the following: the current status of the presidential decree of 2014 amending the Jordanian Criminal Code of 1960, which precluded honour from being considered a mitigating circumstance in cases of violent crimes against women; the status of the British Mandate-era Criminal Code (No. 74 of 1936); and the number of cases of honour killings that had been prosecuted and convictions secured and the punishments imposed on the perpetrators.

30. She wished to know what capacity-building was provided for judges, prosecutors, lawyers, police officers and other law enforcement officials on the application of legislation with a view to eliminating gender-based violence against women, what forms of assistance, including legal assistance, were available to women accused of sexual or moral offences, including survivors of gender-based violence, and what rehabilitation programmes were offered to survivors.

31. With regard to children's rights, she would like to know whether corporal punishment was legal, whether teachers guilty of committing corporal punishment were subject to punishment or disciplinary action, whether the authorities conducted regular and unannounced school inspections and what measures had been taken to raise awareness of the adverse effects of corporal punishment among children, parents, teachers and social

protection professionals. It would be interesting to hear whether the minimum age of criminal responsibility was indeed 12 years, whether the same age applied in all Palestinian territories and whether the Government would consider increasing it to at least 14 years. Referring to footnote 10 of the State party's report, she wondered what was meant by "provisional arrest". She would like to know what human, technical and financial resources were allocated to the special juvenile justice units and whether juvenile offenders had access to free qualified and independent legal aid and to complaint mechanisms.

32. She would appreciate any data on the number of violations against human rights defenders and the measures taken to respond to such violations, including those committed by non-State actors. In addition, information on the use of tear gas for crowd control in Palestine refugee camps by the Palestinian Security Forces would be helpful. She wondered whether the State party intended to review the crowd control procedures applied by the security forces during demonstrations.

33. It would be interesting to know why the crime of torture was not an extraditable offence. She wished to know how the State party ensured that its domestic legislation was compatible with its obligations under article 3 of the Convention. It was not clear whether there were exceptions to the prohibition on the extradition of Palestinian nationals to a foreign country and whether Palestinian nationals accused of committing torture in a foreign territory were prosecuted in the State of Palestine instead of being extradited to the State where the crime had occurred.

34. According to article 2 of the Convention, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment was absolute and non-derogable, including during states of emergency and any other exceptional circumstances. Article 110 of the Palestinian Basic Law permitted the President to declare a state of emergency by decree in specific cases for a period not exceeding 30 days. The period could be extended for 30 days by a two-thirds majority vote of the members of the Legislative Council. According to article 111, restrictions on fundamental rights and freedoms could be imposed only to the extent necessary to fulfil the purpose stated in the presidential decree. The Committee had been informed that the state of emergency declared by the President on 5 March 2020 to prevent the spread of the coronavirus disease (COVID-19) pandemic had been in effect ever since and was renewed every month by presidential decisions, although the approval of the Legislative Council was required for any extension. She wished to know what restrictions had been imposed on rights enshrined in the Convention. She also wondered what the greatest challenge faced by the Government in discharging its treaty obligations during the pandemic had been and whether it had any concrete strategy to discontinue the current state of emergency.

35. **Ms. Racu** said she was aware that mental illness was a major problem in the State of Palestine, which had registered the highest rate of mental disorders in the Middle East. About one third of the population required mental health-care services. Their plight was attributable primarily to a 50-year history of violence and to current political and social events. The mental health-care system lacked the requisite funds, resources and specialists. She had been informed that there were currently only 20 psychiatrists in the West Bank and that there was only one psychiatric hospital in Bethlehem. She wished to know what measures were taken to protect the rights of such vulnerable groups, and she would appreciate an update on action taken to improve the mental health-care system and to prevent any ill-treatment of persons with mental disorders in psychiatric institutions and other care centres.

*The meeting was suspended at 12.10 p.m. and resumed at 12.30 p.m.*

36. **Mr. Habalreeh** (State of Palestine) said that the current dialogue with the Committee provided a historic opportunity to cooperate with a United Nations treaty body on a highly important topic. All the Committee's observations would be taken into account. As consultations with civil society and relevant governmental institutions were also essential, he assured the Committee that regular meetings would be held to assess the human rights situation in all sectors of society.

37. Although Israel, as the occupying Power interfered in all walks of life, the Palestinian authorities would not relinquish their responsibility and would refrain from imposing additional pressure on the Palestinian people, who were hoping to be rescued from the

occupation. As the authorities were strictly opposed to all forms of torture, they were determined to take vigorous action based on national convictions and to align the legislation with international provisions in order to guarantee the best possible results for the Palestinian people.

38. **A representative of the State of Palestine** said that the state of internal division had a negative impact on various aspects of Palestinian life, including denial of the collective national right to self-determination and independence. It was an issue of high political priority, and no effort was spared to restore normality and unity for the Palestinian territory and people.

39. Only one set of standards and laws was applicable in the State of Palestine. Those applied in Gaza had been imposed by the de facto authority that had assumed power by a coup d'état. The Palestinian authorities endeavoured through their partnership with non-governmental organizations (NGOs) and the Independent Commission for Human Rights to influence decision-making in Gaza and to align it with international standards and the State's obligations. They had succeeded in some cases but not, for instance, when it came to capital punishment and the punishment of so-called honour crimes.

40. Attempts to establish a self-governing authority had been impeded in the past by the oppression of the occupying Power, but the authorities had decided to set aside the issue of occupation and to highlight issues that could be addressed by the Palestinian people. Gaza had previously been subject to Egyptian legislation and the West Bank to Jordanian legislation. Both territories had also been subject to laws inherited from the Ottoman Empire and Mandatory Palestine as well as to Israeli military decrees. The ratification by the State of Palestine of about 96 international treaties had played a major role in addressing that issue. It was essential to incorporate treaties that had a direct impact on people's lives into the legal system. Failure to publish a treaty in the Official Gazette did not mean that its provisions were not applicable. They merely needed to be incorporated into domestic law. The State of Palestine had a combined monist and dualist legal system. Some temporary measures had been taken in the case of the Convention, such as the ending of capital punishment. Although it was not yet prohibited by law, the President had issued a decree suspending its implementation. The same applied to honour crimes.

41. The Supreme Constitutional Court had ruled that international treaties had primacy over domestic legislation. None of the provisions of the Palestinian Declaration of Independence or the Palestinian Basic Law contravened the State's obligations. The process of alignment of domestic legislation took some time, but the authorities were now cooperating with OHCHR and were implementing a major project funded by the European Union to expedite the process. The views of civil society on the alignment of domestic legislation were also taken into account.

42. **A representative of the State of Palestine** said that the Palestinian heritage of obsolete laws from different countries constituted a challenge when it came to aligning domestic legislation with international treaties, including the Convention. The Cabinet had established a committee to align the Palestinian Criminal Code with such treaties and a number of legal experts had drafted a bill on the establishment of a national preventive mechanism which contained articles that defined torture, including mental torture, and cruel and degrading treatment and which prohibited the invocation of orders from a superior authority to justify torture. Accordingly, the bill was in line with the Convention and he hoped that its enactment would be expedited.

43. A special committee had been established to draft the Constitution of the State of Palestine. Article 26 of section II prohibited physical or psychological torture, article 27 prohibited scientific or medical experimentation on human beings and article 32 prohibited the extradition of foreign political refugees.

44. Administrative detention was based on an order from the competent governor. The legislative harmonization committee had drafted an amended version of the Crimes Prevention Act of 1954 in order to align it with the Palestinian Basic Law and relevant international treaties. Governors' administrative orders were subject to appeal.



45. Since the submission of the initial report in 2019, the legislative harmonization committee had drafted a number of amendments to existing legislation. For instance, it had amended the minimum age for marriage in the Personal Status Act and amended the Palestinian Child Act of 2004, the Palestinian Labour Act of 2000, Act No. 20 of 2015 concerning the combating of money-laundering and the financing of terrorism, Act No. 10 of 2018 on cybercrime and many other laws. In so doing, the committee had sought to respond to the recommendations received from United Nations treaty bodies and it would undoubtedly take similar action in response to the concluding observations and recommendations received from the Committee against Torture.

*The meeting rose at 1 p.m.*