

The Role of the Independent Commission for Human Rights in combating torture in Palestine



Randa Siniora
Executive Director, Palestine Independent Commission for Human Rights

The Independent Commission for Human Rights (ICHR) as the Palestinian human rights national institution for human rights has played a significant role in preventing and combating torture in the Palestinian-controlled Territory. Based on the 1993 Paris Principles regulating the work of national human rights institutions, monitoring prisons, detentions centers and the penitentiaries (places of detention), is one of the core functions of national institutions to ensure the respect and adherence of government's officials to principles of human rights and the rule of law when upholding their responsibilities. International human rights instruments, especially the Convention against Torture, the International Covenant on Civil and Political Rights, and the Amended Palestinian Basic Law of 2003 has specifically prohibited torture and other forms of ill-treatment. Both the Optional Protocol to the Convention against torture (OPCAT) and the Istanbul Protocol have specifically focused on the importance of monitoring prison facilities and detention centers by national institutions, human rights organizations and medical personnel and highlighted the importance of such monitoring as a preventive measure in combating torture and other cruel, inhuman or degrading treatment.

The important role undertaken by the ICHR as an independent National Commission is to:

- Monitor all acts of the Palestinian National Authority (PNA) and its institutions and assess their compliance with the international standards and norms which they have complied

with unilaterally and on voluntarily basis.

- Necessarily improve all the national legislation in accordance with universal human rights and ensure that Palestinian legislation and policies are in compliance with international human rights principles. Monitor and document violations of human rights and intervene with relevant authorities to put an end to those violations. Also regularly report on patterns of human rights violations.
- Conduct fact-finding initiatives and investigate serious violations of human rights such as cases of death in detention and serious allegations of torture and other ill-treatment.
- Receive and handle complaints from victims of human rights violations, including cases of physical abuse, torture and ill-treatment and follow up on complaints with the relevant authorities.
- Use all means of mediation and intervention including in some cases of judicial intervention, especially in cases of allegations of torture, deaths in detention or any other violations of human rights that are of great interest to the Palestinian public.
- Spread the culture of human rights through education and training, especially to government officials and security.

Since its initiation eighteen years ago, ICHR has given special attention towards developing mechanisms to combat torture, and has used various means to ensure that preventive measures against all acts of torture and ill-treatment are undertaken. ICHR has taken a firm position against this practice and continuously called on the Palestinian President and Palestinian Officials to officially and publicly condemn torture and take serious measures, including pressing criminal charges against government officials who commit acts of torture. ICHR has firmly reiterated its position that acts of torture must not be tolerated in all circumstances and that the crime of torture entails individual responsibility upon all those officials who order, practice or show complicity with such acts. Under international criminal law, crimes of torture do not



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fall with the passage of time and have no statute of limitation in which the “civil and criminal” lawsuits against those who have committed them can be brought before national courts and International Criminal Court at all times.

The occurrence of numerous cases of torture and ill-treatment inside Palestinian places of detention should be noted, whether in the West Bank or in the Gaza Strip, in which many citizens died. No punitive action or deterrent measures against those who committed or caused the occurrence of such crimes or against those who remained silent were taken. Since the internal political divide and the taking over of the “Hamas” government in the Gaza Strip, ICHR has witnessed a notable increase in registered and documented allegations of torture by security agencies in both the West Bank and the Gaza Governments. ICHR has documented those cases, and intervened with the relevant authorities.



Upon interventions by ICHR, echoed by NGOs, the Palestinian President gave instructions to all security agencies in the West Bank to refrain from practicing torture, and has openly announced that criminal charges will be brought against all those government officials who commit such crimes in accordance with relevant Palestinian legislation. Those instructions to security agencies by the highest political level led to a noticeable decrease in cases of torture documented by ICHR for a short while, especially by the Palestinian Preventive Security and the Palestinian General Intelligence (the two main bodies most often found to be involved in cases of torture and other ill-treatment). But only after a short while, ICHR witnessed a gradual reoccurrence of to the practice of torture and ill-treatment by the two security agencies. This could be attributed to the lack of sufficient actual

subsequent deterring measures taken in reported cases, and the absence of criminal charges brought against those allegedly involved in such crimes.

ICHR is currently taking a number of measures and methods of interventions which serve as constant activities for combating torture through the focus on preventive measures. The most important issues we work on include:

1. Developing internal systematic tools and procedures for ICHR to investigate all allegations of torture document, as well as publish the results of the procedures of investigations to the Palestinian public.
2. Conducting regular monthly visits to all places of detention in the West Bank and the Gaza Strip, to monitor conditions inside all those facilities and ensure that proper legal procedures have been followed and that prisoners were not subjected to any form of ill-treatment and/or torture. ICHR monthly conducts around 65 such visits in the West Bank and another 30 such visits in the Gaza Strip.
3. Establish the right of the ICHR to conduct un-announced visits to prisons, detention centers and penitentiaries. ICHR is in the process of signing a Memorandum of Understanding with the Chief Palestinian Police, in order to give ICHR the right to periodical and non-periodical visits which includes announced and on-the-spot visits, as well as enhance the cooperation with the Palestinian Civil Police (PCP) in three directions; conducting regular and un-announced visits, provide ICHR with access to documents and adopted procedures by the PCP in investigating allegations of torture, and the cooperation between PCP and ICHR in conducting training and capacity building to Palestinian government officials.
4. Enhance the role of other human rights and civil society organisations to access places of detention, and allow medical institutions and medical personnel to access prison facilities in accordance with the Istanbul Protocol and the OPCAT.
5. Issue fact-finding reports about cases of death in detention during interrogation in detention centers, expose such incidents by various means including the media, and call on the Palestinian authorities to press charges against those officials who are suspected of committing the crime of torture and punish them with penalties proportionate to the seriousness of the crime.

6. Demand the PNA and the PLC committees, to necessarily work on passing a law to prevent and criminalise torture and ill-treatment inside all Palestinian places of detention. A number of recommendations have been adopted in this regard. Some have been implemented but there are still some recommendations that the Commission is struggling to activate.
7. Ensure that clinical medical examination is carried out for all detained persons at the moment they enter the detention or investigation centers by doctors affiliated to the Ministry of Health and not by the military medical services or by the military doctors affiliated with the Security Services as is currently the case.
8. Activate internal control and inspection mechanisms by the public prosecutor, the judiciary, the PLC, the Ministry of Justice, the Ministry of the Interior, as provided by applicable legislation, throughout the Palestinian places of detention, and verify the integrity of all actions taken, in order to prevent the occurrence of any abuses inside these centers
9. The PNA should work on combating torture and ill-treatment inside the Palestinian detention and investigation centers and not invoke any exceptional or emergency circumstances to justify torture, no matter what the circumstances are.
10. Provide guarantees of fair trial through the presentation of all civilian detainees to civilian prosecutors and civil judiciary rather than the military justice system, and stop the practice of arresting of civilians at the disposal of the military justice as stipulated in the relevant Palestinian laws and the Palestinian Higher Court of Justice's decisions in the past three years.
11. Any decision issued by the Palestinian judiciary, whether civilian or military, must not be immunized in its elementary stages, to ensure progression and to provide all means of appeal and cassation to those affected by those decisions and judgments.
12. Re-open the files of past torture cases again, use all the evidences to convict the perpetrators of the crime, and decide on the appropriate punishment against the perpetrators in order to prevent the occurrence of crimes of torture.

Despite all the efforts and the achievements of ICHR in combating torture, we still find that the Palestinian accountability procedures against perpetrators of unlawful killings, torture and ill-treatment, or against the violations of prisoners' and detainees' rights were so far ineffective. The current justice system is still unable to adequately hold the perpetrators of violations responsible for torture or ill-treatment that have taken place, leading to the creation of a culture of impunity. The lack of clarity and absence of transparency and responsiveness to victims' complaints leads to the conclusion that the follow-up mechanisms by the authorities for reported complaints and violations are inadequate thus far.