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## Human Rights Council

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Agenda item 7

### Human rights situation in Palestine and other occupied Arab territories

## Written statement\* submitted by United Nations Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 August 2020]

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\* Issued as received, in the language(s) of submission only.

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## The Palestinian Authority and Hamas must be held accountable for international law violations

The Palestinian Authority (“PA”) and Hamas must be held accountable for their violations of the International Covenant on Civil and Political Rights (“ICCPR”), particularly Articles 19 and 21 which guarantee the rights to freedom of expression and association, Article 7 which prohibits torture and Article 14 which guarantees due process. The State of Palestine purportedly joined this and other human rights treaties in April 2014, after the General Assembly granted it non-member observer state status at the United Nations (UN).

### 1. PA and Hamas arrests and torture of opponents (ICCPR Article 7, 19 and 21)

Both the PA and Hamas systematically repress dissent, including through arbitrary arrest and torture. In October 2018, Human Rights Watch (“HRW”) published a report exposing 86 recent cases of arbitrary arrests and torture of peaceful dissenters by both the PA and Hamas based on personal interviews with the victims and their families.<sup>1</sup>

Torture included beatings, solitary confinement, feet whipping, threats and taunts, and forcing detainees into various painful positions for extended periods.<sup>2</sup> HRW commented that “the habitual, deliberate, widely known use of torture, using similar tactics over years with no action taken by senior officials in either authority to stop these abuses, make these practices systematic.”<sup>3</sup> Similarly, in its report on human rights in Palestine for 2019, Amnesty International found that “Palestinian security forces in the West Bank and Gaza routinely used torture and other ill-treatment with impunity” and noted that in 2019 there were 143 allegations of torture in the West Bank and 156 in Gaza.<sup>4</sup>

In September 2017, Al Jazeera reported on several cases of severe torture of detainees in Palestinian prisons, noting a “pattern of abuse” by the Palestinian security services as part of its “attempts to stifle dissent and imprison political opponents.”<sup>5</sup> The article recounted several torture cases:

- Palestinian journalist Sami al-Sai said that during his 15-day interrogation, “They strung me up from the roof of the cell with a rope tied around my arms, which were behind me. There was so much pain...Afterwards, I couldn’t walk properly.”
- An anonymous man with ties to Hamas said that he had been tortured and placed in a stress position for up to five hours at a time.
- Palestinian prisoner Ahmad Izzat Halaweh died in custody in August 2016 after being severely beaten in a prison in Nablus. Five of his sons were also taken into custody.
- Halaweh’s widow said one of her jailed sons who had been tortured “used to be like a flower. When I visited him, I didn’t recognize him.”<sup>6</sup>

Recent examples of Hamas torture include:

<sup>1</sup> Two Authorities, One Way, Zero Dissent: Arbitrary Arrest and Torture under the Palestinian Authority and Hamas, Human Rights Watch (October 23, 2018), <https://www.hrw.org/report/2018/10/23/two-authorities-one-way-zero-dissent/arbitrary-arrest-and-torture-under>. [Hereinafter “Two Authorities, One Way, Zero Dissent”].

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> 2019 Report on Human Rights in Palestine, Amnesty International (2019) <https://www.amnesty.org/en/countries/middle-east-and-north-africa/palestine-state-of/report-palestine-state-of/> [Hereinafter “Amnesty Palestine Report 2019”].

<sup>5</sup> Jacob Burns, Palestinians speak out about torture in PA prison, Al Jazeera (September 27, 2017), <https://www.aljazeera.com/indepth/features/2017/09/palestinians-speak-torture-pa-prison-170906092016102.html>.

<sup>6</sup> Id.

- Detention and torture of 13-year-old boy in August 2018 after he fought with the son of a Hamas military commander.<sup>7</sup> In a Palestinian Authority television broadcast, the boy said “they hit with daggers and a whip. He broke my finger...When one finished or tired out another came and continued to hit me with a belt. They broke iron on my neck.”<sup>8</sup>
- Detention and torture of a mother of six from a Fatah-affiliated family in May 2018. She was released without being charged after 23 days. There was speculation the arrest was due to the Hamas-Fatah rivalry.<sup>9</sup>

According to HRW, Hamas uses broadly-worded offences such as “harming revolutionary unity” and “misuse of technology” to punish peaceful dissent. Between January 2018 and March 2019, Hamas had arbitrarily detained 24 people under these laws.<sup>10</sup> In addition, in March 2019, the Palestinian Independent Commission for Human Rights documented over 1000 Hamas arbitrary detentions of “we want to live” protesters who were not charged with any crimes.<sup>11</sup> Many of them were beaten and tortured.<sup>12</sup>

Palestinians accused of “collaborating” with Israel are particularly at risk of torture and extrajudicial killings.<sup>13</sup> In June 2018, an Israeli court ordered the PA to pay \$3.5 million in compensation to 51 victims and family members of Palestinians who were arrested and tortured by the PA between 1990 and 2003 for assisting Israeli security forces to prevent terror attacks. Torture included beatings, putting out cigarettes on their bodies, pulling out teeth, forcing them into painful positions and abusing their genitals.<sup>14</sup>

In May 2015, Amnesty International published a report accusing Hamas of summarily executing at least 23 Palestinians and subjecting dozens of others to arrest and torture during the summer 2014 Israel/Gaza conflict.<sup>15</sup> In April 2017, Hamas summarily executed by hanging three men convicted of collaborating with Israel.<sup>16</sup> In December 2018, a de-facto military court in Gaza sentenced six Palestinians to death for collaborating with Israel.<sup>17</sup> Earlier that year, a Hamas family in Gaza shot to death a family member accused of collaborating with Israel. That man had been held by Hamas for several months without trial before the militant group handed him over to his family. Media reported that Hamas welcomed the “execution of this criminal.”<sup>18</sup>

<sup>7</sup> Hamas fighters torture 13-year-old, because he hit son of Hamas military leader, PMW (August 29, 2018).

<sup>8</sup> Id.

<sup>9</sup> Bassam Tawil, *Palestinians: A Story You Have Not Heard in the West*, Gatestone Institute (June 5, 2018), <https://www.gatestoneinstitute.org/12422/palestinians-gaza-human-rights>.

<sup>10</sup> *Palestine: No Letup in Arbitrary Arrests, Torture*, Human Rights Watch (May 29, 2019), <https://www.hrw.org/news/2019/05/29/palestine-no-letup-arbitrary-arrests-torture>.

<sup>11</sup> Id.

<sup>12</sup> Omar Shakir, *Another Brutal Crackdown by Hamas in Gaza: Beatings & Arrests of Rights Defenders, Journalists, Demonstrators Reflect Systematic Practice*, Human Rights Watch (March 20, 2019), <https://www.hrw.org/news/2019/03/20/another-brutal-crackdown-hamas-gaza>; Amnesty Palestine Report 2019, *supra* note 4.

<sup>13</sup> PA ordered to pay \$3.5 million compensation to tortured ‘collaborator’ prisoners, *Times of Israel* (June 29, 2018), <https://www.timesofisrael.com/pa-ordered-to-pay-3-5-million-compensation-to-tortured-collaborator-prisoners/>.

<sup>14</sup> Id.

<sup>15</sup> Hamas tortured and killed Palestinian ‘collaborators’ during Gaza conflict – new report, Amnesty International (May 27, 2015), <https://www.amnesty.org.uk/press-releases/hamas-tortured-and-killed-palestinian-collaborators-during-gaza-conflict-new-report>.

<sup>16</sup> *Palestine: Hamas executes three civilians tried in Gaza military courts*, Amnesty International (April 6, 2017), <https://www.amnesty.org/en/latest/news/2017/04/palestine-hamas-executes-three-civilians-tried-in-gaza-military-courts/>.

<sup>17</sup> AFP, Hamas court sentences six to death for ‘collaborating’ with Israel, *Arab News* (December 3, 2018), <https://www.arabnews.com/node/1414851/middle-east>.

<sup>18</sup> AFP, Gaza family kills member who allegedly acted as Israeli informant, *The Guardian* (January 19, 2018), <https://www.theguardian.com/world/2018/jan/19/gaza-family-kills-member-who-acted-as-israeli-informant>.

## 2. PA and Hamas due process violations (ICCPR Article 14)

Both the PA and Hamas are known to violate due process and fair trial guarantees.<sup>19</sup> For example, the PA frequently fails to promptly charge defendants. Furthermore, the judiciary is subject to pressure from the security agencies and the executive.<sup>20</sup> Palestinian civil society groups have complained about executive interference in the judiciary.<sup>21</sup>

Hamas due process violations include: warrantless arrests, failure to inform families promptly of detainees' whereabouts, torture, trials of civilians in military courts, and denial of access to a lawyer.<sup>22</sup> Human Rights Watch has called for urgent reform of Hamas's criminal justice system.

Between Hamas's 2007 takeover of Gaza and May 2016, Hamas had executed at least 46 people, most without any judicial process. Of those that received judicial process, most were tried in military courts where due process is not respected.<sup>23</sup> In May 2016, when Hamas had declared that it would carry out a number of executions, the Office of the UN High Commissioner for Human Rights issued a statement that it had "serious doubts as to whether capital trials in Gaza meet these [scrupulous fair trial] standards."<sup>24</sup>

In April 2017, Hamas executed three suspected collaborators, who were convicted in unfair proceedings in military courts according to Amnesty International.<sup>25</sup> Palestinian human rights groups in Gaza regard military courts as illegitimate and refuse to represent detainees before such courts.<sup>26</sup> The High Commissioner's Office criticized the trials for violating international law by trying civilians in military courts and added that the trials "did not appear to meet international fair trial standards."<sup>27</sup>

In light of the foregoing, United Nations Watch urges United Nations officials, including UN Human Rights Council Special Procedures as well as UN Member States, to demand accountability from the PA and Hamas for their international law violations against Palestinians.

<sup>19</sup> Two Authorities, One Way, Zero Dissent, *supra* note 1.

<sup>20</sup> United States of America (U.S.) Department of State, Bureau of Democracy, H.R. and Lab., 2018 Country Reports on Human Rights Practices: Israel, the West Bank and Gaza (March 11, 2020), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/israel/west-bank-and-gaza/>.

<sup>21</sup> See, e.g., Position Paper by Human Rights Organizations' on Independence of the Palestinian Judicial System, Al-Haq (August 12, 2020), <http://www.alhaq.org/advocacy/17221.html>.

<sup>22</sup> Gaza: Arbitrary Arrests, Torture, Unfair Trials, Human Rights Watch (October 3, 2012), <https://www.hrw.org/news/2012/10/03/gaza-arbitrary-arrests-torture-unfair-trials>.

<sup>23</sup> Palestine: Hamas Should Halt Executions, Human Rights Watch (May 31, 2016), <https://www.hrw.org/news/2016/05/31/palestine-hamas-should-halt-executions>.

<sup>24</sup> Comment by the Spokesperson for the UN high Commissioner for Human Rights, Rupert Colville, on possible imminent executions in Gaza, Office of the UN High Commissioner for Human Rights (OHCHR) (May 25, 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20012&LangID=E>.

<sup>25</sup> Palestine: Hamas executes three civilians tried in Gaza military courts, Amnesty International (April 6, 2017), <https://www.amnesty.org/en/latest/news/2017/04/palestine-hamas-executes-three-civilians-tried-in-gaza-military-courts/>.

<sup>26</sup> State of Palestine: Authorities Must End Arbitrary Detention of Critics Amid Coronavirus Outbreak, Amnesty International (May 6, 2020), <https://www.amnesty.org/download/Documents/MDE2122482020ENGLISH.PDF>.

<sup>27</sup> Press briefing note on Syria and Gaza, OHCHR (April 7, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21492&LangID=E>.