

# ARTICLE 15 COMMUNICATION

15 July 2016

*On 1 January 2015, the Government of Palestine lodged a declaration under article 12(3) of the Rome Statute accepting the jurisdiction of the International Criminal Court (ICC) over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014". On 2 January 2015, the Government of Palestine acceded to the Rome Statute by depositing its instrument of accession with the UN Secretary-General. The Rome Statute entered into force on 1 April 2015.*



## **The Situation in Palestine before the ICC: Acts of Torture by Palestinian Authority Security Services**

### **Submission by:**

The Arab Organisation for Human Rights in the UK

The International Forum for Democracy and Human Rights

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## 1. Introduction

1. The purpose of this report is to invite the Office of the Prosecutor (“OTP”) of the International Criminal Court (“ICC”) to examine, under Article 53 of the Rome Statute of the ICC, whether there is a reasonable basis upon which to proceed with an investigation into the sustained and systematic use of Torture by the Palestinian Authority, thereby constituting crimes against humanity due to its widespread or systematic use against the civilian population, and calls upon the Prosecutor to immediately open a preliminary examination pursuant to Article 15(1) of the Statute with a view to opening a full investigation.
2. It is hereby requested that the Prosecutor opens a preliminary examination independent of the ongoing review of the situation in Palestine on the basis that the allegations presented in this Communication are distinct from the matters already under review.
3. In submitting this Communication, it is noted that the acts alleged remain ongoing and may be considered a State Policy due to its widespread or systematic use and that the perpetrators are members of the Palestinian Authority Security Services. It is further alleged that members of the Judiciary are complicit to the extent that once seised of the torture allegations, orders for detention are extended without any inquiry into the allegations.
4. Further, it is of particular note, that the human rights advocate in the West Bank, Tareq Abid Daoud Abu Zeid, who has taken statements from a large number of victims during the course of our investigations was arrested on 16 May 2016 and held in custody for over 30 days whereby he was also subjected to acts of torture lasting several days. His laptop and documents relating to our investigations were seized.
5. This Communication will analyse how the case at issue fulfils the requirements under the Rome Statute for the opening of a formal investigation, particularly that:

- (i) The Court has temporal, territorial and subject-matter jurisdiction to investigate and prosecute the alleged incident, as there is a reasonable basis to believe that it can be constitutive of crimes against humanity as per Article 7(1)(e), (f), and (k);
  - (ii) The case satisfies the admissibility criteria;
  - (iii) Due to the widespread or systematic nature of the allegations the gravity threshold is met;
  - (iv) The principle of complementarity is met by virtue of the fact that the detainees who are the victims of torture have been brought before judges who have extended their detention notwithstanding allegations of torture being raised. Second, considering that Mr. Tareq Abid Daoud Abu Zeid, tasked with investigation these matters in the West Bank, was arrested and tortured there is no credible basis for believing that these matters can and will be investigated at the national level; and
  - (v) It is clearly in the interests of justice for these matters to be investigated by the ICC Prosecutor.
6. The ICC is entitled to investigate and prosecute credible allegations of arbitrary arrest, detention and ill-treatment that attains a level of severity that satisfies the definition of torture under the Rome Statute and the Torture Convention, as it satisfies all the jurisdictional requirements set out in Article 12 of the Rome Statute:
- (a) The ICC has *temporal jurisdiction* to try crimes committed on Palestinian territory from 13<sup>th</sup> June 2014 onwards. The issues under consideration consist of a continuous course of conduct that has been taking place within the Occupied Territories, and in any event, since the 13 June 2014 and to the present day. Therefore, the ICC has temporal jurisdiction over the matters complained of;

- (b) The Court has subject-matter jurisdiction over the incident on the basis of Article 7(1)(e), (f), and (k) of the Statute. It could be reasonably believed that the incident at issue represents a clear violation of international criminal law, humanitarian law and international human rights law.
- (c) The ICC has territorial jurisdiction over the incident, as the effects and the result of the allegedly criminal conduct took place on the territory of Palestine, more specifically in the West Bank.
7. The incidents analysed in this report are not inadmissible under Article 17 of the Rome Statute, as there are neither domestic nor international investigations that could lead to the prosecution of those who are likely to hold greater criminal responsibility for the reasons already detailed above. It is of further note that the alleged perpetrators are all members of the Palestinian Security and Intelligence Services and operate under the authority of the Palestinian Authority.
8. It is submitted that the allegations suggest direct involvement by the Palestinian Authority, and further, the incidents complained of have been undertaken with the tacit or overt approval of senior relevant members of the Palestinian Authority.
9. On that basis, it is submitted to be clear, that there is no intention on the part of the Palestinian Authority to intervene, investigate or otherwise bring an end to the unlawful practices apparent.
10. With regards to Article 17(d), considering the scale, nature, manner of the alleged criminal conduct and its permanent and serious impact on the victims, the incident analysed in this report is of sufficient quantitative and qualitative gravity so as to justify further action by the ICC.
11. Finally, there are no reasons to believe that an investigation of the reported incident would not serve the interests of justice.

## 2. Jurisdiction

### 2.1. Temporal

12. The International Criminal Court has temporal jurisdiction over the incidents described in this report, as both the acts under consideration and their effects took place after the entry into force of the Rome Statute in 2002 and the accession of the State of Palestine to this treaty.
13. The State of Palestine deposited the instruments of accession to the Rome Statute on 2 January 2015, with effect on 1<sup>st</sup> April 2015. With this accession, the State of Palestine became the 123rd State Party to the Rome Statute of the International Criminal Court.
14. The Secretary-General of the United Nations, acting in his capacity as depositary, communicated the decision to the President of the Assembly of States Parties to the Rome Statute and announced that in accordance with Article 126(2) of the Rome Statute,<sup>1</sup> the Statute would enter into force for the State of Palestine three months later, on 1<sup>st</sup> April 2015.
15. The Government of the State of Palestine additionally accepted the ICC jurisdiction from 13<sup>th</sup> June 2014 by means of a declaration under Article 12(3) of the Rome Statute, which was accepted by the ICC Registrar. Consequently, the Court has temporal jurisdiction to judge international crimes committed after 13<sup>th</sup> June 2014 either by Palestinian citizens or citizens of other states within the territory of Palestine.
16. Consequently, as the relevant actions and omissions took place after Palestine's accession to the Rome Statute, the International Criminal Court has temporal jurisdiction to investigate and prosecute the case at issue.

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<sup>1</sup>United Nations Secretary-General (2015): "Rome Statute of the International Criminal Court, State of Palestine: Accession", UN Doc C.N.13.2015.TREATIES-XVIII.10 (Depository Notifications), available at: <https://treaties.un.org/doc/Publication/CN/2015/CN.13.2015-Eng.pdf>, last accessed: 22nd December 2015.



## 2.2. Territorial

17. According to Article 12.2(a) of the Rome Statute, the ICC has jurisdiction with respect to crimes occurring on the territory of a State that has accepted the jurisdiction of the Court.
18. The question that immediately derives from this precept is in which circumstance it is considered that a crime has ‘occurred’ in a country. The territorial jurisdiction of the ICC has been a matter of wide legal discussion, and one on which the Court has not yet established a formal interpretation.
19. Experts defend an interpretation consistent with the principle of ubiquity. According to this principle, a crime is understood to have been committed in either the territory in which the criminal conduct took place, or where its results appeared. In this spirit, in the article “*The Territorial Jurisdiction of the International Criminal Court — A Jurisdictional Rule of Reason for the ICC?*”, Michail Vagias proposed applying Francis Mann’s theories of territorial jurisdiction in international law to the International Criminal Court.
20. Following this line of thought, Vagias argues that the Court shall have territorial jurisdiction “*when a crime is sufficiently closely connected to the territory of a State Party*”<sup>2</sup>, when the State Party has “*a genuine link, a sufficiently strong interest*” with the crime<sup>3</sup> that could justify the ICC’s competence. He maintains that Article 12 of the Rome Statute should be interpreted “*to the effect that the Court has jurisdiction for crimes ‘reasonably connected’ to State Party territory*”<sup>4</sup>. This theory has been followed by a wide range of jurisdictions in comparative law, including by British and German courts, the latter requiring a “*reasonable nexus*”<sup>5</sup> between the crime and the territory of the State. The Supreme Court of Canada also followed this interpretation in *Libman v. The Queen*,<sup>6</sup> resolving that Canada

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<sup>2</sup> Vagias, M. (2012): “The territorial jurisdiction of the International Criminal Court - a jurisdictional rule of reason for the ICC?”, *Netherlands International Law Review*, LIX, p. 45.

<sup>3</sup> *Idem*, p. 49

<sup>4</sup> *Idem*, p. 54.

<sup>5</sup> *Idem*, p. 53.

<sup>6</sup> *Libman v. The Queen*, [1985] 2 SCR 178, 200 (Supreme Court of Canada).

had territorial jurisdiction over a case in which only the result of a particular fraud (the deprivation of property) took place in Canada, as the country had “a ‘*real and substantial link*’ to the case”<sup>7</sup>.

21. It has also been argued that Article 12 of the Rome Statute included the term “*conduct*” to determine its territorial jurisdiction, and thus it would only have jurisdiction if the criminal conduct of the crime, and not its results, occurred in a State Party.
22. Jean-Baptiste Maillart, nevertheless, disputed this strict and narrow interpretation of the territorial jurisdiction of the ICC, as it would tremendously limit the possibility of the ICC to provide justice to the victims from State Parties and would lead to absurd conclusions.
23. He uses an illustrative example to explain his position: if a missile is launched from Syria, which is not a State Party, and explodes in Jordan, which ratified the Rome Statute, would the ICC understand that the crime did not occur in Jordan? Is not Jordan “*sufficiently closely connected*” with the crime and have “*a genuine link*” to it? All the victims would belong to that State and the destruction would take place in that country, so following the principle of ubiquity and the most basic legal logic and rationality, the crime ‘occurred’ in Jordan.
24. In order to avoid this irrational outcome, Jean-Baptiste Maillart advocated for an expansive interpretation of the term “*conduct*”, based on the “*constructive conduct theory*” developed during the 19th century:

*“It aims at connecting in time the conduct and the result of a crime. Pursuant to this theory, criminal conduct lasts until the result takes place. In this way, from a *ratione loci* point of view, the conduct is moving and not static as it is with the traditional interpretation”<sup>8</sup>.*

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<sup>7</sup> Vagias, M. (2012): “The territorial jurisdiction of the International Criminal Court - a jurisdictional rule of reason for the ICC?”, *Netherlands International Law Review*, LIX, p. 52, citation 40.

<sup>8</sup> Maillart, J. B. (2014): “Article 12(2)(a) Rome Statute: The Missing Piece of the Jurisdictional Puzzle”, *EJIL: Talk! Blog of the European Journal of International Law*, available at: <http://www.ejiltalk.org/article-122a-rome-statute-the-missing-piecc-of-the-jurisdictional-puzzle/>, last accessed: 23rd December 2015.



25. This line of argument is advanced in order to address the eventuality that the counter-argument is raised that the crimes, namely the arrests, may have occurred outside the jurisdiction of the State of Palestine. It is submitted that all the arrests occurred in the West Bank and the detainees are held in the West Bank. Therefore, there can be no suggestion that the ICC has territorial jurisdiction. Nevertheless, it is argued, in the alternative, that even if the initial arrest had been carried out in an area outside the territorial control of the State of Palestine, the impugned acts, namely arbitrary detention and torture, can occur on the territory of the State of Palestine.
26. In this vein, this Communication submits that the ICC has territorial jurisdiction over the case presented on the basis of Article 12 of the Rome Statute, given that Article 12(1) reads “*A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect of the crimes referred to in Article 5.*”<sup>9</sup>

### **2.3. Substantive: Crimes against Humanity**

27. According to Article 5(1) of the Rome Statute, the ICC has jurisdiction to judge “*the most serious crimes of concern to the international community as a whole*”, namely genocide, crimes against humanity, war crimes and the crime of aggression.
28. According to Article 15(4) of the Rome Statute, in order to commence an investigation, the Pre-Trial Chamber of the ICC needs to assess whether there is a “*reasonable basis to proceed with an investigation*”, and whether the case “*appears to fall within the jurisdiction of the Court*”. In other words, that there is a reasonable basis to believe that a crime falling within the substantive jurisdiction of the Court has been or is being committed.
29. The definition of crimes against humanity is contained within Article 7(1) of the Statute:

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<sup>9</sup> [https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-bc94-0a655eb30e16/0/rome\\_statute\\_english.pdf](https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-bc94-0a655eb30e16/0/rome_statute_english.pdf)

*“For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:*

- (a) Murder;*
- (b) Extermination;*
- (c) Enslavement;*
- (d) Deportation or forcible transfer of population;*
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*
- (f) Torture;*
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;*
- (i) Enforced disappearance of persons;*
- (j) The crime of apartheid;*
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”.*

30. This definition contains four Elements. First, a contextual element: the existence of a “*widespread or systematic attack*”; second, a subjective element, the attack being directed towards “*any civilian population*”; third, the *actus reus*, a list of prohibited acts; and fourth, the *mens rea*, the mental element, requiring ‘knowledge’ of the attack.
31. This Communication submits that the intentional acts of arbitrary arrest, torture, and other ‘inhumane acts of a similar character’ are constitutive of crimes against humanity, as the conduct fulfils the four elements required by Article 7 of the Rome Statute.

### **2.3.a. Contextual element: the existence of a widespread or systematic attack.**

32. The definition of crimes against humanity requires the existence of an attack against a civilian population, which excludes isolated or sporadic murderous acts that are unconnected and that fall naturally under the domestic criminal jurisdiction. This attack, in addition, needs to be either widespread or systematic. The tables contained in this Communication, the list of victims and the evidence attached on the portable hard drive demonstrate that these matters are neither isolated or sporadic and as explained later in this Communication are part of a State or organizational policy or plan.
33. This Communication contends that the Security and Intelligence Forces acting on behalf of the Palestinian Authority have engaged in a common policy or plan of the use of torture against those individuals who are held in custody. In *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, the ICC Pre-Trial Chamber I defined the term ‘systematic’ as:

*“either an organized plan in furtherance of a common policy, which follows a regular pattern and results in a continuous commission of acts or as ‘patterns of crimes’ such that the crimes constitute a ‘non-accidental repetition of similar criminal conduct on a regular basis’”* (emphasis added).

34. The definition of the term ‘attack’ follows the same lines, requiring a degree of policy or organisation, in order to exclude random acts of violence from the definition of crimes against humanity.
35. According to Article 7(2)(a) of the Rome Statute the term ‘attack’ can be understood as the multiple commission of acts “*pursuant to or in furtherance of a State or organizational policy*”.
36. Moreover, in *Prosecutor v Jean-Pierre Bemba Gombo*, the Pre-Trial Chamber II clarified that the policy behind the attack “*need not be formalised*”, but reflected from the pattern of acts.
37. This Communication demonstrates through independent evidence that there is a discernible policy or, at least, some degree of systematic organization in the attacks directed by the Palestinian Authority security and intelligence services, with the overt use of the judiciary, over recent years given that the acts complained or cannot be said to be either isolated or sporadic.
38. In order to understand the policy of the Palestinian Authority, is appropriate to understand the recent history and context of the position.

#### **Context of the Action: The Security Services of the Palestinian Authority**

39. Following the Oslo Accords of 1994, the Palestinian Authority Security Services developed increased powers. Much of this being used to arrest those suspected of involvement in what can be loosely referred to as “anti-Israel occupation activities”.
40. Although there was an abject failure on the part of Israel to comply with its obligations under the ‘Accords’, the Palestinian Authority Security Services showed themselves to be willing to act in accordance with their obligations as per the secret security-related annexes of the Accords which make it incumbent upon the Palestinian Authority to work to protect Israel’s security.

41. A Security Council, comprising Israeli, Palestinian, European, and U.S. members, was established in 2005 with the logistical and training support of Western donors. All trainees are subject to the approval of the U.S. and Israeli Security Services.
42. Training concerning the conduct of interrogations, arrests, and the breaking up of protests was offered by the European Union Police Force, from their permanent office in Ramallah.
43. Further, it is suggested that Western intelligence services offered training to their Palestinian counterparts in exchange for security information.
44. Following an intra-Palestinian rift in 2007, the numbers of Palestinians arrested increased significantly, and they now number in the thousands.
45. During this same period, the systematic use of torture can be seen to have developed, resulting in the death of at least 6 Palestinian civilians.<sup>10</sup>
46. The Palestinian Authority refused to investigate the circumstances surrounding the deaths, and took no steps to bring those responsible to justice,<sup>11</sup> further, it continued to deny that torture was ever used.
47. The issue is one that historically has attracted the attention of significant international monitoring bodies, in a 1996 report, Amnesty International reported:

*“The torture of political and other detainees is in danger of becoming systematic in detention centres in ... the West Bank. During the period June 1994 to June 1995, the first year of the Palestinian Authority, those reported to have suffered torture were usually those accused of cooperating with the Israeli security services or detainees accused of certain common law offences, especially those alleged to have been involved in drug-dealing or prostitution... Within one month after the end of Israeli rule over*

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<sup>10</sup> <http://pchgaza.org/en/wp-content/uploads/2016/03/Crimes-of-Torture-in-Palestinian-Prisons.pdf>

<sup>11</sup> Ibid

*the main towns in the West Bank in September 1995, occasions of beatings and torture of Palestinians were being reported.*

*Amnesty International has received substantive and consistent testimonies alleging torture by most branches of the Palestinian security forces including the police, the Preventative Security Service (PSS), the mukhabarat (Intelligence), the istikhbarat (Military Intelligence), Force 17, and the babriyya (Naval Police). [...]*

*Methods of torture used include: burning with electric elements and cigarettes; shabeh (position abuse) and sleep deprivation; suspension from a hook in the ceiling; beating with cables, hoses, sticks or hands; kicking; dropping molten plastic on the body; and threats and insults.*

*The fact that the complaints of the individual against those who have committed acts of torture are almost invariably ignored has created an atmosphere of impunity which has allowed torture to increase. The Palestinian Authority itself, at the highest level, has so far failed to make strong public statements condemning torture, thus giving the impression that torture is condoned and perhaps even encouraged by many of the authorities. [...]*

*At least nine people have died in the custody of the Palestinian security services in circumstances where torture appears to have caused or contributed to their deaths. The aftermath of the deaths have been marked by official silence and cover ups. [...]*<sup>12</sup>

48. International pressure increased however, and in October 2009, the Palestinian Authority finally admitted that torture had been used. It went on to issue a decree that sought to ban all forms of torture.<sup>13</sup> The decision has not however been implemented, and those security services continue to use torture on detainees.

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<sup>12</sup> Amnesty International (1996) "A Synopsis of: Palestinian Authority. Prolonged political detention, torture and unfair trials"

<sup>13</sup> [http://www.palwatch.org/pages/news\\_archive.aspx?doc\\_id=12785](http://www.palwatch.org/pages/news_archive.aspx?doc_id=12785)



49. Again, international monitoring bodies have noted the ongoing use of methods of torture, and the refusal of the Palestinian Authority to address it, despite the rhetoric.

50. In 2010, Human Rights Watch, in its report “West Bank: Reports of Torture in Palestinian Detention” notes:

*“The Palestinian Authority should promptly investigate the alleged torture of two detainees over the past month in a Jericho prison and ensure that officials responsible for the abuse are prosecuted, Human Rights Watch said today. These two cases are among more than 100 allegations of torture registered so far this year with the Independent Commission for Human Rights (ICHR), the official Palestinian human rights ombudsman, against security services in the West Bank”. [...]*

*“The reports of torture by Palestinian security services keep rolling in,” said Joe Stork, deputy Middle East director at Human Rights Watch. “President Abbas and Prime Minister Fayyad are well aware of the situation. They need to reverse this rampant impunity and make sure that those responsible are prosecuted.” [...]*

*Human Rights Watch said that the PA has been extremely lax in prosecuting security officials for torture and ill-treatment of detainees. In the only known prosecution, a Palestinian military court in July acquitted five General Intelligence Service officers from Hebron who allegedly tortured Haitham Amr to death in June 2009. Palestinian detainees registered 106 complaints of torture with the human rights commission from January through September 2010. Since June 2007, according to the commission, PA security services have allegedly been responsible for the deaths in custody of eight detainees in the West Bank”<sup>14</sup>.*

51. Despite the declaration in 2009, and the continued criticism of the use of torture by the Palestinian Authority Security Services, it is clear that it was a trend that was still to continue.

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<sup>14</sup> <https://www.hrw.org/news/2010/10/20/west-bank-reports-torture-palestinian-detention>

52. In 2015, at least 1,392 Palestinians from various parts of the West Bank were arrested.<sup>15</sup> Another 323 were summoned for questioning<sup>16</sup> before being released that same day.
53. On 14 separate occasions the Palestinian Authority Security Services used live bullets to intimidate Palestinians, in one instance injuring a 12-year old child.
54. On at least 43 separate occasions, Palestinian citizens were brutally beaten, and one hit by a car during the course of the arrest.
55. The security services have also held four Palestinians in custody for no other reason than seeking to force 'wanted' relatives to hand themselves in.
56. Most recently, Addameer Prisoner Support and Human Rights Association on 26 June 2016 issued the following:

*“On the occasion of International Day in Support of Victims of Torture, Addameer calls for an end to all practices by the Palestinian Authority that amount to torture and other Cruel, Inhuman or Degrading Treatment. In 2014, the Palestinian government signed and ratified several international conventions on the protection of human rights, including the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment (CAT). Thus, the Palestinian Authority became responsible for fulfilling its obligations under the convention by taking “effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” in accordance with the Convention.”<sup>17</sup>*

57. The salient points to consider therefore is that there have been credible reports of torture for some 20 years, that the Palestinian Authority have all but acknowledged this by seeking to formally outlaw its practice, and yet, it is still clearly rife within those groups under the control of

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<sup>15</sup> <http://aohr.org.uk/index.php/en/all-reports-2/5839-in-the-service-of-israeli-occupation-palestinian-authority-security-forces-arbitrary-arrests-and-torture11.html>

<sup>16</sup> Ibid

<sup>17</sup> <http://www.addameer.org/news/bone-their-bone-torture-and-ill-treatment-palestinian-security-forces>

the Palestinian Authority and law enforcement agencies and the courts continue to turn a blind eye to what is clearly a systematic practice.

58. Further, having regard to those credible and recent international reports, there is complete impunity for the perpetrators of such acts.

### **The Palestinian Security Apparatuses**

59. The Palestinian Authority has six active security apparatus operating in the Occupied Territories in accordance with the Palestinian National Security Forces Law No. 8 for the year 2005.<sup>18</sup> This legislation merged all security divisions into three general branches:

- a. **National Security** – Under the direct authority of the President and comprises National Security, Military Intelligence, and the Presidential Guard;
- b. **Interior Security** – Under the direct authority of the Minister of Interior, and comprises the Preventative Force, the Police, and Public Security; and
- c. **General Intelligence** – Under the authority of the PA President<sup>19</sup>.

60. Arrests and Summons in 2015 were carried out by all of the Palestinian Authority Security Services, despite the diverse nature of their duties and functions.

61. The Preventative Security Force are alleged to have committed the highest number of violations, at 949, followed by General Intelligence at 740, National Security on 17 occasions, Military Intelligence 6, and the Special Police and Presidential Guard on 3 occasions.

62. It is important to note that members of both the Police Force and National Security (all of whom have been trained by the EU), accompany security forces on all night raids, and when they seek to disperse protests.<sup>20</sup>

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<sup>18</sup> <http://aohr.org.uk/index.php/en/all-reports-2/5839-in-the-service-of-israeli-occupation-palestinian-authority-security-forces-arbitrary-arrests-and-torture11.html>

<sup>19</sup> Ibid

## **Duties and Responsibilities:**

63. **Preventative Security Force** – The PSF is part of the interior branch, and is commanded by the Minister of the Interior. The Director of the Force and his deputy are appointed by presidential decree, upon the recommendations of the Minister of the Interior and the Director of Internal Security. The current director is Major General *Ziyad* Hab al-Rih from Jenin. Most of its officers are Fatah members. The Force has more than 18 prisons and centres all over the West Bank.
64. **General Intelligence Services** – GIS are subordinate to the President. Their function and jurisdiction is pursuant to the provisions of the law under the Presidency, and the command of its ‘Head’, who also issues the decision necessary for the management of its work and the regulation of its affairs. The Director of General Intelligence Services is appointed by way of Presidential Decree. The current Director is Major General Majid Faraj from Al-Duheisha refugee camp in Bethlehem. The Services boast 18 prisons and centres throughout the West Bank.
65. **Military Intelligence Services** – Along with the Military Police, Military Intelligence carries out both internal and external duties. It was established in 1994, shortly after the birth of the Palestinian Authority. Major General Zakaria Musleh is the current Director.
66. **National Security Forces** – Headed by Major General Nidal Abu Dukhan since 2012, the NSS is the Palestinian Authority’s closest entity to an Army. It is mandated to protect Palestinian civilian security, but instead, it plays a major role in providing security services with logistical support during operations and the actions to disperse protests.

## **Conclusion**

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<sup>20</sup> Ibid

67. The use of torture against those detainees in the custody of the PA security services cannot be argued to be isolated given the frequency with which it is used, and further, given the period of time over which it has occurred.
68. Given this frequency and time period, it is clear that the use of torture forms part of a ‘policy’ amongst all Palestinian Authority Security Services, and further, that the same is nothing other than systematic.

### **2.3.b Actus reus: the prohibited acts**

#### *Crimes Against Humanity under the Statute*

69. Article 7(1) of the Rome Statute includes various *actus reus* for the commission of a crime against humanity that could be understood to have been committed in the case at issue.
70. It is submitted that the salient point to consider, is the definition of torture as per Article 7(2)(e) of the Rome Statute:

*“Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not preclude pain or suffering arising only from, inherent in or incidental to lawful sanctions”*

#### *Specific Incidents*

71. The reality, is that all those arrested by the Palestinian Authority Security Services are presently at risk of being tortured as evidenced by the data collated by various international monitoring bodies, including IHRC, as highlighted later in this document.
72. The OTP will however note the 18 documented incidents annexed to this submission.

73. It is not our intention to analyse each specific complaint annexed within the core submissions as this simply repeats the information annexed. It is however appropriate to draw attention to a modest selection of those complaints so that the generalised submissions can be put into context.

*Asem Jamil Ismail Ishtayah*

74. Ishtayah is a 22-year-old male from Nablus who recounts an incident that began on Friday 3 July 2015.

75. On that occasion intelligence officers attended his home seeking to arrest him, however, he was not present at the address at that time.

76. Ishtayah outlines how, as a result of his absence, family members were arrested in an effort to force him to hand himself in to the Palestinian Authority Security Services for questioning. A tactic wholly unlawful given that it clearly amounts to arbitrary detention, ill-treatment and collective punishment.

77. Ishtayah was eventually detained, and he recounts in his statement how he was subjected to various forms of torture, some mental, but the majority physical. The allegations set out in his statement clearly meet the legal test of torture in that it attains a level of severity as defined by the Convention and set out in the well established the jurisprudence of the UN Human Rights Committee and the European Court of Human Rights.

78. The violent actions he was subjected to i.e. being beaten, held in stress positions for prolonged periods, beaten with cables in such a way so as to cause extreme pain etc. cannot be said to be anything other than incidents or torture.

79. By way of setting out the definition of torture, ill-treatment amounts to torture only if the following four conditions have been met: (a) a positive act; (b) an act by a governmental official (or at least with the consent of); (c) an intentional act for one of the purposes explicitly listed in Article 1 of the Convention; and (d) infliction of severe pain or suffering. If it is established that



the treatment inflicted upon a suspect was an intentional act by agents of the State aimed at extracting a confession, it is satisfied that the ill-treatment complained of meets the first three criteria as mentioned above. One must then go on to consider the severity of the treatment. The European Court noted in *Ireland v. United Kingdom* (Eur. Court HR, judgment of 18 January 1978, Series A no. 25) that the distinction between ‘inhuman and degrading treatment’ and ‘torture’ derives principally from a difference in the intensity of the suffering inflicted and that a special stigma is attached to deliberate inhuman treatment causing very serious and cruel suffering. Moreover, the European Court has held that interrogation techniques used against detainees were held to be both inhuman and degrading, but a distinction had to be drawn between treatment that is ‘inhuman and degrading’ and treatment that may amount to ‘torture’. In *Selmouni v. France* (Eur. Court HR, judgment of 28 July 1999, Reports of Judgments and Decisions 1999-V, paragraph 92), the European Court noted that such treatment inflicted by state officials was of such a serious and cruel nature that it could only be described as torture. In *Selmouni* the applicant was interrogated by five police officers. He was repeatedly humiliated by racial taunts from the officers, made to kneel during questioning and punched, kicked, stamped upon, repeatedly struck with a baseball bat and truncheon and threatened with burns if he did not give a confession. The European Court held that such treatment amounted to torture for a number of reasons. Firstly, the applicant had received a number of blows, and whatever a person’s state of health, such intensity of blows will cause significant pain. Secondly, the applicant was repeatedly humiliated and threatened with further ill-treatment and it was reasonable for the applicant to suspect that such threats would be carried out. Finally, the European Court noted that this ill-treatment lasted for several hours and was not confined to any one period, thus aggravating the suspect’s mental pain and suffering. Consequently, irrespective of the suspect’s state of health prior to interrogation, such ill-treatment would cause ‘severe’ pain and suffering within the meaning of Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

80. The statement of Ishtayah regarding his treatment is of particular importance, given the exchanges that he recalls with his interrogators.
81. In particular, we refer to the admission by one interrogator who states “*I am operating under the supervision of Intelligence Services*”.
82. Further, Ishtayah recalls how he learned that the Director of Bethlehem Intelligence Services was visiting the centre, and that he entered the room where he was being tortured, and failed to raise any objection.
83. It is clearly evident therefore that the use of torture is known throughout the chain of command, and that given the lack of objection, it is approved either tacitly or overtly.
84. Ishtayah states how he was visited by ICHR twice during his incarceration and that he made his complaint of torture at that stage.
85. Further, it is important to note that during one meeting with a representative of the ICHR, the Director of Intelligence Services and the Chief Interrogator were present in the room.
- Mohamed Shukri Ahmed Awad*
86. Awad is a 29-year-old male, who was detained on 5 May 2015.
87. Some days after arrest Awad recounts how he was forced into stress positions causing him to become physically exhausted, this being exacerbated as he was on hunger strike in protest of what he states was unlawful detention.
88. The first issue to note, is that having been assessed at hospital, he was subsequently refused the medication that the nurse had proscribed.
89. It is an established principle of law that the denial of medical care will, in certain circumstances, constitute torture.

90. Having been taken by to his place of detention, he was again put into stress positions, causing intense pain, and subjected to continual sleep deprivation.
91. These acts were interspersed with questioning in an attempt to force a confession.
92. On 6 June 2015 Awad was led to believe that he was going to be released, however, he was simply moved to a different place of detention where the physical assaults intensified.
93. The detention, and torture continued up until 18 June 2015 whereupon Awad was released from custody.

*Fadi Hamad Ahmed Ghanem*

94. Ghanem is a 31-year-old male, arrested on 16 August 2015, and detained for 22 days.
95. Ghanem was subjected to acts of torture almost immediately; his feet were beaten with plastic hose, he was punched and kicked and prevented from sleeping.
96. Importantly, Ghanem recounts how he was advised by senior intelligence officers that they had been authorised to use torture as a means of extracting a confession, thus evidencing that decisions were being taken at a higher level within the command structure, and therefore suggesting that the use of such techniques formed part of a policy.
97. The common theme throughout, other than the evidenced fact that they were subjected to acts that can only be considered to be torture, is that in each case there exists evidence of a clear policy, and that policy being known of throughout the entire command structure.
98. They cannot be suggested to be isolated incidents, given the manner in which a number of individuals were involved at differing levels of seniority, and at different detention facilities.
99. The use of torture must be viewed as being widespread, with each case evidencing common techniques being used, and thus interpreted as part of an organised and systematic State policy.

### **2.3.d Mens rea: Intent**

100. According to the ICC Elements of Crimes, the mental element of ‘inhuman acts’ constituent of crimes against humanity is confirmed by two factors:
- a. The perpetrator was aware of the factual circumstances that established the character of the act; and
  - b. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.
101. The intent is evidenced in those three cases explored above, and in the remaining 15 other cases within those statements annexed.
102. The acts in question cannot be argued to have been interpreted as justified or as appropriate. Further, the fact that the Palestinian Authority purported to have outlawed the use of torture can leave the security services in no doubt as to the character of their actions in these cases.
103. Further, the comments of individual members of the security services as reported in those statements again evidence the widespread or systematic nature of the offences.

### 3. Admissibility

#### 3.1. Complementarity

94. The principle of ‘Complementarity’ is one of the foundational principles of the Rome Statute system. It was envisioned at the outset that the Court would not simply be one of ‘self-standing’ in nature, but rather a “*comprehensive system of international justice, where the duty on States Parties to investigate and prosecute international crimes is clearly reinforced*”.

95. It therefore follows, that the ICC is seen as a court of ‘last resort’ and will only seek to intervene, where national jurisdictions have failed to address relevant international crimes, or show themselves as being unwilling to investigate and address matters within their national jurisdiction.

96. The issue of complementarity is dealt with at Article 17 of the Rome Statute and rules that a case is inadmissible where:

*(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;*<sup>21</sup>

97. It is respectfully submitted that the Palestinian Authority do not satisfy either the element of investigation or prosecution, and as per the reports of Human Rights Watch *et al* referred to earlier in this submission, there is a clear principle of impunity for those who commit such acts under the guise of the formal security services.

98. It is further noted that there are two matters that require consideration when dealing with the issue of complementarity. First, those persons detained under a ‘lawful order’ have been presented before a judge or other judicial officer. That judicial officer, when repeatedly presented with credible allegations of torture have simply dismissed the complaints and rubber stamped orders for detention or extension of custody. It is incumbent upon judicial officers to investigate any and all allegations of ill-treatment once persons are brought under their care. If victims of ill-

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<sup>21</sup> Sub-paragraph (d) is not dealt with here, as the issue of gravity is considered in the subsequent section.

treatment and torture fail to receive protection of law by the very judicial officers and officials that are tasked with upholding the rule of law they are complicit in such practices. Where the courts merely act as an extension of the Executive and the Security Services and allow such treatment to continue then impunity prevails. There is therefore no true intent to address the state practice and there can be no accountability at the national level. In that vein, the Palestinian Authority, its law enforcement, Security Services and Courts should not be afforded further opportunity to address that which they have failed to do in breach of its obligations as a State Party to the Rome Statute.

99. Second, and importantly, Tareq Abid Daoud Abu Zeid who had been tasked with investigating the matters contained in this Communication, was arrested by the Palestinian Authority Security Services and subjected to torture himself. This speaks volumes of the intent of the Palestinian Authority to address this critical issue.
100. On 4 March 2015, the Independent Commission for Human Rights (ICHR) issued a press release having being prevented from visiting Enad Muhammad Khalil, a Palestinian citizen being held in Ramallah Rehabilitation and Correction Centre:

*“ICHR denounces the decision of the Palestinian Police Agency prohibiting a visit to Enad Muhammad Khalil, a detainee in Ramallah Rehabilitation and Correction Center since 15/2/2015, on charges of attacking a policeman while on duty. ICHR has issued a position statement when that incident happened last February 25.*

*On 25 February 2015, ICHR addressed the Police Chief to allow its staff to visit the previously mentioned inmate, on the basis of receiving allegations from his relatives that he was subjected to beating and torture and to check on his health situation, but ICHR’s staff did not receive any answer’<sup>22</sup>.*

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<sup>22</sup> <http://www.ichr.ps/en/2/4/1331/The-Independent-Commission-for-Human-Rights-Denounces-being-Prohibited-from-Visiting-Enad-Muhammad-Khalil-Detained-at-Ramallah-Rehabilitatio-The-Independent-Commission-for-Human-Rights-Denounces-being-Prohibited-from-Visiting-Enad-Muhammad-Khalil-Detained-at-Ramallah-Rehabilitation-and-Correction-Center.htm?d=2015>



101. This is a position that has been maintained, so much so that the ICHR has received and documented 322 complaints or torture allegedly committed in the West Bank from June 2014 to May 2016:

Date	Complaints of torture received by the ICHR of Palestine in the West Bank	Comment
May 2016 <sup>23</sup>	16	“In the West Bank, 14 complaints were filed against the Police, one against the Preventive Security, and one against the General Intelligence. [...] According to complainants, several torture techniques were used, including Shabeh and beating with hands and feet and batons. Detained persons were also verbally abused”.
April 2016 <sup>24</sup>	23	In the West Bank, 19 complaints were filed against the Police, three against the Preventive Security, and one against the General Intelligence. [...] According to these complaints, several torture techniques were used, including Shabeh, beating with hands and feet and batons. Detained persons were also verbally abused”.
March 2016 <sup>25</sup>	11	Of these, six complaints were filed against the Police, three against the Preventive Security, and two against the General Intelligence [...] According to these complaints, Shabeh, beating with hands, feet and batons were used. Detained persons were also verbally abused and stripped of their clothes.
February 2016 <sup>26</sup>	11	9 complaints against the Police Agency and 1 complaint against the Preventive Security Agency as well as 1 against the General Intelligence [...] According to the complainants, these agencies used different patterns of torture, including tying in difficult position for a long time, punching, kicking, flogging, insulting, deprivation of sleep and stripping.
January 2016 <sup>27</sup>	9	5 complaints against the Police Agency and 4 complaints against the Preventive Security Agency

<sup>23</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: May 2016”, available at: <http://www.ichr.ps/en/2/5/1612/May-2016-Report-of-Human-Rights-Violations-May-2016-Report-of-Human-Rights-Violations.htm>, last accessed: 6<sup>th</sup> July 2016.

<sup>24</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: April 2016”, available at: <http://www.ichr.ps/en/2/5/1588/April-2016-Report-of-Human-Rights-Violations-April-2016-Report-of-Human-Rights-Violations.htm>, last accessed: 6<sup>th</sup> July 2016.

<sup>25</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: March 2016”, available at: <http://www.ichr.ps/en/2/5/1566/March-2016-Report-of-Human-Rights-Violations-March-2016-Report-of-Human-Rights-Violations.htm>, last accessed: 6<sup>th</sup> July 2016.

<sup>26</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: February 2016”, available at: <http://www.ichr.ps/en/2/5/1536/February-2016-Report-of-Human-Rights-Violations-February-2016-Report-of-Human-Rights-Violations.htm>, last accessed: 6<sup>th</sup> July 2016.

<sup>27</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: January 2016”, available at: <http://www.ichr.ps/en/2/5/1493/January-2016-Report-of-Human-Rights-Violations-January-2016-Report-of-Human-Rights-Violations.htm>, last accessed: 6<sup>th</sup> July 2016.

		[...] According to the complainants, these agencies used different patterns of torture, including tying in difficult position for a long time, punching, kicking, flogging, insulting, deprivation of sleep and stripping.
<b>December 2015<sup>28</sup></b>	13	9 complaints against the Police Agency; 3 complaints against the Preventive Security Agency; and 1 complaint against the Military Intelligence Agency [...] According to the complainants, these agencies used different patterns of torture, including tying in difficult position for a long time, punching, kicking, flogging, insulting, deprivation of sleep and stripping.
<b>November 2015<sup>29</sup></b>	17	14 complaints against the Police Agency; 1 complaint against the Preventive Security Agency; and 2 complaints against the General Intelligence Agency [...] According to the complainants, these agencies used different patterns of torture, including tying in difficult position for a long time, punching, kicking, flogging, insulting, deprivation of sleep and stripping.
<b>October 2015<sup>30</sup></b>	16	10 complaints against the police agency, 1 complaint against the preventative security, 2 complaints against the general intelligence agency [...] According to these complaints, different forms of torture were used by the said security services including punching, kicking, holding in difficult positions for a long time, beating with sticks, insulting, using foul language and sleep deprivation.
<b>September 2015<sup>31</sup></b>	31	18 complaints against the police agency, 3 complaints against the preventative security, 10 complaints against the general intelligence agency [...] According to these complaints, different forms of torture were used by the said security services including punching, kicking, holding in difficult positions for a long time, beating with sticks, insulting, using foul language and sleep deprivation.
<b>August 2015<sup>32</sup></b>	26	19 complaints against the police agency, 3 complaints against the preventative security, 3 complaints against the general intelligence agency and 1 against the military intelligence [...]

<sup>28</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: December 2015”, available at: <http://www.ichr.ps/en/2/5/1488/December-2015-Report-of-Human-Rights-Violations-December-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

<sup>29</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: November 2015”, available at: <http://www.ichr.ps/en/2/5/1489/November-2015-Report-of-Human-Rights-Violations-November-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

<sup>30</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: October 2015”, available at: <http://www.ichr.ps/en/2/5/1492/October-2015-Report-of-Human-Rights-Violations-October-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

<sup>31</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: September 2015”, available at: <http://www.ichr.ps/en/2/5/1491/September-2015-Report-of-Human-Rights-Violations-September-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

<sup>32</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: August 2015”, available at: <http://www.ichr.ps/en/2/5/1490/August-2015-Report-of-Human-Rights-Violations-August-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

		According to these complaints, different forms of torture were used by the said security services including punching, kicking, holding in difficult positions for a long time, beating with sticks, insulting, using foul language and sleep deprivation.
<b>July 2015<sup>33</sup></b>	6	Various methods of torture have been used against the complainants. The Shabah, beating by hands and legs, the use of sticks, insults, humiliation and sleep deprivation were among the methods used against the complainants.
<b>June 2015<sup>34</sup></b>	12	7 complaints against the Police Agency. 4 complaints against the Preventive Security Service. 1 complaint against the General Intelligence Service. [...] Various methods of torture have been used against the complainants. The Shabah, beating by hands and legs, the use of sticks, insults, humiliation and sleep deprivation were among the methods used against the complainants.
<b>May 2015<sup>35</sup></b>	14	9 complaints against the Police Agency and 5 complaints against the General Intelligence [...] The complainants alleged that the security agencies used various forms of torture against them, including punching, kicking, starving, cursing, insulting, sleep deprivation and tying them in painful positions
<b>April 2015<sup>36</sup></b>	7	5 complaints against the Police Agency, 1 complaint against the Preventative Security Agency and 1 complaint against the Military Intelligence Agency. [...] The complainants alleged that the security agencies used various forms of torture against them, including punching, kicking, cursing, insulting, sleep deprivation, and tying them in painful positions.
<b>March 2015<sup>37</sup></b>	8	6 complaints against the police agency and 2 complaints against the preventive security agency [...] Different methods of torture were used, including Shabh, beating, punching, badmouthing, insulting and deprivation of sleeping.
<b>February 2015<sup>38</sup></b>	21	10 complaints against Police Agency; 3 complaints against General Intelligence Agency; 5 complaints

<sup>33</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: July 2015”, available at: <http://www.ichr.ps/en/2/5/1397/July-2015-Report-of-Human-Rights-Violations-July-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

<sup>34</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: June 2015”, available at: <http://www.ichr.ps/en/2/5/1396/June-2015-Report-of-Human-Rights-Violations-June-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

<sup>35</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: May 2015”, available at: <http://www.ichr.ps/en/2/5/1376/May-2015-Report-of-Human-Rights-Violations-May-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

<sup>36</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: April 2015”, available at: <http://www.ichr.ps/en/2/5/1361/April-2015-Report-of-Human-Rights-Violations-April-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

<sup>37</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: March 2015”, available at: <http://www.ichr.ps/en/2/5/1340/March-2015-Report-of-Human-Rights-Violations-March-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

<sup>38</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: February 2015”, available at: <http://www.ichr.ps/en/2/5/1323/February-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

		against Preventive Security; and 3 complaints against Military Intelligence
<b>January 2015<sup>39</sup></b>	15	In the West Bank, a number of the detainees were children aged between 16-17 years. According to complainants' statements, they were subjected to different forms of torture, including: <ul style="list-style-type: none"> <li>- Slapping in the face, beating, kicking and punching.</li> <li>- Threatening of using electro-shocks, using cars batteries.</li> <li>- Threatening of opening gas cylinder into their mouth to force them to admit.</li> <li>- Threatening of burning the detainee with cigarettes.</li> <li>- Flogging.</li> <li>- Pushing the detainee against the wall or throwing pieces of furniture forcefully. - Blindfolding, and forcing them to stand in an uncomfortable condition</li> <li>- Pouring cold water and forcing them to take off their clothes.</li> </ul>
<b>December 2014<sup>40</sup></b>	21	18 complaints against the police agency, 2 complaints against the preventive security agency, 1 complaint against the general intelligence [...] The detainees claimed that different methods of torture were used against them, including standing in a hard position for a long time, flogging, forced running for one hour, slapping in the face and beating on the different parts of the body using a hose. They also claimed that they were cursed, insulted, threatened and put in solitary confinement. [...] ICHR received 11 complaints of torture from citizens of Al Zayed Family in Al Yamun near Jenin who were arrested after a group of persons broke a police vehicle. They claimed that they were subjected to different forms of torture in the police detention cell in Jenin. They said that they were forced to stand in a difficult position, beaten and punched. They added that they were detained and severely tortured for three days in contravention of the law. They were tied to the doors and beaten by staves. They were interrogated at night and deprived of sleeping.
<b>November 2014<sup>41</sup></b>	17	14 complaints against the police agency, 2 complaints against the preventive security agency and 1 complaint against the general intelligence agency [...] The detainees claimed that different

<sup>39</sup> The Independent Commission for Human Rights (2016): "Monthly Report on Violation of Human Rights and Freedoms in Palestine: January 2015", available at: <http://www.ichr.ps/en/2/5/1308/January-2015-Report-of-Human-Rights-Violations-January-2015-Report-of-Human-Rights-Violations.htm?d=2015>, last accessed: 6<sup>th</sup> July 2016.

<sup>40</sup> The Independent Commission for Human Rights (2016): "Monthly Report on Violation of Human Rights and Freedoms in Palestine: December 2014", available at: <http://www.ichr.ps/en/2/5/1304/December-2014-Report-of-Human-Rights-Violations-December-2014-Report-of-Human-Rights-Violations.htm?d=2014>, last accessed: 6<sup>th</sup> July 2016.

<sup>41</sup> The Independent Commission for Human Rights (2016): "Monthly Report on Violation of Human Rights and Freedoms in Palestine: November 2014", available at: <http://www.ichr.ps/en/2/5/1296/November-2014-Report-of-Human-Rights-Violations-November-2014-Report-of-Human-Rights-Violations.htm?d=2014>, last accessed: 6<sup>th</sup> July 2016.

		methods of torture were used against them, including standing in a hard position for a long time, flogging, forced running for one hour, slapping in the face and beating on the different parts of the body using a hose. They also claimed that they were cursed, insulted, threatened, put in solitary confinement and forced to take off their clothes.
<b>October 2014<sup>42</sup></b>	7	3 complaints against the police agency, 3 complaints against the preventive security agency and 1 complaint against the general intelligence agency
<b>September 2014<sup>43</sup></b>	7	4 complaints against the police agency; 1 complaint against the preventive security agency; 1 complaint against the general intelligence agency; and 1 complaint against the military intelligence agency
<b>August 2014<sup>44</sup></b>	8	These complaints were filed against the Civil Police Agency
<b>July 2014<sup>45</sup></b>	-	
<b>June 2014<sup>46</sup></b>	6	All complaints in the West Bank were against the Palestinian Civilian Police
<b>TOTAL</b>	<b>322</b>	

102. The UN Secretary General at the 31<sup>st</sup> Session of the UN General Assembly on 20 January 2016 noted:

*“78. Palestinian political divisions have also had a broader negative impact on Palestinians’ enjoyment of their civil and political rights. Among the acts of concern monitored by OHCHR during the reporting period are the excessive use of force, the arbitrary arrest and detention of political activists, the use of torture and other ill-treatment and restrictions on freedom of expression (A/HRC/31/40)”<sup>47</sup>.*

<sup>42</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: October 2014”, available at: <http://www.ichr.ps/en/2/5/1286/October-2014-Report-of-Human-Rights-Violations-October-2014-Report-of-Human-Rights-Violations.htm?d=2014>, last accessed: 6<sup>th</sup> July 2016.

<sup>43</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: September 2014”, available at: <http://www.ichr.ps/en/2/5/1266/September-2014-Report-of-Human-Rights-Violations-September-2014-Report-of-Human-Rights-Violations.htm?d=2014>, last accessed: 6<sup>th</sup> July 2016.

<sup>44</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: August 2014”, available at: <http://www.ichr.ps/en/2/5/1261/August-2014-Report-of-Human-Rights-Violations-August-2014-Report-of-Human-Rights-Violations.htm?d=2014>, last accessed: 6<sup>th</sup> July 2016.

<sup>45</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: July 2014”, available at: <http://www.ichr.ps/en/2/5/1246/July--2014-Report-of-Human-Rights-Violations-July--2014-Report-of-Human-Rights-Violations.htm?d=2014>, last accessed: 6<sup>th</sup> July 2016.

<sup>46</sup> The Independent Commission for Human Rights (2016): “Monthly Report on Violation of Human Rights and Freedoms in Palestine: June 2014”, available at: <http://www.ichr.ps/en/2/5/1225/June--2014-Report-of-Human-Rights-Violations-May--2014-Report-of-Human-Rights-Violations.htm?d=2014>, last accessed: 6<sup>th</sup> July 2016.

<sup>47</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/008/54/PDF/G1600854.pdf?OpenElement>



103. At the 31<sup>st</sup> Session on 24 February 2016, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in making observations concerning a specific case, noted:

*“UA 26/6/2015. Case No. PSE 1/2015. State Reply: None to Date*

*Allegations concerning the arbitrary arrest, detention, torture and ill-treatment of Mr. X and Mr. Y.*

*428. The Special Rapporteur regrets that the Palestinian Authority has not replied to the present communication, thereby failing to cooperate with the mandate issued by the Human Rights Council in its resolution 25/13.*

*429. In the absence of information to the contrary, the Rapporteur concludes that there is substance in the allegations presented in the initial communication, available via the link above, and is therefore of the view that the authorities in the West Bank, by arbitrarily arresting, detaining, and subjecting Mr. X and Mr. Y to acts of torture and other ill-treatment, have violated their right to be free from torture or cruel, inhuman or degrading treatment, as provided by articles 2, 7, 12, 13, 14(1) and 16 of the Convention against Torture. By failing to provide any additional information about an investigation into the allegations, the West Bank authorities have further failed to comply with their obligation, under international customary law, to investigate, prosecute and punish all acts of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in the Convention against Torture<sup>48</sup>.*

104. The above is merely one example in a catalogue of instances of non-cooperation by the Palestinian authority and thus making it, in our submission, beyond doubt that the Palestinian Authority is willing to ignore the complaints of torture, and therefore refuse to investigate those incidents to which there are highly credible and well documented complaints.

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<sup>48</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/035/12/PDF/G1603512.pdf?OpenElement>,



105. The clear position therefore, is that this case ought not to be rendered inadmissible on the complementarity point.

### 3.2. Gravity

105. The potential case likely arising from an investigation into the incident reported in this document would be of sufficient quantitative and qualitative gravity as to be rendered admissible by the ICC, according to Article 17(1)(d) of the Rome Statute.

106. In “*The Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*”<sup>49</sup>, the ICC Pre-Trial Chamber I examined the Courts interpretation of the requirement “sufficient gravity” under Article 17.1.(d) of the Rome Statute. In this occasion, the Chamber recalled that:

(i) “a gravity determination involves a generic assessment (general in nature and compatible with the fact that an investigation is yet to be opened) of whether the groups of persons that are likely to form the object of the investigation capture those who may bear the greatest responsibility for the alleged crimes committed; and

(ii) gravity must be assessed from both a “quantitative” and “qualitative” viewpoint and factors such as **nature, scale and manner** of commission of the alleged crimes, as well as their **impact** on victims, are indicators of the gravity of a given case” (emphasis added).

107. Having had regard to the recent jurisprudence of the ICC, in particular the cases of Lubanga and the referral on behalf of the Comoros, when compared to the decisions concerning the situations in Kenya and that of Colombia and also the Ivory Coast, it would appear that there is a two-tier approach being taken by the OTP when considering the question as gravity.

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<sup>49</sup> International Criminal Court (2015): “The Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia: Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation”, Pre-Trial Chamber I, 16<sup>th</sup> July 2015, No. ICC-01/03, available at: <https://www.icc-cpi.int/iccdocs/doc/doc2015869.pdf>, last accessed: 12<sup>th</sup> January 2016.

108. A two-tier approach as there appears to be different considerations when selecting a ‘situation’ and in selecting a ‘case’.
109. The relevant factors that seem to have been confirmed regardless of it being a case or situation, are the scale, nature, manner, and impact.
110. However, the rank or role of an accused person appears to be relevant when assessing the gravity of a situation (for example the situations in Kenya, Ivory Coast, and Gaza), but not when considering the gravity of a case, in particular the *Ntaganda* AC judgment, and the *Ali* PTC decision.
111. It is likely that the OTP will view this submission as being part and parcel of the request already submitted, to commence an investigation into the ‘situation’ in Palestine. It therefore follows, on the basis of established jurisprudence, that the rank or role of those persons alleged to be involved is relevant.
112. The position to be adopted, is that this does not preclude the commencement of an investigation given that the complaint is against specific departments within the Palestinian Authority Security Services, all of whom make use of a hierarchal structure, with a clearly identifiable ‘Head’, who, it is argued, has ultimate responsibility for those under his command.
113. Further, it is inconceivable, as argued previously, that those lower in the chain of command are acting without the approval or knowledge of those higher within the structure.
114. Therefore, to simplify the matter, the ‘rank and role’ aspect of the gravity threshold is clearly met in the instant case.
115. At the same time as this limb, the crimes themselves, and the victims must also be considered, and consideration not necessarily limited to a ‘numbers’ perspective.

116. With regards to the scale of the crime, or the numbers issue, the OTP will note in considering this submission that 18 witness statements have been annexed to this document, however, it is not suggested that the instances of torture are limited to those 18 individuals.
117. In 24 months (2014-2016) ICHR documented 322 complaints of torture (as per the above table), however, taking into account the nature of such crimes, the fear such crimes instil in their victims, it is likely that the *actual* figure is significantly higher, leaving a large proportion unreported.
118. It is respectfully submitted that at least 322 documented instances of torture over a period of 24 months is a significant figure, equating to almost one instance, every other day. On simply a numbers assessment therefore it is suggested that the issue is one of sufficient gravity.
119. A further element, is the effect of the crime on its victims.
120. The effect of torture is manifest as it remains after the commission of the crime itself, potentially infecting all areas of a victim's life thereafter. The development of Post-Traumatic Stress Disorder (PTSD) and other mental health deterioration for victims of torture is commonplace.<sup>50</sup>
121. It is respectfully submitted that the wider impact of these crimes must also be considered when assessing the gravity of the issue.
122. Those alleged to be responsible for the offences themselves are those with whom Palestinian citizens ought to be able to place their faith and their trust; the Government, Law Enforcement Agencies, Security Services and the Courts.
123. As noted at the outset of this document, the Palestinian Authority Security Services are tasked, and are therefore responsible, for the protection of the security of Palestinian citizens. With the high instance of torture against those detained by such forces, the net result, is that the wider population is in fear of both arbitrary detention, and being tortured whilst detained.

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<sup>50</sup> <http://www.cpt.coe.int/en/working-documents/cpt-2003-91-eng.pdf>

124. Therefore, as a result of these specific instances, the ramifications are further reaching than simply the offending itself.

125. For all these reasons, the allegedly criminal incident exposed in this report is of extreme gravity.



#### 4. Interests of justice

126. There are no reasons to believe that an investigation into the policy and specific instances of the use of torture by the Palestinian Authority Security Services would not serve the interests of justice under Article 53(1)(c). In particular, there are no reasons for the prosecutor to:

- i. Depart from the presumption in favour of investigating, given that the criteria in Article 53(1)(a) and (b) are satisfied;
- ii. Depart from the guidance by the object and purposes of the Statute to prevent the commission of amongst others Crimes Against Humanity and War Crimes through ending impunity; or
- iii. Consider the interests of peace, as those fall within the mandate of institutions other than the OTP.

127. In this line, in a 2007 policy paper on the Interest of Justice, the ICC Office of the Prosecutor clarified that “*the exercise of the Prosecutor’s discretion under Article 53(1)(c) and 53(2)(c) is exceptional in its nature and that there is a presumption in favour of investigation or prosecution*”<sup>51</sup> wherever there is a reasonable basis to believe that an international crime has been committed and the case fulfilled the admissibility criteria set out in Article 17.

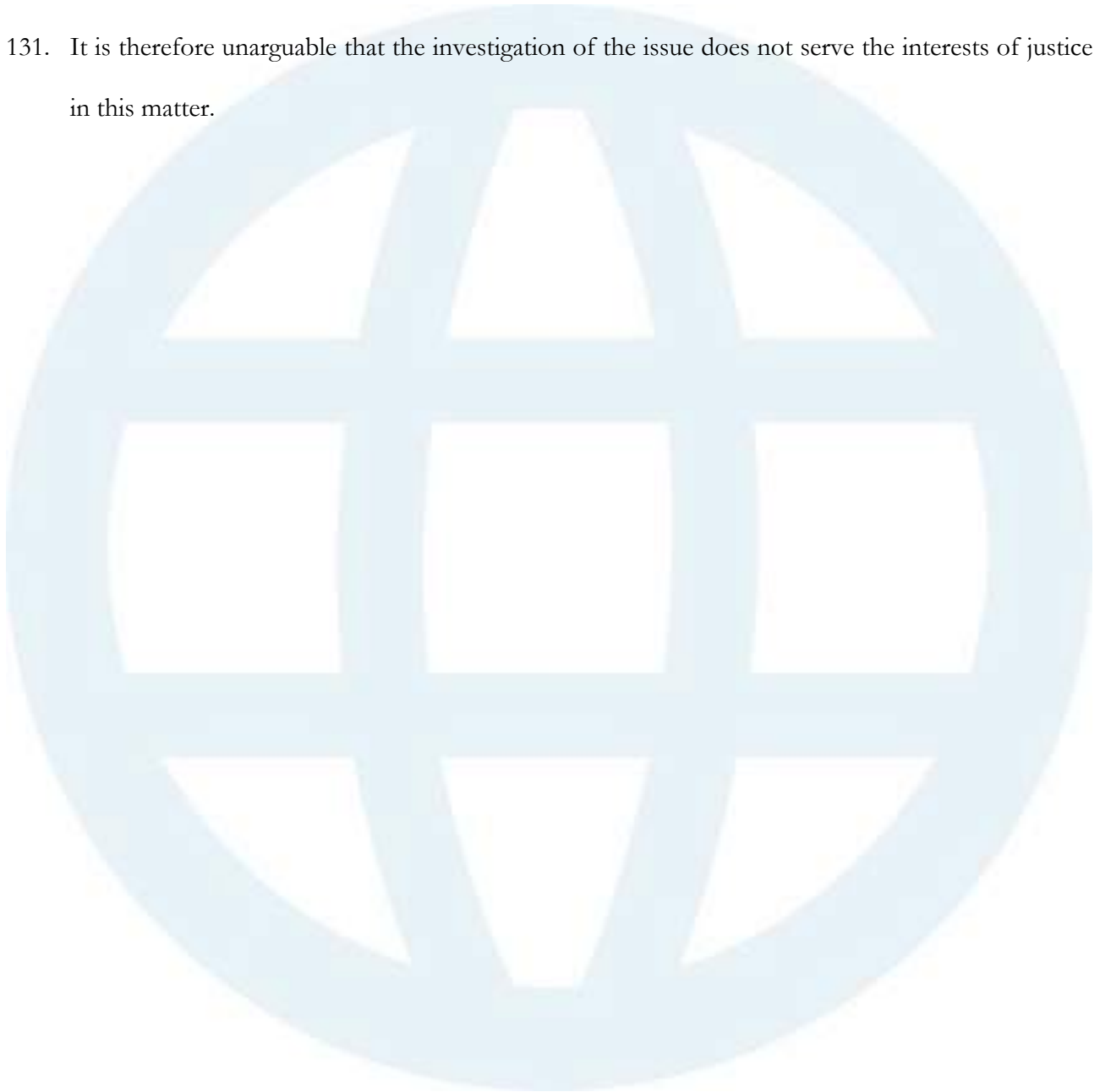
128. It is also noted that in the same policy paper the Office of the Prosecutor indicated that taking into account the Preamble of the Rome Statute, “*considerations of prevention of serious crimes and guaranteeing lasting respect for international justice may be significant touchstones in assessing the interests of justice*”<sup>52</sup>. Following this interpretation, the interests of justice could be well served in this case, should the Prosecutor open an investigation.

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<sup>51</sup> ICC Office of the Prosecutor (2007): “Policy Paper on the Interest of Justice”, September 2007, available at: [https://www.icc-cpi.int/iccdocs/asp\\_docs/library/organs/otp/ICC-OTP-InterestsOfJustice.pdf](https://www.icc-cpi.int/iccdocs/asp_docs/library/organs/otp/ICC-OTP-InterestsOfJustice.pdf), last accessed: 12<sup>th</sup> January 2016.

<sup>52</sup> *Ibidem*.

129. The primary issue is that the Palestinian Authority and the Security Services under its control enjoy complete impunity and therefore remain unaccountable.
130. It is clear that despite being aware of the use of torture for over 20 years, the PA and those under its control have taken no steps to address or investigate and prosecute its use.
131. It is therefore unarguable that the investigation of the issue does not serve the interests of justice in this matter.





## 5. Conclusion

132. The crux of this submission, is that there is an institutionalised policy, known of and approved of at the very highest levels of the Palestinian Authority, that provides for the torture of citizens detained by the Palestinian Authority Security Services.
133. The conclusion of this submission therefore is that there is nothing to prevent the OTP from opening a preliminary examination into the issue.
134. We respectfully base this conclusion on the following salient points:
- a. There can be no logical argument that the instances highlighted within this Communication, and therefore the conduct complained of, amounts to anything other than torture;
  - b. The treatment of detainees, recorded in the annexed witness statements, satisfies any definition of 'torture' on the basis of methods used, the injuries sustained, and its purported justification *i.e.* to assist with the extraction of confessions from those subjected to interrogation;
  - c. There are no issues arising concerning the jurisdictional element of the ICC, on the basis that Palestine is a signatory to the Rome Statute, the conduct complained of took place within Palestinian territory, and finally, the conduct complained of occurred post Palestine becoming a State Party to the Rome Statute;
  - d. No issue arises under the principle of 'Complementarity'. As has been adequately demonstrated throughout this submission, it is clear that there is no appetite domestically for these complaints to be investigated given the numerous opportunities upon which these issues have been ignored by the judiciary, and further, the policy is systematic and approved of at the very highest levels of the Palestinian Authority, thus making any investigation impossible;

- e. Further, the 'Gravity' test is satisfied given the victims run into the hundreds, and likely to be many more than those interviewed by the AOHR in the UK, and other international monitoring bodies such as HRW and Amnesty International given that the reality of such offences is that there are invariably a significant number of victims who fear coming forward to give their account on the basis of potential reprisals; and
- f. There is nothing to suggest that the commencement of any investigation into the allegations of torture would not serve the interests of justice.

135. It is accepted that the ICC is quite rightly seen as a 'Court of last resort', however, it is evident from the above, that the point has not been reached.

136. Hundreds of individuals have been tortured, and hundreds more will continue to be so unless a position is taken that such actions cannot and will not be tolerated internationally.

137. Such Crimes Against Humanity demand accountability and the appropriate judicial process to be followed.

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Respectfully submitted,



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The Hague, 17 July 2026



*On 16 January 2015, the Prosecutor opened a preliminary examination of the situation in Palestine, in accordance with Regulation 25(1) (c) of the Regulations of the Office and the Office's policy on preliminary examinations*

