



## TORTURING EACH OTHER:

### *The Widespread Practices of Arbitrary Detention and Torture in the Palestinian Territory*

Al-Haq, July 2008

#### **Executive Summary**

A year on from Hamas' seizure of control of the Gaza Strip and the declaration by Mahmoud Abbas, President of the Palestinian National Authority (PNA), of a state of emergency throughout the Occupied Palestinian Territory (OPT), Al-Haq is publishing this report that documents and analyses acts of detention, torture and other cruel, inhuman and degrading treatment or punishment against civilians in the West Bank and Gaza Strip since June 2007. Carried out by various security or military agencies and personnel, these practices have consistently affected hundreds of Palestinian citizens.

This Report is based on information obtained by Al-Haq from affected victims in the Gaza Strip and West Bank. Detention and accompanying inhuman practices have been carried out in the Gaza Strip by the *de facto* authority's Executive Force and the Hamas-affiliated Izz-al-Din al-Qassam Brigades. At the same time, PNA security agencies, particularly the Preventive Security Force and General Intelligence Service, have detained and mistreated scores of citizens in the West Bank. The circumstances of detention and treatment of prisoners outlined in the report have been meticulously documented in the form of sworn affidavits. It must be emphasised that the inhuman practices reported have not been subject to any form of oversight by legally competent authorities. Silence, connivance and a failure to prevent or oversee such acts all manifest a definitive presumption of the consent or acquiescence of public officials to inflict such pain and suffering.

Based on Al-Haq's factual monitoring and documentation, and comprehensive legal analysis, the report highlights the following conclusions and recommendations:

#### **(i) Conclusions:**

- Arrests and detention, carried out by both the PNA in the West Bank and the *de facto* Hamas authority in the Gaza Strip, were routinely implemented for political reasons and ends. In the West Bank, PNA security agencies arrested persons suspected of affiliation with the Hamas movement as well as those suspected of enlisting with the Executive Force. In contrast, security forces reporting to the *de facto* Hamas authority in the Gaza Strip, as well as the Izz-al-Din al-Qassam Brigades, detained members of the Fatah movement on the sole basis of such membership.
- On the basis of thorough documentation and analysis of the arrests that have succeeded the internal crisis in the Gaza Strip the declared state of emergency in the OPT, Al-Haq unequivocally concludes that the majority of arrests in the West Bank and Gaza Strip are politically motivated. Detention has rarely been carried out for valid criminal or security reasons.

- According to affidavits collated by Al-Haq, affected persons testified that they were subjected to the following acts of torture and other cruel, inhuman or degrading treatment or punishment:
  - Severe beating and kicking.
  - Whipping.
  - The '*Shabeh*' position (which entails shackling the detainees' hands and legs to a small chair, angled to slant forward so that they cannot sit in a stable position, for prolonged periods).
  - Standing for prolonged periods against a wall, with the lifting of the detainees' arms and one of their legs.
  - Revilement and humiliation.
  - Threatening to kill detainees.
  - Threatening to subject detainees to torture.
  - Solitary confinement in dark and narrow cells.
  - Deprivation of expedient minimum hygiene needs.
  - Preventing detainees from contacting their legal counsel.
  - Preventing family visits.
  - Interrogation over prolonged periods of time.
  - Interrogation late at night.
  - Shackling and blindfolding.
  - Terrifying detainees by deliberately forcing them to watch or hear others scream as they are beaten.
  - Sleep deprivation.
  - Exposure to extreme weather conditions, such as severe cold, to obtain confessions from detainees.
- Such torture and other cruel, inhuman or degrading treatment or punishment by security forces has resulted in three deaths in the Gaza Strip and one in the West Bank since June 2007.
- Pursuant to affidavits received by Al-Haq, most complaints of torture and other cruel, inhuman and degrading treatment have been filed against the PNA Preventive Security Force and General Intelligence Service in the West Bank and the Hamas Executive Force and Izz-al-Din al-Qassam Brigades in the Gaza Strip.
- In the West Bank, the Palestinian Public Prosecution body has failed to effectively play its required role. It has not taken necessary measures to prevent PNA security agencies from detaining persons outside official correction and rehabilitation centres, nor have they overseen actions of judicial police officers. In the meantime, the *de facto* authority in the Gaza Strip has suspended the operation of the Palestinian Attorney-General.
- During detention periods, degradation of human dignity and cruel treatment, including revilement, humiliation and beating, have transformed from an individual pattern of behaviour into a common trend exercised by PNA security agencies in the West Bank and by the Executive Force and Izz-al-Din al-Qassam Brigades in the Gaza Strip.
- Both the PNA and the *de facto* Hamas authority have entirely neglected detention controls and safeguards as prescribed under the Palestinian Basic Law and other procedural laws. In this context, security and law enforcement

officials have neither respected nor heeded detention procedures, controls and codes of conduct.

- In the West Bank, many civilians were detained according to arrest warrants issued by the Head of the Military Judicial Authority. In particular, the PNA Preventive Security Force and General Intelligence Service used such warrants to circumvent controls exercised by the Palestinian Public Prosecution body and Judicial Authority.
- Though ongoing, arrests and arbitrary detention in the West Bank and Gaza Strip have dropped sharply over the past three months.
- There is a widespread fear among victims of torture and other cruel, inhuman or degrading treatment or punishment in both the West Bank and Gaza Strip to speak out about their experiences due to the threat they feel of exposing themselves to further arbitrary detention and ill-treatment.

**(ii) Recommendations:**

1. A Palestinian law against torture and other cruel, inhuman or degrading treatment or punishment should be put in place. The absence of strong legislation prohibiting torture and other forms of degrading treatment, and safeguarding the sanctity of private life and physical safety, has created the grounds for security personnel and law enforcement officials to exercise such inhuman acts.
2. In his capacity as the High Commander of the Palestinian Security Forces, the President of the PNA should promulgate a Presidential Decree obliging the Military Judicial Authority to respect the relevant provisions of the Palestinian Basic Law. Such a decree would restrict jurisdiction of the military judiciary to military affairs and prevent its application to civilians.
3. A package of military regulations, including the Military Law of Penal Procedure, Law on Military Tribunals and Military Justice Law, needs to be developed and enacted. Presently, the military regulations in force are those promulgated by the Palestine Liberation Organisation (PLO). In respect of detention, however, these PLO laws are not consistent with safeguards prescribed by relevant international conventions and the Palestinian Basic Law.
4. The Palestinian High Court should oversee the military judicial system. In reality, independence and immunisation of the military justice system against the regular, civil judiciary has enabled military judicial officials to expropriate powers and jurisdictions of the regular judiciary and the Public Prosecution body, which are both inherently cognisant of civil jurisdiction.
5. Ineffective oversight by the Public Prosecution body and other competent authorities, as well as a lack of internal inspection of detention and interrogation centres, have resulted in more infringements, particularly torture and cruel, inhuman and degrading treatment. To ensure that law enforcement officials respect detention safeguards, Al-Haq recommends that special divisions be established within the PNA security agencies. These will carry out regular disciplinary inspections of detention and interrogation centres as well as oversight of security personnel.
6. The absence of external oversight by the Public Prosecution body and competent authorities, and the lack of internal inspection of detention and interrogation centres, have effectively contributed to increasing human rights breaches, particularly torture and cruel, inhuman and degrading treatment. To ensure that law enforcement officials observe detention safeguards, Al-Haq recommends consolidation of external oversight by civil society and human

rights organisations. As they are normally independent of law enforcement and security authorities, these organisations will help uncover shortfalls of internal oversight within security agencies. As such, law enforcement officials will be encouraged to carry out their tasks in due form. External oversight will also achieve the following objectives:

- Detainees will be assured and satisfied by civil society's effective oversight of the performance of law enforcement officials.
  - External oversight implemented by civil society and human rights organisations will encourage security personnel and law enforcement officials to respect their duties and adhere to the legally prescribed procedures. In addition, they will be less likely to breach any guarantees, restrictions or conditions governing the treatment of detained persons.
7. The absence of serious and effective accountability mechanisms has resulted in widespread violations and acts of torture, and other cruel, inhuman and degrading treatment or punishment. In fact, perpetrators of these atrocities well recognise that they are immune to accountability or prosecution. To end such infringements, official authorities must hold accountable and prosecute all persons who instigate, order or implement these heinous crimes.

Despite the numerous and painful precedents, persons responsible for committing such crimes have never been brought to justice.

8. To ensure serious and legally compliant behaviour by the authorities, conclusions and reports produced by fact-finding committees on crimes of torture and other cruel, inhuman and degrading treatment or punishment should be published and disseminated to the public.
9. Abstention on the part of victims from lodging grievances and penal cases to prosecute perpetrators of reported crimes has encouraged the latter to persist in undervaluing citizens' right to integrity and dignity.

Therefore, Al-Haq recommends that a public awareness campaign be launched to educate citizens on their right to file penal actions against persons who subjected them to torture and other cruel, inhuman and degrading treatment or punishment. It should also be highlighted that these crimes are not subject to a statute of limitations, thereby allowing victims to prosecute and hold accountable all those who have ordered, incited or implemented such crimes at any time.\*

10. As an internationally recognised crime against humanity, the crime of torture and other cruel, inhuman and degrading treatment or punishment allows affected persons to prosecute and hold accountable persons who have ordered, instigated or executed it before the courts of States that allow victims to access their respective jurisdictions, regardless of their nationalities and the place where the atrocities were committed.

Accordingly, Palestinian civilians who have been subjected to reported crimes in the Gaza Strip and West Bank are entitled to seek prosecution of the perpetrators before courts of foreign States that have jurisdiction over such crimes. Affected victims can do so when official Palestinian authorities do not take their grievances seriously or when relevant investigation procedures are satisfactory and internal remedy mechanisms are absent.

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\* Article 32 of the Palestinian Basic Law safeguards this right: "Any violation of personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by the Basic Law or by law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage."