

# National Conference on the Benefits and Challenges of Signing and Implementing OPCAT for Palestine

## Summary Report and Recommendations

October 2015



**DCAF**

a centre for security,  
development and  
the rule of law

## **About DCAF**

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international organisation dedicated to assisting states – both developed and emerging democracies – in advancing good security sector governance, within a democratic framework and in respect of the rule of law. DCAF provides in-country advisory support and practical assistance programs to states that seek to strengthen governance of their security sector. DCAF works directly with national and local governments, parliaments, civil society, international organisations and defence and security forces.

## **DCAF in Palestine**

DCAF has worked in the occupied Palestinian territory since 2005. As a neutral and independent organisation, DCAF aims to assist Palestinians in enhancing good governance of the security sector (SSG). It promotes the development of effective, efficient and transparent security and justice providers that are properly controlled and overseen by the Palestinian executive and legislative authorities and fully accountable to Palestinian civil society and its elected leaders.

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## Introduction

The Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the United Nations General Assembly in 2002 and came into force in 2006.

The OPCAT is unique among international conventions and protocols in that it does not promote any new norm. Instead, it strengthens national implementation of the United Nations Convention Against Torture (UNCAT), to which the State of Palestine acceded on 2 April 2014. The OPCAT establishes a system of regular visits to all places where persons are deprived of their liberty by independent international and national monitoring bodies. On 18 October 2015, there were 80 States parties to the OPCAT (from the Arab world: Lebanon, Morocco and Tunisia), and an additional 18 States signatories.

In 2015, senior Palestinian officials expressed interest in seeing Palestine sign the OPCAT. In light of this, the Office of the Presidency invited DCAF to hold, under its auspices, a national conference on the benefits and challenges of signing and implementing the OPCAT for Palestine.

This summary report highlights the main findings and recommendations of that conference.

## Background

Since 2005 DCAF has been actively engaged with the Palestinian security forces, executive institutions, and civil society to promote accountability and compliance with international human rights. In July 2015 it held a set of workshops and discussion forums on the topic, and presented the results to President Mahmoud Abbas and his Legal Advisor, Hasan Al-Ouri.

The discussions and workshops aimed to cover the entire security sector, including representatives of the President's Office, the President's General Inspectorate, the Ministry of Interior, the Ministry of Justice, the Ministry of Foreign Affairs, the High Judicial Council, the security forces (Civil Police, Preventive Security, Military Justice, Military Intelligence and General Intelligence) and civil society.

These discussions reiterated the idea of Palestine signing the OPCAT, as this Optional Protocol outlines clear and practical steps for implementing the UNCAT, to which Palestine is a signatory. The representatives also noted that signing the OPCAT:

- gives credence to Palestine's commitment to good governance and human rights, including its commitment made to the United Nations on combatting torture;
- helps Palestine implement the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, by outlining clear methods for doing so;
- addresses the gap between civil society and the security forces by setting up an independent monitoring mechanism (a 'national prevention mechanism');
- strengthens Palestine's position in the international treaty system;
- enhances Palestine's reputation as a moral and accountable state

## National Conference

Based on the results of these workshops, the Office of the Presidency asked DCAF to hold a National Conference under its auspices on the Benefits and Challenges of Signing and Implementing the OPCAT for Palestine.

The objectives of the national conference were to discuss, explore and understand:

- what potential benefits are granted to the State of Palestine for signing the OPCAT
- what obligations the OPCAT entails for signatory states;
- what the international standards for its implementation are;
- how other countries have implemented the OPCAT; and
- how Palestine could implement the OPCAT, and what would be needed in order to do so.

The National Conference took place on 18 October 2015 in Ramallah.

The conference was attended by representatives from the Office of the Presidency, the Council of Ministers, the Ministry of Interior, the Ministry of Foreign Affairs, the Ministry of Justice, the Prison Administration, the Military Justice, the National Security Forces, the Civil Police, the Military Intelligence, the General Intelligence, civil society organisations and international organisations including the Office of the United Nations High Commissioner for Human Rights.

The main speakers at the conference were:

- H.E. Hasan Al-Ouri, Legal Advisor to the President, on behalf of President Mahmoud Abbas
- Mr. Ahmed Hanoun, Chief of the Public Persecutor's Office, Ramallah
- Dr. Jean-Pierre Restellini, President of the Swiss National Commission for the Prevention of Torture
- Ms. Catherine Paulet, member of the Subcommittee on the Prevention of Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)

- Mr. Mohktar Trifi, Former President of the Tunisian League for Human Rights, and Member of the Executive Council of the World Organisation Against Torture (OMCT)
- Mr. Ammar Dwaik, Palestinian Independent Commission for Human Rights (ICHR)
- Mr. Shawan Jabarin, General Manager, Al-Haq
- Ms. Randa Karkara, Head of Legal Office, Office of the Adviser of the President

## Main Findings of the Conference

1. All the participants at the conference expressed their desire to see Palestine sign and implement the OPCAT.
2. Palestinian legislation forbids torture and cruel or inhuman punishment. Nevertheless, Palestinian legislation does not outline the prohibition of all types of torture. It does not include all the standards set out in the 'Mandela Rules', or in the UNCAT. (See Box 1)
3. Torture and inhuman treatment is a universal problem. It is not limited to specific countries and occurs in the richest and most advanced states.
4. By signing and implementing the OPCAT, Palestine would be showing the world that it can take responsibility for the human rights situation under its authorities' control.
5. While participants from both civil society and the security forces acknowledged that they received complaints of alleged mistreatment and torture, the participants disagreed over the number of such complaints.
6. Inhumane treatment often occurs as a result of bad conditions (a lack of resources) or due to a lack of skills and knowledge (proper technical capacities and or familiarity with the appropriate standards).
7. Palestine needs to show that it can implement the international agreements it has signed. Signing the OPCAT would help Palestine implement the UNCAT and thus be seen as a step in the right direction.
8. Much of the institutional set up for successful implementation of the OPCAT already exists: currently, there are complaints and investigation units in every ministry and security agency. Furthermore, several Palestinian organisations – such as the Independent Commission for Human Rights, or civil society groups like Al-Haq - work with the security forces to visit detention places. However so far none of them has been granted the right to do so unannounced.
9. A National Preventive Mechanism (NPM) could help bridge the gap between civil society and the security forces. As an independent mechanism, a NPM would have unrestricted access to detention places. At the same time, it would be able to offer advice to security forces on the changes needed to meet international standards.
10. The examples of France and Tunisia showed that the OPCAT, and particularly the initiatives to create a NPM, improved the performance of the security forces.
11. Independent monitoring mechanisms, such as a NPM, also protect the security forces from untrue allegations. Furthermore they can help inform the forces and their commander of mistreatment that they were unaware of, and hence reduce or eliminate risks to their integrity.
12. Psychiatric institutions in Palestine are currently not subject to monitoring. As psychiatric institutions, children's homes, and immigration centres are all considered places where people could be deprived of liberty, a NPM could also visit these locations if Palestine signed the OPCAT.

### **Box 1: Anti-Torture Legislation in Palestine**

Torture and inhuman treatment is forbidden in Palestinian legislation. The main two texts which forbid it are as follows:

#### **1) The Amended Basic Law of 2003**

This law, which serves as the Palestinian constitution, forbids torture:

##### *Article 13*

1. *No person shall be subject to any duress or torture. Accused and all persons deprived of their freedom shall receive proper treatment.*
2. *All statements or confessions obtained through violation of the provisions set forth under paragraph 1 of this Article shall be nullified and of no force or effect.*

#### **2) Correction and Rehabilitation Centres ('Prisons') Law No. 6 of 1998**

The Prisons law, which regulates the detention system, goes into more detail on how prisoners should and shouldn't be treated:

##### *Article 37*

2. *It shall be prohibited to torture an inmate or to use force against him, except as provided in Articles 20 and 21 above.*
3. *It shall be prohibited to insult an inmate or address him in a degrading manner.*

The rest of *Chapter X*, which on the rights of inmates, goes into some detail to explain how inmates should be treated. For instance it states that prisoners should wash twice a day, be fed regularly, and be given a mattress and 5 woollen blankets.

# Recommendations

## **The Conference recommended: to the State of Palestine:**

- *to deposit the instrument of accession to OPCAT with the UN Secretary General.*
- *to perform an honest review of its resources before signing the OPCAT.* Palestine will face a number of challenges following its accession, and it needs to be prepared to meet these. The establishment of a Palestinian working group composed of government agencies and CSO partners might be helpful to ensure that commitments related to the implementation of the OPCAT enjoy broad societal support.
- *to establish the National Preventive Mechanism*

Palestine would need to enact a law that grants a NPM independence and the powers and resources necessary (see box 2).

## **to the Palestinian security forces:**

- *to participate fully in the implementation of the OPCAT by*
  - cooperating with the NPM and civil society organisations in improving the conditions of detention and protecting the rights of detainees;
  - allowing the NPM unrestricted access to all detention facilities, and permitting unannounced visits to these sites.

## **to the international community:**

- *to support accession to and implementation of the OPCAT by*
  - developing the technical capacities of all the actors involved in implementing the OPCAT;

- providing technical support, including forensic equipment, for the relevant security services in order that they can detect and prevent cases of torture;
- preparing and sensitising the security forces: to become a partner in the implementation of OPCAT;
- developing the understanding of the security forces of the international standards concerning the treatment of detainees.

DCAF and the Office of the Presidency remain available to support Palestinian efforts to carry out these recommendations, and assist the implementation of the OPCAT.

## Box 2: National Preventive Mechanism

At the centre of the OPCAT is the requirement that signatories create a 'National Preventive Mechanism' (NPM). This mechanism is supposed to be an independent governmental structure that has complete access to all detention places and records, and the right to perform unannounced visits.

There are no rules on exactly what form such a mechanism should take. There are in general three main types of NPM:

- 1) **Newly created specialist institutions:** many countries, such as France, choose to create a new institution to specifically take on the role of a NPM
- 2) **Previously existing Human Rights Institutions:** most countries choose to give the role of the NPM to an existing human rights commission
- 3) **Making several institutions the NPM:** some countries choose to give the role to many different institutions that then coordinate. This may be so that different institutions can cover different geographical areas or different types of detention place. The United Kingdom, for example, has 18 NPMs.

### Requirements for a National Preventive Mechanism

A NPM must be

- created and defined by law
- functionally independent
- financially independent, and equipped with adequate resources
- endowed with the necessary capabilities and professional knowledge to perform their task
- granted powers to visit any and all places of detention with or without pre-announcing their visits
- access to all information concerning places of detention and detained people

In Palestine, many believe that the natural body to host the National Preventive Mechanism is the Independent Commission on Human Rights (ICHR). The ICHR is founded in Article 31 of the Amended Basic Law of 2003, and formally established by a presidential decree from the late President Yassir Arafat.

The ICHR already visits places of detention (though it does not yet have the ability to do so unannounced), and receives and treats complaints from citizens. They are also widely praised for the quality of their work and reports.

However there are some concerns over its funding structure which could affect its independence, and even its acceptance as a NPM by the United Nations Subcommittee for the Prevention of Torture. ICHR is partially funded by international donors, not fully by the state budget. Whilst this is the case for almost all Palestinian institutions (including the government itself), this structure may have to be adapted to fit the criteria of the SPT.



## **The Geneva Centre for the Democratic Control of Armed Forces (DCAF)**

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