

In the
International Criminal Court

SHURAT HADIN – ISRAEL LAW CENTER

The complainant

v.

RAMI HAMDALLAH

Accused of Crimes Against Humanity

Communication

To the Prosecutor of the International Criminal Court
regarding The Crimes Against Humanity committed by
Rami Hamdallah

January 5, 2015

COMMUNICATION

of SHURAT HADIN – ISRAEL LAW CENTER regarding criminal activities of Rami Hamdallah [hereinafter Hamdallah] requesting that the Prosecutor of the International Criminal Court, pursuant to Article 15 of the Rome Statute,¹ initiate an investigation into the crimes against humanity committed within the Court's jurisdiction by Hamdallah, a citizen of the Hashemite Kingdom of Jordan [hereinafter Jordan].

1. Introduction:

THE COMPLAINANT submits to the Prosecutor this communication concerning the criminal activities of Hamdallah, a citizen of Jordan who is simultaneously Prime Minister and Minister of the Interior of the Palestinian Authority.² Hamdallah has engaged in conduct in violation of Articles 7 (1) f) and 28 (2) of the Rome Statute.³ Hamdallah is criminally liable for the rampant torture undertaken by the Protective Security Service of the Ministry of the Interior because he is the superior official in overall charge of the Ministry of the Interior and of the Protective Security Service.

2. Jurisdiction *ratione personæ*:

The Court has jurisdiction *ratione personæ* because Hamdallah is a citizen of Jordan. The Court may exercise its jurisdiction over all acts committed by the citizen of a state party to the court, wherever those acts are committed.⁴ Jordan is a member state of the Court.⁵

¹ The Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force on 1 July 2002)[hereinafter Rome Stat.].

² *The new Palestinian gov't unveiled*, World Bulletin (Turkey), Jun. 10, 2014.

³ *Supra* at note 1.

⁴ Rome Stat., *supra* note 1 at art. 12(2)(b).

⁵ Ratification of Jordan of the Rome Statute, Apr. 11, 2002, C.N.368.2002.TREATIES-19 (Depositary Notification)

Hamdallah is a citizen of Jordan because he was born in Anabta, in the Tulkarem District, in the West Bank, on August 10, 1958.⁶ Jordan controlled the West Bank at that time.⁷ Hamdallah is a Jordanian citizen under Jordanian law because he was born in an area under Jordanian control and is not Jewish.⁸ In 1954, the Jordanian Parliament extended citizenship to all non-Jews born or resident in all areas then under Jordanian control, including the West Bank.^{9,10} The Jordanian Parliament has never repealed these statutes.¹¹

The Court thus has jurisdiction *ratione personæ* over Hamdallah.

3. Jurisdiction *ratione temporis*:

Jordan ratified the Rome Statute on April 11, 2002.¹² Therefore, the Court has jurisdiction over all criminal acts committed by Jordanian nationals after July 1, 2002 when the Rome Statute entered into force.

4. Jurisdiction *ratione materiæ*:

This Court has jurisdiction over the crime against humanity of torture.¹³ A perpetrator is guilty of the war crime of destroying or seizing the enemy's property when:

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were in the custody or under the control of the perpetrator.

⁶ *Palestine Facts*, Palestinian Academic Society for the Study of International Affairs (2006).

⁷ Eyal Benvenisti, *The International Law of Occupation* 108 (Princeton University Press 2004).

⁸ Palestinian Authority Official Biography of Ministers, *available at* <http://www.palestinecabinet.gov.ps/ar/Govs/ViewMinister.aspx?mid=3>

⁹ Law No. 6 of 1954 on Nationality, Official Gazette, no. 1171, February 16, 1954, p. 105, arts. 3 and 9.

¹⁰ Law No. 56 of 1949 Additional to the Law of Nationality, Official Gazette, no. 1004, December 20, 1949, p. 422.

¹¹ Human Rights Watch, *Stateless Again, Palestinian-Origin Jordanians Deprived of their Nationality* [hereinafter "Stateless Again"] 17, Jan., 2010.

¹² *Supra* at note 4.

¹³ *Id.* at art. 7(1)(f).

3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5. 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.¹⁴

This Court has jurisdiction to impute to a civilian superior the crimes against humanity committed by his subordinates.¹⁵ A civilian superior is liable for the criminal acts of his subordinates when he:

1. Knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes.

2. The crimes concerned activities that were within the effective responsibility and control of the superior, and;

3. The superior failed to take all necessary and reasonable measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

The facts clearly demonstrate that Hamdallah has controlled the PSS from June, 2014 until present, that the PSS has routinely engaged in torture with impunity, that the discipline of the PSS is within the effective responsibility of Hamdallah, and that Hamdallah failed to take all necessary and reasonable measures to prevent routine torture of civilians within his jurisdiction.

¹⁴ Elements of Crimes, International Criminal Court publication, RC/11 (2011).

¹⁵ *Id.* at art. 28(b)

5. Facts Supporting Jurisdiction:

5(a). The Preventative Security Service of the Palestinian Authority inflicted severe physical suffering upon one or more persons.

The PSS has inflicted severe physical suffering upon one or more persons. The Palestinian Independent Commission on Human Rights [hereinafter ICHR] has documented, during the entire period of Hamdallah's tenure in office, routine and rampant torture in confinement facilities maintained by the Palestinian Authority. Since June, 2014, when Hamdallah entered office, the ICHR has reported torture in PA detention facilities on a near-monthly basis:

In September, 2014, the ICHR documented 1 instances in that month of the PSS torturing a persons whom it confined.¹⁶

In November, 2014, the ICHR documented 3 instances in which the PSS tortured persons whom it detained.¹⁷

This follows an extensive history of torture within the PSS:

In October, 2012, the ICHR documented 3 instances in that month of the PSS torturing persons whom it confined. The torture included punching, beating, requiring standing for a long time in difficult position and general ill-treatment.¹⁸

In November, 2012, the ICHR documented 1 instances in that month of the PSS torturing a persons whom it confined.¹⁹

¹⁶ Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during September 2014," 2014.

¹⁷ Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during October 2014," 2014.

¹⁸ Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during October 2012," 2012.

¹⁹ Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during November 2012," 2012.

In December, 2012, the ICHR documented 1 instance in which the PSS beat a person whom it detained.²⁰

In January, 2013, the ICHR documented 3 instances in which the PSS punched or beat persons whom it detained.²¹

In February, 2013, the ICHR documented 1 instance in which the PSS committed torture.²²

In March, 2013, the ICHR documented 2 instances in which the PSS committed torture, by requiring detained persons to standing in a difficult position for a long time (Shabh), and by punching, beating and ill-treatment of such persons.²³

In April, 2013, the ICHR documented an especially flagrant 7 instances of torture committed by PSS personnel. April 2013's instances of torture were especially gruesome. For example, Muhammad Abdel Kareem Dar Muhammad was arrested by the Preventive Security Service in Hebron. On April 28, 2013, he was rushed to the Public Hospital of Hebron for the second time after suffering speech impairment and injuries due to severe beating on the head while hand-cuffed in solitary confinement throughout an extended period of his detention.²⁴

In July, 2013, the ICHR documented 1 instance in which the PSS beat a person whom it detained.²⁵

²⁰ Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during December 2012," 2012.

²¹ Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during January 2013," 2013.

²² Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during February 2013," 2013.

²³ Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during March 2013," 2013.

²⁴ Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during April 2013," 2013.

²⁵ Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during July 2013," 2013.

In August, 2013, the ICHR documented 2 instances in which the PSS tortured persons whom it detained.²⁶

In September, 2013, the ICHR documented 1 instance in which the PSS tortured a person whom it detained.²⁷

In October, 2013, the ICHR documented 2 instances in which the PSS tortured persons whom it detained.²⁸

In November, 2013, the ICHR documented 1 instance in which the PSS tortured a person whom it detained.²⁹

In December, 2013, the ICHR documented 1 instance in which the PSS tortured a person whom it detained.³⁰

In January, 2014, the ICHR documented 11 instances in which the PSS tortured persons whom it detained.³¹

In February, 2014, the ICHR documented 1 instance in which the PSS tortured a person whom it detained.³²

In March, 2014, the ICHR documented 3 instances in which the PSS tortured persons whom it detained.³³

²⁶ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during August 2013,” 2013.

²⁷ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during August 2013,” 2013.

²⁸ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during October 2013,” 2013.

²⁹ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during November 2013,” 2013.

³⁰ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during December 2013,” 2013.

³¹ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during January 2014,” 2014.

³² Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during February 2014,” 2014.

³³ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during March 2014,” 2014.

In April, 2014, the ICHR documented 4 instances in which the PSS tortured persons whom it detained.³⁴

In May, 2014, the ICHR documented 2 instances in which the PSS tortured persons whom it detained.³⁵

These instances are but a sampling of the already documented or documentable instances of torture endured by Palestinian civilians at the hands of the Preventative Security Service.

5(b) Such person or persons were in the custody or under the control of the perpetrator.

In the examples above, all tortured persons were in the custody or under the control of the PSS in facilities run by the PSS or by other agencies of the Palestinian Authority.

5(c) Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.

The laws of the Palestinian Authority strictly prohibit torture.³⁶ Additionally, the so-called “State of Palestine” has deposited documents purporting to accede to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.³⁷ Therefore, the torture which the PSS inflicts is totally unlawful.

5(d) PSS officials committed torture as part of a widespread or systematic attack directed against a civilian population.

The PSS’s scheme of torture is committed as part of a widespread scheme of repression against the civilian population resident in Judea and Samaria and under its

³⁴ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during April 2014,” 2014.

³⁵ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during May 2014,” 2014.

³⁶ Art. 13, Palestinian Authority Basic Law.

³⁷ 1465 U.N.T.S. 85.

control. The areas controlled by the Palestinian Authority are not free. The Palestinian Authority uses torture as a part of a system of political repression and elimination of dissent. Under this system, those who question the aims or honesty of the leaders of the Palestinian Authority are subject to arbitrary arrests, illegal forfeiture of property, and trial before military tribunals lacking basic due process, in addition to brutal acts of torture.³⁸ Therefore, the PSS's torture is part of a wider campaign directed by the Palestinian Authority to attack and suppress the rights of civilians subject to its jurisdiction.

5(e) Hamdallah knows that the conduct was part of a widespread or systematic attack directed against a civilian population.

Hamdallah knows that torture was and is part of a widespread and systemic attack directed against the civilian population in areas under Palestinian Authority control. Within its overarching scheme of repression and control, the Palestinian Authority has fought a continuing low intensity battle, constituting non-international armed conflict, for effective control, in the areas over which it has *de jure* jurisdiction, against the Opposition Parties since 2007.³⁹ Hamas is a Palestinian terrorist movement that also serves as one the two major political parties in the areas under Palestinian Authority control. The other major political party is the Fatah faction of the Palestine Liberation Organization (PLO), whose members comprise the overwhelming bulk of the Palestinian Authority.⁴⁰ The Palestinian Authority uses torture to suppress opposition political activity in the areas under its control, as well as any activity which it deems contrary to

³⁸ Freedom House, West Bank Report 2014.

³⁹ Noura Erekat, *It's not Wrong, It's Illegal: Situating the Gaza Blockade between international law and the UN Response*, 11 UCLA J. Islamic & Near E.L. 37 (2011).

⁴⁰ *Supra* at n. 44.

its goal of regime protection.⁴¹ Opposition political members, as well as any other civilian whose actions are contrary to the wishes of the Palestinian Authority, are routinely arrested, imprisoned without charge, and tortured, in furtherance of the protection of the Palestinian Authority regime and in furtherance of its low-intensity non-international armed conflict with its domestic political opposition.⁴²

Hamdallah knows of this program of torture, arbitrary arrest and unlawful confinement. Prior to assuming the portfolio of Minister of the Interior, Hamdallah attended a conference on torture and prisoner mistreatment within Palestinian Authority facilities and was specifically briefed on PSS misconduct.⁴³ Therefore, Hamdallah has actual knowledge of the systemic nature of PSS torture

5(f) Hamdallah knows that his subordinates commit torture.

Hamdallah knows that his subordinates commit torture and has actual knowledge of the same. He has received repeated warnings about the existence of PSS torture activities. Representatives of the ICHR have met with Hamdallah and presented him with the evidence of specific instances of torture detailed above, as well as with the reports of other human rights organizations which found a blatant disregard for human rights by PSS forces.⁴⁴ Therefore, he had actual knowledge of torture committed by his subordinates.

5(g) Prevention of PSS torture activities is within Hamdallah's effective responsibility and control.

Hamdallah, as Minister of the Interior, is in overall charge of the PSS. The Palestinian Authority Minister of the Interior has specific responsibility for the training,

⁴¹ Mark Perry, *Dayton's Mission, A reader's guide*, Al Jazeera English, Jan. 15, 2011.

⁴² *Id.*

⁴³ *Palestine: ICHR raises human rights concerns with Prime Minister*, Palestinian Independent Commission for Human Rights, Mar. 5, 2014.

⁴⁴ *Id.*

equipage, and discipline of the PSS.⁴⁵ As minister in overall charge of the PSS, Hamdallah therefore has responsibility for the prevention of torture.

5(g) Hamdallah fails to take all necessary and reasonable measures within his power to prevent or repress torture within the PSS.

Hamdallah has not discipline or dismissed from service any PSS official responsible for torture and has not referred for prosecution any PSS official responsible for torture. As Minister of the Interior, these are steps available to him, but he has not taken them.⁴⁶ He therefore has failed to take any necessary and reasonable measure within his power to prevent or stop PSS's routine torture.

6. Obligation of the Prosecutor to Initiate an Investigation:

The Prosecutor is obligated, under Article 53(1) of the Rome Statute, to initiate an investigation when the information made available to her indicates that a case is:

- a. Admissible to ICC Jurisdiction
- b. Grave, and
- c. In the interests of justice

⁴⁵ David Blumenfeld, *On the Brink: Decline of US-trained Palestinian Security Forces*, Middle East Forum, Jan. 9, 2013.

⁴⁶ Human Rights Watch, *World Report 2014* 559 (2014).

6(a). Admissibility of this case to ICC jurisdiction:

This case is admissible for trial before the ICC under the criteria of Article 17 of the Rome Statute. The crime of torture is admissible for trial before the ICC where national courts are unwilling or unable to prosecute offenders.⁴⁷ A State is unwilling to begin proceedings in its national courts when it shields a person from criminal responsibility, when it delays proceedings unjustifiably, or when the proceedings in the case are neither independent nor impartial.⁴⁸ A State is unable to begin proceedings in its national courts when it is unable to obtain custody of the accused.⁴⁹

Hamdallah is a citizen of Jordan, but is resident in the West Bank. THE COMPLAINANTS have no knowledge of Jordan bringing a prosecution against any official of the Palestinian Authority for torture. THE COMPLAINANTS aver, to the best of their knowledge and belief, that no official of the Palestinian Authority who holds Jordanian citizenship has ever been prosecuted for any offense cognizable under the Rome Statute. Moreover, even if Jordan were actively engaged in prosecuting war crimes and crimes against humanity, THE COMPLAINANTS aver that they know of no method by which Jordan can compel Hamdallah to return to Jordan to face trial. Therefore, Jordan is unwilling to prosecute Hamdallah.

Although the Palestinian National Authority exercises limited government functions in those areas subject to its control, it is not a sovereign entity.⁵⁰ As a non-sovereign entity, the Palestinian Authority's actions cannot trigger complementary deferral by the Court to its judicial system under Art. 17 of the Rome Statute because it is

⁴⁷ Article 17, Rome Stat.

⁴⁸ Stuart Risch, *Hostile Outsider or Influential Insider? The United States and the International Criminal Court*, 2009 Army Law 61, 71 at n. 57.

⁴⁹ Article 17, Rome Stat.

⁵⁰ Interim Agreement on the West Bank and the Gaza Strip, Isr.-P.L.O., art. IX(5)(b), Sep. 28, 1995, 36 I.L.M. 557 [hereinafter Oslo II].

not a state by the terms of the agreement creating it. Even if it could, as discussed above, the Palestinian Authority has not prosecuted or punished any PSS official for torture.⁵¹ Therefore, assuming, *arguendo*, that the Palestinian Authority were a State, it would be a state unwilling to bring a prosecution and therefore not prevent the court's jurisdiction over Hamdallah.

The court therefore may try Hamdallah for torture because the crime is admissible, as neither Jordan nor the Palestinian Authority have the capacity or will to try him.

6(b). Gravity of the Conduct:

Pursuant to Articles 17 and 52 of the Rome Statute, the Prosecutor should open an investigation unless he believes that “there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice,” despite the clear evidence of torture.⁵² Here, there is every reason to believe that an investigation would serve the substantial interests of justice and no reason to believe that it would not. Failure to open an investigation would allow the uncontrolled streak of torture and its attendant political repression to continue unchecked in areas subject to Palestinian Authority control. The ICC exists to provide justice in cases in which national courts are unwilling or are unable, as is the case here.⁵³ Therefore, the Prosecutor should open an investigation.

6(c) A preliminary investigation is in the interests of justice:

The Rome Statute directs the Prosecutor to consider the interests of victims, the age or infirmity of the perpetrator, and his role in the crime in determining whether an

⁵¹ *Supra* at n. 46.

⁵² International Criminal Court: Situation in the Republic of Cote D'Ivoire, 51 I.L.M. 228, 255 (Pre-Trial Chamber III, 2012).

⁵³ Jann N. Kleffner, Complementarity in the Rome Statute and National Criminal Jurisdictions 3-4 (Ruth Mackenzie et. al eds. 2008).

investigation is in the interests of justice.⁵⁴ Here, the torture victims themselves must contend with prolonged and often debilitating injury, pain, and humiliation as a result of the injuries sustained in the course of PSS torture. Moreover, civil society as a whole is victimized by torture, as torture places those who might otherwise voice an unpopular opinion or act in ways contrary to the desires of a regime in fear and keeps them in silence.

There is no evidence the Hamdallah is infirm or otherwise unable to participate in his own defense. Therefore, a preliminary inquiry is in the interests of justice, because it would vindicate the interests of the victims of torture and of civil society and because Hamdallah is able to participate in his own defense.

7. Conclusion:

The information presented above is only a preliminary collection of evidence, but it gives rise to significant concerns that Hamdallah has engaged in a continuing course of conduct in which he has committed grave crimes falling within the jurisdiction of the Court. The available evidence provides a compelling case for an investigation in accordance with the Prosecutor's obligation under Article 53 of the Statute. Based upon the information contained herein, THE COMPLAINTANTS respectfully submit that proper cause exists for the Prosecutor to initiate an investigation into the crimes committed within the Court's jurisdiction, arising from torture committed by forces under Hamdallah's control.

⁵⁴ Art. 53(2)(b), Rome Stat.

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Respectfully submitted,
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