

In the
International Criminal Court

SHURAT HADIN – ISRAEL LAW CENTER

The complainant

v.

MAJID FARAJ

Accused of Crimes Against Humanity

Communication

To the Prosecutor of the International Criminal Court
regarding The Crimes Against Humanity committed by
Majid Faraj

January 5, 2015

COMMUNICATION

of SHURAT HADIN – ISRAEL LAW CENTER regarding criminal activities of major General Majid Faraj [hereinafter Faraj] 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 Faraj, 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 Faraj, a citizen of Jordan, commands the Palestinian Authority General Intelligence Agency [hereinafter GIA].² Faraj has engaged in conduct in violation of Articles 7 (1) (f) and 28 (1) of the Rome Statute.³ The GIA is a quasi-military organization responsible for human intelligence and counter-espionage in those areas under Palestinian Authority control.⁴ Faraj is criminally liable for the rampant torture present in the GIA because he is commander of the GIA.

2. Jurisdiction *ratione personæ*:

The Court has jurisdiction *ratione personæ* because Faraj is a citizen of Jordan. The Court may exercise its jurisdiction over all acts committed by the citizen of a state

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 *Abbas appoints Majid Faraj head of Palestinian general intelligence*, Ma'an News Agency, Sep. 16, 2009.

³ *Supra* at note 1.

⁴ Anthony H. Cordesman, *Palestinian Forces; Palestinian Authority and Militant Forces*, Center for Strategic and International Studies 6, Feb. 9, 2006.

party to the court, wherever those acts are committed.⁵ Jordan is a member state of the Court.⁶

Faraj is a citizen of Jordan because he was born in the Dheisheh refugee camp near Bethlehem in the West Bank, in 1962.⁷ Jordan controlled the West Bank at that time.⁸ Faraj is a Jordanian citizen under Jordanian law because he was born in an area under Jordanian control and is not Jewish.⁹ 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.^{10,11} The Jordanian Parliament has never repealed these statutes.¹²

The Court thus has jurisdiction *ratione personae* over Faraj.

3. Jurisdiction *ratione temporis*:

Jordan ratified the Rome Statute on April 11, 2002.¹³ 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 materiae*:

This Court has jurisdiction over the crime against humanity of torture.¹⁴ A perpetrator is guilty of the war crime of destroying or seizing the enemy's property when:

⁵ Rome Stat., *supra* note 1 at art. 12(2)(b).

⁶ Ratification of Jordan of the Rome Statute, Apr. 11, 2002, C.N.368.2002.TREATIES-19 (Depositary Notification)

⁷ Grant Rumley, "Middle East Watch: Keep Your Eye on Majid Faraj" *The National Interest* (2014), url: <http://nationalinterest.org/feature/middle-east-watchers-keep-your-eye-majid-faraj-11107>.

⁸ Eyal Benvenisti, *The International Law of Occupation* 108 (Princeton University Press 2004).

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

¹⁰ *Id.*

¹¹ Law No. 56 of 1949 Additional to the Law of Nationality, Official Gazette, no. 1004, December 20, 1949, p. 422.

¹² Human Rights Watch, *Stateless Again, Palestinian-Origin Jordanians Deprived of their Nationality* [hereinafter "Stateless Again"] 17, Jan., 2010.

¹³ *Supra* at note 4.

¹⁴ *Id.* at art. 7(1)(f).

1. He inflicts 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.

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.¹⁵

This Court has jurisdiction to impute to a military commander for crimes against humanity committed by his subordinates.¹⁶ A military commander is liable for the criminal acts of his subordinates when he:

1. Knew or should have known that the forces were committing or about to commit such crimes; and

2. Failed to take all necessary and reasonable measures within his or her 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 Faraj has commanded the GIA from September, 2009 until present, that the GIA has routinely engaged in torture with impunity, that the discipline of the GIA is within the effective responsibility of Faraj, and

¹⁵ Elements of Crimes, International Criminal Court publication, RC/11 (2011).

¹⁶ *Id.* at art. 28(b)

that Faraj failed to take all necessary and reasonable measures to prevent routine torture of civilians within his jurisdiction.

5. Facts Supporting Jurisdiction:

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

The GIA 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 Faraj's tenure in office, routine and rampant torture in facilities maintained by the GIA. Since July, 2012, the ICHR has reported torture by the GIA on a near-constant basis:

In July, 2012, the ICHR documented 6 instances of torture and ill-treatment by the GIA and the death of Osama 'Akel Hassan Mansour while in the custody of the GIA.¹⁷

In October, 2012, the ICHR documented 1 instance of torture and ill-treatment by the GIA of a person whom it detained.¹⁸

In December, 2012, the ICHR documented 1 instance in which the GIA tortured a person whom it detained.¹⁹

In January, 2013, the ICHR documented 6 instances in which the GIA tortured persons whom it detained.²⁰

In February, 2013, the ICHR documented 1 in which the GIA tortured a person whom it detained.²¹

¹⁷ Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during July 2012," 2012.

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 December 2012," 2012.

²⁰ Independent Human Rights Commission, Monthly Report On "Human Rights & Public Freedoms Violations in Palestine during January 2013," 2013.

In March, 2013, the ICHR documented 3 instances in which the GIA tortured persons whom it detained.²²

In April, 2013, the ICHR documented 7 instances in which the GIA tortured persons whom it detained.²³

In June, 2013, the ICHR documented 7 instances in which the GIA tortured persons whom it detained.²⁴

In July, 2013, the ICHR documented 1 instance in which the GIA tortured a person whom it detained. The different forms of torture included: “shabh” (extended standing in positions of discomfort), punching and beating.²⁵

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

In December, 2013, the ICHR documented 6 instances in which the GIA tortured persons whom it detained.²⁷ The different forms of torture included: beating, punching, standing in difficult condition for a long time, and ill-treatment.²⁸

In January, 2014, the ICHR documented 4 instances in which the GIA tortured persons whom it detained.²⁹

²¹ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during February 2013,” 2013.

²² Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during March 2013,” 2013.

²³ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during April 2013,” 2013.

²⁴ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during June 2013,” 2013.

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

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 December 2013,” 2013.

²⁸ *Id.*

²⁹ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during January 2014,” 2014.

In February, 2014, the ICHR documented 1 instance in which the GIA tortured a person whom it detained.³⁰

In March, 2014, the ICHR documented 3 instances in which the GIA tortured persons whom it detained.³¹

In April, 2014, the ICHR documented 2 instances in which the GIA tortured persons whom it detained. The torture included punching, beating, forced standing and ill-treatment.³²

In September, 2014, the ICHR documented 1 instance in which the GIA tortured a person whom it detained.³³

In October, 2014, the ICHR documented 1 instance in which the GIA tortured a person whom it detained.³⁴

In November, 2014, the ICHR documented 1 instance in which the GIA tortured a person 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 hand of GIA personnel.

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

³⁰ Independent Human Rights Commission, Monthly Report On “Human Rights & Public Freedoms Violations in Palestine during February 2014,” 2014.

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

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

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

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

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

In the examples above, all tortured persons were in the custody or under the control of the GIA in facilities run by the GIA 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,” which claims to be successor to the Palestinian Authority, 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 GIA inflicts is totally unlawful.

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

The GIA’s scheme of torture is committed as part of a widespread scheme of repression against the civilian population resident in the West Bank and under its control. The areas controlled by the Palestinian Authority are not free and basic human rights are not safeguarded. 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 torture.³⁸ Therefore, the GIA’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) Faraj knows or should know that the conduct was part of a widespread or systematic attack directed against a civilian population.

³⁶ Art. 13, Palestinian Authority Basic Law.

³⁷ 1465 U.N.T.S. 85.

³⁸ Freedom House, West Bank Report 2014.

Faraj 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 Hamas since 2007.³⁹ Hamas is a Palestinian militant 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 activity in the areas under its control, as well as any activity which it deems contrary to 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 Hamas.⁴²

Faraj knows of this program of torture, arbitrary arrest and unlawful confinement. The GIA has met with Palestinian human rights organizations, and was briefed on the systemic torture rampant within the GIA and the Palestinian Authority in general.⁴³ Therefore, Faraj, as the minister of the GIA, has actual knowledge of the systemic nature of GIA torture.

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. 43.

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

⁴² *Id.*

⁴³ Al Haq, *Palestinian General Intelligence: Civilians Will be no Longer Tried in Military Courts*, January 17, 2011.

5(f) Faraj knows or should know that his subordinates commit torture.

Faraj knows or should know that his subordinates commit torture and has actual knowledge of the same. He has received repeated warnings about the existence of GIA torture activities. Representatives of the Palestinian human rights organization Al-Haq have met with the GIA to discuss the rampancy of different forms of torture by the GIA forces in addition other human rights abuses within the GIA and Palestinian authority.⁴⁴ Therefore, Faraj had actual knowledge of torture committed by his subordinates.

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

Faraj commands the GIA. As the current commander in authority, Faraj therefore has responsibility for the prevention of torture.

5(h) Faraj fails to take all necessary and reasonable measures within his power to prevent or repress torture within the GIA.

Faraj has not disciplined nor dismissed from service any GIA official responsible for torture and has not referred for prosecution any GIA official responsible for torture. In 2010, GIA officials conducted a sham investigation into deaths in GIA facilities which resulted in no charges and no convictions.⁴⁵ This investigation was not credible and did not satisfy minimal international standards for due process.⁴⁶ The GIA has never conducted any other investigation into torture and has never punished any official for torture.⁴⁷ Faraj has therefore has failed to take any necessary and reasonable measure within his power to prevent or stop GIA's routine torture because he has not disciplined any GIA official as is within his power.

6. Obligation of the Prosecutor to Initiate an Investigation:

⁴⁴ *Id.*

⁴⁵ Human Rights Watch, *Palestinian Authority: No Justice for Torture Death in Custody*, Feb. 16, 2011.

⁴⁶ *Id.*

⁴⁷ Human Rights Watch, *World Report 2014* 559 (2014).

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

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.⁴⁸ 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.⁴⁹ A State is unable to begin proceedings in its national courts when it is unable to obtain custody of the accused.⁵⁰

Faraj is a citizen of Jordan, but is resident in the West Bank. THE COMPLAINTANTS have no knowledge of Jordan bringing a prosecution against any official of the Palestinian Authority for torture. THE COMPLAINTANTS 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 COMPLAINTANTS aver that they know of no method by which Jordan can compel Faraj to return to Jordan to face trial. Therefore, Jordan is unwilling to prosecute Faraj.

⁴⁸ Art. 17, Rome Stat.

⁴⁹ Stuart Risch, *Hostile Outsider or Influential Insider? The United States and the International Criminal Court*, 2009 Army Law 61, 71 at n. 57.

⁵⁰ Art. 17, Rome Stat.

Although the Palestinian National Authority exercises limited government functions in those areas subject to its control, it is not a sovereign entity.⁵¹ 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 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 GIA official for torture.⁵² 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 Faraj.

The court therefore may try Faraj 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.⁵³ 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

⁵¹ 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].

⁵² *Supra* at note 51.

⁵³ International Criminal Court: Situation in the Republic of Cote D'Ivoire, 51 I.L.M. 228, 255 (Pre-Trial Chamber III, 2012).

ICC exists to provide justice in cases in which national courts are unwilling or are unable, as is the case here.⁵⁴ 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 investigation is in the interests of justice.⁵⁵ 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 GIA 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 Faraj 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 Faraj 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 Faraj has engaged in a continuing course of conduct in which he is responsible for 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

⁵⁴ Jann N. Kleffner, *Complementarity in the Rome Statute and National Criminal Jurisdictions* 3-4 (Ruth Mackenzie et. al eds. 2008).

⁵⁵ Art. 53(2)(b), Rome Stat.

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 Faraj's control.

Dated: January 5, 2015

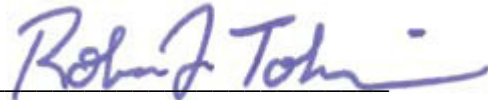
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