



Mr. Joao Nataf  
Secretary  
UN Committee against Torture  
Treaty Bodies Branch, Office of the High Commissioner for Human Rights  
UNOG-OHCHR  
CH-1211 Geneva 10  
Switzerland

12 March 2012

Dear Mr. Nataf,

**RE: ISRAEL - ADOPTION OF LIST OF ISSUES PRIOR TO REPORTING BY THE COMMITTEE AGAINST TORTURE**

On behalf of the submitting organizations I am honoured to submit this briefing ahead of the Committee against Torture's adoption of its List of Issues Prior to Reporting on Israel. I would be grateful if you could distribute this briefing to the members of the Committee and the Secretariat.

Of course we remain at your service to address questions or comments.

Sincerely,

  
e-signature  
CAT, LOIPR, 2012 only

Louis Frankenthaler  
Director of International Outreach and Development  
The Public Committee Against Torture in Israel  
[louis@stoptorture.org.il](mailto:louis@stoptorture.org.il)



15 March 2012

Dear Committee Members,

**RE: ISRAEL - ADOPTION OF LIST OF ISSUES PRIOR TO REPORTING BY THE COMMITTEE AGAINST TORTURE**

The Public Committee Against Torture in Israel (PCATI), Adalah, Al Mezan and Physicians for Human Rights-Israel (PHR-Israel) would like to direct the attention of the members of the Committee against Torture to our concerns regarding the State of Israel's laws, policies and practices relevant to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment (henceforth: the Convention), in advance of the Committee's adoption of its List of Issues Prior to Reporting.

Many of the issues we raised in our previous briefings remain relevant while the Committee's recommendations have not been attended to by the State of Israel. We have therefore reiterated those concerns in this document.

We hope that this briefing will be of help to the Committee in composing the List of Issues Prior to Reporting, to be addressed to the State of Israel. Please do not hesitate to contact us with any questions or outstanding issues.

For the submitting organizations I am,

Sincerely yours,

  
e-signature  
CAT-IGIPR-2012 only

Louis Frankenthaler  
Director of International Outreach and Development  
The Public Committee Against Torture in Israel  
[louis@stoptorture.org.il](mailto:louis@stoptorture.org.il)



## ISRAEL ADOPTION OF LIST OF ISSUES PRIOR TO REPORTING BY THE COMMITTEE AGAINST TORTURE

### OVERVIEW

1. Since the UN Committee Against Torture (henceforth: the Committee or CAT) considered Israel's previous report in 2009, the Israel Security Agency/General Security Service (henceforth: ISA)<sup>1</sup> has continued to employ torture and cruel, inhuman or degrading treatment (henceforth: other ill-treatment) in the interrogation of dozens of Palestinian detainees. The use of techniques of torture, officially referred to as "special measures" or "necessity interrogation," is officially sanctioned and justified by the claim of "necessity" under Israel's Penal Law. Torture victims' complaints are invariably closed by the State Attorney's Office or the Attorney General, without steps being taken either to investigate complaints or to prosecute interrogators or their superiors.<sup>2</sup>
2. As of January 2012, Israel held 4,357 Palestinian prisoners, mostly outside of the Occupied Palestinian Territory (OPT) in prisons in Israel. 3,215 of the detainees were serving sentences, 676 were detained until the conclusion of legal proceedings, 309 were held in administrative detention and the remainder in detention. One Palestinian from Gaza is currently being held under the Unlawful Combatants Law.<sup>3</sup> In June 2011, 37 of the prisoners were women, and 211 were children.<sup>4</sup> In October and November 2011, the number of Palestinian prisoners dropped after approximately 1,000 prisoners were released in the Gilad Shalit prisoner exchange.<sup>5</sup>
3. Violence and humiliation constituting ill-treatment, and at times torture, are inflicted by soldiers, police and other security forces (besides the ISA) during the arrest and detention of Palestinians in the OPT. Preventative measures are half-hearted and inefficient; investigations are rare, prosecutions are rarer and convictions rarer still.
4. While there is no disagreement that the Convention applies in Israel, Israel continues to claim that the Convention does not apply to the OPT despite the Committee and other human rights treaty bodies' position to the contrary. The Committee has repeatedly emphasized that, "as stated by the International Court of Justice in its Advisory opinion, international human rights treaties ratified by the State party, including the Convention, are applicable in the occupied Palestinian territories."<sup>6</sup> Practices in the OPT must be part of Israel's report.
5. Israel has failed to implement the Committee's recommendations.

## Articles 1 & 4 – Definition and criminalisation of torture:

### NO LEGISLATION MAKING TORTURE A CRIME

4. There is no legislation in Israel establishing a crime of torture as defined in Article 1(1) of the Convention. The existing offences of cruel treatment by physical or mental abuse apply only if the victim is in custody or helpless and do not include several elements of the definition of torture.<sup>7</sup> The crime of a public servant extorting a confession or information concerning an offence prohibits the use of force or violence or threat of injury, but does not criminalize causing mental suffering, nor does it prohibit acts for purposes such as punishment or for any reasons based on discrimination. The maximum sentence of three years' imprisonment for this offence cannot be considered an appropriate penalty given the grave nature of the crime of torture.<sup>8</sup>

5. Ad-hoc committees established by the Justice Ministry have pointed out the lacunae in the existing Penal Law and recommended enacting a specific offence of torture consistent with Article 1 of the Convention.<sup>9</sup> These recommendations have, however, been ignored for more than a decade.

## Article 2 – Actions to prohibit torture:

### THE “TICKING TIME-BOMB”/ “NECESSITY” DEFENCE

6. Following a Supreme Court judgment of September 1999 (HCJ 5100/94 *Public Committee against Torture in Israel v. the State of Israel*), torture in certain circumstances (referred to as “ticking time-bomb” situations) is justified as a “lesser evil” through making available to torturers, *ex post facto*, the “defence of necessity” as provided in Israel’s Penal Law.<sup>10</sup> The “defence of necessity” thus provides justification and consequently exemption from criminal liability to torturers in these perceived situations, in violation of Article 2(2) and the very object and purpose of the Convention. The judgment still stands, more than 14 years after the Committee first explained the inapplicability of this defence for torturers to the State Party,<sup>11</sup> and in defiance of subsequent and repeated recommendations by the Committee;<sup>12</sup> the Human Rights Committee;<sup>13</sup> and the UN Special Rapporteur on Torture.<sup>14</sup>

The Supreme Court’s coupling of a general rule prohibiting torture with a “ticking bomb” exception thereto has since been echoed in the position of both the state and the Court vis-à-vis specific torturous interrogation methods – the Court has allowed the state to commit only to refraining from the use of such methods “as a general rule.” Thus the Court rejected a petition against ISA using family members as a means of inflicting mental torture on detainees (described below), accepting the state’s position that (in the Court’s words) “*as a general rule*, in a situation where a family member of the detainee is not under arrest, and there is no legal cause to arrest him, a presentation to the interrogee according to which the family member is under arrest must not be made”<sup>15</sup> (emphasis added). Similarly, in April 2010 a petition by PCATI against the systematic use of handcuffs and other shackles as a means of causing pain and suffering to interrogees by the ISA was rejected *inter alia* on the basis of the state’s statement that (in the Court’s words) “*as a general rule* there is no permission to use shackling as a means of interrogation” (emphasis added). In this case the State added explicitly, and the Court, in accepting the State’s position and rejecting the petition, accepted, that “if and to the extent that shackling is used by an interrogator as a means of interrogation in a specific interrogation, its legality will be clarified according to the circumstances as is the application of any physical means of interrogation used when the ‘defence of necessity’ applies to the interrogator”.<sup>16</sup> This creation of torture-facilitating legal loopholes is in blatant violation of the absolute prohibition of torture under the Convention, and indeed its object and purpose.

### ALLEGATIONS OF TORTURE

7. Allegations made by Palestinian detainees in detailed affidavits to the submitting organizations consistently describe the use of methods which clearly constitute torture under the Convention’s definition and the jurisprudence of international tribunals and human rights monitoring bodies. In several cases, these allegations have been substantiated by internal ISA memoranda, by testimony of ISA interrogators in court and by medical evidence.<sup>17</sup> These methods include, but are not limited to: prolonged incommunicado detention; sleep deprivation by means of continuous or nearly continuous interrogation for periods exceeding 24 hours (for example, 46 hours of interrogation with a two hour

break at 25 hours);<sup>18</sup> stress positions, including forcibly bending the detainee's back over the seat of a chair at an acute angle, often with legs shackled to the chair, or coerced crouching in a frog-like position; slapping and blows; tightening handcuffs on the arms near or above the elbows and pressing or pulling the handcuffs, causing the arms to swell and often injuring the radial nerves; threats of arrest and physical abuse of family members; exposing a suspect to a parent or spouse being abusively interrogated or exposing a family member to a son or brother exhibiting signs of physical torture; and religious and other insults such as beard-pulling or strip searches performed by a person of the opposite sex. Three or more ISA interrogators are invariably present when employing the physical methods of torture and they usually employ more than one method, repeatedly, against the same detainee.

### **COMPLICITY OF PHYSICIANS AND MEDICAL STAFF**

8. Doctors and other medical staff in prison infirmaries where ISA interrogations are conducted work there while aware of torture and other ill-treatment taking place, and are thus complicit in these practices. They examine exhausted, pained, bruised and traumatized detainees, and are aware that their diagnosis may determine whether or not the detainee will return to the ISA wing to be tortured further. After examining their patients, doctors knowingly send them back to their interrogators. They must be considered at least passive participants in ISA torture, in violation both of the Convention and medical ethics. The findings of a recent joint study by PCATI and PHR-Israel into the way doctors and other medical staff treat detainees under ISA interrogation include a systemic failure to properly document injuries inflicted by interrogators, in particular as to their probable causes; the failure of doctors, in all but one of dozens of cases surveyed, to report such injuries to their superiors; the fact that doctors return detainees to their ISA interrogators even in the face of the consequences of the employed interrogation methods, in a gross violation of medical ethics (as well as of Articles 1 and 15 of the Convention); transferring medical information to interrogators without (to the best of PCATI and PHR-Israel's knowledge) the consent of the detainees in question; and the explicit prioritization by doctors of the requirements of ISA interrogators over the well-being of the detainees, their patients, in a number of particularly serious cases. The report concludes that these cases attest to the organizational conflation of the roles of doctor and interrogator. Finally, the report has found that even hospitals to which torture victims are sometimes brought fail to document injuries properly or to report suspected ill-treatment, and return the injured patients to the hands of those who inflicted the injuries.<sup>19</sup>

In its response to this report, the Israeli Ministry of Health informed the two organizations of the establishment of a "Committee for Medical Staff to Report Harm to Detainees under Interrogation." According to the response, dated 1 July 2011, the committee is mandated to receive complaints from medical staff regarding detainees under interrogation whom they suspect have been subjected to torture or ill-treatment. While this committee presents an unprecedented opportunity for medical staff to fulfil their obligations under international guidelines and Israeli codes of ethics to report suspicions of torture and ill-treatment, its effectiveness is yet to be established.

### **SECURITY DETAINEES**

9. An essential guarantee against torture is assuring that a detainee is brought promptly before a judge after arrest and has frequent access to judicial oversight over the nature of the interrogation. The Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law - 2006 and its subsequent amendments drastically weaken this protection. Originally enacted as a temporary arrangement for eighteen months, with the declared intention of incorporating its provisions in a permanent anti-terror law,<sup>20</sup> the law is periodically extended by the Knesset and currently lasts through the end of 2012.

This law allows the detention and interrogation of persons suspected of security offences for up to 96 hours (instead of 48 hours for other detainees) before they appear before a judge. Subsequent judicial remand hearings may take place in the absence of the detainee for up to 20 days (instead of 15 days), and the suspect need not be informed of the hearing or of the decision concerning the extension of his or her detention. As the law also allows denying a detainee suspected of security offences access to a lawyer for up to 21 days. Such detainees may therefore be interrogated for four days without judicial oversight, and with the exception of one hearing before a judge, the interrogation may continue while LOIPR-Public Committee Against Torture in Israel, Adalah, Physicians for Human Rights – Israel, Al-Mezan

the detainee is held incommunicado for three weeks. following a Supreme Court ruling in an appeal by PCATI,<sup>21</sup> the law was amended, *inter alia* to provide that such decisions would be taken by a Supreme Court judge.<sup>22</sup> The law removes a number of essential procedural safeguards from detainees, thereby placing them at a greater risk of torture and ill-treatment.

### **PALESTINIANS GOVERNED UNDER MILITARY LAW**

10. Israeli military law in the West Bank allows the detention of a suspect for up to eight days before being brought before a judge, and permits preventing detainees from meeting a lawyer for up to 90 days.<sup>23</sup> Echoing the new Israeli law described above, the West Bank Military Order was amended to allow remand hearings to be held in the absence of the accused for up to 30 days, aggravating still further the already long periods of incommunicado detention that may be authorized.<sup>24</sup> According to the military courts' own data, 99.74% of all cases heard by the military courts in the OPT end in a conviction.<sup>25</sup>

### **“UNLAWFUL COMBATANTS”**

11. Lengthy incommunicado detention was extended to a new category of administrative detainees under the Detention of Unlawful Combatants Law - 2002. As amended in July 2008,<sup>26</sup> the law now permits holding a detainee for up to 14 days before bringing him or her in front of a District Court judge to determine whether his or her status is that of an “unlawful combatant,” and permits preventing the detainee from seeing a lawyer for up to 21 days. Thus a person from the Gaza Strip or Lebanon<sup>27</sup> may be detained and interrogated in total isolation for 14 days and, aside from one judicial hearing, the interrogation may continue while the detainee is held incommunicado for 21 days. Detention may be extended indefinitely.

12. The above provisions of Israeli law, authorizing the interrogation of detainees while they are held for weeks in isolation from the outside world and with severely limited access to a judge, expressly sanctioned by law measures which, as repeatedly determined by the UN General Assembly and international human rights bodies, constitute a form of ill-treatment, in addition to facilitating further torture or other ill-treatment. The UN General Assembly has repeatedly stated that “prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.”<sup>28</sup> The Human Rights Committee has stated that provisions should be made against the use of incommunicado detention,<sup>29</sup> and the Committee against Torture has consistently called for its elimination.<sup>30</sup> The UN Special Rapporteur on Torture, recognizing that “torture is most frequently practiced during incommunicado detention,” has also called for such detention to be made illegal.<sup>31</sup>

### **SECRET PRISON FACILITY 1391**

13. Secret Prison Facility 1391, a military intelligence detention facility, operates in total secrecy. Israel has mainly used the facility for the holding and interrogation of foreign nationals. Rights group HaMoked petitioned the Supreme Court in 2003 to demand that it shut down the facility.<sup>32</sup> During the litigation, the State Attorney's Office announced that an arrangement had been formulated that would greatly reduce the use of the facility for the purpose of incarceration. The Court accepted the suggested arrangement and appended it to the judgment as a classified annex. On 20 January 2011, the Court ruled that the use of the detention facility, in its current form, in view of the restrictive arrangements undertaken by the state, did not contravene the provisions of Israeli and international law.<sup>33</sup> While the Court often reviews classified material and substantiates its judgment on this basis, creating a “classified annex” is a highly irregular and extraordinary step, which may amount to the Supreme Court creating a secret law. As the Committee pointed out in its 2009 Concluding Observations, “a secret detention centre is *per se* a breach of the Convention.”<sup>34</sup>

### **Article 3 - Extradition and refoulement to where there is a risk of torture**

#### **TREATMENT OF ASYLUM SEEKERS**

14. Provisions of the updated version of the regulations regarding the Treatment of Asylum Seekers in Israel (given effect on 2 January 2011) that replaced the 2002 regulations make no mention of the risk of torture as grounds for refraining from refoulement. An amendment to the Prevention of Infiltration Law<sup>35</sup> adopted by the Knesset on 9 January 2012 similarly fails to take cognizance of the State's LOIPR-Public Committee Against Torture in Israel, Adalah, Physicians for Human Rights – Israel, Al-Mezan

Article 3 obligations. In addition, the Amendment provides for the indefinite detention of “infiltrators” – that is, persons whose only suspected offence is entering the State illegally<sup>36</sup> – in violation of Article 16 of the Convention.

15. The Supreme Court has ruled that torture must be “highly probable”<sup>37</sup> in an extradition context for a claimant to receive protection under Article 3, a more restrictive standard than what is required by the Convention. The Court purports to ground this standard in the text of Article 3, claiming that such a higher test is required by the Convention itself.<sup>38</sup> This is in direct contradiction of the Committee’s own view, in its General Comment No. 1, that “the risk [of torture] does not have to meet the test of being highly probable.”<sup>39</sup>

### **Article 11 – Rules, instructions and practices to prevent torture and other ill-treatment**

16. Safeguards protecting regular criminal suspects from torture and other ill-treatment under Israeli law have significantly advanced over the years.<sup>40</sup> However, these advances do not apply to security interrogations or to the interrogation of suspects arrested under military law in the West Bank.

17. Decisions on the admissibility of evidence still generally follow the *Issaskarov* judgment of 2006<sup>41</sup> wherein the Supreme Court ruled that failure of the police to inform suspects prior to questioning of their right to consult a lawyer, as well as other substantial violations of suspects’ right to fair procedures, give rise to a discretionary judicial authority to hold inadmissible any confession or other evidence obtained in violation of these rights. However, this judicial rule, meant to force the police to comply with legal guarantees of fair procedures, does not apply when the suspect has been prevented from seeing a lawyer on the basis of an order issued in a security case. The exclusionary rule applies only when the violation of a right to fair procedures was not itself authorized by law. Furthermore, the Supreme Court held that the severity of the offence and the importance of the evidence are factors in favour of admitting the evidence, even when the suspect’s rights were violated.<sup>42</sup> Applying this proviso to the interrogation of “suspected terrorists” is likely to lead trial courts to admit confessions and other evidence even where the accused was not informed of the right to meet counsel.

### **ARREST, DETENTION AND CONVICTION OF MINORS IN THE OPT**

18. Under a comprehensive amendment to the Youth (Judging, Punishment and Treatment Methods) Law,<sup>43</sup> a minor’s parent or another adult relative must be informed that the minor will be questioned as a suspect and must be informed without delay of the minor’s arrest.<sup>44</sup> The parent or relative must be given an opportunity to be present during any questioning of the minor.<sup>45</sup> However, the right to be present during the interrogation may be suspended for a number of reasons, among them that the minor is suspected of committing a security offence and the authorized officer believes that the presence of the parent or adult relative will harm state security.<sup>46</sup> Furthermore, the provisions concerning the interrogation of a minor suspect apply only to the police, whereas the ISA is exempt from them.

The provisions do not apply to minors arrested under West Bank military orders, which lack special procedures for the arrest of minors. Between 2005 and 2010, at least 835 minors were arrested on charges of stone-throwing, all but one of whom were subsequently found guilty. A Youth Military Court was established in 2009.<sup>47</sup> In September 2011, the Israel military amended the Order Regarding Security Provisions, changing the age of majority from 16 to 18. Youth from the West Bank undergo harsh arrests, often from their homes in the middle of the night, and are often coerced to sign “confessions” written in Hebrew, which they do not understand.<sup>48</sup>

### **VIDEO AND AUDIO RECORDING OF INTERROGATIONS**

19. An important advance in the protection of suspects from ill-treatment during police interrogations was set by the Criminal Procedure (Interrogating Suspects) Law - 2002. This Law requires that all stages of a suspect’s interrogation be recorded by video. The recording requirement applies to all investigations of felonies for which the maximum penalty is ten years imprisonment or more. The requirement was set to come into force incrementally, beginning with murder investigations in 2006, and applying to all investigations of felonies of 10 years minimum imprisonment or more from 2010. Video recordings of police interrogations should contribute substantially to deterring police from

violence, intimidation and humiliating treatment while questioning persons suspected of serious criminal offences. The recordings should also assure that an accused person claiming that his “confessions” were obtained through the use of torture or other ill-treatment will have the means to prove his or her claim and prevent the admission of such “confessions”.

However, the recording requirement does not apply to the ISA: its interrogators may continue to conduct interrogations without any video or audio recordings. Many of these interrogations are in fact recorded at least in part, but these are secret recordings for the purposes of the interrogators, and are not usually made available in criminal trials. Recording requirements were supposed to come into effect with respect to police interrogations of suspects in security cases in 2008, but the Knesset amended the Law<sup>49</sup> to exempt police from recording the interrogation of suspects charged with security offences until 2012 – nine years after the law came into force, and ten years after it was adopted.<sup>50</sup> This means that even the relatively minor part of the interrogations of security suspects conducted by police, usually consisting of taking one or more statements from the suspect in the course of the ISA interrogation and after its conclusion, will not be recorded in either video or audio form. Thus there will be no direct evidence of the suspect’s physical and mental state as a result of his or her treatment at the hands of the ISA.

20. The Government’s proposal to make this exemption a permanent feature of the law was initially rejected by the Knesset. However, a draft proposed bill tabled in late 2011<sup>51</sup> would again exempt the police and ISA from the duty to make audio/video recordings of their “security interrogations.” Note: According to Haaretz: “The Ministerial Committee for Legislation this week decided to support a bill that will allow the police to permanently avoid recording interrogations of suspects in cases involving security violations.”<sup>52</sup>

### **Articles 12 & 13 – Right to complain, duty to conduct prompt and impartial investigation by competent authorities**

#### **ISA IMPUNITY**

21. The only authority with powers provided by law to investigate complaints against ISA personnel is the Department for the Investigation of Police Officers (DIP) in the Ministry of Justice. However, the 1994 amendment empowering the Attorney General to direct the DIP to conduct criminal investigations into complaints against ISA has become a dead letter - in recent years it has not been used even once. Instead, complaints concerning the conduct of ISA personnel during interrogations are referred to the ISA’s “Inspector of Interrogees’ Complaints.” This position is held by a salaried, experienced, high-ranking employee of the ISA. A statement made by the Attorney General in 2010 that the position would be transferred to the Justice Ministry has yet to be implemented.<sup>53</sup> Thus complaints of torture by ISA agents are investigated in-house, by an ISA agent, who can be neither independent nor impartial. His report is then studied by the State Attorney’s Office. All complaints of torture are then either denied factually or else justified as “ticking bomb” cases, in which case torturers are exempted from criminal liability by the Attorney-General under the “defence of necessity”. Either way, the files are invariably closed. Not a single case has been criminally investigated, let alone prosecuted in over two decades.<sup>54</sup> Setting aside very limited disciplinary measures in a handful of cases (which have never included fines, dismissal or demotion), there is total impunity for such torturers.<sup>55</sup>

22. The General Security Service Law - 2000, grants ISA personnel *de jure* immunity for acts in the course of service as long as they acted reasonably and in good faith.<sup>56</sup> Unfortunately, the possibility of Israel’s State Attorney’s Office, its Attorney-General or indeed its courts finding torture in certain circumstances to have been a reasonable act performed in good faith cannot be ruled out. The Law also requires that all regulations pertaining to the conduct of ISA interrogations and the names of all ISA personnel be kept classified, making it impossible for a complainant to know if the actions of which he or she complains were authorized under cover of law.

#### **COMPLAINTS AGAINST POLICE**

23. The DIP often fails to properly investigate incidents of torture or other ill-treatment by police officers. Its impartiality and independence are hampered by the fact that most of its investigators are former police officers who tend to side with their former colleagues when forced to choose between a LOIPR-Public Committee Against Torture in Israel, Adalah, Physicians for Human Rights – Israel, Al-Mezan



complainant's version of events and that of the police. The vast majority of complaints, including complaints of detainees concerning ill-treatment in custody, are closed without any investigation being conducted at all or without serious investigation.<sup>57</sup> Thus an April 2010 audit by the head of the Ministry of Public Security's Internal Audit Department on the closure of investigation files in four police districts between 2008-2009, revealed police officers routinely breach the law by failing to transfer complaints concerning ill-treatment to the DIP. The audit recommended instituting disciplinary proceedings against the officers who failed to pass along the complaints.<sup>58</sup>

### **COMPLAINTS AGAINST SOLDIERS**

24. IDF regulations require that a criminal investigation be opened for any complaint of violence or cruelty to a person in custody.<sup>59</sup> However, if the detainee – that is, in most cases, a Palestinian – does not lodge a complaint, acts of torture or other ill-treatment are seldom, if ever, reported to the military police or military prosecutor. Even when timely complaints of torture or other ill-treatment by soldiers are submitted, they are seldom seriously investigated. Such investigations often commence late, are inefficient and rarely end in prosecutions.<sup>60</sup>

#### **Article 14 – Right to redress, compensation and rehabilitation**

25. A detainee who suffers injury due to torture or other ill-treatment while in custody theoretically has a right of action in tort to receive compensation for his or her injuries, but this right in practice is difficult to realize because of great difficulties in producing evidence. Neither the Israel Prison Service (IPS) nor any of the interrogating bodies (ISA, Police, IDF) conduct forensic medical examinations of detainees following complaints. Records of medical examinations in the prison infirmary during ISA interrogations are not thorough enough to allow the plaintiff complaint to mount a serious lawsuit. After the victim is released, it is often too late to obtain forensic medical proof of the cause of injury; in addition, former “security” detainees from the OPT are almost invariably labelled security risks and are consequently not allowed to enter Israel, making it difficult to obtain the qualified expert medical opinion required for a compensation suit for physical or mental harm in Israeli courts.

26. Where the victim was not in custody at the time of ill-treatment and the actions took place in the West Bank or Gaza Strip – for example punitive destruction of property not justified by military necessity – the Civil Damages Law was amended to bar most such suits.<sup>61</sup> Further, Israel has instituted a policy of blocking access to courts to Palestinian residents of the OPT and their witnesses, thus preventing them from bringing tort damages lawsuits in Israel against the military and security forces and exercising their right to compensation, including for alleged acts of torture and other ill-treatment. As a result of Israel's blockade on the Gaza Strip, plaintiffs who are residents of Gaza and their witnesses are blocked from attending court hearings and meeting with their lawyers. Plaintiffs must pay a guarantee of NIS 30,000 (around €6,100) on average, a sum that is difficult for most residents of the OPT to raise given the dire socio-economic situation. Other legal obstacles include a two-year statute of limitations imposed on such lawsuits. Typically, evidentiary proceedings are delayed and the lawsuits are ultimately dismissed by the courts because the plaintiff and his or her witnesses cannot attend court and it is impossible to progress in the cases. In effect, their rights to access the courts and receive a remedy become devoid of content. The lack of compensation constitutes a major, systemic source of impunity for the Israeli military and security services, including for suspected acts of torture and other ill-treatment, and acts as a brake on efforts to combat such violations.<sup>62</sup>

#### **Article 15 - Use of statements obtained by torture and other cruel, inhuman or degrading treatment**

##### **USE OF TAINTED “CONFESSIONS” AS EVIDENCE IN JUDICIAL PROCEEDINGS**

27. The use in courts of “confessions” extracted from defendants or witnesses by interrogation methods amounting to torture or other ill-treatment is widespread due to weaknesses in the law of evidence and judicial precedents. These problems persist both in Israeli civilian courts and in West Bank military courts.

28. Under Sec 10(a) of the Evidence Ordinance (New Version) - 1971, an incriminating out-of-court statement by an accomplice may be admissible as evidence and form the sole substantial grounds for conviction. When obtained through torture or other ill-treatment, such evidence, rather than being barred in all cases in accordance with the Convention, in Israeli law “the question of how the evidence was obtained affects its weight in the trial of the appellant [the defendant] but not its admissibility.”<sup>63</sup> Where an accomplice incriminated the defendant in a statement obtained by torture or other ill-treatment in the course of an ISA interrogation, the accomplice’ statement will be admissible as evidence against the defendant even if it might be inadmissible as a confession in the accomplice’s own trial; such a statement on its own may be sufficient to convict the defendant.<sup>64</sup> The result is that prosecutors bring cases based on evidence obtained by the ISA in “necessity interrogations” because they know that even if a defendant’s own confession may be inadmissible as evidence against him, because it was obtained by torture, it would be admissible against his alleged co-conspirators or collaborators, while the latter’s confessions, even if obtained in the same type of interrogation using the same torturous means would in turn be admissible against the original defendant, and that such confessions may even suffice, in both cases, to ensure conviction. Several subsequent judicial rulings followed *Issaskarov* in rejecting purported evidence obtained unlawfully.<sup>65</sup> However, in line with the above, such decisions are based on a low probative value of such evidence rather than its outright rejection, as required by Article 15 of the Convention.

30. The division of labour between the ISA and police has been considered by the courts as rendering admissible confessions which, while induced by torture or other ill-treatment at the hands of ISA interrogators, are delivered (often in the defendant’s own handwriting) to police officers who do not themselves employ methods prohibited by the Convention, and even warn suspect of their right to avoid self-incrimination.<sup>66</sup> The courts have discounted the probability that the defendant was still under the influence of torturous or cruel ISA interrogation and was confessing under the implied threat of their resumption should he not cooperate by confessing to the police. The Head of the Investigations Division and the Chief Legal Advisor of the ISA have both publicly testified that there is in fact no distinction between the police and ISA aspects of a security investigation, the two being thoroughly inter-dependent and under ISA control,<sup>67</sup> belying the claim that a suspect is free of the influence of the ISA interrogation when questioned by police.

31. Secondary evidence found as a result of information provided under torture or ill-treatment is admissible.<sup>68</sup>

## **Article 16 – Preventing Cruel, Inhuman or Degrading Treatment or Punishment**

### **ADMINISTRATIVE DETENTION**

32. The administrative detention of civilians suspected of posing a future threat to security or public safety is practiced in both Israel and the OPT.<sup>69</sup> A recent law has extended administrative detention to “unlawful enemy combatants.” In both cases the detention is open-ended, may be (and usually is) ordered incrementally, for six month periods, and is based on minimally phrased, vaguely stated grounds of suspicion and on information and evidence which the detainee is not allowed to examine. As the Committee has already observed, this type of indefinite administrative detention, in manifestly unfair proceedings, amounts to cruel, inhuman or degrading treatment.<sup>70</sup> In some cases, administrative detention has been imposed on a prisoner who had completed serving his or her sentence after conviction in a criminal trial: after years of imprisonment, expecting to go home as a free person, the person is detained administratively on the day of release from the criminal sentence, indefinitely.<sup>71</sup> Recently, two Palestinian administrative detainees – Khader Adnan and Hanan Shalabi – have undertaken hunger strikes to protest their arrests, detentions, and torture and ill-treatment during their interrogations. These actions, which have received widespread international media coverage, have re-focused international attention on Israel’s routine use of administrative detention against Palestinians.<sup>72</sup>

### **UNLAWFUL COMBATANTS LAW**

33. The Unlawful Combatants Law - 2002 (as amended in July 2008) provides for holding an “unlawful enemy combatant” in administrative detention, subject to judicial review once every six

months, until the “unlawful combatant’s” release will no longer endanger state security (sec. 5(c)) – a condition which might not be met until the end of the armed conflict. Although the Supreme Court held that there must be a showing of danger emanating from the particular “unlawful combatant,” and the burden of demonstrating that danger must be greater the longer the detention,<sup>73</sup> detentions can become extremely lengthy<sup>74</sup> – especially in a conflict that has already lasted two generations. Israel currently holds one “unlawful combatant,” Mr. Mahmoud Kamel Sarsak from Gaza. He has been detained since 2009.

### **SOLITARY CONFINEMENT**

34. As of December 2010, approximately 150 prisoners and detainees were being held in solitary confinement in Israel. Prisoners may be held in solitary confinement in a number of circumstances, including during interrogation and as a disciplinary measure. Prisoners are also held in what is known as Hafradah (separation), solitary confinement of a prisoner for an extended, unlimited period, either for alleged security reasons, or because they suffer from mental problems which the Prison Service is unable to address in any other way, leading to further deterioration in their mental condition. In all cases the severe impact of solitary confinement on the prisoner’s physical and psychological health is the same: solitary confinement undeniably and inevitably causes harm to the physical and mental health of prisoners, and constitutes a disproportionate measure. Prolonged solitary confinement violates the Convention as it constitutes torture or other ill-treatment, as recently noted by the UN Special Rapporteur on torture.<sup>75</sup>

### **SHACKLING**

35. Shackling – ISA: Detainees being interrogated by ISA agents are handcuffed behind the back in an initially uncomfortable and, with time, increasingly painful position. This practice continues despite written assurances to the contrary given to PCATI.<sup>76</sup> It is justified by officials as a means of protecting interrogators from attack, but the fact that interrogees are left shackled in ISA interrogation rooms on their own, sometimes for hours, belie this claim. As noted above, prolonged and painful shackling methods used by ISA interrogators may form part of torturous interrogation methods or even constitute torture on their own.

36. Shackling – other detainees: Shackling of minors to their prison beds as a disciplinary punishment or in response to attempted suicide, disproportionate or punitive shackling of other detainees and convicted prisoners in prison facilities, degrading and inhuman shackling of hospitalized prisoners to their hospital beds, and degrading exposure of handcuffed suspects to their family, the press and public in court remand hearings have all been frequently documented and criticized by prison monitors from the Public Defender’s Office, by PHR-Israel and by Members of the Knesset in committee hearings,<sup>77</sup> yet they continue unabated.

### **INTERROGATION HOLDING CELLS**

37. While undergoing ISA interrogation, security suspects are held (between interrogation sessions) in cells in a separate wing of the prison facility where deliberately degrading conditions prevail, serving as an adjunct to torturous and cruel, inhuman or degrading interrogation methods. There are no beds, no natural light, and an electric light is on constantly for 24 hours a day. In some cases detainees complain of cold, dampness and vermin.<sup>78</sup> Usually the detainee is held in these cells in isolation at least during a portion of the interrogation period, and often during most or all of it.<sup>79</sup> Independent prison monitors on behalf of the Public Defender’s Office and the Bar Association prison monitors are not allowed into these cells.<sup>80</sup> The ISA interrogation wings have all come under the authority of the Israel Prison Service (IPS), yet the IPS denies responsibility for conditions in the ISA wards while the ISA claims that it is not responsible for conditions of detention.<sup>81</sup> There is no oversight of cells used during interrogation except for oversight by the State Attorney’s office, whose reports are not public. A request by ACRI and PHR-Israel to enable official visits by the Public Defenders’ Office was rejected in 2010. The ICRC is also prohibited entry to the cells in the interrogation wings, and is only able to meet detainees under interrogation outside the interrogation wings.

### **PRISON CONDITIONS**

38. All prisons and jails (including former military prisons) are under the authority of the IPS. While the transfer of authority is intended to bring about an improvement of prison conditions, the Public Defender's Office prison monitor reports continue to describe major problems. According to a report by the Public Defender's Office covering 2009-10,<sup>82</sup> most prisons throughout Israel suffered from widespread overcrowding, inadequate access to medical care, poor hygienic conditions and excessive punitive measures. The report found that detainees and prisoners were cuffed hand and foot as a punishment, sometimes for months on end.<sup>83</sup> Prisoners considered suicidal remained in restraints for long periods without access to proper medical care. For instance, an inmate at Hadarim Detention Centre was shackled to his bed 24 hours a day for five and a half months, following which he remained in restraints for 13 hours a day (including the night), for an additional period of about six months.<sup>84</sup> In describing prison conditions, the report uses terms such as "unbearable," "filthy," "improper for human beings" and "inappropriate, and in part inhuman,"<sup>85</sup> thus directly implying a violation of at least Article 16 of the Convention. PHR-Israel has a pending petition in the Supreme Court about the inadequate treatment of prisoners after suicide attempts, which involve shackling to the bed for prolonged periods and without sufficient mental evaluation and treatment.<sup>86</sup>

### **HARSH CONDITIONS FOR SECURITY PRISONERS**

39. Security prisoners – almost entirely Palestinians, including minors – suffer discrimination; they are denied the right to study for matriculation exams and do not receive the welfare services to which other prisoners are entitled.<sup>87</sup> They are denied telephone communications with their lawyers and family and friends, physical contact with family members including children during visits, and private conjugal visits with spouses.<sup>88</sup> The IPS does not employ a single Arab psychiatrist – one who is capable of speaking to Palestinians in their own language, which in the case of Palestinians from the OPT is often the only one they speak.<sup>89</sup> Prisoners from Gaza are unable to receive family visits because their family members are blocked from entering Israel.<sup>90</sup>

### **ILL-TREATMENT OF REFUGEES AND ASYLUM-SEEKERS**

40. In 2010, PHR-Israel identified an alarming new trend of torture and other ill-treatment among asylum seekers who have recently entered Israel. Many patients treated at PHR's clinic show signs of, or report being raped and/or otherwise tortured by traffickers in the Sinai desert prior to their entry into Israel. Of a total of 172 abortions and 1,324 referrals facilitated by the PHR-Israel's Clinic in 2010 for gynaecological treatments, PHR-Israel suspects that about half were requested by women who were sexually assaulted in Egypt's Sinai Desert.<sup>91</sup> Israel does not systematically evaluate whether individuals are victims of torture or other ill-treatment, including trafficking, in the Sinai Desert. The state does not provide health services to asylum seekers, except in emergencies and to provide basic pregnancy follow-up. Israel's lack of response leads to additional suffering and puts the burden of treatment on NGOs and volunteers. PHR-Israel advocates for social residency as a status that enables patients' access to the health and welfare public systems regardless of their citizenship status.

41. Asylum seekers caught crossing the border from Egypt are taken to the *Saharonim* detention centre in the South Negev Desert. Many detainees arrive in the prison soon after experiencing traumatic abuse in the Sinai Desert, as described above, and are held for weeks or months without proper medical care. With four social workers for a detainee population of 1,900, the prison lacks the staff to cope with the asylum seekers' needs. In addition, the current staff is not trained to identify victims of abuse, leading to cases being overlooked and a low rate of battered women entering government shelters.

### **USE OF FORCE AND VIOLENCE DURING MILITARY OPERATIONS**

42. Israel conducted "Operation Cast Lead" (OCL) in Gaza from 27 December 2008 to 18 January 2009. More than three years later, Israel has completely failed to establish an independent investigation into the hundreds of complaints filed against the conduct of the Israeli military for alleged violations of international law, including of the Convention, or to examine the wider context of the policies, strategies, procedures, regulations or objectives of the military operation. [contradicted below. Refine? "Fully publish"?] The Israeli military investigations into OCL are incompatible with international standards of independence, effectiveness, transparency and promptness.

LOIPR-Public Committee Against Torture in Israel, Adalah, Physicians for Human Rights – Israel, Al-Mezan

During OCL, Palestinians were held in cruel, inhuman and degrading conditions during their initial period of detention in Gaza.<sup>92</sup> The UN Fact-Finding Mission on the Gaza Conflict (November 2009) concluded that, “the abuse, which required a considerable degree of planning and control, was sufficiently severe to constitute inhuman treatment within the meaning of article 147 of the Fourth Geneva Convention and thus a grave breach of the said Convention that would constitute a war crime.” Palestinian, Israeli, and international human rights organizations submitted hundreds of complaints to the Military Attorney General and the Attorney General of Israel demanding the opening of criminal investigations into the killings of civilians, injuries, extensive home and other property damage, the prevention of medical treatment and the use of Palestinian civilians as human shields.

Israel published three reports about the status of its inquiries and investigations into OCL in July 2009, January 2010 and July 2010, primarily to coincide with the timeline set by the UN Secretary General (“Goldstone process”). According to these reports, three indictments were pursued: one case against two soldiers for “conduct unbecoming” (using a nine-year child as a “human shield”), in which the soldiers received suspended sentences and were demoted; another case of manslaughter, and a third case which led to the conviction of a soldier for the theft of a credit card. Other military inquiries have led to two disciplinary actions, a reprimand and a sanction. According to Israel’s report of January 2010, a special command investigation will look into allegations that, “IDF forces held the detainees in cruel, inhumane and degrading conditions.” No further information has been published about the results or the status of the investigations or their outcomes. It is clear, more than three years after the end of OCL, that Israel has not and is not willing to conduct proper domestic investigations into the operation.

### **BLOCKADE ON GAZA**

43. Israel’s blockade on Gaza, which severely restricts freedom of movement and trade, has had a lasting impact on the civilian population. 38% of Gazans live in poverty, with 54% suffering from food insecurity. Imports stand at 40% of pre-2007 levels, and only very limited agricultural exports are allowed to Europe, with all of Gaza’s traditional market in the West Bank and Israel blocked.<sup>93</sup> As of March 2011, 41,200 new housing units were needed to address the severe housing shortage, but could not be built because of restrictions on the entrance of cement and other building materials. Since January 2007, as part of the blockade, fishermen’s access to the sea has been further restricted to three nautical miles from the shore; a twenty nautical mile limit was agreed upon in the Oslo Accords. Fishermen are often subjected to harassment and ill-treatment, shot at with water cannons or live ammunition, and have their boats seized by the Israeli navy for allegedly violating the fishing limits. Attacks and arrests have occurred even within the three-mile permitted zone. These actions are undertaken to intimidate and discourage fishermen from working for their livelihood.

### **HOME DEMOLITIONS**

44. The Israeli military has carried out thousands of house demolitions since the beginning of the occupation in 1967, many as a matter of policy to deter and punish violence by Palestinians. Other common pretexts for home demolitions are lack of building permits, used in particular in the vicinity of Israeli settlements, and military necessity. Operation Cast Lead saw the complete demolition of hundreds of homes and buildings up to 300 meters into the Gaza Strip to create the Buffer Zone or Access Restricted Area.<sup>94</sup> Palestinians are totally or partially forbidden from accessing land within 1,000-1,500 meters of the Green Line around Gaza to this day.<sup>95</sup> Since February 2009, Al Mezan has documented the destruction of 251 houses by the Israeli military, of which 25 were totally demolished.<sup>96</sup> This destruction constitutes punitive home demolition. Many of those whose homes have been demolished are still homeless and living in temporary (and often inadequate) accommodation. The reconstruction and repair of homes has been prevented because of the blockade on the Gaza Strip imposed by Israel, which as noted prohibits the entry of most construction materials.

### **DENIAL OF MEDICAL ACCESS**

LOIPR-Public Committee Against Torture in Israel, Adalah, Physicians for Human Rights – Israel, Al-Mezan

45. The ISA has the final authority in deciding whether or not a patient will be allowed to exit Gaza to access medical care. Many patients are denied exit permits, including those in serious medical condition, for unspecified “security reasons.” From January – June 2011, PHR-Israel documented 226 cases and appeals from Gaza patients who were denied permits or delayed access to medical treatment, at times with tragic consequences. Patients who are delayed often miss their scheduled appointments with physicians at health facilities and must re-schedule these dates and submit a new request for an exit permit.<sup>97</sup>

In at least 35 cases since July 2007, the ISA has subjected patients – many of whom had been granted exit permits by other Israeli authorities – to an interrogation at Erez Crossing. In the course of that interrogation, many were asked to provide information about relatives and acquaintances, and/or required to collaborate and provide information on a regular basis, as a precondition for being allowed to exit Gaza.<sup>98</sup> These cases include several patients suffering from life-threatening medical conditions. According to patients’ testimonies, if they refused or could not provide the information, they were denied permission to exit Gaza to receive medical treatment.<sup>99</sup> A petition submitted by PHR-Israel to the Supreme Court on this issue was rejected on the basis that the Court accepted a statement from the Commander of the IDF Southern Command that “[...] no use is made of person’s illness in order to obtain information in the realm of security.”<sup>100</sup> An additional reason was that individual solutions were found for most of the patients in the petition.

### Articles 20, 21 and 22 and the Optional Protocol

46. Israel has not withdrawn its reservation to Article 20 of the Convention. In view of the systematic nature of torture in Israel, approved *a priori* through “consultations with high ranking [ISA] officers”<sup>101</sup> and allowed *a posteriori* through impunity granted routinely to ISA torturers by the Attorney-General, this reservation is a serious impediment to the Committee’s monitoring of Israel’s implementation of the Convention.

47. Israel has refrained from declaring that it recognizes the competence of the Committee to receive and consider communications under Article 21 or Article 22.

48. Israel has not acceded to the Optional Protocol to the Convention, despite the dire need, in Israel, for access to be granted to places of detention and detainees, and for monitoring and reporting by national and international preventive mechanisms as envisaged by the Protocol.<sup>102</sup>

50. The submitting organizations note that Israel does not translate the Committee’s Concluding Observations into Hebrew, one of the official languages of the State. Without a Hebrew translation of the Concluding Observations, it is unlikely that the State will disseminate the report widely.

---

<sup>1</sup> The Hebrew name translates to “General Security Service”. Note that this term and its acronym, GSS, were used officially in older documents.

<sup>2</sup> See PCATI’s most recent report: *Accountability Still Denied* (January, 2012), available at: [http://www.stoptorture.org.il/files/PCATI\\_eng\\_web.pdf](http://www.stoptorture.org.il/files/PCATI_eng_web.pdf)

<sup>3</sup> B’Tselem, *Statistics on Palestinians* [http://www.btselem.org/statistics/detainees\\_and\\_prisoners](http://www.btselem.org/statistics/detainees_and_prisoners), accessed 5 March 2012. Information about the individual being held as an unlawful combatant obtained from Al Mezan.

<sup>4</sup> Addameer Monthly Detention Report – June 2011. <http://addameer.info/?cat=18>, accessed 5 March 2012.

<sup>5</sup> IPS holds most prisoners from the OPT (OPT) inside Israel, a violation of the Fourth Geneva Convention, Articles 76, 66, and 49. In 2009 *Yesh Din*, the Association for Civil Rights in Israel, and HaMoked brought a petition to the Supreme Court against the IPS for holding Palestinian prisoners within Israel in violation of their rights to counsel, due process, and contact with their families. The court upheld a 1988 decision that Israel may hold and try Palestinians outside of the occupied territory. See H CJ 2690/09, *Yesh Din, et al. v. The Commander of the IDF Forces in the West Bank et al* (decision delivered 25 March 2010).

<sup>6</sup> UN Doc. A/64/44 (2008-9), para. 49(11).

<sup>7</sup> Under sec. 368(c) of the Penal Law, 1977, mental or physical abuse of a helpless person is punishable by a maximum of seven years imprisonment, or nine years if the perpetrator is the person responsible for the victim. The Supreme Court has held that this offence is applicable to cruelty or ill-treatment of a person being held in custody: Cr. A. 1752/00 *State of Israel v. Nakash*, Piskei Din 54(2) 72, 78–80 (2000). Under sec. 65 of the Military Jurisdiction Law, 1955, cruel treatment by a soldier of a detainee or lower-ranking soldier carries a maximum penalty of three years imprisonment or seven years in aggravating circumstances.

<sup>8</sup> Section 277 of the Penal Law, 1977, under the heading of “oppression by a public servant,” provides:

“A public servant who does one of the following is liable to imprisonment for three years:

(1) uses or directs the use of force or violence against a person for the purpose of extorting from him or from anyone in whom he is interested a confession of an offence or information relating to an offence;

(2) threatens any person, or directs any person to be threatened, with injury to his person or property or to the person or property of anyone in whom he is interested for the purpose of extorting from him a confession of an offence or any information relating to an offence.”

<sup>9</sup> The Committee for Examining Legislation against Torture – Summary Report (11 July 1995). Similar recommendations for reforms in the law of evidence consistent with Articles 1 and 15 of the Convention were included in the Goldberg Committee Report concerning Conviction on the Sole Basis of Confessions and the Grounds for Retrial (December 1994), pp. 16-17. The Justice Ministry circulated a bill for a crime of torture in 1999: Penal Law (Amendment – Prohibition of Torture), 1999.

<sup>10</sup> “GSS Investigations and the Necessity Defence – Framework for Exercising the Attorney General’s Discretion (Following the High Court Ruling),” issued by then Attorney General Elyakim Rubinstein, 28 October 1999, setting criteria for refraining from prosecuting of GSS interrogators under the defence of necessity. This framework was adopted pursuant to the Supreme Court judgment of September 1999 in HCJ 5100/94. There the Court ruled (at para. 38): “An investigator who insists on employing these methods [“physical means”], or does so routinely, is exceeding his authority. His responsibility shall be fixed according to law. His potential criminal liability shall be examined in the context of the “necessity” defence, and according to our assumptions... the investigator may find refuge under the “necessity” defence’s wings (so to speak), provided this defence’s conditions are met by the circumstances of the case.”

<sup>11</sup> Commenting on Israel’s initial report, CAT stated the following:

“It is a matter of deep concern that Israeli laws pertaining to the defences of ‘superior orders’ and ‘necessity’ are in clear breach of that country’s obligations under article 2 of the Convention Against Torture.” UN Doc. A/49/44 (1994), para. 167.

<sup>12</sup> Commenting on Israel’s 2nd periodic report, the Committee expressed concern over: “The continued use of the “Landau rules” of interrogation permitting physical pressure by the General Security Services, based as they are upon domestic judicial adoption of the justification of necessity, a justification which is contrary to article 2, paragraph 2, of the Convention. UN Doc. A/53/44 (1998), para. 238(a).” Commenting on Israel’s 3rd periodic report, the Committee “expressed concern” that “in the Supreme Court’s 1999 ruling... the Court indicated that GSS interrogators who use physical pressure in extreme circumstances (“ticking bomb cases”) might not be criminally liable as they may be able to rely on the ‘defence of necessity.’” The Committee recommended that “necessity as a possible justification for the crime of torture should be removed from the domestic law.” UN Doc. A/57/44 (2002), para. 52(a)(iii), para. 53(i). Commenting on Israel’s 4th periodic report, the Committee reiterated these concerns, and “its previous recommendation that the State party completely remove necessity as a possible justification for the crime of torture.” UN Doc. A/64/44 (2008-9), para. 49(14).

<sup>13</sup> In 2003 the Human Rights Committee made it clear, having considered Israel’s second periodic report, that “the ‘necessity defence’ argument... is not recognized under the Covenant.” Concluding observations of the Human Rights Committee: Israel. UN Doc. CCPR/CO/78/ISR, 5 August 2003, para. 18. In 2010 the Human Rights Committee recommended, in a similar vein, that “the State party should completely remove the notion of ‘necessity’ as a possible justification for the crime of torture.” UN Doc. A/65/40, Vol. I (2009-10), para. 75(11).

<sup>14</sup> The Special Rapporteur stated unequivocally in response to the HCJ ruling in *HCJ 5100/94 Public Committee against Torture in Israel v. the State of Israel* and referring to the ‘defence of necessity’: “...there is no such defence against torture or similar ill-treatment under international law”. UN Doc. E/CN.4/2000/9 (2000), para. 675.

<sup>15</sup> HCJ 3533/08 *Suweiti et al. v. the ISA et al.* (decision delivered 9 September 2009), para. 4.

<sup>16</sup> HCJ 5553/09 *Public Committee Against Torture in Israel v. the Prime Minister et al.* (decision delivered April 2010). Here, too, the Court is summarising the State’s position.

<sup>17</sup> See for instance Public Committee Against Torture in Israel, *Back to a Routine of Torture: Torture and Ill-treatment of Palestinian Detainees during Arrest, Detention and Interrogation*, September 2002-April 2003 (Jerusalem: PCATI, written by Yuval Ginbar, June 2003); *idem*, *Ticking Bombs – Testimonies of Torture Victims in Israel* (Jerusalem: PCATI, written by Noam Hoffstadter, May 2007); B’Tselem, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees* (Jerusalem: B’Tselem and HaMoked Center for the Defense of the Individual, written by Yehezkel Lein, May 2007), pp. 63-70; Public Committee Against Torture in Israel, “*Family Matters*” – *Using Family Members to Pressure Detainees* (Jerusalem: PCATI, written by Aviel Linder, March 2008); *idem*, *Accountability Denied: The Absence of Investigation and Punishment of Torture in Israel* (Jerusalem: PCATI, 2009, Irit Ballas *et al.*, eds.); B’Tselem and HaMoked, *Kept in the Dark: Treatment of Palestinian Detainees in the Petah Tikva Interrogation Facility of the Israel Security Agency* (Jerusalem: B’Tselem and HaMoked, 2010, written by Yossi Wolfson); Adalah and the Public Committee Against Torture in Israel, *Exposed: The Treatment of Palestinian Detainees During Operation Cast Lead* (2010, written by Majd Badr and Abeer Baker); Public Committee Against Torture in Israel and Physicians for Human Rights-Israel, *Doctoring the Evidence, Abandoning the Victim: The Involvement of Medical Professionals in Torture and Ill-treatment in Israel* (Jerusalem: PCATI and PHR-Israel, 2011, written by Irit Ballas). ISA personnel testified concerning methods of interrogation in closed court hearings; the publication of such testimonies is prohibited. But see Yuval Ginbar, *Why Not Torture Terrorists: Moral, Practical and Legal Aspects of the ‘Ticking Bomb’ Justification for Torture* (paperback edition, Oxford: Oxford University Press, 2010), pp. 365-72 for excerpts from such testimonies. Other ISA memoranda on the use of “special measures” were released to defence attorneys in several cases and are on file with PCATI.

<sup>18</sup> See PCATI, *Ticking Bombs, ibid.*, at 60.

<sup>19</sup> See PCATI and PHR-I, *Doctoring the Evidence*, above.

<sup>20</sup> The (temporary) law was enacted on 29 June 2006 and initially extended by an amendment adopted on 18 December 2007. The intention of the Justice Ministry to incorporate its provisions into a permanent law was stated in the Knesset Constitution Law and Justice Committee on 12 December 2007 (Protocol 379).

LOIPR-Public Committee Against Torture in Israel, Adalah, Physicians for Human Rights – Israel, Al-Mezan

- <sup>21</sup> HCJ 2028/08, *The Public Committee Against Torture in Israel, et al. v. The Minister of Justice* (petition withdrawn on 24 March 2009). For more information, see Adalah news update, 23 February 2010: [http://www.adalah.org/eng/pressreleases/pr.php?file=23\\_02\\_10](http://www.adalah.org/eng/pressreleases/pr.php?file=23_02_10)
- <sup>22</sup> Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law (Amendment No. 2, 2010).
- <sup>23</sup> Order Concerning Security Provisions (Judea and Samaria) (No. 378), 1970, sections 78(d), 78(c) and 78(d). Under section 78(f) a military court judge may extend detention for periods of up to 30 days each, and the total period of pre-indictment detention for purposes of investigation can reach 98 days from the day of arrest.
- <sup>24</sup> Order Concerning Security Provisions (Judea and Samaria) (No. 1599) (Amendment No. 95), 2007, enacted on 15 August 2007, amending sec. 78 of the Order Concerning Security Provisions (Judea and Samaria) (No. 378), 1970.
- <sup>25</sup> Chaim Levinson, "Nearly 100% of all military court cases in West Bank end in conviction, Haaretz learns," *Haaretz*, 29 November 2011, <http://www.haaretz.com/print-edition/news/nearly-100-of-all-military-court-cases-in-west-bank-end-in-conviction-haaretz-learns-1.398369>, accessed 12 February 2012.
- <sup>26</sup> Detention of Illegal Combatants (Amendment and Temporary Provision) Law, 2008, enacted 30 July 2008.
- <sup>27</sup> The Supreme Court ruled that the law may not be applied to residents of Israel and left open the question of whether West Bank residents may be subjected to its provisions. Cr. App. 6659/06 *Anon v. State of Israel* (decision delivered 11 June 2008).
- <sup>28</sup> UN General Assembly resolution A/RES/66/150 17 December 2007. para. 15; UNGA res. 63/166, 12 December 2008, para. 20; UNGA res. A/RES/66/150 19 December 2011, para. 22.
- <sup>29</sup> Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 11.
- <sup>30</sup> See for instance Report of the Committee against Torture, UN Doc. A/52/44 (1997), paras. 121(d) (re Georgia); 146 (re Ukraine); UN Doc. 44(A/55/44) (2000), para. 61(b) (re Peru); UN Doc. A/58/44 (2003), para. 42(h) (re Egypt); UN Doc. A/59/44 (2004), para. 146(d) (re Yemen).
- <sup>31</sup> UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.
- <sup>32</sup> HCJ 9733/03, *HaMoked: Center for the Defence of the Individual v. State of Israel, et al.* (decision delivered 20 January 2011).
- <sup>33</sup> See HaMoked's Court Watch commentary on the judgment: <http://www.hamoked.org/Document.aspx?dID=Updates1071>.
- <sup>34</sup> UN Doc. A/64/44 (2008-9), para. 49(26).
- <sup>35</sup> Prevention of Infiltration Law (Offences and Jurisdiction) (Amendment No. 3 and temporary order), 2012. For an analysis of the law see Ziegler, Reuven (Ruvi), "The New Amendment to the 'Prevention of Infiltration' Act: Defining Asylum-Seekers as Criminals," Israel Democracy Institute, 14 February 2012, available at: <http://www.idi.org.il/sites/english/OpEds/Pages/ZieglerInfiltration.aspx>.
- <sup>36</sup> The Amendment defines an "infiltrator" as "every person who is not a resident (of the State of Israel)... who entered Israel not through a border crossing as designated by the Minister of the Interior..."
- <sup>37</sup> See HCJ 9420/09 *Anon v. The Minister of Justice* (decision delivered 28 March 2010), paras. 5, 11, 31. A request for a further hearing was rejected (HCJ-FH 2465/10, decision delivered 16 June 2010).
- <sup>38</sup> *Ibid.*, para. 30.
- <sup>39</sup> Committee against Torture, General Comment on the Implementation of article 3 of the Convention on the context of article 22, UN GAOR Supp. , Annex IX,44 (A/53/44, 1998), para. 7.
- <sup>40</sup> Changes in the law concerning security suspects are discussed under Article 2, above.
- <sup>41</sup> Cr. App. 5121/98 *Issaskarov v. Chief Military Prosecutor* (decision delivered 4 May 2006), available in English translation on the website of Israel's Supreme Court, <http://www.court.gov.il>.
- <sup>42</sup> *Ibid.*, para. 67, concerning the requirement that the evidence be illegally obtained for it to become putatively inadmissible; para. 72 concerning the gravity of the crime and the importance of the evidence being factors to admit the evidence even it was obtained illegally and violates the defendant's right to fair procedures.
- <sup>43</sup> Amendment no. 14 to the law, adopted 21 July 2008.
- <sup>44</sup> Sec. 9(f) of the Law as amended. The duty to inform the parent or relative of arrest was already part of the general Arrest Law. The duty to inform parents that their child will be questioned was introduced in the Amendment.
- <sup>45</sup> Sec. 9(h). Under section 9(i) the minor must also be informed before any questioning of his or her right to consult a lawyer and to free counsel provided by the Public Defender.
- <sup>46</sup> Sections 9(g) and 9(h).
- <sup>47</sup> B'Tselem, "No Minor Matter: Violations of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone-Throwing, July 2011." <http://www.btselem.org/publications/summaries/2011-no-minor-matter>.
- <sup>48</sup> See "False Confessions by Palestinian children and adolescents under coercion," Physicians for Human Rights-Israel, Adalah, Al-Mezan Center for Human Rights, available at: [http://www.mezan.org/en/details.php?id=12994&ddname=torture&id\\_dept=51&p=center](http://www.mezan.org/en/details.php?id=12994&ddname=torture&id_dept=51&p=center)
- <sup>49</sup> Amendment no. 4, June 17, 2008, extending the exemption from recording investigations of security offences under section 17 of the law from July 2008 to July 2012.
- <sup>50</sup> In December 2010, Adalah, together with PHR-I, Al Mezan and PCATI, filed a petition to the Supreme Court requesting that the exemption be cancelled, arguing that it made detainees suspected of committing the relevant crimes, overwhelmingly Palestinians, more vulnerable to torture and other ill-treatment and increased the likelihood of false confessions. HCJ 9416/10, *Adalah v. The Ministry of Public Security* (case pending).
- <sup>51</sup> Draft Bill: Criminal Procedure Law (Interrogation of Suspects) (Amendment - Interrogation of Suspects of Security Offences). Published for consultation on 14 December 2011.
- <sup>52</sup> Bill set to grant Israel Police immunity when quizzing suspects: 18/3/2012 <http://www.haaretz.com/print-edition/news/bill-set-to-grant-israel-police-immunity-when-quizzing-suspects-1.419237>



<sup>53</sup> “Israel’s Justice Ministry to probe claims of Shin Bet torture and abuse,” Haaretz, 18 November 2010. <http://www.haaretz.com/print-edition/news/israel-s-justice-ministry-to-probe-claims-of-shin-bet-torture-and-abuse-1.325282> In its response to HCJ 1265/11 *PCATI at el v. The Attorney General* (case pending) from January 2012, the State noted that that all budgetary and logistical issues have been resolved and that the tender for the new post will be issued in the coming weeks. See para 19 of State’s response, 2 January 2012. To date, as far as the submitting organizations are aware, no tender for the position has been issued as of February 2012.

<sup>54</sup> According to data provided by the Ministry of Justice to PCATI, over 700 complaints of torture and other ill-treatment by ISA interrogators were received between 2001-2011. All of them were dismissed; no criminal investigations have been opened. According to information provided to the UN Special Rapporteur on human rights and counter-terrorism during his visit to Israel in July 2007, some 550 complaints were examined by the Inspector of Complaints since 2000, yet in not a single case was a prosecution initiated and in only four cases was disciplinary action taken. See UN Doc. A/HRC/6/17/Add.4, 16 November 2007, para. 19.

<sup>55</sup> For a comprehensive treatment of the current situation on this matter see PCATI, *Accountability Still Denied*, [http://www.stoptorture.org.il/files/PCATI\\_eng\\_web.pdf](http://www.stoptorture.org.il/files/PCATI_eng_web.pdf)

<sup>56</sup> Sec. 18 of the General Security Service Law, 2000.

<sup>57</sup> Adalah has demanded the opening of criminal investigations in numerous cases in which the police have used violence and unnecessary or excessive force against demonstrators, resulting in the injury and even the death of protestors, Palestinian citizens of Israel. While investigations have been opened in some cases, no police officer, commander or political leader has been prosecuted or otherwise held to account in these cases. See: *Adalah, The Accused – Part II, Failures and Omissions by the Attorney General in Investigating the October 2000 Events*, October 2011; *Investigate Police Assault on Nakba Day Demonstrators in Israel*, [http://www.adalah.org/eng/pressreleases/pr.php?file=20-2\\_06\\_11](http://www.adalah.org/eng/pressreleases/pr.php?file=20-2_06_11); *Prohibited Protest: Law Enforcement Authorities Restrict the Freedom of Expression of Protestors Against the Military Offensive in Gaza*, [http://www.adalah.org/features/prisoners/GAZA\\_REPORT\\_ENGLISH\\_FOR\\_THE\\_NEWSLETTER.pdf](http://www.adalah.org/features/prisoners/GAZA_REPORT_ENGLISH_FOR_THE_NEWSLETTER.pdf).

<sup>58</sup> Audit concerning closure of investigation files-Final Report, Ministry of Public Security, Internal Audit Dept., April 2010 at 10, published February 2012.

<sup>59</sup> Public Committee Against Torture in Israel, *No Defense – Soldier Violence against Palestinian Detainees* (Jerusalem: PCATI, written by Noam Hoffstadter, June 2008), at 29. This is in contrast to cases of causing injury or death during military operations, in which the opening of a military police investigation is discretionary.

<sup>60</sup> *Ibid.*, pp. 31-2; *Absolute Prohibition*, above, pp. 82-3.

<sup>61</sup> A constitutional challenge to this law was partially successful: the Supreme Court declared unconstitutional an amendment to the Civil Damages (State Responsibility) Law - 1952, which would have made the State immune from civil suits for causing any damage under any circumstances in most of the OPT. However, other amendments to this law broadening state immunity for damages caused in the course of “suppressing insurrection” or “countering terror” in these Territories remain in force and the Government has proposed that the Knesset enact provisions that would further widen this immunity. See HCJ 8276/05 *Adalah – The Legal Center for Arab Minority in Israel v. Defence Minister* (decision delivered 12 December 2006); Civil Damages (State Responsibility) (Amendment No. 8) Bill - 2008 (published in the Official Gazette of Government Bills 28 May 2008).

<sup>62</sup> See Adalah, “The policy of blocking Gaza residents’ access to the Israeli courts in damage lawsuits filed against the Israeli security force,” 14 October 2010.

<http://www.old-adalah.org/newsletter/eng/oct10/Gaza%20Blocking%20Access%20to%20Courts.pdf>

<sup>63</sup> Cr. App. 7758/04 *Alkader v. State of Israel*, per Justice S. Jabarin (decision delivered 19 July 2007). The accomplice was interrogated by the GSS/ISA and the defendant claimed that this interrogation was abusive.

<sup>64</sup> Cr. File 775/04 Jerusalem District Court *State of Israel v. Abd al-Aziz* (decision delivered 29 December 2005). The defendant was convicted of aiding the commission of a suicide terror attack on the basis of the confession of an accomplice. The accomplice’ confession was obtained, according to Justice Noam, “as a result of harsh, abnormal and unacceptable methods of interrogation which were applied to him due to the circumstances in which he hid inside of himself essential information on planned terror attacks and due to the necessity of quickly getting to all members of his cell in order to thwart the attacks” (para. 26 of Justice Noam’s opinion).

<sup>65</sup> See e.g. the Supreme Court decision in Cr. Appeal 1776/06, *Al Saad v State of Israel* (decision delivered 5 September 2011); the Military Appeal Court’s decision in 5382/09 *Military Prosecution v Ayman Hamida* (30 November 2011).

<sup>66</sup> A string of Supreme Court judgments recognise as legitimate the distinction between ISA and police interrogations of the same suspect, and hold that the defendant’s subjective state when making a confession to the police may be unaffected by the nature of the ISA interrogation: Cr. App. 6613/99 *Smirk v. State of Israel*, 56 (3) Piskei Din 529, 546 (2002); HCJ 9438/06 *Anon v. Military Appeals Court*, para. 5(2) (decision delivered 14 January 2007).

<sup>67</sup> Protocol No. 558 of Constitution Law and Justice Committee, 10 June 2008.

<sup>68</sup> The discretionary exclusionary rule under the *Issaskarov* judgment (above), does not adopt the “fruit of the poison tree” doctrine although it leaves open an option of excluding evidence obtained by violations of fundamental rights if the evidence would affect the defendant’s right to fair procedure (para. 71).

<sup>69</sup> During 2011 there was a sharp rise in the number of Palestinian administrative detainees held by Israel, from 219 in January to 307 in December, according to figures received from the Israel Prison Service. See B’Tselem, “Sharp increase in administrative detention in 2011; one detainee on hunger strike for 46 days” 1 February 2012, [http://www.btselem.org/administrative\\_detention/20120201\\_sharp\\_rise\\_in\\_administrative\\_detention](http://www.btselem.org/administrative_detention/20120201_sharp_rise_in_administrative_detention).

<sup>70</sup> Report of the Committee against Torture, UN Doc. A/57/44 (2002), para. 52(e); UN Doc. A/64/44, para. 49(17).

<sup>71</sup> For a case of criminal sentence being extended as administrative detention see e.g. HCJ 2233/07 *Anon* (decision delivered 29 March 2007). See also B'Tselem and HaMoked, *Without Trial – administrative detention of Palestinians by Israel and the Incarceration of Unlawful Combatants Law*, (Jerusalem: B'Tselem and HaMoked, 2009, written by Ofir Feuerstein).

<sup>72</sup> Khader Adnan, 34, was arrested by Israeli forces on 17 December 2011. According to his testimony, army and ISA? interrogators pulled his beard and tore his hair during his interrogation. One of the interrogators touched his shoes and then put the hand over Mr. Adnan's moustache, a religious insult. The interrogators threatened him, screamed at him, and bound his hands behind a chair for several hours, despite his obvious pain and his continual statements about a prior medical condition affecting his back. On the second day of his interrogation, Mr. Adnan began a hunger strike to protest his arrest, detention, harsh interrogation and degrading treatment. During his hunger strike, IPS denied him continuous treatment by an independent doctor, and kept Mr. Adnan shackled to his bed. On 8 January 2012, Mr. Adnan was issued a four-month administrative detention order. He continued the hunger strike until 21 February 2012 when his lawyers reached an agreement with the Attorney General to end his administrative detention on 17 April 2012, in spite of the 66-day hunger strike that endangered his life and left him incapacitated. Following Mr. Adnan's hunger strike other detainees under administrative detention followed suit. The detainee who is on the longest hunger strike as of this submission is Hana Shalabi, who was released on 18 October 2011 from over two years in administrative detention as part of the Gilad Shalit prisoner exchange conducted by the Israeli government and Hamas. Shalabi was re-arrested less than four months later on 16 February 2012, and immediately began a hunger strike in protest of her detention. As of 11 March 2012 she had been on hunger strike for 25 days.

<sup>73</sup> Cr. App. 6659/06 *Anon v. State of Israel* (decision delivered 11 June 2008), para. 67, per Pres. Beinisch.

<sup>74</sup> The detainees in the above case had been held first as administrative detainees, then as "unlawful combatants" under the new law, for six years and six months in one case at the time of the above judgment, and in the other for nearly five years and five months. See also Administrative Detention Appeal 6434/09 *Anon v. State of Israel* (decision delivered 19 August 2009, concerning the detention of a person under the Unlawful Combatants Law who had served a criminal sentence, based primarily on the same information upon which the criminal sentence was based.); Administrative Detention Appeal 6658/11 *Anon v. State of Israel* ( decision delivered 4 October 2011, rejecting an appeal against a decision to extend detention following an 18 month period of incarceration).

<sup>75</sup> Interim report of the Special Rapporteur of the Human Rights Council on Torture, Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. A/66/268, 5 August 2011, available at: <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf>.

<sup>76</sup> Letter from office of Chief Military Secretary in the Prime Minister's Office to PCATI, 27 January 2008. The state reiterated this assurance in its response to PCATI's petition in HCJ 5553/09 on that basis. The Court rejected PCATI's petition, observing that, "As for the use of shackling as a security measure during interrogation, the State notes in its response in this matter, following the intervention of the Attorney General, and following the appeal of the petitioner, that indeed the shackling methods were changed so as to ease the position and manner in which detainees are shackled so as to shift the position of the arms from behind the back to the sides of the detainee's body, even permitting movement of the arms."

<sup>77</sup> See Public Defender's Office Report – Conditions of Detention and Imprisonment 2007, pp. 12–17, 36, 56-57; Public Defender's Office Report – Conditions of Detention and Imprisonment 2006, pp. 13, 25, 57; Knesset Constitution, Law and Justice Committee hearing, 24 January 2008 (protocol 431) – 90% of adult detainees and 95% of minor detainees are brought to court hearings handcuffed and most of them with leg shackles as well.

<sup>78</sup> See: "Adalah and Nadi al-Aseer Demand an End to the Detention of Palestinian Detainees in Shabak Facilities Due to Inhuman and Degrading Conditions," 21 May 2011, [http://www.adalah.org/eng/pressreleases/pr.php?file=12\\_05\\_11](http://www.adalah.org/eng/pressreleases/pr.php?file=12_05_11).

<sup>79</sup> See *Absolute Prohibition*, above, pp. 46–53.

<sup>80</sup> Public Defender's Office Report – Conditions of Detention and Imprisonment 2004, at 36 – the Public Defender monitors were denied access to the ISA interrogation wing in the Kishon prison. Public Defender reports in subsequent years, which describe thorough monitoring, make no more mention of the security wards. Independent monitors from PCATI, who received their appointments through the Israel Bar Association, have consistently been denied access in to the ISA interrogation wings in Petah Tikvah and Jerusalem.

<sup>81</sup> For instance a complaint about painful shackling between interrogations received responses from each of the two bodies stating that it is under the other's responsibility. The Head of the Investigation Division of the ISA stated in a hearing of the Knesset Constitution, Law and Justice Committee: "Everything connected to the conditions of detention and maintenance is not our responsibility but rather is in the responsibility of the prison authorities" (Protocol 245 of 3 July 2007).

<sup>82</sup> Public Defender's Office Report – Conditions of Detention and Imprisonment in the facilities of the IPS and Israel police 2009-10). For a short summary in English see Tomer Zarchin "Report reveals harsh condition in Israeli jails", *Haaretz*, 16 August 2011, <http://www.haaretz.com/print-edition/news/report-reveals-harsh-condition-in-israeli-jails-1.378807>.

<sup>83</sup> Public Defender's Office Report, *ibid.*, pp. 41, 45.

<sup>84</sup> *Ibid.*, at 16.

<sup>85</sup> *Ibid.*, pp. 39, 43, 41 (repeated 45), respectively.

<sup>86</sup> HJC 7492/11, *Physicians for Human Rights – Israel v. IPS and Ministry of Health*, submitted 11 November 2011.

<sup>87</sup> Public Defender's Office Report – Conditions of Detention and Imprisonment 2009-10, pp. 32-4. In its response to 2009-2010 Public Defender's Office Report, the IPS asserted that in special cases social care is provided; however, as a general policy, due to "security concerns," there are no treatment and rehabilitation programs for security detainees. See "IPS response to draft Public Defender's Office Report – Conditions of Detention and Imprisonment 2009-10", 7 August 2011, at 2, <http://www.justice.gov.il/NR/rdonlyres/8B7BE20A-D5FF-4446-960F-644F5820FE86/29481/TguvatSabash.doc>.

<sup>88</sup> Public Defender's Office Report – Conditions of Detention and Imprisonment 2007, pp. 22, 28-29; 2009-10, pp. 32-4, 55-8. In 2007 the IPS Director ordered that security prisoners no longer be allowed to complete the Palestinian matriculation exams.

LOIPR-Public Committee Against Torture in Israel, Adalah, Physicians for Human Rights – Israel, Al-Mezan

In late 2010, Adalah sent a letter to IPS demanding that security prisoners' books not be censored, [http://www.old-adalah.org/eng/pressreleases/pr.php?file=30\\_11\\_10](http://www.old-adalah.org/eng/pressreleases/pr.php?file=30_11_10). Adalah submitted a petition, on behalf of Rawi Sultani, to the Nazareth District Court demanding that security prisoners be allowed to continue their higher education (Prisoner's Petition 16207-09-11, *Rawi Sultani v. Ministry of Public Security* (case pending)). The Nazareth District Court rejected a demand for conjugal visits for security prisoner Walid Dakka so that he may father a child. Prisoner's Petition 54950-11-11, *Walid Dakka v. Israel Prison Service* (decision delivered February 2012). The Court emphasised security reasons based on secret "evidence" unavailable to Mr. Dakka or Adalah attorneys, his counsel, as its basis for denying the request. Note: Yigal Amir, sentenced to life imprisonment for killing former Prime Minister Yitzak Rabin, was permitted to father a child, while in prison.

<sup>89</sup> "No Treatment for Mentally Ill Detainees," *Haaretz*, 20 August 2001, reporting that the IPS did not employ any Arabic-speaking psychiatrist, psychologist or social worker.

<sup>90</sup> According to the International Committee of the Red Cross, "Palestinian families must be allowed to visit their next of kin in Israeli prisons. This is a humanitarian issue of utmost importance." There are currently 695 individuals from Gaza incarcerated in Israeli prisons. In December 2009, the Supreme Court ruled that family members from Gaza have no right to visit their relatives incarcerated in Israeli prisons. The ruling came in response to a petition submitted by Adalah, Al Mezan and the Association for Palestinian Prisoners in June 2008 demanding family visits from Gaza following a total ban imposed by Israel in June 2007. HCJ 5399/08, *Adalah, et al. v. The Defense Minister, et al.* (decision delivered 9 December 2009).

<sup>91</sup> PHR-Israel: *Hostages, Torture, and Rape in the Desert: Findings from 284 Asylum Seekers about Atrocities in the Sinai*: <http://www.phr.org.il/default.asp?PageID=183&ItemID=915>; "Hundreds of Refugees Held Hostage in Sinai Torture Camps Need Rescuing," <http://www.phr.org.il/default.asp?PageID=183&ItemID=1176>.

<sup>92</sup> See PCATI and Adalah, *Exposed: The Treatment of Palestinian Detainees During Operation "Cast Lead"*, above.

<sup>93</sup> See "Humanitarian Situation in the Gaza Strip," United Nations Office for the Coordination of Humanitarian Affairs occupied Palestinian territory, October 2011, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_Gaza\\_FactSheet\\_October\\_2011\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_Gaza_FactSheet_October_2011_english.pdf).

<sup>94</sup> During Operation Cast Lead, Al Mezan documented Israeli military destruction or damage of 11,149 homes, of which 2,652 homes were destroyed completely. These houses had accommodated 108,892 people, including 53,305 children.

<sup>95</sup> See UN Office for Coordination of Humanitarian Affairs and World Food Program, "Between the Fence and a Hard Place," August 2010. [http://www.ochaopt.org/documents/ocha\\_opt\\_special\\_focus\\_2010\\_08\\_19\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf).

<sup>96</sup> Figures taken from Al Mezan's database unless otherwise noted.

<sup>97</sup> A letter sent to the Military Advocate-General and to the Attorney-General in January 2011 requested a criminal investigation into the death of Mr. Anas Saleh, denied permission by Israel to exit Gaza for medical treatment. Adalah lodged the complaint on behalf of PHR-Israel and Al Mezan to demand the prosecution of those responsible. The 20-year old patient from Gaza died in January 2011 from liver disease. Mr. Saleh was also called for interrogation by ISA on 30 December 2010 to consider his request, but by that date he was already in a comatose state. However, the ISA continued to insist that Mr. Saleh appear for questioning. The legal advisor to the army responded in July 2011 stating that nothing in the complaint required an investigation. See also Adalah Position Paper, June 2010, "Who Gets to Go?" <http://www.old-adalah.org/newsletter/eng/jun10/docs/englishpositionpaper.pdf>.

<sup>98</sup> Physicians for Human Rights-Israel, *Holding Health to Ransom: GSS Interrogation and Extortion of Palestinian Patients at Erez Crossing*, August 2008, available at: [http://www.phr.org.il/phr/files/articlefile\\_1217865604015.pdf](http://www.phr.org.il/phr/files/articlefile_1217865604015.pdf).

<sup>99</sup> See the ISA's response to Physicians for Human Rights-Israel's report, *ibid.* pp.71-73, 75.

<sup>100</sup> Cited in footnote 37 of PHR-Israel, *Holding Health to Ransom*, above.

<sup>101</sup> The ISA confirmed that the Head of the Service grants advance authorizations in an official response published in *Haaretz* on 10 November 2006 to an article on its interrogation methods in the same paper of 8 November 2006: "Permission to employ special methods in interrogations may be granted only by the Head of the [General Security] Service." In a letter sent on 17 October 2007 to Attorney Avigdor Feldman, who had written to the Prime Minister's Office on PCATI's behalf, the Office's Legal Adviser, Att. Shlomit Barnea Perno, wrote (at para. 5):

"...internal instructions were prepared within GSS which determine how consultations with high-ranking officials are to take place when the circumstances surrounding a specific interrogation meet the requirements of the necessity exemption stipulated in Sec. 34(11) of the Penal Law 1997. These instructions were presented to the Attorney-General."

<sup>102</sup> See Physicians for Human Rights – Israel, Adalah, Al Mezan Center for Human Rights, and the Public Committee Against Torture Position Paper, April 2010: *Israel Should Ratify the Optional Protocol to the UN Convention Against Torture as an Effective Means of Eliminating Torture*. Available at: <http://www.adalah.org/newsletter/eng/apr10/English.pdf>.