



**NGO REPORT TO THE UN HUMAN RIGHTS COMMITTEE PRIOR TO THE ADOPTION  
OF LIST OF ISSUES FOR ISRAEL – 4 June 2012**

*Four Palestinian and Israeli human rights organizations – The Public Committee Against Torture in Israel (PCATI), Adalah - The Legal Center for Arab Minority Rights in Israel, Al Mezan Center for Human Rights, and Physicians for Human Rights-Israel (PHR-I) – are submitting this document to assist the UN Human Rights Committee in developing its List of Issues Prior to Israel’s Report. This document focuses on Israel’s lack of compliance with the International Covenant on Civil and Political Rights (ICCPR) regarding torture and ill-treatment of Palestinian prisoners and of the broader population in the Occupied Palestinian Territory (OPT).*

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## OVERVIEW

1. Since the Human Rights Committee (henceforth: the Committee) considered Israel's previous report and issued its concluding observations in 2010, the Israel Security Agency/General Security Service (henceforth: ISA/GSS)<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. The State Attorney's Office or the Attorney General invariably close torture victims' complaints, and/or fail to investigate complaints or prosecute interrogators or their superiors.<sup>2</sup>
2. As of April 2012, Israel held 4,653 security prisoners from the Occupied Palestinian Territories (OPT) and 308 administrative detainees, 24 of whom are members of the Palestinian Legislative Council.<sup>3</sup> Most of the prisoners and detainees are held outside of the OPT in Israel. Seven of the prisoners are female, and 218 are minors – 33 of these under the age of 16. 527 prisoners are serving life sentences. One prisoner has been held under the 2002 law on Unlawful Combatants since August 2009.
3. On Palestinian Prisoners' Day, 17 April 2012, around 2,000 Palestinian prisoners and detainees began a mass hunger strike, continuing a strike begun in December 2011 by Khader Adnan. The strike ended 28 days later, on 16 May 2012, with an agreement with a committee representing the prisoners. Under the agreement, the Israel Prison Service (IPS) will implement "easements" on issues over which the prisoners were protesting, including the harsh conditions of imprisonment, the use of administrative detention, solitary confinement, and the denial family visits from the West Bank and Gaza, on the condition that prisoners will not "carry out any security activity inside Israeli prisons."<sup>4</sup> The agreement was reached while Bilal Diyab and Tha'er Halahla were in critical medical condition, having been on hunger strike for 78 days.
4. Violence and humiliation constituting ill-treatment, and at times torture, are inflicted by soldiers, police and other security forces during arrest and detention of Palestinians in the OPT. Preventative measures are half-hearted; investigations are rare, prosecutions rarer, and convictions rarer still.
5. While there is no disagreement that the Covenant applies in Israel, Israel continues to claim that it 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, "contrary to the State party's position, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the occupied territories, including in the Gaza Strip, with regard to all conduct by the State party's authorities or agents in those territories affecting the enjoyment of rights enshrined in the Covenant."<sup>5</sup> Practices in the OPT must be part of Israel's report or answers to the List of Issues posed by the Committee.
6. Israel has consistently failed to implement the Committee's recommendations.

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1 The Hebrew name translates to "General Security Service". Note that this term and its acronym, GSS, were used officially in older documents.

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

3 Addameer – Prisoner Support and Human Rights Association, *Addameer Monthly Detention Report* – 1 May 2012, <http://www.addameer.org/etemplate.php?id=458>.

4 Israel Ministry of Foreign Affairs, "End of hunger strike by security prisoners," Israel MFA translation of agreement, 14 May 2012, available at

[http://www.mfa.gov.il/MFA/Government/Communiques/2012/End\\_hunger\\_strike\\_security\\_prisoners\\_14-May-2012.htm#understandings](http://www.mfa.gov.il/MFA/Government/Communiques/2012/End_hunger_strike_security_prisoners_14-May-2012.htm#understandings).

5 UN Doc. A/65/40, Vol. I (2009-10), para.5

## ENABLING TORTURE AND OTHER ILL-TREATMENT (ARTICLES 2.2; 7; 14)

### No Legislation Making Torture a Crime

7. There is no legislation in Israel establishing a crime of torture as defined in Article 1(1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>6</sup> or as prohibited by Article 7 of the ICCPR. 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>

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 CAT<sup>9</sup> and Article 7 of the ICCPR. These recommendations have been ignored for more than a decade.

### The “Ticking Time-Bomb”/ “Necessity” Defense

8. 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 an exemption from criminal liability to torturers in these perceived situations. 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 Committee against Torture,<sup>13</sup> and the UN Special Rapporteur on Torture.<sup>14</sup>

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6 UNGA res. 39/46, 10 December 1984, entered in to force 26 June 1987.

7 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.

8 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.”

9 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.

10 “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 prosecution 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.”

11 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.

12 In 2003 the Human Rights Committee clearly stated that “the ‘necessity defence’ argument... is not recognized under the Covenant.” Concluding observations of the Human Rights Committee: Israel. UN Doc.

9. The Supreme Court's coupling of a general rule prohibiting torture with a "ticking bomb" exception 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 the 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).

10. 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 and the Court 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.

### **Use of Tainted "Confessions" as Evidence in Judicial Proceedings**

The use and admissibility 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 evidentiary laws and judicial precedents. These problems persist both in Israeli civilian courts and in West Bank military courts.

11. Decisions on the admissibility of evidence still generally follow the *Issaskarov* judgment of 2006.<sup>17</sup> In this case, the Supreme Court ruled that the 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>18</sup> Applying this proviso to the interrogation of "suspected terrorists" is likely to lead trial

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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).

13 Commenting on Israel's 2nd periodic report, the Committee against Torture (CAT) 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 CAT "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, CAT 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).

14 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.

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

16 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.

17 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>.

18 *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.

courts to admit confessions and other evidence even where the accused was not informed of the right to meet counsel.

12. 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>19</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’s 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>20</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>21</sup> However, in line with the above, such decisions are based on a low probative value of such evidence rather than its outright rejection.

13. 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 Covenant, and even warn suspects of their right to avoid self-incrimination.<sup>22</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 its 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>23</sup> belying the claim that a suspect is free of the influence of the ISA interrogation when questioned by police.

14. Secondary evidence found as a result of information provided under torture or ill-treatment is admissible.<sup>24</sup>

### **Video and Audio Recording of Interrogations**

15. 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

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19 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.

20 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).

21 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).

22 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).

23 Protocol No. 558 of Constitution Law and Justice Committee, 10 June 2008.

24 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).

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 “confession” was 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 “confession”.

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>25</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>26</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. A bill to make the exemption permanent law is currently being considered.<sup>27</sup>

### **Methods of Torture Reported by Detainees**

16. Palestinian detainees, in detailed affidavits provided to the submitting organizations, consistently describe the use of methods which clearly constitute torture under 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>28</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>29</sup> stress positions,

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25 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.

26 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).

27 Draft Bill: Criminal Procedure Law (Interrogation of Suspects) (Amendment - Interrogation of Suspects of Security Offences). Published for consultation on 14 December 2011. See also Ha’aretz, *Bill set to grant Israel Police immunity when quizzing suspects*: 18 March 2012, <http://www.haaretz.com/print-edition/news/bill-set-to-grant-israel-police-immunity-when-quizzing-suspects-1.419237>. The World Organization Against Torture (OMCT) wrote a letter to Prime Minister Netanyahu expressing deep concern over the bill in April 2012: <http://www.nytimes.com/2012/05/04/world/middleeast/palestinian-resistance-shifts-to-hunger-strikes.html>.

28 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.

29 See PCATI, *Ticking Bombs*, *ibid.*, at 60.

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. Prison doctors, in collaboration with the ISA, are suspected of denying proper healthcare to detainees, in order to increase the pressure applied to them. For example, **a detainee with diabetes has been denied access to necessary testing.** In addition, the foul conditions of detainment cells where the prisoner is held between interrogation sessions constitutes ill-treatment, and the combination of all these factors amounts to torture.

### **Arrest and Detention of Minors in the OPT**

17. Arrests of children are not conducted in accordance with domestic Israeli law concerning the rights of children during arrest. For example, children are regularly arrested in the middle of the night, are kept in isolation, subjected to extended interrogations in a threatening atmosphere, and are physically abused during arrest (including slapping, beating, kicking, etc). According to a case study conducted by PHR-I, this treatment can result in post-traumatic stress disorders for the affected children, which can impair development of the child into adulthood.

Under a comprehensive amendment to the Youth (Judging, Punishment and Treatment Methods) Law,<sup>30</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>31</sup> The parent or relative must be given an opportunity to be present during any questioning of the minor.<sup>32</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>33</sup> Furthermore, the provisions concerning the interrogation of a minor suspect apply only to the police, whereas the ISA is exempt from them.

These provisions apply solely to citizens of Israel. They do not apply to Palestinian 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>34</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>35</sup>

### **Complicity of Physicians and Medical Staff**

18. Doctors and other medical staff in prison infirmaries where ISA interrogations are conducted work there while aware of torture and other ill-treatment occurs, and this gives rise to a credible assumption of complicity as pointed out in "Doctoring the Evidence" complicit in these practices. They examine exhausted, pained, bruised and traumatized detainees, and are aware that their diagnosis may

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30 Amendment no. 14 to the law, adopted 21 July 2008.

31 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.

32 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.

33 Sections 9(g) and 9(h).

34 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>.

35 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)

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-I 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; transferring medical information to interrogators without (to the best of PCATI and PHR-I'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, where the doctor is placed in a position of dual loyalty – to his or her patient and to the prison authorities. 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>36</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.

## **INCOMMUNICADO DETENTION AND LACK OF DUE PROCESS (ARTICLES 7, 9, 10.1, 14)**

### **Security-Classified Detainees**

20. 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>37</sup> the law is periodically extended by the Knesset and is currently valid 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. 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 the detainee is held incommunicado for three weeks. Following a Supreme Court ruling in an appeal by PCATI, Adalah and ACRI,<sup>38</sup> the law was amended, *inter alia* to provide that a Supreme Court justice would approve such decisions.<sup>39</sup> The law removes a number of essential procedural safeguards from detainees, thereby placing them at a greater risk of torture and

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36 See PCATI and PHR-I, *Doctoring the Evidence*, above.

37 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).

38 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)

39 Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law (Amendment No. 2, 2010).

ill-treatment, and allows prison authorities and interrogators to exert additional pressure on detainees during their interrogation by preventing them from meeting with their lawyers.<sup>40</sup>

### **Extensive Incommunicado Detention for Palestinians from OPT**

21. 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>41</sup> Echoing the new Israeli law described above, The Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law – 2006, 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>42</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>43</sup>

### **Administrative Detention**

21. 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>44</sup> These detainees are not informed of the reasons for their arrest or detention, which can strongly affect their mental state. A recent law has also 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,<sup>45</sup> this type of indefinite administrative detention, in manifestly unfair proceedings, constitutes arbitrary detention and violates Article 7 of the Covenant. In some cases, an administrative detention order is imposed on a prisoner after he or she 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>46</sup>

### **Unlawful Combatants Law - 2002**

23. Lengthy incommunicado detention was extended to a new category of administrative detainees under the Detention of Unlawful Combatants Law - 2002. The Unlawful Combatants Law (as amended in July 2008) provides for holding an “unlawful enemy combatant” in administrative detention, 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.” The law permits preventing the detainee from seeing a lawyer for up to 21 days. The detention is 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. Thus a person from the Gaza

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40 See PHR-I, Adalah, and Al Mezan Joint Position Paper *Denying the Right to Legal Counsel to Exert Pressure on Palestinian Detainees*, 17 April 2012, <http://www.adalah.org/upfiles/2012/Joint%20Position%20Paper%20-%20Meeting%20with%20Lawyers%20-%20ENGLISH%20FINAL.pdf>.

41 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.

42 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.

43 Chaim Levinson in Ha'aretz, “*Nearly 100% of all military court cases in West Bank end in conviction, Haaretz learns*,” 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.

44 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).

45 Report of the Human Rights Committee, UN Doc. A/53/40 (Vol. I, 1998), para.317; A/58/40 (Vol. I, 2003-4, para.85(12). A/65/40, Vol. I (2009-10), para. 7

46 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).

Strip or Lebanon<sup>47</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. 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>48</sup> detentions can become extremely lengthy.<sup>49</sup> Israel currently holds one “unlawful combatant,” Mr. Mahmoud Kamel Sarsak from Gaza. He has been detained since 2009.

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>50</sup> The Committee has stated that provisions should be made against the use of incommunicado detention,<sup>51</sup> and the UN Committee against Torture has consistently called for its elimination.<sup>52</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>53</sup>

### **Secret Prison Facility 1391**

24. 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>54</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>55</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 CAT pointed out in its 2009 Concluding Observations, “a secret detention centre is *per se* a breach of the Convention.”<sup>56</sup>

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47 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).

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

49 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).

50 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.

51 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.

52 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).

53 UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

54 HCJ 9733/03, *HaMoked: Center for the Defence of the Individual v. State of Israel, et al.* (decision delivered 20 January 2011).

55 See HaMoked’s Court Watch commentary on the judgment: <http://www.hamoked.org/Document.aspx?dID=Updates1071>.

56 UN Doc. A/64/44 (2008-9), para. 49(26).

## **EXTRADITION AND REFOULEMENT TO WHERE THERE IS A RISK OF TORTURE OR OTHER ILL-TREATMENT (ARTICLES 2, 7, 10, 13)**

### **Treatment Of Asylum Seekers**

25. 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>57</sup> adopted by the Knesset on 9 January 2012 similarly fails to take cognizance of the State's non refoulement 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>58</sup> – in violation of Articles 7 and 10 of the Convention.

26. The Supreme Court has ruled that torture must be "highly probable"<sup>59</sup> in an extradition context for a claimant to receive non refoulement protection under Article 3 of CAT, thus applying a more restrictive standard than what is required both by it and the Covenant. 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>60</sup> This is in direct contradiction of the Committee against Torture 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>61</sup> While the decision makes no reference to the corresponding obligations under the Covenant, its narrow interpretation regarding the requisite burden of proof fails also to conform to the "substantial grounds for believing" standard articulated by the Committee.<sup>62</sup>

## **RIGHT TO COMPLAIN, DUTY TO CONDUCT TO PROMPT AND IMPARTIAL INVESTIGATION BY COMPETENT AUTHORITIES (ARTICLES 2, 7)**

### **ISA Impunity**

27. 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>63</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

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57 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>.

58 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..."

59 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).

60 *Ibid.*, para. 30.

61 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.

62 See General Comments No. 6 and 20 of the Committee; General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, paragraph 12

63 Ha'aretz, "Israel's Justice Ministry to probe claims of Shin Bet torture and abuse," 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.

investigated, let alone prosecuted in over two decades.<sup>64</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>65</sup>

28. 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>66</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 and Soldiers Ignored**

29. 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; there is no civilian participation in the review. 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>67</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>68</sup>

IDF regulations require that a criminal investigation be opened for any complaint of violence or cruelty to a person in custody.<sup>69</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>70</sup>

## **RIGHT OF VICTIMS TO EFFECTIVE REMEDY (ARTICLE 2.3, 7)**

### **No Compensation for Injuries**

30. 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

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64 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.

65 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).

66 Sec. 18 of the General Security Service Law, 2000.

67 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).

68 Audit concerning closure of investigation files-Final Report, Ministry of Public Security, Internal Audit Dept., April 2010 at 10, published February 2012.

69 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.

70 *Ibid.* pp. 31-2; *Absolute Prohibition*, above, pp. 82-3.

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.

31. 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>71</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>72</sup>

## **CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN DETENTION (ARTICLES 7, 9, 10.1)**

### **Solitary Confinement**

32. As of December 2010, approximately 150 prisoners and detainees were being held in solitary confinement in Israel.<sup>73</sup> Solitary confinement is used as regular practice during interrogation, resulting in trauma and false or coerced confessions. Doctors working in IPS provide medical approval to hold detainees in solitary confinement in serious violation of medical ethics. Psychiatrists are forced by the Israeli District Courts, when the court is sitting as the Committee on the Extension of Solitary Confinement, to provide medical opinions regarding detainees held in solitary confinement. This information can then be used to prolong the isolation and mistreatment of the detainee. 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 IPS is unable to address in any other way, leading to further deterioration in their

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71 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).

72 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>

See also Administrative Case (Jerusalem) 31179-10-11, *The Estate of Abu Said, et al v. The Minister of the Interior, et al.* (case withdrawn in 2012; to be refiled to the Supreme Court)

73 See PHR-I, Adalah and Al Mezan Position Paper, *Solitary Confinement of Prisoners and Detainees in Israeli Prisons*, June 2011, [http://www.adalah.org/upfiles/2011/Solitary\\_confinement\\_position\\_paper\\_English.pdf](http://www.adalah.org/upfiles/2011/Solitary_confinement_position_paper_English.pdf).

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>74</sup> The Supreme Court recently declared in a case of a prisoner who has seen his family once since his solitary confinement began in 1993 that his continued confinement was not illegal.<sup>75</sup>

### **Shackling**

33. Shackling – ISA: Detainees being interrogated by ISA agents are handcuffed behind the back in uncomfortable and, with time, an 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, belies 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.

Shackling – other detainees: Prison monitors from the Public Defender's Office, representatives of PHR-Israel and Members of the Knesset in committee hearings have frequently documented and criticized diverse instances of shackling, including: the shackling of minors to their prison beds as a disciplinary punishment; shackling in response to attempted suicide,<sup>77</sup> disproportionate or punitive shackling of detainees and convicted prisoners in prison facilities, degrading and inhuman shackling, in some cases on all four limbs, of hospitalized prisoners to their hospital beds, and degrading exposure of handcuffed suspects to their family, the press and public in court remand hearings<sup>78</sup>. Despite the denunciations, the practices continue unabated.

### **Interrogation Holding Cells**

34. 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>79</sup> Usually the detainee is held in these cells in isolation at least during a part of the interrogation period, and often during most or all of it.<sup>80</sup> Independent prison monitors on behalf of the Public Defender's Office, Bar Association prison monitors, and representatives of the ICRC are not allowed into these facilities.<sup>81</sup> The ISA interrogation wings have

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74 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>.

75 Ha'aretz, *In solitary confinement for 10 years, Palestinian prisoner sees family only once*, 4/5/2012, <http://www.haaretz.com/news/national/in-solitary-confinement-for-10-years-palestinian-prisoner-sees-family-only-once-1.428142>.

76 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."

77 All detainees who have attempted to commit suicide receive this treatment. One adult inmate at the Hadarim Detention Center, detailed below, was initially 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.

78 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.

85 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).

80 See *Absolute Prohibition*, above, pp. 46–53.

81 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.

all come under the authority of the 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>82</sup> There is no oversight of cells used during interrogation except 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**

35. 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>83</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>84</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>85</sup> In describing prison conditions, the report uses terms such as "unbearable," "filthy," "improper for human beings" and "inappropriate, and in part inhuman,"<sup>86</sup> thus directly implying a violation of at least Article 10 of the ICCPR.. 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>87</sup>

36. On 8 May 2012 the Knesset passed a Law to Amend the Prison Order (no. 42) – 2012, which sets standards for sanitary conditions, medical treatment, accommodation, including food and lighting and ventilation, daily exercise depending on safety and security, right to leisure and education – subject to IPS regulations, and, for citizens of Israel, prisoner rehabilitation as regulated by the IPS Commissioner.<sup>88</sup> It remains to be seen how the new law will be implemented, and whether it will impact security prisoners' imprisonment.

### **Harsh Conditions for Security Prisoners**

37. 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>89</sup> They are denied telephone communications with their lawyers and family and friends, physical contact with family members including children during visits, and private

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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.

82 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).

83 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 in Ha'aretz, "Report reveals harsh condition in Israeli jails", 16 August 2011, <http://www.haaretz.com/print-edition/news/report-reveals-harsh-condition-in-israeli-jails-1.378807>.

84 Public Defender's Office Report, *ibid.*, pp. 41, 45.

85 *Ibid.*, at 16.

86 *Ibid.*, pp. 39, 43, 41 (repeated 45), respectively.

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

88 Bill to Amend Prison Ordinance (no. 42) – 2012.

89 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>.

conjugal visits with spouses.<sup>90</sup> To the best of our knowledge the IPS does not employ a single Arab psychiatrist to treat patients in Arabic. Most physicians employed by IPS do not speak Arabic and are therefore unable to communicate with their patients.<sup>91</sup> Prisoners from Gaza are not able to receive family visits because their family members are blocked from entering Israel.<sup>92</sup>

### **Mistreatment of Hunger Strikers**

38. Following the release of two Palestinian administrative detainees – Khader Adnan and Hanan Shalabi – after extended hunger strikes, Palestinian administrative detainees and prisoners took up a mass hunger strike to protest the use of administrative detention / detention under the Unlawful Combatants Law, solitary confinement, and harsh conditions of imprisonment imposed before the Gilad Shalit prisoner exchange to pressure Hamas to release the soldier, which have not been loosened. Prisoners currently have extremely limited visits from their family, are not allowed to access Arabic-language news media, and have been banned from pursuing higher education. Two administrative detainees, Bilal Diab and Tha'er Halahleh, refused food for 78 days, until the IPS agreed to free them after the conclusion of their current administrative orders. The Supreme Court earlier declined to cancel their detention after seeing secret evidence against them, severely endangering their lives.<sup>93</sup> A handful of other strikers had been striking for 30-60 days. To punish hunger strikers, the IPS had placed the leaders of the movement in solitary confinement, fined prisoners daily up to NIS 500, confiscated salt, and imposed blackouts and random cell searches.<sup>94</sup> The IPS also created obstacles for hunger strikers to meet with their lawyers, a practice which was eased after Adalah and an NGO coalition demanded that the policy cease.<sup>95</sup> The hunger strikers were not allowed regular access to an independent doctor, nor often transferred to civilian hospitals even at advanced stages of their strike. PHR-I petitioned for the longest hunger strikers to receive visits from an independent doctor and members of the prisoners' families.<sup>96</sup> The harsh punitive actions against hunger strikers endangered their health and constitute ill-treatment and torture .

The hunger strikers also testified to lawyers and independent doctors that they were subjected to physical abuse by prison guards and in one case by a physician. We are aware of one case where a detainee was forcibly given medical treatment, in violation of the Malta Declaration and medical ethics. In the rare occasions when permission was granted for independent doctors to visit the hunger strikers, the IPS medical facilities in which

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90 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. 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.

91 aretz'Ha, "No Treatment for Mentally Ill Detainees," 20 August 2001, reporting that the IPS did not employ any Arabic-speaking psychiatrist, psychologist or social worker.

92 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. H CJ 5399/08, *Adalah, et al. v. The Defense Minister, et al.* (decision delivered 9 December 2009).

93 See Adameer, 1 May 2012, "Urgent Appeal: Bilal Diab and Thaer Halahleh in Grave Condition," <http://www.addameer.org/etemplate.php?id=472>; Al Haq, 4 May 2012, "Palestinian Prisoners Near Death," <http://www.alhaq.org/documentation/weekly-focuses/569-palestinian-prisoners-near-death>; <http://www.alhaq.org/documentation/weekly-focuses/569-palestinian-prisoners-near-death>.

94 Addameer, "Palestinian political prisoners Subject to Collective Punishment as Mass Hunger Strike Continues," 3 May 2012, <http://www.addameer.org/etemplate.php?id=473>. See also Addameer, *Update on the Palestinian Prisoners' Hunger Strike*, 24 April 2012, [adalah.org/upfiles/2012/Update%20on%20the%20Palestinian%20Prisoners%20Hunger%20Strike.pdf](http://adalah.org/upfiles/2012/Update%20on%20the%20Palestinian%20Prisoners%20Hunger%20Strike.pdf).

95 See Adalah Press Release, Israel Prison Service (IPS) to Adalah, Human Rights NGOs: New Guidelines Require Prisoners Confirm Meetings with Lawyers, 6 May 2012, [http://www.adalah.org/eng/pressreleases/6\\_5\\_12.html](http://www.adalah.org/eng/pressreleases/6_5_12.html)

96 PHR-I, *Concern Mounts for the Lives of Prisoners on Protracted Hunger Strikes*, 6 May 2012, <http://www.phr.org.il/default.asp?PageID=116&ItemID=1469>.

the prisoners were held was insufficient for addressing the medical needs of the detainees, thereby endangering their lives.

The mass hunger strike ended 14 May 2012 with an agreement between a committee representing the hunger strikers and the IPS. In exchange for an agreement to not conduct “security activity” from within the prisons, the IPS agreed to loosen restrictions on prisoners, remove prisoners from solitary confinement, to allow family visits from Gaza and the West Bank, and only use administrative detention when “very serious” information was found.<sup>97</sup> The conditions are broadly worded and leave ample room for continued mistreatment of prisoners.

## **CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT OF OTHER VULNERABLE GROUPS (ARTICLES 7, 10.1)**

### **Use of Force And Violence During Military Operations**

41. Israel conducted “Operation Cast Lead” (OCL) in Gaza from 27 December 2008 to 18 January 2009. More than three years later, the Israeli military investigations into OCL are incompatible with international standards of independence, effectiveness, transparency and promptness. During OCL, Palestinians were held in cruel, inhuman and degrading conditions during their initial period of detention in Gaza.<sup>98</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.

42. 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.” As part of these investigations, for example, Israel will not press charges against any of those responsible for an airstrike that killed 21 family members (the Samouni family) taking shelter in a home that the IDF had declared safe for non-combatants during OCL.<sup>99</sup>

### **Closure of Gaza**

43. Israel’s closure of 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>100</sup>

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97 See Israel Ministry of Foreign Affairs, *End of hunger strike by security prisoners*, 14 May 2012, [http://www.mfa.gov.il/MFA/Government/Communiques/2012/End\\_hunger\\_strike\\_security\\_prisoners\\_14-May-2012.htm](http://www.mfa.gov.il/MFA/Government/Communiques/2012/End_hunger_strike_security_prisoners_14-May-2012.htm), and Addameer, *Progress for Prisoners’ Movement: Palestinian Prisoners’ Mass Hunger Strike Concludes after Agreement is Reached*, 15 May 2012, <http://www.addameer.org/etemplate.php?id=481>.

98 See PCATI and Adalah, *Exposed: The Treatment of Palestinian Detainees During Operation “Cast Lead,”* above.

99 Ha’aretz, *IDF Closes Probe into Israeli air strike that killed 21 members of Gaza family*, 1.5.2012, <http://www.haaretz.com/news/diplomacy-defense/idf-closes-probe-into-israeli-air-strike-that-killed-21-members-of-gaza-family-1.427583>.

100 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).

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 closure, 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>101</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>102</sup> Since February 2009, Al Mezan has documented the destruction of 251 houses by the Israeli military, of which 25 were totally demolished.<sup>103</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**

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>104</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>105</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>106</sup> A petition submitted by PHR-Israel to the Supreme Court on this issue was rejected on the basis that the Court accepted a

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101 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.

102 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).

103 Figures taken from Al Mezan's database unless otherwise noted.

104 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, PHR-I and Al Mezan Position Paper, June 2010, "Who Gets to Go?" <http://www.olc-adalah.org/newsletter/eng/jun10/docs/englishpositionpaper.pdf>.

105 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).

106 See the ISA's response to Physicians for Human Rights-Israel's report, *ibid.* pp.71-73, 75.

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>107</sup> An additional reason was that individual solutions were found for most of the patients in the petition. Severe shortages of fuel and electricity in Gaza have severely interfered with medical services, back-up generators for hospitals, and ambulances. It has also resulted in the malfunctioning of medical equipment.<sup>108</sup>

## **RESERVATIONS, OPTIONAL PROTOCOLS**

46. Israel has not withdrawn its reservation to Article 9 of the Covenant. In view of Israel’s policies, in the Committee’s words, “derogating from Article 9 more extensively than what in the Committee’s view is permissible pursuant to article 4,” this reservation remains a serious impediment to Israel’s implementation of the Covenant.

47. Israel has refrained from acceding to either of the Covenant’s Optional Protocols. In view of the fact that the death penalty remains on Israel’s law books, even though no court-ordered executions have taken place for decades, and the insurmountable obstacles Palestinian detainees and other victims face in seeking effective remedy for violations of the Covenant, the submitting organizations consider it imperative that Israel ratify these Protocols.

48. Israel has also not acceded to the Optional Protocol to the CAT, 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>109</sup>

49. 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.

## **NGO RECOMMENDATIONS TO HRC:**

50. The submitting NGOs recommend that the Human Rights Committee call on the state of Israel to adopt, as a minimum, the following steps in order to implement its relevant obligations under the Covenant (and international human rights law more generally), including to take effective legislative, administrative, judicial and other means to prevent acts of torture and other cruel, inhuman or degrading or punishment treatment in any territory under its jurisdiction:

1. Ensure that all acts of torture, as defined in international law, are absolutely and unequivocally prohibited and deemed offences under its criminal law and that any person who is found to have committed torture, ordered its commission or was in any other way criminally responsible, including through command responsibility, is punished by appropriate penalties which take into account the offences’ grave nature (See Paragraph 7);
2. Clarify through legislation that defences such as “necessity” or “superior orders” shall not apply to those who perpetrate torture and other ill-treatment (8);
3. Ensure that measures are put in place to guarantee, in practice, the exclusion by the judiciary of any evidence obtained under any form of coercion and torture (11);
4. Ensure full monitoring and recording of the interrogation of detainees, including by GSS/ISA, through audio and videotaping. Resources must be urgently allocated for installing recording systems (audio and video) in all interrogation rooms (15);
5. Ensure that GSS/ISA interrogators undergo a complete retraining, from violent and degrading interrogation methods to humane ones. This must include thorough instruction in human

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<sup>107</sup> Cited in footnote 37 of PHR-Israel, *Holding Health to Ransom*, above.

<sup>108</sup> See OCHA, [http://www.ochaopt.org/documents/ocha\\_opt\\_electricity\\_factSheet\\_march\\_2012\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_electricity_factSheet_march_2012_english.pdf)

<sup>109</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>.

- rights in general, and detainees' rights in particular. Only those interrogators who have truly internalized the humane approach to interrogation may remain in their jobs (16);
6. Undertake wide-scale public relations activities and education in the IDF in order to explain to soldiers and commanders the need and obligation to respect the dignity and rights of every detainee without exception, including the right to remain silent, the right to proper legal representation, and of course the right to be free of any torture or other ill-treatment (16);
  7. Refrain from trying children in military courts, ensure that children are only detained as a measure of last resort and for the shortest possible period of time, inform parents or close relatives of the child's detention and location, provide the child with prompt, free, and independent legal defense, and ensure that reports of torture and ill-treatment are fully investigated (17);
  8. Take the necessary steps to guarantee presence in all places of detention of independent, qualified medical personnel who work in full compliance with their professional duties and on no account compromise on their ethical obligation; consider placing IPS medical facilities and staff under Ministry of Health supervision (18);
  9. Ensure that all specialized medical-psychological examination of alleged cases of torture or other ill-treatment is carried out in line with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (18);
  10. Stipulate by law that every detainee, without exception, be brought before a judge as quickly as possible, and under no circumstances any longer than 48 hours after arrest, and repeal any legislative provisions allowing longer periods (19, 21);
  11. End all incommunicado detention, through repealing any legal provisions authorising police, GSS/ISA or IDF commanders to deny detainees access to counsel, both under Israeli and military law (21);
  12. Repeal all laws and orders providing for arbitrary, incommunicado or indefinite detention, including Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law, 2006; Detention of Illegal Combatants (Amendment and Temporary Provision) Law, 2008; and the relevant sections of (military) Order Concerning Security Provisions (Judea and Samaria) (No. 1559) (19-24);
  13. Close down any secret detention facilities and permit international observers, including the International Committee of the Red Cross, full access to all detention facilities (24);
  14. Bring legislation fully in line with the principle of non-refoulement; establish a mechanism to prohibit extradition, expulsion, deportation or forcible return of aliens to a country where they would be at risk of torture or other ill-treatment, including the right to judicial review with suspensive effect (25);
  15. Strengthen its efforts to improve the living conditions and treatment of asylum seekers and refugees and ensure that they are treated with dignity. Asylum seekers and refugees should not be held in penal conditions. The State party should fully comply with the principle of non-refoulement and ensure that all persons in need of international protection receive appropriate and fair treatment at all stages, and that decisions on expulsion, return or extradition are dealt with expeditiously and follow the due process of the law (25);
  16. Take all necessary steps (as the State has committed itself) to eliminate the post of the "Official in Charge of GSS Interrogees' Complaints" and replace it with independent officials who are not related to the GSS/ISA in any way, in order to ensure impartial and effective investigation of complaints (27);
  17. Ensure prompt, effective and impartial investigation into all cases of IDF soldiers using violence against or humiliating detainees, and prosecute soldiers and commanders suspected of such acts. Those found guilty must be punished by appropriate penalties which take into account the offences' grave nature (29);
  18. Ensure that all alleged cases of torture, cruel, inhuman or degrading treatment and disproportionate use of force by law-enforcement officials, including police, personnel of the security service and of the armed forces, are thoroughly and promptly investigated by an authority independent of any of these organs, that those found guilty are punished with sentences that are commensurate with the gravity of the offence, and that compensation is provided to the victims or their families (30);

19. Cease using measures that constitute torture / cruel, inhumane, and degrading treatment of detainees and prisoners, including extensive solitary confinement, shackling, harsh imprisonment conditions, and lack of protection for hunger strikers' health (32-38);
20. Fulfill obligations to protect prisoners' rights as agreed in the Commitment Document agreed upon by the representatives of Palestinian political prisoners and IPS in May 2012 (38);
21. Submit to an independent investigation into suspicions raised by Palestinian, Israeli and international human rights organizations regarding breaches of IHL and IHRL by the military during Operation Cast Lead, as no domestic investigations have been seriously conducted. Among the issues that have not been investigated are: The policy that guided the forces during the offensive; the legality of the orders given to the soldiers; the choice of targets for bombing; and the means taken to protect the civilian population. Their resolution is vital to examining the legality of the military's conduct during Operation Cast Lead (41);
22. Cease practice of collective punitive home and property demolitions (44);
23. Allow every patient requiring medical treatment that is unavailable in Gaza access to treatment outside the Strip without delay (45);
24. Cancel reservation on Article 9;
25. Sign and ratify the Optional Protocol to the UN Convention Against Torture and implement its provisions, in particular allowing National Preventive Mechanisms (NPMs) and the UN Sub-Committee on Prevention of Torture (SPT) to visit all places of detention and, including GSS/ISA interrogation facilities, and have unsupervised access to all detainees;
26. Sign and ratify the two Optional Protocols of the Covenant;
27. Anchor in law a system of inspections, including unannounced inspections, of detention and prison facilities, to be conducted by a Knesset committee, government bodies, human rights organizations and other NGOs, in addition to the NPMs and SPT, as above;
28. Take the legal and other steps necessary to open Israel to UN human rights monitoring bodies and experts, including by enabling individual complaints to treaty-monitoring bodies. As an immediate measure – invite the UN Special Rapporteur on Torture to visit Israel, open all the detention and interrogation facilities to him, and enable him to speak freely with any detainee he wishes.