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## ISRAEL

Stakeholders' written submissions

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# List of Abbreviations

AG	Attorney General
FIDH	International Federation for Human Rights
HRC	Human Rights Commission
HCJ	High Court of Justice
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
IDF	Israel Defence Forces
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IIC	Inspector of Interrogee Complaints
IP	Istanbul Protocol
ISA	Israeli Security Agency (AKA Shin-Bet or Shabak)
MoJ	Ministry of Justice
oPt	occupied Palestinian territories
OTP	Office of the Prosecutor
PCATI	Public Committee against Torture in Israel
SPO	Israeli Security Provisions Order
UN CAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

## **A. Summary**

1. This report covers severe human rights violations and violations of International Humanitarian Law committed against Palestinian detainees by members of the Israeli security apparatus amounting to torture and ill-treatment.

## **B. Background**

2. In 2022, PCATI and FIDH conducted research which found systematic modes of operation by Israeli security agencies, amounting to the war crimes of torture and ill-treatment, committed by agents of the ISA against security detainees, mostly Palestinian men, women and minors from the oPt. Part of this research was used for a communication to the ICC's Office of the Prosecutor (the Communication). The research findings are relevant also for the UPR, since its legal analysis relates to violations of international law binding on Israel - specifically the Geneva Conventions of 1949, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the ICCPR as well as customary international law.
3. This report will lay out the main points of the research which are relevant for the State of Israel's 4<sup>th</sup> cycle of the Universal Periodic Review.
4. The report is focussing on the following subjects:
  - a. Arbitrary Arrest and Detention, including Torture and Ill-treatment**
  - b. Justice and Fair Trial / Right to effective remedy**
  - c. Lack of prohibition of torture and ill-treatment**
5. This report specifically, but not exclusively, relates to the following recommendations of the 3rd UPR of the State of Israel: 118.13, 118.72; 118.74; 118.75; 118.76; 118.77; 118.84; 118.160, 118.162; 118.196; 118.198, 119.4 (it is worth noting that the State of Israel has not accepted any of the recommendations made regarding torture and ill-treatment). The following recommendation to combat impunity for human rights violations, was supported by Israel: 118.167.

## **C. Context**

6. The incarceration of Palestinian residents of the West Bank and Gaza, living under Israeli military rule, is one of the fundamental traits of the occupation, and one of the key elements that enable the control and subordination of this large civilian

population, entitled to special protection under International Humanitarian Law (IHL). By the end of 2021, over 4,500 Palestinian security detainees and prisoners were held in Israeli prisons, over 150 of which were children and 34 were female prisoners. **Every year, PCATI receives dozens of complaints alleging to severe cases of torture employed by interrogators of Israel’s Security Agency (ISA / Shin Bet). Torture methods reported include stress positions, painful shackling, sleep deprivation, incommunicado detention, threats – also involving family members - sexual harassment, religion-based humiliation and exposure to extreme heat and cold.**

7. The above mentioned research, conducted by PCATI and FIDH, is based on PCATI’s extensive experience representing victims of torture in Israel (since 1990, the organization has documented over 6,000 cases of torture and ill treatment); and closely examines 17 selected **cases since 2014** in which individuals represented by PCATI were abducted from the occupied Palestinian territories (oPt) for the purpose of interrogation by the Israeli security agencies, which included torture and inhuman and degrading treatment.
8. The evidence indicates that agents of the Israeli Security Agency (ISA) and other state officials systematically subject Palestinian individuals suspected of involvement in national security crimes to torture and other cruel, inhuman or degrading treatment, unlawful deportation from the Palestinian territories into Israel for the purpose of such treatment and denial of the fundamental right to fair trial.<sup>1</sup> In our analysis, such acts amount to war crimes and other violations of IHRL and IHL.
9. All acts are perpetrated in the context of and associated with the occupation, and therefore, are taking place within the context of an international armed conflict.
10. Lastly, our research has found that **Israel is currently unwilling and unable to address these violations itself, and instead is shielding the perpetrators of torture and ill-treatment.**

## **D. Arbitrary Arrest and Detention / Torture and Ill-Treatment**

*(Relating to recommendations 118.72; 118.84; 118.160; 118.162; 118.198; 119.4)*

### **1. Unlawful Deportation**

11. Arrested Palestinians are frequently being deported to detention locations outside the oPt, within the territory of Israel (notably: Kishon (‘Jalameh’), Petach Tikva, Jerusalem (‘Russian Compound’), Ashkelon (‘Askalan’), and Beer Sheva). This **system of unlawful deportations, constituting extraordinary renditions**, runs contrary to Article 76 of Fourth Geneva Convention (which stipulates that an

occupying power may not detain residents of the occupied territory in prisons outside of the occupied territory). Arrests are routinely initiated or prolonged under administrative orders.

12. The ISA and IDF authorities deport detainees from the oPt into Israel for the purpose of using torture and ill-treatment against them. This is inferred from the consistent location of ISA facilities inside Israel and the way that this pattern has been implemented systematically over the years.<sup>2</sup> Beyond this systematic nature, there have been specific instances in which detainees have been blindfolded and maltreated in field interrogations and threatened, while still in the oPt, that they will suffer harsh treatment required to make them talk once they will be delivered to infamous interrogation facilities in Israel.<sup>3</sup>

## **2. Torture and other cruel, inhuman and degrading treatment**

13. Following deportation to Israel, **detainees are frequently tortured according to the ‘necessity procedure’** during ISA interrogations, which take place in several locations in Israeli detention centres mentioned above. During these interrogations, euphemistically referred to as ‘military interrogations’, Palestinian detainees are subjected to the ISA’s most gruelling torture techniques.
14. The methods used during such interrogations **include methods which were explicitly prohibited by Israel’s High Court of Justice in a ruling of 1999** (*Public Committee* case).<sup>4</sup> These include shackling detainees to chairs in various stress positions, e.g., the so-called ‘banana’ and ‘frog’ positions, sometimes while shaking, slapping or beating them, or pulling limbs in unnatural directions. Sleep deprivation is particularly common, sometimes by multiple prolonged interrogations each lasting over 30 hours, as well as interrogation or accommodation in extremely cold temperatures, and detention in filthy, insect-infested cells, with constant artificial lighting. PCATI has documented cases of nude interrogation; denying access to toilets; and sexual intimidation, as well as threats to family members. These different methods are often used simultaneously or in cyclical repetition, over a period of several days. **PCATI received testimony from detainees who said that they had provided false confessions in the hope of putting an end to interrogations.**
15. Torture at the hands of ISA has caused both physical and mental injuries and symptoms during and long after the torture sessions. Among the physical injuries inflicted directly during interrogations, PCATI documented evidence of loss of consciousness, broken teeth, hematomas, muscle tear, bloody stools, loss of ability to eat independently, and temporary loss of sensation in limbs due to tight shackling. Multiple detainees have reported not being able to walk after torture sessions, in which case they were carried to the shower, or taken there in wheelchairs.

16. Evaluations conducted in accordance with the *Istanbul Protocol*, have documented long-term mental and physical harms resulting from torture. Harms to physical health include long-term injuries to the legs and/or back, caused by techniques of tying detainees in contorted positions, and hair loss. Psychological symptoms observed by experts include depersonalisation, flashbacks, nightmares, anxiety, and depression. **Israel's legal system does not recognize Istanbul Protocol assessments as a valid means of evidence.**
17. The persistence of the pattern of Israeli abductions and subsequent torture was recently confirmed in the high-profile **case of Samer Arbeed (2019)**.<sup>5</sup>

On 25 September 2019, a special unit of Israeli forces arrested Arbeed due to his suspected involvement in the murder of an Israeli citizen. According to testimony, he was badly beaten during his arrest in front of his workplace.<sup>6</sup> He was then deported from Palestine and taken to the ISA's interrogation centre in West Jerusalem, where he was denied access to his lawyer. The ISA then apparently received permission to 'use exceptional measures to investigate' in his case, i.e., to employ the 'necessity procedure'. On 25 September, Arbeed was rushed to a Jerusalem hospital in critical condition. He was unconscious, respirated, underwent dialysis for kidney failure, and was diagnosed with several broken ribs. The Israeli Ministry of Justice announced on 29 September 2019, that it had commenced an investigation into the circumstances leading to Arbeed's hospitalisation. Yet, on 2 October, a military court extended Arbeed's detention, noting that his condition had improved, and allowed the ISA to resume his interrogation. In anticipation of this interrogation, security authorities reinstated a temporary ban on Al-Arbeed's access to his legal representatives.

18. Note: A detailed explanation of the methods of torture and ill-treatment applied during interrogations including sources of evidence can be found in the submitting organisations' Art. 15 Communication to the ICC (see annex to this submission).

## **E. Justice and Fair Trial / Right to effective remedy / Lack of Accountability**

*(Relating to recommendations 118.77; 118.167; 118.196)*

19. Denial of fair trial is committed by Israeli authorities in systemic ways<sup>7</sup>; as described below, the legal structure that enforces the law on Palestinian residents of the oPt is characterised by a discriminatory military court system, detention procedures which violate basic IHL safeguards, and a frequent use of confessions and evidence obtained while resorting to torture of defendants. The abuses of justice in the military detention and trial system are widespread and affect the entire population of detainees, and a significant proportion of defendants.

### **1. Discriminatory, partial, and irregular military courts system**

20. According to human rights law jurisprudence, military courts should not, in principle, try civilians.<sup>8</sup> However, a state of occupation is an exception to this rule as the operation of military courts by the occupying power to try civilians is permitted under IHL.<sup>9</sup> Due to the inherent problems of impartiality and independence of military courts it is necessary ‘to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in Article 14 [of the ICCPR]’.<sup>10</sup>

21. As repeatedly observed, the **Israeli military courts fall short of fair trial guarantees as required by international standards** and applied in Israeli civilian courts.<sup>11</sup> Military criminal procedure sets harsher maximum punishments, provides fewer procedural guarantees than Israeli civilian procedure (as detailed in the Communication, including longer detention periods and denial of access to counsel - see annex 3), and defines offences in extremely broad terms which violate the principle of legal certainty. Additionally, practical violations of defendants’ rights abound: essential evidence material (such as ISA memorandums) is not provided in full to defence lawyers and is not translated into Arabic; **interrogations are not documented by audio-visual recording**, as they would be under Israeli civilian procedure; lawyers often do not have proper meeting rooms to meet with their clients; court decisions and precedents are not translated into Arabic, impeding the ability of Palestinian lawyers to provide adequate defence.<sup>12</sup>

22. Moreover, and non-coincidentally, the **military court system in the West Bank is used by Israel exclusively to detain and prosecute Palestinian protected persons who are residents of the oPt**, even though Israeli Jewish citizens are also subject to their *de-jure* jurisdiction as residents of the same territories.<sup>13</sup> The Israeli military also operates a separate court martial system to detain and prosecute soldiers but prosecutes Palestinians in a completely separate legal system. The **military court system is therefore operated by Israel in a discriminatory manner** whereby military courts apply reduced versions of procedural guarantees to Palestinians, as opposed to Jewish Israeli settlers and Israeli soldiers.<sup>14</sup> The separation proves the discriminatory intent and that, contrary to the Geneva Conventions, the military courts are political, partial and irregular.



## **2. Detention Proceedings Violate IHL Guarantees**

23. Article 71 of the Geneva Convention states that protected persons shall be ‘brought to trial as rapidly as possible’. Article 72 states that ‘accused persons... shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence’.
24. Administrative detention proceedings and remand proceedings violate these guarantees in the following ways:
25. (a) The period of initial detention before judicial review, and subsequent detention periods in pre-trial detention and administrative detention, are disproportionately long, **violating detainees rights to be brought to trial rapidly. Detention lasts up to eight days before the first judicial review, 15 days between remand hearings, and up to 75 days before indictment**, all according the Israeli Security Provisions Order (SPO).<sup>15</sup> The long detention periods were challenged before Israel’s HCJ by the Palestinian Ministry of Prisoners and once again, the HCJ upheld these long detention periods for security offences.<sup>16</sup> Long detention periods, as well as administrative detention orders, reduce judicial scrutiny and defence rights in criminal proceedings.
26. (b) ISA deprives detainees of their *right to counsel* during interrogations; **In ISA interrogations, detainees are denied access to lawyers** during the periods of interrogation, and are **held in incommunicado detention** that impedes their ability to withstand the violent treatment. The SPO authorises the ISA officer responsible for the interrogation to issue an order denying meetings with counsel.<sup>17</sup>
27. (c) holding the detainees inside Israel, and holding detention hearings inside Israel, **violates the detainees right to a lawyer of their choice and impedes them from meeting freely with a lawyer**, since Palestinian lawyers from the oPt are not allowed to enter Israel and therefore cannot, as a general rule, meet freely and represent detainees inside Israel. Consequently, given that lawyers cannot meet freely with their clients, detainees’ **right to necessary facilities for preparing their defence** (for detention or trial proceedings) **is also violated**. Lawyers’ visits are also an important safeguard against torture or cruel, inhuman or degrading treatment, and therefore the inability of freely chosen lawyers to visit their clients removes this safeguard, thus serving the torture enterprise.

## **3. Torture-tainted Confessions Used in Detention and Trial Proceedings**

28. Administrative detention and remand proceedings, either during or after interrogation, and trial proceedings, may rely on detainees' confessions obtained through torture or cruel, inhuman or degrading treatment.<sup>18</sup>
29. Israeli military law provides, in principle, a procedure to challenge torture-tainted confessions ('a trial within a trial'); it does not provide any such mechanisms for witness' incriminating testimonies. In practice, however, and just as the Landau Commission<sup>19</sup> documented decades ago, **the testimonies of ISA agents deny torture, or the military court accepts the arguments of the military prosecution that the torture or cruel, inhuman or degrading treatment of the detainee was lawfully based on the 'necessity procedure'**. Of all the hundreds of cases that have been dealt with and reviewed, PCATI is aware of only a single case where a torture-obtained confessions were declared inadmissible by a military court, in the case of *Ayman Hamida*.<sup>20</sup> The single case is the exception which proves the rule that arguments of inadmissibility due to torture are routinely denied, and it speaks volume when compared to the hundreds of complaints of torture or cruel, inhuman or degrading treatment submitted by PCATI alone.
30. Notably, **ISA interrogations are not documented and recorded by means of audio-visual technology** that can later be used to prove allegation of torture. Current Israeli law merely requires CCTV broadcasting of interrogations, observed by authorized state officials at the time, which is not recorded. However, even this frail control mechanism is failing: Despite the declared "hundreds of monitoring hours" and "dozens" of reports filed by the inspectors between 2018 and 2021, the **Israeli Ministry of Justice was not able to state what was the outcome of the monitoring reports**, or whether any investigation had been opened so far as a result of the reports – not to mention indictments, or any other criminal or disciplinary consequences.
31. There is new legislation allowing to the court to consider the confession made in front of the police which was based on the use of torture during a previous ISA interrogation. The admission of torture-tainted confessions as evidence supporting administrative detention, remand, or convictions, results in unfair detention and sentences. Consequently, in subjecting Palestinians to inherently discriminatory legal processes, systematically violating their procedural rights and relying on torture-tainted evidence, Israeli authorities have wilfully deprived Palestinian prisoners of the rights to fair and regular trial.

#### **4. Lack of Accountability**

32. The Geneva Conventions require member states to prosecute grave breaches. Art. 147 GCIV specifically includes torture or inhuman treatment, unlawful deportation or transfer or unlawful confinement, as well as willful deprivation of fair trial, if committed against protected persons, as grave breaches.

33. In 2001, a mechanism for examining complaints of interrogees against ISA agents was established. Since then, the Inspector of Interrogee Complaints (IIC), subordinate to the MoJ, is tasked with conducting the preliminary examination of complaints. Once an examination is completed, the recommendation is passed on to the Inspector's Supervisor, who then presents his/her recommendation to the Attorney General (AG). The AG is the only one empowered to take a decision to open a criminal investigation into alleged misconduct of ISA Interrogators and his/her decision is final.
34. Research conducted by PCATI into the IIC mechanisms shows persistent and systematic shortcomings in its operation: attempts to supersede and replace the criminal investigation, a prolonged examination process, and close to no recommendation to initiate criminal investigations. **The current average time it takes the IIC to conclude the preliminary examination of a complaint filed by PCATI is 44 months (3.6 years), with the longest pending case standing at 97 months of preliminary examination (8 years).** The protracted procedure violates the requirement set out in the UN CAT and international human rights law generally of a prompt investigation, and harms irreparably the rights of complainants to redress. An investigation that drags on for months or years, naturally harms the chances of obtaining necessary evidence to conduct a criminal trial and bringing perpetrators to justice. This, in turn, is liable to bring about the unjustified closing of investigation files. The time elapsed since the commission of the alleged crime by the interrogators can also influence the memory of the witnesses and the possibility of relying upon complete, credible testimony.
35. The imminent lack of accountability for alleged perpetrators of torture persisted during 2022. Since the establishment of the IIC in 2001, over 1,400 complaints of torture or ill-treatment were submitted. In only three cases of all the complaints filed, an investigation was opened, while the rest were dismissed after preliminary examination. Two of those investigations cases have already been closed without indictments. **Overall, to this day, of the 1,400 complaints filed to the IIC, zero indictments have been served against perpetrators.**

In 2021, a news exposure revealed that the AG's Office decided to close the investigation file in the [case of a young Palestinian woman](#) who underwent a serious sexual assault during her arrest in 2015 – a vaginal and anal examination by a military medic and a female soldier consecutively, without her consent nor any operational necessity, and according to the instruction and knowledge of the commanders present at the event. The case was closed as the IIC could not determine which of the commanders, who each accused the other, ordered to conduct the invasive search. However, all involved admitted that the highly unusual search indeed occurred, and that there was no concrete intelligence information justifying the need for such an

invasive search. In February 2022, an appeal against the closure of the investigation has been filed by PCATI on behalf of the victim. Seven months later, in September 2022, PCATI received notice that her appeal was dismissed by the MoJ. Coincidentally, at the same time it was reported that **the senior ISA officer, who was involved in the incident - and who according to PCATI's analysis of the investigation file, gave the unusual order to conduct the illegal physical search - [has been promoted](#) to a higher position in ISA ranks.**

## F. Lack of prohibition of torture and ill-treatment

*(Relating to recommendations 118.13; 118.74; 118.75; 118.76)*

### 1. Lack of Legislation prohibiting Torture in Israeli Law

36. To this day, Israel has not adopted any legislation explicitly criminalising torture. This despite the State's obligation as signatory to both the UN Convention Against Torture and the International Covenant on Civil and Political Rights, as well as Israel's repeated declarations expressed to the UN Human Rights Committee and other international mechanisms that it intended to do so.<sup>21</sup>
37. Israel has claimed that existing provisions within its penal code ("other offenses") have the effect of criminalizing all acts of torture. As a matter of fact, the **existing offenses fall far short of the standard set by CAT** and other internationally recognised standards.
38. This issue has been raised again this year by the UN Human Rights Committee (HRC) in its [Concluding Observations in the fifth periodic review of the State of Israel](#) in March 2022, where it voiced its deep concern that "despite the State party's 2017 report indicating that its authorities were in the final stage of drafting a bill on the prohibition of torture, no such law has been adopted". The committee has urged Israel to "place an absolute ban on torture, including by incorporating into its legislation, such as the draft Basic Law on the rights of suspects and defendants, a definition of torture that is fully in line with article 7 of the Covenant, and removing the notion of "necessity" as a possible justification for the crime of torture".
39. **However, during the deliberation of the draft "Basic Law on Rights in the Criminal Process", mentioned in the HRC's recommendations – the MoJ has rejected the call to introduce any language against torture in the proposed bill, put before it by PCATI as well as MKs. The law was not yet legislated due to the dissolving of the government coalition in June 2022.**

40. Similarly, in June 2022 the **Amendment no. 19 to the Law of Evidence** has been passed, without any direct mention of torture and ill treatment, nor their potential implications on the admissibility of evidence in criminal proceedings.

The effect of this lacuna in legislation has recently been demonstrated in the case of Amiram Ben Uliel, an Israeli convicted for the murder of a Palestinian family. Ben-Uliel's appeal to the Supreme Court has been rejected in September 2022, despite his claim that his confession, obtained less than 48 hours after having endured "special measures", was not made freely and should be regarded inadmissible. **Citing specifically the latest amendment to the Law of Evidence, Justice Elron stated that current Israeli legislation does not oblige the court to dismiss such evidence.**

## **2. Justification for Torture in Israeli jurisprudence**

41. In its 1999 milestone ruling regarding torture,<sup>22</sup> Israel's HCJ has determined that ISA interrogators suspected of violating rules of interrogation because of necessity may be exempt from criminal conviction or even prosecution, if they interrogate suspects during "ticking time bomb" situations. The status of torture in Israeli legislation is therefore not completely clear, and the 1999 ruling has had the effect of rendering the prohibition on torture a derogable one, in stark contrast to the principles and rules of international law.
42. Most notably, despite the long-standing criticism of Israel's use of the **"necessity defense" to justify torture in interrogations, this practice is still used on a regular basis.** Since the last review until today, PCATI documented dozens of incidents of torture yearly, including psychological as well as physical torture, and the judicial system continues to uphold this justification. In the cases of Abu Gosh v the Attorney-General (2017) and Tbeish v. Attorney General (2018), **Israel's HCJ upheld the "necessity defense" of the interrogators, and declined to order a criminal investigation of torture,** thereby condoning the State's whitewashing of torture interrogations.<sup>23</sup>

# **SUMMARY RECOMMENDATIONS TO THE STATE OF ISRAEL**

43. Israel must halt the practice of unlawful deportation of Palestinians, especially of minors, for the purpose of interrogation and imprisonment on Israeli territory.
44. Recognize the Istanbul Protocol as valid evidence in Court to prove the use of means of torture and ill-treatment against a person. (in compliance with recommendation 118.167 of the 3rd UPR).
45. Interrogations must be recorded by audio-visual means and complainants should be given full access to the video footage to prove allegations of torture or ill-treatment (in compliance with recommendation 118.196 of the 3rd UPR).
46. The use of the necessity defense for all acts of torture must be halted (in compliance with recommendation 118.77 of the 3rd UPR).
47. Amend the Evidence Act in a way that any evidence obtained as a result of coercive and illegal means are inadmissible in any court of law; it should be automatically disqualified from being used as evidence in trial, and not left to the discretion of judges or balanced against other interests. This should apply both to confessions and to recriminations of other parties, with no exceptions. (in compliance with recommendation 118.77 of the 3rd UPR).
48. Ensure accountability for perpetrators of torture. Investigations into all allegations of torture, cruel, inhuman or degrading treatment must be prompt, lasting no longer than 10 months all told, from the start of the process to the end of the criminal investigation, if warranted (in compliance with recommendation 118.167 of the 3rd UPR).
49. Enact a law criminalizing torture and ill-treatment immediately and without exceptions (in compliance with recommendations 118.74, 118.75, 118.76 of the 3rd UPR). Present a reasonable timeline outlining the timescale of the legislative procedure for such a law.
50. Israel should cooperate with the ICC in the full extent of their investigation of the Situation in Palestine.

# ANNEX 1: SUBMITTING ORGANISATIONS

## FIDH

The International Federation for Human Rights (FIDH) is an international human rights NGO that unites 192 member organisations from 117 countries. Since its foundation in 1922, FIDH has been defending all civil, political, economic, social, and cultural rights set out in the Universal Declaration of Human Rights (UDHR).

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## PCATI

PCATI is a veteran Israeli human rights organization solely dedicated to the elimination of torture and ill-treatment and the institutional impunity prevalent in Israeli security agencies. Our overarching goal is to contribute to the full cessation of torture and ill-treatment in Israel, in line with international standards.

Our central strategy for achieving this goal is twofold. On the legal front, PCATI facilitates clients' access to justice, while systematically challenging the institutional impunity of the Israeli Internal Security Agency (ISA), Israeli military, police, and the Israeli Prison Services, targeting the State's investigatory bodies and the courts. Specifically, PCATI combats the lack of substantive investigation of complaints filed to the Inspector of Interrogee Complaints, to the Police Investigation Department and to the Military Attorney General's Office. To do so effectively, we combine direct support of torture victims, evidence-based documentation of torture allegations, submission of complaints to authorities, subsequent legal and administrative appellant activities, and principle legal petitions to the High Court of Justice (HCJ). In parallel, we carry out public outreach and advocacy work nationally and internationally, exposing practices of torture to the Israeli public, advancing the understanding of torture as illegal and unacceptable, and urging appropriate action among stakeholders in the Israeli Parliament and Government, as well as with the International community.

PCATI acts as a catalyst of change by influencing the socio-political discourse and the justice system in Israel for a full and sustainable implementation of the International Convention against Torture (CAT) and other international human rights standards.

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## **ANNEXE 2: Status regarding recommendations in the context of this submission:**

The use of torture and other cruel, inhuman and degrading treatment during arrest, transfer, interrogation and in places of deprivation of liberty still occurs frequently against Palestinians, including against children. As to arbitrary arrest and detention, including torture and ill-treatment, the following relevant recommendations were made to Israel at the last UPR cycle:

118.72 Refrain from the practice of arbitrary detentions and prevent cases of the use of torture in places of deprivation of liberty (*Position of the State of Israel: “noted”. No assessments or comments on level of implementation*);

118.84 Ensure that the detention of civilians, especially children, is carried out in accordance with international law and standards and without discrimination, including by ensuring the right to prompt and meaningful access to a lawyer prior to and during interrogations (*Position of the State of Israel: “noted”. No assessments or comments on level of implementation*);

118.160 Eliminate practices of torture and ill-treatment against Palestinian detainees, particularly children, including during arrests, transfers and interrogation (*Position of the State of Israel: “noted”. No assessments or comments on level of implementation*);

118.162 End the illegal detention of Palestinians without charges or legal proceedings; the tortures to which they are subjected, the inhumane conditions of solitary confinement, overcrowding, lack of hygiene and basic services; and the denial of medical attention in its prisons (*Position of the State of Israel: “noted”. No assessments or comments on level of implementation*);

119.4 End the policy of administrative detention and the use of torture against Palestinians including children in Israeli military detention, and free all Palestinian political prisoners including children (*Position of the State of Israel: “noted”. No assessments or comments on level of implementation*);

118.198 Ensure that all Palestinian children detained are held in the occupied Palestinian territory, and not in Israel (*Position of the State of Israel: “noted”. No assessments or comments on level of implementation*).

The Israeli legal system is unable and unwilling to prevent the use of torture by ensuring accountability for perpetrators. Israeli courts, including the HCJ, uphold the extensive use of the “necessity defences”. Current Israeli law merely requires CCTV broadcasting of interrogations, observed by authorised state officials at the time, which is not recorded. As to



justice and fair trial / right to effective remedy, the following recommendations were made to Israel at the last UPR cycle:

118.77 Make progress in domesticating the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including issues such as the exclusion of the necessity exception as a possible justification for torture; and ending situations of administrative detention (*Position of the State of Israel: “noted”. No assessments or comments on level of implementation*);

118.167 Combat impunity through in-depth, impartial investigations of all allegations of human rights violations, including those involving members of security forces or settlers (*Position of the State of Israel: “supported”. No assessments or comments on level of implementation.*);

118.196 Taking action to protect child detainees, ensuring the mandatory use of audiovisual recording in interrogations with all child detainees, ending the use of painful restraints, and consistently and fully informing detainees of their legal rights (*Position of the State of Israel: “noted”. No assessments or comments on level of implementation*).

Israel has yet to fully implement the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, notably to legislate a law absolutely prohibiting the use of torture and ill-treatment. Israel has not ratified the Optional Protocol to UN CAT. As to lack of prohibition of torture and ill-treatment, the following recommendations were made to Israel at the last UPR cycle:

118.13 Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and subsequently establish a national preventive mechanism (*Position of the State of Israel: “noted”. No assessments or comments on level of implementation*);

118.74 Fully translate the Convention against Torture into national legislation and implement the Committee’s recommendations (*Position of the State of Israel: “noted”. No assessments or comments on level of implementation.*);

118.75 Ensure full respect for international human rights obligations, in particular those specified in article 9 of the International Covenant on Civil and Political Rights, towards all prisoners, and that the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment definition of torture be incorporated into Israeli legislation (*Position of the State of Israel: “noted”. No assessments or comments on level of implementation*);

118.76 Ensure that the bill currently being drafted to criminalize torture is in full conformity with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Position of the State of Israel: “supported”. No assessments or comments on level of implementation*).

## END NOTES

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<sup>1</sup> The allegations of the communication related to the following crimes as defined by the Rome Statute: (a) crimes of torture and other inhuman acts of a similar character, in violation of Articles 8(2)(a)(ii), 8(2)(a)(iii), 8(2)(b)(xxi) of the Rome Statute; (b) unlawful deportation or transfer of occupied population, in violation of Article 8(2)(a)(vii), 8(2)(b)(viii) of the Rome Statute; and (c) denial of fair trial, in violation of Article 8(2)(a)(vi) of the Rome Statute. However, most of these crimes have a corresponding counterpart in treaties of international humanitarian law or international human rights law.

<sup>2</sup> The location of interrogations inside Israel has been taken for granted and mentioned in passing by the Israeli Supreme Court in all the decisions on allegations of torture mentioned in this communication, so much that it has related to torture as a matter to which only domestic Israeli Law applies. On the mass transfer of prisoners and detainees to Israel see HCJ, 2690/09 *Yesh Din v Commander of IDF Forces in the West Bank* (2010), available at [https://hamoked.org/files/2010/111511\\_eng.pdf](https://hamoked.org/files/2010/111511_eng.pdf). Specifically on interrogations and remand hearings inside Israel see HCJ, 6504/95 *Wajia v. State of Israel* (unpublished, 1.11.1995); Ben-Natan, Smadar Ben-Natan, *Revise Your Syllabi: Israeli Supreme Court Upholds Authorization for Torture and Ill-Treatment*, 10 *Journal of International Humanitarian Legal Studies* 41–57 (2019), 54-56. For NGO reports, see for example: Hamoked and B'tselem, *Dark Methods: Treatment of Palestinian Detainees in the Petach Tikva Detention Facility*, October 2010, available (in Hebrew) at <https://hamoked.org.il/files/2010/113160.pdf>.

<sup>3</sup> Description of case of Victim No. 3 , FIDH/PCATI 2022, War Crimes in the Interrogation Chamber, Art. 15 Communication to ICC, <https://stoptorture.org.il/en/june-2022/>.

<sup>4</sup> HCJ 5100/94 *Public Committee against Torture in Israel v. the State of Israel* ([link](#)).

<sup>5</sup> Amnesty International, *Israel/OPT: Legally-sanctioned torture of Palestinian detainee left him in critical condition*, 30 September 2019, available at <https://tinyurl.com/ms7wj4fd>

<sup>6</sup> Yuval Shany, *Special Interrogation Gone Bad: The Samer Al-Arbeed Case*, LAWFARE, 10 October 2019.

<sup>7</sup> Jennifer DePiazza, *Denial of Fair Trial as an International Crime: Precedent for Pleading and Proving it under the Rome Statute*, 15 *JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE* 257–490 (2017), describes this type of denial of fair trial as ‘category two’ cases, p. 65.

<sup>8</sup> *Id.* The Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, 2002 OEA/Ser.L/V/II.116, para 232; U.N. Commission on Human Rights, *Draft Principles on the Administration of Justice through Military Tribunals*, E/CN.4/2006/58, 13 January 2006 (Draft Principles), Principle No. 119.

<sup>9</sup> HRC, *General Comment No. 31, Nature of General Legal Obligation Imposed on State Parties to the Covenant*, CCPR /C/21/Rev.1/Add 13, 26 May 2004; Draft Principles, principle 4 – Application of Humanitarian Law.

<sup>10</sup> [Supra Note 8](#), Draft Principles, Principle 15.

<sup>11</sup> B'tselem: The Israeli Information Center for Human Rights in the Occupied Territories, *The Military Judicial System in the West Bank* (Report) (1989); Amnesty International, *The Military Justice System in the Occupied Territories: Detention, Interrogation and Trial Proceedings* (Report) (1991); Lawyers' Committee for Human Rights, *Lawyers and the Military Justice System* (Report) (1992); Yesh Din: Volunteers for Human Rights, *Back Yard Proceedings* (Report) (2007); ACRI, ONE RULE, TWO LEGAL SYSTEMS: ISRAEL'S REGIME OF LAWS IN THE WEST BANK 5 (2014), available at <https://law.acri.org.il/en/wp-content/uploads/2015/02/Two-Systems-of-Law-English-FINAL.pdf>; Lisa Hajar, *COURTING CONFLICT: THE ISRAELI MILITARY COURT SYSTEM IN THE WEST BANK AND GAZA* (2005); Hedi Viterbo, *Military Courts*, in *THE ABC OF THE OPT* 264–276 (Orna Ben- Naftali, Michael Sfar, & Hedi Viterbo eds., 2018).

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<sup>12</sup> Yesh Din: Volunteers for Human Rights, BACK YARD PROCEEDINGS (Report) (2007), <https://www.yesh-din.org/en/backyard-proceedings/>; HCJ, 3326/10 *Palestinian Ministry of Prisoners v. Commander of IDF forces*, *infra* note 251; Smadar Ben-Natan, *The Application of Israeli Law in the Military Courts in the Occupied Territories*, 43 THEORY AND CRITICISM 45–74 (2014).

<sup>13</sup> Amnon Rubinstein, *Israel and the Territories: The Jurisdiction of the Courts*, 13 TEL AVIV UNIVERSITY LAW REVIEW 415 (1989); ACRI, ONE RULE, TWO LEGAL SYSTEMS: ISRAEL'S REGIME OF LAWS IN THE WEST BANK 5 (2014), available at <https://law.acri.org.il/en/wp-content/uploads/2015/02/Two-Systems-of-Law-English-FINAL.pdf>; Hajjar, *supra* note 11, 58-61; Smadar Ben-Natan, *Citizen-Enemies: Palestinian Citizens and Military Courts in Israel and the Occupied Territories, 1967-2000*, in THE POLITICS OF INCLUSION AND EXCLUSION IN ISRAELI-PALESTINIAN RELATIONS (Amal Jamal ed., 2020); Smadar Ben-Natan, *Citizen-Enemies: Military Courts in Israel and the Occupied Palestinian Territories 1967-2000*, (2020); Smadar Ben-Natan, *The Dual Penal Empire: Emergency Powers and Military Courts in Palestine/Israel and Beyond*, 23 PUNISHMENT & SOCIETY 741–763 (2021).

<sup>14</sup> ACRI, *supra*.

<sup>15</sup> Order Regarding Security Provisions (Consolidated Version) (Judea and Samaria) (No. 1651) – 2009, 234 CPOA 5902 ('SPO', '*tsav bidvar hora'ot bitachon*'); Order Regarding Administrative Detentions (Temporary Provision) [Consolidated Version] No. 1591-2007.

<sup>16</sup> HCJ, 3326/10 *Palestinian Ministry of Prisoners v. Commander of IDF forces* (6.4.2014), available at <https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Ministry%20of%20Palestinian%20Prisoners%20v.%20Minister%20of%20Defense.pdf>.

<sup>17</sup> See para. 85 above, Victims No. 1, 7, 13, 14, 11, 17.

<sup>18</sup> Hajjar, *supra*.

<sup>19</sup> *Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity*, 23 ISR. L. REV. 146, (1989) ('Landau Report') available at [https://hamoked.org/files/2012/115020\\_eng.pdf](https://hamoked.org/files/2012/115020_eng.pdf).

<sup>20</sup> Judea Military Court, Case No. 5382/09 *Military Prosecutor v. Ayman Hamida* (30.11.2011). A request by PCATI to open a criminal investigation against the interrogators in the case (letters dated 16.2.2012, 10.2.2013) was denied.

<sup>21</sup> See UN Human Rights Committee concluding observations of the fifth periodic review to the State of Israel, 30 March 2022, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fISR%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fISR%2fCO%2f5&Lang=en)

<sup>22</sup> HCJ 5100/94 *Public Committee against Torture in Israel v. the State of Israel* ([link](#))

<sup>23</sup> HCJ, 5722/12 *Abu Ghosh v. The Attorney General* (published in Nevo 12.12.2017), p. 34. For a review of the case see: <https://www.lawfareblog.com/pressure-techniques-and-oversight-shin-bet-interrogations-abu-ghosh-v-attorney-general>; HCJ, 9018/17 *Tbeish v. The Attorney General* (published in Nevo 26.11.2018). English Translation available at <http://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Tbeish%20v.%20Attorney%20General.pdf>.