

The Public Committee Against Torture in Israel
Israel - List of concerns for UN Committee Against Torture
Jerusalem, September 2008

General non-compliance with the Convention:

1. The Israel Security Agency/General Security Service (henceforth: GSS/ISA) has employed torture in the interrogation of dozens if not hundreds of Palestinian detainees since the UN Committee Against Torture (henceforth: CAT, the Committee) considered Israel's previous report, and used cruel, inhuman or degrading treatment (henceforth: other ill-treatment) in the interrogation of many more. The use of techniques of torture, officially referred to as "special measures", is officially sanctioned and justified by the claim of "necessity". Complaints of torture victims are invariably closed by the State Attorney's Office or the Attorney General without taking any criminal steps against the interrogators or their superiors.
2. Violence and humiliation constituting ill-treatment, and at time torture, is inflicted by soldiers and other security forces during the arrest and initial detention of Palestinians in the Occupied Territories, in defiance of orders but with little preventative, investigative, prosecutorial or punitive action from the authorities.
3. CAT's recommendations with respect to Israel's previous reports have been roundly ignored.ⁱ

Articles 1 & 4 – definition, criminalisation of torture:

4. There is no legislation in Israel establishing a crime of torture as defined in Article 1(1) of the Convention. The existing offences of cruel treatment, by physical or mental abuse, apply only if the victim is in custody or helpless and do not include several elements of the definition of torture.ⁱⁱ 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 is not proportionate to the gravity of the crime of torture.ⁱⁱⁱ
5. Ad-hoc committees established by the Justice Ministry have pointed out the lacunae in the existing Penal Law and recommended enacting a specific offence of torture consistent with Article 1 of the Convention.^{iv} These recommendations have, however, been ignored for more than a decade.
6. The Knesset Constitution Law and Justice Committee discussed in 2007 the inclusion of a prohibition of torture in its draft Constitution.^v The Committee Chairperson concluded the session by supporting a constitutional prohibition of torture.^{vi} However, the proposed provision does not cover cruel, inhuman or degrading treatment or punishment, and the prohibition would be subject to the Constitution's general limitation (balancing) provision. If adopted, the constitutional prohibition would restrict the power of the Knesset to adopt a law permitting torture, but the prohibition would be less than absolute.

Article 2 - actions to prohibit torture:

7. Following the Supreme Court judgment of September 1999 (in 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.^{vii} The “defence of necessity” thus provides justification, and consequently exemption from criminal liability, to torturers in these perceived situations, in violation of Article 2(2) and the very object and purpose of the Convention. This, more than 14 years after the Committee first explained the inapplicability of this defence for torturers to the State Party,^{viii} and in defiance of repeated recommendations by the Committee;^{ix} the Human Rights Committee;^x and the UN Special Rapporteur on Torture.^{xi}
8. Consistent allegations made by Palestinian detainees in detailed affidavits to the Public Committee Against Torture in Israel and to B’Tselem and HaMoked, have described the use of methods which clearly constitute torture under the Convention’s definition and the jurisprudence of international tribunals and human rights monitoring bodies. In several cases these allegations have been substantiated by internal GSS/ISA memoranda, by testimony of GSS/ISA interrogators in court and by medical evidence.^{xii} These methods include, but are not limited to, the following: prolonged incommunicado detention; sleep deprivation by means of continuous or nearly continuous interrogation for periods exceeding 24 hours (for example 46 hours with a two hour break after 25 hours)^{xiii}; forcibly bending the detainee’s back over the seat of a chair at an acute angle, often with the legs shackled to the feet of the chair, and keeping the suspect bent backwards in an arch until the pain is unbearable; slapping and blows; coerced crouching in a frog-like position; 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. Three or more GSS/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.
9. Doctors in infirmaries of prisons where GSS/ISA interrogations are conducted are clearly aware of the torture and other ill-treatment that take place there: they examine exhausted, pained, bruised and traumatized detainees, and are aware that their diagnosis may determine whether or not the detainee they are treating will return to the GSS/ISA wing to be tortured further. As, more often than not, they knowingly send detainees back to their interrogators; such doctors must be considered at least passive participants in GSS/ISA torture, in violation both of the Convention and medical ethics.^{xiv}
10. 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. This guarantee has been drastically weakened in security cases by the *Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law, 2006*. Originally enacted as a temporary arrangement for eighteen months, it was extended by the Knesset through the end of 2010 with the intention of incorporating its provisions in a permanent anti-terror law.^{xv} This Law allows the detention and interrogation of persons suspected of security offences for up to 96 hours before bringing them in front of a judge. Subsequent judicial remand hearings may take place in the absence of the detainee for up to 20 days, and the suspect need not be informed of the hearing or of the decision concerning the extension of his detention. As the Law also permits denying a detainee suspected of security offences access to a lawyer for up to 21 days,^{xvi} such detainees may be interrogated incommunicado 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.

11. Israeli military law in the West Bank allows detaining a suspect for up to eight days before bringing him in front of a judge and permits preventing detainees from meeting a lawyer for up to 90 days.^{xvii} Echoing the new Israeli law described above, the West Bank Military Order was amended to allow remand hearings to be held in the absence of the accused for up to 30 days, aggravating still further the already long periods of incommunicado detention that may be authorised.^{xviii}
12. Lengthy incommunicado detention was extended to a new category of administrative detainees under the *Detention of Unlawful Combatants Law, 2002*. As amended in July 2008,^{xix} the Law now permits holding a detainee for up to 14 days before bringing him in front of a District Court judge to determine whether his status is that of an “unlawful combatant”, and permits preventing the detainee from seeing a lawyer for up to 21 days. Thus a person from the Gaza Strip or Lebanon^{xx} 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.
13. The above new provisions of Israeli law, authorising the interrogation of detainees while they are held in isolation from the outside world and preventing them from seeing a judge, expressly sanction by law measures which, as determined by international human rights bodies, constitute a form of ill-treatment,^{xxi} in addition to facilitating further torture or other ill-treatment.

Article 3 - extradition and refoulement to where there is a risk of torture

14. In May of 2001 the Knesset substantially revised the *Extradition Law, 1954*, yet the revised grounds for refusing extradition do not include a provision in conformity with article 3, forbidding the extradition of a requested person to a requesting state where the person may be at risk of torture.^{xxii}
15. The provisions in the *Law of Entry to Israel, 1952*, regarding the deportation of illegal immigrants were also substantially and repeatedly revised during the past seven years,^{xxiii} yet contain no provision the risk of torture or the principle of *non-refoulement* beyond a discretionary authority to release an illegal immigrant on “special humanitarian grounds.”^{xxiv}
16. The principle of *non-refoulement* is considered by the Supreme Court to be a rule of Israeli law, but this is a rule without expression in statute and it relates generally to endangering the life or freedom of the deportee,^{xxv} not to a specific risk of torture or other ill-treatment. In 2002 the Justice and Interior Ministries introduced *Regulations Regarding the Treatment of Asylum Seekers in Israel*,^{xxvi} which establish a procedure for examining the claims of asylum seekers, yet here too no mention is made of the risk of torture as grounds for refraining from *refoulement*; furthermore the regulations allow the government to deny without any consideration claims by inhabitants of “enemy states”. Thus the decision-makers’ attention is not directed by either Israeli law or jurisprudence to examine whether the person to be expelled stands at risk of being tortured in the receiving country.
17. The issue has become acute due to an influx of East African asylum seekers claiming to be entitled to refugee status. The government has responded with proposed legislation, not yet adopted by the Knesset, which would make it possible to repulse or immediately return “infiltrators” across the Egyptian border, without affording them an opportunity to raise a claim to refugee status and without examination of whether they may be in danger of torture or other ill-treatment if returned to Egypt, or from Egypt to their home country.^{xxvii} The Israeli government already applied a policy of instant

deportation of Sudanese asylum seekers who across the Egyptian border, regardless of their claims or status, in August 2007.^{xxviii}

Article 11 – Rules, instructions and practices to prevent torture

18. Safeguards protecting regular criminal suspects from torture and other ill-treatment under Israeli law have significantly improved during the seven-year period under consideration.^{xxix} However, these advances have not been extended, and do not apply, to security interrogations or to the interrogation of suspects arrested under military law in the West Bank.
19. The Issaskarov judgment^{xxx} in this case, the Supreme Court ruled that failure of the police to inform suspects prior to questioning of their right to consult a defence lawyer, as well as other substantial violations of a suspect's right to fair procedures, gives 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 authorized by law.^{xxxi} 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. Applying this proviso to the interrogation of suspected terrorists is likely to lead trial courts to admit confessions and other evidence even where the accused was not informed of the right to meet counsel.
20. Minors: Under a comprehensive amendment to the Youth (Judging, Punishment and Treatment Methods) Law,^{xxxii} 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.^{xxxiii} The parent or relative must be given an opportunity to be present during any questioning of the minor.^{xxxiv} 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 authorised officer believes that the presence of the parent or adult relative will harm state security.^{xxxv} Furthermore, these provisions concerning the interrogation of a minor suspect apply only to the police, whereas the GSS/ISA is exempt from them. The provisions do not apply to minors arrested under West Bank military orders, which lacks special procedures for the arrest of minors and where a child of 16 is considered an adult.
21. Video recording: 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 in which the maximum penalty is ten years imprisonment or more. (The requirement is coming into force incrementally, beginning with murder investigations in 2006, and will apply to all investigations of felonies of 10 years maximum imprisonment or more in 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 who claims that his confessions were obtained through the use of torture or other ill-treatment will have the means to prove his or her claim and prevent the admissibility of such confessions.

22. However, the recording requirement does not apply to the GSS/ISA: its interrogators may continue to conduct interrogations without any visual or audio recordings. (In fact many of these interrogations are 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). Moreover, the 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^{xxxvi} by exempting 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). 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 GSS/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 GSS/ISA.

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

23. GSS/ISA impunity: The only authority authorised by law to investigate complaints against GSS/ISA personnel is the Department of Investigations of Police Officers (DIP) in the Justice Ministry. However the 1994 amendment empowering the State Attorney General to direct the DIP to conduct criminal investigations into complaints against GSS/ISA has become a dead letter - in recent years it has not been used even once. Instead, complaints concerning the conduct of GSS/ISA personnel during interrogations are referred to the GSS/ISA's "Inspector of Interrogees' Complaints". This position is held by a salaried, high-ranking employee of the GSS/ISA with previous experience serving in the GSS/ISA. Thus complaints of torture by GSS/ISA agents are investigated in-house, by a GSS/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, and torturers are exempted from criminal liability by the Attorney-General under the "defence of necessity". In both these cases the files are invariably closed. Not a single case has been criminally investigated, let alone prosecuted.^{xxxvii} 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.
24. In addition, the General Security Service Law, 2000, grants GSS/ISA personnel *de jure* immunity for acts in the course of service as long as they acted reasonably and in good faith.^{xxxviii} 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 GSS/ISA interrogations and the names of all GSS/ISA personnel be kept classified, making it impossible for a complainant to know if the actions of which he or she complains were authorised under cover of law.
25. Complaints against police: The Department for Investigation of Police Officers in the Ministry of Justice often fails to properly investigate incidents of torture or other ill-treatment by police officers. Its impartiality and independence are seriously hampered by the fact that most of its investigators are former police officers who tend to side with their former colleagues when having to choose between a complainant's version of events and that of the police. The vast majority of complaints, including complaints of detainees concerning ill-treatment in custody, are closed without any investigation being conducted at all or without serious investigation.^{xxxix}

26. Complaints against soldiers: IDF regulations require that a criminal investigation be opened for any complaint of violence or cruelty to a person in custody.^{xi} 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.^{xii}

Article 14 – right to redress, compensation and rehabilitation

27. A detainee who suffers injury due to torture or other ill-treatment while in custody has theoretically a right of action in tort to receive compensation for his injuries, but this right in practice is difficult to realise because of great difficulties in producing evidence. Neither the Israel Prison Service (IPS) nor any of the investigative bodies (GSS/ISA, Police, IDF) conduct forensic medical examinations of detainees following complaints. Records of medical examinations in the prison infirmary during GSS/ISA interrogations are seldom made available to plaintiffs. After the victim is released it is often too late to obtain forensic medical proof of the cause of injury, and in addition, former “security” detainees are almost invariably labelled security risks, and consequently are not allowed to enter Israel, making it difficult to obtain the qualified expert medical opinion required for a compensation suit for bodily injury in Israeli courts.
28. 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.^{xiii}

Article 15 - Use of evidence obtained by torture and other cruel, inhuman or degrading treatment or punishment

29. The use in courts of confessions extracted from defendants or witnesses by interrogation methods amounting to torture or other ill-treatment is widespread due to weaknesses in the law of evidence and judicial precedents. These problems persist both in Israeli civil courts and in West Bank military courts.
30. Under Sec 10(a) of the Evidence Ordinance, 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.”^{xliii} Where an accomplice incriminated the defendant in a statement obtained by torture or other ill-treatment in the course of a GSS/ISA interrogation, the accomplice’ statement will be admissible as evidence against the defendant even if it might be inadmissible as a confession in the accomplice’ own trial; such a statement on its own may be sufficient to convict the defendant.^{xliii} The result is that prosecutors bring cases based on evidence obtained by the GSS/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 co-conspirators or collaborators, while the latter’s confessions, even if obtained in the same type of interrogation using 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.

31. The division of labour between the GSS/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 GSS/ISA interrogators, are delivered (often in the defendant's own handwriting) to police officers who do not themselves employ methods prohibited by the Convention, and even warn suspect of their right to avoid self-incrimination.^{xlv} The courts have discounted the probability that the defendant was still under the influence of torturous or cruel GSS/ISA interrogation and was confessing under the implied threat of their resumption should he not cooperate by confessing to the police. The Head of the Investigations Division and the Chief Legal Advisor of the GSS/ISA have both publicly testified that there is in fact no distinction between the police and GSS/ISA aspects of a security investigation, the two being thoroughly inter-dependent and under GSS/ISA control,^{xlvi} belying the claim that a suspect is free of the influence of the GSS/ISA interrogation when questioned by police.
32. Secondary evidence found as a result of information provided under torture or ill-treatment is admissible.^{xlvii}

Article 16 – Preventing Cruel Inhuman or Degrading Treatment or Punishment

33. Administrative detention: The administrative detention of civilians suspected of posing a future threat to security or public safety is practiced in both Israel and the Occupied Palestinian Territories. A recent law has extended administrative detention to “unlawful enemy combatants.” In both cases the detention is open-ended, may be (and usually is) ordered incrementally, for six month periods, and is based on minimally phrased, vaguely stated grounds of suspicion and on information and evidence which the detainee is not allowed to examine. As the Committee has already observed,^{xlviii} this type of indefinite administrative detention, in manifestly unfair proceedings, amounts to cruel, inhuman or degrading treatment.^{xlix} In some cases, administrative detention has been imposed on a prisoner who had completed serving his or her sentence after conviction in a criminal trial: after years of imprisonment, expecting to go home as a free person, the person is detained administratively on the day of release from the criminal sentence, with no end in sight.¹
34. The Unlawful Combatants Law, 2002 (as amended in July 2008) provides for holding an “unlawful enemy combatant” in administrative detention, subject to judicial review once every six months, until the “unlawful combatant's” release will no longer endanger state security (sec. 5(c)) – a condition which might not be met until the end of the armed conflict. Although the Supreme Court held that there must be a showing of danger emanating from the particular the “unlawful combatant”, and the burden of demonstrating that danger must be greater the longer the detention,^{li} in fact such detention could be extremely lengthy^{lii} in an armed conflict that has already lasted two generations.
35. Shackling – GSS/ISA: Detainees being interrogated by GSS/ISA agents are handcuffed behind the back in an initially uncomfortable and, with time, increasingly painful position. This practice continues despite written assurances to the contrary given to the Public Committee Against Torture in Israel.^{liii} It is justified as a means of protecting interrogators from attack, but the fact that police have stated that they do not shackle detainees under GSS/ISA interrogations whilst taking their statements,^{liv} and that interrogees are left shackled in GSS/ISA interrogation rooms on their own, sometimes for hours, belie this claim. As noted above, prolonged and painful shackling methods used by GSS/ISA interrogators may form part of torturous interrogation methods or even constitute torture on their own.

36. Shackling – other detainees: Shackling of minors to their prison beds as a disciplinary punishment or in response to attempted suicide, disproportionate or punitive shackling of other detainees and convicted prisoners in prison facilities, degrading and inhuman shackling of hospitalized prisoners to their hospital beds, and degrading exposure of handcuffed suspects to their family, the press and public in court remand hearings – all these phenomena have been frequently documented and criticized by prison monitors from the Public Defenders Office, by Physicians for Human Rights (PHR-Israel) and by Members of the Knesset in committee hearings,^{lv} yet they continue unabated.
37. GSS/ISA holding cells: while undergoing GSS/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 electric light is on constantly for 24 hours. In some cases detainees complain of cold, dampness and vermin. Usually the suspect is held in these cells in isolation at least during a portion of the interrogation period, and often during it.^{lvi} Independent prison monitors on behalf of the Public Defender's Office and the Bar Association prison monitors are not allowed into these cells.^{lvii} The GSS/ISA interrogation wings have all come under the authority of the Israel Prison Service (IPS), yet the IPS denies responsibility for conditions in the GSS/ISA wards while the GSS/ISA claims that it is not responsible for conditions of detention.^{lviii}
38. IPS facilities: All prisons and jails (including former military prisons) have come 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 for 2006 and 2007 continue to describe numerous cases of over-crowding, poor ventilation, prison guard violence and lack of sufficient social and educational support. Security prisoners – almost entirely Palestinian, 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. They are denied telephone communications with family and friends, physical contact with family members including children during visits, and private conjugal visits with spouses.^{lix} The IPS does not employ a single Arab psychiatrist – one who is capable of speaking to Palestinians in their own language, which in the case of Palestinians from the Occupied Palestinian Territories is often the only one they speak.^{lx}

Articles 20, 21 and 22 and the Optional Protocol

39. Israel has not withdrawn its reservation to Article 20 of the Convention. In view of the systematic nature of torture in Israel, approved *a priori* through “consultations with high ranking [GSS/ISA] officers”^{lxi} and allowed *a posteriori* through impunity granted routinely to GSS/ISA torturers by the Attorney-General, this reservation is a serious impediment to the Committee's monitoring of Israel's implementation of the Convention.
40. Israel has refrained from declaring that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention, (under Article 21), or to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by State Party of the provisions of the Convention (under Article 22).
41. Israel has not acceded to the Optional Protocol to the Convention, despite the dire need, in Israel, for access to places of detention and detainees, monitoring and reporting by national and international preventive mechanisms as envisaged by the Protocol.

Endnotes:

ⁱ The Committee's recommendations in 2002 include: the incorporation of a specific offence of torture as defined in the Convention into domestic legislation; removal of necessity as a possible defence for the crime of torture from domestic law; review of the practice of administrative detention in the Occupied Territories; assure that all detainees without exception are brought promptly before a judge and ensured prompt access to a lawyer; ensuring that interrogation methods prohibited by the Convention are not utilised by the police or the GSS/ISA in any circumstances; instituting effective complaint, investigative and prosecution mechanisms to prevent the crimes of torture and other ill-treatment; taking legislative measures to exclude a confession extorted by torture and also any evidence derived from such a confession; intensifying education and training concerning the Convention for the GSS/ISA, the Israel Defence Forces, police and medical doctors; withdrawing Israel's reservation with respect to article 20 and declaring in favour of Articles 21 and 22. See UN Doc. A/57/44 (2002).

ⁱⁱ 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.

ⁱⁱⁱ 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."

^{iv} 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.

^v Hearings were held under the auspices of Committee Chairman MK Prof. Ben Sasson on 20 November 2007 with the participation of academic jurists and representatives of the Justice Ministry (Constitution Law and Justice Committee Protocol 349). A previous hearing on this issue was held on 6 February 2005 (Protocol 400). The Justice Ministry representative expressed reservations concerning a constitutional prohibition of torture, arguing that the interpretation of the definition of torture by international bodies is unreasonably broad. His position hinted that methods which the Israeli Government maintains to be less severe than torture would be considered torture under internationally accepted standards.

^{vi} "A person shall not be subject to torture". The limitation clause in the proposed Constitution, as in the existing constitutional Basic Law: Human Dignity and Liberty, is structured similarly to article 1 of the Canadian Charter of Rights and Freedoms. It makes the prohibition less than absolute.

^{vii} "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/ISA interrogators under the defence of necessity. This framework was adopted pursuant to the Supreme Court judgment of September 1999 in H CJ 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."

^{viii} 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.

^{ix} Commenting on Israel’s 2nd periodic report, 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 Committee “expressed concern” that in the Supreme Court’s 1999 ruling, HCJ 5100/94 *Public Committee against Torture in Israel v. the State of Israel*,

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 “[N]ecessity 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).

^x In 2003 the Human Rights Committee made it clear, having considered Israel’s second periodic report, that ‘the ‘necessity defence’ argument... is not recognized under the Covenant.”

Concluding observations of the Human Rights Committee: Israel. UN Doc. CCPR/CO/78/ISR, 5 August 2003, para. 18.

^{xi} The UN Special Rapporteur on torture stated unequivocally in response to the HCJ ruling in HCJ 5100/94 *Public Committee against Torture in Israel v. the State of Israel*:

“...there is no such defence against torture or similar ill-treatment under international law”.

UN Doc. E/CN.4/2000/9 (2000), para. 675.

^{xii} 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). GSS/ISA personnel testified concerning methods of interrogation in closed court hearings; the publication of such testimonies is prohibited. GSS/ISA memoranda on the use of “special measures” were released to defence attorneys in several cases and are on file with PCATI.

^{xiii} See *Ticking Bombs, ibid.*, at 60.

^{xiv} *Ibid.*, pp. 17, 25, 28, 34, 36, 53, 64–65, 80–81. Almost all the torture victims documented in this publication were returned to a continuation of the interrogation after receiving medical assistance, and only in one case (at 81) did the physician report the patient’s complaints and instruct that he be allowed to rest.

^{xv} The (temporary) law was enacted on 29 June 2006 and 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).

^{xvi} Sec. 35 of the *Criminal Procedure (Enforcement Powers – Arrest) Law*, 1996.

^{xvii} 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.

^{xviii} 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.

^{xix} *Detention of Illegal Combatants (Amendment and Temporary Provision) Law*, 2008, enacted 30 July 2008.

^{xx} 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*, judgment of 11 June 2008, not yet published.

^{xxi} For instance, the UN Commission on Human Rights stated that “prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture.” UN Doc. E/CN.4/Res.2004/41, adopted without vote on 19 April 2004, para. 8. The UN Special Rapporteur on torture,

recognising that “torture is most frequently practised during incommunicado detention,” has also called for such detention to be made illegal. UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

^{xxii} Amendment no. 7 (2001). The revised “political exception” to extradition includes a provision (sec. 2B (b) (1)) that a requested person may not claim a political exception where the offence is one in which a multilateral convention requires Israel and the requesting state to extradite. Thus a person accused of torture by the requesting state would be barred by this provision and by the Convention from claiming the political exception.

^{xxiii} Amendments 9 (2001), 14 (2005) and 17 (2008) amending sec. 13 with respect to the expulsion of persons present in Israel without legal permit, and adding a series of procedural provisions concerning administrative hearings and appeals.

^{xxiv} Sections 13F(3) and 13-O(2) of the above law.

^{xxv} HCJ 5190/94 *Salah Tai v. Minister of Interior*, Piskei Din 49 (3) 849 (1995).

^{xxvi} Anat Ben-Dov and Rami Adut, *Israel – A Safe Haven: Problems in the Treatment Offered by the State of Israel to Refugees & Asylum Seekers* (Tel Aviv: Physicians for Human Rights-Israel and Tel Aviv University, September 2003), Annex A, at 68.

^{xxvii} Proposed Law for the Prevention of Infiltration, 2008, published in the official gazette of government bills on 1 March 2008. Sec. 11 authorises a qualified officer to expel an “infiltrator” immediately, if he or she was seized shortly after crossing the border. The expulsion must take place within 72 hours of seizure. However, in other cases there is a procedure prior to expulsion which allows an “infiltrator” to be released on “special humanitarian” grounds (section 15A(2)). The government’s explanatory notes to this bill do not suggest that the bill’s drafters contemplated a risk of torture or persecution as being among the special humanitarian grounds.

^{xxviii} “Israel Returns Illegal African Migrants to Egypt”, *New York Times*, 20 August 2007.

^{xxix} Changes in the law concerning security suspects are discussed under Article 2, above.

^{xxx} Cr. App. 5121/98 *Issaskarov v. Chief Military Prosecutor* (judgment not yet published, 4 May 2006, available in English translation on web site of Israel Supreme Court, <http://www.court.gov.il>).

^{xxxi} *Ibid.*, para. 67, concerning the requirement that the evidence be illegally obtained; 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.

^{xxxii} Amendment no. 14 to the law, adopted 21 July 2008.

^{xxxiii} 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 is new.

^{xxxiv} 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.

^{xxxv} Sections 9(g) and 9(h).

^{xxxvi} Amendment no. 4, June 17, 2008, extending the exemption from recording investigations of security offenses under section 17 of the law from July 2008 to July 2012. The Government’s proposal to make this exemption a *permanent* feature of the law was rejected by the Knesset.

^{xxxvii} Response of the Justice Minister to Parliamentary query of 13 December 2006 and response of the Justice Ministry to Freedom of Information request by PCATI from 18 February 2007: the Inspector of Complaints examined 131 complaints in 2005-6, but no criminal investigation was initiated and only in two cases was disciplinary action initiated (both in 2005). 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 4 cases was disciplinary action taken. See UN Doc. A/HRC/6/17/Add.4, 16 November 2007, para. 19.

^{xxxviii} Sec. 18 of the General Security Service Law, 2000.

^{xxxix} In his *Annual Report 56A* for 2005, the State Ombudsman found that approximately 73% of DIP files concerning police violence are closed without any investigation (at 361), and only 4% to 5% of those complaints in which an investigation is conducted lead to criminal charges (at 363). If the file consists of the complainant’s testimony and police testimony, with no additional evidence, the file will be closed for lack of evidence (pp. 363–4).

^{xl} Public Committee Against Torture in Israel, *No Defense – Abuse of Palestinian Detainees by Soldiers* (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.

^{xli} *Ibid.*, pp. 31-2; *Absolute Prohibition*, *supra* n. 12, pp. 82-3.

^{xlii} 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 suits for causing *any* damage under *any* circumstances in most of the Occupied Palestinian Territories. However, other amendments to this law broadening state immunity from 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 *Adaleh – Center for Rights of the Arab Minority v. Defence Minister* (not yet published, judgment of 12 December 2006); Civil Damages (State Responsibility) (Amendment No. 8) Bill, 2008 (published in the official gazette of government bills 28 May 2008).

^{xliii} Cr. App. 7758/04 *Alkader v. State of Israel*, per Justice S. Jabarin (unpublished judgment, 19 July 2007). The accomplice was interrogated by the GSS/ISA and the defendant claimed that this interrogation was abusive.

^{xliv} Cr. File 775/04 Jerusalem District Court *State of Israel v. Abd al-Aziz* (unpublished judgment, 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’s 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).

^{xlv} A string of Supreme Court judgments recognise as legitimate the distinction between GSS/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 GSS/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), unpublished judgment of 14 January 2007.

^{xlvi} Protocol No. 558 of Constitution Law and Justice Committee, 10 June 2008.

^{xlvii} The discretionary exclusionary rule under the *Issascarov* judgment (see *supra* n. 30), does not adopt the “fruit of the poison tree” doctrine although it leaves open an option to exclude evidence obtained by violations of fundamental rights if the evidence would affect the defendant’s right to fair procedure (para. 71).

^{xlviii} Report of the Committee against Torture, UN Doc. A/57/44 (2002), para. 52(e).

^{xlix} Recent cases of administrative detention of Palestinians being extended beyond two and a half years include ‘Abir Odah, a woman arrested when she was 21 years old and held in administrative detention over 26 months, then on 10 July 2008 served with another six month administrative detention order; An anonymous person (name withheld for security reasons), four years in administrative detention at the time of judgment upholding an additional six-month extension in HCJ 11026/05 (unpublished judgment 22 December 2005); Abed Ja’fari, whose administrative detention for almost three years was upheld by the Supreme Court (HCJ 4960/05 unpublished judgment of 15 June 2005); Ra’ed Kadri, whose administrative detention for nearly four years was upheld by the Supreme Court (HCJ 11006/04 unpublished judgment 13 December 2004) and who was ultimately held in administrative detention for nearly five years.

^l A recent case of criminal sentence being extended as administrative detention: HCJ 2233/07 *Anon* (unpublished judgment 29/32007).

^{li} Cr. App. 6659/06 Judgment of 11 June 2008, not yet published, para. 67 of the decision, per Pres. Beinisch.

^{lii} 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.

^{liii} Letter from office of Chief Military Secretary in the Prime Minister’s Office to PCATI, 27 January 2008.

^{liv} In a letter sent to PCATI on 11 May 2008, Yuval Rivlin, Public Complaints Coordinator at the Internal Auditor & Public Complaints Unit of the Ministry of Public Security (which is responsible for the police), stated that “interrogees questioned by the Israel police are not handcuffed during questioning”.

^{lv} 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.

^{lvi} *Absolute Prohibition*, *supra* n. 12, pp. 46-53.

^{lvii} Public Defender's Office Report – *Conditions of Detention and Imprisonment 2004*, at 36 – the Public Defender monitors were denied access to the GSS/ISA interrogation wing in the Kishon prison. Public Defender reports in subsequent years, which describe thorough monitoring, make no more mention of the security wards. Independent monitors from PCATI, who received their appointments through the Bar Association, were denied access in 2007 to the GSS/ISA interrogation wings in Petah Tikvah and Jerusalem.

^{lviii} 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 GSS/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).

^{lix} Public Defender's Office Report – *Conditions of Detention and Imprisonment 2007*, pp. 22, 28-29. In 2007 the IPS Director ordered that security prisoners no longer be allowed to complete the Palestinian matriculation exams.

^{lx} "No Treatment for Mentally Ill Detainees," *Haaretz*, 20 August 2001, reporting that the IPS did not employ any Arabic-speaking psychiatrist, psychologist or social worker.

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

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