

## The Public Committee Against Torture in Israel

Israel – Briefing to the Human Rights Committee  
Jerusalem, June 2010

### Introduction

In this briefing, the Public Committee Against Torture in Israel (PCATI) provides information on and illustrations of its concerns regarding Israel's compliance with the International Covenant on Civil and Political Rights (the Covenant), for the consideration by the Human Rights Committee (the Committee) of Israel's 3<sup>rd</sup> Periodic Report.<sup>1</sup>

The briefing focuses on provisions of the Covenant relevant to PCATI's mandate, that is, chiefly involving the treatment of persons deprived of their liberty, and should not be considered as purporting to cover the full range of Covenant rights.

The briefing consists of four parts and an Annex. The first provides a detailed description of PCATI's concerns. The second and third Parts mainly provide specific cases to illustrate how torture and other cruel, inhuman or degrading treatment or punishment (henceforth: other ill-treatment) are in practice inflicted by GSS/ISA interrogators, IDF soldiers and other security forces, the third part providing information specific to violations of relevant Covenant rights during war in the Gaza Strip in December 2008 and January 2009 and in its wake. The fourth Part comprises of key recommendations that PCATI have made to the Israeli authorities.

The Annex briefly describes the systematic attacks to which Israel-based human rights organisations are currently exposed, including vicious verbal attacks and attempts to introduce legislation that would have the effect of exercising control by the authorities over the funding of civil society organisations.

This introduction concludes with a general overview.

### General overview of PCATI's concerns:

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, mostly from the Occupied Palestinian Territories, since the Committee considered Israel's previous

<sup>1</sup> UN Doc. CCPR/C/ISR/3, 21 November 2008.

This briefing expands, elaborates and provides illustrations for the concerns central to PCATI's mandate within the "List of issues on the situation of human rights in Israel for the 96th session of the Human Rights Committee" which PCATI submitted to the Committee, together with the International Federation for Human Rights (FIDH) in October 2009.

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 legally sanctioned and morally justified by the claim of “necessity”, in clear violation of international law in general and the Covenant in particular, and blatantly ignoring the Committee’s unequivocal clarification, in its previous concluding observations to Israel, that “the ‘necessity defence’ argument... is not recognized under the Covenant.”<sup>2</sup> GSS/ISA torturers enjoy total impunity, with complaints of torture victims invariably closed by the State Attorney’s Office or the Attorney General without taking any criminal steps against interrogators or their superiors.

2. Violence and humiliation constituting ill-treatment, and at times torture, are inflicted by soldiers and other security forces during the arrest and initial detention of Palestinians in the Occupied Palestinian Territories, in defiance of orders but with little preventative, investigative, prosecutorial or punitive action from the authorities.
3. The Committee’s other recommendations with respect to Israel’s previous reports in this context have been roundly ignored.<sup>3</sup>

## Part I: Violations of prisoners’ rights under the Covenant

### Legislative measures against torture and other ill-treatment (Articles 2.2.; 7):

4. There is no legislation in Israel establishing a crime of torture. This is a glaring omission, in view of Israel’s long record of combining officially-sanctioned torture practices with an attempt to avoid the stigma and legal repercussions of doing so through the use of euphemisms such as “a moderate measure of physical pressure”<sup>4</sup> or “physical interrogation methods”.<sup>5</sup> The existing offences of cruel treatment, by physical or mental abuse against a victim who is in custody or helpless do not include several elements of the definition of torture in Article 1(1) of the UN Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment.<sup>6</sup> The crime of a public servant extorting a confession,

<sup>2</sup> Report of the Human Rights Committee (2002-3), UN Doc. A/58/40 (Vol. I), para. 85(18).

<sup>3</sup> Relevant recommendations included reviewing emergency legislation, limiting detention without access to a lawyer to a maximum of 48 hours; ensuring that anti-terrorist measures comply with the Covenant; stopping the use of Palestinian civilians as human shields; reviewing recourse to the defence of necessity and ensure all complaints of torture or other ill-treatment are independently investigated and suspected perpetrators are prosecuted. See *ibid*.

<sup>4</sup> *Report of the Commission of Inquiry in the matter of Interrogation Methods of the General Security Service regarding Hostile Terrorist Activity*, First Part, (Jerusalem: October 1987), para. 4.7. This report lay the legal foundations of a system under which many thousands of Palestinians were tortured between 1987 and 1999.

<sup>5</sup> HCJ 5100/94 *The Public Committee against Torture in Israel v Government of Israel et al*, PD 53(4) 817 (ruling of 6 September 1999), para. 34.

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

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

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.<sup>7</sup>

5. Ad-hoc committees established by the Justice Ministry have pointed out the lacunae in the existing Penal Law and recommended enacting a specific offence of torture consistent with international legal definitions.<sup>8</sup> 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.<sup>9</sup> The Committee's Chairperson concluded the session by supporting a constitutional prohibition of torture.<sup>10</sup> 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, in stark contrast to its non-derogable nature under the Covenant.

treatment by a soldier of a detainee or lower-ranking soldier carries a maximum penalty of three years imprisonment or seven years in aggravating circumstances.

<sup>7</sup> Section 277 of the Penal Law, 1977, under the heading of "oppression by a public servant", provides:

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

- (1) uses or directs the use of force or violence against a person for the purpose of extorting from him or from anyone in whom he is interested a confession of an offence or information relating to an offence;
- (2) threatens any person, or directs any person to be threatened, with injury to his person or property or to the person or property of anyone in whom he is interested for the purpose of extorting from him a confession of an offence or any information relating to an offence."

<sup>8</sup> The Committee for Examining Legislation against Torture – Summary Report (11 July 1995). Similar recommendations for reforms in the law of evidence to ensure consistency with the prohibition on admitting statements obtained by torture as evidence, except against a person accused of torture as evidence that the statement was made, were included in the Goldberg Committee Report concerning Conviction on the Sole Basis of Confessions and the Grounds for Retrial (December 1994), pp. 16-17. The Justice Ministry circulated a bill for a crime of torture in 1999: Penal Law (Amendment – Prohibition of Torture), 1999.

<sup>9</sup> 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.

<sup>10</sup> "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.

## Other measures against torture and other ill-treatment (Articles 2.2; 7):

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.<sup>11</sup> The “defence of necessity” thus provides justification, and consequently exemption from criminal liability, to torturers in these perceived situations, in violation of Articles 2.2., 4, 7 and the very object and purpose of the Covenant. This, in defiance of repeated recommendations by the Committee;<sup>12</sup> the Committee against Torture;<sup>13</sup> and the UN Special Rapporteur on Torture.<sup>14</sup>
8. The Supreme Court’s coupling of a general rule prohibiting torture with a “ticking bomb” exception thereto has since been echoed in the position of both the state and the Court vis-à-vis specific torturous interrogation methods – the Court has allowed the state to commit only to refrain from using such methods “as a general rule”. Thus the Court rejected a petition

<sup>11</sup> “GSS Investigations and the Necessity Defence – Framework for Exercising the Attorney General’s Discretion (Following the High Court Ruling),” issued by then Attorney General Elyakim Rubinstein, 28 October 1999, setting criteria for refraining from prosecution of GSS/ISA interrogators under the defence of necessity. This framework was adopted pursuant to the Supreme Court judgment of September 1999 in HCJ 5100/94. There the Court ruled (at para. 38): “An investigator who insists on employing these methods [“physical means”], or does so routinely, is exceeding his authority. His responsibility shall be fixed according to law. His potential criminal liability shall be examined in the context of the “necessity” defence, and according to our assumptions... the investigator may find refuge under the “necessity” defence’s wings (so to speak), provided this defence’s conditions are met by the circumstances of the case.”

<sup>12</sup> As noted, In 2003 the Committee made it clear 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.

<sup>13</sup> Commenting on Israel’s initial report, the Committee against Torture (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.

Commenting on Israel’s 2<sup>nd</sup> 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 3<sup>rd</sup> 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).

Commenting on Israel’s 4<sup>th</sup> periodic report, CAT reiterates this position and “its previous recommendation that the State party completely remove necessity as a possible justification for the crime of torture.” UN Doc. A/64/44 (2008-9), para. 49(14).

<sup>14</sup> 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.

against the use by the GSS/ISA of family members as a means of inflicting mental torture on detainees (described below), accepting the state's position that (in the Courts words) "*as a general rule*, in a situation where a family member of the detainee is not under arrest, and there is no legal cause to arrest him, a presentation to the interrogatee according to which the family member is under arrest must not be made."<sup>15</sup> (emphasis added) Similarly, in April 2010 a petition by PCATI against the systematic use by GSS/ISA of handcuffs and other shackles as a means of causing pain and suffering to interrogees was rejected *inter alia* on the basis of the state's statement that (in the Court's words) "*as a general rule* there is no permission to use shackling as a means of interrogation." (emphasis added) In this case the State added, and the Court (in rejecting the petition) accepted, that "if and to the extent that shackling is used by an interrogator as a means of interrogation in a specific interrogation, its legality will be clarified according to the circumstances as is the application of any physical means of interrogation used when the "defence of necessity" applies to the interrogator".<sup>16</sup> Needless to add, this explicit creation of torture-facilitating legal loopholes is in blatant violation of the absolute and non-derogable prohibition of torture and other ill-treatment under the Covenant.

9. Consistent allegations made by Palestinian detainees in detailed affidavits to the Public Committee Against Torture in Israel and to B'Tselem, HaMoked and other human rights NGOs, have described the use of methods which clearly constitute torture under the international human rights and criminal definitions 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<sup>17</sup> and by medical evidence.<sup>18</sup> 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

<sup>15</sup> HCJ 3533/08 *Suweiti et al. v. the GSS et al.* (unpublished ruling, 9 September 2009), para. 4.

<sup>16</sup> HCJ 5553/09 *Public Committee Against Torture in Israel v. the Prime Minister et al.* (unpublished ruling, 26 April 2010. Here too the Court is summarising the State's position.

<sup>17</sup> 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); Public Committee Against Torture in Israel, *Shackling as a Form of Torture and Abuse* (Jerusalem: PCATI, written by Samah Elkhatib-Ayoub, June 2009). 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.

<sup>18</sup> Regarding medical evidence see letter from PCATI & PHR-IL to the Director General and the Ombudsman of the Ministry of Health: "Physicians' Involvement in Torture and/or Cruel, Inhuman or Degrading Treatment" 7 March 2010, pp.7-10, available at:

[http://www.phr.org.il/uploaded/Mugrabi\\_Ministry%20of%20Health\\_eng%2017%203%2010.pdf](http://www.phr.org.il/uploaded/Mugrabi_Ministry%20of%20Health_eng%2017%203%2010.pdf); see also PCATI & PHR-IL letter to the Chair of the Israel Medical Association Ethics Committee: "Clarification of the Behavior of Physicians during the Interrogation of a Detainee", 12 February 2009;

with a two hour break after 25 hours);<sup>19</sup> 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, mainly women, 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.

10. Medical staff in Israeli prisons lack independence, being employed by and directly subordinate solely to the Israel Prison Service (IPS).<sup>20</sup> An expert committee, set up to examine claims regarding the functioning of IPS medical services and inmate care in 2002,<sup>21</sup> rejected proposals to grant medical services and personnel independence from the IPS, arguing that the IPS organizational structure does not, in practice, create issues of dual loyalty between obligations to the IPS and to prisoner patients, and that the working conditions and unique requirements of IPS medical staff necessitate such subordination. Later legislation intended to implement the Committee's recommendations, failed to incorporate those recommendations aimed at strengthening external supervisory and oversight mechanisms.<sup>22</sup>
11. 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 Covenant<sup>23</sup> and medical ethics.<sup>24</sup> Various requests for increased Ministry of Health involvement were turned down.<sup>25</sup>

<sup>19</sup> See *Ticking Bombs*, *ibid.*, at 60.

<sup>20</sup> As explained by an NGO, this means *inter alia* that "the IPS has no obligation to follow recommendations made by the Ministry of Health, which remain at the level of recommendations." Physicians for Human Rights-Israel, *Oversight and Transparency in the Israeli Penal System* (Tel Aviv: PHR-I, August 2008, researched and written by Anat Litvin, Niv Michaeli and Gila Zelikovitz), pp. 25; 28-31.

<sup>21</sup> Report of the Committee to Examine Medical Services Provided to Prisoners (known as the Yisraeli Committee), 26 December 2002, pp. 9-10. See also *Oversight and Transparency in the Israeli Penal System*, *ibid.*, pp. 28-31.

<sup>22</sup> Amendment to Section 73 of the Prison Ordinance, 2005.

<sup>23</sup> See e.g. Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), UN Doc. HRI/GEN/1/Rev.1 at 30, para. 10.

<sup>24</sup> *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.

<sup>25</sup> See response of the Director General of the Ministry of Health to PHR-IL letter: "instructions to medical teams regarding the examination of detainees in light of concern of the use of violence during their interrogation/detention," 17 May 2009, Physicians for Human Rights-Israel, *Position Paper: Torture in Israel and Physicians' Involvement in*

### **Incommunicado detention (Articles 9, 7):**

12. An essential guarantee against torture and other ill-treatment, provided independently by Article 9(3) and 9(4) of the Covenant, 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.<sup>26</sup> 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. According to sec. 5 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 or her detention. As the Law also permits denying a detainee suspected of security offences access to a lawyer for up to 21 days,<sup>27</sup> 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. In February 2010, the Supreme Court struck off sec. 5 of the 2006 “temporary” Law, which provided for extensions of detainees’ detention without the presence of the detainee as unconstitutional, that is, in breach of Basic Law: Human Dignity and Freedom.<sup>28</sup> Nevertheless, three of the Justices raised concerns over their ruling’s implications for “ticking bomb” situations, with Chief Justice Beinish suggesting that in such situations “a solution could be found... with judicial response, albeit a partial one, extant in other arrangements”,<sup>29</sup> thus suggesting in exceptional cases, detention orders may be extended without the detainee being present. Subsequent government bills, both for amending the *Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law*, and for a comprehensive anti-terror law rely on these sentiments expressed by the Court in making identical propositions to reintroduce extensions of detention without the presence of the detainee in exceptional circumstances.<sup>30</sup>

*Torture*, (Tel Aviv: PHR-IL, July 2009, written by Hadas Ziv), pp. 44-46, available at: <http://www.phr.org.il/uploaded/PositionPaperTortue.pdf>.

<sup>26</sup> 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).

<sup>27</sup> Sec. 35 of the *Criminal Procedure (Enforcement Powers – Arrest) Law, 1996*.

<sup>28</sup> MRC 8823/07 *Anon v. State of Israel et al.*, [MRC stands for Miscellaneous Requests – Criminal], ruling of 11 February 2010.

<sup>29</sup> *Ibid.*, concurring opinion of Chief Justice Beinish.

<sup>30</sup> Law memo - Struggle against Terror Bill (2010), sections 47 and 48. See similarly Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) (amendment), (2010) Bill. Both Bills propose, inter alia, that only a Supreme Court Justice may extend detention orders without the presence of the detainee, only when bringing a detainee to court is deemed to incur “danger to human life” and for a maximum of two periods of three days each.

13. Israeli military law in the West Bank allows detaining a suspect for up to eight days before bringing him or her in front of a judge<sup>31</sup> and permits preventing detainees from meeting a lawyer for up to 90 days.<sup>32</sup> Echoing the new Israeli law described above, the West Bank Military Order was amended to allow remand hearings to be held in the absence of the suspect for up to 25 days,<sup>33</sup> aggravating still further the already long periods of incommunicado detention that may be authorised. Whilst providing the counsel for the detainee should attend remand hearing where the detainee himself or herself is prohibited from attending, the military law authorises the military court to order that counsel too be excluded from such hearings or parts thereof.<sup>34</sup>
14. Lengthy incommunicado detention was extended to a new category of administrative detainees under the *Detention of Unlawful Combatants Law*, 2002. As amended in July 2008,<sup>35</sup> 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<sup>36</sup> may be detained and interrogated in total isolation for 14 days and, aside from one judicial hearing, the interrogation may continue while the detainee is held incommunicado for 21 days.
15. 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,<sup>37</sup> in addition to facilitating further torture or other ill-treatment.

### **Extradition and *refoulement* to where there is a risk of torture or other ill-treatment (Article 7)**

16. In May 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 7

<sup>31</sup> Order Concerning Security Provisions (consolidated version) (Judea and Samaria) (No. 1651) (2009), sections 32(a) [arrest by a police officer] and 33(b) [“arrest during hostilities” by a ranking military officer]. Note that in the second instance the period of eight days is “from the day he is brought to the detention centre”.

<sup>32</sup> *Ibid.* Under sections 58(c) and 58(d) police, IDF or GSS/ISA officers may prevent meeting with counsel for up to 30 days.. Under section 59(a), 59(b) and 59(c) a military court judge and the President of a military court (or his or her deputy) may extend detention for periods of up to 30 days each.

<sup>33</sup> *Ibid.*, sec. 52(d).

<sup>34</sup> *Ibid.*, sec. 52(7).

<sup>35</sup> *Detention of Illegal Combatants (Amendment and Temporary Provision) Law*, 2008, enacted 30 July 2008.

<sup>36</sup> The Supreme Court ruled that the law may not be applied to residents of Israel and left open the question of whether West Bank residents may be subjected to its provisions. Cr. App. 6659/06 *Anon v. State of Israel* (unpublished judgment, 11 June 2008).

<sup>37</sup> For instance, Human Right Council Resolution 8/8, Torture and other cruel, inhuman or degrading treatment or punishment (28th meeting), 18 June 2008, para. 7(c). 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.

which, according to the Committee's authoritative General comment,<sup>38</sup> forbids the extradition of a requested person to a requesting state where the person may be at risk of torture.<sup>39</sup>

17. 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 nine years,<sup>40</sup> yet contain no provision for the risk of torture or the principle of *non-refoulement* beyond a discretionary authority to release an illegal immigrant on "special humanitarian grounds."<sup>41</sup>
18. 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,<sup>42</sup> 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*,<sup>43</sup> 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.
19. 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.<sup>44</sup> The Israeli

<sup>38</sup> Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), UN Doc. HRI\GEN\1\Rev.1 at 30, para. 9.

<sup>39</sup> 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, as well as by international legal standards, from claiming the political exception.

<sup>40</sup> 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.

<sup>41</sup> Sections 13F(3) and 13-O(2) of the above law.

<sup>42</sup> H CJ 5190/94 *Salah Tai v. Minister of Interior*, Piskei Din 49 (3) 849 (1995).

<sup>43</sup> 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.

<sup>44</sup> 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.

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.<sup>45</sup>

### **Discrimination against Palestinians in rules, instructions and practices to prevent torture and other ill-treatment (Articles 2.1 9, 14, 7)**

20. Safeguards protecting regular criminal suspects from torture and other ill-treatment *under Israeli law* have significantly improved during the seven-year period under consideration.<sup>46</sup> 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, that is, almost exclusively Palestinians, be they Israeli citizens or residents of the Occupied Palestinian Territories.
21. The *Issaskarov* ruling:<sup>47</sup> 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.<sup>48</sup> 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.
22. Minors: Under a comprehensive amendment to the Youth (Judging, Punishment and Treatment Methods) Law,<sup>49</sup> a minor's parent or another adult relative must be informed that the minor will be questioned as a suspect and must be informed without delay of the minor's arrest.<sup>50</sup> The parent or relative must be given an opportunity to be present during any questioning of the minor.<sup>51</sup> However, the right to be present during the interrogation may be suspended for a number of reasons, among them that the minor is suspected of committing a security offence and the authorised officer believes that the presence of the parent or adult

<sup>45</sup> "Israel Returns Illegal African Migrants to Egypt", *New York Times*, 20 August 2007.

<sup>46</sup> Changes in the law concerning security suspects are discussed *supra*, para. 12.

<sup>47</sup> Cr. App. 5121/98 *Issaskarov v. Chief Military Prosecutor* (unpublished ruling, 4 May 2006), available in English translation on web site of Israel Supreme Court, <http://www.court.gov.il>.

<sup>48</sup> *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.

<sup>49</sup> Amendment no. 14 to the law, adopted 21 July 2008.

<sup>50</sup> Sec. 9(f) of the Law as amended. The duty to inform the parent or relative of arrest was already part of the general Arrest Law. The duty to inform parents that their child will be questioned is new.

<sup>51</sup> Sec. 9(h). Under section 9(i) the minor must also be informed before any questioning of his or her right to consult a lawyer and to free counsel provided by the Public Defender.

relative will harm state security.<sup>52</sup> 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.

23. Video recording: An important advance in the protection of suspects from torture and other 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 1.1.2010. Video recordings of police interrogations should contribute substantially to deterring police from resorting to 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.
24. However, the recording requirement does not apply to the GSS/ISA: its interrogators may continue to conduct interrogations without any visual or audio recordings. It should be note that 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<sup>53</sup> by exempting police from recording the interrogation of suspects charged with security offences until 2012 – nine years after the law entered 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 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 will be available to a "security" detainee or to a court or other independent body.

<sup>52</sup> Sections 9(g) and 9(h).

<sup>53</sup> 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.

## **Right to complain, duty to conduct to prompt and impartial investigation by competent authorities (Articles 2, 7)**

25. **GSS/ISA impunity:**<sup>54</sup> 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 a 1994 amendment authorising 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 invariably 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 in the service. Thus complaints of torture by GSS/ISA agents are investigated in-house, by a GSS/ISA agent, who cannot possibly be described either as "independent and impartial" or as capable of investigating "allegations of violations promptly, thoroughly and effectively".<sup>55</sup> The Inspector's report and recommendations are then studied by the State Attorney's Office. All complaints of torture, without exception, 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 among the 621 complaints** submitted from 2001 until September 2009 **has been criminally investigated**, let alone prosecuted.<sup>56</sup> Setting aside very limited disciplinary measures in a handful of cases (which have never included fines, dismissal or demotion), there is total impunity for such torturers.

26. 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.<sup>57</sup> Unfortunately, the possibility of Israel's State Attorney's Office, its Attorney-General or indeed its courts finding torture in certain circumstances to have been a reasonable act performed in good faith cannot be ruled out. The Law also requires that all regulations pertaining to the conduct of GSS/ISA be kept classified, making it impossible

<sup>54</sup> For a detailed analysis of this issue see *Accountability Denied: The Absence of Investigation and Punishment of Torture in Israel* (Jerusalem: PCATI, December 2009, researched and edited by Atty. Irit Ballas, Atty. Avi Berg, Mr. Carmi Lecker, Dr. Ishai Menuchin, Atty. Barna Shoughry-Badarne).

<sup>55</sup> See Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 15.

<sup>56</sup> 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: According to statistics provided by Attorney Boaz Oren, head of the International Agreements Unit, Ministry of Justice, in a letter to B'Tselem, 26 June 2006. The Inspector has initiated, 65 examinations in the year 2001, 81 examinations in the year 2002, 129 examinations in 2003, 115 examinations in 2004, 64 examinations in 2005; Statistics provided Adv. Michal Tene, Supervisor of Freedom of Information Law at the Ministry of Justice 23 March 2010 to PCATI: 67 examinations were open in 2006, 47 in 2007 and a further 75 between January 2008 and September 30<sup>th</sup> 2009.

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.

<sup>57</sup> Sec. 18 of the General Security Service Law, 2000.

for a complainant to know if the actions of which he or she complains were authorised under cover of law. In addition, the law requires that the names of all GSS/ISA personnel be kept classified.

27. 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 retired 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.<sup>58</sup>
28. Complaints against soldiers: IDF regulations require that a criminal investigation be opened for any complaint of violence or cruelty to a person in custody.<sup>59</sup> However, if the detainee – that is, in most cases, a Palestinian – does not lodge a complaint, acts of torture or other ill-treatment are seldom, if ever, reported to the military police or military prosecutor. Even when timely complaints of torture or other ill-treatment by soldiers are submitted, they are seldom seriously investigated. Such investigations often commence late, are inefficient and rarely end in prosecutions.<sup>60</sup> According to the Military Prosecutor-General's Command, a "conspiracy of silence among combat soldier" surrounds cases of soldiers' violence against Palestinians.<sup>61</sup> According to the same source, during 2009 military prosecuted pressed charges against officers and soldiers for "violence and looting" in 14 cases.<sup>62</sup> No breakdown is provided, nor is any data on outcomes.

### **Right of victims to effective remedy (Article 2.3, 7)**

29. A detainee who suffers physical or mental harm as a result of 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 is in practice seldom realised because of great difficulties in producing evidence. Neither the Israel Prison Service (IPS) nor any of the bodies investigating complaints (the Inspector for GSS/ISA, DIP for Police, Military Police CID for IDF) conduct forensic medical examinations of detainees following complaints. After the victim

<sup>58</sup> 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).

<sup>59</sup> 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. See also *Exceptions: The prosecution of IDF soldiers for offenses against Palestinian civilians, 2000-2007*. (Tel Aviv: Yesh Din, Research and writing: Lior Yavne, September 2008)

<sup>60</sup> *Ibid.*, pp. 31–2; *Absolute Prohibition*, *supra* n. 17, pp. 82–3.

<sup>61</sup> Military Prosecutor-General's Command, Annual Activities Report 2009, at 40.

<sup>62</sup> Military Prosecutor-General's Command, Annual Activities Report 2009, at 21.

is released it is often too late to obtain forensic medical proof of the cause of injury, and in addition, former “security” detainees from the Occupied Palestinian Territories are almost invariably labelled security risks, and consequently are not allowed to enter Israel, making it nearly impossible to obtain the qualified expert medical opinion required for a compensation suit for bodily injury or mental harm in Israeli courts.

30. Where the victim was not in custody at the time of ill-treatment and the actions took place in the West Bank or Gaza Strip – for example punitive destruction of property not justified by military necessity – the Civil Damages Law was amended to bar most such suits.<sup>63</sup>

### **Use of evidence obtained by torture and other ill-treatment (Articles 14, 7)**

31. 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 to judicial precedents. These problems persist both in Israeli civil courts and in West Bank military courts.
32. 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 and other international standard, in Israeli law “the question of how the evidence was obtained affects its weight in the trial of the appellant [the defendant] but not its admissibility.”<sup>64</sup> 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.<sup>65</sup> 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

<sup>63</sup> A constitutional challenge to this law was partially successful: the Supreme Court declared unconstitutional an amendment to the Civil Damages (State Responsibility) Law, 1952, which would have made the State immune from 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 H CJ 8276/05 *Adalah – Center for Rights of the Arab Minority v. Defence Minister* (not yet published ruling, 12 December 2006); Civil Damages (State Responsibility) (Amendment No. 8) Bill, 2008 (published in the official gazette of government bills 28 May 2008).

<sup>64</sup> 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.

<sup>65</sup> 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’ 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).

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.

33. The division of labour between the GSS/ISA and police has been considered by the courts as rendering admissible confessions which, while obtained 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 Covenant, and even warn suspects of their right to avoid self-incrimination.<sup>66</sup> The courts have discounted the probability that the defendant was still under the influence of torturous or cruel 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,<sup>67</sup> belying the claim that a suspect is free of the influence of the GSS/ISA interrogation when questioned by police.
34. Secondary evidence found as a result of information provided under torture or ill-treatment is admissible.<sup>68</sup>

### **Administrative Detention and other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 9, 10.1, 7)**

35. 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,<sup>69</sup> this type of indefinite administrative detention, in manifestly unfair proceedings, constitutes arbitrary detention

<sup>66</sup> 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* (unpublished ruling, 14 January 2007), para.5(2),

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

<sup>68</sup> The discretionary exclusionary rule under the *Issascarov* judgment (see *supra* n. 46), 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).

<sup>69</sup> Report of the Human Rights Committee, UN Doc. A/53/40 (Vol. I, 1998), para.317; A/58/40 (Vol. I, 2003-4, para.85(12). See similarly Report of the Committee against Torture, UN Doc. A/57/44 (2002), para.52(e).

and violate Article 7 of the Covenant.<sup>70</sup> In some cases, administrative detention has been imposed on a prisoner who had completed serving his or her sentence after conviction in a criminal trial: after years of imprisonment, expecting to go home as a free person, the person is detained administratively on the day of release from the criminal sentence, with no end in sight.<sup>71</sup>

36. The Unlawful Combatants Law, 2002 (as amended in July 2008) provides for holding an “unlawful enemy combatant” in administrative detention, subject to judicial review once every six months, until the “unlawful combatant’s” release will no longer endanger state security (sec. 5(c)) – a condition which might not be met until the end of the armed conflict. Although the Supreme Court held that there must be a showing of danger emanating from the particular “unlawful combatant”, and the burden of demonstrating that danger must be greater the longer the detention,<sup>72</sup> in fact such detention could be extremely lengthy<sup>73</sup> in an armed conflict that has already lasted two generations.
37. 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.<sup>74</sup> This practice continues despite written assurances to the contrary given to the Public Committee Against Torture in Israel.<sup>75</sup> It is justified as a means of protecting interrogators from attack, but the fact 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.

<sup>70</sup> 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 ruling, 22 December 2005); Abed Ja’fari, whose administrative detention for almost three years was upheld by the Supreme Court (HCJ 4960/05 unpublished ruling, 15 June 2005); Ra’ed Kadri, whose administrative detention for nearly four years was upheld by the Supreme Court (HCJ 11006/04 unpublished ruling, 13 December 2004) and who was ultimately held in administrative detention for nearly five years.

<sup>71</sup> A recent case of criminal sentence being extended as administrative detention: HCJ 2233/07 *Anon* (unpublished ruling, 29 March 2007).

<sup>72</sup> Cr. App. 6659/06 (unpublished judgment of, 11 June 2008), para.67, per Pres. Beinisch.

<sup>73</sup> The detainees in the above case had been held first as administrative detainees, then as “unlawful combatants” under the new law, for six years and six months in one case at the time of the above judgment, and in the other for nearly five years and five months.

<sup>74</sup> See *Shackling as Torture and Abuse*, *supra* n. 17.

<sup>75</sup> Letter from office of Chief Military Secretary in the Prime Minister’s Office to PCATI, 27 January 2008. See *ibid*. The state reiterated this assurance in its response to PCATI’s petition in HCJ 5553/09 on that basis. The Court rejected PCATI’s petition, observing that, “As for the use of shackling as a security measure during interrogation, the State notes in its response in this matter, following the intervention of the Attorney General, and following the appeal of the petitioner, that indeed the shackling methods were changed so as to ease the position and manner in which detainees are shackled so as to shift the position of the arms from behind the back to the sides of the detainee’s body, even permitting movement of the arms.” *ibid* footnote 17.

38. Shackling - IPS: 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 Defender's Office, by Physicians for Human Rights (PHR-Israel) and by Members of the Knesset in committee hearings,<sup>76</sup> yet they continue unabated.
39. Shackling –IDF: Soldiers routinely handcuff detainees in a painful and often injurious manner from the moment of their arrest and through their transfer to the various detention and interrogation facilities. Detainees are shackled behind their backs in combination with excessive tightening of the narrow plastic manacles, causing pain and at times lasting injury. Some of the detainees described additional tightening of the plastic restraints with the obvious aim of causing additional suffering.<sup>77</sup> Following PCATI's protracted advocacy and correspondence with the IDF authorities on the matter<sup>78</sup> on 23 March 2010 the IDF issued new instructions regarding the cuffing.<sup>79</sup> While welcoming these developments, PCATI's monitoring has revealed limited implementation of the new guidelines on the ground.
40. 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 other cruel, inhuman or degrading interrogation methods. There are no beds, no natural air or 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 of it.<sup>80</sup> Independent prison monitors on behalf of the Public Defender's Office and the Bar Association prison monitors are not allowed into these cells.<sup>81</sup> The GSS/ISA interrogation wings have all come under the

<sup>76</sup> See Public Defender's Office Report – *Conditions of Detention and Imprisonment 2008*, pp. 12-15; Public Defender's Office Report – *Conditions of Detention and Imprisonment 2007*, pp. 12–17, 36, 56-57; Public Defender's Office Report – *Conditions of Detention and Imprisonment 2006*, pp. 13, 25, 57; Knesset Constitution, Law and Justice Committee hearing, 24 January 2008 (protocol 431) – 90% of adult detainees and 95% of minor detainees are brought to court hearings handcuffed and most of them with leg shackles as well.

<sup>77</sup> See Public Committee Against Torture in Israel, *Shackling as a Form of Torture and Abuse* (Jerusalem: PCATI, June 2009, written by Samah Elkhatib-Ayoub.), pp. 9-14.

<sup>78</sup> *Shackling as a Form of Torture and Abuse*, *ibid*, pp.14-19.

<sup>79</sup> In a letter sent to PCATI on 23 March 2010, Maj. Yael Bar-Yosef of the West Bank division of the Attorney General's Office stated that "as a rule, arrests will be made with plastic handcuffs, with both of the detainee's hands in front of him. Under circumstances in which there is an operational necessity to do so, a detainee may be handcuffed behind his back with metal cuffs." The instructions further provide guidance on the proper application and use of plastic cuffs and the responsibilities of unit commanders for implementation. Amos Harel "IDF revises regulations on handcuffing detainees after complaints- Move prompted by request filed last May by the Public Committee Against Torture in Israel," *Haaretz*, 4 March 2010. <http://www.haaretz.com/business/economy-finance/idf-revises-regulations-on-handcuffing-detainees-after-complaints-1.28387>.

<sup>80</sup> *Absolute Prohibition*, *supra* n. 17, pp. 46–53.

<sup>81</sup> – the Public Defender monitors were denied access to the GSS/ISA interrogation wing in the Kishon prison. Public Defender reports, which describe thorough monitoring, make no more mention of the security wards. Independent

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.<sup>82</sup> This claim has not stopped Shay Nitzan, Deputy State Attorney for special affairs, from explaining that the reasons why the abovementioned monitors are barred from visiting the cells where interrogees are held is “concern that defence lawyers would be exposed to confidential interrogation methods”.<sup>83</sup>

41. **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 2006-2008 continue to describe numerous cases of over-crowding, poor ventilation, prison guard violence and lack of sufficient social and educational support<sup>84</sup>. 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. Family visits for Gazan detainees stopped in June 2007<sup>85</sup>, and family visits from the West Bank are limited and subject to security checks, and they are denied physical contact with family members including children during visits, and private conjugal visits with spouses.<sup>86</sup> The IPS does not employ a single Arab psychiatrist – one who is capable of speaking to Palestinians in their own language; in the case of Palestinians from the Occupied Palestinian Territories Arabic is often the only one they speak.<sup>87</sup>

### **Reservations, Optional Protocols**

42. Israel has not withdrawn its reservation to Article 9 of the Covenant. In view of Israel’s policies, in the Committee’s words, “derogating from Article 9 more extensively than what

monitors from PCATI, who received their appointments through the Israel Bar Association, were denied access in 2007 to the GSS/ISA interrogation wings in Petah Tikvah and Jerusalem.

<sup>82</sup> For instance a complaint about painful shackling between interrogations received responses from each of the two bodies stating that it is under the other’s responsibility. The Head of the Investigation Division of the 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).

<sup>83</sup> Letter from Shay Nitzan, Senior Deputy of State Attorney for Special Affairs to the Association for Civil Rights in Israel, 22 January 2010.

<sup>84</sup> Public Defender’s Office Report – *Conditions of Detention and Imprisonment 2008 9-12,20,23-29* Public Defender’s Office Report – *Conditions of Detention and Imprisonment 2006*, pp 43-50,56; Public Defender’s Office Report – *Conditions of Detention and Imprisonment 2007*, pp 9-12, 22,23-28, 28-29. In 2007 the IPS Director ordered that security prisoners no longer be allowed to complete the Palestinian matriculation exams, *Conditions of Detention and Imprisonment 2007* at 22

<sup>85</sup> See, “Gaza: ICRC calls for immediate resumption of family visits to detainees in Israel,” ICRC News Release, 26 May 2008, available at: <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/israel-news-260508>.

<sup>86</sup> See, “Adalah Briefing Note: Palestinian Prisoners’ Rights April 2010”, available at: <http://www.adalah.org/newsletter/eng/apr10/Adalah%20Briefing%20Note%20to%20EU%20on%20Prisoners%20Rights%20April%202010.pdf>

<sup>87</sup> “No Treatment for Mentally Ill Detainees,” *Haaretz*, 20 August 2001, reporting that the IPS did not employ any Arabic-speaking psychiatrist, psychologist or social worker.

in the Committee's view is permissible pursuant to article 4,"<sup>88</sup> this reservation remains a serious impediment to Israel's implementation of the Covenant.

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

<sup>88</sup> Report of the Human Rights Committee (2002-3), UN Doc. A/58/40 (Vol. I), para. 85(12).

## Part II: torture and other ill-treatment - illustrations

### Introduction

Following a brief explanatory note on matters which may have been blurred by the State Party's report, this Part mainly provides specific cases to illustrate how torture and other cruel, inhuman or degrading treatment or punishment (henceforth: other ill-treatment) are in practice inflicted by GSS/ISA interrogators, IDF soldiers and other security forces.

### A note on the number of complaints and petitions, and on the role of the Supreme Court

PCATI would like to clarify that the absolute immunity from prosecution granted by the State Attorney's Office and the Attorney-General to GSA/ISA torturers in response to every single complaint, following an in-house GSS/ISA investigation, even in cases where the fact of torture is in effect acknowledged, *sub silentio*, has had a significant negative effect on the readiness, both of victims of GSS/ISA torture and of PCATI itself, to file complaints with this Office.

Victims, who are often still in GSS/ISA interrogation wings when providing PCATI with affidavits, are aware of the total impunity enjoyed by torturers, and that, consequently, they have little to gain from complaining, and are often fearful GSS/ISA reprisal. In fact, detainees have told PCATI of threats of such reprisal by GSS/ISA agents. As a result, fewer and fewer victims request PCATI to file complaints in their name. As an example, the vast majority of Palestinians detained by the IDF and interrogated by the GSS/ISA during the war in Gaza instructed PCATI not to file complaints, while allowing the organisation to use their affidavits anonymously for other purposes.

For its part, and for the same reasons, as of 2005, PCATI has drastically decreased the number of individual complaints it has filed with the Israeli authorities, choosing instead to concentrate on principled or issue-centred complaints. A similar decision has been taken by PCATI regarding complaints to IDF authorities, although the culture of impunity there, while prevalent, is not absolute.

**PCATI would therefore urge the Committee not to consider any figures presented by the State showing a decline in the number of complaints of torture/ill-treatment during GSS/ISA interrogation or by soldiers as reflecting a decline in the number of cases of torture and other ill-treatment. Rather, this decline mainly reflects the futility of complaining in the face of a brick wall of total official impunity for GSS/ISA torturers, and a bleak, albeit less-than-total picture with regards to the IDF.**

PCATI has also decided to limit petitions to the Supreme Court seeking to repeal orders imposing incommunicado detention, through denial of access to counsel, on detainees under GSS/ISA interrogation. This, in view of many years, running to decades, during which the Court has not granted even a single one of the many hundreds of petitions submitted by PCATI and other organizations, as well as individuals, in this regard.<sup>89</sup>

**Here too, and regardless of any information from the State party, the decline in the number of petitions must in no way be considered an improvement of Israel's compliance with the Covenant. Unfortunately the opposite is true – it reflects the uncritical compliance and cooperation of the Israeli court system with a policy of incommunicado detention that facilitates torture and other ill-treatment by the GSS/ISA.**

PCATI would also like to bring to the Committee's attention the fact that the Supreme Court's role in the GSS/ISA torture system goes beyond facilitating torture by allowing incommunicado detention. Having laid the legal grounds for *ex post* approval of torture, through granting torturers impunity in "ticking bomb/necessity" cases, the Court appears to be content with this state of affairs. The Supreme Court judges must be aware that torture by GSS/ISA agents is a well-known fact in Israel, and even official figures have been published as early as July 2002, stating that ninety Palestinians, defined as "ticking bombs," were interrogated, using what was euphemistically called "exceptional means of interrogation" between September 1999 and that date.<sup>90</sup>

Despite this, the Supreme Court has not once ordered any torture to be prevented, stopped, investigated or prosecuted, as the Covenant provides. In certain individual cases it has clearly been aware that torture had taken place – but has chosen not to intervene.

In its decision in the case of *Medhat Tareq Muhammad* the Court notes, without further comment or action, that:

... the Attorney General and State Attorney decided that the forms of interrogation which were applied fall under the 'defence of necessity,' and therefore the interrogators bear no criminal liability in this case for the forms of interrogation applied by them ...<sup>91</sup>

<sup>89</sup> For instance, between 2002 and 2005 (inclusive), PCATI submitted a total of 376 petitions to the Supreme Court requesting that orders denying detainees access to counsel be lifted. It should be noted that Palestinians are never allowed family visits, and access to ICRC representatives may be delayed for up to 14 days.

<sup>90</sup> Amos Harel, "GSS Has Used "Exceptional Interrogation Means" 90 Times Since 1999 HCJ Ruling," *Haaretz*, 25 July 2002. No similar official figures have been provided since, but there is no doubt that the figures have consistently risen. The Ministry of Justice has refused to provide data regarding the number of incidences in which files were closed based on a necessity claim between 2005-2007. The Administrative Court affirmed the Ministry of Justice' exemption from the Freedom of Information Law, based on its *in camera* review of classified evidence submitted by the GSS in hearing PCATI's application to the Court. See Administrative Petition 08/8844, *The Public Committee Against Torture in Israel and others v. the Person Responsible for FOI in Ministry of Justice*, 25 February 2009.

PCATI would like to emphasise that in practice torture, not to mention ill-treatment not amounting to torture, go far beyond the so called 'ticking bomb' or 'necessity' cases, and that under the Covenant no circumstances whatsoever can ever justify either.

<sup>91</sup> Crim. App. 4705/02 *Anon v. State of Israel* (unpublished judgment, 30 December 2002), para 1.

In the case of *Qawasmeh*, a **submission by the State Attorney's Office** described the following:

We would add, between brackets, that at the end of the hearing in HCJ 9271/04 the esteemed Court informed Petitioner's Counsel that at the beginning of the Petitioner's interrogation **physical force was applied**, that as of the time of the hearing in HCJ 9271/04 no physical force was being applied, and **that it is impossible to know what will happen in the future.**<sup>92</sup> [emphases added]

Moreover, the fact of past and possibly future torture did not stop the Court from rejecting PCATI's petition to annul the GSS/ISA's order prohibiting Counsel from meeting Qawasmeh. In justifying its decision, the Court stated:

We were convinced that the issuance of the order prohibiting the Petitioner from meeting his Counsel is necessitated by the interest of the interrogation and the security of the area.<sup>93</sup>

Israel's Supreme Court failed to instruct the GSS/ISA to refrain from torturing a detainee who had, by the State's own admission, already been tortured, at a point in time where the State would not rule out further torture, opting instead to extend the torture-facilitating incommunicado detention order. The Supreme Court thus plays, at the very least, a passive role in the GSS/ISA torture system. We would urge the Committee to address this unacceptable situation.

## Torture and other ill-treatment - illustrations

1. This Part seeks to provide a "human face" to the general description of torture and ill-treatment by GSS/ISA interrogators and by soldiers described above. The cases cited here span the seven years since the Committee examined Israel's previous Periodic Report. Whilst the state has in the intervening period announced various changes of policy, as described above, all GSS/ISA methods illustrated here could still be used in "ticking bomb situations," for the reasons just explained, whilst patterns of behaviour by other security forces are still prevalent.

### a. During GSS/ISA interrogations

2. Following are a few illustrations of the interrogation methods used by the GSS/ISA, containing mostly excerpts from affidavits by torture victims taken by PCATI attorneys. Detailed descriptions and dozens of other cases may be found in PCATI's reports.<sup>94</sup> These in turn form a small minority of the complaints which have reached PCATI.

<sup>92</sup> Atty. Aner Helman, Senior Deputy A to the State Attorney, *Response by the Respondent in HCJ 9625/04 'Imad Salah 'Abd al-Fateh Qawasmeh v. The General Security Service*, 25 October 2004, para. 6.

<sup>93</sup> HCJ 9271/04 *'Imad Salah 'Abd al-Fateh Qawasmeh v. The General Security Service* (unpublished decision, 17 October 2004).

<sup>94</sup> 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, June 2003); 22

### 3. Prolonged incommunicado detention:

It should first be noted that in the case of Israel, incommunicado detention is clearly used as a means to exercise pressure for purposes of the interrogation. The very military order on the basis of which GSS personnel (namely the “person in charge of the interrogation”) could issue an order prohibiting a detained person being interrogated from seeing his lawyer stipulates that this may be done “where it is required for reasons of the security of the area *or in the interest of the interrogation.*”<sup>95</sup> [emphasis added] This justification, “the interest of the interrogation” has been routinely used both by the State defending such orders before the Supreme Court and by the Court itself in rejecting petitions against such orders, which it invariably has. Here are a few examples:

- Jasser Abu ‘Omar was arrested on 7 December 2006. He was denied access to counsel until 31 January 2007, a period of some 45 days, through a series of orders approved by the Kishon Military Court, and eventually by the Supreme Court.<sup>96</sup>
- Muhammad ‘Abd al-‘Aziz Lubad ‘Ataunah was arrested on 25 November 2007. He was denied access to counsel for some 37 days. A petition against the order preventing access was denied by the Supreme Court, citing “confidential material which cannot be exposed.”<sup>97</sup>
- Muhammad Nu‘man Matir was arrested on 17 October 2007. He was denied access to counsel for about a month. Rejecting a petition by PCATI, the Supreme Court ruled that “at this stage there is justification for preventing the Petitioner from meeting his attorney” as this “denial is essential for reasons of security.”<sup>98</sup>

### 4. Sleep deprivation by means of continuous or nearly continuous interrogation:

- From the affidavit of Dr. ‘Omar Sa‘id, a Palestinian Israeli citizen arrested on April 24<sup>th</sup>, 2010:  
 “From the interrogation room I was transferred shackled and blindfolded to the detention cell, in which there was another detainee. From the utter exhaustion, I immediately feel asleep. The next day, I don’t know at what time, I was awoken for the first counting? I had barely fallen asleep again when the woke me up again and gave me a plate of food. I couldn’t eat and went back to sleep because I was too tired, after which they called me again in order to shower. After showering the warden called me again and informed me that I was to go to my interrogation. I did not know exactly what time it was but I

*Ticking Bombs – Testimonies of Torture Victims in Israel* (Jerusalem: PCATI, May 2007); “*Family Matters*” – *Using Family Members to Pressure Detainees* (Jerusalem: PCATI, March 2008).

<sup>95</sup> Sec. 78(c) (c) (1) of the (military) Order Concerning Security Provisions, No. 378 (1970). See similarly sec. 35 of the Criminal Procedure (Enforcement Powers – Arrest) Law, 1996; sec. 6(a1) of the Detention of Illegal Combatants (Amendment and Temporary Provision) Law, 2008, enacted 30 July 2008;

<sup>96</sup> See HCJ 167/07 *Jasser Muhammad Sa‘id Abu ‘Omar v. Justice of the Shomron (Petah Tikva) Military Court* (decision of 8 January 2007).

<sup>97</sup> HCJ 11097/07 *Muhammad ‘Abd al-‘Aziz v. Head of the GSS* (unpublished decision, 28 December 2007).

<sup>98</sup> HCJ 9396/07 *Muhammad Nu‘man Rajab Matir v. Head of the GSS* (unpublished decision, 10 November 2008).

assume it was no later than nine in the morning. On the same day I was interrogated in continuously during the entire day, without breaks except for meals and coffee which were served to me in the interrogation room. This interrogation lasted from the morning until three a.m. the next morning. At three a.m. I was returned to the cell and very exhausted. Therefore went to sleep immediately and on the next day the same story all over again..."<sup>99</sup>

- From the affidavit of Saleh Muneer Hamed:

The agents interrogated me continuously for 48 hours (two days) from Friday afternoon to Sunday morning. During the interrogation they gave me food and did not allow me to get up from the chair, sometimes they allowed me to go and wash my hands and return, after two days, they allowed me to rest for two hours. A policeman came and took me to the cell, and after two hours they came and took me to the interrogation room...

The interrogation was conducted by "Abu Yosef" and other interrogators during an entire day until the morning of the following day. The interrogation went on in this way, in the same position and the same method for 17 days. Afterwards they continued to interrogate me but for short periods of time, not as they had before, until the end of the interrogation which finished at the end of August 2009."<sup>100</sup>

- From the affidavit of Amin Ahmad Jamil Shqirat:

"The interrogators interrogated me continuously until 10:00 p.m., and then transferred me to a solitary confinement cell. The next day, they took me back to interrogation, and this time it was more difficult. It went on for three days straight, without sleep, until I felt fatigue in my eyes and head and had difficulty breathing."<sup>101</sup>

- From the affidavit of Dr. Ghassan Sharif Khaled:

"For eight days they interrogated me about 22 hours a day, except for Fridays and Saturdays [the weekend in Israel]. He [the warden] would take me back to sleep at 6 in the morning. At 6:30 there's a roll call. At 7:00 he would come to ask me if I wanted a shower and at 7:30 they would bring my breakfast. At 8:00 they would take the food tray and at 8:30 they took me to the interrogation. They wouldn't let me sleep at all. The interrogation would start at 9:00 in the morning and would continue until 6:00 the next morning...

They wouldn't let me sleep. Whenever I'd dose off in front of the interrogator he would yell at me and wake me up."<sup>102</sup>

<sup>99</sup> From the affidavit of Dr. `Omar Sa`id from 13 May 2010, taken by Atty. Nabeel Dakwar.

<sup>100</sup> From the affidavit of Saleh Muneer Hamed, from 1 December 2009, taken by Atty. Nabeel Dakwar.

<sup>101</sup> From the affidavit of Amin Ahmad Jamil Shqirat from 15 August 2006, taken by Atty. Ahmed Amara. See *Ticking Bombs*, at 23.

<sup>102</sup> From the affidavit of Dr. Ghassan Sharif Khaled, taken by Atty. Taghrid Shbita on 17 August 2008.

## 5. Forcibly bending the detainee's back backwards:

- From the affidavit of George Mansur Qurt:

“Afterwards [the interrogator] Itai put me on a chair and bent my back backward, and Ghazal [another interrogator] would grab my legs and they would twist my back backwards. Itai would grab my throat and bend my back backwards and push, and my back would hurt and I would shiver...”<sup>103</sup>

- From the affidavit of Bahjat Yamen

“...the first method was to handcuff me from behind, with my legs tied backwards under the chair. The interrogator would push me back so that I was sitting on the seat while leaning backwards, and at the same time they kept beating me on the stomach. This position was maintained for about fifteen minutes, and then the interrogator would forcefully yank me forward... I simply felt terrified, and I had excruciating pains in my back and I felt that my back was about to really break, and I yelled and cried and begged, but the torture did not stop.”<sup>104</sup>

It should be noted that both a GSS/ISA memorandum shown to Mr. Yamen's attorney and a military judge confirmed that “special measures,” justified by the “necessity defense,” were used in his interrogation.<sup>105</sup>

- From the affidavit of Muhammad ‘Abd al-Rahim Barjiyye:

“They put me into a new position – at the side of the chair, with the armrest at my side and nothing behind my back. They shackled each of my legs to a chair leg, then took off my blindfold, saying they wanted to see me. Oscar the interrogator sat across from me and stepped on my feet so that I would not move. Micha and Gur yelled all the time. Oscar said that he would grab my shirt from the front upwards, and that I should lean back. He said I had to lean midway, because if I leaned all the way back my back would break, and if I sat up the regular way he would hit me. And that he wanted to see how long I could endure it.”

<sup>103</sup> From the affidavit of George Mansur Qurt, taken by Atty. Leah Tzemel on 11 March 2003 at the Russian, Compound. See *Back to a Routine of Torture*, at 66.

<sup>104</sup> From affidavit of Bahjat Yamen from 26 December 2004, taken by Atty. Labib Habib at the Shata Prison. See *Ticking Bombs*, at 14.

<sup>105</sup> From the affidavit of Atty. Labib Habib, 31 August 2004, quoting a memo signed by “Alias Rani, Interrogation Team Leader, Southern Samaria.”; *Bahjat Fathi Yusef Yamen v Military Prosecutor Request 3029/05*, Petition to Order Removal of Classified Status regarding Information Relating to the Petitioner's Interrogation and Interrogation of the Main Prosecuting Witness. See *Ticking Bombs*, at 16.

I stayed this way for maybe an hour, with my eyes blindfolded again. When I could no longer manage and wanted to sit, he hit me hard below the chest. The blow threw me back. I felt as if my back was coming apart. I couldn't get up again. My head was on the floor and the pain was excruciating. He told me to get up, but I couldn't. I felt a sour liquid pouring out of my nose, and my stomach hurt. I stayed this way for about fifteen minutes.<sup>106</sup>

## 6. Slapping and blows

- From the affidavit of Muhammad 'Abd a-Rahman Zeid:

"...this time 5 GSS agents entered the room and began beating me to death. They threw me on the floor and started kicking me all over my body. This continued until my clothes were torn and I fainted."<sup>107</sup>

- From the affidavit of Sa'id Diab:

"Major Effi [an interrogator] is 1.9 m. tall, with a solid build. After they tied me to the chair, Effi began beating me hard on my face, punching and slapping and cursing and threatening me. Effi hit me for close to fifteen minutes, and as a result, I was injured on my lower lip and bleeding."<sup>108</sup>

- From the affidavit of Jihad Mughrabi:

On the third day they took me from the morning and until 6 in the evening. Sometimes when I didn't answer "Maymon" [interrogator's pseudonym] or when he didn't like my answer he would slap my forehead or head with his palm... They would hit me relentlessly, grab my shirt from the front, pull me and throw me with great force on the chair. It's my back that would absorb the blow.<sup>109</sup>

When this, and another ruse failed – and despite being transferred out of prison to a comfortable apartment, being offered good food, drink, clean clothes and a shower, Mughrabi would not supply them with the information they sought, more, and worse violence followed:

Suddenly two young men entered... they threw me on the bed and started beating me all over my body. I was trying to hide my face in order to prevent it from being hit. They were punching and kicking me... they also used the butts of their pistols to hit me on my head... I was close fainting several times, and finally fainted... they then called the doctor...<sup>110</sup>

<sup>106</sup> From the affidavit of Muhammad 'Abd al-Rahim Barjiyye, dated 25 July 2006.

<sup>107</sup> From the affidavit of Muhammad 'Abd a-Rahman Zeid, taken by Atty. Fida' Qa'war on 22 January 2003. See *Return to a Routine of Torture*, at 60.

<sup>108</sup> From the affidavit of Sa'id Diab, taken by Atty. Maher Talhami on 24 June 2007. See *Family Matters*, at 20.

<sup>109</sup> From the affidavit of Jihad Mughrabi, taken by Atty. Taghrid Shbita on 12 June 2008 at Kishon prison.

<sup>110</sup> From the affidavit of Jihad Mughrabi, taken by Atty. Taghrid Shbita on 11 August 2008 at Kishon prison.

## 7. Forced crouching in a frog-like position:

- From the affidavit of Hassan 'Abd a-Rahman Hassan Ledadiyah:

Afterwards, they released the shackles and I was commanded to sit in a 'frog' position – to sit on my toes, with my knees partially bent, for 45 consecutive minutes, and all the while my hands were shackled behind me. Each time that I would lose strength and fall, or lower my foot to the floor, one of the interrogators would lift my body and the second would slap me and beat me on the soles of my feet.<sup>111</sup>

- From the affidavit of Sa'id Diab:

My hands were shackled behind my back, and they forced me to squat on my tiptoes. Every time I lost my balance, [interrogator] Maimon would hold me and [interrogator] Adi, who stood behind me, would catch me. The interrogators forced me to squat in this position for half an hour.<sup>112</sup>

## 8. Tightening, pressing or pulling handcuffs:<sup>113</sup>

- From the affidavit of Muhammad 'Abd al-Rahim Barjiyye:

At one stage, before breakfast, they removed my shirt and I remained in an undershirt. They placed an elastic bandage on my hand, like athletes' shields, and placed strange shackles on my hands, connected by a relatively long chain and whose tightness could be adjusted. Gur [an interrogator] stood behind me, grabbed my neck from behind and put his knee in my back. Two others held each of my hands and started tightening the handcuffs, and a fourth stood facing me, shouting at me to confess. I shouted from the pain and they cursed.... They tightened the handcuffs each time for many minutes, until my hands turned blue and I couldn't move my fingers. Then they would loosen them. They did this many times.<sup>114</sup>

From the affidavit Mustafa 'Ali Hammad Abu-Mu' ammar:

...the interrogators released my hand shackles and covered my arms with pieces of sponge, and then closed the shackles over the sponge higher up along my arms, not near my hands. Afterwards, two interrogators grabbed me, one arm each, and began tightening the shackles with force, which blocked my arteries, and after ten minutes of pressure like

<sup>111</sup> From the affidavit of Hassan 'Abd a-Rahman Hassan Ledadiya, taken by Atty. Ahmad Amara on 9 August 2006. See *Ticking Bombs*, at 79.

<sup>112</sup> From the affidavit of Sa'id Diab, taken by Atty. Maher Talhami on 24 June 2007. See *Family Matters*, at 21.

<sup>113</sup> For shackling generally see Public Committee Against Torture in Israel, *Shackling as a Form of Torture and Abuse* (Jerusalem: PCATI, written by Samah Elkhatib-Ayoub, June 2009).

<sup>114</sup> From the affidavit of Muhammad 'Abd al-Rahim Barjiyye, dated 25 July 2006. See *Ticking Bombs*, at 44.

that my arms swelled very much, to the point that they were unable to remove the handcuffs from them.<sup>115</sup>

## 9. Prolonged shackling

This should be distinguished from the previous section as here victims have only complained about the fact of shackling itself. However, even when cuffs or chains are not tightened or pulled, with the passage of hours and days, such shackling, which has no justification whatsoever, increasingly causes suffering and injury, both to the wrists and to other parts of the body, which is effectively stuck in an awkward, and increasingly painful positions.

- From the affidavit of Mohammad Helmi Abu-Safiyyeh  
They made me sit down on a chair that was bolted to the floor. They shackled my hands behind the backrest of the chair. I was unable to move my hands because the chain was attached to the backrest. The length of the chain between the manacles was around 30cm and no more. Also my legs were shackled, the chain between the shackles was around 35cm. The chain was attached to the legs of the chair and I could not move my legs to the sides... The leg irons were very tight and every movement hurt, causing pain and injury to my legs.<sup>116</sup>
- From the affidavit of Mohannad As`ad Yusef Harashe:  
During the entire duration of the interrogation I was shackled to a chair, to its backrest the interrogators would attach my hands at the beginning of the interrogation with iron manacles connected by a chain of around 30cm in length. They would insert the chain into a loop attached to the back of the chair and secure it with a padlock. The warden, under the orders of the interrogator, would fasten the manacles tightly, causing me to suffer terrible pain in my arms and my legs were numb (sensation of numbness) and I could not feel them...  
During the interrogation and as a result of the position in which I was interrogated, I suffered pain in my waist and arms and right leg. During this period I also suffered from haemorrhoids, which gave me stomach aches. After the interrogation and after they took me to the cell, I had pain in the back and arms in particular. My arms were swollen, and you could see on them marks left by the manacles. For about ten days after the interrogations, I had pain in my arms and I still suffer from pain in the right arm as a result of the shackling.<sup>117</sup>
- From two affidavits by Dr. Ghassan Sharif Khaled:

<sup>115</sup> From the affidavit of Mustafa 'Ali Hamad Abu Mu'amar, taken by Atty. Ahmed Amara, 31 July 2006. See *Ticking Bombs*, pp. 86-7.

<sup>116</sup> From the affidavit of Mohammed Helmi Abu-Safiyye, from 21 April 2010, taken by Atty. Nabeel Dakwar.

<sup>117</sup> From the affidavit of Mohannad As`ad Yusef Harashe, from 1 December 2009, taken by Atty. Maher Talhami.

In the interrogation room a warden made me sit on a chair fixed to the floor and shackled my hands behind my back in metal handcuffs with a very short chain, perhaps 5 centimetres long, linking them. He then fixed the chain to the chair.

... I started feeling pain at the bottom of my spine, which was very strong. This pain had started on the first day of my interrogation from the long periods of sitting on the metal chair. I suffer from pain there to this day.<sup>118</sup> I was not allowed to stretch my legs; I had to fold them under the chair. This resulted in internal haemorrhages in the knee area. It was swollen and painful.<sup>119</sup>

- ‘Abd al-Karim Yunis Hussein Mbayed, a resident of Tol-Karem, who was born in Gaza, was arrested on 26 June 2008. According to his affidavit, his hands were shackled behind his back in metal handcuffs linked to each other and to the chair from behind. He stated that he was shackled in this way for 2 and a half hours the first day, six hours the next day, and for long hours each day thereafter, with the exception of Friday and Saturday. Mbayed noted that whenever he told his interrogator something that pleased him, the shackled would be removed and he would receive coffee. He was also left shackled in the interrogation room on his own for long periods. Mbayed complained of intense pain as a result of the long hours of being shackled in this way.<sup>120</sup>

## 10. Threats of arrest and physical abuse of family members:

- From the Affidavit of Sami `Emad el-`Alem  
The interrogation was more violent psychologically than physically, because the interrogators threatened me with bringing my wife - who at the time was still pregnant - to give birth in the detention centre...  
It should be mentioned that my brother was detained two days after my arrest and he was released a month later. The interrogator pointed out that just as they arrested my 14 year old brother, they could bring my wife as well.<sup>121</sup>
- From the affidavit of Samer Tawfiq Sabri Duqan:  
...during the interrogation they cursed me and my family a lot, they threatened to demolish my house and to bring my wife and place her in detention...<sup>122</sup>
- From the affidavit of Malek Salhab:

<sup>118</sup> From the affidavit of Dr. Ghassan Sharif Khaled, taken by Atty. Maher Talhami on 21 August 2008 at the Ketsiot prison.

<sup>119</sup> From the affidavit of Dr. Ghassan Sharif Khaled, taken by Atty. Taghrid Shbita on 17 August 2008.

<sup>120</sup> Based on the affidavit of ‘Abd al-Karim Yunis Hussein Mbayed, taken by Atty. Maher Talhami on 20 July 2008 at the Kishon prison.

<sup>121</sup> From the affidavit of Sami `Emad el-`Alem, from 3 November 2009, taken by Atty. Tahreer Athamleh-Mhanna

<sup>122</sup> From the affidavit of Samer Tawfiq Sabri Duqan, taken by Atty. Hasan Shqeidhaf on 20 January 2003. See *Back to a Routine of Torture*, at 50.

They threatened to destroy my house and arrest my whole family, and also threatened to harm and tarnish my good name...<sup>123</sup>

## 11. 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:

PCATI published a report devoted to this subject, “*Family Matters*” – *Using Family Members to Pressure Detainees*, which presents in great detail six cases where the detention (real or staged), interrogation and/or torture of family members was used as a means of torturing detainees – often in addition to other torture methods. Among the cases are:

- The case of the Sweiti family, residents of Beit Awa near Hebron: the father and wife of the detainee, Mahmud ‘Abd al-‘Aziz Sweiti, without their knowledge or consent, were placed in a scene staged by the GSS/ISA to mislead him into believing that they are in detention. The response of Sweiti, who was indeed convinced by this scenario, was to go on a hunger strike and make two attempts on his own life.<sup>124</sup>
- The case of the ‘Abd family from Qalqiliya: Fathiya Shbeita the diabetic mother of ‘Ali ‘Abd, who had been detained, interrogated and tortured by the GSS/ISA, was brought to the detention centre. Shbeita was shown to her son while being herself interrogated. In his affidavit of Upon seeing her, ‘Ali ‘Abd:

He [the interrogator] asked what I had to say, what I thought. I said that he should just send her back, and I was willing to confess to whatever he wanted. My mother is sick, and I feared for her health because I understood that if I didn’t confess, he would put my mother in the isolation cell. It killed me. It broke me, totally. I said that I was willing to confess to whatever he wanted, but that he should just take her back home. The interrogator said he would if I gave him something to go on. I said, ‘Okay.’ I said that I had known that there were explosives in the car. I understood that they were releasing her. The interrogators left me alone in the interrogation room. The interrogator said that within two hours my mother would go home. While I was alone in the interrogation room, I heard my mother crying, but it seems that she didn’t know that I was close to her and that I heard her. My mother’s voice grew more distant. I was exhausted. I didn’t even answer her, even though I could. I was in shock. What could I say to her...<sup>125</sup>

- The more recent case of the Jihad Mughrabi, a resident of Tulkarm, who was arrested on 26 April 2008. His mother Samiha Mughrabi was arrested and herself interrogated and ill treated by the GSS/ISA. In his affidavit Jihad Mughrabi stated the following:

<sup>123</sup> From the affidavit of Malek ‘Abd al-Halim ‘Abd al-Ghani Salhab, taken by Atty. Fahmi ‘weiwi on 7 March 2003. See *Back to a Routine of Torture*, at 57.

<sup>124</sup> See *Family Matters*, pp. 10-16.

<sup>125</sup> From the affidavit of ‘Ali ‘Abd, taken by Atty. Taghrid Shbita on 1 October 2007. See *Family Matter*, at 38. For the case see *ibid.*, pp. 36-41.

...they said they may transfer me to “military interrogation.” They... threatened that they would arrest my mother, demolish our home and detain my sisters. Yesterday they told me they had in fact arrested my mother. They said they would keep her in detention until I provide them with a pistol which they claimed I possessed. They said the key to my mother’s freedom is in my hands.<sup>126</sup>

## 12. Physicians’ involvement in torturous interrogation by the GSS/ISA

The following case illustrates the complicity of physicians in torture.

Jihad Mughrabi described his ordeal in two affidavits.<sup>127</sup> Complaints in reference to both have been submitted to the Attorney General:

According to Mughrabi, at the end of an interrogation period lasting approximately 100 days (from 26 April 2008 to 4 August 2008), he was transferred to a residential apartment, where he was severely beaten by two young men. After briefly losing consciousness, he was thrown face-down onto the floor and instructed not to move. The men handcuffed him and called a physician. A man arrived wearing civilian clothes, but carrying medical equipment and proceeded to examine Mughrabi. One of Mughrabi's interrogators arrived thereafter. At the physician’s request, an ambulance was called. The interrogator instructed the physician and paramedics to state that Mughrabi had fallen down a flight of stairs while shackled and blindfolded.

Mughrabi was then transferred to a civilian hospital, where he was carried on a stretcher to the emergency room. A physician arrived and asked what had happened. She was told that Mughrabi had fallen down the stairs. Mughrabi told her that this was a lie and that he had been beaten. The physician told Mughrabi that this was not her business and that her job was to treat him, and that she was not interested in the cause of his injury. Mughrabi was examined in the hospital by two additional physicians, who also ignored his complaints of torture. After about three hours, Mughrabi was discharged from the hospital. He overheard the interrogator asking the physician to make an effort not to hospitalize him.

### *b. Torture and other ill-treatment by IDF soldiers*

12. Following are a few illustrations of torture and other ill-treatment by IDF soldiers, containing mostly excerpts from affidavits by victims taken by PCATI attorneys, as well as soldiers’ testimonies, mostly taken from a recent PCATI report.<sup>128</sup> The report is based on 90 affidavits and testimonies received by PCATI describing incidents that occurred between June 2006 and October 2007. It should be noted that the 90 cases form a small minority of the complaints which Palestinian

<sup>126</sup> From the affidavit of Jihad Mughrabi, taken by Atty. Taghrud Shbita on 12 June 2008 at Kishon prison.

<sup>127</sup> Affidavits of Jihad Mughrabi, taken by Atty. Taghrud Shbita of PCATI, 12 June and 11 August 2008.

<sup>128</sup> Public Committee Against Torture in Israel, *No Defense – Abuse of Palestinian Detainees by Soldiers* (Jerusalem: PCATI, June 2008).

and other Israeli NGOs have documented over the years, and that many victims do not complain, even to human rights NGOs. It should also be noted that all the victims were tortured or ill-treated following arrest, namely when they were helpless and bound. Finally, a Palestinian would often be tortured or ill-treated during arrest, then tortured or ill-treated further during transportation, IDF detention and/or during GSS/ISA interrogation.

### 13. Torture/ill-treatment immediately following arrest:

- From the affidavit of Ahmad Yassin, from Nablus, describing his arrest on 10 July 2006:

I was arrested by soldiers and Intelligence officers at Dir Sharaf cemetery... They threw me onto the ground on my stomach and began to kick me, particularly on my thighs... They led me to a car and suddenly one of the soldiers hit me on the middle of my back...

The jeep must have been delayed, and while we were standing on the sidewalk they amused themselves by taking turns hitting my neck. They made me sit on the ground and one of them hit me hard on my left ear. I couldn't feel my ear for about fifteen minutes. The jeep still had not arrived. They took me away from the road to a deserted area parallel to the road with my back to them. They threw stones at me and competed to see who could hit me on the head... Each of them threw several stones at me.<sup>129</sup>

- From the testimony of an IDF soldier who participated in numerous arrests in Hebron:

[One of the soldiers] took him [the detainee], put him into the *Abir* [a vehicle used by the military]. Boom! He banged him onto the step. This guy wanted to cry, he couldn't see anything, and they used to tighten the blindfold, I mean tighten it until his eyes bulged out. They would tighten the handcuff, one of the guys who used to go too far, so every time someone had to cut it off and put a new one on. He would tighten it on his legs, I'm telling you, he would take him by the legs and he would cry out 'It hurts, it's hurting me.' He would say, 'Good, it's not hurting you for nothing.' I'm telling you, he would close it and every time the guy cried he slapped him. If he cried then he would tighten the blindfold. He used to hurt them deliberately.<sup>130</sup>

### 14. Torture/ill-treatment during the transport of detainees:

- From the affidavit of 'Abd-Al-'Aziz 'Amariyah:

... they shackled my hands behind my back with plastic handcuffs, blindfolded me with a strip of cloth, and put me into a military jeep that took me to Etzion base... While they

<sup>129</sup> From the affidavit of Ahmad Yassin, taken by Atty. Loui `Uqah on 13 August 2006. See *No Defense*, at 5.

<sup>130</sup> From the testimony of a staff sergeant, stationed in Hebron through mid-2007. The testimony was forwarded by the organization Breaking the Silence. See *No Defense*, at 4.

were taking me to Etzion base they beat me in a painful and humiliating way. They punched my head and beat me on the back with the butts of their rifles. On the way they took me out of the military jeep and put me into an army truck, and inside the truck they also beat me. They kicked me all over my body and beat the back of my neck with their hands...

When I got to Etzion base my hands were shackled behind my back and my eyes were blindfolded with a white strip of cloth. They dragged me off the truck because I couldn't see anything and so I walked along the truck until I fell onto the ground because they did not warn me that the truck was high up and I was near the edge. I fell onto the ground on my face and knees and they jumped on me, kicking my back, stomach, and legs and punching my face until I got to the interrogator's room.<sup>131</sup>

- From the affidavit of Yusuf Sahali, who was arrested at his home in Balata refugee camp on 6 January 2007:

A soldier in the jeep hit me on the back with the butt of his rifle. While we were travelling the soldiers asked my name, and then they would beat me for no reason. They beat my face and my nose and mouth bled. They also pulled me up and then my head hit the roof of the jeep, so I also cut my head and it was bleeding.<sup>132</sup>

- From the affidavit of Mahmud Faruq Hamed el-Bobali, who was arrested at his work place in Nablus on 11 June 2008:

They cuffed my hands in plastic shackles... I was left with the shackles for many hours. I really suffered because of the tight cuffing. After about half an hour I stopped feeling my hands, it was like the palms of my hands were being cut off... A soldier took me to the Jeep... There were many soldiers around us and behind my back. The jeep was moving. At a certain stage, a soldier began to slap the right side of my face with the back of his hand at least 10 times. Sometimes he lowered my head and slapped the back of my neck. Sometimes I heard him do the same thing to the other detainee. Every so often he would leave me and go to another. I would hear the same thing happen to him. Another soldier would join him once in a while. At one point the soldier took my head, held it from behind and began, in an automatic manner, to hit my face to the seat, on the edge of the bench... I kneeled between the seats facing one of them and my back to the other. From these beatings I felt pain in my eyes and that my eye was going to pop out of its socket. I could not see well. To this day I still do not see well. Now I cannot even read. I cannot see the letters. Even with all the beatings I did not shout because the guy who was next to me, when they beat him and he said 'aye', I felt that they beat him much

<sup>131</sup> From the affidavit of 'Abd-al-'Aziz 'Amariyah, taken by Atty. Fahami 'Aeiwi on 5 January 2007. See *No Defense*, at 7.

<sup>132</sup> From the affidavit of Yusuf Sahali, taken by Atty. Maher Talahmi on 20 May 2007. See *No Defense*, at 7.

harder when he cried out. I decided to be quiet and not to shout and not to tempt them because they beat and mocked us and joked and were entertained by it.<sup>133</sup>

### 15. Torture/ill-treatment while the detainee is temporarily held in army base:

- From the affidavit of Munsar Na'irat, arrested at Qabatiya Checkpoint on 31 March 2007:

... they put me into another jeep and took me to another base. They said it was Salem base. They dropped me off there for two or three hours. At this base I was put into a small room and they beat my legs. They put me on the floor. Then I felt one of the soldiers take something from the floor and beat me on my head and shoulders... Then they took me out into a concrete yard and tied my handcuffs to a concrete pole and made me sit on the ground and they beat me. Every hour or half hour they would beat me on the face...<sup>134</sup>

### 16. Use of dogs:

- From the affidavit of Mohammed Jalab from Tulkarem refugee camp, arrested on 21 March 2007 at a checkpoint:

... They took me into a room where there were [male] soldiers and one female soldier and she had a dog she talked to as I sat on the chair, handcuffed and blindfolded. The dog would walk around me and when the soldier spoke to him he would attack me and bark. I didn't understand what the soldier said, but [I realized that] she said to the dog, 'Arab, Arab,' and then it would attack me.

The dog didn't bite me; I guess they had muzzled it. I felt the muzzle when it attacked me and touched me. I asked to be allowed to pray. After refusing, the woman soldier said, 'Well then, go ahead and pray,' and they made room for me to pray. I asked them to unshackle me so that I could pray but they refused. As I began to pray the woman soldier talked to the dog again and it began to attack me from the front and the back as I prayed.<sup>135</sup>

- A soldier who spent his military service in the assault track of the Sting ("Oketz") unit, stated that the dogs trained specifically for assault, they "are trained to seek humans using their scent."<sup>136</sup> Another soldier with the rank of staff sergeant who served in the unit revealed that the assault dogs are not kept close by the combat soldiers, and are not as disciplined as the dogs trained to locate explosives; in fact, they "work completely

<sup>133</sup> From the affidavit of Mahmud al-Bobali, taken by Atty. Taghrid Shbita on 7 July 2008 in the Megido Prison.

<sup>134</sup> From the affidavit of Munsar Na'irat, taken by Atty. Samer Sam'an on 28 May 2007. See *No Defense*, at 8.

<sup>135</sup> From the affidavit of Mohammed Jalab taken by Atty. Taghrid Shbita on 10 October 2007. See *No Defense*, at 13.

<sup>136</sup> Quoted in Billy Frankel, "The Best Dog My Team Ever Had," NRG website, 15 June 2007, <http://www.nrg.co.il/online/ART1/595/614.html>. See *No Defense*, at 10.

independently.” The soldier noted that these dogs have attacked people “more than once, because these are dogs – this is an assault dog that can get confused...”<sup>137</sup>

## 17. Torture/ill treatment during field interrogations

In a recent military court case involving the beating and humiliation of Palestinians detained by soldiers for questioning in a West Bank village, senior military commanders described routine practices of violence in field interrogations of Palestinians which included beating, shaking, slapping and “kneeing”.<sup>138</sup>

This is how Lieutenant-Colonel Itay Virov described field questioning tactics to the Court:

...saying that questioning is carried out without any use of force is being naive. Questioning is a relatively aggressive operation. Sometimes yelling and pinning to the wall. Sometimes there is no escape from shaking, pinning, pushing, when this is necessary... beating, pushing in a situation even with persons not involved in an operational situation, if it can be beneficial to carrying out the operation, is certainly possible.... a slap, sometimes hitting on the back of the chest, in cases where there is friction, a response from the Palestinian side, at times kneeling, or choking in order to calm them down is reasonable.<sup>139</sup>

The existence of such routine practices was denied in court by the Commander of the IDF Central Command, General Gad Shamni. However, the fact that he saw fit, in response to what his commanders said in court, to issue a letter to the Command’s rank and file clarifying that violence against detainees is never acceptable, while welcome, indicates that at least the perception that such violence is acceptable existed. It should also be noted that while stating to the Court that for soldiers interrogating detainees “resort to physical force... is crossing a red line,” General Shamni adds immediately that “professional bodies would do that to the extent that it is necessary”,<sup>140</sup> elsewhere clarifying that he is referring *inter alia* to the GSS.<sup>141</sup>

## 18. Torture/ill treatment of minors

- From the testimony of a soldier with the rank of staff sergeant:

One day there was some kind of disturbance... and I went in with the jeep and saw the youth running toward the house throwing a block at us, and there were burning tires and

<sup>137</sup> The soldier’s affidavit, is available on the Breaking the Silence website: “50,000 Children,” <http://www.shovrimshatika.org/testimonies.asp?cat=17>. See *No Defense*, at 11.

<sup>138</sup> Central Military Court, Central Region, *Military Prosecutor v. Lieutenant Adam Malul* Cent 205/09 (judgment 13 December 2009). See e.g. para. 73 in addition to the passage below.

<sup>139</sup> *Ibid.*, para. 74.

<sup>140</sup> *Ibid.*, para. 77.

<sup>141</sup> Earlier in the same paragraph, *ibid.*, General Shamni states: “Every other, forcible method is something which may be undertaken following a series of approvals and not by soldiers. There’s police interrogators and GSS interrogators...”

a real mess... I took him out of the house and arrested him and took him to the post, something I am permitted to do... and went to take off my battle vest and wash my face, I told the guard to watch him. We took him and blindfolded him according to the usual procedure. When I came back I saw a group of four or five soldiers laying into him, hitting his face, throwing those heavy telephones (military field phones) at him, just taking them and throwing them at him, and he was this 15-year old kid who had been throwing stones...

I saw the kid that they were beating up and I just went over there and threw them off, and took the kid for a medical check. The doctor examined him. The boy was shaking and hugged me because if it hadn't been for me... he just came over and hugged me and I just took him and you know what? He just shook like a leaf blowing in the wind.<sup>142</sup>

- F., aged 17 at the time of his arrest at the beginning of 2007. He testified:

... After school ended and I was on my way out, I tried to get a taxi to take me home... Before I got to the taxi, I suddenly ran into some guys who were throwing stones and the Israeli soldiers and the soldiers were firing tear gas... I went down a side street and there were soldiers there. I stopped in my tracks. The soldiers took me and began to beat my left leg with their weapons. They also hit my right eye. The soldiers went on beating me on all parts of my body. Then the soldiers started to drag me along the main street. They dragged me about twenty meters until I got to the middle of the street, and they left me lying there in the middle of the street for almost half an hour. Then they made me stand up... When they saw that I couldn't stand up they brought the army jeep and put me inside, and they took [me] to the police station at Jabal Mukabar... [where] they beat me again all over my body... After the doctor came he asked them to send me for x-rays and the x-rays showed that I had three fractures in my left leg. They told me that I would have to have an operation.<sup>143</sup>

<sup>142</sup> This testimony is available at the Breaking the Silence website, <http://www.shovrimshatika.org/testimonies.asp?cat=17>. See *No Defense*, pp. 15-16

<sup>143</sup> From the affidavit of F., taken by Atty. Shirin Nasser from the organization Nadi Al-Asir on 14 February 2007.

### Part III: violations of the Covenant during and in the aftermath of the Gaza war of December 2008-January 2009

1. Clearly the most widespread – and appalling – violations of international law perpetrated by Israel’s armed forces during the war were, in human rights terms, violations of the right to life, and in international humanitarian law terms attacks either targeting civilians and civilian objects or indiscriminate attacks.<sup>144</sup> However, Palestinians were, in addition, detained in inhumane conditions amounting to cruel, inhuman or degrading treatment or punishment, both as “unlawful combatants” and under other Israeli laws and some of them were tortured by the GSS/ISA during their interrogations.
2. Moreover, the treatment of other Palestinian individuals who came under the direct, effective control of Israel’s armed forces during their operations in Gaza, and thus were their *de facto* detainees, similarly falls within the Covenant’s remit. These include in particular families whose homes the Israeli forces took control over and occupied.
3. In this Part, violations of the Covenant in regard to both Palestinians officially detained by Israeli security forces and others under their direct and effective control will be described and illustrated.

#### II(1). Treatment of detainees (Articles 10, 7)

4. During their operations, the Israeli security forces detained scores, possibly hundreds of Palestinians. Most were released within a few days, but dozens were transferred into Israel. For about seven days, no organised or transparent registration of these detainees took place, and families were frantically trying, through PCATI and other organizations, to determine their loved ones’ fate and whereabouts. As of June 2010, ten Palestinians, who were detained during the Cast Lead operation are still detained in Israel, eight of them are being held as security prisoners convicted by Israeli courts, and two held as “unlawful combatants.” It emerges from affidavits and testimonies taken by PCATI and other organizations that all detainees were exposed to one or more violations of the Covenant, including detention in appalling conditions, exposure to danger, use as human shields, violence, humiliation and interrogation methods intentionally causing physical and/or mental suffering of varying degrees.

#### II(1)(1). Torture and other ill-treatment upon arrest

5. On several occasions, Palestinians detained by IDF forces were beaten, threatened and humiliated.

<sup>144</sup> Similar attacks, with deadly results, albeit on a far smaller scale, were carried out by HAMAS forces, who have also reportedly engaged in torture and other ill-treatment of political rivals during and after the conflict. These violations, which PCATI condemns unreservedly, are not, however, attributable to the state party whose record the Committee is to examine.

- S and I of the K family, twin brothers, were detained at the family home at the Zeitun neighbourhood of Gaza city on the night of the first or second day of Israel's ground attack. Their hands were shackled with plastic handcuffs and they were blindfolded. Both have stated<sup>145</sup> that a dog was used to frighten them. S stated that he was terrified and urinated as a result. S was beaten all over his body, and was made to walk barefoot outside, and as a result suffered from cuts to his feet from broken glass. I was later taken to a separate room, where he was held for about 10 hours without water, food or access to the toilet. I heard the screams of his father and brothers who were being beaten by soldiers. When he requested to see his mother, he was hit with a helmet and lost consciousness. When he came too he was urinated on by a soldier.
- Subhi al-'Attar was arrested at his home in Beith Lahia on 2 January 2009. He was held with other men in the yard of a neighbour. There, soldiers beat him as well as his father, a disabled man, and his cousins with fists and kicked them. They pointed laser beam sights at his 12-year-old brother, who was terrified, believing he was about to be shot.<sup>146</sup>

6. Others were interrogated on the spot or during their initial detention period inside the Gaza Strip, with the interrogators using methods amounting to torture or other cruel, inhuman or degrading treatment or punishment (ill-treatment), including violence and threats on the lives of the detainees.

- Muhammad Khair Kassab was arrested at his home on 7 January 2009. According to his affidavit,<sup>147</sup> his eyes were covered and he was questioned about weapons and tunnels, of which he denied any knowledge. While interrogated, a gun (he was not sure which part of it) was held tight to his forearm and twisted against it, causing an injury. At the same time, he was also continually kicked and beaten, despite begging his tormentors to stop.
- N.A. of Al-'Atatrah neighbourhood, Gaza city, was arrested on 2 January 2009. The next day he and about 80 other men were held in an open space, and at night were taken, one by one, to a small ditch to be interrogated. His interrogators slapped his face and hit him with rifle-butts. They forced him to take off his sweater and left him for about an hour exposed to the intense cold.<sup>148</sup>

## ***II(1)(2). Detention in cruel, inhuman, degrading and dangerous conditions***

7. Many of those detained were held in ditches, probably dug out by army bulldozers, 2-3 metres deep and varying in size. Both adults and minors were held in these ditches for hours and days - two

<sup>145</sup> Affidavit of I.K., taken by Atty. Majd Bader, 26 February 2009 in the Shikmah prison; affidavit of S.K, taken by Atty. Majd Bader, 26 February 2009 in the Shikmah prison.

<sup>146</sup> Affidavit of Subhi Majed al-'Attar, taken by Atty. Majd Bader, 16 February 2009 in the Shikmah prison.

<sup>147</sup> Affidavit of Muhammad Khair Kassab, taken by Atty. Muhammad Jabarin of Al-Mizan at the Shikmah prison on 12 January 2009.

<sup>148</sup> Affidavit of N.A., taken by Atty. Majd Bader, 26 February 2009 in the Shikmah prison.

days in several cases, and in some even longer. They were exposed to the cold air, wind and rain, handcuffed for hours and days, and at times also with their eyes covered. There were no sanitary facilities in these ditches; food and water were sparsely provided and the detainees were hungry. Moreover, most of the ditches were dug close to Israeli tanks and in areas where hostilities were ongoing, thus exposing the detainees to danger. About 70 people were reportedly held in each ditch, and it appears that scores, possibly hundreds, were detained in these appalling conditions.

- Raji 'Abd Rabbo of Jabalia, describes what happened at around 13:00 on 5 January 2009 after he and his family were ordered out of their homes, by the Israeli army:<sup>149</sup>

There were some 15 people in my parents' house. We went out; the soldiers separated the women from the men. The soldiers took the men and led them to a ditch which was dug nearby. The ditch was some 2.5 meters deep and covered an area of about 5 meters. We were then brought up to a place where there were soldiers, and we gave them our id cards. The soldiers ordered us to sit on the asphalt with our hands in the air, while the soldiers had their weapons ready and pointing at us. The soldiers kept us there until about 5 in the evening. We asked for water and access to toilets, but the soldiers refused, saying that whoever moves will be shot to death.

- N.A. recounts:<sup>150</sup>

They arrested me and my sister's husband, Husam al-'Attar, searched us, shackled our hands behind our backs in plastic handcuffs and blindfolded us. The soldiers led us on foot to a ditch that was about 600 meters from my home. This ditch had an area of about 2 dunums<sup>151</sup> and was some three meters deep. Around the ditch there were tanks. They were shelling in the direction of Gaza. The next day I was transferred, together with 25 other men, to another ditch, about 100 meters from the first one. When I was in the second ditch, I asked one of the soldiers to take off my handcuffs, because they hurt immensely. I response, the soldier kicked me in the stomach and beat my back with his fists.

- Samir 'Ali al-'Attar, of Beit Lahia, was arrested outside his home on the morning 5 January 2009. He recounts:<sup>152</sup>

They led us, with our hands shackled in plastic handcuffs in the front, and my [10 year-old] son cuffed to me, to the area where the tanks were, about a kilometre from my home. At the time, the tanks were shelling Beit Lahia. The army had prepared a large area of about 2 dunums which they had dug to form a sort of crater surrounded by sand

<sup>149</sup> From the affidavit of Raji Musbah 'Abd Rabbo, taken by Atty. Majd Bader, 23 February 2009 in the Shikmah prison.

<sup>150</sup> From the affidavit of N.A., taken by Atty. Majd Bader, 26 February 2009 in the Shikmah prison.

<sup>151</sup> A dunum is 1.000 square metres.

<sup>152</sup> From the affidavit of Samir 'Ali Muhammad al-'Attar, taken by Atty. Maher Talhami on 14 January 2009 at the Shikmah prison.

embankments about 2 metres high. The soldiers ordered us to climb the sand embankment and go into the crater while handcuffed. We were held there under the sky for two days... The soldiers held us exposed to the intense cold, and only on Tuesday [the second day] provided us with blankets – one for every two of us. During the whole period we were handcuffed and slept on the sand. We were fed once or twice a day... There were no toilets and we were not provided with hygienic necessities such as toilet paper. Inside the crater we were held with about 70 other civilians...

### *II(1)(3). Use of detainees as human shields*

8. On several occasions, soldiers forced detainees, whom they had handcuffed, to go into houses where the soldiers apparently expected to face hostile activities, ahead of them, as human shields.

Raji 'Abd Rabbo was arrested on 5 January 2009 from his home. He provides the following account:<sup>153</sup>

The soldiers called my name and those of [two others]... shackled our hands in plastic handcuffs... then the soldiers led us towards several other houses in the neighbourhood, with me and another nine men going into the houses in front of the soldiers and under their orders.

Abd al-Mu'ti 'Abd Rabbo, resident of 'Izbat 'Abd Rabo, east of Gaza City two of whose sons were arrested by Israeli soldiers on 4 January 2009, told B'Tselem researchers the following:<sup>154</sup>

My two sons were released the next day, and they came to where we were staying. They told us that soldiers had made them, at gun point, open doors and enter houses to search for Hamas members.

Similar account appeared in the press.<sup>155</sup>

In considering the legal aspect of this practice, we would encourage the Committee to bear the following facts in mind:

- i. Soldiers were exercising direct and effective control over the detainees throughout these operations;
- ii. Soldiers were engaged in an intentional act involving coercion and intimidation for such purposes as obtaining from the detainees or third persons information, in this case about what was happening in the houses;
- iii. The detainees were placed in grave danger, within a combat zone;

<sup>153</sup> From the affidavit of Raji Musbah 'Abd Rabbo, taken by Atty. Majd Bader, 23 February 2009 in the Shikmah prison.

<sup>154</sup> From the testimony of 'Abd al-Mu'ti 'Abd Rabbo, given to Iyad Haddad by telephone on 11 January 2009. The testimony is available on B'Tselem's website, [www.btselem.org](http://www.btselem.org).

<sup>155</sup> See e.g. Amirah Hess, "Witnesses in Gaza: the IDF used us as human shields," Haaretz, 20 February 2009.

- iv. The detainees were acutely aware of the danger they were led into, resulting in severe mental pain and suffering.

In view of the above, PCATI would urge the Committee to consider that Palestinian detainees forced to act as human shield were subjected to torture, in violation of Article 7 of the Covenant.

#### ***II(1)(4). Detention as “unlawful combatants”***

9. In Part I, PCATI highlighted the *Detention of Unlawful Combatants Law*, 2002, as amended in July 2008, and the provisions within it allowing for incommunicado detention, as well as indefinite detention without charge or trial. This law was used in the recent conflict to detain 17 Palestinians. two of them were still detained as of early June 2010. PCATI is worried that, together with others held as "illegal combatants", they may now be used as “bargaining chips.” The Committee has on several occasions concluded that indefinite detention is in violation of the Covenant’s provisions, in particular Articles 9 and 14.<sup>156</sup>

#### ***II(1)(5). Torture and other ill-treatment during interrogation***

10. While some Palestinian detainees were interrogated within Gaza, as noted, most of the interrogations took place in IDF-run detention centres and in the GSS/ISA interrogation wing of the Shikmah prison in Ashqelon. Clearly GSS/ISA interrogators were involved in the latter case, but PCATI does not have clear information as to who the interrogators were in the former – they may have been soldiers, GSS/ISA interrogators wearing IDF uniforms or a combination of both.

11. Interrogation methods used against Palestinians detained in Gaza have constituted cruel, inhuman or degrading treatment, and in several cases amounted to torture. They have included beatings and kicks; prolonged painful shackling; sleep deprivation; humiliations, curses and threats, including death threats.

- Muhammad Khair Kassab was interrogated in an army camp within Israel, in a location which he could not identify. His hands were continuously handcuffed for the first five days of his arrest, leaving marks which Atty. Jabarín noticed whilst taking his affidavit. During the interrogation two interrogators threatened to kill his sons (who had also been arrested) unless he provided information about the location of tunnels and military equipment.<sup>157</sup>

<sup>156</sup> Concluding observations of the Human Rights Committee: Nigeria, UN Doc. CCPR/C/79/Add.64, 3 April 1996, para. 7; Concluding observations of the Human Rights Committee: Finland, UN Doc. CCPR/C/79/Add.91, 8 April 1998, para. 18; Concluding observations of the Human Rights Committee: Zambia, UN Doc. CCPR/C/79/Add.62, 3 April 1996, para. 14; Concluding observations of the Human Rights Committee: Cameroon, UN Doc. CCPR/C/79/Add.33, 18 April 1994, para. 22; Concluding observations of the Human Rights Committee: Cameroon, UN Doc. CCPR/C/79/Add.116, 4 November 1999, para. 19.

<sup>157</sup> Affidavit of Muhammad Khair Kassab, taken by Atty. Muhammad Jabarín at the Shikmah prison on 12 January 2009.

- 'Imad Yusuf Hamed of Beit Hanun was arrested on 5 January 2009, and later interrogated in the GSS/ISA wing at the Shikmah prison. He was interrogated continuously and deprived of sleep for five days and nights, with the exception of two very short periods of rest. During the whole period he was shackled to a metal chair with his hands cuffed behind his back. The shackles would only be released for meals. The prolonged shackling resulted in serious pain throughout Mr. Hamed's body, and in particular his lower back. The interrogators threatened to leave him in this position until he suffers from haemorrhoids.<sup>158</sup>
- Subhi al-'Attar's interrogation at the GSS/ISA interrogation wing in the Shikmah prison included prolonged shackling to a chair, as a result of which he suffered from severe pain to his lower back and bleeding from the rectum. One of the interrogators forced Mr. al-'Attar to crawl on all fours and imitate the barking of a dog; spat on him; and beat him. Interrogators threatened that they would kill Mr. al-'Attar's father and demolish his house.<sup>159</sup>

## II(2). Treatment of other persons under the direct, effective control of IDF troops (Articles, 10, 7)

12. Whole families – men and women, babies, older children and the elderly, the healthy and the sick, came under the direct and effective control of soldiers who took over their houses. While some testimonies point to respectful and helpful treatment of these families by soldiers, on many occasions the treatment appeared to be cruel, inhuman or degrading. Families in effect held in the custody of soldiers were not provided with adequate food, drink or access to the toilet, were threatened, and soldiers carried out gratuitous destruction around homes.

- On 7 January soldiers entered the Kassab family home in the North of the Gaza Strip. At the time it housed four men, six women and five children. All were moved into the living room. Soldiers broke the windows, turned the house upside down, bore holes into the walls, threw house utensils out. They burned the family's documents for heating, including the father's medical records and prescriptions for his medication. During the week of their stay, a seven-month-old baby became sick and hot with fever, but the soldiers refused to provide any help; they even refused the family's request to get water so as to cool his temperature.<sup>160</sup>

13. Despite the fact that intense fighting was taken place, soldiers forced families out of the relative safety of their homes onto the streets, exposing them to danger.

- According to 'Ammar al-Hilu, resident of Zaytun neighbourhood, Gaza city, soldiers entered his home on 10 January 2009. They stormed the house, shooting and killing his

<sup>158</sup> Affidavit of 'Imad Yusuf Hamed, taken by Atty. Majd Bader, 16 February 2009 in the Shikmah prison.

<sup>159</sup> Affidavit of Subhi Majed al-'Attar, taken by Atty. Majd Bader, 16 February 2009 in the Shikmah prison.

<sup>160</sup> Testimony of Rim 'Izzat 'Omar Kassab, taken over the phone by Physician for Human Rights-Israel on 19 January 2009.

father, who was lying in bed. Then they demanded that the family leave the house. 'Ammar al-Hilu recounts:<sup>161</sup>

We picked up the children and left my father inside the house... shots were fired at us from another house taken by soldiers. My one-year-old daughter, Farah, the youngest of my four children, was shot in the stomach. Her mother tried to breastfeed her, maybe to calm her down and ease the pain, and while she was doing this Farah passed away. My brother 'Abdallah was hit by three shots, two of which entered his belly and lodged into his spine. He is now being treated in Egypt, after bleeding for almost 24 hours. My other daughter, who is six years old, was hit in her hand, and my brother's wife was hit in the chest.

The family spent hours, hiding under a pile of stones and sand and with heavy firing around them before they could be evacuated and the wounded treated.

<sup>161</sup> From the testimony of 'Ammar Fua'd al-Hilu, taken by phone by Atty. Tahrir 'Atamleh-Mohana on 20 January 2009.

#### Part IV: PCATI's recommendations to the Israeli authorities

The Public Committee Against Torture in Israel (PCATI) recommends that the state of Israel adopt, as a minimum, the following steps in order to implement its relevant obligations under the Covenant (and international human rights law more generally), including to take effective legislative, administrative, judicial and other means to prevent acts of torture and other cruel, inhuman or degrading or punishment treatment in any territory under its jurisdiction:

- Ensure that all acts of torture, as defined in international law, are absolutely and unequivocally prohibited and deemed offences under its criminal law and that any person who is found to have committed torture, ordered its commission or was in any other way criminally responsible, including through command responsibility, is punished by appropriate penalties which take into account the offences' grave nature;
- Clarify through legislation that defences such as "necessity" or "superior orders" shall not apply to those who perpetrate torture and other ill-treatment;
- Instruct the GSS/ISA to cease immediately the application of any means of torture and other ill-treatment, and only use methods of "reasonable interrogation" that fully comply with the Covenant;
- Ensure full monitoring and recording of the interrogation of detainees, including by GSS/ISA, through audio and video taping. Resources must be urgently allocated for installing recording systems (audio and video) in all interrogation rooms;
- Eliminate the post of the "Official in Charge of GSS Interrogees' Complaints" and replace it with independent officials who are not related to the GSS/ISA in any way, in order to ensure impartial and effective investigation of complaints;
- Ensure prompt, effective and impartial investigation into all cases of IDF soldiers using violence against or humiliating detainees, and prosecute soldiers and commanders suspected of such acts. Those found guilty must be punished by appropriate penalties which take into account the offences' grave nature;
- Take the legal and other steps necessary to open Israel to UN human rights monitoring bodies and experts, including by enabling individual complaints to treaty-monitoring bodies. As an immediate measure – invite the UN Special Rapporteur on Torture to visit Israel, open all the detention and interrogation facilities to him, and enable him to speak freely with any detainee he wishes;
- Sign and ratify the Optional Protocol to the UN Convention Against Torture and implement its provisions, in particular allowing National Preventive Mechanisms (NPMs) and the UN Sub-Committee on Prevention of Torture (SPT) to visit all places of detention and, including GSS/ISA interrogation facilities, and have unsupervised access to all detainees;
- Sign and ratify the two Optional Protocols of the Covenant;
- Anchor in law a system of inspections, including unannounced inspections, of detention and prison facilities, to be conducted by a Knesset committee, government

bodies, human rights organizations and other NGOs, in addition to the NPMs and SPT, as above;

- Stipulate by law that every detainee, without exception, be brought before a judge as quickly as possible, and under no circumstances any longer than 48 hours after arrest, and repeal any legislative provisions allowing longer periods;
- End all incommunicado detention, through repealing any legal provisions authorising police, GSS/ISA or IDF commanders to deny detainees access to counsel, both under Israeli and military law;
- Repeal all laws and orders providing for arbitrary, incommunicado or indefinite detention, including *Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law, 2006*; *Detention of Illegal Combatants (Amendment and Temporary Provision) Law, 2008*; and the relevant sections of (military) Order Concerning Security Provisions (Judea and Samaria) (No. 1559);
- Ensure that GSS/ISA interrogators undergo a complete retraining, from violent and degrading interrogation methods to humane ones. This must include thorough instruction in human rights in general, and detainees' rights in particular. Only those interrogators who have truly internalized the humane approach to interrogation may remain in their jobs;
- Undertake wide-scale public relations activities and education in the IDF in order to explain to soldiers and commanders the need and obligation to respect the dignity and rights of every detainee without exception, including the right to remain silent, the right to proper legal representation, and of course the right to be free of any torture or other ill-treatment;
- Take the necessary steps to guarantee presence in all places of detention of independent, qualified medical personnel who work in full compliance with their professional duties and on no account compromise on their ethical obligation; consider placing IPS medical facilities and staff under Ministry of Health supervision;
- Ensure that all specialized medical-psychological examination of alleged cases of torture or other ill-treatment is carried out in line with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);
- Bring legislation fully in line with the principle of non-refoulement; establish mechanism to prohibit extradition, expulsion, deportation or forcible return of aliens to a country where they would be at risk of torture or other ill-treatment, including the right to judicial review with suspensive effect.

## Annex: Official de-legitimation of human rights organisations (Article 22)

1. During the last months Israel-based human rights organisations have been at the receiving end of a series of acrimonious verbal attacks by various officials. In addition, actual actions have been taken by government agencies against these organisations in order to curb their activities and possibly in order to silence them.
2. In August 2009, the then head of the Oz unit,<sup>162</sup> Mr. Tzuki Sela, claimed that organisations who help refugees and asylum-seekers “aim to destroy the state of Israel.”<sup>163</sup> In another instance, Prime Minister Benjamin Netanyahu and IDF Spokesman Avi Benayahu denied the legitimacy of the publication by an NGO, Breaking the Silence, of officers’ and soldiers’ testimonies of human rights violations during Operation Cast Lead, and criticised the fact that the organisation receives support from abroad.<sup>164</sup> Another example is the attack by Deputy Prime Minister Moshe Ya’alon against human rights organisations, stating: “They destroyers and they that make thee wast shall go forth from thee.”<sup>165</sup>
3. On 14 February 2010, the government decided (by a vote of 8-3 in the Ministerial Committee on Legislation) to support a legislative bill entitled the “Bill concerning disclosure requirements for recipients of support from a foreign political entity – 2010”. Civil society organizations have expressed grave concerns over this bill, which passed a preliminary vote (58-11) in the Knesset plenary on 17 February 2010. The proposed legislation, which is close to being approved as law, would restrict the activities of a host of organisations working on a broad spectrum of issues in Israel and the Occupied Palestinian Territories.
4. While the legislation purports to increase transparency concerning foreign funding of NGOs, in reality it will undermine the ability of a wide variety of social change organisations to conduct their work by undermining public legitimacy and limiting funding opportunities. This in all likelihood is the true aim of the bill’s supporters and advocates in the Knesset and outside of the Knesset.

<sup>162</sup> A unit within the Immigration and Population Authority of the Ministry of Interior, established in 2009 to deal with irregular immigration.

<sup>163</sup> Liat Schlesinger, “Head of Oz Unit: Aid organisations seek our destruction,” NRG website [the website of Israeli daily newspaper *Maariv*], 5 August 2009, available at: <http://www.nrg.co.il/online/1/ART1/925/983.html>.

<sup>164</sup> Eli Oshrov, “Make a noise, they’re shooting: Breaking the Silence reply to the attacks,” NRG website, 25 July 2009, <http://www.nrg.co.il/online/1/ART1/921/148.html>.

<sup>165</sup> Deputy Prime Minister, Moshe (Boogi) Ya’alon: Ready to give up visits to European capitals,” *Haaretz* website, 28 October 2009, available at: <http://www.haaretz.co.il/hasite/spages/1124222.html>. Ya’alon is quoting a passage from Isaiah often invoked in Israel against perceived “enemies within”.

See generally Joint Letter from Human rights Organisations’ CEOs, addressed to President Shimon Peres, Knesset Speaker Reuven Rivlin, and Prime Minister Benjamin Netanyahu, 31 January 2010, available at: <http://gisha.org/UserFiles/File/HiddenMessages/HROrgsLetter.pdf>

5. On June 14, 2010, a group of 25 members of Parliament, introduced a bill entitled "Associations (Amutot) Law (Amendment – Exceptions to the Registration and Activity of an Association), 2010"<sup>166</sup>. This bill aims to prohibit the registration of, or to close down any existing non-governmental organisation (NGO), if "there are reasonable grounds to conclude that the association is providing information to foreign entities or is involved in legal proceedings abroad against senior Israeli government officials or IDF officers, for war crimes." If adopted, the bill will legitimise the suppression of information regarding the commission of war crimes. As such, this bill has serious implications with respect to international law and the rule of law, and accountability for international crimes. As proposed, the bill also conflicts with numerous principles of treaty and customary international law, as codified in, inter alia, the Fourth Geneva Convention, international human rights treaties and the Universal Declaration on Human Rights. The bill places arbitrary and unnecessary restrictions on the rights to freedom of association, information and expression and infringes upon victims' fundamental right to an effective remedy.
6. Conclusion: It is our opinion that the importance of protecting the integrity and ability of the Israeli human rights community in Israel is paramount and that the attacks/demonization of human rights NGOs and their supporters represent a direct attack on NGOs and on human rights protection in general. While the various campaigns personally attack individual and organizational Human Rights defenders the primary danger is that these efforts will (and seek to) neutralize human rights advocacy in Israel which is all too often the only line between abuse and the protection of civilians (Israeli and Palestinian) from State violations.
7. These efforts not only attack the values of democracy and human rights that we collectively strive to protect but they also seek to distract us from our core work and to distract public discourse from the issues by demonizing the so called "anti-Israeli" forces "undermining" Israel. Thus, instead of talking about and defending human rights we are engaged in a struggle against the suppression of dissent in which civil society organizations such as PCATI, ACRI, Adallah, B'tselem, PHR-I and others are attacked, labeled subversive and accused of exploiting human rights to attack Israel. The demonization campaign taking place by so called monitoring organizations and which finds voice in the above mentioned legislative initiatives similarly contributes to the ongoing violations of human rights described in this briefing and in others submitted by other NGOs and it similarly contributes to the impunity described herein.
8. We therefore call on the State of Israel to condemn the ongoing demonization campaigns currently being undertaken. We further call on the Government of Israel to denounce the legislative initiatives under consideration and mentioned above and to state conclusively its support of the right of individual human rights defenders and human rights organizations to operate free of political and legal molestation.

<sup>166</sup> See unofficial English translation of the proposed bill <http://www.adalah.org/newsletter/eng/apr10/bill.pdf>  
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