



Joint NGO Report to UN CAT: Written information for the examination of Israel's report by the Committee, 57th session, May 2016

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Adalah, Al Mezan, and PHR-Israel, based in Israel and the Gaza Strip, submit this report to the UN Committee Against Torture (CAT) regarding the State of Israel's failures in implementing and lack of compliance with the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment. The report is submitted in advance of the Committee's review of Israel in May 2016.¹

Since the UN CAT considered Israel's previous report in 2009, the Israel Security Agency/General Security Service, as well as other Israeli forces and authorities have continued to use torture and cruel, inhuman or degrading treatment (CIDT) against Palestinian detainees and prisoners, and Palestinian civilians. Further, torture victims' complaints are invariably closed without appropriate steps being taken either to investigate them or to prosecute interrogators or their superiors.

This report provides information to the Committee on Questions 1, 2, 5, 6, 8, 9, 10, 11, 26, 27, 32, 37, 43, 44, 49, 53, 54, and 57 of the 2012 CAT's List of Issues to Israel, and responds to many of Israel's claims as noted in its report to the CAT dated 16 February 2015.²

Articles 1 and 4:

Question 1 – Definition of torture: No crime of torture in Israel

1. The Committee Against Torture has emphasized the importance of defining the offense of torture as distinct from assault or other crimes in drawing attention to the special gravity of the crime of torture, and ultimately in preventing torture and ill-treatment.³
2. In its Concluding Observation of 2009, the Committee Against Torture (CAT) urged Israel to comply with its obligation to enact into law specific legislation incorporating the provisions of the Convention, namely the incorporation of the explicit crime of torture as defined in Article 1 of the convention.⁴ The UN Human Rights Committee, in its Concluding Observations of 2014, also emphasized that Israel “should explicitly prohibit torture, including psychological torture, and cruel, inhuman or degrading treatment by incorporating into its legislation a definition of torture that is fully in line with Article 7 of

¹ The three human rights organizations, together with the Public Committee Against Torture in Israel (PCATI), last submitted a report to the CAT in 2012 (See <http://www.mezan.org/en/uploads/files/13865.pdf>) in advance of the Committee's adoption of its List of Issues Prior to Reporting at its 48th session (May 2012).

² Israel, Fifth Periodic Report to the Committee Against Torture, CAT/C/ISR/5, 16 February 2015.

³ Committee Against Torture, General Comment No. 2, CAT/C/GC/2, 24 January 2008.

⁴ Committee Against Torture, Concluding Observations of the Committee Against Torture, Israel, 23 June 2009, para. 13 (*hereinafter*: “Concluding Observations, 2009”).

the Covenant, and ensuring that the law provides for penalties commensurate with the gravity of such acts.”⁵

3. Despite the Committees’ recommendations, Israel takes the position that the “Convention does not expressly require State Parties to implement a specific crime labeled ‘torture’,”⁶ and argues that “Acts and behaviors defined as ‘torture’ [...] may constitute offences under the Israeli *Penal Code 5737-1977*.”⁷
4. Whether or not some forms of “torture”, as defined in Article 1, constitute offenses under Israeli criminal law, the fact remains that there exists no comprehensive and unqualified crime of torture in Israeli law. Under current Israeli law, some forms of torture that are prohibited under the Convention are subject to qualifications, partly due to the general defenses for which the Penal Code provides, namely “the defense of necessity” (which will be addressed in depth in the following sections).

Question 2 – The “necessity defense” remains intact

5. In *Public Committee Against Torture in Israel v. The State of Israel* (1999) (“the Torture Ruling”), the Israeli Supreme Court purported to rule that the practice of torture is prohibited, but in somewhat contradictory fashion, left open the possibility that an Israeli official charged with torture may escape criminal liability by virtue of the defense of necessity contained in section 34(1) of the Israeli Penal Law, 5373 – 1977 (the Penal Law). This aspect of the Torture Ruling contradicts the total prohibition against torture contained in Article 2.2 of the Convention.
6. The Supreme Court also reasoned that Israeli authorities would be permitted “to utilize physical means” if the requisite legislation was enacted by the Knesset.⁸ In paragraphs 36 and 37 of the Torture Ruling, the Supreme Court stated that:

“The very fact that a particular act does not constitute a criminal act (due to the “necessity” defense) does not in itself authorize the administration to carry out this deed, and in doing so infringe upon human rights. The Rule of Law (both as a formal and substantive principle) requires that an infringement on a human right be prescribed by statute, authorizing the administration to this effect. The lifting of criminal responsibility does not imply authorization to infringe upon a human right [...] In other words, general directives governing the use of physical means during interrogations must be rooted in an authorization prescribed by law and not from defenses to criminal liability [...] If the State wishes to enable GSS investigators to utilize physical means in interrogations, they must seek the enactment of legislation for this purpose.” (Emphasis added).

7. While at the time of writing this legislative step has not been taken, the fact that the Israeli Supreme Court entertained this prospect is extremely worrying and appears to ignore Article 2.2 of the Convention.

⁵ Human Rights Committee, Concluding Observations of the Human Rights Committee, Israel, 21 November 2014, para. 14 (*hereinafter*: “HRC Concluding Observations, 2014”).

⁶ Consideration of reports submitted by States parties under Article 19 of the Convention pursuant to the optional reporting procedure, Fifth periodic reports of States parties due in 2013, Israel, 17 November 2014, CAT/C/ISR/5, para 4.

⁷ *Id.*, para. 1.

⁸ *Public Committee Against Torture in Israel v The State of Israel* (1999) 53(4) PD 81 at paragraphs 36 and 37

8. Indeed, while the Supreme Court ruled that the Necessity Defense should by no means be perceived as authoritative for the practice of torture, it nonetheless remains, as it were, a defense for interrogators who resort to torture and other “brutal and inhuman means”. As a result, it provides them with immunity from criminal prosecution, rendering any form of accountability mechanism non-existent in reality.
9. Notably, all the Penal Law offenses noted in Israel’s report⁹ as constituting effective legislation criminalizing torture remain subordinated – as a matter of criminal law jurisprudence and similar to any other offense in the Penal Law – to the Necessity Defense. Therefore, unless an explicit statute/provision is put in place excluding its application in circumstances of torture, it will continuously bind the courts’ hands even if a charge of torture is brought forward.
10. Needless to say, the existence of the mere possibility of the application of the Necessity Defense in the context of any practice of torture, as defined in Article 1, acts as a qualification to any prohibition of the use of torture, which stands in contradiction to the “no exceptions” clause set forth in Article 2.2 of the Convention.
11. Therefore, it is deeply concerning that Israeli authorities, including the Supreme Court, have yet to fully accept and adopt the principle that torture and ill-treatment are totally prohibited, and without exception.
12. In its most recent Concluding Observations on Israel from 2009, the Committee recommended that Israel “completely remove necessity as a possible justification for the crime of torture.”¹⁰ The Human Rights Committee, in its Concluding Observations of 2014, additionally stressed that Israel “should also: (a) remove the notion of “necessity” as a possible justification for the crime of torture; and (b) refrain from inflicting “moderate physical pressure” in cases of “necessity” and ensuring that interrogation techniques never reach the threshold of treatment prohibited by Article 7 of the Covenant.”¹¹

Article 2:

Question 5 – Audio-Video Documentation: ISA and police still exempt from this requirement in cases involving “security suspects”

13. The Criminal Procedure (Interrogating Suspects) Law (Amendment No. 7) – 2015 extends the exemption granted in the Criminal Procedure (Interrogating Suspects) Law – 2002 to the ISA/GSS and the police from making audio and video documentation of their interrogations of suspects, who are alleged to be involved in committing security offences. The Knesset extended the validity of the law on 4 July 2015 for an additional year and a half, the latest in a series of continuous extensions of the law since 2002. When originally passed in 2002, the amendment’s legislative history stated that the intention was for this exemption to be a temporary emergency order. However, this latest extension turns this order, in effect, into a permanent law. Since it was first enacted as a

⁹ See Israel’s report, para. 2.

¹⁰ Concluding Observations, 2009, para. 14.

¹¹ Human Rights Committee, Concluding Observations of the Human Rights Committee, Israel, 21 November 2014, para. 14 (*hereinafter*: “HRC Concluding Observations, 2014”).

temporary order, the Knesset has extended the exemption three times, and it has been in effect for almost 14 years.¹²

14. This exemption is highly dangerous as it creates conditions that facilitate the torture or ill treatment of individuals under interrogation. The lack of audio and video documentation of interrogations also has serious implications for the reliability, authenticity and admissibility of evidence presented before the courts against suspects. The exemption is even more severe when viewed in conjunction with section 35(a) of the Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996, which enables the Israeli authorities to deny a person suspected of a security offence from seeing a lawyer for 21 days, contrary to Israel’s assertion in its report;¹³ and with the authority granted to the ISA under the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law to delay bringing security suspects before a judge for an arraignment and a remand hearing.
15. In the Committee’s comments in paragraph 41 of the summary record of the 496th meeting: Israel (CAT/C/SR.496) dated 20 November 2001, a member of the Committee “urged Israel to consider making audio-visual recordings of interrogations” in order to establish whether or not detainees were being mistreated. It is concerning that Israel has adopted this recommendation with an exemption that effectively nullifies this simple and practical safeguard.
16. The fact that the exemption applies only in the cases of individuals suspected of committing security offences – who are overwhelmingly Palestinians – is particularly significant as this group is the most likely to be exposed to torture or ill-treatment by interrogators.
17. Notably, prior to the latest extension of the exemption clause, the Israeli Justice Ministry published a Memorandum Bill recommending that the temporary exemption be changed into a permanent law. The Justice Ministry provided justifications for this change as those listed in Israel’s report, namely “that if, for whatever reason, such a recording reached the hands of the terrorist organizations, it could be used to the advantage of these organizations to study the interrogation procedures and methods. In addition, such documentation may deter interrogatees from providing information, due to the fear that the cooperation with the interrogating authorities will be discovered or revealed by their families, friends and the terrorist organization to which they belong to.”¹⁴
18. The mere consideration of permanently exempting the ISA and the police from audio and video documentation of interrogations of security suspects is concerning and stands at odds with the Committee’s Concluding Observation in 2009 that Israel must make it a

¹² On 19 July 2015, human rights organizations Adalah, the Association for Civil Rights in Israel, the Public Committee Against Torture in Israel (PCATI), PHR-I, Al Mezan, HaMoked, and Yesh Din submitted a petition to the Israeli Supreme Court demanding the cancellation of the law. See *H CJ 5014/15 Adalah et al. v. Minister of Public Security et al.* The case is currently pending. While the Turkel Commission, an Israeli commission that reviewed Israel’s investigatory mechanisms, recommended in 2013 that the audio-video exemption be rescinded, the subsequent Ciechanover Commission, a team appointed to review and implement the recommendations made by the Turkel Commission, disagreed. Thus, it is highly unlikely that the law will be cancelled. The Supreme Court dismissed a previous petition against law, submitted by Adalah, Al Mezan, PCATI, and PHR-I submitted, on 7 February 2013. See *H CJ 9416/10 Adalah et al. v. The Ministry of Public Security et al.*

¹³ See, Israel’s Report, para 9.

¹⁴ Israel’s Report, para 20.

priority to “extend the legal requirement of video recording of interviews of detainees of security offenses as a further means to prevent torture and ill-treatment.”¹⁵

19. The Human Rights Committee supported the 2009 recommendations of the Committee in 2014, stating that it was, “concerned about the exemption from the obligation to provide audio or visual documentation of interrogations in cases of persons detained for security offences,” and urged Israel to “provide for audio or visual documentation of interrogations in cases of persons detained for security offences.”¹⁶

Question 6 – Bringing detainees before a judge and access to lawyers

20. Two legal frameworks that create special criminal procedures in the case of security suspects remain in place despite the Committee’s recommendation to abolish them. First is the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law – 2006, and second is Article 35(a) of the Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996. These legal frameworks will be discussed and explained separately below.

Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law:

21. In June 2006, the Knesset passed the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law, which removes a number of essential procedural safeguards provided to other suspects. Under this law:
- a. Security suspects can be detained for up to 96 hours before being brought before a judge, as opposed to 48 hours in other cases;¹⁷
 - b. Security suspects can be detained for up to 35 days without being indicted, as opposed to 30 days in other cases;¹⁸
 - c. Security suspects can concurrently be denied access to a lawyer for up to 21 days, as opposed to 48 hours in other cases, as we further explain below.
 - d. At the same time, the law permits the detention of a suspect remanded by a court for a period of less than 20 days to be extended *in absentia* for the rest of the period of up to 20 days from his original detention if the original detention was ordered in his presence.¹⁹
22. This law, which predominantly applies to Palestinians, fosters conditions in which detainees, held far away from the purview of the courts, can be exposed to unlawful methods of interrogation by the ISA, including torture.
23. Although it was originally passed by the Knesset as a “temporary order” for 18 months, the law has since been extended a number of times, the most recent of which was on 28 December 2015, for a period of 12 months, ending on 31 December 2016.

¹⁵ Concluding Observations, 2009, para. 16.

¹⁶ Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Israel, 21 November 2014, CCPR/C/ISR/CO/4, para. 14.

¹⁷ Section 30 of the *Criminal Procedure (Powers of Enforcement - Arrests) Law – 1996*.

¹⁸ Section 17(b) of the *Criminal Procedure (Powers of Enforcement - Arrests) Law – 1996*.

¹⁹ Section 34 of the *Criminal Procedure (Powers of Enforcement - Arrests) Law – 1996*.

24. Notably, the provisions of this temporary order have been incorporated verbatim as permanent provisions into the *Counter-Terrorism Bill – 2015*, a very important, lengthy piece of proposed legislation, which passed a first reading in the Knesset on 2 September 2015. The bill is currently being discussed further in the Knesset's Constitution, Law and Justice Committee.

Access to a Lawyer: Israel – Articles 34-35 of the Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996

25. Article 34(a) set forth the right of every detainee to see and consult with a lawyer. According to subsection (b), the person in charge of the investigation must permit the meeting between a detainee and his/her lawyers without delay, whether if a detainee asks to see his/her advocate, or if a lawyer appointed by a person close to the detainee asks to see him/her.

26. In criminal investigations, the meeting with a lawyer may be postponed starting from a few hours and up to 48 hours based on the reasoning provided. The law allows for delaying the meeting with a lawyer in the following cases and in accordance with these conditions:

- a. 34(d) - If at that time the detainee is involved in investigative procedures or in other activities connected with the investigation, so that his presence is necessary for their completion, and if meeting his lawyer without delay, as stated in subsection (c), would require them to be delayed or postponed to a later date, and if the officer in charge of the rank of superintendent or higher (hereafter in this section: the officer in charge) believes that their delay or postponement would be liable to endanger the investigation materially, then he is entitled to order – by a reasoned written decision – that the detainee's meeting with the lawyer be postponed for the time required to complete the activity, on condition that the interruption not exceed a few hours.
- b. 34(e) - If the officer in charge holds that a meeting between the detainee and the lawyer would be liable to frustrate or to interfere with the arrest of additional suspects in the same matter, to prevent the discovery of evidence or the seizure of anything obtained in connection with that offense, then he is entitled to order – by a reasoned written decision – that the meeting be postponed for the time required, on condition that it does not exceed 24 hours after the arrest.
- c. 34(f) - Notwithstanding the provisions of Subsection (B), the officer in charge is entitled – by a reasoned written decision – not to allow the detainee to see a lawyer for a period that will not exceed 48 hours after the arrest, if he/she is satisfied that this is necessary in order to protect human life or to frustrate a crime, or if the matter is connected with a security offense and one of the grounds specified in Section 35(a) applies; the provisions of this subsection will not derogate from the right of a detainee who has requested to be given a reasonable opportunity to see a lawyer before he/she is brought before a court on the matter of his/her arrest.

27. However, Article 35(a) forms the framework for limiting the access to lawyers in the case of security detainees. It authorizes the investigators to deny the security suspect access to a lawyer for up to 10 days, as stated in Article 35(c).

28. The President of the District Court is empowered, upon an application made with the approval of the Attorney General, to extend the denial period on condition that the total of all periods during which the security detainee was prevented from seeing a lawyer will not exceed 21 days. An application under this subsection is set to be heard *ex-parte*.
29. The application of these provisions is not limited to cases containing any sort of urgency, and is applicable to any investigation of security offences, as defined broadly in Article 35(b), if the following applies:
- “(1) The meeting is liable to interfere with the arrest of other suspects;
- (2) The meeting is liable to disrupt the discovery or seizure of evidence, or to interfere with the investigation in some other manner;
- (3) The meeting must be prevented in order to frustrate an offense or to protect human life.”
30. In summary, the law allows, theoretically, the denial of access to a lawyer for a security suspect in Israel for an accumulated period of 21 days.

Access to a Lawyer: Occupied Palestinian Territories (OPT) – Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009

31. Similar to the provisions in the Israeli law, which apply within the Green Line, the military laws applying in the OPT state that the detainees have the right to access a lawyer,²⁰ and that the access to a lawyer must be permitted as soon as possible.²¹
32. In criminal investigations, the meeting with a lawyer may be postponed starting from a few hours and up to 96 hours – much longer than the maximum delay period of 48 hours permitted in Israeli law – based on the reasoning provided. The order allows for delaying the meeting with a lawyer in the following cases and in accordance with these conditions:
- a. 56(d) - If the detainee is in interrogation proceedings or other actions related to the investigation, and a police officer of the rank of chief inspector or higher finds that disrupting the interrogation proceedings or actions is liable to thwart the investigation, he is authorized to order, in a written and detailed decision, that a meeting of the detainee with an attorney be delayed for a few hours, and this applies if the meeting is liable to thwart or disrupt the arrest of additional suspects in the same matter.
 - b. 56(e) - Notwithstanding the aforementioned in subsection (c), a police officer of the rank of superintendent and higher, in a detailed written decision, may order to not permit a meeting of a detainee with a lawyer for a period no longer than 96 hours from the hour of arrest, if he is convinced that this is required for maintaining the security of the region or of human life or to thwart an offense punishable by three years or more.

²⁰ Article 56(a) to Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009.

²¹ Article 56(c) to Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009.

33. Article 57(a) authorizes a military court judge “to permit that a detainee shall not meet a lawyer if he is convinced that reasons pertaining to the security of the region or investigation requirements necessitate the confidentiality of the arrest.” Article 57(b) states that the military judge may exercise his authority under subsection (a) for a period of 96 hours and is authorized to extend this period from time to time as long as the total period does not exceed 8 days. Subsection (c) provides that “[a] request under Subsection (a) shall be heard *ex parte* on behalf of the applicant a military prosecutor or a police officer of the rank of inspector or higher shall present themselves.”
34. However, Article 58(c) forms the framework for limiting temporally the access to lawyers in the case of security detainees in offenses listed in the Appendix to the Order. It authorizes the supervisor of interrogation²² to deny the security suspect access to a lawyer for up to 15 days, if he deems it “necessary for reasons of security of the region or the good of the interrogation necessitates this.”
35. Article 58(d) allows the permitting authority²³ to postpone the meeting for an additional period of up to 15 days “if convinced that this is necessary for reasons of the security of the region or the good of the interrogation necessitates this.”
36. Article 59(a) allows a military court judge to deny a security suspect access to a lawyer “if he is convinced that reasons pertaining to the security of the region or the good of the interrogation necessitate this.”
37. The period provided under this article for denial of access to a lawyer, as provided in Article 59(b), is up to 30 days, which are additional to the periods provided for under the abovementioned Article 58. Subsection (c) stipulates that “[t]he president or vice-president of the military court of first instance is empowered to extend the aforementioned period in subsection (b) for an additional period or periods which together shall not exceed 30 days, if the Commander of IDF Forces in the Area confirmed in writing that special reasons of security of the region necessitate this.”
38. In summary, the order allows, theoretically, the denial from a security suspect in the OPT the access to a lawyer for an accumulated period of 90 days.
39. Thus the right to due process is thoroughly violated by a series of overlapping and cumulative restrictions in these laws that together create conditions that are ripe for the torture and ill-treatment of detainees. The Committee has previously voiced its concerns about this legislation in 2009 and called on Israel “to examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer.”²⁴ The Committee’s concerns have been

²² “Supervisor of interrogation” is one of the following: (1) A police officer of the rank of superintendent or higher; (2) Head of an investigation team in the General Security Services; (3) An IDF officer so authorized by the Commander of IDF Forces in the Area.

²³ “Permitting authority” – is one of the following: (1) A police officer of the rank of chief superintendent or higher; (2) Head of the Investigations Department at the General Security Services; (3) An IDF officer of the rank of lieutenant colonel and higher so authorized by the Commander of IDF Forces in the Area.

²⁴ Concluding Observations, 2009, para. 15. See also para. 18, in which “The Committee once again calls upon Israel to examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer”, and the Committee’s 2002 Concluding Observations on Israel, in which it stated that Israel “should review its laws and policies so as to ensure that all detainees, without exception, are brought promptly before a judge and are ensured prompt access to a lawyer.”

echoed by the Human Rights Committee, which has stated that it was “particularly concerned at the State party’s intention to include, in its revised anti-terror legislation, provisions based on the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law which allow for significant delays before trial, before providing access to a lawyer and for decisions on the extension of detention to be taken, in exceptional circumstances, in the absence of the suspect...”²⁵

Access of independent (external) doctors for Palestinian prisoners

40. In contradiction of Israel Prison Service (IPS) directive no. 04.46.00, which allows for and regulates private doctors’ visitations to prisoners for an external medical second opinion, the IPS continues to deny the access of external doctors to Palestinian prisoners. Such visits have been made possible mostly through prolonged court processes, and after long waiting periods. Over the past three years, PHR-Israel has filed more than 15 court petitions on behalf of Palestinian prisoners in this regard, and only after filing the petitions did the IPS allow independent doctors to visit Palestinian prisoners. The denial of access to external medical advice is used as a means of punishing and isolating hunger strikers.
41. Despite an Israeli Supreme Court ruling on a petition brought forward by PHR-Israel, in which the Court instructed the IPS to recognize private medical visits “as a right and not a privilege,” the IPS has still not implemented this guidance and continues to deny the entry of external doctors in most cases.²⁶

Prisoners’ Family Visits:

42. Notably, the Committee has previously concluded that family visits to detainees once a month for only 30 minutes amounted to torture.²⁷
43. The Israel Prison Service (IPS) considers family visits to be a privilege, which can be revoked as a punitive measure.²⁸ During the recent wave of hunger strikes by Palestinian administrative detainees in 2014 and 2015, the IPS applied this punitive measure and denied family visits from the hunger strikers.
44. In 2014, Adalah submitted a petition to the Lod District Court on behalf of Mr. Abdel Razeq Farraj, a Palestinian man from the West Bank held in administration detention, demanding the cancellation of the IPS’s instructions prohibiting family visits for prisoners participating in hunger strikes. The court dismissed the petition based on the argument put forward by the IPS that the petition was rendered moot since the hunger

Report of the Committee Against Torture, A/57/44(SUPP), Concluding Observations on Israel, 17 October 2002, para. 53(c).

²⁵ Human Rights Committee, Concluding Observations of the Human Rights Committee; Israel, 3 September 2010, CCPR/C/ISR/CO/3, para. 13. These concerns were reiterated by the Human Rights Committee in its Concluding Observations on Israel, 21 November 2014, CCPR/C/ISR/CO/4, para. 11.

²⁶ LCA 3676/13, *Muhammad Taj and Physicians for Human Rights-Israel v. The Israeli Prison Service* (decision delivered on 18 July 2013).

²⁷ Manfred Nowak and Elizabeth McArthur, *The United Nations Convention Against Torture – A Commentary*, Oxford University Press, 2008, at p. 408, para. 27.

²⁸ Article 6(d) to the Prison Service Order No. 04.16.00 in conjunction with its Appendix.

strike was over, and the IPS convinced the petitioner to back down while preserving his arguments for a future case if one presented itself.²⁹

45. The Prison Service Order in question remains in effect and family visits remain subject to denial as a punitive measure for any prisoner engaging in hunger strikes.
46. Family visits for prisoners from the Gaza Strip were resumed in 2012 six years after Israel banned them. The International Committee of the Red Cross (ICRC) coordinates the visits, subject to conditions imposed by the Israeli authorities. The regulations permit every prisoner to have a family visit once every two months. In general, family members who are allowed to visit include the parents, spouse and children (12 years old or under as of December 2015) of the prisoner, subject to a security permit issued by the Israeli authorities. Security permits can be refused reducing the number of immediate family members who may visit. Three immediate family members noted above are allowed to visit together every time. Visits are cancelled if the Erez border crossing (between Gaza and Israel) is closed by Israel for holidays or for security reasons. In this case, the visit is automatically delayed to the following week. Family visits were halted during Operation Protection Edge from early July to early September 2014.
47. A recent report from the High Commissioner for Human Rights highlights that, "Furthermore, despite the issuance in late 2014 of new regulations on the exit from Gaza for certain Palestinians, including family members of prisoners held in Israeli prisons, the right to family visits remained severely restricted."³⁰
48. The Human Rights Committee has previously called on Israel to "enhance the right of prisoners suspected of security-related offences to maintain contact with their families, including by telephone."³¹

Question 8 – Administrative detention & Unlawful combatants

49. Administrative detention orders are routinely issued against Palestinians by the Israeli Military Commander in the West Bank for periods of one to six months and can be renewed indefinitely. Administrative detention is carried out under a heavy veil of secrecy, and does not permit detainees to marshal the legal assistance or representation accorded to them by international law. Israel regularly keeps Palestinians for extended periods of time in administrative detention without charging them, without informing them of the charges, or allowing their lawyers to review the evidence against them.³²
50. After the mass hunger strike of 2012, it was agreed that Israel would greatly limit the use of administrative detention, as required by international human rights and humanitarian law. However, it is clear that Israel has reneged on the agreement as it has continued to use administrative detention on a systematic basis as a course of punishment. In July 2013, the number of administrative detainees reached 136, the lowest number since the

²⁹ PP1689-07-14 *Abdel Razeq Farraj v. Israel Prison Service* (5 November 2014).

³⁰ Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, A/HRC/31/40/Add.1, para. 42, 7 March 2016

³¹ Human Rights Committee, Concluding Observations of the Human Rights Committee; Israel, 3 September 2010, CCPR/C/ISR/CO/3, para. 21.

³² See Addameer – Prisoner Support and Human Rights Association, "On Administrative Detention," December 2015, available at: http://www.addameer.org/israeli_military_judicial_system/administrative_detention

Palestinian prisoner's hunger strikes in April 2012, but the number has jumped up to 670 in February 2016.³³

51. Palestinian administrative detainees have undertaken a number of hunger strikes since 2011, both on an individual and a collective basis, to protest against administrative detention. As noted above, the mass hunger strike of 2012 ended on 14 May 2012, after an agreement was reached between representatives of the prisoners and the IPS. Another mass hunger strike was launched on 24 April 2014, when approximately 90 administrative detainees went on a 50-day hunger strike. The human rights organizations wrote a number of letters of complaint to the IPS and to the Attorney General and brought a series of cases before the Israeli courts challenging many restrictions placed on the hunger strikers by the IPS, including for example, restrictions on meeting with lawyers and family members; refusal to allow detainees to go out to the yard; limitations on prayer; and shackling to hospital beds for 24-hours a day.³⁴
52. In the summer of 2015, Mohammad Allan, a Palestinian administrative detainee, went on a 64-day water-only hunger strike that ended on 20 August 2015. He was arrested in November 2014 and started his hunger strike when his first detention order was renewed for an additional six months. After several weeks, he was hospitalized in Be'er Sheva's Soroka Hospital in critical condition. Medical staff refused to forcibly treat him and he was transferred to Barzilai Hospital, where the teams also refrained from any type of forced treatment. Only when he lost consciousness and reportedly suffered brain damage from his hunger strike was he put on an IV to preserve his life.
53. The Israeli authorities did not attempt to use the newly enacted Force-Feeding law, which requires a court order to initiate force-feeding after a doctor determines a prisoner's life is at risk and the authorities have made significant effort to obtain consent.
54. Following a petition to cancel his administrative detention, the Israeli Supreme Court suspended the detention order against Mohammad Allan, while he was in hospital, because of his severe medical condition.³⁵ Upon his release from the hospital, Allan was rearrested and detained. He was released from administrative detention in November 2015.
55. Another recent cases involved Khader Adnan, who was freed in June 2015 after a 55-day strike. He also secured his release following a hunger strike in 2012.³⁶
56. The most recent case is that of Muhammad Al-Qeeq, who was arrested on 21 November 2015 and went on a 94-day hunger strike shortly thereafter to protest his administrative detention. He was hospitalized in the Afula Hospital, where he was strapped to his bed

³³ Addameer – Prisoner Support and Human Rights Association's statistics' database, available at: <http://www.addameer.org/statistics>

³⁴ See for example, Adalah's Newsletter, "The Hunger Strike is Over, but Torture Continues," June 2014, available at: <http://us4.campaign-archive2.com/?u=4c0bb759968fd1dcd47869809&id=256ab14c1b>

³⁵ HCJ 5580/15, *Mohammed Allan v. General Security Service, et al.* (decision delivered 19 August 2015). See Adalah Press Release, 19 August 2015, available at: <http://www.adalah.org/en/content/view/8624>

³⁶ Yael Marom, "Khader Adnan reaches deal to end hunger strike, will be released," +972 Magazine, 29 June 2015, available at: <http://972mag.com/khader-adnan-reaches-deal-to-end-hunger-strike-will-be-released/108265/>

and forcibly treated during four days, despite his clear objection to it. Al-Qeeq ended his hunger strike in February 2016 and will be released in three months.³⁷

57. According to DCI-Palestine, at the end of 2015, Israeli forces held six Palestinian children in administrative detention. In October 2015, Israeli authorities renewed the use of administrative detention for Palestinian children for the first time in nearly four years. There have been two additional cases since January 2016.³⁸
58. In 2009, the Committee expressed concern that Israel's practices of administrative detention violate Article 16 of the Convention, as large numbers of individuals are held in administrative detention and for lengthy periods of time, despite Israel's claims to the contrary.³⁹ The UN Human Rights Committee, in its concluding observations of 2014, called on Israel, to "end the practice of administrative detention and the use of secret evidence in administrative detention proceedings, and ensure that individuals subject to administrative detention orders are either promptly charged with a criminal offence, or released."⁴⁰
59. The Israeli authorities continue to detain Palestinians from the Gaza Strip under Israel's Incarceration of Unlawful Combatants Law 5762-2002. This law allows the military to incarcerate civilians without fair trial and based on secret evidence, and to abrogate from detainee rights in Israeli prisons. Israel passed the 'Unlawful Combatants Law' in 2002 and subsequently amended the law in 2008. The UN CAT in 2009 raised concerns about this law, while the Human Rights Committee in 2010 called for its repeal.⁴¹
60. This law allows the military to incarcerate civilians without fair trial and based on secret evidence, and to abrogate from detainee rights in Israeli prisons. According to the law, persons who are suspected to have taken part in hostile activities against the State of Israel, directly or indirectly, or have carried out hostile activities against the security of the state, can be qualified as unlawful combatants.⁴² Moreover, a person who "belongs to a force engaged in against the state of Israel" can also be held according to this law.⁴³ In practice, the law strips individuals of the rights and protections guaranteed in IHL and IHRL for prisoners and detainees, including the status of prisoner-of-war under the Third Geneva Convention, and the status of civilian detainee under the Fourth Geneva Conventions.
61. The law grants vast powers to Israeli district courts, which can order the arrest, conviction, and/or detention of any suspected person for unlimited periods of time, without showing evidence to the detainee or allowing for his/her adequate legal

³⁷ Nigel Wilson, "Profile: Mohammed Al-Qeeq, Palestinian Journalist, Al Jazeera English, 27 February 2016 available at: <http://www.aljazeera.com/news/2016/02/profile-palestinian-journalist-mohammed-al-qeeq-160225112358269.html>

³⁸ Defense for Children International – Palestine, "Israel increasing use of administrative detention against Palestinian children," 26 February 2016, available at:

http://www.dci-palestine.org/israel_increasing_use_of_administrative_detention_against_palestinian_children

³⁹ CAT Concluding Observations, 2009, para. 17.

⁴⁰ HRC Concluding Observations, 2014, para. 10.

⁴¹ CAT Concluding Observations 2009, para. 17. HRC Concluding Observations, 2010, para. 13.

⁴² See Al Mezan Center for Human Rights, "Unlawful Combatants: The Violation of Gazan Detainees' Rights in Israeli Prisons", April 2009 at page 8, available at <http://mezan.org/en/post/8619> (last accessed on 26 March 2016).

⁴³ Ibid. See also B'Tselem, "Criticism of the Internment of Unlawful Combatants Law", January 2011, available at http://www.btselem.org/administrative_detention/criticism_on_the_illegal_combatants_law (last accessed on 26 March 2016).

representation. The law also grants full authority to the Military Chief of Staff, or his deputy, to order the arrest of any person, based on mere suspicions that he/she could be a so-called unlawful combatant.

62. The law has been applied against at least 11 individuals from the Gaza Strip since Israel's disengagement in September 2005, and is employed in particular during Israel's military operations on Gaza, including Israeli-codenamed Operation Cast Lead in 2008/09 and Operation Protective Edge in 2014. Since the nine proclaimed cases during Cast Lead, at least one additional case was proclaimed during Operation Protective Edge and one outside of a full-scale operation.
63. The following cases documented by Al Mezan Center for Human Rights are illustrative of Israel's use of the Unlawful Combatants Law against residents of the Gaza Strip:
- a) **Case 1: Sameer Al Najjar:**⁴⁴ During "Operation Protective Edge," Israeli forces launched a ground invasion of the town of Khuza'a, in Khan Younis. On 26 July 2014, Israeli forces in Khuza'a arrested Sameer Al Najjar, 45 years of age. Al Najjar was subjected to detention and interrogation by Israeli authorities for the ensuing 28 days. On 24 August 2014, the Israeli Be'er Sheva District Court declared him an unlawful combatant. Al Najjar was released one year later, on 24 August 2015. He is the father of five children and lives in the Gaza Strip.
 - b) **Case 2: Munir Ismail Hamada:**⁴⁵ On 8 November 2015, Israeli authorities arrested Munir Hamada, 48 years of age, at the Erez border crossing. Hamada held an Israeli-issued business permit for Erez enabling his travel via the crossing. After his arrest, Hamada was subject to interrogation for 28 days. On 27 December 2015, the Israeli Be'er Sheva District Court declared him an "unlawful combatant." On 27 December 2015, the court extended Hamada's detention on the grounds of his unlawful combatant status. Hamada remains in detention at the time of writing. He is married and lived in the Gaza Strip with his family of 10.

Question 9 – Definition of terrorism

64. Recently, the Israeli government has promoted a new "Counter-Terrorism Bill," which passed its first reading in the Knesset on 3 September 2015.⁴⁶ The sweeping legislation includes many problematic aspects,⁴⁷ but one of the most prominent relates to a set of definitions it puts forth as to what constitutes an "act of terror."
65. According to Article 2 to the Bill, an "act of terror" is:

⁴⁴ See, "Al Mezan Condemns the Israeli Increasing Indictments of Gazans as 'Unlawful Combatants'; Calls International Community to Intervene", 28 August 2014, available at: <http://www.mezan.org/en/post/19595>

⁴⁵ See, "Al Mezan Condemns the Israeli Indictment of Gazans as 'Unlawful Combatants'", 29 December 2015, available at: <http://www.mezan.org/en/post/21112> (last accessed 8 April 2016)

⁴⁶ The bill is currently being discussed in the Knesset's Constitution, Law and Justice Committee. See Adalah, "A dangerous escalation of repression in Israel: Knesset approves first reading of the proposed 'Anti-Terrorism Law'," 3 September 2015, available at <http://www.adalah.org/en/content/view/8630>. See also Jonathan Lis, "Sweeping Anti-terror Bill Passes First Reading in Knesset," *Haaretz*, 3 September 2015, available at: <http://www.haaretz.com/israel-news/premium-1.674043>.

⁴⁷ See the Association for Civil Rights in Israel, Position Paper on the Counter-Terrorism Bill, 6 June 2013, available at: <http://www.acri.org.il/en/wp-content/uploads/2013/06/ACRI-Position-Paper-CounterTerrorism-Bill.pdf>.

An act, which constitutes an offence or the threat of committing such an act, to which all the following applies:

- (1) It was committed out of a political, religious, nationalistic or ideological motive;
- (2) It was committed with the intent to create fear or panic within the public or with the intent to motivate a government or any other authority, including a government or another authority of a foreign state, or an international public organization, to act or refrain from acting; for the purposes of this section, foreseeing, as a likely possibility, that the act or the threat will create fear or panic within the public is tantamount to an intention to create fear or panic within the public;
- (3) The act committed or the threat to commit it entailed, or existed a high risk for, one of the following:
 - (a) Serious harm to a person's physical being or freedom;
 - (b) Serious harm to public security or health;
 - (c) Serious harm to property, which under the circumstances it was carried out there was a real chance that it would cause harm in accordance with subsections (a) or (b) and was committed with the intent to cause such harm, or serious harm to religious sanctities; for the purposes of this section, foreseeing, as a likely possibility, that the serious harm to property will cause a serious harm in accordance with subsections (a) or (b) is tantamount to an intention to cause it;
 - (d) Serious harm to infrastructure, essential systems or services, or their serious disruption, to the state's economy or environment, or harm to the environment which caused or is likely to cause serious financial harm.

For the purposes of this definition:

- (a) if the act or the threat thereof was committed with a weapon, it shall be considered a terror act, even if it did not entail the mentioned in subsection (2), and if the act or the threat was committed with a chemical, biological or radioactive weapon, a harmful substance or sensitive plant, or through causing harm to a sensitive plant, which due to their nature or kind are likely to cause real harm to a vast territory or a large public, it shall be considered a terror act even if it did not entail the mentioned in subsections (2) or (3).
- (b) if the act or the threat thereof was committed by a terrorist group or by a member of a terrorist group, it shall be presumed that the mentioned in subsections (1) and (2) applies; if the suspect raises reasonable doubt in this matter — the reasonable doubt shall work in his favor;
- (c) There shall be no practical difference if the motive or the objective mentioned in subsections (1) and (2) were the exclusive or the primary motive or objective for the act or the threat.
- (d) "Weapon" — excluding parts or fixture as stated in Article 144(c) to the Penal Law, and including a knife as defined in Article 186 to the mentioned law.

(e) An “act of terror” is defined broadly and in an ambiguous manner, as is what constitutes a terrorist organization. The bill further defines as a serious terror offense in Article 49, which triggers special procedural and substantial provisions eradicating many of the constitutional protections given to criminal suspects, all but a very few offenses it lists. Many of these offenses do not satisfy the imminent threat bar that might serve as a possible justification to the use of special and draconian tools, such as the denial of meeting with a lawyer, extended periods of detention without appearing before a judge, secret evidence and much more. The ambiguity in the definitions of a terror act and in a terrorist organization renders the application of many of the particular offenses listed in the bill over-inclusive and disproportionate. If enacted, this bill is liable to result in serious human rights violations, overwhelmingly against Palestinians.

66. The Human Rights Committee in its 2014 concluding observations called upon Israel to “ensure that the new legislation governing the State party’s counter-terrorism measures is in full compliance with its obligations under the Covenant [ICCPR]”, and to take into account the Committee’s previous recommendations on this issue in 2010. (CCPR/C/ISR/CO/3, para. 13). There, the Committee noted, in particular, that definitions of terrorism and security suspects should be “precise and limited to countering of terrorism and the maintenance of national security.”⁴⁸

Question 10 – Solitary confinement

67. PHR-Israel receives daily complaints from Palestinian prisoners held in severe conditions of solitary confinement in Israeli prisons. They are isolated in a cell alone for 23-24 hours a day, for periods ranging from a single day to an indefinite stretch of time.⁴⁹ Beyond the health-related, mental and physical damage it causes in both the short and long terms, solitary confinement is a cruel and inhumane practice that runs fundamentally counter to the effort to rehabilitate prisoners, which is one of the purported objectives of the Israeli Prison Service (IPS).⁵⁰

68. The following data relates solely to the isolation-by-separation procedure, according to which prisoners are separated from others for a range of reasons, including security-based reasons. The IPS claims to have no data on prisoners held in punitive isolation.⁵¹

69. A total of 755 “placements in isolation” (where the same prisoner may be counted more than once) were recorded in 2014, twice the number for 2012 (390).⁵² Figures provided by the IPS indicate that 63 prisoners, accounting for 54% of all prisoners held in isolation, were held for six months or more, meaning that their isolation was extended by a court of

⁴⁸ HRC Concluding Observations, 2014 para.11.

⁴⁹ Punitive solitary confinement can last 14 days, provided it is no longer than seven days in a row; solitary confinement for interrogation can last 35 days, extendable by approval of the Attorney General; and solitary confinement by isolation can last indefinitely. For more information, see: PHR-Israel, Al Mezan Center for Human Rights, and Adalah, *Solitary Confinement of Prisoners and Detainees in Israeli Prisons* (June 2011).

⁵⁰ [IPS website](#), “The IPS views as a key objective the treatment and rehabilitation of prisoners and preparing them for re-insertion into society after serving their sentence”.

⁵¹ From the IPS response dated 2 July 2015, at the request of PHR-Israel based on Freedom of Information Act.

⁵² PHR-Israel Report, “Politics of Punishment: Solitary Confinement of Prisoners and Detainees in Israeli Prisons,” March 2016; Yaniv Kubovich, “Report: Solitary confinement doubled in Israeli jails between 2012-2014,” Haaretz, 21 March 2016: <http://www.haaretz.com/israel-news/.premium-1.709979>.

law. In July 2015, of the 117 prisoners being held in solitary confinement, 30 had been held in solitary confinement for three to five years, and seven had been there for over five consecutive years.

70. The Committee called upon Israel in its 2009 concluding observations to amend current legislation in order to “ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards.”⁵³ The figures noted above illustrate that solitary confinement is used on a widespread basis, and for extended, lengthy periods of time, which constitutes torture and/or CIDT.

Question 11 – Medical care, Family visits, and Prisoners from Gaza

Medical care in Israeli prisons

71. The health policies of the Israel Prison Service (IPS) have major structural failures, which allow for systematic violations of the medical rights of prisoners and detainees during custody, some of which can amount to or facilitate the use of torture/CIDT.⁵⁴
- a. *Lack of Supervision and transparency:* The IPS operates without appropriate external oversight, particularly with respect to inmates' access to medical services and to the quality of these services. This situation is even more serious in view of the fact that inmates cannot address their complaints to any external body with authority.
 - b. *Lack of Inspections:* Official review tours of the prisons are not undertaken often enough, nor do the reviewers always publish their reports after their visits. When such reports are indeed published, their recommendations do not appear to have any effect on what happens in the prisons. Moreover, the reviewers lack the necessary medical expertise that would allow them to identify the problems of prisoners' access to health. Independent review tours by civil society organizations are not permitted.
 - c. *Lack of independence of the prisoners' health system:* The health services of prisoners are managed and provided exclusively by the IPS, not by the Ministry of Health. They are not subject to supervision by the health authorities. Moreover, IPS doctors, being directly employed by the prison services, are often in a state of extreme ‘dual loyalty’ – a conflict between the interests of their employers and their obligations toward their patients.⁵⁵
 - d. The healthcare system run by the IPS is often subject to security and intelligence considerations that are not transparent, and that frequently stand in stark contrast to the benefit of the patients and their healthcare needs. Transferring the responsibility for prisoners' healthcare from the IPS and the Ministry of Internal

⁵³ CAT Concluding Observations, 2009 at para. 18.

⁵⁴ PHR-I report, “Oversight and Transparency in the Israeli Penal System,” July 2008.

<http://d843006.bc470.best-cms.com/uploaded/%D7%93%D7%95%D7%97%20%D7%A9%D7%A7%D7%99%D7%A4%D7%95%D7%A%20%D7%95%D7%91%D7%A7%D7%A8%D7%94.pdf>

⁵⁵ PHR-I report, “The Palestinian prisoners' hunger strikes of 2012,” January 2013 at page 23.

Security to the Ministry of Health would ensure better healthcare services for prisoners, including improving their quality, accessibility and transparency.⁵⁶

- e. *Disregard for health-related complaints and inadequate medical treatment of Palestinian prisoners:* Unprofessional conduct on the part of the IPS doctors, combined with unreasonably long waiting periods for specialist medical examinations and treatment, often lead to the unnecessary deterioration of patients' medical conditions which could have been prevented if treated on time. This negligence has sometimes led to severe, irreversible health problems and even to cases of death.
- f. *Lack of adequate and transparent mechanisms of inquiry into deaths in custody:* Inquiries following the death of a prisoner are conducted internally by the IPS. No other governmental or independent bodies are involved or have the authority to intervene. Inquiries are only conducted to determine whether the cause of death was natural or not (e.g. homicide or suicide). If death was a consequence of illness, a medical inquiry will not be conducted. The results and conclusions of such inquiries are rarely given to the families of the deceased prisoners.

Article 10:

Question 26 – Excessive Use of Force and Ill-Treatment by the Police

72. The Israeli police and security authorities utilize excessive use of force in various contexts, and there is *de facto* impunity granted to police officers and commanders responsible for this disproportionate use of force. See also *Ill-treatment of injured detainees*, below.

October 2000

73. On 27 January 2008, the Israeli Attorney General decided not to file any indictments against police officers or commanders responsible for the killings of 13 unarmed Palestinian citizens of Israel during the October 2000 protest demonstrations inside Israel, and the injury of thousands of others. His decision officially closed all the cases against the security forces.⁵⁷ In October 2000, Palestinian citizens of Israel held widespread demonstrations at the outbreak of the second Intifada. The brutal and disproportionate response of the Israeli security forces included the use of snipers, and the firing of live ammunition and rubber-coated steel bullets at unarmed demonstrators.

74. The inability or unwillingness of Israel to properly investigate and prosecute security forces in cases involving the killing of Palestinian citizens of Israel further ingrains the existing culture of impunity within the Israeli police and security forces.

⁵⁶ Ibid.

⁵⁷ The Attorney General has filed indictments regarding the October 2000 events only against Arab citizens, including relatives of the deceased. For more information, see: <http://www.adalah.org/eng/october2000.php>. To view a summary of the Attorney General's decision, see: <http://www.justice.gov.il/NR/rdonlyres/5B88648A-D537-47E1-9CE8-EE9D586CFCFE/9728/english2.doc>. The UN Special Rapporteur on Extra-Judicial Executions discussed the failure to issue indictments in his report of 2 May 2008. Referring to his previous communication to Israel, he stated that, "[t]his outcome... would appear to fall short of the international standards."

December 2008

75. On 27 December 2008, Israel initiated an extensive military offensive in Gaza codenamed “Cast Lead”. Thousands of Palestinian citizens of Israel throughout the country demonstrated against the 23-day military offensive, during which the Palestinian civilian population in Gaza suffered damage and injury on a massive scale. The law enforcement authorities responded to the protestors with mass arrests and excessive force: the police, who dispersed lawful demonstrations by force, used serious violence against peaceful demonstrators. Several demonstrators suffered severe injuries.⁵⁸
76. The Fact-Finding Mission on the Gaza Conflict⁵⁹ dedicated an entire chapter of its report to the arbitrary arrest and harassment of anti-war protesters in Israel, relying extensively on information provided by Adalah.⁶⁰ The Mission recommended that Israel set up an independent inquiry to assess whether demonstrators faced discrimination in charges and detention pending trial (para. 1972). Israel did not implement this recommendation. The same trend continues into recent years, which have seen police officers continue to engage in excessive force towards demonstrators and/or security suspects.
77. The Israeli Ministry of Justice’s Police Investigation Unit (“Mahash”) is the body responsible for investigating suspected cases of excessive use of force and ill-treatment by the Israeli police. However, official data obtained by Adalah strongly suggests that Mahash continues to provide broad impunity to the Israeli police, systematically failing in its duty to conduct adequate investigations, a factor that is likely to encourage the use of excessive police violence against citizens, and particularly Palestinian citizens as members of a marginalized minority.
78. On 1 May 2014, following a written request, Adalah received data about the number of complaints submitted to Mahash against police officers between 2011 and 2013.⁶¹ The findings were alarming. Between 2011 and 2013, as many as 11,282 complaints were filed to Mahash. 93% of the complaints filed against the police were closed; over 72% of the cases were closed without an investigation; 21% of the files were closed after investigation, half of them for “lack of evidence;” 3.3% of the cases filed (373 complaints) led to disciplinary actions against police officers; only 2.7% of the cases (303 files) resulted in prosecution.

Summer 2014

79. Brutality and violence again characterized the police’s response to anti-war demonstrators in the summer of 2014, when thousands of Palestinian citizens of Israel took to the streets en masse to protest another Israeli military offensive against the Gaza Strip, “Operation

⁵⁸ For detailed information about the attacks on the rights and freedoms of Palestinian citizens of Israel see: Adalah, *Prohibited Protest*, September 2009, available at:

<http://www.adalah.org/uploads/oldfiles/features/prisoners/protestors%20report.pdf> (full report, in Hebrew) and http://www.adalah.org/uploads/oldfiles/features/prisoners/GAZA_REPORT_ENGLISH_FOR_THE_NEWSLETTER.pdf (executive summary, in English).

⁵⁹ The Report of the United Nations Fact Finding Mission on the Gaza Conflict (the Goldstone report), 25 September 2009, A/HRC/12/48, available at:

<http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session9/Pages/FactFindingMission.aspx>

⁶⁰ Adalah, *Prohibited Protest*.

⁶¹ See Adalah, *Mahash: The Green Light for Police Brutality*, September 2014, available at: <http://www.adalah.org/uploads/oldfiles/Public/files/English/Newsletter/Sep-2014/Adalah-Mahash-Data-Report-Sep-2014.pdf>.

Protective Edge”, which consisted of 51 days of bombardment and shelling from air, land and sea. This offensive left over 2,250 Palestinian civilians dead.

80. Many demonstrators in Israel were subjected to police violence, both from the brutal protest dispersal methods used by the police and from being struck by officers during individual arrests. Further, the police falsely charged numerous protestors with assaulting police officers.⁶² One of the primary causes for the police’s brutality towards citizens in general and demonstrators in particular is Mahash’s failure to investigate and prosecute offending officers.

Mid-September 2015

81. ***Arrests of demonstrators:*** During the violent events that erupted in Israel and the West Bank since mid-September 2015, Israeli police, backed by the courts, have tried to prevent the legitimate protest of Palestinian citizens of Israel against the government’s policies by means of brutal and illegal acts. The primary purpose of these acts has been to intimidate and oppress citizens to silence their dissent. Adalah, together with Mezan (in Nazareth), Human Rights Defenders and numerous volunteer lawyers, represented close to 100 detainees in Israeli courts around the country, and gathered testimonies from those individuals whose rights have been violated by the police. Brutal and repressive acts undertaken by the Israeli police against Palestinian citizens and residents of Israel include the arbitrary arrests of minors; “preventive arrests” of activists/protest organizers to thwart demonstrations; arrests of activists’ family members to pressure them; and severe physical violence against protestors, and in particular, Palestinians in East Jerusalem.⁶³
82. ***Arrests of juveniles (minors) and serious violations of their rights:*** Based on Adalah’s legal representations, Adalah found that the Israeli police failed to follow the special procedures applicable to the arrest of minors when arresting Palestinian youth. The police failed to afford minors the right to consult with an attorney, questioned them without the presence of their parents, interrogated them late at night, and compelled them to sign statements that they did not understand. The state argued in court against the release of these minors, claiming that due to the ideological background of the protests, and in light of the security situation in general, the authorities should not give weight to a minor’s lack of a criminal record in considering his/her release from detention. Like other measures taken by the police, these state practices are also illegal.
83. ***“Preventive arrests”:*** Preventive arrests were another illegal police practice that was used against dozens of Palestinian citizen activists. The police issued arrest warrants on the grounds of suspicion of “organizing an illegal gathering with the intent to riot.” Seven activists were arrested on this fictitious charge, some also with their parents. These arrests have no legal basis; there is no crime in Israeli law of “attempting to organize an unlawful gathering.” Thus with these arrests, the Israeli police acted above the law and according to their own unauthorized discretion.

⁶² For more information see Adalah. *Silencing the Opposition: Israeli Law Enforcement’s Restrictions on Freedom of Expression in Israel during “Operation Protective Edge” in Gaza, 8 July – 26 August 2014*, issued August 2015, available at <http://www.adalah.org/uploads/Adalah-Report-Silencing-the-Opposition-11-Aug-2015.pdf>.

⁶³ See Attorney Sawzan Zaher, “From October 2000 to October 2015”, *Haaretz*, 20 October 2015, available at: <http://www.haaretz.com/opinion/premium-1.681510>. See also Adalah, “Israeli police acting above the law, taking brutal measures to suppress legitimate protest of Palestinian citizens of Israel,” 11 October 2015, available at: <http://www.adalah.org/en/content/view/8652>

84. ***Arrests of family members, false arrests:*** The police arrested the parents of political activists, who they claimed were suspected of serious crimes including incitement to terrorism. In practice, some of these activists were not questioned at all; some reported to Adalah that upon arrival at the police stations, they were told that they were not suspected at all; while others were held only for a short time and sent home. Therefore, it is clear that the arrests of the activists' parents were aimed at compelling their children not to organize or participate in demonstrations, and that before signing these arrest warrants, the courts did not examine the cases or the police materials justifying the parents' detention. Further, three bus drivers who drove activists to a demonstration site were arrested and charged with unlawful gathering, before any such event or demonstration took place. The drivers were then released to house arrest until the following day.
85. ***Police violence against demonstrators:*** Some protestors were beaten by the police and hospitalized. In one case, a minor's leg was broken and he underwent surgery. According to the police, his leg was broken "during his flight from the police and as they tried to take control of him." Another activist was hospitalized with internal bleeding and two broken ribs, following a beating by the police. In addition, in the cases represented by Adalah, the bodies of two other minors bore marks of violence. One police representative claimed that he "used reasonable force."
86. ***Total number of Palestinian citizens of Israel detained in different localities:*** Approximately 100 activists were arrested during the demonstrations in late September and October, predominantly from Nazareth, Haifa, Tamra, Jaffa, Taybeh, Umm al-Fahem and Arrabe. Most police requests to extend the detention of arrested demonstrators were approved by the courts, without any critique of the police behavior. Throughout the various hearings, the judges expressed understanding with the police and excused their acts of gross violations of detainees' rights, especially minors. The courts granted extensions of detention unjustifiably, while repressing basic freedom of expression rights of citizens, and granted long periods of detention requested by the police without setting short court status dates that would allow for the further judicial review of developments in investigations.⁶⁴
87. ***Ill-treatment of injured detainees:*** PHR-Israel filed many complaints on behalf of patients under custody – most of them minors – their families, and their lawyers regarding the treatment of detainees in hospitals during and following the latest upsurge in violence.⁶⁵ Below is a list of violations of the rights of detained patients recorded by PHR-Israel:
- a. Wounded or sick detainees were interrogated in hospitals without the presence of the detainees' lawyers representing them or their families, while the authorities employed threats, punishments, or exploited their medical condition to pressure them. Medical staff ignored these practices. Such interrogations also took place after serious surgeries and other treatment, violating the protection to which the patient is entitled under the law.

⁶⁴ See also: Adalah, *Silencing the Opposition*.

⁶⁵ PHR-I letter to Moshe Siman Tov, Director General of the Ministry of Health, 19 November 2015.

- b. The vast majority of patient detainees were handcuffed to their hospital beds, which was very painful for many of them as they were wounded and had in some cases undergone surgical procedures. In some cases, the shackles, which are closed very tightly, caused wounds and edema. The shackling – which was redundant as in most cases the detainees were placed under 24-hour surveillance – took place despite IPS Commission Ordinance 4:15:01, according to which shackling should only be used after exhausting all other means. Medical staff did not intervene to have the shackles removed.
- c. Numerous complaints were received regarding severe verbal and physical abuse from guards towards patients under custody in the hospital. In some cases, patients were subject to verbal harassment by nurses.
- d. The transmission of confidential medical information from the hospital to the media about the condition of wounded detainees – as was the case with one patient who was a minor – breaches the duty of medical confidentiality.
- e. Some of the minors were regularly treated or even operated on without parental consent.
- f. The families of Palestinian detainees were often prohibited from visiting hospitals in Israel, and in most cases the medical staff denied requests for information by telephone.
- g. In some cases, no continuity of care was ensured after the detainees were released from the hospital to the interrogation centers.

Extra-judicial executions

88. While the Israeli military’s own regulations establish that live ammunition must be used “only under circumstances of real mortal danger”, in September 2015, during an intense wave of violence, the Israeli Security Cabinet approved the decision that the police are allowed to use of lethal force “when they face danger to any lives.”⁶⁶ This change effectively relaxed the rules of engagement for the law enforcement forces. A statement released by the Security-Cabinet said that ‘Until recently police would open fire only when their own lives were in danger. As of now, they will be permitted to open fire – and they will know that they have the right to open fire – when they face danger to any lives.’⁶⁷
89. The new regulations led to a dramatic increase in the use of lethal force in unjustifiable circumstances. By that, the Israeli police have in many instances engaged in what appear to be extrajudicial executions (EJEs), which are effectively prohibited under the UN CAT and the ICCPR. This conclusion is corroborated by video evidence and/or first-hand witness accounts in several of the cases. This “shoot to kill” phenomenon has become

⁶⁶ Government of Israel, Security Cabinet Statement, 24 September 2015, available from <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeJerusalem240915.aspx>.

⁶⁷ See <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeJerusalem240915.aspx>

alarmingly widespread, particularly in East Jerusalem and other parts of the West Bank against Palestinian youth.⁶⁸

90. On 7 October 2015, Adalah requested that the Israeli police publish the full open fire regulations, and they refused citing state security concerns. On 10 December 2015, Adalah filed an administrative petition to the Lod District Court seeking the disclosure of the regulations.⁶⁹ The case is pending.
91. During this latest round of violence, the Israel police have also followed a policy of withholding the bodies of extra-judicially executed Palestinians, and in some cases have reneged on agreements made with the families of the deceased for their release for autopsy and/or burial.⁷⁰ The withholding of bodies obstructs the possibility of conducting an investigation into the circumstances of the alleged extra-judicial executions and a proper autopsy.⁷¹
92. Three case examples in which police opened fire on Palestinians that appear *not* to have posed an imminent danger to them or to others follow:

- a. **Case 1: Fadi Alloun, 19 years old, from East Jerusalem, Musrara neighborhood**

Facts of the Case: On 4 October 2015, Mr. Fadi Alloun was shot dead by police in the neighborhood of Musrara in Jerusalem, besides the Old City. The shooting occurred following calls by a mob of Israeli Jewish citizens urging the police to shoot him on sight, following an alleged stabbing. A video was taken of the incident that documented the killing and was widely distributed. The video clearly indicates that the deceased posed no immediate threat to life to those around him that could justify the shooting and killing. The video also documents how the Israeli police officers involved exited from two police cars and immediately began to fire a barrage of shots, and it also records the sounds of the crowd who gathered at the scene and urged the police to shoot Alloun.

Video evidence: <https://www.youtube.com/watch?v=wETAMJqc5nA> | https://www.youtube.com/watch?v=w_34gTwm_c

Legal Action Taken: On 10 October 2015, Adalah and Addameer – Prisoner Support and Human Rights Association sent a complaint on behalf of the family of Fadi Alloun to the Israeli Police Investigation Unit (“Mahash”) demanding an investigation into the circumstances of the police shooting and killing of Alloun. Adalah and Addameer argued that the police officers at the incident had violated

⁶⁸ See also B'Tselem, "Unjustified use of lethal force and execution of Palestinians who stabbed or were suspected of attempted stabbings," 16 December 2015, available at: http://www.btselem.org/gunfire/20151216_cases_of_unjustified_gunfire_and_executions.

⁶⁹ Administrative Petition 23001-12-15, *Adalah v. The Israel Police* (case pending). See Adalah, "The police's contention that publishing the instructions could harm state security and threaten public order is baseless," 14 December 2015, available at: <http://www.adalah.org/en/content/view/8721>.

⁷⁰ See, Adalah and Addameer, "Israeli Occupation forces continue to withhold the bodies of deceased Palestinians, and renege on conditions of release," 1 March 2016, available at: <http://www.addameer.org/news/israeli-occupation-forces-continue-withhold-bodies-deceased-palestinians-and-renege-conditions>.

⁷¹ See also Al-Haq, "From Killing to Burial: Questions Left Unanswered," 10 March 2016, available at: <http://www.alhaq.org/documentation/weekly-focuses/1028-from-killing-to-burial-questions-left-unanswered>.

the rules of engagement by using deadly force as a first course of action instead of as a last resort. In addition, the complaint noted that the police had refused Addameer's request to conduct an autopsy of Alloun's body, needed to establish the circumstances of his death. The complainants that the police's rejection raises the concern of a clear conflict of interest and serious suspicion that the police are attempting to tamper with the evidence and disrupt the investigation in advance, as well as damage essential factual findings.⁷² The family also asked the Jerusalem Magistrates' Court to appoint an investigative judge to the case, but was rejected on 8 October 2015.

State's Response: No response to the request to open an investigation.

Current Status: The Israeli authorities returned Alloun's body to his family, one week after his killing, and he was buried without an autopsy.

b. **Case 2: Ahmad Abu Shaaban, 22 years old, from East Jerusalem, Ras al-Amud neighborhood**

Facts of the Case: On 14 October 2015, Ahmad Abu Shaaban was shot dead by the Israeli police in the area of the Jerusalem Central Bus Station. According to police reports, the deceased was shot after allegedly stabbing a woman in the area. A video documenting the incident shows that when the police shot Abu Shaaban to death, he was already lying on the floor, incapacitated, and did not pose a threat to anyone. A police officer stood next to him, while he was already on the ground, and shot him several times until he was dead. The fact that Abu Shaaban was shot several more times after he was already lying down on the ground is a clear indication of the shooter's intention to kill.

Video evidence: <https://www.youtube.com/watch?v=w-a8gio2W5M>

Legal Action Taken: On 21 January 2016, Adalah and Addameer sent a letter on behalf of Abu Shaaban's parents to Mahash demanding the opening of a criminal investigation into the killing of their son by the police, and the immediate suspension of the police officers involved. They argued that the shooting in this case appears to constitute a serious violation of the rules of engagement.⁷³

State's Response: No response.

Current Status: Waiting for response.

c. **Case 3: Mu'taz Ewisat, 16 years old, from East Jerusalem, Jabal al-Mukaber neighborhood**

Facts of the Case: The Israeli police killed Mu'taz Ewisat on 17 October 2015 in the Israeli Jewish settlement of Armon HaNatziv in East Jerusalem. According to police reports, two police officers asked Ewisat to identify himself and show his ID card, and he immediately pulled out a knife and tried to stab them. One of the

⁷² See, "Family demands that Israeli Police Investigation Unit "Mahash" investigate police killing of Palestinian youth Fadi Alloun," 11 October 2015, available at: <http://www.adalah.org/en/content/view/8654>.

⁷³ See "Adalah and Addameer demand investigation into the killing of Ahmad Abu Shaaban," 10 February 2016, available at: <http://www.adalah.org/en/content/view/8746>.

officers used physical force and struck the deceased. Mu'taz fell to the ground but he continued to hold the knife in his hand. He allegedly stood up again and tried to stab one of the two policemen, and then he was shot by the police officers.

Video evidence: In contrast to other recent killing cases of Palestinians, this incident was not filmed, and the family only learned of Ewisat's death from the media. The only known account of Mu'taz's killing is the version given by the police. Mu'taz's family vigorously denies the police's account.

Legal Actions:

(1) On 4 November 2015, Adalah and Addameer sent an urgent request to Mahash demanding a criminal investigation into the killing, and that an autopsy of his body be conducted before it is returned to his parents, with the presence of a medical examiner commissioned by his family. The organizations argued that the police had no justification for fatally shooting Ewisat, and that they had other courses of action available to them that could have secured his arrest, for example by warning him or firing into the air. Over the last five months, the Israeli police refused to conduct an autopsy of Ewisat and refused to release his body to his family. The police conditioned the release of his body on the family's immediate burial of the deceased, which would negate the possibility of an autopsy being conducted by a forensic doctor, and therefore, thwart an impartial investigation into the circumstances of his killing.

(2) On 25 October 2015, Mr. Ahmad Ewisat, the father of the deceased child, requested from the Jerusalem Magistrates' Court the appointment of an investigatory judge to inquire into the circumstances of his son's death. The court rejected his request on 26 October 2015.

(3) On 13 March 2016, Adalah and Addameer submitted a petition to the Israeli Supreme Court on behalf of Ewisat's family demanding an independent autopsy of his body.⁷⁴ The petitioners argued that, "preventing the family from conducting an autopsy only reinforces the strong suspicions that the police have tampered with the evidence and impeded the process of investigation." The police are typically the party that requests such procedures to be able to uncover the truth. However, in this case the police are refusing the autopsy.

Current Status: Following the submission of the petition to the Israeli Supreme Court, the state agreed to allow an independent doctor to be present at the autopsy of Ewisat's body. The autopsy was conducted on 21 March 2016. The family is now awaiting the findings.⁷⁵

93. These three cases and others⁷⁶ indicate that the police acted in a manner contrary to the order that fatal fire should be used only, "as a last resort, and only in circumstances where

⁷⁴ Case citation: HCJ 2086/16, *Ahmad Ewisat v. The Israel Police*.

⁷⁵ See Adalah press release, "Following petition, autopsy conducted on body of Palestinian minor Mu'taz Ewisat," 22 March 2016: <http://www.adalah.org/en/content/view/8767>.

⁷⁶ B'Tselem has also documented cases of EJE's in its report, "Unjustified use of lethal force and execution of Palestinians who stabbed or were suspected of attempted stabbings," 16 December 2015 available at: http://www.btselem.org/gunfire/20151216_cases_of_unjustified_gunfire_and_executions

there is a sensible relationship between the degree of danger arising from the use of weapons, and the outcome they are trying to prevent.”⁷⁷

94. Politicians and senior police officers have openly called for the extra-judicial killing of suspects, and have urged civilians to carry guns in statements that effectively endorse the extra-judicial execution of Palestinians.⁷⁸ For example, Jerusalem District Police Commander Moshe Edri was quoted as saying, “Anyone who stabs Jews or hurts innocent people is due to be killed.” Interior Security Minister Gilad Arden declared that, “every terrorist should know that he will not survive the attack he is about to commit.” MK Yair Lapid stated, “You have to shoot to kill anyone who pulls out a knife or screwdriver.” Jerusalem Mayor Nir Barkat called on Israeli civilians who own firearms to carry them at all times.⁷⁹
95. The Israeli police’s actions, backed by politicians’ statements and coupled with the non-disclosure of the new rules of engagement all amount to a clear violation of the Convention and are in essence a license to engage in extra-judicial executions.
96. We call on the Committee to recommend that the State of Israel take urgent measures to prevent extrajudicial killings, carry out thorough and impartial investigations of allegations of extrajudicial killings including the performance of autopsies, and ensure that those responsible are prosecuted and punished.

Question 26 – III-Treatment of Gaza Fishermen

97. Israeli forces continue to implement a policy of cruel, inhuman and degrading treatment (CIDT) against Palestinian fishermen within the context of closure/blockade of the Gaza Strip. According to Al Mezan’s documentation, the Israeli forces and authorities regularly employ live fire on fishermen, their boats, and equipment; arbitrarily arrest fishermen employing humiliating and degrading practices; and use physical violence and verbal abuse against Palestinian fishermen carrying out their work in the Israel-controlled, restricted fishing zone off the coast of the Gaza Strip.
98. The currently-permitted fishing zone authorized by Israeli authorities is defined as six nautical miles from Gaza’s coast. In line with the Oslo Accords (1994), Palestine is entitled to 20 nautical miles of fishing grounds. Within the reporting period, Israel has arbitrarily reduced the restricted fishing zone to just three nautical miles, thereby preventing access to between 70-85% of Gaza's maritime territory. The permitted zone has fluctuated sporadically between three and six nautical miles since 2007.
99. The process of arrest is humiliating and degrading and seems to follow a specific protocol implemented by the Israeli navy, which violates Israel’s obligations regarding torture and CIDT. Typically, when a Palestinian fishing boat is intercepted, armed naval vessels surround it, usually with simultaneous employment of live fire. The fishermen are ordered to stop the engine, remove all their clothing, and swim towards the Israeli naval vessel to

⁷⁷ See https://www.police.gov.il/Doc/pkodotDoc/sug_2/060214_2.pdf

⁷⁸ See, “Human Rights Organizations in Israel: Politicians’ calls to police and soldiers to shoot rather than arrest endorse the killing of Palestinians”, 14 October 2015, available at: <http://www.adalah.org/en/content/view/8659>. For additional examples of excessive use of force against Palestinians see: “Adalah files complaint on behalf of Palestinian minor attacked by army dog during detention”, 20 December 2015, available at: <http://www.adalah.org/en/content/view/8722>

⁷⁹ Steven Klein, “Why Israel’s Unwritten ‘Shoot to Kill’ Policy Is So Dangerous,” *Haaretz*, 20 October 2015.

their own arrest, including during the cold winter months. Once on the boat, they are handcuffed, given very light clothing, and blindfolded. The fishermen report beatings, verbal abuse and humiliation throughout the process.

100. Arrested fishermen are transported to Ashdod port where they are interrogated about their families and communities. The environment is extremely coercive: blackmail is employed against detainees and attempts are made to force the fishermen to collaborate with the Israeli authorities. The fishermen are left extremely vulnerable to torture and ill-treatment, as has been documented throughout the process of arrest, interrogation, and detention of these victims. The vast majority of these fishermen are released on the same day, usually at Erez border crossing, or on the next day, which strongly suggests there was no sound basis for their arrest and detention.

101. The following table provides data collected by Al Mezan from mid-June 2009 to mid-February 2016:

Year	Incidents	Shootings	Killed	Injured	Detained
Mid-2009	16	15	0	1	16
2010	54	54	1	5	26
2011	70	69	0	6	43
2012	123	123	1	2	87
2013	149	148	0	10	22
2014	107	106	1	15	64
2015	126	125	1	29	73
2016	9	9	0	3	19
Total	654	649	4	71	350

102. The following testimony taken by Al Mezan provides details of the kind of ill-treatment to which arrested Gazan fishermen are routinely subjected by Israel:

a. *Case of fisherman Jihad Basheer Abu Riyala, 24 years old:*⁸⁰

“At around 7:00 am on Tuesday, 11 March 2013, I went along with my brother Sha’ban to the harbor. We went directly to our small boat which was moored at the port... We boarded and sailed in a southwesterly direction. We stopped west of Al Sheikh ‘Ijleen area, to the southwest of Gaza City.

I saw one of the illuminated buoys [which demarcates the no-go line for Palestinian fishermen] about one nautical mile to the west of us. We were about five nautical miles off the coast [during this period, fishermen were allowed to fish up to six nautical miles offshore]. We took our nets and started fishing. We continued working until 1:00 pm.

I suddenly saw a big Israeli boat entering the permitted fishing zone. It was sailing about one nautical mile east of us [about four nautical miles from the coast]. After one hour, the Israeli boat sailed to the west and it was around one nautical away from us [about six nautical miles from the coast]. I suddenly saw two more big

⁸⁰ See, “Field Report - Torture and Cruel, Inhuman and Degrading Treatment: the Palestinian Population, the Gaza Strip and Israeli Authorities”, November 2015, available at: <http://www.mezan.org/en/uploads/files/14519781991754.pdf> (last accessed 8 April 2016)

Israeli boats. One was sailing to the south and the other was sailing north beyond the illuminated buoys.

I sailed back to the east about two kilometers, afraid of the Israeli boats. I heard shooting. Then I saw Israeli boats chasing us. We continued sailing to the east until we were three nautical miles away from the coast. In the meantime, the Israeli boats managed to surround us. They were just a few meters away from us. I heard shooting again. I saw bullets hit our boat. I heard an Israeli soldiers talking via loudspeaker, saying “stop or I will kill you, you son of a bitch.” I told the soldier, “Enough, we are leaving.”

Then he opened fire again and I heard the engine of our boat stop. He then ordered us to take off our clothes. We took off our clothes except our underwear. He ordered us to jump into the sea and swim towards him. I did. I was so cold. I told him in a loud voice, “Come and take me. It’s so cold.” He did not answer. I heard shooting again. I saw ripples in the water around me for a minute.

I swam to the Israeli boat. When I reached it, I climbed its wooden ladder. I was so cold. A soldier blindfolded me and handcuffed me with a plastic strap. I could hear a soldier via loudspeaker ordering my brother Sha’ban to jump into the water. A few minutes later, a soldier untied my hands and made me dress in a light cotton shirt and trousers. He then handcuffed me with metal handcuffs. I felt the Israeli boat moving. A soldier asked me my name and I answered. He asked me for my ID card number. I did not answer him because I had not memorized it. He beat me on my head with his fist. He then beat my shoulder and my back. Then he left me alone.

Half an hour later, the Israeli boat stopped. A soldier uncovered my eyes. I saw my brother beside me. I saw soldiers around me. The boat had stopped. There was a quay opposite us and a number of soldiers were standing there. They made me get down onto the quay. Two soldiers blindfolded me and took me and my brother to a room. We sat there on chairs for about four hours. A soldier then took me to another room. He uncovered my eyes. I saw a man dressed in civilian clothing sitting behind a desk. He asked me to sit down and I did. He asked me my name and about my work. I answered him. He then asked me questions about Gaza seaport, the other fishermen, the Hamas movement, my home, and my neighbors.

He told me, “I’ll give you a chance to think about your future working with us.” I told him, “You want me to be a traitor? This is not acceptable to me”. He said, “No, this opportunity will make your life better.” After one hour of interrogation, I still refused to cooperate with them. A soldier then took me back to the previous room. Then they took my brother away with them. After an hour, my brother was brought back to the same room. They took us to a car and drove us to Erez crossing. They released us at around 11:00 pm the same day. We went home. The Israeli forces had confiscated our boat, nets, two GPS, and the cell phone of my brother. Fishing is our only source of living.”⁸¹

⁸¹ Information based on the documentation and testimonies contained in the database of Al Mezan Center for Human Rights.

b. *Case of fisherman Mahmoud Sa'eed Fathi Al-Sa'eedi, 23 years old:*⁸²

“At approximately 4:00am on 3 February 2016, I headed to the port accompanied by my brother Mohammed. We stayed there for a while and at 5:00am we boarded the boat and sailed towards the location of the nets, which we had cast the previous day (we were using a torch to light our way). When we reached the location of the nets, we turned off the engine and stayed there waiting for the morning light.

At 7:00am we started to draw the fishing net, and then I saw an Israeli military gunboat and a military inflatable boat heading quickly towards us from the east – the two military boats were inside the imposed 6 nautical mile fishing zone. At that moment, I started the engine and sailed east towards the imposed fishing zone leaving the fishing net behind. I heard gunshots and the voice of an Israeli soldier over an amplifier asking us to stop. We kept going until we reached a distance of approximately 5.5 nautical miles off the coast. There we came head to head with the military boats, a few meters away from our fishing boat. We tried to maneuver and escape in fear of getting arrested and having our boat confiscated.

I then heard gunshots and I felt pain in my right leg, my back, and my head. Then the small military boat approached us and faced the front of our boat. I was standing in the front of the boat and my brother was at the back. I started begging the soldiers to leave us alone. Suddenly, I saw the military inflatable boat approaching quickly towards us and ended up on top of our boat. I fell down and I felt excruciating pain in my neck and mouth, and was bleeding heavily. I remained lying down on my back and the inflatable boat was on top of me. After about one minute, the military boat retreated. And then I saw my brother, Mohamed, turn on the engine and sail again.

The military boat resumed the chase, and shortly afterwards I heard heavy fire and our boat stopped. The military boat approached us again, and I was still lying on my back when two soldiers suddenly boarded our boat, put me on a stretcher, and carried me to a small plane which had landed next to the boat. They injected me with a syringe...and then I lost consciousness.

I woke up and found myself in a hospital unable to speak; my neck and mouth were covered with white gauze. I learned that I had been there for 7 days and my mom was at my bedside. After that, I underwent 4 surgeries.

On 18 February 2016, I went back home to Gaza. Now, I'm at Al-Shifa Hospital, where I found out that some of my vocal cords have been torn, and that I have a fracture in my left jaw, which makes it hard for me to speak. I was hit with three bullets, one in my right leg, another one in my back, and a third one in my head. The doctors advised that I don't eat any solid foods; instead I'm only allowed to drink fluids and have intravenous therapy.”⁸³

⁸² See “Israeli Forces Severely Injure Palestinian Fisherman, Arrest Several Others, and Confiscate Two Boats; Al Mezan Calls on the International Community to Intervene”, 29 February 2016, available at:

<http://mezan.org/en/post/21190> (last accessed 10 April 2016)

⁸³ Ibid.

c. *Case of fisherman Tawfiq Sa'eed Mohammed Abu Riyala, 32 years old:*⁸⁴

At approximately 1:15 am on 7 March 2015, Israeli gunboats opened fire at Palestinian fishing boats off of the coast west of As-Sudaniya in the north of the Gaza Strip. The fishermen were in the process of attracting fish before casting their nets, when the Israeli forces opened fire on them. As a result of the shooting, the engines of two boats were damaged.

The fishermen tried to escape but the Israeli forces proceeded to open fire on them directly. As a result, Tawfiq Sa'eed Mohammed Abu Riyala, 32, was killed, having sustained a bullet to his abdomen. The Israeli forces arrested Jihad Sa'eed Ahmed Kaskin, 20, and his brother Waheed, 25. They were detained and their boats were confiscated. At approximately 1:00 pm on the same day, medical sources at the Shifa Hospital in Gaza City pronounced Abu Riyala dead from wounds he had sustained in this attack. At approximately 2:00 pm on the same day, the Israeli forces released the two other fishermen, but kept the two boats and other equipment.

103. In these cases illustrated above, the Israeli forces' use of intentional, excessive force without justification against Palestinian fishermen blatantly violates the Convention, as well as the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms. The case of Tawfiq Sa'eed Mohammed Abu Riyala, who was shot and killed while posing no imminent danger to life, amounts to an unlawful killing or extrajudicial execution.

Question 27 – Doctors, complicity, and the Istanbul Protocol

104. Testimonies and complaints gathered by PHR-I continue to reveal that the violation of medical confidentiality of detainees and prisoners is the norm rather than the exception. Even more alarming is the disclosure of confidential medical information to security entities including the Israeli military authorities, the Israel police, the Israel Prison Service, and the Israel Security Agency, against the best interests of the patients. The disclosure of such information creates potential of its misuse by these security entities.⁸⁵

105. The breach of confidentiality occurs in two main situations:

- a. *Violation of medical confidentiality by doctors employed at interrogation facilities:* Doctors employed at interrogation facilities continue to disclose confidential medical information about their patients to ISA interrogators on a regular basis by means of special written forms dedicated to this purpose, according to an established procedure.
- b. *Disclosure of information by doctors in hospitals to interrogators and prison guards:* The disclosure of information about patients held in custody to interrogators and security entities is not unique to doctors employed by the IPS and in interrogation facilities. Several testimonies indicate a worrying trend

⁸⁴ Al Mezan Center for Human Rights, Press Release: "IOF Escalate Attacks in ARA, Kill Palestinian Fisherman and Arrest Two," 13 March 2015, available at <http://mezan.org/en/post/20099> (last accessed on 26 March 2016).

⁸⁵ PHR-I letter to Arnon Afek, Medical Deputy Director General of the Ministry of Health, 24 March 2015.

whereby the organizational culture of several hospitals and of some medical personnel have been compromised by political and security considerations that serve to fulfil the demands and expectations of the security services but are contrary to the best interests of the detained patient.

106. Doctors and other medical staff fail to properly document injuries inflicted by interrogators on detainees and to report such injuries to their superiors. They continue to return detainees to their ISA interrogators to face the same interrogation methods, in a gross violation of medical ethics and Articles 1 and 15 of the Convention. As noted previously, the staff also transfers medical information to interrogators without the consent of the detainees, and routinely prioritizes the requirements of ISA interrogators over the well-being of the detainees.
107. The complicity of medical staff enables the ISA to obtain and use information about the detainees' health situation in order to pressure and coerce detainees. Staff is also complicit in cases where the ISA denies or delays detainees' treatment, examination and provision of medication as a means of pressure during interrogation.
108. The operating mechanism of the committee set up by the Israeli Ministry of Health to review medical staff's complaints of harm or violence against detainees under interrogation remains opaque. In fact, the Ministry of Health has not yet publicly informed medical personnel of the existence of this committee.
109. PHR-Israel sent a letter to the Ministry of Health on 19 November 2015 demanding that it takes the following actions against the violation of medical confidentiality by medical staff and institutions:
 - a. Investigate in a transparent manner cases of medical personnel being involved in violations of medical confidentiality and take substantial steps against doctors and organizations that violated their duties;
 - b. Write and disseminate guidelines prohibiting medical practitioners from being involved in violations of ethical or professional codes, with special emphasis on medical confidentiality and the non-disclosure of patients' information to interrogators;
 - c. Instruct medical practitioners to report any act demanded of them against the best interest of the detainee;
 - d. Act to stop the employment of doctors in interrogation facilities.
110. In its response, the Ministry of Health acknowledged that the cases described could constitute a violation of the principle of medical confidentiality, but has not opened any investigations into the cases reported.

Question 32 – Palestinian prisoners

111. As of January 2016, there were 6,900 Palestinian prisoners being held in Israeli custody, including 450 minors, 55 women, and 7 members of the Palestinian parliament.⁸⁶

⁸⁶ Addameer – Prisoner Support and Human Rights Association's statistics' database, available at: <http://www.addameer.org/statistics>.

The number 6,900 represents a large increase in the number of Palestinian prisoners held by Israel from January 2015 (6,200), January 2014 (5,023), and February 2013 (4,812). As these figures demonstrate, the number of prisoners has risen steadily over this period. No prisoner exchanges between Israel and the Palestinians have been authorized during this period.⁸⁷

Articles 12 and 13:

Question 37 – Operation Cast Lead & Operation Protective Edge

112. The UN High Commissioner for Human Rights (HCHR) issued a report, dated 7 March 2016, which focuses on progress in implementing the recommendations made by the United Nations Fact-Finding Mission on the Gaza Conflict (“The Goldstone Mission”, A/HRC/12/48), and the independent commission of inquiry on the 2014 Gaza conflict (“The Davis Commission”, A/HRC/28/7).⁸⁸ It provides detailed information on Israel’s non-implementation of the recommendations.
113. The main finding of this review (para. 39) is that: “In light of this information, the High Commissioner reiterates serious concerns regarding the lack of accountability related to past cycles of violence and escalation in Gaza and to incidents in the West Bank, including East Jerusalem, and in the access-restricted areas of the Gaza Strip (see A/68/502, paras. 30-34, A/69/347, paras. 52-69, A/HRC/25/40, paras. 50-56 and A/70/36136), para 60).
114. Concerning the 2008-2009 Gaza conflict, eight years after Israel’s military operation “Cast Lead”, the Israeli security forces continue to enjoy impunity for their actions against civilians. Thus far, no military commander, political official or state body has been held accountable for gross violations of international law during these incidents.
115. The Goldstone Mission raised serious doubts about Israel’s willingness to carry out genuine investigations concerning Operation Cast Lead as required by international law. The Mission also found that the Israeli system presents inherently discriminatory features that have proven to make the pursuit of justice for Palestinian victims very difficult. Israel failed to abide the Goldstone mission’s recommendations, as well as those of the subsequent Independent Committee of Experts, to take all appropriate steps to launch appropriate investigations that conform to international standards.
116. According to the independent experts, Israel’s demonstrated practice of opening only a very small percentage of investigations into alleged violations by its military forces during OCL casts doubt on the impartiality of the system in general, and the MAG in particular. Following OCL, in which approximately 1,400 Palestinians were killed, 400 incidents were initially examined by the Israeli military, of which only 52 resulted in the opening of criminal investigations.⁸⁹ Of those 52 cases, only three resulted in the filing of

⁸⁷ See also B’Tselem, “Trends in 2015 inmate figures: Record number of Palestinians held in Israel,” 3 March 2016, available at: http://www.btselem.org/20160303_trends_in_detention_2015.

⁸⁸ UN General Assembly, Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, A/HRC/31/40/Add1, 7 March 2016.

⁸⁹ Human Rights Council, Report of the Committee of independent experts in international humanitarian and human rights law pursuant to Council resolution 13/9, U.N. Doc. ¶ 24, A/HRC/16/24 (May 5, 2011).

indictments, and the most severe punishment delivered was in a case of the theft of a credit card.⁹⁰

117. Adalah, Al Mezan and Al Haq sent complaints to the Israeli military authorities and demanded that Israel open independent, impartial, and prompt criminal investigations into 10 separate incidents that occurred during OCL, including into suspected war crimes. These cases involved killings, injuries, and the prevention of medical treatment, home demolitions, and the use of Palestinian civilians as human shields. The Israeli military closed all of the cases, except for one in which an officer was disciplined for using a Palestinian civilian as a human shield for 24 hours. In many cases, the human rights organizations and the victims learned solely from Israel's reports to the Independent Experts Committee or the media that the cases were closed. By contrast, the Goldstone Mission investigated three of the cases brought by Adalah, Al Mezan and Al Haq and reported grave factual and legal findings in each case, including the commission of war crimes.
118. Further, the Israeli Supreme Court has never issued any order to the MAG to open a criminal investigation or to indict any individual regarding alleged suspicions of the commission of war crimes in Gaza. The Israeli Supreme Court in a 2011 judgment ("The Adalah Case") refused to intervene in the Military Advocate General's (MAG) decisions not to open any investigations into Israeli military attacks in Gaza in 2004, which resulted in enormous loss of life and injury of civilians and extensive damage to homes.⁹¹ The Court reiterated its previous decisions in ruling that intervention in the decisions of the chief military prosecutor is rare, and should occur only in very exceptional circumstances. The Supreme Court also evaded serious discussion on the question of which circumstances trigger the initiation of an investigation. In fact, the Court has never set forth any guidelines under which a criminal investigation should be opened in cases involving alleged IHL violations.
119. Under intensive international pressure following Operation Cast Lead and the 2010 Gaza Flotilla events, the Israeli government formed the Turkel Commission. Despite the Commission's contention otherwise, its 18 recommendations issued in 2013 illustrate serious shortcomings in Israel's investigatory mechanisms.⁹² While the Turkel Commission recommended the enactment of war crimes legislation, including command responsibility, other recommendations *do not* fully comply with the international standards of the duty to investigate: they do not offer a solution for the "dual role" played by the MAG, which continues to create serious conflicts of interest, and they do not include clear guidelines regarding *under what circumstances* an investigation into allegations of IHL and IHRL violations must be opened.

⁹⁰ Amnesty International, *Families Under the Rubble* (2014) at 40, available at: <http://www.amnesty.org/en/library/asset/MDE15/032/2014/en/613926df-68c4-47bb-b587-00975f014e4b/mde150322014en.pdf> and B'Tselem, *Israeli authorities have proven they cannot investigate suspected violations of international law by Israel in the Gaza Strip*, (Sept. 5, 2014): http://www.btselem.org/accountability/20140905_failure_to_investigate.

⁹¹ HCJ 3292/07 *Adalah – The Legal Center for Arab Minority Rights in Israel v. Attorney General* (decision delivered 8 December 2011) (hereinafter: "the Adalah case").

⁹² Adalah, PHR-I and PCATI, "The Turkel Report: A Preliminary Analysis," 28 February 2013, available at: <http://www.adalah.org/uploads/oldfiles/Public/files/English/Newsletter/101-February-2013/Statement-Turkel-Adalah-PCATI-PHRI-English.pdf>

120. The HCHR report notes at (para. 37) that “in Paragraph 681 (b) of its report (A/HRC/29/CRP.4) the Commission recommended that the Government of Israel implement all the recommendations contained in the second Turkel report. The High Commissioner noted that no legislation has been adopted to that end.” The High Commissioner also noted that, “The Ciechanover Commission did not issue instructions for the full implementation of the first two recommendations of the Turkel Commission with respect to legislation incorporating international norms and standards into domestic law, including regarding war crimes, and imposing responsibility on military commanders and civilian superiors for offenses committed by their subordinates.”
121. Concerning the 2014 Gaza conflict, the HCHR stated in its report that, “The investigations carried out by the [Fact-Finding Assessment] Mechanism and reviewed by [Military Advocate General] MAG are steps towards establishing accountability for alleged victims in Gaza. However, the High Commissioner has noted the limited scope of the “mechanism for fact-finding assessments” to “exceptional incidents”, and the conflict of interest stemming from the dual role of the MAG office, in advising the military on planning and conducting military operations and investigating allegations of misconduct by Israeli soldiers. He noted that international law requires investigations into alleged human rights violations to be carried out by authorities that are separate and in a separate chain of command than those involved in the original operations” (para. 32).
122. Further, “At the time of drafting of this report, no information was available on reviews of rules of engagement and operational policies stemming from MAG investigations into the 2014 incidents in Gaza or on the initiatives undertaken by MAG to regulate the use of live ammunition in law enforcement operations, as recommended by the Commission” (para. 33). Moreover, the Commission, in paragraph 681 (a) of its report (A/HRC/29/CRP.4), called upon the Government of Israel to ensure that investigations comply with international human rights standards and that allegations of international crimes, where substantiated, lead to indictments, prosecutions and convictions, with sentences commensurate to the crime. It urged the authorities to take all measures necessary to ensure that such investigations are not confined to individual soldiers alone, but also encompass members of the political and military establishment, including at the senior level, where appropriate.
123. The HCHR records (para. 38) that, “according to Al Mezan, as of July 2015, jointly with the Palestinian Centre for Human Rights, 354 criminal complaints were submitted to MAG and the mechanism for fact-finding assessment. As of 15 November 2015, the two organizations had not received any communication regarding criminal indictments.”⁹³ Further, “the MAG has not published any updates regarding the status of investigations since 11 June 2015. The last update stated that MAG had independently opened 15 criminal investigations and another seven out of the 190 exceptional incidents compiled by MAG and submitted to the mechanism for fact-finding assessment. As detailed in the Secretary-General report (A/70/421, paragraph 53), these investigations have resulted only in one criminal indictment issued for a case of looting.” The HCHR notes that, “according to NGO Adalah, as of 15 November 2015, they had received no response from MAG regarding criminal indictments for any of the 22 cases they had submitted for independent criminal investigation.”

⁹³ See also: <http://mezan.org/en/post/20953>

124. In addition, the HCHR notes at (para. 38), “Similarly, no progress was recorded with regard to the 1,248 civil complaints submitted by Al Mezan and the Palestinian Centre for Human Rights to Compensation Officer at the Ministry of Defence.” Also at para. 38: “During 2014, the Military Police Criminal Investigations Division opened 229 investigations of alleged criminal offenses committed by soldiers against Palestinians in the West Bank and the Gaza Strip, which resulted in only eight (3.5 per cent) indictments.”

125. Further, Al Mezan documented the arrest of 98 Palestinians in the Gaza Strip during OPE in 2014, and provided legal representation for 24 of them. Dozens of those arrested were tortured by the Israeli forces and/or security authorities, including being beaten, held in painful stress positions, used as human shields, subjected to threats to themselves and their families, and other methods. Two of the detainees, both from Rafah, gave the following accounts of their subjection to torture and ill-treatment during detention and interrogation:^{94,95}

a. *Case 1: Hg M.A.S., 19 years old, from Rafah:*

“At approximately 1.30am M.A.S.'s father was shot and injured by Israeli infantry soldiers in front of the house. The family went back inside the house and remained there with the wounded father until 5am, when Israeli soldiers came to the house again and took M.A.S. and the others outside.

As they walked in a line, a soldier ordered M.A.S. to step out of the line. M.A.S. was ordered to enter several houses with soldiers as they searched the houses. They took him to his house, which is close to his uncle's house, and handcuffed him. He was kept in the sitting room for two hours without interrogation. A soldier then approached M.A.S. and fired rifle shots near his head. Soldiers then pushed him and made him stand at the south-facing window and opened fire at targets outside the house from the window.

A soldier approached him, changed the handcuffs, blindfolded him and ordered him to walk. He walked a few steps outside the house and was ordered to raise his foot and enter a vehicle, which moved for about 20 minutes before stopping. He was then put into an army jeep, which was driven for about 30 minutes. When the jeep stopped, soldiers removed the blindfold and two soldiers approached M.A.S. They roughly removed his clothes, except for his underwear. They walked him to a container, where his hands were un-cuffed; they then interrogated him. He was interrogated for 40 minutes and asked if he knew where there were rockets and tunnels. He was slapped on the face three times.

He was then handcuffed and blindfolded and moved to a vehicle that was driven for about 15 minutes. When the vehicle stopped, he was ordered to get out and sit on the ground; he spent about 30 minutes sitting in the sun. During the 30 minutes, M.A.S. was kicked and slapped in the face four times. He was then taken to an office where the handcuffs and blindfold were removed and for about 20 minutes a soldier showed him photographs of people on a computer screen.

⁹⁴ Information based on Al Mezan's database on torture.

⁹⁵ See Al Mezan's press release concerning torturing Palestinian detainees at: mezan.org/en/post/19540

A soldier then handcuffed and blindfolded him and he was put in a vehicle that was driven for about an hour. When the vehicle stopped, a soldier spoke to him and told him that he was in Ashkelon prison. The handcuffs and blindfold were removed and he was detained in a small cell for three days; during those three days he was interrogated twice a day. He was beaten and slapped during the interrogation. He was released a week later.”⁹⁶

b. *Case 2: H.A.A., 29 years old, from Rafah:*

H.A.A. provided Al Mezan’s lawyer in Israel with a statement while in detention. H.A.A. was a fighter who was captured by Israeli soldiers in the town of Al Qarara, in north-east Khan Younis. H.A.A. described how he and another two men had been ordered by Israeli soldiers to search houses. He was then transported in an armoured vehicle into Israel. He was interrogated in a location near the border and then taken to Ashkelon prison, where he was interrogated by the ISA.

While being transported by car to Ashkelon, H.A.A. was beaten on the head by one of the soldiers guarding him. He described how, during the subsequent interrogation in the prison, he was tied up in painful positions and how various physical and psychological torture methods were used on him. H.A.A. identified three particularly painful positions:

(i) ‘The banana’: interrogators turn the chair so that the detainee sits with the backrest to the side; the hands are tied; then the detainee is pushed backwards, with the back arched, until the head touches the floor. The interrogator often sits on the detainee’s stomach or chest.

(ii) ‘The table’: the detainee is forced to lie face-down on a table with the hands tied behind the back; an interrogator tightens the hand-ties from behind as another interrogator pulls the face of the detainee upwards.

(iii) ‘The squat’: the detainee is made to squat on the ground for extended periods of time, while an interrogator stands behind the detainee to prevent falling.⁹⁷

126. Another 12 OPE detainees interviewed by Al Mezan described similar torture methods, that were also accompanied by beatings, slapping, and threats that the detainees’ houses would be attacked by the Israeli army. In at least two cases detainees were threatened with rape.⁹⁸

⁹⁶ This summary is based on a full statement, which is contained in Al Mezan’s database.

⁹⁷ This summary is based on a full statement, which is contained in Al Mezan’s database.

⁹⁸ Al Mezan lodged five complaints to the Military Advocate General in relation to the torture and ill-treatment of Palestinians who were arrested during OPE. ‘MAS’ was one of the cases; however, no response from MAG about his case has been received at the time of submission of this report.

Article 14:

Questions 43 & 44 – Compensation to Palestinians who sustained damages caused by security or military forces

127. The government of Israel actively seeks to evade responsibility for compensating Palestinian civilians who have sustained injuries and death due to Israeli military actions, and has placed numerous barriers and obstacles in their way from receiving any civil legal remedy from the Israeli courts.
128. Israeli tort law liability is regulated by the Torts Ordinance (New Version), 1968, however, the liability of the state and anyone acting on its behalf is regulated by special legislation: the Torts (State Liability) Law 1952 (hereinafter “the Civil Wrongs Law”). This law determines that the state also has liability for civil damages in torts.
129. The Civil Wrongs Law was amended in 2005 with the aim of exempting the state from liability and all responsibility for damages sustained during military actions in the OPT, including illegal actions. Adalah, together with other human rights organizations in Israel and the OPT, submitted a petition to the Israeli Supreme Court arguing that the amendment denied basic human rights to Palestinian victims. The court accepted the petitioners’ main arguments and annulled the provision, ruling that it was unconstitutional as it granted absolute and unjustified immunity to the state. The court also recognized Palestinian victims’ rights to submit tort lawsuits against Israel in Israeli courts in cases where harm was caused to their lives, physical integrity and property.⁹⁹ However, other barriers in the law prevent victims from obtaining a legal remedy from the Israeli courts.

Prerequisites for the submission and litigation of lawsuits

130. **60-day notice requirement:** According to the Civil Wrongs Law, injured parties who are residents of the West Bank or the Gaza Strip must submit a notice in writing to the Israeli Ministry of Defense regarding the event in which they were injured within 60 days of the event.¹⁰⁰ This obligation is not imposed on persons who submit other types of tort lawsuits. The law further stipulates that the courts will not consider a lawsuit if the notice is late.
131. **2-year statute of limitations:** The Civil Wrongs Law reduced the statute of limitations as it relates to these lawsuits from the customary seven years to just two years.¹⁰¹ The state has claimed that “grounds for suspension,” as set forth in the general statute of limitations¹⁰² and according to which the period of limitation may be frozen, do not apply to lawsuits with a shortened statute of limitations, thus leaving the victims with only a brief period of time in which to exercise their rights.¹⁰³ Consequently, due to the crisis in the Gaza Strip created by Israel’s “Cast Lead” military operation (December 2008-January 2009), many Palestinians harmed during the offensive were unable to submit their lawsuits within the required timeframe, and many of their claims were rejected on the ground that they became invalid.

⁹⁹ HCJ 8276/05, *Adalah v. The Minister of Defense* (decision delivered 12 December 2006).

¹⁰⁰ Article 5a(2) of the Civil Wrongs Law.

¹⁰¹ Article 5(a)3 of the Civil Wrongs Law.

¹⁰² The Statute of Limitations Law, 1958.

¹⁰³ See, e.g., the state’s response to HCJ 9408/10, *The Palestinian Center for Human Rights v. The Attorney General* (para. 17).

132. **Ban on entry:** In September 2007, with the takeover by Hamas, Israel declared the Gaza Strip to be a “hostile entity,” and has imposed additional sanctions against its civilian population, including further restrictions on the movement of people to and from Gaza.¹⁰⁴ Since this declaration, Israel’s declared policy has been to grant permits to Gazans to enter Israel and to transit to the West Bank solely in exceptional and urgent humanitarian cases.¹⁰⁵ Entering Israel for the purpose of completing legal procedures is not listed in the exceptions to Israel’s closure of Gaza. This policy is not in line with the provisions of laws that govern entry into Israel, which grant certain Israeli officials the authority to issue entry permits to Gaza residents for a temporary purpose that is not for humanitarian or medical reasons.¹⁰⁶ Furthermore, Israeli law bans Israelis from entering and staying in Gaza without a permit from the military commander.¹⁰⁷
133. As a result of the current restrictions, Gaza residents cannot enter Israel and Israeli attorneys cannot enter Gaza. Victims of military actions therefore cannot hold meetings with their attorneys, and attorneys cannot complete necessary legal work such as visiting the scene of the event, hearing witness accounts, etc. The 60-day demand for submitting a written notice and the two-year statute of limitations for filing a lawsuit, as specified in the Civil Wrongs Law, consequently becomes an often-impossible undertaking. Moreover, even in cases where the injured parties and their attorneys manage to overcome these obstacles, they face yet further barriers.

The financial obstacle: a requirement to submit a deposit of a guarantee by the victims.

134. In most lawsuits submitted by parties injured by the Israeli security forces, the state asks the court to compel the plaintiff/s to deposit a guarantee to ensure that its expenses will be paid. By law, the court is permitted to do so, and if it does and the guarantee is not deposited by the set date, then the petition is dismissed.¹⁰⁸
135. In the lawsuits submitted by parties injured by the Israeli security forces prior to “Operation Cast Lead,” the average guarantee was NIS 30,000 (US\$8,570 or EUR 6,120). Many petitioners were forced to withdraw their petitions because they were unable to meet this condition, or, alternatively, the courts dismissed the lawsuits because a guarantee had not been deposited in time.¹⁰⁹
136. In recent years, victims of “Cast Lead” have submitted lawsuits and the state has subsequently filed requests for guarantees in all of these cases. The courts have adopted a procedure in these cases that compels each plaintiff to deposit a guarantee totaling NIS

¹⁰⁴ Or the Prime Minister’s Office announcement of 19 September 2007 (in Hebrew): <http://www.pm.gov.il/PMO/Archive/Spokesman/2007/09/spokecab190907.htm>

¹⁰⁵ See a policy paper on the movement of people between the State of Israel and the Gaza Strip published by the Israeli Ministry of Defense and the Coordination of Government Activities in the Territories (COGAT): http://www.cogat.idf.il/Sip_Storage/FILES/3/2533.pdf (in Hebrew).

¹⁰⁶ See Article 3b(3) of the Citizenship and Entry into Israel Law (Temporary Order), 2003.

¹⁰⁷ Article 24(a) of the Implementation of the Disengagement Plan Law, 2005.

¹⁰⁸ Regulation 519 of the Civil Law Procedure Regulations, 1984.

¹⁰⁹ See, e.g., court decision in Civil Case (Haifa District Court) 1106/05, *Ahmed Mohammad Elbashiti v. The State of Israel* (decision delivered 29 June 2009), Civil Case (Haifa District Court) 183/07, *The State of Israel v. Farid Shaban Hajij* (decision delivered 1 February 2009), ordering the dismissal of the petition, Civil Case (Herzliya Magistrates’ Court) 1624/06, *The Estate of Samah Yussuf Abu Gezer v. The State of Israel* (decision delivered 14 January 2009), Civil Case (Herzliya Magistrates’ Court) 1816/06, *The Estate of Elasar v. The Ministry of Defense* (decision delivered 10 June 2008), Civil Case (Herzliya Magistrates’ Court) 1622/06, *The Estate of Hajazi v. The Ministry of Defense* (decision delivered 10 June 2008), Civil Case (Haifa Magistrates’ Court) 3608/07, *Salah v. The State of Israel* (decision delivered 14 May 2008).

20,000 (per plaintiff in the lawsuit) to cover the state's expenses. To date, the sum of the guarantees demanded in each these lawsuits totals hundreds of thousands of shekels and, in some cases, over one million shekels, as in the El-Samouni case.¹¹⁰ In this case, the Israeli military aerielly bombed the El-Samouni house, which resulted in the death and serious injury of dozens of family members. The court mandated that sum be deposited based on a determination made in disregard to the existing legal regulations requiring lawsuits that are based on the same grounds or concern the same legal or factual questions to be joined.¹¹¹ Therefore, there is no ground for determining the amount of a guarantee based on the number of plaintiffs rather than per lawsuit. However, the Supreme Court refused to intervene in this matter.¹¹²

The closing of crossings and the dismissal of lawsuits due to non-appearance:

137. As a result of the restrictions and obstacles discussed above, plaintiffs and their witnesses from Gaza cannot appear at court hearings and, consequently, the plaintiffs' ability to fulfill the legal procedures necessary to prove their claims is severely curtailed, and in many cases completely nullified.¹¹³ Petitioners are, for example, prevented from submitting affidavits and responses in affidavits to questions made by the respondents,¹¹⁴ from appearing for an examination by expert physicians in Israel, and from presenting their testimonies before the court.¹¹⁵ Thus, in reality, with all of these obstacles and barriers, the state denies plaintiffs the opportunity of proving their claim.

138. The state, as the respondent, submits requests to dismiss lawsuits claiming that the petitioners had not fulfilled their legal obligations. A relevant case is that of members of the Hajaj family, who were injured by Israeli missile fire in 2006. A lawsuit concerning the incident was submitted to the Haifa District Court. However, due to the closure of the Erez border crossing, it was not possible for the plaintiffs' attorney to enter Gaza or for the plaintiffs to enter Israel. As a result, the attorney could not hold a meeting with the clients, which would have allowed the necessary exchange of legal documents and the signing of affidavits in response to the respondents' questions. They were compelled to submit numerous requests for extensions. Finally, the state asked the court to dismiss the lawsuit on the ground that the petitioners had not completed the preliminary legal procedures. The court accepted the state's request and dismissed the lawsuit.¹¹⁶ The Sarsur case, brought before the Haifa Magistrates' Court, had a similar outcome. The state again filed a request to dismiss the lawsuit because the plaintiffs were unable to

¹¹⁰ Civil Case (Be'er Sheva District Court) 9548/11, *Al-Samouni v. The State of Israel*.

¹¹¹ See Regulation 19 of the Civil Law Procedure Regulations and Civil Appeal 560/94, *Yosef Shosana et al. v. Heftziba Construction, Development and Investments Ltd.*, PD 48(4) 63 (1994).

¹¹² In Civil Appeal Request 9148/11, in the matter of the late Abu Halima, the sum of the guarantee that was set is at least 260,000 NIS. In Civil Appeal Request 9155/11, in the case of the late Samur, the set sum is at least 240,000 NIS, and in Civil Appeal Request) 493/12, in the case of the late Abed, the sum of the guarantee has been set at a minimum of 600,000 NIS. The appeal requests were all rejected in a decision dated 5 July 2012.

¹¹³ Civil Law Procedure Regulations and the Evidence Ordinance (New Version), 1971.

¹¹⁴ See Article 15 of the Evidence Ordinance and Regulation 1 and 521(a) of the Civil Law Procedure Regulations regarding the conditions that an affidavit must meet under the Israeli laws of evidence.

¹¹⁵ See Article 17(a) of the Evidence Ordinance (New Version), which provides that if a person who submitted an affidavit does not appear for questioning, the court is permitted to disqualify the affidavit as evidence. See also Regulation 522(d) of the Civil Law Procedure Regulations, which lays down a similar rule regarding a person who submitted an affidavit and who is not a litigant, should they be called for questioning and do not appear.

¹¹⁶ Civil Case (Haifa District Court) 183/07, *Hajaj v. The Ministry of Defense* (decision delivered 14 December 2009).

submit an affidavit disclosing their evidence, and the state also requested that the plaintiffs pay court expenses. On 4 April 2011, as a result of the plaintiffs' inability to meet with their attorneys to submit their affidavit, the court dismissed the lawsuit and ordered the plaintiffs to pay the state's expenses, totaling NIS 30,000.¹¹⁷

139. In some cases, the courts ordered the dismissal of lawsuits at their own initiative, without the state's request. An example is the case of Abu Said, in which the court dismissed the lawsuit on the ground of idleness. The judge determined:

4. In January 2009, I cancelled a scheduled evidentiary hearing because it was not possible for the petitioners to enter Israel. The hearing of evidence was scheduled for 8 December 2009 and today, again, I was given an (agreed-upon) request to postpone the date of the hearing for the same reason. There are many similar cases pending before me, including plaintiffs represented by the same counsel, in which a similar problem arose. I warned him on several occasions that despite the sorrow and understanding of the petitioners' situation, I cannot repeatedly postpone the case for years on similar grounds, as this harms other cases pending before me.

5. As this is the state of affairs I have decided, in view of the last request for a postponement, to dismiss the petition due to idleness.¹¹⁸

140. On 16 December 2014, the Supreme Court of Israel rejected a petition¹¹⁹ submitted by human rights organizations against Israel's policy of preventing residents of Gaza who have submitted compensation lawsuits for damages against the Israeli military, and their witnesses, from entering Israel to attend their own court hearings. Adalah filed the petition in 2012 in cooperation with Al Mezan, the Palestinian Center for Human Rights, and PHR-Israel on behalf of four individuals from Gaza who filed tort lawsuits against the Israeli military for killings, injuries and extensive property damages and whose requests for permission to enter Israel to pursue their cases were repeatedly denied.

141. Although the Court rejected the petition, the judgment pointed out the conflict of interests created by this policy between the state's position as the defendant before the court and as the authority that determines who can and who cannot enter Israel to access the court. Justice Elyakim Rubinstein stated in the decision that the state simultaneously wears two hats, as the party "responsible for security on the one hand, and as the defendant on the other," and that "it must take care as far as possible not to confuse the two issues."

142. After the petition was filed, the Attorney General (AG) proposed new procedures before the Supreme Court for "examining requests to enter by Palestinian residents of Gaza for the purpose of pursuing judicial proceedings in Israel." These regulations openly and absurdly specified that the AG should look into the possibility of facilitating the pursuit of legal cases only provided that it does not harm the state's position in the case. In response to the petitioners' argument that these regulations resulted in clear conflict of interests, the justices stated in their final judgment that, "We do not deny that we have criticisms regarding this section [of the regulations]... but the question goes back to the

¹¹⁷ Civil Case (Haifa Magistrates' Court) 353/06, *The Estate of the Late Sarsur v. The State of Israel* (decision delivered 4 April 2011).

¹¹⁸ Civil Case (Hadera Magistrates' Court) 4364/04, *The Estate of Abu Said v. The State of Israel* (decision delivered 6 December 2009).

¹¹⁹ HCJ 7042/12, *Abu Daqqa, et al. v. the Interior Minister, et al.* (judgment delivered 16 December 2014).

two hats that the state wears in this case, as we have stated above.” In its decision, the court did not address the grave violation of the constitutional rights of the complainants and of their rights to compensation for damages incurred by them resulting from the state’s policy of closure. Justice Rubinstein stated that the case should not be viewed, “from a constitutional perspective, but a practical perspective...” adding that the filing and pursuit of lawsuits must not “harm security.”

143. Although the court criticized the new regulations, it is nonetheless asking the complainants to abide by them. The fact is that the AG did not provide one example of an individual who obtained a permit to enter Israel under these regulations. The court’s judgment effectively denies Gaza residents the possibility of accessing courts in Israel, and it endorses a set of illegal regulations that violate the complainants’ constitutional rights. The regulations further prevent lawyers who are citizens of Israel from holding meetings with their clients from the Gaza Strip to pursue these cases. The lack of an effective means of accessing the Israel courts will lead to the dismissal of these tort lawsuits on the grounds that the complainant or his/her eyewitnesses failed to attend court hearings.

Exemption from liability based on the circumstances of an “act of war” and heavier burden of proof:

144. The Civil Wrongs Law determines that, “The state is not civilly liable for an act undertaken in the course of a military operation of the Israel Defense Forces.”¹²⁰ The definition of a military operation has been refined over the years in the rulings of various Israeli courts in a variety of cases. The rule concerning the question of state liability in torts for any military action, which affects local residents, was determined in the case of Bani Oudeh.¹²¹ The tests according to which a military operation is defined as either a combat or police operation were also set forth in this case. Not every military action is considered an “act of war”:

The army conducts various “actions” in the areas of Judea, Samaria [the West Bank] and Gaza, which create different types of dangers. Not all actions are “acts of war”... Therefore, in providing an answer to the question of whether an action is an act of war, all the circumstances of the incident must be examined. The purpose of the action, the location of the incident, the duration of the activities, the identity of the military force involved, the threat that preceded it or was foreseen from it, the strength and size of the military force involved, and the duration of the incident must all be examined. All of these factors shed light on the nature of the distinct danger that was created by the act.¹²²

145. A definition of the term “act of war” was added in a 2002 amendment to the Civil Wrongs Law, which defines it as, “Any action to combat terror, hostile acts or insurrection, and also any action as stated that is intended to prevent terror, hostile acts or

¹²⁰ Article 5 of the Civil Wrongs Law.

¹²¹ Civil Appeal 5964/92, *Beni Ouda v. The State of Israel* PD 56(4) (2002).

¹²² *Ibid.*, pp. 8-9.

insurrection undertaken in circumstances of danger to life or limb”. This is a broader definition of “act of war” than that which appeared in the Bani Oudeh decision.¹²³

146. In the framework of torts lawsuits submitted during Operation “Cast Lead,” the state claimed that the various activities that caused the alleged damages fell within the definition of an “act of war”, and therefore that “the state has full immunity from a torts lawsuit, both by virtue of it being an act of state according to the Civil Torts (State Liability) Law – 1952 and from the viewpoint of case law”.

147. The Israeli courts have tended to accept this argument by the state. The Nazareth District Court recently delivered a judgment in the case of Aldaia, whose home was mistakenly hit by the Israeli military on 6 January 2009, resulting in the death of 22 people and the injury of many others. The state claimed that the attack came within the context of a military operation, and the court agreed.¹²⁴ Hence, it is to be expected that all lawsuits submitted in relation to “Cast Lead” will be dismissed based on the same argument, even if the specific action that caused the damage violated the laws of war.

148. In addition to the broad definition and interpretation of the term “act of war,” other provisions were added to the Civil Wrongs Law to create difficulties for plaintiffs and help the state evade responsibility. Under the 2002 amended law, the tort regulations – according to which the burden of proof is transferred to the state when negligence is claimed concerning “dangerous matters”,¹²⁵ and where there is a claim of *res ipsa loquitur* (“the thing speaks for itself”)¹²⁶ – do not apply to torts lawsuits brought against the state.¹²⁷ The burden of proof therefore remains on the plaintiffs’ shoulders; and by doing so, Israel has made it difficult for victims to prove state liability.

Amendment no. 8 to the Civil Wrongs Law

149. Following the 2006 Supreme Court’s ruling in the case of *Adalah v. The Minister of Defense*, the state initiated legislation to circumvent it. On 16 July 2012, the Knesset enacted Amendment no. 8 to the Civil Wrongs Law, which places additional obstacles before injured parties who sue for damages. First, the amendment modifies the term “act of war” by replacing the paragraph that stated that such an act existed when there was imminent danger to the life and body of Israeli soldiers. The new definition requires that for an act to be defined as an act of war, it should be considered in “terms of its nature; including the purpose, location, or the danger on the [security] force as a result of conducting the operation.”

150. Moreover, the amendment determines that, “If the state asserts, as a preliminary claim, that it is not liable for the damages because the deed for which it was sued was a ‘military operation’, the court will promptly deliberate this claim, and if it finds that the deed was, as stated, a military operation, it will dismiss the lawsuit.” In enacting the amendment, the legislator disregarded the fact that, in many cases, in order to determine

¹²³ HCJ 8276/05, *Adalah v. The Minister of Defense* (decision delivered 12 December 2006), para. 6 of the verdict. See also Civil Appeal 3675/09, *The State of Israel v. Daoud*, para. 13 of the verdict, and Civil Appeal 8384/05, *Salam v. The State of Israel* (decision delivered 7 October 2008), para. 3 of the verdict.

¹²⁴ Civil Case (Nazareth District Court) 35106-08, *The Late A.M. Eldaya v. The State of Israel* (decision delivered 5 September 2012).

¹²⁵ Article 38 of the Torts Ordinance (New Version), 1968.

¹²⁶ Article 41 of the Torts Ordinance (New Version).

¹²⁷ Articles 5a(2), 5a(3) and 5a(4) of the Civil Wrongs Law.

whether an action was an act of war, the need to present evidence and hear witnesses will arise. The amendment may encumber rather than simplify the legal process, and make it necessary to hold a ‘trial within a trial’ on the classification of the operation in question. The denial of the plaintiffs’ right to present evidence that may shed light on the nature of the operation violates their right to a fair trial and thus their constitutional rights to access the courts and receive a legal remedy. On 14 February 2013, the Beer Sheva District Court dismissed a tort lawsuit brought by 42 plaintiffs including individuals who were injured during “Cast Lead” and the estates of other civilians killed during the same attack. The state invoked the no liability provision as a preliminary argument and claimed that the attack fell within the definition of an “act of war.”

151. The court accepted the argument and dismissed the lawsuit in a short decision, explaining that there was no need to check whether the attack that caused widespread destruction and the deaths and injuries of many civilians was lawful under the laws of war or if there was negligence on the part of the Israeli armed forces, since such positive findings would not supersede the “act of war” exemption. Despite the fact the court dismissed the case in the preliminary stage, it decided to order the plaintiffs to pay the state NIS 20,000 in legal expenses, thereby making the victims compensate the perpetrator.¹²⁸
152. Until its most recent amendment in 2012, the Civil Wrongs Law did not distinguish between the West Bank and the Gaza Strip.¹²⁹ Although the Supreme Court determined in *Elbasiuni v. The Prime Minister* that Israel was no longer in effective control of Gaza,¹³⁰ the court had previously determined in *Adalah v. The Minister of Defense* that even if Israel’s military control of Gaza had ended, as the state claimed, there was still no justification for a sweeping exemption for the state’s liability in torts.¹³¹ In the 2012 amendment, the legislator altered the situation and left the matter to the government’s discretion. Prior to the amendment, it was determined by law that the state would not be liable for damage caused to a subject of an enemy state. In the 2012 amendment, the legislator broadened this provision to apply also to residents of any area outside Israel that the government proclaimed to be “enemy territory.”¹³² This provision is effective retroactively from 12 September 2005, the day of the implementation of Israel’s Disengagement Plan from the Gaza Strip. In the explanatory notes to the bill, the government stated that it was considering proclaiming Gaza an “enemy territory.”¹³³
153. Despite the government’s statement that Gaza had not yet been declared an “enemy territory,” in the recent case of *Abed Rabbo*, the Beer Sheva District Court, which denied the lawsuit based on the expiration of the statute of limitations, further stated that the case would still have been dismissed based on the exemption of liability, because the plaintiffs were “subjects of an enemy state.” The court therefore rejected the plaintiffs’ argument

¹²⁸ Civil Case (Beer Sheva District Court) 34232-08-10, *The Estate of Arafat Mohammad Abd al-Dayim, et al. v. The State of Israel* (decision delivered 14 February 2013).

¹²⁹ See the definition of a region in Article 5a(1) of the law.

¹³⁰ H CJ 9132/07, *Elbasiuni v. The Prime Minister* (decision delivered 30 January 2008, unpublished), para. 12 of the verdict.

¹³¹ Para. 36 of the verdict.

¹³² See Article 5b (a)(1) of the current version of the law.

¹³³ As mentioned above, the Israeli Government declared the Gaza Strip a “hostile entity” in September 2007. Given that the explanatory notes to the bill refer to a future declaration of Gaza as an “enemy territory”, the proclamation can be assumed to relate to a separate kind of designation, with government deliberately differentiating between “enemy territory” and “enemy entity”.

that this exemption did not apply to the Gaza Strip since Amendment no. 8 referred to a future proclamation by Israel of Gaza as an “enemy territory,” a move that has not yet been made.¹³⁴

154. The 2012 amendment made other changes regarding jurisdiction. It determined that new lawsuits would be submitted, and older ones would be transferred, to the authorized courts in the Districts of Beer Sheva and Jerusalem, depending on which was closer to the location of the incident under consideration. Thus, lawsuits from Gaza must be submitted in the Beer Sheva District Court, and lawsuits from the West Bank must be submitted in the Jerusalem District Court. The stated reason for the designation of judicial authority is to create uniformity in the verdicts in light of the state’s dissatisfaction with the judgments of the courts in the Northern and Central Districts. However, this stipulation makes it harder for lawyers to manage cases in distant districts.

Question 49 – Access to medical permits, Gaza

155. The inhibiting influence of the blockade/closure and two Israeli military offensives in five years had crippled Gaza’s healthcare provision even before Operation Protective Edge of 2014. The enormous scale of the destruction in 2014 and the lack of reconstruction over the past year and a half have further reduced the capacity of Gaza’s health sector to provide appropriate care.

156. Since 2009, tens of thousands of Palestinian patients from Gaza have been referred by the Palestinian Ministry of Health for adequate healthcare outside the Gaza Strip, mostly to other parts of the West Bank. The process of referral to hospitals in Israel and the West Bank requires Israeli-issued permits, which are regularly delayed or denied via an onerous and complex set of processes that risk the health and lives of patients.

157. In an update to its 2015 report, “#Denied,”¹³⁵ PHR-Israel analyzed the 243 requests it received in 2015 from Palestinian patients whose applications for an exit permit had been turned down or repeatedly delayed, preventing access to adequate and sometimes life-saving treatment. In 59.5% of the cases, the organization succeeded in overturning the decision, which suggests that there is often no genuine security justification behind the refusals and delays.

158. According to the most recent data,¹³⁶ 50,000 (or 20%) of the 250,000 applications from Palestinians for health-related exit permits in 2013 were denied or delayed.

¹³⁴ Civil Case (Beer Sheva District Court) 11383-01-11, *Abed Rabbo v. The State of Israel* (decision delivered 10 March 2013). The *Abed Rabbo* decision was based on a previous decision of the same court in Civil Case 5193/08, *Masri Gabon Company Ltd. v. The State of Israel* (decision delivered 15 April 2012). In the *Abed Rabbo* case, the court noted that the addition of the 2012 amendment with regard to “enemy territory” was an alternative to the “enemy state” exemption, and that the court had already decided, in the *Masri Gabon Ltd.* case, that the enemy state exemption did apply to Gaza since it was controlled by Hamas, a designated terrorist organization. It should be noted that this argument was also not the main ground for the dismissal of the *Masri Gabon Ltd.* case, in which the court held that the incident in question fell within the definition of an “act of war”.

¹³⁵ PHR-Israel report, #*Denied*, June 2015, available at:

<http://reliefweb.int/sites/reliefweb.int/files/resources/%D7%90%D7%A0%D7%92%D7%9C%D7%99%D7%A%2011.6.15.pdf>.

¹³⁶ World Health Organization, “Right to Health: Crossing barriers to access health in the Occupied Palestinian Territory,” 2013: http://www.emro.who.int/images/stories/palestine/documents/WHO_-_RTH_crossing_barriers_to_access_health.pdf?ua=1.

159. Since 2007, PHR-Israel has been documenting a particularly egregious practice employed by the Israeli security services, whereby many Gazans applying for an exit permit on medical grounds are required to undergo questioning as a prerequisite for considering their application. During interrogation, the patients are requested and/or coerced to provide information, and are sometimes told that the exit permit for medical treatment is conditional on their agreement to collaborate with the Israeli authorities. About 200 patients are summoned to such interviews every year (about 5% of those who apply for permits).
160. Since 2009, Al Mezan Center for Human Rights has also documented the arrest of 30 patients and 12 patients' companions by the Israeli authorities at the Erez border crossing. The patients who were arrested had either received permission to access the crossing or had been requested by the Israeli authorities to attend a security interview there, and were arrested upon arrival.¹³⁷

Other Issues:

Question 53 – Ban on family unification

161. On 11 January 2012, Israel's Supreme Court, for the second time, upheld the Citizenship and Entry into Israel Law (Temporary Order) by a vote of 6-5.¹³⁸ The law flagrantly discriminates against Palestinian citizens of Israel, who represent the overwhelming majority of Israeli citizens married to non-citizen Palestinian, Arab, Muslim spouses.
162. The original law, enacted in 2003, denies Palestinian citizens of Israel the right to acquire residency or citizenship status in Israel for their Palestinian spouses from the OPT, based entirely on the spouse's nationality. Those few Palestinians who are granted temporary permits to live with their spouse in Israel are denied the ability to work, drive, or to access health insurance and social security. The law is blunt and sweeping in its application and is totally disproportionate to the alleged security reasons cited by Israel to justify its enactment. As a result of this law, thousands of Palestinian families are unable to live together in Israel, are forced to live together illegally, or are compelled to separate.
163. The law was amended in 2007, extending the ban to spouses from Syria, Lebanon, Iraq and Iran, defined under Israeli law as "enemy states," and "anyone living in an area in which operations that constitute a threat to the State of Israel are being carried out." In June 2008, the Gaza Strip was added to this list, nullifying any possibilities of family unification between citizens of Israel and residents of Gaza. At the same time, however, the "gradual process" of naturalization for residency and citizenship status in Israel for all other "foreign spouses" remains unchanged. This law, in depriving citizens of their right to maintain a family life in their country of citizenship based only on the ethnic or national belonging of their spouse, has no parallel in any democratic country.

¹³⁷ Information contained in Al Mezan's database.

¹³⁸ HCJ 466/07, *MK Zahava Galon v. The Attorney General, et al.* (decision delivered on 11 January 2012). See Adalah's Press Release, "Israeli Supreme Court Upholds Ban on Family Unification," 12 January 2012, http://www.adalah.org/eng/pressreleases/12_1_12.html. For a summary of the Court's decision in English: <http://www.adalah.org/newsletter/eng/jan12/docs/Summary%20Citizenship%20Law.pdf>.

164. Adalah has been fighting the law before the Israeli Supreme Court since 2003. In May 2006, a 6-5 majority of the Supreme Court decided to uphold the law.¹³⁹ Adalah submitted a second petition in 2007, challenging the expanded version of the law. According to the state's response, between 2001 and April 2010, 54 persons who had received status in Israel through family unification procedures were either "directly involved in terrorist attacks" or prevented from carrying out such attacks at the last minute. However, the state failed conspicuously to provide any details about these cases, nor did the state provide any data about applications or involvement of persons from "enemy states" in these serious offenses. This lack of information strongly suggests that there is no factual basis for the sweeping ban on family unification with non-Jewish nationals from these states.

165. The Knesset last renewed the law on 18 June 2015, and it is currently valid until 30 June 2016. It will likely be renewed again.

Question 54

166. See detailed discussion under Article 2 above.

Question 57 – General information: negative legal developments

Mandatory minimum prison sentences for stone throwing¹⁴⁰

167. On 20 July 2015, the Knesset approved an amendment to the Penal Law 5737-1977, adding the offense of Stone-Throwing in three constellations (the law is officially a "temporary order" and is valid for three years). First, it criminalizes the act of throwing a stone or an object towards a police officer or a police vehicle with the intent of obstructing a police officer, and sets a punishment of 5 years imprisonment.¹⁴¹ Second, it criminalizes the act of throwing a stone or another object towards a moving vehicle, in a manner, which might endanger a passenger of the vehicle or a person in its vicinity, or in a manner, which might create fear or panic, and sets a punishment for up to ten years, but no less than 2 years.¹⁴² Third, it criminalizes the same act of throwing a stone or another object towards a moving vehicle, in a manner which might endanger a passenger of the vehicle or a person in its vicinity and with the intent to harm the passenger or the person in the vehicle's vicinity, and sets a punishment up to 20 years, and no less than 4 years.

168. The law imposes a mandatory minimum sentence for throwing stones, unless there exist unique reasons based on which the judge hearing the case might consider to deviate from these mandatory minimum sentences. The law contradicts most forms of criminal sentencing followed in Israel. It upends the status quo by creating a punitive model in which the judge will exercise discretion and take into account the particular circumstances of each individual only exceptionally. With this new law, judges lose their discretion in imposing sentences. The amendment violates the constitutional rights of minors by allowing their imprisonment for a mandatory minimum of four years without taking into account the individual circumstances of each case.

¹³⁹ HCJ 7053/03, *Adalah, et al. v. Ministry of Interior, et al.* (petition rejected 14 May 2006).

¹⁴⁰ The text of the law (in Hebrew): http://fs.knesset.gov.il/20/law/20_lsr_315852.pdf

¹⁴¹ Article 275A. to the Penal Law 5737-1977.

¹⁴² Article 332A(a) to the Penal Law 5737-1977 in conjunction with subsection (c).

169. Although the majority of the stone-throwers are minors, the bill does not allow judges to give reasonable weight to the option of rehabilitation. Therefore, it contradicts the Youth (Care and Supervision) Law, which stipulates that the exercise of powers and initiation of proceedings against a minor must be done in such a way that safeguards his or her dignity, and that due weight must be given to considerations of rehabilitation, treatment, reintegration into society, age and maturity.

170. The law targets young Palestinians who are either citizens of Israel or residents of East Jerusalem, and who are all brought before Israeli civil courts, thus making it a discriminatory legislation.

Law revoking child allowances from the parents of stone-throwers¹⁴³

171. Enacted on 2 November 2015 as Amendment No. 163 to the National Insurance Act, this new law strips child allowances from the parents of a child convicted of stone-throwing or similar acts. It targets Palestinian minors who are either citizens of Israel or residents of East Jerusalem, and who are all brought before Israeli civil courts.

172. The National Insurance Law states explicitly that child allowances belong to the children, even if their parents actually receive these payments. By stripping child allowances from the child and his/her parents, the law creates arbitrary discrimination between minors, in breach of the fundamental principle of equality.

173. The state claims that it is possible to withdraw the benefits from the parents of a child convicted of the crime of stone-throwing during the period of the child's imprisonment because their basic needs are met in prison, breached the fundamental principle of equality. Just as the state cannot deny benefits to the parents of a child convicted of criminal offense on the pretext that the child's needs are being met by the prison, as it in fact does not, so the same should apply in the case of a child convicted of a 'security offense.' Thus the bill is legislating irrelevant, arbitrary discrimination between minors."

174. The law creates a framework, according to which benefits are withdrawn from the parents of convicted minors, rather than from the children themselves essentially on the basis of their national belonging. This is so as the bill will overwhelmingly affect Palestinian children and their parents.

Law imposing fines on the parents of stone-throwers¹⁴⁴

175. Enacted on 2 November 2015 as Amendment No. 20 to the Youth (Care and Supervision) Law. This new law allows for direct fines to be imposed on the parents of minors convicted of committing an offense listed in the Israeli Penal Code. It provides the offense of stone-throwing as an example, and this fact, combined with its timing during the current round of violence, gives rise to fears that it will be deployed in a discriminatory manner against the parents of Palestinian children – citizens of Israel or residents of East Jerusalem – convicted of stone-throwing and similar acts, who are brought before Israeli civil courts.

176. The law violates the most basic principles of criminal law: that the imposition of criminal responsibility and punishment must be specific solely to the person who

¹⁴³ The text of the law (in Hebrew): http://fs.knesset.gov.il/20/law/20_lsr_315852.pdf

¹⁴⁴ The text of the law (in Hebrew): http://fs.knesset.gov.il/20/law/20_lsr_315850.pdf

committed the offense. Punishing the parents violates the prohibition on collective punishment, since there can be no ‘vicarious liability’ on parents for their child’s acts.

Stop and Frisk Law – Amendment of the Power for Maintaining Public Security Law¹⁴⁵

177. Enacted on 1 February 2016 as the Authorities for Preserving Public Safety Law (Amendment No. 5 and Temporary Provision), 2016, the Law expands the powers of the police to stop and frisk individuals. At present, the police may stop and frisk a person only where there is a reasonable suspicion that he or she is carrying a concealed weapon or other object intended for use in criminal activity. The new law allows the police to stop and frisk people in case of a “reasonable suspicion” that he or she is about to commit a violent act. It further expands on what constitutes “reasonable suspicion” broadening its previous legal meaning as it was brought down by the Supreme Court, stating that: “For the purposes of this amendment reasonable suspicion shall be, among others, if the person is acting aggressively in a public place, or employs verbal violence or threats, or acts alarmingly or otherwise frighteningly.”
178. The most problematic section of the new law is the one presented by Article 6.B, titled “Police powers to conduct a body search of a person in a location thought to be a target for hostile terrorist activities.” This article authorizes a police district commander to declare any area as one in which there is a real fear that “hostile terrorist activities” will take place, and then police can search people without having to satisfy a requirement of reasonable suspicion. This basically replaces the necessity of individualized reasonable suspicion with a general collective suspicion in a geographic area.
179. This law broadens the police’s scope of discretion dramatically, in a manner that potentially might lead to severe human rights violations.

Force-Feeding Law

180. On 30 July 2015, the Israeli Knesset enacted the "Force-Feeding Law", introduced by the Ministry of Public Security, which authorizes the forcible feeding of hunger striking prisoners. The new law, an Amendment to the Prisons Act (Preventing Damages due to Hunger Strikes), empowers the court to permit doctors who treat prisoners on hunger strike to feed them against their will, which violates the Patients’ Rights Law. This legislation sanctions the torture of hunger strikers. The law enables the state to break a prisoner’s will by violating his/her human rights, including the right of autonomy over one’s body, in order to deprive prisoners of the only means of peaceful protest they have left at their disposal.
181. Prior to the passage of the law, two UN human rights experts reiterated their call on the Israeli authorities to stop the process of legalizing force-feeding and forced medical treatment of detainees on hunger strike. In a press release issued on 28 July 2015, the UN Special Rapporteur on Torture, Prof. Juan E. Méndez, stated that, “feeding induced by threats, coercion, force or use of physical restraints of individuals, who have opted for the extreme recourse of a hunger strike to protest against their detention, are, even if intended for their benefit, tantamount to cruel, inhuman and degrading treatment.”¹⁴⁶ The UN

¹⁴⁵ The text of the law (in Hebrew): http://www.nevo.co.il/law_html/Law01/999_469.htm.

¹⁴⁶ UN experts urge Israel to halt legalization of force-feeding of hunger-strikers in detention available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16269&LangID=E>.

Special Rapporteur on Health, Daninius Puras, said that, “Under no circumstance will force-feeding of prisoners and detainees on hunger strike comply with human rights standards. Informed consent is an integral part in the realization of the right to health.”¹⁴⁷

182. These calls join the position of the International Committee of the Red Cross, which state that force-feeding is a form of torture and cruel and degrading treatment.¹⁴⁸ The World Medical Association also prohibits doctors from participating in force-feeding.¹⁴⁹ On 26 June 2015, the World Medical Association addressed the Prime Minister of Israel, stating that: “Force-feeding is violent, very painful and absolutely in opposition to the principle of individual autonomy. It is a degrading, inhumane treatment, amounting to torture. But worse, it can be dangerous and is the most unsuitable approach to save lives.”¹⁵⁰

183. It should be noted that in the 1970s and 1980s, the Israel Prison Service (IPS) tried to use the force-feeding of prisoners to suppress hunger strikes, which resulted in the death of three prisoners: ‘Abd Al-Qader Abu Al-Fahem (5 November 1970), Rasem Halawi (20 July 1980) from Jabaliya, and Ali Al-Jaafari (24 July 1980) from Nablus.

184. On 6 September 2015, four human-rights organizations – PHR-Israel, the Public Committee against Torture in Israel, HaMoked, and Yesh Din – submitted a petition to Israel’s Supreme Court asking to cancel the legislation. The case is pending.¹⁵¹

No ratification of OPCAT; no recognition of the Committee’s competence to hear individual complaints

185. To date, despite the recommendations of the Committee as well as those of Member States at Israel’s Universal Periodic Review in 2013,¹⁵² Israel has continued to refrain from signing or ratifying the Optional Protocol to the Convention (OPCAT). Consequently, there is still no unrestricted, independent preventive system of regular visits to places of detention.¹⁵³

186. Further, Israel has not made declarations under articles 21 and 22 of the Convention, despite the recommendations of the Committee and those of Member States at Israel’s UPR in 2013 to do so.¹⁵⁴ Thus, Israel has still not recognized the competence of the Committee to receive and consider inter-state and individual communications. In addition, Israel has not withdrawn its declaration prohibiting article 20 inquiries.

¹⁴⁷ Ibid.

¹⁴⁸ Red Cross chief blasts US for force-feeding Gitmo inmates, RT QUESTION MORE 12 Apr, 2013 available at <https://www.rt.com/usa/red-cross-guantanamo-maurer-770/>.

¹⁴⁹ WMA condemns all forced feeding, available at http://www.wma.net/en/40news/20archives/2006/2006_10/.

¹⁵⁰ WMA, "WMA Appeals to Israeli Prime Minister to Reconsider Force Feeding Bill," 26 June 2015, available at: http://www.wma.net/en/40news/20archives/2015/2015_25/.

¹⁵¹ See Sharon Pulwer, “Israeli High Court Judge Questions State Security Clause in Forced-feeding Law,” Ha’aretz, 22 February 2016, available at: <http://www.haaretz.com/israel-news/premium-1.704613>

¹⁵² CAT Concluding Observations, 2009 at para. 35 and United Nations General Assembly, Report of the Working Group on the Universal Periodic Review: Israel, A/HRC/25/15, 19 December 2003, para. 136.8.

¹⁵³ Adalah, PHR-Israel, Al Mezan, and the Public Committee Against Torture in Israel, "Position Paper: Israel Should Ratify the Optional Protocol to the UN Convention Against Torture as an Effective Means of Eliminating Torture," April 2010, available at: <http://www.adalah.org/uploads/oldfiles/newsletter/eng/apr10/English.pdf>

¹⁵⁴ CAT Concluding Observations, 2009 at para. 35 and United Nations General Assembly, Report of the Working Group on the Universal Periodic Review: Israel, A/HRC/25/15, 19 December 2003, para. 136.8.