



## Follow-up Report

# Submission to the United Nations Committee Against Torture in relation to Israel's One-Year Follow-up Response to the Committee's Concluding Observations from May 2016

Israel

August 2017

## Introduction

Adalah - The Legal Center for Arab Minority Rights in Israel, Addameer - Prisoner Support and Human Rights Association, Al Mezan Centre for Human Rights, and Physicians for Human Rights - Israel (PHRI), and the Public Committee against Torture in Israel (PCATI)—human rights organizations based in Israel, the West Bank, and the Gaza Strip—submit this report to the UN Committee Against Torture (the Committee) 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 (CAT). This coalition of human rights organizations regrettably reiterates many of the same concerns articulated in the previous submissions to the Committee, observing a lack of improvement since Israel’s May 2016 review.

In advance of the Committee’s examination of Israel in May 2016, the organizations represented here submitted reports to this Committee,<sup>1</sup> expressing grave concerns about the continued presence of torture and ill treatment and the lack of accountability for such allegations. After conducting its May 2016 review of Israel, the Committee invited the State party to share its plans for implementing recommendations for paras. 21, 23 (a), 25 (b) and 31 (b).<sup>2</sup> These recommendations concerned medical care for prisoners, and issues of administrative detention and the Unlawful Combatants Law, solitary confinement, and interrogation. Israel’s follow-up report regarding these recommendations, due 13 May 2017, has not been submitted by the state to the Committee as of this writing. This delay has imposed an additional burden for the organizations represented here in writing this follow-up to the recommendations.

This report provides information regarding each of the aforementioned recommendations. In addition, the coalition emphasizes that despite the representations made by the Israeli delegation before the Committee regarding the state’s work to codify the crime of torture in the national legislation, no progress has been made in this area. Indeed, in spite of repeated requests by PCATI, a draft bill has not been published. Thus, the State is continuing to fail to comply with CAT and with the recommendations of the Committee.<sup>3</sup> We note here that over 16 months after Israel first committed to publicizing a draft memo, no further steps have been taken; indeed, we are still unsure if the State plans to incorporate the absolute nature of the prohibition on torture, including psychological torture as well as the right to rehabilitation.

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<sup>1</sup> Adalah, Al Mezan, and PHRI, Joint NGO Report to UN CAT: Written information for the examination of Israel’s report by the Committee, 57th session, May 2016, Submitted 28 March 2016, Revised 11 April 2016, *available at* <https://goo.gl/MtFkLZ>; PCATI and OMCT, Independent Report to the UN Committee Against Torture Towards the Review of the Fifth Periodic Report on Israel, 1 March 2016, *available at* <https://goo.gl/UrC3CQ>; Addameer Prisoner Support and Human Rights Association, Al Mezan, Al-Haq, Badil Resource Center for Palestinian Residency and Refugee Rights, Jerusalem Legal Aid and Human Rights Centre, Palestinian Prisoners’ Club, Alternative Report to Israel’s Fifth Periodic Review by the Committee against Torture, 28 March 2016, *available at* <https://goo.gl/4pppXy>.

<sup>2</sup> U.N. Committee Against Torture, Concluding observations of the Committee against Torture (Extracts for follow-up of CAT/C/ISR/CO/5), Fifty-seventh session, 18 April – 13 May 2016, *available at* <https://goo.gl/KZyqCJ>.

<sup>3</sup> U.N. Committee against Torture, Concluding observations on the fifth periodic report of Israel, U.N. Doc. CAT/C/ISR/CO/5, (3 June 2016), ¶¶ 12-13; 15, *available at* <https://goo.gl/uxpNzA>.

## Review of Recommendations

### 1. **Recommendation 21: Development of mechanisms for medical professionals to document ill-treatment and transference of responsibility for prisoner health to the Ministry of Health.**

- a. The Committee recommended that Israel: (i) urgently take the measures to guarantee that medical staff working with prisoners and detainees are able document all signs and allegations of torture or ill-treatment and report them to the appropriate authorities and (ii) consider transferring responsibility for prisoner and detainee health care to the Ministry of Health to ensure that medical staff can operate independently from the custodial authorities.<sup>4</sup>

### Measures and Mechanisms for Physicians and other Medical Professionals to Document Ill-Treatment

#### 1. *Access of Independent (External) Doctors for Palestinian Prisoners in Israeli Prisons.*

As observed by PHRI and PCATI, the Israel Prison Service (IPS) continues to deny the access of external doctors to evaluate Palestinian prisoners, whether it is for the purpose of an independent medical opinion or an independent health assessment to substantiate legal claims of torture.<sup>5</sup> Although IPS directives provide and regulate private doctor's visitations for an external medical second opinion, they are often ignored. These same regulations do not provide explicitly for independent health assessments for legal purposes. Since May 2016, PHRI and PCATI requests for independent physician visits continue to be rejected or stalled until long after an alleged incident has occurred. PHRI case work since May 2016 illustrates this phenomenon:

**Case 1: Bilal Kayed.** In August 2016, PHRI requested an independent physician visit on behalf of Bilal Kayed, which was denied by the IPS and later challenged in court. Kayed is a former Palestinian prisoner, who at the end of his 15-year sentence, was placed in administrative detention without explanation. In response, Kayed launched a hunger strike. He was admitted to Barzilai hospital, where he was shackled to the bed. PHRI dispatched an independent physician to evaluate Kayed's condition, however his entry was denied by the IPS. In response, PHRI filed a petition to the District Court in Be'er Sheva regarding the prevention of this doctor's visit, which was dismissed on 11 August 2016.<sup>6</sup> PHRI appealed to

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<sup>4</sup> U.N. Committee Against Torture, Concluding observations of the Committee against Torture (Extracts for follow-up of CAT/C/ISR/CO/5), 18 April – 13 May 2016, ¶ 21.

<sup>5</sup> Denial of independent physician visits is in contradiction of IPS directive no. 04.46.00, which allows for and regulates private doctors' visitations to prisoners for an external medical second opinion. Adalah, Al Mezan, and PHRI, Joint NGO Report to UN CAT, ¶ 40. Further, such denial occurs despite an Israeli Supreme Court ruling on a petition brought by PHRI, where the Court instructed the IPS to recognize private medical visits "as a right and not a privilege." LCA 3676/13, *Muhammad Taj and Physicians for Human Rights-Israel v. The Israeli Prison Service* (decision delivered on 18 July 2013).

<sup>6</sup> See DCBS 39374-07-16/49821-07-17, *Bilal Kayed v. Israel Prison Service*, 11 August 2017 (A copy of the verdict is on file with PHRI).

the Supreme Court on 17 August 2016, and a hearing was then set for 22 August. The day before the hearing, the IPS removed Kayed's hand shackles, though his feet remained shackled. The Supreme Court rejected the appeal on the grounds that the Kayed's situation had changed since the initial appeal. However, it recommended that the IPS reconsider the shackling and noted that its decision did not constitute acceptance of the findings made by the District Court.<sup>7</sup>

PCATI casework, likewise, illustrates this phenomenon:

**Case 2:** In the first 6 months of 2016, PCATI worked to obtain access for a medical team to conduct an assessment for a Palestinian prisoner in an Israeli prison. During this period, PCATI was in contact with the IPS and the prison's legal department, but to no avail. In August of 2016, PCATI submitted a Prisoner's Petition that resulted in a court hearing, which took place on 11 September 2016. After the hearing, the medical team was granted access to conduct an assessment of the prisoner during October of 2016. When the medical team, consisting of a physician, psychologist and translator, arrived at the prison, the group was held at the prison gate. Only after two and a half hours of debate and negotiation was the medical team granted access to see the prisoner. At this point, the original pre-scheduled four hour appointment to conduct the assessment had been reduced to an hour and a half, and PCATI regrets to inform the Committee that the conditions in which the assessment was to take place were far from ideal. As the Committee is aware, an examination to determine and assess the sequelae of torture cannot be rushed and a thorough examination is crucial to rightfully assess a person.

PCATI's case is typical and similar problems were encountered in other cases over the course of the last year. As the Committee is well aware, the effects and visible scars of torture fade over time and the current lengthy processes for granting access to a prisoner within an Israeli prison greatly heightens the risk of loss of evidence or prejudices a potential evidentiary case. Furthermore, prisoners are often moved from prison to prison, which means that every time a prisoner arrives at a new location, a new application process for prisoner access to the prisoner is necessary. As observed by PCATI, each prison has its own rules, regulations, and reasons for refusal of assessment.

Moreover, in February 2017 the IPS issued new regulations that further restrict the rights of persons in prisons with respect to access of visitors - both medical and legal - as shall be elaborated below. These regulations explicitly limited the entry of private experts except for the purpose of building a post-release rehabilitation program.<sup>8</sup> These regulations have met with criticism from the District Court, which found them to be unreasonable, disproportionate and contrary to Israeli law, as well as the Public Defender's Office, which, as reported in the media, sent a letter of condemnation to the Attorney General and the State Attorney's office.<sup>9</sup> These

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<sup>7</sup> See HCJ 6392/16, *Bilal Kayed v. Israeli Prison*, 23 August 2016 (A copy of the verdict is on file with PHRI). See also Adalah, Addameer, PCATI, and PHRI, *NGO's Concerned by Recent Court Decision regarding Bilal Kayed*, 17 August 2016, available at <http://www.phr.org.il/en/ngos-concerned-recent-court-decision-regarding-bilal-kayed/>.

<sup>8</sup> IPS directive no 04.68.00, published 22 December 2016.

<sup>9</sup> Yaniv Kovovitz, *Despite court criticism, the IPS prevents prisons and detainees from meeting with private experts*. HAARETZ.COM (09 February 2017).

regulations contradict the UN Committee Against Torture’s recommendation regarding the access of independent doctors.

The lack of progress and even backsliding in this area is disconcerting. The lack of clear process or guidelines in place to ensure a systematic health examination for assessments in Israeli prisons indicates that the IPS does not see independent health examination as a prisoner’s legal right for fair treatment. Furthermore, no plan of implementation for the stated recommendation regarding standardized procedures for health examinations in Israeli prisons has been submitted by Israel to the Committee Against Torture, as required according to the follow-up guidelines. Additionally, no changes to legislation or practice have been introduced within the last year; prisoners’ access to independent visitors - both legal and health - has been limited further over the last year, as will be elaborated further below. As observed by PCATI, today's practices do not live up to the Committee’s recommendations. The Coalition suggests that the Committee requests from the Israeli State further clarification as to how it plans implement standardizations for independent medical examination in Israeli prisons.

## *2. Establishment of Committee to Review Medical Staff Complaints of Ill-Treatment.*

As previously observed, Israel’s Ministry of Health (MOH) has a reporting mechanism for medical staff complaints of harm or violence against detainees under interrogation.<sup>10</sup> The establishment of this committee was announced in November 2011; however, PHRI’s joint May 2016 CAT submission observed that “information about the committee remained opaque.”<sup>11</sup> Some positive ground has been made with respect to publicizing this committee. On 7 May 2017, PHRI received a letter from the MOH, wherein the MOH advised that it was working to further publicize the existence of this reporting committee;<sup>12</sup> however, as of the date of this submission, such publicization has yet to occur.

## **Independent medical examinations of persons deprived of their liberty**

### *3. Lack of independence of the prisoners' health system.*

Since May 2016, no measures have been taken to transfer responsibility for the health of prisoners from the IPS to the MOH, which may compromise the independence of professionals employed by the prison service.<sup>13</sup> 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.<sup>14</sup> An example of the issues created by this dual loyalty can be seen in the cases where detainees are examined by medical personnel while in the interrogation room and during an interrogation using torture methods.<sup>15</sup>

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<sup>10</sup> Adalah, Al Mezan, and PHRI, Joint NGO Report to UN CAT, April 2016, ¶ 108.

<sup>11</sup> *Id.*

<sup>12</sup> Letter from Israel’s Ministry of Health to PHRI (7 May 2016), on file with PHRI.

<sup>13</sup> U.N. Committee against Torture, Concluding observations on the fifth periodic report of Israel, 3 June 2016, ¶ 20.

<sup>14</sup> PHRI, *The Palestinian Prisoners’ Hunger Strikes of 2012*, January 2013, available at <http://www.phr.org.il/en/abuses-palestinian-inmates-2012-hunger-strike/?pr=99>; Adalah, Al Mezan, and PHRI, Joint NGO Report to UN CAT, April 2016, ¶ 71(c).

<sup>15</sup> Cases on file with PCATI.

Indeed, during the recent April – May 2017 mass hunger strike, it was reported in the Israeli media that Gilad Erdan, Israel’s Minister of Public Security who oversees the IPS, ordered the establishment of a field hospital to provide a medical response to hunger strikers in order to prevent their transfer to civilian hospitals as required by the MOH.<sup>16</sup> Such a field hospital would place hunger strikers under the care of doctors subject to ‘dual loyalty’ and constitutes a violation of medical ethics and the Malta declaration.<sup>17</sup> In response to these media reports, on 7 May 2017, PHRI wrote to the IPS, the MOH, and other concerned parties to further inquire and clarify this policy.<sup>18</sup> Specifically, PHRI requested: (1) clarification as to existing MOH regulations stipulating for the transfer of hunger strikers to MOH hospitals after 28 days and (2) clarification as to procedure regarding the treatment of hunger strikers in either MOH permanent hospitals or IPS field hospitals. At the time of this submission, no response has been received.

Furthermore, PHRI received reports of mistreatment and medical ethics violations by IPS staff during the 2017 April – May mass hunger strike, which highlight that the conflicts that arise as a result of “dual loyalty” between IPS doctors, their patients, and their employer are ongoing. First, PHRI received a number of reports concerning ethics violations by prison staff at Ktzi’ot prison, including: (1) testimonials that a medic cursed at hunger strikers and tried to force them to drink yogurt; (2) reports of the denial of medical treatment to hunger strikers who suffered from vomiting and diarrhea by medics, who claimed it was not possible to give them treatment until they stopped hunger striking; and (3) reports of the refusal of the IPS to allow hunger strikers to file a complaints against the aforementioned medics. Further, delays in the provision of emergency medical care were reported at the Ktzi’ot and Eshel prisons. It was reported that after prison staff were summoned in response to hunger strikers collapsing in their cells, it took staff half an hour to arrive and that IPS staff arrived with riot equipment but not with appropriate medical equipment. In light of these reports, PHRI wrote to the MOH, the IPS, and other concerned parties, requesting, among other measures: (1) an investigation into the complaints about the behavior of the medic; (2) examination of the conduct of IPS staff in prisons in connection with hunger strikers; and (3) the issuance of an update to IPS medical and the security staff regarding appropriate conduct towards hunger strikers.<sup>19</sup> At the time of this writing, the only agency to respond to PHRI’s inquiry is the MOH, which stated that it was unaware of any mistreatment of hunger strikers.<sup>20</sup> At the time of this submission, no further responses from the agencies contacted have been received.

## **2. Recommendation 22: Administrative Detention and Incarceration and the Unlawful Combatants Law.**

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<sup>16</sup> Elior Levy and Roi Yanovsky, *700 Palestinian security prisoners announce hunger strike*, YNETNEW□.COM (16 April 2017, 20:12),

<sup>17</sup> For more information on the implications of dual loyalty and the Malta Declaration, which “emphasizes the importance of an examination by an independent, neutral physician not identified with prison authorities,” see PHRI, *The Palestinian Prisoners’ Hunger Strikes of 2012*, January 2013 at 23-24.

<sup>18</sup> Letter from PHRI to Israel’s MOH, the IPS, et. al (7 May 2017), on file with PHRI.

<sup>19</sup> Letter from PHRI to Israel’s MOH, the IPS, et. al (25 May 2017), on file with PHRI.

<sup>20</sup> Letter from Israel’s Ministry of Health to PHRI (12 June 2017), on file with PHRI.

- a. The Committee recommended that Israel: (i) urgently take the measures necessary to end the practice of administrative detention and ensure that all persons who are currently held in administrative detention are afforded all basic legal safeguards and (ii) take measures necessary to repeal the Incarceration of Unlawful Combatants Law 5762-2002.<sup>21</sup>

## Administrative Detention and Incarceration

### 1. *Continued use of Administrative Detention.*

Administrative detention continues to be practiced in a widespread and systematic manner. According to statistics obtained by *HaMoked* in May 2017, the Israeli authorities were holding 486 individuals under administrative detention.<sup>22</sup> This high figure indicates that administrative detention is not only being used in exceptional cases for imperative cases of security, which contravenes international law.<sup>23</sup> Current cases of administrative detention include:

**Case 1: Ahmad Qatamesh:** Mr. Qatamesh is a 67-year old Palestinian academic and political scientist who was arrested in a pre-dawn raid by Israeli occupation forces on 14 May 2017. He subsequently received a three-month administrative detention order (renewable indefinitely). Amnesty International has called Qatamesh a prisoner of conscience and has called for his release.<sup>24</sup>

**Case 2: Ms. Sabah Faroun:** Ms. Faroun was arrested on 16 September 2016 at approximately 3:00 AM when Israeli forces raided her home in occupied Jerusalem. The mother of four was handcuffed and blindfolded and then illegally transferred to the HaSharon and Damon prisons, in contravention with the Fourth Geneva Convention which prohibits transfers from occupied territory into territory of the occupying power. She has since been held under administrative detention without charge or trial. Moreover,

**Case 3: Ahmad Hamid:** Mr. Hamid is a 17-year-old Palestinian minor who was arrested in Silwad village on 7 April 2017 at approximately 4:00 AM. An estimated 40 soldiers raided his home, and he has since been held in Ofer prison without charge or trial.

### 2. *Denying lawyers' visits to hunger-striking prisoners.*

On 17 April 2017, some 1,500 Palestinians classified as “security prisoners” began a hunger strike to protest the conditions of their detention in Israeli prisons and to demand improvements. In response to the hunger strike, as a punitive measure, the IPS prevented hunger-striking

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<sup>21</sup> U.N. Committee Against Torture, Concluding observations of the Committee against Torture (Extracts for follow-up of CAT/C/ISR/CO/5), 18 April – 13 May 2016, ¶ 23.

<sup>22</sup> HAMOKED: Center for Defense of the Individual, *6020 Security Inmates are Held in Prisons inside Israel*, May 2017, available at <http://www.hamoked.org/Prisoners.aspx>.

<sup>23</sup> Article 78 of the Fourth Geneva Convention.

<sup>24</sup> Amnesty International, *Israel: Release Palestinian prisoner of conscience detained without charge or trial*, 24 May 2017 (9:39 UCT), <https://www.amnesty.org/en/latest/news/2017/05/israel-release-palestinian-prisoner-of-conscience-detained-without-charge-or-trial/>.

prisoners from meeting with their lawyers. Attorneys who had scheduled authorized visits with their clients were surprised to discover that the IPS had cancelled their meetings for a variety of illegal pretexts relating to the prisoner's participation in the hunger strike.

On 3 May 2017, following a petition to the Israeli Supreme Court filed by Adalah and the Commission of Detainees and Ex-Detainees Affairs on behalf of 17 lawyers, the IPS was compelled to halt this practice.<sup>25</sup> The organizations argued in their petition that the prisoners had a right to meet with counsel, and that the IPS practice was illegal and constituted a forbidden form of punishment. (Note: *The Palestinian prisoners suspended their hunger-strike after 40 days, just before Ramadan at the end of May 2017. Among other concessions, the parties and the ICRC agreed to increase the frequency of the visits from one to two visits per month.*)

The Committee raised its concerns regarding prisoners' access to lawyers in its 2016 Concluding Observations, and it recommended that Israel "ensure, in law and in practice, that all persons deprived of liberty, irrespective of the charges brought against them, the law applicable to them or wherever they may be located, are afforded all legal safeguards from the very outset of the deprivation of liberty, including the rights to be assisted by a lawyer and to be brought before a judge without delay."<sup>26</sup>

Arab Member of the Knesset Yousef Jabareen (The Joint List) has also been prohibited from visiting Palestinian leader and hunger-strike leader Marwan Barghouti. Adalah, together with MK Jabareen, petitioned the Israeli Supreme Court in May 2017 against a December 2016 decision of the Knesset and the IPS to impose a blanket ban on meetings between Knesset members and Palestinians classified by Israel as "security prisoners." Adalah argued that the decision amounted to illegal government infringement of parliamentary activities: "The purpose of parliamentary immunity is to ensure freedom of political expression and action for Knesset members. In our view, the Knesset Committee decision runs contrary to this purpose and actually allows the public security minister to interfere in the duties of Knesset members and to decide who will be permitted to visit prisoners and who will not." Moreover, Adalah contended that "The importance of MK visits with prisoners and the need for parliamentary oversight increases in particular during prisoner hunger strikes. Reports and complaints of prisoners' rights violations during this period [of a hunger strike] necessitate parliamentary supervision."<sup>27</sup> This recent prevention of parliamentary supervision in the form of visits, which forms part of a practice when taken in conjunction with consistent denials of lawyers visits and the visits of independent medical experts, demonstrates a lack of application of the CAT by authorities.

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<sup>25</sup> See HCJ3555/17, *Attorney Ashraf Khatib, et al. v. Israel Prison Service*; Adalah press release, *Israel Prison Service compelled to allow hunger-striking Palestinian prisoners to meet with lawyers*, 7 May 2017, available at <https://www.adalah.org/en/content/view/9091>

<sup>26</sup> U.N. Committee against Torture, Concluding observations on the fifth periodic report of Israel, 3 June 2016, ¶¶ 16-17.

<sup>27</sup> See HCJ4252/17, *MK Yousef Jabareen v. The Knesset et al* (case pending); Adalah press release, *Adalah, MK Jabareen petition Israeli Supreme Court to allow MKs to visit Palestinian prisoners on hunger strike*, 25 May 2017, available at <https://www.adalah.org/en/content/view/9117>.

### 3. *Anti-Terror Law.*

On 15 June 2016, the Knesset enacted the “Anti-Terror Law,” which incorporates draconian provisions of the 1945 British Emergency Defense Regulations into Israeli criminal law, along with other emergency orders. It contains broad, vague definitions of ‘terrorism,’ ‘terrorist organizations,’ and “terror act,” which may be exploited by the security agencies to criminalize legitimate political, humanitarian and even cultural activities by Palestinian citizens of Israel and Palestinians in East Jerusalem.<sup>28</sup>

The Anti-Terror Law also enshrines in permanent law a series of harsh criminal procedures applicable solely to detainees suspected of committing security offenses as defined in the law. These procedures—previously part of a temporary order—disregard basic principles such as the right to due process, the right to liberty, the right to access the courts, the right to consult with an attorney, the right to equality and the right of a detainee to be present at his/her detention proceedings. As such, the law poses a further obstacle to safeguards from torture and CIDT.

For example, the law makes it possible to delay bringing a detainee before a judge for up to 96 hours; to hold detention hearings, reviews, and appeal proceedings in the absence of the suspect; and to refrain from informing him/her of the decisions in the case. The law also permits the extension of suspects’ detention for longer periods of time than those that are set in regular criminal detention laws. Holding interrogations and detention hearings in the framework of this law provides fertile ground for illegal conduct of interrogations.

The Anti-Terror Law also allows the widespread use of secret evidence, in stark contravention of fundamental constitutional principles. In regular criminal proceedings, secret evidence is inadmissible in court and can, therefore, not be the basis for a judicial decision as the defendant has no real possibility of defending himself against their contents. Nevertheless, the Anti-Terror Law grants wide-ranging powers at various junctures to employ confidential information, which is not revealed to the defendant.

### **Incarceration of Unlawful Combatants Law**

#### 4. *Incarceration of Unlawful Combatants Law 5762-2002*

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 state to incarcerate civilians without fair trial and on the basis of secret evidence and to abrogate detainee rights in Israeli prisons. The CAT Concluding Observations in June 2016 “reiterated its previous concerns” regarding the Law<sup>29</sup> and urged Israel to “take the measures necessary to repeal the Incarceration of Unlawful Combatants Law 5762-2002.”<sup>30</sup>

The Committee also noted that, at the time of its dialogue with Israel in May 2016, there was one individual held under this Law—Munir Hamada. Seven months later, on December 16, 2016, the

<sup>28</sup> See Adalah press statement, “Israel’s new Anti-Terror Law violates Arab citizens’ human rights”, 16 June 2016. Available at: <https://www.adalah.org/en/content/view/8834>.

<sup>29</sup> U.N. Committee against Torture, Concluding observations on the fifth periodic report of Israel, 3 June 2016, ¶ 22.

<sup>30</sup> *Id.* at ¶ 23b.

Beer Sheva District Court approved the State's request for the issuance of a third six-month detention order. The district court thereby accepted the State's determination that Hamada was a threat based on a secret intelligence report that was not made available to Hamada's counsel. After two appeals for his release were rejected by the Supreme Court, one-month of interrogation, and three six-month detention orders, on 9 June 2017, Hamada was released through Erez crossing back into the Gaza Strip.

Hamada returned to his family after 19 months of arbitrary detention that was in serious violation of his rights and international humanitarian law; however, victims of this type of arbitrary detention have no chance of legal recourse or redress. On the one hand, the practice is legal under Israeli domestic law and approved by the Supreme Court, and on the other hand the Israeli legal system shields perpetrators of serious violations of international law, including torture and CIDT/P, and does not hold them to account.

Al Mezan has learned that one other individual is currently being held under the Law: Majdi Abu Taha, from Rafah in the south of the Gaza Strip, born in 1981, who was arrested at the Erez crossing on 15 February 2017. After undergoing interrogation for one month, a six-month detention order was issued by the court on the grounds of his unlawful combatant status. He is the father of three children.

Since Israel's disengagement from Gaza in September 2005, the Law has been applied against at least 11 individuals from the Gaza Strip. It was employed, in particular, during Israel's military operations on Gaza, "Cast Lead" in 2008/09 (9 cases) and "Protective Edge" in 2014 (1). Two additional cases were proclaimed outside of these full-scale operations.

### **3. Recommendation 25: Solitary confinement and other forms of isolation**

- a. The Committee recommends that Israel put an immediate end and prohibit the use of solitary confinement for juveniles and persons with intellectual or psychosocial disabilities.<sup>31</sup>

#### *1. Ongoing Use of Solitary Confinement*

Currently an estimated 15 Palestinian prisoners and detainees are being held in solitary confinement and isolation cells, between Eshel, Nitzan, Rimon, Megiddo, and Nafha prisons. These prisoners include Nahar Al Saadi, who has been held in isolation sections for over two years,<sup>32</sup> as well as Ahmad Mughrabi, and Bages Naghleh.

Also, during the recent mass 2017 April – May hunger strike by Palestinian prisoners and detainees in Israeli detention, hunger strikers were placed under solitary confinement.<sup>33</sup> These

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<sup>31</sup> U.N. Committee Against Torture, Concluding observations of the Committee against Torture (Extracts for follow-up of CAT/C/ISR/CO/5), 18 April – 13 May 2016, ¶ 25(b).

<sup>32</sup> PHRI, *Nahar Al-Saadi held in solitary confinement for over 570 days*, 15 December 2014, available at <http://www.phr.org.il/en/nahar-al-saadi-held-solitary-confinement-570-day/>.

<sup>33</sup> See Addameer, *38th day of hunger strike: striking prisoners remain steadfast despite deteriorating health*, 24 May 2017, available at

measures against the detainees, who were conducting a hunger strike, an internationally recognized form of peaceful protest, may amount to CIDT/P and/or torture<sup>34</sup> and run counter to the 2016 concluding observations issued by the Committee.<sup>35</sup>

## *2. Ongoing Use of Solitary Confinement of Minors and those with Mental Illness.*

PHRI casework since May 2016 suggests that Israel continues to make use of the practice of solitary confinement for minors and those with mental illness. On 23 February 2017, PHRI submitted a request to the IPS under Israel's Freedom of Information law to obtain further information regarding the use of solitary confinement writ large - as all prisoners may be psychologically and physiologically impacted by solitary confinement - but also specifically with respect to the solitary confinement of minors and persons with mental illness.<sup>36</sup> As of the date of this submission, PHRI has yet to receive a response. A recent report of the Public Defender's Office confirmed that the presence of prisoners with mental illness in Israeli prisons, such as in Hadarim prison, where the report noted that prisoners with suicidal tendencies were held in the absence of appropriate alternatives.<sup>37</sup>

In June 2017, the Ministry of Public Security, which oversees the IPS, circulated for public comment proposed legislation regarding the IPS regulations concerning individuals placed in solitary confinement. Under this legislation, a prisoner's health, the length of time he or she is in solitary confinement, and the reason for the solitary confinement would be considered by the IPS representative or the court when making the determination as to whether to place an individual in solitary or to prolong placement in solitary confinement.<sup>38</sup> While this legislation is in its preliminary phase of consideration, if it is passed, its implications should be clearly monitored by the Committee to ensure adherence with the Committee's recommendations.

## **4. Recommendation 31(b): Interrogation Methods and Use of Restraints**

- a. The Committee recommends that Israel should take effective measures to ensure that interrogation methods contrary to the Convention are not used under any circumstances and avoid the use of restraints during interrogation as much as

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<http://www.addameer.org/news/38th-day-hunger-strike-striking-prisoners-remain-steadfast-despite-deteriorating-health>;

Addameer, Addameer visits hunger-striking political leader Ahed Abu Ghoulmeh, 22 May 2017, available at <http://www.addameer.org/news/addameer-visits-hunger-striking-political-leader-ahed-abu-ghoulmeh>; Addameer, 23 days of hunger strike: Israeli occupation continues to impose restrictions on attorney visits, 09 May 2017, available at <http://www.addameer.org/news/23-days-hunger-strike-israeli-occupation-continues-impose-restrictions-attorney-visits>.

<sup>34</sup> U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1, (10 December 1984.)

<sup>35</sup> Israel should guarantee that hunger strikers "are never subjected to ill-treatment or punished for engaging in a hunger strike, and are provided with necessary medical care in accordance with their wishes." U.N. Committee against Torture, Concluding observations on the fifth periodic report of Israel, 3 June 2016, ¶¶ 26-27.

<sup>36</sup> Letter from PHRI to the Israeli Prison Service (27 February 2017), on file with PHRI.

<sup>37</sup> Public Defender's Office, Conditions of detention and imprisonment in incarceration facilities, 2016, p.10, available at <http://www.justice.gov.il/Units/SanegoriaZiborit/DohotRishmi/Documents/PrisonerReport2016.pdf>

<sup>38</sup> A copy of the proposed legislation is on file with PHRI.

possible or apply them, only if strictly regulated, as a measure of last resort, when less intrusive alternatives for control have failed and for the shortest possible time.<sup>39</sup>

1. *Ongoing Use of Interrogation Methods Contrary to the Convention.*

PCATI continues to receive credible allegations that torture methods are being used in ISA interrogations on a regular basis. These methods include sleep deprivation, stress positions, threats, painful and lengthy use of shackling and humiliation. These methods are approved by the highest levels and are used as a matter of policy, in violation of CAT and despite the Committee's May 2016 concluding observations.<sup>40</sup>

Furthermore, PCATI continues to receive responses from the authorities that examination files regarding complaints alleging torture have been closed. These closures are regularly justified under the necessity defense.<sup>41</sup>

**Case 1: NS:** The case of NS, a Palestinian man, was brought to the Committee's attention in PCATI's submission in 2016, when the case was still in its initial investigation phase.<sup>42</sup> NS was arrested in August 2011 and taken into an ISA interrogation. This interrogation allegedly included the use of torture, specifically sleep deprivation, shaking, and the intensive use of stress positions over three days, leading to intense pain and loss of feeling in his arms. N.S. was prevented from using the toilet, forcing him to void on himself several times and causing him great humiliation and pain. In November 2011, N.S. submitted a complaint through PCATI and PHRI, demanding that his interrogators face criminal prosecution. Only after numerous reminders and reiterations; the provision of detailed medical evidence, detailing the severe physical and psychic repercussions of the interrogations; and the presentation of a petition to the High Court of Justice in March 2013 (HCJ 2286/2013) leading to an order *nisi*, did NS receive a reply on 31/5/2016, over 4 years after the case was filed. The decision was taken to close his complaint with no criminal investigation, offering him no redress and failing to comply with Article 4, 12 and 13 of the Convention. Following the dismissal of the complaint with no criminal investigation, the HCJ rejected the petition.

As this example shows, torture is not only still applied but is also approved retroactively by the authorities, sending a clear message of impunity and destroying any shred of accountability. As the Committee is well aware, this is also a flagrant violation of Article 4 of the Convention.

The Committee has requested that the State party ensure that all instances and allegations of torture and ill-treatment are investigated promptly, effectively and impartially and that alleged perpetrators are duly prosecuted.<sup>43</sup> We note that this year has presented no change, and that to date not a single ISA interrogator has ever faced a criminal prosecution, despite well over 1,000

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<sup>39</sup> U.N. Committee Against Torture, Concluding observations of the Committee against Torture (Extracts for follow-up of CAT/C/ISR/CO/5), 18 April – 13 May 2016, ¶ 31(b).

<sup>40</sup> U.N. Committee against Torture, Concluding observations on the fifth periodic report of Israel, 3 June 2016, ¶ 14.

<sup>41</sup> These answers are on file with PCATI.

<sup>42</sup> PCATI and OMCT, Independent Report to the UN Committee Against Torture Towards the Review of the Fifth Periodic Report on Israel, 1 March 2016, available at <https://goo.gl/UrC3CQ>, pp.21.

<sup>43</sup> *Id.* at ¶ 31(c).

complaints presented against ISA officials with allegations of torture and ill-treatment. We further note that examinations continue to take an unreasonably long time, thereby harming substantially the chance of justice. The current average time for the preliminary examination process is over 28 months.

**Case 2: AO:** AO, a Palestinian woman, was arrested in the summer of 2010. She was interrogated by the Israeli Security Agency in Petach Tikva interrogation facility for 47 consecutive days, during which she was deprived of access to counsel and to her small child. Her interrogation included the use of sleep deprivation, painful shackling, sexual harassment, threats used against family members, and demeaning detention conditions. PCATI submitted a complaint in AO's name on March 2012 to the Ministry of Justice. The file was subjected to a preliminary examination, and like 100% of the complaints submitted against ISA interrogators in the last 16 years, the file was closed (in this case after 40 months). On January 2016 PCATI submitted an appeal, and appended to it two expert opinions testifying as to the gravity of the allegations. The appeal calls on the Ministry of Justice to review the decision and open a criminal investigation into the behaviors of the interrogators. So far, no response to the appeal has been forthcoming (over 17 months), although reminders have been sent.

This case is typical of hundreds of others. No criminal investigation has ever been opened following a complaint of torture or ill-treatment by an ISA interrogators, in spite of over 1,000 complaints of abuses submitted since 2001. No appeal has ever been accepted, since the process was allowed in 2013.

## 2. *Exempting audio-video recording of interrogations of "security suspects."*

In January 2017, the Israeli Supreme Court (SCT) dismissed a petition filed in July 2015 by seven human rights organizations demanding the cancellation of a temporary law exempting Israeli security agencies and the police from making audio-visual recordings of interrogations of 'security suspects,' a group made up overwhelmingly of Palestinians.<sup>44</sup>

The Court dismissed the petition on the basis that it did not address the new enactment of Amendment No. 8, which provides for closed-circuit cameras in interrogations rooms (this amendment was passed after the petition was filed and while it was pending). Adalah argued before the court in July 2016, when the issue of the amendment was raised, that this method of recording produced no permanent documentation and thus, no video would be made and preserved as evidence for potential later use at trial.

Both the Committee (in 2009 and 2016) and the UN Human Rights Committee (in 2014) in their respective concluding observations sharply criticized this sweeping exemption.<sup>45</sup> The Committee

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<sup>44</sup> See Adalah press release, *Human rights organizations petition Supreme Court: Cancel law exempting Israeli Security Services from audio-visual recording of interrogations of Palestinian detainees*, 27 July 2015, available at <https://www.adalah.org/en/content/view/8605>. The petitioning organizations are: Adalah, the Association for Civil Rights in Israel (ACRI), PCATI, PHRI, Al Mezan Centre for Human Rights, HaMoked, and Yesh Din.

<sup>45</sup> See U.N. Committee against Torture, *Concluding observations on the fifth periodic report of Israel*, 3 June 2016; U.N. Committee against Torture, *Concluding observations on the fourth periodic report of Israel*, U.N. Doc. CAT/C/ISR/CO/4, (23 June 2009), available at <https://goo.gl/sPTgXd>; U.N. Human Rights Committee, *Concluding observations on the fourth periodic report of Israel*, U.N. Doc. CCPR/C/ISR/CO/4, (21 November 2014), available at <https://goo.gl/YXB6qK>.

issued a concluding observation in May 2016, which also raised serious concerns over Amendment No. 8, which was pending at the time. The Committee noted that the Justice Ministry represented that it is working on the installation of closed-circuit cameras in all ISA interrogation rooms, however, “it regrets the lack of clarity about whether such interrogations will also be recorded so as to be available to be used as evidence in courts (arts. 2 and 11).” The Committee recommended that Israel “ensure the compulsory audio-visual recording” of all suspects’ interrogations ... and that “Audio-visual footage should be monitored by an independent body and kept for a period sufficient for it to be used as evidence in courts.”<sup>46</sup>

We note that the current practice proposed by the state would not produce any documentation that could be used as evidence at trials, examinations or investigations of torture allegations.

### *3. Use of Restraints during Interrogation*

In its Concluding Observations, the Committee singled out the use of restraints during interrogations as a measure of last resort, “when less intrusive alternatives for control have failed and for the shortest possible time.”<sup>47</sup> Despite the Committee’s explicit request, the state has not submitted an implementation to date, set forth how it intends to comply with this recommendation.

Indeed, a response to a collective complaint submitted by PCATI in January 2011 regarding painful shackling sent in November 2016 suggests that the State is content with using shackling as a default. The letter states that the issue of restraints in interrogations was examined generally, and reports that “we have decided to accept the explanations provided [by the ISA].”<sup>48</sup> The clear implication is that restraints are indeed used as a default in ISA interrogations, and the State finds this acceptable.

Monitoring conducted by Addameer, likewise, indicates that in almost all cases of interrogations in prisons in Jalameh, Petah Tivka, and Ashkelon, detainees continue to be restrained during their interrogation.<sup>49</sup> The forms of restraint usually involve the binding of the hands, but sometimes also includes one or both legs being restrained to a chair. These restraints also accompany other coercive practices including isolation from the outside world, threats, being placed in cells with collaborators (who subject prisoners to physical and mental assault to extract confessions), kicking, and hitting. The following cases illustrate this phenomenon:

**Case 1: Mahmoud Badwan:** Mr. Badwan is 26 years-old, from Azzun village in the West Bank. He recounted in an affidavit that “On October 27, 2016, at approximately 1:30 AM, Israeli soldiers stormed our house, where I was returning from outside ... the soldiers at that time had entered the door of our main house, and distributed throughout the house ... An officer asked for my identity card and asked me to sit in the living room ... After an hour of

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<sup>46</sup> U.N. Committee against Torture, Concluding observations on the fifth periodic report of Israel, 3 June 2016 ¶¶ 18-19.

<sup>47</sup> U.N. Committee against Torture, Concluding observations on the fifth periodic report of Israel, 3 June 2016 ¶ 31(b).

<sup>48</sup> Letter from IPS to PCATI (14 November 2016), on file with PCATI.

<sup>49</sup> Monitoring conducted by Addameer indicates that in almost all cases of interrogations in prisons in Jalameh, Petah Tivka, and Ashkelon, detainees continue to be restrained during their interrogation.

army presence inside the house, they began the inspection and vandalism, where we heard the sound of glass breaking and the sounds of a blanket being torn up. The officer who identified himself as the officer, Sabri, called Ali and was angry. He asked me for my phone. I told him that I did not have it, because it was in the repair shop. Then he began shouting loudly. He began beating the glass buffet with his hands. He broke the glass of the buffet and drew blood from his hand. He punched me in my right eye, ... and then he grabbed an empty glass grip that was on the ground, and beat it directly on me ... I was trying to reach out to the soldiers who were holding me from behind. They were two soldiers, but they responded to me by beating me with their rifles. The beatings were on all parts of my body (shoulder, chest). After ... minutes of continuous beatings, the two soldiers jumped and tied my hands behind me with plastic restraints.”<sup>50</sup>

**Case 2: Asif al-Amour:** Mr. al-Amour is 23-years old and from the village of Takoa, Bethlehem. He recounted: “They took me out of the house and they blindfolded me with a piece of cloth. I was taken directly to an area called al-Fardous, an army camp, and while I was inside the military jeep, the soldiers shouted at me and cursed me with obscene words. Then they took me to the camp and tied my hands with plastic restraints, took me to a large room, sat me on a chair, and sat on the chair with my hands tied in front of me.”<sup>51</sup>

The state’s position violates international law and the Committee’s recommendation. The use of restraints for long periods of time continues apace with no visible attempt to inculcate a different policy or to present alternative methods and guidelines for when the use of restraints is inevitable.

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<sup>50</sup> Affidavit provided to Addameer attorney on 1 December 2016.

<sup>51</sup> Affidavit provided to Addameer attorney on 21 March 2016. Arrest took place on 12 October 2015.