

Israel - Briefing to the Human Rights Committee  
For the Committee's Review of the Fourth Periodic Report on Israel  
Jerusalem, September 2014

Submitted by the **Public Committee Against Torture in Israel (PCATI)**

In consultation with the International Rehabilitation Council for Torture Victims (IRCT) and World Organisation Against Torture (OMCT)

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**The Submitting NGO:** PCATI is an independent human rights organization battling torture and cruel, inhuman and degrading treatment within Israel. Founded in 1990, PCATI advocates for all persons - Israelis, Palestinians, labor immigrants and other foreigners in Israel and the Occupied Palestinian Territories (OPT) – in order to protect them from torture and ill treatment by the Israeli security and law enforcement authorities. These include the Israel Police, the Israel Security Agency (ISA), the Israel Prison Service and the Israel Defense Forces (IDF). PCATI acts in accordance with moral and democratic values, and the standards set in Israeli and International law.

## Introduction

In this briefing, the Public Committee Against Torture in Israel (PCATI) provides information on and illustrations of its concerns regarding Israel's compliance with the International Covenant on Civil and Political Rights (the Covenant), for consideration by the Human Rights Committee (the Committee) of Israel's 4<sup>th</sup> Periodic Report.<sup>1</sup> This, in accordance with the List of Issues (LOI) issued by the Committee in 2012.<sup>2</sup>

The briefing focuses on provisions of the Covenant relevant to PCATI's mandate, that is, chiefly involving the treatment of persons deprived of their liberty. Within that population, the briefing will focus on the treatment of Palestinians from the Occupied Palestinian Territories (OPT). This briefing should therefore not be considered as purporting to cover the full range of Covenant rights.

The briefing will lay a heavy emphasis on Palestinians detained and interrogated by the Israel Security Agency (ISA),<sup>3</sup> where the State Party's violations of the Covenant are exceptionally serious, combining – perhaps uniquely among States Parties - systematic torture with political, legal and indeed judicial legitimisation. PCATI considers this legalisation of torture by Israel to be a blatant violation of the Covenant.

Part I covers a number of key concerns surrounding interrogation of detainees by ISA. These include the absence of legislative measures to criminalise torture; retaining “necessity” as justification of torture; the systematic nature of torture by the ISA (and thus the State Party); the attitude of prosecutors and courts to complaints and reports of torture; the involvement of doctors and other medical staff in torture and other ill-treatment by ISA interrogators; refusal to allow video/audio recording of interrogations; and recent developments concerning the processing of torture complaints.

Part II details and discusses ISA interrogation techniques. It includes a list of the most common interrogation methods; an explanation on three of the less obvious or known ones – incommunicado detentions, inhumane conditions and sexual or gender-based humiliation; two accounts of Palestinian detainees; and a description and illustration of a recent surge in torture cases.

Part III provides a short overview of the investigations by the Military Police and Military Prosecution of complaints of violence by IDF soldiers against Palestinian detainees.

This introduction concludes with a general overview.

PCATI looks forward to engaging with the Committee and the government during the Committee's consideration of the report.

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<sup>1</sup> UN Doc. CCPR/C/ISR/4, 12 December 2013.

<sup>2</sup> List of Issues prior to the submission of the fourth periodic report of Israel (CCPR/C/ISR/4) adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, UN Doc. CCPR/C/ISR/Q/4.

<sup>3</sup> The organisation's Hebrew name, *Sherut ha-Bitahon ha-Klali*, translates to “General Security Service”. Note that the term and its acronym, GSS, were used officially in older documents.

## General overview of PCATI's concerns:

It should first be observed that Israel has paid little or no heed to the Committee's recommendations relevant to this briefing, and that violations of the Covenant, including of its most basic provisions, have continued. Any changes that did take place have been marginal and have not stopped the violations or affected the core of the concerns expressed by the Committee.

1. Since the Committee considered the State Party's previous report, the Israel Security Agency (ISA) has continued to employ torture systematically in the interrogation of Palestinian detainees, mostly from the Occupied Palestinian Territories, and has similarly used cruel, inhuman or degrading treatment (henceforth: other ill-treatment) in the interrogation of many more. The use of techniques of torture, officially referred to as "special measures", is legally sanctioned and morally justified by the claim of "necessity". This practice has continued in clear violation of international law in general and the Covenant in particular. It also blatantly ignored the Committee's unequivocal – and repeated - recommendation to Israel, including in its previous concluding observations, that "the State Party should completely remove 'necessity' as a possible justification for the crime of torture."<sup>4</sup> ISA torturers invariably enjoy total impunity - each and every complaint filed by torture victims is closed by the State Attorney's Office or the Attorney General without criminal investigations ever being opened, let alone prosecutions of interrogators or their superiors. Recent months have seen a surge in torture cases.
2. Violence and humiliation constituting ill-treatment, and at times torture, continue to be inflicted by soldiers and members of other security forces during the arrest and initial detention of Palestinians in the Occupied Palestinian Territories. Unlike in the case of ISA interrogations there is no official impunity route for such acts in military law, but in practice there is also little preventative, investigative, prosecutorial or punitive action from the authorities.
3. The Committee's other recommendations with respect to Israel's previous reports in this context have for the most part been roundly ignored.<sup>5</sup>

## Part I: Key concerns about Covenant rights of detainees under ISA interrogations

1. Allegations made by Palestinian detainees in detailed affidavits and testimonies to PCATI and other NGOs consistently describe the use of methods which clearly constitute torture under international legal definitions and the jurisprudence of international tribunals and human rights monitoring bodies. In several cases, these allegations have been substantiated by internal ISA memoranda, by testimony of ISA interrogators in court and by medical evidence.<sup>6</sup>

### 1.1 No legislative measures against torture and other ill-treatment (Articles 2, 7; LOI para. 15):

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<sup>4</sup> Concluding observations of the Human Rights Committee: Israel, UN Doc. CCPR/C/ISR/CO/3, 29 July 2010, para. 11. See similarly Report of the Human Rights Committee (2002-3), UN Doc. A/58/40 (Vol. I), para. 85(18).

<sup>5</sup> Relevant recommendations included legislating to criminalise torture, refraining from resort to administrative detentions, ensuring that all allegations of torture and other ill-treatment are thoroughly and promptly investigated by an independent body, ensuring that any person arrested or detained has immediate access to a lawyer and a judge and repealing the Detention of Unlawful Combatants Law as amended in 2008. See *ibid.*

<sup>6</sup> See for instance B'Tselem and HaMoked, *Kept in the Dark: Treatment of Palestinian Detainees in the Petah Tikva Interrogation Facility of the Israel Security Agency* (Jerusalem: B'Tselem and HaMoked, 2010, written by Yossi Wolfson); Adalah and the Public Committee Against Torture in Israel, *Exposed: The Treatment of Palestinian Detainees During Operation Cast Lead* (2010, written by Majd Badr and Abeer Baker); Public Committee Against Torture in Israel and Physicians for Human Rights-Israel, *Doctoring the Evidence, Abandoning the Victim: The Involvement of Medical Professionals in Torture and Ill-treatment in Israel* (Jerusalem: PCATI and PHR-Israel, 2011, written by Irit Ballas). ISA personnel testified concerning methods of interrogation in closed court hearings, many of which are on file with PCATI; however, the publication of such testimonies is prohibited. But see Yuval Ginbar, *Why Not Torture Terrorists: Moral, Practical and Legal Aspects of the 'Ticking Bomb' Justification for Torture* (paperback edition, Oxford: Oxford University Press, 2010), pp. 365-72 for excerpts from such testimonies.

2. No legislative steps whatsoever have been taken by the State Party to put in place legislation establishing a crime of torture nor are any such steps envisaged. The current absence of such legislation is a glaring omission, in view of Israel's decades-long record of combining officially-sanctioned torture practices with an attempt to avoid the stigma and legal repercussions of doing so through the use of euphemisms such as "a moderate measure of physical pressure";<sup>7</sup> "physical interrogation methods";<sup>8</sup> "pressure methods";<sup>9</sup> and "necessity interrogation".<sup>10</sup> The existing offence of cruel treatment by physical or mental abuse against a victim who is helpless or in custody do not include several elements of the definition of torture in Article 1(1) of the UN Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment.<sup>11</sup> The crime of a public servant extorting a confession, or information concerning an offence, prohibits the use of force or violence or threat of injury, but does not criminalize causing mental suffering.<sup>12</sup> Nor does it prohibit acts for purposes such as punishment or for any reasons based on discrimination. The maximum sentence of three years' imprisonment for this offence is not proportionate to the gravity of the crime of torture.<sup>13</sup> Most seriously, all of these provisions can - and are - set aside by the "defence of necessity" when torture is inflicted in situations judged to constitute what the Supreme Court described as "ticking time-bombs".<sup>14</sup>

### 1.2. Retaining "necessity" as justification of torture (Articles 2., 7; LOI para. 15)

3. In February 2013 the Turkel Commission, appointed by the Israeli government following the maritime incident of 31 May 2010, recommended that "the Ministry [of Justice] should ensure that there is legislation to transpose clearly into law and practice the absolute prohibition in international law of torture and inhuman and degrading treatment."<sup>15</sup> However, there are currently no pending bills or any other legislative initiatives – either from the government or from individual members of Knesset – for legislation criminalising torture.
4. As the State Party's curt response to the Committee on this point<sup>16</sup> indicates, it continues to consider the prohibition of torture in the Covenant and international law generally to be

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<sup>7</sup> *Report of the Commission of Inquiry in the matter of Interrogation Methods of the General Security Service regarding Hostile Terrorist Activity*, First Part, (Jerusalem: October 1987), para. 4.7. This report lay the legal foundations of a system under which many thousands of Palestinians were tortured between 1987 and 1999.

<sup>8</sup> H CJ 5100/94 *The Public Committee against Torture in Israel v Government of Israel et al*, PD 53(4) 817 (ruling of 6 September 1999), para. 34.

<sup>9</sup> See for instance H CJ 5722/12 *As'ad Abu Gosh et al. v the Attorney-General et al.*, Respondents' Preliminary Reply, 25 December 2012, paras.3, 10-11, 21-2, 41.

<sup>10</sup> See for instance Supreme Court Sitting as High Court of Appeals, Crim App 2005/06, *'Abd al-'Aziz 'Amer v the State of Israel*, ruling of 25 May 2008, para 6; Judea Military Court, 2954/11, *Military Prosecution v. Nidal Nizam al-Din 'Id Shahadah*, Minutes, hearing of 26 November 2013, p. 3; and further examples in the discussion below.

<sup>11</sup> UNGA res. 39/46, 10 December 1984, entered in to force 26 June 1987. Israel ratified this treaty in 1991.

<sup>12</sup> Under sec. 368(c) of Israel's Penal Law, 1977, mental or physical abuse of a helpless person is punishable by a maximum of seven years imprisonment or nine years if the perpetrator is the person responsible for the victim; the Supreme Court has held that this offence is applicable to cruelty or ill-treatment of a person being held in custody: Cr. A. 1752/00 *State of Israel v. Nakash*, Piskei Din 54(2) 72, 78–80 (2000). Under sec. 65 of the Military Jurisdiction Law, 1955, cruel treatment by a soldier of a detainee or lower-ranking soldier carries a maximum penalty of three years imprisonment or seven years in aggravating circumstances

<sup>13</sup> Section 277 of the Penal Law, 1977, under the heading of "oppression by a public servant", provides:

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

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

<sup>14</sup> H CJ 5100/94 *Public Committee against Torture in Israel v. the State of Israel*, para. 34.

<sup>15</sup> The Public Commission to Examine the Maritime Incident 31 May 2010, Turkel Commission – the second report, February 2013, Ch. D, recommendation no. 1, para. 10, p. 366. Henceforth: Turkel Commission report II.

<sup>16</sup> UN Doc. CCPR/C/ISR/4 , para. 357.

subservient to a domestic legal provision, the 'defence of necessity'. This, while extant in most legal systems, Israel uses uniquely to ensure that torture by ISA interrogators is never punished. More broadly, the Supreme Court's "ticking time-bomb" exception to the prohibition on torture has granted torture political and social legitimacy.

5. The legal framework for the current torture/impunity system was set out by the Supreme Court's judgment of September 1999 (in HCJ 5100/94 *Public Committee against Torture in Israel v. the State of Israel*. Henceforth: Torture case). Exactly fifteen years after the judgment, the question of whether or not, or to what extent, this is the state of affairs that the Court envisaged has become irrelevant, not least because the Supreme Court itself has so far cooperated fully with the watertight impunity system created in the wake of that judgment and rejected all attempts to challenge it (see further below, sec. 1.4).<sup>17</sup> The view of the State Party and its Supreme Court that the prohibition of torture has exceptions is reflected the Court's rulings on specific interrogation methods: the Court rejected a petition against ISA using family members as a means of inflicting mental torture on detainees, accepting the State's position that (in the Court's words) "*as a general rule*, in a situation where a family member of the detainee is not under arrest, and there is no legal cause to arrest him, a presentation to the interrogee according to which the family member is under arrest must not be made"<sup>18</sup> (emphasis added). Similarly, a petition by PCATI against the systematic use of handcuffs and other shackles as a means of causing pain and suffering to detainees during interrogations by the ISA was rejected, *inter alia* on the basis of the State's statement that (in the Court's words) "*as a general rule* there is no permission to use shackling as a means of interrogation" (emphasis added). In the latter case the State added explicitly, and the Court, in accepting the State's position and rejecting the petition, accepted, that "if and to the extent that shackling is used by an interrogator as a means of interrogation in a specific interrogation, its legality will be clarified according to the circumstances as is the application of any physical means of interrogation used when the 'defence of necessity' applies to the interrogator".<sup>19</sup> In practice, both methods continue to be utilised during ISA interrogations, as seen in the illustrations below.
6. Nor are there any practical ramifications left, in 2014, of the distinction which in 1999 the Supreme Court took pains to emphasise between the "defence of necessity" constituting *a priori* authorisation for ISA interrogation to torture ("apply physical means"), which the Court rejected, and this defence providing *a posteriori* exemption from punishment and prosecution, which the Court accepted (in "ticking time-bomb" situations).<sup>20</sup> When torture or other ill-treatment take place during "regular" interrogations, a combination of refusal to allow any independent monitoring and consistent preference of interrogators versions of event over those of detainees ensures that complaints in such cases are invariably closed too. **With 15 years having elapsed and many, many hundreds of complaints presented, without a single one resulting in a criminal investigation, let alone prosecution, ISA interrogators have long become reassured in advance that whatever they inflict upon Palestinian interrogees, they are safe from any legal sanction.**

### 1.3. ISA torture as systematic (Articles 2, 4, 7, LOI, paras. 15-16)

7. It should first be clarified that by "systematic" we refer to the existence of official facilitation, resource allocation, planning, organisation, approval and protection of perpetrators rather than to any quantitative elements. This roughly corresponds to the criteria set by the International Criminal

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<sup>17</sup> See for instance HCJ 5100/94, 4054/95, 5188/95 *Public Committee Against Torture in Israel et al v Government of Israel et al*, request under Contempt of Court Ordinance, ruling of 6 July 2009 and other cases cited *infra*.

<sup>18</sup> HCJ 3533/08 *Suweiti et al. v. the ISA et al.*, decision of 9 September 2009, para. 4.

<sup>19</sup> HCJ 5553/09 *Public Committee Against Torture in Israel v. the Prime Minister et al.* (decision delivered April 2010). Here, too, the Court is summarising the State's position.

<sup>20</sup> *Torture case* ruling, paras. 33-38. The Court uses "physical means" to describe both the interrogation methods used prior to its judgment (including sleep deprivation) and actions which may enjoy protection from prosecution under it.

Tribunal for Rwanda, but with due regard to differences, as that Tribunal is referring to crimes against humanity:

The concept of 'systematic' may be defined as thoroughly organised and following a regular pattern on the basis of a common policy involving substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy.<sup>21</sup>

8. PCATI is deeply concerned that the State party has, for the past 15 years, been practising torture systematically. This concern is based on the following facts:

- Torture is performed by officials – ISA interrogators – mostly in dedicated interrogation wings within official places of detention inside Israel;
- The practice of torture is based on a ruling by the highest court of the land and its continuation enabled by a combination of subsequent judicial decisions and inaction;
- Torture is facilitated by laws, military and civilian, allowing ISA to impose prolonged incommunicado detention on Palestinian detainees, during which torture is inflicted;
- Torture is inflicted with complete impunity to perpetrators, provided directly by the State's State Attorney's Office and Attorney-General;
- Interrogators regularly and repeatedly use equipment particularly designed or adapted to their torture needs, such as metal chairs attached to the floor, chairs without a backrest, handcuffs attached by a cable and windowless cells where lighting, airflow and air temperature are externally controlled;
- Interrogators repeatedly use certain methods which are described consistently by both victims and ISA interrogators;
- A decision to inflict torture ("necessity interrogation") is taken following high-level consultations within ISA.

9. The last two points need elaboration. As noted, PCATI is in possession of several documents, including court protocols, where ISA interrogators detail the methods they use during interrogations; they are, however, confidential as are virtually all documents pertaining to the interrogation methods and procedures of the ISA. In the case of N.S. his lawyer, Labib Habib, was allowed to see and copy (though not to photocopy) an ISA document summarising the interrogation methods used against his client. In a sworn affidavit, Att. Habib stated that the document read as follows:

1. The interrogation of the abovementioned [N.S.] was defined as interrogation under the defence of necessity.

2. Between 25.8.11 13:05 and 27.8.11 9:50 special measures were used as follows: a number of full crouching instances, a number of instances of lifting the hands backwards, a number of causing to stand instances and a number of kneeling instances.<sup>22</sup>

10. All but one of these methods correspond to torture methods described by victims to PCATI. It is unclear which torture method the term "kneeling" (*birkiot* in Hebrew) refers to.

11. The first paragraph of this document also illustrates how torture was inflicted only once an elaborate decision to do so had been taken. Such decisions are made internally within ISA, but at a high level, and following a procedure approved by the State party's Attorney-General. Addressing the Committee, the State party has explained this point:

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<sup>21</sup> *Prosecutor v Jean-Paul Akayesu*, Case No ICTR-96-4-T, judgment of 2 September 1998, para. 580.

<sup>22</sup> Affidavit of Att. Labib Habib, given to Att. Muhammad Haleihlah on 21 March 2013 [Hebrew], on file with PCATI.

... internal guidelines were prepared by the ISA, determining the manner in which consultation with high-ranking officials of the ISA should occur when the circumstances of a specific interrogation support the necessity requirement. These guidelines were presented before the Attorney General.<sup>23</sup>

#### 1.4. The response of prosecutors and courts to reports of torture – facilitation through circumnavigation, apathy and inaction

12. Torture by ISA interrogators is claimed by detainees and accused persons, their lawyers and representatives of human rights NGOs in the State Party's courts, with the Prosecution and judges at times admitting such claims, albeit using the official terminology, i.e. "necessity interrogation" or "special methods". But far from responding with outrage and condemnation or instructing that steps be taken to investigate torture claims, courts treat torture as a fact to be stated and ignored, a fact of life.<sup>24</sup>
13. Thus when, during a Military Court hearing in the case of N.S., his counsel stated that "torture was inflicted during the interrogation of my client", the Military Prosecutor responded by saying: "It is undisputed that there were necessity interrogations in the case."<sup>25</sup> In their ruling, the military judges mention the "necessity interrogation" as a matter causing "evidentiary difficulties",<sup>26</sup> but say nothing about the appropriateness, or otherwise, of the torturous interrogation, let alone instruct that investigative or any steps be taken.
14. In the case of Muhammad Khatib, having heard an appeal against his continued detention, a Judge at the Military Appeals Court stated in his ruling that "Counsel pointed out that the Appellant was tortured during his interrogation." Nothing follows this statement – the Judge does not refute this claim, but nor does he order that it be investigated or that any steps be taken to protect Khatib – already 30 days without access to counsel at the time – from further torture.<sup>27</sup>
15. The Supreme Court adopts the same bystander approach to torture. In the case of A.S, the Supreme Court acknowledged that:

... it is undisputed that in this interrogation "special methods" were used in order to obtain information about the planned terrorist attacks and prevent them. The Appellant was defined as a "ticking bomb", justifying, according to the Prosecution, resort to a "necessity interrogation".<sup>28</sup>
16. The Court devotes the ensuing discussion to the question of whether or not al-Sayyed's subsequent confession to police was admissible (ruling in the affirmative<sup>29</sup>). The Court expresses no

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<sup>23</sup> State of Israel, Follow-up to the Oral Presentation by the State of Israel before the Committee on Civil and Political Rights: Implementation of the International Covenant on Civil and Political Rights, October 2011, p. 13 (response to concluding observation no. 11).

<sup>24</sup> The only aspect that is discussed in the hearing is whether the torture affected subsequent confessions to police. See e.g. the cases discussed immediately below.

<sup>25</sup> Judea Military Court, 2954/11, *Military Prosecution v. N.S.*, Minutes, hearing of 26 November 2013, pp. 2-3.

<sup>26</sup> *Ibid.* p. 3 (sentencing).

<sup>27</sup> Military Appeals Court, Detention App. 14/2216 *Muhammad Fawzi Muhammad Khatib v. Military Prosecution*, decision of 20 July 2014, p. 1, [http://www.nevo.co.il/psika\\_html/army/ARMY-14-2216-55.htm](http://www.nevo.co.il/psika_html/army/ARMY-14-2216-55.htm), accessed 1 September 2014. The ruling upheld a lower court's decision to extend Khatib's detention for the purposes of interrogation.

<sup>28</sup> Supreme Court Sitting as High Court of Appeals, Crim. App. 1776/06 'A.S. v. State of Israel, decision of 5 September 2011, para. 10. For older examples of similar inaction by the Supreme Court in the face of "necessity interrogations" see e.g. Atty. Aner Helman, Senior Deputy A to the State Attorney, *Response by the Respondent in HCI 9625/04 'Imad Salah 'Abd al-Fateh Qawasmeh v. The General Security Service*, 25 October 2004, para. 6; HCI 5100/94, 4054/95, 5188/95 *Public Committee Against Torture in Israel et al v Government of Israel et al, request under Contempt of Court Ordinance*, ruling of 6 July 2009.

<sup>29</sup> The Court explains *inter alia* that S's "interrogation by police commenced more than two days after the special methods ceased. During the intervening period, the Appellant was granted long pauses for rest, met his wife, was examined by a doctor, showered, ate and drank." *Ibid.*, para. 10.



condemnation of the “necessity interrogation”, which defence counsel described as torture, let alone issue any instructions to investigate the acts, deemed criminal at least *prima facie* by the very invocation of “necessity”, or take any measures to prevent their repetition.

17. It should be added that, facing claims by victims, NGOs and lawyers that what ISA interrogators inflict upon Palestinian detainees amount to torture as defined in international law (or specifically Article 1(1) of the Convention against Torture) the Supreme court has, for over two decades, doggedly refused to rule on this issue.
18. Bearing in mind the State Party’s obligations under the Covenant,<sup>30</sup> as well as under other international treaties including the Convention against Torture and the 4<sup>th</sup> Geneva Convention, to investigate complaints and reports of torture, an obligation of which prosecutors and judges surely must be aware, PCATI is concerned that their total inaction may amount to complicity in these crimes.

#### **1.5. the involvement of doctors and other medical staff in torture and other ill-treatment by ISA interrogators (Articles 2, 7 of the Covenant; LOI paras. 15-16)**

19. Health professionals work in prison infirmaries where ISA interrogations are conducted. They are aware of torture and other ill-treatment taking place, as we see from the medical records, and are thus complicit in these practices. They examine exhausted, pained, bruised and traumatized detainees, who sometimes complain explicitly of torture, and are aware that their diagnosis may determine whether or not the detainee will return to the ISA wing to be tortured further. After examining their patients, doctors knowingly send them back to their interrogators. They must be considered at least passive participants in ISA torture, in violation both of the Covenant and medical ethics. The findings of a recent joint study by PCATI and PHR-Israel into the way doctors and other medical staff treat detainees under ISA interrogation include a systemic failure to properly document injuries inflicted by interrogators, in particular as to their probable causes; the failure of doctors, in all but one of dozens of cases surveyed, to report such injuries to their superiors; the fact that doctors return detainees to their ISA interrogators even in the face of the consequences of the employed interrogation methods, in a gross violation of medical ethics (as well as of Article 7 of the Covenant); transferring medical information to interrogators without (to the best of PCATI and PHR-Israel’s knowledge) the consent of the detainees in question; and the explicit prioritization by doctors of the requirements of ISA interrogators over the well-being of the detainees, their patients, in a number of particularly serious cases. The report concludes that these cases attest to the organizational conflation of the roles of doctor and interrogator. Finally, the report has found that even hospitals to which torture victims are sometimes brought fail to document injuries properly or to report suspected ill-treatment, and return the injured patients to the hands of those who inflicted the injuries.<sup>31</sup>
20. In its response to this report, the Israeli Ministry of Health informed the two organizations of the establishment of a “Committee for Medical Staff to Report Harm to Detainees under Interrogation.” According to the response, dated 1 July 2011, the committee is mandated to receive complaints from medical staff regarding detainees under interrogation whom they suspect have been subjected to torture or ill-treatment. While this committee presents an unprecedented opportunity for medical staff to fulfil their obligations under international guidelines and Israeli codes of ethics to report suspicions of torture and ill-treatment, it has not proven effective. Repeated approaches to the committee between 2012 - 2014, both from PCATI and from Members of Knesset, have gone unanswered. As far as PCATI is able to determine, it appears that no health professionals have approached the committee to present complaints, and that its existence is not

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<sup>30</sup> See e.g. Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), UN Doc. HRI\GEN\1\Rev.1 at 30, para. 14.

<sup>31</sup> See PCATI and PHR-I, *Doctoring the Evidence*, *supra.*,

publicized in the hospitals or detention centers. The committee is unwilling to accept approaches from NGOs.

21. in 2013 PCATI wrote to the Minister of Health, asking her to investigate the case of a doctor who documented the injuries of F.T., a Palestinian detainee, and his complaints of torture and yet repeatedly returned him to the interrogation room.<sup>32</sup> In spite of several reminders, the Ministry has not responded.

### **1.7. Video/audio recording of interrogations (Articles 2.1, 7; LOI paras. 15-16)**

22. The recording requirement in Criminal Procedure (Interrogating Suspects) Law, 2002 remains inapplicable to the GSS/ISA: its interrogators may continue to conduct interrogations without any visual or audio recordings. Moreover, the recording requirements were supposed to come into effect with respect to *police* interrogations of suspects in security cases in 2008, but the Knesset has repeatedly amended the Law<sup>33</sup> by exempting police from recording the interrogation of suspects charged with security offences until 2015. The fact that this extends the exemption to twelve years from the time the law entered into force (and thirteen years from the time it was adopted) did not stop the Supreme Court from citing the temporary nature of the exemption and promises to reconsider it to reject a petition by 'Adalah, PCATI and other human rights organisation challenging the exemption.<sup>34</sup> This means that even the relatively minor part of the interrogators of security suspects conducted by police, usually consisting of taking one or more statements from the suspect in the course of the GSS/ISA interrogation and after its conclusion, will not be recorded in either video or audio form. Thus no direct evidence of the suspect's physical and mental state as a result of his or her treatment at the hands of the GSS/ISA will be available to a security detainee or to a court or other independent body.

23. In its recommendations, the Turkel Commission strongly advocated that:

All ISA interrogations shall be fully videotaped, in accordance with rules that will be determined by the Attorney-General in coordination with the head of the ISA.<sup>35</sup>

24. It should be emphasised that, testifying before the Commission, the then Head of the ISA endorsed this recommendation. According to the report:

The head of the ISA suggested that visual recording of ISA interrogations should be seriously considered. In his words: "even if not everyone always likes it I think that it would be proper."<sup>36</sup>

25. This casts serious doubts over whether the "security" consideration consistently invoked by the State Party, both internally and externally, for refusing to adopt this crucial safeguard,<sup>37</sup> is the real motivation behind this refusal.

### **1.8 Recent developments concerning the processing of torture complaints (Articles 2, 7, 14 of the Covenant, LOI paras. 15-16)**

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<sup>32</sup> PCATI letter to Minister of Health Yael German, 11 April 2013.

<sup>33</sup> Lastly by Amendment no. 5, 3 July 2012, extending the exemption from recording investigations of security offenses under section 17 of the law from July 2012 to July 2015.

<sup>34</sup> HCJ 9416/2010 *'Adala et al. v. the Internal Security Ministry*, ruling of 6 February 2013.

<sup>35</sup> Turkel Commission report II, recommendation 15, para. 28, p. 430.

<sup>36</sup> *Ibid.*, para. 92, p. 198.

<sup>37</sup> The Committee has on several occasions considered video recording of interrogations an important safeguard against violations *inter alia* of Article 7 of the Convention and recommended its application. See for instance Concluding observations of the Human Rights Committee: Mauritius, UN Doc. A/60/40 (Vol. I, 2004-5), para. 88(12); Uzbekistan, *ibid.*, para. 89(11); Ukraine, UN Doc. CCPR/C/UKR/CO/7 (2013), para. 15.

26. The last four years have seen two prominent developments affecting the processing of torture complaints though, as will be seen below, because they leave intact the main building blocks of the State Party's legalised torture system, their impact has been, and is likely to remain, limited.
27. Firstly, In 2011, six Israeli human rights organisations petitioned the Supreme Court, in the name of 22 Palestinians who had complained of torture or other ill-treatment by ISA interrogators (from two petitions, consolidated by the Court) challenging both the closure of the specific complaint files without criminal investigations and various elements of such closure. The latter included the exorbitantly long time it takes the State Prosecutor's Office to respond to complaints – often running into years, the lawfulness as well as the questionable value and objectivity of the "preliminary examination" of complaints by an ISA agent entitled "Inspector of Interrogees' Complaints" and the denial of a right of appeal against file closure decisions.
28. The State initially tried to have the petition dismissed summarily, on a variety of procedural and substantive grounds.
29. In its ruling,<sup>38</sup> the Court failed to address all of the issues raised in the petition. Thus in its ruling It made no comment on the petitioners' claim that some ISA methods constitute torture, and relied on the State's declared intention to remove the Inspector of Interrogees Complaint post from ISA (see below) to avoid addressing the fact, not denied by the State, that in over a decade, not a single of the hundreds of complaints by PCATI and others has resulted in a criminal investigation. Similarly, the Court refused to rule on any of the specific cases themselves, though it stated that decisions on specific appeals may be in turn appealed back to the Supreme Court. The Court also ruled that the authorities were not bound to open a criminal investigation into every complaint of torture ("crime", in its words), as requested by the petitioners, leaving full discretion in this respect to the Attorney-General and his or her appointees.
30. Nevertheless, the Supreme Court in effect accepted that procedures were wanting in some aspects. The Court's therefore ruled that any attorney charged with deciding whether or not to close a complaint file must also have the power to order a criminal investigation. The Court also ruled that decisions on file closure could be appealed against (within 30 days).
31. In a subsequent ruling on a PCATI petition, the Supreme Court clarified that decisions to close complaint files may be appealed.<sup>39</sup> This ruling too, while noting that Petitioners asserted that the treatment of the complainant, 'Imad Hutri, amounted to torture under international law, refrained from ruling on this issue, preferring to continue the Supreme Court's decades-long practice of avoiding it.
32. Secondly, in early 2014 a new Inspector of Interrogees' Complaints took her post. Unlike her predecessors, the current Inspector is a civilian. PCATI is not in a position to comment on the personal merits of the current Inspector, and acknowledges that compared to the previous situation, having a civilian in this position is an improvement, as is the Supreme Court ruling in H CJ 1265/11.
33. Nevertheless, the seven months that have elapsed since the new Inspector took office have not seen a single announcement of a criminal investigation being launched into a suspected case of torture by an ISA interrogator; Palestinian interrogees continue to be held incommunicado, some for weeks on end, and as will be seen below (sec. 2.6) there has recently been a surge in cases of what appears to be officially-sanctioned torture ("necessity interrogations").
34. At the same time, without a fundamental shift away from the State Party's torture paradigm, and more concretely in its legal and practical approach to torture by ISA interrogators, the Supreme Court's ruling and the new Inspector, even with the best of intentions, will bring at best a more

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<sup>38</sup> H CJ 1265/11 *PCATI et al v. the Attorney-General*, ruling of 6 August 2012.

<sup>39</sup> H CJ 1266/11 *Suweiti et al v. the Attorney-General et al.*, ruling of 21 October 2012.

expedient, efficient, participatory process, complete with the right of appeal, leading invariably to the same conclusion: the closure of the complaint files without a criminal investigation.

35. This is because currently there are insurmountable obstacles to achieving any other results, in either of the categories in which ISA interrogators' complaint in effect fall:
36. Cases where "necessity" is not claimed: in "non-ticking-bomb" cases ISA interrogators are not authorised to use any "special methods" in their interrogations, though methods allegedly used, including sleep deprivation and prolonged shackling, may nevertheless at times amount to torture. All complaint files are therefore closed on the basis that the factual claims of the complainant are deemed to be false. Essentially the Inspector prefers the version of the (several) ISA interrogators to the (one, terrorist suspect) detainee. Before the Turkel Commission, A senior State Attorney's Office Official (and currently State Attorney) described what may lead the Inspector to such decisions thus:

Usually the allegations are "he slapped me"; pushes, abuses, I do not know. Things like that. I sat out in the cold, I sat in the heat. And there are no positive findings. It is an individual's word against the interrogator's word. It is very difficult to create a criminal proceeding from this.<sup>40</sup>

Of course, this 'he-said-she-said' situation can easily be resolved through the instalment of video monitoring equipment. It is the State Party's persistent and consistent refusal to put this safeguard in place, even if only for the benefit of the Inspector, that perpetuates the state of affairs where "it is very difficult to create a criminal proceeding", a state which the introduction of the new Inspector cannot change.

It should also be added that, to PCATI's knowledge, no attempts have so far been made to investigate complaints or torture or other ill-treatment in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol),<sup>41</sup> as neither the Inspector nor physicians working at the prisons with ISA interrogation centres appear to have undergone training on its application. The acute need for such training is illustrated by the laconic medical records in cases where a detainee complained to the medical staff. Visual documentation of injuries, which is required by Israel Prison Service regulations and would also help resolve conflicting versions of events, is exceedingly rare.

37. Officially-sanctioned torture ("necessity interrogation") cases: in these cases, where in PCATI's experience torture is almost invariably inflicted, there is agreement over at least the essential facts, and in this respect the Inspector's work is easy enough. However, the decision on whether the "necessity defence" would shield the ISA interrogators from criminal investigation or not – though it is never "not" – is in the hands of the Attorney-General, so here too the role of the new Inspector is left unchanged. Similarly, the ruling of the Supreme Court in *HCI 1265/11* provides for the Attorney-General to hear any appeals against complaint files going closed. Since it is the Attorney-General who decides on such cases, and more importantly since the Attorney-General works within the torture-justifying paradigm, the process may become more fair, by the addition of an appeal instance, but is hardly likely to result in different outcomes.
38. The key problem with the "preliminary examination," which has not been resolved by the changeover - since beyond the personal change the system remains as it was - is that it replaces

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<sup>40</sup> Testimony of Att. Shai Nitzan, (then) Deputy State Attorney before the Turkel Commission, 10 April 2011, [http://turkel-committee.com/files/worddocs/1478Testimony\\_AG.pdf](http://turkel-committee.com/files/worddocs/1478Testimony_AG.pdf), accessed 7 August 7, 2014.

<sup>41</sup> Office of the High Commissioner for Human Rights, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol", 2004), HR/P/PT/8/Rev.1.

criminal investigation, thus violating the State Party's "general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies."<sup>42</sup>

39. A preliminary examination, if warranted at all, must indeed be preliminary and strictly limited to ensuring that the complaint is not, factually, manifestly unfounded.
40. Instead the "preliminary examination" of interrogees' complaints replaces criminal investigations altogether. While it was described by a senior Ministry of Justice official speaking to the Turkel Commission as "almost as thorough as a criminal investigation,"<sup>43</sup> the "preliminary examination" purports to establish the full factual and indeed legal picture while lacking the legal regulatory framework, transparency and accountability of a criminal investigation.
41. PCATI, which has been at the forefront of the struggle both against an ISA official conducting even "preliminary examinations" and for the right of appeal against decisions to close complaint file does not want to belittle these developments, but is nevertheless concerned that they fall far short of the State Party's obligation to investigate complaints of torture and other ill-treatment and more importantly to refrain from granting immunity from justice to perpetrators.

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<sup>42</sup> Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 15. See similarly General Comment 20, Article 7 (Forty-fourth session, 1992), UN Doc. HRI\GEN\1\Rev.1 at 30, para. 14.

<sup>43</sup> Testimony of Att. Shai Nitzan, (then) Deputy State Attorney before the Turkel Commission, 10 April 2011, [http://turkel-committee.com/files/wordocs/1478Testimony\\_AG.pdf](http://turkel-committee.com/files/wordocs/1478Testimony_AG.pdf), accessed 7 August 7, 2014.

## Part II Interrogation methods

This part will include a list of the most common interrogation methods; an explanation on three of the less obvious or known ones; two accounts of Palestinian detainees; and a description and illustration of a recent surge in torture cases.

### 2.1. Torture and other ill-treatment: methods (Article 7 of the Covenant, LOI para. 15)

42. Many of the interrogation methods used by the ISA as described and illustrated by PCATI in its previous submission<sup>44</sup> have remained the same, the most frequently used being (not in order of frequency):

1. Incommunicado detention;
2. Sleep deprivation, mostly by means of continuous or near-continuous interrogation;
4. Forcibly bending the detainee's back backwards (banana position);
5. Slapping, kicking and blows;
6. Strangulation;
7. Forced crouching (the "frog" position);
8. Forced semi-crouching, with back to the wall;
9. Tightening, pressing or pulling handcuffs;<sup>45</sup>
10. Prolonged shackling;
11. Curses and threats, including of a sexual nature;
12. threats, including of death, home demolition and indefinite detention;
13. Humiliation, including sexual/gender-based;
14. Incarceration in inhumane conditions.

### 2.2. Prolonged incommunicado detention as ISA interrogation method (Articles 7, 9, 14 of the Covenant; LOI paras. 15-16)

43. It should first be borne in mind that the UN General Assembly has repeatedly clarified that "prolonged incommunicado detention... can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment".<sup>46</sup>

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<sup>44</sup> Public Committee Against Torture in Israel, Israel – Briefing to the Human Rights Committee, Jerusalem, June 2010, Part II, [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT\\_CCPR\\_NGO\\_ISR\\_99\\_9198\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_NGO_ISR_99_9198_E.pdf), accessed 7 September 2014.

<sup>45</sup> For shackling generally see Public Committee Against Torture in Israel, *Shackling as a Form of Torture and Abuse* (Jerusalem: PCATI, written by Samah Elkhatib-Ayoub, June 2009).

<sup>46</sup> UN General Assembly Resolution 68/156, Torture and other cruel, inhuman or degrading treatment or punishment, 13 December 2013, para. 27. See similarly UN General Assembly resolution 67/161, 20 December 2012, , para. 23. See similarly for instance UNGA res. 66/150, 19 December 2011, para. 22; Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), UN Doc. HRI\GEN\1\Rev.1 at 30 (1994), para. 11; Report of the UN Special Rapporteur on Torture, 12 August 2006, UN Doc. A/61/259, para. 56.

44. In the case of State Party, prolonged incommunicado detention is clearly used as a means to exercise pressure for purposes of the interrogation. The very military order on the basis of which GSS personnel (namely the “person in charge of the interrogation”) are authorised to issue an order prohibiting a detained person being interrogated from seeing his lawyer stipulates that this may be done “where it is required for reasons of the security of the area *or in the interest of the interrogation.*”<sup>47</sup> [emphasis added] This justification, “the interest of the interrogation” has been routinely used both by the State defending such orders before the Supreme Court and by the Court itself in rejecting petitions against such orders, which it invariably has.

45. The UN Special Rapporteur on torture has observed as early as 2001 that:

...the Israeli Government continues to detain persons incommunicado for exorbitant periods, itself a practice constituting cruel, inhuman or degrading treatment.<sup>48</sup>

46. PCATI is concerned that nothing has changed in this regard too – Palestinians (and very rarely Israeli Jews) are still detained incommunicado for prolonged periods “in the interest of the interrogation”,<sup>49</sup> which may on its own constitute cruel, inhuman or degrading treatment. When combined with other interrogation methods, as they invariably are, they contribute to the pain and suffering inflicted by ISA interrogators which at times amounts to torture.

### **2.3. Conditions of detention and their link to interrogation methods (Articles 7, 10 of the Covenant; LOI paras. 15-16)**

47. When they are not being interrogated, most Palestinians (and on very rare occasions Israeli Jews) under ISA interrogation are held in dedicated cells within the four prisons – or detention centres - in which the ISA has interrogation wings, namely Shikma (in Ashkelon), Petach Tikva (in that city), Kishon (outside Haifa) and the Russian Compound (in Jerusalem). The prisons themselves are run by the Israel Prison Service, but it has little control over the treatment of interrogees.

48. Israeli NGOs B’Tselem and HaMoked, who interviewed 121 Palestinians detained at the ISA wing in Petach-Tikva prison in 2009, described conditions there as follows:

From the time detainees arrived at the Petach-Tikva facility, they were kept in interrogation rooms or in cells. Almost all the floor space in these tiny cells is taken up by the thin mattress provided to the inmate, or several mattresses in cells intended for several persons. The ceiling is so low an inmate can touch it. Most of the cells are windowless, therefore night and day are undistinguishable. The ventilation was artificial at all times, and 26 percent reported that the air flowing into the cell was either very cold or very hot. The artificial light was kept on around the clock, causing sore eyes, impaired vision and difficulties falling and staying asleep. The walls of the cells are gray and very rough with bumps, and so it is impossible to lean against them. Seventy-eight percent of the detainees were held in isolation in these cells, without the companionship of another inmate, for at least part of their time in the facility.

The hygienic conditions were appalling: the squat toilets in the cells reeked; the mattresses and blankets were filthy; the inmates were not issued materials for cleaning the cells, except in a few solitary instances, following insistent demands; 35 percent of the detainees were not provided with a change of clothes for extended periods and even for the entire

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<sup>47</sup> Sec. 58(C)& 59(B) of the (military) Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), (2009). See similarly sec. 35 of the Criminal Procedure (Enforcement Powers – Arrest) Law, 1996; sec. 6(a1) of the Incarceration of Unlawful Combatants Law (Amendment and Temporary Provision) Law, 2008, enacted 30 July 2008.

<sup>48</sup> Report of the UN Special Rapporteur on Torture, UN Doc. E/CN.4/2001/66, 25 January 2001, para. 665.

<sup>49</sup> See the cases in sec. 2.6 *infra*.

duration there; and 27 percent were denied showers. Many reported they had developed skin conditions as a result of their incarceration in the facility.<sup>50</sup>

49. Palestinian detainees who spoke to PCATI described similar conditions more recently and in other interrogation wings. Thus S.Z., interrogated at the ISA wing of the Russian Compound in Jerusalem in late 2011, told a PCATI lawyer the following:

I was in the cell on my own. There is a very thin mattress, they gave me three blankets. The air-conditioning is on 24 hours a day and it is very cold. Inside there is a yellow light that is on at all times and is disturbing. The walls are grey and coarse. The food was not tasty at all. I [choose to] eat only packed food.<sup>51</sup>

50. M.D. , who was interrogated, among other places, in the ISA wing of Shikma prison in 2010 similarly was held in “an isolation cell described in his testimony as a very narrow room, 1.5m wide and 2m. long, its walls damp, coarse and painted dark grey with dim hellos lights, no bed, a thin mattress with a dirty cover.”<sup>52</sup>

51. Y.L., who was detained and interrogated in the ISA wing of the Petach Tikva prison in May 2014, told a PCATI lawyer the following:

They moved me to a cell where I tried to sleep, unsuccessfully... the size of the cell was 2X2m<sup>2</sup>, a mattress on the floor. The cell stank, part of it was a toilet (a hole), a tap, but I couldn't drink... there was no window.<sup>53</sup>

52. Y.K., who was detained and interrogated at the ISA wing of the Russian Compound in Jerusalem in May-June 2014 similarly complained being held in a very small cell, the walls being coarse and painted dark grey, and a strong yellow light on day at night. In addition the air-conditioning was on constantly above his head. There was a toilet of the “hole” type, a mattress and a blanket and all reeked.<sup>54</sup>

53. The conditions under which Palestinian women detained for "security" offences are held are particularly harsh. In addition to the general conditions detailed above, women also endure ill-treatment targeting them specifically as women: the exploitation of aspects of their culture for the purpose of humiliation, failure to provide for their hygienic and medical needs, and injury to their religious sensitivities. The failure of prison authorities to meet women's health and hygienic needs is exacerbated by the difficulty they have in approaching the guards – mostly men – regarding intimate needs, and because of structural problems in the Israel Prison Service' guidelines. According to reports, every woman receives 2-3 rolls of toilet paper and 10 pads per month, without any accommodation of each woman's individual needs.<sup>55</sup> These guidelines result in harm to women's basic personal hygiene.

54. No independent bodies are allowed to visit these cells. Requests by NGOs to allow the Public Defence (which regularly carries out visits to prisons and detention centres) or least members of the Israel Bar Association to conduct such visits were rejected.<sup>56</sup> Instead, “external” visits are

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<sup>50</sup> B'Tselem and HaMoked, *Kept in the Dark: Treatment of Palestinian Detainees in the Petah Tikva Interrogation Facility of the Israel Security Agency* (Jerusalem: B'Tselem and HaMoked, 2010, written by Yossi Wolfson), pp. 5-5.

<sup>51</sup> From the affidavit of S. Z., taken at the Russian Compound detention centre by Att. Maisa Abu Saleh on 20 November 2011, paras. 6-7

<sup>52</sup> PCATI letter to Attorney-General Yehuda Weinstein, 23 December 2010, para. 20.

<sup>53</sup> Affidavit of Y.L., given to Att. Alona Korman at the Petach Tikva detention centre on 18 May 2014, para. 17.

<sup>54</sup> PCATI letter to Attorney-General Yehuda Weinstein *et al.*, 19 July 2014, para. 16

<sup>55</sup> Based on data collected by PCATI: Kvinna till Kvinna women's project 2011-2012. See also *From the Testimony of a Palestinian Woman Prisoner*, PCATI Special Report, July 2013 <http://www.stoptorture.org.il/en/women>, accessed 9 September 2014.

<sup>56</sup> See for instance letters from Att. Leila Margalit of ACRI to Att. Shai Nitsan, then Deputy State Prosecutor (Special Tasks), 28 September 2009 and 21 March 2010 and Nitsan's responses, 21 January and 31 June 2010. See also *Israel Should Ratify the Optional Protocol to the UN Convention Against Torture as an Effective Means of Eliminating Torture*, Joint position paper, PCATI, Adalah, PHR-Israel and Al Meza, April 2010 <http://www.stoptorture.org.il/files/english1.doc>, accessed 10 9 September 2014.



carried out by two staff of the State Prosecutor's Office, the very Office responsible for processing complaints of torture and other ill-treatment by the ISA and in practice rejects all of them. Indeed, on some occasions the very person in charge of this processing was one of the visitors.

55. Visits were "official" and pre-arranged rather than unannounced. Visitors were accompanied by the ISA Head of Interrogations in the area as well as an ISA legal adviser and other ISA staff, but not by Israel Prison Service staff.
56. The few reports from these visits which PCATI<sup>57</sup> has seen confirm the physical conditions as described above, including the absence of windows and beds, the constant light, the walls being painted dark grey and the ventilation that may produce air that is too cold or too hot.
57. However, the official visitors have found that the cells were clean, the food reasonable and hygiene maintained, findings confirmed by detainees the spoke to. In view of the reports to the contrary reports by detainees speaking to lawyers and NGOs, which are consistent across interrogation wings and over many years, the discrepancy can only be explained by the fact that visits were official, pre-arranged ones and that it is unlikely that detainees under interrogation would be candid with official visitors escorted by ISA staff.
58. That appalling conditions of detention are imposed at ISA's behest as an addition to and in combination with other means of interrogation, to coerce detainees into cooperation, may be surmised from a combination of facts, namely that ISA interrogees are held in dedicated wings where conditions are harsher than in other, non-"security" wings,<sup>58</sup> that Israel cannot be described as too poor to afford better conditions and that conditions include elements not necessitated by any purpose other than control and coercion, such as the absence of windows and natural light, the constant artificial light, the absence of a bed and the artificial ventilation that often renders cell temperature too cold or too hot.
59. To which should be added the fact that officials visiting ISA interrogation centres see ISA rather than the Israel Prison Service as their interlocutors, and it is "the Head of the Interrogators' Unit" who, the official visitors report,

...briefed us about [*inter alia*]... routine activities [including] painting the cells, hygiene and washing, personal affects, provision of meals, running the air-conditioning system and so forth.<sup>59</sup>

60. To remove any remaining doubts, in the case of 'Atef Hussayn Jaber 'Abu 'Alya, who was detained and interrogated in the ISA wing of the Russian Compound detention centre, a three-judge panel of the Judea Military Court concluded explicitly that conditions of detention are indeed subject to the control of ISA, whose sole function vis-à-vis detainees is their interrogation:

It must first be said that we are not ignoring the fact that conditions of detention during interrogation are not easy and are very bothersome as in any total institution. The cells are narrow, dark and dimly lit, at times shared with others and at times isolated, interrogations last for long periods and are unpredictable, there is nothing to occupy oneself with, showers, clothing and food are provided but not freely in accordance with the will or choice of the interrogee.

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<sup>57</sup> Letter from the Office of the Deputy State Attorney (Special Tasks) to the Minister of Internal Security, re: An official visit in the ISA interrogation wing in the Russian Compound in Jerusalem, 29 June 2010; Letter from the Office of the Attorney-General to the Minister of Internal Security, re: An official visit in a detention centre - the ISA interrogation wing in the Shikma prison, 21, March 2011.

<sup>58</sup> This discrimination is enshrined in regulation; thus the form filled by the Official Visitors to the ISA interrogation wing in the Shikma prison notes that under the regulations "there is no obligation to provide shelves, beds and electricity outlets." *Ibid*.

<sup>59</sup> Report on official visit to Russian Compound, *ibid*.

*It was indeed proven to us that these conditions are affected or even determined by the interrogating authorities and not only by the Israel Prison Service.*<sup>60</sup> [emphasis added]

61. PCATI is concerned that these conditions, in addition to violating prisoners' right to be treated with humanity under Article 10(1) of the Covenant, also amount, even on their own, to cruel, inhuman or degrading treatment or punishment in violation of Article 7. When combined with other interrogation methods, as they invariably are, they contribute to the pain and suffering inflicted by ISA interrogator which at times amounts to torture.

#### **2.4. Sexual or gender-based attacks and humiliation**

62. Several Palestinian male detainees have complained to PCATI that ISA interrogators have threatened, humiliated or attacked them sexually, apparently using detainees' personal, cultural and religious sensitivities. These took mainly the following forms:

1. Sexually-based curses;
2. Threats to detain, rape or have sex with female family members;
3. Threat to have sex or rape the interrogee himself;
4. Mocking;
5. Sexual humiliations by a female interrogator;
6. Physical sexual attacks.

63. While sexually-based curses are common (albeit unacceptable), the following are examples of harsher sexual humiliation or attacks – to which should be added parts of the testimonies of F.T., Y.K. and M.R. below.<sup>61</sup> It should be noted that detainees are at times reluctant to talk of or detail such attacks and therefore sexual humiliation and attacks may be more common and more harsh than our available information reveals.

64. N.S. from Hebron, arrested on 21 August 2011 and detained and interrogated at the ISA wing of the Russian Compound in Jerusalem, told PCATI that his interrogators threatened to bring his wife to the interrogation room and interrogate her in any way they see fit, using sexually explicit and insulting language. He added that a female interrogator used harsh, sexually explicit, insulting words when speaking to him, telling him they could use any means to make him speak.<sup>62</sup>

65. T.J., arrested at his home in Sai'r town Hebron area on 1 December 2013, and detained and interrogated at the ISA wing of the Shikma prison told PCATI that one of the interrogators said to him: "your house is a whorehouse" and threatened that he would arrest T.J.'s wife and have sex with her.

66. Another ISA interrogator would place his head between T.J.'s legs and threaten that he would take off his trousers and force T.J. to "suck my dick". The same interrogator would approach T.J. and press his penis (he was dressed) to T.J.'s head, again threatening to force T.J. to "suck my dick". He also threatened to arrest T.J.'s wife, "fuck her" and force her to "suck my dick". This and other forms of torture inflicted on T.J. resulted in him becoming suicidal.<sup>63</sup>

67. Y.K., who was arrested on 2 April 2014 and subsequently detained and interrogated at the ISA wing of the Russian Compound in Jerusalem in May-June 2014, told PCATI that during his interrogation,

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<sup>60</sup> Judea Military Court, 5338/09 *Military Prosecution v. 'Atef Hussayn Jaber 'Abu 'Alya*, ruling of 15 December 2011 [Hebrew], p. 21

<sup>61</sup> Sections 2.5 (first two) and 2.6, respectively.

<sup>62</sup> PCATI letter to Attorney-General Yehuda Weinstein, 24 November 2011, paras. 9, 12.

<sup>63</sup> PCATI letter to the Attorney-General Yehuda Weinstein, 14 July 2014, paras. 5, 8, 10.

one of the ISA interrogators told him: “I will fuck your sister” and “I will send you to prison so the guys can fuck you.”

68. In addition, a female ISA interrogator threatened Y.K. thus: “I will fuck you in the ass and make blood come out instead of something else.”<sup>64</sup>
69. Palestinian women under interrogation are extremely vulnerable to sexual or gender-based attacks and humiliation, and at the same time are less likely to report them, due to the barriers of shame associated with sexual abuse. Testimonies gathered by PCATI from Palestinian women detainees between 2012-2013 and included in a petition to the Supreme Court attest to physical and verbal violence against them, including swearing and curses, prevention of access to necessities of personal hygiene and showering during the monthly period, sexual harassment through forced physical proximity, and prohibition of wearing headscarves during interrogation in contravention of their religious beliefs. These abuses all exploit their gender and amount to the use of sexual abuse as an interrogation method.<sup>65</sup>

## 2.5. The story of two torture cases

70. F.T.,<sup>66</sup> from a village in the Hebron area, told PCATI that he was arrested administratively on 2 November 2011, removed for interrogation on 5 September 2012, then constantly transferred between detention centres all around the country for a week, before eventually being detained and interrogated at Shikma.

F.T. was interrogated, sitting on a metal chair with his hands cuffed behind his back for long hours, extending on some occasions to days, without proper sleep. The ISA interrogation logs, which PCATI has seen (the logs describe questions, answers etc. and the length of interrogation but not the methods used) show long periods of interrogation with little or no time to rest, including breaks (most of which were too short for a sleep).

At first there was no direct physical violence though interrogators threatened to kill him, cursed and humiliated him, including the use of his baby boy, born after F.T. had been arrested.

Then he was threatened with “military interrogation” (“better speak out of your mouth before I’ll make you speak out of your ass”). He was asked “to tell the story” and when he refused he was punched in the eye by an interrogator. This was followed by the “banana position”, where he was on a chair, one interrogator holding on to his legs, the other forcing his head backwards towards the floor. F.T. told PCATI he felt horrendous pain, as if his back was being broken, as well as strong pain in his thigh and stomach muscles. The interrogator holding his head smacked him. Every two minutes they would lift him up and ask if he wanted to talk.

After a few times F.T. lost consciousness, waking to find himself in a toilet with prison warden pouring water over him. They told him they had no say in what was happening to him and were just trying to help him. However, once they had changed his clothes they brought him back into the interrogation room. When he refused to talk, his interrogators punched and smacked him again.

The interrogators would also place his back to the wall and hold him by the shoulders with his legs bent, ensuring that the full weight of his body was on his feet until he collapsed, upon which he was brought back to the “banana” position. At one point he vomited, unintentionally, on the interrogator who was holding his legs. The latter punched him in the face and F.T. next found

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<sup>64</sup> PCATI letter to Attorney-General Yehuda Weinstein *et al.*, 19 July 2014, paras. 12-13.

<sup>65</sup> HCJ 8899/13 *PCATI et al v. the Attorney General et al.* See also *From the Testimony of a Palestinian Woman Prisoner*, PCATI Special Report, July 2013 (<http://www.stoptorture.org.il/en/women>), accessed 9 September 2014.

<sup>66</sup> Summarised from PCATI letter to Attorney-General Yehuda Weinstein, 2 April 2013.

himself again waking up in a toilet, soaked. Wardens changed his clothes again and returned him to the interrogation.

During the pursuing session his interrogator used his knees to kick at his thigh muscle repeatedly, before returning him to the “banana” position. At one point a doctor was called in, but told the interrogators that F.T. was “acting up” and they returned to more “banana”, half-crouching and full crouching (frog position).

At one point an interrogator strangled him, a medic had to be called who in turn called a doctor. The doctor cursed him in Russian and repeated that F.T. was merely playacting. More “banana” positions followed, and he lost consciousness again.

This repeated itself intermittently for the next week or so. One day his trousers fell down. The interrogators used this to humiliate him sexually (verbally) and one of them took a photograph.

The prison medical records confirm that F.T. was suffering from lack of sleep “due to interrogation” and that he complained of pains. An examination after 24 hours of interrogation found that his knees were visibly swollen.

Five months after his interrogation ended, an independent, Istanbul Protocol-trained physician who examined F.T. affirmed findings that accord with his complaints, and he was still suffering from nightmares, problems in his vision, and pain in his leg.

71. I.K.,<sup>67</sup> from Bani Na’im in the Hebron area, told PCATI that he was arrested on 15 March 2014 and detained and interrogated first at a place he did not recognise (nor was told the location).

On the first day he was interrogated for long periods, sitting on a forward-tilting chair with his hands and feet shackled, and was allowed no sleep. An interrogator cursed and humiliated him (“we brought you here so we can fuck your mother,” “your mother’s a whore,” “your sister’s cunt,” “I’m going to shove a long stick up your ass,” “I will fuck you in the ass”) and spat on him.

The same interrogator strangled I.K. with his hands, inserted a finger in his mouth in order to choke him, placed a foot on I.K.’s stomach while pulling his hands backwards over his shoulder and attempted to squash him against the chair. On several occasions he was not allowed to go to the toilet and was provided with food inside the interrogation room, with insufficient time to eat. At other times he could only eat after the interrogation ended.

The interrogation lasted 30 days. At times I.K. was left in the interrogation room shackled to the chair without being interrogated. Even when placed in the cell the viewport was opened constantly every few minutes, there were knocks on the door and other noise, preventing him from sleep. The cell he was held at was 1.5mX2m, its walls coarse and painted dark grey. A strong red light was on 24 hours a day, and out of a shaft in the ceiling a whistling noise was sounded incessantly.

## **2. 6. Recent surge in torture cases (Articles 2, 7 of the Covenant, LOI paras. 15-16)**

72. On 12 June 2014, three Israeli teenagers, two of them children, were kidnapped and murdered by Hamas militants in the West Bank – acts which are wholly incompatible with the Covenant and probably constitute war crimes. The Israeli authorities’ response included the arrest of hundreds of Palestinians - “over 300 activists” according to the IDF Spokesperson,<sup>68</sup> between 1,100-1,500 according to the Palestinian human right organisation Addameer.<sup>69</sup> In addition, PCATI is aware of several Palestinians who were already held in arbitrary administrative detention by the IDF when

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<sup>67</sup> From PCATI letter to Attorney-General Yehuda Weinstein, 24 July 2014.

<sup>68</sup> IDF website, 22 June 2014, <http://www.idf.il/1133-20786-he/Dover.aspx> (Hebrew), accessed 12 August 2014.

<sup>69</sup> Addameer Quarterly Newsletter—April to June 2013, <http://www.addameer.org/files/Quart%20Newsletter%202014%20%20Qtr.pdf>, accessed 18 August 2014.

the kidnapping took place, and were transferred to the ISA for interrogation following the kidnapping.

73. Many of those detained were interrogated by ISA, but no official data has been published on how many were, let alone on how many were subjected to legally-sanctioned torture (“necessity interrogation”).
74. Prolonged incommunicado detentions: No official figures have been published on this issue either, and PCATI is not in a position to provide comprehensive data on this issue. However, from the partial information at our disposal we are deeply concerned that ISA, which routinely holds Palestinians from the Occupied Territories under interrogation incommunicado for days and weeks under powers granted it by Israeli military and civilian law, has used these powers extensively during this period.

Thus in a single (morning) session on a single day, 3 July 2014, when Machsom Watch monitors attended one (the Judea) Military Court, sitting at the Russian Compound detention center in Jerusalem, eight of the ten Palestinians whose detentions were extend in that session were being denied access to a lawyer under ISA orders.<sup>70</sup>

According to minutes of military court hearings and reports from other such hearings by Machsom Watch, several Palestinian detainees were kept incommunicado – with the exception of meeting ICRC representatives - for 30 days or more while under ISA interrogation during June and July 2014.<sup>71</sup>

75. Torture - extent: PCATI is deeply concerned that in the wake of the kidnapping and murder of the three Israeli teenagers, ISA interrogators resorted to torture extensively. The State party has not published statistics or any other information on its use of torture during this period. On 19 June, *Haaretz* quoted ISA as stating that “in contrast to media reports that the Attorney-General has provided ISA with special powers, there is no change in interrogation policies.”<sup>72</sup> PCATI has no reason to doubt this statement’s veracity since, as explained above, ISA interrogators already have the power to torture with impunity as many Palestinians and as severely as they deem necessary. Thus, the ISA denial did not stop *Haaretz* from “assessing” that in interrogating Palestinians suspected of involvement in the kidnapping, “ISA resorts on several occasions to special interrogation measures.”<sup>73</sup>
76. Beyond PCATI’s own direct research, our concerns over widespread torture are supported by other sources. Thus on 14 July, when, in a rare move, a military judge at the Russian Compound in Jerusalem allowed Machsom Watch monitors to attend hearings involving Palestinians under interrogation who were denied access to counsel, they reported the following:

We observed the state of the detainees, one of whom walked with difficulty, a second one (denied [access to counsel] who waited outside the courtroom sitting on the floor, and found it very difficult to get up). Another detainee... complained that he couldn’t sleep as he was suffering serious pain in one of his arms (because he had been shackled high on his arm, whereas the circumference of the cuffs is that of the wrist).

From all of the above, our impression was that the use of violence is frequent.<sup>74</sup>

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<sup>70</sup> Machsom Watch, Russian Compound, Jerusalem, 3 July 2014, morning [Hebrew], <http://www.machsomwatch.org/en/node/26341>, accessed 13 August 2014.

<sup>71</sup> For instance Muhammad Mustafa Shrietah; Riyad Nasser; Sharif Sa’di ‘Abd al-‘Afu Qawasmah; Yahya Saleh Ahmad Dar ‘Ata; Muhammad Fawzi Muhammad Khatib.

<sup>72</sup> “53 of those released in the Shalit deal arrested, Israel will seek to renew their imprisonment,” [Hebrew] *Haaretz*, 19 June 2014, <http://www.haaretz.co.il/news/politics/1.2353295>, accessed 19 August 2014.

<sup>73</sup> *Ibid.*

<sup>74</sup> Diab Mustafa Diab Nasser, ‘Abd al-Karim Sa’di Ahmad Qawasmeh, ‘Uthman Muhammad ‘Abd al-Qader Qawasmeh, ‘Abd al-Karim Muhammad Suleiman Abu Rumuz, Muhammad Fu’ad Nawfal ‘Adawin, Muhammad Yusuf Ahmad Abu Da’ud, Musa Majdi Musa

77. A Palestinian lawyer told PCATI in early August that all of the nine Palestinians interrogated following the kidnapping whom he was representing had been tortured, including a suspected car thief, and that he had not encountered such a scale of torturing “since 1999”.<sup>75</sup>
78. PCATI has so far only had limited access to a small number of those interrogated by ISA. However, based on testimonies from victims and on information gathered from lawyers, human rights activists and other sources **we believe that ISA interrogators may have used legally-sanctioned torture (“necessity interrogations”) against dozens of Palestinian detainees.**
79. Torture - methods: Interrogations in the recent cases that PCATI and others have documented involved mostly the use of ISA’s routine torture procedures described above (see sec. 2.2) combining:
1. Contorted positions (“banana”, “frog”);
  2. Slaps and kicks;
  3. prolonged and deliberately painful shackling;
  4. Sleep deprivation;
  5. Threats, including death threats;
  6. Humiliations, including of a sexual nature.
- However, in certain cases other methods were used, including:
7. Violent shaking,<sup>76</sup> and
  8. Applying pressure to sensitive parts of the head.
80. The following are excerpts from testimonies by Palestinians interrogated in June and July of this year, in the context of the kidnap and murder of the three teenagers:
81. From the testimony of S.K, resident of the Hebron area, interrogated by ISA near his home upon arrest and subsequently in Shikma prison in Ashkelon:

On the second day the interrogation started again, lasting all day and all night for four days more or less. As time passed, the interrogation became increasingly violent, they beat me with their hands and kicked me. There were eight interrogators concurrently, they put me in “Shabeh”, shackling me and holding me both from the chest and the back, with one of them strangling me with his hands. One interrogator pressed my jaw with his fingers from both sides so hard that I thought the jaw was going to dislocate. They used the same method, pressing with their fingers, beneath my ear. I suffered immense pain. One of them hit me hard with his hand on my chest. There were always several interrogators around and they used different torture methods simultaneously, including slapping my face, beating my legs and cursing.

They deprived me of sleep... I was so weak I’d fall asleep on the interrogation chair. They would hit me every time I fell asleep.

The order of events may not be precise because of the conditions under which I was held and the loss of a sense of time but these things did happen.

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Khatib and Shukri Mahmud Muhammad Khawajah. See Machsom Watch, Russian Compound, Jerusalem, 14 July 2014, morning [Hebrew], <http://www.machsomwatch.org/en/node/26341>, accessed 13 August 2014.

<sup>75</sup> PCATI Phone conversation with Att. F.Q. of Hebron.

<sup>76</sup> For another complaint of violent shaking, in addition to the testimony quoted below, see the statement of K.M. in Judea Military Court, *Israel Police v. K. M. A. M.*, hearing of 14 August 2014, Minutes [Hebrew], p. 2.

I could neither walk nor stand, and one night they transferred me to a hospital. I was suffering pain in my lower abdomen. They did an x-ray... then I was returned to the interrogation.

82. From the testimony of R.M., resident of the Ramallah area, interrogated by ISA in the Russian Compound, Jerusalem:

[After extended sleep deprivation] Then they used the “shaking” method, with both my hands and my feet shackled and me sitting on a chair, bearing in mind that I suffer from backaches. They sat me on a chair of normal size, made of metal, without a backrest, the hands cuffed behind the back, each cuff right next to the hand, and a metal cable connecting the two cuffs. The interrogator would grab my shirt in the chest area and push me backwards at an obtuse angle in relation to the chair, that causes pressure on the muscles of the back, the stomach and the legs, which were shackled to the chair. In addition, there’s beatings on the legs and a sense of being suspended in the air, until I fell back, on what was a blanket, a mattress or a pillow, with my head hitting it, and in this way the “banana” position is created.

They beat me on the legs until they were swollen, black and blue. They hit me on the back and chest, tightened the handcuffs and for a while I lost all feeling in my hands.

They threatened me with death or paralysis, said they would confiscate everything in my house, cursed me.

They used the “frog” technique – the back is against the wall, the hands cuffed in front of the body, the legs shackled and kept at a sharp angle for a period. When I’m no longer able to maintain this position and fall on the floor they would beat me horribly, and if I stood up fully I’d be exposed to the same beatings.

At times I’d spend a whole hour rotating between “frog”, “shaking” and “banana”.

They’d also use the traditional “frog” position, that is, full crouching of the legs without the knees touching the floor, with one interrogator in front of me and another behind to prevent me from falling on the floor.

83. From the testimony of M.M., resident of the Ramallah area, interrogated by ISA in the Russian Compound, Jerusalem:

There were three periods of interrogation: prolonged, military and regular. The [prolonged] interrogation lasted three consecutive days and nights, then a few hours for rest. During interrogations I would sit on a chair with a fixed backrest, my hands cuffed and the interrogation was normal, questions, without physical violence – just threats.

[during the military interrogation] the interrogation was under the same conditions as far as sleep deprivation, food etc. the interrogation took place while I was on a chair without a backrest, with my hands and legs shackled to the chair, with the use of “banana” for 20 minutes each time, 15-17 times daily more or less.

There were threats to demolish my home, to arrest family members, including the women - my fiancé, my father, my brother. There were threats that I would be killed or become disabled for the rest of my life.

The “frog” method was also used, with my back to the wall, and simultaneously my legs being beaten. There was also use of full “frog” method and when I couldn’t hold the position and fell to the floor, the interrogator would beat me.

84. From the statement of Muhammad Hasan ‘Abdallah Rabi’, arrested on 25 July and interrogated at the Russian Compound, to the Military Court at the Russian Compound (as written down by Machsom Watch monitors):

When I was brought to the Russian Compound I was kept in my underpants outside the building... the doctor [initially] refused to see me. [...] then [I was taken] to interrogations for 15 days. On Wednesday 30 July 2014 I was surprised by bearings on my face, knees, the tied my hands behind on a chair without a backrest. It was very difficult... Captain Shim'on and Captain 'Ezri threatened that they would rape me if I didn't speak... Captain Shim'on told me to blow him... there was also a woman interrogator, Captain Nor, who slapped me and threatened that if I don't change my tack, they would place my wife among prisoners who would rape her... I was scared and terrified during the interrogation.<sup>77</sup>

85. The claim of "rarity" of torture use: The absolute and peremptory nature of the prohibition of torture and other ill-treatment in Articles 4 and 7 of the Covenant (as well as in other treaty law and under general international law) means that even a single violation of this prohibition is never lawful or acceptable, let alone justifiable. Nevertheless, Israeli officials have consistently defended Israel's legalised torture system *inter alia* by claiming that "necessity" cases, namely cases where ISA interrogators resort to torture (not the term officially used) are rare. This claim has been made *inter alia* to the Israeli Supreme Court ("cases where a 'necessity' exists... are few and rare"),<sup>78</sup> as well as to the UN Committee Against Torture, whom an Israeli delegate told:

In only a few cases had it been acknowledged that the interrogators had resorted to physical force because of the exigencies of the situation... in recent years there had been very few and exceptional cases in which interrogators from the Agency considered that they had been faced with a state of necessity and had acted accordingly. Those cases had related to only a very small percentage of persons under investigation for suspected terrorist activities.<sup>79</sup>

86. The recent surge in torture cases has illustrated, not for the first time,<sup>80</sup> that not only is torture practised systematically, but even this claim of rarity, being situation-dependant, cannot be relied upon.

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<sup>77</sup> See Machsom Watch, Russian Compound, Jerusalem, 21 August 2014 [Hebrew], <http://www.machsomwatch.org/%D7%9E%D7%92%D7%A8%D7%A9 %D7%94%D7%A8%D7%95%D7%A1%D7%99%D7%9D %D7%99%D7%A8%D7%95%D7%A9%D7%9C%D7%99%D7%9D 19>, Accessed 1 September 2014.

<sup>78</sup> HCJ 5100/94, 4054/95, 5188/95 *Public Committee Against Torture in Israel et al v Government of Israel et al, request under Contempt of Court Ordinance*, ruling of 6 July 2009. See similarly HCJ 5722/12 *As'ad Abu Gosh et al. v the Attorney-General et al.*, Preliminary Response on Behalf of Respondents, 25 December 2012, para. 46.

<sup>79</sup> Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention (continued), Fourth periodic report of Israel (continued)(CAT/C/ISR/4; CAT/C/ISR/Q/4). Summary record (partial) of the 881th meeting, Wednesday, 6 May 2009, 42nd session, UN Doc. CAT/C/SR.881.

<sup>80</sup> An even greater surge happened during the height of the second Intifada, in 2001-2003.



### Part III Violence by soldiers (Articles 2, 7 of the Covenant; LOI paras. 15-17)

87. As noted, The State Party has not set up an elaborate system ensuring all-round, watertight impunity to Israel Defence Forces (IDF) soldiers and other security forces suspected of violence against detainees of the kind enjoyed by ISA interrogators (although in theory soldiers too could plead the “defence of necessity”). Criminal investigations into complaints are opened, some lead to prosecutions and to convictions. However, in practice investigations by the Military Police CID are extremely slow and inefficient, while prosecutions and convictions are extremely rare, leading to *de facto* near-total impunity.
88. According to the human rights NGO Yesh Din, in 2013 the Military Police CID initiated 199 investigations into suspected criminal offenses by IDF soldiers against Palestinians and their property; 124 were complaints from 2013, 75 complaints from 2012. Of those complaints, only six (3 per cent) led to charges being pressed against the soldiers involved. The organization elaborates further:
89. Of all the investigation files opened by the MPCID in 2013, 15 investigations were opened into incidents involving Palestinian deaths; 152 investigation files constituting 76% of the investigations were initiated following violence and injury; and 18 files constituting 9% of the investigations related to complaints of vandalism or looting. Furthermore, 14 investigation files were opened following events defined by the IDF spokesman as “inappropriate behaviour”.<sup>81</sup>
90. In a report published in June 2014, PCATI similarly found that of at least 133 complaints it made to the military judicial and investigating authorities between 2007-2013, only two resulted in prosecutions. 73 per cent of PCATI’s complaint files during the period were closed, mostly by the Military Prosecution, some by complainants giving up after long periods without progress. The other 27 per cent are outstanding, some for as long as six years.<sup>82</sup>
91. PCATI’s research attributed this virtual impunity to delays and procrastination in initiating and carrying out investigations; the low quality of most investigations; failing to locate events and identify those involved; reluctance of investigators to go to alleged crime scenes; refusal, purportedly based on the law,<sup>83</sup> to allow adult Palestinian victims to be accompanied by persons of their choosing when providing evidence to Military Police CID investigators; abusive behaviour towards victims providing evidence; failure to treat children victims appropriately, absence of interpreters; and failure to inform victims of the progress of investigations.
92. Thus K.S., a child, was arrested on 15 March 2011. His feet and hands were cuffed, his eyes covered and he was forced to walk for about a kilometre, during which time he was beaten on his head with a rifle butt, was kicked in his knees and pushed around, suffering knocks to his head and strong pain all over his body.
93. PCATI first requested K.S.’s medical file on 4 July 2011. It took no less than two years for the request to be granted. It should be noted that K.S. complained about the beatings before a military

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<sup>81</sup> Yesh Din, Summary of 2013 data, <http://yesh-din.org/infoitem.asp?infocatid=625>, accessed 6 September 2014.

<sup>82</sup> Public Committee Against Torture in Israel, *The short arm of the law: Systemic failures in investigating violence by soldiers* [Hebrew], (Jerusalem, PCATI, June 2014, written by Aviel Linder), <http://www.stoptorture.org.il/files/%20%D7%9C%D7%90%D7%A0%D7%97%D7%95%D7%A9%D7%94.pdf>, accessed 4 September 2014, p. 7.

<sup>83</sup> The Military Prosecution relies on the fact that the Rights of crime victims Law (2011), the Israeli law providing for victims being accompanied, defines the “investigating body” as “police or the Department for Investigation of Police Misconduct” (sec. 2) to claim that the obligation does not extend to the Military Police.

doctor, and she noted the injuries she saw on his body, although she chose not to complain to the officer in charge.<sup>84</sup>

94. Once a decision to close the file is made, complainants often receive laconic responses providing no explanation of the decision, such as “no basis was found to your complaint” or “it was decided that there were no grounds for initiating criminal proceedings”. Thus in response to several complaints by Palestinian women who had complained of being strip-searched, cuffed, cursed, mocked and humiliated – all in clear violation of IDF instructions, PCATI was informed that the files were closed, *inter alia* because “according to the complaints, search was not conducted in a manner departing from procedures.”<sup>85</sup>

95. A.A., a 20 year old man, was arrested at his town of Beit Umar (in the occupied West Bank) with his cousin on the night of 15 March 2011. The soldiers forced them to walk out of the town. A.A. told PCATI:

The soldiers started beating us up. First one of the soldiers kicked my testicles with his knee. Following this they covered my eyes with a flannelette. Then they tightened the plastic cuffs behind my back all the way, which caused me severe pain, I felt like it was cutting my flesh. Then I was beaten from all sides, receiving punches, kicks and beatings from rifle butts all over my body, including my eyes, feet, knees.<sup>86</sup>

96. PCATI first sent a complaint to the Military Prosecution on 6 August 2011, detailing these and additional forms of ill-treatment. It was not until February 2012 that reception of the complaint was acknowledged, and only in May 2013 was a substantive response provided, to wit, that the file was closed as “the Deputy Judge-Advocate General for Operational Matters found no grounds for initiating any legal proceedings against any military elements.” No further details or explanations were provided.<sup>87</sup>

97. In some instances complaint files are closed for obscure reasons such as a victim’s insistence that he or she be accompanied by a person of his/her choice. PCATI’s lawyers representing victims have had to wait for long months and sometimes threaten with judicial action before being able to see the investigation materials. A key failure is the poor quality of medical records and the fact that, as the report concludes:

Of particular seriousness is the phenomenon of the medical examination of the detainee being carried out in the presence inside the room of the soldiers who had arrested him. This clearly creates illicit pressure on the doctor not to describe fully the injuries which he observes. Indeed, many of the doctors fail to meet the requirements of the Istanbul Protocol that bruises and injuries be recorded photographically; at times all they do is provide descriptions in writing, often in handwriting that is extremely difficult to decipher.<sup>88</sup>

98. Many of the findings of PCATI, Yesh Din and other NGOs on the sorry state of investigations within the military system have been echoed and highlighted in the second Turkel Commission report.<sup>89</sup>

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<sup>84</sup> See *ibid.*, pp. 20, 29.

<sup>85</sup> *Ibid.*, pp. 27-8.

<sup>86</sup> *Ibid.*, p. 26.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*, p. 31.

<sup>89</sup> Turkel Commission report II, Chapters C and D.