

March 1, 2016

INDEPENDENT REPORT TO THE  
UN COMMITTEE AGAINST TORTURE  
TOWARDS THE REVIEW OF THE  
FIFTH PERIODIC REPORT ON ISRAEL

public committee against  
**TORTURE**  
In Israel

**OMCT**  
SOS-Torture Network

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

in consultation with the World Organisation Against Torture (**OMCT**)

Authors: Adv. Efrat Bergman-Sapir, Director of the Legal Department (PCATI)

Dr. Rachel Stroumsa, Executive Director (PCATI)

We are indebted to Carin Benniger-Budel (OMCT) and Bana Shoughry-Badarne (The Hebrew University of Jerusalem) for their contributions to this report. We would also like to thank our teams in PCATI and OMCT for their work and input as well as their continued resilience in the fight against torture.

Editor: Ariadna Petri, Director for International Development (PCATI)

Production: Deganit Ben Shitrit, Maya Epszajn (PCATI)

Address: POB 4634, Jerusalem 91046

Tel. 972-2-642-9825, Fax. 972-2-643-2847

Website: [www.stoptorture.org.il](http://www.stoptorture.org.il) ; Email: [pcati@stoptorture.org.il](mailto:pcati@stoptorture.org.il)

## THE SUBMITTING NGOS



**The Public Committee Against Torture in Israel (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, labour 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 Defence Forces (IDF).



The **OMCT** is the main international coalition of non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances, arbitrary detentions and all other cruel, inhuman and degrading treatment or punishment. Our vision is of a world free of torture and ill-treatment, in which every person is protected,

where victims and their families obtain reparation and where the perpetrators are punished. The strength of the OMCT lies in its SOS-Torture Network composed of about 300 NGOs from around the world. OMCT's mission is to help and support torture victims, prevent torture and fight against impunity by protecting human rights defenders, accompanying and strengthening NGOs in the field.

## Table of Contents

<b>THE SUBMITTING NGOS</b> .....	<b>1</b>
<b>INTRODUCTION</b> .....	<b>4</b>
<b>PART 1 – CRIMINALIZATION (ARTICLES 1, 2, 4 AND 16 OF CAT)</b> .....	<b>5</b>
<i>In reference to the following questions on the List of Issues:</i> .....	5
<i>CAT position</i> .....	5
<i>State position</i> .....	5
<i>Issue summary – Legislation</i> .....	6
<i>Necessity defence</i> .....	6
<i>Frequency of torture in ISA interrogations</i> .....	7
<i>Torture and other ill-treatment by police officers</i> .....	8
<i>Torture and other ill-treatment by soldiers</i> .....	8
<i>Suggested Recommendation</i> .....	9
<b>PART 2 – SAFEGUARDS (ARTICLES 2 AND 15 OF CAT)</b> .....	<b>10</b>
<i>In reference to the following questions on the List of Issues</i> .....	10
<i>CAT Position</i> .....	11
<i>State position</i> .....	11
<i>Issue summary</i> .....	11
<i>Access to Counsel and family</i> .....	11
<i>Judicial Review</i> .....	13
<i>Admissibility of tainted evidence</i> .....	13
<i>Suggested Recommendations</i> .....	13
<b>PART 3: THE INVESTIGATION OF ALLEGATIONS OF TORTURE OR CIDT (ARTICLES 12-13 OF CAT)</b> .....	<b>15</b>
<i>With reference to the following questions on the List of Issues</i> .....	15
<i>CAT position</i> .....	15
<i>State position</i> .....	15
<i>Issue summary</i> .....	15

<i>IDF Investigations</i> .....	16
Investigations.....	16
<i>Duty of Promptness</i> .....	16
<i>Duty of Efficacy</i> .....	17
<i>Results of CIU investigations</i> .....	19
<i>Police Investigations</i> .....	19
<i>The Inspector for Complaints against ISA Interrogators (“Inspector”)</i> .....	20
<i>Suggested Recommendations</i> .....	22
<b><i>PART 4: TRAINING ON THE PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT AND INCORPORATION OF THE USE OF THE ISTANBUL PROTOCOL IN THE INVESTIGATION AND DOCUMENTATION OF TORTURE (ARTICLES 10, 11, 12 AND 13)</i></b> .....	<b>23</b>
<i>With reference to the following questions on the List of Issues</i> .....	23
<i>CAT position</i> .....	23
<i>State party response</i> .....	23
<i>Issue summary</i> .....	24
<i>Suggested Recommendations</i> .....	25
<b><i>PART 5: REPARATIONS (ARTICLE 14)</i></b> .....	<b>26</b>
<i>With reference to question 43 of the List of Issues</i> .....	26
<i>Issue summary</i> .....	26
<i>Recommendations</i> .....	27

## INTRODUCTION

Since Israel's ratification of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in 1991, the UN Committee against Torture has undertaken four examinations of Israel. In relation to the upcoming review of Israel on 3-4 May 2016, the present report is submitted to the Committee Against Torture (CAT) as an alternative to the State of Israel's report, replying to the questions in the list of issues regarding progress made with respect to treaty implementation and compliance.

Since Israel underwent its last review by the Committee in 2009, it has made progress in a number of areas, notably with regard to the establishment of a semi-independent mechanism for examining complaints against the Israel Security Agency (hereafter ISA). Yet in other areas improvements are lacking, and the recommendations of CAT and other UN treaty bodies have not been implemented. Most notably, in spite of the long-standing criticism of Israel's use of the "necessity defence" to justify torture in interrogations, this practice is still used extensively and it is employed to nullify any criminal investigations. Moreover, Israel maintains its procrastination to incorporate the UNCAT into Israeli law, despite the clear recommendation to the contrary by UNCAT and two internal governmental commissions. Ultimately, Israel has failed in its basic obligation and commitment not to use torture; it has also failed in its basic obligation and commitment to prosecute offenders, and to provide real and effective safeguards against torture or ill-treatment. All the changes and all the improvements in the Israeli mechanisms cannot obscure these two fundamental and egregious violations of the Convention. We therefore suggest that the Committee recommend the two following steps to the State party:

1. Sign and ratify the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and implement its provisions, in particular allowing National Preventive Mechanisms (NPMs) and the UN Subcommittee on Prevention of Torture (SPT) to visit all places of detention and, including GSS/ISA interrogation facilities, and have unsupervised access to all detainees;
2. Recognise the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction, who claim to be victims of a violation by a State Party of the provisions of the Convention.

This alternative report falls into five parts:

1. Criminalization of torture in national law and the obligation to prevent torture and cruel, inhuman or degrading treatment or punishment
2. Safeguards
3. Investigation of complaints
4. Training and the use of the Istanbul Protocol
5. Reparations

The documentation presented in this report derives primarily from PCATI's ongoing monitoring of Israeli law and practice within the areas of the UNCAT, including frequent and regular visits to detention centres and prison, and regular monitoring and follow-up of the progress of complaints through the Israeli legal system.

## **PART 1 – CRIMINALIZATION (ARTICLES 1, 2, 4 AND 16 OF CAT)**

### **In reference to the following questions on the List of Issues:**

1. Please provide information on any steps taken by the State party to amend its legislation and incorporate a crime of torture as defined in article 1 of the Convention, as recommended by the Committee following the consideration of the previous report (para. 13).
  
2. Referring to the previous recommendation by the Committee (para. 14), please indicate whether the State party completely removed the doctrine of “defence of necessity” in its Penal Law as a possible justification for the crime of torture in the context of physical interrogation methods by the Israel Security Agency (ISA). Please comment on the reports of painful shackling and binding, immobilization in stress positions, sleep deprivation and the use of threats and verbal abuse during the interrogations.
  
3. Please also provide detailed information on the number of Palestinian detainees interrogated since 2002 under the “ticking time-bomb” exception which allows for the use of physical pressure during interrogation by ISA of terrorist suspects or persons otherwise holding information about potential terrorist attacks (para. 14).
  
29. Referring to the previous recommendation of the Committee, please explain the measures taken to ensure that interrogation methods contrary to the Convention are not utilized under any circumstances (para. 19).

### **CAT position**

The Committee has reiterated its concern that a crime of torture as defined in article 1 of the Convention has not been incorporated into Israeli domestic legislation. The State party should ensure that interrogation methods contrary to the Convention are not utilized under any circumstances. The Committee reiterated that, according to the Convention, “no exceptional circumstances” – including security, or a war, or a threat to the security of the state – justifies torture.

The Committee has reiterated its concern regarding the use of the necessity defence as an exemption from criminal responsibility in ISA interrogations. The Committee has reiterated its previous recommendation that the State party completely remove necessity as a possible justification for the crime of torture. The Committee requested that the State party provide detailed information on the number of “ticking bomb” Palestinian detainees interrogated since 2002.

### **State position**

Israel claims that all acts of torture are criminal acts under existing Israeli law. Israel denies that it is in breach of its duty to criminalize torture — mainly, by claiming that torture is criminalized by other crimes. Such substitutions are established in Israel’s penal code.

Israel claims that the ‘necessity defence’ is not a source of authority for an interrogator’s use of physical means.

### **Issue summary – Legislation**

States are obligated to regulate the offence of torture as a crime under their criminal law, in accordance with the elements of torture mentioned in Article 1 of the Convention. In spite of this, Israeli law contains no specific prohibition, definition or criminalization of torture, despite its repeated and ongoing formal commitment to international law. Israel has claimed that existing provisions within its penal code (“other offenses”) have the effect of criminalizing all acts of torture. In point of fact, the existing offenses fall far short of the standard set by CAT in the following facets:

1. Existing offenses do not address the issue of mental suffering. In addition, psychological torture - such as mock executions - does not fall under any existing offence.
2. Most existing offenses carry a maximum penalty of three years, which is not proportionate to the gravity of the crime of torture.
3. Existing offenses are subject to the statute of limitation (most of them 5 or 10 years); this contradicts the absolute nature of the crime of torture as declared in international law
4. Existing crimes do not prohibit acts for purposes such as punishment, intimidation or discrimination.

According to the Ciechanover Implementation Task-Force (hereafter the Ciechanover Commission) the State is currently working on a draft legislation criminalizing torture. It is unclear what the timeline is for this legislation; it is also unclear if it will indeed include all the necessary elements and component of the definition of torture under the Convention, and if it will refrain from exempting certain interrogations. In these circumstances, it is difficult to regard the news that the State is addressing the issue as credible or substantial.

### **Necessity defence**

The Israeli Supreme Court, sitting as High Court of Justice (HCJ), has determined that no authorization to torture may be given in advance. Yet the same court, in a 1999 milestone ruling, determined that Israeli Security Agency (ISA) interrogators suspected of violating rules of interrogation because of necessity may be exempt from criminal conviction or even prosecution, if they interrogate suspects during “ticking time bomb” situations. The status of torture in Israeli legislation is therefore not wholly clear, and the 1999 HCJ ruling H CJ 5100/94 *Public Committee against Torture in Israel v. the State of Israel* has had the effect of rendering the prohibition on torture a derogable one, in stark contrast to the principles and rules of international law. This defence is not employed sparingly, but rather very frequently. The State claims that the “special measures” employed do not amount to torture; the next paragraph will detail some of the measures used and argue that they are indeed, and by all reasonable criteria, torture.

## **Frequency of torture in ISA interrogations**

That the legal status of "necessity interrogations" is not an abstract concern can be seen from the numbers of detainees presenting consistent reports regarding the use of specific forms of torture during their ISA interrogations. This is found in particular, but not confined to, those detainees subject to what is known as "military interrogations" or "necessity interrogations", described by the state euphemistically as "special measures".

Since 2001, 1,000 complaints have been submitted to the Inspector regarding the use of torture in ISA interrogations, with allegations including beatings, sleep deprivation, holding in stress positions and sexual abuse.

In the last two years alone, PCATI has received 68 allegations regarding the use of different stress positions, including 16 reports regarding the "frog" position, whereby the victim is forced to crouch on his toes, while the hands are cuffed behind the back. When crouched, torturers may push or strike the victim until he loses his balance, and falls. This can cause injury to the knees, and other ligaments and nerves, and was specifically banned by the HCJ on its 1999 ruling. We have also documented in the last two years alone 18 allegations regarding the use of the "banana" position, whereby the victim is held on a seat, hands tied in front and then pulled, pushing the victim backwards until the body forms an arch. This positions, like others, causes pain and neuro-skeletal damage. In addition, while being held in this position, the victim's genitals are exposed, and he may also be subjected to sexual abuse. All of these techniques of torture have been employed with the full consent and authority of the State, as a regular, accepted and authorized element of interrogations.

The very frequency of these complaints points to the real and present use of these techniques of torture. In an expert opinion written by Professor Sir Nigel Rodley, Professor Peter Burns, Professor Malcolm Evans and Professor Manfred Nowak, and presented to the Israeli HCJ in the case of Mr. Abu Ghosh (HCJ 5722/12 *As'ad Abu Gosh et al. v the Attorney-General et al*), these techniques were described thus:

*In view of the undisputed fact that certain methods were intentionally inflicted on him by security officials for the purpose of obtaining from him information, we conclude that Mr Abu Gosh was tortured within the meaning of that term under Article (1) of the Convention against Torture.[...] It is our opinion that, as regards to the various crouching, or "frog" positions, as described by Mr. Abu Gosh, the point at which the pain or suffering they occasion becomes "severe" may vary according to personal disposition and other circumstances. Conversely, we cannot imagine, in view of the information provided to us, that the "banana" position, even if in the case of Mr. Abu Gosh it was applied for a few minutes, deliberately accompanied by more direct physical brutality ("slaps"), could be the cause of anything less than "severe pain or suffering.*

For a direct and recent testimony regarding similar allegations on the use of stress positions and other forms of torture in ISA interrogations, see also the following video:

[victim testimony](#). The witness, who was arrested and interrogated in late 2014, describes the following:



*The interrogation I went through was difficult. Screaming, cursing, shackling, back breaking – what's called "banana". The hands and legs were shackled and pulled back, so the shoulders break. And in addition to what I said, they shook me and prevented me from sleeping. Physically, I was in a very bad state. I prayed sitting on the floor. When I ate, my hands shook. My mental situation in the interrogation was very, very difficult. I felt the interrogation continues endlessly, because there's no clock, and you can't tell if it's night or day, or how much time has passed. You're sitting in a cell, and you can't see night or day. During the shaking, my hands and legs were shackled behind me. What I remember is that one interrogator took hold of my shirt and started shaking me like this (demonstrates) until the shirt tore completely.*

### **Torture and other ill-treatment by police officers**

The use of violence, abuse and threats on individuals in police custody is common and routine. These phenomena can be part of the detention and arrest; part of an attempt to suppress a demonstration; inflicted during transit; or employed during police interrogation. PCATI's data shows that the use of torture and ill-treatment is more likely against disadvantaged populations suffering from discrimination, such as Palestinians, Ethiopians and asylum seekers. In addition, we encounter all too frequently the excessive use of force in situations of crowd control. Two egregious examples of such excessive use of force can be seen in the following news reports: [Police brutality against Ethiopians](#); [Police misuse of Tasers](#).

#### Case Study: A.H.

A.H. was searched in the street in the market of the city in late 2015, and his ID was verified. When A.H. was released and began driving, he was dragged out of the car and attacked by several policemen in front of a security camera and in the middle of a crowded market.

A.H. was then taken to a police station, where he was made to stand facing the wall while officers slapped him from behind. He was then strip-searched again, this time in the bathroom, with four men in the toilet with him. During the search the officers were joking about him, laughing and pulling his underwear against his will, spitting in his face and slapping his naked body.

### **Torture and other ill-treatment by soldiers**

Violence perpetrated by soldiers against detainees, in both physical and verbal forms, is a far from infrequent phenomenon in the Occupied Territories today. The hundreds of complaints which have reached PCATI in recent years reflect a disturbing norm of intentionally painful shackling, beatings, kicking, assault with batons and rifle butts, and curses and insults directed against the detainees, their family members, and their religion.

Case Study: A.A.

A.A. a 20 year-old man, was arrested in his town of Beit Umar (in the occupied West Bank) together with his cousin in 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.

**Suggested Recommendation**

1. The State Party should incorporate into its legislation the crime of torture, as defined in article 1 of the Convention. The definition of the crime should include all the components defined in the Convention, including the psychological elements of the crime, and incorporate a punishment commensurate with the severity of the crime.
2. The State Party should remove absolutely the notion of “necessity” as a possible justification for the crime of torture, both in its legislation and in its interpretation by the State Party’s Supreme Court.
3. “Necessity” interrogations should cease immediately, unconditionally and completely. The use of stress positions in interrogation should be prohibited completely and unreservedly. State party should take educational steps to ensure that this ban is known, understood, and implemented.
4. Police officers should not, under any circumstances, employ violence as a means of punishment or discrimination against people in their custody. Physical and psychological violence should not, under any circumstances, be used as a means of interrogation, punishment, or intimidation.
5. The police as a body should examine the regulations regarding the use of force in dispersing demonstrations, and the application of such force disproportionately against otherwise disadvantaged communities.

## PART 2 – SAFEGUARDS (ARTICLES 2 AND 15 OF CAT)

### **In reference to the following questions on the List of Issues**

5. Referring to the previous recommendation by the Committee (para. 16), please describe steps taken to install the audio records and video surveillance system in cells and interrogation rooms used by ISA, in particular the video recording of interviews of detainees accused of security offences as a further means to prevent torture and ill-treatment.

6. Referring to the previous recommendation by the Committee, please indicate what steps have been taken to examine the legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer. Have the safeguards against torture and ill-treatment to detainees and persons accused of security offences been extended, in particular the right of suspects to have prompt access to a lawyer, an independent doctor and family members (para. 15)?

7. Please provide the Committee with documentation indicating the number of cases in which detainees have been denied the right to meet with a lawyer for 24 hours or longer. Please indicate the maximum amount of time during which contact with a counsel may be postponed pursuant to article 35 of the Criminal Procedure Code “in exceptional cases,” and the number of times such an “exception” has been invoked. Please clarify whether, in practice, the State party is taking measures to ensure that minors detained by police or military personnel receive prompt access to a lawyer. Please provide data on the number of persons apprehended pursuant to the military legislation and amount of time between apprehension and appearance before a judge in such cases.

10. Have any steps been taken to amend current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards, as recommended by the Committee following the consideration of the previous report (para. 18)?

11. Please explain in detail the extent of application of solitary confinement, provision of medical care and the regime of family visits of Palestinian prisoners held for security-related reasons.

45. Referring to the Supreme Court judgement in *Prv. Yisascharov v. the Head Military Prosecutor et al*, laying down the doctrine of exclusion of unlawfully obtained evidence, please comment on reports about the continued use of evidence obtained through torture and other ill-treatment of witnesses deemed admissible in court, in particular the admissibility of the testimony of Islam Dar Ayoub, aged 14, arrested on 23 January 2011, as evidence by a military judge although it was obtained through breach of his rights.

46. Have any legislative measures been taken to prohibit the use as evidence in any proceedings against the victim of any statement which is established to have been made as a result of torture, as recommended by the Committee (para 25)?

### **CAT Position**

**Incommunicado:** The Committee calls upon Israel to examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer. Ensuring that detainees should have prompt access to a lawyer, an independent doctor and family member are important means for the protection of suspects, offering added safeguards against torture and ill-treatment for detainees, and these should be guaranteed to persons accused of security offenses.

**Solitary confinement:** The State party should amend current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards.

**Admissibility of evidence:** The State party should legislate to ensure any statement which is established to have been made as a result of torture cannot be invoked as evidence in any proceedings against the victim, in line with article 15 of the Convention.

### **State position**

**Access to Counsel and Family:** Incidents of detention or interrogation with no access are rare, and requests to postpone the meeting between detainee and counsel are not made arbitrarily or often. There has been a conscientious decrease in the cases of detainees prevented from seeing counsel.

**Solitary Confinement:** Solitary confinement is limited by law to 15 days. In practice, it is used mostly for short periods of time, commonly two to three days.

**Admissibility of evidence:** This issue is being discussed by an Advisory Committee to the Minister of Justice on the issue of criminal procedure and evidence.

### **Issue summary**

As in previous appearances before UN bodies, the State insists that international human rights treaties – including CAT – are not applicable to the West Bank. The State therefore addresses only Israeli civil law, ignoring the military legislation that applies to Palestinians detained by the state and sets up draconian provisions in relation to their arrest and detention.

Legally speaking, there is a consensus among legal experts that international human rights treaties apply to the population of the OPT, a view that has been reiterated by international tribunals and UN bodies. Moreover, the question of the applicability of UNCAT should not be raised in relation to Palestinian detainees, since they are held on Israeli sovereign soil.

### **Access to Counsel and family**

As stated in previous reports to this Committee, it should first be noted that in the case of Israel, preventing a detainee from access to counsel or family visits is clearly used as a means to exercise pressure for purposes of the interrogation. It is also a standard and systematic

practice during the interrogation. In practice, this translates to the detainee being held in complete isolation from the outside world, without family visits or interactions with other prisoners.

In the case of Mr. Abu Ghosh, several leading international legal experts examined the case of his incommunicado detention in 2007, when he was held incommunicado for 15 days, allowed a visit by an ICRC delegate, then held incommunicado again for a further 16 days. The experts concluded the following:

*In view of the officially documented denial of access to a lawyer and the uncontested denial of any other access to the outside world, this appears to have amounted to a case of prolonged incommunicado detention, applied intentionally for the purpose of obtaining information from the detainee. To this extent, it is our opinion that, under international law, Mr Abu Gosh's prolonged incommunicado detention constitutes cruel, inhuman or degrading treatment.*

Under Israeli civil law, access can be delayed up to a total of 21 days, by order of a District Court judge with the permission of the State Attorney. Access to a lawyer can be prevented by the officer in charge for up to 10 days. Furthermore, under military legislation, which applies to Palestinian detainees, access to a lawyer can be prevented for up to 30 days by an IDF/Police or ISA officer, and up to 60 days by military court judge. This is, therefore, very far from being an adequate safeguard.

The Israeli regulation concerning the right to notify next of kin is similar to that of the right to access legal representation. In regular civil law this right can be suspended for up to seven days. For detainees suspected of security offenses, the maximum delay is 15 days. In the OPT, however, military law allows a judge to withhold notification of the arrest (also ex parte) for up to 12 days for security offenses.

In practice, we see that being held incommunicado is a regular feature of security interrogations. Just in the last two years, from the cases seen by PCATI alone, the following numbers were collected:

Held incommunicado for 5-9 days	Held incommunicado for 10-19 days	Held incommunicado for 20-39 days	Held incommunicado for 40-60 days
4 detainees	3 detainees, including one minor	17 detainees	4 detainees

These numbers are just the tip of the iceberg, representing only those few detainees who were persistent and driven enough to pursue the practically-useless process of submitting complaints. We are well aware that the practice is so widespread as to be nearly ubiquitous, with judges scarcely pausing before approving yet another extension. The fact that the practice of incommunicado detention as a means of exerting pressure is not confined only to military law can be seen from the recent arrests of two prominent Jewish right-wing extremists, who were held incommunicado for 21 days in December 2015.

We see here that, in spite of the State's reassurances that this is a rare occurrence, once such a possibility exists in the legal code, it can, has and will be applied.

### **Judicial Review**

The state claims that the process of arraignment before a judge in the remand extension hearings provides the necessary safeguard against torture and ill-treatment. In practice, even once suspects are brought before a military court judge, the setting does not allow for the judicial review to act as it should, protecting the detainee and providing a safe space for allegation. First of all, the court hearings are held in Hebrew, which does not allow Palestinian detainees to be active and engaged participants in the process. Secondly, the judge is a military judge, part not only of the general Israeli system but part specifically of the occupying army system. Detainees therefore will often hesitate or decline to expose stories of ill-treatment of their own volition. Thirdly, judges often do not see themselves as obligated to ask about the well-being of the client, in spite of the lack of sufficient and substantial access to counsel. Fourth, in the few cases where a detainee has put forward allegations of abuse, judges are inclined to note the allegations with no further comment and move on, without insisting on an immediate and thorough investigation of the allegations, instead returning the detainee to the very people against whom he is complaining. Thus for example, MK, who had been detained for 5 days already, was brought before a military judge on December 6 2015 for an extension of his remand and an extension of the prevention of counsel. In his ruling the judge noted that the detainee complained of damage to his arm and of back pains, both typical of "necessity defense" interrogations using stress positions. In spite of this, the judge extended his remand for another 5 days. Fifth, even in those rarest of cases where a detainee has alleged torture or ill-treatment, and the judge has ordered measures taken, such as an examination by a health professional, this order is likely to be ignored.

### **Admissibility of tainted evidence**

Evidence obtained through torture is often used to implicate and recriminate other detainees; this kind of evidence is not considered inadmissible. Additionally, while a confession obtained through torture is not considered to be given freely; in practice, a detainee will often be tortured in interrogation, and then transferred to a separate room, where he signs a confession supposedly of his own free will and volition. Naturally, a confession obtained after torture cannot be considered to be independent and voluntary.

### **Suggested Recommendations**

1. The Committee insists that the Convention applies and is relevant to Palestinian detainees held by the State of Israel.
2. The Committee calls on Israel to repeal all laws and orders providing for arbitrary, incommunicado or indefinite detention both under Israeli and military law, including Criminal Procedure (Enforcement Powers – Arrest) Law, 1996; Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law, 2006; and the

relevant sections of the (military) Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (no. 1651), 5770-2009.

3. The Committee calls on Israel to repeal all legal provisions authorizing police, ISA or IDF commanders to deny detainees access to counsel, both in Israeli and military law.
4. Ensure that when provided with access to counsel, suspects should be able to speak in private, in reasonable conditions, and for a reasonable length of time with their counsel.
5. Raise judges' awareness of their obligation to inquire into any allegations of torture and ill-treatment which are brought to their attention. Require all judges, especially military court judges, receiving daintiness for arraignment to inquire explicitly about treatment received since their arrest, and shall ask questions to check whether their statements to prosecutor were made freely and without any form of coercion. Ensure the provision of training for judges on the methods used to detect and investigate cases of torture and ill treatment in line with the Istanbul Protocol and undertake a comprehensive assessment of the impact of such training programs. Given the urgency and importance of the judicial review, such training should be made available within one year.
6. Under no circumstances should detainees be held in solitary confinement for prolonged periods of time, given the irreversible and documented damage such practices cause to the detainee. Under no circumstances should prolonged solitary confinement be used as a means of punishment or interrogation. This understanding should be reflected clearly in legislation and in the regulations and training provided to relevant staff.
7. Any evidence obtained as a result of coercive and illegal means should be inadmissible in any court of law. This should apply both to confessions and to recriminations of other parties, with no exceptions.

### **PART 3: THE INVESTIGATION OF ALLEGATIONS OF TORTURE OR CIDT (ARTICLES 12-13 OF CAT)**

#### **With reference to the following questions on the List of Issues**

34. Please indicate how many of around 700 complaints of alleged torture or ill-treatment during ISA interrogation have been properly and impartially investigated. Please provide data on the perpetrators prosecuted and penalties imposed for the acts of torture or ill-treatment, as requested by the Committee (para. 19).

35. Please report on the number of complaints of torture and ill-treatment and criminal procedures that have resulted in convictions of the accused and the penalties imposed, as requested by the Committee following the consideration of the previous report (para. 20). Please provide information on any criminal investigations into law enforcement officials accused of committing torture or ill-treatment against detainees during the reporting period and indicate if any of these resulted in the conviction of the accused and the penalties imposed.

36. Referring to the previous recommendation of the Committee (para. 21) and the Attorney General's announcement that the person in charge of investigating complaints against ISA – the Interrogee Complaints Comptroller - would become independent from its structures, please indicate the measures taken to ensure external and independent supervision of ISA interrogation practices.

#### **CAT position**

The State party should ensure that all allegations of torture and ill-treatment are promptly and effectively investigated and perpetrators prosecuted and, if applicable, appropriate penalties imposed. The State party should duly investigate all allegations of torture and ill-treatment by creating a fully independent and impartial mechanism outside the ISA.

#### **State position**

All complaints submitted to the Inspector for Complaints against ISA Interrogators ("Inspector") are examined independently, impartially and properly. So far, these complaints have not resulted in any prosecutions. However, some of them have prompted changes in procedures and methods of interrogation. The Inspector is working to improve response time.

#### **Issue summary**

The Israeli investigative system is multifaceted and fragmented according to the organizational identity of the alleged perpetrators. For example, acts committed by Israel Police and ISA are investigated under the Police Investigation Department (PID) at the State Attorney's Office in the Israeli Ministry of Justice, but in two separate departments following fundamentally different procedures. Concurrently, the Military Police Criminal Investigation



Division (MPCID) has the authority to carry out criminal investigations into offenses allegedly carried out by Israel Defense Forces (IDF) personnel during their service. Finally, the National Prison Wardens Investigation Unit (UIW) is responsible for investigating information concerning criminal offenses by members of the Israel Prison Service (IPS). This fragmentation creates a chaotic system, characterized by widely varying response times and professional standards.

In addition, victims often do not know the institutional affiliations of the perpetrators, and thus need to determine the body to which the complaints should be submitted before they can even lodge their allegations. Complaints are often passed around from one mechanism to another for months and even years, each preliminary body claiming it has no jurisdiction over the case. Thus, just in the last 24 months, 11 cases submitted by PCATI have been passed from one particular investigative body (the IIC, in charge of preliminary investigation of the ISA) to another (the Police Investigation Department). Every such transfer takes several months, resulting in a substantial harm to the victim's right to redress.

## **IDF Investigations**

### **Investigations**

The body entrusted with investigating complaints regarding soldiers is the Military Police Criminal Investigative Unit (CIU). The CIU is plagued by two main problems: systematic and astounding foot-dragging, which negates the promptness of the investigations; and lack of professionalism in the investigations. Both these issues manifest themselves in the results of CIU investigations, which have an abysmal negative rate of indictment. Both of these issues have been discussed at length in two internal Israeli Commission, the Turkel commission and the Ciechanover Commission, both of whom set a detailed and reasoned list of practical recommendations. The problems, their repercussions, and the solutions are all well-known. The issue at hand is that of effective and timely implementation.

### **Duty of Promptness**

An investigation that drags on for months or years naturally harms the chances of bringing the suspects to trial and of obtaining the necessary evidence to conduct a criminal trial; this, in turn, is liable to bring about the unjustified closing of investigation files. The time elapsed since the commission of the crime can also influence the memory of the witnesses and the possibility of relying upon complete, credible testimony. Wherever justice frequently remains unfulfilled, public faith in the investigative system is damaged, which contradicts the public interest in the formation of an independent investigatory mechanism to educate and deter the security forces from inhuman behaviour towards individuals in their custody.

Attention must also be paid in this context to the limited applicability of the Military Adjudication Law upon reserve duty soldiers. Under article 6 of this law, its applicability expires after the suspect has ceased being a soldier (enlisted or reserve), if within 180 days of

leaving active duty no indictment has been filed; and with regards to a crime for which the punishment is two years or for a non-military felony – one year. Therefore, any dragging out of the investigation process is liable to hurt the chances of bringing those responsible for acts of violence to justice.

We note in this context that ten months to conduct an investigation was considered “unreasonable” according to the UN Committee Against Torture in the **Encarnación Blanco Abad v. Spain** matter.<sup>1</sup> And yet, in Israel, of 133 complaints filed by PCATI between 2007 and 2013 against torture and cruel, inhuman and degrading treatment by soldiers during arrest – violence which, in the vast majority of cases, is carried out when the detainee is shackled and blindfolded – an average of **over two years** passed before investigation conclusions were received, in those cases where an answer was received at all. The statistics reveal that the Military Prosecutor takes an average of 30 months – two and a half years – from the moment of the complaint’s filing until notification is provided to the complainant or their representative regarding the closing or shelving of the investigation file.

This issue has been brought before the Israeli High Court of Justice (HCJ 8311/14). PCATI there asked the Military Attorney General to set a clear, reasonable and tight timeframe for completion of the examination of complaints against soldiers. Although the matter has been brought to a hearing, the HCJ has not yet ruled on the issue, 5 years and 7 months after the event.

#### **Case Study: A.S.**

On Aug 12, 2010 PCATI filed a complaint with MPC in the case of soldier violence against a detainee named A.S. The detainee testified that he was arrested late at night in his home and was taken outside with his hands shackled in an extremely painful manner. While being transferred by military jeep to the settlement of Ariel, he was punched and kicked continuously in the neck and legs by a soldier who sat next to him. When they arrived in Ariel, A.S. was forced to stand; every time he attempted to sit down from exhaustion the soldiers would stand him back up. All of this was described in detail in PCATI’s complaint of the above date, and **two years later** – on March 6, 2012 – the Military Prosecutor Corps informed PCATI that a CIU investigation had been ordered into the case but that “the investigation materials have yet to be received in our offices.” Clearly, two years is an absolutely unreasonable timeframe for the conduct of an investigation into such a case, and a more businesslike approach and greater desire to reveal the truth and bring those responsible to justice would have led to the completion of the investigation long before.

#### **Duty of Efficacy**

A criminal investigation may and should include proactive actions, including interviews of as many witnesses as possible immediately after the incident in question. The investigative body should, among other things, stage a line-up, identify all those involved in the incident,

---

<sup>1</sup> See para. 8.7 of ruling. Cited in **Turkel Committee**, para. 87.

confront various witnesses with each other, check the records, examine video footage and still photographs, locate evidence and perform other basic investigatory activities. In our experience, the CIU frequently refrains from performing these actions, rendering itself incapable of exposing what actually happened.

A case illustrating this point is that of P.A. who, as a minor, was allegedly physically and verbally assaulted during his arrest, and later seated in painful stress positions, kept in the cold, blindfolded, and shackled tightly and unlawfully for a prolonged period. The investigation log looking into the complaint filed on his behalf indicates only five significant actions: taking the complainant's testimony, examining his medical record, ordering the intake reports from the prison, an incomplete identification of the regiment of the arresting force, and the taking of an affidavit from the commander during the incident. No potential witnesses were interrogated, no line-up was conducted, no attempt was made to locate those involved in the incident, various witnesses were not confronted with each other, and in sum: a thorough and effective investigation was not conducted. Little wonder that after all of these oversights the file was closed due to a lack of sufficient evidence.

The lack of a professional approach is also demonstrated by the fact that the vast majority of CIU's investigators do not speak Arabic, which of course presents them with a serious – if not insurmountable – challenge. The complainant's interrogation at times consists of little more than being blatantly encouraged to abandon her or his complaint completely. In some cases, the complainants were treated in a humiliating fashion, as if they were suspects rather than victims.

- A.A. was violently arrested in 2011 and filed a complaint on the matter with CIU. In his affidavit he stated: “in the first meeting with the CIU investigators, I was asked about my complaint. I was surprised to see how the soldier representing CIU began screaming, even tearing the pages in front of her, and she spoke to the interpreter with angry hand movements and a loud voice. Per her request I repeated my testimony again. She said that they would handle my complaint and deal with the soldiers involved, including bringing the soldiers to trial. As such, since they would handle the matter, she tried to convince me to recant my complaint and drop the case. Of course I refused to do so... In early 2012 I again met with CIU investigators who came to ‘Ofer’ Military Prison. There was a woman soldier and a Druze interpreter, and again they attempted to convince me to recant my complaint. In response I told them that I was being represented by an attorney and any demand on their part should be communicated to him.”
- P.M., was detained at his home in 2009 and held at “Ofer” Prison. A complaint for physical ill-treatment of a detainee at the hands of soldiers was filed in his name with the Military Prosecutor for Operational Affairs on June 6, 2010. Sometime around November 2010, a man and a woman in military uniform took his testimony in an interrogation room at “Ofer” Prison. Throughout the interview – very much like an interrogation – the complainant's hands were shackled. A prison guard translated his words into Hebrew. The interrogators did not identify or introduce themselves to the complainant. At the conclusion of the testimony he was asked to sign documents in Hebrew, a language foreign to him, without having received proper

### **Results of CIU investigations**

Out of 154 complaints filed by PCATI between 2007 and 2015 regarding soldier violence against detainees in the Palestinian Occupied territory, only two such complaints resulted in an indictment against a soldier, on assault charges. Many are still pending at the offices of the Military Advocate General – some for several years – with no investigative conclusions. The rest of the complaints were dismissed with no further action taken.

### **Police Investigations**

Police investigations are plagued by a general lack of a rigorous and professional approach to crimes committed by police officers. In our experience, the cases where we see the initiation of legal procedures are those where audio-visual documentation of the police violence exists to substantiate the complaint. Needless to say, this is rarely the case. The problem is compounded by the fact that PID rarely search for such supportive evidence. Currently, police investigation into allegation of torture and ill-treatment by police officers lack a proactive approach, examining the testimony offered by the complainant, but not searching for any additional documentation. This does not meet with the standard of police investigation apparent in other investigations in Israel, nor does it meet the standard required by the Convention. The PID should search for and summon other witnesses, question the police officers involved, and proactively search for visual documentation.

In the rare cases where the PID have decided to initiate procedures, allegations against police officers result in a disciplinary hearing, even when the allegation itself involves a criminal offense. Disciplinary hearings are in essence internal, less stringent than criminal investigations, and carry reduced penalties. They also negate the rights of the complainant, leaving him removed from the process, uninformed of any updates on the progress of his complaint or even any information on the very decision of the hearing.

Legally, complainants – and particularly minors – are allowed to be accompanied throughout the process, especially when giving their witness statement. This provides support and encouragement for the victim, and can sometimes serve to monitor abusive or illegitimate behavior during the testimony (such as attempts to intimidate the victim into withdrawing the complaint). In practice, we find that the PID assumes that only victims of sexual violence are entitled to such an accompaniment. For all other victims, PID is both unaware of this right and often insistent that the complainant appear alone or lose the right to present his/her testimony.

### **The Inspector for Complaints against ISA Interrogators (“Inspector”)**

The establishment of a civilian, professional, formally independent Inspector of Interrogees’ Complaints for examining complaints against ISA interrogators in February 2014 cannot but be lauded. PCATI respects and appreciates the efforts made by the IIC to ensure a thorough, worthy examination.

Nevertheless, after over two years in operation, we can state that three systemic problems plague the new mechanism and call into question the value of her work: the attempt to supersede and replace the criminal investigation, the length of time required and the lack of any recommendation to initiate criminal investigations.

1. Though the desire to conduct in-depth quality examination is laudable, the very attempt at thoroughness in a preliminary examination is misguided. The typical purpose of preliminary examination mechanisms is to enable initial clarification of charges and determine whether a basis exists for criminal investigation. The preliminary examination must indeed be preliminary and strictly limited to ensuring that the complaint is not, factually, manifestly unfounded. 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>2</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. In addition, the very thoroughness of the preliminary investigation harms due process by contaminating evidence and, in essence, preparing the suspects for the criminal investigation. Thus, it not only harms the ability of the victim to achieve redress but has significant potential to damage the criminal procedure.
2. This leads to a second problem, which is the length of time from the presentation of a complaint to a decision. At the time of writing (Feb. 2016), 24 months into the operation of the OCGIC in the Ministry of Justice, the average treatment time of complaints of torture followed by PCATI and currently open at the OCGIC is just over 23 months – and this, before a criminal investigation has even been opened. The unreasonable length of time is sometimes caused by the fact that, under the current operating procedures, the very existence of any other legal proceeding in the case (such as a mini-trial regarding the validity of the confession) leads to the freezing of the examination process. Thus, PCATI has 7 clients who have complained of torture in 2014, and whose testimonies were not taken and their complaint not pursued because of the ongoing mini-trial in their cases.

---

<sup>2</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 August 7, 2014.

This clearly violates the requirement for a prompt investigation, harming irreparably the rights of complainants to redress. Apart from any other problems, the absurd length of time is occasioned by the fact that **the Inspector is but the first of four different stages in the preliminary investigation**. Once her examination is completed, her recommendation is passed on to the Inspector's Supervisor, who then in turn – after a few months – presents her recommendation to the Attorney General. His decision is the final one, and he is the only one empowered to take a decision into opening a criminal investigation into the behavior of ISA officers. Only then does the PID begin its criminal investigation. Thus, the system in its entirety is still designed to increase obfuscation and delay the process.

The problems are compounded when we look at the process of appealing decisions to close cases with no criminal investigation. According to PCATI's data, from 2013 to date, the average time between the appeal against the decision and the receipt of a decision in the appeals was 27 months.

**Case Study:**

N.S. was arrested in August 2011 and taken into an ISA interrogation. This interrogation allegedly included the use of torture, specifically sleep deprivation, shaking, and the intensive use of stress positions over three days, leading to intense pain and loss of feeling in his arms. N.S. was prevented from using the toilet, forcing him to void on himself several times and causing him great humiliation and pain. In November 2011, N.S. submitted a complaint through PCATI, demanding that his interrogators face criminal prosecution. Despite numerous reminders and reiterations; despite the provision of detailed medical evidence, detailing the severe physical and psychic repercussions of the interrogations; despite the presentation of a petition to the High Court of Justice in March 2013 (HCJ 2286/2013) – N.S.'s file is still in the preliminary investigation stage at the time of writing, **adding up to a process of 4 years and 4 months**.

3. More than two years have elapsed since the new Inspector took office, with not a single recommendation of a criminal investigation being launched into a suspected case of torture by an ISA interrogator. Of the 1,000 complaints examined from 2001 to March 2016, not a single one led to a criminal investigation; this, despite the fact that many of the complaints describe systematic and egregious violations of the Convention, and many are backed by substantial medical evidence.

Some cases are closed because the complainant declines to meet the Inspector, for a variety of reasons. And yet, the question before the IIC should be whether or not a criminal offence was allegedly committed; the current willingness of the victim – which is of course also affected by the unreasonable length of time elapsing from the event to the end of the investigation – should have no bearing on the IIC's decision.

### **Suggested Recommendations**

1. A clear directive must be given by the Military Prosecutor determining a maximum period of 10 months from the start to the end of an investigation.
2. A clear directive must be given by the Military Prosecutor ordering CIU to conduct a thorough and comprehensive investigation into every single complaint, which will utilize the widest range of investigatory methods at CIU's disposal. To this end resources should be allocated, including an increase in the number of Arabic-speaking investigators.
3. Complainants should be allowed accompaniment of their choice to ascertain that they are not harassed in the investigation process.
4. Investigation into all allegations of torture, cruel, inhuman or degrading treatment should be prompt, lasting no longer than 10 months all told, from the start of the process to the end of the criminal investigation, if warranted. Preliminary examination should not take more than 3 months. This should hold true regardless of the investigating agency; steps should be taken to ensure that a transfer of a case from one agency to the other does not result in an unreasonable delay.
5. A preliminary examination, if warranted at all, must indeed be preliminary and strictly limited to ensuring that the complaint is not, factually, manifestly unfounded. The IIC should therefore have the legal power to open a criminal investigation after the initial determination that the case is founded.
6. The decision to open a criminal investigation should not be automatically nullified as a consequence of a victim's unwillingness to testify.
7. All investigative bodies addressing allegations of torture should work to unify their standards and training, ensuring that the same professional standards are applied across the board, and that the quality of the investigation is not determined by the body to which the complaint was submitted.
8. Police Internal Investigations and the Military Police Criminal Investigative Unit should meet the same standard of professional investigations held in other cases, including proactively searching for additional information and documentation.
9. All allegation involving a criminal offense should lead to a criminal investigation, reserving disciplinary hearings for breaches of procedure.
10. The appeal process should not last more than 6 months all told.

**PART 4: TRAINING ON THE PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT AND INCORPORATION OF THE USE OF THE ISTANBUL PROTOCOL IN THE INVESTIGATION AND DOCUMENTATION OF TORTURE (ARTICLES 10, 11, 12 AND 13)**

**With reference to the following questions on the List of Issues**

25. What steps have been taken to provide and intensify human rights education and training to security officials, including training on the prohibition of torture and ill-treatment, as previously recommended by the Committee (para. 19)?

27: Please inform the Committee whether all professionals who are directly involved in the process of documenting and investigating torture, as well as medical personnel and other officials involved with detainees, are trained on the provisions of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the result of such training. Please also indicate whether the Istanbul Protocol is used in asylum determination procedures.

30: Please indicate what measures have been taken to ensure that any allegations of ill-treatment by law enforcement officials made before a prosecutor or judge are recorded in writing and immediately and properly investigated, including through a forensic medical examination regardless of the fact whether or not the person concerned bears visible external injuries.

39. Please describe the measures, if any, to improve mechanisms to facilitate the submission of complaints by victims of torture and ill-treatment to public authorities, including obtaining medical evidence in support of their allegations. Is there any judicial revision of compliance with the Law on the Military Activities in the Occupied Territories?

41. Regarding the functioning of the judiciary, please indicate any effective measures undertaken to strengthen the independence of the judiciary and to provide adequate training on the prohibition of torture and ill-treatment to judges and prosecutors.

**CAT position**

In its Concluding Observations concerning Israel (2009), the Committee stated that the State party should intensify human rights education and training activities to security officials, including training on the prohibition of torture and ill-treatment.

**State party response**

Israel claims that the various security officials, Population and Immigration Authority officials, and judges each undergo regular training and instructions through courses held in their relevant units. Training regarding the relevant international law and human rights conventions is included and integrated in such workshops. State also notes that pursuant to the recommendations of the Turkel Commission of February 2013, and pursuant to the Examination and Implementation Team of the Second Turkel Report's Recommendations, the Istanbul Protocol is being examined in order to fully understand its implications on the IPS and other authorities.



### **Issue summary**

There is no systematic and specific training of physicians in identifying signs of torture or ill-treatment, neither in the Medical Faculties nor in the teaching hospitals. Physicians do not receive specific training in the documentation of torture pursuant to the Istanbul Protocol. This is also true also of Israel's few forensic doctors working in the National forensic Institute. The lack of a systematic approach to victim of torture is apparent also in the training given to social service providers, who are often the first responders in detention facilities: There is no systematic training of social service providers in identifying signs of torture or ill-treatment in adults.

The lack of such training and the acute need for it are demonstrated by the laconic medical records in cases where a detainee complained to the IPS medical staff. Thus, prison medical files will often note that a detainee complained of unspecified "pains," without identifying the location of the pains, or note that a detainee suffered "bruises," without describing the size, location and other features of the bruises. In spite of the fact that the IPS regulations demand that any injury to a detainee be photographed immediately in the prison clinic, in the past 5 years PCATI has encountered only two cases of such photographic documentation out of hundreds of medical files. This situation leads to loss of medical evidence, directly and gravely hindering the ability of detainees to lodge sustainable complaints.

There is no systematic and specific training of investigators, interrogators and other relevant personnel in any of the security apparatuses on the non-derogable prohibition on torture. Investigators, interrogators and judges, to PCATI's knowledge, have not received any systematic, specific and sufficient training on the identification of torture or ill-treatment with particular reference to the Istanbul Protocol. The State has not, to date, made use or requested the provision of Istanbul Protocol assessments in cases of torture allegations. The few assessments conducted privately by CSOs were rejected by the Ministry of Justice (see for example state responses to H CJ 5722/12 *As'ad Abu Gosh et al. v the Attorney-General et al.* from 26 February 2014 and 10 November 2015; H CJ 869/12 *Warani et al. v the Attorney General et al.* from 28 June 2013; and civil case 51912-11-15 Jerusalem Magistrate's Court *Al Ramila v State of Israel* from 24 February 2016).

These problems are compounded by the obstacles piled in the path of independent assessments. Increasingly, NGOs encounter difficulties in gaining access to detention facilities in order to provide such assessments. The delays, obstructions and denials of access result in the indefinite postponement of such assessments, and thereby the loss of crucial evidence. This situation leads to loss of medical evidence, directly and gravely hindering the ability of detainees to lodge sustainable complaints.

### Case study

Since May 2015, PCATI has been attempting to coordinate four medic-legal assessments for clients who are still held in detention facilities. All four were repeatedly denied. In one example, SH, a Palestinian security prisoner who alleges to have been tortured by the ISA, submitted three separate requests for such an assessment, which were denied, often at the last minute with no explanation. **More than ten months after its first request was submitted, PCATI has still not been able to conduct an assessment for SH.**

### **Suggested Recommendations**

The Committee recommends the State party to:

1. Hold specific and directed training on the investigation and documentation of torture and ill-treatment based on the Istanbul Protocol for Judges, especially Military Court Judges, and Investigators of allegations regarding torture and ill-treatment in the IPS, ISA, Police, and the IDF.
2. As part of the follow-up process, the State party should provide, within one year, relevant information detailing its actions to provide such training. Such trainings should be held by the State, in consultation with relevant CSOs. The training should include an awareness of the common memory patterns among victims of torture and the common impediments that may affect the ability of a torture victim to present a well-ordered and completely consistent story.
3. Intensify its education and training on how to identify signs of torture and ill-treatment – pursuant to the Istanbul protocol – among students of medicine, and particularly among physicians who are involved in the screening, diagnosis and/or treatment of detainees and asylum seekers.
4. Introduce a systematic screening procedure, based on the Istanbul Protocol, at all asylum centers, with the intention of identifying every torture victim and undertaking a specialized medical examination of persons who claim or appear to have been tortured, before releasing any decision on the future incarceration, detention or status of the asylum seeker.
5. Ensure that medical files in the IPS comply with Israeli regulations regarding the documentation of injuries and with accepted international standards, inter alia: United Nations, Body of principles for the protection of all persons under any form of detention or imprisonment, 9 December 1988; World Medical Association. Declaration of Lisbon on the rights of the patient. 1981, Rev. 2005; United Nations. Principles of medical ethics relevant to the role of health personnel, in the protection of prisoners and detainees against torture and other cruel, inhuman, or degrading treatment or punishment; and World Medical Association. Declaration of Tokyo: Guidelines for physicians concerning torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment. 1975, Rev. 2006.

6. Introduce and facilitate the provision and use of legal-medical evidence, given by physicians and mental health professionals trained in the Istanbul Protocol, in the investigation and prosecution of allegations of torture.

7. Facilitate the prompt entry of physicians and mental health professionals into detention facilities in order to provide legal-medical evidence pursuant to the Istanbul Protocol. Such health professionals should also be provided with the appropriate conditions for such an interview.

## **PART 5: REPARATIONS (ARTICLE 14)**

### **With reference to question 43 of the List of Issues**

43. The Committee would also appreciate an update on the application of legal and other mechanisms to ensure fair and adequate compensation for all victims of torture and ill-treatment as well as information on instances and types of compensation granted. Please also inform the Committee about whether any programs or services for rehabilitation are available and accessible to victims of torture and ill-treatment. Please, inform on the operation and efficiency of the “Committee on claims by the medical staff, related to damages caused to detainees when submitted to interrogation”. May Palestinians in the Occupied Palestinian Territories present any civilian claims in order to obtain reparation for damages caused by security or military forces?

### **Issue summary**

Fair and adequate compensation is a fundamental feature of any attempt to provide redress to victims of torture. The civil process is not only crucial for providing monetary reparations to those who have suffered wrongs; it is also an essential part of ensuring accountability, given the lower burden of proof required in the civil process (in comparison to the criminal process, where the standard is beyond reasonable doubt). It is thus in keeping with Israel's derogation of its responsibilities that Palestinians are in practice unable to apply for compensation.

In 2005 Israeli Tort Law (Liability of the State, 1952) article 5B, was amended. The amendment states that anyone active or a member in a "terror organization" may not hold the state liable for any damage caused. The definition of membership in a terror organization in law and by precedent is so wide as to practically nullify any possible reparations for ISA interrogees, who are all routinely accused of security crimes. This amendment effectively blocks the road for reparations for almost all ISA interrogees, who are accused of security offenses. The obstacle is compounded by the fact that evidence regarding a person's membership in a terror organization are habitually classified in order to protect sources. This means that an alleged victim of torture is for all practical purposes unable to disprove such allegations. Thus, reparations from the state are impractical, not to say unattainable, for Palestinians who were tortured.

It should also be noted that military courts in the Occupied Territories have no jurisdiction to discuss damages / compensation lawsuits, and procedures therefore have to be conducted in Hebrew, in Israeli courts. Access of Palestinians to justice is further compromised by the high costs of expert opinions required to prove damage and causality which are required in such cases.

### **Recommendations**

1. Article 5B of Israeli Tort Law (Liability of the State ,1952) should be annulled forthwith.
2. A separate tort, addressing torture specifically and directly, should be written into Israeli legislation.

**SOURCES** are available on the PCATI website <http://stoptorture.org.il/?lang=en>

- From the Testimony of a Woman Prisoner  
[http://stoptorture.org.il/wp-content/uploads/2015/10/en\\_women\\_testimony-2013.pdf](http://stoptorture.org.il/wp-content/uploads/2015/10/en_women_testimony-2013.pdf)
- Briefing to the UNCAT for the 5<sup>th</sup> Review on Israel  
<http://stoptorture.org.il/briefing-committee-torture-committees-review-fifth-periodic-report-israel-2016/?lang=en>
- Family Matters: The Ongoing Use of Family Members in Interrogations:  
<http://stoptorture.org.il/family-matters-part-two-the-ongoing-use-of-family-members-in-gss-interrogations-june-2012/?lang=en>
- The Implementation of the Istanbul Protocol in Israel  
<http://stoptorture.org.il/implementation-of-the-istanbul-protocol-in-israel-february-2014/?lang=en>

