



SUGGESTED QUESTIONS FOR THE UN HUMAN RIGHTS COMMITTEE CONSIDERING ISRAEL'S COMPLIANCE WITH THE ICCPR

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Three human rights organizations – Adalah - The Legal Center for Arab Minority Rights in Israel, Al Mezan Center for Human Rights, and Physicians for Human Rights-Israel – are pleased to submit this report to the UN Human Rights Committee to assist it in its consideration of Israel's Third Periodic Report of 2008. The partners are working together on a joint, EU-funded project to combat and prevent torture and ill-treatment of Palestinian prisoners and civilians in the Occupied Palestinian Territory by the State of Israel.

1. Prolonged detention without access to a lawyer

Articles 7, 9, 10, 14, para. 3(b).

Suggested questions

Pursuant to section 3 of *the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law – 2006*, security suspects may be detained for up to 96 hours before being brought before a judge, as opposed to 48 hours in other cases. The law also provides for subsequent judicial remand hearing in the absence of the detainee for up to 20 days. Security suspects can concurrently be denied access to a lawyer for up to 21 days, as opposed to 48 hours in other cases, according to Section 34 of *the Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996*. What is the current status of *the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law – 2006*, which was enacted for an initial period of 18 months and extended until the end of 2010?¹

According to these laws security suspects, who are most vulnerable to acts of torture and ill-treatment, are denied the procedural safeguards that are provided to other suspects. Based on information received by the Committee, Israeli Jewish prisoners classified as security prisoners number 16 out of a total of 6,552 prisoners, whereas Palestinian prisoners classified as security

¹ The Public Committee Against Torture in Israel (PCATI), the Association for Civil Rights in Israel (ACRI) and Adalah submitted a petition to the Israeli Supreme Court challenging the constitutionality of this law in 2008. The organizations withdrew the petition in protest against the court's unprecedented decision to hear secret evidence provided by the state on the constitutionality of a law, in the absence of the petitioners and the public. The state argued that the secret evidence was needed to justify the restrictions on rights in the law, and to demonstrate why some investigations require "continuity," which would be disrupted by taking the detainee to court. The petitioners argued that the court's decision to hear secret evidence has no legal basis and contradicts previous Supreme Court judgments, and furthermore, sets a dangerous precedent that significantly harms future possibilities for the judicial review of laws that violate human rights. See H.C. 2028/08, *The Public Committee Against Torture in Israel, et al., v. The Minister of Justice, et al.* (petition withdrawn on 24 March 2009). A challenge to the law by the Public Defenders' office remains pending. See H.C. 1548/08, *The Israeli Bar, et al, v. The Minister of Justice, et al.*

prisoners number 7,734 out of a total of 12,990 prisoners incarcerated in Israeli prisons.² What measures does the State party plan to take to bring these laws into conformity with articles 7, 9, 10 and 14, para. 3(b) of the Covenant, and with the Committee's previous recommendation³ that no one should be held in custody for more than 48 hours without access to a lawyer?

2. Extra-judicial executions

Articles 6, 7

Suggested questions

According to information received by the Committee, Israel continues to pursue the policy of extra-judicial executions (EJEs) in the Occupied Palestinian Territory (OPT), following the Supreme Court's decision of December 2006, limiting the circumstances in which EJEs can be used.⁴ How many EJEs have been carried out since the Committee issued its last set of Concluding Observations in 2003? In accordance with the Committee's previous recommendations,⁵ has the State party promulgated guidelines for military commanders governing the use of EJEs, including to regulate who constitutes a legitimate target for EJE operations, who makes this decision, and what is the timeframe allowed for carrying out these operations; if yes, what are these guidelines? How does Israel determine that all measures to arrest a person are exhausted before resorting to the use of EJEs? Are complaints into alleged incidents of EJEs and complaints about the disproportionate use of force investigated promptly by an independent body that includes civilian oversight? Have any investigations conducted into alleged EJE operations lead to criminal prosecutions?

Background to the questions

Between 29 September 2000 and 26 December 2008, 387 Palestinians were killed during the course of an EJE, of whom 234 were the target.⁶ According the Palestinian Centre of Human Rights (Gaza), between 29 September 2000 and 20 December 2008, 742 Palestinian have been killed as a result of EJEs, including 512 targeted persons and 230 non-targeted civilians.⁷

In its decision, the Israeli Supreme Court did not rule EJEs illegal, but determined that the legality of EJE operations must be determined on case-by-case basis, according to several criteria, including whether or not the targeted individuals were "direct participants in hostilities" – defined broadly by the court⁸ – during EJEs, and whether the attack conforms to the principle

² See, "New Data on Arabs Incarcerated in Israeli Prisons," edited by Adalah Attorney Abeer Baker based on information received from the Israel Prison Service on 25 June 2009, in *Adalah's Newsletter*, Volume 62, July 2009, available at: http://www.adalah.org/newsletter/eng/jul09/New_Prisoner_Data_july_2009.pdf.

³ CCPR/CO/78/ISR (2003), para. 13. See also the Concluding Observations of the Committee Against Torture, CAT/C/ISR/CO/4, 14 May 2009, para. 15; and List of issues to be considered during the examination of the fourth periodic report of Israel, CAT/C/ISR/Q/4, 15 December 2008, para. 6.

⁴ H.C. 769/02, *The Public Committee Against Torture in Israel v. The Government of Israel* (decision delivered on 14 December 2006).

⁵ CCPR/CO/78/ISR (2003), para. 15.

⁶ See B'Tselem, Statistics – Fatalities, available at: <http://www.btselem.org/english/statistics/Casualties.asp>. Site accessed on 9 July 2009.

⁷ See Palestinian Centre of Human Rights, Statistics, available at: <http://www.pchrgaza.org/alaqsaintifada.html>. Site accessed on 9 July 2009.

⁸ The court determined that taking a direct part in hostilities covers, e.g., "a person who collects intelligence on the army, whether on issues regarding the hostilities (...) or beyond those issues (...) a person who transports unlawful combatants to or from the place where the hostilities are taking place; a person who operates weapons which unlawful combatants use, or supervises their operation, or provides service to them, be the distance from the battlefield as it may." Para. 35 of the ruling.

of proportionality.⁹ Putting aside justified and severe criticisms of the decision, Israel is even acting in breach of this flawed judgment. Since the Supreme Court's decision, the Israeli military has not announced any EJE's in the West Bank. However, it has continued to carry out these operations to kill wanted men, instead relabeling them as, "arrest operations" or "exchanges of fire."¹⁰

The above noted figures do not include deaths caused as a result of EJE's carried out during Israel's military attacks on Gaza in December 2008 and January 2009. On 27 December 2008, the Israeli military fired a missile at a parade to mark the graduation of police cadets in the Gaza Strip, which was held at the police headquarters in Gaza City. Dozens of civilians were killed in the attack, the majority of whom were members of the civilian police force.¹¹ On 2 January 2009, Israel assassinated Dr. Nizar Rayan, a senior Hamas leader, together with his four wives and eleven of his children in an EJE operation in Gaza.¹²

In November 2007, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism recommended that extra-judicial executions, "be strictly limited to persons directly participating in hostilities as a means of last resort after all possible measures to apprehend the person have been take."¹³

3. Punitive home demolitions

Articles 7, 12, 17 and 26.

Suggested questions

According to information before the Committee, Israel has not ceased its policy of punitive home demolitions, in violation of articles 7, 12, 17 and 26 of the Covenant, and contrary to both the previous recommendation of the Committee¹⁴ and the Defense Minister's announcement before the Israeli Supreme Court in 2005 of the army's decision to discontinue this policy.¹⁵ Please explain how the extensive home demolition operations carried out by Israel in the OPT and against the families of suspected Palestinian attackers do not constitute punitive measures, in breach of Israel's obligations under the Covenant.

⁹ Para. 40 of the ruling.

¹⁰ See Uri Blau, "License to Kill," *Haaretz*, 4 December 2008. Available at: <http://www.haaretz.com/hasen/spages/1041622.html>. See also, The Palestinian Center for Human Rights-Gaza (PCHR), *Extrajudicial Executions as Israeli Government Policy*, August 2008. Available at: http://www.pchrgaza.org/files/Reports/English/pdf_killing/killing%20report9.pdf.

¹¹ See the weekly report on the protection of civilians issued by the UN Office of the Humanitarian Coordinator (OCHA-OPT), 24-31 December 2008 (291), available at: http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_2008_12_31_Hebrew.pdf; and Fatmeh El-'Ajou, "Position Paper – Israeli Military Attacks on the Civilian Police Force and Government Buildings and Institutions of Hamas in Gaza," *Adalah's Newsletter*, Volume 57, February 2009, available at: <http://www.adalah.org/newsletter/eng/feb09/feb09.html?navi=%2Fnewsletter%2Feng%2Ffeb09%2Ffeb09.html>.

¹² For details of the Rayan case, see the Palestinian Center for Human Rights – Gaza. IOF Offensive on the Gaza Strip Continues for the 7th Consecutive Day, 2 January 2009, available at: <http://www.pchrgaza.org/files/PressR/English/2008/125-2008.html>; and Al Mezan Center for Human Rights, Israeli Attacks on Gaza Continue for the 7th Day, 2 January 2009, available at: http://www.mezan.org/en/details.php?id=1518&ddname=gaza%20destruction&id_dept=9&id2=9&p=center.

¹³ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, A/HRC/6/17/Add.4, 16 November 2007.

¹⁴ CCPR/CO/78/ISR (2003), para. 16.

¹⁵ See H.C. 4969/04, *Adalah, et al. v. IDF Major General, Central Command, Moshe Kaplinski, et al.* (decision delivered 17 July 2005). For more information, see: http://www.adalah.org/eng/pressreleases/pr.php?file=05_07_27-3.

Background to the questions

In 2009, the Israeli Supreme Court upheld two cases of punitive home demolitions in East Jerusalem against Palestinian families of two Palestinian individuals suspected of carrying out attacks in Jerusalem, sanctioned by the Prime Minister, Defense Minister and the Attorney General.¹⁶ The Prime Minister and the Defense Minister explicitly called for the punitive home demolitions in 2008, following a series of fatal attacks by Palestinians from East Jerusalem. In these cases, the alleged perpetrators were shot dead by the Israeli security forces at the sites of the attacks; the homes to be demolished belonged to their families. The Attorney General also announced that there was no legal impediment to demolishing the homes under Israeli law.¹⁷ On 17 March 2009, the Supreme Court of Israel¹⁸ ruled that the house of Dweiyat's family could be demolished. Supreme Court Justice Edmund Levy wrote that demolishing a house is an effective deterrent against acts of terror and thus is important.¹⁹

Punitive house demolitions have also been carried out in the context of military operations: The civilian population in the Gaza Strip has been particularly devastated by punitive house demolitions during military operations. During "Operation Rainbow", 18-24 May 2004, 400 houses (117 completely) inhabited by 4,171 individuals were demolished in densely populated areas of Rafah.²⁰ During "Operation Days of Penitence," 30 September – 15 October 2004, 91 houses inhabited by 675 Palestinians were demolished in northern Gaza.²¹ Israel has argued that these demolitions have taken place to locate weapons-smuggling tunnels and in response to the launching of Qassam rockets from Gaza into Israel.²²

The number of home demolitions carried out by Israeli military forces during "Operation Cast Lead" (27 December 2008 to 18 January 2009) is staggering: The latest UN figures based on a large scale house-to-house survey reveal that 3,500 shelters were demolished beyond repair, 2,100 shelters sustained major damages and 40,000 shelters sustained minor damages.²³ Home demolitions on this scale constitute the collective punishment of the entire population of the Gaza Strip. These demolitions cannot be sweepingly justified under IHL as absolute military necessity.

¹⁶ H.C. 9353/08, *Abu Dheim v. GOC Home Front Command* (decision delivered 5 January 2009) available in English at: http://hamoked.org.il/items/110991_eng.pdf and H.C. 124/09, *Tayseer Dwaiyat v. The Minister of Defense, et al.* (decision delivered 18 March 2009) available in Hebrew at: <http://elyon1.court.gov.il/files/09/240/001/o03/09001240.o03.htm>.

¹⁷ Efrat Weiss, "Mazuz: No Legal Obstacle to Razing Terrorists Homes," YNET, 7 March 2008. Available at: <http://www.ynet.co.il/english/articles/0.7340.L-3563794.00.html>. See also notice of intention to confiscate and demolish the Abu Dheim's family house by the GOC Homefront Command. Available at: http://hamoked.org.il/items/110463_eng.pdf.

¹⁸ H.C. 124/09, *Hisham Abu Dweyat v. Minister of Interior et al.* The Supreme Court's ruling is available in Hebrew at <http://elyon1.court.gov.il/files/09/240/001/o03/09001240.o03.htm>.

¹⁹ *Ibid.*, para. 6. The demolition was carried out under Regulation 119 of the Defence (Emergency) Regulations 1945, which authorizes a Military Commander to order the forfeiture and destruction or sealing of any house from which gun fire has issued or explosive or incendiary material was thrown unlawfully, and of any house in an area or village residents of which violated the Emergency Regulations involving violence or intimidation.

²⁰ See Al Mezan Centre for Human Rights, *Operation Rainbow: A Report on Human Rights Violations perpetrated by the Israeli Occupation Forces in Rafah, from 18 to 24 May 2004*, July 2004.

²¹ See Adalah – The Legal Center for the Arab Minority Rights in Israel, Briefing Paper, "The Israeli Army Exploitation of the 'Absolute Military Necessity' Exception to Justify its Policy of Home Demolition in the 1967 Occupied Palestinian Territories," February 2005. Available at: <http://www.adalah.org/features/rafah/ABP170205.pdf>.

²² *Ibid.*

²³ Figures from UNRWA and UNDP, assessments of damage caused during the "Cast Lead" offensive, as reported in OCHA-OPT, "The Humanitarian Monitor," April 2009, available at: <http://domino.un.org/unispal.nsf/7b1b9e1db706652385257539006849fa/3a64f6fbdba71939852575c9004943f5?OpenDocument>.

4. Human shields

Articles 6, 7

Suggested questions

Based on information provided to the Committee, several incidents of the use of Palestinian civilians as human shields by the Israeli military have occurred since the Israeli Supreme Court's decision banning the practice on 6 October 2005,²⁴ and contrary to the Committee's previous recommendation.²⁵ Some of these cases reportedly led to the death or injury of those being used in this way. Please provide details of the outcomes of the numerous requests for investigations submitted with regard to alleged incidences of the use of civilians as human shields by the Israeli military since the Supreme Court's decision. Please also provide information on directives given to the Israeli military and security forces regarding the ban on the use of human shields.

Background to the questions

Since September 2000 and the start of the second Intifada, the Israeli military has routinely resorted to the use of Palestinian civilians as human shields, forcing them to carry out life-threatening tasks to assist military operations and arrests. Such tasks include the use of Palestinian civilians to enter buildings to check if they are booby-tapped, remove suspicious objects from roads, stand inside houses where soldiers have set up military positions so that Palestinian combatants will not fire at the soldiers, walk in front of the soldiers to shield them from gunfire and stone-throwing, and remain tied to military jeeps at which stones are being thrown by protestors.²⁶ Some of these cases reportedly led to the death or injury of those being used in this way.²⁷ Based on testimonies received from B'Tselem and Al-Mezan, Adalah has been demanding that the Attorney General and the Military Advocate General (MAG) initiate investigations into these matters and criminal prosecutions against those responsible.²⁸

During the recent military operation in Gaza (December 2008 – January 2009), soldiers ordered civilians to enter buildings to ensure that they were not booby-trapped or to bring people outside, as well as to remove suspicious objects from roads, and to stand in front of soldiers in order to prevent Palestinians from shooting at them.²⁹ One of the documented examples involved three brothers from Gaza (14, 15 and 16 years old) who were taken by Israeli soldiers at gunpoint from their home on 5 January 2009, and made to kneel in front of tanks in order to deter Hamas fighters from firing; they were also sent by Israeli soldiers into houses to clear them.³⁰ In another incident, between 5 and 12 January 2009, the Israeli army forced around 20 Palestinians to carry

²⁴ H.C. 3799/02, *Adalah, et al. v. Yitzhak Eitan, Commander of the Israeli Army in the West Bank, et al.*

²⁵ CCPR/CO/78/ISR (2003), para. 17.

²⁶ The use of human shields contravenes Articles 28 and 51 of the Fourth Geneva Convention, which prohibit the use of civilians "to render certain points or areas immune from military operations" and coercing civilians into "taking part in military operations" respectively. Furthermore, in the case of minors, the practice infringes Article 38 of the Convention on the Rights of the Child (CRC), which imposes a duty on States Parties to ensure that no child under 15 takes part in hostilities. Israel is a State Party to both conventions. Under the Rome Statute of the International Criminal Court, which Israel has signed but not ratified, the use of human shields is a war crime. The use of human shields is also a violation of Article 6 of the Covenant.

²⁷ See Al Mezan Center for Human Rights, "Hiding behind Civilians: The Continued Use of Civilians as Human Shields," July 2008, pp 9-10 available at <http://www.mezan.org/upload/8600.pdf>. Accessed on 3 August 2009.

²⁸ Rana Asali, "Adalah Update Report on the Israeli Military's Routine Use of Palestinian Civilians, including Minors, as Human Shields," *Adalah Newsletter*, Volume 62, July 2009. Available at: http://www.adalah.org/newsletter/eng/jul09/Rana_Human_Shields_update_report_Engslih_july_2009.pdf

²⁹ B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, *Guidelines for Israel's Investigation into Operation Cast Lead: 27 December 2008 – 18 January 2009*, pp. 9-10. Available at: http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf.

³⁰ Clancy Chassay, "Palestinian brothers: Israel used us as human shields in Gaza war," *The Guardian*, 23 March 2009. Available at: <http://www.guardian.co.uk/world/2009/mar/23/gaza-human-shields-claim>.

out “escort and protection” missions of various kinds in the I’zbet Abed Rabbo neighborhood of Gaza.³¹ In one of these cases, a civilian was ordered to search tens of homes and made to enter an empty house in which three fighters were taking positions many times. The civilian was compelled to relay oral messages to the fighters to surrender themselves, give information about them, and take footage of them after the house was bombed from the air.³²

5. Investigations into allegations of torture and ill-treatment / ISA detention facilities / prison doctors

Article 7

Suggested questions

ISA Inspector

According to Israel’s report to the Committee, between 2001 and 2007, the Inspector for Complaints within the ISA initiated 583 complaints alleging the use of unlawful investigation techniques and/or torture and that as a result, four cases resulted in disciplinary measures (0.6%), and several in “general remarks” to ISA interrogators; in no case was a criminal prosecution opened. Further, the Committee also notes with concern that the Inspector is an ISA agent and subordinate to the Head of the ISA, and therefore lacks independence and objectivity. Given these figures, and in view of the broad exemption provided within Section 18 of the Israel Security Agency Law – 2002 (e.g., the necessity defense), please provide information on whether there is any independent oversight for the investigation of complaints or challenge to its application under article 7 and other provisions. Please provide updated statistics from 2007 on the number of complaints made to the Inspector for Complaints within the ISA, the number of complaints turned down as unsubstantiated, the number turned down because the defense of necessity was applied, and the number upheld, and with what consequences for the perpetrators.

ISA Detention Facilities

According to information received by the Committee, representatives of the Public Defender’s Office and the Israeli Bar Association have on several occasions been denied permission to visit ISA detention cells, and have therefore never been able to conduct a visit to detainees held in such cells. However, these representatives do conduct visits to other cells in prisons and often issue severely critical reports about prison conditions as a result. According to guidelines of the Israel Prison Service (IPS),³³ the Minister of Internal Security has the discretion to authorize entry to certain areas of the prison, while restricting access to other areas. The State party is requested to explain why periodic visits by a local, independent body to ISA detention facilities where interrogations take place have not been approved?³⁴

³¹ Amira Hass, “Gazans: IDF used us as ‘human shields’ during offensive,” *Ha’aretz*, 20 February 2009. Available at: <http://haaretz.com/hasen/spages/1065594.html>.

³² See Al Mezan Center for Human Rights, “Hiding Behind Civilians: April 2009 Update Report on the Use of Palestinian Civilians as Human Shields by the Israeli Occupation Forces,” pp 12-14, available at <http://www.mezan.org/upload/8632.pdf>, accessed on 3 August 2009. The same case was also reported in a soldier’s testimony published in a report by Breaking the Silence in August 2009, available at:

http://www.breakingthesilence.org.il/oferet/testimonies_e.asp?cat=2, accessed on 3 August 2009.

³³ Guidelines No. 3.04.00, available in Hebrew at: <http://www.ips.gov.il/NR/rdonlyres/0DBB15A5-53C4-444D-9C51-148A8069D581/0/0>.

³⁴ See Physicians for Human Rights-Israel (PHR-IL), “Oversight and Transparency in the Israeli Penal System,” July 2008, available at: http://www.phr.org.il/phr/files/articlefile_1248003531234.pdf.

Prison Doctors

Prison doctors working in Israeli prisons are subordinate to the Israel Prison Service (IPS). This relationship may reduce their professional autonomy and expose them to situations of “dual loyalty” to their employer and to their prisoner patient. In 2007, the Public Committee Against Torture in Israel published a report, which included prisoners’ testimonies of torture and the collusion of prison doctors in torturous acts such as the lack of medical documentation.³⁵ Did Israel investigate these allegations, and if so, please inform the Committee of the outcome of these investigations? Based on information before the Committee, the Ministry of Health rejected calls to publish guidelines for doctors and medical staff explaining the necessary procedures that should be undertaken in instances where they confront physical abuse and/or acts of torture against prisoners based on the claim that these instances occur so rarely and that such guidelines would, “seriously tarnish the country’s health care professions and security.”³⁶ Further, the ministry refused to extend “whistleblower” protection to doctors who report instances of torture.³⁷ The State party is requested to detail measures taken to ensure compliance with the UN Principles of Medical Ethics in relation to suspected cases of torture and ill-treatment.

6. Restrictions on freedom of movement

Article 6, 7, 12

Suggested questions*The total closure of Gaza*

Gaza is now entering the third year of closure; around 1.5 million people are being held indefinitely in what is in effect a prison. On 29 July 2009, Israel’s Prime Minister said that Israel will continue to keep the crossings to Gaza closed, except for humanitarian aid, until the release of kidnapped soldier Gilad Shalit.³⁸ This statement appears to indicate that the closure constitutes collective punishment. As Israel retains effective control of Gaza, how does it intend to fulfill its obligations under article 12 of the Covenant, as well as articles 6 and 7?

Background to the questions

Israel’s closure of the population of Gaza, which was tightened in June 2006, has brought about a humanitarian crisis unprecedented in the 42 years of Israeli occupation, with poverty and unemployment reaching disastrous levels, and essential health, sanitation and education services deteriorating in an alarming manner.³⁹ Following Hamas’ victory in the Palestinian parliamentary elections of April 2006, Israel allowed only basic humanitarian goods and supplies to enter Gaza,

³⁵ See the Public Committee Against Torture in Israel (PCATI) “Ticking Bombs,” May 2007, available at: <http://www.stoptorture.org.il/en/node/69>.

³⁶ See Physicians for Human Rights-Israel, “Torture in Israel and Physicians’ Involvement in Torture,” position paper issued July 2009, available at: <http://www.phr.org.il/phr/article.asp?articleid=742&catid=57&pcat=46&lang=ENG>. Position paper relied on UN Principles of Medical Ethics, available at: <http://www.un.org/documents/ga/res/38/a38r118.htm>.

³⁷ In 2008, PHR-Israel requested the Director-General of Ministry of Health publish guidelines for doctors and medical staff to explain how they ought to react should they witness or hear of instances of torture or ill-treatment. It was further requested that the Ministry of Health pledge to extend “whistleblower” protection to doctors who report instances of torture. In 2009, the Director General of the ministry rejected PHR-Israel’s request, describing the evidence brought by PHR-Israel as negligible. The ministry further claimed that, even if there were any truth to PHR-Israel’s claims that torture takes place, such incidents occur rarely, and therefore it is not necessary on that basis to publish guidelines that would “seriously tarnish the country’s healthcare professions and security forces.”

³⁸ See Herb Keinon, “Netanyahu: Crossings shut until Shalit freed,” 29 July 2009. Available at: <http://www.jpost.com/servlet/Satellite?cid=1248277925059&pagename=JPost/JPArticle/ShowFull>.

³⁹ See updates and reports by the UN Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territories, available at www.ocha.org.

despite its total dependence on Israel.⁴⁰ This policy intensified following Hamas' takeover of Gaza in June 2007. Since then, Israel has kept the border crossings between Israel and Gaza closed, with minor exceptions. In September 2007, Israel officially declared Gaza a "hostile entity" and introduced a policy of collective punishment that included severe cuts to electricity and fuel supplies.

Denial of Access to Medical Care outside Gaza

According to information received by the Committee, at least 49 patients were denied exit from the Gaza Strip by Israeli authorities for the purpose of receiving medical care between January and June 2009, while a further 863 were delayed.⁴¹ Patients who are delayed often miss their scheduled appointments with physicians at health facilities and must re-schedule these dates and submit a new request for an exit permit. Please provide data on the number of requests for exit permits that have been submitted by residents of Gaza for the purpose of receiving medical care outside Gaza from the period from June 2007 to the present, data on the number of requests that were accepted and denied, as well as the reasons for any denials. Please also provide data on the number of requests for exit permits submitted by residents of Gaza for the purpose of receiving medical care outside Gaza from the period from June 2007 to the present that were delayed, as well as the reasons for these delays.

Denying Essential Professional Medical Training

Several complaints have come to the Committee's attention that medical doctors have been prevented by Israel from exiting Gaza via the Erez Crossing for the purpose of attending professional medical training courses, all of which are unavailable in Gaza. Denying training opportunities to physicians in the fields of pediatric cardiology, ophthalmology, and cystic fibrosis treatment – in which medical doctors from Gaza were refused exit for training during 2009 – inevitably exacerbates the dangerously precarious state of health care in Gaza and increase the dependency of Gaza's health system on external health systems.⁴² What is Israel's policy regarding the exit of Palestinian physicians from Gaza via the Erez Crossing for the purposes of receiving professional training in medical centers outside of Gaza? Please provide data on the number of requests for exit permits submitted doctors from Gaza seeking to receive medical training outside of Gaza from June 2007 to the present that were either denied or delayed, together with the reasons for these rejections or delays.

7. Medical coercion of patients in Gaza

Articles 6, 7

Suggested questions

Information obtained by the Committee indicates that the ISA has the final authority in deciding whether or not a patient will be allowed to exit Gaza to access medical care. Many patients are denied exit, including those in serious medical condition, due to "security reasons." According to data brought to the attention of the Committee, in at least 35 cases since July 2007, the ISA has called patients – many of them having been granted exit permits by Israel – to an interrogation at Erez Crossing, in the course of which they were asked to provide information about relatives and acquaintances, and/or required to collaborate and provide information on a regular basis, as a

⁴⁰ For Israel's effective control over Gaza, see Gisha: *Disengaged Occupiers: The Legal Status of Gaza*, January 2007, available at: <http://www.gisha.org/UserFiles/File/Report%20for%20the%20website.pdf>.

⁴¹ See Physicians for Human Rights-Israel, *The Closure of Gaza and Its Effects on the Right to Health*, submission to the UN Office of the High Commissioner for Human Rights (OHCHR), July 2009.

⁴² Ibid.

precondition for being allowed to exit Gaza.⁴³ These cases include several patients in life-threatening conditions. According patients' testimonies, if they refused or could not provide the information, they were denied permission to exit Gaza for the purpose of receiving medical treatment. The ISA denies these claims.⁴⁴ Please detail the steps undertaken by Israel to investigate these very serious allegations of medical coercion and the withholding of medical treatment for non-medical reasons and permission to receive medical treatment outside Gaza.

The latest data points to an increase in the proportion of individuals subjected to such interrogations of the total number who submitted applications to the authorities at the Erez Crossing: from 1.45% in January 2008 to 5.65% in October 2008 to 17% in January 2009.⁴⁵ A petition submitted by PHR-Israel to the Israeli Supreme Court on this issue was rejected on the basis that the Court accepted a statement from the Commander of the IDF Southern Command and Southern Brigadier General, that "[...] no use is made of person's illness in order to obtain information in the realm of security."⁴⁶ An additional reason given for not granting a remedy was that individual solutions were found for most of the patients in the petition.

8. Family visits to Palestinian prisoners held in Israel

Articles 7, 10, 12, 17

Suggested questions

According to information received by the Committee, approximately 750 Palestinian residents of the Gaza Strip are incarcerated in prisons in Israel in isolation from the outside world, and are not allowed to receive family visits.⁴⁷ Why is Israel not allowing Palestinians from Gaza to visit their relatives incarcerated in Israeli prisons and detention centers, subject to an individual security check?⁴⁸ How does Israel reconcile its policy of imposing a blanket ban since June 2007 on residents of Gaza from visiting their relatives held in Israel with its obligations under the Covenant?⁴⁹

⁴³ Physicians for Human Rights-Israel, *Holding Health to Ransom: GSS Interrogation and Extortion of Palestinian Patients at Erez Crossing*, August 2008, available at: http://www.phr.org.il/phr/files/articlefile_1217865604015.pdf.

⁴⁴ See the ISA's response to Physicians for Human Rights-Israel's report, *ibid.* pp.71-73, 75.

⁴⁵ See update by Physicians for Human Rights-Israel, May 2009, available at: <http://www.phr.org.il/phr/article.asp?articleid=715&catid=55&pcat=45&lang=ENG>.

⁴⁶ Cited in footnote 37 of Physicians for Human Rights-Israel, *Holding Health to Ransom: GSS Interrogation and Extortion of Palestinian Patients at Erez Crossing*, August 2008.

⁴⁷ See, "New Data on Arabs Incarcerated in Israeli Prisons," edited by Adalah Attorney Abeer Baker based on information received from the Israel Prison Service on 25 June 2009, in *Adalah's Newsletter*, Volume 62, July 2009, available at: http://www.adalah.org/newsletter/eng/jul09/New_Prisoner_Data_july_2009.pdf.

⁴⁸ See, "Gaza: ICRC calls for immediate resumption of family visits to detainees in Israel," ICRC News Release, 26 May 2008, available at: <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/israel-news-260508>. Adalah, Al Mezan and the Association for the Palestinian Prisoners are challenging the denial of family visits before the Israeli Supreme Court. See H.C. 5399/08, *Adalah et al. v. the Defense Minister et al.* (case pending); see also <http://www.adalah.org/newsletter/eng/jun08/3.php>.

⁴⁹ The Committee Against Torture has previously concluded in relation to Peruvian detention facilities that family visits to detainees once a month for only 30 minutes amounted to torture. See Manfred Nowak and Elizabeth McArthur, *The United Nations Convention Against Torture: A Commentary*, Oxford University Press, 2008, p. 408, para. 27.

9. Administrative Detention

Articles 7, 9, 10 and 14

Suggested questions

The Committee notes its concern over Israel's ongoing use of the practice of administrative detention against Palestinians. Military order 1226,⁵⁰ coupled with The Incarceration of Unlawful Combatants Law – 2002,⁵¹ operate to hold detained Palestinians, including children, in indefinite detention, in breach of articles 7, 9, 10 and 14 of the Covenant.⁵² Alarming, the military order and law do not require persons detained to be informed of any charges against them, to be brought promptly before a judge, or entitle them to a trial within a reasonable length of time. Administrative detention orders are often based on “secret evidence” to which neither the detainee nor the detainee's lawyer are given access.⁵³

How does the State party reconcile the holding of foreign nationals for indefinite periods of time in administrative detention without charge or trial with its obligations under articles 7, 9, 10 and 14 of the Covenant? How does the State party justify the use of administrative detention as an exceptional measure when, according to information before the Committee, between 450 and 1,000 Palestinians have been held at any one time in administrative detention between 2003 and May 2009, including some minors?⁵⁴ Please also comment on information before the Committee that Israel is continuing to detain Palestinians even after the completion their sentences using administrative detention orders or the Incarceration of Unlawful Combatants Law – 2002, in violation of articles 7, 9 and 14 of the Covenant. How many individuals are being held pursuant to this order and law after the completion of their sentence? What is the exact legal status of

⁵⁰ Military Order 1226 – 1998 empowers Israeli military commanders to detain Palestinian West Bank residents, including children, without charge or trial, for up to six months if they have “reasonable grounds to presume that the security of the area or public security require the detention.” No definition of “security of the area or public security” is given and the initial six-month period can be extended by additional six-month periods indefinitely, amounting to indefinite arbitrary detention.

⁵¹ The Unlawful Combatants Law – 2002 provides for the indefinite administrative detention of “foreign nationals,” who are subsequently classified as “unlawful combatants”. It contains a vague definition of an “unlawful combatant” that includes not only persons who participate in hostilities against Israel, but also any members of forces that carry out such hostilities. The law effectively creates a third category of person, contrary to the distinction in international humanitarian law between combatants and civilians. The law allows a person suspected of being an “unlawful combatant” to be held for up to 21 days without access to a lawyer (Section 6) and for up to 14 days without judicial review (Section 5), and allows the use secret evidence and evidence taken in the absence of the detainee. If the detention order is approved by a court, the law allows the administrative detention of individuals for indefinite periods of time, or until such a time that “hostilities against Israel have come to an end” and mandates judicial review of the detention only once every six months. The law denies basic rights to prisoners of war, including the right to be present during all hearings, the right to have hearings held in public, and the right to be informed of the evidentiary basis for the charges against them. **Special Rapporteur Martin Scheinin has recommended that the law “should be repealed, without replacement.”** See *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin*, A/HRC/6/17/Add.4, para.55. The Israeli Supreme Court has upheld the constitutionality of the law. See *Cr.A. 6659/06, Anon. v. The State of Israel* (decision delivered 11 June 2008). Available in English at: http://elyon1.court.gov.il/files_eng/06/590/066/n04/06066590.n04.htm.

⁵² Operating in parallel to Military Order 1226 and The Unlawful Combatants Law, The Emergency Powers (Detentions) Law – 1979 grants the state the power to hold Israeli citizens and Palestinian residents of East Jerusalem in administrative detention for indefinitely extendable six-month periods.

⁵³ Regarding the use of secret evidence in ordering administrative detentions, Special Rapporteur Martin Scheinin has recommended that. “The practice of military or other courts authorizing administrative detention on the basis of evidence available neither to the detainee nor counsel should be discontinued as incompatible with article 14 (1) of the International Covenant on Civil and Political Rights.” *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin*, para.57.

⁵⁴ B'Tselem statistics, available at: http://www.btselem.org/english/Administrative_Detention/Statistics.asp.

persons held as “unlawful combatants”? How many individuals have been held as “unlawful combatants” since 2003?

10. Incommunicado Detention

Articles 7, 9, 10, 14

Suggested questions

The Committee is aware of a group of laws containing provisions that allow for the incommunicado detention of security suspects, including minors, for prolonged periods of time.⁵⁵ The cumulative effect of these laws is the de facto incommunicado detention of security suspects for up to 21 days. In these 21 days detainees are vulnerable to torture and ill-treatment, and indeed this isolation constitutes one means of exerting pressure on detainees in order to extract confessions. How does the State party reconcile the incommunicado detention provided for by these laws with its obligations under articles 7, 9, 10 and 14 of the Covenant? What safeguards are in place to ensure that “security” detainees are not subjected to torture or ill-treatment during periods of incommunicado detention in pre-trial detention? What purpose is served by holding detainees in prolonged incommunicado detention?

11. Solitary Confinement

Articles 7, 10

Suggested questions

Please comment on reports that solitary confinement is used widely within the Israeli prison system **as a means of discipline** against prisoners for infractions of prison rules. Please provide information on the number of Palestinian prisoners held in solitary confinement each year since 2003, for what length of time prisoners were held, and for what reason. According to information before the Committee, Article 56 of the 1971 Prison Ordinance – 1971 (new version) lists 41 disciplinary offenses for which solitary confinement may be imposed on prisoners of all kinds.⁵⁶ Please provide a list of these offenses and the maximum periods of solitary confinement that may be imposed for committing each offense.

According to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 700 Palestinian minors were arrested in 2006, 25 of whom were held under administrative detention orders.⁵⁷ The Rapporteur also received reports of solitary confinement used by prison authorities as a means of

⁵⁵ Under **The Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law – 2006**, security suspects may be detained for up to 96 hours before being brought before a judge, as opposed to 48 hours in other cases (Section 30 of the law). The law also provides for subsequent judicial remand hearing in the absence of the detainee for up to 20 days (Section 5). Under the law, suspects can also be held for up to 35 days before being issued an indictment, as opposed to 30 days in other cases (Section 17b). **The Incarceration of Unlawful Combatants Law – 2002** allows suspects to be held for up to 21 days without access to a lawyer (Section 6 of the law), and for up to 14 days without judicial review (Section 5). **The Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996** allows for suspects to be held for up to 21 days without access to a lawyer (Section 34), and for up to 30 days before being issued with an indictment (Section 17(b)). **The Criminal Procedure Regulations (Powers of Enforcement – Arrest) (Conditions of Arrest) – 1997** stipulates that suspects shall not receive visits prior to their indictment (Section 12). **Military Order 378** allows West Bank detainees, including children as young as 12 years, to be held for up to eight days before being brought before a military judge (Section 78(e1)(2)).

⁵⁶ Physicians for Human Rights-Israel and Addameer, “The Sounds of Silence: Isolation and Solitary Confinement of Palestinians Prisoners in Israeli Detention,” August 2008, p. 6. Available at: <http://www.phr.org.il/phr/cat.asp?catid=58&parentid=46&pcat=46&lang=ENG>.

⁵⁷ *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin, para.28.

encouraging **confessions from minors** or as a punishment for infractions of prison rules.⁵⁸ How does the State party reconcile these allegations with its obligations under the Covenant and with rule 67 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which prohibits disciplinary measures against children, including solitary confinement? Please comment on these reports, and provide information on the number of detainees aged 18 and under who have been held in solitary confinement since 2003, as well as the duration of the solitary confinement in each case. Please also respond to Special Rapporteur Martin Scheinin's recommendation that "solitary confinement never be used by prison authorities as a means of coercion or punishment of children."⁵⁹

The Committee has received information on allegations that Palestinian "security detainees" are kept in solitary confinement **cells in interrogation facilities**, ranging from three to six square meters, with no windows or access to daylight or fresh air.⁶⁰ Please describe in detail the conditions of solitary confinement (the dimensions of the cells, the quantity and quality of food provided, whether there are windows/ventilation in the cells, what hygiene facilities are made available to prisoners, whether prisoners are shackled during solitary confinement and in what circumstances, as well as the number of solitary confinement cells in each prison. Please also indicate whether prisoners are permitted to get leave their cells during periods of solitary confinement, and if so, for how long and with what frequency? Please explain whether and in what circumstances the Criminal Procedure Regulations, which establish certain minimum detention conditions, apply to security detainees. Please provide statistics and information on any complaints challenging such conditions, including their outcome(s).

12. State of emergency

Article 4

Suggested questions

The Committee wishes to reiterate its concern that the state of emergency, declared by the Knesset in 1948 and maintained continuously ever since, remains firmly in place. The Committee emphasizes that derogations under article 4 are only permitted in times of public emergency which threaten the life of the nation and to the extent strictly required by the exigencies of the situation. The Committee further wishes to reiterate its concern at the sweeping nature of measures declared under the state of emergency, that appear to extend beyond what would be permissible under those provisions of the Covenant which allow for the limitation of rights.⁶¹ In

⁵⁸ Ibid.

⁵⁹ Special Rapporteur Martin Scheinin has recommended that the law "should be repealed, without replacement." *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin*, para.58.

⁶⁰ United Against Torture (UAT) Coalition – Alternative Report for Consideration Regarding Israel's Fourth Periodic Report to the UN Committee Against Torture (CAT), September 2008, Annexure A - List of Evidence Available at: http://www2.ohchr.org/english/bodies/cat/docs/ngos/UAT_Israel42_Annex1.pdf.

⁶¹ The State of Israel has enacted dozens of laws and orders the applicability of which are anchored in the ongoing state of emergency, declared by the Knesset in 1948 and maintained continuously ever since. The permanent state of emergency has been used to derogate from basic rights that are protected under international human rights law. Some legislative examples dependent upon this continued state of emergency are: (i) **The Emergency Powers (Detentions) Law – 1979** grants the State the power to detain individuals in administrative detention for indefinitely extendable six-month periods; (ii) **The Prevention of Terrorism Ordinance – 1948** enumerates a number of criminal offences including "membership in a terrorist organization" and "supporting a terrorist organization." The Ordinance contains a number of broad definitions of terrorism, and is often used against Palestinian political leaders who voice strong opposition to Israel's occupation. Almost all of the Palestinian political parties in the OPT are designated by Israel as "terrorist organizations"; and (iii) **The Criminal Procedures (Powers of Enforcement –**

this regard, the Committee refers to its earlier concluding observations on Israel and to its general comment No. 29.

Please provide an update to the Committee regarding the “joint program to complete the needed legislative procedures required in order to end the state of emergency” referred to in the State party’s report [para. 159]. What measures referred to in the State’s report [para. 159] have been amended to de-link them from the state of emergency? How does the state party intend to ensure that the new laws are stripped of provisions derogate from rights protected by the Covenant, as required to end of the state of emergency, and in accordance with the Committee’s previous recommendation that “the State party should review the modalities governing the renewal of the state of emergency and specify the provisions of the Covenant it seeks to derogate from, to the extent strictly required by the exigencies of the situation (art. 4).”⁶²

13. The Israeli Supreme Court's 1999 torture decision

Articles 7, 10

Suggested questions

Notwithstanding the State party's declaration that under Israeli law acts of torture or cruel, inhuman or degrading treatment or punishment are designated as criminal offenses and that the perpetrators of such acts are tried and severely punished by the courts [para. 173], the Committee is concerned at evidence that torture and ill-treatment continue by the ISA and indeed have become widespread.⁶³

Please comment on reports that, since the Supreme Court’s 1999 ruling⁶⁴ – which outlawed torture but also created an exception in “ticking bomb” cases that is contrary to article 7 of the Covenant, as well as the Convention against Torture – the use of torture and ill-treatment has become systemic and institutionalized through the misuse of the “ticking bomb” scenario, in contradiction of the Supreme Court’s decision itself.⁶⁵

Please respond to concerns voiced by Special Rapporteur Martin Scheinin at admissions by the ISA officials that, “in principle, there was no distinction, in the use of the “ticking bomb” scenario, between a terrorist suspect and a person otherwise holding information about a terrorist incident,” and his conclusion that there are internal ISA guidelines that allow interrogators to seek approval under the “necessity defense” contained in article 34(11) of the Penal Law, from the Director of the ISA for the existence of the ticking bomb scenario that “appear to render the

Detention) Law – 1996 permits the denial of access to counsel by detainees accused of “security offences” for a period of up to 21 days.

⁶² Concluding observations of the Human Rights Committee: Israel, 21 August 2003, CCPR/CO/78/ISR, para. 12.

⁶³ According to evidence gathered by the Public Committee Against Torture in Israel (PCATI), the Association for Civil Rights in Israel (ACRI) and HaMoked – Center for the Defence of the Individual and presented to the Supreme Court in H.C. 5100/94, *Public Committee against Torture in Israel v. The State of Israel*. Ruling available at: http://www.stoptorture.org.il/files/High_Court_Judgment_Torture_eng_0.pdf. See also motion for contempt of court filed to the Supreme Court on 2 November 2008. The motion provides evidence of the granting of a-priori authorizations to interrogators to use torture in interrogation that fundamentally violates the Supreme Court’s 1999 decision. This evidence includes testimonies of GSS interrogators from court proceedings, which are attached as classified annexes of the motion, as well as testimonies from victims and public responses by the GSS and the Prime Minister’s Office. Available at: See <http://www.stoptorture.org.il/en/node/1332>. On 6 July 2009, the Supreme Court rejected the motion for contempt. The decision is available in Hebrew at: <http://elyon1.court.gov.il/files/94/000/051/n15/94051000.n15.htm>

⁶⁴ H.C. 5100/94, *Public Committee against Torture in Israel v. The State of Israel*.

⁶⁵ Paragraphs 36, 37 and 38 of the Supreme Court’s ruling in H.C. 5100/94, *Public Committee against Torture in Israel v. The State of Israel*.

use of special interrogation techniques a matter of policy rather than a case-by-case ex post facto defense in respect of wrongful conduct.”⁶⁶

What mechanisms exist to ensure that victims of torture or ill-treatment by interrogators are provided with an effective remedy? The Committee requests that the State party provide detailed information on the number of Palestinian suspects classified as “ticking bomb” cases who have been interrogated since 2003, as well as the outcome of these interrogations. Please indicate whether Israel intends to enact effective legislation fully incorporating the provisions of the Covenant into domestic law, including a provision that unambiguously prohibits all forms of torture and other cruel, inhuman or degrading treatment or punishment, without exception.

14. Education of Juvenile Prisoners

Articles 7, 10, 14, 24.

Suggested questions

The Committee is concerned at reports that no education is provided to Palestinian children detained and imprisoned in Huwarra, Etzion, Salem, Askelon, Jalama, Mascobiyya and Petah Tikva interrogation and detention centers, and that only limited education is provided at Telmond and Addamoun,⁶⁷ and that the Israeli prison authorities are neglecting the right of children to continue receiving education whilst in detention.⁶⁸

Please explain in what circumstances education is not provided to detained minors, and, where it is provided, give details of the subjects of instruction offered, the language of instruction and the number of teaching hours offered per week. How does the State party ensure that the education and development of detained children classified as “security detainees” is not neglected, with potentially serious repercussions for their future rehabilitation? What measures will the State party take to fulfill its obligations under articles 7, 10, 14 and 24 of the Covenant with regard to detained minors, as well as other relevant provisions of international law?⁶⁹ Please respond to the recommendation made by Special Rapporteur Martin Scheinin that Israel should ensure that “all

⁶⁶ *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin, para. 21. The Special Rapporteur recommended, inter alia, that as a result of “the apparent lack of understanding by Israeli Security Agency officers of the parameters of the necessity defence... that all complaints of torture or cruel, inhuman or degrading treatment be referred to the Attorney General’s office for the immediate filing of criminal charges against the individual interrogator wherever such complaints point to conduct that, if proven, would amount to torture or cruel, inhuman or degrading treatment, and that only the courts may pronounce on the applicability and effect of the necessity defence.” Para. 56.

⁶⁷ Defence for Children International – Palestine Section, *Palestinian Child Prisoners: The Systematic and institutionalised ill-treatment and torture of Palestinian children by Israeli authorities*, June 2009, p. 18, and Defence for Children International – Palestine Section, *Palestinian Child Prisoners 2007 Report*, pp. 33-34.

⁶⁸ For more information, see Addameer, *Palestinian Children as Political prisoners*, *Early Adulthood-Stolen Childhood*, available at: <http://www.addameer.org/detention/children.html>.

⁶⁹ The **UN Standard Minimum Rules for the Treatment of Prisoners**,⁶⁹ applicable to all imprisoned individuals, specifies the standards required for conditions of detention. Rule 77 states that provision shall be made for the further education of all prisoners capable of profiting thereby, and that, “The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.” The **UN Rules for the Protection of Juveniles Deprived of their Liberty**⁶⁹ stipulates clear standards for the conditions of detention in which children may be held. Rule 12 states that juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity. Rule 13 specifies that the design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment.

facilities in which children are detained provide educational care appropriate to the age of each child.”⁷⁰

15. Recording of interrogations of security suspects

Articles 7, 9, 14, 26

Suggested questions

According to information before the Committee, an amendment (Amendment no. 4) made in 2008 to The Criminal Procedure (Interrogation of Suspects) Law – 2002 has extended the existing exemption of the ISA and the police from making audio and video recordings of security suspects in their interrogations for an additional four years. As the recording of investigations constitutes one of the basic means of ensuring a fair investigation and a fair trial, the exemption has serious implications for the reliability, authenticity and admissibility of evidence presented before the courts against suspects. The Committee is further concerned that the exemption creates conditions that may facilitate the torture or ill-treatment of individuals under arrest and interrogation,⁷¹ particularly in the case of security suspects, based on recently-published reports that indicate the continuing use of torture and illegitimate methods of investigation against Palestinians.⁷² The exemption is even more serious when viewed in conjunction with section 35(d) of the Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996, which enables the authorities to prohibit a person suspected of a security offense from meeting a lawyer for up to 21 days.

How does the State party reconcile this exemption with its obligation under the Covenant to ensure due process and that all persons are equal before the law and are entitled without discrimination to the equal protection of the law? What measures does Israel have in place to guard against torture and ill-treatment during interrogations, as well as the extraction of false confessions? Given the further extension of the law for a period of four years, does the State party intend to transform the law into a permanent law?

The views expressed in this paper reflect the views of the human rights organizations and do not reflect the official position of the European Community or any other donor to them.

⁷⁰ *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin, para. 58.

⁷¹ Its Concluding Observations on Israel of 14 May 2009, the UN Committee against Torture recommended that, “as a matter of priority, the State party extend the legal requirement of video recording of interviews of detainees accused of security offenses as a further means to prevent torture and ill-treatment.” CAT/C/ISR/CO/4, para. 16.

⁷² The United Against Torture Coalition, *Alternative Report to UN Committee Against Torture*, September 2008; Physicians for Humans Rights-Israel and Addameer, *The Sounds of Silence: Isolation and Solitary Confinement of Palestinians Prisoners in Israeli Detention*, August 2008; The Public Committee Against Torture in Israel, “*Ticking Bombs*”: *Testimonies of Torture Victims in Israel*, May 2007.