JOINT NGO SUBMISSION

Key concerns regarding Israel's use of torture and ill-treatment against Palestinians from the OPT Submitted in advance of the EU-Israel Political Subcommittee and Human Rights Dialogues

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This briefing paper sets forth key concerns of Adalah, Al Mezan and PHRI regarding the state of Israel's use of torture and/or cruel, inhuman and degrading treatment (CIDT, or ill-treatment) against Palestinians from the 1967 Occupied Palestinian Territory (OPT). Many of the practices described below violate Israel's international obligations as a signatory to the UN Convention against Torture (UN CAT), which prohibits torture and cruel, inhuman and degrading treatment (CIDT) in all its forms. This short report is submitted in advance of the EU-Israel Political Subcommittee and Human Rights Dialogues, scheduled to take place in April 2016.

I. No crime of torture; existence of "necessity defense"; and new legislation legitimizing or creating conditions that allow for torture/CIDT

Despite repeated calls and concluding observations by the UN Committee Against Torture and the UN Human Rights Committee (which monitors compliance with the International Covenant on Civil and Political Rights, or ICCPR), Israel still has **no legislation that defines torture as an explicit crime**, in accordance with Article 1 of the CAT.[1] Further, Israeli law also permits the "defense of necessity", which undermines the absolute prohibition on torture. Here too the UN CAT and the UN HRC have consistently urged Israel to completely remove the necessity defense as a possible justification for the crime of torture. Due in part to the absence of a crime of torture, the Israeli Knesset has been able to enact and propose new legislation, which legitimizes or creates further conditions for the use of torture and ill-treatment against Palestinians, examples of which are discussed below.

On 30 July 2015, the Israeli Knesset enacted **the "Force-Feeding Law"**, which authorizes the forcible feeding of hunger striking prisoners against their will, in violation of Israel's Patients' Rights Law as well as internationally accepted standards of medical ethics. The UN Special Rapporteurs on Torture and Health have twice issued statements in opposition to the law, describing force-feeding as a form of CIDT. The World Medical Association, which is opposed to doctors conducting force-feeding, also wrote an appeal to the Israeli Prime Minister in June 2015 requesting that he reconsider the law. A petition against the law was filed to the Israeli Supreme Court in September 2015 by PHRI, the Public Committee Against Torture, Hamoked, and Yesh Din, and is currently pending. Although the law has not yet been used against any prisoner, the Israeli authorities threatened to do so in the cases of Mohammad Allan during his 65-day hunger strike, and Muhammad Al-Qeeq during his 94-day hunger strike. The refusal of

[1] See for example: UN Committee Against Torture, Concluding Observations of the Committee Against Torture, Israel, 23 June 2009; and UN Human Rights Committee, Concluding Observations of the Human Rights Committee, Israel, 21 November 2014.

the hospital medical staff to force-feed the prisoners, and the Israeli Supreme Court's decisions to "suspend" their administrative detentions after petitions were filed to demand their release from detention, contributed to preventing the law's application (see prisoners section below for more details).

In July 2015, the Knesset extended for an additional year and a half a temporary law, renewed repeatedly since 2002, **exempting Israeli security agencies from audio-visual recording** of interrogations of Palestinian "security suspects". This exemption is highly dangerous as it creates conditions that may facilitate the torture or ill-treatment of individuals under interrogation. The lack of audio and video documentation of interrogations also has serious implications for the reliability, authenticity and admissibility of evidence presented before the courts against suspects. The exemption is even more severe when viewed in conjunction with another law that enables the Israeli authorities to deny a person suspected of a security offence from seeing a lawyer for 21 days, and with the authority granted to the GSS to delay bringing security suspects before a judge. The fact that the exemption applies only in the cases of individuals suspected of committing security offences, who are overwhelmingly Palestinians, is particularly significant as this is the group most likely to be exposed to torture or ill treatment by interrogators. In July 2015, seven human rights organizations including Adalah, Al Mezan and PHRI filed a petition to the Israeli Supreme Court demanding the cancellation of the law;[2] the Court previously dismissed a similar petition in 2013. The case is pending. The UN CAT and UN HRC have repeatedly called on Israel to audio and/or videotape interrogations of security suspects.

On 28 December 2015, the Knesset enacted an order that re-extended Amendment No. 4 to Israel's Criminal Procedure Law from 2006, which **removes a number of essential, procedural safeguards for detainees suspected of security offenses** that are provided to criminal suspects. The law is officially classified as a "temporary" order, but has now been in effect for close to 10 years and is now extended until 31 December 2016. The order allows for the detention of a security suspect for up to 96 hours before being brought before judge, versus 48 hours in other cases, and for up to 35 days without being indicted, versus 30 days in other cases. The order also allows for the suspect not to be made present at hearings in order to extend his/her detention, or at appeal hearings against the detention, if the interruption of an ongoing investigation is deemed highly likely to thwart efforts to safeguard human life. It also allows security suspects to be denied access to a lawyer for up to 21 days, versus 48 hours in other cases. While neutral on its face, in practice the law is used almost exclusively against Palestinians, who make up the overwhelming majority of detainees classified as "security" detainees. In essence this law allows for the incommunicado detention of individuals for lengthy periods of time, which constitutes a severe violation of their rights to due process, and creates conditions that allow for torture and/or ill-treatment to occur. The UN CAT and the UN HRC have raised grave concerns about this law and have called on Israel to amend it.

On 2 September 2014, the Knesset passed the first reading of the **"Anti-Terrorism Bill"**. The bill seeks to entrench many emergency regulations which are currently in effect, and which date back to the British Mandatory period. Among other provisions, the bill would substantially strengthen and expand the powers of the police and the General Security Services (GSS, or Shabak/Shin Bet) in dealing with Palestinian criminal and security suspects and detainees, under a very broad definition of what constitutes an "act of terror" or "terrorist organization". It would add to a pre-existing system that **provides fertile ground for the security agencies to employ illegal methods such as torture in the interrogation room**. The bill also includes draconian measures for investigating detainees accused of

[2] HCJ 5014/15, *Adalah, et. al. v. Minister of Public Security, et. al. (*case pending).

security offenses; provides for the extensive use of secret evidence in court; limits detainees' access to judicial review; lowers the evidentiary requirements of the state in such cases; and sharply increases the maximum sentences for people convicted of security offenses. If enacted, this bill is liable to result in serious human rights violations, overwhelmingly against Palestinians.

II. Violations of rights of Palestinian prisoners and detainees in Israeli custody

As of January 2016, there were **6,900 Palestinian prisoners** being held in Israeli custody, including 450 minors, 55 women, and 7 members of the Palestinian Legislative Council (PLC). The number 6,900 represents a large increase in the number of Palestinian prisoners held by Israel from January 2015 (6,200), January 2014 (5,023), and February 2013 (4,812).[3] As these figures demonstrate, the number of prisoners has risen steadily over this period. The data reveals a more dramatic increase in the number of Palestinian administrative detainees over the same period, rising from 178 in February 2013, to 450 in January 2015, to the current figure of **650**.[4] The substantial increase in administrative detention, which allows the state to arrest and detain Palestinians without charge or trial, reflects Israel's continued employment of the measure in sweeping and arbitrary ways, in violation of international law's restrictions on its use. No prisoner exchanges between Israel and the Palestinians have been authorized during this period.

Two recent prominent hunger strikes by Palestinian administrative detainees were conducted by lawyer Mohammad Allan (65 days) and journalist Muhammad Al-Qeeq (94 days) in protest of their detention. Allan was hospitalized at Be'er Sheva's Soroka hospital in critical condition after several weeks of his strike, before being transferred to Barzilai hospital; the medical staff of both hospitals refused to forcibly treat Allan against his will. Adalah and private attorney Jamil Khatib filed a petition to the Israeli Supreme Court demanding his release from administrative detention, arguing that such detention is supposed to be used only as a rare and preventive measure, and that Allan did not pose a security threat particularly due to his critical health condition during the strike. On 19 August 2015, the Supreme Court suspended Allan's detention.[5] In his similar case, Al-Qeeq was hospitalized at Afula hospital, strapped to his bed and forcibly treated for four days despite his objection. Following a petition, the Supreme Court suspended his administrative detention on 4 February 2016 as his health drastically deteriorated (he remains in hospital due to his poor condition).

The use of **solitary confinement has increased in Israel**, in contrast to the growing view under international human rights law that solitary confinement constitutes a form of torture or ill-treatment, and that it should be significantly restricted or even ended. Israel employs three forms of solitary confinement: as a "separation" procedure, for punitive purposes, and during interrogations; however, Israel only maintain records for the first form, which requires judicial review after six months. According to data provided to PHRI by the IPS, the number of prisoners held in solitary confinement under the "separation" procedure almost doubled between 2012 and 2014, from 390 to 755. In July 2015, 117 prisoners (including 7 minors and 2 women) were held in solitary confinement under the separation procedure, and 62 were held in solitary confinement on the grounds of state security or prison security and discipline; 7 of the prisoners were held for over five years, and 63 were held for more than six

[3] Addameer – Prisoner Support and Human Rights Association's statistics' database, available at: http://www.addameer.org/statistics

[4] Ibid.

[5] HCJ 5580/15, *Mohammed Allan v. General Security Service, et al. (decision delivered 15 August 2015)*. See Adalah Press Release, 19 August 2015.

months, following judicial review.[6] This data gives a partial but highly disturbing picture of the scope and use of solitary confinement against Palestinian prisoners and detainees.

The Israeli authorities also continue to detain Palestinians from the Gaza Strip under Israel's **Unlawful Combatants Law**, which was enacted in 2002 and amended in 2008. This law allows the military to incarcerate civilians without fair trial and based on secret evidence, and to abrogate from detainee rights in Israeli prisons. According to the law, persons who are suspected to have taken part in hostile activities against the State of Israel, directly or indirectly, or have carried out hostile activities against the security of the state, can be qualified as unlawful combatants. In practice, the law **strips individuals of the rights and protections guaranteed in IHL and IHRL** for prisoners and detainees, including under the Third and Fourth Geneva Conventions. The law grants vast powers to Israeli regular courts, which can order the arrest, conviction, and/or detention of any suspected person for unlimited periods of time, without showing evidence or allowing for adequate legal representation. The law also grants full authority to the Israeli Military Chief of Staff, or his deputy, to order the arrest of any person, based on mere suspicions that he/she could be a so-called unlawful combatant. The law has been applied against at least 11 individuals from the Gaza Strip since Israel's disengagement in September 2005, and is employed in particular during Israel's military operations on Gaza, including Israeli-codenamed Operation Cast Lead in 2008/09 and Operation Protective Edge in 2014. Since the nine proclaimed cases during Cast Lead, at least one additional case was proclaimed during Operation Protective Edge and one outside of a full-scale operation. The UN CAT has raised concerns about this law and called for its repeal.

Prisoners' and detainees' rights are also violated through Israel's routine denial of family visits. The Israel Prison Service (IPS) **considers family visits to be a privilege**, which can be revoked as a punitive measure. During the waves of hunger strikes by Palestinian administrative detainees in 2014 and 2015, the IPS applied this punitive measure and denied family visits to the hunger strikers. For example, in 2014, Adalah submitted a petition to the Lod District Court on behalf of Mr. Abdel Razeq Farraj, a Palestinian man from the West Bank, held in administration detention, demanding the cancellation of the IPS's instructions prohibiting family visits for prisoners participating in hunger strikes. The court dismissed the petition based on the argument put forward by the IPS that the petition was rendered moot since the hunger strike was over, and the IPS convinced the petitioner to back down while preserving his arguments for a future case if one presented itself. The principle elements therefore remain unresolved, and the IPS policy to deny family visits remains in effect and continues to be used as a punitive measure for any prisoner engaging in hunger strikes. Notably, the UN CAT previously concluded that allowing family visits only once a month for only 30 minutes amounted to torture/CIDT. The High Commissioner for Human Rights notes in a recent report to the UN Human Rights Council that despite the issuance in late 2014 of new regulations on the exit from Gaza for certain Palestinians,[7] including family members of prisoners held in Israeli prisons, the right to family visits remained severely restricted.[8]

[6] PHR-Israel Report, "Politics of Punishment: Solitary Confinement of Prisoners and Detainees in Israeli Prisons," March 2016.

[7] Gisha, One step at a time: Israel revises criteria for exiting Gaza, 26 October 2014, available from: http://gisha.org/updates/3614.

[8] Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1, A/HRC/31/40/Add.1, para. 42, 6 March 2016

III. Policies violating medical rights of Palestinians at Gaza crossings and in Israeli prisons

Due to the **severe crippling of the Gaza Strip's health sector** as a result of Israel's blockade and repeated military offensives, tens of thousands of Palestinian patients from Gaza have been referred to hospitals in Israel and the West Bank. The process of referral requires an Israeli-issued permit, which are regularly delayed or denied in an onerous and complex set of processes that risks the health and life of patients. Most troublingly, since 2007, human rights organizations have documented a practice employed by the Israeli security services, whereby Gazans applying for an exit permit on medical grounds are required to undergo questioning as a prerequisite for considering their application. During interrogation, **the patients are requested and/or coerced to provide information**, and sometimes are told that the exit permit for medical treatment is conditional on agreeing to collaborate. About 200 patients are summoned to such interviews every year (about 5% of those who apply for permits.) Since 2009, Al Mezan has documented the arrest of 30 patients and 12 patient companions by the Israeli authorities at Erez crossing. The patients who were arrested had either received permission to access the crossing or been requested by the Israeli authorities to attend a security interview there, and were arrested upon arrival.

The **health policies of the Israel Prison Service (IPS) have major structural failures,** which allow for systematic violations of the medical rights of prisoners and detainees during custody, some of which can amount to or facilitate the use of torture/CIDT. These include: (i) the lack of transparency and external supervision of prisoners' access to medical services, including the quality of those services; (ii) infrequent prison inspections by Israeli officials, as well as their frequent lack of appropriate medical expertise to identify problems related to prisoners' health rights (inspections by civil society organizations are not permitted); (iii) the absence of independent health services – services are provided and managed exclusively by the IPS, and are unsupervised by the Israeli Ministry of Health; (iv) the healthcare system is subject to the considerations and interests of Israeli security authorities with little regard for prisoners' health care needs; (v) negligence and unprofessional conduct on the part of IPS doctors, including unreasonably long delays to conduct medical examinations and treatments, which can lead to the deterioration of health in patients; and (vi) the lack of transparent investigations in cases of deaths of prisoners, including those in which there is suspicion that torture or ill-treatment was used and may have led to the prisoners' deterioration of health or subsequent death.

In addition, despite the IPS directive 04.46.00, which permits and regulates visitations by private doctors to prisoners for an external medical second opinion, the IPS continues to **deny the access of external, independent doctors to Palestinian prisoners**. Such visits have been possible mostly through prolonged court processes and after long waiting periods. During the past three years, PHRI has filed more than 15 court petitions on behalf of Palestinian prisoners in this regard, and only after filing the petitions did the IPS allow access of independent doctors to Palestinian prisoners. The denial of external medical advice is used as a punitive and isolating measure against hunger strikers. Despite a Supreme Court ruling on a petition brought forward by PHRI, in which the court instructed the IPS to recognize medical visits "as a right and not a privilege", the IPS has still not implemented this guidance and continues to deny the entry of external doctors in most cases.[9]

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

IV. Ill-treatment of Gaza fishermen

Israeli forces continue to implement a policy of CIDT against Palestinian fishermen working in the Israel-controlled, restricted fishing zone off of the coast of the Gaza Strip, which range between three to six nautical miles away from the coast. The process of arrest and CIDT **appears to follow a specific protocol implemented by the Israeli navy**. Typically, when a Palestinian fishing boat is intercepted, armed naval vessels surround it, usually with simultaneous use of live fire. The fishermen are ordered to stop the engine, remove all their clothing, and swim towards the Israeli naval vessel to their own arrest, including during the cold winter months. Once on the boat, they are handcuffed, given very light clothing, and blindfolded. The fishermen report beatings, verbal abuse and humiliation throughout the process. Arrested fishermen are transported to Ashdod port where they are interrogated about their families and communities. The environment is extremely coercive: blackmail is employed against detainees and attempts are made to force the fishermen to collaborate with the Israeli authorities. The fishermen are left extremely vulnerable to torture and ill-treatment throughout the process of arrest, interrogation, and detention. The vast majority of these fishermen are released on the same day or on the following day, which strongly suggests there was no sound basis for their arrest and detention.

Al Mezan continued to document many such cases of CIDT in 2015 and to date in 2016, as in previous years.[10] The following table presents data from the last five years:

Year	Incidents	Shootings	Killed	Injured	Detained	Boats confiscated	Equipment damaged
2012	123	123	1	2	87	25	10
2013	149	148	0	10	22	10	25
2014	107	106	1	15	64	28	17
2015	126	125	1	29	73	21	16
2016	9	9	0	3	19	6	1
Total	**654**	**649**	**4**	**71**	**350**	**111**	**77**

V. Extrajudicial executions of Palestinians

While the Israeli military's own regulations establish that live ammunition must be used "only under circumstances of real mortal danger", in September 2015, during an intense wave of violence, the Israeli Security Cabinet approved the decision that the police are allowed to use of lethal force "when they face danger to any lives."[11] This change effectively relaxed the rules of engagement for the law enforcement forces. A statement released by the Security-Cabinet said that 'Until recently police would open fire only when their own lives were in danger. As of now, they will be permitted to open fire – and they will know that they have the right to open fire – when they face danger to any lives.[12]'

The new regulations led to a dramatic increase in the use of lethal force in unjustifiable circumstances. By that, the Israeli police have in many instances engaged in what appear to be **extrajudicial executions (EJEs)**, which are effectively prohibited under the UN CAT and the ICCPR. This "shoot to kill"

[10] See Al Mezan, Fact Sheet: Torture and CIDT, 1 November 2014 to 31 October 2015, available at: http://www.mezan.org/en/uploads/files/14525988961548.pdf

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

[12] See http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeJerusalem240915.aspx

phenomenon has become alarmingly widespread, particularly in East Jerusalem and other parts of the West Bank against Palestinian youth. These acts of excessive use of force come pursuant to recent **statements of Israeli politicians and police officers** praising the actions by the police and calling on them to shoot and kill, in complete contravention of their rules of engagement. After the Israeli police **refused to publish their open-fire regulations** on "security grounds" following a request by Adalah in October 2015, Adalah filed an administrative petition in December 2015 to the Lod District Court seeking their disclosure.[13] The case is pending.

Adalah is also currently working with Addameer on five cases of what appear to be EJEs.[14] In these cases, Palestinian youth from East Jerusalem, who were assailants or alleged assailants in knife attacks of Jewish Israelis or police, were shot dead by the Israeli police or other security forces, while they were in a position that did not pose a danger to the lives of the police or others. The human rights organizations argue that in these cases, the police acted in a manner contrary to the order that fatal fire should be used only, "as a last resort, and only in circumstances where there is a sensible relationship between the degree of danger arising from the use of weapons, and the outcome they are trying to prevent."

The organizations and the family members of the deceased have **demanded investigations into the incidents and independent autopsies** for the bodies of the deceased, which the Israeli authorities have refused to do (except in one case until now, discussed below), and which strengthens concern that the authorities may have tampered with the evidence. Most recently, on 13 March 2016, Adalah and Addameer submitted a petition to the Israeli Supreme Court on behalf of the family of a Palestinian minor Mu'taz Ewisat (16 years-old) demanding an autopsy of his body.[15] Mu'taz was killed by Israeli police gunfire on 17 October 2015 in the Jewish settlement of Armon HaNatziv in East Jerusalem. The police refused to return the body to his family for 4 months. The police demanded that the family bury him immediately, which would negate the possibility of an autopsy being conducted by a forensic doctor, and therefore, thwart an impartial investigation into the circumstances of his killing. After the filing of the petition, the state agreed to an independent autopsy, which was conducted on 21 March 2016. The family is awaiting the findings of the autopsy.

PROJECT OF ADALAH, PHYSICIANS FOR HUMAN RIGHTS-ISRAEL AND AL MEZAN
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[13] Administrative Petition *23001-12-15, Adalah v. Israel Police* (case pending).
[14] B'Tselem has also documented cases of EJEs in its report, " Unjustified use of lethal force and execution of Palestinians who stabbed or were suspected of attempted stabbings," 16 December 2015 available at: http://www.btselem.org/gunfire/20151216_cases_of_unjustified_gunfire_and_executions
[15] HCJ 2086/16*, Ahmad Ewisat v. The Israel Police*