

The Public Committee Against Torture in Israel (PCATI) Submission to the UN Universal Periodic Review (UPR)¹

17th Session of the UPR Working Group, 2013

1. Israel has ratified the Convention against Torture (CAT), but torture-related policies and practices against Palestinian prisoners and detainees continued since the State's first Universal Periodic Review in 2008 despite the fact that both the UN Committee against Torture (CAT) and the UN Committee on Human Rights (HRC) in 2009 and 2010 respectively, have expressed concerns regarding Israeli practices that may constitute torture and/or cruel inhuman and degrading treatment (CIDT). Impunity and a lack of accountability continue to characterise the relationship of Israel's security services with civilians.

Evidence of torture and ill treatment from arrest to interrogation

PCATI continues to receive complaints on a regular basis from detainees who allege torture and ill treatment at the time of arrest and during interrogation. From 2001 to date, over 750 complaints of torture and other forms of cruel, inhuman and degrading treatment of Palestinian detainees were submitted by victims to the Israeli Attorney General. As PCATI reported in its 2012 report ([Accountability Still Denied](#)), none of the complaints of torture and ill treatment by security detainees received and processed by the Israeli authorities between 2001 and 2012 led to a criminal investigation.

Lack of a specific legislation against torture

2. The absolute prohibition of torture enshrined in international law has not been adopted in Israeli domestic law. Following a Supreme Court ruling of September 1999, torture is under certain circumstances permissible as “defence of necessity” as provided in Israel’s Penal Law. In its ruling, the Israeli Supreme Court referred to “ticking time-bomb” situations where torture is a “lesser evil”. The “defence of necessity” thus provides justification and consequently exemption from criminal liability to torturers in these perceived situations, in violation of Article 2(2) of the CAT and the very purpose of the Convention. The judgment still stands more than 14 years after the Committee first explained to Israel the inapplicability of this defence and in defiance of subsequent and repeated recommendations by the CAT; the Human Rights Committee; and the UN Special Rapporteur on Torture.

Lack of appropriate complaints, investigations and accountability procedures

3. Israel continues its refusal to join the Optional Protocol to the Convention Against Torture (OPCAT), which would provide for the establishment of an independent national inspections mechanism and allow for international inspections. Thus a specific legislation against torture and an impartial and credible monitoring mechanisms such as video and

¹ This submission draws on submissions and positions submitted previously and jointly by PCATI, PHR-Israel and Adalah to [CAT](#) and to [HRC](#). PCATI highly appreciates and welcomes the synergies with any submissions by these NGOs and others, individually or collectively.

audio documentation of interrogations; open and independent inspections of ISA interrogation centres; and comprehensive education and oversight regarding the absolute prohibition on torture and ill treatment is absent.

4. The Israeli inquiry process is as follows: In practice, the Attorney General has delegated his authority to a senior official within the State Attorney's office, who is not legally empowered to dictate the fate of complaints against the Israeli Security Agency (ISA). This official in turn automatically and comprehensively refers complaints to a preliminary inquiry, conducted by the Inspector of Interrogee Complaints (IIC) - himself an ISA agent – in a formula which ultimately guarantees the absence of credible, independent investigations into complaints of torture and ill treatment.
5. In November 2010 the Attorney General pledged to create a permanent post in the Ministry of Justice (MoJ) for conducting investigations and to transfer the post from the ISA agent. In August 2012, the Israeli Supreme Court dismissed a petition submitted by PCATI and five other NGOs demanding effective accountability mechanisms in complaints of torture, though in the ruling, the court strongly criticised the manner of examination of complaints against ISA interrogators and the failure to investigate even a single one out of the hundreds of complaints filed over the past decade.
6. In February 2013, the government-appointed [Turkel Commission published its report](#) regarding Israeli investigations into reported violations of international law. The report confirms civil society complaints and calls for the incorporation of the absolute prohibition of torture in Israeli criminal law, and for a substantial increase and tightening of the external supervision and oversight of ISA interrogations.
7. Nonetheless, on 7 February 2013, Israel's Supreme Court upheld the extension of the exemption from audio/video documentation of interrogation of detainees suspected of serious 'security' offenses by ISA officials. This decision directly contradicts the Turkel Commission's recommendations, as well as UNCAT's 2009 Concluding Observations on Israel.
8. In June 2013 the State's committed to reform the torture investigations process by transferring [initial inquiry obligations from the ISA to a civilian inspector with no apparent ISA affiliation in the Justice Ministry](#). PCATI welcomed the announcement and demands that the Attorney General and the new inspector open proper and credible investigations into all pending complaints by victims.

Need for additional preventive mechanisms²

9. There is a need for additional mechanisms to effectively prevent, document and report torture. Detainees under interrogation do not have access to independent physicians, and physicians who examine the interrogees are employed by the IPS, undermining their ability to fulfill their first ethical obligation, to treat and protect their patients. PCATI calls for the immediate reform of this system through the transfer of prison and detention healthcare to the Ministry of Health (MoH), and remind all physicians that they must document and report suspected instances of torture. The Istanbul Protocol provides important guidelines for the way in which physicians, psychologists and attorneys should document and report torture. The Israeli Ministry of Health (MoH) and the Israel Medical Association (IMA) should fully

² Adalah, Physicians for Human Rights, PCATI (2013): [Joint NGO press release United Nations International Day in Support of Victims of Torture 2013](#)

implement and apply the Istanbul Protocol, and enforce mandatory training and guidelines for identification, documentation and reporting of suspected torture for medical staff in the prisons, for civilian physicians in public medical centres, and for students of the medical professions. Following PCAT lobby efforts we are pleased with the IMA's recent agreement to publish the Hebrew translation (done by PCATI) of the Istanbul Protocol on their website.

Lack of rehabilitation for torture survivors

10. Israel is responsible not only for the victims of its own practices of torture but also for protecting victims of torture who find their way to Israel as refugees and asylum seekers. According to Physicians for Human Rights Israel, there are an estimated 7,000 survivors of torture in Israel, who arrived from Eritrea and Sudan via the Egyptian Sinai, and were apprehended and tortured by smugglers and traffickers. Of these, several hundred are currently in detention, with no access to identification, treatment, rehabilitation or release from detention as required for victims of torture. The only psycho-social rehabilitation services offered to this community are provided by civil society actors. They have no opportunity for occupational rehabilitation as they are forbidden to work, and they receive no financial assistance. Israel must fulfill its obligations under CAT of non-refoulement of torture victims.

To stop and prevent torture in Israel, PCATI recommends the following

11. The MoJ should initiate legislation to transpose clearly into law and practice the absolute prohibition in international law on torture and cruel, inhuman and degrading treatment. The "necessity defence" should fully be removed as a possible justification for the crime of torture.
12. The MoJ should formulate, implement and oversee mechanisms of transparency and accountability: actions must be taken to ensure the effective documentation of all interrogations (e.g. ISA interrogations should be fully videotaped). The documentation must be made transparent and accessible, at least, to the interogees and their legal representatives. Palestinian detainees and prisoners should be given telephone access to external ombudsmen at all times. Adalah led an important HCJ petition on this issue.
13. In any case of torture or abuse, whether raised in a complaint or in any other manner, fair, substantive and independent criminal investigations procedures for the ISA, the IPS and the military should be opened immediately. The criminal investigation should be undertaken by an external and independent body whose promotion, organizational affiliation and salary should not be connected to the subject of the investigation. As an integral part of the procedure, the investigation should include a hearing of the victim of the offense, who must enjoy legal representation, and it must take place within a reasonable timeframe. Its conclusions should be published. The complainant should receive all the materials collected in the inquiry in an orderly manner, whether this ended in an indictment or in the closure of the complaint. If the criminal investigation ends in a decision not to indict, the complainant should be allowed to submit an effective appeal against the decision.
14. Medical staff providing medical care to prisoners and detainees should be employed and supervised by MoH and not the Ministry of Public Security, the IPS, or any other organ with the chief purpose of enforcing security and maintaining order. Their independence should be ensured through legislation that makes the medical documentation and reporting of

abuse mandatory, and protects whistleblowers. Moreover, structural and legislative mechanisms should be introduced to ensure that medical considerations are not overruled by security considerations. Access to external doctors, to which prisoners are entitled by law, should be ensured at all times. Additionally, the MoH should incorporate information about the treatment of prisoners and detainees and identification of torture victims into the curricula of medical and nursing schools and into trainings for medical professionals in hospitals. PHR-Israel and other NGOs have consistently advocated for this.

15. Access of lawyers, medical experts, and relevant human rights actors, inspectors, and interpreters to prison and detention facilities and to potential victims of torture should be enshrined in law and the MoJ should formulate regulations to this end. The duty of IPS staff to respond to inquiries from civil society regarding individuals in custody in a timely and honest manner should be formally recognized. Further, in line with these recommendations, Israel should ratify the Optional Protocol to the UN Convention Against Torture.
16. The Istanbul Protocols for the identification, treatment and rehabilitation of survivors of torture, and provisions for their release from detention should be initiated by the MOH and the MOJ. Rehabilitation for all torture survivors should include full public health and psycho-social services as well as financial assistance.