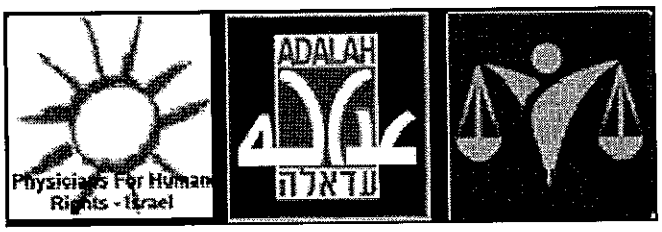

29 August 2011

EU High Representative Catherine Ashton
External Action Service

Re: EU-Israel Informal Human Rights Working Group: Torture and other cruel, inhuman or degrading treatment in Israel

Dear High Representative Ashton,

In view of the upcoming meeting of the EU-Israel Informal Human Rights Working Group, scheduled to take place on 13 September 2011, *Adalah – The Legal Center for Arab Minority Rights in Israel*, *Physicians for Human Rights-Israel* (PHR-Israel) and *Al Mezan Centre for Human Rights* in Gaza welcome this opportunity to draw your attention to their key concerns regarding Israel in the field of torture and other cruel, inhuman or degrading treatment or punishment (CIDT).

Both the UN Committee Against Torture (CAT) and the UN Human Rights Committee (HRC), in 2009[1] and 2010[2] respectively, issued their Concluding Observations (COs) on Israel, in which they expressed concern regarding Israeli practices that may constitute torture and/or CIDT. The committees further called on Israel to ratify the OPCAT[3] and the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). We urge the EU to follow-up on the concluding observations and recommendations of these committees, and to raise these issues with the representatives of the State of Israel at the meeting. Specifically, this short briefing paper will raise five key points to follow-up in this regard:

1. Israeli criminal law does not comply with the provisions of CAT/ICCPR
2. Lack of independent investigations into complaints against the Israel Security Agency; lack of access to courts for remedies
3. Insufficient safeguards for Palestinian "security" detainees held by Israel
4. CIDT and Palestinian "security" prisoners held by Israel
5. CIDT and the ongoing blockade of Gaza

1. Israeli criminal law does not comply with the provisions of CAT/ICCPR

CAT COs 2009, para. 13, 14; HRC COs 2010, para. 11

Despite the fact that Israel is a State party to several international conventions that prohibit torture and ill treatment – including the CAT, ICCPR, the Convention on the Rights of the Child (CRC) and the

[1] Concluding observations of the UN Committee Against Torture – Israel, CAT/C/ISR/CO/4, 23 June 2009.
[2] Concluding observations of the UN Human Rights Committee (monitoring the ICCPR) – Israel, CCPR/C/ISR/CO/3, 3 September 2010.
[3] For more information, see Adalah, Physicians for Human Rights-Israel and Al Mezan, "Israel Should Ratify the Optional Protocol to the UN Convention Against Torture as an Effective Means of Eliminating Torture", April 2010, available at: http://www.adalah.org/newsletter/eng/apr10/English.pdf

Fourth Geneva Convention – there is no provision in the Israeli Penal Code that specifically outlaws torture, and no other domestic legislation that effectively incorporates these prohibitions. The Israeli Supreme Court's ruling from 1999[4] outlawed torture but also created a sweeping exception in "ticking bomb" cases, leaving open the possibility that an Israeli official charged with torture may escape criminal liability by virtue of the "necessity defense".[5] The use of torture and ill-treatment has subsequently become systemic and institutionalized through the misuse of the "ticking bomb" scenario, as well as other means, in contradiction of the Supreme Court's decision itself.[6] Thus, the absolute prohibition on torture enshrined in international law has not been adopted in Israeli domestic law. In order to remedy this situation, Israel should remove the "necessity defense" for criminal responsibility for torture and CIDT and enact a clear and specific crime of torture into domestic law.

2. Lack of independent investigations into complaints against the Israel Security Agency (ISA); lack of access to courts for remedies

CAT COs 2009, paras. 19, 20, 21, 29; HRC COs 2010, paras. 9, 12

Lack of independent investigations into complaints against the ISA

Complaints of torture and ill-treatment in Israeli detention centers continue to be made on a regular basis. According to data published by the Public Committee Against Torture in Israel (PCATI) in December 2009, of the over 600 complaints of torture and CIDT submitted to the Israeli authorities since 2001, ***not one*** has led to a criminal investigation.[7] Complaints are examined by an Inspector of Complaints, who is an employee of the ISA, a situation that creates a clear conflict of interest and systemic lack of transparency, and precludes an independent, impartial process of investigation.

In March 2010, a group of human rights organizations in Israel wrote to the incoming Attorney General (AG) demanding that he order an independent unit within the Justice Ministry or the Israeli Police to conduct criminal investigations of all complaints submitted against ISA interrogators involving suspected torture or abuse.[8] The letter described how the over 600 complaints had all been transferred to an internal body of the ISA for preliminary examination, but were then closed without investigation. In November 2010, the AG announced that the position of Inspector of Complaints would be transferred to the Ministry of Justice. However, this transfer has yet to take place and it is unclear whether the person of the inspector would change, or merely change location institutionally.

In its ENP progress report of 25 May 2011 on Israel's implementation of the EU-Israel ENP Action Plan in 2010, the European Commission makes the important note that the ISA itself continues to investigate allegations of torture made against its personnel. In part due to the lack of independent and transparent investigations, the progress report further notes, "Since 2001, no complaints against the GSS [ISA] have led to criminal investigations" (p. 4).

Lack of access to courts for remedies

Adalah received a large number of complaints from attorneys concerning the policy of blocking access to courts to plaintiffs who are residents of the OPT and their witnesses, thus preventing them from

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[4] HCJ 5100/94, *The Public Committee against Torture in Israel v. The State of Israel.*

[5] Contained in section 34(1) of Israel's Penal Code – 1977.

[6] Paragraphs 36, 37 and 38 of the Supreme Court's ruling in HCJ 5100/94, *The Public Committee against Torture in Israel v. The State of Israel.*

[7] See PCATI, *Accountability Denied: The absence of investigation and punishment of torture in Israel*, December 2009, p. 15, available at: http://www.stoptorture.org.il/files/Accountability_Denied_Eng.pdf. See also PCATI and Adalah, "Exposed: The Treatment of Palestinian Detainees During Operation Cast Lead", July 2010, available at: http://www.stoptorture.org.il/files/Exposed-Treatment%20of%20Detainees%20Cast%20Lead_June%202010.pdf

[8] The human rights organizations included PCATI, PHR-Israel, Adalah, ACRI, HaMoked, and Yesh Din.

bringing tort lawsuits in Israel against the military and security forces and exercising their right to compensation, including for alleged acts of torture and CIDT. The obstacles to access to Israel's courts are physical, economic, and legal. The physical barriers stem from the state's policy of denying entry to plaintiffs and witnesses, particularly residents of Gaza. As a result of Israel's blockade on/closure of the Gaza Strip, plaintiffs who are residents of Gaza (as well as other parts of the OPT) and their witnesses are blocked from attending court hearings and meeting with their lawyers.

The economic obstacles stem from the requirement that plaintiffs must pay a guarantee of NIS 30,000 (around €6,100) on average, a sum that is difficult for most residents of the OPT to raise given the dire socio-economic situation, particularly in Gaza. Legal obstacles include a two-year statute of limitations imposed on such lawsuits by the Civil Liability Law (the Knesset recently changed this law from seven years to two years).[9] As a result, Palestinian plaintiffs are increasingly unable to pursue civil remedies in the Israeli courts.

Typically, the evidentiary proceedings are delayed and the lawsuits ultimately dismissed because the plaintiff and his/her witnesses cannot attend court and it is impossible to progress in the cases. In effect, their rights to appeal to the courts and receive a remedy become devoid of content, and the lack of compensation constitutes a major, systemic source of impunity for the Israeli military and security services, including for suspected acts or torture and CIDT, and acts as a break on efforts to combat such violations. The right to compensation of Palestinians from the OPT who are injured by the military and security forces' activity is also anchored in international human rights law, including Article 14 of CAT, which stipulates that, "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible..."[10]

3. Insufficient safeguards for Palestinian "security" detainees held by Israel

CAT COs 2009, paras. 15, 16; HRC COs 2010, para. 13

New Criminal Procedures Law that inflicts further violations on the basic rights of security detainees

This law, entitled the Criminal Procedure Law (Suspects of Security Offenses) (Temporary Order) (Amendment No. 2) (2010) and enacted on 20 December 2010, is designed to extend the validity of harsh, special detention procedures for those suspected of security offenses. While neutral on its face, in practice the law will apply to Palestinians from Gaza and Palestinian citizens of Israel. The special procedures allow the law enforcement authorities to delay bringing a security suspect before a judge for up to 96 hours after his or her arrest (instead of 48 hours for other detainees). It also allows the courts to extend a security suspect's detention for up to 20 days at a time (instead of 15 days) and to hold extension of detention hearings in his/her absence. In this last respect the law seeks to bypass a February 2010 Israeli Supreme Court decision that struck down article 5 of the Criminal Procedure (Detainees Suspected of Security Offences) (Temporary Order) Law (2006),[11] which stipulated that security suspects could have their pre-trial detention extended in their absence.[12] The law removes a

[9] A challenge to the two-year statute of limitations, particularly in cases involving damages to Palestinian civilians in Gaza during Operation Cast Lead, is pending before the Israeli Supreme Court. See HCJ 9408/10, *The Palestinian Centre for Human Rights v. The Attorney General* (pending).

[10] See Adalah, "The policy of blocking Gaza residents' access to the Israeli courts in damage lawsuits filed against the Israeli security force," 14 October 2010, available at: http://www.old-adalah.org/newsletter/eng/oct10/Gaza%20Blocking%20Access%20to%20Courts.pdf

[11] Originally passed by the Knesset as a "temporary order" for 18 months, the law was extended in January 2008 for three years.

[12] HCJ 2028/08, *The Public Committee Against Torture in Israel, et al. v. The Minister of Justice* (petition withdrawn on 24 March 2009). For more information, see Adalah news update, 23 February 2010: http://www.adalah.org/eng/pressreleases/pr.php?file=23_02_10

number of essential procedural safeguards from detainees, thus placing them at a greater risk of torture and ill-treatment.[13]

Adalah, PHR-Israel and Al Mezan would also like to draw the EU's attention to a new Counter-Terrorism Bill currently before the Knesset that passed its first reading on 3 August 2011. The provisions of the bill, which seek to codify many of the emergency regulations now in effect, threaten to cause real harm to the rights of security detainees. The bill includes additional draconian measures for investigating suspects held on suspicion of committing security offenses, and provides for the extensive use of secret evidence in court.[14]

Sweeping exemption granted to Israeli police and ISA absolving them of the duty to make audio/ video recordings of their interrogations of individuals suspected of committing serious offenses

The Criminal Procedure (Interrogation of Suspects) Law – 2002 requires audio and video recordings to be made of interrogations of detainees suspected of committing serious offenses that carry a sentence of ten or more years' imprisonment. However if the Israeli police or the ISA decide that a certain interrogation is a security interrogation, they are consequently exempted from recording it. In December 2010, Adalah, together with PHR-I, Al Mezan and PCATI, filed a petition to the Supreme Court of Israel to demand that the exemption be cancelled, arguing that it made detainees suspected of committing the relevant crimes, overwhelmingly Palestinians, more vulnerable to torture and CIDT and increased the likelihood of false confessions.[15]

Both the ISA and the police claim that "security interrogations" should not be recorded in order to avoid exposing the techniques and methods that are employed in such interrogations. According to the petitioners, however, such an aim does not justify the harsh violation of the constitutional rights of detainees that results from the lack of recording, including the rights to due process, equality and dignity, as well as the freedom from torture and other forms of ill-treatment. Moreover, the exemption entails discrimination based on national belonging, since the overwhelming majority of individuals suspected of committing security offenses are Palestinians, and it is therefore Palestinians who will suffer its consequences.

Inhuman and degrading conditions of detention for Palestinian detainees in ISA facilities

Detainees being held in the Ashqelon, Jalameh, Petakh-Tikva and Moscobiya facilities run by the ISA are routinely subjected to inhuman and degrading conditions during their detention. Overwhelmingly, it is Palestinian citizens of Israel and Palestinians from the OPT who are detained and interrogated in these facilities. The conditions effectively form a part of the interrogation process, and are designed to weaken the detainees' bodies and morale and put additional pressure on them to cooperate with their interrogators and give them confessions in order to secure their release from the conditions in the detention cells.

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[13] Adalah sent a letter to the Knesset's Constitution, Law and Justice Committee on 21 October 2010 to demand that the bill be rejected.

[14] For more information, see the Association of Civil Rights in Israel, "Counter-Terrorism Bill: Undemocratic Emergency Regulations Could Become Permanent Law," 4 August 2011, available at: http://www.acri.org.il/en/?p=2999\. See also the Israel Democracy Institute, "Roundtable Discussion on the Counter-Terrorism Bill" held in October 2010, at: http://www.idi.org.il/sites/english/events/TheGeorgeShultzRoundtableForum/Pages/TheCounter-TerrorismMemorandumBill.aspx

[15] HCJ 9416/10, *Adalah v. The Ministry of Public Security* (case pending). A court hearing has been scheduled for 28 November 2011.

The same methods of interrogation are employed in all the ISA's detention facilities. After being interrogated for hours, the detainees are placed in narrow, dark and filthy isolation cells without windows or air vents to allow daylight or fresh air to enter. They are not given mattresses that are suitable to sleep on or basic hygienic supplies and are unable to keep themselves clean. They are also subjected to sleep deprivation. In addition, the suspects are held in total isolation for hours and days on end without being allowed any contact with their families or lawyers. These methods are also used against juveniles suspected of committing security offenses, who are exposed to CIDT along with adults. Such practices stand in violation of international standards of human rights that protect children from arbitrary detention.[16]

Israeli Ministry of Health (MOH) announces the establishment of the "Committee for Medical Staff to Report Harm to Detainees under Interrogation"

In its response to a forthcoming report written by PCATI and PHR-Israel on the involvement of medical personal in torture and CIDT in Israel and other countries, the Israeli MOH informed the two organizations of the establishment of a "Committee for Medical Staff to Report Harm to Detainees under Interrogation." According to the response, dated 1 July 2011, the committee is mandated to receive complaints from medical staff regarding detainees under interrogation whom they suspect have been subjected to torture and/or CIDT. This committee presents an unprecedented opportunity for medical staff to fulfill their obligations under international guidelines and Israeli codes of ethics to report suspicions of torture and CIDT. The submitting organizations urge the EU to follow-up with Israel on the composition, mandate, and functioning of this committee.

Israeli prison doctors continue to pass confidential medical information about Palestinian detainees to their interrogators, in violation of the Tokyo Declaration

In 2010, PHR-Israel gathered cases in which doctors in Israeli prisons passed medical information about Palestinian detainees under interrogation to the ISA. PHR-Israel found that medical information is provided to interrogators systematically, on special written forms designated for the purpose. This practice is a serious violation of medical ethics, patients' rights, and the law for the protection of privacy, as well as the Tokyo Declaration, and may facilitate the torture and/or CIDT of detainees.

In July 2010, PHR-Israel sent a complaint against the practice to the Israeli MOH. On 13 January 2011, the MOH forwarded to PHR-Israel a response issued by the Chief Medical Officer of the Israel Prison Service (IPS), who confirmed these incidents. According to the response, the incidents had occurred in error and the IPS would prevent similar incidents in the future by raising the awareness of IPS doctors of their ethical and professional duties to their patients. The response further stated that prisoners' medical files had been transferred to a new computerized system and that such forms no longer existed, and that doctors only gave instructions to interrogators regarding the conditions of confinement of specific detainees.

Despite this commitment, however, PHR-Israel recently received information about two cases in which new medical forms were found in detainees' medical files and transferred from doctors in the interrogation facility to ISA interrogators. The forms, dated March 2011, are entitled, "Chapter: Medical Care Procedure: Medical care for detainees in the ISA ward, medical certificate for ISA ward

[16] On 11 May 2011, Adalah and Nadi al-Aseer (the Palestinian Prisoners' Club) sent a pre-petition to the AG, the Minister of Internal Security and the Head of the Israeli Prison Service (IPS) to demand an end to the detention of detainees in the four ISA facilities because of the inhuman and degrading conditions in which detainees are held. For more information, see "Adalah and Nadi al-Aseer Demand an End to the Detention of Palestinian Detainees in Shabak Facilities Due to Inhuman and Degrading Conditions," 12 May 2011, available at: http://www.adalah.org/eng/pressreleases/pr.php?file=12_05_11

detainees." The forms include detailed and confidential medical information about individuals under interrogation. The fact that the IPS medical system continues to use a special form for detainees under interrogation raises grave concerns that medical professionals are collaborating in and facilitating "special interrogation methods" that may constitute torture and/or CIDT, in a systematic manner.

4. CIDT and Palestinian "security" prisoners held by Israel

CAT COs 2009, para. 18; HRC COs 2010, para. 21

New law imposing severe restrictions on meetings between "security" prisoners and lawyers

A new law approved by the Knesset on 3 August 2011,[17] expands the severe restrictions placed on meetings between sentenced prisoners classified as security prisoners and their lawyers, grossly violating their rights. The new law amends the Israeli Prisons Ordinance – 1971. There are currently over 5,640 sentenced Palestinians being held as "security" prisoners in Israeli prisons.[18] Main provisions of the new law include:

- The Israel Prison Service (IPS) can prevent a prisoner from meeting with his lawyer for up to 96 hours (previously 24 hours).
- The IPS can extend the ban on meetings for 10 days (previously 5 days).
- A court must authorize an extension of the ban after 15 days (previously 5 days).
- A district court can extend a ban for six months at a time (previously 21 days), for a total period of one year (previously three months).
- After one year, the Supreme Court can extend the ban for unlimited periods (Supreme Court supervision was required after three months under the previous law).

Under the previous law, meetings could be prohibited if there was *real suspicion* that it may harm the security of a person, the public, the state, or the prison. The new law adds the additional ground of *suspicions* that the meeting may allow the transfer of information between prisoners relating to promoting the activities of terrorist organizations. This ground is extremely vague and stands to cause grave harm to the rights of prisoners and their lawyers based on suspicions alone, even where the information involves no criminal or administrative infraction.

These sweeping restrictions further increase prisoners' isolation and prevent them from effectively accessing the courts, including in cases of CIDT, and block them from obtaining redress. Attorneys who represent Palestinian political prisoners must visit them often because of the severe limitations placed on contact with their families, or the total ban on family visits in the case of prisoners from Gaza (see below). Various restrictions already apply to meetings between political prisoners and their lawyers, from the wide-ranging searches of lawyers to the glass barriers that separate them during the meetings. The new law essentially empties the right to legal counsel of all meaning.[19]

The "Shalit bills"

A set of legislative proposals currently before the Knesset's House Committee seek to impose further restrictions on Palestinian "security prisoners" held in Israeli jails, including a blanket ban on receiving any family visits. The bills have all passed a preliminary vote in the Knesset and enjoy strong, broad-

[17] See: http://knesset.gov.il/privatelaw/data/18/3/558_3_1.rtf (Hebrew).

[18] According to data obtained from the Israel Prison Service (Hebrew). See: http://www.shabas.gov.il/Shabas/TIPUL_PRISONER/Prisoners+Info/prisoners_bithahoni.htm

[19] Before the law was enacted, on 26 June 2011, Adalah sent a letter to the Chair of the Knesset's Interior Committee, demanding that the bill be rejected. See, Adalah, "Proposed Bill Allowing for One-Year Ban on Meetings between Prisoners and their Attorneys is Unconstitutional," 28 June 2011, available at: http://www.adalah.org/eng/pressreleases/pr.php?file=28_06_11

based support from parliamentarians, and the Prime Minister. By referring to "terrorist organizations" that hold Israeli captives, the bills all clearly target Hamas and aim to bring pressure to bear on the organization to release captured Israeli soldier Gilad Shalit; this is an illegitimate political purpose than cannot be used to justify depriving prisoners of rights to visitation and other basic rights.

- *The Preventing Visits Bill – 2009*[20] seeks to impose a blanket ban on prisoners who belong to an organization designated as a terror organization from receiving visits in prison. According to this bill, such prisoners would only be entitled to visits by the International Committee of the Red Cross (ICRC), and these would be limited to once every three months.
- *The Release of Captives and Kidnapped Persons Bill – 2009*[21] states that if a terror organization holds an Israeli captive and demands the release of a specific prisoner held in an Israeli jail, then this prisoner should be placed in "absolute isolation and be prevented from contact with another human being," including with a relative, lawyer or representative of an international human rights organization. The bill further states that such a prisoner should also be denied access to any reading materials or source of entertainment.
- *The Restriction of Visitation for a Security Prisoner Bill – 2010*[22] proposes that any prisoner who belongs to an organization designated as a terror organization that holds an Israeli captive should be denied visits in prison and the right to meeting a lawyer.
- *The Imprisonment of Requested Prisoners – 2009*[23] states that any prisoner whose release is conditioned on the release of an Israeli held captive by a terror organization should be denied any right that could be restricted on security reasoning, which could include access to reading material, education, exercise, etc. It proposes that such a prisoner should be held in isolation indefinitely and should not be entitled to early release or parole. Furthermore, once the prisoner has served his/her sentence, he/she should be declared a detainee and continue to be held.

If approved by the Knesset, these bills would render Palestinian prisoners vulnerable to being used as hostages or bargaining chips in negotiations for prisoner exchanges.

<u>The ongoing ban on family visits to prisoners from Gaza</u>

Families in Gaza have not been able to visit their relatives in Israeli prisons since June 2007. Approximately 700 prisoners from Gaza are imprisoned in Israel with no physical access to their families. Preventing family visits has, in practice, led to the almost complete isolation of these prisoners from the outside world. Like all Palestinians classified as "security prisoners", they are not permitted to use a telephone. The lack of family visits means that these prisoners lack a basic safeguard against torture and CIDT, and represents a clear violation of the right to a family life.

In December 2009, the Supreme Court of Israel ruled that family members from Gaza have no right to visit their relatives incarcerated by Israel.[24] This ruling came in response to two petitions filed in June

[20] Bill no. P/18/735, passed by the Knesset by a 52-10 majority, with one abstention.
[21] Bill no. P/18/829, passed by the Knesset by a 53-9 majority.
[22] Bill no. P/18/2396, passed by the Knesset by a 51-10 majority.
[23] Bill no. P/18/758, passed by the Knesset by a 54-10 majority, with one abstention.
[24] HCJ 5399/08, *Adalah, et al. v. The Defense Minister, et al.* (decision delivered 9 December 2009). The decision is available in Hebrew at: http://www.adalah.org/features/prisoners/prisoners%20visits%20decision.pdf

2008 by Adalah, Al Mezan, the Association for the Palestinian Prisoners and families of Palestinian political prisoners from Gaza, and by HaMoked.[25] In its judgment, the Supreme Court ruled that:

a. Family visits are not a basic humanitarian need for Gaza residents that Israel must provide.
b. The Israeli government decision on this issue stems from security reasons, and the court is reluctant to interfere with such decisions.
c. There is no right of "aliens" [Palestinians from Gaza] to enter Israel.
d. This policy was not instated to target prisoners directly, but they are affected indirectly by a legitimate government decision.
e. The need for family visits, including the families' provision of basic supplies, is unnecessary since prisoners may obtain these items through the prison canteen.

According to the International Committee of the Red Cross (ICRC), "Palestinian families must be allowed to visit their next of kin in Israeli prisons. This is a humanitarian issue of utmost importance."[26] In September 2010, the UN Human Rights Committee noted the ban on family visits with concern, and stated that Israel "should reinstate the family visit programme supported by the ICRC for prisoners from the Gaza Strip."[27] In a new statement issued by the ICRC on 23 June 2011, the organization stated that: "Under international humanitarian law, detainees held by Israel in relation to the armed conflict have a right to family visits. The ICRC urges Israel, on humanitarian grounds, to lift the suspension of family visits for all detainees from Gaza."[28]

Solitary confinement of prisoners and detainees in Israeli prisons

Approximately 150 prisoners and detainees were being held in solitary confinement by Israel as of December 2010. Prisoners may be held in solitary confinement in a number of circumstances, including during interrogation, as a disciplinary measure, and what is known as *Hafradah* (separation), which is the solitary confinement of a prisoner for an extended, unlimited period, mainly for alleged security reasons. However, in all cases its severe impact on the prisoner's physical and psychological health is the same: solitary confinement undeniably and inevitably causes harm to the physical and mental health of prisoners, and constitutes illegal and disproportionate punishment and CIDT.[29]

In addition, the solitary confinement of Palestinian prisoners who are classified as security prisoners is doubly severe because of the restrictions that are imposed on their contact with the world outside of prison, even when they are not held in isolation. In the opinion of Adalah, PHR-Israel and Al Mezan, solitary confinement in prison is a cruel and harsh punitive and administrative act, and constitutes a violation of CAT and the ICCPR. In a joint position paper, the human rights organizations have called

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[25] See Joint Press Release, "Israeli Supreme Court: No Family Visits for Gaza Prisoners in Israeli Prisons," 10 December 2009, available at: http://www.mezan.org/en/details.php?id=9334&ddname=detention&id_dept=31&id2=9&p=center; Grietje Baars, "Palestinian Political Prisoners: Unfair Game for Israel's Persecution," *Adalah's Newsletter*, Volume 68, January 2010, available at: http://www.adalah.org/newsletter/eng/jan10/Grietje_Article_Prison_Visits_English_FINAL.pdf See also: Supreme Court decision (English translation), available at: http://www.adalah.org/features/prisoners/Isr%20Sup%20Ct%20decision%20No%20family%20visits%20Gaza%20prisoners%20English.doc

[26] ICRC, *Families should be allowed to resume visits to relatives detained in Israel*, 10 June 2009, available at: http://www.icrc.org/web/eng/siteeng0.nsf/html/gaza-news-100609

[27] Concluding observations of the Human Rights Committee – Israel, CCPR/C/ISR/CO/3, 3 September 2010, para. 21.

[28] See ICRC, "Gaza detainees barred from family visits," 23 June 2011, available at: http://www.icrc.org/eng/resources/documents/news-footage/palestine-israel-tvnews-2011-06-23.htm

[29] Concluding observations of the Committee Against Torture – Israel, CAT/C/ISR/CO/4, 23 June 2009. See also Rod Morgan and Malcolm Evans, "Combating torture in Europe", 2001, p. 118; Recommendation Rec(2003)23 Committee of Ministers under the European Council, paras. 7, 20, and 22.4.

on Israel to end the use of this practice.[30] Prisoners should be permitted to have social interaction with other prisoners under professional supervision, and should be provided with adequate activities. In addition, until the use of solitary confinement ends, prisoners held in solitary confinement should have access to fair legal proceedings and secret evidence should no longer be used as a justification for continued solitary confinement.

5. CIDT and the ongoing blockade of Gaza

CAT COs 2009, paras. 30, 31; HRC COs 2010, para. 8

Since 2006, Israel allowed only basic humanitarian goods and supplies to enter Gaza, despite its total dependence on Israel. 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. Due to the blockade, Palestinian civilians from Gaza have been subjected to a wide range of Israeli policies and practices that arguably constitute CIDT. These include indiscriminate fire by the Israeli army that fails to discriminate between military and civilian objects, strict limitations of freedom of movement, and the restriction or ban on the import of basic goods and materials, including foodstuffs and medical supplies and equipment. Two examples of practices constituting CIDT that stem directly from the blockade are the denial of access to medical treatment for patients from Gaza and Israeli military attacks on Gaza fishermen.

Lack of access to necessary medical treatment and deaths of patients from Gaza

Due to the blockade, hundreds of patients in Gaza in need of essential medical treatment that is unavailable in the Strip are referred each month for medical treatment outside of Gaza. However, they are often denied permits to access medical care elsewhere. From January to June 2011, PHR-Israel documented 226 cases and appeals from Gaza (and 147 appeals from the West Bank) concerning patients who were denied permits or delayed access to medical treatment.

Case study: In a recent case, 20-year old Mr. Anas Saleh died from a liver disease at the Shifa Hospital in Gaza after Israel denied him permission to exit Gaza for essential medical treatment. The patient was in a critical medical condition, which was known to the Israeli authorities. However, he was denied an exit permit. In these circumstances, the denial of a permit is an act that violates the legal obligation to provide medical treatment to save the life of the patient, an act that brought about, or at least hastened, the death of the deceased. Mr. Saleh was called for interrogation by the ISA on 30 December 2010 to consider his request, but by that date he was already in a comatose state. However, the ISA continued to insist that the patient appear for questioning. Throughout this process, medical documents substantiating the patient's medical condition were sent to the Israeli authorities. A final medical document confirming the patient's critical condition was sent on 29 December 2010. The patient died in Shifa Hospital in Gaza on 1 January 2011 at 18:00.[31, 32]

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[30] See Adalah, PHR-Israel and Al Mezan, "Solitary Confinement of Prisoners and Detainees in Israeli Prisons," June 2010, available at: http://www.adalah.org/upfiles/2011/Solitary_confinement_position_paper_English.pdf

[31] On 5 January 2011, Adalah sent a letter of complaint to the Israeli Military Advocate General and Attorney General (AG) on behalf of PHR-Israel and Al Mezan to request a criminal investigation into the death of Anas Saleh. Mr. Saleh's case was followed and documented by PHR-Israel and Al Mezan. On 14 July 2011, the MAG responded that there was nothing in the complaint to warrant an investigation. Adalah is now preparing a response that emphasizes the current lack of criteria or directives to respond to the needs of patients who require medical treatment that is not available in Gaza. For more information see Al Mezan, "Human Rights Organizations Demand Criminal Investigation into Death of 20 Year-Old Palestinian Patient Denied Permit by Israeli Authorities to Leave Gaza" 6 January 2011, available at: http://www.mezan.org/en/details.php?id=11315&ddname=torture&id_dept=31&id2=9&p=center

[32] For details of a subsequent case in which the Israeli authorities rejected a permit request for a patient to access a hospital in the West Bank, a patient who later died, see Al Mezan, "Gaza Patient Dies Due to Deprivation of Access

Attacks on fishermen in Gaza

The maritime blockade of the Gaza Strip is imposed by force of arms by the Israeli navy. Fishermen from Gaza are regularly exposed to serious rights violations that tread on their dignity and undermine their ability to work, even while fishing in permitted areas. Dozens of fishermen have been arrested, detained, injured, and even killed. These practices constitute grave violations of international law, including CIDT, and violate the prohibition on targeting civilians in the context of Occupation and armed conflict.

The fishing zone – which is limited to only three nautical miles as opposed to the 20 nautical miles agreed upon in the Oslo Accords – prevents fishermen from being able to fish beyond the narrow strip of sea along the Gaza coastline. The restricted fishing area that is available is made difficult and dangerous by the regular Israeli naval attacks on the fishing boats. Typically, the Israeli navy approaches and surrounds fishing boats. Sometimes they force the fishermen to take off their clothes and swim towards the naval boats where there are arrested and detained. At other times, fishing nets are severed or the boats rammed, and the boats are confiscated.

Case study: At approximately 06:00 on 11 January 2011, fisherman Mr. Saher Juha, 15, and other fishermen took out a *hasaka* (small fishing boat) and sailed for about half an hour before beginning to fish off the coast of Gaza.[33] At approximately 07:00, Saher saw an Israeli naval boat and heard heavy gunfire. He saw bullets hitting the water around them. The Israeli boats then approached to within 10m from the boat. Saher heard an Israeli soldier on a loud-speaker ordering Saher and his colleagues to strip off their clothes, jump in the water and swim towards them. The other fishermen did so, while Saher told the Israeli soldier that he could not swim. The soldier then pointed his gun at Saher and ordered him to jump and swim. According to his testimony, when Saher was on the Israeli boat, an Israeli soldier slapped him in the face, handcuffed him, and blindfolded him with a piece of clothing. The fishermen were taken to an Israeli harbor where a doctor examined them. They were then interrogated at Erez crossing by the ISA. At approximately 12:30 a.m the following day, the Israeli military released them at Erez crossing, except for one of the fishermen, who is still under detention.

For more information on cases of CIDT documented in Gaza by Al Mezan, see Al Mezan, "Documentation Report on: Torture and other Forms of Cruel, Inhumane and Degrading Treatment against the Palestinian Population in Gaza Strip by IOF," July 2011.[34]

Yours sincerely,

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to Treatment", 27 July 2010, available at:
http://www.mezan.org/en/details.php?id=12380&ddname=&id2=9&id_dept=9&p=center

[33] According to an affidavit provided by Mr. Juha to Al Mezan.

[34] The report is available at:
http://www.mezan.org/en/details.php?id=12381&ddname=Torture&id2=7&id_dept=22&p=center_more