



INTERNATIONAL  
COMMISSION  
OF JURISTS

## **Submission to the Committee Against Torture on the examination of the fourth periodic report of the State of Israel**

The International Commission of Jurists (ICJ) wishes to provide its views to the Committee Against Torture (the Committee) for the consideration of the Fourth Periodic Report of Israel. In this submission, the ICJ highlights the failure of the Israeli Government to comply with the Committee's previous recommendations and to that end, incorporate into Israeli domestic legislation a crime of torture as defined in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention).

The ICJ has received consistent reports concerning the continuing use of "special" interrogation techniques by the Israeli Security Agency (ISA) and the General Security Service (GSS) against Palestinian detainees and convicted prisoners. These include, amongst other measures; beating and tying in painful positions, painful binding, back bending, sleep deprivation while the suspect is held in waiting for interrogation or confined to his cell and coercing the suspect to crouch in a frog-like position. These practices violate Israel's obligations under the Convention, and have been further exacerbated by the immunities provided by Israeli law and jurisprudence, under the "*defence necessity*" doctrine, for state officials and law enforcement officers responsible for such violations.

The ICJ also wants to bring to the attention of the Committee the continued use by Israeli authorities of prolonged *incommunicado* and administrative detention. This Israeli policy violates Israel's obligations under Human Rights and International Humanitarian Law (IHL), facilitates the perpetration of torture and could in itself constitute a form of cruel, inhuman or degrading treatment or even torture.

### **Torture in the Israeli legal framework**

Despite persistent recommendations by the Committee and other United Nations treaty bodies, the Israeli Government has failed to incorporate into its domestic legislation a crime of torture as defined in the Convention.<sup>1</sup> Indeed, under section 277 of the Israeli Penal Law, 1977, "*A public servant who does one of the following is liable to imprisonment for*

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<sup>1</sup> Article 1 of the CAT states: "For the purposes of this Convention the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent or incidental to lawful sanctions."

three years: (i) uses or directs the use of force or violence against a person for the purpose of extorting from him or from anyone in whom he is interested a confession of an offence or information relating to an offence; (ii) threatens any person, or directs any person to be threatened, with injury to his person or property or to the person or property of anyone in whom he is interested for the purpose of extorting from him a confession of an offence or any information relating to an offence.” Section 65 of the Military Jurisdiction Law, 1955, also provides that cruel treatment by a soldier of a detainee or lower-ranking soldier carries a maximum penalty of three years imprisonment or seven years in aggravating circumstances. Both articles fall short of the definition provided for in Article 1 of the Convention, and does not criminalize the infliction of mental suffering to detainees, nor does it include acts of intimidation or coercion against them or third persons based on discrimination of any kind. The sanctions provided for in these articles are not proportionate with the gravity of such offences that constitute grave human rights violations, and further exacerbate the use of torture and other cruel, inhuman or degrading treatment in Israel. Indeed, it is well documented that the GSS and ISA have employed torture, physical coercion and other cruel, inhuman or degrading treatment in the vast majority of its investigations<sup>2</sup>.

In 1999, the Israeli Supreme Court ruled that the GSS does not have authority to use physical means against suspects in the course of its investigations. The Court further declared: “A reasonable investigation is necessarily one free of torture, free of cruel, inhuman treatment, and free of any degrading conduct whatsoever. There is a prohibition on the use of “brutal or inhuman means” in the course of an investigation. Human dignity also includes the dignity of the suspect being interrogated. This conclusion is in accord with international treaties, to which Israel is a signatory, which prohibit the use of torture, “cruel, inhuman treatment” and “degrading treatment.” These prohibitions are “absolute.” There are no exceptions to them and there is no room for balancing. Indeed, violence directed at a suspect’s body or spirit does not constitute a reasonable investigation practice. The use of violence during investigations can lead to the investigator being held criminally liable.”<sup>3</sup> However, in cases defined as “ticking bombs,” where interrogation might prevent an imminent “terrorist attack”, the Court ruled that interrogators would not face criminal neither disciplinary sanctions for using physical pressure, despite the fact that it amounts to torture.

This judgment does not contain a definite prohibition of torture and in some cases justifies it; shielding GGS interrogators who have carried out torture from criminal liability; therefore violating Article 2(2) of the Convention, which provides that “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

Under international law, the prohibition of torture is absolute and a peremptory norm from which no derogation is permitted (*jus cogens*). The International Criminal Tribunal for the former Yugoslavia (ICTY) reaffirmed the absolute nature of the prohibition of torture, cruel, inhuman or degrading treatment in the *Prosecutor v. Anto Furundzija*’s judgment, “The fact that torture is prohibited by a peremptory norm of international law...serves to internationally delegitimise any legislative, administrative or judicial act authorizing torture. It would be senseless to argue, on the one hand that on account of the *jus cogens* value of the prohibition against torture, treaties or customary rules providing for torture

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<sup>2</sup> The Report of the Commission of Inquiry into the Methods of Interrogation of the General Security Service Regarding Hostile Terrorist Activity (Jerusalem, October 1987), popularly known as the “Landau Commission”, confirmed that the GSS has authority to use “moderate physical pressure” and provided guidelines concerning methods of coercion in a classified annex.

<sup>3</sup> HCJ 5100/94 *Public Committee Against Torture in Israel v. Government of Israel* (September 1999)

would be null and void ab initio, and then be unmindful of a state say, taking national measures authorizing or condoning torture or absolving its perpetrators through an amnesty law".<sup>4</sup> The Human Rights Committee has also reaffirmed this principle and stated that: "the absolute nature of the prohibition of torture, cruel, inhuman or degrading treatment [...] in no circumstances can be derogated from".<sup>5</sup> The Committee Against Torture has reiterated that absolute and non-derogable prohibition against torture is a "peremptory *jus cogens* norm"<sup>6</sup>. The Committee against Torture has also "considered the prohibition of ill-treatment to be likewise non-derogable under the Convention and its prevention to be an effective and non-derogable measure."<sup>7</sup>

During its last two high level missions to Israel and the Occupied Palestinian Territory,<sup>8</sup> the ICJ was told that the ISA and GSS are continuing to use "special" interrogation techniques involving physical measures and torture against Palestinian detainees and convicted prisoners. These include, amongst other methods; beating and tying in painful positions, painful binding; back bending, sleep deprivation while the suspect is held in waiting for interrogation or confined to his cell and coercing the suspect to crouch in a frog-like position.

The Israeli Government has attempted to defend its use of these interrogation techniques as a necessary means of combating terrorism. It is to be highlighted that the Committee has found these interrogation methods inhuman and/or degrading, and that used in combination amount to torture. It has consequently called on the State of Israel to preclude "from raising before [this Committee] exceptional circumstances as justification for acts prohibited by article 1."<sup>9</sup>

As a legal consequence of the absolute prohibition of torture, States are obliged to take measures to prevent and punish their own officials and law enforcement officers who are responsible for such practices. Yet, in Israel, and despite the persistent reports of the use of torture and other cruel, inhuman or degrading treatment, the Israeli Government has failed to; provide adequate guarantees against torture and other ill-treatment to Palestinian detainees, investigate in a prompt, transparent and independent manner allegations of torture and ill-treatment of convicted prisoners and detainees and bring to justice military and civilian state officials and law enforcement officers who carried out, ordered or acquiesced torture and ill-treatment.

This Israeli policy has further been exacerbated by immunities provided by the domestic legislation to State officials and law enforcement officers. Under the "defence necessity" doctrine, ISA and GSS interrogators are exempt from criminal liability for actions taken in order to avoid consequences which could not otherwise be avoided, and which would have inflicted grievous harm or injury on them or others they were bound to protect.

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<sup>4</sup> International Criminal Tribunal for the former Yugoslavia, *the Prosecutor v. Anto Furundzija*, Judgment, IT-95-17/1-T, para. 155.

<sup>5</sup> See the Human Rights Committee's Concluding Observations following the consideration of the fifth periodic report by Canada on the implementation of the International Covenant on Civil and Political Rights, CCPR/C/CAN/CO/5, 20 April 2006, para. 15.

<sup>6</sup> Committee Against Torture, General Comment No. 2, *Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2 of 24 January 2008, para. 1

<sup>7</sup> *Ibid.*, para. 3

<sup>8</sup> [http://www.icj.org/news.php3?id\\_article=4265&lang=en](http://www.icj.org/news.php3?id_article=4265&lang=en).

<sup>9</sup> Concluding Observations on Israel, (1997) UN doc. CAT/C/18/CRP1/Add. 4, § 134. See also Concluding Observations on Israel, (2002) UN doc. A/57/44 (2002) § 53.

These immunities violate Israel's obligations under international law and exacerbate impunity for gross human rights violations.

The State of Israel is required, under international law, to adopt domestic laws and safeguards that prevent the use of legal rules in a way that shields from justice perpetrators of gross human rights violations, including torture and other cruel, inhuman or degrading treatment. Commenting on Israel's third periodic report, the Committee recommended that "*necessity as a possible justification for the crime of torture should be removed from the domestic law*"<sup>10</sup>. In 2003, the Human Rights Committee made it clear, having considered Israel's second periodic report, that "*the necessity defence argument [...] is not recognized under the Covenant.*"<sup>11</sup> The United Nations Special Rapporteur on torture also stated unequivocally in response to the Supreme Court's 1999 judgment that, "*there is no such defence against torture or similar ill-treatment under international law*"<sup>12</sup>.

The ICJ calls on the Committee to urge the Government of Israel to:

- i) **Incorporate into its domestic legislation a crime of torture as defined in the Convention with penalties commensurate with the gravity of torture;**
- ii) **Remove the "*defence necessity*" as a possible justification for the crime of torture from domestic law;**
- iii) **Ensure that interrogation methods and special measures prohibited by the Convention are not utilized by the ISA and GSS in any circumstances, and hold those who have carried out, ordered or acquiesced such methods criminally responsible;**
- iv) **Investigate in a prompt, exhaustive, impartial and independent manner the allegations of torture and ill-treatment of detainees and prisoners;**
- v) **Provide adequate guarantees against torture or ill-treatment to detainees, including the right to legal counsel from the moment of arrest and the right to challenge the lawfulness of detention before an independent and civilian court;**
- vi) **Ensure that GSS and ISA officials are aware that torture and cruel, inhuman or degrading treatment or punishment are serious crimes which they are responsible to prevent, and that those suspected of engaging in torture or other ill-treatment must be held accountable, regardless of their official capacity;**
- vii) **Accept independent monitoring of detention facilities, allow independent observers immediate access to detainees and prisoners and to that end ratify the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* providing for a system of visits to places of detention;**
- viii) **Bring to the civilian justice system State officials and law enforcement officers who have carried out, ordered or acquiesced torture and ill-treatment;**
- ix) **Adopt effective measures and steps to ensure that the complainant, witnesses, relatives of the victim and their defence counsel, as well as**

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<sup>10</sup> UN Doc. A/57/44 (2002), para. 52(a)(iii), para. 53(i).

<sup>11</sup> Concluding observations of the Human Rights Committee: Israel, UN Doc. CCPR/CO/78/ISR, 5 August 2003, para. 18.

<sup>12</sup> UN Doc. E/CN.4/2000/9 (2000), para. 675.

**persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given;**

- x) **Provide an effective remedy and full reparation, including compensation and rehabilitation, to all victims of torture and ill-treatment.**

### **Torture and abusive use of administrative detention in Israel**

Administrative detention is a measure of depriving a person of liberty, who constitutes or will constitute a real threat to State's security, via the executive branch - without criminal charges being brought against the detainee. The Fourth Geneva Convention recognizes the possibility of an occupying power to hold a civilian in administrative detention, though makes it explicitly clear that this is a severe measure that may only be taken if the security of the State makes it "*absolutely necessary*",<sup>13</sup> or for "*imperative reasons of security*"<sup>14</sup>. According to international jurisprudence and doctrine, administrative detention on security grounds is only permissible under exceptional circumstances or in the event of derogation from human rights treaty obligations.<sup>15</sup> The UN *Standard Minimum Rules for the Treatment of Prisoners* stipulates that persons arrested or imprisoned without charge [administrative detention] shall be accorded the same protection as that accorded to prisoners under arrest or awaiting trial, namely; presumption of innocence, medical assistance, communication with family and friends and access to a legal adviser, and that the same general rules of detention shall apply, namely; maintenance of a register of detention, the separation of convicted prisoners and untried detainees and contact with medical services from the outside world.<sup>16</sup> Under international law, administrative detention must never violate peremptory norms of international law, including the use of administrative detention as a form of hostage-taking.

However, the ICJ notes that thousands of Palestinian administrative detainees, including scores of children, are held in Israeli jails. Hundreds have been held in administrative detention without charge or trial, including some held for several years. Hamas ministers, parliamentarians and mayors have been detained since 2007, and "*were seemingly held to exert pressure on Hamas to release Gilad Shalit, an Israeli soldier captured in 2006.*"<sup>17</sup> Seven hundred Palestinian minors were arrested in 2006, 25 of whom were held under administrative detention orders<sup>18</sup>.

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<sup>13</sup> See Article 42 of the IV Geneva Convention.

<sup>14</sup> See Article 78 of the IV Geneva Convention.

<sup>15</sup> See amongst others the *Study on the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile*, UN document E/CN.4/826/Rev.1, paras. 783-787; the European Court of Human Rights, Judgment of 1 July 1961, *Lawless v. Ireland* (paras. 13, 15 and 20), Judgment of 18 January 1978, *Ireland vs. The United Kingdom* (para. 214), and Judgment of 26 May 1993, *Brannigan and McBride v. The United Kingdom*; the Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, *op. cit.* 13, para. 138; the *Concluding Observations of the Human Rights Committee on: Jordan*, UN document CCPR/C/79/Add.35, A/49/40, paras. 226-244, and Morocco, UN document CCPR/C/79/Add.44, para. 21.

<sup>16</sup> Rule 95 of the *UN Standard Minimum Rules for the Treatment of Prisoners*.

<sup>17</sup> Israel and Occupied Palestinian Territories - *Amnesty International Report 2008*, available at: <http://www.amnesty.org/en/region/israeloccupied-palestinian-territories/report-2008>, [accessed 17 March 2009]

<sup>18</sup> Defence for Children International, Palestine Section, *Palestinian Child Political Prisoners 2006 Report*, p.1.

Several domestic laws reinforce the excessive use by the Israeli authorities of incommunicado and administrative detention; aggravate the isolation of detainees and exacerbate, therefore, their vulnerability to torture and other ill-treatment. Israeli Military Order 378 (1970)<sup>19</sup> allows for holding Palestinian detainees, including children from the age of 12, whether or not the detainee is suspected of a security offence, for up to eight days and without judicial approval of the arrest, before being brought before a military judge. In addition, Israeli Military Order 1226 (1988) empowers Israeli military commanders in the West Bank to detain Palestinian citizens for up to six months when there are “reasonable grounds to presume that the security of the area or public security require the detention”. The Order does not define “security of the area” and “public security”; interpretation is left to military commanders.

Commanders can extend detentions for additional periods of up to six months. Since the Military Order does not define a maximum cumulative period of administrative detention, it can be extended indefinitely. Under international law, administrative detention can proceed only as an exceptional and temporary measure under exceptional circumstances. The Human Rights Committee considers that administrative detention should be confined to very limited and exceptional cases<sup>20</sup> and limited in time, *inter alia*, for a short period of time, and should not be indefinite.<sup>21</sup> According to the Fourth Geneva Convention, administrative detention must end as soon as the reasons for it cease.<sup>22</sup> It cannot be used as an alternative to criminal proceedings. Even where armed hostilities occur over a prolonged period, this factor alone cannot justify the extended detention or internment of civilians, “their detention is only justified as long as security concerns strictly require it.”<sup>23</sup> Under IHL, civilians who are interned have the right of appeal to a court or administrative board and their internment must be reviewed at least every six months.<sup>24</sup> The ICRC has commented that administrative boards must offer “the necessary guarantees of independence and impartiality”.<sup>25</sup>

Furthermore, much of the information concerning the reasons for administrative detention is classified. Arrests and detentions are often based on secret evidence, available only to the military court confirming the detention, denying the detainees and their lawyers’ access and the ability to contest the grounds of the detention.<sup>26</sup> Palestinian administrative detainees are often denied, given the rigid permit regime in Israel, their right to have contact, to correspond with and be visited by members of their families. They have regularly been held in prolonged incommunicado detention, prevented from communicating with their lawyers, and subjected to cruel, inhuman or degrading treatment, or even torture. This policy violates Israel obligations under international law. In its 2004 Resolution, the former United Nations Commission on Human Rights stated that: “prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture.”<sup>27</sup> The

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<sup>19</sup> Sections 78 - 78D of Order in the Matter of Security Provisions (Military Order 378) (Judea and Samaria), 1970.

<sup>20</sup> *Concluding Observations of the Human Rights Committee on: Jordan*, CCPR/C/79/Add.35, A/49/40, paras. 226-244, and *Morocco*, CCPR/C/79/Add.44, para. 21

<sup>21</sup> *Concluding observations of the Human Rights Committee: Zambia*, CCPR/C/79/Add.62, para. 14.

<sup>22</sup> See Article 132 of the 4<sup>th</sup> Geneva Convention.

<sup>23</sup> Inter-American Commission of Human Rights, *Report on Terrorism and Human Rights*, OAS Doc. OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. 22 October 2002, para. 143.

<sup>24</sup> Articles 43 and 78 of the IV Geneva Convention.

<sup>25</sup> *ICRC Commentary to IV Geneva Convention* (ed. by Jean Pictet, ICRC, Geneva 1960), p. 260.

<sup>26</sup> See Article 72 of the IV Geneva Convention.

<sup>27</sup> UN Doc. E/CN.4Res.2004/41, adopted without vote on 19 April 2004, para. 8.

United Nations Special Rapporteur on Torture, recognizing that “torture is most frequently practiced during incommunicado detention,” has also called for such detention to be made illegal.<sup>28</sup>

Prolonged incommunicado detention was also extended to a new category of administrative detainees under the *Detention of Unlawful Combatants Law*.<sup>29</sup> The original law passed in 2002 allows ‘foreign nationals’ subsequently classified by Israel as “unlawful combatants” to be held in indefinite administrative detention without a trial until hostilities are over. Under this law, an ‘Unlawful combatant’ is a “person who took part in hostilities against the State of Israel, whether directly or indirectly, or who is a member of a force carrying out hostilities against the State of Israel, who does not satisfy the conditions granting a prisoner of war status under international humanitarian law, as set out in article 4 of the Third Geneva Convention of 12 August 1949 relative to the Treatment of Prisoners of War”. It is to be highlighted that there is no such distinction between “lawful” and “unlawful” combatants under the law of the war. IHL does not recognize any category of combatants as “unlawful”.

Amended in July 2008, the law now permits holding a detainee for up to 14 days before bringing him in front of a District Court judge to determine whether his status is that of an “unlawful combatant”, and can prevent the detainee from seeing a lawyer for up to 21 days. The amendment further establishes a military court of review and a military court of appeals to handle all procedures relating to “unlawful combatants” during periods of large-scale military operations between Israel and organizations to which “unlawful combatants” belong. Under international human rights law and jurisprudence, the decision to administratively detain a person or to renew the period of detention should always be subject to review by a civilian, independent and impartial judicial authority. The European Court of Human Rights and the Inter-American Commission on Human Rights have both stated that military judges cannot be considered independent and impartial because they are part of the hierarchy of the army.<sup>30</sup>

The ICJ is particularly concerned that under this *Detention of Unlawful Combatants Law*, Palestinians from the Gaza Strip, and from the West Bank,<sup>31</sup> may be held incommunicado and interrogated in total isolation for lengthy periods. During the last war in Gaza, a substantial number of Palestinians have been detained as “unlawful combatants” and illegally transferred for interrogation to Israel where they faced incommunicado detention. Local NGOs reported that many of these detainees – minors as well as adults, “were held for many hours – sometimes for days - in pits dug in the ground, exposed to bitter cold and harsh weather, handcuffed and blindfolded. These pits lacked basic sanitary facilities which would have allowed the detainees appropriate toilet facilities, while food and shelter, when provided, were limited, and the detainees went hungry.” Furthermore, “some of the detainees were held near tanks and in combat areas, in gross violation of international

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<sup>28</sup> UN Doc. E/CN.4/2002/76, 27 December 2001, Annex

<sup>29</sup> *Detention of Unlawful Combatants (Amendment and Temporary Provision) Law*, 2008, enacted 30 July 2008, available at: [http://www.knesset.gov.il/privatelaw/data/17/3/375\\_3\\_1.rtf](http://www.knesset.gov.il/privatelaw/data/17/3/375_3_1.rtf).), [accessed 17 March 2009]

<sup>30</sup> European Court of Human Rights, see *Findlay v. The United Kingdom*, judgment of the European Court of Human Rights of 25 February 1997, Series 1997-I and *Incal v. Turkey*, judgment of 9 June 1998, Series 1998-IV. Re Inter-American system, see Annual Report of Inter-American Commission on Human Rights 1997, OAS document OEA/Ser.L/V/II.98, Doc. 6, Chapter VII, Recommendation 1.

<sup>31</sup> The Supreme Court ruled that the law may not be applied to residents of Israel and left open the question of whether West Bank residents may be subjected to its provisions. Cr. App. 6659/06 *Anon v. State of Israel*, judgment of 11 June 2008, available at: [http://elyon1.court.gov.il/files\\_eng/06/590/066/n04/06066590.n04.htm](http://elyon1.court.gov.il/files_eng/06/590/066/n04/06066590.n04.htm) [accessed 17 March 2009]

*humanitarian law which prohibits holding prisoners and captives in areas exposed to danger.*"<sup>32</sup>

However, the Israeli Supreme Court delivered a decision on 11 June 2008 upholding the constitutionality of this law. The Court ruled that the purpose of the law was genuine and that it complied with IHL.<sup>33</sup> *"Like all protected human rights, the right to personal liberty is not absolute and a violation of the right is sometimes required in order to protect essential public interests,"* the Court stated. In such circumstances, *"the extent of the violation of the constitutional right to personal liberty is significant and even severe. Notwithstanding, the legislative purpose of removing 'unlawful combatants' from the cycle of hostilities in order to protect state security is essential in view of the reality of murderous terrorism that threatens the lives of the residents and citizens of the State of Israel,"*<sup>34</sup> the Court added.

The Court went further to legitimize the excessive use of the administrative detention under this law by contrast to criminal trials. *"As a rule, the use of the extreme measure of administrative detention is justified in circumstances where other measures, including holding a criminal trial, are impossible, because of the absence of sufficient admissible evidence or the impossibility of revealing privileged sources, or when holding a criminal trial does not provide a satisfactory solution to averting the threat presented to the security of the state in circumstances where after serving the sentence the person concerned is likely to become a security danger once again,"*<sup>35</sup> the Court concluded.

This ruling supported the excessive use of administrative detention, as a satisfactory solution to protect the "State's security", when there is insufficient secret evidence that the detainee constitutes a real threat to State's security, or when a criminal proceeding fails to eliminate the threat the detainee constitutes against the State's security. Thus, the judgment upholds the Israeli policy of indefinite administrative detention, and therefore violates Israel's obligation under IHL. The Fourth Geneva Convention, which Israel has ratified and is obliged to uphold, specifically stipulates that recourse to administrative detention may be used only when the security of the state makes it *"absolutely necessary"* (article 42) or for *"imperative reasons of security"* (article 78). Contrary to the judgment's conclusions, administrative detention cannot be used under IHL, indefinitely and consequently, as an alternative to criminal proceedings.

**The ICJ therefore calls on the Committee to urge the Government of Israel to:**

- xi) Abide by international humanitarian law and end the abusive use of the administrative detention;**
- xii) Review the policy of indefinite administrative detention, and ensure that any administrative detention is a time-limited exceptional measure that cannot be used, in any circumstances, as an alternative to criminal proceedings, or as a form of hostage-taking;**
- xiii) Ensure the conformity of the policy of administrative detention with article 16 of the Convention, and to that end, guarantee the rights of detainees to prompt access to legal assistance, and to have contact, to correspond with and be visited by, members of their families;**

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<sup>32</sup> Public Committee Against Torture in Israel, *"Israel held many Gaza prisoners in harsh and humiliating conditions and threatened their lives and their health"*, January 2009, available at: <http://www.stoptorture.org.il/en/node/1384> [accessed 17 March 2009]

<sup>33</sup> Criminal Appeal 6659/06, *A and B v. State of Israel*, judgment of 11 June 2008, available at: [http://elyon1.court.gov.il/files\\_eng/06/590/066/n04/06066590.n04.htm](http://elyon1.court.gov.il/files_eng/06/590/066/n04/06066590.n04.htm) [accessed 17 March 2009]

<sup>34</sup> *Ibid.*, para. 31

<sup>35</sup> *Ibid.*, para 33

- xiv) Guarantee the right of Palestinian detainees to be incarcerated within the Occupied Palestinian Territory (OPT);
- xv) End the practice of prolonged incommunicado detention that can in itself constitute a form of cruel, inhuman or degrading treatment or even torture;
- xvi) Ensure that all detainees, without exception, are brought promptly before a civilian, independent and impartial judicial authority, and are ensured prompt access to a lawyer;
- xvii) Ensure that the process leading to criminal prosecution of those arrested and detained on criminal charges must meet the international standards of; impartiality of investigation, fairness of procedures in prosecution and fundamental standards of fair trial, including access to legal counsel or other representatives;
- xviii) Immediately and unconditionally end the practice of holding children in administrative detention;
- xix) Revoke the detention of Unlawful Combatants Law, and guarantee those who are arrested under this law the protection that IHL provides for combatants;
- xx) Investigate in a prompt, transparent and independent manner the allegations of torture and ill-treatment of detainees held under the Unlawful Combatants Law and Military Orders 378 and 1226;
- xxi) Bring to justice those who carried out, ordered or acquiesced torture and ill-treatment and provide full reparation to victims of such acts.