public committee against

TORTURE

in israel

ACCOUNTABILITY STILL DENIED

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In December 2009, PCATI released the report entitled *Accountability Denied*,[1] which details the manner in which the Attorney General has systematically disregarded hundreds of complaints of torture and ill treatment submitted between 2001 and 2009. The report served to lay the groundwork for PCATI's subsequent legal and public advocacy efforts, which today focus on attacking the various institutional mechanisms that stand in the way of accountability and ultimately underlie the continued use of torture and ill treatment by the Israel Security Agency.[2]

This update offers an overview of the main issues, outlines PCATI's ongoing legal advocacy efforts aimed at tackling impunity, and evaluates policy developments since 2009.

BACKGROUND

Over 700 Complaints of Torture: Not a Single Criminal Investigation

Intense public debate in the aftermath of a series of revelations regarding ISA practices in the 1980s and 1990s, which had exposed an organizational culture of systematic torture, lies, an cover-ups, led to a decision to extend of the authority of the Police Investigations Department (PID) within the Ministry of Justice to include the investigation of offenses committed by ISA personnel in the context of the performance of their duties.

Whereas complaints relating to police conduct are filed directly with the PID, legal arrangements were put in place requiring that complaints against ISA employees be submitted to the Attorney General. This mechanism ultimately granted the Attorney General full discretion with regards to the decision to forward complaints of torture and ill-treatment for criminal investigation with the PID.

In practice, the Attorney General has delegated this authority to an official within the State Attorney's office, the Director of Special Tasks[3], who is not legally empowered to dictate the fate of complaints against the 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 employee** – in a formula which ultimately guarantees the absence of credible, independent investigations into complaints of torture and ill treatment.

While the IIC has the power to make inquiries within the Israel Security Agency, the documentation collected is classified and therefore unavailable to the complainants or their legal counsel. Complainants' testimonies are by the IIC during very brief and unannounced visits. It has been common practice for the IIC to falsely introduce himself as a representative of the Ministry of Justice, and complainants' testimonies have been taken under conditions that replicate the interrogation itself: in the very same rooms where ISA interrogations take place, and, in some instances, while the complainants have remained shackled for the duration of the meeting.

As an ISA agent, the IIC is an authority whose identity is shrouded in obscurity, whose independence is dubitable, and whose recommendations are one alone: the closing of every complaint without further criminal investigation. The Director of Special Tasks invariably accepts these recommendations fully and unquestioningly.

The result has **been the comprehensive closure of over 700 complaints of torture and ill-treatment since 2001** by an official who lacks proper authority to make these decisions, and on the basis of an entirely unacceptable procedure of inquiry.[4]

As part of its ongoing efforts to exhaust domestic legal remedies following complaints of torture handled by the organisation, in 2010 and 2011 PCATI's legal department filed petitions to the High Court of Justice on behalf of 14 victims of torture. Each of the petitioners in question were subjected to particularly grueling physical and psychological torture and/or ill treatment in the course of ISA interrogations - in all cases the closure of the victims' complaints have been rubberstamped following the IIC's preliminary inquiry.

It is worth noting that the majority of detainees who have reported torture or ill treatment to PCATI lawyers ultimately refuse to submit complaints to the authorities, citing lack of trust in official mechanisms of investigation or fear of reprisals.

Between 2001 and 2010, **701 complaints of torture and ill treatment** were received and processed by the Inspector of Interrogee Complaints.
Not one of these complaints has led to a criminal investigation.

2001: 65 complaints
2002: 81 complaints
2003: 127 complaints
2004: 115 complaints
2005: 64 complaints
2006: 67 complaints
2007: 50 complaints
2008: 29 complaints
2009: 52 complaints
2010: 51 complaints

TWO IMPUNITY REGIMES

Based on an analysis of correspondence received by PCATI from the Director of Sepcial Tasks since 2005, the grounds provided for the closure of complaints of torture and ill treatment, in their vast majority, fall into one of two main categories: either **denial** or justification under the **necessity defense** doctrine. We see these as the two main policies standing in the way of ISA accountability today.

Denial

In the majority of cases, responses from the legal authorities consist simply of a denial of the facts, using boilerplate formulations such as: "There is no basis for your complaint". Sometimes, these statements are accompanied by a brief explanation.

The case of Jihad Mughrabi, who was detained and subsequently interrogated by the ISA in April and again in August 2008, offers an illustration of the policy of denial. In the course of the second round of interrogations, Mughrabi was taken to an undisclosed location outside the

prison in which he was being held, where he was interrogated by ISA agents and brutally beaten. Mughrabi was subsequently treated by medical professionals on the scene and at Laniado Hospital in Netanya, where doctors documented the wounds resulting from the attack,[5] described in his sworn affidavit as follows:

"*I tried to cover my face in order to protect it from their blows. They struck me with their fists and kicked me in the legs. I was lying on my side covering my face with my hands and my arms. They also struck me with their guns, with the butts of their guns, with the wide back portion of the gun. They used the guns in this way to strike my head and also my body. At times I felt very faint, they saw I was fainting all the time. I felt that I lost consciousness. […] I was bleeding profusely from the head, and also from my mouth. There were cuts on my face as a result of their punches. For the first few days afterwards, I could not swallow because of the pain*."[6]

In March 2011, independent forensic experts who examined Mughrabi concluded: "The sources of evidence [physical and psychological examinations] are consistent with the torture and ill-treatment which Mughrabi claims to have suffered", and "Mughrabi suffers from chronic pain and major depression as a result of the alleged abuse."[7]

In a reply dated 21 March 2011, over **two and a half years after the complaint was submitted** by PCATI on Mughrabi's behalf, the legal authorities informed PCATI that "The inquiry shows clearly that the complainant was the one who violently attacked the security personnel of the ISA. […] Your detailed complaint and the complainant's account of events to the IIC are inconsistent with the inquiry forms and should therefore be rejected. Under the circumstances, I have decided to close the complaint."[8] As is typical for this type of response, no documentation or additional information was provided to corroborate the claims of the ISA. Further, even if those claims were to be proven true and Mughrabi had indeed attacked the ISA employees, the alleged need to subdue an unarmed detainee cannot justify the brutality of the beating inflicted upon him, evidenced by the wounds documented by Laniado Hospital staff as well as independent forensic experts.

Official correspondence in Jihad Mughrabi's case reveals how, under the policy of denial, the burden of proof is shifted to the victim, whose version of the events is deemed inconsistent with those of the ISA, and thereby automatically assumed to be false. In the absence of video or audio recordings of interrogations, from which the ISA is exempt, the interrogators' account cannot be independently verified. Nevertheless, wherever inconsistencies arise, the legal authorities invariably decide in favor of the interrogators, closing the complaint without further investigation.

High Court of Justice Petition on Impunity

In addressing the policy of denial, PCATI has focused on the intersections between Israeli and international law, leveraging the sharp critique which was leveled against Israel by the Committee Against Torture (2009) and the Human Rights Committee (2010) on the issue of impunity, combined with in-depth research into domestic legal arrangements and practices and

international jurisprudence to undermine, in Israeli courts, the impunity regimes that allow perpetrators to continue to go unpunished.

At the core of these efforts is a major High Court of Justice petition filed in February 2011, which challenges the Attorney General's comprehensive referral of complaints of torture to the IIC. Its main arguments consist of the following:

- By law, the Attorney General must refer all complaints of torture to *either* the PID or the Police. The Director of Special Tasks does not have the authority to dismiss complaints of torture and ill treatment, nor to create a mechanism by which a preliminary internal inquiry becomes an automatic stage in the complaints procedure.
- There is an inherent absurdity in the implicit requirement for additional evidence: the authorities operate under an assumption that, where there is no additional evidence to support a complaint, the decision is, invariably, that there is no basis to investigate the allegations of torture. However, torture is almost always an "evidence free" crime. This creates a situation in which a complaint of torture can almost never be the subject of a criminal investigation.
- Finally, the Attorney General's actions are in violation of the duty to investigate all complaints of torture, as established under international law. In this respect, the current mechanisms fail to live up to international norms for the conduct of prompt, thorough and impartial investigations, and the suspension of suspects of alleged perpetrators from their duties.

Justification under the 'Necessity Defense' policy

A second type of response, used by the authorities in the closure of approximately 15 per cent of PCATI complaints since 2003, can be categorized under the *necessity defense* doctrine. Reaffirmed by the landmark High Court of Justice ruling of 1999, which banned most of the methods of torture brought before it, the necessity defense doctrine establishes that ISA agents who employed means of interrogations including physical force in order to prevent tangible danger - the "ticking bomb" [9] scenario - may, under the appropriate circumstances, invoke the necessity defense if brought to trial. The court ruling establishes that the necessity defense does not constitute a general *a priori* authorization for the use of "physical means" of interrogation. At the same time, however, it created deliberate legal ambiguity by empowering the Attorney General to devise guidelines for the treatment of "ticking bomb" cases.[10]

These guidelines, issued by the Attorney General in 1999, have since served as the basis for *de facto* approval of methods of interrogation amounting to torture and ill treatment in such cases,[11] thereby granting ISA interrogators exemption from prosecution.

The authorities' responses in accordance with the necessity defense policy do not explicitly refer to the legal doctrine itself, however, they generally make allusion to a "ticking bomb" scenario and indicate that, given the seriousness of the allegations against the complainant in question, the interrogation methods used by the ISA were justified.

In a recent example, a letter from the Director Special Tasks in response to a complaint submitted by PCATI states that one of the reasons for the arrest of the complainant was "the suspicion, based on intelligence information, of his involvement in the planning of a 'stock' of Hamas attacks, which could be executed at any given time." The letter goes on to state that the IIC inquiry has concluded that "No basis was found upon which to pursue legal or administrative action against the interrogators."

As is typical for responses under the 'necessity defense' regime, the Director of Special Tasks does not deny the factual basis of the complaint – indeed, in this specific example PCATI is informed that "Nonetheless, it should be noted that the inquiries that were made into this complaint and others, with regard to specific points, resulted in lessons learnt, including changes in the operating procedures." [12] Even upon an implicit admission of the allegations, the complaint does not lead to a criminal investigation because the IIC determines that the treatment of the complainant was *approved*, i.e. conducted in accordance with regulations under the necessity defense doctrine.

The Necessity Defense and the Duty to Investigate

International law is unequivocal in declaring the absolute prohibition of torture and states' duty to investigate alleged acts of torture. Article 12 of the Convention Against Torture, to which Israel is a party, outlines the requirements for **effective** and **impartial** investigations. The Human Rights Committee has gone further to emphasize that the duty is to open a **criminal investigation**.[13]

It is PCATI's position that the necessity defense does not nullify Israel's duty to conduct an investigation in accordance with international standards wherever there are reasonable grounds to believe that torture has been committed, and that the High Court of Justice ruling of 1999 did not intend to grant interrogators an *a priori* exemption from investigation and trial. In addition, it is worth pointing out that, on a theoretical level at least, the position of the Israeli legal authorities coincide with those of PCATI in instances where interrogation methods amount to *torture*, as there is agreement that the Attorney General's guidelines on the application of the necessity defense in such cases do not apply. In practice, however, authorities are availing themselves of the doctrine to secure yet another shield of impunity to ISA interrogators.

In a pre-petition letter addressed to the Attorney General in September 2011, PCATI challenges the decision to close complaints of torture in cases that fall under the above description of the necessity defense policy – i.e. where the factual basis of the complaints had not been denied, and it was implied that the detainees in question was considered a "ticking bomb". The facts in the cases selected relate to particularly brutal treatment involving a combination of methods of physical torture which were applied to each of the complainants represented. The letter calls for the conduct of prompt, thorough and impartial investigations following any complaint of torture; and stresses that the requirement for an investigation is only strengthened in necessity defense cases, where the facts are not even disputed by the authorities.

The case of Mahmoud Sweiti

On 15 February 2011 PCATI filed a petition on behalf of Mahmoud Sweiti in a case in which the legal authorities and the ISA had admitted that ISA agents had acted in contravention of approved procedures when they staged a hoax intended to extract a confession from Sweiti by causing him to believe that his wife and father had been detained. In the words of Deputy Attorney General Raz Nizri, in correspondence with PCATI dated 11 July 2007:

"As a rule, in a situation when a family member of the detainee is not in detention, and there is no legal reason to detain him or her, it is not appropriate to make the interrogee believe the family member is under detention. These principles are accepted by the Attorney General and in our opinion they reflect the current law. In the face of these facts, and in the context of the specific matter of Mr. Sweiti, the subject of your complaint, it is agreed by the ISA and of course by the Attorney General that it is not appropriate to undertake an action which resulted in the staging of the detention of Sweiti's father."

As a result of the grossly unreasonable psychological pressure to which he was subjected, Sweiti made repeated attempts on his own life. A psychiatric evaluation conducted in 2007 revealed that the episode had caused him to suffer an "acute and extreme depressive reaction" as well as symptoms indicative of a "psychotic depressive condition".

In its response to the High Court Petition in this case, the State is disputing PCATI's demands for a criminal investigation, arguing that such a request should have been made when the case was first brought before the Court in 2007.

Sweiti's case demonstrates that even in the rare instances in which the ISA admits to the use of illegal methods of interrogation, the legal authorities fail in their duty to ensure a criminal investigation ensues.

SHIFTS IN POLICY?

Changes in the Preliminary Inquiry Mechanism – Mere Cosmetics

Following intensive legal and public advocacy efforts by PCATI, there are indications that a number of changes in the mechanism for examining interrogee complaints are now under way.

First and foremost, in November 2010 the Attorney General announced plans to transfer the IIC post from the Israel Security Agency to the Ministry of Justice. While this announcement was welcomed as a positive development towards dismantling a deeply flawed preliminary inquiry mechanism, it nonetheless left a number of critical questions unanswered.

Since April 2011, PCATI has sought, through repeated requests under the Freedom of Information Law to obtain information relating to the announcement. Specifically, PCATI requested details regarding the entry into effect of the new policy; whether the serving IIC

"…[Attorney General Yehuda] Weinstein decided, with the agreement of Shin Bet head Yuval Diskin, that for "the sake of appearances" and in order to prevent the wagging of "loose tongues," and to increase public trust in the organization, the Shin Bet complaint examiner's office would become part of the Justice Ministry, and be severed from the Shin Bet."

Haaretz, 18 November 2010

has been replaced or if there are plans to make such personnel changes; whether a public tender for the position had been made public and where responsibility for recruitment would lie; who is responsible for his/her salary; who the IIC will report to; and whether the incoming IIC has ever been employed by the Israel Security Agency. The requests also demand clarifications as to the regulations governing the IIC's tasks and powers, and whether findings resulting from inquiries into complaints of torture will be made available to alleged victims.

These requests have been met with unjustified delays and bureaucratic stonewalling, as a result of which PCATI filed a petition demanding that the Court order the release of the requested information.[14]

On 25 October 2011, PCATI finally received formal notification from the Ministry of Justice confirming that the announced plans have not been implemented, and stating that "A principled decision was taken regarding the transfer of the IIC from the ISA to the Ministry of Justice. Subsequently, several discussions have taken place between the [relevant] authorities relating to budgetary and procedural matters. This issue has been prolonged due to our demand that, once transferred, the IIC be in a better position to meet obligations optimally. Additional steps are currently being taken towards formulating decisions, as a result of which we will have answers to all your questions, such as the selection process to fill the position, working procedures and methods of referral to the IIC. Once decisions are made on this issue, we will share this information with you."[15]

Based on official statements by senior government officials who have continued to publicly defend the existing mechanism, the decision to relocate the IIC from the ISA to the Ministry of Justice was made in order to assuage mounting international scrutiny and an *appearance*[16] of impropriety. This goes to suggest that the planned changes – which have yet to be implemented – are merely cosmetic and not reflective of a genuine interest in bringing accountability to the ISA.

PCATI's extensive inquiries confirm that, over a year since they were declared, the changes consist of little more than an announcement to the press. To this day, the official charged with examining complaints of torture against his own colleagues in the ISA continues to deem these unworthy of criminal investigation, with the unquestioning endorsement of the Israeli legal authorities including the Attorney General.

Changes in official correspondence: a sign of increased accountability?

Over the past two years, PCATI has noted a number of changes in the State's correspondence regarding allegations of torture and ill treatment. Following the arrival of a new Director of Special Tasks, complaints of torture and/or ill treatment submitted to the Attorney General have received replies which point to a slight shift in the phrasing and terminology used in official communications. Letters informing PCATI of the closure of complaints are now typically one to one and a half pages in length; and provide brief elaborations on the IIC findings leading to each complaint closure.

Notably, during 2011 PCATI received two faxed communications directly from the IIC, in response to two complaints submitted by the organisation to the Attorney General. In both cases, the letters were signed merely 'the IIC' and a first name - without further indication as to the official's identity, or a letterhead attributing the reply to any governmental institution. Neither of the letters provided substantive information relating to the complaints in question.

Overall, these developments point to an apparent departure from the terse and formulaic answers received by PCATI in the past, and reveal a certain level of deliberation behind each reply which was patently lacking in previous communications relating to allegations of torture and ill treatment. While this may indicate an increased formal responsiveness to PCATI's legal and public advocacy efforts, it should nonetheless be noted that the changes have not resulted in any visible, substantive steps towards increased accountability. PCATI is still awaiting responses to over a dozen complaints submitted between 2004 and 2010, and it remains a fact that complaints of torture are systematically and invariably closed as a result of the inquiry mechanism in place.

The Duty to Investigate – Deputy State Prosecutor's Testimony before the Turkel Commission

The most detailed available declarations on the State's current stance with regards to accountability in the ISA can be found in the testimony of Deputy State Prosecutor Shai Nitzan before the Public Commission to Examine the Maritime Incident of 31 May 2010 ("*The Turkel Commission*").

In his defense of the preliminary inquiry mechanism under the IIC, Nitzan dismisses the complainants, who in their vast majority are Palestinian security detainees, as "interested parties" with a "basic resentment against the State of Israel", and who therefore stand to benefit from submitting frivolous complaints. He points to these factors in justifying the need for a preliminary inquiry in every single complaint against ISA interrogators – an argument which has already been rejected by the Human Rights Committee.[17] Furthermore, in addressing the absence of criminal investigations into the conduct of ISA interrogators, and the systematic closure of complaints by the IIC, Shai Nitzan states that "many times those who file complaints are interrogees who confessed, during interrogation, to committing security offenses against the State of Israel."[18]

These remarks are telling insofar as they shed light on the attitudes held by the Deputy State Prosecutor – a senior official who serves in a key capacity as a defender of the rule of law in Israel. Nitzan adopts an attitude of off-hand dismissal of the Palestinian complainants as suspects; his remarks disregard the possibility that confessions may have been made under duress; and suggest that the confession of a crime in and of itself undermines the credibility of a complaint against an ISA interrogator.

Questioned by Turkel Commission members, the Deputy State Prosecutor attempts to justify the absence of criminal investigations against ISA interrogators by repeatedly underscoring the following main points: i) preliminary inquiries conducted by the IIC, he claims, are thorough and should therefore be seen as de facto criminal investigations; ii) the absence of either external

Concluding Observations of the UN Human Rights Committee, 2010:

"The Committee is further concerned that the Inspector for complaints against the Israel Security Agency (ISA) interrogators is a staff member of the ISA and that, despite supervision by the Ministry of Justice and examination of the Inspector's decisions by the Attorney General and the State Attorney, no complaint has been criminally investigated during the reporting period. […] The State party should ensure that **all alleged cases of torture, cruel, inhuman or degrading treatment and disproportionate use of force by law-enforcement officials, including police, personnel of the security service and of the armed forces, are thoroughly and promptly investigated by an authority independent of any of these organs, that those found guilty are punished** with sentences that are commensurate with the gravity of the offence, and that compensation is provided to the victims or their families."

Excerpt of recommendations of the UN Committee against Torture, 2009:

"The Committee reiterates its previous recommendation that a crime of torture as defined in article 1 of the Convention be incorporated into the domestic law of Israel."[…]

"The Committee reiterates its previous recommendation that the State party completely remove *necessity* as a possible justification for the crime of torture." […]

"The State party should duly investigate all allegations of torture and ill-treatment by creating a fully independent and impartial mechanism outside the ISA." […]

"The Committee recommends that, as a matter of priority, the State party extend the legal requirement of video recording of interviews of detainees accused of security offenses as a further means to prevent torture and ill-treatment."

witnesses, video or audio recordings of ISA interrogations render complaints of torture a case of the word of the complainant against that of the ISA interrogator; and iii) there is rarely medical evidence available or other positive findings supporting the complainants' allegations.

Nitzan's rationale for the closure of complaints fails to address three crucial issues. First, is the fact that preliminary inquiries by the IIC cannot, under Israeli law, comprehensively replace criminal investigations and do not fulfill international standards for the conduct of investigations into allegations of torture. Nor do they address the fact that the Director of Special Tasks is not empowered by law to determine the fate of a complaint in alleged cases of torture.

Secondly, the absence of witnesses in an interrogation room may contribute to the difficulties in determining the facts of a case but cannot determine a decision to close a complaint – on the contrary, the role of a criminal investigation would be to attempt to shed light on those facts.

Finally, while methods of interrogation that amount to torture and ill treatment do not always leave visible physical wounds, research conducted by PCATI suggests that Israeli Prison Service medical personnel fail to adequately document and report cases of torture and ill treatment, and in many cases long periods of incommunicado detention bar victims from access to independent medical evaluations until lesions are healed.[19]

ISA interrogations are exempt from audio or visual documentation; interrogation facilities are not accessible to the Red Cross; and prolonged incommunicado detention prevents access to legal counsel and independent medical treatment. Security detainees consequently undergo interrogation under circumstances that place them in the hands of an agency in which a culture of lies and cover-ups has

been repeatedly exposed, but which nonetheless is allowed to operate almost entirely without scrutiny. In the face of these facts, Shai Nitzan's attempts to justify existing inquiry procedures are entirely unacceptable.

CONCLUSIONS AND RECOMMENDATIONS

A number of developments since the release of *Accountability Denied* point to an awareness among policy makers that the mechanisms protecting ISA interrogators and allowing the continued use of torture and ill treatment in interrogations are becoming increasingly untenable.

However, in the absence of substantive changes, and in light of the continued, comprehensive closure of complaints of torture and ill treatment, there is a risk that cosmetic amendments to the current system merely result in strengthened, increasingly sophisticated safeguards for perpetrators.

To date, the law enforcement system in Israel and the Attorney General at its helm, have failed to live up to the demands placed upon them by Israeli and international law to adequately investigate suspects of torture and ill treatment. Accordingly, PCATI's recommendations remain as follows:

- In any case of torture or abuse, whether raised in a complaint or in any other manner, a criminal investigation is to be opened immediately. The Attorney General cannot be granted discretion in this matter.
- The criminal investigation must be fair, substantive, and independent and must be undertaken by an external and independent body whose promotion, organizational affiliation, and salary are not connected to the subject of the investigation.
- The investigation must maintain clear and transparent criteria. It must 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 must be published.
- The complainant must receive all the material 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 must be allowed to submit an effective appeal against the decision.
- The obligation to open an investigation obviates the need for a preliminary examination. In any case, preliminary inquiries cannot be undertaken by an organ of the body that is the subject of the investigation. Accordingly, the institution of the IIC should be abolished. If the ISA wishes to examine itself it may do so, as may any other body, by means of its internal auditor.
- Action must be taken to ensure the effective documentation of all interrogations. The exclusion of ISA interrogations from the rule requiring the videotaping of interrogations must be nullified immediately. The documentation must be transparent and accessible, at least, to the interrogees and their representatives.

- In accordance with Israel's undertakings in the Convention Against Torture, and given the moral gravity of the offense of torture, torture should be defined explicitly as offenses under law.
- A system of inspections should be anchored in law, including unannounced inspections, of detention and prison facilities, to be conducted by a Knesset committee, government bodies, human rights organizations and other NGOs.
- The State of Israel should sign and ratify the Optional Protocol to the UN Convention against Torture and thereby permit external monitoring mechanisms, both Israeli and international, for all incarceration, imprisonment, and interrogation facilities, without exception.

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[1] PCATI report: ***Accountability Denied: The Absence of Investigation and Punishment of Torture in Israel*** (December 2009).
[2] Note on terminology and translation: The *Sherut haBitachon haKlali*, officially known as the Israel Security Agency, is also commonly referred to in English as the General Security Service, or by its Hebrew acronym *Shin Bet*.
[3] The Director of Special Tasks generally carries out the function of "Supervisor of the Inspector of Interrogee Complaints".
[4] Data provided to the Public Committee Against Torture in Israel and B'tselem by the Ministry of Justice.
[5] Mughrabi was treated at Laniado Hospital on 6 August 2008, medical files obtained by PCATI confirm he was treated for "laceration of scalp and contusion of chest".
[6] Sworn affidavit by Jihad Mughrabi before a PCATI attorney dated August 11, 2008.
[7] Forensic medical and psychiatric evaluation conducted by Sidsel Rogde, MD, PhD, Professor of Forensic Medicine, University of Oslo, Norway; and Jim Jaranson, MD, MA, MPH, Senior Clinical Advisory Group, International Rehabilitation Council for Torture Victims (IRCT) and Adjunct Faculty Member, University of Minnesota School of Public Health.
[8] Letter addressed to PCATI from Adv. Rachel Matar, Supervisor of the IIC, State Prosecutor's Office, 21 March 2011.
[9] The 'ticking bomb' term as defined in the 1999 High Court of Justice ruling on torture relates to the immediacy of the act and not the immediacy of the danger; such that a ticking bomb scenario applies also if the information purportedly held by the interrogee relates to an event that will only occur in several days or weeks, as long as there is no possibility to prevent the actualization of the event in another manner.
[10] High Court of Justice 5100/94 Public Committee Against Torture in Israel v Government of Israel, *Piskei Din* 53(4)817. See paras. 34, 35, 38.
[11] Interestingly, the framework itself states that these exemptions do not apply to the use of torture, but rather, to the use of "physical means" of interrogation. *ISA Interrogators and the Defense of Necessity, A Framework for the Discretion of the Attorney General* (Following the HCJ Ruling), Letter no. 99-04-12582 dated 28 October 1999.
[12] A gag order on this case prevents us from revealing further details as to the victim's identity or the circumstances of his arrest and detention.
[13] Human Rights Committee, Mohammed Alzery v. Sweden, UN Doc. CCPR/C/88/D/1416/2005, (HRC), 10 November 2006, para. 11.7.
[14] PCATI has agreed to the withdrawal of this court petition, following the October 25 communication from the Ministry of Justice and a commitment from the state that all administrative costs incurred by PCATI would be reimbursed. It is worth noting that the Ministry of Justice holds primary responsibility for the implementation of the Freedom of Information Law in Israel. Its disregard for the law, and for the public's right to access information on the machinery of government in matters relating to the ISA, is an astonishing phenomenon in and of itself.
[15] Letter addressed to the PCATI from Adv. Dan Eldad, Director of Special Tasks Department, State Prosecutor's Office, 25 October 2011.
[16] Deputy State Prosecutor Shai Nitzan's testimony before the Turkel Commission, 10.04.2011 http://turkel-committee.gov.il/content-127-b.html (Hebrew).
[17] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant: Israel, UN Doc. CCPR/C/ISR/CO/3, para.12.
[18] Testimony by Deputy State Prosecutor Shai Nitzan before the Turkel Commission, 10.04.2011 (Hebrew).
[19] The topic of Physicians' involvement in torture and ill treatment in Israel is the subject of joint report by PCATI and Physicians for Human Rights-Israel: ***Doctoring the Evidence, Abandoning the Victim: The Involvement of Medical Professionals in Torture and Ill Treatment in Israel*** (October 2011).