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Response of the Law Professors' Forum for Democracy to the Reports of Abuse of Detainees and an Unusual Number of Detainee Deaths under Unclear Circumstances

Reports of abuse in military detention facilities, as well as of an unusual number of detainee deaths—where it is unclear whether the circumstances of their deaths were investigated—require thorough investigation and, where necessary, the immediate correction of the treatment of detainees. According to reports by news agencies, as well as Israeli, Palestinian, and international human rights organizations, since the outbreak of the war in October 2023, Palestinian detainees held in Israel and the West Bank (including CNN reports) have been subjected to inhumane conditions and severe abuse by guards and soldiers.

Reports have documented harsh abuse, beatings with batons, attacks by dogs, sexualized assaults and humiliations, sleep and food deprivation, and detention in unsanitary conditions. Additionally, there have been reports of Palestinian detainees who died while in custody.

There is no dispute that, in wartime, the detention of Palestinian detainees—including Hamas operatives who participated in the horrific October 7 massacre—is a complex and challenging task. Some restrictions on detainees' rights may be justified due to various circumstances. However, the legislature has already addressed these special needs and enacted a series of temporary emergency provisions—for example, allowing more crowded detention conditions, extending detention periods, and prolonging the denial of access to legal counsel. Beyond what the legislature has authorized, it is not permissible to infringe upon detainees' rights. There is an absolute legal prohibition—and no justification or security benefit—in abusing detainees or engaging in cruelty for its own sake.

The reports of abuse and deaths in custody raise serious suspicions of torture, cruel treatment, and in some cases severe physical harm. These acts may amount to crimes against humanity and war crimes, and also constitute serious criminal offenses under Israeli law.

In light of these reports of severe violence, law enforcement authorities have a legal duty to immediately initiate investigations into the deaths and the abuse allegations. Moreover, strict oversight and monitoring of detention conditions is required. The general policy being implemented must be made public and its legality examined. Failure to initiate immediate investigations and the lack of official publication of the policy in effect may lead to international proceedings against Israel and may severely harm the State of Israel.

It must be emphasized that Hamas's cruel and inhuman treatment of Israeli hostages does not justify breaches of Israel's legal obligations with respect to the detainees in its custody. The existing legal rules in Israel apply to law enforcement authorities even when the opposing side does not act similarly. Abuse, cruelty, and unjustified violence against detainees severely damage Israel's core values, the rule of law, the duty to respect human rights, and the international standing of the State of Israel.

A public service accustomed to the unchecked use of force will struggle to act lawfully and with restraint toward other populations as well—including Israeli citizens.

The Forum calls on the Israel Prison Service, the military, other security agencies, and the Attorney General to act immediately to end the abuse of detainees, and on state authorities to launch investigations into the reported incidents.