LAW - The Palestinian Society for the Protection of Human Rights and the Environment

The Public Committee against Torture In Israel (PCATI)

The World Organisation Against Torture (OMCT)

Comments on the Third Periodic Report of the State of Israel Concerning the Implementation of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[1]

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[1] Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Third periodic reports of States parties due in 2000, Addendum: Israel. CAT/54/Add.1, February 2001. Hereafter: the report.

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Then [GSS interrogator]"Martin" assaulted me - he grabbed my shirt on both sides and started pulling and pushing me backwards and forwards forcefully. The force of the shaking would send me flying towards the wall which was behind me, and my head would bang against the wall. He yelled at me: "whore, bitch, I'll fucking break you, you're interested in an intimate conversation so that you'd start talking..." The female soldier present was very frightened by what she saw; she covered her face with her hands and hid it between her knees. As a result of what happened, I suffered very strong headaches, dizziness, and was about to faint. Then "Martin" told the other interrogators who were present in the room: "Take her to hospital so that she doesn't die on us here."

From the affidavit of Muna 'Obeid, a woman, age 30, interrogated in Petah-Tikvah police detention centre by the GSS August-September 2001.[2]

Sometimes the [GSS] interrogators would get up and stand on the leg shackles, and I would feel excruciating pain. In addition, the interrogators would seat me on a chair with my back not in the direction of the backrest, and one of them would pull me backwards until my head reached the floor, and I felt that my neck was about to break from all the pain.
... The same interrogator [Abu Medhat] would sometimes place his hand around my neck and choke me forcefully and intensely to the point where I could barely drink water, and I felt terrible pains.
My interrogation continued for crazy [long] hours, while I was in shackles and sitting on a wooden chair. Sometimes I would feel total weakness and fall off the chair...
...During the second week, I remember that I slept once for a few hours, and that was it.

From the affidavit of Nasser 'Ayyad, interrogated in Shikmah prison by the GSS January-March 2001

They ordered me to go outside, despite the freezing cold. One of them came close to me, grabbed my shirt and poured cold water on me. Afterwards he forced me to undress and I remained in my short-sleeved shirt and they continued to pour freezing water on my head. Afterwards he approached me and tore my pants, and also forced me to drag a wooden beam while I was handcuffed with my hands behind me and while I was dragging, one of them would get up on the beam, and when I got tired and dropped it, I was beaten hard.
I was transferred to the interrogations room, I was trembling all over, barely able to speak, and they ordered me to stand near the turned-on air conditioner for about 10 minutes. Afterwards they asked me "Do you have something to say?" and when I answered "No" they took me to the bathroom and one of the officers shouted "OK, we'll educate you, you asshole" and stuck my head into the toilet and flushed it.
Afterwards he brought me the Torah and said: "Kiss the Koran." I said to him "That is not a Koran" and then he screamed and began cursing our religion. I suffered heavy blows that caused me to faint.

From the affidavit of Rami Za'ul, age 16, interrogated in the 'Etzion' police temporary holding facility, October-November 2000.

[2] The excerpts here are taken from PCATI, *Flawed Defense: Torture and Ill-treatment in GSS Interrogations Following the Supreme Court Ruling 6 September 1999 – 6 September 2001*, Jerusalem, September 2001.

Executive Summary

Following are our comments on Israel's third periodic report to the UN Committee Against Torture (henceforth: the Committee), regarding its compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[3] In view of the different mandates of the three organisations whose views these comments represent, we will confine ourselves to issues pertaining to the treatment by the Israeli authorities of Palestinians from the Occupied Palestinian Territories.

These comments consist of three parts summarised immediately below. Two annexes have also been submitted addressing the issues of : torture and ill-treatment of children; and the policy of closure, house demolitions and devastation of agricultural land under article 16 of the Convention.

At the outset we would like to emphasise that all Israeli practices discussed here are squarely within Israel's jurisdiction, under Article 5(1)(a) of the Convention, or Article 5(1)(b), or both.

Part One includes information, sadly lacking in Israel's report, about current Israeli practices relevant to its obligations under the Convention, especially the treatment of Palestinian detainees by Israel's General Security Service (GSS)[4] and other Israeli security forces, and policies facilitating such treatment.

LAW, PCATI and OMCT are deeply concerned that torture and other forms of ill-treatment are still widely used against Palestinian detainees, both in GSS interrogation facilities and by members of the Israeli army and police.

Even after the Supreme Court ruling in 1999, each month, dozens of Palestinians interrogated by the GSS are exposed, to one extent or another, to methods of torture and other ill-treatment.

Incommunicado detention, which often lasts for weeks and is authorised by military orders, both facilitates torture and other ill-treatment and forms an integral part thereof. It has been used against hundreds of Palestinians in the past two years. The Supreme Court has consistently allowed prolonged incommunicado detention to proceed, and has refused to examine the legal basis allowing for the practice, even in the case of children.

Methods of torture and other ill-treatment are routinely used by the GSS both in interrogation rooms and when detainees are placed in cells. Now as in the past, these methods work through an accumulation of pain and suffering inflicted by a combination

[3] Adopted by UN General Assembly resolution 39/46 of 10 December 1984. Hereafter: the Convention. "Other cruel, inhuman and degrading treatment or punishment" will be referred to as "other ill-treatment.'

[4] We are aware that Israel's report announces a new name for this body, i.e. "the Israel Security Agency (ISA)." However, this new name has not been used anywhere else, and Israeli official documents continue to refer to this body as the General Security Service, or GSS. It is therefore our impression that plans to change the name have either been abandoned or put on hold, and we will use the old name in these comments.

of techniques.

Interrogation room - routine methods:

- Sleep deprivation (often continued when a detainee is placed in a cell)
- Shackling to a chair in painful positions
- Beating, slapping and kicking
- Threats, curses and insults

Interrogation room - special methods (used in a smaller number of cases):

- Bending the body in contorted and extremely painful positions
- Intentional tightening of handcuffs
- Treading on shackles
- Applying pressure to various body parts
- Shaking the interrogee's body in various ways
- Forcing the interrogee to squat ("qambaz")
- Suffocating
- Other violent and degrading methods (ripping out hair, spitting, etc.)

Methods used in cells:

- Sleep deprivation
- Exposure to extreme heat and cold
- Prolonged and continuous exposure to artificial light
- Detention in inhuman and degrading conditions

The forces that detain Palestinians in the Occupied Territories – the Israeli army, the Border Police, and the Israel Police, and the various special units of each, often use physical and psychological violence, towards Palestinians during arrest. Similarly, interrogation of Palestinians not conducted by the GSS – i.e. by the Israeli army and the Israel Police, is often accompanied by violence and humiliation.

Palestinian detainees, including children, who were interrogated by Israel Police interrogators or held in police detention, were exposed to methods of torture and ill-treatment that included:

- beating, kicking and slapping
- exposure to cold, including pouring cold water (in the middle of winter) on detainees
- forcing detainees to drag heavy poles
- smashing detainees' heads against the wall
- curses and insults, including those of a sexual and religious nature

In arresting Palestinians, Israeli soldiers and police use disposable plastic handcuffs (termed in Hebrew *"azikonim"*), which often cause swelling, cuts in the skin, and intense pain.

Part Two includes an analysis of the ruling by the Israeli Supreme Court, sitting as High Court of Justice, in *HCJ 5100/94 The Public Committee Against Torture in Israel v. The Government of Israel et al.* (henceforth: Supreme Court ruling, or HCJ ruling) and Israel's interpretation of that ruling, as illustrated in its report, in relation to the relevant provisions of the Convention.

LAW, PCATI and OMCT believe that Israel's contention that the Landau methods did not constitute torture or even other ill-treatment, in the face of an unequivocal international legal opinion to the contrary, and following the ruling which described them as causing "real pain and suffering," shows a basic misunderstanding of crucial provisions of the Convention – articles 1 and 16 - and is cause for grave concern, in its legal as well as its practical implications.

The Supreme Court ruling itself, while being a significant step in the right direction, falls far short of the Convention's requirements:

- It allows prolonged shackling and sleep deprivation, and while neither must, under the ruling be used as means of interrogative pressure, this vague caveat has been used by the GSS to torture and otherwise ill-treat Palestinian detainees;
- It allows GSS agents to apply torture ("physical means of interrogation)" in extreme ("ticking bomb") situations. The torturing interrogators may later plead the 'defence of necessity' and be exempt from criminal liability *ex post factum.* This is in stark contradiction of the absolute and unconditional prohibition of torture under the Convention.

The result of which is that, even under the Supreme Court ruling, *it is still legal to torture in Israel*, albeit in extreme circumstances 'only.'

Part Three includes comments on two other issues raised by Israel in its report:

- Legislation: despite the Committee's repeated recommendations, no steps have been taken to criminalise torture in Israel. Constitutional provisions concerning physical integrity and dignity may be derogated from in emergency situation. Criminal legal provisions on oppression, use of force, blackmail etc. do not follow the Article 1(1) definition, and, as stated, torturers may be exempt from criminal liability in "ticking bomb" situations;
- Impunity: GSS interrogators enjoy full and unqualified impunity. Impunity is engineered by a combination of incommunicado detention; the isolation of interrogation facilities from the outside world; and a strictly internal investigation of complaints.
  All complaints of torture or other ill-treatment against GSS agents are "investigated" by a person who is a GSS agent himself. As a result not a single GSS agent has been criminally charged with torture or other ill-treatment for the last seven years.
  In the army and police, prosecutions have taken place in some cases, but these are few and far between, compared to the large number of complaints.

Main Recommendations

LAW, PCATI and OMCT call upon the Committee:

- to conclude that violations of Articles 1 and 16, in the form of torture and ill-treatment, are still widely practiced by GSS interrogators against Palestinian detainees, as well as, in less organised form, by Israeli army and police during arrest, interrogation and detention of Palestinians;

- to call for an immediate halt to all practices of torture and other ill-treatment;

- to call for an immediate cessation of the use by members of Israeli forces of disposable plastic handcuffs, to be replaced by humane means of restraint;

- to reiterate its recommendation that the provisions of the Convention be fully and unconditionally incorporated by legislation into Israeli law;

- to consider what further steps are necessary in view of Israel's consistent non-compliance and rejection of article 2(2) of the Convention, a provision which is a crucial part of its very object and purpose;

- to call upon Israel to urgently revise both its laws (military and civilian) and policies so that all detainees, without exception, are brought promptly before a judge, and are ensured prompt access to lawyers and families, in accordance with international legal standards;

- to address the issue of impunity, as it is an obvious incentive for the continued practice of torture and other ill-treatment by Israel, and an impediment to any steps to halt such practice;

- to call upon Israel to cease its practice of administrative detentions, which are in violation of Article 16 of the Convention.

Part One: Torture and Other Ill-Treatment by the Israeli Authorities (issues under articles 1 and 16 of the Convention)

LAW, PCATI and OMCT believe that the crucial question that a state party's report to the Committee should address is how detainees, prisoners and other persons over which state authorities have total power are treated in practice. Legal and administrative measures which may be in line with the Convention are of little use if these are not implemented in practice to prevent, stop and provide redress for torture and other ill-treatment.

It is therefore extremely disappointing that Israel's report contains very little information about the actual treatment of detainees and prisoners. We believe that this failure by Israel is clearly in non-compliance of the Committee's General Guidelines regarding states parties' reports,[5] a point which we hope the Committee will address. In Part One we will try to fill this void by supplying the relevant information ourselves, as regards Palestinian detainees.

The information below is based on a report published recently by the Public Committee Against Torture, ***Flawed Defense: Torture and Ill-treatment in GSS Interrogations Following the Supreme Court Ruling 6 September 1999 – 6 September 2001***, Jerusalem, September 2001 (henceforth: PCATI report). The report contains extensive excerpts from victims' sworn affidavits, testimonies and other documents, substantiating and illustrating the factual description made here. It is made available to members of the Committee alongside these comments. We would also like to refer Committee member to our two annexes which address the issues of: torture and other ill-treatment of children; and that of the policy of closures, house demolitions and devastation of agricultural land under article 16 of the Convention.

1. Torture and other ill-treatment in GSS Interrogation facilities

The PCATI report estimates that each month, dozens of Palestinians interrogated by the GSS are exposed, to one extent or another, to methods of torture and other ill-treatment.[6] GSS interrogators cut the detainees off from the outside world (incommunicado detention), exhaust them, inflict pain upon them, frighten and humiliate them. This is achieved through a combination of the following: sleep

[5] General Guidelines Regarding the Form and Contents of Periodic Reports to be Submitted by States Parties Under Article 19, Paragraph 1, of the Convention, U.N. Doc. C/14/Rev. 1 [1998]. Adopted by the Committee at its 85th meeting (sixth session) on 30 April 1991 and revised at its 318th meeting (twentieth session) on 18 May 1998. Israel has similarly ignored other parts of the Guidelines, such as following the order of the Convention's articles (para. 3).

[6] According to data provided by the Israel Prison Service (IPS) to an Israeli NGO, B'Tselem (see: www.btselem.org), the number of Palestinians 'detained for interrogation' in IPS prisons was 37 on 3 January 2001, 41 on 8 February, 44 on 5 March, 42 on 4 April, 44 on 8 May, 39 on 10 June and 45 on 11 July. Only one GSS interrogation facility is located within an IPS prison (Shikmah). The Israeli Police have not provided B'Tselem with similar information regarding its own detention centres, within which the other three GSS interrogation facilities are located. At any given month, the number of Palestinians interrogated by the GSS may well be in the hundreds. Complaints by interrogees of torture and other ill-treatment are commonplace, and the estimate here is therefore a conservative one.

deprivation in various forms; prolonged shackling in painful positions; slapping, hitting and kicking; exposure to extreme heat and cold; threats, curses and insults; complete isolation from the outside world for days and weeks; and detention under inhuman and degrading conditions. These methods are detailed below.

In addition, GSS interrogators have in some cases used other methods, including forcing the detainee to squat in the "frog position" ("qambaz"), shackling him in contorted and extremely painful positions, shaking the body in various ways, applying painful pressure to various body parts, etc. These methods are detailed below.

a. Incommunicado Detention as a Means of Ill-treatment

The provisions of article 78 of the Security Regulations Order, issued by the Israeli military commanders in the Occupied Palestinian Territories, grant a policeman with the rank of officer the authority to detain a Palestinian for up to eight days prior to bringing him or her (henceforth the male gender will be used) before a judge. These provisions also grant a military judge the authority to extend the detention by three periods of up to 30 days, and allow a military judge in a military appeals court to add up to three additional months to this period.

At the same time, the official "in charge of the interrogation" is authorized to deprive the detainee of his right to meet with his attorney for a period of up to 15 days; an "approving authority" may extend this period by 15 additional days; the military judge may extend it for additional periods of up to 30 days each time, for a total of up to three months; the president on-duty at the military appeals court has the authority to extend it (at the request of the State Attorney) to a period of up to thirty additional days. In total, a resident of the Occupied Territories can therefore be held for six months under detention order, without the right to meeting with his or her attorney.

The authority to deprive detainees of their basic human right to contact with their families, to legal counsel, and to legal scrutiny for prolonged periods, which the military orders intended, presumably, for extreme cases, is in practice used routinely *vis-a-vis* Palestinian detainees under GSS interrogation. From the beginning of the al-Aqsa Intifada, at the end of September 2000 through the end of August 2001, PCATI processed the cases of hundreds of Palestinian detainees subjected to GSS interrogation and whose right to meet with their attorney was denied for days and weeks. The overall number is even higher, as many others contacted other human rights organizations or attorneys.

Unfortunately, the Supreme Court is a full participant in this glaring violation of basic human rights. The justices of the Court often try to reach an arrangement or compromise between the parties, such as an agreement not to renew the order preventing detainees from meeting with their attorneys, and sometimes, during the trial, recommend the cancellation of the order. However**, during the past two years the Court has not acquiesced to a single one of the hundreds of petitions submitted by attorneys on behalf of human rights organizations or independently that such an order be annulled**. The routine and laconic response of the Court justices to such petitions is usually a variation of the following: "We are convinced that preventing a meeting between the petitioner and his attorney is necessary for the interrogation to

continue, as well as for the security of the area."[7]

The Supreme Court was not even deterred from leaving a detained 17-year-old Palestinian child incommunicado for three weeks.[8] In another case, the Court went so far as to even refuse to order the GSS to inform a Palestinian detainee that an order had been issued against him preventing him from meeting with his attorney, and this, too, "for reasons of State security."[9] If it is not enough that in Israel it is not required to apprise detainees of their rights, as is the practice in most democratic countries – even informing the detainee that they are **denying him** his rights constitutes, according to the Supreme Court, harm to the security of the State.

Needless to say, visits by family members of Palestinians under GSS interrogation is an extremely rare occurrence.

LAW, PCATI and OMCT have no doubt that one of the goals of denying these rights is to place emotional pressure on detainees. In specific reference to the policy of incommunicado detention of Palestinian detainees in Israel, the UN Special Rapporteur on Torture, Prof. Sir Nigel Rodley, states explicitly in a report he submitted this year (2001) to the Commission on Human Rights, and following statements by that Commission,[10] that,

> … the Government continues to detain persons incommunicado for exorbitant periods, **itself a practice constituting cruel, inhuman or degrading treatment**…[11][our emphasis]

We believe that in light of the above, and in view of the fact that Israel's methods of torture and other ill-treatment, now as in the past, work through an accumulation of pain and suffering inflicted by a combination of techniques, incommunicado detention of Palestinians should be viewed not only as a means of facilitating torture and other ill-treatment, but as part and parcel of torture and other ill-treatment at the hands of Israeli authorities.

LAW, PCATI and OMCT urge the Committee to recommend that Israel urgently revise both its laws (military and civilian) and practices so that all detainees, without exception, are brought promptly before a judge, and are ensured prompt access to lawyers and families, in accordance with international legal standards.

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[7] Quoted from *HCJ 5129/00 Muhammad 'Abd al-'Aziz v. General Security Service et al.*, decision of 19 July 2000. Compare, for example, with *HCJ 1229/01 Nasser Mas'ud 'Ayyad and the Public Committee Against Torture in Israel v. General Security Service*, decision of 23 July 2000.

[8] *HCJ 5242 Muhammad Ibrahim Huhammad al-Matur and the Public Committee Against Torture in Israel v. Erez Military Court*, decision of 15 February 2000.

[9] *HCJ 2000 801, Bassam Natshe and the Public Committee Against Torture in Israel v. General Security Service*, decision of 1 February 2000, p. 2

[10] See for instance, U.N. Doc. E/CN.4/RES/1998/38,17 April 1998, para. 5; U.N. Doc. E/CN.4/RES/1999/32, 23 April 1999, para. 5; U.N. Doc. E/CN.4/RES/2000/43, 20 April 2000, para. 7.

[11] U.N. Doc. E/CN.4/2001/66, 25 January 2001, para. 665

b. Arenas of Torture and Ill-Treatment (1): The Interrogation Room

Following the HCJ ruling, the GSS was forced to shut down the corridor arena, where exhaustion and pain were inflicted, the usual location for "waiting" (the GSS and State Attorney's Office's code name for the interrogation method that combined sleep deprivation, sitting or standing in painful positions, covering the head with a foul smelling sack, and playing loud music non-stop). This arena was moved, however, with the restrictions and adjustments imposed on the GSS by the ruling, to the interrogation room. This was made possible, to a certain extent, by the cracks and openings in the HCJ ruling, and particularly the legitimacy that the ruling granted to sleep deprivation and shackling the detainee during interrogation (see below, in Part Two). However, the GSS has gone beyond what the Supreme Court permitted.

The Supreme Court explicitly prohibited the routine use of torture methods used previously in the interrogation room: violent shaking, forcing the detainee to squat ("qambaz"), and the use of a small, tilted chair. In response, the GSS implemented adjustments and changes, yet managed to find ways of deliberately inflicting pain and suffering on detainees during interrogation, in complete contravention both of the Convention and of the HCJ ruling.

In the interrogation rooms, certain methods of torture and other ill-treatment are routinely used by the GSS, while others are applied in more rare situations.

Routine Methods:

- Sleep deprivation (often continued in cells – see below)
- Shackling to a chair in painful positions
- Beating, slapping and kicking
- Threats, curses and insults

Special Methods:

- Bending the body in contorted and extremely painful positions
- Intentional tightening of handcuffs
- Treading on shackles
- Applying pressure to various body parts
- Shaking the interrogee's body in various ways
- Forcing the interrogee to squat ("qambaz")
- Suffocating
- Other violent and degrading methods (ripping out hair, spitting, etc.)

Routine Methods – Details

1. Sleep deprivation

The Supreme Court ruled that "prolonged" interrogation, involving sleep deprivation is permitted only on the condition that the lack of sleep is a "side effect" of the interrogation and not a means employed "for the purpose of tiring him out or "breaking" him" (para. 31 of the ruling).

The GSS has ignored this condition, and uses various methods that deprive detainees of sleep as a means of pressuring them during their interrogation.

The GSS holds Palestinian interrogees, as a matter of routine, shackled to a chair in the interrogation room for long and contiguous periods, excepting short pauses for meals, and sometimes pauses (even shorter ones) for using the toilet.

The study conducted by PCATI revealed that shackling detainees in the interrogation rooms for 15 and even 20 hours a day, for a number of consecutive days, is a matter of routine.[12] On more than a few occasions, detainees have been shackled in the interrogation rooms for more protracted periods – for a number of consecutive days.[13] As detailed below, various means of sleep deprivation are also employed in the isolation cells.

In most if not all of the cases, these protracted periods are not used fully for the purpose that they were ostensibly intended – i.e. for questioning interrogees regarding information they may possess. The interrogators sometimes "spend" hours in idle conversation; repeat the same exact question over and over, sometimes for many hours; and in many cases do not speak with the interrogees and even leave the interrogation room for hours, while ensuring that the interrogee will not be permitted to sleep while they are gone.

The "protracted interrogations" are therefore intended, first and foremost, to "kill time" while the detainee becomes increasingly tired – that is, to exhaust the interrogee and "break" him, in contravention even of the HCJ ruling.

2. Shackling to a chair in painful positions

Following the HCJ ruling, small, forward-leaning chairs are no longer used, nor are hoods and loud music. However, the GSS still has interrogees sit for many hours, sometimes for a number of consecutive days (with the exception of short breaks for meals, and even shorter breaks for going to the toilet), on an ordinary-sized or low, unupholstered wooden or metal chair (although they no longer use a tilted child's chair), with their hands shackled behind their backs in handcuffs linked to the chair using an additional handcuff.

The chairs are not particularly comfortable even for sitting 'normally' for short periods. However, Palestinian detainees sit on such chairs for long periods, with no possibility of even changing positions, let alone a stretching break, leading sooner or later to pains in the back, arms, shoulders, or all of the above. The shackles are not designed for prolonged tying, and even when they are not tightened intentionally, the prolonged handcuffing eventually leads to pain and swelling in the wrist.

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[12] See for instance the affidavits or testimonies of Thabet 'Asi, Kamel 'Awwad, Muhammad Farjallah and Da'ud Shawish in the *PCATI Report*, Part Two.

[13] See for instance the affidavits or testimonies of 'Adnan al-Hajjar, Muhammad Abu Daher and Nasser 'Ayyad, *ibid.*

Statements from witnesses confirm that shackling detainees causes them suffering and pain, and is in contravention of the HCJ ruling, which stipulated explicitly that "cuffing causing pain is prohibited" (para. 26).[14] It is similarly clear that painful shackling is in violation of the Convention, as it is used to apply pressure on the interrogee, in conjunction with other methods of pressure.

The conclusion that shackling is designed for pressure rather than 'security' is not unique to NGOs. Magistrates court justice Haim Lahovitzki reached the same conclusion, commenting as follows at the end of his decision regarding extending the detention of Jihad Shuman:

> As an aside, let the following be said: The Respondent claims, through his attorney, that even today, during his interrogations, his interrogators regularly shackle him with his hands behind his back. Regarding the question of Attorney Tsemel to the police representative on this matter, the latter responded that it was done for reasons of his [Shuman's] interrogators' security. **I tend to doubt this argument...**[15] [Our emphasis.]

The Supreme Court itself, in a manner similar to justice Lahovitzki, had commented in its ruling that "there are other ways of preventing the suspect from fleeing from legal custody which do not involve causing the suspect pain and suffering." (para. 26). The fact that the GSS chose to disregard these comments and to stand by the use of shackles also bears witness that the aim of shackling should be sought in the realm of torture and other ill-treatment, rather than in the realm of security.

3. Beating, slapping and kicking

During the "interrogation," GSS interrogators often beat detainees, slap them on the face, kick them and employ other violent means – all with various degrees of intensity. NGOs defending Palestinian detainees believe that the use of these means has increased during the period following the HCJ ruling, and particularly during the al-Aqsa Intifada.

4. Threats, curses and insults

This method was used routinely prior to the HCJ ruling as well. While the Supreme Court ruled that "a reasonable investigation is necessarily one free of… cruel, inhuman treatment of the subject and free of any degrading handling whatsoever," (para. 23 of the ruling), and it is clear that these means fall under at least one of those categories, the ruling did not relate specifically to these means, and in all likelihood the GSS believes that this fact gives a 'green light' to their continued use.

The curses, threats and humiliations are often of a racist or sexual nature. The interrogators, who supposedly represent the law of the State of Israel, threaten interrogees that they will perpetrate acts against them or their families (usually women) that are considered serious criminal offences, such as rape. In many cases, they threaten

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[14] See for instance the affidavits or testimonies of Kamel 'Obeid, Shadi al-'Isawwi, Muhammad Abu Daher and Nasser 'Ayyad, *ibid.*

[15] Jerusalem Magistrates court, before Justice Haim Lahovitzki, *M 007453/01, Regarding Israel Police v. Shuman Jihad*, 2 February 2001, p. 9 of the decision.

to perpetrate acts against interrogees or their families that are prohibited by international law but acceptable in Israel, such as protracted and arbitrary administrative detention, or extra-judicial execution (referred to in Israel has "elimination," "interception," "focused prevention," etc.).[16]

c. Arenas of Torture and Ill-Treatment (2): The Isolation Cells

The isolation cells are located outside the GSS interrogation wings; that is, they are nominally under the jurisdiction of the police or the Israel Prison Service. Detainees under interrogation ostensibly rest there, therefore, far from the heavy hand of the GSS interrogators.

Yet the GSS has unbounded control over all handling of Palestinian detainees, even when they are in the isolation cell, a situation which has not changed following the HCJ ruling. Statements by Palestinian detainees have consistently shown that the police and jail guards are instructed, by GSS agents, regarding the extent to which an interrogee is allowed to sleep, regarding the length of meal breaks, regarding the prevailing temperatures in the cell (in some of the cases the GSS apparently has computerized control over cell temperatures) and even regarding the time for showering and changing clothes. Each of these aspects is enlisted in the service of increasing the suffering of Palestinian detainees. The methods identified in the PCATI study are:

- Sleep deprivation
- Exposure to extreme head and cold
- Prolonged and continuous exposure to artificial light
- Detention in inhuman and degrading conditions

1. Sleep deprivation

Practically speaking, all the means detailed below 'contribute' to one extent or another to disturbing the sleep of interrogees. In addition, the wardens actively prevent interrogees from sleeping, by knocking forcefully on the door of the isolation cell, shouting loudly, or waking the interrogee, supposedly in order to offer him food, a shower or cigarettes.

2. Exposure to extreme heat and cold

In the isolation cells where Palestinian interrogees are held, there is no natural ventilation. Air is streamed into the cell through vents that are part of a centralized air conditioning system.[17] GSS agents take advantage of this situation. Apparently it is they – and not the police or jail guards – who control the air conditioning system, and use it in order to stream into the cells, when they deem fit, extremely hot or freezing cold air.

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[16] See for instance the affidavits or testimonies of Muna 'Obeid, Da'ud Shawish and Jihad Shuman, *PCATI Report*, Part Two. In the case of Nasser 'Ayyad (for which see *ibid.*), a threat to "liquidate" his father was actually carried out.

[17] See letter by attorney Talia Sasson, Head of the Special Tasks Division in the State Attorney's Office to Hannah Friedman, Executive Director of PCATI, 26 June 2000, para. 3.

3. Continuous exposure to artificial light

In the isolation cells where Palestinian interrogees are held, the light is on day and night. In two cases, interrogees referred in their affidavits to the use of red light bulbs, which cause sight disturbances and headaches.[18]

4. Detention in inhuman and degrading conditions

We acknowledge that use of the term "methods" for rotten food or a cell with putrid toilet facilities seems, at first glance, questionable. The explanation for this is that human rights NGOs, as well as many other organisations and institutions, including courts, have for many years objected to and protested against the horrid conditions in which Palestinian detainees are held, but with little effect. Since Israel is not a poor country, the continued gross neglect of this topic can only be understood as an intentional act.

Interrogees have not been allowed to shower for several days on end, and forced to remain in the clothes in which they were detained for even longer periods. They have been held in a cell, in which there is a toilet in the form of a hole in the floor, with no real separation between it and the rest of the cell, and it is in these filthy and putrid isolation cells that they have slept and even eaten. The food has been described as horrible, as has been the way in which it is served. In sum, the Palestinian interrogees have been held in places unsuitable for human dwelling, and not treated in a manner that human beings deserve.[19]

* * *

LAW, PCATI and OMCT strongly urge the Committee to conclude that violations of Articles 1 and 16, in the form of torture and other ill-treatment, are still widely committed by GSS interrogators against Palestinian detainees. In the context of clarifying the facts we believe that two points should be borne in mind:

- such torture and ill-treatment are often practiced while detainees are being held incommunicado
- no impartial investigations of detainees' complaints are carried out (see below, in Part Three)

Under these circumstances, the burden of proof as to a state party's responsibility for torture and other ill-treatment must rest with that state. It is rests upon Israel to prove that the numerous complaints of torture and other ill-treatment inflicted by its officials are unfounded. This has been the view both of the U.N. Special Rapporteur on Torture[20] and of the Committee itself in response to previous claims made by Israel.[21]

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[18] See the affidavits of Shadi Ghanem and Muhammad Abu Daher, *PCATI Report*, Part Two.

[19] See for instance the affidavits or testimonies of Walis Abu Khdeir, 'Abd a-Rahman al-Ahmar and Hassan Khater, *ibid.*

[20] See U.N. Doc. A/56/156, 3 July 2001, para 34:

> ...the Special Rapporteur has been increasingly advocating, for the purposes of establishing

2. Torture and Ill-treatment by Other Authorities: IDF, Border Police, Regular Police

The forces that detain Palestinians in the Occupied Territories – the Israeli army, the Border Police, and the Israel Police, and the various special units of each, often use physical and psychological violence towards Palestinians during arrest. Similarly, interrogation of Palestinians not conducted by the GSS – i.e. by the IDF and the Israel Police, is often accompanied by violence and humiliation.

From the moment a person is under the control of the police or army and is no longer physically resisting this control, any use of violence against this person is absolutely prohibited under international law, any force used is excessive force and constitutes ill-treatment or torture.

However, such violence **after** the arrest has been completed, that cannot be justified in any way, is used in a many of the cases in which Palestinians are detained in the Occupied Territories.

It is worth noting that the overwhelming majority of Palestinian detainees have complained of the use of disposable handcuffs (termed in Hebrew *"azikonim"*), made of flexible but hard plastic, that can be tightened but not loosened, which the soldiers and police use to bind detainees' hands and sometimes their legs. These plastic handcuffs often cause swelling, cuts in the skin, and intense pain. The requests – and sometimes begging – of the detainees to replace the handcuffs with looser ones are often met with refusal and derision. Beating, kicking, slapping, curses and humiliation are commonplace during the arrest of Palestinians.[22]

Palestinian detainees, including children, who were interrogated by Israel Police interrogators or held in police detention, were exposed to methods of torture and other ill-treatment that included:

- beating, kicking and slapping
- exposure to cold, including pouring cold water (in the middle of winter) on detainees
- forcing detainees to drag heavy poles
- smashing detainees' heads against the wall
- curses and insults, including those of a sexual and religious nature

Some investigations into detainees' complaints have taken place, but these have been few and far between.

State responsibility, a reversal of the burden of proof in relation to allegations of torture where prolonged incommunicado detention persists.

[21] U.N. Doc. A/53/44, para. 239(c).

[22] See for instance the affidavits and testimonies of Muhammad Abu Daher, Walid Abu Khdeir, Salim Muhammad Salim, Ramzi Taysir Damiri and Rami Yasser Za'ul, *PCATI Report, Appendix B, Torture of Palestinian Minors at the Gush Etzion Police Station* Information Sheet, B'Tselem July 2001; *In Broad Daylight: Abuse of Palestinians by IDF soldiers on July 23, 2001*, Case Study No. 12, B'Tselem, July 2001.

LAW, PCATI and OMCT strongly urge the Committee to conclude that violations of Articles 1 and 16, in the form of torture and other ill-treatment, are widely committed by Israel soldiers and police. We believe that the Committee should call upon Israel to take all necessary measures to put an end to such practices. In addition, we strongly recommend that the Committee also call for an immediate cessation of the use by members of Israeli forces of disposable plastic handcuffs, to be replaced by humane means of restraint.

Part Two: The Supreme Court Ruling and Israel's Interpretation thereof (issues under articles 1, 2 and 4 of the Convention)

LAW, PCATI and OMCT acknowledge that the Supreme Court ruling, which came as a result of a long and vigorous struggle by human rights organisations and independent lawyers, aided by strong statements from U.N. bodies (not least by the Committee), was a significant step in the right direction. The ruling put an end to permitted and authorized mass and routine torture, limited the authority of GSS interrogators in interrogation (or the means of interrogation at their disposal), and largely limited, at least in theory, the field of play within which GSS interrogators can torture and ill-treat Palestinian detainees.

Nevertheless, the ruling falls far short of fulfilling Israel's international legal obligations in general, and its obligations under the Convention in particular.

1. Issues under Article 1 – Torture

a. Israel's interpretation of the Article 1(1) definition of torture

It is both astonishing and deeply worrying that after two sets of unequivocal conclusions and recommendations by the Committee,[23] as well as several by the UN Special Rapporteur on Torture,[24] and the ruling against the Israeli government by its own Supreme Court, Israel's report still maintains that,

> …the methods which had been employed in investigations by Israel's security service (referred to as the "Landau Rules"), do not constitute torture or cruel, inhuman or degrading treatment and do not violate the provisions of the Convention. (paragraph 49 of the report).

This claim is based on one sole fact, namely that the Supreme Court "did not reject the arguments of the State that such interrogation methods did not constitute torture or cruel, inhuman or degrading treatment and do not violate the Convention" (para. 50 of the report). This argument is dubious even at first glance, as it ignores the fact that the Court similarly "did not reject" the petitioners' claim that the methods *did* constitute torture under the Convention.

More importantly, the Court made two points in this respect:

1. That, in the Court's words,

> [A] reasonable investigation is necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever. (para. 23)

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[23] Concluding observations of the Committee against Torture: Israel. 09/05/97. U.N. Doc. A/52/44, paras. 253-260, see esp. para. 257; Concluding observations of the Committee against Torture: Israel. 18/05/98. U.N. Doc. A/53/44, paras. 232-242, see esp. para. 240.

[24] U.N. Doc. E/CN.4/1997/7, 10 January 1997, para. 121; U.N. Doc. E/CN.4/1998/38, 24 December 1997, para. 121; U.N. Doc. E/CN/1999/61, 12 January 1999, para. 394.

2. That the Landau methods,

> … do not fall within the sphere of a "fair" interrogation. *They are not reasonable.* They impinge upon the suspect's dignity, his bodily integrity and his basic rights in an excessive manner (or beyond what is necessary). They are not to be deemed as included within the general power to conduct interrogations." (para. 27)[25] [our emphasis]

In this context, the Court referred to the various Landau methods using terms such as "harms the suspect's body… violates his dignity… a violent method" (para. 24 – re. violent shaking); "prohibited," "degrading" (para. 25 – re. "qambaz"); and described them as causing "real pain and suffering" (para. 27 – re. "Shabach") and even "particular pain and suffering" (para. 30 – re. "Shabach").[26]

How Israel has surmised from all of the above that it can cite the Supreme Court ruling in support of its contention that these methods did not amount to torture or ill-treatment is beyond us.

The problem is not merely one of gross misinterpretation of a domestic court ruling, but has a direct effect on Israel's present, and possibly future position vis-à-vis the Convention. The position presented in Israel's report amounts to claiming that "real" and "particular" pain and suffering may be intentionally inflicted upon a detainee by agents of the state without the state breaching the Convention's prohibition on torture and other ill-treatment.

We believe that this position reflects not merely a non-compliance, but a basic misunderstanding, if not a deliberate misreading, by a state of the very object and purpose of an international agreement to which it is party, a point which, we hope, the Committee will address.

b. Allowing sleep deprivation and shackling

In its concluding observations on Israel's special report in 1997, the Committee listed "restraining in very painful conditions" and "sleep deprivation for prolonged periods," as two of the methods which constitute ill-treatment and torture.[27]

While the Supreme Court did limit the use of sleep deprivation and shackling, and in practice disqualified them as methods of interrogation, it did allow their continued use under certain limitations. Regarding sleep deprivation, the Court ruled that "prolonged" interrogation is allowed, even if it involves sleep deprivation, on the condition that lack of sleep is a "side effect" of an interrogation and not a means employed "for the purpose

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[25] This statement is made concerning the "Shabach" methods, described in para. 26 as "cuffing of the suspect, seating him on a low chair, covering his head with an opaque sack (head covering) and playing powerfully loud music in the area." Similar statements are made regarding the other Landau methods.

[26] Note that any mention, in the Court's ruling, of 'pain and suffering' is omitted from the State's report

[27] 1997 Concluding Observations, U.N. Doc. A/52/44, para. 257.

of tiring him out or 'breaking' him. (para. 31 of the ruling).

Regarding shackling, the Supreme Court ruled that interrogators are authorised to use this method, "but only for the purpose of preserving the investigators' safety." In contrast, "cuffing causing pain is prohibited" (para. 26 of the ruling).

Yet given the poor record of the GSS in all that involves turning "security measures" into methods of torture, the ruling is wanting in that it fails to place clear and firm limitations on the use of these practices. The Court failed in that it refrained from fixing, at the very least, minimum periods of rest and sleep which must not be denied under any circumstances, and which ensure that the detainee's physical and mental health is not harmed, whether intentionally or as a "side effect;" ordering measures to ensure that "cuffing" indeed does not cause pain and suffering; and ordering that monitoring mechanisms be placed to ensure that the Court's orders are strictly adhered to.

The result of the ruling in these matters in practice, as detailed above (in Part One), is that the GSS holds people in the interrogation rooms for many hours, sometimes days, while they are shackled to a chair. The explanation offered by the State Attorney's Office is, for example:

> The manner and form of his interrogation derive from the assessment of security officials, according to which your client harbors even today information that can enable the foiling of [terrorist] attacks in the near future... regarding your claims about his shackling during his interrogation – this arises solely from the need to assure the security of the interrogators...[28]

The style is almost identical to that previously assumed by the State Attorney's Office in response to claims raised by interrogees and their attorneys regarding the "shabeh" method. As explained above (in Part One), sleep deprivation and prolonged, painful shackling, have been turned by the GSS into means of torture and other ill-treatment *par excellence*, in stark contravention of the Convention's provisions, as well as the HCJ ruling. Yet because GSS interrogators are protected, (see below, Part Three) in a shroud of isolation and disconnection from the outside world, and the person sent by the State Attorney's Office to investigate individual complaints against them is no less than a GSS agent himself, the result is that the word of the detainee, perceived as a "terrorist," claiming that he was tortured, is again, as in the days prior to the Supreme Court ruling, pitted against that of the GSS agents, perceived as the State's dedicated guardians, according to whom shackling and sleep deprivation are only "side effects" and "security measures."

Consequently, sleep deprivation and prolonged, painful shackling are used by the GSS to torture and otherwise ill-treat Palestinian detainees with impunity.

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[28] Letter of Attorney Shai Nitzan, Official in Charge of Security Matters in the State Attorney's Office, to Attorney Andre Rosenthal, on the matter of "Arguments Regarding Interrogation Methods Used Against Nasser 'Ayyad," 20 March 2001, paras. "a" and "b."

2. Issues under Articles 2(1) and 4 – Measures to Prevent Torture and to Criminalise it

Since outlining its Concluding Observations on Israel's initial report in 1994, the Committee has consistently made statements to the effect that it "regrets the clear failure [by Israel] to implement the definition of torture as contained in article 1 of the Convention,"[29] and recommended that "[T]he provisions of the Convention should be incorporated by legislation into Israeli law, particularly the definition of torture contained in article 1 of the Convention."[30] Such conclusions and recommendations, consistent with the Committee's approach to states parties reporting to it,[31] are particularly important in a 'dualist' state like Israel, where international agreements only become law through elaborate acts of Parliament, and even more so in states, like Israel, with a long history of torture.

Israel, for its part, has consistently ignored the Committee's recommendations in this respect, claiming, as it does in its present report, that "all acts of torture, as defined in Article 1 of the Convention, are criminal offenses under Israeli law" (para. 38???) and that, moreover, its Basic Law: Human Dignity and Liberty adds a constitutional guarantee to such legislation.[32]

The fact that the Supreme Court opted not to state explicitly that the Landau methods amount to torture under Article 1 of the Convention is highly regrettable, and we believe that the Court's failure in this respect should be addressed by the Committee. No less importantly, the fact that the Court *had the option* of avoiding this issue, as domestic laws do not oblige the Court to address it, clearly illustrates that the Convention in general, and Article 1 in particular, have *not* become part of Israeli law, in contravention of the State Party's obligation under Article 2(1) and of the Committee's repeated recommendations.

LAW, PCATI and OMCT call upon the Committee to reiterate its demand that Israel fully implement the Convention unto its domestic law. Unlike other countries, where the question of whether domestic legislation covers or does not cover the Article 1(1) definition may be merely a legal-theoretical issue, in the case of Israel it has far-reaching practical implications.

3. Issues under Article 2(2) – the Absolute Prohibition of Torture

While the Supreme Court prohibited the government from authorizing the GSS to

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[29] Consideration of reports submitted by States Parties under article 19 of the Convention: Israel, U.N. Doc. A/49/44, 28 April 1994, para. 166.

[30] 1998 Concluding Observations, U.N. Doc. A/53/44, para. 240(b). See similarly 1994 Concluding Observations, A/49/44, para. 170(a); 1997 Concluding Observations, A/52/44, para. 260(b).

[31] See for instance Concluding observations of the Committee against Torture: Austria, U.N. Doc. CAT/C/23/2, 12/11/99, para. 4(a), and see the Committee's recommendation, para. 5(a); Finland, U.N. Doc. CAT/C/23/3, 12/11/99, para. 4(a), and see the Committee's recommendation, para. 6(a); Kazakhstan. 17/05/2001. U.N. Doc. CAT/C/XXVI/Concl.7/Rev.1, para. 8(a); Sri Lanka, U.N. Doc. A/53/44, 19/5/98, recommendations, para. 254(a).

[32] See similarly U.N. Doc. CAT/C/33/Add.2/Rev.1, 18 February 1997, para. 2; U.N. Doc. CAT/C/33/Add.3, March 1998, para. 5.

torture or ill-treat detainees, ***it did not prohibit GSS interrogators from torturing or ill-treating detainees under all circumstances***, as strictly required by Article 2(2) of the Convention. The HCJ ruling states:

> We are prepared to assume that- although this matter is open to debate - ...the "necessity" defence is open to all, particularly an investigator, acting in an organizational capacity of the State in interrogations of that nature. Likewise, we are prepared to accept - although this matter is equally contentious- ...that the "necessity" exception is likely to arise in instances of "ticking time bombs", and that the immediate need ("necessary in an immediate manner" for the preservation of human life) refers to the imminent nature of the act rather than that of the danger. Hence, the imminence criteria is satisfied even if the bomb is set to explode in a few days, or perhaps even after a few weeks, provided the danger is certain to materialize and there is no alternative means of preventing its materialization... Consequently we are prepared to presume, as was held by the Inquiry [Landau] Commission's Report, that if a GSS investigator- who applied physical means of interrogation for the purpose of saving human life-is criminally indicted, the "necessity" defence is likely to be open to him in the appropriate circumstances... A long list of arguments, from both the fields of Ethics and Political Science, may be raised for and against the use of the "necessity" defence... This matter, however, has already been decided under Israeli law. Israel's Penal Law recognizes the "necessity" defence. (ruling, para. 34. References omitted.)

In other words, if a GSS interrogator were convinced that the case at hand qualified as a "ticking bomb" situation, which may stretch to "a few days, or perhaps even... a few weeks" prior to an expected attack, the law allows him to apply all of the "physical means of interrogation" that the Supreme Court generally prohibited in its ruling. The interrogator would then be allowed in law to apply methods which the Committee has explicitly defined as torture. After the fact, (see para. 38 of the ruling) his matter would be brought before the Attorney General, who would then decide if, in fact, the case were indeed a "ticking bomb" situation.[33] If so, the defence of "necessity" would be at the interrogator's disposal, and he would be exempt from criminal liability; if not – he would be tried, at which point he would also be able to invoke the "necessity" defence.

The sum of which is that, even under the Supreme Court ruling, in extreme situations ***it is still legal to torture in Israel.***

Since outlining its Concluding Observations on Israel's initial report in 1994, the Committee has consistently addressed this serious issue. In 1994 it stated that,

> It is a matter of deep concern that Israeli law pertaining to the defences of "superior orders" and "necessity" are in clear breach of that country's obligations under article 2 of the Convention.[34]

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[33] Israel's State Attorney General, Dr. Eliyakim Rubinstein, indeed composed and even published a document containing the principles according to which he would guide himself in such cases. See State Attorney General, *GSS Interrogations and the Necessity Defence – Framework for Attorney General's Deliberation (following the HCJ ruling),* Jerusalem, 28 October 1999.

[34] U.N. Doc. A/49/44, 28 April 1994, para. 16p.

In response to Israel's special report the Committee stated in 1997:

> The Committee acknowledges the terrible dilemma that Israel confronts in dealing with terrorist threats to its security, but as a State party to the Convention Israel is precluded from raising before this Committee exceptional circumstances as justification for acts prohibited by article 1 of the Convention. This is plainly expressed in article 2 of the Convention.[35]

In response to Israel's second periodical report in 1998, the Committee expressed concern about,

> [T]he continued use of the "Landau rules" of interrogation permitting physical pressure by the General Security Services, based as they are upon domestic judicial adoption of the justification of necessity, a justification which is contrary to article 2, paragraph 2, of the Convention;[36]

These concerns, like others, have been ignored by the State Party, in this case by its Supreme Court as well. While the scope of the authority of GSS agents to torture and otherwise ill-treat detainees has been reduced by the ruling, it has not been abolished altogether, and a legal situation still exists in Israel which constitutes a grave breach of its obligations under Article 2(2) of the Convention.

LAW, PCATI and OMCT believe that the Committee should consider what further steps are necessary in view of Israel's consistent rejection of this crucial provision.

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[35] 1997 Concluding Observations, U.N. Doc. A/52/44, para. 258.

[36] 1998 Concluding Observations, U.N. Doc. A/53/44, para. 238(a).

Part Three: Other Issues Raised by the State's Report (issues under articles 2(1), 2(3), 4, 11, 14, and 16 of the Convention)

1. Issues under Articles 2(1) and 4 – Measures to Prevent Torture and to Criminalise it

As noted, Israel has in its report reiterated its previous position that its Basic Law: Human Dignity and Liberty and various provisions in its criminal law prohibit all acts of torture and other ill-treatment as required by the Convention.

In response, LAW, PCATI and OMCT would like to remind the Committee that: these same constitutional and criminal law provisions existed before the Supreme Court ruling, and that these provisions were considered by this Committee to be inadequate, in particular as regards the definition of torture contained in article 1.[37] More importantly, in practice, in spite of the existence of these provisions torture was nevertheless systematically practiced against many thousands of Palestinian detainees for many years.

In addition, we would like to bring to the Committee's attention the following facts:

a. Basic Law: Human Dignity and Liberty

The report fails to mention that this Law contains two derogation clauses. Derogations could be made either,

> … by a law fitting the values of the State of Israel, designed for a proper purpose, and to an extent no greater than required, or by and to an extent no greater than required, or by regulation enacted by virtue of express authorization in such law.[38]

Or through "emergency regulations,"

> … when a state of emergency exists, by virtue of a declaration under section 9 of the Law and Administration Ordinance, 5708-1948, emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than required.[39]

It should be noted that such "state of emergency" has existed in Israel since its inception.

Unlike constitutional provisions in other states parties, the Basic Law fails to make provisions for the absolute prohibition on the violation of non-derogable human rights as agreed by the international community. Arguably, limiting the violations to those "by

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[37] Concluding observations of the Committee against Torture: Israel, 18 May 1998, U.N. Doc. A/53/44, para. 240 (b).
[38] Section 8 (Violation of Rights).
[39] *Ibid*, Section 12 (Stability).

a law fitting the values of the State of Israel," or "for a period and extent no greater than required" at least affords the courts a way to enforce such prohibition. However, in view of the Supreme Court's *qualified* prohibition of torture, through its acceptance of the applicability of the "defence of necessity" for torture in extreme situations, the protection under the Basic Law of non-derogable human rights in general, and of freedom from torture and other ill-treatment in particular, is still very much wanting.

In sum, as Israeli law now stands, Basic Law: Human Dignity and Liberty does not afford sufficient protection against torture.

b. Criminal legislation:

The above is true of the various criminal law provisions cited in Israel's report: they would all, under the Supreme Court ruling, give way to the "defence of necessity" wherever an interrogator has tortured a detainee in a suspected "ticking bomb" situation.

Since Israel presented its 2nd periodic report there has been no new legislation relevant to the problem of torture. The "legislative developments" cited by the current report (paras. 33 to 39) are a mere reiteration of claims from previous ones, citing the same legal provisions. Steps for amending the Penal Code so as to make torture a distinct, punishable offence had been halted even before that earlier report.

In reporting to the Committee, many states parties have referred to the particular obligation that their anti-torture legislation, required under Arts. 2(1) and 4, is also consistent with the provisions of Article 2(2), citing constitutional and criminal legal provisions which guarantee that the prohibition on torture applies under all circumstances.[40]

The Committee, for its part, has also referred to this issue in its Concluding Observations, criticising states parties [41] or praising them,[42] as the case may be, for the way their legislation has addressed their obligations under this provision. It is obvious that Israel has not complied with the Convention's provisions under these articles.

In view of the above, LAW, PCATI and OMCT strongly recommend that the Committee conclude that it cannot support any anti-torture legislation in Israel, as long as the latter fails to incorporate explicitly the provisions of Article 2(2) of the Convention into its domestic law, making torture and other ill-treatment absolutely prohibited. In practical legal terms this should mean that no justificatory defences would ever be available in law to persons accused of torture or other ill-treatment.

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[40] See for instance Cuba's initial report, 18 June 1997, U.N. Doc. CAT/C/32/Add.2, para. 28; the Czech Republic's initial report, 20 May 1994, U.N. Doc. CAT/C/21/Add.2, para. 36; France's 2nd periodic report, 8 October 1997, U.N. Doc. CAT/C/17/Add.18, para. 17; Namibia's initial report, 27 January 1997, U.N. Doc. CAT/C/28/Add.2, para. 3; Paraguay's 2nd periodic report, 16 December 1996, U.N. Doc. CAT/C/29/Add.1, paras. 17, 21; Sri Lanka's initial report, 21 November 1997 U.N. Doc. CAT/C/28/Add.3, para. 52.

[41] See for instance Concluding observations of the Committee against Torture: Canada. 22/11/2000. U.N. Doc. CAT/C/XXV/Concl.4, para. 5(h); United Kingdom of Great Britain and Northern Ireland. 17/11/98. U.N. Doc. A/54/44, para. 76(e).

[42] See for instance Concluding observations of the Committee against Torture: Namibia. 06/05/97. U.N. Doc. A/52/44, para 231; Paraguay. 02/05/97. U.N. Doc. A/52/44, para. 196.

Because of the potential damage that the acceptance of such legal reasoning might cause elsewhere, we further recommend that the Committee continue to view such incorporation as an integral part of **all** States Parties' obligations under the Convention.[43]

2. Impunity and Redress– issues under articles 2(1), 4, 11, 12, 13, 14, and 16 of the Convention

a. Impunity

The Convention obliges states parties, in the clearest of terms, to conduct "a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction" [Article 12] and to similarly investigate complaints by individuals [Art. 16] and cases of other ill-treatment [Art. 16(1)]. The Committee has consistently criticised stated for not complying with these obligations and recommended steps to end such non-compliance.[44]

Paras. 25-30 of Israel's report outlines what it calls "[C]omplaints Concerning Alleged Misconduct by Police Personnel or by Investigators of the Israel Security Agency," claiming that all complaints of torture and ill-treatment "are thoroughly investigated" (para. 25 of the report). Unfortunately, the truth is far from this: in practice GSS interrogators enjoy full and unqualified impunity. This impunity works through a combination of incommunicado detention (for which see above, in Part One); the isolation of interrogation facilities from the outside world; and a strictly internal investigation of complaints.

Incommunicado detention: The detainee's isolation from the outside world means that no complaints can be filed nor any investigation initiated before long days, and sometimes weeks, have passed since torture or other ill-treatment were first inflicted on him. As a result, 'real time' investigations are virtually impossible, allowing interrogators to cover their tracks, for instance by giving time for physical and psychological wounds to become less apparent before an independent physician can examine the victim. The latter's descriptions would also become less clear with the

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[43] Several States, *e.g.* Rumania and Australia, have indeed made such provisions in their law. In contrast, the construction of the British law against torture needs improvement, as it both lacks such provision and stipulates, *inter alia*, that "[I]t shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct." (Criminal Justice Act 1988 s 134/4). The Committee made it clear, after considering the UK's 3rd periodic report, that this and other provisions of the Act "appear to be in direct conflict with article 2 of the Convention." See Concluding observations of the Committee against Torture: United Kingdom of Great Britain and Northern Ireland. 17/11/98. U.N. Doc. A/54/44, para. 76(e).

[44] See for instance, recently: Concluding observations of the Committee against Torture: Belarus. 20/11/2000. U.N. Doc. CAT/C/XXV/Concl.2/Rev.1, para. 6(e); Croatia. U.N. Doc. A/54/44, 17/11/98, para. 68. And see the Committee's recommendations, at para. 69; Hungary. U.N. Doc. A/54/44, 19/11/98, para. 82; Kazakhstan. U.N. Doc. 17/05/2001. CAT/C/XXVI/Concl.7/Rev.1, para. 8(d); Malta. U.N. Doc. CAT/C/23/1, 11/11/99, para. 5(b) (recommendations); Slovakia. 11/05/2001. U.N. Doc. CAT/C/XXVI/Concl.4/Rev.1, para. 6(d).

passing of time, therefore less reliable, especially as disorientation is one of the aims, and effects, of the GSS interrogation methods.

Isolation of GSS facilities from the outside world: The GSS interrogation wings, located in facilities that are ostensibly under police jurisdiction (in Petah Tikvah, the Russian Compound, and Kishon) or under the auspices of the Israel Prisons Service (Shikmah), are in fact completely separate and independent kingdoms. Moreover, as explained above (in Part One), it is GSS agents who instruct jailers and policemen – and even physicians – how to treat Palestinian interrogees even at times when they are located outside the interrogation wing. GSS agents control what is done to these interrogees in other ways as well.

Everything that occurs in interrogation rooms and isolation cells is concealed completely from the eyes of the outside world. Recording the interrogations – whether video or audio – for the purposes of scrutiny, as is the practice in many democratic countries, is not done. The Kremnitzer Committee's recommendations, cited favourably in Israel's 2nd periodic report, to wit, that "[P]revention of police violence should be achieved by… [V]ideotaping investigations and field operations",[45] have been, at least as far as the GSS is concerned, totally ignored, and are not mentioned in the current report. No independent body performs surprise inspections, such as those performed, for example, across Europe by the European Committee for the Prevention of Torture (CPT).

Internal investigation of complaints: No less grave is the manner in which detainees' complaints of ill-treatment and torture by GSS agents are handled, which amount to total impunity. Such complaints are described in the report as being processed by the Special Tasks Division of the State Attorney's Office, and the DIPM (paras. 26, 28 of the report), neither of which is subordinate, of course, to the GSS. In practice, all complaints against GSS agents are processed by the former body.

The problem is that all complaints are passed on to the "Official in Charge of Investigating Interrogees' Complaints," **who himself is a GSS agent**. According to the State Attorney's Office, this agent receives "professional guidance" from the State Attorney's Office in general, and from the State Attorney in particular, and acts according to their instructions.[46] However, this does not alter the fact that a Palestinian who has been tortured, tired out to the point of exhaustion and humiliated by GSS agents, is brought before another GSS agent and required to detail for him the deeds of that agent's colleagues. It should be noted that during the interrogation, the GSS agents and their aides often pose as members of Palestinian organizations, and are known to have also posed as a foreign consul, an attorney, and even as human rights workers.

The GSS agent who is the "Official in Charge of Investigating Interrogees' Complaints," also investigates his colleagues regarding complaints against them, and is required to determine, objectively, whose claims are more reliable – those of his friends, or those of the Palestinian "terrorist."

This questionable method of investigating complaints has had two clear, predictable and

[45] U.N. Doc. CAT/C/33/Add.3, March 1998, para. 22(e).

[46] Conveyed in a telephone call to Hannah Friedman, Executive Director of PCATI, on 27 August 2001.

related results:

1. In a large portion of the cases, Palestinian interrogees are afraid to recount the complaints they conveyed to their attorneys before the GSS agent who acts as a complaints investigator, and it is therefore easy for the State Attorney to reject such complaints as unreliable.
2. Whereas some, albeit few, complaints against soldiers and police officers who had tortured or otherwise ill-treated Palestinians have reached the courts, since the investigation of detainees' complaints was transferred to the State Attorney's Office in 1994, that is, **over a period of seven years**, **not a single GSS interrogator has been tried in a criminal court**, not even when detainees left interrogation wings with permanent physical or mental disabilities, and even not when a GSS agent tortured a Palestinian detainee ('Abd a-Samad Harizat) to death with his own hands. The same interrogator, after a not-too-long suspension, resumed interrogating - and probably also torturing – Palestinian detainees.[47]

The claim in the report that all complaints of torture and ill-treatment "are thoroughly investigated" (para. 25) is thus a gross misrepresentation. The truth is that in practice, GSS agents who torture or otherwise ill-treat Palestinian detainees enjoy full and unqualified impunity, facilitated through a combination of incommunicado detention, the virtual closure of GSS facilities to the outside world, and the fact that all complaints against GSS agents are investigated by a GSS agent.

It is in light of these facts that the allusions, in Israel's report (para. 32), to two unnamed and unspecified cases where petitions to the Supreme Court against ill-treatment by the GSS were later withdrawn should be read. Since its ruling in 1999, the Supreme Court itself has not addressed the issue of whether interrogation methods currently used against Palestinians detainees were lawful. Petitions to halt painful methods are withdrawn once the State declares it was no longer using them. When the report claims that "these complaints were investigated by the authorities and found to be groundless" (*ibid.*), what in all probability occurred is that a GSS agent questioned a suffering, frightened and - naturally - suspicious Palestinian detainee (without the presence of his attorney), then questioned his own fellow GSS agents, and finally decided, unsurprisingly, that the former had lied and the latter had spoken the truth.

Since the Supreme Court ruling, PCATI has written to the State Attorney's Office complaining of the torture or other ill-treatment of 28 Palestinian detainees under GSS interrogation, and other similar complaints were filed by other NGOs and lawyers. As mentioned, we have yet to be notified of a single criminal prosecution.

Regarding soldiers and police officers, while the picture is not quite as bleak – in both cases there have been some prosecutions – it appears that there too the vast majority of perpetrators go unpunished. PCATI has, in the past two years, written to the Israeli army and police regarding 65 cases of torture and ill-treatment of Palestinian detainees.

LAW, PCATI and OMCT strongly believe that the Committee should address this issue, as impunity is an obvious incentive for the continued practice of torture and other

[47] See, Carmi Gilon, *Shin-Beth between the Schisms*, Tel-Aviv: Miskal, 2000, Rami Tal, ed. pp. 394-395 (in Hebrew). The interrogator faced disciplinary procedures, and according to Gilon, was convicted of a "minor disciplinary offense." See *ibid.* Gilon is a former head of the GSS.

ill-treatment and an impediment to any steps to halt such practice.

b. Redress

A draft law in now at the Israeli Parliament (Knesset) designed to halt Palestinian tort claims, which passed its first reading in 1997.[48] If passed, this law would exempt the State of Israel and its security forces from tort liability for bodily and property damage and killing of Palestinians in the OPT during the first and the current Intifada. The law proposal provides that the exemption shall apply to "activities of security forces in the areas, where the activities were conducted in the context of the struggle against terrorism and to prevent insurrection and hostile acts against security forces and civilians."[49] LAW, PCATI and OMCT believe that if passed, this law might be applied in cases of abuse against Palestinians occurred in the OPT outside the interrogation room, for example in cases of torture and other ill-treatment at checkpoints or during arrest, or in cases of deaths as a consequence of the closure. We therefore believe that if passed, this law would violate the right of torture victims to seek fair compensation, as guaranteed by article 14 of the Convention.

3. Administrative detentions – issues under article 16

The Committee has consistently expressed concern over the practice by states parties of administrative detention.[50] In 1998, it specifically addressed this issue regarding Israel's practices.[51]

It is not clear to us what is meant by the statement in the report that "no persons are being held in administrative detention in the occupied territories" (para. 54). While the number Palestinians from the Occupied Palestinian Territories under administrative orders has dropped from over a hundred a the time of Israel's previous report to 17 as of 16 August 2001,[52] and while it is true that all such detainees are held inside Israel rather than in the Territories, this itself is in contravention of explicit provisions of international humanitarian law binding upon Israel, and the suffering of each administrative detainee is a matter of concern under the Convention.

Palestinians from the Occupied Territories are held under orders by a military commander, under a general military order regulating such detention.[53] A single order may extend for up to six months and is renewable indefinitely. Palestinians under administrative detention orders have no way of knowing when they would be free

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[48] There might have been some changes to the versión of the 1997 bill.

[49] Proposed Law for the Handling of Claims arising from Activities of Security Forces in Judea and Samaria and the Gaza Strip, 5757-1997. (Translation by B'Tselem).

[50] See for instance Consideration of reports submitted by States Parties under article 19 of the Convention, Egypt, U.N. Doc. A/49/44, para. 87, and see the Committee's recommendations, para. 93; Concluding observations of the Committee against Torture: China, 9 May 2000, U.N. Doc. A/55/44, para. 120; Cameroon, 16 December 2000. U.N. Doc. CAT/C/XXV/Concl.5, para. 6(b).

[51] 1998 Concluding Observations, U.N. Doc. A/53/44, para. 238(b). And see the Committee's recommendations, para. 241.

[52] Official data given to B'Tselem, www.btselem.org.

[53] In the West Bank, Administrative Detention Order (Temporary Provision) (Judea and Samaria) (No. 1229), 1988; in Gaza, Administrative Detention Order (Temporary Provision) (Gaza Strip) (No. 941), 1988.

again. Nor do they have any real recourse to justice, as the Supreme Court has, in numerous cases, upheld this policy.[54]

The issues raised in 1998 by the Committee are therefore still pertinent.

LAW, PCATI and OMCT recommend that the Committee call upon Israel to cease its use of administrative detentions, which is in violation of Article 16 of the Convention.

[54] *E.g. HCJ 6843/93Ahmad Suleiman Musa Qatamesh v. IDF Commander in the West Bank; HCJ 5978/95 Khaled Dalaisheh v. IDF Commander in the West Bank, HCJ 5920/96; 'Imad Saba' v. IDF Commander in the West Bank and the GSS.*