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The Public Committee against Torture In Israel (PCATI)

The World Organisation Against Torture (OMCT)

Implementation of the Convention Against Torture by Israel

November 2001

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OMCT would like to extend its gratitude for its support of the Special Procedures Programme to the Government of the United Kingdom.

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Introduction

1. Israel signed the United Nations Convention against Torture[1] on 22 October 1986 and deposited its instrument of ratification on 3 October 1991. The Convention entered into force on 2 November 1991.

2. At the moment of ratification of the Convention against Torture, Israel made a reservation to article 20 and therefore does not recognise the Committee Against Torture's (CAT) competence to carry out special investigations, including on-site visits, when there are indications that torture is being systematically practiced. Israel also made a declaration under article 30, to the effect that it is not bound by the provision allowing disputes concerning the interpretation or application of the Convention to be submitted to arbitration or referred to the International Court of Justice.

3. In addition, at the time of ratification, Israel did not make declarations under either Article 21, which would recognise the CAT's competence to receive inter-state complaints against it, or Article 22, which would permit the CAT to receive individual complaints.

4. To date, Israel has submitted four reports to the CAT: three periodic reports and one special report.[2]

5. Israel submitted its initial report on 4 February 1994.

6. On 22 November 1996 the CAT requested that the State of Israel present a special report regarding the legal status and application of measures of so-called 'moderate physical pressure' during interrogations by the security services. A special report was submitted to the CAT on 6 December 1997. In May of 1998 Israel presented its second periodic report to the CAT.

7. Israel presented its third periodic report to the CAT on November 2001.

8. On that last occasion the Public Committee Against Torture in Israel (PCATI), LAW-The Palestinian Society for the Protection of Human Rights and the Environment, and the World Organization Against Torture (OMCT) presented three joint alternative reports to the CAT: a general report titled "*Comments on the Third periodic Report by the State of Israel Concerning the Implementation of the UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*"; and two shorter reports regarding torture and ill-treatment of children; and the policy of closure, house demolitions and devastation of agricultural land as violations of article 16 of the Convention.

9. LAW, PCATI and OMCT generally welcomed the Conclusions and Recommendations of the CAT[3], which, to a large extent, reflected the concerns expressed in their submissions. In particular, the three organizations were pleased at the CAT's firm rejection of Israel's judicial justification for acts prohibited under the Convention. The three organizations were also pleased that

[1] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, in *Human Rights A Compilation of International Instruments Volume I (First Part) Universal Instruments* United Nations, New York and Geneva, 1994, pp. 293-307.

[2] See: Israel's initial report, U.N.Doc./CAT/16/Add.4, 4 February 1994 and the Conclusions and recommendations of the Committee against Torture, A/49/44,paras.159-171, 12 June 1994; Israel's special report, U.N. Doc.CAT/C/33/Add.2/Rev.1, 18February 1997 and the Conclusions and recommendations of the Committee against Torture, A/52/44,paras.253-260, 9 May 1997; Israel's second periodic report, U.N. Doc.CAT/33/Add.3, 6 March 1998 and the Conclusions and recommendations of the Committee against Torture, A/53/44,paras.232-242, 18 May 1998; and Israel's third periodic report, U.N. Doc.CAT/C/54/Add.1, 4 July 2001, and the Conclusions and recommendations of the Committee against Torture, CAT/C/XVII/Concl.5, 23 November 2001.
These documents can be found at the web site of the United Nations High Commissioner for Human Rights at www.unhchur.ch

[3] *Op. cit note 3.*

the CAT addressed in its Conclusions and Recommendations a number of the issues raised regarding the question of the treatment of detained Palestinian children and that of the policies of closures and house demolitions.

However, the three organizations found some of the CAT's Conclusions and Recommendations regrettable: (1) the CAT asserted that closures and house demolitions "may, in certain instances amount to cruel, inhuman or degrading, treatment," while it is clear that these two deliberate and systematic policies are a form of collective punishment which have caused suffering to many thousands of people– in the former case to hundreds of thousands. Moreover, dozens of people have died as a consequence of the closure. (2) the CAT commended the alleged possibility of "real time judicial review of persons under detention to the Supreme Court" when, in fact, Palestinian detainees held incommunicado have no means of contacting their families or lawyers, let alone the High Court; (3) the CAT commended the transfer in 1994 of responsibility for investigating complaints against the Israel Security Agency (ISA) to the Ministry of Justice, ignoring the facts that such investigations are carried out by an "ISA" agent, and that since 1994 not a single "ISA" agent has been criminally charged with ill-treating a detainee.

10. In view of the different mandates of the three organisations their joint reports were confined to issues pertaining to the treatment by the Israeli authorities of Palestinians from the Occupied Palestinian Territories.

11. The following reports have been edited and summarized for publication. For the complete version of these reports please consult OMCT's website at www.omct.org or LAW's website at www.lawsociety.org; or contact the secretariats of either PCATI, LAW or 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[4]

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November 2001

[4] Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Third periodic reports of States parties due in 200, Addendum: Israel. CAT/54/Add.1, February 2001. Hereafter: the report.

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.[5]

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.

[5] 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.

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

12. 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.

13. 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[6], 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.

14. 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

15. The PCATI report estimates that each month, dozens of Palestinians interrogated by the General Security Service (GSS)[7] are exposed, to one extent or another, to methods of torture and other ill-treatment[8]. 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 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.

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[6] 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).

[7] 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.

[8] 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.

16. 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

17. 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.

18. 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.

19. 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.

20. 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*"[9].

21. The Supreme Court was not even deterred from leaving a detained 17-year-old Palestinian child incommunicado for three weeks[10]. 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*"[11]. If it is not enough that in Israel it is not required to apprise detainees of their rights, as is the practice in most

[9] 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.

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

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

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.

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

23. 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[12], that,

> … *the Government continues to detain persons incommunicado for exorbitant periods,* ***itself a practice constituting cruel, inhuman or degrading treatment*** …[13] [our emphasis]

24. 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.

25. 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.

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

26. 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.

27. 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.

28. 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.

29. 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

[12] 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.

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

30. 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

31. 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).

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

33. 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.

34. 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[14]. On more than a few occasions, detainees have been shackled in the interrogation rooms for more protracted periods – for a number of consecutive days[15]. As detailed below, various means of sleep deprivation are also employed in the isolation cells.

35. 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.

36. 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

37. 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.

38. 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.

39. Statements from witnesses confirm that shackling detainees causes them

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

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

suffering and pain, and is in contravention of the HCJ ruling, which stipulated explicitly that "*cuffing causing pain is prohibited*" (para. 26 of the ruling)[16]. 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.

40. 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** ...*[17] [our emphasis.]

41. 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 of the ruling). 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

42. 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

43. 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.

44. 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 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 as 'elimination', 'interception', 'focused prevention', etc.) [18].

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

45. 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.

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

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

[18] 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.

46. 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

47. 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

48. 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[19]. 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.

3. Continuous exposure to artificial light

49. 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[20].

4. Detention in inhuman and degrading conditions

50. 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.

51. 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[21].

* * *

52. 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

[19] 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.

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

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

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)

53. 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[22] and of the Committee itself in response to previous claims made by Israel[23].

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

54. 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.

55. 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.

56. 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.

57. 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[24].

58. 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

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

60. 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

[22] See U.N. Doc. A/56/156, 3 July 2001, para 34:
> …the Special Rapporteur has been increasingly advocating, for the purposes of establishing State responsibility, a reversal of the burden of proof in relation to allegations of torture where prolonged incommunicado detention persists.

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

[24] 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.

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)

61. 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.

62. 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

63. It is both astonishing and deeply worrying that after two sets of unequivocal conclusions and recommendations by the Committee[25], as well as several by the UN Special Rapporteur on Torture[26], 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* (para. 49 of the report).

64. 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.

65. 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 of the report).

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*

[25] 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.

[26] 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.

interrogations (para. 27 of the report)[27] [our emphasis].

66. 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 of the report – re: violent shaking); "*prohibited*", "*degrading*" (para. 25 of the report – re. 'qambaz'), and described them as causing "*real pain and suffering*" (para. 27 of the report – re. 'Shabach') and even "*particular pain and suffering*" (para. 30 of the report – re. 'Shabach')[28].

67. 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.

68. 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.

69. 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

70. 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[29].

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

72. 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).

73. 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.

74. 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:

[27] 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.

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

[29] 1997 Concluding Observations, U.N. Doc. A/52/44, para. 257.

> *The manner and form of his interrogation derive from the assessment of security officials, according to which your client harbours 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 …*[30]

75. 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'.

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

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

77. 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*"[31] 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*"[32]. Such conclusions and recommendations, consistent with the Committee's approach to states parties reporting to it[33], 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.

78. 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 offences under Israeli law*" and that, moreover, its Basic Law: Human Dignity and Liberty adds a constitutional guarantee to such legislation[34].

79. 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

[30] 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."

[31] 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.

[32] 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).

[33] 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).

[34] 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.

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.

80. 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

81. While the Supreme Court prohibited the government from authorizing the GSS to 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* (para. 34 of the ruling) (references omitted).

82. 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[35]. 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.

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

[35] 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.

84. 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*[36].

85. 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*[37].

86. 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*[38].

87. 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.

88. 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.

[36] U.N. Doc. A/49/44, 28 April 1994, para. 16p.
[37] 1997 Concluding Observations, U.N. Doc. A/52/44, para. 258.
[38] 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 Criminalize it

89. 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.

90. 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[39]. 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.

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

a. Basic Law: Human Dignity and Liberty

92. 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*[40].

93. 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*[41].

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

95. 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 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.

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

b. Criminal legislation:

97. 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.

98. Since Israel presented its 2nd periodic report there has been no new legislation relevant to the problem of torture. The

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[39] Concluding observations of the Committee against Torture: Israel, 18 May 1998, U.N. Doc. A/53/44, para. 240 (b).

[40] Section 8 (Violation of Rights).

[41] *Ibid*, Section 12 (Stability).

'legislative developments' cited by the current report (paras. 33 to 39 of the report) 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.

99. 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[42].

100. The Committee, for its part, has also referred to this issue in its Concluding Observations, criticising states parties[43] or praising them[44], 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.

101. 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.

102. 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[45].

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

a. Impunity

103. 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 (Article 16(1)). The Committee has consistently criticised stated for not complying with these obligations and recommended steps to end such non-compliance[46].

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[42] 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.

[43] 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).

[44] 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.

[45] 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).

[46] 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.

104. Paragraphs. 25-30 of Israel's report outline 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.

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

106. ***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.

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).

107. 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*"[47], 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).

108. ***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.

109. 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[48]. 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

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

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

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.

110. 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'.

111. This questionable method of investigating complaints has had two clear, predictable and 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[49].

112. The claim in the report that all complaints of torture and ill-treatment "*are thoroughly investigated*" (para. 25 of the report) 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.

113. It is in light of these facts that the allusions, in Israel's report (para. 32 of the report), 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.

114. 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.

115. 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.

116. LAW, PCATI and OMCT

[49] 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.

strongly believe that the Committee should address this issue, as impunity is an obvious incentive for the continued practice of torture and other ill-treatment and an impediment to any steps to halt such practice.

b. Redress

117. A draft law in now at the Israeli Parliament (Knesset) designed to halt Palestinian tort claims, which passed its first reading in 1997[50]. 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*"[51]. 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

118. The Committee has consistently expressed concern over the practice by states parties of administrative detention[52]. In 1998, it specifically addressed this issue regarding Israel's practices[53].

119. 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 of the report). 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[54], 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.

120. Palestinians from the Occupied Territories are held under orders by a military commander, under a general military order regulating such detention[55]. 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 again. Nor do they have any real recourse to justice, as the Supreme Court has, in numerous cases, upheld this policy[56].

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

122. 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.

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

[51] 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).

[52] 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).

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

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

[55] 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.

[56] *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*.

Summary of the Report on the Treatment of Detained Palestinian Children by the Israeli Authorities

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We would like to thank Adv. Khaled Quzmar from DCI/Palestine Section for his invaluable contribution to this report. We would also like to thank Adv. Lea Tsemel of PCATI.

Introduction

1. The Palestinian branch of the Geneva-based international NGO Defence for Children International (DCI/PS) estimates that since the beginning of the Al Aqsa Intifada on 29 September 2000 through 15 September 2001 about 600 Palestinian children from the Gaza Strip and the West Bank including East-Jerusalem have been arrested and detained by the Israeli security forces. Of those arrested, dozens have been subjected to torture or other ill-treatment during arrest, interrogation or detention and imprisonment.

2. DCI/PS estimates that as of mid-September 2001 about 160 Palestinian children were being held in detention centres and prisons throughout Israel and the OPT. The majority of those arrested were either from Jerusalem, Hebron (especially the Old City and al-'Arrub refugee camp) or Hussan village near Bethlehem. While children from the West Bank and Gaza are held in custody in detention centres in the OPT, juveniles from East Jerusalem are usually interrogated at the Russian Compound Detention Centre in Jerusalem. According to DCI/PS, as of 22 September 2001 about 75 Palestinian boys aged 12 – 16 were held in Tel-Mond Prison; about 60 children aged 16 or more were imprisoned as adults in Meggido prison under the control of the Israeli army; about 20 minors were being held in detention centres in the OPT and 4 girls aged between 14 and 17 were being held in the Neve Titza women's prison in Ramle.

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

1. Abuse during arrest and transfer to detention centres

3. The circumstances under which many Palestinian children from the OPT, mostly 14-17 years old, have been arrested, interrogated, detained and imprisoned reveal that there have been serious violations of the Convention against Torture among others.

4. As a matter of routine, children have been arrested in the middle of the night and literally taken from their beds to the interrogation rooms by members of Israeli security forces, including officers with balaclavas or with their faces blackened[57]. Arrests have often been carried out by large groups of Israeli security forces (between 30 and 40 men), who arrive in military jeeps, surround the children's family homes and forcibly enter them, at times with guns drawn, at times pointing at family members with flashlights.

5. Moreover, security forces have ill-treated the children and their relatives during arrest, employing means such as beatings, kicking, verbal abuse, humiliation and threats, and the destruction of property during searches. Children are transported to detention centers in military vehicles, usually handcuffed and sometimes blindfolded or hooded, and often beaten with rifle butts, punched, kicked and subjected to verbal insults and curses during transfer to detention centers. After the arrest, in numerous cases, families have had to search for their children, as they had either not been informed of or had received misleading information regarding their whereabouts.

2. Torture and ill-treatment during interrogation

6. Palestinian child detainees have been subjected to many of the methods which, in the case of adults, have been considered to constitute torture or other ill-treatment, such as: beatings including with objects; painful manacling of hands and feet; pouring of freezing water onto the child's head, being kept in fetid isolation cells; preventing the child from changing his or

[57] See B'Tselem. Torture of Palestinian Minors in the Gush Etzion Police Station. Information Sheet. July 2001.

her clothes for long periods of time; covering the head with a foul smelling sack; tight blindfolding; shooting at the child's head with small plastic pellets from as close distance; placing weights on the detainees shoulders for an extended period of time; denial of water; denial of access to the toilet; continuous long interrogations; and prolonged incommunicado detention[58].

7. Some children had to be hospitalised after interrogation. In other cases children have complained that they did not receive adequate medical attention for the bruises and injuries caused by the beatings and other forms of ill-treatment.

8. Methods which have been held to constitute torture when applied to adults should be strictly prohibited in the interrogation of children. In the case of children, the techniques described above should be considered to be incompatible with the Convention against Torture in all cases.

3. Detention and imprisonment conditions

a. Detention Centres

Detention centres in the OPT, which are, in the majority of cases, under the control of the Israeli army, are mostly located inside heavily guarded Jewish settlements, illegal under international law. As a consequence, a climate of tension, fear and hostility as well as preponderant security and military considerations set the tone, creating an environment which is clearly inappropriate for holding children in custody.

9. Moreover, LAW, PCATI and OMCT believe that general conditions inside the detention centres which are located in the OPT do not meet the minimum standards for holding child detainees. Despite this, in one case a child was held for several months in custody under such conditions. According to DCI/PS, 14-year-old Shadi Abu Fahida, from Ras Karkar village west of Ramallah, who was arrested on 27 February 2001 on charges of stone-throwing, was held until mid June 2001 in the Bet El detention centre near the West Bank town of Ramallah.

b. Imprisonment and detention in Israel; restrictions on contacts with families

10. The transfer of Palestinian detainees from the OPT to Israel, in violation of international law, has effectively, curtailed the rights of these detainees both to legal counsel and family visits: Palestinians from the West Bank and the Gaza Strip who want to visit their children in prison have to first obtain a permit to enter Israel, as do Palestinian lawyers who want to visit prisoners held in Israel. Since the beginning of the Intifada, family visits have been seriously hampered and detainees including children have received no family visits for months. This contravenes the Convention on the Rights of the Child, which stipulates that child detainees shall have the right to maintain contact with their families through visits and correspondence.

c. Circumstances of imprisonment: no separation from criminal prisoners; application of solitary confinement

11. Once imprisoned, children mostly accused of stone-throwing, have been kept together with criminal prisoners often resulting in grave threats to their physical and psychological integrity. The use of solitary confinement as a form of punishment against detained Palestinian children, as reported in Tel-Mond Prison near Netanya and Neve Titza Prison in Ramle, both under the administrative control of the Israel Prison Service, are also a matter of grave concern. Children have reported being placed in solitary confinement in tiny, dark, dirty, foul-smelling cells with open toilets.

[58] See the case of 17-year-old Muhammad Ibrahim Huhammad al-Matur, featured in the general report on page 10.

Part Two: The Legal Context (issues under articles 2.1 and 15 of the Convention)

1. Definition of the child under military law applicable in the OPT contrary to international law

12. The laws governing arrest and detention of children from the OPT [59], are laid down in Israeli Military Orders which do not provide the level of protection granted to children in Israeli and international law. While under international law the generally accepted definition of the child is "every human being below the age of eighteen years"[60] and under Israeli law majority is attained at the age of 18, Military Order No. 132 defines a minor as someone under the age of 16[61].

13. Israeli Military Orders concerning detention are only applied to Palestinians from the West Bank and the Gaza Strip including those living under the control of the Palestinian National Authority – and not to Israeli settlers who under international law are an illegal presence in the OPT – and have continued to be in force after the signing of the Oslo Accords.

2. Stone-throwing as a security offence subject to military jurisdiction

a. Introduction

14. Under Military Order Concerning Security Provisions N0. 378 of 1970, applicable in the West Bank, security offences cover, *inter alia*, stone-throwing, participating in a demonstration[62] and failing to carry appropriate documentation. For this reason, children from the West Bank[63] (with the exception of East Jerusalem) charged with stone-throwing are tried in Israeli military courts with all of its implications. Israeli military courts, have been found to fall short of international fair trial standards. Moreover, there are no military courts and judges designated especially for children, no specifically trained officers for the interrogation of children, no probation officers and no social workers to accompany them[64].

b. Sanctions established by military law for stone throwing

15. M.O. 132 establishes the maximum penalties for security offences committed by children. In the case of offences which carry a maximum penalty of up to 5 years, a child aged between 12 and 14 at the time of passing sentence shall not be sentenced to more than 6 months' imprisonment, a child aged between 14 and 16 at the time of the passing sentence to no more than one year imprisonment.

16. With regard to adults (those over 16), under article 53 of M.O. 378, the maximum penalty for stone-throwing on cars is 20 years imprisonment, while stone-throwing on soldiers can be punished with up to 10 years imprisonment. Acquittals of Palestinian children charged with stone-throwing are rare at Israeli military courts. In most cases, fines as well as prison sentences are imposed, thus also punishing the families of the children as well.

c. The discriminatory nature of the law: stone-throwing under Israeli law

17. Palestinian children from the OPT do not the enjoy the level of protection afforded by Israeli law, as the different

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[59] With the exception of East Jerusalem where Israeli law is illegally applied.

[60] See CRC, article 1.

[61] In April 1999, Military Order No. 132, which had been implemented during the first Intifada (1987-1993) and cancelled after the signing of the Declaration of Principles in 1993, was reinstated in the West Bank.

[62] The mere fact that active participation in a demonstration is categorized as a security offence is in violation of the rights to assembly and freedom of expression under the ICCPR.

[63] Children from the Gaza Strip are also tried in military courts, albeit under a different military order.

[64] Some Palestinians from East Jerusalem arrested since the outbreak of the Intifada have also been charged under M.O. 378, previously only applied to Palestinians from the West Bank. This happened for example to children from Jerusalem arrested in the West Bank. However, children from the West Bank arrested in Jerusalem are never tried according to Israeli law but always according to the harsher military law.

provisions regarding e.g. stone-throwing clearly show.

18. Some examples of discriminatory treatment are the fact that: a) Whereas under Israeli law stone-throwing is a criminal offence, described as aimed at 'disrupting the traffic', military law defines stone-throwing as a 'security offence', described as designed to harm property or kill or injure individuals; b) Whereas under Israeli law, the punishment established for stone-throwing by children is in most cases 2 or 3 months' imprisonment[65], the average sentence in military courts is 6 months[66]; c) Whereas under Israeli law house-arrest is a possible alternative to imprisonment for stone-throwing, imprisonment and fines are the only punishments established for minors by military law; d)Whereas under Israeli law children (defined as under age 18) charged with stone-throwing are tried in juvenile courts, there are no courts or judges for minors (defined as under age 16) tried under military jurisdiction.

d. Sentences on the sole basis of confessions, often extracted under torture or other ill treatment

19. In 1981 Military Order N° 53a (Military Order of Evidence)[67] was issued allowing military courts to sentence a defendant solely on the basis of a testimony given by another person. As a consequence, a lot of efforts are made during interrogation to get written confessions since these written statements will, almost automatically, become the major and crucial evidence in trials and will be used to convict the defendant. Such confessions can then become the basis of the charges and conviction of many child detainees.

e. Judges at military courts

20. The fact that some of the persons who serve as judges and prosecutors in military courts, are also settlers calls the impartiality and independence of the military court system under which Palestinian children are tried in the OPT into question.

Conclusion

21. The children featured in the report had no previous criminal record, and were neither recruited nor trained for violent or military action. They are ordinary Palestinian youths as can be found in many families, who used to work or attend school.

22. Taking advantage of the vulnerability of these children, interrogators have used physical and psychological forms of torture and other ill-treatment in order to extract quick confessions. Under the shock and pain of torture and ill-treatment children interrogated in the middle of the night, often after having been ill-treated upon arrest and during transfer to a detention center, easily broke down and signed confessions in a language, which they often did not understand. Unfortunately the examples presented in the report do not constitute isolated or exceptional cases but are representative of attitudes and practices of Israeli law enforcement officials towards Palestinian detainees including minors.

23. LAW, PCATI, and OMCT believe that as long as torturers are not punished and that the state signals by its behaviour that it condones the use of illegal methods of interrogation, torture and other ill-treatment against Palestinian child detainees will continue in Israel.

[65] The punishment will depend on the age group (12-13) or (15-16) and on the target of the stone-throwing. Stone-throwing at a house or immobile object is considered a much lesser offence than throwing stones at a vehicle on the road as this could endanger lives.

[66] Harsher punishments for stone throwing by Palestinian children are often justified by arguing that among Palestinians stone-throwing is a widespread phenomenon whereas Jewish Israelis rarely engage in stone-throwing.

[67] M.O. Nr 53a was based on the Israeli Civil Law of Evidence (1971) which was amended in 1980 with article 10a. This particular amendment was originally aimed at facilitating preference of evidence given at the police stations over testimonies by witnesses in courts (since many witnesses in civil courts withdrew from the testimonies previously given at police stations) provided the court was convinced that the wrong reasons affected the testimony in court and assured about the conditions under which the statement was given.

Summary of the Report on the Policy of Closure, House Demolitions and Destruction of Agricultural Land as violations of the Convention against Torture

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1. Preliminary observations

1. Since the military occupation of the the Gaza Strip and the West Bank including East Jerusalem in 1967, a number of Israeli policies and methods have been applied which have caused unnecessary suffering to the Palestinian population living in the OPT. These methods, which amount to cruel, inhuman or degrading treatment or punishment, are part of a wider policy to make life so unbearable in the OPT that Palestinians feel they have no choice other than to leave or accept submission under Israeli control. In fact, large numbers of Palestinians have continued to migrate since 1948, and since 1967[68].

2. Closures, house demolitions and destruction of agricultural land are examples of policies designed to cause unnecessary suffering. In describing the nature, implementation and implications of such policies, the report examines how these can constitute a form of cruel, inhuman or degrading treatment or punishment.

2. The closure policy

3. Since the beginning of the Palestinian resistance known as the Al Aqsa Intifada, Israel has imposed severe restrictions of movement on Palestinians living in the OPT, which have generally taken four different forms: a comprehensive closure of the OPT; internal closures imposed within the OPT cutting towns and villages off from each other; curfews; and the closure of international crossing points between the OPT and neighbouring countries (Jordan and Egypt).

4. The tight system of closures and curfews enforced on the West Bank and the Gaza Strip effectively encircles the population and keeps it captive in closed enclaves – towns, villages and refugee camps. It materializes in permanent and mobile military checkpoints, unmanned roadblocks, dirt walls, concrete blocks, iron gates[69], earth mounds and trenches dug around villages and towns. Besides restricting the freedom of movement, Israeli military checkpoints are places where abuse in the form of harassment, humiliation and ill-treatment or torture have occurred.

5. Internal and external closures have particularly affected the economy, health and education, leading to a profound humanitarian crisis in the OPT[70]. Closures do more than disrupt the daily lives of Palestinians: sick patients are prevented from receiving adequate and timely medical treatment sometimes resulting in death; workers are prevented from reaching their workplace; pupils, students and teachers from going to school; families from visiting relatives including those held in Israeli prisons; refuse is not being collected exposing the population to ever increasing health risks; whole villages are prevented from receiving necessary basic goods including water, food, fuel and medicines and cannot get their products to the markets.

6. Israel justifies its closure policy with security. However, whatever means Israel chooses to achieve security, they must be

[68] According to the Department of International Affairs of the Catholic Bishops´ Conference of England and Wales, 40% of all Christians have left the country since 1967.

[69] See LAW, Press Release of 12 July 2001. Iron gates seal entrances to Palestinian towns.

[70] Closures end up depriving individuals from their very means of subsistence and livelihood. In the *Selçuk and Asker* case (12/1997/796/998-999), the ECHR found this element to be an essential factor to conclude the occurrence of ill-treatment. Moreover, while the restrictions are responsible for the deprivation, they also prevent the victims from seeking alternative means, leaving them without few, if any recourse. Again, in the *Selçuk and Asker* case (12/1997/796/998-999), the ECHR viewed this absence of alternatives and the consequent destitution as a factor in concluding that ill-treatment had occurred. In this case it was because the defendants were aged persons, as a factor allowing to conclude that ill-treatment occurred. While the persons affected by the closure can be children, men, women, elderly, etc., they all face the same destitution and absence of recourse.

within the limits of international human rights and humanitarian law. The suffering caused by closures does not fulfil this condition as it amounts to cruel, inhuman or degrading treatment or punishment as prohibited by the Convention against Torture. Irrespective of the fact that the purpose can never justify illegal measures, such as Israel's closure policy, LAW, PCATI and OMCT believe that rather than a genuine and valid measure to ensure Israel's security, as claimed by the Israeli government, the closure policy is a form of collective punishment, as prohibited by article 33 of the Fourth Geneva Convention.

7. Moreover, Israel's closure policy, through the cumulative effect of its different aspects and implications, has created a system, which involves cruel, inhuman and degrading treatment or punishment for the wider Palestinian population. By way of example, this report will present humiliation and ill-treatment at checkpoints, denial of access to water and prevention of access to medical treatment as three different aspects of the closure policy which in itself and in conjunction are causing immense physical and psychological suffering to the wider Palestinian population.

a. Humiliation and Ill-treatment at checkpoints

8. Since the beginning of the Intifada numerous checkpoints have been established and removed, opened and closed in the West Bank without prior notification by the Israeli army. We acknowledge that not every single element and aspect of the system created by checkpoints and other barriers – uncertainties, onerous and exhaustive exercises, fear, arbitrariness, daily humiliations, harassment and instances of ill-treatment - if considered in isolation, will amount to ill-treatment. However, LAW, PCATI and OMCT believe that, through its cumulative effect, the suffering caused by the different elements of this network of manned and unmanned checkpoints, dirt piles and trenches constitutes cruel, inhuman or degrading treatment or punishment.

9. Beyond the daily arbitrariness and the fear it involves, private Palestinian drivers and taxi drivers are subject to daily harassment, humiliation, beatings and other forms of violence perpetrated by Israeli soldiers at checkpoints or on dirt roads. These include beatings (including with objects), kicking, punching, slapping; curses, insults and threats; forcing at gunpoint men to pair off and beat each other; forcing passengers to line up against a wall; forcing passengers to wait for hours in the heat with the windows of their cars rolled up and without air-conditioning; holding up passengers for hours at roadblocks with no reason; confiscating ID cards and car keys of drivers attempting to bypass checkpoints; asking for "passage fees" such as cigarettes or drinks; shooting at vehicles and pedestrians, sometimes resulting in injury or even death; and deliberately damaging vehicles.

b. Denial of Access to water

10. According to the Israeli human rights organisation B´Tselem, about 200 000 Palestinians living in 218 West Bank villages are not connected to the water network, and therefore depend on trucks to supply water in order to be able to meet their basic needs[71]. However, due to the restrictions of movement imposed since the beginning of the Intifada, water tankers have faced enormous difficulties and have thus not been able to provide water as needed. Moreover, many Palestinians have lost their jobs and are hardly able to pay for water deliveries. For this reason, villagers who are not hooked up to the water system are suffering a severe water crisis and facing health risks.

11. The reports also shows examples of truck drivers trying to bring water on dirt roads and by night to West Bank villages under closure and without running water, who have been harassed and ill-treated by Israeli soldiers.

[71] B'Tselem, *Not even a drop. The Water Crisis in Palestinian Villages*, Jerusalem: August 2001.

c. Prevention of access to medical treatment

12. Since the outbreak of the Intifada, restrictions of movement have severely obstructed access to medical treatment and health facilities for Palestinian civilians, in violation of international law[72]. This has affected those injured in clashes and who need to be transported to hospital by ambulances, as well as cases unrelated to the current upheaval, such as persons with follow-up appointments, the chronically ill, expectant mothers and urgent medical cases. Moreover, the Israeli policy of closures has resulted in severe shortage of health personnel and medical supplies at a time when Palestinian hospitals and health centres are in great need.

13. In the case of seriously injured patients or in urgent medical cases, where time is certainly a critical factor, restricting the movement of ambulances or vehicles can cause the patient's condition to significantly deteriorate. In several cases where ambulances or vehicles were delayed, by the time the patient reached the hospital or medical centre, it was too late and his life could not be saved.

14. The Israeli army claims that "*there are orderly procedures whose goal is to guarantee checkpoint crossings in cases of medical emergency*"[73]. However, the number of cases documented by human rights organizations, where sick or injured were not able to cross barriers, shows that the implementation of these procedures is faulty.

15. Soldiers at checkpoints appear not to be informed about such procedures or not to be willing to abide by them. Whatever the reasons, these procedures are not being complied with on the ground.

16. Closures are implemented by three kinds of checkpoints, permanent ones, mobile checkpoints, which have a surprise effect, and an increasing number of unmanned roadblocks.

17. While at manned checkpoints it is still possible to negotiate a passage with soldiers, such possibility is removed when the restrictions are implemented through unmanned road blocks, dirt piles or trenches; at unmanned barriers there is no one to talk to, "*there's no depending on the kindness of strangers in army uniform: You can't show medical papers to concrete blocks and deep trenches*"[74]. In a letter to the Israeli Minister of Defence Ben-Eliezer dated 16 July 2001, the NGO Physicians for Human Rights (PHR-Israel) pointed out "*that the regulations are not implemented and that the existence of physical, unmanned barriers on the roads of the West Bank in fact prevents their implementation, since they were intended for implementation at manned checkpoints*"[75]. The organization concluded that "*in the absence of checkpoints manned by soldiers on the roads, selective passage of medical cases is impossible*"[76].

18. Expectant mothers represent a particularly vulnerable group in need of medical care and require, therefore, special protection. Despite this fact, expectant mothers on their way to hospitals have been stopped at Israeli checkpoints. In some cases, women had miscarriages, in other cases expectant mothers have given birth at military roadblocks. According to the PRCS, "*the EMS Department is reporting a significant increase in the number of births at home, ambulances, and checkpoints due to the delays being created by the checkpoints and*

[72] The Fourth Geneva Convention contains a series of articles designed to ensure access to medical treatment to any injured person, including evacuation if need be (Article 17); protection of civilian hospitals and their staff (Articles 18 to 20); medical transportation (Articles 21 and 22) and the consignment of medical supplies and equipment (Article 23). Moreover, the International Covenant on Economic, Social and Cultural Rights, applicable to the OPT, guarantees the enjoyment of the right to health.[72]

[73] Ha'aretz, 24 June 2001, *You can't show medical papers to concrete blocks an deep trenches*, by Aryeh Dayan.

[74] Ha'aretz, 24 June 2001, *You can't show medical papers to concrete blocks and deep trenches*, by Aryeh Dayan.

[75] Physicians for Human Rights-Israel. Letter to Mr. Binyamin Ben-Eliezer, Minister of Defense, 16 July 2001. Subject: Passage of chronically ill patients through IDF checkpoints and barriers during closure and internal closure/blockade.

[76] *Ibid.*

roadblocks"[77].

3. House Demolitions and Destruction of Agricultural Land

19. Since its occupation of the Gaza Strip and the West Bank including East Jerusalem, Israel has demolished thousands of Palestinian homes. The practice of house demolitions continued throughout the period known as the Oslo Process, and has increased at an alarming rate since the beginning of the current Intifada on 29 September 2001.

20. According to the Israeli NGO B'Tselem, from 1987 until the end of 2000, Israel has demolished at least 2300 Palestinian houses that were built in the OPT. LAW estimates that the number of Palestinian homes demolished in 2000 is 54, of which 35 were in East Jerusalem, 10 in the West Bank and 9 in the Gaza Strip. From January 2001 to 8 October 2001, LAW has recorded 38 house demolitions in East Jerusalem, 36 in the West Bank and 213 in the Gaza Strip.

21. As a consequence of the demolitions, the victims are left in destitute conditions as they have lost their property and belongings. The ICRC and UN agencies have had to provide tents to shelter those left homeless. Moreover, in an important number of cases, house demolitions have been accompanied by ill-treatment, humiliations and other forms of violence[78].

22. In the West Bank including East Jerusalem, most house demolitions are carried out because the homes are built without a permit and are therefore considered as "illegal". Under the current Israeli policy of permits' attribution, it remains virtually impossible for the Palestinians to obtain building permits. The system is constructed in a way that the Palestinian will necessarily end up constructing houses without permits, facing risks of eviction and demolitions. In its 1998 Concluding Observations, the Human Rights Committee "*deplores the demolition of Arab homes as a means of punishment. It also deplores the practice of demolitions, in part or in whole, of 'illegally' constructed Arab homes. The Committee notes with regret the difficulties imposed on Palestinian families to obtain legitimate construction permits*"[79].

23. Indeed, in the OPT, including East Jerusalem, planning and building policies as well as legislation are much more favourable to settlers than to Palestinians. The aim of this discriminatory policy is to limit Palestinian construction to a minimum in order to preserve maximum opportunity for land confiscation and Jewish settlement. As a consequence, Palestinians are left without the possibility of building with a permit and have no choice but to build houses and other structures without Israeli permits. Their houses are then considered 'illegal' and therefore liable to be demolished by the Israeli authorities when deemed convenient. The paradox of such a policy that reverses the question of illegality to the advantage of settlers and the detriment of Palestinians, keeping in mind that under international law the settlements are illegal, reveals its arbitrariness, intrinsic injustice and expansionist purpose.

24. In the Gaza Strip, Israel has argued, since the beginning of the Intifada, that house demolitions were necessary for 'security' reasons, in order to prevent Palestinian gunmen from shooting from specific houses. Moreover, house demolitions have been carried out against Palestinians accused of security offences and their families, but also as a reprisal for the attacks of individuals against Israeli citizens, e.g. in the wake of suicide bombings. The missing link between individual responsibility and retaliatory measures, affecting not the person responsible for the attack but other individuals and families, show that in such cases the demolitions of houses represent a

[77] *Ibid.*

[78] OMCT, *Human Rights in the Euro-Mediterranean Region and the Barcelona Process*, November 2000, p. 51 See also reports on house demolitions by the Palestinian Center for Human Rights (www.pchrgaza.org) and the Alternative Information Center (www.alternative.news.org).

[79] *Concluding Observations of the Human Rights Committee: Israel*, 18/08/98, CCPR/C/79/Add. 93.

form of collective punishment or reprisal for the attacks of individuals.

25. Since the beginning of the Intifada, there has been extensive destruction of agricultural land by bulldozing as well as uprooting of trees by the Israeli authorities and settlers in the OPT. The extensive destruction and confiscation of land, and uprooting of trees in the West Bank and the Gaza Strip follows a pattern of arbitrariness, justified by Israel with the security argument. From 29 September 2000 to 10 October 2001, LAW estimates that 10,689.5 dunams[80] of agricultural land have been destroyed and that 3,162.5 dunams of agricultural land have been set on fire. In the same period, LAW has recorded the uprooting of 34,530 trees and the burning of 4,207 trees.

26. In the case *Selçuk and Asker v. Turkey*, the European Court for Human Rights (ECHR) ruled that the destruction of the defendants' homes constitutes a form of ill-treatment, in breach of article 3 of the Convention which states that "*no one shall be subjected to torture or to inhuman or degrading treatment or punishment*"[81].

27. In determining the occurrence of ill-treatment, the ECHR recalled that it must attain this a minimum level of severity, dependent upon the circumstances. In the *Selçuk and Asker* case, the ECHR judged that these circumstances allowed to qualify a home destruction, i.e. a violation of a right typically categorised as belonging to economic, social and cultural, as a form of inhuman and degrading treatment. The fact that the victims were old, left with nothing following the destruction of their house, as well as in a difficult position, given their age, to provide for themselves and find another shelter, were determinative factors in the decision of the ECHR.

28. On this basis, the reflection of the ECHR can be applied to other situations, which combine similar features of destitution and vulnerability resulting from the actions of the State or with its acquiescence. Under the CAT, such cases will fall within the scope of article 16.

29. Except for the question of duration, the houses demolitions and destruction of land present the same pattern: they leave the victims in serious destitution and deprive them from their means of subsistence and livelihood, with no available recourses. Moreover, the way demolitions and destructions are carried out, in many cases without prior notification, in the presence of military jeeps and armed Israeli soldiers and involving, sometimes, ill-treatment and humiliations constitutes in itself an additional factor of stress and suffering.

Conclusions and Recommendations

30. In the light of the precedent developments, LAW, PCATI and OMCT call upon the Committee:

- to conclude that the systematic policy of closure, destruction of houses and land and uprooting of trees perpetrated by Israel or by Israeli settlers with its acquiescence of Israel constitute a breach of Article 16;
- to conclude that the systematic policies of closure and destruction of homes and agricultural lands in the OPT have involved several specific cases of ill-treatment amounting to violations of Article 16;
- to call for an immediate halt to these policies.

[80] 1 dunam=1/4 acre or 1000 m2.

[81] European Court for Human Rights, *Case of Selçuk and Asker v. Turkey* (12/1997/796/998-999), paras 79-80. See also, *Bilgin v Turkey*, 16 November 2000 para. 100-102; and *Dulas v Turkey*, 30 January 2001 para. 54-55.

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