

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

The Public
Committee against
Torture
In Israel (PCATI)

The World
Organisation
Against Torture
(OMCT)

**Comments on Issues relating to Palestinian Detainees in the
Third Periodic Report of the State of Israel Concerning the
Implementation of the International Covenant on Civil and
Political Rights¹**

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

P.O.B 20873, Jerusalem 91208
Tel.: 972-2-5833430 Fax: 972-2-5833317
E-mail: law@lawsociety.org
www.lawsociety.org

The Public Committee Against Torture in Israel (PCATI)

POB 4634, Jerusalem 91046
Tel.: 972-2- 5630073 Fax: 972-2-5665477
E-mail: pcati@netvision.net.il
www.stoptorture.org.il

The World Organisation Against Torture (OMCT)

OMCT International Secretariat
PO Box 21
8, rue du Vieux-Billard
CH-1211 Geneva 8
Switzerland
Tel.: ++41 22 809 49 39 Fax: ++41 22 809 49 29
E-mail: omct@omct.org
<http://www.omct.org>

Researched and written by Yuval Ginbar (PCATI) in consultation with and Dianne Luping (LAW) and Isabel Ricupero (OMCT)

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¹ Consideration of reports submitted by States parties under article 40 of the Covenant, Second Periodic Report, Addendum: Israel, CCPR/C/ISR/2001/2, 4 December 2001. Henceforth: 'Israel's report,' or 'report.'

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Executive Summary

Following are our comments on Israel's second periodic report to the UN Human Rights Committee (henceforth: the Committee), regarding its compliance with the UN Covenant on Civil and Political Rights (henceforth: the Covenant).² In view of the different mandates of the three organisations whose views these comments represent, we will confine ourselves to certain issues pertaining to the treatment by the Israeli authorities of Palestinians from the Occupied Palestinian Territories, with a special emphasis on the rights of detainees, and on Article 7 of the Covenant. This executive summary is followed by our main recommendations for the Committee, and the questions which, we believe, should be presented to the state party.

At the outset LAW, PCATI and OMCT would like to emphasise that all Israeli practices discussed here fall squarely within Israel's jurisdiction, therefore within its obligations, under the Covenant. The three organisations would like to express, in the strongest possible terms, our rejection of Israel's view that the "Committee's mandate cannot relate to events in the West Bank and the Gaza Strip, inasmuch as they are part and parcel of the context of armed conflict as distinct from a relationship of human rights." (Report, para. 8). This view which, unfortunately, Israel applies in its treatment of Palestinians in the Occupied Palestinian Territories, is in blatant violation of Israel's obligations as stipulated in Article 2(1) of the Covenant, and is diametrically opposed to the position of the Committee.³ The idea that when the guns roar human rights fall silent is totally unacceptable, and reflects at best a profound misunderstanding of human rights law in particular and international law in general.

The three organisations would also like to stress that they unreservedly condemn all attacks against civilians – *any* civilians, but responding to such attacks by violating the basic, non-derogable rights of human beings – *any* human beings, is equally condemnable.

On August 18, 1998, the Committee published its Concluding Observations following its consideration of Israel's initial report,⁴ expressing concern over a wide variety of issues, many of them to do with Israel's policies in the Occupied Palestinian Territories, and making extensive recommendations as to how Israel should address those concerns. In the four years that have passed, Israel has not only failed to address the Committee's concerns or implement its recommendations, but has greatly exacerbated its previous violations of the Covenant's provisions in the Occupied Palestinian Territories, as well as adding a wide range of new violations.

As Israel's report has failed to provide information on its treatment of Palestinians from the Occupied Palestinian Territories, we have attempted to do so ourselves, to the extent

² UNGA res. 2200 A (XXI) adopted 16 December 1966, entered into force 23 March 1976. For text see UN Center for Human Rights, **Human Rights: A Compilation of International Instruments**, vol. 1 (First Part), New York and Geneva, UN, 1994, pp. 20ff, and the UNHCHR website, www.unhchr.ch.

³ Concluding Observations of the Human Rights Committee: Israel, U.N. Doc. CCPR/C/79/Add.93, 18 August 1998 (henceforth: Committee's conclusions), paras. 10, 31.

⁴ Concluding Observations of the Human Rights Committee: Israel, U.N. Doc. CCPR/C/79/Add.93, 18 August 1998. Henceforth: Committee's conclusions.

possible.

Part 1 addresses the issue of the interrogation of Palestinian detainees by the GSS/ISA. It includes an analysis of the ruling by the Israeli Supreme Court, sitting as High Court of Justice, in *HCI 5100/94 The Public Committee Against Torture in Israel v. The Government of Israel et al.* (henceforth: Supreme Court ruling, or HCJ ruling) and Israel's implementation of that ruling in relation to the relevant provisions of the Covenant.

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

- It allows GSS/ISA agents to apply torture (“physical means of interrogation”) in extreme (“ticking bomb”) situations. The torturing interrogators may later plead the ‘defence of necessity’ and be exempt from criminal liability *ex post facto*. This is in stark contradiction of the absolute and unconditional prohibition of torture and other ill-treatment under the Covenant. In practice, official sources have indicated that there have so far been close to a hundred cases of officially-sanctioned, judicially-approved torture;
- It allows prolonged shackling and sleep deprivation, and while neither must, under the ruling be used as means of interrogative pressure, this vague caveat has been used by the GSS/ISA to torture and otherwise ill-treat Palestinian detainees.

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

Torture and other ill-treatment: current methods

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

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

Interrogation room - routine methods:

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

Interrogation room - special methods (possibly corresponding to “ticking bomb” cases):

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

Methods used in cells:

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

Impunity: GSS/ISA interrogators enjoy full and unqualified impunity. Impunity is engineered by a combination of incommunicado detention; the isolation of interrogation facilities from the outside world; and a strictly internal investigation of complaints.

All complaints of torture or other ill-treatment against GSS/ISA agents are “investigated” by **a person who is a GSS/ISA agent himself**. As a result not a single GSS/ISA agent has been criminally charged with torture or other ill-treatment in the eight years since the Ministry of Justice ostensibly took over investigations into complaints of ill-treatment by GSS/ISA agents.

Part 2 addresses the issue of violations of detainees’ rights by other security forces.

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 and interrogation.

Mass arbitrary arrests: During the current Intifada, Israeli forces have arrested many thousands, perhaps **tens of thousands of Palestinians**. In several Palestinian towns, refugee camps and villages overtaken by the Israeli army, all males between the ages of 15 (in some cases 16) and 45 (in some cases 50) were arrested.

Violence and humiliation during arrest: Many detainees are beaten – including with batons kicked, threatened, cursed or otherwise humiliated by the arresting Israeli soldiers. Those arrested are often forced to lie on the ground for long periods. During the mass arrests of February-April, many were paraded, at times in circles in the

pouring rain and shown to television cameras, shackled and blindfolded.

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

Using Palestinian detainees as human shields: On numerous occasions, Israeli troops forced Palestinian detainees to shield them from Palestinian gunfire or to go ahead of them into houses which they suspected were booby-trapped. This was done through threats, at gunpoint and sometimes even by shooting between the detainee’s legs. These cruel policies, at times known as “the neighbour procedure,” have continued despite assurances made to the Supreme Court that they would be stopped, and have recently caused the death of a Palestinian youth.

Violence and humiliation during interrogation: the interrogation of Palestinians not conducted by the GSS/ISA – i.e. by the Israeli army and the Israel Police, is often accompanied by violence and humiliation.

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

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

Detention conditions amounting to cruel, inhuman or degrading treatment or punishment: those arrested during the waves of mass arrests faced long hours with out food or water, and were held out in the open, exposed to the elements. Many hundreds of Palestinian detainees still held Ketziot and other detention facilities are housed in tents, in harsh desert conditions and their families are still facing great difficulties in trying to visit them.

Administrative detention: the number of administrative, i.e. Palestinians detained indefinitely without trial, has shot up during the current Intifada, and stood at **867** at the beginning of September 2002.

Main Recommendations

LAW, PCATI and OMCT call upon the Committee:

- to conclude that violations of Article 7, in the form of torture and ill-treatment, are still widely practiced by GSS/ISA interrogators against Palestinian detainees, as well as, in less organised form, by the Israeli army and police during arrest, interrogation and detention of Palestinians, and to call upon Israel to cease such violations immediately and totally;
- in particular to clarify that criminal law justifications, such as the “defence of necessity,” cannot form a shield behind which a state may allow practices which are in violation of non-derogable human rights, and call upon Israel to enact legislation reflecting the absolute prohibition on torture and other ill-treatment;
- 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 the Covenant and other international legal standards;
- to address the issue of impunity, as it is an obvious incentive for the continued practice of torture and other ill-treatment and an impediment to any steps to halt such practices. In particular, to call upon Israel to ensure that investigations of complaints by detainees be taken out of the GSS/ISA and conducted by independent and impartial body;
- to reiterate its opposition to the Parliamentary bill designed to halt Palestinian tort claims;
- to clarify that the fact that persons are Palestinian males between certain ages (including children) cannot be considered ample grounds for arrest, and to recommend that Israel cease conducting operations of mass arrests;
- to conclude that plastic cuffs (*Azikonim*) cannot be considered a proper, humane means of restraint. The coarse material of which they are made, the grooves that make it possible to tighten but not to loosen them (they can only be cut off completely), and the consistent complaints of swelling, cuts and immense, accumulating suffering all render these cuffs instruments of ill-treatment, and sometimes torture. Their use should therefore be banned completely and be replaced by humane means of restraint;
- to define the practices of “human shield” and “the neighbour procedure” as clearly constituting torture and other ill-treatment under Article 7 of the Covenant, as well as being a violation of Article 6 thereof, and to call upon Israel to put an end to them immediately and unconditionally;
- to conclude that Israel has been in violation of its obligations, under Articles 7 and 10(1), to provide conditions of detention which are humane, respect the

inherent dignity of the human person and are free from torture and other cruel, inhuman or degrading treatment or punishment; and to clarify that Israel should not deprive persons of their liberty where it cannot provide such conditions.

- to repeat its conclusions and recommendations concerning administrative detentions;
- to consider what further steps are necessary in view of Israel's consistent non-compliance and blatant violations of the most basic rights protected by the Covenant.

Suggested questions to the Israeli government

A. Data

The following questions are necessary in view of Israel's failure to provide in its report any information on these subjects.

1. How many Palestinians from the Occupied Palestinian Territories have been arrested by the Israeli authorities since Israel presented its initial report? How many of these have been charged with committing offences? How many of those have been convicted?
2. How many Palestinians have been held under administrative detention orders?
3. Against how many Palestinians have orders preventing them from meeting their lawyers been issued?
4. How many Palestinians have been interrogated by the GSS/ISA?
 - a. Of those, how many were considered "ticking bombs?" Who makes this determination? Against how many have "extraordinary," or "physical" interrogation methods been used, i.e. those methods falling outside what the Supreme Court termed "reasonable interrogation"? What methods of interrogation were used against these detainees?
 - b. How many other Palestinian detainees interrogated by the GSS/ISA were subject to prolonged sleep deprivation and shackling?
 - c. How many investigations into possible abuse by GSS/ISA interrogators have been initiated since Israel's initial report? How many of those have resulted in disciplinary action? How many have resulted in criminal prosecution? In how many cases did the Attorney General refrain from prosecution on the grounds that the "defence of necessity" applied to the interrogators?
5. Against how many soldiers have investigations regarding ill-treatment of Palestinian detainees been initiated? How many of those have resulted in disciplinary action? How many have resulted in Court Martial? What punishments have been meted out against those convicted?

B. Legal and practical aspects of the Supreme Court ruling and GSS/ISA interrogations

1. Under the Supreme Court ruling of September 1999, GSS/ISA interrogators go unpunished if they have, in “ticking bomb” situations, used methods which the U.N. Committee Against Torture and the Special Rapporteur on Torture have defined as torture, and the Human Rights Committee has described as constituting “a violation of article 7 of the Covenant in any circumstances.” How does this accord with Israel’s obligations, under the Covenant, not to derogate from the provisions of Article 7, namely to refrain from torture and other cruel, inhuman and degrading treatment or punishment even in time of public emergency which threatens the life of the nation?
2. How are states parties to be held accountable for violations of their obligations under the Covenant if it is to be accepted that in certain circumstances, individual state agents may violate even the most basic human rights and be immune from prosecution?
3. Does Israel consider the “defence of necessity” in its domestic law as overriding its international legal obligations under treaties to which it is party and under customary international law?
4. How does Israel explain the fact that in the last 8 years, while investigations by the State Attorney’s Office led to criminal charges being filed against police officers in hundreds of cases, not a single GSS/ISA interrogator has faced prosecution?
5. Who is “the Official in Charge of Interrogees Complaints” to whom all complaints on torture and ill-treatment by GSS/ISA interrogators are referred by the State Attorney’s Office? Is it true, as suggested by NGO reports, that he is in fact a GSS/ISA agent himself? Could this explain the fact that in the last 8 years, not a single GSS/ISA interrogator has faced prosecution?
6. Please comment on NGO reports which suggest the GSS/ISA interrogators routinely use the following methods while interrogating Palestinian detainees: Sleep deprivation (often continued when a detainee is placed in a cell); shackling to a chair in painful positions; beating, slapping and kicking; threats, curses and insults.
7. Please comment on NGO reports that in certain cases, GSS/ISA interrogators have used the following methods of while interrogating Palestinian detainees: 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.). Are these the methods used in “ticking bomb” cases? If not, what methods *have* been used in such cases?
8. Do GSS/ISA agents undergo instruction in the spirit of human rights in the same

way that police officers do? Are there plans to record GSS/ISA interrogations?

C. Treatment of detainees generally

1. What is the legal justification for arresting every single male aged between 15 and 50 in a given area and holding them in difficult conditions for hours, sometimes days?
2. Can the Israeli Government assure the Committee that Israel has finally and unconditionally halted the use of “human shields,” “neighbour procedure” or any other method of forcing Palestinian civilians to participate in Israeli military operations in the Occupied Palestinian Territories?
3. Does Israel consider the denial of a detainee’s right to meet his lawyer and family for weeks on end to be in accordance with the requirement to derogate from Article 9 of the Covenant in times of emergency only to the extent strictly required by the exigencies of the situation?
4. Does Israel consider the denial of a detainee’s right to be brought in front of a judge for eight days to be in accordance with the requirement to derogate from Article 9 of the Covenant in times of emergency only to the extent strictly required by the exigencies of the situation?
5. May the combined, and prolonged, denial of access to lawyers, family visits and judicial supervision not amount to cruel, inhuman or degrading treatment or punishment which the Covenant prohibits even during emergencies?
6. Do the military orders regarding administrative detention include any provisions limiting the number of times that a detention order may be renewed, namely the length of time that a detainee may spend in prison without being charged or tried? If not, has the jurisprudence of the Israeli courts established such limits?

Torture and other ill-treatment by the Israeli authorities (issues under Article 7, and other articles of the Covenant)

LAW, PCATI and OMCT believe that the crucial question which a state party's report to the Committee should address in regard to Article 7 is how detainees, prisoners and other persons over which state authorities have total power are treated in practice. Judicial and administrative measures, important as they may be, are of little use unless their implementation in actual practice serves to prevent, stop and provide redress for torture and other ill-treatment.

It is therefore extremely disappointing that Israel's report contains very little information about the actual treatment of Palestinian detainees and prisoners, or for that matter about their very existence. Even under Israel's own misguided view, it cannot claim that Palestinians detained, interrogated or imprisoned in its various facilities – the vast majority of them being within Israel itself – are not under its jurisdiction. In addition, torture and other ill-treatment are of course prohibited under international humanitarian law as well as under human rights instruments such as the Covenant. We believe that this failure by Israel is clearly in non-compliance of the Committee's guidelines regarding states parties' reports,⁵ a point which we hope the Committee will address. We will try to fill this void by supplying the relevant information ourselves, as regards Palestinian detainees.

During the past four years, and especially in the two years of the current Intifada, Israel has detained many thousands, perhaps **tens of thousands** of Palestinians in the Occupied Palestinian Territories. For instance, between 26 February and 17 of March over **2,500** Palestinians were arrested; all but about **135** of them were released by 17 March.⁶ On 18 April 2002, state representatives told the Israeli Supreme Court that between 29 March and 18 April alone, **5,600** Palestinians were arrested, of which **3,900** had by that date been released. While the vast majority of those detained are released after a relatively short period of detention, only a minority have escaped treatment amounting to cruel, inhuman and degrading treatment or punishment, and in a growing number of cases to torture.

According to the latest available official figures, at the beginning of September 2002 a total of **4,019** Palestinians were incarcerated by the Israeli army and its prison system,⁷ to which should be added an undisclosed number of Palestinians incarcerated in police facilities in the Occupied Palestinian Territories and inside Israel. At least **867**⁸ of these are held in administrative detention, i.e. held indefinitely,⁹ without trial. In addition, two

⁵ Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights, U.N. Doc. CCPR/C/66/GUI/Rev.2, 26 February 2001, para. C.6.

⁶ Amnesty International, *Israel and the Occupied Territories: The heavy price of Israeli incursions*, April 2002. AI INDEX: MDE 15/042/2002, p. 20.

⁷ Data provided by the Israel Prison Service (IPS) and the Israeli army to an Israeli human rights NGO, B'Tselem (see: www.btselem.org). The data for the IPS is for 3 September, the data from the IDF is for 2 September 2002.

⁸ According to official data provided to B'Tselem, 857 Palestinians were held in administrative detention in military facilities on 2 September 2002, and 10 in IPS facilities on 3 September, 2002. In addition, there are dozens of Palestinians against whom administrative detention orders have been issued, but not yet approved by a military judge; these have not been included in the official figures.

⁹ While a single administrative detention order may extend for no longer than six months, these orders

Lebanese citizens have now been held in Israel under administrative detention orders for eight and thirteen years, respectively.¹⁰

1. Torture and other ill-treatment in GSS/ISA¹¹ interrogation facilities

1.1 Introduction

Only a minority of Palestinians detained by Israeli authorities are interrogated by the GSS/ISA. Nor are they, as will be detailed below, the only ones to suffer ill-treatment at the hand of the detaining authorities. However, we have chosen to deal extensively with this issue for the following reasons:

- The State report creates the false impression that this is one issue where the State has complied with the recommendations of the Committee (see report, paras. 80-87);
- Unfortunately, the reality is that the use of torture and other ill-treatment of Palestinian detainee continues in GSS/ISA facilities, with the full approval of the government and the courts;
- Israel's 'legal' justification of its torture of Palestinian detainees in the name of the "war on terrorism," if accepted, would threaten to undermine the authority of the human rights legal system not only in Israel and the Occupied Palestinian Territories, but in other countries as well. The three organisations unreservedly condemn all attacks against civilians – *any* civilians, but responding to such attacks by violating the basic, non-derogable rights of human beings – *any* human beings, is equally condemnable.

1.2. Data

In 2001, official figures suggested that at any given day, the number of Palestinians under GSS/ISA interrogation was in the high tens, possibly just over one hundred.¹² According to recent official figures, however, this number has risen significantly during 2002. In July, an Israeli newspaper report cited "a senior security source" as saying that the number of Palestinians interrogated by the GSS/ISA rose during the first half of 2002 to 1,768, compared to 618 during the first half of 2001.¹³ In September 2001, a PCATI report estimated that each month, dozens of Palestinians

may be renewed indefinitely. See, for the West Bank, Administrative Detention Order (Temporary Provision) (Judea and Samaria) (No. 1229), 1988; for the Gaza Strip, Administrative Detention Order (Temporary Provision) (Gaza Strip) (No. 941), 1988.

¹⁰ See Israel's report, para. 128. The two concerned are Mustafa Dirani and 'Abd al-Karim 'Ubeid.

¹¹ The official Hebrew name of this service is *Sherut ha-Bitahon ha-Klali*, the proper translation of which is 'the General Security Service' (GSS).

¹² According to data provided to B'Tselem, 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 2001. Only one GSS/ISA interrogation facility is located within an IPS prison (*Shikmah*). The Israeli Police has not provided B'Tselem with similar information regarding its own detention centres, within which the other three GSS/ISA interrogation facilities are located.

¹³ Yoav Limor, "90 Palestinian Detainees were Defined as "Ticking Bombs" *Maariv*, 25 July 2002. At the beginning of September 2002, **48** Palestinians were being interrogated by the GSS/ISA in the IPS' *Shikmah* prison, according to IPS data provided to B'Tselem. No earlier figures for 2002 have been available.

interrogated by the GSS/ISA were exposed, to one extent or another, to methods of torture and other ill-treatment.¹⁴ We now estimate that the current figure is much higher.

1.3. The Supreme Court ruling and Israel's implementation thereof

LAW, PCATI and OMCT acknowledge that the Supreme Court ruling in *HCJ 5100/94 The Public Committee Against Torture in Israel v. The Government of Israel et al.* (henceforth: Supreme Court ruling, or HCJ ruling), 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 (including the Committee), was a significant step in the right direction. The ruling put an end to the *a priori* permission and authorization of mass and routine torture, limited the authority of GSS/ISA interrogators in routine interrogations (or the means of interrogation at their disposal), and largely limited, at least in theory, the field of play within which GSS/ISA interrogators can torture and ill-treat Palestinian detainees.

However, the three organisations would like to emphasise that the ruling falls far short of fulfilling Israel's international legal obligations in general, and its obligations under the Covenant in particular. This has resulted in large, and increasing, numbers of Palestinians being tortured or otherwise ill-treated in what is, again, a judicially-sanctioned manner.

1.3.1. Allowing torture

While the Supreme Court prohibited the government from authorizing the GSS/ISA to torture or ill-treat detainees, **it did not prohibit GSS/ISA interrogators from torturing or ill-treating detainees under all circumstances**, as strictly required by Article 4(2) of the Covenant. 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/ISA 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

¹⁴ The Public Committee Against torture in Israel, **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).

Ethics and Political Science, may be raised for and against the use of the “necessity” defence... This matter, however, has already been decided under Israeli law. Israel’s Penal Law recognizes the “necessity” defence. [ruling, official translation, para. 34. References omitted.]

In other words, if a GSS/ISA 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 U.N. treaty bodies and mechanisms have explicitly defined as torture.¹⁵ After the fact, (see para. 38 of the ruling and para. 86 of Israel’s report) his matter would be brought before the Attorney General, who would then decide if, in fact, the case were indeed a “ticking bomb” situation.¹⁶ If so, the defence of “necessity” would be at the interrogator’s disposal, and he would be exempt from criminal liability; if not – he would be tried, at which point he would also be able to invoke the “necessity” defence.

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

Unfortunately, the “ticking bomb” loophole left by the Supreme Court in its ruling prohibiting the routine use of torture, far from being a theoretical, hypothetical *obiter dictum*, is a practical, working torture-facilitating and torture-legalising system.

During the U.N. Committee Against Torture’s discussion of Israel’s 3rd periodic report, on 21 November 2001, an Israeli representative stated the following:

“In isolated cases during the last two years, interrogators had used force because it was deemed necessary to prevent terrorist attacks, and in several cases charges subsequently had been filed by those interrogated and investigations were being carried out.”¹⁷

The term “isolated cases” is, however, misleading. In July 2002, a senior “security source” briefed several Israeli newspapers, and told them that, since the Court ruling, the GSS/ISA had applied, in some **90** cases, “extraordinary interrogation measures” against Palestinian detainees suspected of involvement in attacks against Israelis; the “defence of necessity” was subsequently applied to protect the interrogators from prosecution.¹⁸ The following should be emphasised in this context:

- It is apparent from official communications with PCATI that **investigations**

¹⁵ See e.g. the conclusions and observations of the U.N. Committee Against Torture in 1997, U.N. Doc. A/52/44, para. 257, and in 1998, U.N. Doc. A/53/44, para. 240; and the reports of the U.N. Special Rapporteur on Torture in 1997, E/CN.4/1997, para. 121, and in 1999, E/CN.4/1999/61, para. 394.

¹⁶ 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.

¹⁷ CAT press release, 21 November 2001,

<http://www.unhcr.ch/hurricane/hurricane.nsf/NewsRoom?OpenFrameSet>, accessed 30 November 2001.

¹⁸ See e.g. *Haaretz, Maariv, Yediot Aharonot*, 25 July 2002.

- have been initiated only following complaints by human rights NGOs**, as indicated by the Israeli representative – rather than immediately following the use of torture (“extraordinary interrogation measures”) during an interrogation;
- The official “ticking bomb” cases are not exhaustive of the cases where Palestinian detainees have been tortured or otherwise ill-treated in GSS/ISA facilities;
 - As far as we are aware, not a single GSS/ISA interrogator has to date been criminally charged, let alone convicted as a result of the “investigations” – not only in the past three years, but in the past **thirteen** (see more on this point below).

The bleak reality is that, even following the Supreme Court ruling, torture is still officially carried out and judicially sanctioned, albeit under a slightly different legal guise.

1.3.2. Allowing sleep deprivation and shackling

In its conclusions on Israel’s initial report in 1998, the Committee listed “the methods of handcuffing” and “sleep deprivation” among the interrogation methods which “constitute a violation of article 7 of the Covenant in any circumstances.” (at para. 19)

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).

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

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

The result of the ruling in these matters in practice, is that the GSS/ISA holds people in the interrogation rooms for many hours, sometimes days, while they are shackled to a chair. The explanation offered by the State Attorney’s Office is, for example:

The manner and form of his interrogation derive from the assessment of security officials, according to which your client harbors even today information that can enable the foiling of [terrorist] attacks in the near future... regarding your claims

about his shackling during his interrogation – this arises solely from the need to assure the security of the interrogators...¹⁹

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 under the Landau rules. In practice (see below), sleep deprivation and prolonged, painful shackling, have been turned by the GSS/ISA into means of torture and other ill-treatment *par excellence*, in stark contravention of Article 7 of the Covenant, as well as of the HCJ ruling. Yet because GSS/ISA interrogators are protected 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/ISA 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/ISA agents, perceived as the State's dedicated guardians, according to whom shackling and sleep deprivation are only "side effects" and "security measures."

Consequently, sleep deprivation and prolonged, painful shackling are used by the GSS/ISA to torture and otherwise ill-treat Palestinian detainees with impunity. Unlike "extraordinary measures," the use of these methods is not limited to "ticking bombs," but is practiced on a much greater numbers of interrogees.

1.3.3. GSS/ISA torture and ill-treatment methods

As note above, the number of Palestinians now subjected to torture and other ill-treatment during GSS/ISA interrogations has risen sharply in 2002, and may be as high as a hundred every month. GSS/ISA 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.

In addition, GSS/ISA interrogators have in several cases, possibly those defined as "ticking bombs," 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.

1.3.3.1. Incommunicado detention as a means of ill-treatment

In its General Comment on Article 7, the Committee stated the following:

Provisions should also be made against incommunicado detention. In that connection, States parties should ensure that any places of detention be free from

¹⁹ 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."

any equipment liable to be used for inflicting torture or ill-treatment. The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.²⁰

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

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

However, this state of affairs, itself unacceptable, was made even worse in April 2002, when General Yizhak Eitan, the "Commander of IDF Forces in the Judea and Samaria Area," issued Military Order 1500, under which security officers may detain any individual where "the circumstances of his arrest raise suspicion that he threatens or could threaten the security of the area, the security of Israeli forces, or public security" for as long as 18 (eighteen) days without judicial review and without access to a lawyer. Under the order, which was valid for 60 days thousands of Palestinians were held incommunicado. The order was extended by subsequent orders; the last order, as far as we know (no. 1504), limits the period without access to a lawyer to four days, and the period without judicial review to eight days. It should be noted that after the initial 4 days, the period without access to a lawyer may be extended under the previous military orders, noted above.

The authority to deprive detainees of their basic human right to contact with their families, to legal counsel, and to legal review for prolonged periods, which the military orders intended, presumably, for extreme cases, is in practice used routinely *vis-à-vis* Palestinian detainees under GSS/ISA 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/ISA interrogation and whose right to meet with their attorney was denied for days and weeks. The overall number is even higher, as many others contacted other human rights organizations or attorneys.

Unfortunately, the Supreme Court is a full participant in this glaring violation of basic

²⁰ U.N. Doc. HRI/GEN/1/Rev.1 (1994), at para. 11.

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 four 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.”²¹ Such wording was used, for instance, in a 2002 decision which allowed that he be kept without access to a lawyer, eventually, for a total of 52 (fifty-two days).²² The following is an excerpt from an affidavit given by Riyadh ‘Ayyad to Attorney Na’il Zahalqah on the day the two were finally allowed to meet:

During the first 22 days I got no time to sleep and the interrogators would not let go of me. I would point out that during the whole of the 22 days I did not sleep more than 20 hours. At the end I could not stand on my feet and felt utterly exhausted. The interrogators would make me stand and pull me up by my arms.²³

Nor was the Supreme Court deterred from leaving a detained 17-year-old Palestinian child incommunicado for three weeks.²⁴ In another case, the Court went so far as to even refuse to order the GSS/ISA 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.”²⁵ If it is not enough that in Israel it is not required to apprise detainees of their rights, as is the practice in most democratic countries – even informing the detainee that they are **denying him** his rights constitutes, according to the Supreme Court, harm to the security of the State.

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

LAW, PCATI and OMCT have no doubt that one of the goals of denying these rights is to place emotional pressure on detainees. In specific reference to the policy of incommunicado detention of Palestinian detainees in Israel – even before the recent

²¹ Quoted from *HCI 5129/00 Muhammad ‘Abd al-‘Aziz v. General Security Service et al.*, decision of 19 July 2000. Compare, for example, with *HCI 1229/01 Nasser Mas’ud ‘Ayyad and the Public Committee Against Torture in Israel v. General Security Service*, decision of 23 July 2000.

²² *HCI 724/02 Riyadh Sa’di ‘Ayyad and the Public Committee Against Torture in Israel v. the GSS*, decision of 25 January 2002. Orders prohibiting meeting with ‘Ayyad’s lawyer were issued intermittently between the day of his arrest, 1 January and 21 February 2002. Such orders are often combined with “bureaucratic” impediments to ensure, as in this case, that a detainee has no access to a lawyer for a continuous stretch of time.

²³ Affidavit given by Riyadh Sa’di ‘Ayyad to Att. Zahalqah in the Shikmah prison on 21 February 2002.

²⁴ *HCI 5242 Muhammad Ibrahim Huhammad al-Matur and the Public Committee Against Torture in Israel v. Erez Military Court*, decision of 15 February 2000.

²⁵ *HCI 2000 801, Bassam Natshe and the Public Committee Against Torture in Israel v. General Security Service*, decision of 1 February 2000, p. 2

orders - the outgoing UN Special Rapporteur on Torture, Prof. Sir Nigel Rodley, stated explicitly in a report he submitted in 2001 to the Commission on Human Rights, and following statements by that Commission,²⁶ that,

... the Government continues to detain persons incommunicado for exorbitant periods, **itself a practice constituting cruel, inhuman or degrading treatment...**²⁷ [our emphasis]

LAW, PCATI and OMCT are aware of the fact that Israel derogated from article 9 of the Covenant. We believe, however, that Israel's policy of incommunicado detention far exceeds measures reasonably taken "to the extent strictly required by the exigencies of the situation," as stipulated in the Covenant. Moreover, in its General Comment on Article 4, the Committee stated, *inter alia*, the following:

In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide **without delay** on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant.²⁸ [our emphasis].

We believe that in light of the above, and in view of the fact that Israel's methods of torture and other ill-treatment, now as in the past, work through an accumulation of pain and suffering inflicted by a combination of techniques, incommunicado detention of Palestinians should be viewed not only as a violation of Article 9, and not merely as 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, in violation of Article 7.

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 the Covenant and other international legal standards.

1.3.3.2. Arenas of torture and ill-treatment (1): the interrogation room

b. Following the HCJ ruling, the GSS/ISA was forced to shut down the corridor arena, where exhaustion and pain were inflicted, the usual location for "waiting" (the GSS/ISA 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/ISA by the ruling, to the interrogation room. This was made possible, to a certain extent, by the cracks and openings in the HCJ ruling discussed above, and particularly the legitimacy that the ruling granted to sleep deprivation and shackling the detainee during interrogation. However, even in more routine interrogations, the GSS/ISA has gone beyond what the Supreme Court permitted.

²⁶ 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.

²⁷ U.N. Doc. E/CN.4/2001/66, 25 January 2001, para. 665.

²⁸ General Comment no. 29, CCPR/C/21/Rev.1/Add.11 (2001), para. 11.

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/ISA implemented adjustments and changes, yet managed to find ways of deliberately inflicting pain and suffering on detainees during interrogation even in cases apparently not constituting “ticking bombs,” in complete contravention both of the Covenant and of the HCJ ruling.

In the interrogation rooms, certain methods of torture and other ill-treatment are routinely used by the GSS, while others are applied less frequently.

Routine Methods:

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

Special Methods:

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

Routine Methods – Details

a. Sleep deprivation

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

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

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

The study conducted by PCATI revealed that shackling detainees in the interrogation rooms for 15 and even 20 hours a day, for a number of consecutive days, is a matter of

routine.²⁹ On more than a few occasions, detainees have been shackled in the interrogation rooms for more protracted periods – for a number of consecutive days.³⁰ As detailed below, various means of sleep deprivation are also employed in the isolation cells.

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

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

b. Shackling to a chair in painful positions

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

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

Statements from witnesses confirm that shackling detainees causes them suffering and pain, and is in contravention of the HCJ ruling, which stipulated explicitly that “cuffing causing pain is prohibited” (para. 26).³¹ It is similarly clear that painful shackling is in violation of Article 7 of the Covenant, as it is used to apply pressure on the interrogee, by causing him pain, in conjunction with other methods of pressure.

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

²⁹ See for instance the affidavits or testimonies of Thabet ‘Asi, Kamel ‘Awwad, Muhammad Farjallah and Da’ud Shawish in the *PCATI Report*, Part Two.

³⁰ See for instance the affidavits or testimonies of ‘Adnan al-Hajjar, Muhammad Abu Daher and Nasser ‘Ayyad, *ibid*.

³¹ See for instance the affidavits or testimonies of Kamel ‘Obeid, Shadi al-‘Isawwi, Muhammad Abu Daher and Nasser ‘Ayyad, *ibid*.

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...**³² [Our emphasis.]

The Supreme Court itself, in a manner similar to justice Lahovitzki, had commented in its ruling that “there are other ways of preventing the suspect from fleeing from legal custody which do not involve causing the suspect pain and suffering.” (para. 26). The fact that the GSS/ISA 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.

c. Beating, slapping and kicking

During the “interrogation,” GSS/ISA 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.

d. Threats, curses and insults

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

The curses, threats and humiliations are often of a racist or sexual nature. The interrogators, who supposedly represent the law of the State of Israel, threaten interrogees that they will perpetrate acts against them or their families (usually women) that are considered serious criminal offences, such as rape. In many cases, they threaten to perpetrate acts against interrogees or their families that are prohibited by international law but acceptable in Israel, such as protracted and arbitrary administrative detention, or extra-judicial execution (referred to in Israel has “elimination,” “interception,” “focused prevention,” etc.).³³

Special methods – an example:

From Attorney Leah Tsemel's letter of complaint to the State Attorney (signed by Jihad Shuman)

³² Jerusalem Magistrates court, before Justice Haim Lahovitzki, *M 007453/01, Regarding Israel Police v. Shuman Jihad*, 2 February 2001, p. 9 of the decision.

³³ 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.

... He was physically beaten by his interrogators. Among other things, they kicked him, slapped him [emphasis in the original] on the face with great force many times, to the extent that his nose was bruised and he was bleeding from the nose. Since the beginning of the interrogation, his nose has been stuffed and he has experienced difficulty breathing.

Since the beginning of his interrogation he has been placed for extraordinarily long hours on a tiny chair, with his legs pushed in and pressed behind the legs of the chair. He was tied, with his back pressing against the side of the back of the chair (the chair was placed sideways). His interrogators forced him to bend backwards with his entire body pressed and his muscles hurting to the limits of what he could endure. They forced him to remain in this painful position, and did not allow him to get up. Following continued efforts to remain seated, he would collapse to the floor. The interrogator would grab his chest and lift him up to the same painful position. He was forced to do this for a number of days in a row, and many times for what seemed to him for entire days.... His back hurt tremendously as a result of these acts, and he felt that his back had been broken.

...For days on end he was not allowed to sleep. He remembers at least three consecutive days during which he was tired and exhausted “to death.” Every time he showed signs of fatigue, the prison guard would take him by force to the shower and pour cold water on him, and he would be forced to sit for hours in the freezing cold, wet all over.

...The interrogation included threats and insults of every type. First and foremost, sexual threats such as that he would be raped or that they would rape his mother. In addition, they threatened him with electric shock and that they would cut off his nerves. They made ample use of curses against his family and his mother.³⁴

It should be noted that in response to a letter complaining of Mr. Shuman’s torture, the State Attorney’s Office informed PCATI that an “investigation” of the complaint had concluded that the “interrogation methods” used against each of them were justified, as in each case the interrogee was “suspected of being ‘a ticking bomb.’” The Interrogators therefore enjoyed immunity from prosecution under the “defence of necessity, and no criminal or disciplinary measures were taken against them.³⁵ It should be emphasised that the State Attorney’s Office does not deny any of the allegations of torture made by Mr. Shuman.

1.3.3.3. Arenas of torture and ill-treatment (2): the isolation cells

The isolation cells are located outside the GSS/ISA 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

³⁴ Gerald (Jihad) Rida Shuman, a tourist, a British citizen, was detained on 5 January 2001 and interrogated by the GSS/ISA. He is currently under administrative detention. The excerpt is from a letter by Attorney Leah Tsemel to the Attorney General on 27 January 2001, which was signed by Mr. Shuman as confirmation of the facts included therein.

³⁵ Letter from the State Attorney’s Office regarding PCATI’s complaint concerning Gerald Shuman, 7 March 2002.

GSS/ISA interrogators.

Yet the GSS/ISA 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/ISA 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/ISA 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 heat and cold
- Prolonged and continuous exposure to artificial light
- Detention in inhuman and degrading conditions

1. Sleep deprivation

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

2. Exposure to extreme heat and cold

In the isolation cells where Palestinian interrogees are held, there is no natural ventilation. Air is streamed into the cell through vents that are part of a centralized air conditioning system.³⁶ GSS/ISA 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

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.³⁷

4. Detention in inhuman and degrading conditions

We acknowledge that use of the term “methods” for rotten food or a cell with putrid toilet facilities seems, at first glance, questionable. The explanation for this is that human rights NGOs, as well as many other organisations and institutions, including courts, have for many years objected to and protested against the horrid conditions in

³⁶ 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.

³⁷ See the affidavits of Shadi Ghanem and Muhammad Abu Daher, *PCATI Report*, Part Two.

which Palestinian detainees are held, but with little effect. Since Israel is not a poor country, the continued gross neglect of this topic can only be understood as an intentional act.

Interrogees have not been allowed to shower for several days on end, and forced to remain in the clothes in which they were detained for even longer periods. They have been held in a cell, in which there is a toilet in the form of a hole in the floor, with no real separation between it and the rest of the cell, and it is in these filthy and putrid isolation cells that they have slept and even eaten. The food has been described as horrible, as has been the way in which it is served. In sum, the Palestinian interrogees have been held in places unsuitable for human dwelling, and not treated in a manner that human beings deserve.³⁸

* * *

LAW, PCATI and OMCT strongly urge the Committee to conclude that violations of Article 7, in the form of torture and other ill-treatment, are still widely committed by GSS/ISA interrogators against Palestinian detainees, and to call upon Israel to cease such violations immediately and totally.

In the context of clarifying the facts we believe that two points should be borne in mind:

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

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 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 Torture³⁹ and of the U.N. Committee Against Torture in response to claims made in the past by Israel.⁴⁰

In particular, the three organisations urge the Committee to clarify that criminal law justifications, such as the "defence of necessity," cannot form a shield behind which a state may allow practices which are in violation of non-derogable human rights, and to call upon Israel to enact legislation reflecting the absolute prohibition on torture and other ill-treatment.

³⁸ See for instance the affidavits or testimonies of Walid Abu Khdeir, 'Abd a-Rahman al-Ahmar and Hassan Khater, *ibid*.

³⁹ 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.

⁴⁰ U.N. Doc. A/53/44, para. 239(c).

1.4. Impunity and redress (issues under article 7 combined with article 2 of the Covenant)

1.4.1. Impunity

The Covenant obliges states parties, in the clearest of terms, to “ensure that any person whose rights or freedoms are as herein recognized are violated shall have an effective remedy” and that such a person “shall have his right thereto determined by competent judicial, administrative or legislative authorities...” (Article 2).

In this context, the Committee, commenting on Israel’s initial report, praised “the establishment of the Department for Investigation of Police Misconduct within the Ministry of Justice to review complaints of maltreatment by members of the police and security forces.” (para. 7)

Paras. 89-91 of Israel’s report outline what it calls “Disciplinary and Criminal Proceedings and other Judicial Relief” and provides an array of data on measures taken by Department for Investigation of Police Misconduct (DIPM). It should be emphasised that **none of this data concerns GSS/ISA interrogators**, which the DIPM no longer handles. There are, in fact, no data on disciplinary measures or criminal procedures taken against GSS/ISA interrogators for torturing or ill-treating detainees, for the simple fact that, as far as we know, no such measures or procedures have been initiated.⁴¹

GSS/ISA interrogators enjoy full and unqualified impunity. As detailed above, the Supreme Court’s ruling allows full impunity from prosecution for torturers in “ticking bomb” cases. In addition, impunity for GSS/ISA works through a combination of incommunicado detention; the isolation of interrogation facilities from the outside world; and a strictly internal investigation of complaints.

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

Isolation of GSS/ISA facilities from the outside world: The GSS/ISA 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, it is GSS/ISA 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/ISA agents control what is done to these

⁴¹ As far as we are aware, no disciplinary measures have been taken since 1995, and no criminal charges have been pressed since 1989.

interrogees in other ways as well.

Everything that occurs in interrogation rooms and isolation cells is concealed completely from the eyes of the outside world. Recording the interrogations – whether video or audio – for the purposes of scrutiny, as is the practice in many democratic countries, is not done. In this context it should be noted that neither the Kremnitzer Committee recommendations, nor those of the Goldberg Committee, cited favourably in Israel's report (paras. 93-4) have been applied to the GSS/ISA. No independent body performs surprise inspections, such as those performed, for example, across Europe by the European Committee for the Prevention of Torture (CPT).

Internal investigation of complaints: No less grave is the manner in which detainees' complaints of ill-treatment and torture by GSS/ISA agents are handled, which amount to total impunity. Such complaints are now being processed by the Special Tasks Division of the State Attorney's Office which is not subordinate, of course, to the GSS/ISA.

The problem is, however that all complaints are passed by the Special Tasks Division on to the "Official in Charge of Investigating Interrogees' Complaints," **who himself is a GSS/ISA 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.⁴² 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/ISA agents, is brought before another GSS/ISA agent and required to detail for him the deeds of that agent's colleagues. It should be noted that during the interrogation, the GSS/ISA agents and their aides often pose as members of Palestinian organizations, and are known to have also posed as a foreign consul, an attorney, and even as human rights workers.

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

This questionable method of investigating complaints has had two clear, predictable and 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/ISA 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 eight years, not a single GSS/ISA 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/ISA 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

⁴² Conveyed in a telephone call to Hannah Friedman, Executive Director of PCATI, on 27 August 2001.

- and probably also torturing – Palestinian detainees.⁴³

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.

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

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

LAW, PCATI and OMCT strongly believe that the Committee should address this issue, as impunity is an obvious incentive for the continued practice of torture and other ill-treatment and an impediment to any steps to halt such practices. In particular, we urge the Committee to call upon Israel to ensure that investigations of complaints by detainees be taken out of the GSS/ISA and conducted by independent and impartial body;

1.4.2. Redress

In commenting on Israel's periodic report, the Committee expressed "regret" over "the introduction by the Government of a draft law which would deny victims compensation for excesses committed by members of the security forces against Palestinian residents of the occupied territories." The Committee went on to request "that detailed information on these matters be included in the next periodic report of the State party." (para. 18). Israel has chosen to ignore this request too.

The draft law, which is still at the Israeli Parliament (Knesset) is designed to halt Palestinian tort claims, which passed its first reading in 1997.⁴⁴ 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 Occupied Palestinian Territories during the first and the current Intifada. The law proposal provides that the exemption will generally apply to "wartime action" which is defined as "including any action of combating terror, hostile actions, or insurrection, and also an action as stated that is intended to prevent terror and hostile acts and insurrection committed in circumstances of danger to life or limb."⁴⁵ 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

⁴³ 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/ISA.

⁴⁴ There have been some changes to the version of the 1997 bill.

⁴⁵ Torts Law (State Liability) (Amendment – Claims Arising from Activity of Security Forces in Judea and Samaria and the Gaza Strip), 5761-2001. (Translation by B'Tselem).

checkpoints or during arrest, or in cases of deaths as a consequence of the closure. It is not inconceivable that attempts may be made to apply the law to “ticking bomb” torture victims as well. We therefore believe that if passed, this law would violate the right of torture victims to seek fair compensation, as guaranteed by article 2 of the Covenant, and suggest that the Committee reiterate its opposition to this bill.

LAW, PCATI and OMCT call upon the Committee to reiterate its opposition to this bill.

2. Torture and ill-treatment by other authorities: IDF, Border Police, Regular Police

The forces that make the initial arrest of Palestinians in the Occupied Territories – the Israeli army, the Border Police, and the Israel Police, and the various special units of each, often use violence or otherwise behave in a cruel, inhuman or degrading manner towards Palestinians during – and after – arrest, and during (non-GSS/ISA) interrogation. Beating, kicking, slapping, curses and humiliation are commonplace during the arrest and interrogation of Palestinians.⁴⁶ Such behaviour has assumed a massive scale during the mass arrests that followed the invasions which have taken place during 2002.

2.1. Mass arbitrary arrests

Starting in February 2002, and especially during, March and April 2002, Israeli forces conducted mass, arbitrary arrests on an unprecedented scale. Thus between 26 February and 17 of March over 2,5000 Palestinians were arrested; all but about 135 of them were released by 17 March.⁴⁷ On 18 April 2002, state representatives told the Israeli Supreme Court that between 29 March and 18 April alone, **5,600** Palestinians were arrested, of which **3,900** had by that date been released. In several Palestinian towns, refugee camps and villages overtaken by the Israeli army, all males between the ages of 15 (in some cases 16) and 45 (in some cases 50) were ordered to leave their homes and go to a specific location, often a school - sometimes threatened that they would be shot dead unless they do so.

Article 9(1) of the Covenant provides that “no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.” LAW, PCATI and OMCT believe that the fact that persons are Palestinian males between certain ages (including children) cannot be considered ample grounds for arrest. The arbitrariness and scale of the arrests gives rise to concern that at least one of the principal reasons for effecting them was to punish, humiliate and intimidate the Palestinian population at large (the families of those arrested were often kept for

⁴⁶ 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 (see excerpt below), *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.

⁴⁷ Amnesty International, *Israel and the Occupied Territories: The heavy price of Israeli incursions*, April 2002. AI INDEX: MDE 15/042/2002, p. 20.

long days in total darkness as to the whereabouts and fate of their loved ones); which in turn raises issues under article 7 of the Covenant even before the ways by which the arrests were carried out and the treatment of those detained are considered.

As noted, most of those arrested were subsequently released, within a few days. However, even those released had suffered several forms of ill-treatment, at times amounting to torture. Those held for longer period were, as of the 28th of March, subject to the provisions of Military Order no. 1,500 discussed above, and thus were held for up to 18 days without access to family, lawyers or even the military court.

2.2. Violence and humiliation during arrest and in the detention facilities

Many detainees are beaten – including with batons kicked, threatened, cursed or otherwise humiliated by the arresting Israeli soldiers. Those arrested are often forced to lie on the ground for long periods. During the mass arrests of February-April, many were paraded, at times in circles in the pouring rain and shown to television cameras, shackled and blindfolded, in an obvious attempt to humiliate them and the Palestinian population generally.

As noted, most of those arrested were taken to a designated assembly point, where in most cases they were blindfolded and bound by disposable handcuffs (termed in Hebrew “*azikonim*”), made of flexible but coarse plastic, which the soldiers use to bind detainees’ hands and sometimes their legs. These plastic handcuffs often cause swelling, cuts in the skin, and intense pain. In several cases detainees spent long hours – and sometimes a whole night – bound by these plastic handcuffs. The requests – and sometimes begging – of the detainees to replace the handcuffs with looser ones were usually met with refusal and derision. Some persons hands turned black.

LAW, PCATI and OMCT believe that these plastic cuffs cannot be considered a proper, humane means of restraint. The coarse material of which they are made, the grooves that make it possible to tighten but not to loosen them (they can only be cut off completely), and the consistent complaints of swelling, cuts and immense, accumulating suffering all render these cuffs instruments of ill-treatment, and sometimes torture, which should be banned completely.

Thousands of Palestinians detained during mass arrests were transferred to temporary detention facilities within military bases and settlements; the largest among them being at Ofer camp, where at one point over 1,000 Palestinians were held..

Violence and humiliation continued during the transfer, with detainees being beaten, trodden upon and spat on. In one case a soldier urinated on a detainees blindfold.⁴⁸ in these facilities as well. For instance, one detainee told the Association for Civil Rights in Israel (ACRI) that upon leaving the bus on which he had arrived at Ofer camp, he slid in the mud, whereupon soldiers dragged him in the mud by his feet, then placed him against a wall, pulled him by the hair and banged his head against the wall. Later soldiers ordered detainees to stand up, then sit down, stand up again etc. It appears

⁴⁸ Letter by Adv. Sharon Avraham-Weiss of ACRI to Commander of the Central Command, 2 April 2002.

that other detainees had their heads banged against walls.⁴⁹

2.3. Violence and humiliation during interrogations

Interrogations of Palestinians not conducted by the GSS/ISA – i.e. by the IDF and the Israel Police, are often accompanied by violence and humiliation, albeit without express official or judicial sanction. Palestinian detainees, including children, interrogated by Israel Police interrogators or held in police detention, have been exposed to methods of torture and other ill-treatment that include:

- 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

By way of example, the following is an excerpt from the affidavit of Rami Za'ul, age 16, who was interrogated in the 'Etzion' police temporary holding facility, October-November 2000:

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.

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

LAW, PCATI and OMCT strongly urge the Committee to conclude that violations of Article 7, in the form of ill-treatment at times amounting to torture, are widely

⁴⁹ Letter by Adv. Sharon Avraham-Weiss of ACRI to Commander of the Central Command, 2 April 2002.

committed by Israel soldiers and police, with many thousands suffering as a result. We believe that the Committee should call upon Israel to take all necessary measures to put an end to such practices. In addition, we strongly recommend that the Committee also call for an immediate cessation of the use by members of Israeli forces of disposable plastic handcuffs (*Azikonim*), to be replaced by humane means of restraint.

2.4. Using Palestinian detainees as human shields

On numerous occasions, Israeli troops forced Palestinian detainees to shield them from Palestinian gunfire or to go ahead of them into houses which they suspected were booby-trapped. This was done through threats, at gunpoint and sometimes even by shooting between the detainee's legs.

Following are some examples:

- Artas Village, 29 January 2002: The Israeli army entered the village between 1:00 and 2:00 a.m. Israeli soldiers took Ahmad al-Yas 'Aysh, 37, and his brother Hamdi from their house and held them hostage. They demanded that Ahmad return to the house and bring out his brother Omar. When Ahmad failed to do so, the soldiers shot him in the thigh. They then forced Hamdi 'Aysh to go to the house and fetch Omar, threatening to shoot him as well if he failed to comply.
- Jenin refugee camp, 6 April 2002: Kamal Tawalbi, 43, and his fourteen-year-old son, were used as human shields by Israeli soldiers. For three hours, the soldiers forced the father and son to stand in front of them on a balcony, facing the soldiers, while they exchanged gunfire with Palestinian fighters. The soldiers used the shoulders of Mr. Tawalbi and his son to support their rifles.
- Nablus, Old city, 7 April 2002: Israeli soldiers entered the home of Nabil Nadim Nur a-Din, 43, at around 11:00 a.m. and conducted a search. They then ordered him to go outside and clear the road for them. Mr. Nur a-Din refused, as he could hear an exchange of fire taking place outside. He told the soldiers: "Even if you shoot me, I will not go out to the street." In response, one of the soldiers then shot him in the knee. The soldiers subsequently ordered Mr. Nur a-Din's son, Ahmad to clear the road. Ahmad left the house with the soldiers, but was later able to escape.⁵⁰

Following petitions by five Israeli NGOs,⁵¹ the State made the following announcement in front of the Supreme Court:

⁵⁰ Compiled by an Israel-Palestinian human rights NGO, 'Adalah, from various sources, including Amnesty International and Human Rights Watch, for submission to the Supreme Court. See 'Adalah News Update, 6 May 2002.

⁵¹ HCJ 3779/02 *'Adalah et al v. Yitzhaq Eitan, Commander of the Central Command et al*, Petition for an *Order Nisi* and Interim Injunction, 5 May 2002.

It was decided in the IDF to issue immediately to the forces in the field an unequivocal order whereby it is absolutely prohibited to use civilians, wherever they may be, as “human shields” against shootings or terrorist attacks by the Palestinians. The order further clarifies that this prohibition applies to streets, houses and any area or place where IDF troops operate.⁵²

In view of this statement, the Court decided, on 8 May 2002, that there was no need to issue the requested order. However, on 14 August, a 19 years old Palestinian, Nidal Abu Muhsin, was shot to death in Tubas by another Palestinian, having been forced by Israeli soldiers to approach that Palestinian’s door. This was part of a widely-use policy called “the neighbour procedure,” which the State apparently did not consider as constituting a “human shield.”

The NGOs petitioned the Supreme Court again, on 18 August 2002, requesting an interim injunction against that “procedure.” The Court issued a temporary injunction to that effect. This injunction has to date been extended twice.

However, according to B’Tselem, the “neighbour procedure” was used again in Deir al-Balah in the Gaza Strip on 22 August 2002.

The IDF’s “human shield” policies, including the “neighbour procedure,” are clearly in blatant violation of international human rights and humanitarian law in general, and of the provisions of Articles 6 and 7 of the Covenant in particular.

LAW, PCATI and OMCT recommend that the Committee define these practices clearly as constituting torture and other ill-treatment under Article 7 of the Covenant, as well as being a violation of Article 6 thereof, and call upon Israel to put an end to them immediately and unconditionally.

2.5. Detention conditions amounting to cruel, inhuman or degrading treatment or punishment

Those arrested during the waves of mass arrests spent long hours, sometimes days, without being provided with any food, and water was initially scarce too. In the unseasonably cold and rainy days and nights of March and April 2002 many Palestinian detainees, some of whom had been taken from their homes in their pyjamas without being given a chance to dress or pack warm clothes, spent long hours, sometimes a whole night, totally exposed to the elements. In several cases detainees were not allowed to go and relieve themselves, and had to do so where they were.

According to the Palestinian human rights NGO al-Haq, prisoners arriving at Ofer camp were forced to stand handcuffed outside in the rain for 36 hours before they were finally moved to tents. Initially approximately 140 men were forced to stay together for one day in two tents before more prisoners were brought to the camp and more tents arrived. Later thirty to forty men assigned to each tent although the tents

⁵² *HCI 3779/02 ‘Adallah et al v. Yitzhaq Eitan, Commander of the Central Command et al*, Statement by the Respondents, 7 May 2002, para. 2.

are designed to hold only fifteen to twenty men. Each prisoner was initially supplied with a board to sleep on, but no mattresses. Two Prisoners first had to share one blanket, then each prisoner was provided with only one blanket. No warm clothing were provided despite the cold rainy weather. There was hardly any food initially and later it was inadequate and of poor quality. The same is true for toilet and shower facilities - prisoners at Ofer camp did not shower for the first 15 days.⁵³

To accommodate the large number of detainees, Israel reopened the Ketziot (Ansar III) detention facility, and expanded its use of the Megiddo military prison, transferring Palestinian detainees into these two facilities inside Israel in violation of international humanitarian law, and making it virtually impossible, at least in the short run, for families to visit detainees.

Conditions in Ketziot too were initially extremely poor, crowded and unhygienic. Regarding all complaints on detention conditions the Israeli authorities have promised that they would improve conditions, and some improvements have subsequently taken place. However, LAW, PCATI and OMCT would like to stress the following points:

- The mass arrests were made by Israel purely of its own accord, and within an obviously well-planned operation. Israel cannot therefore claim legitimately that it was not prepared to accommodate such large number of detainees and needed time to get properly organised. Where a state party to the Covenant decides to arrest persons, it is obliged to accommodate them in proper conditions; where it is only capable of accommodating detainees in conditions which amount to cruel, inhuman and degrading treatment or punishment, it should refrain from detaining persons.
- Even following improvements, detention conditions in places such as Ketziot cannot become acceptable under the Covenant. Most detainees are housed in tents, in harsh desert conditions and, as mentioned, their families are still facing great difficulties in trying to visit them.

LAW, PCATI and OMCT recommend that the Committee conclude that Israel has been in violation of its obligations, under Articles 7 and 10(1), to provide conditions of detention which are humane, respect the inherent dignity of the human person and are free from torture and other cruel, inhuman or degrading treatment or punishment. We urge the Committee to clarify that Israel should not deprive persons of their liberty where it cannot provide such conditions.

2.6 Administrative detentions

Palestinians from the Occupied Territories are held under orders by a military commander, under a general military order regulating such detention.⁵⁴ A single order may extend for up to six months and is renewable indefinitely. Palestinians under

⁵³ Al-Haq press releases, 4 and 16 April 2002.

⁵⁴ 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.

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 over the years, upheld this policy.⁵⁵

In 1998, the Committee, while noting the reduction in the number of administrative detainees, expressed its concern over the continued practice, as it “considers the present application of administrative detention to be incompatible with articles 7 and 16 of the Covenant, neither of which allows for derogation in times of public emergency,” and recommended that “the application of detention be brought within the strict requirements of the Covenant and that effective judicial review be made mandatory.” (para. 21).

Unfortunately, the Committee’s recommendations have been totally ignored. As noted, at least **867** of these are held in administrative detention, i.e. held indefinitely, without trial. In addition, two Lebanese citizens have now been held in Israel under administrative detention orders for eight and thirteen years, respectively.

LAW, PCATI and OMCT recommend that the Committee repeat its conclusions and recommendations in this regard, as well as consider what further steps are necessary in view of Israel’s consistent non-compliance.

⁵⁵ E.g. *H CJ 6843/93 Ahmad Suleiman Musa Qatamesh v. IDF Commander in the West Bank*; *H CJ 5978/95 Khaled Dalaisheh v. IDF Commander in the West Bank*, *H CJ 5920/96*; *‘Imad Saba’ v. IDF Commander in the West Bank and the GSS*.