

ISRAEL AND THE OCCUPIED TERRITORIES

@Torture and ill-treatment of political detainees

I. INTRODUCTION

Thousands are arrested and held on security grounds every year in Israel and the Occupied Territories, while the Palestinian *intifada* which began in December 1987 and the peace process initiated in Madrid in 1991 continue. Many of those in custody are subjected to methods of interrogation amounting to torture or ill-treatment, possibly in implementation of secret guidelines for interrogation endorsing the use of "a moderate measure of physical pressure". The official investigations of allegations of torture or ill-treatment have so far been inadequate, a factor that may discourage the reporting of, and the taking of legal action against, torture.

In recent years Israeli and Palestinian human rights activists and organizations have produced a large body of evidence of torture and ill-treatment in Israeli detention centres. Among the organizations are *B'Tselem*-- the Israeli Information Centre for Human Rights in the Occupied Territories; *al-Haq* and the Gaza Centre for Rights and Law, both affiliates of the International Commission of Jurists; the Palestine Human Rights Information Centre; the Association for Civil Rights in Israel; the Public Committee Against Torture in Israel; and the Association of Israeli-Palestinian Physicians for Human Rights.

At the international level, the International Committee of the Red Cross (ICRC), present in the Occupied Territories since 1967, on two occasions since 1991 has taken the rare step of voicing publicly its concerns about the treatment of detainees. In July 1991, noting the "lack of response to previous representations", the ICRC called on the Israeli authorities "to give special attention to the treatment of detainees under interrogation". In May 1992 the ICRC called on the Israeli Government "to put an immediate end to the ill-treatment inflicted during interrogation on detainees" from the Occupied Territories, having observed "no substantial or lasting improvement in the situation".

In his 1994 report, the Special Rapporteur on torture appointed by the United Nations (UN) Commission on Human Rights, expressed his concern "about the numerous reports of ill-treatment [by the Israeli authorities] frequently amounting to torture, as well as allegations of medical personnel involvement in procedures requiring them to certify prisoners as fit for interrogation where such treatment is used", while hoping that "recent political developments will materially affect the situation" (para 358).

While the peace process between Israel and the Palestine Liberation Organization (PLO) develops, the human rights situation in Israel and the Occupied territories should remain under close scrutiny, as respect for human rights is fundamental for any just and lasting peace. In the specific area of the treatment of detainees, there is an urgent need for full compliance with relevant international standards. Particular attention should also be given to ensuring clear responsibilities between Israel and the PLO during the transitional period in which both will exercise law enforcement duties in the same areas.

Amnesty International has long been concerned about the treatment of detainees in Israeli custody, including political prisoners and ordinary criminal suspects. In July 1991 the organization detailed such concerns with regard to the treatment of political detainees in the Occupied Territories in the report, *Israel and the Occupied Territories: The military justice system in the Occupied Territories: detention, interrogation and trial procedures* (AI Index: 15/34/91). The Israeli authorities responded in detail to the report in April 1992. Discussions on this issue, including on several specific cases, have since continued through correspondence and regular meetings between Israeli officials and Amnesty International's delegates.

Amnesty International welcomes the access it has been given by the Israeli authorities. However, it remains seriously concerned about the persisting use of torture and ill-treatment and believes that measures of redress are urgently needed in this area. This paper summarizes Amnesty International's concerns with specific regard to the interrogation of political detainees by the Israeli authorities. With few exceptions, these detainees are Palestinians, the large majority from the Occupied Territories. Many are suspected of membership of illegal organizations and involvement in violent activities from stone-throwing to use of firearms. This paper also examines Israel's position with regard to international treaties and includes nine recommendations for the introduction of safeguards against torture and ill-treatment as a matter of priority.

II. THE INTERROGATION OF POLITICAL DETAINEES

A. Incommunicado detention

Prolonged incommunicado detention, whereby a detainee is isolated from the outside world, is known to increase the risk of torture and makes particularly difficult the corroboration of allegations of such treatment. The Human Rights Committee, set up under the UN International Covenant on Civil and Political Rights (ICCPR), recognizes that among the safeguards which make control of torture or ill-treatment effective are provisions against incommunicado detention (General Comment 7 on Article 7 of the ICCPR which prohibits torture and cruel, inhuman or degrading treatment or punishment).

Military orders in force in the Occupied Territories of the West Bank (except for East Jerusalem) and the Gaza Strip significantly undermine the relevant legal safeguards available to detainees under Israeli law applicable to Israel, annexed East Jerusalem and the Golan Heights. Under these military orders, political detainees aged above 16 and accused of serious offences are normally held without access to a judge for 18 days, the maximum allowed. Detainees are denied access to lawyers and relatives for longer periods, usually until the interrogation is over: even at remand or bail hearings lawyers may not be allowed to speak to their clients. Visits by delegates of the ICRC, whose role is restricted by the confidentiality of their representations, are allowed within 14 days of arrest, which in practice means on or after the 14th day. The result is that for at least 14 days these detainees are held in total isolation from the outside world.

Access to judges

Military Order No. 378 issued in 1970 for the West Bank (a similar order is in force in the Gaza Strip) authorizes a soldier to arrest and detain any person suspected of committing a security offence for four days without a warrant. Two seven-day extensions may then be granted by police officers before the detainee need be brought before a judge for the first time.

In 1992 the maximum period of detention without judicial review was reduced from 18 to eight days for detainees aged 16 or below and in early 1993 the same reduction was instituted for adults suspected of "any other than the most serious offenses". The Association for Civil Rights in Israel has made specific efforts to ensure the reduction of such a period to a maximum of eight days. A petition on this issue submitted by the Association to the High Court of Justice in 1992 is still pending.

The provisions in force in the Occupied Territories in this respect contrast starkly with the provisions of the 1982 Israeli Criminal Procedure Law: Article 27 (b) stipulates that a person

"shall be brought before a Judge as soon as possible, but not later than forty-eight hours after his arrest", or should be released.

Israeli procedures in the Occupied Territories are also inconsistent with international human rights standards. Article 9 (3) of the ICCPR requires that anyone held on a criminal charge "be brought promptly before a judge or other officer authorized by law to exercise judicial power". The Human Rights Committee has expressed the view in its General Comment 8 on Article 9 (3) that delays in bringing a detainee before a judge "must not exceed a few days". Principle 11 (1) of the 1988 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires that such access by any detainee be prompt. Article 9 (4) of the ICCPR also requires that any detainee be allowed access to a court "in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful".

Access to lawyers

Military Order No. 378 allows detainees to be denied access to lawyers for up to 90 days. The interrogating authorities themselves may forbid access to lawyers during the first 30 days of detention if in their opinion this is "necessitated by the security of the region or for the sake of the investigation". Military court judges may prevent such access for a further 30 days on the same grounds, and for an additional and final 30 days if the army Regional Commander certifies in writing that "special reasons of security in the region" so require.

In contrast, Articles 29 (f) and 30 (c) of the Criminal Procedure Law allow for a meeting between a suspect of certain security offences and a lawyer to be prevented by the investigating authorities for a maximum of 15 days. This can be extended for a further 15 days with the authorization of a District Court judge if the Minister of Defence certifies in writing that reasons of state security so require.

The Israeli procedures in Israel as well as the Occupied Territories in this respect are inconsistent with international human rights standards. Principle 7 of the 1990 UN Basic Principles on the Role of Lawyers requires governments to ensure prompt access to a lawyer, "in any case not later than forty-eight hours from the time of arrest or detention". Principle 15 of the UN Body of Principles makes clear that even in exceptional circumstances such access "shall not be denied for more than a matter of days". In his report for 1989, the UN Special Rapporteur on torture, recognizing that

access to lawyers is an important safeguard against torture, stated that "[a]ny person who is arrested should be given access to legal counsel no later than 24 hours after his arrest".

Role of confessions

Confessions and other statements obtained during prolonged incommunicado detention are often the main evidence against detainees brought before the military courts operating in the Occupied Territories. Although defendants may retract their confessions in court, prosecutors and judges often put pressure on them to accept a plea-bargain rather than ask for an investigation of allegations of torture or ill-treatment and continue with a full trial. In addition to prolonged incommunicado detention, these shortcomings of the military justice system, discussed in detail in the report published by Amnesty International in July 1991, clearly facilitate torture or ill-treatment.

Article 14 (3) (g) of the ICCPR requires that a detainee shall not "be compelled to testify against himself or to confess guilt". The obligation under Article 12 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to conduct a prompt and impartial investigation of complaints of torture applies to all competent authorities, including prosecutors and courts. Guideline 16 of the 1990 UN Guidelines on the Role of Prosecutors requires prosecutors to exclude evidence which they have reason to believe was obtained through unlawful methods and to take all necessary steps to ensure that those responsible for such methods be brought to justice.

B. Methods of interrogation and agencies involved

Methods of interrogation

Political detainees held by the Israeli authorities are systematically subjected to methods of interrogation amounting to torture or ill-treatment. Virtually every security detainee brought into custody is hooded with dirty and sometimes wet sacks, which disorient and hamper respiration. Detainees are then usually held in solitary confinement and most commonly subjected to prolonged sleep deprivation, usually achieved by subjecting them to various forms of "position abuse". For example, they are tied up to a child-size chair or forced to stand hand-cuffed to a wall (*shabah*) or tied up in some other painful position (like the "banana", in which the body is bent backwards by tying up hands to feet) for prolonged periods. The Israeli authorities have not denied that such methods are in use.

Other methods most commonly reported include beatings all over the body, sometimes concentrated on sensitive areas such as the genitals, and prolonged confinement into closet-sized dark cells. Some of these cells have been reported as being particularly cold or hot. Occasionally detainees have complained of loud music being played for prolonged periods in the

area where they were being held. Palestinian "collaborators" placed in detention cells are known to have been used to obtain information from other detainees, including by torture or ill-treatment.

Role of the security forces and medical personnel

The state agencies mostly involved in interrogating security detainees have been the Israeli armed forces, known as the Israel Defence Force (IDF), and the General Security Service (GSS), also known as *Shin Bet* or *Shabak*, Israel's main intelligence agency in matters of internal security which reports directly to the Prime Minister. The GSS exercises full control over a number of interrogation and detention wings of army and police detention centres. This appears to have created confusion as to who is ultimately responsible for the detainees brought into custody.

The Israeli police also detains and interrogates political detainees. In December 1991 the Palestine Human Rights Information Centre published evidence of torture by a police unit operating since 1990 in the West Bank. The unit was said to have specialized in interrogating Palestinian detainees at night with methods including severe beatings with wooden sticks and electric shocks. In an interview to the *Hadashot* newspaper in February 1992, a security source is quoted describing an interrogation room after its use by this unit:

"... broken wooden clubs, ropes, blood, an absolute mess. They would crush the prisoners ... turning them into lumps of meat. Several times I saw prisoners crawling back to the [detention cell]. They simply could not walk".

That same month the Israeli authorities announced an official investigation into the operations of this unit. Its results are not known to Amnesty International.

Medical personnel have apparently cooperated with practices of torture or ill-treatment. Israeli physicians and other medical personnel are said to have been involved in certifying detainees' fitness to undergo at least some of the methods of interrogation used by the Israeli authorities; in examining and providing treatment to victims before allowing them to be returned to interrogation; and in covering up abuses by interrogators.

In May 1993 a "medical fitness form" to be used in interrogation centres was made public by the *Davar* newspaper. The form required doctors to certify whether a detainee may withstand methods of interrogation including solitary confinement, tying up, hooding and prolonged standing. After protests including by local human rights groups, the Israeli Medical

Association instructed physicians not to use the form. The Israeli authorities suggested the form had been a mistake. For further details see the report, *Israel and the Occupied Territories: Doctor and interrogation practices: the case of Nader Qumsieh* (AI Index: MDE 15/09/93) published by Amnesty International in August 1993.

Amnesty International believes that any medical personnel who cooperates with any form of torture or ill-treatment of prisoners would at the very least be in breach of the 1982 UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Amnesty International also believes that prompt, regular and confidential access to doctors of the detainees' choice must be ensured as an additional safeguard against torture and ill-treatment for the detainee and against false accusations of such treatment for the authorities.

III. OFFICIAL GUIDELINES AND INVESTIGATIONS

A. The prohibition of torture in law

Israeli law applicable to all law enforcement officials in Israel and the Occupied Territories forbids the use of violence or threats to extract confessions. Article 277 of the 1977 Penal Law provides for up to three years' imprisonment for a public servant who does any one of the following:

"(1) uses or directs the use of force or violence against a person for the purpose of extorting from him or from anyone in whom he is interested a confession of an offence or information relating to an offence;

"(2) threatens any person, or directs any person to be threatened, with injury to his person or property or to the person or property of anyone in whom he is interested for the purpose of extorting from him a confession of an offence or any information relating to an offence."

Also relevant are Articles 378 to 382, which provide for punishments of up to three years' imprisonment for physical assault if actual bodily harm is caused. Article 415 prescribes the same maximum penalty for someone who "obtains a thing by deceit" and Article 416 makes liable to imprisonment for two years a person who "obtains a thing by a trick or by deliberately taking advantage of another person's error". "Blackmail by means of threats" is punishable under Article 428 with up to three years' imprisonment.

Article 65 of the 1955 Military Justice Law provides for up to three years' imprisonment for "[a] soldier who strikes or otherwise maltreats a person committed to his custody". Article 130 makes forms of "unbecoming conduct" on the part of soldiers of or above the rank of sergeant punishable with a reduction in rank.

The Police Ordinance of 1971, as amended, states that the use of force "contrary to the standing orders of the Israel Police or to any order lawfully given" is a disciplinary offence. Penalties that a Police Disciplinary Tribunal may impose include imprisonment for up to 45 days. Similar provisions apply to prison officers.

B. Official interrogation guidelines: the Landau Commission

The Landau Commission's report

Although the Israeli Government maintains that its own legal standards prohibiting torture and ill-treatment are to be respected, secret guidelines for interrogation by the GSS, allowing "the exertion of a moderate measure of physical pressure", remain official interrogation policy and are of the gravest concern. Such guidelines were first drawn up by the "Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity" established in May 1987 and headed by former Supreme Court Chief Justice Moshe Landau.

In the public part of its report, published in October 1987 and endorsed by the government the following month, the Commission stated that in the previous two decades some 50 per cent of GSS interrogations led to trials, and that the "overwhelming majority of those tried were convicted on the basis of their confession in court" (para 2.20). GSS interrogators, faced with the "dilemma" between revealing methods of interrogation which could lead a court to reject confessions, and committing perjury in order to ensure the conviction of suspects they ostensibly believed to be guilty on the basis of other, classified, evidence, simply lied: "False testimony in court soon became an unchallenged norm which was to be the rule for 16 years" (para 2.30).

Searching for a different solution on how to balance interrogation needs and rights of suspects, the Landau Commission applies to the acts of the GSS interrogators the provisions of Article 22 of the Penal Law, which exempts from criminal responsibility the author of an act committed in conditions of "necessity". Article 22 states:

"A person may be exempted from criminal responsibility for any act or omission if he can show that it was only done or made in order to avoid consequences which could not

otherwise be avoided and which would have inflicted grievous harm or injury on his person, honour or property or on the person or honour of others whom he was bound to protect or on property placed in his charge:

"Provided that he did no more than was reasonably necessary for that purpose and that the harm caused by him was not disproportionate to the harm avoided."

The Landau Commission argued that GSS interrogators fulfil the requirements of Article 22 since, in its opinion, they act to protect the security of the state, which includes preventing grievous harm or injury to its citizens. This was the case as the suspect's confession is the only source of information on such harmful activities and, with respect to what is "reasonably necessary", in light of "the concept of the lesser evil", the use of "actual torture ... would perhaps be justified in order to uncover a bomb about to explode in a building full of people" regardless of "whether the charge is certain to be detonated in five minutes or in five days" (para 3.15). In the Commission's own words, in the same paragraph:

"To put it bluntly, the alternative is: are we to accept the offence of assault entailed in slapping a suspect's face, or threatening him, in order to induce him to talk and reveal a cache of explosive materials meant for use in carrying out an act of mass terror against a civilian population, and thereby prevent the greater evil which is about to occur? The answer is self-evident."

The Landau Commission goes on to stress that "the pressure must never reach the level of physical torture or maltreatment of the suspect or grievous harm to his honour which deprives him of his human dignity" (para 3.16). However, the ambiguous language regarding a possible justification for torture is disturbing, and its clear endorsement of slapping and the use of threats is unacceptable: such methods at the very least constitute cruel, inhuman or degrading treatment or punishment, and therefore are absolutely forbidden by international law. They are also expressly forbidden by Article 277 of the Israeli Penal Law.

The Landau Commission sums up its views as follows:

"4.6 We are convinced that effective activity by the GSS to thwart terrorist acts is impossible without use of the tool of the interrogation of suspects, in order to extract from them vital information known only to them and unobtainable by other methods.

"The effective interrogation of terrorist suspects is impossible without the use of means of pressure, in order to overcome an obdurate will not to disclose information and to overcome the fear of the person under interrogation that harm will befall him from his own organization, if he does reveal information.

"Interrogation of this kind is permissible under the law (*sic*), as we interpreted it above, and we think that a confession thus obtained is admissible in a criminal trial, under the existing rulings of the Supreme Court.

"4.7 The means of pressure should principally take the form of non-violent psychological pressure through a vigorous and extensive interrogation, with the use of stratagems, including acts of deception. However, when these do not attain their purpose, the exertion of a moderate measure of physical pressure cannot be avoided. GSS interrogators should be guided by setting clear boundaries in this matter, in order to prevent the use of inordinate physical pressure arbitrarily administered by the interrogator."

The means of pressure which the Landau Commission finds to be permissible are described in a "code of guidelines for GSS interrogators which define, on the basis of past experience, and with as much precision as possible, the boundaries of what is permitted to the interrogator and mainly what is prohibited to him." The Commission expresses the conviction that "if these boundaries are maintained exactly in letter and in spirit, the effectiveness of the interrogation will be assured, while at the same time it will be far from the use of physical or mental torture, maltreatment of the person being interrogated, or the degradation of his human dignity". The Commission stresses "that no investigation is to be opened against a person unless information exists giving reasonable grounds to suspect that he is involved in some manner in ["Hostile Terrorist Activity"], or in political subversion which is prohibited by law in Israel or the territories." (para 4.8).

The guidelines of the Landau Commission are contained in the second part of its report, which remains secret to this day "for understandable reasons" (para 4.8). The Commission believed that these guidelines would "pass the test of the prohibitions contained" in international standards.

The Landau Commission recommended that the secret guidelines be reviewed annually by a "small Ministerial Committee" empowered to make "whatever changes it deems fit, according to changing circumstances". The guidelines for GSS interrogators, which remain secret, have since been reviewed and updated by a special ministerial committee in August 1988, September 1990 and April 1993. This committee currently includes the Ministers of Justice and of the Police. The Israeli authorities clarified in 1993 that the guidelines apply only to those suspected of grave offences, not including disturbance of the peace. They also clarified that methods of interrogation involving food and drink deprivation, prevention from going to the toilet and exposure to excessive heat or cold are not permitted.

The Landau Commission also recommended that after each review the guidelines for

interrogation be made known to the Services Subcommittee of the Defence and Foreign Affairs Committee of the Knesset (Israel's Parliament). It welcomed the appointment of a GSS Comptroller to supervise the respect of the guidelines, but stressed that "external control and supervision should be maintained", including by entrusting the State Comptroller (whose brief includes the supervision of all state agencies) with examination of the activities of the GSS investigators' unit. Amnesty International understands that the State Comptroller has taken on this task, although her reports on this issue are not made available to the public.

With regard to the maximum period of detention without judicial review in the Occupied Territories, the Landau Commission recommended that remand hearings take place "no later than the eighth day" following arrest, instead of 18. The Commission also said that hearings to decide on requests for release on bail did not have to take place "until seven days" after detention, noting that "in any case no contact is permitted at this early stage between the detainee and his lawyer".

Criticisms of the Landau Commission's main recommendations

The Landau Commission's report has been the subject of extensive study, particularly within the Israeli legal, academic and human rights community. The Faculty of Law of the Hebrew University in Jerusalem in particular published a collection of papers on this issue in the *Israel Law Review* (Spring-Summer 1989).

Questions have been raised, for example, by the logic of the Landau Commission in using the legal concept of "necessity" to justify "moderate" pressure: if it is "necessary" in order to prevent a greater harm such as a massacre (because, for instance, there are no other ways to obtain vital information except from the suspect), then why not justify any kind of treatment, even the most savage form of torture? After

all, even the Commission itself suggested that the use of "actual torture ... would perhaps be justified in order to uncover a bomb about to explode in a building full of people" (para 3.15).

Critics have also found contradictory the use of "necessity" to justify physical and other pressure by interrogators but not their lying in court. The Commission has stated that here "the investigator cannot rely on the defence of necessity ... since perjury is a grave criminal offence and manifestly illegal" (para 4.22). However, if "necessity" is not enough to justify perjury, why should it be enough to justify the offence of assault?

It has also been pointed out that the use of "moderate" pressure for the purposes of interrogation, if properly applied, would not work with the most hardened and dangerous suspects, who are likely to know from the Landau Commission's report itself and from the collective experience of other detainees that the interrogators are limited in the degree of

pressure they are allowed to use. Therefore, according to the logic of the report, in order to be effective, pressure should be allowed without limits. The alternative is not to allow pressure at all.

When assessing the "balance of evils", the Landau Commission has been criticized for failing to take into account a number of factors which weigh against the use of even "moderate" pressure. For instance, any form of coercion -- which by its very nature cannot but humiliate a suspect or worse -- may turn an innocent person wrongly arrested and "pressured" into a potential future offender. In this context, the Commission itself found that one in two of those interrogated by the GSS were never brought to trial.

When assessing the "balance of evils", the Landau Commission has also been criticized for failing to take into account the reality that, even before the outbreak of the *intifada* in December 1987, the overwhelming majority of people arrested for "terrorist" offences and interrogated by the GSS were not detained for cases of the "ticking bomb" type. This is particularly true of the tens of thousands of Palestinians arrested since the beginning of the *intifada*. Thus, in elaborating guidelines for the use of "pressure", the Commission appears to have ascribed a gravity to the activities the GSS is confronting that is rarely matched in reality.

Other critics have argued that, in breaking the absolute prohibition of harming the physical integrity of a detainee, a real danger has been introduced that "moderate" pressure would easily escalate into "immoderate" pressure and ultimately straightforward torture. The Landau Commission itself seemed aware of this risk when it observed that "a security service ... is always in danger of sliding towards methods practised in regimes which we abhor" (para 4.2). It has been argued that a similar phenomenon developed from statements by former Minister of Defence Yitzhak Rabin in January

1988, when he declared that "force, power and blows" should be used to deal with rioters. The period immediately following this statement witnessed punitive beatings on a massive scale. Subsequent official statements attempted to confine the use of force but without great success, testifying to the difficulty of containing force once it appears to have been allowed or condoned by the highest authorities.

Finally, the Landau Commission Report has been criticized for recommending that a governmental body, which is likely to receive significant advice from the GSS, is to review the secret guidelines on the use of "pressure" with the power to amend them. Some have also argued that such secrecy is unnecessary, as former detainees are bound to inform others on the methods of interrogation used, as in fact happens. By contrast, such secrecy may place medical and other personnel who visit GSS interrogation wings in a position of unwanted complicity.

Critics have called for the interrogation guidelines to be published so as to allow their examination in light of international standards on the treatment of detainees and allow proper monitoring of their application. In 1991 a petition was submitted to the High Court of Justice by lawyer Avigdor Feldman on behalf of the Public Committee Against Torture in Israel and Murad Salahat, a Palestinian detainee who alleged he had been tortured by the GSS in 1990. The petition aimed at obtaining the publication of the secret guidelines and a ruling on their legality. In August 1993 the court rejected the petition, arguing that its role was to rule on specific disputes in a court case, such as the admissibility of a confession, not to review issues such as the interrogation guidelines in "general terms", the latter being a task for commissions of inquiry.

Amnesty International considers that the interrogation methods employed by the Israeli authorities constitute torture or ill-treatment: most of them, especially when used in combination, certainly amount to torture. It believes therefore that either the official guidelines for interrogation ultimately endorse torture or ill-treatment, or Israeli interrogators have extensively violated such guidelines with impunity. In either case urgent measures of redress are needed.

Amnesty international also emphasizes that although international law makes a distinction between torture and other forms of ill-treatment it absolutely and unconditionally prohibits *all* of them. For example, Article 7 of the ICCPR states unequivocally that no one "shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". These provisions can *never* be derogated from, not even in time of war or other public emergency.

C. Official investigations since the Landau Commission

Following the publication in March 1991 of a report on torture of Palestinian detainees by the Israeli human rights organization *B'Tselem*, there was considerable debate on this issue within the public and the Knesset. The government initiated a number of official investigations into the IDF and the GSS, the methods and results of which have not been made public. Such secrecy in itself makes them incompatible with international standards.

In May 1991, Major General (Reserve) Rafael Vardi was entrusted to investigate allegations of violence by soldiers in military interrogation centres in the Occupied Territories. He issued his report in July 1991, the text of which is secret. However, according to an IDF press release in August 1991, Major General Vardi recommended that eight of 16 complaints examined should continue to be investigated by the Military Police. According to the Israeli authorities, as a result of his inquiry, a number of interrogators were punished. Major General Vardi also recommended that responsibility for interrogating residents of the Occupied

Territories "be transferred from the IDF, which is not meant to interrogate civilians". Vardi's report also included "recommendations for sharpening existing IDF orders which prohibit the use of any violence and even ... the possibility of using threats" against residents of the Occupied Territories "after they are detained and during the course of their interrogation." The Israeli authorities have stated that all these recommendations have been adopted. However, the IDF apparently continues to hold and interrogate Palestinian civilians.

At least one other official investigation into interrogation practices by the GSS was established in May 1991, carried out jointly by the GSS and the Ministry of Justice. In a statement to the High Court of Justice in November 1991 the Israeli Government indicated that this investigation had found that interrogators in Gaza prison had deviated from the official guidelines during the period in which Khaled Shaikh 'Ali was tortured and killed (see below). The authorities said that as a result measures had been taken against a number of interrogators. However, the identity of the officials carrying out this investigation and their methods have been shrouded in secrecy, and the full findings of the investigation have not been made known.

In 1987 the GSS Comptroller took on responsibility for investigating complaints of torture or ill-treatment against GSS interrogators. In June 1992 it was announced that responsibility for investigating alleged offences by the police had been transferred from the police to the Ministry of Justice, except for minor offences. The same year it was announced that investigations of all complaints against the GSS were also being transferred from the GSS Comptroller to a unit of the Ministry of Justice supervised by the State Attorney. Following the adoption by the Knesset of new legislation in

February 1994, complaints against GSS interrogators are now to be investigated either by the police or, if the Attorney General decides so, by the same unit within the Ministry of Justice responsible for investigating complaints against the police. While welcoming this transfer of responsibilities, Amnesty International urges the Israeli Government to ensure that the newly set up system of investigations be effective.

D. Criteria for effective investigations

Article 13 of the Convention against Torture requires states party to ensure that "any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities". Even in the absence of complaints, Article 12 requires states party to "ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its

jurisdiction". Similarly, in its General Comment 20, the Human Rights Committee has stated that under Article 7 of the ICCPR states party have an obligation to ensure that complaints are "investigated promptly and impartially by competent authorities so as to make the remedy effective".

Amnesty International believes that any official investigating body, however constituted, should be able to demonstrate its formal independence from the detaining and interrogating authorities as well as from government pressure and influence. The government might include among the members of such a body persons nominated by independent non-governmental organizations such as the country's bar and medical association, as well as members of the public.

An effective investigating body should be able to act on its own initiative, without waiting for formal complaints. Its terms of reference should also include the authority to subpoena witnesses and documents, to take testimony under oath and to invite evidence from interested individuals or organizations. Those making a complaint and their lawyers should have the right to present evidence and have access to any hearing and all information relevant to the investigation. Alleged victims and any witnesses should be actively encouraged to testify and should be protected from any intimidation. The investigations should be speedy and their methods and findings should be public. Those responsible for torture or ill-treatment should be brought to justice, including commanding officers who should be held accountable for torture committed by officials under their command. There should be no impunity: perpetrators should not be allowed to benefit from any legal measures exempting them from criminal prosecution or conviction.

IV. THE VICTIMS

Tens of thousands of Palestinians have been detained on security grounds since the beginning of the Palestinian *intifada* in December 1987. Most of them appear to have been subjected to methods of interrogation as described above, even in cases where they were accused of minor offences. Many were subsequently released without charge or trial, some were placed in administrative detention. Those who made formal complaints were not informed of the details of the relevant investigations, which often ended after a prolonged time with a decision to close the file without action. Even lawyers are reportedly not allowed to examine the investigation files relating to their clients.

A. Two typical cases

The following are two cases of allegations of typical torture or ill-treatment taken up by

Amnesty International and related responses by the Israeli authorities. These responses do not disclose the methods of the investigations into the allegations nor their full findings. The organization is concerned that so far Israeli investigations have not satisfied the requirements of promptness and impartiality, and have not provided an effective remedy, as required by international standards.

'Abd al-Ra'uf Ghabin

'Abd al-Ra'uf Ghabin was accused of being involved in the printing and distributions of leaflets of the Popular Front for the Liberation of Palestine and was arrested in August 1990. He was initially interrogated but was then placed in administrative detention without charge or trial until August 1991. He denied the accusations and said in an affidavit in September 1990 that after his arrest he was deprived of sleep for three weeks, with breaks at week-ends and for one other period of two hours:

"I was interrogated every day, Saturdays excepted, starting on 30 August 1990 until 18 September 1990... During the interrogation I was beaten four to six times -- on my head, abdomen, genitals -- usually with a fist."

The Israeli authorities informed Amnesty International in April 1991 and February 1992 that 'Abd al-Ra'uf Ghabin's allegations had been thoroughly investigated by the GSS Comptroller and that it was found that "there had been no deviation from the accepted procedures for interrogations". The Israeli authorities also said that he had "retracted most of his allegations" and that others, such as those relating to three weeks

of sleep deprivation and the "squeezing" of testicles, were "found to be baseless". The authorities said that "as a rule" they would not disclose the methodology or details of such investigations, although they referred to a polygraph test on 'Abd al-Ra'uf Ghabin and to having questioned one interrogator. The authorities gave no indications as to whether 'Abd al-Ra'uf Ghabin had been deprived of sleep for any period or whether he had been beaten.

In another affidavit in June 1992 'Abd al-Ra'uf Ghabin responded to the Israeli authorities categorically denying having withdrawn any of the allegations of torture and ill-treatment previously made and maintaining that the results of the polygraph test had not been shown to him.

Amnesty International is still seeking information on the "accepted procedures for interrogations" found to have been followed in this case and other details of this investigation,

including its methods and full findings. Without such details Amnesty International must question the validity of the Israeli authorities' version.

Nader Qumsieh

Nader Qumsieh was arrested between 3 and 4 May 1993, apparently by the IDF. He sustained an injury to his scrotum while under interrogation in the Dhahiriyyah detention centre, as evident from his medical records. One medical report claims that Nader Qumsieh said he had fallen down stairs, whereas he has repeatedly stated that he was injured as a result of torture. He said he was beaten on his face, stomach and testicles and repeatedly confined into a closet-size cell. This is how he described the last interrogation session on 11 May:

"I was handcuffed and kneeling. 'Amir' [one of the interrogators] told me that I was organizing and active, I told him I was not. At this point he told me to stand up. Suddenly he began to kick me on my testicles and stomach. At 11.00 a soldier came and took me to the *khazana* [the closet-size cell]."

A military commander initiated an internal investigation into these allegations while Nader Qumsieh was still detained. Nader Qumsieh was released from interrogation on 19 May but remained held under an administrative detention order until 20 July, when he was set free. He has since been repeatedly prevented from seeking medical treatment in East Jerusalem.

Lawyers acting on Nader Qumsieh's behalf submitted formal complaints in May and June 1993. In March 1994 the IDF informed one of them that Nader Qumsieh's complaint was found to be groundless and the file had therefore been closed. Amnesty

International wrote to the Israeli Government and the Israeli Medical Association about its concerns in this case, including possible falsehoods in medical reports, but has not received a response. For further details see the report, *Israel and the Occupied Territories: Doctor and interrogation practices: the case of Nader Qumsieh* (AI Index MDE 15/09/93) published in August 1993.

B. Deaths in custody

Since the beginning of the Palestinian intifada in December 1987, some 16 Palestinians are reported to have died after punitive beatings at the time of or shortly after arrest by Israeli forces. At least eight others died in detention centres and one died shortly after release in circumstances relating to their treatment while under interrogation. Torture and ill-treatment, together with medical negligence, appear to have been the cause of or a contributory factor to their deaths.

In the five cases outlined below, the detainees were aged between 22 and 35 and all died

within days of their arrest. Official autopsies were carried out in all cases by Dr Yehuda Hiss, Director of the Leon Greenberg Institute of Forensic Medicine at Abu Kabir. Foreign pathologists acting on behalf of the victim's family were able to attend the official autopsies with the exception of the first case. In this instance the autopsy report and other relevant documents were reviewed at length by a British forensic pathologist.

Official investigations were concluded in three such cases. The methods of such investigations and their full findings have not been made public, contrary to the requirements of international standards. For example, Article 17 of the 1989 UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which apply to deaths resulting from torture or ill-treatment in custody, requires that a detailed report of the investigations, including their findings and the "procedures and methods used to evaluate evidence", "be made public immediately".

The heaviest penalty imposed in these five cases was six months' imprisonment for two GSS interrogators involved in the death of Khaled Shaikh 'Ali. They were convicted of causing death by negligence under Article 304 of the Penal Law, which provides for a maximum penalty of three years' imprisonment. The penalty for manslaughter under Article 298 is a maximum of 20 years' imprisonment.

Mahmud al-Masri

Mahmud al-Masri, aged 32, died in Gaza prison on 6 March 1989, three days after his arrest. He was held under interrogation by the GSS on suspicion of belonging to an illegal organization and providing weapons to people apparently involved in the killing of Palestinians suspected of collaborating with the Israeli authorities. According to statements of interrogators and prison personnel, he was hooded, handcuffed and forced to sit for prolonged periods on a chair in a corridor.

Dr Yehuda Hiss, who performed the autopsy, found that Mahmud al-Masri had died as a result of peritonitis due to perforation of a chronic stomach ulcer. According to the Israeli authorities, he described the death as the result of a chronic natural illness, not attributable to an injury, and indicated that there were no signs of violence on the detainee's body. Professor Derrick Pounder, Head of the Department of Forensic Medicine at Dundee Royal Infirmary, reviewed the autopsy report and other documentation, including statements of interrogators and prison personnel. He considered that "the psychological and physical stress of the sudden arrest,

intense interrogation over two days, and physical violence, precipitated the perforation of the stomach ulcer and indirectly caused the death". The autopsy report recorded 24 injuries of different ages but all sustained during detention, indicating in his opinion that Mahmud al-Masri "was subjected to repeated physical violence".

The autopsy evidence proves that the stomach ulcer perforated about 24 hours prior to Mahmud al-Masri's death. No effective medical treatment was provided during this period although he was visibly ill. On the evidence of interrogators and prison personnel he vomited on a few occasions and at least once vomited blood, was moaning and writhing in pain, unable to walk upright and complaining about stomach pains. Furthermore, in the 24-hour period in which he was dying from the perforated ulcer, Mahmud al-Masri was subjected to two further interrogation sessions. Professor Derrick Pounder noted that "[m]edical treatment during this time would have likely saved his life but none was given." Professor Derrick Pounder also noted that "[t]he statements of prison guards, the paramedic and Shin Bet members make it clear that control over the movement, care and availability of medical treatment for prisoners in the General Security Service Wing of Gaza Prison lies, in practice, exclusively with the Shin Bet".

As a result of the official investigation, the GSS interrogators involved were disciplined for "their lack of coordination with the Prison Service Personnel" and because "al-Masri's medical condition had been neglected". The nature of the disciplinary measure was not disclosed. A medic was punished by 10 days of actual imprisonment, a reduction in rank and a severe reprimand "for negligence and unbecoming behavior."

Khaled Shaikh 'Ali

Khaled Shaikh 'Ali, aged 27, died on 19 December 1989 also in Gaza prison, 12 days after he had been arrested on suspicion of belonging to an illegal organization and possession of weapons. One month earlier, two soldiers had been killed in an armed attack. According to the Israeli authorities, "Ali disclosed the location of some weapons, which were hidden in his courtyard" and included two sub-machine guns and a hand grenade. However, "[d]espite information from other sources that additional weapons, including the murder weapon, were in Ali's possession, he refused to furnish the interrogators with any further information or to hand over the weapons." The Israeli authorities have not provided Amnesty International with the results of the official autopsy. Dr Michael Baden, Director of Forensic Sciences for the New York State Police, observed the official autopsy and concluded that Khaled Shaikh 'Ali died "from internal bleeding as a result of blows to the abdomen".

As a result of the official investigation, two members of the GSS were brought to trial and found guilty of "causing death by negligence", under Article 304 of the Penal Law which prescribes a penalty of up to three years' imprisonment. They were sentenced to six months' imprisonment and suspended from their employment in the GSS. Their appeal against their sentence was rejected. According to the Israeli authorities:

"The opinion of the judge of the Jerusalem District Court stated that the goal of the interrogators had been to obtain vital information regarding the whereabouts of the remaining weapons in Ali's possession in order to prevent the carrying out of additional murders. The opinion also stated that the interrogators did not intend to bring about Ali's death."

Amnesty International notes that Article 304 makes liable to imprisonment for three years "[A] person who by want of precaution or by rash or careless act, not amounting to culpable negligence, unintentionally causes the death of a person". This provision basically applies to accidents and appears badly suited to punish people who have tortured someone to the point of death, even if they did not intend to cause his death.

Mustafa 'Akkawi

Mustafa 'Akkawi, aged 35, died in the early hours of 4 February 1992 in Hebron (al-Khalil) prison, while under interrogation by the GSS. He had been arrested on 22 January on suspicion of belonging to the Popular Front for the Liberation of Palestine. Israeli officials reportedly admitted that during interrogation they kept him in freezing

temperatures and subjected him at various times to hooding, sleep deprivation (while tied hands and feet to a chair) and to forms of "shaking". At a remand hearing on 3 February the judge extended his detention but ordered a medical examination after hearing Mustafa Akkawi complaining of beatings and noting the presence of bruises on his arms and shoulders. However, Mustafa 'Akkawi was taken back into interrogation and held in similar conditions. He complained of feeling ill but received no adequate treatment before he died.

The official autopsy report determined that Mustafa 'Akkawi's death was caused by heart failure due to coronary artery arteriosclerosis, a preexisting condition not detected by the medical examination conducted after arrest and apparently unknown to the detainee himself. According to the Israeli authorities, Dr Yehuda Hiss concluded that Mustafa 'Akkawi's death was "definitely not the result of physical pressure, although the conditions of his detention and the circumstances preceding his death may have affected the onset of his heart failure". According to Dr Michael Baden, who observed the official autopsy on behalf of the Boston-based Physicians for Human Rights, Mustafa 'Akkawi "died of a heart attack precipitated by the emotional pressure, physical exertion, and freezing temperatures he was forced to withstand, along with lack of proper medical care". His body showed evidence of multiple injuries sustained while in custody.

Following the official investigation, the State Attorney closed the file for lack of evidence of a criminal offence but recommended that disciplinary measures be taken against the prison

medic and the GSS officer on duty, even though "it was determined that their conduct neither caused nor contributed" to his death. The nature of any disciplinary measure eventually taken was not disclosed. To Amnesty International's knowledge no measures were taken against the interrogators.

Mustafa Barakat

Mustafa Barakat, aged 23, died on 4 August 1992 in the Tulkarem detention centre, some 36 hours after arrest. He had suffered asthma attacks in earlier years and because of this took an inhaler with him when detained. He was apparently nevertheless subjected to hooding and suffered an asthma attack, from which he recovered using his inhaler. A prison doctor who visited him in the morning of 4 August, after the asthma attack, is said to have recommended that an additional inhaler be kept available. Although it appears that hooding was then discontinued, Mustafa Barakat reportedly underwent a further interrogation session that afternoon. He died shortly after being taken back to a detention cell.

The official autopsy determined that Mustafa Barakat had died as a result of an acute asthma attack. Dr Edward McDonough, Deputy Chief Medical Examiner, State of Connecticut, who observed the autopsy on behalf of the Boston-based Physicians for Human Rights, judged that the asthma attack was brought about by conditions of detention. He added that the fact that he was "previously healthy and that he experienced his attack or attacks after 36 hours of detention and interrogation, leads to the conclusion that he could have been subjected to severe mistreatment". In March 1993 the Israeli authorities informed Amnesty International that the investigation into Mustafa Barakat's death had not been concluded. No further information has since been received.

Ayman Nassar

Ayman Nassar, aged 22, died on 2 April 1992 in Barzalai hospital 13 days after his arrest during a military operation in Deir al-Balah in which a "smoke bomb" was used to force him out of a hide-out. Witnesses say that he was coughing when he came out and was beaten immediately after arrest on 20 March. Three other men arrested with him complained of having again been beaten in Ashkelon prison and subjected to hooding, prolonged shackling and sleep deprivation. Ayman Nassar was taken back to Deir al-Balah on 23 March, apparently to reveal a weapons cache, and witnesses described him as unable to walk or talk properly and as having fallen to the ground. He was hospitalized that same day.

The official autopsy report indicated that he died of "acute respiratory distress syndrome". According to Professor Jorgen Dalgaard of the Institute of Forensic Medicine of the University of Aarhus, who observed the autopsy on behalf of Physicians for Human Rights -- Denmark, Ayman Nassar died from "pneumonia due to ruptured lung blisters ... presumably due to irritating

smoke ... and possibly influenced through beating on the chest". The pathologist believes that Ayman Nassar might have survived had adequate medical treatment been provided earlier. The Israeli authorities have told Amnesty International in February 1994 that a coroner's inquest had been initiated.

V. ISRAEL AND INTERNATIONAL TREATIES

Israel ratified both the ICCPR and the Convention against Torture on 3 October 1991, although Israeli officials have indicated that such treaties apply only to Israel, not to the Occupied Territories. This interpretation is inconsistent with the *travaux préparatoires* of the ICCPR and its interpretation by the Human Rights Committee. Amnesty International welcomed these ratifications but regretted that the Israeli Government made important reservations to both of them. It is also gravely concerned at the suggestion that such treaties do not apply to the Occupied Territories.

With regards to the ICCPR, Israel derogated from its obligations under Article 9, prohibiting arbitrary detention and providing safeguards against such detention. With regards to the Convention against Torture, Israel's reservations include a declaration that it does not recognize the competence of the UN Committee against Torture under Article 20 to consider "reliable information which appear to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party". Amnesty International believes that such reservations tend to defeat the objective and purpose of the treaties. Israel also decided not to make a declaration under Article 22 recognizing the competence of the Committee to receive and consider complaints from or on behalf of individuals.

In Israel, while international customary law is automatically considered part of the national legal system, international treaties need to be expressly incorporated into national legislation to become part of the legal system and be directly invocable in court. In August 1992 nine

members of the Knesset belonging to different parties presented a draft law aiming at incorporating fully into Israeli legislations provisions of the Convention against Torture. The draft is still pending.

Amnesty International urges the Israeli Government to withdraw all the reservations it has made to the ICCPR and the Convention against Torture and to recognize that such treaties apply fully to all territories under its jurisdiction, including the Occupied Territories, as a demonstration of the strength of its commitment to implement and promote international human rights standards.

Since 1991 Israel has also been a party to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. The Israeli authorities have consistently maintained that the Convention does not formally apply to the West Bank and Gaza Strip, although they have also repeatedly declared that Israel would respect in practice its "humanitarian provisions", without clearly specifying such provisions. The ICRC and the UN have consistently maintained that the Convention fully applies to the Occupied Territories.

Articles 31 and 32 of the Convention prohibit any form of "physical or moral coercion" against protected persons and any measures of such a character as to cause them "physical suffering". In its public statement of May 1992, the ICRC, the custodian of the Convention, said that it had "reached the conclusion that to obtain information and confessions from the detainees, means of physical and psychological pressure are being used that constitute a violation of the Convention". It further specified that the "Israeli position, which is that security considerations may justify the use of 'moderate measures of physical pressure', constitutes in the ICRC's opinion a violation of the relevant provisions of international humanitarian law".

VI. AMNESTY INTERNATIONAL'S RECOMMENDATIONS

Amnesty International has repeatedly expressed concern at relevant legislation, the secret interrogation guidelines and the systematic use of practices amounting to torture or ill-treatment. It is also concerned that the Israeli system of investigating allegations of torture has so far fallen short of international standards requiring that investigations be prompt and impartial and provide an effective remedy, particularly since such investigations are conducted in secrecy and their full findings are not made public.

Amnesty International calls on the Israeli Government to set up an independent and impartial inquiry, the proceedings and findings of which should be public, to review thoroughly the issues of interrogation legislation, guidelines and practices, and the mechanisms for dealing with complaints of torture or ill-treatment. Such an inquiry should be empowered to make recommendations.

Amnesty International sees the adoption by the Israeli Government of a number of safeguards as long overdue and calls for the implementation of the following nine recommendations as a matter of priority:

1. *Review of legislation*

The military orders and other legislation relating to arrest, detention and interrogation, as well as their application in practice, should be reviewed in order to bring them into line with international standards. As a first step the safeguards for detainees included in the Israeli Criminal Procedure Law should be extended to the Occupied Territories.

2. *Prompt access to judges*

All detainees in the Occupied Territories should automatically be brought before a court without delay. As a first step this must take place within 48 hours after arrest, as is the case in Israel. The court should be empowered to assess the legality and necessity of the detention, as well as the detainee's treatment. At any time detainees should retain the right to seek a judicial review of their detention and of any orders preventing access to lawyers, doctors or relatives.

3. *Prompt access to lawyers, doctors and relatives*

All detainees must be allowed prompt, regular and confidential access to lawyers and doctors of their choice, at all stages of the proceedings, as well as access to relatives. International standards require that in no case access to lawyers be prevented for more than 48 hours after arrest and detention.

4. *Interrogation guidelines: prohibit any "physical pressure" and other coercion*

The Israeli Government should ensure that all interrogation guidelines are fully consistent with the international absolute prohibition of torture, ill-treatment and coerced confessions. Any use of "physical pressure" for the purposes of interrogation, and any other method aimed at forcing confessions, must be absolutely prohibited.

5. *Separate detention and interrogation functions*

The agency responsible for the custody of detainees should be different from the one engaged in interrogating them. The government should also ensure that the Vardi recommendation to remove any interrogation function of civilians from the IDF is fully implemented.

6. *Medical personnel must not be involved in torture*

The Israeli authorities must ensure that no medical personnel is required to give any assistance to practices of torture or ill-treatment. Medical personnel must refuse to give any such assistance and should promptly report abuses to the judicial and professional authorities, while being protected against any reprisal.

7. *Effective investigations of allegations of torture and deaths in custody*

Prompt and impartial investigations of allegations of torture should take place whenever there are reasonable grounds to believe that they are well-founded and whenever a death in custody occurs. The methods and full findings of these investigations should be made public. Prosecutors and judges should play an active role in investigating allegations of torture and should not admit as evidence any statement found to have been coerced. Anyone found responsible for abuses should be brought to justice. Victims should be compensated.

8. *Safeguards in plea-bargaining*

Prosecutors should be forbidden from suggesting less favourable plea-bargains to defendants who intend to challenge the admissibility of their confessions. Judges should rigorously check that no plea-bargain deal is based on torture or ill-treatment, and reject any such deal.

9. *Full implementation of human rights treaties*

The Israeli Government should withdraw all reservations from the ICCPR and the Convention against Torture. In particular, it should make a declaration under Article 22 recognizing the competence of the UN Committee against Torture to consider complaints from or on behalf of individuals. Israel should fully implement the guarantees in human rights treaties, in law and in practice, and recognize that they apply to the Occupied Territories as well as Israel.