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B'Tselem: The Israeli
Information Center for
Human Rights in the
Occupied Territories

ANNEXURE B

ABSOLUTE PROHIBITION

THE TORTURE AND ILL-TREATMENT OF PALESTINIAN DETAINEES

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Introduction

The right of every person not to be subjected to ill-treatment or torture (physical or mental) is one of the few human rights that are considered absolute. Therefore, it is forbidden to balance it against other rights and values, or suspend or restrict the right, even in the harsh circumstances of war or the battle against terrorism.¹ This right now enjoys the highest and most binding status in international law.

Numerous utilitarian arguments have been presented over the years to support strictly honoring this absolute prohibition, particularly in the context of interrogations by state security services. For example, it has been argued that information obtained by means of torture is unreliable inasmuch as the interrogee is liable to say anything the interrogators wish to hear simply in order to stop the torture; that there is no practical way to restrict the use of torture to the most extreme cases, so any deviation from the total prohibition will inevitably create a slippery slope leading to greater use of torture; that violation of the prohibition against torture may damage the state's international reputation or interests; and that the use of torture may expose security personnel to detention and prosecution when traveling abroad.

All these arguments are, to a lesser or greater extent, pertinent and correct. However, we believe that the most important reason for the absolute prohibition is that torture is a despicable act in and of itself, and not because of the damage it may cause. Like murder, rape, and slavery, torture is a form of absolute evil that justifies the imposition of an absolute prohibition, even if the prohibition clashes with other important values. This type of absolute prohibition resembles the approach seen, for example, in Jewish tradition: despite the emphasis on the sanctity of human life, certain offenses are considered so grave that it is preferable to die rather than to commit them.²

Torture is evil because it is one of the most extreme forms of denying a person's humanity. While states routinely force individuals to act in ways that are contrary to their own desires or

¹ The term "ill-treatment" in this report refers to cruel, inhuman, or degrading treatment within the meaning of these terms in international law. For further details, see chapter 1 below.

² This analogy was mentioned by the team of legal experts, headed by attorneys Menachem Mazuz and Rachel Sucar, appointed by then Prime Minister Ehud Barak to examine the ramifications of the court's landmark ruling in 1999 in the matter of General Security Service interrogations (Report, December 1999, 46).

inclinations, what is unique about the use of torture in interrogations, is that the means of coercion used by the state to break the will of interrogees (i.e., to get them to reveal information) are their own bodies and emotions. The interrogator in such a situation effectively expropriates the body and emotions of the detainees for the purpose of the interrogation, using pain and suffering to force them to betray their free will, their inner self, and their very essence as humans.³

Does the State of Israel respect the absolute prohibition against torture and ill-treatment? The answer to this question would seem to be no. In recent years, Israel has officially admitted several times that in "ticking-bomb" cases, the interrogators of the Israel Security Agency (ISA, formerly referred to as the GSS – General Security Service) employ "exceptional" methods of questioning, including "physical pressure." The interrogees in these cases are invariably Arabs. Moreover, Israeli law-enforcement officials have openly admitted that these methods are customarily approved retroactively. Accordingly, this report focuses mainly on an examination of the ways and frequency in which Israel violates the right of Palestinian detainees suspected of terrorist activity to be free from torture and ill-treatment.

This report, a joint endeavor of HaMoked: Center for the Defence of the Individual (hereafter "HaMoked") and B'Tselem, constitutes one stage in the longstanding struggle by both organizations against the use of torture in the interrogation rooms of the ISA. Since the early 1990s, B'Tselem has published more than ten reports documenting various aspects of this phenomenon, aimed at raising awareness of the issue in Israel and abroad.⁴ In 1996, HaMoked launched a legal campaign against torture, filing more than 120 petitions to the High Court of

³ For a more detailed exposition of this argument, see David Sussman, "What's Wrong with Torture?" *Philosophy and Public Affairs* (2005, No. 1), 33.

⁴ B'Tselem, *Interrogation of Palestinians During the Intifada: Ill-Treatment, "Moderate Physical Pressure" or Torture?* (March 1991); B'Tselem, *The Interrogation of Palestinians During the Intifada: Follow-up to March 1991 B'Tselem Report* (March, 1992); B'Tselem, *The Death of Mustafa Barakat in the Interrogation Wing of the Tulkarm Prison* (September 1992); B'Tselem, *The "New Procedure" in ISA Interrogation: The Case of `Abd A-Nasser `Ubeid* (November 1993); B'Tselem, *Torture During Interrogations: Testimony of Palestinian Detainees, Testimony of Interrogators* (November 1994); B'Tselem, *Detention and Interrogation of Salem and Hanan "Ali," Husband and Wife, Residents of Bani Na'im Village* (June 1995); B'Tselem, *Legitimizing Torture: The Israeli High Court of Justice Rulings in the Bilbeisi, Hamdan and Mubarak Cases* (January 1997); B'Tselem, *Routine Torture: Interrogation Methods of the General Security Service* (February 1998); B'Tselem, *Legislation Allowing the Use of Physical Force and Mental Coercion in Interrogations by the General Security Service* (January 2000).

Justice in cases where torture was employed or suspected over a period of two years.⁵ However, since the High Court ruling on the legality of ISA interrogation methods in 1999 (see discussion in chapter 1), HaMoked and B'Tselem have significantly reduced the scope of their activity in this field. The current report has given us a chance to refocus our efforts on this issue and improve our abilities in the battle against torture and ill-treatment.

Research methodology

This report is unusual in one respect: the testimonies on which it is based were not received following complaints or reports we received. Instead, we adopted a proactive approach, contacting people who have been interrogated by the ISA and whose names appeared in a sample group, and asking them to provide testimony. It is important to emphasize that the reference group does not constitute a representative sample.⁶ Accordingly, it should not be assumed that the frequency of each phenomenon reflected in the sample reflects the precise frequency of that phenomenon among the relevant population as a whole (i.e., among all Palestinians who have been interrogated by the ISA). However, given the manner in which the sample was composed (see below) and the fact that we did not have any prior information regarding the respondents' treatment during detention or interrogation, the results of the sample provide a valid *indication* of the frequency of the reported phenomena.

The basic list of names used to compose the sample includes Palestinian residents of the West Bank detained by Israeli security forces and whose relatives contacted HaMoked for assistance in locating their whereabouts. Naturally, HaMoked is not involved in locating every detained Palestinian, but the scope of requests is extensive and fairly representative. In 2005, for example – the relevant year in terms of this report – HaMoked received a total of 4,460 requests to locate incarcerated persons, of which 4,384 came from residents of the West Bank.⁷ It should be noted that HaMoked provides this service for the Palestinian population

⁵ For example, see H CJ 1622/96, *Al-Ahmar v. General Security Service*. See also HaMoked, *Prisoners Rights Project* (May 1996), 7-16.

⁶ It was not possible to take a representative sample due to various objective constraints, including uncertainty regarding the composition of the research sample (lack of access to lists of ISA interrogees), severe restrictions on access to interrogees held in prisons, and the high costs of preparing such a sample.

⁷ Random examinations by HaMoked show that the total number of requests it receives to locate detainees amounts to some eighty percent of the detentions reported in the media by the IDF

because there is no official Israeli body which assumes responsibility for notifying the families of detainees of the fact of the detention and the location where the person is being held. This, despite the fact that Israel is required to provide such notification both under international law and its own military legislation.⁸

The selection of the sample from within the list of names held by HaMoked was based on a number of formal criteria as detailed below. The end product was a list containing the names of 102 detainees. Nine of these detainees refused to provide testimony; accordingly, ninety-three testimonies were collected. It was later decided to remove twenty of these testimonies because they did not meet at least one of the predetermined criteria.⁹ Thus, the final number of testimonies included in the sample was *seventy-three*.

All the testimonies were given in the course of a semi-structured interview comprising a set questionnaire, which the person could answer freely, and additional questions based on the circumstances of the specific case and the level of detail offered in the initial responses. Of the seventy-three interviews included in the sample, sixty-eight were conducted in the prisons in which the detainees were being held, either in detention pending completion of legal proceedings or after they had been sentenced. The interviews were conducted by Attorney Hisham Abou Shehadeh on behalf of HaMoked and B'Tselem. The five remaining persons in the sample group had already been released from detention when we contacted them; they were interviewed in their homes by four fieldworkers on B'Tselem's staff.¹⁰ To protect the safety and privacy of the interviewees, only their initials appear in this report.

Spokesperson. According to information published in *Ha'aretz*, some 5,000 Palestinians were arrested over the course of 2006: Amos Harel, "Get to Battle or Get in the Police Car," *Ha'aretz*, 3 March, 2007.

⁸ Order Relating to Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970, section 78B, Amendment 53. In most cases, HaMoked receives information on the location where Palestinian detainees are being held through a control center which operates under the auspices of the Central Command of the Military Police. This unit coordinates information on all Palestinian detainees and prisoners held by all the relevant Israeli authorities – the army, the police, and the Israel Prison Service [IPS].

⁹ It should be noted that, while the twenty cases in which testimonies were collected but not included in the sample were not used in calculating the frequency of each of the aspects and methods discussed in the report, they nevertheless corroborated the principal findings that emerged from the sample.

¹⁰ Musa Abu Hashhash in Hebron District, Suha Zeid in Bethlehem District, 'Abd al-Karim Sa'adi in Tulkarm District, and Iyad Hadad in Ramallah District.

The questionnaire addressed the manner in which they were treated by security forces with whom they came into contact (soldiers, police officers, prison guards, and ISA agents) from the time of arrest to the completion of the ISA interrogation. The basic assumption underlying this broad mandate is that a proper examination of whether a detainee has been subjected to torture or ill-treatment requires more than a consideration of the methods of interrogation in the narrow sense of the term – the techniques employed during questioning – but must also cover the cumulative impact of the conditions imposed on the detainee, including those outside the interrogation room (conditions of confinement, access to legal counsel, and the like), and to the circumstances prevailing between the arrest and the commencement of interrogation (the level of violence used during the arrest, the manner of transfer to the detention facility, and so forth).

Of course, we cannot guarantee that every detail in the testimonies is accurate, precise and not exaggerated. Overall, however, we are satisfied that the practices and methods reported in the testimonies indeed take place. At least four factors support this conclusion. First, almost all the testimonies have a high level of internal consistency and include very detailed descriptions; second, the differences in the description of the methods used are relatively minor; third, all the practices reported in the testimonies and quoted in the report have also been documented in testimonies and affidavits collected by other organizations and by private attorneys; and fourth, the State of Israel has not denied using some of the violent methods described here when they have been publicized, while in other cases (particularly relating to the detention conditions, solitary confinement, and the isolation of detainees from the outside world) not only is their use not denied, but the authority to adopt such measures is expressly stated in legislation.

Profile of the sample

The sample consists of two groups of detainees, each of which was defined according to different criteria and effectively constitutes a distinct sub-sample. The first group, referred to as the "regular detainees," is intended to reflect the routine practices experienced by ISA detainees. The second group, which we refer to as the "senior detainees," is intended to reflect the treatment and methods of interrogation used in the case of detainees whose questioning the ISA considers particularly urgent. It is important to emphasize that the use of the term "senior detainees" in this report should not be seen as implying that the members of this group held any particular position in any organization, or were involved in any specific type of activity; the term relates solely to the urgency attached to their interrogation.

The "regular detainees" include *all* individuals in the database who were detained during the five-day period between 13 and 17 July 2005 and who, according to the information obtained by HaMoked, were transferred to one of the four detention facilities where ISA interrogations take place (see chapter 3) not later than two weeks after they were arrested. These criteria yielded the names of thirty-seven detainees, two of whom declined to give testimony; one of the detainees was removed from the list after we learned that he had not been interrogated by the ISA. It later emerged that two other detainees were not residents of the West Bank (one was a resident of Israel and the other a resident of Gaza); however, given that they met the other substantive criteria, it was decided to leave them in the sample. Accordingly, thirty-four testimonies were collected from this group. We should note that the specific dates mentioned above were chosen because on the previous day, 12 July 2005, a suicide attack, killing four Israeli citizens, took place in Netanya. We assumed that a wave of arrests took place after the attack, and that many of the detainees were interrogated by the ISA.

The "senior detainees" group includes Palestinians arrested during the period July 2005-January 2006 who meet two key criteria. The first is that their detention took place through a proactive and targeted act of arrest, rather than in other circumstances (such as random checks, demonstrations, and summons to interrogation). Since the database maintained by HaMoked does not specify the nature of the arrest of persons the organization is asked to locate, the initial screening was undertaken on the basis of information concerning the arrest of Palestinians published by the media and on the website of the IDF Spokesperson, or provided by Palestinian human rights organizations. The second criterion is that the actual interrogation by ISA personnel (and not merely their arrival at the interrogation facility) began within forty-eight hours from the time of their arrest. In practice, the interrogation of most of the cases included in this group began less than twenty-four hours from the time of their arrest. Because the information forwarded to HaMoked by the authorities states only the date on which the detainee was transferred to a particular facility and does not specify what happened to him after he reached that facility, the decision to include each testimony in this sample was made retroactively, after it was possible to determine precisely when the interrogation began.

These criteria yielded the names of sixty-five potential members of the survey group, seven of whom declined to give testimony. Of the fifty-eight testimonies collected, nineteen were later excluded after it emerged that the cases did not meet one of the two criteria noted above (usually the second). Accordingly, thirty-nine testimonies from this group were included in the sample.

Criteria	"Regular Detainees"	"Senior Detainees"
Date of detention	13-17 July 2005	July 2005-January 2006
Circumstances of detention	All circumstances	Targeted operation
Delay before transfer to interrogation	Up to two weeks from the day of detention	Up to 48 hours from the day of detention
Persons included in the sample	34	39

The profile of the persons included in the sample – sex, family status, and district of residence – is as follows: all seventy-three persons are men, since the predetermined criteria did not yield the name of any women; their average age at the time of detention is twenty-four (the youngest detainee was seventeen and the oldest fifty-eight);¹¹ three-fourths of the detainees were single at the time of detention and the others were married (most of the married detainees had children); regarding the district of residence at the time of detention, thirty-two detainees lived in the north of the West Bank (the districts of Jenin, Nablus, Tubas, and Tulkarm), thirteen lived in the center of the West Bank (the districts of Qalqilya, Salfit, Ramallah, Jericho, and Jerusalem), twenty-six lived in the south of the West Bank (the districts of Bethlehem and Hebron), one lived in Israel, and one lived in the Gaza Strip.

Structure of the report

This report comprises five chapters, followed by conclusions and recommendations. Chapter 1 presents the legal framework that will be used in the subsequent chapters to examine the practices used on the Palestinian detainees from the perspective of international law and Israeli constitutional law. Chapter 2 deals with the harmful practices employed against Palestinian detainees (mainly by soldiers) from the time of arrest through their transfer to the interrogation facility. Chapter 3 describes the routine methods of interrogation by the ISA, examining both interrogation methods in the narrow sense of the term (the actions undertaken directly by the ISA interrogators) and the use of psychological pressure by means of the conditions of detention. Chapter 4 examines seven violent methods of interrogation that are

¹¹ The ages mentioned in the report are at the time of arrest.

apparently employed in cases that are defined as "ticking bombs." Chapter 5 offers a critical review of the functioning of four mechanisms within the Israeli law-enforcement system regarding the ill-treatment of Palestinian detainees by the ISA and by soldiers.

Chapter 1

The Legal Framework

This chapter, which is divided into two sections, presents the legal framework for examination of the treatment of Palestinian detainees, which will follow.¹² The first section deals with the prohibition on torture and ill-treatment under international law. The second section comprises a criticism of the High Court of Justice's landmark decision in *Public Committee against Torture in Israel et al. v. The State of Israel et al.* (hereafter "*PCATI*"), in 1999, on the legality of the interrogation methods then used by the ISA, and discusses the ramifications of *PCATI*.¹³

Torture and ill-treatment from the perspective of international law

International law absolutely prohibits torture and cruel, inhuman, or degrading treatment (hereafter "cruel, inhuman, or degrading treatment" will be referred to as ill-treatment) absolutely. Unlike other norms, states are not permitted to derogate from or balance the prohibition against other rights or values, even in an emergency. Furthermore, for some time now, there has been broad consensus that the absolute prohibition on torture and ill-treatment is customary law, which binds every state, organization, and person, even in the absence of an international convention or other instrument.¹⁴

The prohibition is enshrined in the two main branches of international law that apply to Israel's treatment of Palestinian detainees: international human rights law, which deals with the obligations of a state toward persons under its jurisdiction, and international humanitarian law, which deals, inter alia, with a state's obligations toward residents of an occupied territory. The two principal relevant conventions in human rights law are the Covenant on Civil and

¹² B'Tselem and HaMoked thank Dr. Yuval Ginbar for his comments on this chapter.

¹³ HCJ 5100/94, *The Public Committee against Torture in Israel et al. v. The State of Israel, Piskei Din* 53 (4) 817.

¹⁴ For a discussion on the development of this legal status, see Nigel Rodley, *The Treatment of Prisoners under International Law*, 2nd edition (Oxford: Oxford Univ. Press, 1999), chapter 2.

Political Rights, of 1966,¹⁵ and the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment.¹⁶ The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 1949, is the primary relevant instrument in international humanitarian law.¹⁷

The prohibition on torture and ill-treatment is also conspicuous in international criminal law, which specifies that breach of the prohibition constitutes an international crime. Persons involved in the commission of the prohibited act – which includes the persons who gave the order to torture or ill-treat a person, or assisted in carrying out the act – are held personally responsible. Individual responsibility is in addition to the state's responsibility for the acts carried out by its agents.¹⁸ Therefore, every state is obligated to enact legislation in its domestic law that torture and ill-treatment is forbidden and to prosecute persons who violate the prohibition.

In the twentieth century, international tribunals were established to try persons suspected of committing international crimes, among them torture and ill-treatment.¹⁹ A permanent international criminal court was not established until the end of the century: the International Criminal Court, established under the Rome Statute, opened its doors in 2002. Under the

¹⁵ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171. See, in particular, article 7. Israel ratified the Covenant in 1991.

¹⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)]. This Convention, which Israel ratified in 1991, deals solely with the prohibition on torture and ill-treatment.

¹⁷ Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 1949; see, in particular, articles 3, 27, 31, and 32. Israel ratified the Convention in 1951.

¹⁸ Personal responsibility for torture and ill-treatment are considered customary law. Over the years, this norm has been enshrined in various instruments, among them the Fourth Geneva Convention (article 147).

¹⁹ The first such tribunal, established under the Versailles Agreements at the end of the First World War, tried Germans for war crimes. About twenty-five years later, following the Second World War, the Nuremberg and Tokyo tribunals were established to try German and Japanese soldiers and government officials for war crimes and crimes against humanity. In the 1990s, tribunals were established to try alleged perpetrators of crimes carried out in the civil war in the former Yugoslavia and in the genocide in Rwanda. For a survey of the development of the handling of torture cases in international tribunals, see William Schabas, "The Crime of Torture and the International Criminal Tribunals," *27 Case Western Reserve Journal of International Law* (2006), 349.

statute, torture and ill-treatment constitute a crime against humanity or a war crime, depending on the circumstances in which the act is committed.²⁰ However, given that Israel has not yet ratified the Rome Statute, the International Criminal Court does not have jurisdiction to try Israeli citizens for offenses committed in Israel or in the West Bank and the Gaza Strip.²¹

However, pursuant to the principle of universal jurisdiction, states may arrest and try persons from other countries who are suspected of having committed torture or ill-treatment, even in the absence of an international court empowered to hear the case. Thus, every state is empowered to arrest and prosecute or extradite alleged perpetrators found on its soil, regardless of where the torture took place, the nationality of the alleged perpetrator, or the nationality of the victim.²² Universal jurisdiction was applied, for example, in the case of the former Chilean tyrant, Augusto Pinochet, who was accused of ordering the torture of thousands of persons during his reign. The House of Lords ruled that he could be extradited because the immunity given heads of state under international law does not apply to the crime of torture.²³

Despite the absolute prohibition on ill-treatment, the discourse on the "war on terror" and the legitimate ways to conduct it has resulted in the claim that the absolute prohibition is not the same as with torture, in the sense that international law does not require that every state prosecute individuals suspected of violating the prohibition.²⁴ One argument along this line

²⁰ Rome Statute of the International Criminal Court, U.N. Doc. 2187 U.N.T.S. 90, articles 7(1) (f) and (k), 8(2)(a)(ii) and (iii), 8(b)(xxi), and 8(c)(ii).

²¹ Under article 14 of the Statute, the UN Security Council may act under Chapter VII of the UN Charter and refer a case for prosecution, regardless of the nationality of the alleged offender or the place where the crime purportedly took place.

²² This norm is considered customary international law, which is enshrined, for example, in article 146 of the Fourth Geneva Convention (regarding torture and inhuman treatment) and in articles 5 and 6 of the Convention against Torture (regarding torture only).

²³ *Regina v. Bartle and the Commissioner of Police for the Metropolis and Others ex parte Pinochet*, 38 I.L.M. 581 (House of Lords, 1999).

²⁴ One of the well-known statements of this claim appears in an opinion written by senior U.S. Justice Department attorneys for the Counsel to President George W. Bush, which came to be referred to as the "Torture Memo": Jay S. Bybee, Assistant Attorney General, Memorandum for Alberto R. Gonzales, Counsel to the President, "Re: Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A," August 1, 2002, in Karen Greenberg and Joshua Dratel (eds.), *The Torture Papers: The Road to Abu Ghraib* (New York: Cambridge Univ. Press, 2005).

states that, in extreme cases, states may properly exempt from criminal responsibility public officials who, acting under duress or to save lives, maltreated detainees.²⁵ Most commentators holding this position rely on the Convention against Torture, which does not require the state-parties to criminalize acts of ill-treatment.

Although the obligation to prosecute officials who maltreat detainees does not appear in the Convention against Torture, this fact does not exempt the state from this obligation under the provisions of other conventions to which the state is party.²⁶ For example, neither the Covenant on Civil and Political Rights nor the discussions held during the drafting of the Covenant provide any indication that the prohibition on ill-treatment is less absolute than that on torture. In fact, the prohibition on torture and ill-treatment is presented together, in the same clause (Article 7), from which the state may not derogate in times of emergency. The UN Human Rights Committee, which is charged with interpreting the Covenant, has explicitly held that, "... no justification or extenuating circumstances may be invoked to excuse a violation of article 7 *for any reasons*, including those based on an order from a superior officer or public authority."²⁷

The majority of commentators who erroneously hold that the prohibition on ill-treatment is less absolute than the prohibition on torture do not contend that international law permits states to allow ill-treatment in certain cases. Rather, they "only" argue that international law does not forbid states to free from criminal responsibility public servants who maltreat detainees in extreme cases. To describe their position in another way: in maltreating detainees, the state violates international law, regardless of the circumstances.

The generally accepted definition of "torture" appears in Article 1(1) of the Convention against Torture:

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for

²⁵ Yuval Shany, "The Prohibition against Torture and Cruel, Inhuman and Degrading Treatment and Punishment: Can the Absolute be Relativized under Existing International Law?," available at www.papers.ssrn.com/sol3/papers.cfm?abstract_id=856905.

²⁶ Also, the second paragraph of article 16 of the Convention against Torture, which relates to the prohibition on ill-treatment, states that, "The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion."

²⁷ CCPR, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Article 7), 10 March 1992, para. 3 (emphasis added).

such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent or incidental to lawful sanctions.

The definition specifies four elements that cumulatively comprise torture:

- a) the act must be intentional
- b) it must cause severe pain or suffering
- c) it is inflicted to attain information or other specifically mentioned purposes
- d) it is committed by, or with the consent or acquiescence, of a public official

The second element has raised problems and disputes in attempts to apply the definition to interrogation methods, particularly to sophisticated and combined methods of the kind discussed in this report. In this regard, we rely, among other things, on four primary notions set forth in the literature and case law.

First, given that pain and suffering are subjective experiences, it is impossible regarding some methods to determine whether they in fact inflict severe pain or suffering without relating to the specific individual. For example, a particular interrogation method might cause substantial, but not severe, pain to a young, healthy person, but would cause severe pain to an older or less healthy individual.

Second, the determination as to whether a particular act causes severe pain is dynamic. As the European Court of Human Rights [hereafter "the European Court"] has held, the European Human Rights Convention is "a living instrument which, as the [European] Commission rightly stressed, must be interpreted in the light of present-day conditions," in part, in light of the relevant values at a specific time and place.²⁸ Therefore, an act once considered as causing suffering but as not severe can subsequently be deemed torture in light of normative changes that have taken place in the interim, including changes in the conception of human dignity.

Third, contrary to one of the views, voiced occasionally, the definition given above clearly indicates that severe psychological, and not only physical, harm comes within the rubric of

²⁸ *Tyler v. UK*, Application 5856/72 (1978), para. 31; *Selmouni v. France*, Application 25803/94 (1999), para. 10. All European Court of Human Rights decisions mentioned in this report appear on the Court's website: <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>.

torture. Sociologists have found that the firm establishment of the prohibition on torture has increased the temptation of states to use psychological torture, which does not leave physical marks and is easier to conceal.²⁹ However, as the UN's Special Rapporteur on torture reported, the distinction between physical torture and psychological torture is largely artificial, inasmuch as the experience of pain entails, almost inevitably, both physical and psychological elements.³⁰

Fourth, as many international judicial bodies have emphasized, a determination as to whether a person has been subjected to severe pain or suffering requires an examination of the combined and cumulative effect of all the methods used against him during his detention and interrogation.³¹ Obviously, the duration of use of a particular method and the number of methods may well be decisive in determining if the detainee has been tortured. Therefore, even when each method used does not itself entail severe pain, their use in tandem might lead to this result. It might also be the case that a certain interrogation method becomes severe pain or suffering only after it is used continuously for a certain period of time, an example being sleep deprivation.

Unlike torture, no convention defines ill-treatment. The literature and case law indicate that two principal criteria distinguish torture and ill-treatment: the intensity of the suffering and the intention of the person committing the act. Conduct that causes substantial, but not severe, suffering, or, alternatively, which causes severe suffering, but is not done to obtain information (for example, the use of excessive force in arresting a person who resists arrest), is deemed ill-treatment and not torture.³²

²⁹ M.D. Evans and R. Morgan, *Preventing Torture: A Study of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (Oxford: Clarendon Press, 1998), 59-60.

³⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/59/324, Agenda Item 107(a), para. 45.

³¹ A leading precedent on this issue is the European Court of Human Rights decision in *Ireland v. UK*, Application 5310/7 (1978), para. 167.

³² The UN Special Rapporteur on torture (both past and present) maintains that the severity of the suffering is a relevant criterion only in respect of the distinction between torture and degrading treatment. The primary difference between torture and cruel or inhuman treatment, however, is not the intensity of the suffering (both being severe), but in the intent. See Nigel Rodley, "The Definition(s) of Torture in International Law," 55 *Current Legal Problems* (2002), 467-493; Manfred Nowak and Elizabeth McArthur, "The Distinction between Torture and Cruel, Inhuman or Degrading Treatment," 16 *Torture* (2006), 147-151.

Leading quasi-judicial bodies, particularly the UN Human Rights Committee, which is responsible for hearing complaints on breach of the Covenant on Civil and Political Rights, often relate to the two prohibitions as one, making no mention if the acts under examination come within one category or the other.³³ Other bodies, the European Court foremost among them, distinguish between torture and ill-treatment, despite their fundamental position that both are absolutely prohibited. These bodies justify the distinction because the term torture bears a "special stigma," which should be stamped on only the most grievous acts.³⁴

The High Court of Justice on the prohibition on torture and ill-treatment

On 6 September 1999, the High Court of Justice gave its decision in *PCATI*, which comprised a number of petitions that had been filed during the 1990s requesting the High Court to prohibit the use of certain interrogation methods. At the time, the government permitted the ISA to use "psychological pressure" and a "moderate degree of physical pressure" in cases of hostile terrorist activity. This permission was in accord with the recommendations of the commission of inquiry headed by the retired Supreme Court Justice Moshe Landau [hereafter "the Landau Commission"].³⁵ The Commission determined that ISA interrogators are allowed to use such pressure, holding that the "necessity defense" specified in the Penal Law applied (see below for more on this issue).³⁶

Conversely, official international institutions, among them the UN Committee against Torture and the UN Human Rights Committee have held on several occasions that these ISA methods amounted to ill-treatment, and even torture, under international law.³⁷ Human Rights

³³ In most of its decisions on individual complaints, the Committee related to "violations of article 7" of the Covenant on Civil and Political Rights, which includes, as mentioned above, the prohibitions against both torture and ill-treatment.

³⁴ See *Ireland v. United Kingdom*, footnote 29, para. 168. The Court also distinguishes between different kinds of ill-treatment. It holds that an act defined as "inhuman treatment" is more serious than one defined as "degrading treatment." Unlike the other conventions, the European Convention does not refer to "cruel" treatment or punishment.

³⁵ Report of the Commission of Inquiry into the Methods of Investigation of the General Security Service regarding Hostile Terrorist Activity (Jerusalem, October 1987). See, in particular, section 4.7.

³⁶ *Ibid.*

³⁷ See, for example, Concluding Observations of the Committee against Torture: Israel (1997), UN Doc. A/52/44, para. 257; Concluding Observations of the Human Rights Committee: Israel, UN Doc. CCPR/C/79/Add.93, para. 19.

organizations, HaMoked and B'Tselem included, which had for years fought to prohibit torture, showed that these methods had become routine during ISA interrogation of Palestinian detainees.³⁸

PCATI changed the understanding of the law. In repudiation of the Landau Commission's position, the High Court ruled that the ISA does not have legal authority to use physical means of interrogation that are not "reasonable and fair" and that cause the detainee to suffer. "Human dignity," then-Supreme Court President Aharon Barak stated for the court, "also includes the dignity of the suspect being interrogated."³⁹ The court held that this conclusion is in perfect accord with international-law treaties that prohibit the use of torture and ill-treatment, and added that these prohibitions are absolute, are not subject to any exceptions, and that there is no room for balancing.⁴⁰

"A reasonable interrogation," the High Court held, "is necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever."⁴¹ Violence directed at a detainee's body or spirit is not a reasonable interrogation practice. However, a reasonable interrogation is likely to cause discomfort and put pressure on the detainee. Such discomfort, or unpleasantness, will be deemed lawful only if "it is a 'side effect' inherent to the interrogation," and not an end in itself, aimed at tiring out or "breaking" the detainee.⁴²

In the absence of express statutory provisions permitting the use of physical pressure, the court held, "the power to interrogate given to the ISA investigator by law is the same interrogation power the law bestows upon the ordinary police investigator."⁴³ Accordingly, the use of "physical means" by the ISA is illegal, inasmuch as they are not part of a reasonable interrogation, violate the detainee's human dignity, which is enshrined in the Basic Law: Human Dignity and Liberty, and are a criminal offense under the Penal Law.⁴⁴

³⁸ See *supra*, footnotes 4 and 5.

³⁹ *PCATI*, para. 23.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*, para. 23, 31.

⁴³ *Ibid.*, para. 32.

⁴⁴ *Ibid.*, para. 23.

With these principles as a guide, the High Court examined four specific investigation methods used by the ISA: shaking; forcing the detainee to crouch on the tips of his toes for minutes at a time; the "*shabah*" position, in which the detainee sits on a low chair that is slanted forward, with his hands cuffed behind him, his head hooded with an opaque sack, with extremely loud music being played constantly; and sleep deprivation. Regarding the first three methods, the court held that they do not serve any purpose inherent to an interrogation. Therefore, they are prohibited interrogation methods and the ISA is not empowered to use them in any case.⁴⁵ Regarding the "*shabah*" method, the court adopted the European Court's approach, mentioned above, noting that consideration must be given to the combined effect of a number of methods being used simultaneously.⁴⁶ Regarding sleep deprivation, the court held that the ISA may use the method if it is a "side effect" of the interrogation, but not if it is used as a means of pressure.⁴⁷

The High Court's holding on the ISA's powers and the legality of its interrogation methods is generally proper and comports with international law.⁴⁸ However, the High Court erred in holding that ISA interrogators who exceeded their authority and used forbidden "physical pressure" can avoid criminal responsibility if it is subsequently found that they acted "in the proper circumstances." The court relied on the necessity defense set forth in the Penal Law, whereby a person shall not bear criminal responsibility for

committing any act immediately necessary for the purpose of saving the life, liberty, body or property, of either himself or his fellow person, from substantial danger of serious harm, imminent from the particular state of things [circumstances], at the requisite timing, and absent alternative means for avoiding the harm.⁴⁹

The state based its position on the Landau Commission's conclusions, which included, inter alia, the opinion that the necessity defense grants ISA agents automatic, prior authority to use physical pressure on detainees in certain circumstances. The High Court rejected this position, stating that the necessity defense "deals with deciding those cases involving an individual reacting to a given set of facts," so it cannot serve as the source of a general administrative power. It is only a defense to criminal responsibility, claimed after the fact.

⁴⁵ Ibid., para. 24-29.

⁴⁶ Ibid., para. 30.

⁴⁷ Ibid., para. 31.

⁴⁸ Except for the holding that sleep deprivation is, in certain circumstances, legal. On this point, see chapter 4 below.

⁴⁹ Penal Law, 5737 – 1977, section 34A.

It should be noted that the justices avoided ruling expressly that the four methods the court had examined were torture, or even ill-treatment, although such a determination appears obvious in light of the description of the methods accepted by the court and the precedents established by relevant official international bodies. Presumably, the court avoided declaring the methods torture or ill-treatment because such a finding would have rendered its judgment incompatible with international law, which requires states to prosecute and punish perpetrators of torture and ill-treatment and forbids them to cite "exceptional circumstances" as a justification for such actions.

In its conclusions to the periodic report filed by Israel, the Human Rights Committee discussed the availability of the necessity defense to avoid criminal responsibility in cases of torture or ill-treatment:

The Committee is concerned that interrogation techniques incompatible with article 7 of the Covenant are still reported frequently to be resorted to and the "necessity defense" argument, *which is not recognized under the Covenant*, is often invoked and retained as a justification for ISA actions in the course of investigations.⁵⁰

The UN Committee against Torture welcomed the court's rejection of the Landau Commission's acceptance of the interrogation methods, but raised concern about other aspects of the court's opinion. For example, the Committee against Torture stated: "The Court indicated that ISA interrogators who use physical pressure in extreme circumstances ('ticking bomb cases') might not be criminally liable as they may be able to rely on the "defense of necessity."⁵¹ The UN Special Rapporteur on torture also welcomed the court's opinion, but "regrets that, pursuant to the defense of necessity under Israeli Law (*there is no such defense against torture or similar ill-treatment under international law*), the Court felt that such techniques could avoid attracting criminal responsibility in certain extreme cases."⁵²

Also, the norm inherent in allowing the necessity defense in certain cases of torture or ill-treatment has an extra-judicial significance: it sanctions torture or ill-treatment on the grounds that the act was, under the circumstances, correct given that it was intended to prevent the occurrence of a much worse danger. It is not surprising, therefore, that the justices avoided expressly stating that the four methods constitute torture or ill-treatment. However, this

⁵⁰ Concluding Observations of the Human Rights Committee: Israel, 5 August 2003, CCPR/CO/78/ISR, para. 18 (emphasis added).

⁵¹ See Report of the Committee against Torture, UN GAOR Supp. A/57/44 (2002), para. 52.

⁵² UN Doc. E/CN.4/2000/9, 2 February 2000, para. 675 (emphasis added).

avoidance cannot blur the regrettable fact that the highest court in the land legitimated, if only by implication, the use of torture and ill-treatment.

The High Court aggravated matters by failing to carefully delineate those "proper circumstances" in which the necessity defense is available, leaving an opening for broad interpretation by the ISA and its legal advisors, and for the slippery slope leading to an increase in torture and ill-treatment.⁵³ The court assumed that the attorney general would define these circumstances: "The Attorney General can instruct himself regarding the circumstances in which investigators shall not stand trial, if they claim to have acted from a feeling of 'necessity.'"⁵⁴ However, the instructions given by the attorney general at the time, Elyakim Rubinstein, did not do so, but only made general statements on the nature of the necessity defense in criminal law.⁵⁵

Although the court does not define the proper circumstances for the application of the necessity defense, it states twice that the defense "likely arises" in the cases of a "ticking bomb."⁵⁶ On this point, the court adopted the state's description of the "ticking-bomb" case:

A given suspect is arrested by the GSS. He holds information respecting the location of a bomb that was set and will imminently explode. There is no way to diffuse the bomb without this information. If the information is obtained, however, the bomb may be diffused. If the bomb is not diffused, scores will be killed and maimed.⁵⁷

The posited case is problematic. On two points in particular, the justices failed to respond clearly, leaving the ISA and the State Attorney's Office to make the determination.

First, although the court notes that for the necessity defense to apply there must be "certainty that the danger will materialize," the court does not discuss the degree of certainty the ISA must have about the other factual assumptions, explicitly and implicitly, inherent in the ticking-bomb case: the assumption that if the danger materializes, many persons will be killed; the assumption that the suspect has valuable relevant information; the assumption that obtaining the information will enable security personnel to diffuse the bomb; the assumption

⁵³ Mordechai Kremnitzer and Re'em Segev, "The Legality of Interrogational Torture: A question of Proper Authorization or a Substantial Moral Issue?", 34 *Israel Law Review* (2000, No. 4), 509.

⁵⁴ *PCATI*, para. 38.

⁵⁵ Elyakim Rubinstein, *ISA Interrogations and the Necessity Defense – Framework for the Attorney General's Discretion*, 28 October 1999.

⁵⁶ *PCATI*, para. 34.

⁵⁷ *Ibid.*, para. 33.

that the danger continues to exist, even though the suspect is being held, which may lead his associates to cancel the planned bombing and diffuse the bombs themselves; the assumption that it is not possible to prevent the danger from materializing other than by means of the information obtained from the detainee; the assumption that if "physical pressure" is used, the detainee will provide the necessary information and will not lie to put an end to the pressure; the assumption that there is no other, more efficient, way than "physical pressure" to obtain information from the detainee; the assumption that the interrogators know the intensity of the pressure needed to get the detainee to disclose the information, without him fainting, dying, or losing his mind.

It may be that ISA interrogators are almost certain about one of these factual assumptions. However, if the ticking-bomb scenario requires absolute, or at least a very high degree of certainty as to each of the relevant assumptions, it is very doubtful that the case posited by the state will ever materialize.⁵⁸ Presumably, with a danger of terrorist activity hovering above and the threat of prosecution for ill-treatment of the detainee being non-existent in practice, ISA interrogators will surely settle for a low level of certainty regarding the ticking-bomb assumptions. This attitude results in an increase in cases being defined as ticking bombs and with it an increase in the number of victims of torture and ill-treatment.

Second, the question arises whether it is necessary that the detainee is the person who laid the ticking bomb, or if it is sufficient that he know vital details about the bomb. The case posited by the state does not relate to this point, and the High Court did not speak to it.

A response to this question can be found in the principle on which the Landau Commission relied in justifying deviation from the absolute prohibition on torture and ill-treatment in ticking-bomb cases: the concept of the lesser evil.⁵⁹ According to this principle, although any harm to the body or honor of a detainee is evil, in extreme cases, there is no option to weighing this evil against other, opposing evils. Therefore, if the evil weighed against ill-treatment of the detainee is the murder of many innocent persons in a terror attack, the identity of the detainee, regardless of whether he laid the bomb or only has information that can lead to the persons who laid it, is almost irrelevant.

Furthermore, contrary to the vagueness surrounding the response to these two questions, the High Court in *PCATI* paved the way for an expansion of the definition of the ticking-bomb

⁵⁸ B'Tselem, *Legislation Allowing the Use of Physical Force and Mental Coercion in Interrogations by the General Security Service* (January 2000), 40-42. See also Kremnitzer and Segev, "The Legality of Interrogational Torture," 549-550.

⁵⁹ Landau Commission Report, para. 3.15, 3.16.

case when it held that the necessity defense is available even when the danger is not immediate. In the court's words: "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 it."⁶⁰ However, if ticking-bomb cases include those in which the danger is not immediate, the exceptional and extreme ticking-bomb case is no different than almost every other matter investigated by the ISA.

Almost every Palestinian can be considered the "clue" that leads to vital information that can prevent a mass terror attack in the near future.

In concluding this brief survey, we should emphasize the importance of the High Court's determination that ISA interrogators are not empowered to use physical means in interrogations. Yet, by allowing a delinquent interrogator to benefit from the necessity defense and thus not be held criminally responsible for his acts, the court implicitly legitimates ill-treatment, and even torture, of detainees. Also, the High Court's failure to define ticking-bomb cases precisely creates a real danger of the slippery slope that would lead to a substantial increase in the number of victims of torture and ill-treatment.

⁶⁰ *PCATI*, para. 34.

Chapter 2

The Ill-treatment of Detainees from Arrest through Transfer for Interrogation

One of the questions examined in the study was whether – and if so, to what extent – the security personnel responsible for arresting and holding Palestinians pending their transfer to the ISA maltreat or torture the detainees. For the purposes of the analysis, and despite the unique aspects reported in some of the testimonies, we broke down the reported violations into four categories: beating, painful binding, swearing and humiliation, and denial of basic needs.

Before discussing the findings of the study in depth, we present the main characteristics and facts relating to the two principal stages that precede the ISA interrogation – the arrest itself and the confinement in the transit site pending transfer to the interrogation facility. Each of the four practices is discussed separately, using data from the sample and relevant excerpts from the testimonies. In the last part of this chapter, we summarize the findings of the sample and discuss their significance in light of the prohibition against torture and ill-treatment in international law.

Factual background

Some of the Palestinians who are brought for routine interrogation by the ISA are arrested in the course of a targeted and planned action. All the persons in the "senior detainees" group, and some of those in the "regular detainees" group, were apprehended in such circumstances. These arrests are usually executed by the various army units operating in the West Bank, and sometimes by special units of the Border Police. In most cases, the arrest is made in the middle of the night (often between one and three in the morning) when security forces arrive at the home of the "target" for arrest. The forces surround the house and announce – through a loudspeaker or via a family member who comes to them – that a specific individual must hand himself over to them.

It should be noted that, in most cases, the forces are accompanied by an ISA agent who conducts a preliminary interrogation immediately after the arrest to confirm the identity of the detainee. In a minority of cases, ISA agents conduct a full-scale interrogation immediately after the detention, in the detainee's home or elsewhere in their village or town, to obtain information other than their personal details. The reports of ill-treatment committed during

such preliminary interrogations are not included in the four categories noted above, but are discussed separately in the next chapter.

In addition to arrests and detention of this kind, many detainees – among them, some of the persons in the "regular detainees" group – reach the ISA after being arrested in other circumstances. Most common is detention resulting from a random inspection of the identity cards of Palestinians on their way through one of the dozens of checkpoints situated throughout the West Bank, or crossing Allenby Bridge, the only exit point for residents of the West Bank traveling abroad. Most of the checkpoints and crossings are equipped with computers containing information on Palestinians who are "wanted" by the various official Israeli authorities, including the ISA. When there is no computer in the field, the identity number of the individual is forwarded by two-way radio to a place where the number is fed into a computer.

Following arrest, detainees are usually transferred to one of the temporary detention facilities in the West Bank. The detainees undergo registration, initial screening, and a superficial medical examination, and are held there pending transfer to an ISA interrogation facility. In most cases, the detainees are not interrogated while in the temporary facility, although in a minority of cases interrogation begins at this stage and continues in the ISA facility. Detainees are occasionally transferred directly to the ISA interrogation facility without passing through an interim facility in the West Bank.

During the period covered by this report (July 2005-January 2006), five detention facilities operated in the West Bank, all under the responsibility of the Military Police: Etzion facility, which is located southwest of Bethlehem; Binyamin facility, situated in the Ofer military base, located northwest of Jerusalem; Ephraim facility, near the settlement of Qedumim on the road from Qalqiliya to Nablus; Shomron facility, near the village of Huwara, south of Nablus; and Salem facility, near the Green Line, north of Jenin. In the latter half of 2006, Salem and Binyamin facilities were transferred to the responsibility of the Israel Prison Service [IPS], and the Ephraim facility was closed.

Beating

The commonest forms of beatings mentioned in the testimonies were punching and kicking all parts of the body, striking with rifle butts and face slapping. Some of the sample group reported being hit with a club, a helmet, and other objects, and having their head knocked against a wall, floor, or other hard surface. Many beatings took place inside army vehicles while the detainees were being transported from the place of arrest to the detention center; at this stage, their hands were bound behind their back and their eyes were blindfolded. Beatings

also occurred when they underwent physical inspection, while their hands were cuffed; and during intake at the detention facility. It is important to emphasize that this category does not include acts of violence which, according to the descriptions in the testimonies, might have constituted reasonable use of force to make the arrest or prevent the person from escaping.

Thirty-six (fourteen "regular detainees" and twenty-two "senior detainees") of the seventy-three persons in the sample (forty-nine percent) reported at least one incident in which they were beaten by security forces before reaching the ISA interrogation facility.

I.A., 17, was arrested during a random inspection as he attempted to pass through a temporary checkpoint on a road leading from his village to Ramallah. In his testimony, he stated that after his hands were cuffed and he was blindfolded,

The soldiers ordered me to climb into the back of the jeep. I put my foot on the step so I could climb in, and suddenly one of the soldiers gave me a hard kick and pushed me inside. Four soldiers came into the jeep. I could see them through the piece of cloth over my eyes. They kicked me, slapped me, and punched me. They also banged my head against one of the iron corners of the jeep. All this time, my hands were bound and I was blindfolded.

M.I., 30, a married man with two children, left his home and noticed soldiers walking toward him. He was armed with a Kalashnikov rifle and two pistol cartridges and began to run away. The soldiers fired at him, but missed, after which he surrendered. According to his testimony, the soldiers came over to him and took his rifle.

They searched me and found my identity card. When the soldiers saw my name, one of them kicked my leg hard and I fell down on my face. While I was lying on the ground, the soldiers cuffed my hands behind my back. Then they stomped on me, kicked me, and beat me with the butts of their rifles.

I.I., 24, who is married and has two children, was detained by undercover security forces disguised as Arabs who forced their way into his home around midnight. In his testimony, he stated that all the soldiers were masked.

They ordered me to strip down to my underpants. Then they bound my hands behind my back with plastic handcuffs. Then the soldiers kicked, punched, and slapped me. One of the soldiers also struck me hard in the back of my neck with his rifle butt. I felt very dizzy and lost my balance. The soldiers told me that there had been a terrorist attack that morning in Beersheva and asked me who the suicide bomber was, who sent him, and how the attack happened. I had no idea what they were talking about and did not even know there had been an attack that day. The soldiers went on beating me, hitting me with the rifle butt on various parts of my body. After about twenty minutes, a man in an army uniform arrived. He identified himself as an ISA officer and allowed me to get dressed.

He told the soldiers to stop beating me and let me get my identity card and say goodbye to my wife and children. Then they covered my eyes with a piece of cloth and the ISA agent ordered the soldiers to cuff my hands behind my back. They put me in an army vehicle and made me lie down on my stomach. The soldiers sat around me and stepped on me. Every now and then they beat me on my back and shoulders with a rifle butt.

A.S., 31, was arrested at his home at about two o'clock in the morning. He related what happened after he was arrested.

Two soldiers held me, one on each side, and ordered me to run with them. We ran along a dirt track, a distance of about 600 meters. As we ran the soldiers slapped, kicked, and punched me. At one stage, they ordered me to stop and kneel down. Then they punched and slapped me again. The soldiers left me in the same position for about an hour. I told them that my knees were hurting and asked to sit in a different position, but they refused. Eventually, they told me to get into a truck... The soldiers pushed me in and I fell on my face. All this time, I was handcuffed and blindfolded. One of the soldiers in the truck slapped me and put a lit cigarette on my hand, burning me.

S.R., 43, father of four, was arrested on 13 July 2005 by a large army contingent that forced its way into his home at about 3:00 A.M. The previous day, one of his sons carried out a suicide attack in Netanya, killing four Israelis. S.R. was taken to the Ephraim detention facility. In his testimony, he stated:

When we arrived [at the facility], they made me sit, handcuffed and blindfolded, on the ground in the hot sun for two hours. Then the soldiers dragged me into one of the rooms in the facility... Inside the room, I heard the soldiers say in Hebrew that I was the father of the man who carried out the action in Netanya. Then one of the soldiers hit me on my lower back with a club. It was very painful. I told him that I suffer from back pain and have a disc problem... Then he clubbed me on my cuffed wrists. While beating me he said, "Your son killed a friend of mine in Netanya." The beating continued for about five minutes until the detainees in the facility realized that the soldiers were beating me and began to shout and bang on the cell doors. Then the soldier stopped beating me.

Painful binding

One of the first measures the security force personnel take after finding the "arrest target" is bind his hands behind his back. In most cases, this is done by using disposable handcuffs made from flexible but hard plastic. The handcuffs can be tightened but not loosened. The testimonies indicate that the security forces deliberately tighten the handcuffs, causing wrist pain and sometimes cuts and swelling. Some of the interviewees reported that they asked the soldiers to remove the handcuffs, or at least loosen them. In most cases, the requests were

rejected. The handcuffs were sometimes removed when the detainee arrived at the detention facility, but often were left on for several hours, until the intake process began. The degree of pain depended, of course, on how long the detainee's hands were bound. Twenty-four (sixteen "regular detainees" and eight "senior detainees") of the sample group (thirty-three percent) reported that the handcuffs caused them pain.

It should be noted that, contrary to the other harm described in this chapter, the handcuffing of detainees is permitted under both Israeli law and international law, provided that it is done to protect the safety of the security forces and prevent escape. However, fastening the handcuffs in a way that causes pain is not permitted since the act does not serve the aforesaid purpose.

S.I., 26, was arrested at about 1:30 A.M. The soldiers who came to his home threw stun grenades close to the house and ordered all the occupants to come out into the street. He related what happened then.

The soldiers put me on the floor of the jeep. My hands were cuffed behind my back and I was blindfolded... At some point, I asked one of the soldiers who was guarding me to loosen the handcuffs because they were very tight and made my wrists hurt. The soldier refused. Instead, he slapped my face a few times and swore at me.

R.R., 18, was arrested in July 2005 at about 3:00 A.M. by soldiers who came to his home.

The soldiers bound my hands behind my back with plastic handcuffs, fastening them extremely tightly, causing severe pain and swelling in my hands. The marks on my hands from the handcuffs remained for several months... I was taken to a trailer that seemed to be used as a clinic. They took off the blindfold but left my hands cuffed behind my back. They asked a few questions about my health... Then they blindfolded me again. The handcuffs were very painful, and I noticed that my hands were bleeding a little. I asked the soldiers to remove the handcuffs, but they did not reply. Then they put me in a vehicle... It drove to Etzion [Detention Center]. I asked them again to remove the handcuffs, and again they didn't answer me.

M.R., 17, was arrested at about 2:00 A.M. at his parents' home. In his testimony, he stated:

The soldiers bound my hands behind my back with plastic handcuffs and tightened them as much as they could... They put me on a truck that drove to an army base – I do not know its name... Half an hour later they transferred me to another army vehicle that drove to a different army base. One of the soldiers told me that I was in Beit El... My palms hurt because of the plastic handcuffs. At one point, I lost sensation in my hands and could not move them. Then one of the soldiers took the handcuffs off and put a new set on, which he fastened in a way that caused me less pain.

Swearing and humiliation

Many detainees were subjected to insults and other humiliation at the hands of the various security forces who guarded them until they were handed over to the ISA. Such incidents usually began in the vehicle used to transport the detainees to the detention facility. In most cases, the soldiers pushed the detainees into the vehicle while swearing at them. The soldiers then made the detainees lie down on the floor of the vehicle, blindfolded and with their hands cuffed behind their back. Some of the detainees reported that while they were lying in this position, the soldiers put their boots on their back. Others reported that the soldiers had a dog (dogs are considered unclean in Islam) sit on their back or close to their face. Another common practice, which according to the testimonies was exploited by the soldiers to humiliate the detainees, was body searches during intake at the detention facility. Some of the interviewees reported that, during these searches, they were forced to strip and stand naked, or partially naked, in front of a number of soldiers, who mocked and swore at them.

In total, twenty-five (fourteen "regular detainees" and eleven "senior detainees") of the sample group (thirty-four percent) reported curses and/or other humiliation during the period between their arrest and arrival at the interrogation facility.

In his testimony, M.J., 24, who was arrested in September 2005, stated:

The soldiers covered my eyes with a piece of cloth, bound my hands behind my back with plastic handcuffs, and put me inside an army vehicle. There was also a dog inside the vehicle. The soldiers had the dog sit on my body. I asked them to get it off me, but they refused. Dogs are considered unclean, and as someone who observes the commandments relating to prayers and fasting, this disturbed me greatly.

M.M., 20, was arrested in July 2005 at his parents' home in the early morning. He related what happened after soldiers cuffed his hands and put him in an army vehicle.

The soldiers in the vehicle mocked me the whole time. I asked for some water to drink, and they didn't give me any. Instead they poured water over my feet. Eventually, they gave me a very small quantity of water to drink and told me that they only had cola. I suffer from a urinary-tract infection and have to urinate frequently. During the journey, I asked them to let me urinate, but the soldiers refused. A few minutes later, when I explained that I could not hold back any longer, they took me out of the vehicle. My hands were cuffed behind my back... The soldier refused to remove the handcuffs and wanted to take my pants down himself. I refused and told him that, in these circumstances, I withdrew my request. The soldier dragged me forcefully into the vehicle and kicked me. During the remainder of the trip, they mocked me constantly, cursing me and my family in a vulgar way, particularly by means of curses relating to my mother and sister...

I.F., 22, was detained in July 2005 after a random inspection at a checkpoint near his home. He was initially taken to an army base where he underwent a medical examination. A few hours later, he was transferred to the Ephraim detention center. In his testimony, he stated:

When I arrived at Qedumim [the Ephraim detention center], I wanted to sit on the ground because I was tired, but the soldiers shouted and swore at me and told me it was forbidden to sit down. They also threw grapes at me and mocked me. I remained standing, blindfolded and handcuffed, for about thirty minutes. Then a soldier came carrying a broom, which he ran over my head and back to humiliate me. When I tried to remove the broom from my head, he kicked my leg.

W.Z., 22, was arrested at his home early one morning in September 2005. In his testimony, he related what happened after the soldiers blindfolded and handcuffed him.

The soldiers put me in an army vehicle and made me lie on my stomach. One of the soldiers put his foot on my back... After we arrived at Qedumim [the Ephraim detention center], the soldiers took me to a room and removed the handcuffs and blindfold. There were other soldiers in the room. They told me to undress completely, until I was naked. During the search, the soldiers cursed Arabs in general and me in particular.

Denial of basic needs

Some of the interviewees reported they were denied basic needs, particularly food and drink, medicines, or being allowed to relieve themselves. The failure to provide food and drink generally related to the period up to the end of intake in the detention facility, which often lasted many hours. By contrast, denial of access to the bathroom usually related to the time they were in the detention cell. The testimonies suggest that in the detention facilities in the West Bank, the only toilets available to the detainees are situated in the prison yard, where the detainees usually come for thirty minutes to an hour twice a day. While they are inside the cells, the detainees have to urinate into a bottle provided for this purpose. A detainee who wishes to go to the toilet for the purpose of defecation outside the times of the daily walk must call the soldiers and ask to be accompanied out of the cell. Seventeen of the persons in the sample (twenty-three percent) reported that they were denied a basic need, including twelve "regular detainees" and five "senior detainees."

H.F., 19, who was arrested in July 2005, stated:

At the army installation, I was taken to a place whose name and location I don't know, where they left me outside in the open air. I estimate that I was left out in the sun for four or five hours. I sat on the ground under the burning sun, blindfolded, with my hands cuffed behind my back. All this time I did not have any water to drink. I suffered from heatstroke because I was in the sun for so long, and at some point I fainted. The soldiers who came up

to me kicked me to wake me up, but because I could not stand up they called a doctor. The doctor moved me into the shade, gave me some water to drink, and gave me an infusion.

After his detention, M.H., 20, was taken for medical inspection at an army installation. During the inspection,

I informed the doctor that I suffer from a recurring kidney infection and have a problem with my body temperature balance... Accordingly, I require medication on a daily basis... But he did not believe me, ignored me, and did not give me any medication... After this inspection they put me into the vehicle again and transferred me to Qedumim... There they put me in a cell with two other detainees. There was no toilet or faucet in the cell... I asked the soldiers to bring me some water to drink, but they ignored me. Water usually helps my kidney problem. I stayed in the cell for almost five hours. At one point I asked to go to the toilet to urinate. I felt dizzy and couldn't stand up. After they took me out to the yard, I asked the other detainees to help me into the toilet... I thought I was going to faint... About fifteen minutes later, an ambulance arrived and took me to another army camp.

According to M.Q., 19, who was arrested in August 2005:

When we arrived in Etzion, the soldiers ordered me to stand up against a concrete wall. My hands were cuffed behind my back and I was blindfolded. The soldiers did not let me lean against the wall or turn around. They left me standing in the open air for six or seven hours. They did not bring me any water or food during this time. It was very sunny and hot and I was sweating all the time.

A.N., 48, married and father of eight, was arrested in July 2005 in the early morning and taken to one of the army's DCOs (District Coordination Offices).

They took me out of the vehicle and put me on the ground in the open air. I was still handcuffed and blindfolded. Between four o'clock and five o'clock, the sun rose. I remained on the ground in the same position almost until sunset... Throughout this time I was not given any water or food... I have diabetes and I also suffer from kidney stones. Because of my kidney problems, I need to drink large quantities of water – more than most people. I began to suffer from pain in my midsection because I did not have enough water. I also need to urinate frequently, and I could not do this while I was sitting on the ground. I had to hold it in and this caused me great suffering. Because I sat for so long, I developed pains in my back and joints, because we were not allowed to stand up or stretch ...

Discussion of the findings

The table below summarizes the data from the survey. It shows that security forces' abuse of Palestinians detained for interrogation by the ISA is common during the stages preceding the

interrogation. Approximately two-thirds of the sample population reported that they had suffered at least one of the four forms of abuse discussed in this chapter.

Type of Abuse	"Regular Detainees" (N=34)	"Senior Detainees" (N=39)	Total Sample (N=73)
Beating	14 (41%)	22 (56%)	36 (49%)
Painful binding	16 (47%)	8 (21%)	24 (33%)
Curses and humiliation	14 (41%)	11 (28%)	25 (34%)
Denial of basic needs	12 (35%)	5 (13%)	17 (23%)
At least one of the above	26 (76%)	23 (59%)	49 (67%)

One notable finding is that the percentage of participants who reported at least one of the four types of abuse, except for beating, is higher among the "regular detainees." The reason for this may be that "senior detainees" are transferred to the ISA more rapidly than "regular detainees," so that the period in which they are exposed to these and other violations is shorter. This factor is particularly relevant in the case of the denial of basic needs, since this usually occurs during confinement in the transit center. Most of the "senior detainees" were only held in such centers for a few hours, and some were not taken to the center at all, but were transferred directly to the ISA. In addition, it is possible that at least some of the "senior detainees" were more likely than the "regular detainees" to forget or dismiss the importance of the harm they suffered prior to the interrogation, given the severity of the harm they faced later during the ISA interrogation itself.

The phenomenon of the ill-treatment of Palestinian residents by Israeli security forces is not limited to the detention and confinement of people suspected of anti-Israeli activities. HaMoked was originally formed to handle complaints from Palestinians who were victims of violence by security forces, and has handled approximately two thousand such complaints over the years. Since its establishment, B'Tselem has published numerous reports documenting incidents in which Palestinian residents have been ill-treated by Israeli soldiers or police officers. Many of these incidents occurred during the enforcement of restrictions on freedom of movement. After such cases of ill-treatment are exposed, senior army and police figures ritually condemn them vigorously, arguing that the soldiers or police officers involved constitute a few "rotten apples" who have failed to follow their instructions.

The official instructions applying to security forces who make arrests and hold Palestinians in custody indeed prohibit the use of force beyond the minimum required to complete the arrest and prevent the detainee from escaping. However, such official condemnation cannot release the state or the heads of the security establishment from their responsibility for the phenomenon. The fact that acts of ill-treatment continue to occur on a significant scale confirms the suspicion that the official condemnations are accompanied by a policy of turning a blind eye and tacit consent. As will be seen in chapter 5, this policy is also manifested in the failure to prosecute the majority of soldiers who abuse detainees. It is also reflected in the systematic failure to warn soldiers not to do certain actions or, worse still, in the implicit message that some types of ill-treatment are legitimate.⁶¹

Regardless of the question of institutional responsibility, it is important to stress that since the practices described above humiliate and cause suffering to detainees without any justification on security grounds, under international law they constitute "cruel, inhuman, or humiliating treatment," i.e., prohibited ill-treatment. The question also arises as to whether some or all of these actions may also be defined as torture.

As explained in chapter 1, for a given act to constitute torture, the four cumulative conditions specified in the definition of torture in international law must be verified (intent, severe pain or suffering, improper motive, and involvement of the state). While the first condition (intent) and the fourth (state involvement) are present in all the cases discussed in this chapter, it may be asked whether, and in which cases, the remaining two conditions are met.

Regarding the second condition (severe pain or suffering), and while recognizing that pain is by definition subjective and relative, in some cases, at least, it is impossible to avoid the conclusion that the suffering caused to the detainees is indeed "severe," as required by the definition of torture. This is true, for example, in the case of protracted beating, cuffing leading to swelling and bleeding, exposure of an individual to the hot sun for many hours without water, and denial of access to a toilet to people suffering from various medical problems.

Is the injury caused to the detainees based on one of the improper motives mentioned in the definition? Regarding the motive of securing information, it may be assumed that the suffering experienced by the detainee during the stages prior to the interrogation "softens"

⁶¹ For a discussion and examples of the phenomenon of the double message conveyed to police officers and soldiers regarding the ill-treatment of "persons staying illegally in Israel," see B'Tselem, *Crossing the Line: Violation of the Rights of Palestinians in Israel without a Permit* (March 2007), chapter 3.

them ahead of the interrogation itself. However, on the basis of the information in our possession, it is impossible to establish the extent to which the soldiers are aware of the interrogation that awaits the detainees or to determine whether this is the motive for the violations. The situation is clearer in the case of the remaining motives. According to some of the testimonies, the abusive soldiers did not conceal their desire to punish the detainees for terror attacks for which they or their relatives were considered responsible. In other cases, it is apparent, on the basis of the nature of the curses leveled at the detainees, for example, that the violations were based on racist motives. Accordingly, in those cases, in which some form of racist motive may be discerned and, in addition, the suffering faced by the detainee may be defined as "severe," the injury may be defined not only as ill-treatment but also as torture.

Chapter 3

The ISA Interrogation Regime: Routine Ill-treatment

This chapter examines the treatment of Palestinian detainees during the period in which they are interrogated by the ISA. As noted in the introduction, the underlying assumption is that to evaluate whether ISA interrogees are subject to torture or ill-treatment, it is necessary to examine the combined and cumulative affect of all the relevant components of the period in question, both inside the interrogation room and elsewhere. A further assumption, derived from the above, is that the conditions of confinement pertaining in the interrogation facilities are deliberately designed to serve the purpose of the interrogation, i.e., to secure information or a confession. In this chapter, therefore, we examine various practices relating to the interrogation period as part of a single structure we shall refer to as the "interrogation regime." It should also be noted that the discussion in this chapter will be restricted to those methods and aspects of this regime that, according to the sample findings, are experienced by most of the ISA interrogees. Exceptional interrogation methods employed only against a minority of interrogees will be discussed separately in the next chapter.

Our discussion will begin with a description of the main features of the interrogation facilities, the bodies involved in their management, and the division of functions among these bodies, as well as details relating to the duration of the interrogation period and its main stages. We shall then discuss seven key elements which the testimonies suggest combine to form the profile of the routine interrogation regime:

1. Isolation from the outside world.
2. The use of the conditions of confinement as a means of psychological pressure.
3. The use of the conditions of confinement as a means for weakening the detainees' physical state.
4. Cuffing in the "*shabah*" position.
5. Cursing and humiliation.
6. Threats and intimidation.
7. The use of informants to extract information.

The discussion of each of these elements includes attention to various interrelated practices that in one way or another violate the detainees' human rights. It is important to clarify, however, that the division into these different elements is ultimately artificial and intended

merely to facilitate the discussion and analysis. We shall present data from the sample regarding each of these aspects, as well as excerpts from the testimonies that illustrate the points. We shall also examine the extent to which Israeli legislation permits the authorities to employ the various practices. The last section of this chapter summarizes the findings and examines the extent to which the various methods discussed in the chapter are consonant with Israeli constitutional law and whether these methods are considered ill-treatment or torture under international law.

Factual background

Apart from the initial interrogation that takes place at the point of detention, the interrogation of Palestinian detainees by the ISA generally takes place at one of four installations situated inside the State of Israel: Shikma Prison in Ashkelon; Kishon Prison at the Jalameh intersection (to the southeast of Haifa); and two police detention centers – the Russian Compound in Jerusalem and Sharon in Petach Tikva. Palestinian detainees are also interrogated in other locations by bodies subordinate to the ISA, including the Hostile Terrorist Activity unit of the Judea and Samaria Police District.⁶² Of all the persons included in the sample, fifteen (21 percent) were interrogated at Shikma Prison; twenty-two (30 percent) at Kishon Prison; nineteen (26 percent) at the Russian Compound detention center; sixteen (22 percent) at the Sharon detention center; and one detainee at the Judea and Samaria police station in the settlement of Ariel.

The formal responsibility for the management of these installations, including conditions in which the detainees subject to ISA interrogation are held, rests with the IPS (in the case of Kishon and Shikma) and with the Israel Police (in the case of the Russian Compound and Sharon). Those who come into contact with the detainees outside the interrogation room (provide food, take the detainees from place to place, and so on) are prison guards and police officers, not ISA personnel. However, during the interrogation period ISA personnel are involved in all aspects of the processing and detention conditions of the interrogees, and are empowered to instruct the IPS and police staff in this respect. This involvement is clear from the comments of the head of the ISA Interrogations Division, whose name is not permitted to be published, during a hearing in the Knesset Constitution, Law and Justice Committee in August 2005. The ISA official explained how certain rules relating to the confinement of detainees labeled as "security detainees," such as the prohibition on bringing specific items

⁶² Public Committee against Torture in Israel, *Back to a Routine of Torture – Torture and Ill-treatment of Palestinian Detainees during Detention and Interrogation* (June 2003), 21, 59.

into the cell, serve the needs of interrogation.⁶³ In a different context, an ISA interrogator known as "Rani" noted, during testimony in the trial of a police officer accused of abusing a detainee at the Sharon detention facility, that he had made it clear to the defendant that "the sole authority permitting the transfer or punishment of interrogees for this purpose rests solely with the [ISA] interrogators."⁶⁴ In any case, since the responsibility for the conditions in which detainees are held rests with official bodies operating with the permission and authority of the State of Israel, for our purposes the question of the division of labor and responsibility among these bodies is of secondary importance.

The overall length of the interrogation period naturally varies from case to case. The average period for the entire sample was thirty-five days and the median period was 30.5 days (including time spent in the "informer wing.") The average period of interrogation among the "senior detainees" was generally longer than among the "regular detainees" – thirty-seven days and thirty-three days, respectively. Many of the detainees in the sample remained in the interrogation facility for a considerable period after their interrogation ended, waiting to be indicted or for their trial to be completed. For them, the conditions were slightly better (they had contact with the outside world, there were other detainees in the cell, they were allowed a daily walk, and so on) than during the interrogation period.

Isolation from the outside world

Isolation from the outside world is one of the most common practices regarding ISA interrogees. The detainees are prevented from meeting with their attorneys, with representatives of the International Committee of the Red Cross [ICRC], and with their families for the entire duration of the interrogation period, or at least for the majority of the period. Almost all the members of the sample group reported they were isolated from the outside world, at least during the initial days of interrogation. Forty of them stated that the isolation continued during the *entire* interrogation period, and ten of them stated that they were only permitted to meet with an attorney or with an ICRC representative after more than twenty days had passed since their arrest. Of all the persons in the sample, therefore, fifty (sixty-eight percent) – twenty-two "regular detainees" and twenty-eight "senior detainees" – were isolated from the outside world during all or most of their interrogation period, including

⁶³ The hearing was held to secure the Committee's authorization for the above-mentioned procedures. The transcript of the hearing is available at www.knesset.gov.il/protocols/Data/Html/huka/2005-08-30-01.html.

⁶⁴ Crim. (Petach-Tikva) 2453/02, *State of Israel v. Atbarian et al.*, para. 5.3 of the judgment.

This practice naturally exacerbates the interrogee's sense of powerlessness, since it prevents him from sharing what is happening inside the interrogation facility with a friendly person. The isolation creates a situation in which the interrogee is almost completely at the mercy of his interrogators. Moreover, and as detailed below in this chapter, the combination of the isolation of the detainee from the outside world and other components of the interrogation regime (particularly solitary confinement and sensory deprivation) creates psychological distress that is accompanied by a form of emotional dependence of the detainee on the interrogator.

The prevention of meetings between the interrogees and their attorneys, which is achieved by obtaining a court order, is a particularly important factor in creating this sense of powerlessness, since it denies the interrogees access to legal guidance regarding their rights during detention and interrogation. The vice-president of the Military Appeals Court in Judea and Samaria, Lt.-Col. Netanel Benisho, defined this situation in the following terms:

Preventing the meeting is liable to grant the interrogators a substantial advantage over the interrogee, to the point of breaking the latter's spirit and the delivery of a false confession, or one not made of the interrogee's free will. This prevention deprives the suspect of the advice of his counsel – the only person with whom he can maintain contact during the course of the interrogation.⁶⁵

In the vast majority of cases, moreover, the interrogators deliberately refrain from informing the interrogees that such an order has been issued, or notifying them of the petitions filed against the order by their attorney or by human rights organizations.⁶⁶ It may reasonably be assumed that the reason for this is the desire of the ISA to intensify the interrogee's sense of powerlessness and the accompanying psychological pressure. Thus, for example, since the order stipulates a specific period, usually a few days, in which the prohibition of a meeting applies, mere knowledge of the order provides the interrogee an element of certainty. Similarly, the knowledge that a petition has been filed in the High Court of Justice against the order (even if the petition is ultimately rejected) may be regarded by the interrogee as a sign that someone outside the interrogation room is aware of his condition and concerned about him, which might have a positive impact on his psychological state.

⁶⁵ Cent. App. 3765/06, *Amani Jaarmeh v. Military Prosecutor*. It should be noted that, despite this comment, in this particular case Judge Benisho decided to leave intact the order preventing a meeting between the detainee and her attorney for a cumulative period of forty-five days.

⁶⁶ For details regarding these proceedings, see chapter 5 in this report.

It is true that most interrogees are brought before a judge at some point to have their detention extended. In theory, this occasion can be used by the interrogees to complain about the interrogation methods being used or about the conditions in which they are being held. In practice, however, given the nature of these hearings, it is doubtful whether most detainees will be able to use this opportunity. For example, the judge before whom they appear is usually a military judge, the hearing takes place within the interrogation facility, and the detainees cannot receive legal advice regarding their rights, or even regarding the possibility to complain to the judge. In brief, it may be assumed that the hearing to extend the detention does not even partially offset the freedom of action that is granted to the interrogators by the isolation of the interrogees from the outside world, and the psychological impact this has on them.

An incident that was heard by the Military Appeals Court in September 2006 illustrates the lack of objectivity attributed to the extension of detention proceedings by detainees and their attorneys. The case involved an appeal against the decision of a military judge to extend the detention of a Palestinian who was undergoing interrogation by the ISA. The interrogee's attorney claimed that while waiting for the hearing on the extension of detention to begin, he asked a police officer in the court why there was a half-hour delay, and received the reply, "the judge is in the ISA offices." The president of the Appeals Court commented laconically on the impropriety of a judge consorting with one of the parties in the proceeding: "Justice must not only be done, but it must also be seen to be done." Despite this, however, he ruled that "since I have not formed the impression that the defects in the proceeding relate to the essence of the matter... I have reached the conclusion that the appeal should be rejected."⁶⁷

* * *

To what extent is the isolation of detainees from the outside world permitted under the legislation enacted by Israel in the Occupied Territories? The legislation does not recognize the right of a detainee to receive family visits during the interrogation period; accordingly, the ISA does not require any special authority to prevent such visits. Also, the Prisons Ordinance specifically states that, "a detainee who has not yet been indicted is not entitled to receive visitors except with the authorization of the person in charge of the interrogation."⁶⁸

Regarding the prevention of meetings with ICRC representatives: The internal regulations issued by the Prisons Commissioner state that ICRC officials are to be permitted to meet with "security detainees," but not before two weeks have passed since the commencement of

⁶⁷ Cent. App. (Judea and Samaria) 3374/06, *Na'im Nasar v. Military Prosecutor*.

⁶⁸ Prisons Ordinance, section 47(b).

detention and "except in cases in which the visit is postponed for security reasons."⁶⁹

According to the *directive*, during the visit "the detainee may not deliver notices or news to his family or to any other person via the ICRC."⁷⁰

Regarding the prevention of meetings with attorneys: Since the right of a detainee to receive legal counsel is perceived as a human right, legislation was required to establish the authority to prevent such meetings. The Order Regarding Defense Regulations (No. 378), which forms part of the military legislation Israel enacted in the West Bank, duly empowers the head of an ISA interrogation team to deny a detainee such a meeting for fifteen days from the day of arrest; the head of the ISA Interrogations Division is permitted to extend this for an additional fifteen days.⁷¹ The order further empowers any judge to extend this period by an additional thirty days, while the president or vice-president of the court is empowered to establish a further thirty-day extension.⁷² In total, therefore, the order permits the authorities to prevent a meeting between detainees and their attorney for a maximum period of ninety days from the day of arrest, provided the person making the decision "is of the opinion the prevention is required for reasons relating to the security of the area or for the good of the investigation."⁷³

Conditions of imprisonment as a means of psychological pressure

As detailed in this chapter below, during the interrogation period, the detainees are held in the interrogation room between five and ten hours each day (excluding Fridays and Saturdays). The detainees spend the remainder of their time in solitary confinement. Accordingly, and if only because of the amount of time the detainees spend in solitary-confinement cells, the conditions in the cells comprise a central component of the interrogation regime. It should be noted that the conditions in which the ISA interrogees are held are not officially defined by the IPS and the police as "solitary-confinement cells." However, the absence of such an official definition does not alter the fact that in terms of their characteristics, these cells indeed constitute solitary confinement.

One of the main characteristics of solitary confinement is, of course, the isolation from other detainees. This effectively functions as a further layer of isolation, added to the isolation from

⁶⁹ Prisons Commissioner's Order No. 03.12.00, section 4(c).

⁷⁰ *Ibid.*

⁷¹ Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970, section 78(c).

⁷² *Ibid.*, section 78(d).

⁷³ *Ibid.*

the outside world as discussed above. Of the total sample group, sixty-four (eighty-eight percent), including twenty-seven "regular detainees" and thirty-seven "senior detainees," stated that they were held in solitary-confinement cells during all (except for the period in the informer wing) or most of the interrogation period.

The separation from other detainees literally becomes complete isolation on those days on which the detainees are not taken for interrogation. On these days, the detainees are denied any human interaction, except such contact as may take place with a prison guard/police officer who brings meals to the cell or takes the detainee to the shower. This is the case on Fridays and Saturdays, when the ISA does not usually conduct interrogations. Moreover, most of the sample group reported that during the interrogation period there were additional days, other than Fridays and Saturdays, in which they remained in the solitary-confinement cell all day and were not taken for interrogation. Some of them reported that toward the end of the interrogation period, usually after a period of intensive questioning and after returning from the informers' wing, they were only taken for questioning for brief periods every two or three days and were held in the solitary-confinement cells for the remainder of the time. The survey population held in solitary confinement was not taken for interrogation an average total of fourteen days: ten days for the "regular detainees" and nineteen days for the "senior detainees."

Regarding physical conditions, the solitary-confinement cells in all the interrogation facilities range in size from three to six square meters, a small space by any standards. Most of the interviewees reported that they were held in more than one such cell during the course of the interrogation period. Almost all the cells are situated on the underground levels of the interrogation facilities. In any case, all the detainees, without exception, reported that the cells in which they were held did not have windows and lacked access to daylight or fresh air. A light fixed to the ceiling of the cell provides dim light twenty-four hours a day. The walls of the cell are painted dark gray and covered in rough plaster so that it is impossible to lean on them. On one wall there is an opening through which air-conditioned air enters the cell. A water faucet is also installed on one wall and, in some cells, there is a sink below the faucet. In other cells, the water flows through a hole in the floor that is also used as a toilet. A mattress and two blankets are placed on the floor. Other than these, no other items or furniture are provided for the cell, nor are any allowed in it, including reading material or writing implements.

The lack of daylight in the cell, combined with the fact that the detainees' watches (if they had one) are invariably taken from them on arriving at the installation, leads to temporal disorientation, to the point that detainees are unable to tell whether it is night or day. `A.F., for example, a twenty-three year old from the north of the West Bank who was interrogated for

an entire month at the Sharon facility, in Petach Tikva, stated in his testimony that, "the fact that I couldn't distinguish between night and day was a source of mental anguish for me during the interrogation period." Many of the sample group commented that the artificial lighting installed in the cells, combined with the dark-colored walls, tired their eyes and disturbed their vision. For example, `A.R., 24, a resident of the central West Bank who was interrogated at Kishon Prison, stated in his testimony that

During the first month, when I was interrogated every day, I was never allowed out to the yard. The first time I saw sunlight was when they took me to the meeting with the representative of the ICRC, on the twenty-second day after my arrest. The second time was when they took me to meet my attorney, on the forty-fifth day after my arrest. The light in the cell, combined with the dark gray walls, made my eyes tired and also created a kind of sense of mental fatigue.

Given the lack of ventilation and the fact that the small cells had a hole used as a makeshift toilet, it is not surprising that almost all the detainees reported a constant, foul odor in the cell. In particular, many of them reported that the mattress and blankets were filthy, and some stated that they were given a damp mattress. Some of the detainees stated that the flow of water in the faucet was too strong, so that water was sprayed throughout the cell. Although this was not specifically suggested, it is possible that this explains why the mattresses were damp. Almost all the members of the sample group stated that cold air constantly streamed into the room through the vent, lowering the temperature to an uncomfortable level. Some of them stated that the air was intermittently cold and hot. In any case, the cells were either too hot or too cold.⁷⁴

It is impossible to avoid characterizing each of the physical attributes of the solitary confinement cells as inhuman and as a source of mental anguish. Moreover, the combination of these different characteristics, and particularly total isolation, weak, permanent lighting, dark walls, and the absence of any item that could help pass the time, taken together, create a phenomenon known in psychiatric literature as sensory deprivation. This phenomenon is

⁷⁴ In this context, it is interesting to note that during a hearing in the Knesset Constitution, Law and Justice Committee on the subject of the conditions of detention of security detainees as compared to regular detainees, the head of the ISA Interrogations Department mentioned the presence of air-conditioning in the cells in which the former are held, and claimed this constitutes "positive discrimination." See footnote 62.

observed when an individual is partially or completely isolated from the basic external stimuli to which he is accustomed – visual, acoustic, sensory, and social.⁷⁵

It can be assumed that these conditions serve the purpose of the interrogation, since the human encounter between the detainee and the interrogators, despite the suffering it entails, provides some form of relief from the sensory deprivation faced during the remainder of the time. As noted in a recent report by Physicians for Human Rights – USA, "The confined person can become so desperate to relate to another person and so hungry for sensory stimulus that he or she will gratefully accept any stimulus that is offered."⁷⁶ However, this "relief" from sensory deprivation comes at a price. According to an opinion prepared by Attorney Yehoyachin Stein, a physician and psychiatrist, on the subject of the conditions of imprisonment at one of the facilities used by the ISA for the interrogation of Palestinians during a brief period (in 2002), "the confrontation between the antipathy toward the interrogator and the need for human contact in a situation of total isolation creates emotional confusion, self-blame, and a decline in self-esteem."⁷⁷

In addition to the mental anguish the detainees face during the interrogation period due to the conditions of imprisonment as described here, numerous studies and expert opinions have also suggested that these conditions may cause emotional disorders that can have long-term ramifications. According to the above-mentioned opinion written by Dr. Stein:

Sensory deprivation and monotonous sensory stimulation disrupts cognitive capability. Ego functions require feedback in order to maintain their operation. In order to compensate at least slightly for the lack of external stimuli, the individual creates alternative internal stimuli. This explains the phenomenon of hallucinations observed in some of these cases. The hallucinations reflect an inability to distinguish between reality and imagination. The disruption of temporal orientation also contributes to the significant disruption of the

⁷⁵ Stuart Grassian and Nancy Friedman, "Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement," *International Journal of Law and Psychiatry*, vol. 8 (1986), 50.

⁷⁶ Physicians for Human Rights, *Break Them Down – Systematic Use of Psychological Torture by U.S. Forces* (2005), 59.

⁷⁷ This opinion was submitted on behalf of HaMoked as part of a petition filed to the High Court of Justice against the operation of this facility (Facility 1391, also known as "the Secret Facility") in view of the refusal of the state to acknowledge the location of this facility. The petition also challenged the interrogation methods used at the facility (HCJ 9733/03, *HaMoked – Center for the Defence of the Individual v. State of Israel et al.*)

distinction between reality and imagination. Due to the difficulty in examining reality through feedback, paranoid fears are created and self-perception is impaired.⁷⁸

The potentially destructive effect of sensory deprivation in terms of the individual's mental health has been studied extensively and thoroughly by psychiatrists and criminologists in the context of inmates held in solitary confinement in prisons in the United States (the so-called Supermax prisons).⁷⁹ Craig Haney reviewed the extensive literature on this subject over the past forty years and concluded that "there is not a single published study of solitary or supermax-like confinement in which non-voluntary confinement lasting for longer than ten days, where participants were unable to terminate their isolation at will, that failed to result in negative psychological effects."⁸⁰ The range of psychological disorders mentioned in the literature is extremely broad, from difficulties in concentration to chronic depression and suicidal thoughts and behaviors. The type and severity of the disorders naturally depend on diverse factors, including the duration of isolation and the preexisting mental state of the prisoner.⁸¹

It should be noted that due to differences in some key characteristics, the conclusions of studies relating to the psychological damages resulting from confinement in isolation in "Supermax" prisons cannot be applied directly to the case of ISA interrogees. On the one hand, the duration of isolation in these prisons is generally much longer than the isolation faced by ISA interrogees. On the other hand, the remaining conditions in which the American prisoners are held are far better than those provided to ISA interrogees (including partial control of lighting, a walk in the open air several times a week, being allowed to keep reading materials, radios, televisions, and so on). Despite these and other differences, this literature provides an indication that must not be ignored regarding the mental health dangers inherent in confinement in conditions of isolation and sensory deprivation.

* * *

Are the ISA, the IPS, and the Israel Police authorized under Israeli law to hold Palestinian detainees in the conditions described above? The answer to this question is unclear.

⁷⁸ Ibid.

⁷⁹ For a critical review of this practice, see Human Rights Watch, *Out of Sight – Briefing Paper on Supermaximum Prisons* (2000).

⁸⁰ Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," *Crime & Delinquency*, vol. 49/1 (2003), 132.

⁸¹ Ibid.

Regarding some aspects of the conditions of confinement described here, Israeli legislation does not include any explicit prohibitions; regarding others, there are explicit provisions permitting "security" detainees to be held in conditions of sensory and social deprivation. In the conclusions to this chapter, we shall argue that notwithstanding such provisions, the disgraceful conditions of confinement as described are by their nature unlawful.

Regarding the holding of detainees in isolation, the Prisons Commissioner's orders state that the ISA official in charge of the interrogation may order "the holding of a detainee in separation... if required for the purposes of the interrogation," in accordance with the provisions established by law regarding convicted prisoners.⁸² The period of time in which convicted prisoners may be held "separate," provided periodical authorizations are obtained from the relevant authorities, is unlimited.⁸³ A similar provision was included in the orders of the National Headquarters of the Israel Police: "The commander of the detention center, or the person in charge of the interrogation, may order that a detainee be kept in isolation," if required, among other reasons, "for the good of the interrogation."⁸⁴

The physical conditions in the solitary-confinement cells are regulated in the Criminal Procedure Regulations, which are made by the Minister of Internal Security with the approval of the Knesset Constitution, Law and Justice Committee.⁸⁵ These regulations recognize the right to certain minimum conditions in which they may be held. However, the regulations provide that these rights shall not apply, or are not fully applicable, with regard to detainees defined as "security detainees."⁸⁶ Under this provision, the right that the cell include a bed, table, chair, and sink, the right to keep reading material or electric devices, the right to a daily walk (see below), the right to use a telephone, and the right to receive certain products from visitors, do not apply to "security detainees."

In other words, the regulations release the officials from almost every obligation regarding the conditions in which they hold "security detainees." An exception is the obligation to provide

⁸² Prisons Commissioner's Orders, No. 04.30.00, Holding of Detainees prior to Indictment in the Detention Wing in a Detention Facility of the Israel Prison Service, section 4.

⁸³ Prisons Ordinance [New Version], 5732 – 1971, part B1.

⁸⁴ Israel Police, National Headquarters Orders, No. 12.03.01 – Handling of persons confined in detention centers, section 9(b).

⁸⁵ Criminal Procedure Regulations (Enforcement Powers – Detention) (Conditions in Detention), 5737 – 1977.

⁸⁶ *Ibid.*, section 22.

security detainees with a "double mattress and clean blankets." However, as most of the testimonies show, even this minor obligation was not always honored, and many detainees were forced to sleep on a single mattress, usually filthy and sometimes damp, and to cover themselves with filthy and putrid blankets. An amendment to the regulations that took effect in October 2005 introduced a number of improvements to the conditions in which "security detainees" are held, most notably the right to have a table, chair, and sink in the cell.⁸⁷ However, since most of the detainees in the sample were interrogated prior to this date, these improvements did not apply to them at the time.

Using conditions during confinement to weaken the detainees' physical condition

The conditions of confinement during the interrogation period cumulatively and gradually cause physical weakening, exacerbating the mental distress caused by sensory deprivation. In this section, we shall discuss three key characteristics that contribute to this debilitating effect.

First, the conditions of confinement and interrogation impose motor deprivation on the detainees. Throughout the hours of the questioning periods, the interrogee is shackled to a chair without any ability to move his hands or legs even minimally (see the discussion below). For the remainder of the time, the interrogee is held in the solitary-confinement cell. The detainee can stand, lie down, and stretch his body in the cell, but due to its small size he cannot walk around. Most of the detainees stated that during the interrogation period they were not allowed to take a walk in the yard of the facility even once. The only daily "walk" the interrogees experience (other than on Fridays and Saturdays, when there is no "walk") is from their cell to the interrogation room. During this "walk" they are led with their hands and feet cuffed and their eyes covered. In his above-mentioned opinion submitted to the High Court of Justice, Dr. Stein explained that "the lack of movement is physically debilitating and weakens resistance to illness, thus exacerbating the effect of sensory deprivation."⁸⁸

Second, the interrogees suffer from sleep deprivation during the interrogation period. In this chapter, we shall not discuss the total prevention of sleep by means of leaving the detainee shackled in the interrogation room continuously for more than twenty-four hours. Since the survey findings suggest that this method is employed only in a minority of cases, it is examined in the next chapter. By contrast, almost all the interviewees stated in their testimony

⁸⁷ Criminal Procedure Regulations (Enforcement Authorities – Detentions) (Conditions in Detention) (Amendment), 5765 – 2005.

⁸⁸ See footnote 77.

that the fact that the light in the cell was left on at all times significantly impaired their ability to sleep. Moreover, some of the participants reported that the prison guards or police officers woke them up during the night (between midnight and five o'clock) in order to take them to the shower.⁸⁹ The interrogees were free to refuse to go to the shower, but their sleep had already been interrupted. Various noises also disturbed the sleep of the interrogees. For example, T. A., 23, who was held for over two months at the interrogation facility in Petach Tikva, stated that "the guards used to bang on the metal door of the cell four or five times every night."

Third, during the interrogation period (except the time in the informers' wing), the interrogees suffer from poor nutrition, both in quantity and quality. Almost everyone in the sample group stated that the food they received was cold, inadequately cooked, flavorless, and often ground and repulsive in form. Conspicuous was the uniformity of the description of the hard-boiled egg served for breakfast or at the evening meal: the eggs were bluish and seemed almost rotten. Many of the sample population stated that they resisted eating as long as their strength held out.

M.G., 24, who was interrogated at Kishon Prison, stated in his testimony that, "during the first five days of the interrogation I didn't eat anything because the food they served was of extremely poor quality. The food was stale, tasteless, uncooked, and completely unappealing... After that, I ate only the fruit that was served in the evening." A.R., 23, who was interrogated for two months at the Russian Compound, recalled that, "the food they gave me was of extremely poor quality and was provided in small and inadequate quantities. In general the food was not clean; once I saw an insect in it. Breakfast included two slices of bread and a hard-boiled egg that had been cooked a long time before, as well as a small piece of tomato or cucumber." A.R., 21, who was interrogated at Kishon Prison, stated that, "the lunches usually included some item that I could not even identify – a strange mush of different kinds of food mixed together. It wasn't even clear what was in the meal... In my opinion, they did this deliberately as a form of psychological pressure."

It is interesting to note that with two exceptions, the persons in the sample group did not report that they suffered food poisoning or other symptoms due to the poor food received during the interrogation period. With this in mind, it may be assumed that the offensive appearance and taste of the food served to the detainees is not the result of negligence or lack

⁸⁹ Some witnesses stated that they used to ask the police officers or prison guards what the time was, and they often received a reply. Others noted that they could guess what the time was by various means, such as the time when the meals were served.

of attention, but actually reflects a special effort to create the revolting appearance while avoiding the consequences of the detainees' eating spoiled food.

* * *

Of the three features noted – lack of movement, disruption of sleep, and poor nutrition – the only explicit authorization relates to the first of the three. In accordance with the Criminal Procedure Regulations, persons defined as "security detainees" are not entitled "to a daily walk in the open air in the place of detention."⁹⁰

Regarding nutrition, the regulations state that, "a detainee is entitled to receive at least three meals a day at regular hours: the meals shall be composed of food in such quantity and composition as required to maintain the detainee's health."⁹¹ It should be noted that, unlike other provisions, the regulations make no exception for "security detainees." While it may not be possible to determine on the basis of the testimonies that the food served is actually spoiled, it is difficult to accept that food whose appearance and taste suppress the appetite can meet the requirement of the law to "maintain the detainee's health," at least in the broad sense of the word "health."

There is no specific reference in the regulations to the various methods mentioned above by which prison guards and police officers disrupt the detainees' sleep. Although the regulations oblige the authorities to provide detainees with access to a shower on a daily basis, for example, it is not specified at what time this must take place. It is difficult, however, to imagine any objective reasons justifying the practices encountered in this respect.

Accordingly, in the absence of explicit permission, it may be determined that these practices are unlawful.

Binding in the "*shabah*" position

The principal component of the *shabah* method is prolonged cuffing to a chair. The chair is of standard size, without armrests. The seat and backrest are made of rigid plastic without any upholstery; the frame is metal. The chair is fixed to the floor. The interrogee is made to sit in the chair and his hands are bound behind his back with metal handcuffs. The handcuffs are connected to a ring at the rear of the seat, stretching the interrogee's hands below the backrest. In most cases, the interrogee's legs are also shackled and bound to the front legs of the chair.

⁹⁰ Criminal Procedure Regulations (Enforcement Authorities – Detention) (Conditions in Detention) (Amendment), 5767 – 1977, section 22(b)(3).

⁹¹ *Ibid.*, section 8(a).

Since the chair itself is fixed to the floor, the result is that it is completely impossible for the interrogee to get up. Of all the persons included in the sample, only three reported that they were not cuffed at all during the interrogations; and the remainder stated that they were shackled as described above.

The interrogees were bound in this manner throughout their time in the interrogation rooms. An average day of interrogation lasts for a period of eight consecutive hours. The first day of interrogation is usually an exception and lasts even longer (over twelve hours). Toward the end of the interrogation period, and particularly after the interrogees return from the informers' wing, the interrogations are usually shortened to four or five hours a day. It is important to emphasize, however, that all the testimonies state that actual interrogation – the questioning – takes up only part of the time in which the detainees are held in the interrogation room, and sometimes only a small part of this time. In most cases, the interrogators intermittently come in and out of the room; in their absence, the interrogees sit chained to the chair and wait. Almost the entire sample group stated that before leaving the room, the interrogators turned up the air-conditioner so that the room became uncomfortably cold.

Over the course of the day's interrogation, the interrogee is usually served one meal. In some cases the interrogators release one of the interrogee's hands for a few minutes so that he can eat, though he is still unable to get up. In other cases, the interrogees are taken to the solitary-confinement cell for a few minutes to eat. The interrogees are also permitted to get up during the course of the day's interrogation to go to the toilet, although they must usually wait a long time before their request is granted.

Almost everyone in the sample group stated that he suffered severe back pain during the interrogation period due to the protracted daily shackling to the chair. Some interrogees reported that the *shabah* position also caused intense pain in other parts of the body, particularly the neck, shoulders, arms, and wrists. The inability to stretch often caused "pins and needles" in the hands and legs. It may be assumed that the exposure to cold air from the air-conditioner while waiting for the interrogation to continue intensified the sense of pain caused by the protracted binding. Moreover, ten of the participants in the survey (fourteen percent) reported numbness or loss of sensation in their limbs due to the exposure to the cold. Almost all of the sample group categorized the time spent bound in the *shabah* position as one of the worst experiences of the interrogation period.

* * *

Is the *shabah* method legal under Israeli law? In 2002, after repeated and protracted delays, the Knesset approved the Israel Security Agency Law; which, among other things, arranged

the legal status of the organization.⁹² As in the past, however, the Knesset declined to establish specific provisions regulating the interrogation methods that may be employed by the ISA. The High Court of Justice in *PCATI*, in 1999, examined the legality of the interrogation methods used by the ISA, including the *shabah* method, in light of the principles of Israeli administrative and constitutional law.⁹³ It must be noted that the *shabah* method, as used prior to the granting of the above-mentioned ruling, differs slightly from the *shabah* as described in the testimonies given for the purpose of this report. In the past, an unusually low chair was used, and it was tilted forward and downward. The interrogee's hands were cuffed behind his back but, unlike the current practice, one hand was placed above the backrest and the other below it. During the hours spent waiting for interrogation, the interrogees waited in the corridor, shackled to the chair, rather than inside the interrogation room, as is the case today. While waiting, the interrogee's head was covered with an opaque and filthy sack, whereas now, the testimonies show, only the interrogee's eyes are covered with opaque glasses, and this only during transfer to and from the interrogation room. In addition, loud music used to be played to the interrogees while they were waiting, a practice that the testimonies suggest is no longer in use. All the components of the *shabah* method, including the shackling of the interrogee's hands behind his back, were defined as unlawful in the ruling, since they deviated from the rules for "reasonable and fair interrogation" and unnecessarily injure the dignity and bodily wellbeing of the interrogees:

... [T]he suspect's cuffing, for the purpose of preserving the investigators' safety, is included in the general power to investigate.... The cuffing associated with the "shabah" position, however, is unlike routine cuffing. The suspect is cuffed with his hands tied behind his back. One hand is placed inside the gap between the chair's seat and back support, while the other is tied behind him, against the chair's back support.... This is a distorted and unnatural position. The investigators' safety does not require it.... Moreover, there are other ways of preventing the suspect from fleeing which do not involve causing pain and suffering.⁹⁴

The essential rationale behind this determination, which was also applied by the High Court with regard to other methods discussed in the ruling, is that the authority to injure the dignity or person of the interrogee, even in a minimal manner, may exist only if the injury is the side-effect of the inherent needs of the interrogation. Accordingly, and despite the changes that have occurred in the manner of binding (the interrogee's hands are now cuffed together under

⁹² Israel Security Agency Law, 5762 – 2002.

⁹³ For further details, see chapter 1 of this report.

⁹⁴ *PCATI*, para. 26.

the seat), the comments of the High Court as quoted above apply to the same extent, since this manner of shackling is also extremely painful, and alternatives exist enabling the security of the interrogators to be protected. Although the ruling did not specifically address the other aspects of the method – such as leaving the interrogee shackled to the chair for many hours of waiting without interrogation, turning up the air-conditioner during the waiting periods, and the protracted delay in providing access to a toilet – it may be held, on the basis of the same rationale, that these also deviate from the relevant authorization and are, therefore, unlawful acts under Israeli law.

Cursing and humiliation

Throughout the entire interrogation period, many of the detainees are intermittently subjected to acts of humiliation at the hands of the ISA interrogators in the interrogation room and the prison guards and police officers elsewhere.

The intake process in the interrogation facility invariably includes a body search of the detainee. Of the sample population, twenty-one (twenty-nine percent) reported that during the search they were required to strip naked and stand in front of the police officers or prison guards. One detainee stated that although he was ordered to remove all his clothes, he remained standing in his underpants. All the others refrained from referring to the body search they were required to undergo on entering the interrogation facility. It should be noted that this body search was the third, and sometimes the fourth search to which some of the them had been subjected following their arrest. Some of the group reported that the search was accompanied by cursing and mocking. Most of those who were forced to remove all their clothes commented that the search was a humiliating experience.

For example, M.H., 37, father of seven, who was interrogated at Shikma Prison, stated that, after arriving at the facility, "they ordered me to strip naked. Then they told me to bend over so that they could search my groin and rear. No one touched me, but the experience was extremely humiliating. The prison guards also cursed me, using appalling insults." A.M., 19, who was interrogated at the same facility, stated that the guards ordered him to strip, but he refused. "They told me that if I did not strip, they would remove my clothes by force. Against my will, I was forced to remove my clothes until I was completely naked. I am religious and this severely violated my dignity. There were five prison guards in the room who mocked me while I was naked. There were also closed-circuit cameras in the room."

During the interrogation itself, the ISA interrogators often curse and insult the interrogees in a rude and vulgar manner. Most of the curses concern the interrogee's relatives or are of a sexual nature. The interrogators also humiliate the interrogees in other ways, particularly by

shouting loudly in their ears and spitting in their face. In most cases, curses and humiliation are used intermittently, depending apparently on the extent to which the interrogee cooperates with the interrogators. Fifty-three of the persons in the sample (seventy-three percent) – twenty "regular detainees" and thirty-three "senior detainees" – stated that the ISA interrogators cursed and/or humiliated them at some stage of their interrogation.

`A.M., 19, who was interrogated at Shikma Prison, stated that "every time I refused to answer the interrogator's questions he would spit in my face and curse me, referring to my parents and sister." M.`A., 21, too, was interrogated at Shikma Prison. He reported that, during his interrogation, "the interrogator did not hit me, but he ordered me to keep my eyes focused on his for long periods. It was very tiring. Every time I looked down or away from him he would yell at me: 'Bastard! Dog! Look into my eyes!'" F.R., 19, who was interrogated at Kishon Prison, stated in his testimony that he "grew a beard for religious reasons. This interrogator used to pull my beard deliberately to hurt and humiliate me." A.H., 19, who was interrogated at Shikma Prison, described the manner in which he was forced to eat his lunch in the interrogation room: "The interrogator released just one hand, and my other hand remained cuffed behind the back of the chair. My legs were also cuffed to the chair. He put the tray of food on the floor and told me to manage. I stretched out my free hand but could barely reach the food on the floor. I felt terrible humiliation..."

* * *

Of all the humiliating practices described here, strip searches are the only one that the authorities are empowered to employ under Israeli law. But strip searches, too, are subject to various conditions. When a person is taken into custody, the prison guards may make a "visual inspection of his naked body" to prevent prohibited items being taken into the detention facility.⁹⁵ However, the statute states that the detainee's consent must first be obtained. In the absence of such consent, the search is allowed only if it is authorized in writing by an officer after providing the detainee with an opportunity to be heard. Body searches, and all the more so when the person is naked, must be done with "maximum respect for human dignity, privacy, and health, and with the minimum degree of injury, discomfort, and pain."⁹⁶ Given the technological means available today, it must be asked whether it is not possible to conduct a thorough and efficient body search without requiring the subject to strip naked. In any case, performing searches of naked detainees, without their consent and without

⁹⁵ Criminal Procedure Regulations (Enforcement Powers – Body Search of Suspect), 5756 – 1996, section 17(4).

⁹⁶ *Ibid.*, section 2(d).

giving them an opportunity to be heard, and often with the addition of curses and mocking in front of several police officers or prison guards, and in front of a large number of officials, as described in some of the testimonies, undoubtedly are in clear violation of the statute.

On the other hand, Israeli law does not permit law-enforcement officials to curse and insult interrogees, shout in their ears, spit on them, pull their beard, or humiliate them in any manner, regardless of the severity of the offenses on account of which they are being interrogated. In a recent decision on an appeal by a convicted murderer, Supreme Court Justice Elyakim Rubinstein stated that:

In this specific interrogation, the interrogator repeatedly made comments and uttered curses too offensive to mention... I believe this approach is improper, since there is no doubt that the use of curses and insults against an interrogee is prohibited, and comes close to the breaking of his spirit... There is no precise instrument that can determine when harsh words addressed to an interrogee become prohibited words. Having observed the video documentation, however, it is apparent that in this case, the line was crossed... and it is reasonable to assume that in non-documented interrogations the latitude permitted may be greater still, something we must warn against.⁹⁷

Threats and intimidation

Approximately two-thirds of the sample group (forty-seven) reported that the ISA interrogators threatened them in various ways during the interrogation. Unlike the other phenomena discussed in this chapter, which were present with equal frequency in both groups of interrogees, it was found that threats and intimidation were more common among the "senior detainees" (thirty-two cases) than among the "regular detainees" (fifteen cases). The threats made by the interrogators may be divided into two types: threats to harm the interrogee himself, and threats to harm his relatives.

Regarding the first type, one of the commonest threats is the threat that the interrogee will be subjected to severe torture if he fails to cooperate with his interrogators. The term "military interrogation" (in Arabic: *tahqiq `askari*) is used by both interrogators and interrogees to refer to interrogations employing torture. Such threats are perceived as highly credible since, as we shall see in the next chapter, physical torture is still used, despite the High Court ruling in *PCATI. `A.R.*, for example, who was interrogated at Kishon Prison, reported in his testimony

⁹⁷ Crim. App. 9613/04, *Zion Ben-Simon v. State of Israel*, judgment of Justice Elyakim Rubinstein (not reported).

that "the interrogator threatened they would leave me disabled and break my arms and legs... The story of Luay Ashkar [an Islamic Jihad activist who was tortured by the ISA – Y.L.] has become famous... The interrogators used the story to threaten to leave me disabled." S.`A., 27, who was interrogated at the Sharon facility, stated that "the interrogation was marked by repeated threats to transfer me to a military investigation in which they would use interrogation methods that could break my back; they also threatened to injure me in the groin." In some cases, the threats included other components, such as the threat of rape. For example, M.R., 18, who was interrogated at the Russian Compound, stated that "the interrogators threatened to transfer me to a military investigation... They also threatened to rape me and crush my testicles. One of the interrogators tried to touch my penis over my clothes. I screamed and tried to resist with my legs, which were not cuffed at the time, and he stopped." Other threats leveled against the interrogees included the threat to obtain an administrative detention order "for an indefinite period," expulsion to the Gaza Strip, and imposition of a life sentence.

The other kind of threats focuses on the arrest of members of the interrogee's family or the demolition of his home if he fails to provide the desired information. The threat to demolish homes is often perceived as credible since, for an extended period, Israel regularly demolished the homes of Palestinians suspected of involvement in terror attacks as a form of punishment.⁹⁸ Moreover, to underscore the threat to detain relatives, the interrogators sometimes bring the relatives to the interrogation facility and enable the interrogees to see them from a distance. For example, `A.N., 58, father of eight, who was interrogated at the Russian Compound, related that:

... a few days later, the interrogators showed me my son `A., 28, through a hole in the door; he had been brought into the next room. When I saw my son through the hole in the door I was seized by anxiety... This had a very bad effect on my state of mind and my general morale during the interrogation, which was poor anyway. The interrogators did not let me speak to my son, and threatened that they would arrest him and my other children.

M.H., 37, father of seven, interrogated at Shikma Prison, testified that "the interrogator threatened to bring my eldest daughter and wife in for interrogation and to have our home

⁹⁸ See B'Tselem, *Through No Fault of Their Own: Israel's Punitive House Demolitions in the al-Aqsa Intifada* (November 2004). During 2002-2004, the peak period in terms of house demolitions, HaMoked filed sixty-seven petitions to the High Court of Justice against the intended demolition of the homes of family members of persons suspected of involvement in terror attacks. It should be noted that in February 2005, the Minister of Defense decided to discontinue this policy on the basis of the recommendation of a military committee that found no evidence that it was effective.

demolished. He also told me that they have special interrogation methods for girls and women, hinting at methods of a sexual nature." `A.`A., 24, father of two, interrogated at Shikma Prison, stated in his testimony that at one point,

A new interrogator came into the room – an athletically-built man with large muscles... He stayed in the interrogation room for almost an hour, then went out. An hour later, he came back and said, "While you're in here, the soldiers are sitting in the next room fucking your wife – I'll take you in there soon so you can watch." At this point I began to shout, cursing him and his family.

Naturally, the more credible the threat, the greater the chance that it will help break the interrogee's spirit. The fear caused by the tangible threat of physical injury, particularly if the threat continues to be applied for a significant period of time, may cause greater suffering than the actual physical harm to which the threat alludes. Experts in the treatment of the victims of torture in the United States report that clients who had been the victims of extreme intimidation techniques, such as the use of mock executions, tended to suffer from diverse mental disorders for a long period after the traumatic event."⁹⁹

Israeli law does not, of course, grant law-enforcement agencies, including the ISA, any license to threaten and intimidate interrogees, whether for the purpose of extracting information or for any other purpose. Indeed, the penal law specifies that a civil servant who "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 offense or any information relating to an offense" is liable to three years' imprisonment."¹⁰⁰

The use of informers to extract information

The use of Palestinians who pretend to be regular detainees to encourage detainees to speak and extract information or a confession has been and continues to be a primary and routine component of the ISA interrogation regime. The usual term used by residents of the Occupied Territories to refer to these ISA informers is "`*asafir*" ("birds" in Arabic). The use of informers takes two different patterns that are usually employed consecutively. The first and more simple method is the placement of a single informer in the cell in which the detainee is being held, usually for a few hours. In the second, more elaborate method, the authorities

⁹⁹ See Physicians for Human Rights, *Break Them Down*, 54-55.

¹⁰⁰ Penal Law, 5737 – 1977, section 277(2).

transfer the detainee to another facility, where he is placed in a cell with a large number of informers ("the informers' wing.") Sixty – twenty-nine "regular detainees" and thirty-one "senior detainees" – of the seventy-three detainees in the sample population (eighty-two percent) spent some time in the informers' wing during their interrogation.

This method is used under false pretenses. The ISA interrogators and the authorities in the detention facility inform the interrogee that "the interrogation has been completed," and that they are about to be transferred to a "regular prison." Some of the survey group noted that the day before they were transferred to the other facility, another "detainee," later proved to be an informer, was placed in their cell. He "prepared" the detainee for the next stage of the process. This method constituted the next-to-last stage of the interrogation, and was followed by the taking of a formal statement from the detainee.

The informers' wings in which the sample group was placed were situated in each of the four ISA interrogation facilities, as well as in Megiddo and Beersheva prisons. Each detainee was taken to an informers' wing in a different facility from the one in which they were interrogated. The wing included one or two relatively spacious rooms usually containing between ten and twelve "prisoners," all or most of whom, apart from the detainee himself, were informers. The difference between the conditions in solitary-confinement cell and the conditions in the informers' wing was enormous, at least in terms of the subjective experience of the detainee. Each wing had windows permitting natural light to enter, the rooms had toilets, a shower, and an adjacent yard to which the "prisoners" enjoyed free access. Each "prisoner" had a bed and mattress (usually in bunk beds) and was permitted to keep reading material, radios, and televisions, among other items. The survey group described the food as "excellent" given that, for example, it included diverse items, was served hot and with spices, and in satisfying quantities.

The average length of time spent in the informers' wing was nine days. Most of the survey group stated that the informers treated them in a "normal and respectful" manner. Two or three days after the detainee arrived in the wing, one of the informers approached and presented himself as a "coordinator," "representative," or "security officer" for the prisoners in the jail, stating that he could contact activists in the various organizations outside the prison. Accordingly, the informer continued, the interrogee must tell him what he did or did not say to the ISA interrogators so that the activists outside might be warned. The vast majority of the sample group who were placed in the informers' wing stated that they did not suspect that those involved were informers for the ISA. After completing their stay in the informers' wing, the interrogees were taken back to their original interrogation facility. In this stage, they usually underwent one or two more interrogations, during which the interrogators informed

them that they were held in the informers' wing and confronted them with the comments they made there.

Unlike the other methods discussed in this chapter, the use of informers does not cause suffering or distress to the interrogees or involve a violation of their rights.¹⁰¹ Accordingly, it is not surprising that Israeli law does not prevent the authorities from using informers to collect information from interrogees, and this method is considered legitimate.

One may assume, both logically and based on the relevant literature, that the success of the informer method stems, to some degree, from the traumatic experience to which the detainees had been subjected before being transferred to the informers' wing. Such experiences may lead the interrogees to ignore suspicious signs or prior information that would have alerted them to the reality of the situation if they were in their normal state of mind. Thus, for example, it may be assumed that the diverse methods used against the interrogees, particularly isolation and sensory deprivation, create a strong and almost uncontrollable need for human contact, for a sympathetic ear, and for releasing the tension that has built up in the interrogee. This need may lead them to overlook suspicious signs. This need may also be the result of temporary damage to certain cognitive functions, such as the ability to engage in critical thought, caused by their traumatic experiences. The psychiatric literature refers to this damage as "acute stress reaction." It usually lasts for several days after the traumatic incident.¹⁰² "The commonest symptoms are a daze, the reduction of the field of consciousness, attention disorders, and confusion."¹⁰³ If this hypothesis is correct, the ramification is that, although the informer method does not in itself entail the physical injury or humiliation of the interrogees, its effectiveness depends largely on the ill-treatment these detainees suffered prior to the use of this method.

¹⁰¹ We shall not discuss here the possible violation of the rights of the Palestinians who serve as informers if they were coerced into doing so following improper pressure. Regarding this phenomenon, see B'Tselem, *Forbidden Roads: The Discriminatory West Bank Road Regime* (July 2004), chapter three; B'Tselem, *Builders of Zion: Human Rights Violations of Palestinians from the Occupied Territories Working in Israel and the Settlements* (September 1999), chapter four; B'Tselem, *Collaborators in the Occupied Territories: Human Rights Abuses and Violations* (January 1994).

¹⁰² The term "traumatic incident" is defined in the literature as "A physical or psychological occurrence wherein the component of actual physical damage may be insignificant in objective terms, but which is interpreted by the victims as endangering their security, mental balance, dignity, health, and, sometimes, existence." M. Neuman, "Responsive Mental States," in H. Monitz (ed.), *Selected Chapters in Psychology*, 11th ed. (Tel Aviv: Papyrus, 1995), 257.

¹⁰³ *Ibid.*, 259.

Conclusions

On the basis of the discussion thus far, it may be concluded that all or most aspects of the routine interrogations regime of the ISA infringe the human rights of detainees. It is also clear that most, if not all, of the methods employed in the framework of this regime are not the inevitable side-effects of the necessities of detention and interrogation, but are deliberately planned to break the spirit of the interrogees and obtain information from them against their free will. Accordingly, these methods deviate from what the High Court referred to as the rules of "reasonable and fair interrogation," insofar as they unjustifiably impinge on the detainees' rights to dignity and bodily integrity – rights that enjoy constitutional, supra-legal, status in the Israeli legal system.¹⁰⁴ Accordingly, even if the use of the some of the methods described here is rooted in various legislative provisions, their legality under Israeli law is questionable.

Method	"Regular Detainees" [N=34]	"Senior Detainees" [N=39]	Total [N=73]
Isolation from the outside world during all/most of the interrogation period	22 (65%)	28 (72%)	50 (68%)
Confinement in conditions of solitary confinement and sensory deprivation during all/most of the interrogation period	27 (79%)	37 (95%)	64 (88%)
Disruption of sleep*	17 (50%)	16 (41%)	33 (45%)
Poor-quality food*	20 (59%)	33 (85%)	53 (73%)
Protracted cuffing in the <i>shabah</i> position	31 (91%)	39 (100%)	70 (96%)
Naked body search*	7 (21%)	14 (36%)	21 (29%)

¹⁰⁴ Basic Law: Human Dignity and Liberty, 5752 – 1992, sections 2 and 4.

Insults and other humiliation	20 (59%)	33 (85%)	53 (73%)
Threats	15 (44%)	32 (82%)	47 (64%)
Time in the informers' wing	29 (85%)	31 (79%)	60 (82%)

* Since many of the survey population did not relate to these aspects, the actual proportion of the sample who suffered these experiences may be higher than indicated here.

Inasmuch as the methods described here cause physical pain and mental distress to detainees, with the aim of breaking their spirit and leading them to provide information or make a confession, they constitute, under international law, prohibited ill-treatment. Moreover, given the cumulative character of these methods and the subjective nature of the experience of pain, their use may, in certain circumstances, be considered to cause severe mental suffering and hence fall under the definition of torture.

These conclusions are supported, among other sources, by numerous precedents established by the relevant legal institutions that have examined the legality of methods identical or similar to those described here under international law and the Geneva Conventions. The following are some examples:

- In 2003, the UN Commission on Human Rights ratified a decision in which it "Reminds all States that prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture..."¹⁰⁵
- The UN Human Rights Committee, which is responsible for interpreting and supervising the implementation of the International Covenant on Civil and Political Rights, held that "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7," i.e., a violation of the prohibition on torture or ill-treatment.¹⁰⁶

¹⁰⁵ Commission on Human Rights, *E/CN.4/RES/2003/32*, para. 14.

¹⁰⁶ CCPR, General Comment No. 20 concerning prohibition on torture and cruel treatment, relating to article 7 of the Covenant, 10 March 1993.

- Nigel Rodley reached the same conclusion in his capacity as UN Special Rapporteur on torture between 1993 and 2001.¹⁰⁷ Moreover, in a report concerning his visit to Chile, Rodley noted that judges should not be authorized to approve confinement in isolation for more than two days.¹⁰⁸
- In a precedent-setting ruling in a petition filed against the government of Honduras, the Inter-American Court of Human Rights ruled that, "the mere holding of a person in conditions of confinement and communicational deprivation for a protracted period of time constitutes cruel and inhuman treatment damaging the psychological and moral integrity of the individual and violating the right of any detained person under article 5(1) and 5(2) [of the Inter-American Convention on Human Rights] to respect of his dignity."¹⁰⁹
- Ruling in a petition filed against the governments of Russia and Moldova, the European Court of Human Rights determined that "full sensory isolation, combined with complete social isolation, may destroy the personality and constitutes a form of inhuman treatment that cannot be justified by security needs or any other reason." Accordingly, such conditions constitute a violation of article 3 of the European Convention on Human Rights, which prohibits ill-treatment and torture.¹¹⁰
- The Fourth Geneva Convention, which regulates the obligations of every occupying power toward civilians living in the occupied area and subject to its control, expressly states that holding civilians in detention facilities without daylight is prohibited and constitutes cruelty."¹¹¹
- In a petition against Poland, the European Court examined the case of a prisoner who wished to vote in the elections to the parliament in his country and, to this end, was subjected to a body search in the course of which the prison guards forced him to strip to his underpants while they ridiculed and verbally abused him.¹¹² The court held that "the

¹⁰⁷ Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, UN Doc. A/59/324.

¹⁰⁸ Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Visit to Chile, UN Doc. E/CN.4/1996/35/Add.2, para. 76(c).

¹⁰⁹ *Velazquez Rodriguez Case*, Inter-Am Ct. H.R. (Ser C) No. 4, 1988, para. 187.

¹¹⁰ *Ilascu and Others v. Russia and Moldova*, Application 48787/99, para. 432, 442.

¹¹¹ Fourth Geneva Convention, article 118(2).

¹¹² *Iwancuk v. Poland*, Application 25196/94, para. 15.

[guards'] behavior was intended to cause feelings of humiliation and inferiority on the part of the appellant," and hence constituted a violation of article 3 of the European Convention.¹¹³

- The International Criminal Tribunal for the Former Yugoslavia convicted one of the commanders of the Serb militia in Kosovo of cruel treatment as a type of war crime on account of his responsibility for the confinement of Muslim residents in Kosovo in cells which, inter alia, were overcrowded, lacked beds, and were improperly ventilated (although the detainees were "occasionally" taken out to breathe fresh air).¹¹⁴
- In his position as the Special Rapporteur on torture, Rodley determined that "serious and credible threats, including death threats, to the physical integrity of the victim or a third person can amount to cruel, inhuman or degrading treatment or even torture, especially when the victim remains in the hands of law-enforcement officials."¹¹⁵
- In 1997, the UN Committee against Torture ruled that certain interrogation methods used by the ISA, including binding in painful positions and the use of threats, including death threats, constitute "breaches of article 16 and also constitute torture as defined in article 1 of the Convention. This conclusion is particularly evident where such methods of interrogation are used in combination..."¹¹⁶

The methods discussed in this chapter being classified as forms of ill-treatment, let alone torture, Israel is obliged under international law to investigate and prosecute the persons directly involved in the use of these methods. If it fails to do so, all other countries are authorized, and indeed obliged, to arrest the suspected offenders when they are in their territory, and prosecute or extradite them to a country that wants to prosecute them.

¹¹³ Ibid., para. 59-60.

¹¹⁴ *Prosecutor v. Limaj, Bala, and Musliu*, Case No. IT-03-66-T (Trial Chamber), 30 November 2005, para. 288-289.

¹¹⁵ Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, UN Doc. E/CN.4/2002/76, Annex III.

¹¹⁶ Concluding Observations of the Committee against Torture: Israel, 1997, UN Doc. a/52/44, para. 257.

Chapter 4

"Special" Interrogation Methods

This chapter discusses seven interrogation methods, which we shall refer to as the "special" interrogation methods, employed by the ISA in addition and alongside the methods discussed in chapter 3. The "special" interrogation methods are sleep deprivation, beating, tightening of handcuffs, sudden pulling of the body, sharp twisting of the head, crouching in the "frog" position, and bending of the back (the "banana" position). Although these methods form part of the "tool box" available to the ISA, and hence constitute an integral part of the interrogation regime, they are used much less frequently than the methods described in the previous chapter. All or some of these methods are presumably used by the ISA, and authorized retroactively by the State Attorney's Office, in "ticking-bomb" cases.

In addition to the difference in the frequency of their use, the "special" interrogation methods also differ from those described in the previous chapter in two main ways. First, all the "special" interrogation methods, with the exception of sleep deprivation, involve the use of direct physical violence. Second, these methods are used only in the interrogation rooms, and only by ISA personnel, so cooperation on the part of the police or the IPS is not needed, unlike some of the other methods.

As the High Court made clear in *PCATI*, Israeli law does not authorize the ISA to use "physical means" against interrogees (see chapter 1). Therefore, and keeping with the structure of the previous chapter, the discussion in this chapter will not relate separately to the legality of each of the "special" interrogation methods. The legality, both under Israeli and international law, will be discussed in a single section in the conclusions of the chapter.

Sleep deprivation

For the purposes of analysis, only those cases in which the detainee reported that he was prevented from sleeping for at least one day are considered sleep deprivation. Of the sample group, fifteen (twenty-one percent) reported sleep deprivation – ten of the "senior detainees" (approximately twenty-five percent of this group) and five of the "regular detainees" (approximately fifteen percent of this group). The sleep deprivation lasted in most instances between thirty and forty hours. One detainee reported that he was prevented from sleeping for three and a half days. Sleep deprivation is implemented by means of "intensive interrogation" in other words, seating the detainee in the interrogation room in the *shabah* position. Some

detainees reported that ISA interrogators, who switched every few hours, were present in the room at all times and prevented them from falling asleep, for example by shouting at them. Others reported they were left alone in the room for varying periods of time but could not sleep due to the painful position they were in and the cuffing. In most cases, sleep deprivation was employed only during the early days of the interrogation:

- R. A., 28, father of one, was interrogated in Shikma Prison. In his testimony, he stated that "on the second day, I was in the interrogation room from seven o'clock in the morning until six o'clock the next evening – thirty-five consecutive hours. The interrogators would switch around... The air-conditioner worked constantly and the room was very cold, so I could not fall asleep as I sat cuffed to the chair... The interrogators addressed me and spoke among themselves, and this also prevented me from sleeping. Every so often they shouted at me."
- A. A., 24, father of two, who like R.A. was interrogated at Shikma Prison, described how he was prevented from sleeping for about three days. He noted that he managed to retain some sense of time by looking at the watches worn by his interrogators, and because he could see the sun from the interrogation room. "They took me into the interrogation room at about seven o'clock in the morning. That was on Thursday. They left me there without sleep until Sunday at about two o'clock at night, without any break. Throughout this time I was bound to a chair. They did not use any physical violence against me during this period... but when I fell asleep, the interrogators poured water on me or hit my head or my face to wake me up. I was taken for a polygraph test several times during these days. The interrogators untied my hands so that I could eat, and they let me go to the toilet when I asked. At about two o'clock on Sunday morning, they took me back to the cell and let me sleep until six o'clock. Then they took me for interrogation again."
- A.D., 24, was interrogated at Kishon Prison. In his testimony, he stated that, after his first interrogation, "They put me in solitary confinement about one day after I had been arrested. During this time they did not let me sleep. When I entered the cell, I thought that they would finally let me sleep, but I was mistaken. An hour later, they took me back to the interrogation room. This was about one o'clock in the morning... I stayed there for another day, until midnight the next night... I was exhausted and was about to fall asleep at any moment, but the interrogators hit me or shouted at me, to stop me falling asleep."

Beating

Seventeen of the sample group (twenty-four percent) reported that the ISA agents gave them "dry" beatings (slaps, punches, and kicks) during the course of their interrogation. This number includes twelve "senior detainees" (thirty-one percent of this group) and five "regular detainees" (fifteen percent of this group). Those in the group who reported an isolated slap were not included in these figures. Seven of the instances of beating occurred at Kishon Prison, four at Shikma Prison, three in Petach Tikva, three at the Russian Compound, and one at the police station in Ariel. Most of the interviewees reported that they were beaten once during the course of their interrogation, usually during their first or second interrogation. The following are some examples:

- M.J., 24, who was interrogated at Kishon Prison, stated that, "At first, the interrogator Spoke to me calmly, but when I told him that I had nothing to say to him, he called two more interrogators who joined him, and one of them punched me in the chest and then held me by my throat, choking me... I should note that the use of direct violence I described occurred only on the first day of interrogation."
- H.Q., 26, father of one, was interrogated at Kishon Prison, related that, "One of the interrogators kicked me in the groin while I was sitting on the chair. Then he hit me in the chest with the knee of the same leg, and hit me under the chin with his hand, forcefully knocking my head back. The series of blows was very rapid and skilful. I was only beaten like that once."
- H.F., 20, who was interrogated at Shikma Prison, stated: "All four interrogators in the room slapped my face every time I denied the suspicions against me... The Major told me that he was going to go out of the room for ten minutes, and if I didn't talk when he came back, he would beat me. He came back after ten minutes, and when he realized that I didn't want to talk, he released my handcuffs from the ring behind the chair, but kept my hands cuffed behind my back. Then he lifted me out of the chair, threw me on the table, and beat me with his fists and palms while I was lying with my back on the table. Then he lifted me off the table and kicked all over my body."
- B.`A., 27, who was interrogated at Shikma Prison, gave the following testimony: "At first, the interrogation only included cursing, insults, and threats to arrest my mother and wife. Then they started to slap the back of my neck. One of the interrogators told me that I hadn't seen anything yet. I told him that my back was hurting because of the beating I got from the soldiers who arrested me. He asked me precisely where it hurt, and I told him it hurt on the left-hand side of my waist. Then he kicked me right on that spot. I screamed in pain."

Tightening of handcuffs

Five of the sample group (seven percent) reported that at some stage of the interrogation the interrogators tightened the metal handcuffs on their hands to the maximum, causing severe pain to the wrists. All five belonged to the group of "senior detainees" constituting thirteen percent of that group. Two of the cases occurred at the interrogation facility at Kishon Prison, two at Shikma Prison, and one in Petach Tikva.

Three of the five reported that, in addition to the tightening of the handcuffs, during one interrogation the interrogators lifted the handcuffs to close to the elbow, stopping the blood flow to the palms for several minutes. One of them, `A.D., 28, who was interrogated in Petach Tikva, stated that when this was done to him, "the interrogator moved my fingers, causing unbearable pain in my fingers and palm." Two of the three stated that before raising the handcuffs, the interrogators wrapped elastic bandages between their wrist and elbow. All three stated that they suffered bruising to the arms and wrists.

Sudden pulling of the body

In this method, the interrogator seizes the interrogee suddenly by his shirt or shoulders and pulls him forcefully, usually to the front, one time. This action is repeated several times during the course of the interrogation. Since the interrogee's hands are cuffed behind his back and the handcuffs are connected to the ring in the seat of the chair, this sudden pulling causes severe pain to the interrogee's wrists and arms. Six of the sample group (eight percent) – four "senior detainees" and four "regular detainees" – reported that this method was used against them during their interrogation. Two of the cases occurred at Kishon Prison, two at Shikma Prison, and two at the Russian Compound. One of the group reported that the pulling caused his wrists to bleed. Two others stated that the interrogator pulled their shirt several times in a row, causing severe pain in the neck and shoulders as well as in the wrists.

This method appears to be similar to the "shaking" method that was used extensively by the ISA until the High Court's decision in *PCATI*, in 1999. In this method, the interrogator pulls the lapels of the interrogee's shirt for several seconds, shaking the interrogee's head forward and backward rapidly. The two methods differ, however. In "shaking" the focus of the pain is in the head and neck, and the danger of the method lies in the shaking effect created on the brain. The principle behind the "sudden pulling," by contrast, is to stretch the body, rather than to shake it, and the focal point of the pain is in the arms and wrists. It should be noted that although none of the members of the sample group reported that the "shaking" method was used against them, affidavits collected by the Public Committee against Torture in Israel

(hereafter "Public Committee") show that ISA interrogators continued to use this method after 1999.¹¹⁷

Sharp twisting of the head

Eight of the survey participants (eleven percent) – four each from among the "regular detainees" and the "senior detainees" – reported that this method was used against them during their interrogation. In this method, the interrogator grips the interrogee's chin firmly and twists the interrogee's head forcefully and suddenly to one side. Alternatively, or additionally, the interrogator pushes the interrogee's head backwards by placing his fist on the interrogee's chin. Six of the eight detainees reported that their head was twisted once or twice each time; the other two detainees stated that the interrogators twisted their head as described several times in succession. Three of the cases of sharp twisting occurred in Petach Tikva, two at Shikma Prison, two at the Russian Compound, and one at Kishon Prison.

In all these cases, the method was used in an interrogation in which at least one of the other violent methods was also employed. Consequently, most of the survey group did not relate specifically to the pain caused by this method. With this lack of certainty in mind, it may be assumed that the sudden and rapid movement causes some level of pain to the interrogator's neck. It may also be assumed that using the fist to push the head, as described above, leads, to a lesser or greater extent, to a sense of suffocation due to the pressure on the windpipe.

Crouching in the "frog" position

In this method, the interrogators force the interrogee to crouch on tiptoes for several minutes at a time, his hands cuffed behind his back. While the interrogee crouches in this manner, the interrogators push or beat him until he loses his balance and falls forward or backward. Of the entire sample group, three (four percent), all "senior detainees," reported that this method was used against them. One case each occurred at Kishon Prison, Shikma Prison, and in Petach Tikva. According to the detainees, this position places increasing pressure on the leg muscles, which begin to hurt after a few minutes. In addition to the pain in the leg muscles, the falling after the interrogees are pushed causes their handcuffs to rub against their wrists, intensifying the pain.

¹¹⁷ Public Committee against Torture in Israel, *Back to a Routine of Torture*, 45.

It should be noted that this method, without the pushing, was among those examined by the High Court in *PCATI* and defined as unlawful.¹¹⁸ Affidavits collected by the Public Committee in subsequent years suggest that the ISA has continued to use this method.¹¹⁹

Bending the back (the "banana" position)

In this method, the interrogators change the way the interrogee sits, so that the backrest is at his side. The detainee's hands are cuffed in front, rather than behind. After this brief preparation, one of the interrogators pushes the interrogee backwards forcefully until the interrogee's back reaches a forty-five-degree angle. When the interrogee can no longer hold his back at this angle, he falls back, his body forming an arch. Some of the survey participants reported that immediately after their body arched, the interrogators tied their handcuffs to their leg shackles with a chain and left them in this position for several minutes. Then the interrogator stands behind the interrogee and brings the interrogee's back to an angle of forty-five degrees again.

Of the sample group, five (seven percent), all from the "senior detainees" group (thirteen percent of this group), reported that this method was used against them. Two cases occurred at Kishon Prison, two at Shikma Prison, and one in Petach Tikva. All five detainees reported that the method caused unbearable pain.

- `A.`A., 24, father of two, who was interrogated at Shikma Prison, stated that, "Every time I tried to straighten my back, the interrogator standing in front of me hit me or pushed my chest... When I couldn't hold myself any longer, my torso arched back, causing extremely violent pain. Then the interrogator, who was standing behind me, lifted me up and put me back in the same position, until I fell again. They made sure my buttocks stayed on the seat of the chair to intensify the pain in my lower back. I told them that I had a history of back problems and that this was causing me great suffering, but it didn't do any good."
- `A.Z., 29, who was interrogated in Petach Tikva, related that, "At one point, they brought a chain and used it to hook the handcuffs and leg shackles together. This made my body stretch in a way that was unbearably painful. Then the interrogators lifted up the bench from both ends and dropped it suddenly. At that point, I lost consciousness."

¹¹⁸ *PCATI*, para. 25.

¹¹⁹ Public Committee against Torture in Israel, *Back to a Routine of Torture*, 45.

When I woke up, my face was wet, presumably because the interrogators had thrown water on me. I felt incredible pain in my groin and lower stomach. The area was swollen, too. Then they took me to the clinic."

- B. A., 27, who was interrogated in Shikma Prison, said in his testimony that, "They left me in that position [arched] for about twenty minutes at a time. Then they released me for about five minutes and let me sit down normally, and then put me back in the same position. They did that five times. I told the interrogators that I couldn't take any more. My back was hurting and I felt I was going to die... Then they took me back to the cell."

Conclusions

On the basis of the findings presented in this chapter, it can be concluded that, while the "special" interrogation methods are not used on a routine basis, they are by no means an insignificant phenomenon. As the table below shows, twenty-seven out of the seventy-three persons in the sample – more than one-third – reported that they were exposed to at least one of the "special" interrogation methods during the course of their interrogation. Another conspicuous finding is that these methods are used much more frequently with "senior detainees" than with "regular detainees." Indeed, in three of the seven methods discussed above, not a single instance was reported of their use against "regular detainees."

As noted in the conclusion to the previous chapter, the methods that comprise the routine interrogation regime generally constitute prohibited ill-treatment, but may amount to actual torture in certain cases. By contrast, the methods discussed in this chapter fall mainly and clearly under the definition of torture, well beyond the gray zone between ill-treatment and torture. This conclusion is supported mainly by the descriptions contained in the testimonies, whereby the suffering caused to the detainees by these methods cannot be considered anything other than "severe," within the meaning of this term in the definition of torture in international law. This conclusion is especially valid if we take into account that the "special" methods are in addition to the routine methods described in the previous chapter, which constitute ill-treatment in their own right: the cumulative effect of all these methods, applied simultaneously or consecutively, is a crucial factor in determining the severity of the suffering caused, rather than examining the effect of each method as if it were used in a vacuum.

Method	"Regular Detainees" [N=34]	"Senior Detainees" [N=39]	Total Sample [N=73]
Sleep deprivation	5 (15%)	10 (26%)	15 (21%)

Beating	5 (15%)	12 (31%)	17 (23%)
Tightening of handcuffs	0	5 (13%)	5 (7%)
Sudden pulling	2 (6%)	4 (12%)	6 (8%)
Sharp twisting of head	4 (12%)	4 (10%)	8 (11%)
Crouching in the "frog" position	0	3 (8%)	3 (4%)
Bending the back	0	5 (13%)	5 (7%)
At least one method	10 (26%)	18 (46%)	28 (38%)
At least two methods	3 (9%)	10 (26%)	13 (18%)
Three or more methods	2 (3%)	7 (18%)	9 (12%)

Since international law does not recognize any exceptional circumstances in which states are permitted to use torture, and does not permit persons responsible for torture to be released from criminal responsibility, Israel is required to investigate, prosecute, and punish every person involved in the use of the methods described here. If it fails to do so, every country is authorized, indeed obliged, to detain the suspected perpetrators, when they are in their territory, and prosecute or extradite them to a country that wants to prosecute them.

Is the use by the ISA of any or all of these "special" interrogation methods compatible with the High Court's judgment in *PCATI* or with the principles derived therefrom? First, we should note that the judgment explicitly addressed only three of the means reviewed here: sleep deprivation, tightening of handcuffs, and crouching in the "frog" position. Regarding the latter two methods, the High Court held that, "They infringe the suspect's dignity, his bodily integrity and his basic rights in an excessive manner. They are not to be deemed as included within the general power to conduct interrogations."¹²⁰ In the absence of specific reference to the remaining methods in the judgment, and bearing in mind that these other methods are more violent, it may be concluded that this holding also applies to the other four means discussed in this chapter (beating, sudden pulling of the body, sharp twisting of the head, and bending of the back).

To determine whether the ISA has the authority to deprive an interrogee of sleep for a protracted period, we must consider the reasons the interrogators use the means. The court in *PCATI* explained: "[T]he suspect, subject to the investigators' questions for a prolonged

¹²⁰ *PCATI*, para. 27.

period of time, is at times exhausted. This is often the inevitable result of an interrogation. This is part of the 'discomfort' inherent to an interrogation. This being the case, depriving the suspect of sleep is, in our opinion, included in the general authority of the investigator." However, "[i]f the suspect is intentionally deprived of sleep for a prolonged period of time, for the purpose of tiring him out or 'breaking' him, it is not part of the scope of a fair and reasonable investigation."¹²¹

From the testimonies, it is impossible to determine unequivocally whether the sleep deprivation inflicted on the detainees in the sample is consonant with the High Court's ruling. In any event, this uncertainty is irrelevant under international law. The professional bodies authorized to interpret human rights conventions and monitor their implementation have held several times that sleep deprivation for a substantial period constitutes ill-treatment and even torture, regardless of the circumstances. Thus, for example, following the decision in *PCATI*, the UN Committee against Torture noted:

The recent Supreme Court ruling was a step in the right direction, although unfortunately it did not outlaw torture completely. It fell short of the obligations imposed by the Convention because it allowed such measures as *deprivation of sleep* so long as they were not used as a means of interrogative pressure; in other words the ISA could continue to torture.¹²²

Despite the High Court's holding that the ISA does not have legal authority to use the "special" interrogation methods, with the exception of sleep deprivation in the conditions defined above, the court recognized a key exception: Under the "necessity defense" in the Penal Law, ISA interrogators who used prohibited interrogation methods may not bear criminal liability for their actions in certain circumstances (see Chapter 1 for details). However, under *PCATI*, this exception "...deals with cases involving an individual reacting to a given set of facts. It is an improvised reaction to an unpredictable event."¹²³ Accordingly, *PCATI* continues, "neither the government nor the heads of the security services have the authority to establish directives regarding the use of physical means during the interrogation of suspects suspected of hostile terrorist activities, beyond the general rules which can be inferred from the very concept of an interrogation itself."¹²⁴

¹²¹ Ibid., par 31.

¹²² Committee against Torture, Summary record of the 496th meeting: Israel, U.N. Doc. CAT/C/SR.496, para. 45.

¹²³ *PCATI*, para. 36.

¹²⁴ Ibid., para. 38.

The question arises as to whether the use of torture by ISA interrogators may be described as "improvisation given an unexpected occurrence," employed without any "instructions, rules, and permits." Most of the evidence suggests that the answer to this question is negative.

The first evidence of this may be found in the "self-instructions" published by former Attorney General Elyakim Rubinstein following the decision in *PCATI*. According to these instructions, in all matters relating to "physical means," "the ISA should have internal instructions, relating, inter alia, to the structure of consultations and authorizations required for this purpose."¹²⁵ It may be assumed that these instructions provided legal backing for the development of an orderly procedure regarding the exercising of the "special" means – a "torturer's guide," as it were. The existence of such a guide was mentioned several times in criminal proceedings against Palestinians who had been interrogated by the ISA. In the ruling in one of these proceedings, the judges held that, "in light of the evidence held by the interrogators regarding his active involvement in the execution of terror attacks, an *interrogation procedure* was adopted in Ahmad's case that was intended to come within the protection of the necessity defense ... The interrogators explained in their direct testimony and on cross-examination the nature of the means adopted, including physical pressure."¹²⁶

Moreover, the ISA itself has openly admitted the existence of a procedure including authorization for the use of "special" methods by interrogators. Thus, for example, a report in *Ha'aretz* on the subject of complaints about torture processed by the Public Committee over the preceding year noted that, "according to the ISA, the authorization to use force in interrogations is given by, at least, the head of the interrogation team, and sometimes by the head of the ISA himself."¹²⁷ Two days later, the newspaper published a report forwarded by the ISA stating that, "only the head of the ISA may authorize the use of special means in interrogations."¹²⁸

Even in the absence of such concrete indications, it could be assumed that the methods described here are not the product of improvisation. As explained cogently by Kremnitzer and Segev, the situation entertained by the court in *PCATI*, in which the ISA interrogator

¹²⁵ Elyakim Rubinstein, *GSS Interrogations and the Necessity Defense – A Framework for the Consideration of the Attorney General*, 28 October 1999, section g(2)(b)(4).

¹²⁶ Ser. Crim. (Jerusalem) 775/04, *State of Israel v. `Amru `Abd al-`Aziz*, section 5 of the judgment of Judge Y. Noam (not reported) (emphasis added).

¹²⁷ Nir Hasson, "ISA Interrogators Sodomize Interrogees and Pluck off their Beards," *Ha'aretz*, 8 November 2006.

¹²⁸ "Clarification," *Ha'aretz*, 10 November 2006.

spontaneously and autonomously decides to torture a particular interrogee due to an immediate danger is patently unrealistic.¹²⁹ In the opinion of Kremnitzer and Segev:

However, where governmental organization's activities are concerned... patterns of behavior are bound to emerge, one way or another. Since the court, as well as the Attorney General, refused to explain what are, in their opinion, the "appropriate circumstances" in which the use of physical interrogation means is justified, this resolution is presumably made by the ISA heads and legal advisers.¹³⁰

The inevitable conclusion is that, even if the use of "special" means takes place solely in situations of a "ticking bomb" (a spurious assumption in its own right), it is not possible, according to the position taken by the High Court, to apply the necessity defense to these cases and release ISA personnel from criminal liability, since it is inconceivable that their behavior constituted an act of improvisation rather than a measured decision resulting from instructions and procedures.

¹²⁹ Kremnitzer and Segev, "The Legality of Interrogational Torture," 540.

¹³⁰ Ibid.

Chapter 5

Who Will Guard the Guards? Mechanisms of Concealment and Cover-Up

What is the response of the institutions and apparatus responsible for maintaining the rule of law in Israel in the face of the phenomenon of the torture and ill-treatment of Palestinian detainees by security forces as described in the preceding chapters? In this chapter we shall focus on four key aspects of this question: The processing of complaints of the ill-treatment of Palestinian interrogees by the ISA and by soldiers; the High Court's policy as reflected in petitions against the ISA-imposed prohibition on meetings between interrogees and their attorneys, and the policy of the courts regarding testimonies obtained by means of ill-treatment.

The investigation of complaints against ISA interrogators

The responsibility for investigating suspected criminal offenses committed by ISA personnel in the course of their official activities rests by law with the Department for the Investigation of Police (DIP).¹³¹ The authority to instruct the DIP to open the investigation rests with the attorney general, who may delegate this authority to the state attorney or his deputy.¹³² In practice, this authority is delegated to a senior attorney in the State Attorney's Office, generally the head of the Special Functions Department (hereafter "the senior attorney.")

In response to a letter published in *Ha'aretz* in November 2006 relating to complaints of torture and ill-treatment received by the Public Committee, the Attorney General's Office stated that, "all complaints are examined in the most thorough manner," and that, "in isolated cases, in which it is found that there has indeed been a deviation from the procedures, the decision is taken to initiate disciplinary or criminal proceedings."¹³³ This statement could be taken to imply that there have been "isolated cases" in which the State Attorney's Office ordered a criminal investigation, i.e., an investigation by the DIP. In fact, this has never occurred.

¹³¹ Police Ordinance [New Version], 5731 – 1971, section 49I(1).

¹³² *Ibid.*, subsection (b).

¹³³ Hasson, "ISA Interrogators."

A reply received from the Ministry of Justice in response to B'Tselem's request for information shows that, of over five hundred complaints filed between January 2001 and October 2006 against ISA interrogators for alleged ill-treatment and torture, DIP did not conduct a single criminal investigation.¹³⁴ This outcome is patently and extremely unreasonable. It means that the State Attorney's Office is of the opinion that over the course of six years of intensive activity, during which time thousands of individuals were interrogated, not even one instance occurred in which an ISA interrogator deviated from his authority and beat an interrogee, or unnecessarily violated his rights in another manner. The reason for this unreasonable situation may lie in the factual and legal basis applied by the State Attorney's Office in deciding whether to order a criminal investigation following a complaint.

Factually, the senior attorney's decision regarding each complaint is based on an examination by an official referred to as the "Inspector of Complaints by ISA Interrogees," (hereafter "the complaints' inspector"), who operates under the senior attorney's professional guidance. The legal status of the complaints' inspector is formalized in a procedure established by the Ministerial Committee for ISA Affairs.¹³⁵ According to Attorney Talia Sasson, a former senior attorney, the person who fills the complaints' inspector position is actually "a senior interrogator in the Israel Security Agency whom I guided professionally."¹³⁶ If the examination by the inspector shows that the complaint filed is not credible, the senior attorney orders the file closed.

However, the independence and objectivity of the complaints' inspector is questionable. First, the inspector is an ISA employee subordinate to the head of the ISA, who is supposed to be one of the subjects of his review. The dependence of the inspector on the head of the ISA might, naturally, impair his independence. Second, it is reasonable to assume, that, coming from the ranks of the ISA, having "worked" in the field, and possibly maintaining professional and social contacts with his colleagues in the organization, impairs the complaints' inspector's objectivity to a lesser or greater extent, however decent and honest the person appointed to this position may be.

¹³⁴ Letter to B'Tselem from Attorney Boaz Oren, head of the International Agreements Unit, Ministry of Justice, 26 June 2006.

¹³⁵ Ibid. This committee was established pursuant to section 5 of the Israel Security Agency Law, 5762 – 2002.

¹³⁶ Minutes No. 6610 of the meeting of the Knesset Constitution, Law and Justice Committee, held on 8 June 2003.

Even if the complaints inspector finds that a complainant was telling the truth – i.e., that the ISA interrogators indeed abused the interrogee – the State Attorney's Office does not think this finding necessarily requires the initiation of a DIP investigation. In practice, as the statistics noted above show, the State Attorney's Office decided to close the file in all these cases without ordering a DIP investigation. This policy is based on a tendentious interpretation of the High Court's holding in *PCATI* (an inherently mistaken interpretation, as explained at length in chapter 1) which claims that, if the ISA interrogator abused the interrogee in "ticking bomb" circumstances, the necessity defense is liable to apply, releasing him from criminal liability for his acts.

In substantive terms, this interpretation ignores the High Court's holding that the necessity defense is liable to apply only in respect of acts that are an "improvisation given an unexpected occurrence," and not the product of a calculated and planned action. In complete contrast to this position, former Attorney General Elyakim Rubinstein recommended to the ISA that the use of "physical means" in interrogations should be subject to "a system of authorizations."¹³⁷

In procedural terms, too, the attorney general's interpretation is not necessarily supported by reality or by the holding in *PCATI* regarding the application of the necessity defense. Pursuant to the court's decision, the attorney general could have determined that, if evidence exists that an ISA interrogator abused an interrogee, he should be indicted, and leave the argument that, in the circumstances, the interrogator should be released from criminal liability to defense counsel and the judges. At the very least, the attorney general could have determined that in those cases in which the interrogee's complaint is verified by the inspector, a DIP investigation should be opened to investigate the circumstances. Only if this investigation reveals that the ill-treatment was committed in a "ticking bomb" situation would it be decided to close the file and not indict the ISA interrogator.

Against the background of the substantive defects inherent in this "investigative" mechanism, it may be held that the State of Israel is violating its obligation under international law to investigate suspected cases of torture and, where necessary, to prosecute the offenders. Moreover, this mechanism sends the interrogees – the potential complainants – a clear message that the likelihood action will be taken against their abusers is negligible. The traces of this message are seen in the refusal of the interrogees included in the sample and who were subjected to actual torture to file complaints, despite the legal advice they received from HaMoked and B'Tselem. Of the nine persons whom the organizations have contacted to date,

¹³⁷ Rubinstein, *GSS Interrogations and the Necessity Defense*, section g(2)(b)(4).

four have refused the suggestion because of their total lack of faith in the investigative system.

The investigation of complaints against soldiers

The responsibility for the criminal investigation of soldiers, including on suspicion of the unwarranted use of violence during arrests and during the detention of detainees in custody, rests with the Military Police Investigation Unit (MPIU). The initiation of such an investigation is subject to the prior authorization of the Judge Advocate General's Office. Contrary to the policy of the State Attorney's Office regarding complaints of the ill-treatment of interrogees by ISA personnel, the Judge Advocate General's Office does not condition the opening of an investigation by the MPIU into violent offenses or ill-treatment on an internal investigation such as that made by the complaints' inspector.¹³⁸ Also, the Judge Advocate General's Office does not prevent the opening of investigations on the grounds that a defense to criminal responsibility applies to the acts of violence or ill-treatment of which soldiers are suspected.

It should be noted that since HaMoked and B'Tselem do not have any figures concerning the number of MPIU investigations opened following complaints of violations against detainees prior to their interrogation by the ISA in the circumstances described in this report, it cannot be established for certain to what extent MPIU investigations constitute an effective control mechanism. However, the cumulative experience of both organizations over the past six years regarding the processing of complaints of violence by soldiers in general (i.e., not necessarily in the circumstances examined in this report) by the Judge Advocate General's Office and the MPIU raises concern that the efficacy of this mechanism in ensuring that soldiers who violate the rights of Palestinian detainees are brought to justice is not much greater than that of the State Attorney's Office with regard to the ISA.

First, one of the main obstacles to ensuring justice is the reluctance of many victims to file complaints. The reasons for this include lack of faith in the military legal system, which generally tends to favor soldiers' versions of events to those of Palestinians, as well as the

¹³⁸ It should be noted that, contrary to violent offenses, in offenses involving the use of firearms that occurred during "combat" operations, the Judge Advocate General's Office conditions the opening of an MPIU investigation on the undertaking of a preliminary "operational debriefing." For a critique of this policy, see www.btselem.org/English/Firearms/JAG_Investigations.asp.

"harassment" and humiliation involved in filing a complaint and giving testimony.¹³⁹ The reluctance to file complaints is reflected in the relatively small number of MPIU investigations opened since the beginning of the second intifada. This despite the violence by soldiers, particularly in the context of the enforcement of restrictions on freedom of movement, that has occurred almost daily in the years since then. Statistics provided by the judge advocate general, Brigadier General Avichai Mandelblit, to the Knesset Constitution, Law and Justice Committee in February 2007 show that over the six and a half years of the intifada, 427 investigations have been opened by the MPIU on suspicion of violent offenses, an average of sixty-five investigations a year. The efforts made by human rights organizations, including HaMoked and B'Tselem, to track cases and forward them to the authorities, however intensive, cannot offset the failings of a system that deters victims from filing complaints.

Second, an investigation by the MPIU does not guarantee that justice will be done. According to Mandelblit, of the 427 investigations opened, just thirty-five (eight percent) eventually resulted in an indictment.¹⁴⁰ It is reasonable to assume that objective difficulties of various kinds require the closing of some files even following an impeccable investigation. In some cases, files might be closed because the soldiers are found to have acted properly. However, our experience suggests that, in many cases, the reason for the closing of the files results from various defects in the actions of the Judge Advocate General's Office and the MPIU.

In many cases, for example, a considerable period of time passes between the filing of the complaint and the Judge Advocate General's Office's order to open an investigation, making it difficult for MPIU investigators to conduct an effective investigation: no physical evidence remains in the field, it is hard to locate eyewitnesses and the soldiers involved, witnesses who are located and are willing to give a statement have difficulty recalling the details of the event, and so forth. In addition, numerous defects are encountered as the result of the limited resources available to the MPIU. For example, the MPIU has almost no Arabic-speaking personnel to take testimonies from Palestinians, and the investigators are dependent on the willingness of translators from other units to help. Moreover, many investigations are conducted by army reservists who are released after a short period of time without completing

¹³⁹ For details of these problems, see B'Tselem, *Crossing the Line: Violation of the Rights of Palestinians in Israel without a Permit* (March 2007), chapter 3.

¹⁴⁰ Brigadier General Mandelblit did not specify how many investigations are still pending and may theoretically result in indictment. B'Tselem requested this data from the judge advocate general but has not yet received a response.

the investigation, and the file is then forwarded to another investigator, who must learn the case from the start.

By way of example, in September 2003, HaMoked filed a complaint with the Judge Advocate General's Office relating to the assault on S.R., a Palestinian resident of East Jerusalem. According to the complaint, twenty days earlier, S.R. was traveling toward Hebron with a friend in a truck carrying watermelons. Close to the settlement of Haggai, soldiers at a checkpoint stopped the truck and asked S.R. to unload it. When he refused, he was brutally beaten by one of the soldiers and then taken to a nearby army base, his face covered and his hands cuffed behind his back. He was held at the base until the next morning without any food or water. In early February 2004, some four and a half months after the complaint was filed, the Judge Advocate General's Office informed HaMoked that an order had been given to the MPIU to investigate the complaint.¹⁴¹ In December 2005, almost two years after the investigation began, an MPIU investigator contacted HaMoked and asked the organization to summon the complainant to the MPIU base in Jerusalem for further investigation.¹⁴² Some eighteen months later, the Judge Advocate General's Office informed HaMoked that it had been decided to close the file since "the soldiers involved in the alleged incident were not located."¹⁴³

Regardless of these defects, it may be assumed that the number of complaints filed relating to the circumstances discussed in this report is even more limited than among the population as a whole. The reason is that many of the potential complainants are held in prison, sometimes in isolation from the outside world, for extended periods following the ill-treatment. During this time, they suffer additional and graver violations and also have to address the criminal proceedings initiated against them. It is reasonable to assume, therefore, that in the absence of a deliberate and proactive effort on the part of the authorities to ensure that delinquent soldiers are prosecuted in an attempt to uproot this phenomenon, the likelihood that a detainee in these conditions will file a complaint for injury sustained in the detention stage is slight.

¹⁴¹ Letter to HaMoked from Captain Orly Goz, prosecutor, Central Command, Judge Advocate General's Office, 2 February 2005.

¹⁴² Letter to HaMoked from Lieutenant Sagi Weitz, investigator, MPIU, Jerusalem and Judea, 6 December 2005.

¹⁴³ Letter to HaMoked from Major Inbal Eini De-Paz, deputy judge advocate, Central Command, 19 July 2006.

Prohibition of meetings between interrogees and their attorneys: The High Court of Justice as a rubber stamp

The right of every person to consult with his or her attorney in situations of detention and interrogation is perceived both in international law and in Israeli law as of crucial importance.¹⁴⁴ In a precedent-making decision in May 2006, the High Court proclaimed this right and explained its importance: "The right to be represented by and to consult with an attorney helps ensure the fairness of the investigative proceedings and prevent the abuse of the inherent imbalance of power between the detainee and the representatives of the authorities who investigate him."¹⁴⁵ As part of this balance, this right is perceived as a form of guarantee preventing the ill-treatment of the interrogee, since it affords an opportunity to complain to a sympathetic person who can, if necessary, warn about the acts of ill-treatment that are taking place. With this important consideration in the background, the High Court acquitted, in *Issacharov*, a soldier convicted of using drugs on the basis of his own confession because the military policeman who interrogated him did not inform him of his right to consult with an attorney. In the case of Palestinian detainees who are interrogated by the ISA, however, principles are one thing and reality another.

As noted, military legislation permits the ISA to prevent a meeting between the interrogee and his attorney, by means of an order given at its sole discretion for a period of up to thirty days from the date of arrest. The only relief available to detainees against the arbitrary denial of their right to counsel is to petition the High Court of Justice to nullify the order. However, such relief is purely theoretical given that the High Court almost always functions as a rubber stamp for the decisions of the ISA. It is true that, in some cases, the State Attorney's Office has agreed, following petitions filed against an order prohibiting meetings between interrogees and their attorneys, to shorten the period of the prohibition or to promise that the prohibition will not be extended, in return for dismissal of the petitions. However, of the hundreds of petitions that have reached the hearing stage in recent years, we do not know of even a single case in which the High Court nullified the order or instructed the state to shorten the period of the prohibition. For example, in 2005, the Public Committee filed in the High Court of Justice ninety-seven petitions against such orders, forty-nine of which reached the

¹⁴⁴ Criminal Procedure Law (Enforcement Powers – Detention), 5756 – 1996, section 34(a); International Covenant on Civil and Political Rights, article 14.

¹⁴⁵ Crim. App. 5121/98, *Private Raphael Issacharov v. Military Prosecutor* (not reported), para. 14 of the judgment of Justice Dorit Beinisch.

hearing stage. All were denied or dismissed on the recommendation of the justices.¹⁴⁶ It should be noted that this is not a new phenomenon that is affected by exceptional security circumstances, such as the outbreak of the intifada. Rather, this is the High Court of Justice's consistent policy, which it has implemented since at least the early 1990s.¹⁴⁷

In these petitions, the Supreme Court justices almost always base their decisions on confidential material presented by ISA representatives *in camera* and *ex parte*. In practical terms, therefore, the interrogee's counsel has no opportunity to refute the claims raised by the ISA. Indeed, the High Court generally allows the ISA to conceal from the interrogee that the prohibition order has been issued and that legal proceedings have been initiated in the matter. From the standpoint of the ISA, the mere knowledge of the interrogee that persons outside the interrogation facility are aware of his existence and are discussing his conditions of interrogation may lessen his sense of helplessness and the psychological pressure he is under (see chapter 3). Thus, for example, in a decision given in September 2006 in a petition against the prohibition of a meeting between an ISA interrogee (whose name is prohibited for publication) and his attorney, three Supreme Court justices held:

We have reviewed the confidential material, with the agreement of petitioner's counsel and not in his presence, and we have also received additional oral explanations. After studying the material as stated, we are convinced that, for the present time, and, as noted, there is an intention to extend the orders, the security of the region and the good of the interrogation justify the said orders at this time. For the same reasons, it is justified that the petitioner in HCJ 7814/06 should not know that he is prevented from meeting [his attorney]. Promise has been made to us that every effort will be made to remove the prevention as soon as possible. The petitions are denied.¹⁴⁸

This laconic ruling is a powerful illustration of the enormous gulf between the lofty principles expounded by the justices in *Issacharov* and the cruel reality in which the same justices allow the trampling of the rights of an ISA interrogee. While the High Court has, in the past, justified preventing a meeting between the interrogee and his attorney on the grounds that there is reason to fear that such a meeting will be used to forward information from the interrogee to persons in the field, and vice versa, thus thwarting the interrogation, it is unclear

¹⁴⁶ The figures were provided for B'Tselem by the legal advisor of the Public Committee against Torture in Israel, Attorney Eliahu Abrams.

¹⁴⁷ Between 1996 and 1998, for example, HaMoked filed forty-seven petitions against prohibitions of meetings between interrogees and their attorneys. Of the twenty-four petitions that reached the stage of a court hearing, not a single one was accepted by the High Court of Justice.

¹⁴⁸ HCJ 7814/06, *John Doe v. Israel Security Agency* (not yet reported).

– and the High Court has not seen fit to explain – the justification for not even informing the interrogee about the proceedings being conducted in his case.

Moreover, in deciding whether to accept or reject a petition against the prohibition on meeting with an attorney, the Supreme Court justices should consider the scenario in which, under the cover of isolation from the outside world, the ISA interrogators will abuse or torture the interrogee. The justices have this obligation even if this scenario is purely theoretical. However, abuse and torture under these circumstances are not theoretical.

In one case, for example, the High Court rejected a petition objecting to a prohibition on a meeting between a Palestinian detainee, Imad Qawasmeh, who was arrested in October 2004, and his attorney. During the confidential hearing, the ISA representatives admitted that they were applying the "permissions" against the interrogee.¹⁴⁹ The judgment does not explicitly clarify the meaning of the term "permissions." However, from the context of the hearing, and on the basis of the manner in which the High Court used this term in *PCATI*, it is evident that the reference is to the use of some form of physical pressure.¹⁵⁰ In the open portion of the hearing, Qawasmeh's attorney requested a commitment from the representative of the State Attorney's Office that the ISA would not make further use of the "permissions" against his client, but his request was rejected. In response, four human rights organizations filed an additional petition, in which they sought the cessation of the use of the "permissions" against Qawasmeh.¹⁵¹ To avoid a decision that would establish a principle in the matter, Attorney Aner Hellman, of the State Attorney's Office, informed Attorney André Rosenthal, who represented Qawasmeh and the human rights organizations, that "I again inform you that the ISA has informed me that, in light of the circumstances, there is no intention to apply physical pressure during the subsequent interrogation of your client."¹⁵² Following this assurance, the petition was dismissed.

In a similar and more recent case, the State Attorney's Office admitted that ISA interrogators performed an "interrogation trick" on the interrogee, who was prohibited from meeting his

¹⁴⁹ HCJ 9271/04, *Qawasmeh v. Israel Security Agency*.

¹⁵⁰ In his preface in *PCATI*, President Barak pointed out that, "These directives equally authorize investigators to apply physical means against those undergoing interrogation (for instance, shaking the suspect and the "shabah" position). The basis for permitting such methods is that they are deemed immediately necessary for saving human lives. Is the sanctioning of these *interrogation practices* legal? These are the principal issues presented by the applicants before us." (emphasis added)

¹⁵¹ HCJ 9390/04, *Qawasmeh et al. v. Israel Security Agency*.

¹⁵² The letter is dated 29 October 2004.

attorney. The "trick" consisted of showing the detainee that his father had been arrested. Also, the State Attorney's Office admitted that the detainee had tried to "inflict harm upon himself," in the words of the judgment. Despite the real fear for the life of this interrogee, given the psychological pressure to which he was subjected, and despite the refusal of the representative of the State Attorney's Office to promise that this "trick" would no longer be used, three Supreme Court justices held that, "we have been satisfied by the respondents' response that the authorities (the IPS and the ISA) in whose responsibility the petitioner is held are taking the petitioner's condition into account, and that he is under constant supervision and is receiving the appropriate care. For all the reasons specified above, the petition is denied."¹⁵³

Using statements obtained through torture and ill-treatment as evidence in criminal proceedings

Article 15 of the Convention against Torture states: "Every State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as as evidence in any proceedings..." According to the UN Human Rights Committee, which is charged with interpreting the International Covenant on Civil and Political Rights, this requires "that the law [in the state] must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment."¹⁵⁴ The use of the word "statement" in both these legal sources implies that this prohibition applies not only to a person's confession to the offense he committed, but to any type of statement. The logic behind this provision is twofold: First, a statement obtained through torture is not considered reliable and hence should not serve as evidence in court; second, the inadmissibility may give the interrogating authorities an incentive to refrain from using torture.¹⁵⁵

The obligation not to admit evidence obtained through torture or ill-treatment is only partially enshrined in Israeli law, given that only the confession of a person regarding the offenses with which he is charged is deemed inadmissible. The Evidence Ordinance states: "Evidence of confession by the accused that he has committed an offense is admissible only when the prosecution has produced evidence as to the circumstances in which it was made and the court

¹⁵³ HCJ 1759/07, *Mahmud Sweiti v. Israel Police and ISA* (not yet reported).

¹⁵⁴ CCPR, General Comment No. 20; Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (article 7): 10/03/92, para. 12.

¹⁵⁵ Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, UN Doc. A/61/259, para. 45.

is satisfied that it was free and voluntary."¹⁵⁶ Nevertheless, under the accepted interpretation of this provision, made by the High Court in 1982, illegality in the manner of obtaining a confession does not automatically render it inadmissible.¹⁵⁷ Then Supreme Court President Yitzhak Kahan held that, "Even in cases involving the use of extreme means of pressure, I would not reject an examination as to whether the improper means actually influenced the interrogee... If it emerges that the means of pressure, whatever they were, did not actually influence the interrogee... it should not be said that the confession was the result of the use of improper means."¹⁵⁸ Justice Menachem Elon added that, "when the defendant's confession is given as the result of the use of improper means, the presumption is that the confession is not made with the defendant's free will. But this is a presumption, and, as with presumptions, it may be rebutted."¹⁵⁹

This interpretation was apparently manifested in the decision in the trial of `Abbas a-Sayid, who was accused of initiating and organizing numerous terror attacks, including the suicide attack at the Park Hotel, in Netanya, on 27 March 2002, which killed thirty civilians and wounded some 160 persons.¹⁶⁰ In their court testimony, the ISA interrogators explained that a-Sayid was declared a "ticking bomb" and his interrogation took place in the format of a "necessity interrogation."¹⁶¹ The interrogators further admitted that, during his interrogation, they used means that were referred to by the court as "special interrogation means." The court's judgment included a prohibition on publication of the description of these means of interrogation, with the exception of sleep deprivation. However, and despite the uncertainty involved, it may be assumed that the "special means" prohibited for publication included some degree of ill-treatment. Yet, a-Sayid was convicted unanimously on numerous counts of murder and other grave offenses, the conviction being based mainly on his confession as recorded in the memoranda prepared by the ISA interrogators during his interrogation. Summarizing her decision, Judge Miriam Sokolov stated that:

I am convinced, as noted, that the Defendant's utterances to the ISA interrogators as detailed in the memoranda submitted to the court and his confession to the police were delivered of his own free will, and the special means employed against him did not break

¹⁵⁶ Evidence Ordinance [New Version], 5731 – 1971, section 12(a).

¹⁵⁷ Crim. App. 1115/82, 162/82, *Mu`adi v. State of Israel*, *Piskei Din* 38 (1) 197.

¹⁵⁸ *Ibid.*, 249.

¹⁵⁹ *Ibid.*, 263.

¹⁶⁰ Ser. Crim. (TA) 1147/02, *State of Israel v. `Abbas ben Muhammed a-Sayid* (not yet reported).

¹⁶¹ *Ibid.*, para. 9, 10, and 51 of the judgment.

his spirit and did not cause "dulling of his senses." I utterly reject the Defendant's comments in his testimony in court, inter alia relating to torture by the ISA interrogators and means ostensibly employed against him ... Indeed, the means [*prohibited for publication*] detailed in [exhibit] Pros/101 were employed against the Defendant; however, it was not the use of these means that caused the Defendant to provide his confession, cooperate with his interrogators, and give them the letters and weapons. The Defendant, realizing that all his associates in the military infrastructure who were accountable to him had been arrested, had admitted carrying out the attacks, and had incriminated him, realized that there was no longer any point in remaining silent, and, accordingly, he made his confession.¹⁶²

It should be noted that the recent ruling in *Issacharov* (see above) set new standards regarding the interpretation of the provision in the Evidence Ordinance relating to confessions not made "freely and voluntarily." In her judgment, President Dorit Beinisch held:

Given the purpose of safeguarding the rights of defendants in their interrogation, and under the inspiration of the Basic Law: Human Dignity and Liberty, the rule of inadmissibility enshrined in section 12 of the Evidence Ordinance should be interpreted in such manner that improper means of interrogation liable to unlawfully impair the interrogee's right to bodily integrity, or to humiliate and degrade him to a greater extent than necessary in conducting an interrogation, lead immediately to the inadmissibility of the confession; this without the need to examine the impact of the said means of interrogation on the veracity of the confession made in the interrogation.¹⁶³

Although this holding is certainly to be welcomed, it remains to be seen how it will be implemented in criminal proceedings, particularly in proceedings against Palestinians interrogated by the ISA and accused of serious offenses. It is especially important to consider which interrogation means will be considered harm "to a greater extent than necessary" to the dignity and bodily integrity of the interrogee.

What do Israeli legislation and case law say about the admissibility in criminal proceedings of statements that do not constitute a "confession" and are obtained by improper means? In the absence of specific statutory provisions, the prevailing approach in the courts is that, "relevant evidence should not be ruled inadmissible as a result of the illegality of the means used to obtain it ... Under the said approach... illegality constitutes a consideration in determining

¹⁶² Ibid, para. 51 of the judgment (emphasis in the original).

¹⁶³ *Issacharov*, para. 33 of the judgment.

the weight of evidence and, in extreme cases, it may reduce this weight to zero; however, it cannot influence the admissibility of the evidence."¹⁶⁴

An example of this approach may be seen in the trial of `Amru `Abd al-`Aziz, a Palestinian resident of Jerusalem accused of giving the keys of his father's apartment to Hamas operatives, where they made the preparations for the suicide attack committed at Café Hillel in Jerusalem, on 9 September 2003, in which seven Israeli civilians were killed. According to the indictment, al-`Aziz handed over the keys fully aware that the apartment would be used for this purpose.¹⁶⁵ Throughout his interrogation and trial, `Abd al-`Aziz denied any involvement in the matter. The main evidence against him was the incriminating statement of another individual, Ahmad `Abid, as recorded in the memoranda of the ISA interrogators. However, in his court testimony, `Abid retracted his statement, claiming it had been made under the pressure of torture. In the judgment, the court described the manner of obtaining this crucial evidence, as follows:

Ahmad's interrogation on 23 September 2004 was intensive. It began at 9:00 in the morning, ended after midnight, and was recorded in memoranda (Pros/4 – Memoranda dated 23 September 2004)... In light of the evidence his interrogators had regarding his active involvement in the commission of terror attacks, an interrogation procedure was adopted in the case of Ahmad that was supposed to come within the protection of the necessity defense ... and which is known by the ISA interrogators as the "necessity interrogation" procedure. In court, Ahmad detailed the means of interrogation employed against him, among them physical pressure and threats, and the interrogators also explained under direct examination and cross-examination the nature of the means used, including physical pressure (testimony of the person referred to as "Dotan.")¹⁶⁶

However, although the ISA interrogators openly admitted that they used "physical pressure" when interrogating `Abid's (publication of the details of these means was prohibited), the court had no doubt that the statement obtained during this interrogation was admissible as evidence. Furthermore, two of the three judges on the panel were convinced that, despite the use of "physical pressure," Ahmad `Abid's statement to the ISA interrogators was credible. Accordingly, `Abd al-`Aziz was convicted, by majority decision, of the offense of murder and was sentenced to seven cumulative life sentences and an additional sentence of thirty years' imprisonment.

¹⁶⁴ Ibid, para. 39 of the judgment.

¹⁶⁵ Ser. Crim. 775/04, *State of Israel v. `Amru `Abd al-`Aziz* (not yet reported).

¹⁶⁶ Ibid., para. 5 of the judgment of Judge Y. Noam (the references to the page numbers of the quoted testimonies were deleted.)

In *Issacharov*, the High Court also addressed the question of the admissibility of evidence obtained by improper means.¹⁶⁷ The court changed the previously-accepted rule that any relevant evidence (with the exception of a confession) was admissible regardless of the manner in which it was obtained. The High Court held that, in light of the Basic Law: Human Dignity and Liberty, the court has discretion not to admit evidence obtained by improper means, if it is of the opinion that "admitting it in the trial will substantially harm the defendant's due process rights and is not in accord with the limitations clause [in Basic Law: Human Dignity and Liberty]."¹⁶⁸ The inadmissibility rule is "relative." Obtaining evidence unlawfully is not grounds for automatic inadmissibility, but merely grants the court the discretion not to admit it. The courts are empowered, inter alia, to consider the importance of the evidence to the prosecution and the damage that will be caused to the public interest if, as the result of not admitting the evidence, a person accused of extremely serious offenses will be acquitted. This approach would seem to create an opening, in the context of "security" trials, for the admission of statements obtained by ill-treatment and torture, giving interrogators a motivation to obtain statements in such circumstances, in contravention of the provisions of the Convention against Torture. Here, too, it remains to be seen how this rule will be applied in practice.

In conclusion on this issue, it should be pointed out that, by admitting as evidence in criminal proceedings statements obtained through the use of improper pressure, the courts in Israel are failing in their obligation to uproot the phenomenon of ill-treatment and torture in ISA interrogation rooms.

¹⁶⁷ See *Issacharov*, footnote 146.

¹⁶⁸ *Ibid.*, para. 76 of the judgment.

Conclusions and Recommendations

Since their establishment, HaMoked and B'Tselem have strived to uproot the phenomenon of torture and ill-treatment, including in the context of ISA interrogations. One of the frequently asked questions posed to human rights organizations is: "So what are you proposing? Do you think that ISA interrogators should sit back and do nothing when a terrorist refuses to cooperate, and simply let terror attacks occur?" This question assumes there are only these two alternatives: either conduct the interrogation using prohibited methods, or sit back and do nothing. This assumption is utterly baseless. The real alternative open to ISA interrogators is to interrogate – in a determined, sophisticated, and professional manner, without physical or mental abuse – individuals suspected of having information that might aid in preventing terror,.

Examples of legitimate methods of interrogation may be found in the U.S. Army's Field Manual for Human Intelligence Collector Operations, published in September 2006.¹⁶⁹ This manual presents eighteen interrogation methods in extensive detail, reflecting decades of experience. These methods have proved effective in diverse arenas and scenarios. Some of the methods are based on the development of trust between the interrogator and the interrogee. Many of them involve, at some point, the use of ruses and psychological manipulations of various kinds, without entering the prohibited area of humiliation or psychological ill-treatment of the interrogee.¹⁷⁰

It should be noted that this field manual was published against the background of the exposure of acts of ill-treatment committed by U.S. Army soldiers against persons suspected of terror activities held in army facilities in Iraq and in Guantanamo Bay, Cuba, and against the background of several official expert opinions seeking to restrict the prohibition against

¹⁶⁹ Headquarters, Department of the Army, *Field Manual 2-2.23, Human Intelligence Collector Operations*, available at www.fas.org/irp/doddir/army/fm2-22-3.pdf.

¹⁷⁰ In addition to these eighteen methods, these instructions also permit the use of an additional interrogation method referred to as "separation," involving primarily the isolation of the interrogee from other detainees. Although this method may verge on the prohibited, the provisions establish careful and strict conditions for its application, including the prohibition on the use of sensory deprivation and sleep deprivation within this framework. See *ibid.*, Appendix M.

torture as part of the "war on terror."¹⁷¹ According to Deputy Chief of Staff for Intelligence Lieutenant General John Kimmons, who presented the field manual at a press conference, the decision to reveal the interrogation methods in full, without any confidential sections, was made in part on the basis of the assumption that the use of these methods would sooner or later become known to the enemy.¹⁷² Obviously, the exposure of these methods does not guarantee that similar cases of ill-treatment will not occur in the future; however, it conveys a message that may help limit this phenomenon, and provides a powerful tool for monitoring and supervising the army.

Regrettably, the ISA does not confine itself to such lawful interrogation methods. Rather, as illustrated in this report, the ISA routinely employs an interrogation regime involving the psychological and physical ill-treatment of interrogees. This regime includes several key aspects: isolation of the interrogee from the outside world; use of conditions of confinement as a means to apply psychological pressure and debilitate the interrogee physically; binding of the interrogee in painful positions; humiliation; and the use of threats. In a minority of cases, probably those classified as "ticking bombs," the ISA also uses violent interrogation methods that constitute outright torture, such as beating, tightening of handcuffs, sudden pulling of the body, and bending of the back. Furthermore, many ISA interrogees arrive at the interrogation facility after having been "softened up" by the soldiers who make the arrest and hold the detainees pending their delivery to the ISA. This "softening up" includes beating, painful binding, humiliation, and the denial of vital needs. Although we do not have evidence to show that the motive of these soldiers or their commanders is to "soften up" the detainees ahead of their interrogation, this is the practical outcome.

The ISA and other security personnel do not act in a vacuum, but as part of a system. The reality described above could not exist without the active support of other Israeli law-enforcement agencies. Thus, for example, the application of pressure on detainees by means of their conditions of confinement would be impossible without the willing cooperation of the Israel Prison Service and the Israel Police, which manage the interrogation facilities and are responsible for these conditions. It may be assumed that the IPS and the police would not impose such conditions if they were not so authorized by the regulations of the Ministry of Internal Security as approved by the Knesset's Constitution, Law and Justice Committee. The

¹⁷¹ For example, see the comprehensive report of Physicians for Human Rights, *supra*, footnote 76; see also the "Torture Memo" issued by the U.S. Department of Justice in 2002, footnote 24.

¹⁷² For a transcript of the press conference at which the manual was presented and the comments were made, see www.globalsecurity.org/security/library/news/2006/09/sec-060906-dod02.htm.

isolating of interrogees from the outside world would not be so common or so simple if the High Court of Justice did not accept almost automatically the contentions of the ISA and reject all petitions filed against the prohibition on detainees from meeting with their attorneys. The magnitude of the violence against detainees by soldiers would not be so great if the Judge Advocate General's Office encouraged the filing of complaints and ensured vigorous and determined action against soldiers who abuse detainees. ISA interrogators would not abuse and torture detainees if the State Attorney's Office did not provide them with virtually automatic immunity from criminal proceedings. The State Attorney's Office would not grant such immunity if the High Court of Justice had not provided a legal cloak for this in its decision in *PCATI*. At least some of the cases of ill-treatment and torture might be avoided if ISA interrogators know for certain that information secured by such means would not be admitted as evidence in court.

In light of this bleak reality, B'Tselem and HaMoked urge the Israeli government to take the following measures:

- instruct the ISA to halt immediately and completely the use of all interrogation methods that harm the dignity or bodily integrity of interrogees, including the use of the unlawful means described in this report;
- initiate legislation strictly prohibiting torture and cruel, inhuman, or degrading treatment as these terms are understood in international law, while denying the "necessity defense" to public servants suspected of such acts;
- require that every complaint filed against ISA interrogators alleging ill-treatment during interrogations is investigated by an independent body, and that the persons who are found to have acted improperly are prosecuted;
- document by video ISA interrogations and open ISA interrogation facilities, including the holding cells, to objective external review, including review by the UN Special Rapporteur on torture;
- ensure, in legislation and in practice, that every detainee receives minimum humane detention conditions, and abolish the rules that discriminate against "security" detainees;
- abolish the military order permitting the ISA to prevent meetings between detainees and their attorneys, and apply the international-law standard to Palestinians;
- initiate legislation whereby any statement, whether a confession or other type of statement, that is proved to have been obtained by means of torture or ill-treatment shall not be admitted as evidence in court under any circumstances;

- take urgent steps to improve the ways and means to bring to justice soldiers who harm or humiliate Palestinian detainees, including the actions needed to supervise the soldiers' behavior at the crucial time and to collect evidence also in the absence of specific complaints, as well as encourage detainees to file complaints.

Response of the Ministry of Justice



מדינת ישראל
משרד המשפטים
State of Israel
Ministry of Justice

The Department for International Agreements and International Litigation
The following is a translation of the Hebrew version, In case of divergence of interpretation, the Hebrew text shall prevail.

Date: 8 Iyar, 5767

28 April 2007

Re: 2752

Mr. Yechezkel Lein
B'tselem
8 HaTa'asiya St.,
Jerusalem 91531

Dear Sir,

Re: **Reference to "B'tselem" Draft Report "Torture and Abuse towards
Palestinian Detainees"**

Your letter regarding our reference to the abovementioned draft report was received by our office, and our response is as follows:

Methodology

1. The report was based upon a non representative sample that seems to have been deliberately chosen which distorts the reality prevailing in the course of arrest and interrogation of security prisoners.
2. Presenting a report which includes description of cases with no identifying details and without allowing the relevant authorities, headed by ISA and the IDF, to review those specific cases raised within, effectively denies these authorities the opportunity to examine the claims raised in the report.

רח' צלאח א-דין 29 ת.ד. 49029 י-ם מיקוד 91490 טל' 02-6466569 פקס 02-6261862

E-Mail: international@justice.gov.il

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Claims regarding the Operational Rank

A. IDF soldiers

3. An enquiry held resulted with the following findings:
 - 3.1. The admittance procedure in a detention facility:
 - 3.1.1. The procedure, except for rare circumstances, is extremely short, and contrary to claims raised in the report, does not include undressing of detainees, except for strictly defined cases.
 - 3.1.2. Includes a mandatory examination by either a medic or a physician, in order to determine aptness for arrest.
 - 3.1.3. Includes an inquiry about injuries, if occurred, during the arrest and escort, and if the detainee claims that he was beaten or if signs of violence are found on his body, the details of the case are transferred to the Military Police for investigation.
 - 3.2. A professional Escort squad has been established in order to insure proper conditions during transfer of detainees between facilities.
 - 3.3. Every case of deviation from the rules of conduct, including such rare cases where cursing or beating occurs, is examined and treated. As aforesaid, additional information about the cases mentioned in the report would have allowed the IDF to check each such individual case.
4. The IDF has been striving to assimilate the judicial rules affecting both proper conduct in combat and in conjunction with the civilian population, among its soldiers by means of training and teaching. Officers of the Military Attorney General's Law School, who lead the training in this field, have held numerous lectures on the subject in recent years, in which thousands of soldiers took part. The training focuses, among other things, on the duty of IDF soldiers of all ranks to provide humane and proper treatment to detainees captured by the IDF, while maintaining their dignity as human beings. Lectures on these subjects are also incorporated as an integral part in the IDF basic training, including officers training

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and courses held in the IDF's Tactical Command Academy. The Military Law School also provides designated lectures focused on proper treatment of detainees.

5. In addition, the Military Law School produced various guidance materials, including educational computer programs in the aforesaid fields, which allow effective guidance for multiple populations. These programs, commonly used as vital guidance tools of IDF soldiers and officers, refer, *inter alia*, to proper treatment of detainees while emphasizing the strict prohibition of applying inhumane or degrading treatment to detainees captured by IDF forces.

B. Israeli Police Officers

6. Israeli police officers that operate in police detention facilities, in which ISA interrogators operate, comply with law and its frame, and the treatment of detainees held in these facilities, including security detainees, is compatible to the law as well as internal police regulations and is subject to continuous scrutiny by the Department for the Investigation of Police Officers in the Ministry of Justice and of the courts.

C. Interrogators of the ISA

7. The Israel Security Agency is responsible by law for the safeguarding of Israel's security, regime, and state institutions, from terror threats, espionage and other threats. In order to do so, it has the duty to foil and prevent any unlawful activity aiming to harm the aforesaid targets.
8. In order to fulfill its purpose, the Agency performs, among other things, investigations of suspects in terrorist activity. The main goal of such investigation is data gathering intended to foil and prevent terrorist acts.
9. The day by day fighting against terrorist infrastructure that seeks to carry out terrorist attacks and to spread death and destruction within the state of Israel, obligates the security services, including the interrogators of the Israel Security Agency, to make every effort to foil and disrupt such aspirations. The last few years saw many civilians' lives saved as a direct consequence of data originating from those investigations.

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10. The report itself refers to a group which is named in the report as “ordinary” detainees, concerning interrogatees which were arrested between 13 – 17 of July 2005, when on the day of July 12, 2005 there was a terrorist attack in the city of Netanya, that caused the death of five people and the injury of many others. (The other group – mentioned in the report as "senior detainees" - includes Palestinians arrested between July 2005 and January 2006).
11. Following the abovementioned terrorist attack, suspects associated with the attack were arrested and interrogated, and as a result of the interrogations, the perpetrators of the attack, as well as the terror infrastructures that supported them, were exposed. In addition, more terrorist units were exposed and weapons that were to be put in use in future terrorist attacks were handed over.
12. Due to confidentiality reasons we can not address here, in details, the interrogation techniques mentioned in the report, and therefore may not address each and every claim raised in the report in this context. Furthermore, since the report does not mention specifically the names of the detainees who have initiated the complaints, the accuracy of the claims cannot be examined. We will state, however, that the report is fraught with mistakes, groundless claims and inaccuracies.
13. In order to illustrate the inaccuracy and the tendentiousness of the report, a few salient examples can be pointed out. The claims, for instance, as if the ISA uses measures intended to cause "detachment" of the interrogatees from the outside world, while instilling a feeling of uncertainty about their fate, are unfounded. In this matter we would like to point that persons interrogated by the ISA receive, at the beginning of the interrogation, a document that states their rights as interrogatees in a criminal investigation, stating their right to refrain from self incrimination, their right to see a lawyer', etc. All this in contrast to the claims in the report.
14. Another example in this context is found in the claim that the Israel Security Agency deals with “designing the appearance” of the food given to the detainees, “in order to create a deterring affect”, which is supposed to create disgust and deterrence among the interrogatees. This bizarre claim is unfounded and is indicative of the lack of seriousness and tendentiousness of the person claiming it.

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15. As a further example, we would like to point out that there is no basis for the claim that interrogators of the ISA routinely practice the habit of "cursing and swearing at the interrogatees callously and rudely".
16. The claim as if the Israel Security Agency is involved in the undressing of the detainees as part of the admittance procedure is unfounded as well. The ISA is not involved in the detainees' admittance procedure and certainly does not instruct that detainees will be completely undressed on their arrival to the facility, as claimed.
17. We shall reemphasize that these are only examples concerning the framework of the matters, and that it is impossible to refer to each and every claim that appears in the report.
18. Regarding the issue claimed in the report concerning the use of the term "military investigation", it should be pointed out that this term has a vague meaning, hence perceived differently by different people. Despite the above, it has been recently decided that ISA investigators shall avoid using this term in general.
19. It should be clarified that ISA investigations are performed in accordance with the law, procedures and instructions, while being regularly scrutinized by Israel Security Agency supervision bodies, the Ministers' Commission for Israel Security Agency Issues, the Subcommittee for Intelligence and Secret Services of the Foreign Affairs and Defense Committee of the Knesset, the Ministry of Justice, the State Comptroller's Office and the different legal instances of the courts.

Claims Regarding the Supervision Mechanisms

A. the Ministry of Justice

20. The ISA complaints inspector (hereinafter, "the Inspector") - an integral part of the ISA - operates independently, and no element within the ISA, including the head of the Agency, has the authority to interfere with his investigation manner or his findings and he performs a practical and comprehensive investigation which is not dependent on all other elements within the Agency.
21. The appointment of such Inspector is carefully carried out in order to avoid any conflict of interests emanating from any of the various positions held by the

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Inspector in the past or present, with his role as an Inspector. Accordingly, the present Inspector, as his predecessors, was not an investigator in his past career.

22. It should be emphasized that there are clear advantages for appointing an ISA member as an Inspector. Being familiar with the system, he is allowed access to all the relevant information, including highly sensitive materials, hence he is able to comprehend that information better than any external factor, since as a member of the ISA he is familiar with the organization's culture and the "organization's language".
23. The Inspector operates under the instruction and close guidance of the Ministry of Justice's specially designated supervisor, who is a high-ranking attorney in the Ministry of Justice. The Inspector is professionally guided by the supervisor which, in turn, approves the Inspector's decisions.
24. In addition, the supervisor of the Inspector is vested with the authority to initiate an examination of a complaint, whereas the ISA or the Inspector does not have the ability to prevent such examination from taking place.
25. Following completion of an Inspector's investigation, the investigation report is examined thoroughly by the supervisor. The investigation report is further examined by the Attorney General and the State Attorney when the issues mentioned in the report are sensitive or when the circumstances so necessitate

B. IDF

26. Complaints concerning harm to Palestinians or soldiers' behavior are solemnly inspected and examined. The Military Attorney's general policy is that complaints concerning violence of soldiers towards Palestinian residents – all the more so in abuse complaints – are investigated by the Investigating Military Police. Thus, in the year 2006, of the 71 complaints submitted regarding soldiers' violence in Judea and Samaria, 61 investigations were initiated. In the year 2005, 87 complaints of violence were submitted and 76 investigations initiated. It should be clarified that contrary to the information in the draft report, the opening of criminal investigation files against soldiers, including in such cases where unjustified violence was ostensibly involved amid arrests and holding detainees in custody, is not subject to

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the Military Attorney General's pre-affirmation. Military Police's investigation files are frequently opened immediately upon complaints' submission, with no instruction of the Military Attorney's Office.

27. Contrary to the claims, a special effort is devoted in order to severely judge those who abuse Palestinians or apply force unlawfully. Severe indictments are submitted in every case where sufficient evidence - gathered in full compatibility with criminal law requirements – is presented, alongside with prosecution's appeal for imposing ample imprisonment periods. In suitable cases, appeals were lodged by the prosecution to the Military Court of Appeals for aggravation of the punishments.
28. In addition, it should be pointed out that several meetings were held in the past between the Military Attorney's Office' senior officers and representatives of "B'tselem" organization. It was clarified to the "B'tselem" representatives in a number of occasions that every complaint concerning soldiers' violence communicated to the Military Attorney's Office will be seriously examined in accordance with the Military Attorney's Office policy.
29. Military Courts also pertain an uncompromising position in regard to violence offences committed by soldiers towards Palestinian detainees, as can be inferred from the following examples:

29.1. Cen/274/06 – A soldier was convicted of an offence of abuse for beating a handcuffed Palestinian detainee. Further to his demotion back to private, the soldier was sentenced to seven months of imprisonment, out of which four months were to be served in prison and the rest by a suspended imprisonment for two years, provided he would not commit any further offence involving threat or violence. The military court stated in its decision that:

"It is unnecessary to heap words as to the gravity of the act in which the defendant was convicted. The Military Court of Appeals expressed its opinion in the recent years about acts of this kind, the severe and serious fault attached to them and the severe harm to the IDF's reputation and the purity of its lines. Indeed, the defendant deserves an aggravated penalty for his acts which hold an element

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of harm to a helpless person, even if the person was regarded according to the defendant's point of view, as a terrorist and one who carried out shooting attacks against our forces. **When the terrorist was arrested, handcuffed and could not react anymore, there is a grave prohibition to harming him in any manner and the fact that no injury or damage was caused to him can not reduce significantly the moral fault of the act".**
(highlight not in the origin).

- 29.2. Cen/472/05 – A soldier was convicted of an offence of abuse and a related offence of improper behavior for beating a handcuffed Palestinian detainee. The indictment was submitted against the soldier who already served a sentence of 28 days of imprisonment and had been suspended from serving as a combat soldier, following his conviction in a disciplinary court. As the military court was not satisfied with this punishment, it convicted the defendant as previously mentioned and sentenced him for an additional sentence of 45 days of imprisonment and 5 months of suspended imprisonment for two years if committing an offence concerning abuse, assault or act of violence against other person, thus in total, the soldier was sentenced to two and a half months of imprisonment. As well as demoted to private. One of the judges pointed out in his judgment that "the behavior of the defendant imposes disgrace on him, tarnishes his unit, damages the combat ethics of the IDF and reflects upon the image of the IDF on the whole and the image of its soldiers".
- 29.3. Cen/471/05 – A soldier was convicted of an offence of abuse and an offence of dishonorable behavior due to the beating of Palestinian detainees who were under his custody. The soldier was sentenced to a punishment of four months of imprisonment, three of which in prison and the rest by suspended imprisonment if committing an offence of abuse or violence against another person in a period of three years. In addition, the soldier was demoted back to private.
30. In accordance with the Supreme Court's recommendation in *H CJ 3985/03 Bedawi et.al. v. the Commander of IDF forces in Judea and Samaria et. al.*, an advising

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committee to the Chief of Staff was appointed, headed by a military-juristic judge, that carries out occasional inspections of the incarceration conditions in detention facilities under IDF responsibility. In addition, inspections of this matter are carried out by the Control and Supervision Unit which is subjected to the Deputy to the Chief of Staff. Following recommendation submitted by the advising committee, several changes were recently applied in order to improve the incarceration conditions, including the transfer of authority over detention facilities to the Regional Military Police Commander, whereas authority over incarceration facilities was transferred to the Israeli Prisons Service, budgets of incarceration facilities were increased and a specialized task force responsible for escorting the detainees was established. Fully recognizing the importance of the subject, the IDF has continuously been striving to improve incarceration conditions in the few detention facilities that remain under its responsibility.

Sincerely yours,

Boaz Oren, Adv.
Deputy Director

C.c: Mr. Meni Mazuz, the Attorney General

Mr. Eran Shendar, the State Attorney

The legal advisor of Israel Security Agency

Brigadier General Avichai Mandelblit, Judge-Advocate General

Mr. Shai Nitzan, the Deputy to the State Attorney (Special Affairs)

Mr. Yoel Hadar, the legal advisor, the Ministry of Public Security

The Supervisor of the Inspector for the Complaints within ISA, the State Attorney's Office