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

ACRI, The Association for Civil Rights in Israel

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

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[1] Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Second periodic reports of States parties due in 1996, Addendum: Israel. CAT/C/33/Add.3, March 1998. Hereafter: the report.

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Executive Summary

Following are our comments on Israel's second periodic report to CAT, regarding its compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[2]

The first part will concentrate on the treatment of Palestinians[3] allegedly suspected of "HTA" (hostile terrorist activity), who are detained in special wings run by the General Security Service (hereafter: GSS) for interrogation.

Israel has totally ignored CAT's conclusions and recommendations, issued on May 9, 1997 following the latter's discussion of the Special report of Israel,[4] as well as its earlier recommendations.

CAT was clear and unequivocal: the methods of interrogation used by Israel constitute torture; there can be no justification for torture; the use of these methods must "cease immediately;" the Convention must be incorporated into Israeli law; Israel should consider making declarations under articles 21 and 22 and withdrawing its reservation to article 20; the Landau guidelines should be published; and Israel should include information on "measures taken in response to these conclusions" in its second periodic report.[5]

It should be noted that CAT's concerns, as expressed in its conclusions, were quoted, at times in full, in many appeals to the Supreme Court against the torture of Palestinians by GSS agents.[6]

Unfortunately, neither Israel's government, nor its legislature, nor yet its Supreme Court, have so far done anything to implement CAT's recommendations, or to halt other policies which are in breach of Israel's obligations under the Convention:

- B'Tselem estimates, relying on official sources, NGO's and lawyers, that between 1,000 and 1,500 Palestinians are interrogated by the GSS annually. Interrogation methods which constitute torture according to CAT are used against some 85% of these;
- The State continues to rely on the suspected crimes of Palestinian detainees to justify its use of measures amounting to torture them. This is done almost invariably in cases brought before the Supreme Court, as well as in Israel's reports to CAT, including the one under discussion here;[7]
- There has been no new legislation, or steps toward legislation, relevant to the

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

[3] We use the term "Palestinian" to denote a resident of the Occupied Territories.

[4] **CAT/C/SR.297/Add.**1, 4 September 1997.

[5] *Ibid,* Articles B(5-6) and C(a-e).

[6] *E.g.* ***Ahmad Siyam Suleiman Abu Ahmad and Hamoked: Center for the Defence of the Individual v. the GSS, HCJ 3359/97,*** Appeal for *Order Nisi* and Interim Injunction, 30.5.97, at para. 4; ***Bassam 'Ali Mahmud Diriyyah and Hamoked: Center for the Defence of the Individual v. the GSS, HCJ 3715/97***, Appeal for *Order Nisi* and Interim Injunction, 17.6.97, at para. 5; ***Gheith 'Abd al-Hafez Gheith and LAW – Palestinian Society for the Protection of Human Rights and the Environment v. the Minister of Defence et al, HCJ 4869/97***, Appeal for *Order Nisi* and Interim Injunction, 10.8.97, at para. 11.

[7] At paras. 38, 41, 43-47; *cf.* Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Special report of Israel, CAT/C/33/Add.2/Rev.1, 18 February 1997, paras. 18-22.

problem of torture. More significantly, both the government and the courts continue to view the "defence of necessity" both as justifying resort to measures which CAT has described as torture, and as overriding any stipulations to the contrary in Israeli law;

- No declarations have been made under articles 21 and 22 and Israel's reservation to article 20 has not been withdrawn;
- The Landau guidelines remain confidential, although it should be noted that, through the work of lawyers and NGO's, much is now known regarding the methods used by the GSS.[8]

The second part will deal with issues concerning detainees and prisoners from Israel, the Occupied Territories and Southern Lebanon. In this regard, the following should be stressed:

- Israel holds over a hundred Palestinians and at least 21 Lebanese citizens under administrative detention orders, which may be extended indefinitely. Some have been held for up to five years (in the case of Palestinians) and eleven years (in the case of Lebanese) without knowing when they will be released, **which constitutes cruel and inhuman treatment or punishment, in violation of Article 16 of the Convention**;
- Foreign nationals, including asylum seekers, are detained for years pending deportation. Such prolonged detention of innocent people constitutes cruel and inhuman treatment in violation of Article 16 of the Convention;
- Israel's report ignores the gross and systematic violations of the Convention in al-Khiyam prison in Southern Lebanon, despite the fact that it has effective control over that prison;
- In contrast to the impression that the report creates, police brutality is still widespread, and only a small portion of the Kremnitzer committee's recommendations have been implemented;
- Prison conditions are still harsh, often amounting to cruel, inhuman and degrading treatment. We generally welcome the new law concerning detentions, and the regulations set out to implement it. However, some of those regulations, and the way they have been implemented, in effect perpetuate conditions which are in violation of the Convention;

These points are further elaborated in our detailed comments, below.

[8] See further below.

Part One: Issues concerning detainees under GSS interrogation

Article 1 - torture

Israel has continued to use methods of interrogation amounting to torture under the Convention. These methods, used routinely and systematically, have all the elements of the definition of torture in Article 1(1):

a. They cause severe physical and mental suffering: interrogation methods include prolonged isolation from the outside world; inhuman detention conditions; sleep deprivation for days and weeks on end; sensory deprivation, by covering the detainee's head with a filthy sack and playing loud music, for days and weeks on end; tight shackling of hands and legs for long periods, forcing the detainee to sit on a tiny chair, stand, squat or kneel in painful positions for long periods; exposure to extreme heat or cold for long periods; threats, including sexual and death threats; slaps, kicks and blows; and violent shaking. A detailed description of these methods is included in B'Tselem, ***Routine Torture: Interrogation Methods of the General Security Service***, attached to these comments.

   Two further facts should be borne in mind:

   1. These methods are used **in combination**, thus the suffering increases through the combined accumulation of time and methods;
   2. With the exception of exposure to extreme temperatures, and possibly beating,[9] the State has openly acknowledged the use of all these methods,[10] although it would, obviously, reject descriptions such as "painful."

b. They are inflicted intentionally: there can be little doubt that the use of methods openly acknowledged to be forms of "pressure," according to detailed instructions and regulations, is intentional;

c. They are used for the purpose of obtaining information: the State has declared in numerous cases, as well as in its reports to CAT, that the methods described above are used in "situations in which the information sought from the detainee… can prevent imminent murder or where the detainee possesses vital information on a terrorist organisation which could not be uncovered by an other source."[11]

d. They are used and sanctioned by officials: Israel openly acknowledges that a Ministerial Committee determines the interrogation methods to be used, and agents of an official intelligence force, the GSS, apply these methods.[12]

CAT, aware of all these facts, has indeed concluded that the interrogation methods of the GSS are "breaches of article 16 and also constitute torture as defined in article 1 of the

[9] The Landau report (see *infra,* n. 15) explicitly justifies "slapping," at para. 3.15.
[10] See *e.g.* Mr. Nitzan's remarks to CAT, **CAT/C/SR.296**, 15 May 1997, paras. 8, 20 (sleep deprivation); 17(shackling); 18 (hooding); 19 (loud music); 27-31 ("shaking"). See also below, *passim*, and ***Routine Torture***.
[11] Special report of Israel, para. 5.
[12] *E.g.* Report, paras. 35-6. On this point see further below.

Convention."[13]

Article 2(2) - Israel's legal justification of the use of measures amounting to torture in exceptional circumstances

Israel's report significantly fails to address its obligations under Article 2(2) of the Convention. It should be noted that Israel's previous reports to CAT[14] similarly failed to address this provision. This failure underlines the fundamental flaw in the Israeli legal system, which has grave repercussions as to that State's willingness to abide by its international obligations.

Israeli law as interpreted by the Attorney-General the courts, allow GSS interrogators questioning Palestinians to violate provisions of the Penal code which prohibit assault, violence, threats etc. and still be immune from prosecution, let alone punishment, under the general defence of "necessity."[15] In clearer terms, the present legal situation allows GSS interrogators to torture Palestinians with impunity. This point has already been taken up by CAT, which, commenting on Israel's initial report in 1994, stated the following:

> It is a matter of deep concern that Israeli laws pertaining to the defences of 'superior orders' and 'necessity' are in clear breach of that country's obligations under article 2 of the Convention Against Torture.[16]

However, not only has Israel done nothing to alleviate CAT's concern since these comments were made, but its representatives have repeatedly used this legal "loophole" in court to justify the use of measures amounting to torture. Israel's Supreme Court, for its part, has made this legal construction a legitimate part of Israeli law, by explicitly allowing the GSS to use "force" in interrogating Palestinians citing the "defence of necessity,"[17] and by rejecting appeals by Palestinians to stop the use of mental and physical forms of torture in other cases.[18] However, the Court has made only interim decisions in these cases, and it may still rule in principle that such interrogation methods are illegal.

The gravity of the danger this legal situation poses cannot be stressed enough. As long as it

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[13] **CAT/C/SR.297/Add.**1, para. B(5).

[14] Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Initial reports of States parties due in 1992, Addendum: Israel. CAT/C/16/Add.4, 4 February 1994 and Special report of Israel.

[15] This defence is provided by Article 34(11) of the Penal Code. The idea that the 'defence of necessity' could stand for GSS interrogators using otherwise illegal methods of interrogation was suggested by a state commission of inquiry in 1987 ("the Landau Commission"). The commission's recommendations included allowing interrogators to use both psychological "pressure" and "a moderate measure of physical pressure." The Israeli government adopted these recommendation in full. See **Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activities, Report** (Part 1), Jerusalem, October 1987.

[16] CAT/C/SR.184 (28 April 1994), Consideration of the initial report of Israel, para. 43(3)(3).

[17] Notably in ***'Abd al-Halim Bilbeisi v. the General Security Service, HCJ 7964/95, HCJ-VR 8181/95***, decision of 11.1.96, at para. 4(c); ***Muhammad 'Abd al-'Aziz Hamdan v. the General Security Service, HCJ 8049/96***, decision of 14.11.96, at para. 6 (where the Court cites *Bilbeisi* as authority for its decision).

[18] See *e.g.* the Court's decisions in ***Khader Mubarak and Hamoked Center for the Defence of the Individual v. the General Security Service, HCJ 3124/96***; ***Ayman Muhammad Hassan Kafishah v. the General Security Service, HCJ 2246/97, HCJ 93179/97, HCJ 2449/97,*** and ***HCJ 2673/97***; ***'Abd al-Rahman Ghaneimat and the Public Committee against Torture in Israel v. Minister of Defence et al*, HCJ 7563/97**, decision of 8.1.98.

prevails, any legislation – both present and future – prohibiting torture and ill-treatment is utterly useless in defending Palestinian detainees[19] from torture, as its provisions could at any moment be rendered null and void through the use of the "defence of necessity."

B'Tselem and ACRI strongly recommend that CAT refrain from expressing support for any anti-torture legislation in Israel, as long as the latter fails to incorporate explicitly the provisions of Article 2(2) of the Convention into its domestic law, making torture and other ill-treatment absolutely prohibited.

In view of the potential damage that the acceptance of such legal reasoning might cause elsewhere, we further recommend that CAT view such incorporation as an integral part of **all** States Parties' obligations under the Convention.[20]

Article 2 – General (paras. 4-26 of the report)

The section in Israel's report pertaining to this Article should be read in light of the legal situation described above.

Basic Law: Human Dignity and Liberty (paras. 4-5 of the report)

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

> … by a law fitting the values of the State of Israel, designed for a proper purpose, and to an extent no greater than required, or by explicit authorisation within such a law.[21]

Or through "emergency regulations,"

> …when a state of emergency exists, by virtue of a declaration under section 0 of the Law of Administration Ordinance, 5700-1948… provided the denial or restriction [of rights under the Basic Law] shall be for a proper purpose and for a period and extent no greater than required.[22]

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[19] The GSS has occasionally used a few of the methods against Jewish detainees. For example, Avigdor Eskin, arrested for allegedly plotting to desecrate the Temple Mount, contended that his interrogators bound him to a chair and covered his head with a sack for many hours, and at the beginning of the interrogation limited the time he could sleep (see ***Ha'aretz,*** 29 December 1997). Relatives of Margalit Har Shefi, arrested in connection with the Rabin assassination, claimed that GSS interrogators psychologically pressured her to a degree bordering on "psychological abuse," and that the first interrogation session lasted seventy-six hours, during which she was not allowed to sleep (see ***Yediot Aharonot***, 3 December 1995). Nevertheless, GSS interrogation methods are used almost invariably against Palestinians, and the full range of these methods is applied only against Palestinians .

[20] Several States, *e.g.* Rumania and Australia, have indeed made such provisions in their law. In contrast, the construction of the British law against torture needs improvement, as it both lacks such provision and stipulates, *inter alia*, that "[I]t shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct." (Criminal Justice Act 1988 s 134/4).

[21] Section 8 (Violation of Rights).

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

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

The Basic Law fails to make provisions for the absolute prohibition on the violation of non-derogable human rights as agreed by the international community. Arguably, limiting the violations to those " by a law fitting the values of the State of Israel," or "for a period and extent no greater than required" affords the courts a way to enforce such prohibition. However, while Section 2 of the Basic Law (see para. 5 of the report) has often been invoked in appeals against the torture of Palestinian detainees,[23] Israel's Supreme Court has yet to render illegal all or any of the interrogation methods which CAT has defined as torture on the basis of the Basic Law (or, for that matter, on any other basis).

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

General Security Service Bill

This bill is of some value, to the extent that it defines in legal terms the activities and authorities of the GSS. However, it will have absolutely no effect on the current practical and legal authority the GSS has to use interrogation methods, which CAT has defined as torture.

Under the bill, the authority of the GSS to interrogate detainees will rely on powers conferred to them under certain acts, which authorise various activities of the police,[24] and the latter are prohibited from using violence or intimidation.[25] However, such prohibitions already apply to GSS agents, as they pertain to all "public servants."[26] The State has never denied this, but has side-stepped such prohibition through the use of the "defence of necessity," as described above. There is nothing in the proposed law to preclude this practice in the future - it is, further, safe to assume that **the bill** (drafted with the active participation of GSS representatives) **was designed to facilitate the continued use of current interrogation methods.**[27]

The supervisory mechanisms envisaged by the bill (sec. 11-14; 17-18) are, by and large, in place already, but work to perpetuate the present practices and their legal justification rather than prevent or stop torture. These mechanisms will be discussed below, under Article 11 .

The Kremnitzer Committee (paras. 21-25 of Israel's report)

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[23] E.g. ***Hatem Yusuf Abu Zaydah v. the GSS, HCJ 6536/95***, Appeal for *Order Nisi*, 19/10/95; *Mubarak* (*supra*, n. 18), Appeal for *Order Nisi* and Interim Injunction, 14.11.96, at para.10;

[24] According to section 8 of the bill, GSS agents will have police powers, *inter alia*, under Criminal Procedure Ordinance (testimony) 1944, which empowers authorised police officers to "question verbally" persons who "may have knowledge" of a criminal activity (section 2 of the Ordinance). The Ordinance is attached to the bill and will form part of the new law.

[25] *E.g.* under Section 277 of the Penal Code 1977.

[26] *Ibid.*

[27] An earlier draft of this bill had allowed GSS interrogators to use, in extreme cases, "pressure" which must not amount to torture or other ill-treatment. This provision was withdrawn, under local and international criticism, but officials made no secret of their intention to continue the use of present interrogation practices, under one form of legal construction or another.

The possibility of this Committee's recommendations (which were limited to the police) being applied also to interrogations by the GSS seem very unlikely. Obviously, measures such as the videotaping of interrogations would constitute an extremely significant improvement compared to the total secrecy in which GSS interrogations are currently shrouded. Nevertheless, such measures, and other measures recommended by the Kremnitzer Committee have as yet, five years after their presentation, to be applied even by the police. Their application in GSS facilities now seems an extremely remote possibility.

Article 4 – Criminal Legislation (para. 27)

As stated earlier, there has been no new legislation, or steps toward legislation, relevant to the problem of torture. Steps for amending the Penal Code so as to make torture a distinct, punishable offence have been halted.

As long as the present legal situation, whereby interrogation methods used by the GSS which CAT has defined as torture are not considered offences, persists, the amendment in Israel's Penal Code described in this section of the report will be of no significance in either deterring or punishing perpetrators of, inciters or accessories to torture and other ill-treatment.

Article 11 – Review (paras. 32-52)

As mentioned earlier, the supervisory mechanisms envisaged by the GSS bill (paras. 11-14; 17-18) are, by and large, in place already, as described in this section of the report.

Thus a Ministerial Committee for Service Affairs already exists, as does the Knesset Committee for Service Affairs (although the latter is currently a sub-committee - see para. 12 of the report), and the GSS is already subject to scrutiny by the State Comptroller, the Division for the Investigation of Police Misconduct (DIPM)[28] and the Supreme Court.

While all this seems quite impressive, it must be kept in mind that **none of these mechanisms has ever questioned either the legality or the legitimacy of the GSS' methods of interrogation, including those that CAT has defined as torture.**

<u>The State Comptroller's Office (para. 33):</u>

As is evident from the report itself, **the State Comptroller looks only for "instances of deviations from the Landau commission's guidelines,"** (para. 33), **rather than examining the legality of the guidelines themselves.**

<u>Ministerial oversight (paras. 34-36):</u>

It is similarly evident from the report that it is the Ministerial Committee which determined exactly what methods may be used. The report mentioned modifications made in the GSS

[28] This term is used in para. 18, and will be used throughout these comments. However, the same body is termed "the Department for Investigation of Police Personnel" (DIPP) from para 75 of the report onwards.

guidelines in 1993 (para. 35). However, no details are given of the "revisions" made in September of 1994, in response to terrorist suicide bomb attacks. The press reported at the time that additional "special permissions," also described as "enhanced physical pressure," were then granted to interrogators for a period of three months. These have been renewed periodically since. From testimonies of detainees it appears the methods of "pressure," both physical and mental, have indeed intensified since that decision was taken.

The DIPM (para. 86):

, Since being charged in 1994 with handling complaints against GSS misconduct, the DIPM has not, to our knowledge, recommended that criminal charges be pressed against one single GSS agent.

The case of 'Abd a-Samad Harizat, who died as a result of violent shaking by a GSS agent in April, 1995,[29] exemplifies the above:

- The government did not dispute that Hareizat died as a result of "shaking," but its Ministerial Committee has authorised the continued use of this method to this day. In response to an appeal to the Supreme Court to prohibit the further use of this method,[30] the State replied that this method does not constitute torture, as "the risk expected to the life of a GSS interrogee as a result of shaking is a **rare** risk."[31].
- The DIPM concluded that Harizat died as a result of shaking,[32] but decided only to order disciplinary action against the perpetrator.[33] The DIPM did not act to stop "shaking," not even as an interim measure.
- The Court, for its part, refused to issue an interim injunction prohibiting the use of "shaking" pending its ruling in the PCATI case.[34] The Court has yet to hold a hearing in this case and in the ACRI case, almost three years after they were presented.

In the meantime dozens, if not hundreds of Palestinians have been violently shaken by GSS interrogators.[35]

In a more recent case, that of 'Omar 'Abd al-Rahman Ghaneimat, the DIPM has decided not to press criminal charges, nor to initiate disciplinary action against Ghaneimat's interrogators, despite the fact that tight shackling, enforced squatting and other forms of torture have caused

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[29] For a detailed analysis of this case see Amnesty International, **Death by Shaking: the Case of 'Abd al-Samad Harizat**, London, October 1995, AI Index: MDE 15/23/95.

[30] ***Association for Civil Rights in Israel v. the Prime Minister et al, HCJ 4045/95*** **(ACRI case).** In its response, the State Attorney's office claimed that the use of this method is legal under the "defence of necessity," see ***ACRI Case***, Response by the Respondents, 13 December 1995, paras 11, 12, 21, 26, 33, 44-46.

[31] *Ibid*, para. 27. Emphasis in the original. See also para. 21. The argument is repeated in paras. 28, 34, 35.

[32] **Investigation by the Department of Investigations of Police Misconduct into the Circumstances of the Death of Prisoner Abd al-Samad Harizat**, 7 June 1995, paras. 7-9 (this report was appended as MSh/3 to the State's Response in the case of ***The Public Committee Against Torture in Israel et al. v. the State Attorney et al., HCJ 5380/95*** (**PCATI case.** The Response is dated 28.9.95).

[33] *Ibid,* para. 12. This is explained by claiming that the interrogator could not have anticipated the fatal result, and that "the causal link between said interrogator's action and the death" could not be established "to the degree required by criminal law" (para. 11).

[34] ***PCATI Case***, decision of 30.8.95.

[35] During 1996-97, 24 Palestinians whose cases were handled by **Hamoked: Center for the Defence of the Individual**, one of several NGO's defending torture victims, complained of being "shaken." The State has not denied this contention in any of the cases.

Ghaneimat irreparable physical damage. This case is described in detail in B'Tselem's attached report.

Judicial review (paras. 37-52)

The case of Raji Muhammad Saba' (paras. 38-42)

The following facts concerning this case should be borne in mind:

- Mr. Saba' complained,[36] **and the State admitted**, that during his interrogation, he was subjected to prolonged sleep deprivation,[37] shackling (on a small and slanted chair) for long periods,[38] loud music,[39] and enforced squatting.[40] The State relied on the "defence of necessity" in justifying its resort to these methods;[41]
- Other complaints by Mr., Saba', namely that he was hooded for long periods and exposed to extreme heat during the day and extreme cold during the night, were not denied by the State;
- The GSS denied Mr., Saba's attorneys access to him between the day of his arrest, 27.8.97, and 10.9.97, *i.e.* for a period of 14 days. The Supreme Court upheld this action.[42] Later, the GSS again denied access to the attorneys for three further days.

In view of all the above, the claim in the report that the Court acted "to ensure that Mr. Saba's basic rights are being respected" (para. 42) is highly questionable.

Similarly curious is the contention, in the report, that "at no point has Mr. Saba denied the accusations against himself, namely that he is "a member of the military wing of Hamas" etc. The fact is that **the State decided not to press any charges against Mr. Saba',** therefore these "accusations" are, legally, pure fiction and their inclusion in Israel's report is totally unwarranted.

Beyond this, Israel continues to justify its use of methods which CAT has defined as torture by describing "accusations" of various kinds.[43] Terrorist acts are, needless to say, abhorrent, but they bear no relevance to the issue of torture. If these methods, as Israel contends, are neither torture nor other ill-treatment, there is no need to point out such "accusations." If, on the other hand, these methods **are** in breach of the Convention, then Israel is explicitly ignoring what CAT has pointed out:

> …as a State party to the Convention against Torture Israel is precluded from raising before this Committee exceptional circumstances as justification for acts prohibited

[36] ***Raji Mahmud Saba' and Hamoked: Center for the Defence of the Individual v. the GSS, HCJ 5304/97***, Appeal for *Order Nisi* and Interim Injunction, 11.9.97, paras. 3-5, and attached affidavit.
[37] ***HCJ 5304/97***, Announcements by Counsel for the State Attorney in Response to an Appeal for an Interim Injunction, 15.9.97, para. 7.
[38] *Ibid,* para. 8.
[39] *Ibid,* para. 9.
[40] *Ibid,* para. 11. The State describes this as "being forced to sit in uncomfortable positions."
[41] *Ibid,* paras. 6, 11.
[42] ***Raji Mahmud Saba' et al v. the GSS, HCJ 5231/97***, ruling of 4.9.97.
[43] See also paras. 43-47 of the report.

by article 1 of the Convention.[44]

The case of 'Abd al-Rahman Ghaneimat (paras. 43-51);

The following facts should be borne in mind:

- The State has admitted that during Ghaneimat's interrogation, he was subjected to prolonged sleep deprivation,[45] shackling (on a small and slanted chair) for long periods,[46] hooding,[47] and loud music.[48] It should be stressed that these methods were used, intermittently, for **over two months.**

  By way of example, according to an **official GSS document** presented to the Court,[49] Ghaneimat was allowed 4 hours of "rest" between 21.12.97, 14:25 hrs. and 25.12.97, 16:40 hrs.,[50] *i.e.* an average of one hour's sleep for every 24 hours during four days. During that whole period, Ghaneimat was interrogated for a total of 4 hours and 50 minutes, the rest of the time he spent hooded, shackled to a small chair and exposed to loud music. Clearly, it was the application of these methods, rather than the interrogation, that was "intensive."
- The Supreme Court rejected an appeal for an interim injunction prohibiting the use of these methods.[51]

In justifying the methods used against Ghaneimat, the report uses terms such as "prevention of further **imminent** terrorist attacks" and "necessary in order to obtain **as quickly as possible** information…" (para. 48, emphases added). As mentioned, Ghaneimat was tortured for two months, and it therefore appears that in Israel's view, "imminent" denotes an almost unlimited span of time.

The case of Ziyad Mustafa a-Zaghl (para. 52):[52]

The following facts should be borne in mind:

- The interim injunction was issued only after some 12 days of torture. The State admitted that that during Mr. a-Zaghl's interrogation, he was subjected to prolonged sleep deprivation,[53] shackling (on a small and slanted chair) for long periods,[54] loud music,[55] enforced squatting,[56] and "shaking."[57]

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[44] **CAT/C/SR.297/Add.**1, para. B(6). As the prohibition of other ill-treatment is also a non-derogable human right (*e.g.* in ICCPR, Article 7), such preclusion is not limited to torture.

[45] ***'Abd al-Rahman Ghaneimat and the Public Committee against Torture in Israel v. Minister of Defence et al*; HCJ 7563/97**, Announcement by the State Attorney's Office, 31.12.97, para. 8.

[46] *Ibid,* para. 6. The State denies that the shackles are too small and cause swelling of the hands.

[47] *Ibid,* para. 9.

[48] *Ibid,* para. 7.

[49] "Interrogation Log (detailed)," also handed to Ghaneimat's attorneys, Allegra Pacheco and Leah Tzemel, on January 7, 1998.

[50] *Ibid,* pp. 6-7.

[51] **HCJ 7563/97**, decision of 8.1.98, at para. 2.

[52] Wrongly cited as "Algazal" in the report.

[53] ***Ziyad Mustafa al-Zaghl v. The General Security Service, HCJ 2210/96***, Response by State Attorney's Representative, 26.3.96, para. 5.

[54] *Ibid,* para.7.

[55] *Ibid,* para. 8.

[56] *Ibid,* para. 9.

> According to an **official GSS document** presented to the Court,[58] between 14.3.96, 01:10 hrs, and 25.3.96 10:00 hrs., Mr. a-Zaghl was allowed a total of 22 hours and 20 minutes "rest," *i.e.* some two hours of sleep for every 24 hours during a period of more than eleven days.

The Supreme Court's injunction therefore did not "remain in force throughout the investigation," as the report claims (on para. 52). Further, the State decided not to pursue its appeal against the injunction, choosing instead to place Mr. a-Zaghl under administrative detention, just as it later did with Mr. Saba'. The Supreme Court has as yet to reject an appeal by the State against placing limitations on methods of interrogation used against a Palestinian.

In sum, the cases brought in the report to prove that review procedures exist, in effect prove the total failure of these procedures either to prevent or to halt the torture of Palestinians.

Treatment of prisoners subjected to detention or imprisonment

The defence of "the fundamental right of detainees and prisoners to conditions ensuring basic maintenance of their human dignity" (para. 53) in Israel does not extend to Palestinian detainees in the GSS interrogation wings. Judge Ruth 'Or described conditions in the GSS interrogations wing thus:

> … the small, overcrowded cells, lacking the minimal living conditions - which are at the disposal of the GSS.[59]

It should be stressed that Palestinians under GSS interrogation spend most of their time not in cells, but rather in corridors, shackled to small chairs, hooded etc., or in interrogation rooms.

Practically all of the rights described in this section of the report are either totally denied or else severely curtailed for such detainees. This is done both through special provisions in the law and, where the law does provide for certain rights, they are denied in practice.

Rights Mentioned in Israel's Report

Segregation and solitary confinement (paras. 55-58):

Palestinians under GSS interrogation are almost invariably segregated and confined. Not only are they held separately, but the State openly admits that whenever there is a "danger" of communication between detainees, it hoods detainees and plays loud music, ostensibly "to prevent the interrogees from talking to each other."[60]

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[57] ***HCJ 2210/96***, Announcement by the Respondent to an Appeal for and *Order Nisi* and Interim Injunction, 24.3.96, para. 9.
[58] *Supra*, n. 53, Annex Msh/1.
[59] ***Al-Natshe v. Israel Prisons Service, Prisoner's Petition 13/96***, decision of 12 March 1996.
[60] This line of justification is used in practically all of the cases where methods of sensory deprivation where discussed. See *e.g.* the relevant passages in statements by State representatives in the cases of ***Saba'***, ***Ghaneimat*** and ***a-Zaghl***, cited above.

Contacts with the outside world (paras. 59-60):

Notification is the only right to such contact that Palestinian detainees under GSS interrogation have. However, according to an Israeli NGO which deals extensively with detainees rights, **Hamoked: Center for the Defence of the Individual**, even this right is often denied in practice, as a result of which families of a detainee often do not know of his or her whereabouts until an NGO has contacted the authorities.

Visitation rights (paras. 61-62):

As the report itself concedes (para. 61), Palestinian detainees under GSS interrogation have no visitation rights.[61]

Correspondence (paras. 63-64):

Palestinian detainees under GSS interrogation have no right of correspondence.[62]

Telephone (para. 65):

Palestinian detainees under GSS interrogation have no right to use a telephone.[63]

Furloughs (paras. 66-69):

Palestinian detainees under GSS interrogation have no right to furloughs.

Conjugal visits:

Palestinian detainees under GSS interrogation have no right to conjugal visits.[64]

Rights Not Mentioned in the Report

The following rights, granted, as a rule, to detainees, are denied or seriously curtailed for Palestinian detainees under GSS interrogation:

Judicial review of detention:

Palestinian detainees may be held **without any external contact** for up to eleven days. Only then are the authorities obliged to bring them before a military judge for a hearing to extend the detention.[65]

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[61] See also **Criminal Procedure Regulations (Enforcement Powers – Detentions) (Conditions of Detention)** 1997, reg. 22(b)(3), denying this right to "detainees suspected of security offences."
[62] *Ibid,* reg. 13(b).
[63] *Ibid,* reg. 22(b)(3).
[64] *Ibid*, reg. 12(b). While this article grants the "person in charge of interrogation" some discretion here, this discretion is hardly ever used.
[65] This is the case for an adult from the Occupied Territories suspected of "hostile terrorist activity."

Access to a lawyer:

Israeli military law in the Occupied Territories now allows the authorities to deny Palestinian detainees access to a lawyer for up to 90 days.[66]

By comparison, the following remarks by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in its Public Statement on Turkey (1996), are worth noting:

> The CPT has been informed that the Bill [submitted to Parliament by the Turkish Government regarding custody] provides for a right of access to a lawyer after four days. In other words, access to a lawyer shall continue to be denied for four days. This is not acceptable. The possibility for persons taken into police custody to have access to a as from the outset of their deprivation of liberty is a fundamental safeguard against ill-treatment.[67]

Daily walk:

Palestinian detainees under GSS interrogation have no right to a daily walk.[68].

Possession of books, newspapers and magazines, pens and paper, radio or television set, a mirror, watch and wedding ring:

Palestinian detainees under GSS interrogation are prohibited from possessing any of these items, generally allowed to other detainees.[69]

The right to privacy:

Palestinian detainees under GSS interrogation are not even allowed privacy in using toilet facilities. The Regulations, which generally provide for a separating partition between the toilet and the rest of the cell which would ensure inmates' privacy,[70] fail to make similar provisions for "security" detainees. In 1997, a petition by a Palestinian to have the 70 cm. partition in his cell raised to 150 cm., granted by a District Court, was subsequently denied by the Supreme Court[71] which, on the State's appeal, overturned the lower Court's ruling.

Sanitary conditions and personal hygiene:

Even the regulations pertaining to conditions of detention show a clear pattern of

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[66] Under sections 78 b-d of the **Order regarding Security Regulations**, the head of interrogations may, upon a written decision giving reasons, preclude detainees from meeting their attorney for up to fifteen days. A police officer of a rank of Chief Superintendent and above may extend the period for an additional fifteen days. A military judge may extend the period of preclusion for thirty days more, and the chief judge or the on-duty chief judge may extend it for an additional thirty days.

[67] **CPT/Inf (96) 34 [EN],** 6 December 1996, para. 9. It should be noted that the report does not dispute Turkey's claim that a state of emergency exists in parts of its territory.

[68] **Criminal Procedure Regulations…Conditions of Detention**, reg. 22(b)(3).

[69] *Ibid,* reg. 22(b)(1).

[70] *Ibid*, reg. 3(b).

[71] ***The State of Israel v. Ra'ed Kafishah, PPA*** [Prisoner's Petition Appeal] ***5266/97***.

discrimination between criminal and "security" detainees. Thus the cells of "security" detainees must be whitewashed "at least once a year,"[72] compared to "at least twice a year" for criminal suspects.[73] The latter must be provided with "cleaning materials and tools in quantities sufficient to keep the cell clean,"[74] while regulations regarding "security" detainees mention no such provisions, nor any alternative means of "keeping the cell clean." Criminal suspects are allotted 4 pairs of socks,[75] compared to 3 for "security" detainees.[76]

In practice, the following treatment of Palestinians under GSS interrogation is routine:

Change of clothes: The authorities do not allow the detainees to change clothes, not even their underwear, and not even where the interrogation lasts for months.
Showers: The authorities allow the detainees to shower no more than once a week.
***Meals*:** Detainees receive small quantities of food and ten minutes to eat it, sometimes less. They are fed in a filthy toilet-facilities cell, without the minimal sanitary conditions, and without eating utensils.

In sum, while recent legislation, mentioned in the report, has improved, at least in theory, the lot of detainees and prisoners in Israel, such improvements were deliberately denied from Palestinians in GSS interrogation wings, whose conditions of detention remain unchanged, and inhuman.

Articles 12 and 13 – procedures for complaints, and disciplinary and criminal procedures (paras. 71-87)

As far as Palestinians under GSS interrogations are concerned, this section does little more than reiterate what has been claimed previously. However, the following points should be borne in mind:

- No criminal proceedings have been initiated against GSS interrogators since 1990,[77] and none have been initiated by the DIPM (see para. 83);
- As mentioned earlier, none of the bodies described in this section, *i.e.* the GSS itself, the General Security Comptroller, the Supreme Court or the DIPP (or DIPM), has questioned the legality of current interrogation practices;
- Further, all these bodies have considered GSS agents' treatment of Palestinians lawful as long as it did not deviate from the guidelines, under which methods that CAT has defined as torture are routinely used. This has not changed following the latest conclusions by CAT.

Concluding remarks

In concluding this part, we would like to emphasize that we are aware that Israeli

[72] **Criminal Procedure Regulations…Conditions of Detention**, reg. 22(a)(1).
[73] *Ibid*, reg. 4(a).
[74] *Ibid*, reg. 4(b).
[75] *Ibid*, Appendix 1, no. 17.
[76] *Ibid*, Appendix 2, no. 8.
[77] In that case, two GSS agents who in 1989 had beaten to death a Palestinian, Khaled Shaykh 'Ali, were each sentenced in 1991 to six months imprisonment. This is probably what is referred to as "legal action" in para. 85.

interrogation methods are much less severe than those used, unfortunately, by scores of other States Parties. However, Israel is unique in that it has gone much further in legitimizing torture, both judicially and publicly. For the international community to accept Israel's official position would be a serious and dangerous setback for the universal prohibition of torture, reversing much of the normative achievements of the past fifty years.

Part Two: Issues concerning detainees and prisoners from Israel, the Occupied Territories and Southern Lebanon

General comment: Detainees at al-Khiyam prison (southern Lebanon)

The State's report makes no reference to detainees held at the al-Khiyam prison in Southern Lebanon. While Israel denies any responsibility for events at al-Khiyam, and while the prison is formally subject to the control and responsibility of the South Lebanon Army (SLA) commanded by General Antoine Lahad, it is common knowledge that Southern Lebanon is *de facto* subject to Israeli control. Israel defines it as its "security zone," Israeli troops have been deployed there since 1978, and the SLA and the IDF co-operate closely. Moreover, there is also evidence that the IDF is directly involved in the management and supplying of the prison, and in the transfer of detainees to and from the prison.[78]

In this context it should be noted that in 1983, a state commission of inquiry into the Sabra and Shatilla massacre determined that Israel had "indirect responsibility", as it had failed to take steps to prevent forces allied with Israel from carrying out the massacre.[79]

Article 2 (1) of the Convention establishes each State party's obligation to take effective measures against torture "in any territory under its jurisdiction." ACRI and B'Tselem's position is that, as such, Israel's obligations under the Convention should be understood to cover all actions taken in Southern Lebanon, whether by Israel itself, or by any person or body acting on Israel's behalf.

According to Amnesty International's July 1997 report on the status of Lebanese detainees,[80] 130 detainees (including one woman) were held at al-Khiyam for extended periods without trial. In some cases, such prisoners were held for over twelve years.

According to press reports, the detainees at al-Khiyam prison are housed in poor conditions and subjected both to torture and to cruel, inhuman and degrading treatment. Since September 1997, detainees at al-Khiyam have been denied their rights to family visits, meetings with attorneys, and visits from ICRC staff, as well all other contact with the outside world. These restrictions seem to have been introduced in order to apply pressure for the return of the body of an IDF soldier, Itamar Ilia, who was killed during an IDF operation in Lebanon.[81] While any delay in returning Ilia's body is unacceptable, and attempting to retrieve the body of a soldier is a worthy cause, denying rights from inmates of the al-Khiyam

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[78] The Israeli press has published several articles about events at al-Khiyam prison, including testimonies both from former detainees and from soldiers who served at the jail. See *e.g.* Aviv Lavi, "In Never-Never Land," *Ha'ir*, January 17, 1997; Yosef Algazi, "Testimony from al-Khiyam Prison," *Ha'aretz* supplement, July 25, 1997.

[79] **Commission of Inquiry into the Events in the Refugee Camps in Beirut** ("the Kahan Commission"). The Commission stated, at para. 71:

> … the development of public international moral norms dictate… that not only perpetrators must be held responsible for abhorrent actions, but so should those who could have, and had the duty to prevent them.

The Commission presented its conclusions on February 7, 1983.

[80] Amnesty International**, *Israel's Forgotten Hostages: Lebanese Detainees in Israel and Khiam Detention Center***, July 1997. AI Index: MDE 15/18/97.

[81] Yosef Algazi, **Ha'aretz**, April 12, 1998, p. A6.

prison is not a legitimate means to that end.

Suha Bishara, a Lebanese citizen who attempted to assassinate General Lahad in November 1988, has been detained at al-Khiyam prison for ten years without trial. During most of this period, Bishara has been kept in total solitary confinement, and has been allowed no visits by her family or by the ICRC. During this entire period, Bishara has been denied the right to meet with an attorney. A petition was recently submitted to the Supreme Court through Attorney Leah Tzemel demanding that Bishara be released.[82]

Article 2: Measures to prevent torture

The Kremnitzer Committee (Paras. 21-25 of the Report)

The report addresses the recommendations of the Kremnitzer Committee, which submitted its conclusions in 1993, and even notes that "at least one prominent independent civil rights group" praised the implementation of the recommendations. Regrettably, this statement represents only a small part of the complete picture. Only this year (1998) has a monitoring committee begun to oversee the implementation of the recommendations. According to the Chairman of the Committee, Professor Kremnitzer, this delay was due to the fact that the Ministry of Internal Security did not allow the committee to be convened. As detailed below, the problem of police violence has not been solved, and the implementation of the Committee's report has been partial.

As part of an effort to change the perception of traits desirable in police personnel – with less emphasis on force and more on wisdom, humanity and self-control – the Kremnitzer Committee recommended, other things, the integration of women into positions of active service on the police force. It appears that the Israel Police is having difficulty parting from the traditional conception of what a police officer should be, as this recommendation has not been implemented. The number of women serving in detective and patrol positions in the police force continues to be very low: women account for 3% of those employed in detective positions and for 8.5% of those in patrol positions. In 1996 ACRI petitioned the Supreme Court, charging discrimination in the recruitment and placement of women in the police force. This petition is pending[83].

The Kremnitzer Committee also found the most serious instances of police brutality to be directed towards Arabs and other minority groups. As a result, the Committee issued further recommendations seeking to ensure that commanders clearly convey to their subordinates the importance of equality before the law and the rights of minorities. ACRI has long monitored police behavior towards Arabs, as well as towards ultra-Orthodox Jews, foreign workers and homosexuals, and we must regrettably conclude that police personnel continue to treat members of these groups in a cruel and degrading manner on numerous occasions. This raises serious questions concerning the extent to which messages emphasizing equality before the law and the rights of minorities are in fact effectively conveyed to rank-and-file police personnel.

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[82] ***HCJ 98/1970, Suha Bishara et al. v Minister of Defence et al.*** The petition was submitted in March 1998. In a previous case, Attorney Tzemel filed a petition in the matter of Yasmin 'Afifi who had been detained at al-Khiyam prison without trial for six years. 'Afifi was released from prison the day before the hearing of her petition was due, together with four other women detainees, in what was described as a "humanitarian gesture." See: Aviv Lavi, "In Never-Never Land," **Ha'ir**, January 17, 1997.

[83] ***HCJ 2979/96, Ben Giyat et al v. Minister for Internal Security et al***.

ACRI's "Red Light" project receives and processes complaints of police brutality. Data collected by the project, confirms that police are often violent towards detainees, demonstrators, those subject to interrogation and others. The following are examples of complaints processed by the "Red Light" project over the past year:

- A young Bedouin Arab complained that policemen poured boiling water over his back during interrogation (the policemen were prosecuted).
- A young woman, who came to the Jaffa police station in order to bring a baby girl to her detained mother, complained that after a dispute emerged between the policemen and herself, they chained her and, while she was chained, slapped and kicked her and spat on her (the complaint is currently under investigation).
- A foreign worker present in Israel illegally jumped off the roof of a building in order to escape the police, due to his fear of expulsion from Israel. Although the man was seriously injured and his life was in danger, the policemen kicked him while making offensive remarks relating to his Colombian origin.

The Kremnitzer Committee further recommended that the Central Police Command review its policy on the use of force during demonstrations. De facto, police behaviour has not changed, and demonstrations are often dispersed by means of unnecessary and excessive force. This is particularly true in the actions of the Border Patrol and the Special Patrol Unit in Arab and Bedouin villages. In some such cases, no force was justified, while in others police intervention was justified, but the force used was excessive.

ACRI has investigated a number of incidents of police brutality in recent years in the Arab villages of Rama, 'Iblin, Jedeida and the area belonging to the Bedouin tribe of Tarabin a-Sana'. While complaints were filed concerning the particularly violent behaviour on the part of the police in many cases, no disciplinary or criminal proceedings were initiated against the personnel involved.

In April 1998, an ACRI staff member witnessed an extremely violent attack by police officers against Arab residents of the unrecognised settlement of Um a-sakhli, near the city of Shfar'am. The police were deployed in the village the day after illegal buildings were demolished in accordance with a court order. During the incident, the ACRI staff member witnessed residents being subjected to unprovoked beatings with truncheons. Teargas and rubber-coated metal bullets were also fired. When the ACRI employee attempted to protect one of the injured residents, she was also beaten with a truncheon. ACRI has complained to the Minister of Internal Security about this incident.

<u>The Public Defenders Office (para. 26)</u>

Public Defenders offices are gradually being established in different parts of the country. While in the Tel Aviv and Central district, such offices have operated for approximately two years, they have only recently been established in Jerusalem and Beersheba. No Public Defenders office has yet been established in northern Israel.

the Minister of Justice has not yet issued the order necessary to enable the Public Defenders Office to represent detainees prior to indictment. The Office therefore represents accused persons only, and unless a court appoints a public defender to represent a detainee, which happens rarely (usually for mentally ill detainees), destitute pre-trial detainees who are not

represented, and thus cannot properly defend their rights, *e.g.* under the new detentions law.

Article 11: Treatment of detainees and prisoners (paras. 53-70)

While the State's report does address some of the issues concerning the treatment of detainees and prisoners in Israel, it ignores many of the central problems. As a general rule, detainees and prisoners are held in poor and degrading physical conditions. Some incarceration facilities are unfit for human habitation. In the following section we will address some of the more problematic issues relating to the treatment of detainees and prisoners in Israel.

Conditions of detention (para. 54)

The following is relevant both to conditions of detention and to Article 16(1) of the Convention:

The new Detention Law and its associated regulations are the first acts of Israeli legislation to formalise the rights of detainees and to establish minimum standards for conditions of detention. The legislation is a response to the often degrading conditions of police detention. B'Tselem and ACRI welcome the general spirit of the law and many of the regulations enacted in accordance therewith. However, we are sharply critical both of certain other regulations and of the manner in which the law and its regulations have been implemented so far.

The regulations and practical policies detailed below constitute an infringement of the provisions of the Convention:

a. Article 11 of The UN Standard Minimum Rules for the Treatment of Prisoners[84] stipulates that:
"In all places where prisoners are required to live or work,
a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight."
Addressing the prohibition of cruel disciplinary punishments, Article 31 states:

> Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

Many detainees in Israel are held in cells that have no windows, ventilation or natural light. The regulations enacted in accordance with the Detention Law did not adopt the international standards, and failed even to require that when new detention cells are

[84] **Standard Minimum Rules for The Treatment of Prisoners**, ECOSOC resolutions 663 C (XXIV), 31.7.57 and 2076 (LXII), 13.5.77.

built, they are constructed so as to provide natural light and ventilation.[85]

b. In cases where it is suspected that detainees may attempt to conceal evidence, it is permitted to incarcerate them in cells without toilets or water.[86] Incarceration in such conditions is not subject to any time limit. In practice, detainees are held in cells without toilets or water even where no such suspicion is claimed. At the detention facility in Rehovot, for example, detainees requiring protection are sometimes held for several days in an empty cell (known as "the chicken coop") that has no beds, sink or toilet.

c. The right to a daily walk in the prison courtyard is generally denied to detainees who have not yet been charged, since many such detainees are incarcerated in police stations where there is no courtyard. Thus these detainees, who are still presumed to be innocent of any offence, are incarcerated for weeks or even months without seeing daylight and without being able to breathe fresh air. Recently, for example, three minors were held at the Lod police station, for periods ranging from 14 to 55 days, without being allowed out of their cells. Denial of the right to a daily walk is particularly grave in the case of minors.

d. According to Regulation 9(d)[87] ,detainees who require special protection may be denied their right to a daily walk, and must only be permitted a walk once every five days. This limitation may be imposed with no time limit.

e. Regulation 22[88] explicitly discriminates between criminal and security detainees: Detainees suspected of security offences may be held in cells without toilets for an unlimited period of time. They do not have the right to a sink in their cell, and their cells must only be whitewashed once a year (as opposed to at least twice a year in cells occupied by criminal detainees). In addition, the regulation establishes that in cells to be built in the future for security detainees, there shall be no electricity and no tables, benches or shelves.

f. Unlike criminal detainees, security detainees are not permitted to keep electric instruments such as kettles or fans in their cells; neither are they allowed to receive or keep books, newspapers, writing implements, games, watches, mirrors or other similar personal effects.

Many of the rights established in the Israel Prison Service (IPS) Ordinance (such as the right to furloughs, rehabilitation, education, and the use of a telephone) do not apply to detainees and prisoners who are defined by the IPS as security prisoners. This includes administrative detainees.

It should be noted that as a result of the enactment of the new Detention Law, the rights of criminal detainees are now superior to those of administrative detainees. This, despite the fact that the regulations enacted according to the law on administrative detention originally

[85] Reg. 3(e) of **the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Conditions of Detention)**, 1997.
[86] *Ibid,* reg. 7(2).
[87] *Ibid,* reg. 9(d).
[88] *Ibid*.

granted preferential rights to administrative detainees, in recognition of their special status.[89]

Handcuffing

The State's Report ignored the issue of handcuffing. Handcuffing unnecessarily is a degrading practice, and we therefore believe it should only be used where a detainee or prisoner presents a danger to his surroundings or is liable to escape.

The Israel Police handcuff any detainee suspected of a felony for which the penalty is three years imprisonment or more, regardless of particular circumstances. No concrete criteria have been established governing the practice of handcuffing. The police also routinely handcuff people being transferred from detention facilities, even in the case of extremely minor offences. Thus, for example, a man arrested on suspicion of "dishonouring the court" after sending strongly-worded letters to judges was handcuffed while being transferred from the court to the police station. In another case, a 60 year-old woman was handcuffed when a Rabbinical Court ordered her arrest for contempt of court after she continued to speak at length despite being asked by the Rabbinical judges to curtail her presentation.

The police and the IPS often shackle detainees and prisoners who are hospitalized outside detention facilities to their beds. ACRI processed a case involving a prisoner who was chained to his bed by his legs after being hospitalized for injuries sustained to his upper vertebrae during furlough. The man was shackled despite the fact that he was held in traction, preventing any movement, and despite the fact that two wardens were posted to guard him 24 hours a day.

Bodily searches

The State's report ignores the issue of bodily searches. The law on bodily searches[90] passed by the Knesset in February 1996 established penal sanctions for people suspected of committing grave violent and sexual offences who refuse to allow a lawful bodily search. Similar sanctions were established for female suspects who refuse to allow a gynaecological examination of her person if such an examination is approved by the court.

It is our opinion that these legal provisions violate human dignity and the autonomous right of suspects not to co-operate with their interrogators by permitting invasive body examinations.[91] These provisions sanction degrading treatment inconsistent with the Convention.

Solitary confinement (para. 55)

Incarceration in complete solitary confinement, whether as a form of punishment or in order to protect the prisoner, must be an extremely unusual practice. it should be used only as a last resort, when there is no alternative way to achieve the purpose of the confinement, and only for a limited, reasonable, pre-determined time period.

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[89] **Emergency Powers (Administrative Detentions) Act**, 5739-1979.
[90] **Criminal Procedure Regulations (Enforcement Powers – Search of a Suspect's Body)**, reg. 12, 5(4) and 8.
[91] These provisions also infringe the suspect's right to avoid self-incrimination.

We do not have information on the number of prisoners currently kept in solitary confinement in Israeli jails, or on the duration of their incarceration in such conditions. We are aware, however, of several cases in which prisoners have been kept in solitary confinement for many years. One such example is the case of Mordechai Vanunu, who was kept in complete solitary confinement for more than eleven years until his conditions of imprisonment were modified following prolonged local and international public pressure.

Particular problems emerge when the use of solitary confinement is justified on the grounds that it is necessary for a prisoner's own protection. Many prisoners held in solitary confinement for this reason object to being defined as "requiring protection," and it would indeed seem that in most cases, even if a prisoner faces danger from others, it should be possible to find cellmates who do not pose any such danger. For example, ACRI recently received a complaint from a former policeman who, while in detention (and before being convicted) was kept in complete solitary confinement for two months, allegedly for his own protection. This was in spite of his demand to be released from confinement (since he argued that it would be possible to find many prisoners with whom he had not come into contact during his work in the drug squad). Only after ACRI intervened was the detainee moved to a police detention center where he was placed in a cell with other detainees.

Moreover, while both prisoners placed in solitary confinement by way of **punishment** for disciplinary offences and detainees who are placed in solitary confinement for their own protection[92] are given an opportunity to appeal such a decision, no such right is granted to prisoners who are placed in solitary confinement for their own protection.

B'Tselem and ACRI believe that holding individuals in solitary confinement for prolonged periods constitutes cruel and inhuman treatment, in violation of Article 16 of the Convention.

Contacts with the outside world (para. 59)

Notification of arrest

The law states that notification of the arrest of a person suspected of serious criminal offenses may be delayed by up to seven days. For persons suspected of security offences, notification of arrest may be delayed for up to 15 days either on grounds of state security (as approved by the Minister of Defence) or in the interest of investigations (as approved by the Commander in Chief of the police).[93]

Despite the obligation to provide notification of the fact and place of arrest, the security forces have not generally done so in the case of detainees who are residents of the Territories. Two different arrangements concerning implementation of this policy have been developed with the security services following Supreme Court petitions filed by ACRI and **Hamoked: Center for the Defence of the Individual** in 1989 and 1996, demanding such notification. The more recent arrangement, which has received the status of a court verdict, established that upon arrest of a resident of the territories, the security service must notify the detainee's

[92] Reg. 17(b) of **the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Conditions of Detention),** 1997.
[93] **Criminal Procedure Regulations (Enforcement Powers – Detentions)** 1996, Article 36.

family regarding the fact and place of arrest, and must also notify the detainee's attorney.[94] In practice it has emerged that this arrangement is also not being fully respected; in many cases families receive no notification of the arrest of their relative.

Prevention of meetings with attorneys

The right to legal representation and the possibility to meet with an attorney are the main tools available to detainees and prisoners in securing their rights and protecting them from torture and abuse. Despite this fact the State's report completely ignores this subject.

It must be emphasized that there is no right to have an attorney present during interrogation in Israel. Moreover, in accordance with the Detention Law, a meeting between a criminal detainee and his/her attorney may be delayed for up to 48 hours, at the discretion of the officer in charge of the interrogation.[95] In the case of security offences the officer in charge of the interrogation may prevent a meeting with an attorney for up to ten days, and a District Court may extend this period for up to 21 days if it finds that such a meeting is liable to hamper the interrogation or if the prohibition is intended to prevent a crime or protect human life.

Holding a detainee or prisoner totally cut off from the outside world, and especially depriving him or her of legal counselling, significantly increases the danger of abuse. Those who torture or otherwise ill-treat prisoners or detainees, in particular detainees held on "security" grounds. usually take advantage of their victims' inability to communicate with their legal counsel or the outside world in general.

Visitation rights (para. 61)

Detainees

Most detainees who have been charged - and during their trial - are held in police detention facilities rather than in IPS facilities. Conditions for family visits in most of these facilities are extremely inadequate: there are no rooms designed for visits and no facilities for the comfort of family members waiting outside (*i.e.*, no shelters to protect visitors from sun or rain, no benches, no toilets, no drinking facilities, etc.)

In the case of detainees awaiting prosecution, the law empowers the investigating officer to permit visits at his/her discretion. In practice, however, the police prevent any visits to detainees pending prosecution (with the exception of meetings with attorneys). We believe that the situation of each detainee should be examined, and only visits by family members who are liable to harm the investigation should be denied. When the investigating officer prohibits visits, the reasons for so doing must be recorded.

Detainees who do not receive visits are often effectively deprived of the possibility of receiving essential items such as clothes, underwear and toiletries. This problem is particularly severe in the case of detainees who are residents of the Territories, foreign workers, tourists and others who have no relatives in Israel. While the new Detention Law obliges the detention facility to supply these items after 24 hours of detention,[96] this does not

[94] ***HCJ 6757/95, Hirbawi et al. v. Commander of IDF Forces et al***., (not published).
[95] **Criminal Procedure Regulations (Enforcement Powers – Detentions)** 1996, reg. 35.
[96] Reg. 6(e) of **the Criminal Procedure Regulations (Enforcement Powers – Detentions) (Conditions of**

actually happen in many cases.

Visitation rights for Palestinian prisoners and administrative detainees from the Occupied Territories (para. 62)

The report discusses at length the question of the right of administrative detainees to family visits. However, no mention whatsoever is made of numerous problems unique to Palestinian prisoners and administrative detainees from the Territories; these problems considerably restrict the right to visits.

For many years the authorities carried out a policy of completely preventing family visits during closures of the Territories. In addition, rigid criteria were used which significantly restricted the possibility of receiving entry permits to Israel for the purpose of visiting imprisoned relatives.[97] Following a Supreme Court petition filed by ACRI, this policy was changed and most of the restrictions revoked.[98]However, the military authorities continue to prevent certain relatives from entering Israel for "security reasons," thus effectively preventing visits to the particular detainee or prisoner concerned, which may result in detainees receiving no family visits at all. In some cases there is room to suspect that the power to prevent entry to Israel is exploited as a means of punishing or applying pressure on the detainee or prisoner.

The Warden of a jail where administrative detainees are held is empowered to permit visits to an administrative detainee by a person other than a first-degree relative.[99] In practice, such visits are almost never permitted. Thus, for example, a request by a number of administrative detainees to permit a visit by activists from the "Open Doors" group, with whom they have been corresponding, was denied.

The right to telephone calls (para. 65)

In addition to the points noted in the report, it should be emphasized that security detainees,[100] security prisoners[101] and administrative detainees do not usually have the right to telephone calls, except in extremely unusual cases and then only subject to the approval of the Commissioner of the IPS or his deputy. Regarding criminal detainees who have not yet been charged, the law grants interrogators discretion in permitting telephone calls.[102] In practice, the police prevent all detainees who have not yet been charged from using the telephone. "Seasoned" detainees and those with good legal representation take the opportunity during hearings on the extension of their detention to ask the judge for

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Detention), 1997.

[97] Some of these criteria were inconsistent with the provisions of reg. 11 of **the Emergency Powers Regulations (Detentions) (Conditions of Administrative Detention**), 1981. Thus, for example, the criteria excluded grandparents, as well as siblings of certain ages.

[98] ***HCJ 1981/97 Kan'an et al. v. The Commander of IDF Forces in Judea and Samaria***.

[99] *Supra,* n. 97.

[100] **Criminal Procedure Regulations (Enforcement Powers – Detentions) (Conditions of Detention)** 1997, reg. 22(b)(3).

[101] The Supreme Court approved a sweeping policy that denies security prisoners the right to telephone calls. ***PPA 1076/95, State of Israel et al. v. Quntar et al***. (not published).

[102] During the drafting of the law the Knesset rejected ACRI's position that the law should provide general permission for detainees to use the telephone, and that prohibition should be seen as an exception in cases where there was concern that the investigation would be impaired.

permission to use the telephone; such permission is sometimes then granted.

Furloughs (paras. 66-69)

In addition to the comments in the report it should be noted that the classification according to which prisoners are allowed furloughs is often based on confidential material to which the prisoner has no access or opportunity to respond. In many cases the result is that prisoners have no idea why they have been denied the right to furloughs. The only path of appeal against the denial of furloughs is to submit a prisoner's petition to the District Court. In such cases a judge at the District Court examines the classified information, but without bringing it to the attention of the prisoner or his/her attorney.

Security prisoners are usually placed in the category of those not entitled to furlough.

Conjugal visits (para. 70)

Security prisoners are not entitled to conjugal visits, even if sentenced to long periods of imprisonment.

Although the IPS has declared its intention to enable all prisoners to receive conjugal visits in the long term, in the immediate future (*i.e.* over the next few years) it does not appear to be any possibility that this right will be applied to security prisoners.

Articles 12-13 – Procedures for complaints and disciplinary and criminal proceedings (paras. 71-87)

ACRI has received many complaints by prisoners regarding misconduct by wardens, including cases of severe violence. Evidence gathered since the establishment of the DIPM has shown that transferring investigations of police misconduct to a body independent of the police has been a productive step which has had a positive influence on police behaviour. However, while investigations of misconduct by the police and the GSS has been transferred to the DIPM, complaints against IPS wardens are still investigated internally, declarations by officials in the Ministry for Interior Security that this will be changed notwithstanding.

Article 16 - prolonged unlawful detention constituting cruel and inhuman treatment or punishment

While the report mentions administrative detentions in several contexts (*e.g.* at paras. 40, 62, 64), the essential problems connected with this measure are ignored:

- Israel has held thousands of Palestinian and dozens of Lebanese as administrative detainees;
- While a single administrative detention order may extend for no longer than six months (see below), **these orders may, in both cases, be renewed indefinitely**. As a result, Palestinians and Lebanese have been held **for years on end,** without knowing when they will be released;

- The Israeli Supreme Court has upheld these policies both regarding Palestinians and Lebanese. Thus there is neither law nor judicial policy placing any time-limit on the practice of holding people without trial for years.

Administrative Detention of Palestinians:[103]

Palestinians from the Occupied Territories are held under orders by a military commander, under a general military order regulating such detention.[104] A single order may extend for up to six month and is renewable indefinitely. Thus a Palestinian, Ahmad Qatamesh, was released in April 1998 after being held for a total of five years and eight months, **four and a half years** of which were spent under detention orders. As of April 22 1998, 128 residents of the West Bank were held in administrative detention in Israel. According to **A-Dameer**, a Palestinian human rights organisation, dozens have been held for over one year; six between 2-3 years; four between 3-4 years; and one has been held for over four years. The number of administrative detainees from the West Bank has been considerably reduced in recent months following a broad-based, intensive campaign by human rights organisations and activists in Israel.

The Supreme Court has, in numerous cases, upheld this policy.[105]

Administrative Detention of Lebanese:

Lebanese are held under emergency provisions in Israeli law.[106] Currently, at least 21 Lebanese are held under administrative detention orders in Israel.[107] Some of these detainees have been tried and convicted by military courts in Israel of committing offences against state security, yet despite completing their sentence they continue to be held in Israeli jails on the basis of administrative detention orders. A single order may extend for up to six months and is renewable indefinitely. Some of the detainees have been held for as long as **eleven years**. In a recent ruling, the Supreme Court has confirmed the legality under Israeli law of prolonged administrative detention,[108] *even if they "are held for years*."[109] The Court gave no indication of the amount of time that would have to lapse for it to change this position.

Even casting aside serious legal issues, such as the legality of the very resort to this measure

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[103] For a detailed discussion see B'Tselem, **Prisoners of Peace: Administrative Detention during the Oslo Process**, Jerusalem, B'Tselem, July 1997.

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

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

[106] **Emergency Powers Law (Detentions),** 1979.

[107] See **Amnesty International News Service 40/98**, 6 March 1998, AI index MDE 15/21/98.

[108] ***X et al. v. the Defence Minister, PAD*** [Petition against Administrative Detention] ***10/94***. The Court conceded that the Petitioners did not themselves pose any danger to the security of Israel (at para. 12), but stated that holding them as "bargaining chips" (*sic. ibid)* for a future exchange of prisoners is a consideration of "state security (paras. 13-14)," under which a person may legitimately be placed in administrative detention. It should be emphasized that Israel does not consider the Lebanese concerned as prisoners of war.

[109] *Ibid*, para. 17.

under current circumstances, the gross violations of the right to due process,[110] and the violation of other rights,[111] we would like to draw CAT's attention to the issue relevant to its mandate under the Convention. **We believes that even though internment in times of emergency is legal under international law, holding a person without trial for months, and certainly for years, grossly oversteps the boundaries of legality, thus also giving rise to issues under Article 16.**

In the words of the UN Human Rights Committee,

> … the assessment of what constitute inhuman or degrading treatment falling within the meaning of article 7 depends on all the circumstances of the case, such as the duration and manner of the treatment, its physical and mental effects as well as the sex, age and state of health of the victim.[112]

A person detained indefinitely without charge or trial, with his or her detention order extended time and time again, is constantly in anguish, being incapable of visualising, let alone planning, a future - either as a free person or even as a prison inmate. Such anguish obviously increases every time a new decision on the extension of the detention order is pending, *i.e.* every few months.[113]

It is therefore our view that Israel's policy of detaining Lebanese and Palestinians administratively for months, and certainly for years, constitutes cruel and inhuman treatment or punishment, in violation of Article 16 of the Convention.

Detainees Awaiting Deportation

In addition to criminal and administrative detainees, there is also a sizeable group of detainees held in Israel pending deportation in accordance with deportation orders issued by the Minister of the Interior on the basis of the Entry to Israel Law.[114] These detainees are aliens who are present in Israel illegally; some sought to work in Israel while others sought political asylum.

The law does not provide for any periodic judicial review of detention on the basis of a deportation order.[115] Neither does the law establish any time frame for the duration of the

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[110] See the comments of the UN Working Group on Arbitrary Detention, *e.g.* E/CN.4/1995/31/Add.2; E/CN.4/1997/4; E/CN.4/1997/4/Add.1.

[111] Thus according to the **Amnesty International** news release, *supra*, n. 107, Lebanese administrative detainees are allowed no family visits, and two of the detainees, Mustafa Dirani and Shaykh 'Abd al-Karim 'Ubeid, have never had access to the ICRC.

[112] **Report of the Human Rights Committee**, **Antti Voulanne v. Finland**, Communication No. 265/1987, (7 April 1989), **UN GAOR** Sup. No. 40 (A/44/40), 1989, pp. 249-258, at p. 265, para. 9.2. The HRC probably relies on ***Ireland v. The UK, Series A***, vol. 25 (1978), p. 65, para. 162.

[113] Considerations which are not dissimilar to these prompted the European Court of Human Rights to rule against the extradition of Soering from the UK to the US, where he would have been subject to the "death row phenomenon." See ***Soering v. UK***, **Series A**, No. 161 (1989), at para. 111.
It should further be noted that this perpetual uncertainty also has devastating effects on the detainee's family.

[114] The Entry to Israel Law, 1952.

[115] The only possibility for challenging a deportation order is by way of a Supreme Court appeal; However, detainees rarely exercise this right, due to language difficulties, a lack of awareness of their rights, and an inability to finance legal representation.

type of detention. It should be noted that in most cases individuals against whom a deportation order has been issued are held in detention without having been given the possibility of release on bail or another alternative to detention. While some of these detainees are kept in separate wings of the IPS facilities, others are kept in police detention centres in which criminal detainees are also held.

A ruling relating to prolonged detention on the basis of a deportation order established that this detention is not punitive. It is permissible solely in order to ensure deportation. In the same case, the Court ruled that the appellant be released from detention.[116] A later Court ruling, however, extended the grounds for detention on the basis of a deportation order by establishing that a person may also be detained on the basis of such an order so as to prevent injury to state security.[117]

This ruling was given in an appeal filed by ACRI in 1994 on behalf of 30 Iraqi refugees who entered Israel illegally and were held in Israeli prisons on the basis of deportation orders. After the petition was filed, 24 of the appellants were released; however, six remained in detention for security reasons. A year later a further petition was submitted on behalf of the six refugees still in detention, demanding their release.[118] The Court rejected the appeal after finding, on the basis of classified material, that their release would jeopardise state security.

Following the Court's decision, the State Attorney's Office requested that the six be deported to Lebanon, despite the claim by the latter that this might endanger their lives, and Lebanon's refusal to accept the six into its territory. Such deportation would have been in breach of Article 3 of the Convention. Faced with strong resistance from the appellants, the State Attorney's Office announced that it would not, for the time being, carry out the deportation. The six are still in prison.

However, the Court asked the UN Commission for Refugees to seek urgently another country that would be willing to offer the appellants political asylum. Despite the long period that has elapsed since this ruling, no solution has yet been found. The six refugees have now been kept in detention for more than four years on the basis of deportation orders.

In January 1998, ACRI petitioned the Supreme Court on behalf of foreign citizens held for extended periods – weeks and even months – while awaiting deportation. In this case the reason for the prolonged detention was essentially bureaucratic. In its reply to the appeal – which received the status of a court ruling – the state undertook to implement deportations within two weeks and to establish an administrative committee to discuss cases where it

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[116] ***HCJ 1468/90, Ben Israel v Minister of the Interior et al***., Verdicts 44(4) 149, 152. In this verdict the court ruled that:

> The detention is not designed to serve a punitive purpose… its sole purpose is to ensure that the person against whom a deportation order has been issued is available for implementation of the order, if he has not left the country of his own volition, and in order to prevent his fleeing the threat of deportation when this is about to take place… The continued detention of the appellant in these circumstances effectively means his detention for an unlimited period with no prospect of any solution that might put an end to the detention. An individual's liberty, including his liberty to walk freely, is a fundamental right and should be denied solely in accordance with a specific legal provision… once it is established that the continued detention of the appellant cannot serve the purpose for which the detention was permitted in accordance with section 13(c), there is no longer any justification to continue to hold him in detention.

[117] ***HCJ 5702/94, Al Tay et al. v Minister of the Interior et al.,*** Verdicts 49(3).

[118] ***HCJ 7616/96, Al Asdi et al. v Minister of the Interior*** (not yet published).

proved impossible to implement deportation within this period.[119]

[119] ***HCJ 199/98, Laverick et al. v Minister of the Interior*** (not published).