



# Implementation of the UN Convention against Torture

# ISRAEL

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## Alternative Report UN Committee Against Torture

41th session  
April-May 2009

Jerusalem-Geneva, 9 April 2009

# **The Public Committee Against Torture in Israel OMCT - World Organisation Against Torture**

**Israel – Briefing to the UN Committee Against Torture  
Jerusalem & Geneva, April 2009**

## **Introduction**

1. In this briefing, the Public Committee against Torture in Israel (PCATI) together with the World Organization Against Torture (OMCT) update and provide cases to illustrate and complement its September 2008 submission<sup>1</sup> to the UN Committee Against Torture (henceforth: the Committee). A copy of our initial briefing is annexed to this one.
2. Following a brief explanatory note on matters which may have been blurred by the State Party's report, the first Part of this briefing mainly provides specific cases to illustrate how torture and other cruel, inhuman or degrading treatment or punishment (henceforth: other ill-treatment) are in practice inflicted by GSS/ISA interrogators, IDF soldiers and other security forces.
3. Despite the relatively short time that has elapsed since PCATI presented its first briefing, a lot has happened that is of direct relevance to Israel's compliance with the UN Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment (henceforth: the Convention), **in particular the war in the Gaza Strip** during December 2008 and January 2009. The second Part of this briefing provides information on violations of the Convention during this war and in its wake.
4. The third Part of this briefing comprises of key recommendations that PCATI and OMCT have made to the Israeli authorities.

## **A note on the number of complaints and petitions, and on the role of the Supreme Court**

5. PCATI would like to clarify that the absolute immunity from prosecution granted by the State Prosecutor's Office and the Attorney-General to GSA/ISA torturers in response to every single complaint, following an in-house GSS/ISA investigation, even in cases where the fact of torture is in effect acknowledged, *sub silentio*, has had a significant negative effect on the readiness, both of victims of GSS/ISA torture and of PCATI itself, to file complaints with this Office.

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<sup>1</sup> Public Committee against Torture in Israel, List of concerns for UN Committee Against Torture, Jerusalem, September 2008.

Victims, who are often still in GSS/ISA interrogation wings when providing PCATI with affidavits, are aware of the total impunity enjoyed by torturers, and that, consequently, they have little to gain from complaining, and are often fearful GSS/ISA reprisal. In fact, detainees have told PCATI of threats of such reprisal by GSS/ISA agents. As a result, fewer and fewer victims request PCATI to file complaints in their name. As an example, the vast majority of Palestinians detained by the IDF and interrogated by the GSS/ISA during the war in Gaza instructed PCATI not to file complaints, while allowing the organisation to use their affidavits anonymously for other purposes.

For its part, and for the same reasons, as of 2005, PCATI has drastically decreased the number of individual complaints it has filed with the Israeli authorities, choosing instead to concentrate on principled or issue-centred complaints. A similar decision has been taken by PCATI regarding complaints to IDF authorities, although the culture of impunity there, while prevalent, is not absolute.

**PCATI would therefore urge the Committee not to consider any figures presented by the State showing a decline in the number of complaints of torture/ill-treatment during GSS/ISA interrogation or by soldiers as reflecting a decline in the number of cases of torture and other ill-treatment. Rather, this decline mainly reflects the futility of complaining in the face of a brick wall of total official impunity for GSS/ISA torturers, and a bleak, albeit less-than-total picture with regards to the IDF.**

6. PCATI has also decided to limit petitions to the Supreme Court seeking to repeal orders imposing incommunicado detention, through denial of access to counsel, on detainees under GSS/ISA interrogation. This, in view of many years, running to decades, during which the Court has not granted even a single one of the many hundreds of petitions submitted by PCATI and other organizations, as well as individuals, in this regard.<sup>2</sup>

**Here too, and regardless of any information from the State party, the decline in the number of petitions must in no way be considered an improvement of Israel's compliance with the Convention. Unfortunately the opposite is true – it reflects the uncritical compliance and cooperation of the Israeli court system with a policy of incommunicado detention that facilitates torture and other ill-treatment by the GSS/ISA.**

7. To conclude this introduction we would like to bring to the Committee's attention the fact that the Supreme Court's role in the GSS/ISA torture system goes beyond facilitating torture by allowing incommunicado detention. Having laid the legal grounds for *ex post* approval of torture, through granting torturers impunity in "ticking bomb/necessity"

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<sup>2</sup> For instance, between 2002 and 2005 (inclusive), PCATI submitted a total of 376 petitions to the Supreme Court requesting that orders denying detainees access to counsel be lifted. It should be noted that Palestinians are never allowed family visits, and access to ICRC representatives may be delayed for up to 14 days.

cases, the Court appears to be content with this state of affairs. The Supreme Court judges must be aware that torture by GSS/ISA agents is a well-known fact in Israel, and even official figures have been published as early as July 2002, stating that ninety Palestinians, defined as “ticking bombs,” were interrogated, using what was euphemistically called “exceptional means of interrogation” between September 1999 and that date.<sup>3</sup>

8. Despite this, the Supreme Court has not once ordered any torture to be prevented, stopped, investigated or prosecuted, as the Convention provides. In certain individual cases it has clearly been aware that torture had taken place – but has chosen not to intervene.

9. In its decision in the case of *Medhat Tareq Muhammad* the Court notes, without further comment or action, that:

... the Attorney General and State Attorney decided that the forms of interrogation which were applied fall under the ‘defence of necessity,’ and therefore the interrogators bear no criminal liability in this case for the forms of interrogation applied by them ...<sup>4</sup>

10. In the case of *Qawasmeh*, a **submission by the State Attorney’s Office** described the following:

We would add, between brackets, that at the end of the hearing in HCJ 9271/04 the esteemed Court informed Petitioner’s Counsel that at the beginning of the Petitioner’s interrogation **physical force was applied**, that as of the time of the hearing in HCJ 9271/04 no physical force was being applied, and **that it is impossible to know what will happen in the future.**<sup>5</sup> [emphases added]

Moreover, the fact of past and possibly future torture did not stop the Court from rejecting PCATI’s petition to annul the GSS/ISA’s order prohibiting Counsel from meeting Qawasmeh. In justifying its decision, the Court stated:

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<sup>3</sup> A Harel, ‘GSS Has Used “Exceptional Interrogation Means” 90 Times Since 1999 HCJ Ruling,’ *Haaretz*, 25 July 2002. No similar official figures have been provided since, but there is no doubt that the figures have consistently risen. The Ministry of Justice has refused to provide data regarding the number of incidences in which files were closed based on a necessity claim between 2005-2007. The Administrative Court affirmed the Ministry of Justice’ exemption from the Freedom of Information Law, based on its *in camera* review of classified evidence submitted by the GSS in hearing PCATI’s application to the Court. See Administrative Petition 08/8844, *The Public Committee Against Torture in Israel and others v. the Person Responsible for FOI in Ministry of Justice*, 25 February 2009.

PCATI would like to emphasise that torture, not to mention ill-treatment not amounting to torture, go far beyond the so called ‘ticking bomb’ or ‘necessity’ cases, and that under the Convention no circumstances whatsoever can ever justify torture or other ill-treatment.

<sup>4</sup> Crim App 4705/02 *Anon v. State of Israel*, decision of 30 December 2002, para 1.

<sup>5</sup> Atty. Aner Helman, Senior Deputy A to the State Attorney, *Response by the Respondent in HCJ 9625/04 ‘Imad Salah ‘Abd al-Fateh Qawasmeh v. The General Security Service*, 25 October 2004, para. 6.

We were convinced that the issuance of the order prohibiting the Petitioner from meeting his Counsel is necessitated by the interest of the interrogation and the security of the area.<sup>6</sup>

11. Israel's Supreme Court failed to instruct the GSS/ISA to refrain from torturing a detainee who had, by the State's own admission, already been tortured, at a point in time where the State would not rule out further torture, opting instead to extend the torture-facilitating incommunicado detention order. The Supreme Court thus plays, at the very least, a passive role in the GSS/ISA torture system. We would urge the Committee to address this unacceptable situation.

## **Part I: Torture and other ill-treatment - illustrations**

1. This Part seeks to provide a “human face” to the general description of torture and ill-treatment by GSS/ISA interrogators and by soldiers described in PCATI’s initial briefing.<sup>7</sup>

a. During GSS/ISA interrogations

2. Following are a few illustrations of the interrogation methods used by the GSS/ISA, containing mostly excerpts from affidavits by torture victims taken by PCATI attorneys. Detailed descriptions and dozens of other cases may be found in PCATI’s reports.<sup>8</sup> These in turn form a small minority of the complaints which have reached PCATI.

3. **Prolonged incommunicado detention:** It should first be noted that in the case of Israel, incommunicado detention is clearly used as a means to exercise pressure for purposes of the interrogation. The very military order on the basis of which GSS personnel (namely the “person in charge of the interrogation”) could issue an order prohibiting a detained person being interrogated from seeing his lawyer stipulates that this may be done “where it is required for reasons of the security of the area *or in the interest of the interrogation.*”<sup>9</sup> [emphasis added] This justification, “the interest of the interrogation” has been routinely used both by the State defending such orders before the Supreme Court and by the Court itself in rejecting petitions against such orders, which it invariably has. Here are a few examples:

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<sup>6</sup> HCJ 9271/04 ‘Imad Salah ‘Abd al-Fateh Qawasmeh v. The General Security Service, decision of 17 October 2004.

<sup>7</sup> See paras. 8 and 2 of the initial briefing, respectively

<sup>8</sup> Public Committee Against Torture in Israel, *Back to a Routine of Torture: Torture and Ill-treatment of Palestinian Detainees during Arrest, Detention and Interrogation, September 2002-April 2003* (Jerusalem: PCATI, June 2003); *Ticking Bombs – Testimonies of Torture Victims in Israel* (Jerusalem: PCATI, May 2007); “Family Matters” – *Using Family Members to Pressure Detainees* (Jerusalem: PCATI, March 2008).

<sup>9</sup> Sec. 78(c) (c) (1) of the (military) Order Concerning Security Provisions, No. 378 (1970). See similarly sec. 35 of the *Criminal Procedure (Enforcement Powers – Arrest) Law*, 1996; sec. 6(a1) of the *Detention of Illegal Combatants (Amendment and Temporary Provision) Law*, 2008, enacted 30 July 2008;

- Jasser Abu ‘Omar was arrested on 7 December 2006. He was denied access to counsel until 31 January 2007, a period of some 45 days, through a series of orders approved by the Kishon Military Court, and eventually by the Supreme Court.<sup>10</sup>
- Muhammad ‘Abd al-‘Aziz Lubad ‘Ataunah was arrested on 25 November 2007. He was denied access to counsel for some 37 days. A petition against the order preventing access was denied by the Supreme Court, citing “confidential material which cannot be exposed.”<sup>11</sup>
- Muhammad Nu’man Matir was arrested on 17 October 2007. He was denied access to counsel for about a month. Rejecting a petition by PCATI, the Supreme Court ruled that “at this stage there is justification for preventing the Petitioner from meeting his attorney” as this “denial is essential for reasons of security.”<sup>12</sup>

#### **4. Sleep deprivation by means of continuous or nearly continuous interrogation:**

- From the affidavit of Amin Ahmad Jamil Shqirat:

The interrogators interrogated me continuously until 10:00 p.m., and then transferred me to a solitary confinement cell. The next day, they took me back to interrogation, and this time it was more difficult. It went on for three days straight, without sleep, until I felt fatigue in my eyes and head and had difficulty breathing.<sup>13</sup>

- From the affidavit of Dr. Ghassan Sharif Khaled:

For eight days they interrogated me about 22 hours a day, except for Fridays and Saturdays [the weekend in Israel]. He [the warden] would take me back to sleep at 6 in the morning. At 6:30 there’s a roll call. At 7:00 he would come to ask me if I wanted a shower and at 7:30 they would bring my breakfast. At 8:00 they would take the food tray and at 8:30 they took me to the interrogation. They wouldn’t let me sleep at all. The interrogation would start at 9:00 in the morning and would continue until 6:00 the next morning...

They wouldn’t let me sleep. Whenever I’d dose off in front of the interrogator he would yell at me and wake me up.<sup>14</sup>

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<sup>10</sup> See HCJ 167/07 *Jasser Muhammad Sa’id Abu ‘Omar v. Justice of the Shomron (Petah Tikva) Military Court*, decision of 8 January 2007.

<sup>11</sup> HCJ 11097/07 *Muhammad ‘Abd al-‘Aziz v. Head of the GSS*, decision of 28 December 2007.

<sup>12</sup> HCJ 9396/07 *Muhammad Nu’man Rajab Matir v. Head of the GSS*, decision of 10 November 2008.

<sup>13</sup> From the affidavit of Amin Ahmad Jamil Shqirat from 15 August 2006, taken by Atty. Ahmed Amara. See *Ticking Bombs*, at 23.

<sup>14</sup> From the affidavit of Dr. Ghassan Sharif Khaled, taken by Atty. Taghrid Shbita on 17 August 2008.

## 5. **Forcibly bending the detainee's back backwards:**

- From the affidavit of George Mansur Qurt:

Afterwards [the interrogator] Itai put me on a chair and bent my back backward, and Ghazal [another interrogator] would grab my legs and they would twist my back backwards. Itai would grab my throat and bend my back backwards and push, and my back would hurt and I would shiver...<sup>15</sup>

- From the affidavit of Bahjat Yamen

...the first method was to handcuff me from behind, with my legs tied backwards under the chair. The interrogator would push me back so that I was sitting on the seat while leaning backwards, and at the same time they kept beating me on the stomach. This position was maintained for about fifteen minutes, and then the interrogator would forcefully yank me forward... I simply felt terrified, and I had excruciating pains in my back and I felt that my back was about to really break, and I yelled and cried and begged, but the torture did not stop.<sup>16</sup>

It should be noted that both a GSS/ISA memorandum shown to Mr. Yamen's attorney and a military judge confirmed that "special measures," justified by the "necessity defense," were used in his interrogation.<sup>17</sup>

- From the affidavit of Muhammad 'Abd al-Rahim Barjiyye:

They put me into a new position – at the side of the chair, with the armrest at my side and nothing behind my back. They tied each of my legs to a chair leg, then took off my blindfold, saying they wanted to see me. Oscar the interrogator sat across from me and stepped on my feet so that I would not move. Micha and Gur yelled all the time. Oscar said that he would grab my shirt from the front upwards, and that I should lean back. He said I had to lean midway, because if I leaned all the way back my back would break, and if I sat up the regular way he would hit me. And that he wanted to see how long I could endure it.

I stayed this way for maybe an hour, with my eyes blindfolded again. When I could no longer manage and wanted to sit, he hit me hard below the chest. The blow threw me back. I felt as if my back was coming apart. I couldn't get

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<sup>15</sup> From the affidavit of George Mansur Qurt, taken by Atty. Leah Tzemel on 11 March 2003 at the Russian, Compound. See *Back to a Routine of Torture*, at 66.

<sup>16</sup> From affidavit of Bahjat Yamen from 26 December 2004, taken by Atty. Labib Habib at the Shata Prison. See *Ticking Bombs*, at 14 .

<sup>17</sup> From the affidavit of Atty. Labib Habib, 31 August 2004, quoting a memo signed by "Alias Rani, Interrogation Team Leader, Southern Samaria."; *Bahjat Fathi Yusef Yamen v Military Prosecutor Request 3029/05*, Petition to Order Removal of Classified Status regarding Information Relating to the Petitioner's Interrogation and Interrogation of the Main Prosecuting Witness. See *Ticking Bombs*, at 16.

up again. My head was on the floor and the pain was excruciating. He told me to get up, but I couldn't. I felt a sour liquid pouring out of my nose, and my stomach hurt. I stayed this way for about fifteen minutes.<sup>18</sup>

## 6. Slapping and blows

- From the affidavit of Muhammad 'Abd a-Rahman Zeid:

...this time 5 GSS agents entered the room and began beating me to death. They threw me on the floor and started kicking me all over my body. This continued until my clothes were torn and I fainted.<sup>19</sup>

- From the affidavit of Sa'id Diab:

Major Effi [an interrogator] is 1.9 m. tall, with a solid build. After they tied me to the chair, Effi began beating me hard on my face, punching and slapping and cursing and threatening me. Effi hit me for close to fifteen minutes, and as a result, I was injured on my lower lip and bleeding.<sup>20</sup>

- From the affidavit of Jihad Mughrabi:

On the third day they took me from the morning and until 6 in the evening. Sometimes when I didn't answer "Maymon" [interrogator's pseudonym] or when he didn't like my answer he would slap my forehead or head with his palm... They would hit me relentlessly, grab my shirt from the front, pull me and throw me with great force on the chair. It's my back that would absorb the blow.<sup>21</sup>

When this, and another ruse failed – and despite being transferred out of prison to a comfortable apartment, being offered good food, drink, clean clothes and a shower, Mughrabi would not supply them with the information they sought, more, and worse violence followed:

Suddenly two young men entered... they threw me on the bed and started beating me all over my body. I was trying to hide my face in order to prevent it from being hit. They were punching and kicking me... they also used the butts of their pistols to hit me on my head... I was close fainting several times, and finally fainted... they then called the doctor...<sup>22</sup>

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<sup>18</sup> From the affidavit of Muhammad 'Abd al-Rahim Barjijye, dated 25 July 2006.

<sup>19</sup> From the affidavit of Muhammad 'Abd a-Rahman Zeid, taken by Atty. Fida' Qa'war on 22 January 2003. See *Return to a Routine of Torture*, at 60.

<sup>20</sup> From the affidavit of Sa'id Diab, taken by Atty. Maher Talhami on 24 June 2007. See *Family Matters*, at 20.

<sup>21</sup> From the affidavit of Jihad Mughrabi, taken by Atty. Taghrid Shbita on 12 June 2008 at Kishon prison.

<sup>22</sup> From the affidavit of Jihad Mughrabi, taken by Atty. Taghrid Shbita on 11 August 2008 at Kishon prison.

## **7. Coerced crouching in a frog-like position:**

- From the affidavit of Hassan 'Abd a-Rahman Hassan Ledadiyah:

Afterwards, they released the shackles and I was commanded to sit in a 'frog' position – to sit on my toes, with my knees partially bent, for 45 consecutive minutes, and all the while my hands were shackled behind me. Each time that I would lose strength and fall, or lower my foot to the floor, one of the interrogators would lift my body and the second would slap me and beat me on the soles of my feet.<sup>23</sup>

- From the affidavit of Sa'id Diab:

My hands were shackled behind my back, and they forced me to squat on my tiptoes. Every time I lost my balance, [interrogator] Maimon would hold me and [interrogator] Adi, who stood behind me, would catch me. The interrogators forced me to squat in this position for half an hour.<sup>24</sup>

## **8. Tightening, pressing or pulling handcuffs:**

- From the affidavit of Muhammad 'Abd al-Rahim Barjiyye:

At one stage, before breakfast, they removed my shirt and I remained in an undershirt. They placed an elastic bandage on my hand, like athletes' shields, and placed strange shackles on my hands, connected by a relatively long chain and whose tightness could be adjusted. Gur [an interrogator] stood behind me, grabbed my neck from behind and put his knee in my back. Two others held each of my hands and started tightening the handcuffs, and a fourth stood facing me, shouting at me to confess.

I shouted from the pain and they cursed.... They tightened the handcuffs each time for many minutes, until my hands turned blue and I couldn't move my fingers. Then they would loosen them. They did this many times.<sup>25</sup>

From the affidavit Mustafa 'Ali Hammad Abu-Mu'ammar:

...the interrogators released my hand shackles and covered my arms with pieces of sponge, and then closed the shackles over the sponge higher up along my arms, not near my hands. Afterwards, two interrogators grabbed me, one arm each, and began tightening the shackles with force, which blocked my

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<sup>23</sup> From the affidavit of Hassan 'Abd a-Rahman Hassan Ledadiya, taken by Atty. Ahmad Amara on 9 August 2006. See *Ticking Bombs*, at 79.

<sup>24</sup> From the affidavit of Sa'id Diab, taken by Atty. Maher Talhami on 24 June 2007. See *Family Matters*, at 21.

<sup>25</sup> From the affidavit of Muhammad 'Abd al-Rahim Barjiyye, dated 25 July 2006. See *Ticking Bombs*, at 44.

arteries, and after ten minutes of pressure like that my arms swelled very much, to the point that they were unable to remove the handcuffs from them.<sup>26</sup>

## **9. Prolonged shackling**

This should be distinguished from the previous section as here victims have only complained about the fact of shackling itself. However, even when cuffs or chains are not tightened or pulled, with the passage of hours and days, such shackling, which has no justification whatsoever, increasingly causes suffering and injury, both to the wrists and to other parts of the body, which is trapped in awkward, and increasingly painful positions.

- From two affidavits by Dr. Ghassan Sharif Khaled:

In the interrogation room a warden made me sit on a chair fixed to the floor and shackled my hands behind my back in metal handcuffs with a very short chain, perhaps 5 centimetres long, linking them. He then fixed the chain to the chair.

... I started feeling pain at the bottom of my spine, which was very strong. This pain had started on the first day of my interrogation from the long periods of sitting on the metal chair. I suffer from pain there to this day.<sup>27</sup>

I was not allowed to stretch my legs; I had to fold them under the chair. This resulted in internal haemorrhages in the knee area. It was swollen and painful.<sup>28</sup>

- ‘Abd al-Karim Yunis Hussein Mbayed, a resident of Tol-Karem, who was born in Gaza, was arrested on 26 June 2008. According to his affidavit, his hands were shackled behind his back in metal handcuffs linked to each other and to the chair from behind. He stated that he was shackled in this way for 2 and a half hours the first day, six hours the next day, and for long hours each day thereafter, with the exception of Friday and Saturday. Mbayed noted that whenever he told his interrogator something that pleased him, the shackled would be removed and he would receive coffee. He was also left shackled in the interrogation room on his own for long periods. Mbayed complained of strong pain as a result of the long hours of being shackled in this way.<sup>29</sup>

## **10. Threats of arrest and physical abuse of family members:**

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<sup>26</sup> From the affidavit of Mustafa ‘Ali Hamad Abu Mu’amar, taken by Atty. Ahmed Amara, 31 July 2006. See *Ticking Bombs*, pp. 86-7.

<sup>27</sup> From the affidavit of Dr. Ghassan Sharif Khaled, taken by Atty. Maher Talhami on 21 August 2008 at the Ketsiot prison.

<sup>28</sup> From the affidavit of Dr. Ghassan Sharif Khaled, taken by Atty. Taghrid Shbita on 17 August 2008.

<sup>29</sup> Based on the affidavit of ‘Abd al-Karim Yunis Hussein Mbayed, taken by Atty. Maher Talhami on 20 July 2008 at the Kishon prison.

- From the affidavit of Samer Tawfiq Sabri Duqan:

...during the interrogation they cursed me and my family a lot, they threatened to demolish my house and to bring my wife and place her in detention...<sup>30</sup>

- From the affidavit of Malek Salhab:

They threatened to destroy my house and arrest my whole family, and also threatened to harm and tarnish my good name...<sup>31</sup>

## **11. Exposing a suspect to a parent or spouse being abusively interrogated or exposing a family member to a son or brother exhibiting signs of physical torture:**

PCATI published a report devoted to this subject, “*Family Matters*” – *Using Family Members to Pressure Detainees*, which presents in great detail six cases where the detention (real or staged), interrogation and/or torture of family members was used as a means of torturing detainees – often in addition to other torture methods. Among the cases are:

- The case of the Sweiti family, residents of Beit Awa near Hebron: the father and wife of the detainee, Mahmud ‘Abd al-‘Aziz Sweiti, without their knowledge or consent, were placed in a scene staged by the GSS/ISA to mislead him into believing that they are in detention. The response of Sweiti, who was indeed convinced by this scenario, was to go on a hunger strike and make two attempts on his own life.<sup>32</sup>
- The case of the ‘Abd family from Qalqiliya: Fathiya Shbeita the diabetic mother of ‘Ali ‘Abd, who had been detained, interrogated and tortured by the GSS/ISA, was brought to the detention centre. Shbeita was shown to her son while being herself interrogated. In his affidavit of Upon seeing her, ‘Ali ‘Abd:

He [the interrogator] asked what I had to say, what I thought. I said that he should just send her back, and I was willing to confess to whatever he wanted. My mother is sick, and I feared for her health because I understood that if I didn’t confess, he would put my mother in the isolation cell. It killed me. It broke me, totally. I said that I was willing to confess to whatever he wanted, but that he should just take her back home. The interrogator said he would if I gave him something to go on. I said, ‘Okay.’ I said that I had known that there were explosives in the car. I understood that they were releasing her. The

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<sup>30</sup> From the affidavit of Samer Tawfiq Sabri Duqan, taken by Atty. Hasan Shqeidhaf on 20 January 2003. See *Back to a Routine of Torture*, at 50.

<sup>31</sup> From the affidavit of Malek ‘Abd al-Halim ‘Abd al-Ghani Salhab, taken by Atty. Fahmi ‘weiwi on 7 March 2003. See *Back to a Routine of Torture*, at 57.

<sup>32</sup> See *Family Matters*, pp. 10-16.

interrogators left me alone in the interrogation room. The interrogator said that within two hours my mother would go home. While I was alone in the interrogation room, I heard my mother crying, but it seems that she didn't know that I was close to her and that I heard her. My mother's voice grew more distant. I was exhausted. I didn't even answer her, even though I could. I was in shock. What could I say to her...<sup>33</sup>

- The more recent case of the Jihad Mughrabi, a resident of Tulkarm, who was arrested on 26 April 2008. His mother Samiha Mughrabi was arrested and herself interrogated and ill treated by the GSS/ISA. In his affidavit Jihad Mughrabi stated the following:

...they said they may transfer me to "military interrogation." They... threatened that they would arrest my mother, demolish our home and detain my sisters. Yesterday they told me they had in fact arrested my mother. They said they would keep her in detention until I provide them with a pistol which they claimed I possessed. They said the key to my mother's freedom is in my hands.<sup>34</sup>

#### b. Torture and other ill-treatment by IDF soldiers

12. Following are a few illustrations of torture and other ill-treatment by IDF soldiers, containing mostly excerpts from affidavits by victims taken by PCATI attorneys, as well as soldiers' testimonies, taken from a recent PCATI report.<sup>35</sup> The report is based on 90 affidavits and testimonies received by the PCATI describing incidents that occurred between June 2006 and October 2007. It should be noted that the 90 cases form a small minority of the complaints which Palestinian and other Israeli NGOs have documented over the years, and that many victims do not complain, even to human rights NGOs. It should also be noted that all the victims were tortured or ill-treated following arrest, namely when they were helpless and bound. Finally, a Palestinian would often be tortured or ill-treated during arrest, then tortured or ill-treated further during transportation, IDF detention and/or during GSS/ISA interrogation.

#### 13. Torture/ill-treatment immediately following arrest:

- From the affidavit of Ahmad Yassin, from Nablus, describing his arrest on 10 July 2006:

I was arrested by soldiers and Intelligence officers at Dir Sharaf cemetery... They threw me onto the ground on my stomach and began to kick me,

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<sup>33</sup> From the affidavit of 'Ali 'Abd, taken by Atty. Taghrid Shbita on 1 October 2007. See *Family Matter*, at 38. For the case see *ibid.*, pp. 36-41.

<sup>34</sup> From the affidavit of Jihad Mughrabi, taken by Atty. Taghrid Shbita on 12 June 2008 at Kishon prison.

<sup>35</sup> Public Committee Against Torture in Israel, *No Defense – Abuse of Palestinian Detainees by Soldiers* (Jerusalem: PCATI, June 2008).

particularly on my thighs... They led me to a car and suddenly one of the soldiers hit me on the middle of my back...

The jeep must have been delayed, and while we were standing on the sidewalk they amused themselves by taking turns hitting my neck. They made me sit on the ground and one of them hit me hard on my left ear. I couldn't feel my ear for about fifteen minutes. The jeep still had not arrived. They took me away from the road to a deserted area parallel to the road with my back to them. They threw stones at me and competed to see who could hit me on the head... Each of them threw several stones at me.<sup>36</sup>

- From the testimony of an IDF soldier who participated in numerous arrests in Hebron:

[One of the soldiers] took him [the detainee], put him into the *Abir* [a vehicle used by the military]. Boom! He banged him onto the step. This guy wanted to cry, he couldn't see anything, and they used to tighten the blindfold, I mean tighten it until his eyes bulged out. They would tighten the handcuff, one of the guys who used to go too far, so every time someone had to cut it off and put a new one on. He would tighten it on his legs, I'm telling you, he would take him by the legs and he would cry out 'It hurts, it's hurting me.' He would say, 'Good, it's not hurting you for nothing.' I'm telling you, he would close it and every time the guy cried he slapped him. If he cried then he would tighten the blindfold. He used to hurt them deliberately.<sup>37</sup>

#### **14. Torture/ill-treatment during the transport of detainees:**

- From the affidavit of 'Abd-Al-'Aziz 'Amariyah:

... they shackled my hands behind my back with plastic handcuffs, blindfolded me with a strip of cloth, and put me into a military jeep that took me to Etzion base... While they were taking me to Etzion base they beat me in a painful and humiliating way. They punched my head and beat me on the back with the butts of their rifles. On the way they took me out of the military jeep and put me into an army truck, and inside the truck they also beat me. They kicked me all over my body and beat the back of my neck with their hands...

When I got to Etzion base my hands were shackled behind my back and my eyes were blindfolded with a white strip of cloth. They dragged me off the truck because I couldn't see anything and so I walked along the truck until I

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<sup>36</sup> From the affidavit of Ahmad Yassin, taken by Atty. Loui `Uqah on 13 August 2006. See *No Defense*, at 5.

<sup>37</sup> From the testimony of a staff sergeant, stationed in Hebron through mid-2007. The testimony was forwarded by the organization Breaking the Silence. See *No Defense*, at 4.

fell onto the ground because they did not warn me that the truck was high up and I was near the edge. I fell onto the ground on my face and knees and they jumped on me, kicking my back, stomach, and legs and punching my face until I got to the interrogator's room.<sup>38</sup>

- From the affidavit of Yusuf Sahali, who was arrested at his home in Balata refugee camp on 6 January 2007:

A soldier in the jeep hit me on the back with the butt of his rifle. While we were travelling the soldiers asked my name, and then they would beat me for no reason. They beat my face and my nose and mouth bled. They also pulled me up and then my head hit the roof of the jeep, so I also cut my head and it was bleeding.<sup>39</sup>

- From the affidavit of Mahmud Faruq Hamed el-Bobali, who was arrested at his work place in Nablus on 11 June 2008:

They cuffed my hands in plastic shackles... I was left with the shackles for many hours. I really suffered because of the tight cuffing. After about half an hour I stopped feeling my hands, it was like the palms of my hands were being cut off... A soldier took me to the Jeep... There were many soldiers around us and behind my back. The jeep was moving. At a certain stage, a soldier began to slap the right side of my face with the back of his hand at least 10 times. Sometimes he lowered my head and slapped the back of my neck. Sometimes I heard him do the same thing to the other detainee. Every so often he would leave me and go to another. I would hear the same thing happen to him. Another soldier would join him once in a while. At one point the soldier took my head, held it from behind and began, in an automatic manner, to hit my face to the seat, on the edge of the bench... I kneeled between the seats facing one of them and my back to the other. From these beatings I felt pain in my eyes and that my eye was going to pop out of its socket. I could not see well. To this day I still do not see well. Now I cannot even read. I cannot see the letters. Even with all the beatings I did not shout because the guy who was next to me, when they beat him and he said 'aye', I felt that they beat him much harder when he cried out. I decided to be quiet and not to shout and not to tempt them because they beat and mocked us and joked and were entertained by it.<sup>40</sup>

## **15. Torture/ill-treatment while the detainee is temporarily held in army base:**

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<sup>38</sup> From the affidavit of 'Abd-al-'Aziz 'Amariyah, taken by Atty. Fahami 'Aeiwi on 5 January 2007. See *No Defense*, at 7.

<sup>39</sup> From the affidavit of Yusuf Sahali, taken by Atty. Maher Talahmi on 20 May 2007. See *No Defense*, at 7.

<sup>40</sup> From the affidavit of Mahmud al-Bobali, taken by Atty. Taghrid Shbita on 7 July 2008 in the Megido Prison.

- From the affidavit of Munsar Na'irat, arrested at Qabatiya Checkpoint on 31 March 2007:

... they put me into another jeep and took me to another base. They said it was Salem base. They dropped me off there for two or three hours. At this base I was put into a small room and they beat my legs. They put me on the floor. Then I felt one of the soldiers take something from the floor and beat me on my head and shoulders... Then they took me out into a concrete yard and tied my handcuffs to a concrete pole and made me sit on the ground and they beat me. Every hour or half hour they would beat me on the face...<sup>41</sup>

## **16. Use of dogs:**

- From the affidavit of Mohammed Jalab from Tulkarem refugee camp, arrested on 21 March 2007 at a checkpoint:

... They took me into a room where there were [male] soldiers and one female soldier and she had a dog she talked to as I sat on the chair, handcuffed and blindfolded. The dog would walk around me and when the soldier spoke to him he would attack me and bark. I didn't understand what the soldier said, but [I realized that] she said to the dog, 'Arab, Arab,' and then it would attack me.

The dog didn't bite me; I guess they had muzzled it. I felt the muzzle when it attacked me and touched me. I asked to be allowed to pray. After refusing, the woman soldier said, 'Well then, go ahead and pray,' and they made room for me to pray. I asked them to unshackle me so that I could pray but they refused. As I began to pray the woman soldier talked to the dog again and it began to attack me from the front and the back as I prayed.<sup>42</sup>

- A soldier who spent his military service in the assault track of the Sting ("Oketz") unit, stated that the dogs trained specifically for assault, they "are trained to seek humans using their scent."<sup>43</sup> Another soldier with the rank of staff sergeant who served in the unit revealed that the assault dogs are not kept close by the combat soldiers, and are not as disciplined as the dogs trained to locate explosives; in fact, they "work completely independently." The soldier noted that these dogs have attacked people "more than once, because these are dogs – this is an assault dog that can get confused..."<sup>44</sup>

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<sup>41</sup> From the affidavit of Munsar Na'irat, taken by Atty. Samer Sam'an on 28 May 2007. See *No Defense*, at 8.

<sup>42</sup> From the affidavit of Mohammed Jalab taken by Atty. Taghrid Shbita on 10 October 2007. See *No Defense*, at 13.

<sup>43</sup> Quoted in Billy Frankel, "The Best Dog My Team Ever Had," NRG website, 15 June 2007, <http://www.nrg.co.il/online/ART1/595/614.html>. See *No Defense*, at 10.

<sup>44</sup> The soldier's affidavit, is available on the Breaking the Silence website: "50,000 Children," <http://www.shovrimshnika.org/testimonies.asp?cat=17>. See *No Defense*, at 11.

## **17. Torture/ill treatment of minors**

- From the testimony of a soldier with the rank of staff sergeant:

One day there was some kind of disturbance... and I went in with the jeep and saw the youth running toward the house throwing a block at us, and there were burning tires and a real mess... I took him out of the house and arrested him and took him to the post, something I am permitted to do... and went to take off my battle vest and wash my face, I told the guard to watch him. We took him and blindfolded him according to the usual procedure. When I came back I saw a group of four or five soldiers laying into him, hitting his face, throwing those heavy telephones (military field phones) at him, just taking them and throwing them at him, and he was this 15-year old kid who had been throwing stones...

I saw the kid that they were beating up and I just went over there and threw them off, and took the kid for a medical check. The doctor examined him. The boy was shaking and hugged me because if it hadn't been for me... he just came over and hugged me and I just took him and you know what? He just shook like a leaf blowing in the wind.<sup>45</sup>

- F., aged 17 at the time of his arrest at the beginning of 2007. He testified:

... After school ended and I was on my way out, I tried to get a taxi to take me home... Before I got to the taxi, I suddenly ran into some guys who were throwing stones and the Israeli soldiers and the soldiers were firing tear gas... I went down a side street and there were soldiers there. I stopped in my tracks. The soldiers took me and began to beat my left leg with their weapons. They also hit my right eye. The soldiers went on beating me on all parts of my body. Then the soldiers started to drag me along the main street. They dragged me about twenty meters until I got to the middle of the street, and they left me lying there in the middle of the street for almost half an hour. Then they made me stand up... When they saw that I couldn't stand up they brought the army jeep and put me inside, and they took [me] to the police station at Jabal Mukabar... [where] they beat me again all over my body... After the doctor came he asked them to send me for x-rays and the x-rays showed that I had three fractures in my left leg. They told me that I would have to have an operation.<sup>46</sup>

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<sup>45</sup> This testimony is available at the Breaking the Silence website, <http://www.shovrimshetika.org/testimonies.asp?cat=17>. See *No Defense*, pp. 15-16

<sup>46</sup> From the affidavit of F., taken by Atty. Shirin Nasser from the organization Nadi Al-Asir on 14 February 2007.

## **Part II: violations of the Convention during and in the aftermath of the Gaza war of December 2008-January 2009**

1. Clearly the most widespread – and appalling – violations of international law perpetrated by Israel’s armed forces during the war were, in human rights terms, violations of the right to life, and in international humanitarian law terms attacks on civilians and civilian objects – must be considered to have been both deliberate or indiscriminate.<sup>47</sup> PCATI realises that these violations do not *per se* fall under the Convention. However, Palestinians were, in addition, detained in conditions amounting to cruel, inhuman or degrading treatment or punishment, both as “unlawful combatants” and under other Israeli laws, and some of them were tortured by the GSS/ISA during their interrogations.
2. Moreover, the treatment of other Palestinian individuals who came under the direct, effective control of Israel’s armed forces during their operations in Gaza, and thus were their *de facto* detainees, similarly falls within the Convention’s remit. These include in particular families whose homes the Israeli forces took control over and occupied.
3. In this Part, violations of the Convention in regard to both Palestinians officially detained by Israeli security forces and others under their direct and effective control will be described and illustrated.

### **II(1). Treatment of detainees (Articles 1 and 16)**

4. During their operations, the Israeli security forces detained scores, possibly hundreds of Palestinians. Most were released within a few days, but dozens were transferred into Israel. For about seven days, no organised or transparent registration of these detainees took place, and families were frantically trying, through PCATI and other organizations, to determine their loved ones’ fate and whereabouts. As of early April 2009, 20 Palestinians from Gaza are still detained in Israel, 13 of them in the Shikmah prison in Ashkelon as security detainees, facing charges in Israeli courts, and six in Ketsiot as “unlawful combatants.”<sup>48</sup> It emerges from affidavits and testimonies taken by PCATI and other organizations that all detainees were exposed to one or more violations of the Covenant, including detention in appalling conditions, exposure to danger, use as human shields, violence, humiliation and interrogation methods intentionally causing physical and/or mental suffering of varying degrees.

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<sup>47</sup> Similar attacks, with deadly results, albeit on a far smaller scale, were carried out by HAMAS forces, who have also reportedly engaged in torture and other ill-treatment of political rivals during the conflict. These violations, which PCATI condemns unreservedly, are not, however, attributable to the state party whose record the Committee is to examine.

<sup>48</sup> PCATI is not aware of the whereabouts of the 20<sup>th</sup> detainee.

## II(1)(1). Torture and other ill-treatment upon arrest

5. On several occasions, Palestinians detained by IDF forces were beaten, threatened and humiliated.

- S and I of the K family, twin brothers, were detained at the family home at the Zeitun neighbourhood of Gaza city on the night of the first or second day of Israel's ground attack. Their hands were shackled with plastic handcuffs and they were blindfolded. Both have stated<sup>49</sup> that a dog was used to frighten them. S stated that he was terrified and urinated as a result. S was beaten all over his body, and was made to walk barefoot outside, and as a result suffered from cuts to his feet from broken glass.  
I was later taken to a separate room, where he was held for about 10 hours without water, food or access to the toilet. I heard the screams of his father and brothers who were being beaten by soldiers. When he requested to see his mother, he was hit with a helmet and lost consciousness. When he came too he was urinated on by a soldier.
- Subhi al-'Attar was arrested at his home in Beith Lahia on 2 January 2009. He was held with other men in the yard of a neighbour. There, soldiers beat him as well as his father, a disabled man, and his cousins with fists and kicked them. They pointed laser beam sights at his 12-year-old brother, who was terrified, believing he was about to be shot.<sup>50</sup>

6. Others were interrogated on the spot or during their initial detention period inside the Gaza Strip, with the interrogators using methods amounting to torture or other cruel, inhuman or degrading treatment or punishment (ill-treatment), including violence and threats on the lives of the detainees.

- Muhammad Khair Kassab was arrested at his home on 7 January 2009. According to his affidavit,<sup>51</sup> his eyes were covered and he was questioned about weapons and tunnels, of which he denied any knowledge. While interrogated, a gun (he was not sure which part of it) was held tight to his forearm and twisted against it, causing an injury. At the same time, he was also continually kicked and beaten, despite begging his tormentors to stop.
- N.A. of Al-'Atatrah neighbourhood, Gaza city, was arrested on 2 January 2009. The next day he and about 80 other men were held in an open space, and at night were taken, one by one, to a small ditch to be interrogated.

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<sup>49</sup> Affidavit of I.K., taken by Atty. Majd Bader, 26 February 2009 in the Shikmah prison; affidavit of S.K., taken by Atty. Majd Bader, 26 February 2009 in the Shikmah prison.

<sup>50</sup> Affidavit of Subhi Majed al-'Attar, taken by Atty. Majd Bader, 16 February 2009 in the Shikmah prison.

<sup>51</sup> Affidavit of Muhammad Khair Kassab, taken by Atty. Muhammad Jabarin of Al-Mizan at the Shikmah prison on 12 January 2009.

His interrogators slapped his face and hit him with rifle-butts. They forced him to take off his sweater and left him for about an hour exposed to the intense cold.<sup>52</sup>

## II(1)(2). Detention in cruel, inhuman, degrading and dangerous conditions

7. Many of those detained were held in ditches, probably dug out by army bulldozers, 2-3 metres deep and varying in size. Both adults and minors were held in these ditches for hours and days - two days in several cases, and in some even longer. They were exposed to the cold air, wind and rain, handcuffed for hours and days, and at times also with their eyes covered. There were no sanitary facilities in these ditches; food and water were sparsely provided and the detainees were hungry. Moreover, most of the ditches were dug close to Israeli tanks and in areas where hostilities were ongoing, thus exposing the detainees to danger. About 70 people were reportedly held in each ditch, and it appears that scores, possibly hundreds, were detained in these appalling conditions.

- Raji ‘Abd Rabbo of Jabalia, describes what happened at around 13:00 on 5 January 2009 after he and his family were ordered out of their homes, by the Israeli army:<sup>53</sup>

There were some 15 people in my parents' house. We went out; the soldiers separated the women from the men. The soldiers took the men and led them to a ditch which was dug nearby. The ditch was some 2.5 meters deep and covered an area of about 5 meters. We were then brought up to a place where there were soldiers, and we gave them our id cards. The soldiers ordered us to sit on the asphalt with our hands in the air, while the soldiers had their weapons ready and pointing at us. The soldiers kept us there until about 5 in the evening. We asked for water and access to toilets, but the soldiers refused, saying that whoever moves will be shot to death.

- N.A. recounts:<sup>54</sup>

They arrested me and my sister's husband, Husam al-‘Attar, searched us, shackled our hands behind our backs in plastic handcuffs and blindfolded us. The soldiers led us on foot to a ditch that was about 600 meters from my home. This ditch had an area of about 2 dunums<sup>55</sup> and was some three meters deep. Around the ditch there were tanks. They were shelling in the direction of Gaza.

The next day I was transferred, together with 25 other men, to another ditch, about 100 meters from the first one. When I was in the second ditch, I asked

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<sup>52</sup> Affidavit of N.A., taken by Atty. Majd Bader, 26 February 2009 in the Shikmah prison.

<sup>53</sup> From the affidavit of Raji Musbah ‘Abd Rabbo, taken by Atty. Majd Bader, 23 February 2009 in the Shikmah prison.

<sup>54</sup> From the affidavit of N.A., taken by Atty. Majd Bader, 26 February 2009 in the Shikmah prison.

<sup>55</sup> A dunum is 1.000 square metres.

one of the soldiers to take off my handcuffs, because they heart immensely. In response, the soldier kicked me in the stomach and beat my back with his fists.

- Samir ‘Ali al-‘Attar, of Beit Lahia, was arrested outside his home on the morning 5 January 2009. He recounts:<sup>56</sup>

They led us, with our hands shackled in plastic handcuffs in the front, and my [10 year-old] son cuffed to me, to the area where the tanks were, about a kilometre from my home. At the time, the tanks were shelling Beit Lahia. The army had prepared a large area of about 2 dunums which they had dug to form a sort of crater surrounded by sand embankments about 2 metres high. The soldiers ordered us to climb the sand embankment and go into the crater while handcuffed. We were held there under the sky for two days... The soldiers held us exposed to the intense cold, and only on Tuesday [the second day] provided us with blankets – one for every two of us. During the whole period we were handcuffed and slept on the sand. We were fed once or twice a day... There were no toilets and we were not provided with hygienic necessities such as toilet paper. Inside the crater we were held with about 70 other civilians...

#### II(1)(3). Use of detainees as human shields

8. On several occasions, soldiers forced detainees, whom they had handcuffed, to go into houses where the soldiers apparently expected to face hostile activities, ahead of them, as human shields.

Raji ‘Abd Rabbo was arrested on 5 January 2009 from his home. He provides the following account:<sup>57</sup>

The soldiers called my name and those of [two others]... shackled our hands in plastic handcuffs... then the soldiers led us towards several other houses in the neighbourhood, with me and another nine men going into the houses in front of the soldiers and under their orders.

Abd al-Mu’ti ‘Abd Rabbo, resident of ‘Izbat ‘Abd Rabbo, east of Gaza City two of whose sons were arrested by Israeli soldiers on 4 January 2009, told B’Tselem researchers the following:<sup>58</sup>

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<sup>56</sup> From the affidavit of Samir ‘Ali Muhammad al-‘Attar, taken by Atty. Maher Talhami on 14 January 2009 at the Shikmah prison.

<sup>57</sup> From the affidavit of Raji Musbah ‘Abd Rabbo, taken by Atty. Majd Bader, 23 February 2009 in the Shikmah prison.

<sup>58</sup> From the testimony of ‘Abd al-Mu’ti ‘Abd Rabbo, given to Iyad Haddad by telephone on 11 January 2009. The testimony is available on B’Tselem’s website, [www.btselem.org](http://www.btselem.org).

My two sons were released the next day, and they came to where we were staying. They told us that soldiers had made them, at gun point, open doors and enter houses to search for Hamas members.

Similar account appeared in the press.<sup>59</sup>

In considering the legal aspect of this practice, we would encourage the Committee to bear the following facts in mind:

- i. Soldiers were exercising direct and effective control over the detainees throughout these operations;
- ii. Soldiers were engaged in an intentional act involving coercion and intimidation for such purposes as obtaining from the detainees or third persons information, in this case about what was happening in the houses;
- iii. The detainees were placed in grave danger, within a combat zone;
- iv. The detainees were acutely aware of the danger they were led into, resulting in severe mental pain and suffering.

In view of the above, PCATI would urge the Committee to consider that Palestinian detainees forced to act as human shield were subjected to torture within the meaning of Art. 1(1) of the Convention.

#### II(1)(4). Detention as “unlawful combatants”

9. In PCATI’s original briefing, the organization highlighted the *Detention of Unlawful Combatants Law*, 2002, as amended in July 2008, and the provisions within it allowing for incommunicado detention, as well as indefinite detention without charge or trial.<sup>60</sup> This law was used in the recent conflict to detain 17 Palestinians. Six of them were still detained as of early April 2009. PCATI is worried that they may now be used as “bargaining chips.” The Committee has in the past noted that “that detaining persons indefinitely without charge, constitutes per se a violation of the Convention.”<sup>61</sup>

#### II(1)(5). Torture and other ill-treatment during interrogation

10. While some Palestinian detainees were interrogated within Gaza, as noted, most of the interrogations took place in IDF-run detention centres and in the GSS/ISA interrogation wing of the Shikmah prison in Ashqelon. Clearly GSS/ISA interrogators were involved in the latter case, but PCATI does not have clear information as to who the interrogators were in the former – they may have been soldiers, GSS/ISA interrogators wearing IDF uniforms or a combination of both.

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<sup>59</sup> See e.g. Amirah Hess, “Witnesses in Gaza: the IDF used us as human shields,” Haaretz, 20 February 2009.

<sup>60</sup> See para. 12 of the briefing, attached to this one.

<sup>61</sup> Conclusions and recommendations of the Committee against Torture: United States of America, UN Doc. CAT/C/USA/CO/2, 18 May 2006, para. 22.

11. Interrogation methods used against Palestinians detained in Gaza have constituted cruel, inhuman or degrading treatment, and in several cases to torture. They have included beatings and kicks; prolonged painful shackling; sleep deprivation; humiliations, curses and threats, including death threats.

- Muhammad Khair Kassab was interrogated in an army camp within Israel, in a location which he could not identify. His hands were continuously handcuffed for the first five days of his arrest, leaving marks which Atty. Jabarin noticed whilst taking his affidavit. During the interrogation two interrogators threatened to kill his sons (who had also been arrested) unless he provided information about the location of tunnels and military equipment.<sup>62</sup>
- ‘Imad Yusuf Hamed of Beit Hanun was arrested on 5 January 2009, and later interrogated in the GSS/ISA wing at the Shikmah prison. He was interrogated continuously and deprived of sleep for five days and nights, with the exception of two very short periods of rest. During the whole period he was shackled to a metal chair with his hands cuffed behind his back. The shackles would only be released for meals. The prolonged shackling resulted in serious pain throughout Mr. Hamed’s body, and in particular his lower back. The interrogators threatened to leave him in this position until he suffers from haemorrhoids.<sup>63</sup>
- Subhi al-‘Attar’s interrogation at the GSS/ISA interrogation wing in the Shikmah prison included prolonged shackling to a chair, as a result of which he suffered from severe pain to his lower back and bleeding from the rectum. One of the interrogators forced Mr. al-‘Attar to crawl on all fours and imitate the barking of a dog; spat on him; and beat him. Interrogators threatened that they would kill Mr. al-‘Attar’s father and demolish his house.<sup>64</sup>

## **II(2). Treatment of other persons under the direct, effective control of IDF troops (Articles 1, 11 and 16)**

12. Whole families – men and women, babies, older children and the elderly, the healthy and the sick, came under the direct and effective control of soldiers who took over their houses. While some testimonies point to respectful and helpful treatment of these families by soldiers, on many occasions the treatment appeared to be cruel, inhuman or degrading. Families in effect held in the custody of soldiers were not provided with adequate food, drink or access to the toilet, were threatened, and soldiers carried out gratuitous destruction around homes.

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<sup>62</sup> Affidavit of Muhammad Khair Kassab, taken by Atty. Muhammad Jabarin at the Shikmah prison on 12 January 2009.

<sup>63</sup> Affidavit of ‘Imad Yusuf Hamed, taken by Atty. Majd Bader, 16 February 2009 in the Shikmah prison.

<sup>64</sup> Affidavit of Subhi Majed al-‘Attar, taken by Atty. Majd Bader, 16 February 2009 in the Shikmah prison.

- On 7 January soldiers entered the Kassab family home in the North of the Gaza Strip. At the time it housed four men, six women and five children. All were moved into the living room. Soldiers broke the windows, turned the house upside down, bore holes into the walls, threw house utensils out. They burned the family's documents for heating, including the father's medical records and prescriptions for his medication. During the week of their stay, a seven-month-old baby became sick and hot with fever, but the soldiers refused to provide any help; they even refused the family's request to get water so as to cool his temperature.<sup>65</sup>
13. Despite the fact that intense fighting was taken place, soldiers forced families out of the relative safety of their homes onto the streets, exposing them to danger.
- According to 'Ammar al-Hilu, resident of Zaytun neighbourhood, Gaza city, soldiers entered his home on 10 January 2009. They stormed the house, shooting and killing his father, who was lying in bed. Then they demanded that the family leave the house. 'Ammar al-Hilu recounts:<sup>66</sup>
- We picked up the children and left my father inside the house... shots were fired at us from another house taken by soldiers. My one-year-old daughter, Farah, the youngest of my four children, was shot in the stomach. Her mother tried to breastfeed her, maybe to calm her down and ease the pain, and while she was doing this Farah passed away. My brother 'Abdallah was hit by three shots, two of which entered his belly and lodged into his spine. He is now being treated in Egypt, after bleeding for almost 24 hours. My other daughter, who is six years old, was hit in her hand, and my brother's wife was hit in the chest.
- The family spent hours, hiding under a pile of stones and sand and with heavy firing around them before they could be evacuated and the wounded treated.

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<sup>65</sup> Testimony of Rim 'Izzat 'Omar Kassab, taken over the phone by Physician for Human Rights-Israel on 19 January 2009.

<sup>66</sup> From the testimony of 'Ammar Fua'd al-Hilu, taken by phone by Atty. Tahrir 'Atamleh-Mohana on 20 January 2009.

### **Part III: PCATI's and OMCT's recommendations to the Israeli authorities**

The Public Committee Against Torture in Israel (PCATI) and the World Organization against Torture (OMCT) recommend that the State of Israel adopt, as a minimum, the following steps in order to implement its obligations under the Convention, including the obligation to take effective legislative, administrative, judicial and other means to prevent acts of torture and other cruel, inhuman or degrading or punishment treatment in any territory under its jurisdiction:

- Ensure that all acts of torture, as defined in the Convention, are absolutely and unequivocally prohibited and deemed offences under its criminal law. To ensure that any person who is found to have committed torture, ordered its commission or was in any other way criminally responsible, including through command responsibility, is punished by appropriate penalties which take into account the offences' grave nature;
- Clarify through legislation that defences such as "necessity" or "superior orders" shall not apply to those who perpetrate torture and other ill-treatment;
- Instruct the GSS/ISA to cease immediately the application of any means of torture and other ill-treatment, and only use methods of "reasonable interrogation" that fully comply with the Convention;
- Repeal all laws and orders providing for arbitrary, incommunicado or indefinite detention both under Israeli and military law, including *Criminal Procedure (Enforcement Powers – Arrest) Law*, 1996; *Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law*, 2006; *Detention of Illegal Combatants (Amendment and Temporary Provision) Law*, 2008; and the relevant sections of (military) Order Concerning Security Provisions (Judea and Samaria) (No. 378);
- Repeal all legal provisions authorising police, GSS/ISA or IDF commanders to deny detainees access to counsel, both in Israeli and military law;
- Ensure full monitoring and recording of the interrogation of detainees, including by GSS/ISA, through audio and video taping. Resources must be urgently allocated for installing recording systems (audio and video) in all interrogation rooms;
- Eliminate the post of the "Official in Charge of GSS Interrogees' Complaints" and replace it with independent officials who are not related to the GSS/ISA in any way, in order to ensure impartial and effective investigations of complaints;
- Ensure prompt, effective and impartial investigations into all cases of IDF soldiers using violence against or humiliating detainees, and prosecute soldiers and commanders suspected of such acts. Those found guilty must be punished by appropriate penalties which take into account the grave nature of the offences;
- Take the legal and other steps necessary to open Israel to UN human rights monitoring bodies and experts, including by enabling individual complaints to treaty-monitoring bodies. As an immediate measure – invite the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Israel, open all the detention and interrogation facilities to him, and enable him to speak freely with any detainee he wishes;

- Sign and ratify the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and implement its provisions, in particular allowing National Preventive Mechanisms (NPMs) and the UN Subcommittee on Prevention of Torture (SPT) to visit all places of detention and, including GSS/ISA interrogation facilities, and have unsupervised access to all detainees;
- Anchor in law a system of inspections, including unannounced inspections, of detention and prison facilities, to be conducted by a Knesset committee, government bodies, human rights organizations and other NGOs, in addition to the NPMs and SPT, as above;
- Stipulate by law that every detainee, without exception, be brought before a judge as quickly as possible, and under no circumstances more than 48 hours after arrest, and repeal any legislative provisions allowing longer periods;
- Ensure that GSS/ISA interrogators undergo a complete retraining, from violent and degrading interrogation methods to humane ones. This must include thorough instruction in human rights in general, and detainees' rights in particular. Only those interrogators who have truly internalized the humane approach to interrogation may remain in their jobs;
- Undertake wide-scale public relations activities and education in the IDF in order to explain to soldiers and commanders the need and obligation to respect the dignity and rights of every detainee without exception, including the right to remain silent, the right to proper legal representation, and of course the right to be free of any torture or other ill-treatment.