

## **ISRAELI INTERROGATION METHODS UNDER FIRE AFTER DEATH OF DETAINED PALESTINIAN**

### **Israel's Supreme Court to Rule on Legality of Interrogation Guidelines**

The death of Palestinian detainee Mustafa Akawi on February 4 illustrates the untenable nature of Israel's claim that its use of "moderate physical pressure" during interrogation does not lead to torture. This claim is being challenged in an important Israeli Supreme Court case that is scheduled for argument next month.

The Akawi case is unusually revealing because of the nature of the debate that has surrounded it. Israeli authorities and human rights organizations have disagreed less over what interrogators did to Mr. Akawi than over whether their actions constituted torture. General Security Service (GSS) interrogators freely admitted that they had placed Mr. Akawi handcuffed and hooded in a bitterly cold corridor for at least several hours, and beat him at least once. (Details of the case are provided in an appendix to this report.)

A police investigation recommended clearing Mr. Akawi's interrogators of criminal wrongdoing, and Police Minister Ronnie Milo proclaimed that the GSS had "acted as it should, and there were no grounds for the complaints and accusations against it."<sup>1</sup> By contrast, Middle East Watch and other human rights organizations have charged that the methods the interrogators admitted employing amount to torture as it is defined and unconditionally forbidden by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Convention against Torture), which Israel ratified in August 1991.<sup>2</sup> (The State Attorney has not yet decided whether to accept the findings and recommendations of the police investigation.)

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<sup>1</sup> "Israeli Interrogators Cleared in Arab's Death," *The New York Times*, February 14, 1992.

<sup>2</sup> Mr. Akawi's treatment during interrogation has been characterized as torture by the Physicians for Human Rights, al-Haq, the Public Committee against Torture in Israel, and the Palestine Human Rights Information Center.

**The immediate cause of Mr. Akawi's death was heart failure related to severe arteriosclerosis, from which he suffered apparently unbeknownst to his family or interrogators. Israeli officials have used this finding from the autopsy to claim that Mr. Akawi died of natural causes and to deny any causal link between his treatment in detention and his death.<sup>3</sup>**

**This conclusion was rejected by Dr. Michael Baden, the family-appointed pathologist who participated in the February 7 autopsy and then questioned the interrogators and the medical personnel responsible for Mr. Akawi. In Dr. Baden's view, Mr. Akawi's fatal heart attack was "precipitated by the physical, psychological, and environmental abuse" he had suffered under interrogation. Dr. Baden, who is director of forensic sciences for the New York State Police, also deplored the "inadequate, inappropriate and even harmful care" that Mr. Akawi had been given after complaining of chest pain and shortness of breath caused by the developing heart attack.<sup>4</sup> The U.S.-based Physicians for Human Rights, which sponsored Dr. Baden's work on the case, concluded, "If we had a similar case in the U.S., this kind of death should be classified as a homicide."<sup>5</sup>**

**The Police Minister's insistence that the GSS "acted as it should" in its treatment of Mr. Akawi seems to confirm that beatings, exposure for prolonged periods to extreme cold, and other cruel forms of pressure on suspects are not aberrational but rather part of the approved methods of the GSS. Indeed, the techniques that the agency acknowledged using in his interrogation have been used against thousands of Palestinians under interrogation, as reports by B'Tselem, Amnesty International and other human rights organizations have shown (see below). Further evidence that these abuses are officially condoned is suggested by the fact that despite the scores of complaints of mistreatment that have been submitted to authorities by lawyers, human rights and humanitarian organizations and others, there has been only one case in recent years in which interrogators were given prison sentences for mistreating suspects. In that case, two GSS agents received six-month terms when a Palestinian in their custody died from internal bleeding caused by blows to his abdomen (see below).**

**The Convention against Torture provides what is generally regarded as the standard definition of torture in international law:**

**any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a**

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<sup>3</sup> The chief of the GSS, whose name is a closely guarded secret, reportedly told the Knesset Foreign Affairs and Defense committee that Mr. Akawi had received proper medical attention and that the accusations against the agency were unfair. "Israeli Interrogators Cleared in Arab's Death," *The New York Times*, February 14, 1992.

<sup>4</sup> See letter from the Physicians for Human Rights to Zalman Shoval, Israeli Ambassador to the United States, February 12, 1992, and the transcript of Dr. Baden's press conference in New York on February 12, available from the Physicians for Human Rights.

<sup>5</sup> "Israeli Interrogators Cleared in Arab's Death," *The New York Times*, February 14, 1992. See also the criticism of the GSS by Hebrew University Law Professor Mordechai Kremnitzer: "If you didn't check at the start to make sure that Akawi wasn't ill, then you take responsibility, even if the violence was 'light.' For some prisoners, 'light' violence may suffice to kill." Quoted in Moshe Reinfeld, "Investigate the Death of Akawi for Possible Manslaughter, Causing Death by Negligence, or Beating," *Haaretz*, February 14, 1992.

**person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incident to lawful sanctions. (article 1[1])**

**Article 2(2) of the convention forbids all derogations from the prohibition on torture:**

**No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.**

Israel recognized this definition when it recently took the welcome step of ratifying this convention.<sup>6</sup> At the same time, Israel said its ratification did not apply to its conduct in the occupied territories, on the grounds that this would contradict the government's official position that the political status of the territories remains to be determined.<sup>7</sup> This position notwithstanding, Israel remains bound by the absolute prohibition in customary international law of torture, and cruel, inhuman or degrading treatment or punishment, which is found in the International Covenant on Civil and Political Rights (articles 4 and 7). The covenant, ratified by Israel in 1991, applies "to all individuals within [each State Party's] territory and *subject to its jurisdiction*." (article 2[1]; italics added.) Also applicable to the occupied territories is the Fourth Geneva Convention of 1949, which prohibits torture, brutality, and "physical or moral coercion" (articles 31 and 32) and considers acts of torture or inhuman treatment to be "grave breaches" (war crimes) of the convention (article 147).<sup>8</sup>

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<sup>6</sup> The convention was ratified with two other human rights conventions that Israel had signed several years earlier. If the spate of publicity on the issue of torture prodded the cabinet to ratify the convention in August some five years after it had been signed, no official would acknowledge this. A legal advisor to the Foreign Ministry had a different explanation: "In the past, we did not sign these treaties because we felt we would not be treated fairly by international panels which monitor the work of signatories. However, our recent experience with these panels has been okay." (*Jerusalem Post*, August 5, 1991.)

In ratifying the convention, Israel filed two formal reservations. First, it does not recognize the competence of the Committee against Torture, which the convention establishes to examine reports submitted to it by States Parties and to investigate allegations of torture (see article 20). Second, the State of Israel does not consider itself bound by Paragraph 1 of article 30, which concerns the submission of disputes between two or more States Parties concerning the interpretation or application of the convention. Many of the States Parties to the convention have entered one or both of these reservations. When the United States ratified the convention in 1990, it entered several reservations, declarations and understandings that significantly weakened the convention's standards.

<sup>7</sup> Communication to B'Tselem from a legal advisor to the Foreign Ministry.

<sup>8</sup> Israel has ratified the Fourth Geneva Convention but maintains that it is not applicable to the territories it has occupied since 1967. Virtually the entire international community, including the U.N. Security Council, the United States and the International Committee of the Red Cross, maintains that Israel is obliged to comply with the convention in its administration of the occupied territories.

**While disputing the convention's *de jure* applicability, Israel has said that it will voluntarily comply with the**

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Regrettably, there are few signs that Israel is moving tangibly to bring its practices into conformity with its international obligations. As shown by the state's response to the Supreme Court petition discussed below, the government continues to defend existing guidelines and safeguards as adequate to prevent torture and degrading treatment of suspects under interrogation. Faced with recent reports by the human rights organizations B'Tselem and Amnesty International about the routine use by interrogators of beatings, sleep and food deprivation, enforced standing, painful confinement in enclosed spaces, and tying limbs in painful positions, Israel has neither directly denied these practices<sup>9</sup> nor explained publicly how they can be reconciled with the prohibition in international law of torture, and cruel, inhuman or degrading treatment.

Despite the growing controversy, Israel continues to refuse to divulge information about the GSS guidelines governing the use of "psychological pressure" and "a moderate measure of physical pressure" on suspects under questioning. Those guidelines are found in the classified appendix to the 1987 Landau Commission report on GSS interrogations.<sup>10</sup> The commission's recommendations have been widely criticized by human rights organizations for advocating the use of undisclosed means of physical pressure while maintaining that such means can be applied at a level compatible with international prohibitions on torture and other forms of mistreatment.

Those guidelines are now facing a challenge from a lawsuit filed last June in Israel's Supreme Court, sitting as the High Court of Justice. The petitioners are Murad 'Adnan Salahat, a young Palestinian who says he was tortured by GSS interrogators, and the Public Committee against Torture in Israel, an independent Jerusalem-based organization. The petitioners requested that the court declare the guidelines illegal on the grounds that they contravene Israeli law and in effect sanction torture. The suit also demanded that the classified appendix to the Landau report be made public.

### **Growing Evidence of Torture**

**The death of Mustafa Akawi demonstrates that abusive interrogation practices are continuing after a year of intensifying criticism. Allegations of torture made headline news last March, when the**

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**convention's "humanitarian provisions." However, it has never specified which provisions it regards as humanitarian, and the Israeli courts have declined to enforce the convention.**

<sup>9</sup> One of the very few techniques Israel has acknowledged using is the placement of hoods over the heads of suspects under interrogation. Officials state that this is done to prevent suspects from identifying security agents and other suspects. However, hooding seems also to be a form of abuse in Israeli detention facilities. Ex-detainees have told B'Tselem and other groups that when hooded they had difficulty opening their eyes because the hoods were very tight, or had difficulty breathing because the hoods stank or were wet. B'Tselem charged that hooding "is used as a deliberate form of pressure." B'Tselem, *The Interrogation of Palestinians during the Intifada: III-Treatment, "Moderate Physical Pressure" or Torture?*, March 1991, p.69 (hereinafter *The Interrogation of Palestinians*).

<sup>10</sup> State of Israel, *Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity*, Report, Part One, paragraph 4.7. All citations from this document, known as the Landau Commission report, are from the English translation issued by the Government Press Office.

rights group B'Tselem issued a major report on interrogations. In July, Amnesty International published a lengthy study of interrogation procedures and other aspects of the justice system in the occupied territories. Also in July, the International Committee of the Red Cross, whose delegates are permitted access to Palestinian detainees after their fourteenth day in custody, considered the problem to be sufficiently grave to depart from its standard policy of communicating privately with governments. The ICRC stated, "In view of the lack of response to previous representations," it was urging Israel "to give special attention" to this issue and "to implement the recommendations it has already made."<sup>11</sup>

In December, the Jerusalem-based Palestine Human Rights Information Center issued a report charging that interrogators at Hebron military headquarters had used electric shock, beatings and threats, on eight adolescents and young men between April and September 1991. Although the Israeli army denied the allegation,<sup>12</sup> more revelations of the use of electric shock came two months later, when an exposé in the Israeli daily *Hadashot* charged that the police in the southern West Bank operated a special unit for extracting confessions from suspected stone-throwers.<sup>13</sup>

Late last month, two weeks after Mr. Akawi died in the GSS interrogation center in Hebron, Bir Zeit university student Amin Amin was released without charge from the same facility and alleged that he had been subjected there to harsh interrogation methods despite a serious liver ailment. He told the Agence France-Presse that over the course of several days he had been confined between questioning sessions to a small chair in a very cold room, with a hood over his head and his hands cuffed behind his back, with only a few minutes each day to eat and perform bodily functions.<sup>14</sup> Amin's health worsened to the point where his interrogators brought him to Hadassah hospital, and he was released a few days later.<sup>15</sup>

The mounting evidence on abuses during interrogations was reflected in the U.S. State Department's *Country Reports on Human Rights Practices* for 1991, which characterized the problem in language that was clearer and tougher than in previous editions of the report:

In 1991, international, Israeli, and Palestinian human rights groups published detailed credible reports on torture, abuse and mistreatment of Palestinian detainees in prisons and detention centers. The practices reportedly included hooding; deprivation of food, sleep, and sanitary

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<sup>11</sup> Press release, July 16, 1991.

<sup>12</sup> Jan Immanuel, "IDF Denies Torture by Electric Shock," *Jerusalem Post*, December 4, 1991.

<sup>13</sup> Doron Meiri, "Torture Unit," *Hadashot*, February 24, 1992. The deputy commissioner of police for the southern West Bank, Yossi Portugal, confirmed the existence of a police interrogation unit, but stated that it functioned strictly within the law and did not carry out any form of torture. "Police Response: Some Prisoners Did Not Confess," *Hadashot*, February 24, 1992. An English translation of the *Hadashot* articles is available from the Palestine Human Rights Information Center in Chicago.

<sup>14</sup> Shalom Cohen, "Tortures policières en Cisjordanie," *Libération*, February 25, 1992.

<sup>15</sup> Amin was allegedly tortured during a previous interrogation in Dhahiriyya military detention center near Hebron, in 1989. See al-Haq, *A Nation under Siege: Annual Report on Human Rights in the Occupied Palestinian Territories 1989*, pp. 211-214.

facilities; forced standing; confinement in a narrow, small space; slaps, blows and beatings; and threats against the detainee or his family. Most such abuse takes place immediately after arrest and during the first few days of detention and interrogation when detainees are denied access to family members, attorneys, and the International Committee of the Red Cross (ICRC). The ICRC cites this isolation period as an issue of great concern. (p.1442)<sup>16</sup>

Allegations that Palestinians were tortured at the hands of GSS interrogators did not begin in 1991. Numerous accounts have appeared in the press, in human rights reports and elsewhere since the early years of the occupation.<sup>17</sup>

Despite all of the previous coverage, the publication in March 1991 of B'Tselem's 151-page study of the interrogation of Palestinians generated an unusual amount of attention. This was because its allegations of routine torture by the GSS, an agency that is generally revered by the Israeli public, were particularly detailed, and because the allegations were being made by a respected Israeli organization.

In preparing the study, entitled *The Interrogation of Palestinians during the Intifada: Ill-Treatment, "Moderate Physical Pressure" or Torture?*, B'Tselem interviewed 41 Palestinian men who had undergone interrogation between 1988 and 1990. It found that, almost without exception, they had been subjected to a combination of:

verbal abuse, humiliation and threat of injury; sleep and food deprivation, hooding for prolonged periods; enforced standing for long periods, sometimes in an enclosed space, hands bound

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<sup>16</sup> Compare this to the more noncommittal wording in the 1989 report:

Reports continue of harsh and demeaning treatment of prisoners and detainees... Palestinians and international human rights groups claim that...cruel practices—including enforced standing in one position for prolonged periods, hooding, sleep deprivation, and cold showers—have continued since being confirmed in the 1987 report of the Landau judicial commission....Physical and psychological pressures are particularly severe in incommunicado detention during investigation and interrogation. (p.1434)

<sup>17</sup> A partial list of reports and articles includes "Israel Tortures Arab Prisoners," *Sunday Times* (London), June 19, 1977; al-Haq, *Torture and Intimidation in the West Bank: The Case of al-Fara'a Prison*, 1984; Barbara Rosewicz "Israeli Security Service Mistreats Suspects, Palestinians Charge," *Wall Street Journal*, December 9, 1986; Timothy M. Phelps, "Israelis' Prisoners Cite Brutality," *Newsday*, January 2, 1989; al-Haq, *A Nation under Siege: Annual Report on Human Rights in the Occupied Palestinian Territories 1989*, pp. 168-231; B'Tselem Information Sheet, "Violence against Minors in Police Detention," June-July 1990; Yosef Cohen, "Just off the Pedestrian Mall," *Kol Ha'ir*, September 14, 1990, translated in *al-Fajr* English weekly, September 24, 1990; Teresa Thornhill, "Palestinian Women in Detention - Interrogation Methods Used on Women Detainees by the Israeli General Security Services," draft report of a research project carried out from May 1990 to October 1990.

Several long articles on torture have appeared in the Israeli press since the publication of B'Tselem's report. Among the most notable are: Ari Shavit, "Ansar Camp: Duty Report," *Haaretz*, May 3, 1991, translated into English as "Inside an Israeli Prison," *New York Review of Books*, July 18, 1991; Ariela Ringel-Hoffman, "Interrogation Room," *Yediot Ahronot* Friday Magazine, November 22, 1991, excerpted in English in *al-Fajr* weekly, December 2, 1991; and Doron Meiri, "Torture Unit," *Hadashot*, February 24, 1992. See also Stanley Cohen (a co-author of the B'Tselem report), "Talking about Torture in Israel," *Tikkun*, November-December 1991.

**behind the back and legs tied ("al-Shabah"); being bound in other painful ways (such as the "banana" position); prolonged periods of painful confinement in small, specially constructed cells (the "closet" or "refrigerator") and severe and prolonged beating on all parts of the body (resulting sometimes in injuries requiring medical treatment). (p.106)**

**B'Tselem characterized the frequency of some of these techniques as follows (pp.56-74):**

**Verbal humiliation:** all 41 interviewees reported constant verbal humiliation.

**Threats:** 14 reported that interrogators threatened to kill them.

**Sleep deprivation:** nearly all detainees were routinely and deliberately deprived of sleep during detention and interrogation.

**Being bound:** all interviewees were, without exception, tied up for long hours before or between interrogations, and most reported that they were also tied when their interrogators were roughing them up.

**Beatings:** Only one of the 41 interviewees said he had not been beaten; 15 reported losing consciousness and 11 said they had been injured so severely that they had to be treated in hospitals outside the detention center.

B'Tselem's findings posed a direct challenge to the report of the government-appointed Landau Commission. The Landau report, issued in October 1987 and endorsed by the cabinet, remains the preeminent statement of government policy on the interrogation of Palestinians. The commission had been formed in May 1987 to study GSS interrogation techniques following two widely reported cases of the abuse of suspects by GSS agents.<sup>18</sup>

The specific guidelines on interrogation techniques are outlined in a classified appendix to the Landau report. In the published portion of the report, the commission expressed its view that a "moderate measure of physical pressure" against suspects was a permissible and "unavoidable" (paragraph 2.21) tool in Israel's war against so-called "hostile terrorist activity." The commission concluded that such pressure, if properly regulated, would remain "far from the use of physical or mental torture, maltreatment of the person being interrogated, or the degradation of his human dignity." (paragraph 4.8) Thus, according to the commission, a clear boundary between permissible and excessive force could be delineated, and interrogators could be induced to respect that boundary -- even though their orders would be withheld from the public.

The Landau Commission recognized that the employment of physical force during interrogation was problematic in terms of Israel's Evidence Ordinance, which states that a confession is admissible in court only if the accused is shown to have been made it "freely and voluntarily." (article 12) The commission, however, stated that Israeli judicial precedent allows the admissibility of a confession even if "it was obtained from the accused by means of pressure or by misleading him, as long as the interrogator

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<sup>18</sup> In the first case, the GSS fabricated evidence to cover up the fatal beatings by its agents of two Palestinians in custody who had hijacked a bus containing civilians (the 1984 "Number 300 Bus Affair"). In the second incident, Izzat Nafsu, an army lieutenant from Israel's Circassian (Turkic Muslim) minority, was released from prison after the Supreme Court ruled that he had been convicted of espionage on the basis of a false confession extracted under duress by GSS agents, who later lied in court when he challenged his confession.

did not use extreme means which contradict accepted basic values or are degrading." (paragraph 3.19)

If this permissive standard on confessions seems to tolerate the use of "moderate" physical pressure, Israel's penal code does not. Section 277 of the code prohibits any physical force during interrogation, and is generally considered applicable to the actions of all Israeli citizens, whether in Israel or in the occupied territories. Section 277 states:

A public servant who does one of the following is liable to imprisonment for three years: uses or directs the use of force or violence against a person for the purpose of extorting from him or from anyone in whom he is interested a confession of an offense or information relating to an offense; threatens any person, or directs any person to be threatened, with injury to his person or property or to the person or property of anyone in whom he is interested for the purpose of extorting from him a confession of an offense or any information relating to an offense.

In order to evade this clear-cut prohibition of physical force, the Landau Commission proposed a sweeping interpretation of the "necessity defense" article in Israel's penal code. This article mitigates the criminal liability of a person who commits an otherwise illegal act in order to prevent grievous harm to himself or others.<sup>19</sup>

The classic scenario that is invoked wherever the necessity defense is discussed involves a suspect in custody who knows the location of a bomb that is about to explode in a public place. This is an archetypal case of clear and imminent danger.

The clear and imminent danger standard, however, was explicitly rejected by the Landau Commission in favor of a lower standard based on "the concept of the lesser evil," by which "the harm done by violating a provision of the law during an interrogation must be weighed against the harm to the life or person of others which could occur sooner or LATER." (paragraph 3.12, emphasis in original.)

This interpretation of the necessity defense extended the approval for otherwise illegal acts to situations far removed from the ticking-bomb scenario. The commission defined the "hostile terrorist activity" for which its interrogation guidelines are intended to include such offenses as membership in or possession of literature issued by a "terrorist" organization.<sup>20</sup> The guidelines were also applied to the interrogation of persons suspected of "political subversion." (paragraph 4.8) The military orders in effect in the occupied territories classify as subversive such activities as displaying flags and political symbols without a permit.<sup>21</sup>

<sup>19</sup> "A person may be exempted from criminal responsibility for any act or omission if he can show that it was done or made in order to avoid consequences which could not otherwise be avoided and which would have inflicted grievous harm or injury on his person, honor or property or on the person or honor of others whom he was bound to protect or on property placed in his charge, provided that he did no more than was reasonably necessary for that purpose and that the harm caused by him was not disproportionate to the harm avoided." Section 22 of the Penal Law, 1977.

<sup>20</sup> See paragraph 3.1, which refers to article 84-85 of the Defense (Emergency) Regulations of 1945. Israel considers those regulations to be valid law in the occupied West Bank.

<sup>21</sup> For the West Bank, see military order 101.

**By sanctioning such a broad use of the necessity defense, the Landau Commission enabled GSS interrogators to routinely use methods of interrogation that would ordinarily violate Israeli law. In effect, the Commission's recommendations put them under a discrete legal regime whose rules remain classified, and thus beyond effective outside monitoring.**

**Recent human rights reports have exposed how these guidelines operate in practice. The B'Tselem report found, in its admittedly small sample, that even Palestinians suspected of relatively minor offenses are subjected to harsh interrogation techniques. All 41 suspects in B'Tselem's sample reported being mistreated, and all but one reported being beaten. Yet of the 26 detainees who had been released at the time of the interviews, almost all had been accused of relatively minor offenses: stone-throwing, participation in demonstrations, hanging Palestinian flags, or distributing leaflets. Half of the members of this group were released after interrogation without being charged. (pp. 48-49)**

**Even more significant, the B'Tselem report made a strong case that the methods being practiced on Palestinians under interrogation exceeded "moderate" physical pressure -- if such a category distinct from torture can be said to exist -- and constituted torture under internationally accepted definitions of the term.**

**The Landau Commission, in reviewing the legal literature on defining torture, appropriately cited the case of *Ireland v. the United Kingdom* before the European Court of Human Rights. In that 1978 case, the court examined five "disorientation" and "sensory deprivation" techniques employed during interrogation by the Northern Ireland police: hooding the detainees, subjecting them to a loud hissing noise, depriving them of sleep, subjecting them to a reduced diet and making them stand for hours at a time against a wall in a painful posture.**

**The Court ruled that the use of the five techniques, when applied in combination and under the circumstances that they were being applied in Northern Ireland, amounted to inhuman treatment but not torture. These methods, the court determined, were not being used in a manner capable of inflicting the particular level of suffering inherent in the notion of torture. Assessing that level, the court held, "is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc."**<sup>22</sup>

**In commenting on this decision, the Landau Commission stated that it remained to be seen whether techniques that constitute impermissible inhuman treatment when used in combination with one another would be permissible if used separately. (paragraph 3.22)**

**As B'Tselem and other groups have documented, the methods employed in the interrogation of Palestinians are routinely employed in combination with one another. Moreover, they include certain techniques that are more severe than the ones scrutinized in *Ireland v. the United Kingdom*. (This is certainly true of the interrogation of Mr. Akawi, who was beaten and exposed to bitterly cold temperature**

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<sup>22</sup> 2 European Human Rights Reports, paragraph 162. These criteria strengthen the case that the treatment of Mr. Akawi constituted torture, since the pain inflicted on him was made more severe by his poor state of health.

for several hours at a time.) B'Tselem concluded:

Despite all the problems of defining such subjective terms as "severe [pain]," we believe that the practices documented in...this report would be recognized by common sense as "torture" and would be covered by the U.N. definition. Even if they would not be so recognized, they clearly constitute "cruel, inhuman or degrading treatment." (p.9)

The conclusions of B'Tselem were buttressed by an Amnesty International report released on July 30.<sup>23</sup> Amnesty International charged that abusive techniques similar to those documented by B'Tselem were being practiced "on a systematic scale" (p.58). The report placed these abuses in the larger framework of a military justice system in the occupied territories in which "the odds are stacked against" Palestinian defendants.<sup>24</sup> Noting the use of physical and psychological pressure and the inadequate means available to defendants who wish to challenge coerced confessions in court<sup>25</sup> Amnesty stated:

Of particular relevance to the assessment of the fairness of trials in the Occupied Territories are concerns relating to the effect of the interrogation practices allowed by the [Landau] Commission on the criminal justice system as a whole. Allowing coerced confessions -- irrespective of how they were coerced -- to be introduced as evidence violates the basic rights of defendants. In addition, allowing detainees to be held in total isolation from the outside world for prolonged periods prevents judges from assessing the reliability of confessions alleged to have been coerced except by balancing the word of detainees against that of interrogators. Unreliable confessions can also easily lead to the conviction of innocent people other than suspects who confessed, for example if a detainee makes up a confession implicating others. The entire judicial system is thus corrupted. (pp.56-57)

### Official Responses to the Allegations of Torture

The release of B'Tselem's report in March 1991 prompted no public response from the GSS or the Prime Minister's office, to which the GSS is directly responsible. It did, however, prompt reactions from the Israel Defense Force (IDF) and the Justice Ministry, both of which announced the formation of committees

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<sup>23</sup> Amnesty International, *The Military Justice System in the Occupied Territories: Detention, Interrogation and Trial Procedures* [hereinafter *The Military Justice System*].

<sup>24</sup> Amnesty International, press release, July 30, 1991.

<sup>25</sup> "Amnesty International does not know of successful challenges in the Occupied Territories to a confession by the use of [trials within a trial," a procedure for contesting the voluntary nature of a confession]...Lawyers maintain that in a "trial within a trial", judges often automatically accept the testimony of witnesses of the prosecution forces and reject that of defendants. Defendants who have been held in prolonged incommunicado detention -- in practice all those being interrogated, as seen earlier -- have no witnesses to call on their behalf."

Amnesty International also cites factors that deter defendants from even seeking to have such a trial within a trial. See pp. 67-70.

to investigate allegations that Palestinians were mistreated during interrogation.

The B'Tselem report also caused a stir in the Knesset. On March 26, parliamentarians Yossi Sarid and Ya'ir Tsaban formally requested the Foreign Affairs and Defense Committee to hold hearings on the report. (The head of the GSS appears on a regular basis before the committee in closed sessions.) On April 25, sixteen MKs signed a letter demanding, to no avail, that the Prime Minister respond to B'Tselem's findings. Two months later, the State Control committee voted to establish a subcommittee to scrutinize the reports on the GSS that State Comptroller Miriam Ben-Porat was said to be preparing.<sup>26</sup> Ms. Ben-Porat is widely respected for the independence and toughness of her reports on government agencies.<sup>27</sup>

In the year since B'Tselem released its report, this flurry of activity has yielded few results. The GSS and the Prime Minister's office have maintained their silence on B'Tselem's allegations. The investigative committee supposedly established by the Justice Ministry has not been heard from. In the Knesset, the B'Tselem report was discussed by the Foreign Affairs and Defense Committee, according to the Israeli press, but details of the closed session were not disclosed. The subcommittee formed within the State Control Committee has been dormant in the absence of a report on the GSS by Comptroller Ben-Porat.

The only government investigation whose findings have been reported was the IDF probe conducted by Maj. Gen. (res.) Rafael Vardi, who was appointed on May 10 by Chief-of-Staff Gen. Ehud Barak to look into B'Tselem's findings as they pertained to IDF personnel. Gen. Vardi's mandate was a narrow one in view of the secondary role played by the IDF in interrogations, when compared to the GSS.

IDF personnel perform two basic roles with regard to interrogations. First, both the IDF and the Israeli police conduct some interrogations, particularly of Palestinians suspected in less serious security offenses, such as stone-throwing. Second, IDF and police personnel play supporting roles in interrogations carried out by the GSS, which take place in wings that are run by the GSS inside Israel Prison Service (IPS) prisons, IDF detention camps, and police jails. In these facilities, soldiers and policemen have contact with detainees under interrogation, as B'Tselem reports:

Soldiers (or policemen, in the Russian compound in Jerusalem, for example) bring the detainees to the interrogation sessions and take them away when the interrogation has been completed. They guard the detainees while they are bound and awaiting interrogation, and are responsible for distributing food and drink. (p.53)<sup>28</sup>

In July, Gen. Vardi submitted his classified report to the Chief of Staff, who endorsed his findings. In the portions of the report that were made public the following month, Gen. Vardi recommended that the IDF reduce its involvement in interrogations and transfer some of its tasks to other security branches. He also called for sharpening IDF orders prohibiting the use and threat of force against Palestinians undergoing

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<sup>26</sup> Asher Wallfish, "Ben-Porat's GSS Report to be Studied," *Jerusalem Post*, June 19, 1991.

<sup>27</sup> See Joel Brinkley, "Israeli Civic Watchdog is Suddenly a Target," *The New York Times*, August 29, 1991.

<sup>28</sup> See also Ari Shavit, "Inside an Israeli Prison," *infra*.

interrogation, and urged that persons be appointed within the General Staff and in the various commands to enforce this policy.<sup>29</sup>

In addition, Gen. Vardi examined sixteen complaints that IDF personnel had engaged in brutality against Palestinians under interrogation, and recommended that the IDF's Criminal Investigation Division investigate eight of them. The IDF judge advocate-general ordered investigations into these cases. On February 4, a military spokesperson told the press that most of the investigations had been completed and turned over to military prosecutors for possible legal action.<sup>30</sup> Requests to the IDF for information about these cases, submitted in writing and by telephone by Middle East Watch on December 10 and 11, have not been answered.

Within his limited mandate, Gen. Vardi approached his task seriously. He met with representatives of B'Tselem on May 17 and took testimony from several Palestinian complainants. However, by recommending a disengagement by the IDF from interrogations, Gen. Vardi was in effect endorsing an increased role for the GSS: an agency subject to less oversight than the IDF and one that appears to bear greater responsibility for abuse in the past.

Among those who responded to the B'Tselem report was Justice Moshe Landau, the former Supreme Court president who headed the 1987 commission that bore his name.<sup>31</sup> In a May 6 article in the daily *Yediot Ahronot*, Justice Landau denied that the commission had condoned torture. Pointing out that international legal definitions of torture covered only methods that inflicted severe pain or suffering, he maintained that the commission had made clear that the forms of "moderate physical pressure" it was condoning must not be allowed to reach the level of torture. He questioned the credibility of B'Tselem's description of the forms of pressure that are applied to Palestinians under interrogation, on the grounds that it was based on the testimony of detainees, who, he said, lie and exaggerate for political reasons. B'Tselem's release of the report, Landau charged, encouraged "animosity" toward GSS interrogators, "assisting! -- unintentionally, I assume -- those evil-mongers who conduct psychological warfare against the State, in addition to other kinds of warfare with the purpose of undermining its existence."

### **Abuses by Interrogators are Rarely Punished**

The police investigation unit's recommendation that Mustafa Akawi's interrogators be cleared of criminal wrongdoing came as no surprise, given the extreme rareness with which GSS agents are brought to justice. Several factors may underlie the infrequency of prosecutions. These may include a laxness on the part of authorities and the criminal justice system toward deviations from the guidelines for interrogation, or guidelines that are themselves lenient toward abusive acts. The relative weight of these

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<sup>29</sup> Israel Government Press Office press bulletin no. 21, "Barak Adopts Vardi Recommendations on Military Interrogation Centers," August 13, 1991.

<sup>30</sup> "Soldiers Suspected of Brutality," *Jerusalem Post*, February 5, 1992.

<sup>31</sup> Justice Landau also replied to Amnesty International's allegation that some of the methods of torture it had documented might be consistent with the secret guidelines of the Landau Commission. See *The Military Justice System*, p.63.

two factors will remain a mystery so long as the guidelines remain secret.

**In 1987, the Landau Commission acknowledged a pattern of leniency toward abuses committed by GSS agents:**

**Sanctions in response to GSS operatives' violation of rules and directives have so far been imposed as an internal procedure within the GSS, such as transfer of the delinquent to another unit, up to dismissal from the Service. The Special Disciplinary Tribunal sometimes showed leniency in imposing disciplinary sanctions despite the gravity of the offense. (paragraph 4.19(a))**

**The commission urged that in cases of "special gravity," GSS investigators "cannot enjoy *de facto* immunity from criminal proceedings." Its report proposed several methods of external oversight of the agency, including a probe by the State Comptroller to determine whether investigations are conducted in accordance with the laws and legal guidelines, and a unit within the Justice Ministry to handle complaints against the GSS. Details of how that unit would function are supposedly found in the secret appendix to the report.**

**To date, there is little evidence that the investigation of abuses by interrogators has intensified as a result of the commission's recommendations. The State Comptroller has yet to submit a report on GSS interrogations, although one is reportedly nearing completion. The unit set up within the Justice Ministry has proven to be slow and unaggressive in responding to complaints against the GSS. For example, in December 1989 and January 1990, Tamar Pelleg, a staff attorney with the Association for Civil Rights in Israel, submitted formal complaints to the Justice Ministry on behalf of 10 of the detainees interviewed for the B'Tselem report (see pp.140-148). After she sent two follow-up letters, Advocate Pelleg was told in November 1990 that the cases were being processed. In December 1991, the Justice Ministry informed Adv. Pelleg of the outcome: in one of the cases, "irregular" means had been employed, and those involved had been subjected to "disciplinary measures as warranted."<sup>32</sup> With regard to the other complaints she had submitted, the investigation found that there had been no wrongdoing. No further details were provided.**

**Since 1990, the Public Committee against Torture in Israel has submitted to the Justice Ministry detailed complaints and requests for investigations on behalf of tens of Palestinians about torture and beatings during interrogation. In the majority of cases, authorities acknowledged receipt of the complaint and then either sent no further information or wrote to inform the organization that the investigation had found no wrongdoing by the interrogators.**

**In recent memory, in only one instance did the mistreatment of a Palestinian in custody lead to actual time in prison for GSS interrogators. This was the case of Khaled al-Sheikh Ali, 27, who died in the interrogation wing of Gaza Central Prison on December 19, 1990, from blows to the abdomen. His was the fifth case since 1988 in which death appeared to have been a direct or indirect result of interrogation methods, according to B'Tselem.<sup>33</sup>**

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<sup>32</sup> Letter to Tamar Pelleg from Rachel Sucar, Deputy to the Attorney General for Special Tasks, December 21, 1991.

<sup>33</sup> See *The Interrogation of Palestinians*, pp. 39-44, and Joost R. Hiltermann, "Deaths in Israeli Prisons," *Journal of Palestine Studies*, Spring 1990, pp. 101-110.

The prosecution of the interrogators in this case resulted from a unique combination of circumstances. First, Mr. Ali's death caused an unusual outcry because it came only two weeks after another young Palestinian had died in the same interrogation facility.<sup>34</sup> Second, human rights groups aided Mr. Ali's family to bring in an independent pathologist to represent them at the official autopsy. (The pathologist, Dr. Michael Baden, participated in the autopsy of Mustafa Akawi fourteen months later.) When Dr. Baden and the state pathologist, Dr. Yehuda Hiss, found clear evidence that Ali had died from internal bleeding caused by strong blows to the abdomen inflicted shortly before his death, they received authorization to visit the GSS wing in Gaza Prison. There, they interviewed five persons who identified themselves as participants in the questioning of Mr. Ali. All five denied using force.

The publicity and the strength of the evidence surrounding the death of Mr. Ali created an unusual amount of pressure for accountability. Soon afterward, the press reported that two GSS agents whose names were not disclosed were being prosecuted *in camera* for manslaughter in Jerusalem District Court. After a plea bargain, the two were sentenced to six months imprisonment for causing death by negligence, and dismissed from the GSS. When they were ordered to serve their sentences in prison rather than performing community service, the defendants appealed to the Supreme Court. Their sentences were upheld. Supreme Court Justice Aharon Barak called the sentences an "unequivocal" message that if investigations are not conducted within the bounds of the law, "the response will be meaningful punishment."<sup>35</sup>

The unprecedented imposition of prison sentences for beating a man in custody to death is a step toward establishing accountability, although six-month sentences are deplorably short considering the grave acts that were committed. Amnesty International observed that the negligent homicide statute under which the two were convicted "basically applies to accidents and appears badly suited to punish people who have tortured someone to the point of death, even if they did not intend to cause his death."<sup>36</sup>

In 1991, a case involving police officers rather than the GSS also led to the rare step of punitive measures against interrogators. As in the Sheikh Ali case, the torture of Ismail al-Ghoul by Jerusalem police received notice because of unique circumstances in the case and the wide publicity it received.

Mr. al-Ghoul was arrested by Jerusalem police in December 1989, along with a brother and cousin, on suspicion of murdering a Palestinian suspected of collaborating with Israeli authorities. Under interrogation, al-Ghoul confessed to the killing and implicated his brother only after being severely beaten on his body and the soles of his feet, and forced to stand handcuffed with his hands held in the air, according to affidavits taken later by his lawyer. Soon after, however, authorities found another suspect with no relation to al-Ghoul who confessed to the murder. Seven weeks after their arrest, the al-Ghoul

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<sup>34</sup> Jamal 'abd al-'Ati allegedly hanged himself on December 4 after a month in the interrogation wing. See *The Interrogation of Palestinians*, p. 42, and al-Haq, *A Nation under Siege*, pp.187-188.

<sup>35</sup> *MidEast Mirror*(US), September 2, 1991, p. 5.

<sup>36</sup> *The Military Justice System*, p. 63.

brothers were released.<sup>37</sup>

Following an internal investigation of the case, three members of the Jerusalem Police Minorities Division were suspended and criminal charges were filed against ten policemen in the division, in connection with the mistreatment of Ismail al-Ghoul and other suspects. The charges included assault and obstruction of justice. The trial is scheduled to begin in Jerusalem District Court on March 14.

### **The Supreme Court Petition against the Report of the Landau Commission**

On April 15, the Israeli Supreme Court, sitting as the High Court of Justice, is scheduled to hear oral arguments on a petition to declare illegal the recommendations of the Landau Commission on the grounds that they contravene Israeli law and in effect sanction torture. The petition, filed last June by Murad 'Adnan Salahat and the Public Committee against Torture in Israel, also demanded that the secret appendix to the Landau report, containing the guidelines for interrogation, be made public.

Mr. Salahat is an 18-year-old ex-detainee from the Nablus district in the West Bank who alleges he was tortured under interrogation by the GSS between October 17 and November 8, 1990. The Public Committee against Torture is an independent Jerusalem-based organization of academics, professionals and human rights activists working for the prevention of torture in Israel and the occupied territories. The suit, prepared by human rights attorney Avigdor Feldman, named as respondents the Government of Israel, through the Government Secretary; the Prime Minister; and the head of the General Security Service, care of the office of the Prime Minister.

The petition criticized the commission's assumption that international norms permit vigorous psychological pressure and moderate physical pressure against suspects under interrogation, and its broad interpretation of the necessity defense. Arguing that "there is a likelihood that the increase in the number of people who have died in the course of interrogation is related to the recommendations of the [Landau report]," (paragraph 70) the petition contended that only a total prohibition of physical abuse could protect a person in custody who is entirely vulnerable before his interrogator.

The following excerpts give a sense of the principal arguments made in the petition:

Even accepting the use of illegal actions under the necessity defense, the commission errs in failing to distinguish between the use of torture to prevent an immediate danger and its use to extract evidence or confessions for use in court.... (paragraph 9)

The commission marks as targets for the means which it recommended a wide group of suspects....The commission does not differentiate between persons suspected of acts of violence and persons suspected of political subversion, and thus persons suspected of opposition to Israeli rule in the territories acting in a political, although prohibited, manner become a target for unacceptable means of interrogation. (paragraph 10)

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<sup>37</sup> B'Tselem, *The Interrogation of Palestinians*, pp. 37-38; Yosef Cohen, "Two Steps Away from the Pedestrian Mall," *Kol Ha'ir*, September 14, 1990, translated in *al-Fajr* English weekly, September 24, 1990.

**Moreover, the commission does not distinguish between the kind of serious suspicion entailing immediate danger to human life that the law can perhaps consider as justification for using unacceptable means, and those suspected of minor "hostile terrorist activity" offenses, such as throwing rocks, membership in a hostile organization, flag-raising, expressing solidarity with a hostile organization, and such offenses as are abundant in the defense legislation. (paragraph 11)**

**The commission's claim that vigorous psychological pressure and moderate physical pressure are not bodily or emotional torture, mistreatment of the person undergoing interrogated, or humiliation to his human dignity, is based upon a far-reaching assumption with regard to what is permissible and forbidden in terms of bodily and emotional harm to persons being interrogated, an assumption that is vigorously rejected in our [Israeli] law, and in the law of other civilized countries. (paragraph 16)**

**The petition goes on to ask the court to order the publication of the secret appendix of the Landau report containing the guidelines for GSS interrogators. These guidelines, according to the petition,**

**constitute a substantial deviation from the rules of law existing in the State of Israel. They do not involve the implementation of existing provisions but amount to a new normative system allowing methods of interrogation that were, in the view of the petitioners, illegal until the report of the commission of inquiry. Therefore, the collection of guidelines for the interrogator does not have the status of internal guidelines only...but is a chief normative source, or is at least at the level of secondary legislation and, as such, cannot remain a secret because the rule is that there is no hidden legislation in our law. (paragraph 66)**

**In responding to this petition, the government staunchly defended the Landau report in several ways. First, it claimed that the GSS operated strictly within the law and was subject to internal and external supervision. Second, the government -- without commenting on specific methods or allegations -- denied that the forms of "moderate physical pressure" prescribed in the secret appendix to the Landau report could be interpreted in any way as torture. Third, the government claimed that the necessity defense was not being used as a blanket advance approval for interrogators to use physical pressure or other methods against suspects, but was invoked only in situations where the methods met certain conditions of necessity and proportionality. Fourth, the government argued that releasing the appendix to the Landau report would hamper the effectiveness of interrogations.**

**The response to the Salamat petition was the first public defense by the GSS of its interrogation guidelines since the Landau Commission report in 1987. The excerpts that follow give the thrust of its arguments:**

**The foundation of the report of the Landau Commission and its recommendations is the clear and unequivocal determination that all of the legal limitations in the law apply to the General Security Service's methods of interrogation, and that it is necessary to be strict with the GSS and to impose prohibitions and restrictions on the work of interrogators. This must be done while exercising continuous control and supervision by the authorities in charge of the activity of the GSS, as well as by the state and parliamentary elements of control. (paragraph 4)**

**[T]he work procedures of the security service include an unequivocal declaration to the interrogators with regard to the prohibition of the torture, humiliation, or compromise of the human dignity of persons under interrogation. (paragraph 5)**

**Among other things, it is explicitly stipulated in the interrogation procedures distributed to the interrogators, which are based upon the [Landau Commission's report, that the means which may be exercised during interrogation must be weighed against the degree of danger anticipated by the suspicions deriving from the activity under interrogation. It is necessary to assess the importance of the information being sought in preventing the danger. (paragraph 7(b))]**

**In light of what is stated in paragraph seven, the respondents shall further claim that the legality of the use of means of pressure in an interrogation must be examined in accordance with the particular circumstances of the specific case.... (paragraph 8)**

**The respondents shall...claim that the principles upon which the commission of inquiry's report is based and the guidelines issued in accordance with it are legal. In other words, there are cases in which the necessity defense stipulated in article 22 of the Penal Code shall be available to the interrogators. (paragraph 8)**

**It is obvious that the commission saw the possibility of using "moderate physical pressure" during interrogation as a measure of last resort, a limited measure that is not to be used indiscriminately by the interrogator, a defined and restricted means, while stipulating the boundaries of what is prohibited and only subsequently of what is permitted. (paragraph 10)**

**The question of whether the necessity defense will allow the use of one method or another will be checked in each specific interrogation according to the specific circumstances of the investigation, in accordance with the conditions detailed in the definitions found in the collection of guidelines. (paragraph 12)**

**...[E]veryone, including an interrogator for the state, is exempt from criminal liability when the terms of a number of defenses have been fulfilled. For our purposes, the necessity defense is of importance when the conduct of the interrogator is intended only to prevent consequences that cannot be prevented in any other way and that would have caused severe injury or harm to the bodies, dignity, or property of others whom he is responsible for protecting, as long as he does no more than is reasonably necessary for that purpose, and the evil he caused is not incommensurate with the evil that he prevented.**

**In defending the secrecy of the guidelines, the government contended that disclosure would render interrogations ineffective. Since "terror organizations" train their "operatives" in the art of evading interrogation through "ideological indoctrination," disclosure of interrogation methods would allow "terrorists" to resist interrogation with even greater ease. (paragraph 17)**

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**Human rights activists were encouraged last summer when the Supreme Court issued an *order nisi* to the government to respond fully to the petitioners' arguments. While they doubt that the court will**

grant the petitioners' request to void or make public the GSS guidelines, they speculate that the case could bring about more modest achievements. The government may, for example, allow the court to scrutinize the interrogation guidelines, which may lead to the GSS consenting to modify aspects of the guidelines. The case will, in any event, add to public and legal scrutiny of the treatment of detainees under interrogation at a time when severe abuses are clearly continuing.

## Recommendations

The mistreatment of Palestinians under interrogation is a matter of gravest concern. The methods that interrogators admitted using on Mustafa Akawi, which include beating and prolonged confinement while hooded and handcuffed in a bitterly cold room, cumulatively amount to torture as it is defined in international law. The ready admission by interrogators to these methods strongly suggests that their behavior was not aberrational but rather within or close to the approved departmental guidelines for interrogation. This indicates that torture, or at the very least, inhuman or degrading punishment, during interrogation is likely to continue with state approval unless Israel radically revises its policies in this area.

■ *Middle East Watch welcomes Israel's ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and calls on the government to take steps to prevent all acts against suspects under interrogation that violate Israel's international legal obligations. This includes voiding any and all guidelines that permit the commission of such acts, and punishing any state agent found to have engaged in abusive practices.*

Among other initiatives, Israel should reject the permissive interpretation of the necessity defense that is at the heart of the recommendations of the Landau Commission (see above, pp. 8-9); and increase the accountability of the GSS by establishing credible outside bodies to monitor and investigate complaints concerning the treatment of suspects under interrogation.

■ *Middle East Watch calls on Israel to make public the Landau Commission guidelines for GSS interrogations.*

Middle East Watch is aware of the state's interest in maintaining the confidentiality of interrogation techniques. However, the desire to gather information cannot be used to shield from scrutiny techniques that have been shown to yield forms of mistreatment and torture that are prohibited under both international and Israeli domestic law. In light of the evidence in this regard, the public interest in preventing torture, inhuman and degrading treatment outweighs the interest in confidentiality.

■ *Middle East Watch commends the willingness of Israeli authorities to heighten accountability by allowing a family-appointed pathologist to participate in the autopsy of Mustafa Akawi, and to visit and question staff at the interrogation center where he died. We urge Israel to extend this policy by ensuring that the family of any Palestinian whose death in or out of detention appears linked to security forces is informed of its rights with regard to participating in the investigation of the death.*

**Israel's chief pathologist, Dr. Yehuda Hiss of the Ministry of Health, has told Middle East Watch of**

**his willingness to allow a family-appointed physician to be present at any intifada-related autopsy. However, Middle East Watch has found that in practice, authorities usually fail to inform Palestinian families of their rights and options in this regard before the autopsy takes place. In the handful of cases during the intifada in which independent pathologists did attend the autopsy, their presence was made possible chiefly because human rights groups and lawyers intervened quickly.**

**■ Middle East Watch calls on the government to continue the criminal investigation into the death of Mustafa Akawi.**

**Based on the information given to Dr. Michael Baden by Mr. Akawi's interrogators and the paramedic who treated him, we believe that there is a *prima facie* case that Mr. Akawi was subjected to forms of ill-treatment that are forbidden by international conventions to which Israel is a party. There is also evidence that he received grossly inadequate medical care.**

**In light of this information, we are distressed by the recommendation made by police investigators that no charges be filed in the case. Without knowing the contents of the police investigation report, which has not been made public, we are concerned that its exoneration of the interrogators is based on the reasoning of the Landau Commission, i.e., that interrogators may be exempted from criminal liability for ordinarily illegal acts by invoking the necessity defense in Israel's penal code.**

**If true, such reasoning is to be deplored on two grounds. First, the forms of ill-treatment to which Akawi was subjected are forbidden under all circumstances by international law. Second, in any society in which the necessity defense exists, it should be considered an emergency measure and above all it should not become an institutionalized recourse for a state agency.<sup>38</sup> In view of the exceptional quality inherent in the concept of the necessity defense, the appropriate forum for judging its applicability in a particular case must not be a routine police investigation, but a thorough legal inquiry or a criminal trial that examines the necessity and proportionality of the illegal acts committed for the alleged purpose of preventing harm to others.**

## **APPENDIX**

### **Chronology: Mustafa Akawi's Detention and Death**

*The following account is based largely on information gathered by Dr. Michael Baden, who investigated the death of Mr. Akawi on behalf of the Boston-based Physicians for Human Rights.<sup>39</sup> Together with Israeli state pathologist Dr. Yehuda Hiss, Dr. Baden participated in the autopsy and visited the interrogation wing of Hebron Central Prison, where he interviewed the paramedic who examined Mr. Akawi, as well as several men who identified themselves as the GSS interrogators responsible for him.*

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<sup>38</sup> See Alan M. Dershowitz, "Is It Necessary To Apply 'Physical Pressure' to Terrorists – And To Lie About It?" *Israel Law Review*, 1989, p. 197.

<sup>39</sup> The transcript of a press conference that Dr. Baden gave in New York on the case on February 12, 1992 is available from the Physicians for Human Rights.

*This chronology does not assess the quality of medical treatment Mr. Akawi received. Dr. Baden's criticisms of that care are outlined in the transcript of his press conference of February 12, 1992, available from the Physicians for Human Rights, and in the letter sent the same day by PHR to Zalman Shoval, the Israeli ambassador to the United States.*

*It is likely that the abuse Dr. Baden was told of by the interrogators represents only part of the mistreatment to which Mr. Akawi had been subjected. Judging by a statement Mr. Akawi made at a court hearing the day before he died, and accounts by other Palestinians who have undergone interrogation, it is plausible that Mr. Akawi was beaten more severely, and exposed to cold for longer periods than interrogators acknowledged in their conversations with Dr. Baden.*

*An alternative source of information about the sequence of events, the report of the police unit that investigated the death, has not been made public.*

**Mustafa Akawi, 35, resided in a suburb of East Jerusalem and worked as a salesman for a local company. He had not been arrested since 1985, when he served a ten-month sentence for membership in the Popular Front for the Liberation of Palestine (PFLP), a radical faction of the Palestine Liberation Organization. He had also been arrested in 1983 and released without charge after two weeks.<sup>40</sup>**

**Early on the morning of January 22, 1992, Mr. Akawi was arrested at his home and brought to Hebron Central Prison. He was one of scores of Palestinians arrested on January 22 in connection with a series of fatal ambushes on Israeli settlers since October, and was among a handful of detainees who was being questioned in detail, interrogators told Dr. Baden. The PFLP had claimed responsibility for some of these attacks.<sup>41</sup> After Mr. Akawi's death, the head of the GSS reportedly described him as a PFLP activist.<sup>42</sup>**

**Upon his entry to the prison, Mr. Akawi was examined by a physician. Dr. Baden said this check-up was apparently cursory and did not include an electrocardiogram, which might have detected Akawi's severe arteriosclerosis. Dr. Baden believes that both Mr. Akawi's family and prison authorities had been unaware of his heart disease.**

**Between January 22 and February 2, Mr. Akawi was held in incommunicado detention in the interrogation wing of the prison. Throughout the occupied West Bank and Gaza Strip, Palestinians under interrogation are routinely denied all visits and contact with the outside for at least two weeks.**

**Little is known about what kind of treatment Mr. Akawi received during this period. However, Mr. Akawi complained of abuse during this phase when he was brought on the afternoon of February 3 to a hearing on a prosecutor's request to extend his investigative detention 30 days. Mr. Akawi is reported to have told Judge Col. Shmuel Knobler in Hebron Military Court, "I don't sleep at all, this pressure in the**

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<sup>40</sup> "Al-Haq's Interim Report on Mustafa Akkawi's Torture and Death: A Response to Israeli Police Investigation Results," February 14, 1992.

<sup>41</sup> Sami Aboudi, "Radical Palestinians Vow More Ambushes on Jews," Reuters dispatch, January 27, 1992.

<sup>42</sup> "Israeli Replies to Charge on Arab Who Died in Jail," *The New York Times*, February 12, 1992.

nights, the cold..." And then pointing to bruises on his shoulders, he said, "These marks come from being hit." The judge ordered that Mr. Akawi be given a medical examination and that his complaint be forwarded to the Hebron police department. He then authorized an eight-day extension of the detention instead of the thirty days requested, and Mr. Akawi was returned to the interrogation wing.

The interrogators acknowledged to Dr. Baden only one incident of physical force during Mr. Akawi's detention. Dr. Baden recounted:

What [the interrogators] said had happened was that at some point on the second or third day that [Mr. Akawi] was in custody the interrogator took him by the lapels and pushed him back and forth, both punching the chest and wiggling the head back and forth...I was advised by [Palestinians] that the technique of whiplashing the head back and forth is one technique of getting the person to be uncomfortable, to be more willing to talk, and doesn't leave marks upon him. There was a little bruise present over the third cervical vertebra in the back of the neck under the skin, it could be seen under the skin, but the spine itself was all right. But that was the way that I was told that these injuries were produced. The age, the color of the bruising was consistent with it having happened on January 24....But they had to be pretty strong punches to get diffuse hemorrhages about four or five inches in diameter each on the chest. **(emphasis added)**

More is known about how Mr. Akawi was treated from the time he was brought back from court to his death approximately 12 hours later. During most of this period, Dr. Baden was told, Mr. Akawi was kept with his hands cuffed behind his back and a hood over his head, seated in an extremely cold exterior hallway. Dr. Baden said:

the temperature was at most zero degrees centigrade [on the night of February 3-4]. There was snow outside, the room [has] broken [window] panels, so that the cold of the outside comes into the room readily.

Dr. Baden said he did not know if Mr. Akawi slept, but "if he were going to sleep, he'd have to sleep in this little chair with the handcuffs behind his back and the hood over his face."

At some point during the evening Mr. Akawi was examined by a paramedic. The paramedic later told Dr. Baden that he had recommended that a physician see Mr. Akawi the following day. At about 9:30 pm, Mr. Akawi was taken from the hallway into a warmer room for two hours of "friendly interrogation," as the interrogators described it to Dr. Baden. At 11:30 pm, Mr. Akawi was returned to the cold hallway, handcuffed and hooded.

Dr. Baden was not certain what Mr. Akawi was wearing during the various phases of the evening. He was informed that after Mr. Akawi saw the paramedic he was given a flight jacket and two blankets. This suggests that he did not have warm clothing or covering prior to that time. Dr. Baden noted that he himself felt cold when he visited the hallway four days later, wearing street clothes and a long raincoat.

Mr. Akawi sat in the chair in the hallway from 11:30 pm until 3:30 am, when Mr. Akawi told a guard that he felt ill and wanted to see a doctor. An interrogator brought him down two flights of stairs to see the paramedic. The paramedic told Dr. Baden that he found Mr. Akawi's pulse and blood pressure to be normal and sent him back upstairs, advising the interrogators to provide Mr. Akawi with hot tea. The interrogator placed Mr. Akawi in a closet-sized room, unhooded and uncuffed, and went off to prepare tea. When he

**returned he found Mr. Akawi slumped back and unconscious.**

**The interrogator called the paramedic and the physician on duty, who administered cardiopulmonary resuscitation in an unsuccessful attempt to revive Mr. Akawi. He was pronounced dead at about 5:20 am.**

\* \* \* \*

**For more information contact Eric Goldstein or Susan Osnos at (212) 972-8400.**

*Middle East Watch was created in 1989 to monitor human rights practices in the Middle East and North Africa and to promote respect for internationally recognized standards. The chair of Middle East Watch is Gary Sick, the vice chairs are Lisa Anderson and Bruce Rabb, the executive director is Andrew Whitley, the research director is Eric Goldstein, the associate director is Virginia N. Sherry, the senior researcher is Aziz Abu-Hamad, and the associate is Christina Derry. Allegra Pacheco provided research assistance for this report.*

*Middle East Watch is a component of Human Rights Watch, a nongovernmental organization which is also composed of Africa Watch, Americas Watch, Asia Watch, the Fund for Free Expression and Helsinki Watch. The chair of Human Rights Watch is Robert L. Bernstein, the vice chair is Adrian W. DeWind, the executive director is Aryeh Neier, the deputy director is Kenneth Roth, the Washington director is Holly J. Burkhalter, and the press director is Susan Osnos.*