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# ISRAEL/OCCUPIED TERRITORIES AND THE PALESTINIAN AUTHORITY

## Five years after the Oslo Agreement: human rights sacrificed for "security"

*Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world (Universal Declaration of Human Rights, preamble)*

### INTRODUCTION

This report describes human rights concerns and developments in Israel and the Occupied Territories and the areas under the jurisdiction of the Palestinian Authority (PA) in the five years since the signing of the Oslo Agreement on 13 September 1993. It focuses on areas of main concern to Amnesty International, including arbitrary arrest and detention without charge or trial of political detainees; the use of torture and deaths in custody after torture; unfair trials; possible extrajudicial executions and other unlawful killings. Other human rights violations, such as closures which prevent freedom of movement; confiscation of land; destruction of houses; confiscation of Jerusalem identity cards, causing forcible relocation or loss of benefits; profoundly affect the lives of Palestinians but are not considered in this report.

Amnesty International does not rank or compare violations of human rights committed by different states or non-governmental entities. It combats abuses within its mandate wherever they occur. With this report, Amnesty International is urging both the Israeli and Palestinian authorities to place the protection of basic human rights at the heart of all future policies and accords.

The grave human rights abuses which have occurred in both the Israeli and Palestinian-controlled areas are primarily the responsibility of the Israeli authorities, the PA and armed groups. However, the acceptance by the international community of "peace" at any price or of a security-led agenda involving the suppression of "terrorism" without regard for human rights has often encouraged violations, and the international community has a crucial role to play in achieving respect for human rights by refusing to accept these violations. Israelis and Palestinians must not accept human rights violations in the name of achieving "peace" or fighting "terrorism"; many sectors of civil society and ordinary citizens are making a major contribution to the struggle for human rights by refusing to accept human rights abuses on whatever side they are committed, by whomsoever they are committed and against whomsoever they are committed.

## **BACKGROUND**

On 13 September 1993 Israel and the Palestine Liberation Organisation (PLO) signed the Declaration of Principles on Interim Self-Government Arrangements, which became known as the Oslo Agreement. The Palestinian Authority was created by the Agreement on the Gaza Strip and Jericho Area (also known as the Cairo Agreement), signed by Israel and the PLO on 4 May 1994. The PA was established in May 1994 in parts of the West Bank and Gaza Strip, areas which had been occupied by Israel in 1967 and had been under Israeli military government since that date. The Cairo Agreement gave the PA the jurisdiction to administer parts of the Gaza Strip and Jericho, one town in the West Bank, under the leadership of Yasser Arafat, Chairman of the PLO. He returned to Gaza from his headquarters in Tunis to oversee this new administration in July 1994.

On 28 September 1995, a further accord, the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (known as the Oslo II or Taba Agreement) extended the jurisdiction of the PA to cover other areas in the West Bank beyond Jericho. This agreement superseded the previous Cairo Agreement.

This agreement divided the West Bank (excluding East Jerusalem<sup>1</sup>) into three separate areas. Area A, approximately 3% of the area of the West Bank, consisted of the main urban areas; the PA had responsibility for public order and internal security. Area B, 27% of the area of the West Bank, consisted of approximately 440 West Bank villages; the PA had responsibility for public order for Palestinians, while Israel retained "overriding responsibility for security for the purpose of protecting Israelis and confronting the threat of terrorism" (Article XIII(2a)). In Area C, the remaining 70% of the West Bank, Israel retained complete responsibility for security and public order.

In implementation of the Oslo II Agreement Israel withdrew its forces from six towns in the West Bank at the end of 1995. At elections which took place in January 1996 Palestinians in the Occupied Territories, including Jerusalem, elected an 88-member Legislative Council and overwhelmingly voted for Yasser Arafat as President of the PA. In Israeli elections of May 1996, Binyamin Netanyahu was elected Prime Minister of Israel. In January 1997, after signing the Protocol Concerning the Redeployment in Hebron, Israel withdrew from most of Hebron. As of August 1998, there had been no further redeployment of the Israeli army in the West Bank, although the Oslo II Agreement anticipates three further redeployments.

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<sup>1</sup> East Jerusalem was annexed by Israel in 1967, though this annexation has not been internationally recognized.

The five years since the Oslo Agreement have been marked by a great increase in the number of Israeli civilians killed by armed Palestinian groups. When the Oslo Agreement was signed a number of Palestinian political groupings rejected it and stated that they would continue armed struggle against Israel. *Hamas*, using its armed wing the *Izz al-Din al-Qassam* Brigades, and Islamic *Jihad* have launched armed attacks, often suicide bombings, usually in reprisal for Israeli extrajudicial executions or other killings of Palestinians. More than 100 Israeli civilians have died in suicide attacks since 1994; others have died in individual attacks. Other Palestinian groups opposed to the peace process who have claimed responsibility for attacks on Israeli nationals include the Popular Front for the Liberation of Palestine (PFLP) and the Democratic Front for the Liberation of Palestine (DFLP) .

More than 45 Palestinian civilians (including the 29 killed in the al-Ibrahimi Mosque) have been killed by Israeli civilians, some of whom have been allied to Israeli groups opposed to the peace agreement, such as *Kach*.

The aftermath of suicide bombings, and the deaths and woundings of Israeli citizens have provided the backdrop for many of the violations of human rights described in this report. The Palestinian population have been the main victims of such violations, liable to mass arbitrary arrests, incommunicado detention, torture and unfair trials from both sides. The Occupied Territories have become a land of barriers, mostly erected by Israeli security services, between town and town and village and village; at these checkpoints Palestinians may be refused passage, and it is at such barriers that many arrests, beatings and shootings have taken place.

Amnesty International deplores the deliberate and arbitrary killing of civilians and has consistently raised with *Hamas* leaders in Gaza and in Jordan the fact that the targeting of civilians goes completely against international humanitarian standards applicable to all parties to internal and international armed conflicts<sup>2</sup>. At the same time, Amnesty International has repeatedly stressed that human rights abuses by opposition groups can never justify abandonment of international human rights principles by the authorities.

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<sup>2</sup> The killing of non-combatants and prisoners, the taking of hostages and the use of torture are prohibited Article 3 common to the four Geneva Conventions of 1949.

## **HUMAN RIGHTS**

The year 1998 marks the fifth anniversary of the signing of the Oslo Agreement and the 50th anniversary of the Universal Declaration of Human Rights (UDHR). The UDHR was drawn up in 1948 in response to the Second World War and the holocaust, the "barbarous acts which have outraged the conscience of mankind" caused by "disregard and contempt for human rights" (UDHR preamble). The fundamental human rights summarized in the UDHR have been expanded in other United Nations human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), both of which the State of Israel has ratified. President Yasser Arafat also stated, soon after signing the first Oslo Agreement, that he would abide by international human rights treaties. The standards quoted below are in their simplest form, from the UDHR:

*No one shall be subjected to arbitrary arrest, detention or exile (Article 9)*

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5)*

*All are equal before the law and are entitled without any discrimination to equal protection of the law... (Article 7)*

*Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence (Article 11(1))*

*Everyone has the right to life, liberty and security of person (Article 3).*

These basic and fundamental rights are the subject of this report.

## **ISRAEL AND THE OCCUPIED TERRITORIES**

### ***I Detention Procedures***

#### **Arrests and Prolonged Incommunicado Detention**

Essentially nothing has changed in the laws or practice governing the arrest and detention of Palestinians from the Occupied Territories. Israeli military orders are still applicable throughout the Occupied Territories. Palestinians are still subject to arbitrary political arrest and prolonged incommunicado detention according to Israeli Military Order 378

which allows detention for up to 90 days without access to a lawyer. Access to the family can be denied even longer. Judicial review is often perfunctory. An amendment to Military Order 378 issued in 1994 authorizes arrest even in Area A.

Numbers of Palestinians arrested have, of course, declined since the *intifada* (the uprising of the Palestinian population of the Occupied Territories from 1987 to 1993) when up to 30,000 Palestinians were arrested per year. According to official Israeli statistics a total of 6,245 Palestinians were arrested for security offences in 1994. At least 2,000 must have been arrested in 1997.

Waves of arrests, prolonged incommunicado detention, increased numbers of administrative detainees and increased torture and ill-treatment followed suicide bomb attacks on Israeli targets by Palestinian armed groups. After two bombings caused 13 Israeli deaths in Afula in April 1994 there were 500 arrests and the number of administrative detainees rose in 10 days from 119 to 333. The Dizengoff Street suicide bombing of October 1994 brought an even sharper increase in arrests and prolonged incommunicado detention. For six months after the bombing, lawyers of Palestinian detainees reported that it had become the norm rather than the exception to be denied access to detainees for 25-30 days and that detainees were being held between 40 to 140 days without access to their families. Not only does this contravene standards on the administration of justice, it also leaves the detainees especially vulnerable to torture or ill-treatment. Israeli lawyers, who can apply for injunctions in the Israeli High Court of Justice demanding access, may be successful at shortening times of incommunicado detention, but even then they may not see their clients for 20 days or more<sup>3</sup>.

**Ziyadeh al-Qawasmeh**, a student from Hebron, aged 19, was arrested on 13 November 1994. His lawyer was able to see him about 25 days after arrest but he was not allowed to meet his family until 136 days after arrest; during his interrogation which lasted most of this time, he says he spent six days per week without sleep tied to a small chair.

Even though the main population centres in the West Bank (except for parts of Hebron and East Jerusalem) have been transferred to the jurisdiction of the PA, mass

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<sup>3</sup>Principle 15 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that the communication of a detainee with the outside world, in particular his family and counsel, should not be delayed for more than a matter of days. The UN Special Rapporteur on Torture has underscored the role of incommunicado detention in facilitating torture and has called for detainees to have access to legal counsel within 24 hours (E/CN.4/1995/34 page 173, para. 926(d)).

arrests of Palestinians by Israeli security services still take place. At least 1,000 Palestinians were arrested by Israel from the West Bank in the months after the suicide bombs of February and March 1996. About 500 were arrested in the West Bank in August and September 1997 after two suicide bombs in Jerusalem. Although most of the Palestinian population in the Occupied Territories are under the PA's administrative jurisdiction, Israeli security services act freely throughout Areas B and C to impose curfews, search houses and arrest and detain. Villages such as Surif or Asira al-Shimaliya thought to have harboured *Hamas* cells have been cut off from the outside world for days or weeks during Israeli security sweeps, and houses of suspected suicide bombers destroyed. In Area B Palestinians can be arrested both by the Israeli security services and by the PA.

Having handed over to the PA the detention centres and prisons in the centre of cities on the West Bank, Israel has constructed new detention centres and military tribunals in the West Bank areas under its direct control: at Majnuna near Hebron; Beit El near Ramallah; and Dotan near Nablus. Palestinians arrested are also sent for interrogation to the Moscobiyya Detention Centre in Jerusalem, Shikma Prison in Ashkelon and Kishon Prison near Haifa.

### **Administrative Detention**

Administrative detention has been used against thousands of Palestinians and up to 20 Jews since 1993. Detainees are held without charge or trial under the order of either the Israeli Minister of Defence, in the case of Israel and Jerusalem, or an Israel Defence Forces (IDF) Military Commander, in the case of the Occupied Territories, excluding East Jerusalem. Usually neither they nor their lawyers are allowed to know in any detail the reasons for their detention.

Administrative detention laws - ostensibly introduced as an exceptional measure to detain people who pose an extreme and imminent danger to security - are in fact used to detain a much wider range of people who should be arrested, charged and tried in accordance with the normal laws of penal procedure, or against individuals who should not be arrested at all.

Under administrative detention, detainees' rights to a fair trial, including their right to be informed promptly and fully of the reasons for their detention, to be presumed innocent, to examine and have examined the witnesses against them, and to be tried in public, are consistently abused. In many cases the first if not the only opportunity detainees have to find out why they are detained is at an appeal hearing which they have to initiate themselves. It takes place several weeks, sometimes months, after arrest. The evidence against the detainee is heard *in camera*, without either the defendant or his or her lawyer being allowed to know what that evidence is and to challenge it.



At the time of the 1994 Oslo Agreement it was hoped that the problem of administrative detention would be resolved and the detainees rapidly released. However, by 1994 administrative detention was once more the "normal" means of holding a large number of detainees without bringing them to trial. While before the establishment of the PA in May 1994 all but two administrative detainees from the Gaza Strip had been released, during October to December 1995, when towns in the West Bank were being handed over to the PA, many political activists opposed to the peace process resident in these towns were arrested by Israel and placed under administrative detention.

Some detainees stay in administrative detention for two or three months. Others have their detention orders continually extended, without any new evidence being presented by the General Security Service (GSS), and remain in detention for years on end.

**'Usama Jamil Isma'il Barham,** currently the longest-serving administrative detainee, has been held since 8 November 1993 with a gap of only 17 days in September 1994. His detention order has been renewed more than ten times. His present order is due to expire on 9 September 1998.

oppose the peace process. One detainee, Wissam Rafeedie, writes of his arrest:

*"When I was arrested on the morning of 15 August 1994 the officer said to me, 'Why do you oppose the peace plan?' i.e. the Oslo Agreement. I said, 'That's not your concern, I am free to hold my opinion.' He replied, 'For that reason, we are free to hold you in prison.'"*

**Ahmad Qatamesh,** from Ramallah in the West Bank, was arrested by the IDF on 1 September 1992 and was reportedly tortured and ill-treated. He was placed under administrative detention more than a year later on 20 October 1993 after a judge had ordered his release on bail, arguing that the prosecutor had failed to show sufficient evidence against him to justify his continued detention. He was eventually released on 15 April 1998 after he had been held in administrative detention for four and a half years.

Between 1994 and 1998 those held in administrative detention have mainly been members of parties which opposed the peace process, either activists from the PFLP or the DFLP, or from *Hamas* or Islamic *Jihad*. Some were accused of involvement in violence but since no evidence was made available to them or their lawyers, such involvement is impossible to assess. Many may have been prisoners of conscience, and many of those detained said that they were offered freedom if they would agree not to

During 1997 and 1998 campaigns against administrative detention by Palestinian, Israeli and international human rights organizations, including Amnesty International<sup>4</sup>, helped to raise the awareness of the Israeli public. The letters between an Israeli, Yuval Lotem, who had served a prison sentence for refusing to serve as an administrative detainee guard in Megiddo Prison, and Imad Sabi', in administrative detention, published

in the major national Israeli newspaper *Ha'Aretz* in 1997, brought the issue of administrative detention to a much wider Israeli audience. Some of those inspired by the correspondence to take action were a group of Israelis, who formed the *Open Doors* movement. The movement's activities in support of the administrative detainees ranged from "twinning" with individual detainees to demonstrating outside the Ministry of Defence. A number of administrative detainees, including long-term detainees, began to be released: Imad Sabi, detained since December 1995, was released in 1997, and other long term detainees from the beginning of 1998. In March and April 1998, 70 administrative detainees were released, including Ahmad Qatamesh and others held for more than four years. However, the laws allowing the practice of administrative detention remain in place.

Despite the much smaller numbers involved, the use of administrative detention against Jews may have created more opposition in Israel to the practice in general. New constituencies of opposition on the right-wing of Israeli politics developed. For example Haim Falk, chair of the National Religious Party's Young Guard, wrote in a letter about administrative detention: "A reality in which a man's freedom is taken away without him or his family knowing why is a morally and Jewishly distorted reality.... I thought...that the fact that a man can be held in administrative detention, without the right to defend himself, is wrong." (*Ha'Aretz*, March 1998)

As of July 1998 there were approximately 90 administrative detainees. The majority are reportedly members of *Hamas* and Islamic *Jihad*; labelled "terrorists" and denied a fair trial. Administrative detention is still used as a means to circumvent the criminal justice system and avoid the due process safeguards it provides.

## ***II Torture and Ill-treatment***

By September 1993 the Israeli security services were using torture systematically on Palestinian political suspects and its use was effectively legal, an internationally unprecedented state of affairs. The past five years has witnessed a constant struggle between, on the one side, victims, human rights lawyers and local and international human rights organizations searching for the means to effectively challenge the system of legalized torture and, on the other, the Israeli Government, seeking to defend and entrench the present system,

<sup>4</sup> See *Israel/Occupied Territories: Administrative detention: Despair, uncertainty and lack of due process*, April 1997, AI Index: MDE 15/03/97.

together with a compliant Israeli Supreme Court and a largely supportive Israeli public. Though the human rights movement has won some successes, this legalization and systematization of torture has, over the past five years, if anything, become a more entrenched part of the system in which Palestinian detainees find themselves.

The GSS, and to a lesser extent also the IDF, interrogate the overwhelming majority of Palestinians from the Occupied Territories, using *torture and ill-treatment systematically*. Since 1987 GSS interrogations have been regulated by secret guidelines drawn up by the Landau Commission allowing "the exertion of a moderate measure of physical pressure". Probably at least 800 Palestinians suffer torture every year. The apparent acceptance of this by the majority of Jewish Israelis allows the systematic torture of Palestinians to continue.

### **Methods of Torture**

The Landau Report guidelines have never been made public, but certain methods of torture have been described by Palestinians in thousands of testimonies and in court hearings the GSS has confirmed their use. Methods described by detainees and admitted by the GSS include:

**Shabeh** A combination of methods including prolonged sleep deprivation while shackled in painful positions, hooding and exposure to continuous raucous music, played at an extremely high volume. Normally detainees are interrogated and deprived of sleep for five days at a time and allowed to sleep during Friday and Saturday (the weekend). The painful position may involve sitting on a kindergarten chair with the front chair legs shortened or standing with the arms stretched and handcuffed to a pipe, or the legs just touching the ground. In the "banana position" the detainee lies with his stomach on the chair.

**Gambaz** The detainee is forced to squat for more than two hours.

**Tiltul** (in Hebrew, or *Hazz* in Arabic; "violent shaking") The detainee is held by the collar and violently shaken for up to five minutes. Detainees describe losing consciousness as a result.

**Khazana** (in Arabic, "closet") The detainee is held in a cupboard-sized room.

**Psychological pressure** includes threats to life, family and health.

Other methods of torture, such as beating, pressure on genitals and exposure to heat and cold, have been denied by the Israeli authorities but are frequently reported by detainees. Detainees also report having suffered severe restrictions on the time allowed for eating or going to the toilet.

The use of the torture methods described above is accompanied by a system of medical checking of detainees designed to ensure that detainees do not die in custody. Such involvement by health professionals in a system in which detainees are tortured and ill-treated places current prison medical practice in conflict with medical ethics. Detainees are checked by medical staff on arrival and torture is modified according to the state of their health.<sup>5</sup>

### **"Increased Physical Pressure"**

The Landau Commission report recommended that a ministerial committee should be set up to regularly review the secret guidelines on the use of "moderate pressure". Currently the members of this committee are the Prime Minister (Chairman), the Minister of Defence, the Minister of Justice, the Minister of Internal Security and the Attorney General. In October 1994, after the Dizengoff Street bombing, this committee gave an "exceptional dispensation" to members of the GSS to use "increased physical pressure" for a period of three months. After the Beit Lid suicide bombing of January 1995 these guidelines were renewed and have been renewed at three-monthly intervals ever since.

The meaning of "increased physical pressure" - like the guidelines to the Landau Report - remains secret. However, detainees interrogated after the Dizengoff Street bombing on 19 October 1994 described more intensive treatment. Ahmad Sa'id, a Bir Zeit University student, described his torture as follows:

*"We stayed like that [in shabeh for six days a week] until the bombing in Dizengoff Street in Tel Aviv and then they kept us there for 11 days and I stood for 20 hours instead of four hours a day. The squatting would last four hours instead of one hour. They interrogated me with more physical pressure than before, pressing down on my stomach, my spinal cord and the joints of my feet. Then they made me do physical exercises with my hands tied - this might have made me paralysed if I lost control because my whole weight was on my spine. They threatened me with being unable to father children and with incurable injury. They mentioned names of other prisoners who had been left dead or injured and if we slept or rested they would pour cold water on us or hit our heads.*

*"After the Dizengoff Street bombing... we did not sleep for 11 days. It was summer. The shabeh was in the sun during the day and in cold air-conditioned rooms at night. Standing under the sun, the hoods on our faces made it hotter. The hood on my face day and night affected my sight as it was dark all through. When they beat us they told us that they wouldn't leave marks on the body 'so that if you speak to the judge or the Red Cross representative or the lawyer they won't see any mark and they won't believe you'."*

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<sup>5</sup>See "Under constant medical supervision" *Torture, ill-treatment and health professionals in Israel and the Occupied Territories*, August 1996, (AI Index MDE 15/37/96).

Testimonies like these suggest that "increased physical pressure" is an intensification of previous methods. Six months later a death in custody occurred which highlighted the use of violent shaking.

### **The Death of 'Abd al-Samad Harizat and the Shaking Debate**

'Abd al-Samad Harizat, a 30-year-old computer expert from Hebron, was arrested around midnight on 21 April 1995 and fell into a coma soon after 4pm on 22 April; he died on 25 April without regaining consciousness. Physicians for Human Rights sent an expert, Professor Derrick Pounder, to observe the autopsy, carried out by two Israeli forensic pathologists. The autopsy found that 'Abd al-Samad Harizat had died from "violent shaking" which had caused a sub-dural haemorrhage within the skull. Pressure from the lawyer of the Harizat family later obtained information about his interrogation: he had been shaken 12 times between 4.45am and 4.10pm, 10 times by holding his clothes and twice by holding his shoulders.

Although the interrogators who caused death or severe injury were offered, as usual, impunity for their actions<sup>6</sup>, the death of 'Abd al-Samad Harizat by violent shaking brought torture and the use of shaking into public debate. The Minister of Justice David Liba'i and the Legal Advisor to the Israel Government, Michael Ben Yair, were reported to be opposed to the continued use of shaking. The dispensation to use "increased physical pressure" which expired in July 1995 was then renewed for periods of approximately one week until August 1995.

*"There is no doubt whatsoever about the cause of death and it's very clear he has died from unnatural causes and that he has died from torture."*

Professor Derrick Pounder

*"Shaking the head and trunk in a forward-backward motion while holding the shirt... provides relative stability to the neck."* Expert opinion by the Director of the Israeli Institute of Forensic Medicine

The Association for Civil Rights in Israel filed a suit before the High Court of Justice seeking an injunction against the practice of shaking. The Public Committee Against Torture in Israel and the Association of Israeli- Palestinian Physicians for Human Rights also sought an injunction in the High Court against shaking and filed manslaughter charges

against those officials it regards as responsible for the death of 'Abd al-Samad Harizat.

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<sup>6</sup> In June 1996 it was reported that the interrogator in question had been acquitted on most counts during a disciplinary inquiry and returned to work. He was said to have been convicted of "not carrying out his duty" but no information was given as to what this entailed.

The public was simultaneously exposed to official reports suggesting that violent shaking was an effective means of gaining information. The GSS reported to the ministerial committee on 6 August that 48 attacks had been foiled in the past six months as a result of special interrogation methods. At the committee meeting on 16 August not only was the "exceptional dispensation" to use "increased physical pressure" renewed but the committee also authorized shaking: it was no longer to be "regular" and would be used in future only with the authorization of the head of the GSS.

### **Legalising Torture**

In 1995 and 1996 two bills were put forward which would have enshrined the legalization of torture in law by permitting the use of "pressure" during interrogations and offering impunity to GSS interrogators who used force.

The proposed *Amendment to the Penal Law - Prohibition on Torture 1995*, which was supposed to bring Israel's law into conformity with the UN Convention against Torture, defined torture as:

*severe pain or suffering, whether physical or mental, except for pain or suffering inherent in interrogation procedures or punishment according to law (our emphasis).*

Such a definition of torture, excluding "pain or suffering inherent in the interrogation process" would have negated the intentions of the Convention against Torture and formally legalised the treatment amounting to torture already routinely used during Israeli interrogation.

The proposed *Law of the General Security Service* (the "GSS Law") introduced in January 1996, was to be the first law regulating the GSS. The GSS Bill accepted, in Article 9(a), the use of "pressure" against those interrogated in certain defined circumstances "to prevent actual danger to the security of the state" and when "no other reasonable way exists to prevent said danger". Article 9(b) stated that methods which might be used by GSS interrogators should not cause "severe pain or suffering" or be "cruel or inhuman". A phrase in the article stipulating that the methods used by a GSS interrogator "will not injure the interrogee's health" incorporates in law the part played by health professionals in providing the medical supervision which allows the system of torture to function in Israel and the Occupied Territories.

National and international protests may have played a part in persuading the Israeli Government to reconsider these bills. The *Prohibition on Torture* Law has apparently been dropped while protests against the "GSS Law" caused it to be shelved until after the 1996 elections. Recently the bill has been reintroduced without its controversial Article 9 and is now before the Knesset. Amnesty International continued to

oppose certain articles in the bill which appear to offer impunity for GSS agents who use torture or ill-treatment.

### **The Supreme Court**

Over the past five years numerous battles on the meaning and legality of torture have been fought out before the Israeli Supreme Court sitting as the High Court of Justice. Palestinian lawyers from the Occupied Territories (except East Jerusalem) do not have the right to use this means of appeal. However, a number of cases have been brought by Israeli lawyers.

In 1994 one lawyer started bringing "sleep injunctions" before the Supreme Court, requiring the GSS to allow his clients under interrogation to have six hours sleep each day. Such injunctions were normally granted, but either the GSS stated that they had completed their interrogation or that the interrogation of detainees would continue after the sleep.

At the same time lawyers started to bring petitions to the Supreme Court to grant injunctions prohibiting the GSS to use "pressure" against individual detainees. However, the success of such injunctions has been limited. In cases where the court grants such injunctions and the GSS returns to court and challenges them, the Supreme Court has consistently found in its favour. For instance, on 24 December 1995 the Supreme Court granted an injunction preventing the interrogators from using physical force on '**Abd al-Halim Belbaysi**. Despite this, the GSS continued to subject him to torture and ill-treatment, including shackling his legs to a chair and his hands behind his back, blindfolding him, depriving him of sleep for three days and violently shaking him. He confessed to placing bombs. 'Abd al-Halim Belbaysi's lawyer, André Rosenthal, then, as a test case, protested only against the use of violent shaking, which had caused the death of 'Abd al-Samad Harizat, and asked that it should be forbidden. On 11 January 1996 the request was refused and the Supreme Court rescinded its injunction preventing physical force.

In the case of **Khader Mubarak** which came before the Supreme Court in November 1996, the Court accepted the GSS argument that hooding was carried out in order to prevent the detainee from identifying other detainees and that the loud music was to prevent detainees from communicating with each other. They also accepted the "explanations of the Security Service... that the issue is not one of active sleep deprivation, but of periods of time during which the Appellant was held waiting for interrogation without being given a break designed especially for sleep". However, as the Israeli human rights organization *B'Tselem* pointed out:

*The periods of 'rest' which exceeded one day invariably included Friday and Saturday, i.e. the Israeli weekend. It seems highly unlikely that four times during three and a half weeks there was a 'pressing need' to deprive Mubarak of sleep only during mid-week, while, as the weekend approached, the 'pressing needs' mysteriously vanished, only to re-emerge come the next week<sup>7</sup>.*

The Supreme Court three times refused to grant injunctions to prevent the use of *shabeh* against 'Abd al-Rahman Ghanimat, who was arrested on 13 November 1997 and met his lawyer for the first time on 23 December. He gave a sworn affidavit stating that he had been forced for five-day periods for the previous six weeks to sit on a small slanting chair to which his hands and legs were shackled, with a thick sack over his head. Loud music was played and he was deprived of sleep. His lawyer saw that her client's wrists were red and swollen because they had been so tightly shackled to the chair. 'Abd al-Rahman Ghanimat complained of dizziness and pain throughout his body, including his joints and back.

Partly as a result of the Ghanimat case (see box), in January 1998, the Supreme Court scheduled an unprecedented nine-judge hearing to review the legality of GSS interrogation methods under Israeli law. The GSS now admitted that methods such as hooding, *shabeh* and the playing of raucous music were, indeed, interrogation techniques. Other longstanding petitions challenging torture, including a petition challenging the use of shaking by the GSS, were then joined to the case which came

up again before the High Court on 20 May 1998. After hearing the petitions Supreme Court President Aharon Barak commented that the question should be dealt with by the legislature rather than by the Supreme Court. The case was later adjourned and no date has been set for its resumption.

This represents a serious failure by the judiciary to uphold one of its basic responsibilities: "to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected"<sup>8</sup>. The former UN Special Rapporteur on torture, P. Kooijmans, stated in his 1991 report: "Under circumstances in which torture is practiced or condoned by the authorities, it is the judiciary which forms the last bastion for the protection of the citizens' basic rights"<sup>9</sup>. The Israeli judiciary has persistently failed to protect even the most basic rights of Palestinians.

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<sup>7</sup>*Legitimizing Torture: The Israeli High Court of Justice Rulings in the Bilbeisi, Hamdan and Mubarak Cases*, B'Tselem, January 1997.

<sup>8</sup>The UN Basic Principles on the Independence of the Judiciary, Principle 6

<sup>9</sup> E/CN.4/1992/17, page 102, para.280.



### **The UN Committee against Torture**

The UN Committee against Torture is a body of experts which examines implementation of the Convention against Torture by states which have ratified the Convention. Israel ratified this convention in 1991. Article 2 of the Convention requires states to prevent "acts of torture in any territory under its jurisdiction", and to incorporate the prohibition of torture or ill-treatment into their domestic law.

*In April 1994 the Committee against Torture considered Israel's initial report regarding implementation of the Convention. The Committee found the authorization of the use of "moderate physical pressure" to be "completely unacceptable" and expressed concern at the "large number of heavily documented cases of ill-treatment in custody". The Committee recommended that the interrogation procedures be published and that all interrogation practices in breach of the Convention be ended immediately<sup>10</sup>.*

At the time of the Supreme Court's failure to ban torture in two cases in November 1996, the Committee asked Israel to submit "as a matter of urgency" a special report. At its May 1997 meeting the Committee found that interrogation methods used by Israel, "restraining in very painful conditions", "hooding under special conditions", "sounding of loud music for prolonged periods", "sleep deprivation for prolonged periods", "threats, including death threats", "violent shaking", and "using cold air to chill", constituted torture<sup>11</sup>. The Committee examined Israel's second periodic report in May 1998. The Committee reiterated its conclusions and recommendations of the previous year and expressed concern at "Israel's failure to implement any of the recommendations of this Committee". None of the recommendations has yet been implemented.

### **Police Brutality**

There appears to be a fairly constant level of brutality, amounting to torture or ill-treatment, carried out especially by the Border Police and the IDF, often at checkpoints. Such beatings, kickings and general humiliation of Palestinians tend to increase during periods of political tension. What has marked such cases has been the

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<sup>10</sup> CAT/C/XII/CRP.1/Add.5 28 April 1994

<sup>11</sup>CAT/C/SR.297/Add.1, page 3, para. 5.

brutality of the forces involved and the almost total impunity from which those involved appear to have benefited. In February 1998 the Department for the Investigation of Police Personnel in the Ministry of Justice announced that the department had received more than 100 complaints, mainly concerning the Border Police, of violence against Palestinians from the West Bank and the Gaza Strip.

On 3 April 1994 **Ya'qub Sulayman Diab**, together with his two sons, **Nidal Ya'qub Diab** and **Iyad Ya'qub Diab** and other family members, were driving out of Kalandia refugee camp in the West Bank on their way home in two cars. As they left the camp, some soldiers on the side of the road shouted at them to stop. The cars stopped; the soldiers opened the doors and pulled out Nidal Ya'qub Diab and Iyad Ya'qub Diab and began to beat them with their fists and rifle butts. Some of the women in the cars came and tried to pull them away from the soldiers, but they were beaten as well. The soldiers arrested the two brothers. In the course of the investigation, the office of the Legal Adviser to the IDF's Central Command only questioned two members of the IDF. Of these the only eyewitness was a potential suspect who said that he and other soldiers "were forced to exercise reasonable force" to search the brothers. The five members of the Diab family present at the incident and other soldiers present were not interviewed. On the basis of this incomplete investigation, the Legal Adviser to the Central Command concluded that "the soldiers in question acted properly" and closed the investigation without taking action.

The cases where those involved in brutality are actually brought to justice and punished tend to be dramatic, public and inescapable. For instance, in a famous case, by chance captured on videotape by a witness from a rooftop and played on Israeli and international television, two border policemen were shown beating up and humiliating Palestinian labourers in Jerusalem for more than half an hour in October 1996. They kicked some of the Palestinians in the head, kneed another in the stomach, rode one like a donkey and forced others to do push-ups. The policemen slapped the Palestinians after forcing them to lie flat on the ground. The border police involved were charged with aggravated assault and abuse of authority and sentenced to eight months in prison and a further 12 months suspended.

Israeli human rights organizations have attempted to file complaints and claims for compensation for victims without success. In an assessment made by the Israeli human rights organization *Hamoked* of 441 cases of Palestinian complaints against members of the IDF since 1987, in only seven cases were soldiers tried before a military court<sup>12</sup>. Among the reasons for failure of these complaints, the report stressed the lack of seriousness of the investigations (in most cases the soldiers were not even located) and

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<sup>12</sup>*Escaping Responsibility: The Response of the Israeli Military Justice System to Complaints against Soldiers by Palestinians*, November 1997, *HaMoked*.

the tendency to believe soldiers' accounts of incidents instead of the Palestinians involved.

### **Failure to Achieve Change**

Notwithstanding world attention on the Israeli authorities' use of torture, the testimonies of hundreds of victims, the pressure of human rights activists and local and international human rights organizations, there has been a failure to achieve any real change. Torture continues to be used in Israel because the majority of Israeli society seems to accept that the methods used are a legitimate means of combatting "terrorism". The Israeli public's views have, if anything, been hardened in the last five years, in which more than 100 civilians have been killed in suicide bomb attacks carried out by *Hamas* and Islamic *Jihad*. Palestinians, Lebanese and other non-Israeli nationals have become the "acceptable" victims of torture: the methods are acceptable because they are not used against Israeli Jews. The use of similar, though less severe methods, against any Israeli Jew has led to immediate protests. For example, when Oren Edri, an officer in the IDF arrested with other Jewish militants in September 1994, complained that he was hooded for hours, roughly handled, insulted, and confined to a cell with cockroaches and rats, an immediate commission of inquiry was set up.

The Israeli Government has answered thousands of letters from Amnesty International members by saying that the interrogation methods used by the GSS do not constitute torture and are "according to the law". (The Israeli authorities continued to make this claim even after one method of "physical pressure" - violent shaking - had actually caused the death of a detainee.) Thus the unequivocal declaration by the Committee against Torture that Israel's interrogation methods constitute torture was an important development in the campaign against torture.

Israeli Government responses also stressed that detainees were "terrorists" and that physical pressure saved lives from "terrorist" attacks. Yet there can never be any excuse for the use of torture. The Convention against Torture states in Article 2 that:

*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 for torture.*

In February 1996 Amnesty International sent a delegation led by its Secretary General to discuss its concerns, including about torture and ill-treatment, with the Israeli Government. During the visit the GSS Bill which would have specifically allowed "physical pressure" was withdrawn. The bill has since been reintroduced, as detailed above.

Protests have so far achieved only small results. There appears to be more control of torture: the occasional use of dark glasses instead of hoods. But detainees are still deprived of sleep for days and held in painful positions for hours. Violent shaking continues to be used, albeit in more limited fashion. With the statement of the Committee against Torture that the interrogation practices of Israel constitute torture, there is general acceptance by the international community that Israel has effectively legalized the use of torture. But the Supreme Court has adjourned its consideration on petitions challenging the use of torture and appears reluctant to declare its use illegal.

### ***III Unfair Trials***

There has been little change over the past five years to the military justice system in the Occupied Territories. Palestinians continue to receive unfair trials in the military courts set up by Israel for the West Bank and the Gaza Strip. Convictions are almost invariably based exclusively on the accused's confession, usually extracted by the use of torture and ill-treatment. It appears to Amnesty International that there is a presumption of guilt rather than innocence in these courts.

All Palestinians in the Occupied Territories arrested by the Israeli security services and accused of "security crimes", and many who were accused of offences which seemed not necessarily politically motivated, are tried by military courts, set up after 1967 by military orders and administered by the IDF. Palestinians from the Occupied Territories may also be tried in Israeli military courts for offences committed in Area A, the area under the direct jurisdiction of the PA. However, although the jurisdiction of Military Tribunals in the Occupied Territories theoretically still extends to Israelis resident in the Occupied Territories, in practice no Israeli is ever tried before a West Bank or Gaza military court for any offence committed in the Occupied Territories. They are tried in the civil courts within Israel.

Military courts presided over by a single judge may pass sentences of up to five years; three-judge courts can pass any sentence, including the death sentence (a sentence rarely imposed and never carried out). The IDF military commander appoints the "legal judges" (military officers with legal training who may act as single judges or presidents of three-judge courts) on the recommendation of the IDF Military Advocate General. The court president may appoint permanent or reserve officers without legal training as other judges of the panel. Prosecutors are military, but the defendant has the defence lawyer of his or her choice. Since 1989 there has been a limited right of appeal to a Military Court of Appeals, though only the sentences of one-judge courts are subject to appeal. Both the original verdict and the appeal verdict may be reviewed by the regional commander who may reduce the sentence or give a pardon.

Offences committed by Palestinians from the Occupied Territories punishable by military courts are listed in military orders and regulations of the Emergency (Defence)

Regulations. Military Order 378 includes offences such as murder (for which the death penalty is provided); arson (punishable by 10 years' imprisonment); throwing objects such as stones (punishable by up to 10 years, with the punishment increased to 20 years if thrown with harmful intent at a moving vehicle); and acts against the IDF, such as insulting, injuring and obstructing the work of soldiers. No one is now sentenced for displaying the Palestinian flag or being a member of *Fatah*, as happened before September 1993, but Regulation 85 which punishes offences such as performing a service or other activities for an "unlawful association" is still used to punish suspected members of *Hamas*, *Islamic Jihad* or members of student organizations which the GSS claims are fronts for the organizations.

The procedure used in the military courts is drawn from Military Order 378 itself, supplemented by Israel's 1995 Military Justice Law and general principles of Israeli law on procedure. Hearings are normally open unless the court, for reasons of security, decides to hear evidence *in camera*. Following Israel's redeployment in the West Bank and the Gaza Strip, the Israeli authorities began to hold extension of detention hearings for detainees *in camera* in prisons inside Israel. The Association for Civil Rights in Israel challenged this practice arguing that legal proceedings, as a matter of principle, should take place in public. In 1997 the IDF agreed to set up court rooms adjacent to prisons so that hearings could be held in public.

The number arrested and tried under the military justice system now is smaller than the numbers in the years during the *intifada* when thousands were tried each year. The fact that there are fewer trials should mean that more time can be taken over them, standards can be higher and that trials are not so summary. However, people still remain in detention a long time, frequently more than a year, awaiting trial.

The system is still "confession-based": normally the detainee is sentenced on the basis of evidence given by members of the Israeli security forces and the detainee's own confession given under duress. Sometimes defendants try to challenge the confession stating that it was extracted under torture; at that stage a "trial within a trial" takes place and the court assesses the truth of these allegations. However, the fact that treatment amounting to torture and ill-treatment is permissible against Palestinian detainees means that such "trials within trials" within the military courts will fail; the interrogation of a detainee was carried out "according to the law".

A problem with all military trials is that there appears to be a presumption of guilt rather than of innocence. The detainee who has not confessed to an offence will have been released or placed under administrative detention and not brought to trial; thus almost invariably those tried have signed confessions. Lawyers assume that their client is likely to be found guilty and that the best action they can do for him or her is to obtain the minimum possible sentence through plea bargaining. While recognizing that plea

bargaining is an element of many judicial systems, Amnesty International has long been concerned that coercive elements connected to plea bargaining in trials before military courts deprive defendants of a fair trial<sup>13</sup>.

Lawyers complain that sentencing is arbitrary and varies widely: lawyers not only engage in plea-bargaining but also seek to find a more sympathetic judge. There is some evidence to suggest that sentences have increased over the past five years: in 1994 the average sentence for stone-throwing was four months; now (with stone-throwing greatly diminished) the average sentence is more like 10 months.

When making submissions about the length of sentence, military prosecutors will argue that the fact that an offence was committed after the Israelis and Palestinians entered into a peace agreement is an aggravating factor as it is as an offence against the "spirit of Oslo". Defence lawyers, likewise, will argue that the fact that an offence was committed before 13 September 1993 is a mitigating factor. Military judges have been open to such arguments and take this consideration into account in imposing sentences.

#### ***IV Killings***

Between 9 December 1987 and 13 September 1993, about 1,070 Palestinian civilians were killed by the Israeli security forces in the Occupied Territories. They were extrajudicially executed, targeted by Israeli death squads, or unlawfully killed in demonstrations or riots, and at checkpoints. Some died because of the use of supposedly non-lethal means of control; for instance up to 50 people (a number always disputed by Israeli authorities) are said to have died from the use of tear gas in enclosed spaces.

The number of killings since the signing of the Oslo Agreement has greatly diminished; but between 14 September 1993 and 30 May 1998, over 250 Palestinians have been killed by the security forces. The vast majority were unlawful killings, carried out in contravention of international standards regulating the use of force. There continues to be almost total impunity for unlawful killings of Palestinians by the Israeli security forces.

#### **Extrajudicial Executions**

The cases of extrajudicial executions known to Amnesty International over the past five years typically involve people believed to be leaders of *Hamas* or Islamic *Jihad* who are suspected of being responsible for armed attacks against the Israeli population. Thus **Hani 'Abed**, associated with Islamic *Jihad* and suspected of involvement in the killing of

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<sup>13</sup> See *Israel and the Occupied Territories: The military justice system in the Occupied Territories: Detention, interrogation and trial procedures*, July 1991, AI Index: MDE 15/34/91.

two Israeli soldiers in May 1994, was killed in a car bombing in the Gaza Strip in November 1994. **Fathi Shikaki**, a leader of Islamic *Jihad* in exile was gunned down in his hotel in Malta in October 1995 and **Yahya 'Ayyash**, a member of *Hamas* said to have made bombs used in suicide bombings, was killed by a bomb placed in a mobile telephone he was using in Gaza in January 1996. Following their deaths, statements by Israeli officials implied that those responsible for armed attacks against Israelis might be targets for extrajudicial executions. Israel neither declared nor denied responsibility for the deaths.

Other killings apparently carried out by Israeli agents involved other groups opposed to the peace process; for instance, four Palestinian men - Jihad Assi, Ali Mafarja, Ashraf Mafarja, and Muhammad Assi - were shot when leaving the village of Beit Liqya in the West Bank by car. They were reportedly fired on by men in plain clothes lying in wait in a Volkswagen transporter van. The Volkswagen van then allegedly left the scene and members of the IDF collected the bodies a few minutes later. Two of the Palestinians were members of the PFLP, which opposes the peace process, and were wanted by the security services.

In September 1997 two Israeli Mossad agents attempted to inject poison into the ear of *Hamas* leader **Khaled Mesh'al** in Amman, Jordan. The two agents were later arrested. Israel acknowledged that it had tried to kill Khaled Mesh'al and that the orders for the extrajudicial execution had been approved by the Prime Minister himself. A Commission of Inquiry was set up but its remit was confined to examining the reasons for the failure of the attempted assassination, rather than questioning why it was carried out at all. The action of the Israeli Government and the February 1998 report of the Commission of Inquiry showed Israel's contempt for the right to life, by restating the principle that for Israel's security all international rules of conduct could be broken:

*The decision to carry out the attack in Jordan was based on the principle that no place in the world should be allowed to serve as a safe harbour for those who plan to carry out murders and acts of terror in Israel.... The commission does not question this policy, but nevertheless proposes that the government discuss it, define its scope and establish ground rules for its implementation.*

### **Other Unlawful Killings**

Scores of people have been unlawfully killed by members of the Israeli security services in circumstances where this could not be justified under international standards. Israeli Open-Fire Regulations allow the non-lethal use of firearms to disperse demonstrations or to arrest suspects; many Palestinian civilians have been killed in these circumstances. On 6 April 1998 the Israeli Police shot and killed **Muhammad Bilal Salaymeh** after giving chase to his car. The Israeli Police Spokesperson stated on 28 April that the driver was

killed after he did not respond to the calls of the police to stop at a checkpoint and fled. However, eyewitnesses saw a police car overtake his vehicle and block his car horizontally. A police officer got out, stood in front of the Palestinian vehicle and fired several times directly at the driver. Muhammad Bilal Salaymeh died from a fatal wound in his back.

Deaths in the context of demonstrations and disturbances are on a lesser scale than during the 1987-93 *intifada*. But they are still numerous. The highest death toll came during what is known as the September 1996 *intifada*, when 65 Palestinians, including 37 members of the Palestinian security services, 16 members of Israeli security services and one Egyptian were killed during demonstrations and clashes throughout the Occupied Territories. Israeli security forces opened fire during demonstrations and members of the Palestinian security forces returned fire. Helicopter gunships also shot at individuals in crowds. Many Palestinian civilians who died appeared to have been killed unlawfully.

Unlawful killings which occur during demonstrations are often caused by rubber-coated metal bullets and many of those killed have been children. For instance, in November 1997 an eight-year-old boy **'Ali Jawarish** was killed after a demonstration outside Rachel's Tomb in Bethlehem. Joel Greenberg, the correspondent for *The New York Times* witnessed the incident and described what he saw to the Israel human rights organization *B'Tselem*:

*Behind Rachel's Tomb I saw several dozens of children who were standing near tyres that apparently had been burning before I arrived. Most of the children were about ten years old.... I was standing near a group of soldiers who were standing near the tomb. There were stones on the road, apparently from the confrontation that had taken place earlier. During the time that I was there I saw one stone thrown.... The soldiers caught three children who appeared to me to be about ten years old.... At the time that those three were caught, the rest of the children ran away and dispersed. At that moment I saw one of the soldiers kneeling and aiming his gun at the children. He fired one shot towards the fleeing children. In my opinion it was a rubber bullet, judging from the sound of the shot and from my experience, but I am not certain. When the soldier fired he was about 15-20 meters away from the fleeing children. At the stage of capturing the children and the children fleeing no stones were being thrown....*

*When the soldiers retreated I noticed a boy aged about nine or ten lying motionless on the ground. ...I saw, to the best of my recollection, a wound on the right side of the forehead and a lot of blood flowing. Later the doctors at Muqassed Hospital and at Beit Jala told me that the child's brain had spilled out.*



No independent public inquiry was carried out into the death. An IDF spokesperson said that 'Ali Jawarish ran across the line of fire. However, *B'Tselem* said in a report on the killing that the soldier who killed 'Ali "knelt down and aimed from a range of 15-20 metres.... Following the shooting, the soldiers left the scene without assisting Jawarish."

Such killings contravene international standards regulating the use of force and firearms, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Principle 9 states:

*Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional use of firearms may only be made when strictly unavoidable in order to protect life.*

International standards also require the authorities to conduct a prompt, thorough and independent investigation where the use of force of firearms by law enforcement officials results in death. However in many of the cases reported to Amnesty International of killings by the Israeli security forces, investigations are inadequate. The officers responsible rarely appear before an inquiry; if they do so they are rarely punished; if they are punished the sanction is trivial in relation to the loss of a life.

The official Israeli explanation given in such circumstances has normally been that shootings have occurred while the lives of members of the security forces were in danger from rioters, but evidence has shown: a tendency to overreact and to use excessive force; targeting the head and upper part of the body; and shooting at ranges closer than those allowed in the Open Fire Regulations, which regulate the use of firearms by members of the Israeli army.

### **Impunity for Killings**

As was the case during the *intifada*, there continues to be impunity for the vast majority of perpetrators of unlawful killings. The Military Advocate General's office, which is responsible for investigating killings by the IDF in the Occupied Territories, as well as other agencies responsible for investigating killings by the Israeli Police and Border Police, do not carry out thorough investigations. It is very unusual, for example, for these agencies to interview Palestinian witnesses despite many offers from human rights organizations to assist in arranging interviews. They normally interview only members of the Israeli security forces who witnessed the incident. The vast majority of cases are then

closed by the Military Advocate General's office. It is rare for the office to insist that investigations are reopened because of their lack of thoroughness.

On 5 February 1994 **Khiri 'Abd al-Jabr Hamdan** was shot dead by the IDF in Bala'a village, Tulkarem district. He was mentally ill. Israeli soldiers came to the village to arrest car thieves. Some soldiers asked Khiri Hamdan to halt. He did not stop and fled down into a *wadi*. The soldiers pursued him, assisted by a helicopter. Shots were heard in the course of the chase. Afterwards, the soldiers informed various witnesses that Khiri Hamdan had been shot from the helicopter.

The Military Advocate General's office informed *B'Tselem* that "the firing procedure was performed according to orders". The investigation had shown "that the deceased was identified as a suspect in committing a dangerous crime due to the circumstances of his escape, near the checkpoint, in the course of a curfew in the village, which is known to be a village in which there are many terrorists, the appearance of the deceased and the fact that he did not heed repeated calls to stop and repeated firing in the air." The Open Fire Regulations do not permit the use of lethal force to arrest a suspect and indicate that shots should be fired at the legs. Khiri Hamdan was shot in the stomach.

In the few cases where action is taken against members of the security forces, it is normally disciplinary action rather than action in military courts. The military courts, when they convict members of the security forces, impose very light sentences.

On 13 November 1993 members of the IDF shot **Iyad Amali** in a car. The car was approaching a temporary checkpoint near the village of Salfit in the West Bank. According to the driver, he did not see the checkpoint and did not hear anyone telling him to stop. He stated, "I started driving up the hill, and on top I saw many lights and projectors, which prevented me from continuing. I stopped because I could not see. Suddenly someone got out of a vehicle with a lighted projector and aimed it at me, and then shooting started, a lot of shooting." Iyad 'Amali was killed as a result. In November 1996 four soldiers were convicted by a military court for negligently causing his death. The court fined each soldier one agora, equivalent to about US\$0.03.

## AREAS UNDER THE JURISDICTION OF THE PALESTINIAN AUTHORITY

### *I Detention Procedures and Judicial Review*

Political arrest and detention under the PA has seen the stabilization of a system of prolonged detention without charge or trial. There has been virtually no attempt by the PA to follow local laws regulating arrest and detention with regard to political prisoners.

As in Israel, waves of arrests of political opponents have tended to be linked to suicide bombs or other opposition inspired operations against Israel. The detention of suspected supporters of Islamist armed groups, prolonged for up to four years outside any legal framework, is closely linked to pressure from Israel and the United States (US) to stamp out "terrorism". Attempts by lawyers and human rights organizations to use legal safeguards to obtain the release or trial of detainees have invariably failed and today up to 300 political or security detainees have been held for up to four years without trial.

Three categories of political detainees can be distinguished: those suspected of cooperating, in the past or present, with Israeli security services (generally known as "collaborators" or "security" prisoners); those known as "political" prisoners, suspected members of groups such as *Hamas*, *Islamic Jihad* and the PFLP, opposed to the peace process with Israel; and those detained for criticism of or perceived opposition to members of the PA.

Suspected "collaborators" have been arrested throughout the past four years and held in incommunicado detention for extended periods of time, denied access to their families and lawyers even if they were no longer under interrogation. Some suspected "collaborators" have been held for years without charge or trial. In 1997 dozens of those suspected of selling land to Jews were arrested and have also been held without charge or trial. Torture during prolonged incommunicado detention of this group has been systematic. No security detainee is known to have been tried by the PA for his activities<sup>14</sup>.

Political arrests in 1994 in the Gaza Strip involved at first mainly suspected members of Islamic groups opposed to the peace process. Many were held for days, others were held for weeks or up to three months without being charged or brought before a judge. Sometimes they were not even interrogated. With a few exceptions they were not ill-treated and families were usually able to visit promptly. There was informal rather than formal access to lawyers who were able to gain access to their clients in detention as ordinary visitors but not in their capacity as lawyers.

By the beginning of 1995 detainees in Gaza included Islamists and members of leftist groups, suspected of involvement in armed attacks against Israel or known for their opposition to the PA. Incommunicado detention - without access to family - lasted now for days and sometimes weeks. Most were released after weeks or months in detention, a

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<sup>14</sup> According to Article XVI(1) of the Oslo II Agreement, "Palestinians who have maintained contact with the Israeli authorities" are protected from prosecution.

few were brought before the State Security Court after April 1995 (see below) and some continued in detention outside any legal process. As towns in the West Bank came under the PA between September and December 1995 some known opponents of the peace process were arrested.

The largest wave of arrests in the PA was carried out after suicide bombings in February and March 1996. More than 1,200 suspected members of Islamist groups were arrested by PA security services in the West Bank and Gaza; they often spent weeks in incommunicado detention and remained in prison for months without charge or trial. Torture was widespread. Other waves of arrest have continued: for instance more than 150 alleged sympathizers with Islamic groups were arrested in 1997 and about 40 persons, allegedly linked to *Hamas*, were detained in Ramallah in March and April 1998 in connection with the killing of Muhi al-Din al-Sharif, a prominent member of *Hamas'* military wing.

People who have criticized the PA, including journalists and human rights defenders, have also been detained without charge or trial. Such arrests have attracted a great deal of international attention and local public pressure, and the PA has normally released these detainees within days. In 1996 the large number of arrests of critics of the PA led for a time to a climate of fear in which people were afraid to criticize the PA in public. In 1997 and 1998 the numbers of such arrests decreased, although cases continued to be reported.

Often high profile critics are held for only a few hours; for instance, **Raji Sourani**, Director of the Palestinian Centre for Human Rights, was held for eight hours in February 1995 after calling for a conference on the State Security Courts. **Bassem Eid**, who worked with *B'Tselem* as a fieldworker, was arrested on 2 January 1996 after the organization issued a report suggesting that Palestinians implicated in torture had been recruited by the Preventive Security Service (PSS). He was released without charge the next day.

Others have remained for longer before pressure has forced their release. **Iyad al-Sarraj**, Commissioner General of the Palestinian Independent Commission for Citizens' Rights (PICCR) was detained three times for up to 17 days in 1995 and 1996 as a result of his criticism of the PA's human rights record. **Da'ud Kuttub**, head of the Modern Communications Centre at al-Quds University, was arrested on 20 May 1997 by the Palestinian Police in Ramallah, apparently for televising debates in the Palestinian Legislative Council which discussed corruption and mismanagement in the PA. He was released without charge on 27 May.

### **Legal Challenges to Arbitrary Detention**

Numerous cases appealing against arbitrary detention have been brought to the Palestinian High Court of Justice; the High Court has on nearly all occasions ordered that detainees should be released because they are illegally detained. On each occasion the executive has failed to implement these orders.

The PICCR and other human rights organizations have referred many cases of detention without charge or trial to the Attorney-General's office, which has a legal duty to investigate such cases. The Attorney General, Khaled al-Qidreh, in office until May 1997, failed to respond to their inquiries. A new Attorney General, Fayez Abu Rahma, who was appointed in July 1997, promised to re-examine the files of 185 political detainees held since May 1994 and to release those who had not been involved in any criminal act. In August he ordered the release of 11 detainees held for up to two years without charge or trial. They were released the same day but were immediately rearrested by the PSS.

Despite the lack of enforcement, lawyers and human rights organizations have been persistent in using the law to challenge the executive's use of prolonged detention without charge or trial. LAW, the Palestinian Society for the Protection of Human Rights and the Environment, challenged the legality of the continued detention without trial of **Mahmud Muslah** in a case which came before the High Court in Ramallah. On 30 November 1997 the Court ordered his release but he remained in detention as of August 1998. **Rajab al-Baba**, who was arrested in Gaza on 17 March 1996, was released on 17 August 1997 under orders of the Attorney General. He was immediately rearrested. The Palestinian Centre for Human Rights then brought his case before the Gaza High Court. His detention was declared illegal and his release was ordered by the

Ten students of Birzeit University were arrested without warrant after the suicide bombings of February and March 1996 and held for months without charge or trial. On 19 May 1996 lawyers for the students acting in conjunction with the Birzeit Human Rights Action Project submitted a request to the Attorney General of Ramallah that he visit the students in Ramallah Prison and carry out an inquiry into their detention. He responded that they were being held under the military not the civil authority. The lawyers then repeated their request to the Military Prosecutor who responded, orally, that their detention was not under his authority. On 26 June the lawyers filed a petition to the High Court of Justice in Ramallah requesting the court to issue a preliminary injunction requiring President Yasser Arafat and the Attorney General, Khaled al-Qidreh, to show reason for the detention of the students and to order their release. After a number of delays the Attorney General filed a response on 25 July saying that the Court did not have jurisdiction over this question and the detentions were not illegal. On 31 July a five-judge panel, headed by the Chief Justice, Amin 'Abd al-Salam, heard arguments from the Attorney General's office and from the defence and adjourned the proceedings until 18 August, when it issued a unanimous decision declaring that the detention of the students was illegal and ordering their immediate release. However, the students were only released gradually between September 1996 and January 1997.

Court on 28 December 1997; he was eventually released on 5 April 1998.

Amnesty International delegates have frequently raised with members of the PA the issue of prolonged detention for years of political detainees outside any legal framework. Some PA officials have stated that the PA detains members of *Hamas* because they are under pressure from outside to do so and also because they fear suicide bombings which would further derail the peace process. They say they are reluctant to impose sentences on members of groups which they later hope to bring into a democratic political process. Amnesty International has continued to press for all those detained without trial to be brought to fair trial or be immediately released.

The failure of lawyers and courts to obtain the release of hundreds of people held without charge and trial for up to three months during 1994 and the first part of 1995 brought about a general reluctance to appoint a lawyer; *wasta* - seeking the intervention of well-placed personalities - was perceived to be more important and more useful. In April 1995 the establishment of the State Security Courts further marginalised the judiciary, and it was also noteworthy that only one of those brought to trial before the State Security Courts in April had a lawyer (who was not allowed to represent his client nor even informed that a trial was taking place).

## ***II Torture and Ill-treatment***

The use of torture is still widespread in the PA, carried out particularly by certain forces: the PSS, the *mukhabarat* (General Intelligence), and the *istikhabarat* (Military Intelligence). Those particularly liable to suffer torture or other ill-treatment are suspected "collaborators", including those accused of selling land to Jews. But many others are tortured, including those accused of criminal or drug offences and support for groups opposed to the peace process. Even distinguished international figures or journalists have not been spared; those tortured have included the PA's own Commissioner General for Human Rights, a university lecturer, a festival organizer and more than one journalist.

However, the situation has not remained static: torture seems to have diminished since 1996, due mostly to local and international pressure. Torture or ill-treatment of those arrested by the Palestinian Police for non-security related offences has greatly diminished. However the torture of certain categories of detainees and by certain forces has continued despite the training. There appears to be a policy which condones or often encourages torture or ill-treatment of certain groups and offers impunity for perpetrators.

### **The Security Services**

There are now at least 10 different branches of Palestinian security services. They appear to operate without a unified chain of command except in name. There is a plethora of

detention centres belonging to different forces in towns and even in the larger villages. Sometimes the forces compete and a detainee released from one is arrested by another; sometimes they cooperate and pass a detainee for interrogation from one to another. As a result of this confusion, families may have difficulty in locating a detained relative. All security services have been involved in torture at certain times.

The PSS, the *mukhabarat* and the *istikhbarat* are the three main security services which hold political detainees. At certain times since the PA's establishment, torture diminished among the first two services, especially in the West Bank. Nevertheless, testimonies indicate that the *mukhabarat* and the PSS continue to use torture. Torture by the *istikhbarat* appears to be systematic. This force has kept detainees incommunicado for weeks, sometimes months or years. The *istikhbarat* tends to hold most people accused of cooperation with Israel or land-dealing, those most at risk of torture.

#### **Methods of Torture and Ill-treatment**

**Beatings** The majority of detainees who allege torture report being beaten. Beating is carried out with hands, fists or feet; often detainees allege being beaten with sticks or iron bars.

**Shabeh** This involves sleep deprivation while being made to stand or sit in a painful position, often hooded or blindfolded. In the West Bank sleep deprivation may last for three days; in Gaza in 1996 periods up to 20 days were alleged. Detainees mostly describe sitting on chairs with hands painfully handcuffed behind their backs, being kept without sleep and raucous music played continuously at very high volume.

**Suspension from wrists** Suspension from the wrists, with feet barely touching the floor, has been reported from various services, including the PSS, *mukhabarat* and the *istikhbarat*.

**Burning with electric elements or cigarettes** A number of detainees have described cigarettes being stubbed out on their bodies. Detainees held in 1996 reported being burnt by electric elements; the marks of these were visible on the body of Yusef al-Baba, who died in custody in January 1997. Fortunately there have been no testimonies of these since that time.

**Subjection to extreme temperatures** Some detainees have described having hot and cold water poured or showered over them alternately; detainees have reported being placed in cells with water on the floor, so that they cannot lie down; others have reported being exposed to cold air.

**Insults and threats** are frequently reported by many detainees, particularly threats of rape against family members and threats to kill the detainee.

### Deaths in Custody

Nineteen people, most of them accused of "collaboration" with Israel, have died in custody since the PA's establishment. Amnesty International believes that the majority of these persons died in circumstances where torture may have caused or hastened their death. In certain cases, the PA officials have admitted that torture caused their death. There has been no thorough, impartial or public investigation of any incident of torture or death in custody. An autopsy is normally conducted after a detainee dies in detention but the results are normally not made public or even disclosed to the family.

The first death in custody was that of **Farid Abu Jarbu'**, from the Gaza Strip, who was arrested on 26 June 1994 and died in custody on 6 July 1994, reportedly after torture. Freih Abu Meddein, the Minister of Justice, admitted that violence had been used during the interrogation and stated that four members of the Palestinian General Intelligence had been arrested. All were released without charge.

The protests of Palestinian civil society after some deaths in custody, especially those where photos of the beaten body were circulated or reproduced in the media, has sometimes led to inquiries and trials of members of the security forces said to have caused the deaths. **Mahmud**

**Jumayel** died in July 1996 as a result of being subjected to torture, including severe beating and multiple burning by an electric element, by the Naval Police (*bahriyya*) in Jneid Prison in Nablus. Both the PA Cabinet and the Legislative Council set up commissions of inquiry but many details relating to the circumstances of his death were never disclosed. **Yusef Mahmud al-Baba** died in January 1997 one month after his arrest by the *istikhbarat*; his body showed severe burns, bruises and rope marks. Five people, including the head of the *istikhbarat* in Nablus and the deputy governor were arrested but eventually released.

Very few individuals have been put on trial or disciplined for the use of torture and ill-treatment. Amnesty International knows of four cases where members of the security services have been tried after a death in custody, in three cases within a matter of days or hours. The trials apparently happened because the cases attracted wide publicity and the culpability of the security services could not be denied.

For instance, following Mahmud Jumayel's death, three members of the Naval Police were arrested and tried before the State Security Court in Jericho on 3 August 1996, charged with causing unintentional death. Captain 'Abd al-Hakim Hijjo and Lieutenant 'Umar Qadumi were sentenced to 15 years' imprisonment with hard labour and Sergeant Ahmad Biddo to 10 years' imprisonment with hard labour. However, the trial, which lasted two hours including a half-hour adjournment, was grossly unfair: the defendants had a state-appointed military lawyer who offered no defence, no witnesses were called and no information was given as to who had ordered the torture. The trial of



those accused of causing the death of Mahmud Jumayel did not establish any of the vital circumstances leading to his death in custody.

### **Trends**

"Security" detainees, those suspected of "collaborating" with Israel and those who have sold land to Jews, appear to be routinely tortured after arrest. If anything torture of this group has increased as the peace process became deadlocked and the PA became more concerned about sales of land to Jews by Palestinians.

The treatment of political detainees who oppose the peace process, especially of suspected members of *Hamas* and Islamic *Jihad*, has been most affected by political trends and internal and international pressure.

From June 1994 until April 1995, the Islamists and members of leftist groups who were arrested and detained without charge or trial for up to three months generally in response to Israeli pressure to round up "terrorists" were not usually tortured. One Islamic *Jihad* group arrested in June 1994 alleged torture; after that there were rare accounts of beatings, usually ascribed to factional or personal animosities with one of the detaining officers. Thus, of the 25 Islamists brought before the State Security Courts in April and May 1995 only one was known to have been beaten.

Later in 1995 there began to be a few reports of political detainees suffering torture and ill-treatment. For instance, Dr Mahmud al-Zahhar, a well-known *Hamas* leader, was arrested with two other *Hamas* members on 28 June 1995. His hair and beard were shaved off, he was beaten and his arm was fractured. He was released without charge about three months later.

In the months following the Israeli security forces' withdrawal from six West Bank towns in late 1995, there were frequent reports of the arrest of political activists, Islamists and leftists opposed to the peace process, in some towns, especially Nablus and Bethlehem. Some of those arrested were tortured, including by being suspended and beaten.

A qualitative change for the worse took place after suicide bombings in February and March 1996. At least 800 *Hamas* and Islamic *Jihad* sympathizers were rounded up, torture was widespread and, in Gaza, systematic. An atmosphere of fear developed, reflected in Amnesty International's December 1996 report<sup>15</sup>, when those who had suffered torture were no longer ready to give their names.

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<sup>15</sup> *Palestinian Authority: Prolonged political detention, torture and unfair trials*, AI Index: MDE 15/68/96

However, after the deaths in July and August 1996 of three detainees, Mahmud Jumayel in Nablus, Nahed Dahlan in Gaza and Khaled al-Habal in Ramallah, in circumstances where torture caused or may have contributed to their deaths, internal and international pressure mounted against torture. The Legislative Council commission of inquiry and the trial of three members of the Naval Police (see above) reflected the the popular and international criticism of torture in the PA. Soon afterwards President Arafat stated that "he would not tolerate torture" in a meeting with the Norwegian Minister of State for Foreign Affairs in August 1996, and agreed to allow visits by the International Committee of the Red Cross (ICRC), which had withdrawn from visiting Palestinian detention centres reportedly because of limitations on their conditions of access. Reports of torture decreased after the so-called September 1996 *intifada*. At the same time, although outside pressure to eradicate "terrorism" remained, after Binyamin Netanyahu became Prime Minister in May 1996 the peace process gradually reached deadlock and the incentives for the PA to engage in "security cooperation" with Israel by cracking down on suspected supporters of "terrorism" therefore diminished.

Though torture of political detainees had diminished - there were isolated reports of torture of political detainees during 1997, although hundreds were arrested and held without charge or trial - the fragility of any gains was shown in the systematic ill-treatment or torture of more than 30 supporters of *Hamas* arrested in Ramallah in March and April 1998 after the death of the alleged *Hamas* bombmaker Muhi al-Din al-Sharif. Detainees reported beatings and suspension by the wrists from the ceiling. One detainee, arrested in April 1998, recounted how PSS officers beat him all over his body after his arrest. He remained for seven days in solitary confinement. He was then taken out of his cell and hooded. PSS officers beat him again and subjected to different forms of position abuse (*shabeh*). He described how an interrogator tied a belt to the handcuffs on his wrists and attached the belt to a rope. The interrogator pulled on the rope, so that the detainee's arms were stretched upwards behind him. The interrogator pulled until the detainee's toes were barely touching the ground. He remained hanging like this in extreme pain for four hours. After being let down and allowed half an hour to pray, he was put back in this position for another three and half hours.

Amnesty International still receives many reports of torture of individuals, including many arrested on criminal charges. Many of those who have been tortured are still unwilling to let their names be published or to make official complaints. Even if they do make complaints, those who carry out the torture still almost invariably benefit from impunity. However, the situation has improved, and contributing factors include:

- the work of monitoring torture and representing its victims carried on by local human rights organizations and lawyers;
- the large-scale programme of police training, including training in interrogation and other forensic techniques which conform to international standards;
- condemnation of torture by the Legislative Council and Palestinian civil society;
- the access of the ICRC to detention centres;
- pressure from the international community.

That members of the security service can torture whom they want, how they want, notwithstanding the condemnations of the world, was shown in the torture of **Fathi Subuh** by the PSS. On 2 July 1997 the PSS arrested Fathi Subuh, a university lecturer at al-Azhar University in Gaza. The previous month he had set the questions for an examination for his critical thinking course at the university. Two questions asked students to write about corruption in the PA and to discuss corruption in the university. His arrest attracted a large amount of international concern. Despite this, Fathi Subuh was tortured when he was initially detained incommunicado in the Tel al-Hawa Prison under the PSS in Gaza. He was hung from behind by his hands with his feet off the ground, forced to balance for long periods on his toes, and had been subjected to beating, sleep deprivation and hooding. He was held until 26 November 1997.

### ***III Unfair Trials***

#### **The State Security Court and Military Courts**

In the first nine months of the PA only a few people were brought to trial; **Maher Ghazali** was arrested on 3 February 1995 after criticising Yasser Arafat in a sermon delivered in Gaza. He was denied bail and held on charges of incitement to disorder. The magistrate's court [*mahkamat al-sulh*] sentenced him to 15 days' imprisonment and then overturned his conviction later the same month.

In February 1995 a presidential decree announced the formation of the State Security Court. A significant factor in the court's creation was the pressure being placed on the PA by Israel and the US to bring to trial and sentence some of those it had arrested in 1994 and the first months of 1995.

The first people put on trial in April 1995 were Islamist activists accused of helping organize suicide bombings. The court held trials at night which lasted sometimes

only minutes. Defendants had no idea they were going to be tried until they walked into the courtroom; their families only heard news of their convictions over the radio the following day. Judges, prosecutors and defence lawyers were military officers appointed on an *ad hoc* basis. If defendants had lawyers at all, they were appointed by the court. There was no right of appeal.

Those tried were immediately sentenced to long prison terms. The first to be tried, on the night of 9-10 April 1995, was **Samir al-Jedi**, sentenced to 15 years on charges of recruiting suicide bombers; the following night saw the trial of **'Umar Shallah** sentenced to 25 years on similar charges.

There is no doubt whatsoever that trials with heavy sentences were demanded and encouraged by Israel and the US, both of which had criticised the PA's previous policy of detaining and subsequently releasing without charge or trial members of certain opposition groups. In statements of Israeli and US government spokespersons the bringing to trial of opponents of the peace process was closely linked to progress in the peace talks. For example, in March 1995 an Israeli Foreign Ministry official said that "*the implementation of empowerment will be clearly linked to very specific actions undertaken by the Palestinians against terror. We are talking about Palestinian moves to arrest and bring to trial those Palestinians suspected of terror*" (The Jerusalem Post, 10 March 1995).

On 11 April, after 'Umar Shallah's trial, US State Department spokesman Nicholas Burns said:

*"As you know, we've called upon the PA to take concrete steps to effectively preempt and to prevent terrorist acts by arresting and trying and prosecuting those who advocate and practice violence. The PA obviously has taken action over the last 24 hours to do that. Chairman Arafat has expressed his commitment to addressing the security concerns of Israel, and we very much expect and hope that the PA will continue these efforts. I would just note that I think there have been over 150 arrests during the last 24 hours in Gaza. There have been two sentencings -- one yesterday for 15 years, one today to life -- for people convicted of having aided and abetted terrorism or directed it."*

The gross unfairness of these trials soon caused an outcry. It became difficult for the PA or those who had put pressure on the PA to sentence "terrorists" to justify such flagrant denials of due process.

The court has been used less frequently since May 1995, but it is nevertheless still used on occasion to try and sentence persons to long terms of imprisonment in summary and secret trials where there is no due process of law. Although there have been some

improvements, such as the holding of trials during the day and, occasionally, the invitation of defence lawyers to address the court, the basic parameters outlined above of a summary trial before military judges have remained the same.

The State Security Court has further undermined the Palestinian civil courts, already marginalised by Israel during the past 30 years of occupation. The State Security Court has been used as a simple tool of the executive, typically in the following categories: to condemn those whose condemnation is demanded by Israel or the US; to prevent detainees from facing trial in Israel; to meet the people's demand to condemn members of the security services for gross violations of human rights (see page 30); and, in a dangerous development, its use has also been threatened against human rights activists and others who have criticised the PA.

A particularly worrying tendency noted above has been for the PA to refer cases involving human rights activists or its critics before the State Security Court. The

court appears to be used mainly in such cases as a means of denying the rights of such people to challenge their detention before the courts. For instance, **Iyad al-Sarraj**, the Commissioner General of the Palestinian Independent Commission for Citizens' Rights, was arrested on 6 May 1996 after *The New York Times* published an interview with him where he described human rights violations by the PA. His detention was extended for questioning on three occasions by the State Security Court before he was released on 28 May. Other detainees such as **Fathi Subuh** (see page 33) have been informed in court during hearings of their *habeas corpus* applications in the High Court that their files are before the State Security Court. On 6 October 1997 the High Court accepted the PA prosecutor's office argument that it did not have jurisdiction to review Fathi Subuh's detention as the case was before the State Security Court.

**Shaher** and **Yusef al-Ra'i**, two cousins, both supporters of the PFLP, living in the 'Ain al-Sultan Refugee Camp near Jericho, were arrested on 3 September 1995 and held by the General Intelligence for 10 days, without being questioned or charged. On 13 September they were brought before the Military Prosecutor, who told them they had been detained in connection with the killing of two Israeli hikers, based on the confession of a Palestinian detainee held in by Israel. They denied any involvement in the killing. At 2am the following morning, without any warning, the cousins were brought before the State Security Court. The judge and prosecutor were military officials. A court-appointed defence lawyer was present but the defendants had no chance to speak to him before the trial. They were not allowed to say anything in their own defence. The session lasted between 10 and 15 minutes. They were convicted of "disturbing public security" and "opposing the peace process" and sentenced to 12 years' imprisonment, with five years suspended. The detainee who implicated Shaher and Yusef al-Ra'i in the killing stated that his confession had been obtained under torture and was untrue and is now free; the cousins remain in jail.

When the PA was established lawyers and human rights activists felt that there was a danger that civilians might be tried before the military courts using the 1979 Revolutionary Penal Code, used by the PLO for trying members of the PLO's military forces. This possibility did not initially materialize. However, the 1979 code has been increasingly used, notably in the State Security Court, although it is not part of domestic law in the PA.

The military courts have primarily been used to try members of the security forces but some civilians have also been tried before these courts. It is not clear what are the bases for members of the security forces being prosecuted in the State Security Courts or in the military courts. The State Security Courts appear to offer greater opportunities for secrecy and rapidity. Trials before military courts have tended to be more open; they allow the defendant to be defended by the lawyer of his choice, and they provide a limited right of appeal. At the same time, they fall short of standards for a fair trial; judges in military courts have, for instance, frequently refused to order medical examinations of defendants who state that confessions were extracted from them by torture.

On 12 August 1997 **Fawzi Muhammad Sawalha** was sentenced to death by a military court in Nablus, after being convicted of "collaborating" with Israel. He was accused of being the leader of a masked gang that terrorized, abducted and ill-treated local civilians, reportedly under orders from the Israeli GSS. Three other persons, **Khaldun Sami 'Uthmaneh, Taher Ahmad Jamlan and Naser Rashid Hamadneh**, were also convicted and sentenced to prison terms of varying lengths. During the trial all the defendants claimed that they were forced to confess to the crimes under torture. Fawzi Sawalha said he was hit on the head and knees with a hammer and put in *shabeh*. The three others said they had been subjected to hammer blows to the head and stomach and told that their sisters would be raped. These claims were ignored by the judges who failed to order an investigation.

#### ***IV Unlawful Killings***

The number of possible extrajudicial executions and other unlawful killings carried out by members of the Palestinian security services has decreased over the past four years. However extrajudicial executions continue and, when they take place, they are carried out with almost complete impunity.

In the first years of the PA the rapid introduction of normally armed and poorly trained security forces brought about a volatile situation where fatal shootings of Palestinians were common. During the first two years of the PA, from 1994-6, at least 50 Palestinians were killed. While some were killed during shootouts between rival police

forces or shot dead through the apparently accidental discharge of guns, many were targeted for extrajudicial execution or killed as a result of the excessive use of lethal force at checkpoints or on arrest. In addition to detainees who died in custody in circumstances where torture may have caused or hastened their death (see page 30), others have died in custody as a result of apparent extrajudicial executions and other unlawful killings.

### **Extrajudicial Executions**

Most extrajudicial killings by the PA have targeted those suspected of cooperation with Israel, including those allegedly involved in selling land to Jews. However some have targeted leaders of Islamist groups opposed to the peace process. For instance, in January 1996 **Ayman Razaina** and **Imad al-Araj**, two members of Islamic *Jihad*, were shot by members of the Palestinian police who stormed their house in Shati' Refugee Camp in the Gaza Strip. The Palestinian authorities claimed that they had resisted arrest but no evidence of this was found by investigators from human rights organizations.

Many deaths of persons accused of cooperating with Israel or land-dealers have taken place in custody apparently after torture. Others have been found dead apparently after having been arrested by one of the security services. Although other unlawful killings decreased over all, the extrajudicial execution of persons suspected of cooperating with Israel appears to have increased since 1997; analysts have suggested that this may be because of frustration over the stagnation in the peace process. For instance, after the Minister of Justice, Freih Abu Middein, announced on 5 May 1997 that the PA was going to use Jordanian law to sentence to death those who sold land to Jews, four land-dealers were found dead in circumstances where they appeared to be victims of extrajudicial executions. Among them, **Farid Bashiti**, from East Jerusalem, was found dead in Ramallah with his hands tied behind his back on 9 May 1997. On 17 May the body of another land dealer, **Harbi Abu Sara**, was found, also in Ramallah, with bullet wounds to the head. Both had been previously been arrested and released by PA security services.

Another extrajudicial execution appears to have been that of **Muhammad Anqawi**, a contractor and a father of 10 from Beit Sira village, who had been held under suspicion of cooperating with Israel by the PSS for 20 days in April 1996. At 1.20pm on 6 April 1998 he telephoned a friend on his mobile telephone to say that he was going to the office of the *mukhabarat* to retrieve some stolen property. Half an hour later his body was discovered in a side street with nine bullet holes in it; his car was still outside the office of the *mukhabarat*. No one was arrested and no investigation was held after his death.

### **Other Unlawful Killings**

Other unlawful killings have resulted from the unjustified use of lethal force against demonstrators when the lives of members of the security services were not in danger. However, such killings have decreased dramatically in the last two years, perhaps a positive effect of training of members of the security forces in human rights and weapons use.

The most flagrant killing took place on 18 November 1994 when police opened fire on a peaceful demonstration of *Hamas* supporters who had just left the Palestine Mosque in Gaza after Friday prayers; 13 people were killed. A commission of inquiry was set up but its conclusions were never made public. In another case on 2 August 1996 police killed one demonstrator and wounded several others outside Tulkarem Prison during a protest when demonstrators stormed the prison to release detainees held for five months without trial. Dozens of demonstrators were arrested and five were sentenced in a flagrantly unfair trial before the State Security Court in Nablus to up to 12 years' imprisonment; no inquiry was held into the killing.

Unlawful killings at checkpoints have targeted individuals in cars. **Hanan Ahmad Mahmoud Qash'am** was killed and four other passengers wounded when members of the *mukhabarat* apparently waiting in ambush opened fire on a car. No explanation was given for the killing, and the members of the security services gave no explanation for opening fire on a car without warning. In another case, an 11-year-old girl, **Riba Nidal Hindi**, was killed on 21 August 1996 during a shoot-out between rival members of the police and the PSS in Gaza. The Attorney General, Khaled al-Qidreh, stated that several people had been arrested and an investigation was underway; however, no report of the investigation has ever been made public.

## **RECOMMENDATIONS**

The following recommendations relate only to the areas considered in this report: the arbitrary arrest and detention without charge or trial of political detainees; the use of torture; unfair trials; and unlawful killings carried out by the authorities concerned.

### ***To Israel***

1) All detainees, whether from Israel or from Israel's occupied territories, whatever the offence of which they are accused, should be brought promptly before a judge following their arrest. All detainees should be given regular and confidential access to lawyers of their choice without delay after their arrest, as well as prompt and regular access to their families.



2) Administrative detention should be ended and all administrative detainees immediately released, unless they are promptly charged and given a fair trial according to international standards.

3) The Israeli Government should revoke all guidelines allowing torture or ill-treatment. The government should make a public statement condemning all forms of torture or other ill-treatment in all circumstances, disseminate this statement among all security forces and ensure that torture or ill-treatment is ended. All allegations of torture or ill-treatment should be independently investigated, a report on the investigation should be made public within one month, and any member of the security services found to have used torture or ill-treatment should be brought to justice. Training should be given to all relevant units in respecting the right to physical and mental integrity of the detainee.

4) Israel should review the military justice system in the Occupied Territories in the light of international fair trial standards. In particular, it should address such aspects as the use of confessions extracted under duress; the coercive use of plea bargaining; undue delays and inconsistent or punitive sentencing.

5) The Israeli Government should ensure that no member of its security forces carries out extrajudicial executions either in Israel and the Occupied Territories or elsewhere and should revise its policy in this regard accordingly.

6) The Israeli Government should revise their open fire guidelines to ensure that they conform with UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and should ensure that all members of Israel's security forces strictly adhere to these guidelines.

7) The Israeli Government should ensure that there shall be a thorough, prompt and impartial investigation of any killing by the security forces. Amnesty International believes that the established investigative procedures carried out by the Israeli authorities are inadequate and all investigations should be made by an independent commission of inquiry in accordance with the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

### ***To the Palestinian Authority***

1) All detainees, whatever the offence of which they are accused, should be brought promptly before a judge following their arrest. All detainees should be given regular and confidential access to lawyers of their choice without delay after their arrest, as well as prompt and regular access to their families.

2) All those held in detention without charge on political or "security" grounds should be immediately released unless they are promptly charged and given a fair trial according to international standards.

3) The PA should make a public statement condemning all forms of torture and ill-treatment in all circumstances, disseminate this statement among all security forces and ensure that torture and ill-treatment is ended. All allegations of torture or ill-treatment should be independently investigated, a report on the investigation should be made public within one month, and any member of the security services found to have used torture or ill-treatment should be brought to justice. Training should be given to all relevant units in respecting the right to physical and mental integrity of the detainee.

4) State Security Court trials should be halted, previous trials annulled and new fair trials held for those already convicted. This is because the State Security Courts are inherently incapable of providing the guarantees for a fair trial since judges in these courts are themselves members of the security forces and therefore not impartial, and because there is no right to appeal its decisions before a higher court.

5) The independence of the judiciary should be assured and judicial decisions by the courts should be executed by the PA's security forces. Judges should have guaranteed tenure.

6) The PA should draw up open fire guidelines in conformity with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and should ensure that all members of the Palestinian security forces strictly adhere to these guidelines.

7) The PA should ensure that there shall be a thorough, prompt and impartial investigation of any killing by the security forces. Such investigations should report promptly and publicly.

### ***To the International Community***

1) All governments which have relations with the Israeli Government or the PA should ensure that in their support for the peace process they always abide by their duty under the UN Charter to respect human rights. In particular, in their justifiable demands for perpetrators of violent acts against civilians to be brought to justice, they should stress that this should only be done in accordance with internationally recognized human rights standards.

2) All governments should use their influence to secure the implementation of the recommendations made to Israel and the Palestinian Authority in this report and should

provide assistance to local human rights defenders with the aim of bringing about increased respect for human rights in Israeli and Palestinian society.