Report and Recommendations of an Amnesty International Mission to The Government of the State of Israel

3-7 June 1979

including the Government's response and Amnesty International comments

an amnesty international publication

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ERRATA

Report and Recommendations of an Amnesty International

Mission to the Government of the State of Israel

Correction

Page 6, paragraph c (2): "The International League of Human Rights" should read "The International Federation of Human Rights."

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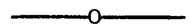

Abbreviations for references cited in the text

CPO	Criminal Procedure (arrest and searches) Ordinance (New Version) 1969
DER	Defence (Emergency) Regulations 1945
DMCO	Defence in Military Court Order. An order issued on 8 October 1967 by the Commander of the Israeli Defence Forces in the West Bank Region. Portions of this are published in IYHR, Vol.1, pp.435-440.
ICPL	Israeli Criminal Procedure Law 1965
IYHR	Israeli Yearbook of Human Rights. Published annually, beginning with volume one in 1977, under the auspices of the Faculty of Law, Tel Aviv University.
OGO	Operation of Gaols Order. An order issued on 23 June 1967 by the Commander of the Israeli Defence Forces. Portions of this are published in IYHR, Vol.1, pp.435-440.
SPO	Security Provisions Order No.378. Issued in 1970 by the Commander of the West Bank Region. Portions of an earlier version (1967) of this order are published in IYHR, Vol.1, pp.421-429.

PREFACE

Throughout recent years there have been persistent allegations of ill-treatment of prisoners in Israel and the territories occupied by it since the 1967 Six Days' War. The Israeli authorities have always denied that there is any systematic or deliberate ill-treatment of prisoners in Israel or the territories, and have said that where exceptions have occurred the authorities have taken steps to discipline the culprits or brought them to justice under criminal law.

In 1978 Amnesty International asked the Government of Israel to receive a delegation to discuss Amnesty International's concern about this matter and the results of the organization's own efforts to establish the truth of the allegations. The Attorney General of Israel responded positively to Amnesty International's request and, in June 1979, a delegation consisting of the organization's Secretary General and two other members of its International Secretariat went to Israel where they met members of the Israeli Government and judiciary, as well as a number of people not holding any official position but with relevant experience.

The Amnesty International delegation emphasized to all officials they met that the organization had reached the view that substantial changes were needed in the legal and administrative procedures under which people suspected of offences against the security of the state are held from the time of arrest until they are released or brought to trial. The delegation argued that, under the existing procedures, arrested security suspects could be held for an excessively long time without being allowed to meet relatives, lawyers, or private doctors. In addition, the law permitted up to 18 days to elapse after arrest before a security suspect had to be produced before a judicial authority. It also appeared that the system of medical examination of such arrested people and the documenting of their medical condition was inadequate to establish a clear record of their physical condition while in custody. Moreover, although the formal rights given by the Israeli authorities to the International Committee of the Red Cross to visit prisoners in the Occupied Territories were among the best that organization has been granted anywhere in the world, in Amnesty International's view the provisions of the agreement and its implementation were not such as to ensure the full protection of prisoners' rights.

The Amnesty International delegation emphasized to the Israeli authorities they met that these aspects of the procedures for holding arrested security suspects were such as to increase the risk of ill-treatment of prisoners, and made official refutation of such allegations less than convincing.

These aspects of the procedures are crucial to the issue of alleged ill-treatment of arrested security suspects since most of the allegations

concern the period shortly after arrest, when the prisoner is, in effect, isolated from contact with anyone except those in charge of investigating the case. Furthermore, confessions and other statements by arrested suspects are in very many cases instrumental in the successful prosecution of people charged with security offences, especially where there is little or no independent corroborating evidence. It is reasonable to expect that interrogators may have an incentive to resort to coercion of one sort or another where persuasion has failed to elicit a statement from the suspect which will be useful in evidence.

The Amnesty International delegation argued also that the procedures for holding security suspects made it extremely difficult for the Israeli courts or any other agency responsible for evaluating an allegation of ill-treatment to verify the allegation, even where it is well-founded. This is characteristic of any system in which arrested people are held for prolonged periods incommunicado. Under such conditions, the person making an allegation of ill-treatment cannot produce any witnesses to support the allegation, whereas the interrogators will be able to support one another in their denials.

This effect of the procedures, Amnesty International argued, gravely impairs two most important safeguards against ill-treatment: the legal requirement that no statement taken from a suspect or witness be admitted in evidence if obtained by force, and the capacity of the government and non-governmental bodies to assess allegations and take action if they are shown to be well-founded.

The discussions between the Amnesty International delegation and the Israeli authorities in June 1979 did not alleviate Amnesty International's concern about any of these matters.

Following the mission, Amnesty International submitted to the Israeli Attorney General a Memorandum (consisting of 82 pages in double-spaced typescript) dated October 1979 summarising its concerns, suggesting areas where administrative and legal procedures should be amended and urging that the authorities initiate a full scale investigation of the entire subject of alleged ill-treatment, including relevant administrative and legal procedures, and that the results be made public.

In its Memorandum to the Israeli authorities, Amnesty International cited and commented on a number of allegations of ill-treatment of prisoners, but did not make or endorse any specific allegations. The allegations have persisted and, as is stated in the "Conclusions" to its Memorandum, Amnesty International believes that the weight of the allegations is sufficient to warrant thorough investigation and remedial measures. The Government has persistently rejected such allegations in the past, including complaints and queries submitted by Amnesty International.

Amnesty International, in its Memorandum, specifically avoided attaching its recommendations to particular allegations and cases since, in the organization's view, the nature of currently employed procedures did not permit a clear, factual assessment of either allegations or denials, hence discussion of individual allegations could only lead to

sterile dispute. Instead, Amnesty International believed a more constructive way of urging the authorities to take remedial and preventive steps would be by presenting them with a Memorandum which, in addition to citing sample allegations, documented the need for such measures by describing deficiencies in existing procedures for handling arrested security suspects.

On 31 December 1979 the Attorney General of Israel sent Amnesty International a 15-page reply saying, in effect, that the government would not undertake the investigation or make the changes in procedures which the organization had recommended. The Attorney General's reply does not alleviate Amnesty International's concern about the deficiencies in procedures; in the present publication Amnesty International has responded to the Attorney General's reply, and reiterated the recommendations contained in the original Memorandum.

One aspect of the Attorney General's reply warrants a response here so as to eliminate misunderstnading of Amnesty International's intentions: his suggestion that Amnesty International is oblivious of the violence which has persisted in Israel and the Occupied Territories - violence which has led to loss of life and other forms of suffering by the victims, who are often innocent civilians.

Amnesty International does not condone crimes of violence, nor does it work for the release of people who are imprisoned for having committed acts of violence. On the contrary, it condemns assassinations and the taking of hostages by anti-governmental forces, and regards these as grave violations of the human rights proclaimed in the Universal Declaration of Human Rights. At the same time, the international human rights standards, the observance of which Amnesty International seeks to achieve, require that no one be subjected to torture or cruel, inhuman or degrading treatment, and do not permit governments to justify such treatment by referring to the threat of violence to the government or the public.

In publishing this documentation Amnesty International hopes to present considerations, based on its worldwide experience, which will facilitate informed public discussion, especially within Israel, of the basic issue: the need effectively to guarantee the humane treatment of all arrested people and to ensure that their treatment can be properly evaluated by impartial observers, with adequate documentation and evidence readily available.

This publication is in two parts. The first contains the Memorandum which Amnesty International submitted to the Government of Israel in October 1979; several amendments have been made and these are indicated in footnotes. The second part contains the reply of the Attorney General of Israel (in italics), and Amnesty International's comments on it. The Memorandum is reproduced in full except for one passage containing material which Amnesty International considers inappropriate for a public document. This passage has been deleted, as have two comments on it in the Attorney General's reply, which is otherwise reproduced in full. The deletions are indicated by dots.

MEMORANDUM TO THE ISRAELI GOVERNMENT

I The Amnesty International Mission

In June 1979 an Amnesty International delegation went to Israel and had discussions with Israeli Government, judiciary and military officials. The delegation discussed several matters of concern to Amnesty International: persistent and numerous allegations of ill-treatment of persons arrested on suspicion of security offences; imprisonment of Israeli citizens or residents of the Occupied Territories for their political views and associations rather than for the use or advocacy of violence; features of Israeli legislation allowing for the imprisonment of conscientious objectors to military service; the continuing practice of detention without trial ("administrative detention"); the death penalty.

During the discussions the Amnesty International delegation gave greatest emphasis to questions related to the persistent allegations of ill-treatment of persons arrested on suspicion of security offences. Specifically, the delegation discussed at length the legal and administrative procedures under which arrested suspects in the Occupied Territories are held for investigation and pending trial and the possibility that such procedures (1) may permit the use of brutal interrogation methods and (2) may lead to the conviction and sentencing of individuals whose dissenting behaviour did not include the use or advocacy of violence.

In addition to these discussions, and as part of its ongoing effort to examine those human rights violations in Israel and the Occupied Territories which fall within the organization's mandate, Amnesty International has made a serious attempt to obtain from people in Israel and the Occupied Territories who are not in official positions (including lawyers, journalists, academics and ex-prisoners) information relevant to the allegations of ill-treatment. During its visit in June 1979, the delegation also met with one convicted security offender at Nablus prison and spoke with prison officials who attended the meeting.

Furthermore, Amnesty International has studied with care recent reports on this matter, including the London *Sunday Times* 1977 investigation into torture in Israel, the various United Nations reports on this subject, the report by the 1978 mission of the International League of Human Rights and the International Association of Catholic Jurists, *Pax Romana*, the 1978 report by the United States National Lawyers Guild, the information collected by Alexandra Johnson, a former United States consular official in Jerusalem, and various relevant press reports. As well, Amnesty International has paid close attention to the replies made by the Israeli authorities to allegations of ill-treatment of security suspects.

Informed by this examination, Amnesty International decided in July 1979 to submit to the Israeli government authorities and to the relevant committees of the *Knesset* a memorandum outlining the organization's concerns regarding the legal and administrative procedures applied to arrested persons and to request that the authorities initiate a thorough review of these procedures.

In submitting this memorandum, Amnesty International has concluded that these procedures are so deficient as they now stand that they do not provide adequate minimum protection for arrested persons. This enhances the possibility that the basic rights of prisoners may be routinely violated. Law enforcement officials too are denied the protection which tighter procedures might afford: allegations of ill-treatment may be easily brought, and blanket denials just as easily issued, yet the procedures are such as to make most difficult a factual assessment of either the allegations or the denials.

Amnesty International was motivated in its decision to submit this memorandum by its view that the highest priority should be given to the search for measures to prevent the future ill-treatment of arrested persons. At the same time, Amnesty International noted with dismay that the Israeli authorities have not acceded to requests by Amnesty International for a public investigation into allegations of ill-treatment in their totality, and have restricted their inquiries instead to individual cases. In Amnesty International's view, official inquiries into individual cases of alleged ill-treatment are not an adequate response to these allegations; such inquiries are, by their nature, very selective and fail to address the central problem of those administrative and legal procedures which, as applied to arrested security suspects in the Occupied Territories, permit such allegations to arise. It remains the view of Amnesty International that the Israeli authorities should initiate a thorough investigation into such allegations and the relevant administrative and legal procedures, drawing on all sources of information germane to the matter, and publish the results of the inquiry.

II Explanatory Background

The Occupied Territories * have been under Israeli control since the June 1967 war and since then have been subject to military rule. By virtue of a 1967 proclamation, primary, legal authority in each of the territories reposes in the Regional Commander of the Israeli Defence Forces and "Any power of government, legislation, appointment, or administration with respect to the Region or its residents shall henceforth be vested in me (the Commander) alone and shall be exercised only by me or by a person appointed by me to that end or acting on my behalf" (Proclamation issued by the Commander of the Israeli Defence Forces in the West Bank Region, 1967; published in IYHR, Vol.1, p.419).

Although legal responsibility for the administration of the territories lies with the Regional Commander, policy is established by the Israeli Ministerial Committee for Security and Territories, chaired by the Prime Minister. Its decisions are channelled through the Ministry of Defence to the Department of Military Government of the Israeli Defence Forces whose head in each region is the Regional Commander (IYHR, Vol.7, pp.182-183). The Regional Commander thus constitutes the primary authority, both military and civilian, in the Occupied Territories.

In the proclamation cited above, all law that had been in existence on 7 June 1967 in the Occupied Territories is declared to remain in force. This includes the Defence (Emergency) Regulations (DER), promulgated by the British in 1945 during the Mandate period for the whole of Palestine. The DER, together with the more than 700 orders (including Security Provisions Order No. 378, of 1970 (SPO)) and hundreds of regulations and decrees issued by the Regional Commander of the West Bank since 1967, provide the framework for military rule and cover the following aspects:

1. Justiciable offences and corresponding punishments: whereas many of the acts defined as punishable may involve violence (e.g. DER, paragraph 58, on unlawfully discharging firearms; and SPO, paragraph 51(a), on sabotage and the causing of death), in a number of instances the acts may be of a purely political nature and may not themselves involve the use or advocacy of violence (e.g. DER, paragraph 85(f), on possessing documents relating to an unlawful association; and Security Order 101, Order Prohibiting Hostile Sedition and Propaganda).

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* The term "Occupied Territories" as it is used throughout this report refers in general to three regions: (1) the area west of the Jordan River which was, until June 1967, under Jordanian rule (known as the West Bank); (2) the Gaza Strip (formerly under Egyptian rule); (3) the Golan Heights (formerly under Syrian rule). The legislative and administrative practices are broadly similar in each of these regions but each has its own Regional Commander and its own set of military proclamations and security provisions. These provisions are in most cases identical and, for the purposes of this report, we will be referring to those in effect in the West Bank.

In addition, some punishable acts may indicate little more than the affiliation of the accused individual to a community which widely rejects the legitimacy of the occupying power (e.g. SPO, paragraph 59, on the non-prevention of an offence).

2. Procedures under which individuals may be arrested, held in custody, charged and tried. (These procedures are dealt with in detail in section IV of this memorandum.)

3. Provisions concerning the system of military justice under which court judgments are rendered. According to Security Provisions Order No. 378, of 1970, "A Military Court shall be competent to try any offence defined in security enactments and any offence defined by law, subject to all provisions in security enactments" (SPO, paragraph 7). (Details of the military justice system are discussed below in section IV.C.) It should be noted that the provision for military trials in the Occupied Territories is in accord with Article 66 of the Fourth Geneva Convention.

4. A number of administrative measures, subject to no judicial review, which permit imprisonment without trial ("administrative detention"), deportation, house arrest, curfews, the destruction of property, prohibitions on political demonstrations and public gatherings, censorship of publications and suspension or restriction of other rights (e.g. DER, paragraphs 86-101, 108-113, 119-120; SPO, paragraphs 85-87).

III Arrests and Allegations of Ill-treatment

A. Numbers of arrests

It is difficult to state exactly the number of people in the West Bank who have been either detained or arrested on security grounds since such estimates often do not include the apparently large number of detentions for short periods of less than one week.

The total number of West Bank residents who have passed through Israeli prisons since June 1967 may be between 20-30,000.* According to figures announced by the Military Government in the West Bank, there were 2,473 security prisoners in January 1979 (slightly less than the figure of 2,493 given for January 1978). The Beirut-based Committee for the Defence of Palestinian Prisoners in Israeli Jails gives the much higher figure of approximately 5,000. According to the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories (which relies for its figures on reports in the Israeli press and excludes those reports which cite "dozens, several, large numbers" of arrests), there were at least 1,192 security arrests made in the Occupied Territories between November 1977 and October 1978. Over the same period, the United Nations Special Committee variously reported that 935 or 1,035 trials before military courts had taken place, many of them involving groups of defendants.

If anything, the number of arrests has increased since 1978: the Military Governor stated in early June 1979 that, in the previous six months, 1,500 Palestinians had been arrested in the West Bank (of whom approximately 70% were between 16 and 23 years of age).

B. Allegations of ill-treatment

The allegations of ill-treatment dealt with in this report relate to individuals arrested for security reasons, and particularly to the period of detention when they are under interrogation.** Such allegations have been collected and analysed in several reports of varying quality and substance, including those made by the United Nations Special Committee, by the United States State Department, by various non-governmental groups concerned with human rights (Swiss League of Human Rights, *Pax Romana*, National Lawyers Guild and Amnesty International) and by the press (comprising both individual allegations and allegations of systematic ill-treatment. The best known report of the latter form is the one published by the London *Sunday Times* in 1977).

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* *Prisons and Prisoners in Israel*, Ithaca Press, London, 1978, pp.1

** It should be noted here that recently there have been frequent and serious reports of ill-treatment by the police of arrested criminal suspects within Israel proper. A substantial number of these have been collected, translated into English, and reproduced by Israel Shahak and the Israeli League for Human and Civil Rights, P.O.Box 14192, Tel Aviv, Israel.

1. Summary of previous reports:

In this section we will present the general conclusions of these reports; in the next section we will examine in detail the one - that of the *Sunday Times* - to which the Israeli authorities have addressed their most direct public reply.

a. Reports of the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories.*

In 1970, the Special Committee's first report concluded, "None of the reports (alleging ill-treatment of prisoners) quoted in this publication have been refuted and this, together with the evidence before the Special Committee, leads it to believe that there is, in several prisons ... a regular practice of ill-treating inmates" (paragraph 108). These conclusions have been repeated consistently over the years. Most recently, the Special Committee concluded that "the testimony ... confirms the allegations that persons under interrogation are ill-treated and that no adequate remedies exist to safeguard such persons from abuse" (A33/356, November 1978, paragraph 133).

b. The United States Department of State Report on Human Rights Practices in Countries Receiving United States Aid.

In its 1979 annual survey, the section on Israel included the following: "the accumulation of reports (of torture), some from credible sources, makes it appear that instances of mistreatment have occurred."

c. Non-governmental investigations into human rights in the Occupied Territories.

(1) The Swiss League of Human Rights. Their report, in 1977, concluded that prisoners in the Occupied Territories were subjected to ill-treatment and torture.

(2) The International League of Human Rights and the International Association of Catholic Jurists, *Pax Romana*. The team of three investigators, in their 1978 report, concluded that: "Invividual acts of ill-treatment (blows, detention under brutal conditions, perhaps torture in

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* The Israeli authorities have never cooperated with this committee and have asserted that its composition - three members (Yugoslavia, Sri Lanka, Senegal), none of which recognises the State of Israel - deprives it of any claim to impartiality. Established in 1968, the Special Committee publishes its report annually, towards the end of each calendar year.

its strict sense) were committed on suspects under interrogation or in preventive detention." *

(3) The United States-based National Lawyers Guild. In its 1978 report on an investigation carried out in 1977, the National Lawyers Guild concluded that: "substantial evidence exists that torture has been used in numerous instances."

(4) Amnesty International. In 1970, Amnesty International issued a *Report on the Treatment of Certain Prisoners under Interrogation in Israel*. This report, which summarized four case histories, contained "*prima facie* evidence of the serious maltreatment of Arab prisoners under interrogation in Israel." In its conclusion, Amnesty International stated that: "Amnesty restricts itself to claiming that the serious nature of these allegations warrants immediate inquiry so that their truth can be tested ..."

In its recent Annual Reports, including those of 1976, 1977 and 1978, Amnesty International noted with concern the serious allegations of ill-treatment brought against the Israeli authorities and requested the Prime Minister to "institute an independent inquiry into the treatment of detained persons ..." (1976).

d. Press reports.

Allegations that persons in custody for security reasons have been subjected to ill-treatment have been raised in the international press on a number of occasions. Several allegations taken from the Israeli press are noted in paragraphs 110-116 of United Nations Special Committee's 1978 report; a detailed allegation brought by an East Jerusalem journalist, Ismail Ajweh, upon his release from prison was published in the *Guardian* of 3 May 1979 and is reproduced below in section III.C.

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* The study goes on to say that, "Frequent use of torture or ill-treatment is usually inseparable from the existence of secret interrogation and detention centres and from prisoner disappearances. Nothing of the sort ... has ever been mentioned in Israel nor in the Occupied Territories. This observation excludes even further the existence of a deliberate policy." In Amnesty International's view, neither disappearances nor secret interrogation and detention centres are necessary concomitants of torture: see the June 1978 report of an Amnesty International mission to Northern Ireland which presents documentary evidence of ill-treatment in Northern Ireland, where disappearances and secret centres of interrogation and detention play no role. Also, secret interrogation centres and prolonged disappearances occur in Israel: see, for example, the numerous press reports on the cases of two German citizens, Brigitte Schulz and Thomas Reuter, held for 14 months from January 1976 to March 1977, at a detention centre whose location is still secret, and during which time no representative of theirs was informed of their whereabouts despite persistent inquiries from their parents.

Whereas most relevant press reports have dealt with allegations of ill-treatment in individual cases, in two notable instances press reports brought forward allegations that ill-treatment was practised in a substantial number of cases and that such ill-treatment was systematic and part of administrative practice. To one of these, the *Sunday Times* investigation published in June 1977, the Israeli authorities responded at length (see below, section III.B.2). More recently, in early 1979, the *Washington Post* and the *Christian Science Monitor* published reports of allegations of ill-treatment collected by Alexandra Johnson, a former United States consular official in Jerusalem.

Alexandra Johnson interviewed, in Jerusalem, from March 1977 to November 1978, 29 "visa security cases": that is, Palestinians who had at one time been under arrest and who were now requesting visas for travel to the United States. Ms Johnson's task was, through interviews with the applicants, to provide further information on the individual's confrontation with Israeli justice, in order to enable the United States Department of Immigration to determine the applicant's eligibility for a visa under United States Immigration Law. Of the 29 subjects interviewed by Ms Johnson, all alleged some degree of beating or other form of ill-treatment, the most recent in 1977. Twenty-two of the applicants were eventually granted visas to enter the United States, four were refused and three are still awaiting decision.

The material on which these decisions were based included two lengthy telegrams sent by the Jerusalem Consular Office containing extended accounts of the testimonies of the 29 applicants and a detailed analysis of the testimonies. In these telegrams, Ms Johnson concluded that:

> "These reports depict a graded system of physical pressures applied in conformity with certain fundamental criteria - a system requiring far-reaching administrative coordination."

And further,

> "Patterns recurring in these statements of 29 individuals interrogated in four different administrative jurisdictions at various times over a period of 10 years cannot be dismissed as mere coincidence or the product of actions of a few isolated low-level personnel. On the contrary, one is faced with the possibility that the use of brutality in the interrogation of Arab political prisoners is a systematic practice, involving the use of trained personnel, backed up by far-reaching administrative support, and protected by standard methods of suppressing complaints and blocking their investigation."

These conclusions were prefaced with a general introduction written by higher consular officials which stated that "the weight of evidence points to the validity of her general conclusion that physical mistreatment is systematically used on many Arab security suspects interrogated in the West Bank." In January 1979, Ms Johnson sent a further telegram reporting on police treatment of arrested demonstrators. Of 18 Palestinians

interviewed, 10 alleged beatings or other forms of ill-treatment (the most recent in 1978). To date, the Israeli authorities have made no substantive reply to these allegations.

2. The 1977 *Sunday Times* report and the Israeli Government's response

(The relevant documents here include the initial *Sunday Times* report of 19 June 1977, the Israeli response published in the *Sunday Times* of 3 July 1977, the *Sunday Times* answer of 10 July 1977, the Israeli government-published transcript of State Attorney Gabriel Bach's press conference of 29 July 1977, and the *Sunday Times* follow-up article of 18 September 1977.)

For the *Sunday Times* report of 19 June 1977, investigative journalists questioned 49 Palestinian Arabs resident in the West Bank. Forty-four of these alleged ill-treatment and 22 of them agreed to be named. These allegations called into question not only the treatment of individuals in custody, but also certain aspects of the judicial and administrative systems which were alleged both to encourage ill-treatment and deny proper redress to complainants.

The response of the Israeli Government challenged the individual allegations brought by the *Sunday Times* and presented a lengthy defence of the system of Israeli military justice.

a. The specific allegations of ill-treatment.

The *Sunday Times* presented, in varying degrees of detail, 14 of the 44 cases of Palestinian Arabs who alleged ill-treatment. These 14 cases refer to ill-treatment alleged to have occured in 1969 (one case), 1970 (two cases), 1973 (one case), 1974 (five cases), 1976 (four cases). (The dates for one set of allegations were not provided.) In addition, the *Sunday Times* also listed by name eight other interviewees who alleged ill-treatment.

The Israeli response addressed only five of the 14 detailed cases, and denied the allegations in only one of the second group of eight. In sum, although the Israeli authorities denied the allegations in their totality, their response dealt with only six of the 22 cases named in the *Sunday Times* report. In explaining this selective reply, the Israeli authorities stated that since "a detailed refutation of all the allegations published in the four-page report of the *Sunday Times* would require at least the same amount of space, we would like to refer only to some of the more blatant alleged evidence quoted in the article." Even in the six cases which the Israeli response addresses (those of Odeh, al-Karim, Toutounji, Al-Dibl, Krim and Harb), they generally did not challenge the allegations of ill-treatment with arguments of substance but either denied the allegations outright or raised peripheral issues.

Josef Odeh had stated to the *Sunday Times* that his daughter, when in custody, had been threatened with rape and that an object had been thrust into her vagina in his presence. The Israeli response was that "in the *(Sunday Times)* article, there is no attempt to verify the incident

... no mention of any complaint ... no mention of any request for a medical examination ... no mention of any names ..." "Israel emphatically and categorically denies that this incident (and other incidents) occurred - it is the warped imagination of a sick mind."

In the cases of al-Karim and Toutounji, the Israeli response sought to refute the *Sunday Times* allegations that both were subject to ill-treatment by arguing 1) that al-Karim's advocate made no mention of ill-treatment at the trial, and 2) that Toutounji's advocate made no mention of ill-treatment in two letters written to the authorities on the accused's behalf.

In the case of al-Dibl, the Israeli response asserts only that the *Sunday Times* did not convey correctly the crime for which al-Dibl was convicted.

The *Sunday Times* presented allegations that Krim had been severely ill-treated in prison. The Israeli response disputed the *Sunday Times* on a number of facts, including the length of time Krim had spent in prison, the evidence brought forward to support Krim's confession and the acts of which Krim was finally judged guilty. The Israeli response also challenged the *Sunday Times* view that when Krim was released on medical grounds, before his full sentence was served, he was suffering so severely that he "couldn't recognize his brother". The Israeli response affirmed, to the contrary, that Krim "happily" appeared several days later on Jordanian television (a fact disputed in the *Sunday Times* reply). State Attorney Bach concluded that "when he arrived in Jordan, knowing that his confession was no secret, and that people would wonder why he had been released and whether he might not be serving as an enemy agent, the claim that he ha been subjected to all kinds of abuse by the security forces may very well have been the best way for him to overcome these suspicions."

Only in the case of Ghassan Harb did the Israeli authorities bring positive evidence to refute the allegations made by the *Sunday Times*: the Israeli response mentioned that there exists "a formidable list of medical certificates disproving the allegations". But the *Sunday Times* subsequently disputed the relevance of these certificates to the issue at hand and, furthermore, questioned the availability of impartial, objective evidence and therefore the ability of the courts to form an opinion based on sound and conclusive evidence. The *Sunday Times* wrote:

> "How could Harb provide conflicting medical evidence? He was in Israeli custody, out of reach of independent doctors. The most nearly independent witnesses - the two men we cited who visited Harb in prison - both thought that he had been ill-treated ... Harb did in fact complain of torture at the time. He made a formal complaint to the International Red Cross - a copy of which the Red Cross sent to the Israeli military authorities in the usual way.
>
> "As for the medical examinations - Israel cites six, but two were dental - it is clear from their dates that three came before Harb's interrogation. The only relevant examination was on 4 July 1974, 18 days after the end of his intensive interrogation and that came about because two days before, on 2 July, Harb's lawyer, Felicia Langer, had claimed to see bruises on him and others and demanded an inquiry ...
>
> "In our article we quoted Harb's allegation that the 4 July examination was in fact 'perfunctory', and not even the Supreme Court - whose handling of the case was criticised - found that Harb had no injuries. In a curious phrase, the court found no signs of 'intentionally inflicted injuries' - which taken literally can only mean that, sitting *in camera*, the court chose to believe the authorities' account of how Harb came by the injuries that were recorded."

In sum then, the Israeli response to the *Sunday Times* allegations addressed only six of the named 22 cases. Even in these cases, their response was circumstantial and did little to weaken the specific allegations themselves. Only in the cases of Harb and Krim did the response argue directly against the allegations: with reference to Krim, the argument was tenuous - that because Krim's confession was corroborated by external facts, and because he allegedly appeared in good health on Jordanian television, he was therefore not tortured; with reference to Harb, the relevance of the medical certificates cited in the response is open to question.

b. The quality of Israeli military justice.

In addition to presenting allegations that specific prisoners had been subjected to ill-treatment, the *Sunday Times* also questioned the fairness of the system of Israeli military justice under which security suspects in the Occupied Territories are tried. The Israeli response to these arguments was phrased publicly in State Attorney Bach's press conference in July 1977, which was called specifically to respond to the *Sunday Times* charges. Many of the points made in this response were also made by the Israeli authorities in their meetings with the Amnesty International delegates in June 1979. These points are examined comprehensively in section IV of this report.

(1) The Military Court system

In his press conference State Attorney Bach stated that he did not "share the negative attitude held by some towards military courts", emphasizing that "the presiding judges in such cases are usually civilian lawyers on reserve service in the Israeli Defence Forces and, as such, they are imbued with a sense of the rule of law and of natural justice." State Attorney Bach went on to say that "the judges in military courts frequently are more meticulous about procedure, and make life more difficult for the prosecution, than those in civilian courts".

(2) Incommunicado detention

State Attorney Bach did not contest that detainees under interrogation (the period to which most allegations of ill-treatment refer) were cut off from the outside world, including from their lawyer. Rather, he justified this practice by reference to Article 5 of the Fourth Geneva Convention which states, *inter alia*: "Where, in occupied territory, an individual protected person is detained as a spy or a saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention."

State Attorney Bach went on to say that "interrogating a suspect by ordinary means, according to established rules, but preventing him, under such circumstances, from coming into contact with the outside world while he is being interrogated - that, I think, is definitely legitimate."

(3) The admissibility of a confession

State Attorney Bach argued that a suspect is protected against a confession extracted under duress by the procedure known as the "trial within a trial" or the "little trial". Here, as he explained, whenever the suspect alleges that his confession was taken under duress, the court holds a special hearing to examine whether or not the confession had been given freely. In this hearing, he stated that the burden of proof is on the prosecution to show that the confession was indeed given freely. State Attorney Bach then cited three cases where the courts had ruled a suspect's confession inadmissible because, in one, the accused was subjected "to severe prison conditions and psychological pressure which he might not have been able to withstand"; in another, because the accused had been given no routine medical examination until 33 days after arrest; and in the third, because the prosecution was unable to show that a confession had been made to the police.

(4) Evidence to support a confession

The Israeli response to the *Sunday Times* article stated that "In Israel ... a statement to the police containing a confession needs corroborative evidence and it is impossible to obtain a conviction based on a confession alone." This statement, and the one made by State Attorney Bach in his press conference that "there must be some additional evidence that indicates to the court that it can safely rely on the confession", differs from several made to the Amnesty International delegates during meetings with the Israeli authorities in June 1979.

(5) Application to the High Court of Justice

At his press conference State Attorney Bach stressed that, over and above all other safeguards: "Every citizen of Israel - in fact, every person living here and in the areas administered by Israel - can apply

directly to the High Court of Justice, and he will be heard within 24 hours, if he claims that any of his rights have been infringed by any government or other official authority."

3. Conclusion

The Israeli response to allegations of ill-treatment and, most specifically, to those brought by the *Sunday Times*, leaves many questions unanswered. In particular, although Amnesty International recognizes the difficulty inherent in proving that certain alleged events did not occur, we are particularly disturbed that the response of the Israeli authorities has not provided a convincing refutation even in those very few selected cases which they have chosen to address directly. This not only casts serious doubt on the general denials offered by the authorities to allegations of ill-treatment, but substantially weakens their assertion that sufficient safeguards exist in the military court system and in relevant administrative practices to protect individuals in custody.

The Israeli authorities have reason for asserting that those who allege ill-treatment are almost always unable to bring conclusive proof that such ill-treatment did, in fact, occur. At the same time, it is also clear that, for their part, the Israeli authorities are generally unable to provide convincing evidence and arguments that such ill-treatment did not occur.

The dilemma was pointed to quite directly by State Attorney Bach himself, when he began his press conference with the following words:

> "I am convinced that anyone who lives in this country (Israel), who is familiar with its people, would find it hard to believe that this administration or this nation would tolerate systematic ill-treatment or torture of defenceless prisoners. For such people, no clarification is, of course, necessary.
>
> "For those, however, who might be inclined to accept the veracity of the allegations published by the *Sunday Times* - not an isolated incident here and there, but the systematic ill-treatment and torture of prisoners - I think that, *prima facie*, it is rather doubtful whether any statement by myself, as State Attorney, to the effect that these allegations are unfounded, and in support of the testimony of the police and the security services, would be of much value as such."

Amnesty International was sufficiently disturbed by the seriousness and persistence of allegations of ill-treatment, and by the inadequacy of the Israeli authorities' published replies to these allegations to seek, in June 1979, further clarification from the authorities of the procedures and safeguards currently in effect to protect the rights of persons in custody, and to enquire into the conditions which permit such a paucity of relevant evidence on an issue of critical importance. The results of that enquiry are contained in sections IV, V, and VI of this memorandum.

C. Examples of recent allegations of ill-treatment

(The following are four recent testimonies of ill-treatment which, taken together, are representative of allegations made in recent years as regards the type of ill-treatment and the circumstances surrounding arrest and detention. The first three testimonies were received by Amnesty International; in them dates and places have been changed at the request of the individuals involved. The words themselves constitute a paraphrase of the testimonies as they were received by Amnesty International. The fourth set of allegations is taken from press reports on the case of Isma'il Ajweh. All the testimony that follows concerns events occuring in 1977 or later.)

1. I was arrested in early 1978, at my home, while asleep. There were soldiers with guns all around, my mother was crying and my younger brothers were in terror. I was told to get dressed and then was put into a jeep and made to lie on the floor of the jeep. My shirt was taken off me and used to blindfold me. While I was lying on the floor of the jeep, the soldiers beat me on the head with their iron helmets, and kicked me.

I was taken to the Moskobiya (a detention centre in Jerusalem) and here I was beaten by about five people, in the stomach, in the back of the head, and on the genitals. I lost consciousness.

After breakfast the next day, I was taken to the interrogation room which had one table and two chairs. The interrogator asked me to speak and I answered, "I did nothing." He said, "Now I will force you to speak."

I was sitting on the chair in front of the desk and now he came and sat on the front of the desk, near me. He placed one of his feet on my genitals and pressed down on them whenever he felt like it. With the other foot he periodically kicked me in the face. The pressure on my genitals increased - it became very painful. At the same time he began to threaten me that my brother would be dismissed from his job. This treatment lasted for about two hours.

Then my dossier arrived, and now the interrogator saw that I had been under interrogation several times before. I think the job of the first interrogator was just to throw fear into me. Now two other people were brought in to interrogate me. My hands were tied behind my back, to the chair. They began to beat me on the head and arms. One of them was beating me with a rope. This lasted about five hours. When I was sent back to my cell, my nose was bleeding, there was blood all over the inside of my mouth, and my genitals were blue.

On the second day, I was again tied to the chair and a thick cloth sack was put over my head. But now I was not beaten. After some time, they took me into the courtyard and tied me to a pipe there so that I couldn't sit down, only stand. They left me this way for 48 hours, standing, with no food, no cigarettes, no sleeping, no going to the

toilet. I urinated in my clothes at least twice. After this, I was sent back to my cell, where I rested for about two hours.

Then I was taken for interrogation again. Now they began to throw information at me, that I had been a member of the Democratic Front for the Liberation of Palestine. They weren't beating me at all. Some of this information was correct and some of it was wrong. I admitted nothing, and they sent me back to the cell. I slept like a dead man. When I woke up, I did some exercises, since you have to be strong to withstand this kind of treatment.

The next day, they brought before me a man who said that I had recruited him to the Democratic Front for the Liberation of Palestine. This man, whom I knew, looked like he had lost 15 kilos in weight. I admitted I had done this. Then they asked me how I got my orders. I told them nothing. Now a new torture began. I was again tied to the chair, but he had tied a rope to my penis and began to pull on the rope in time to the music on the radio he had turned on. The interrogator was laughing, dancing, and pulling on the rope. He was not even asking me questions. This lasted for several hours.

And after this, I was again brought into the courtyard, tied to a pipe, and left standing for 48 hours.

This kind of treatment continued for 29 days.

It was only after 20 days that I first saw my lawyer. I was never seen by the Red Cross since my identity card is from East Jerusalem and the ICRC only visits prisoners from the West Bank.

After this treatment, I was moved to another prison for about a month, where I was not interrogated. Then I was tried - I had confessed to membership and recruiting - and I was sentenced to eight months'. After two months of this sentence, I was again brought to the Moskobiya for the same kind of treatment again. Now the treatment was even worse, because some other people had confessed and named me in their confession. Here I was under interrogation for 17 days but I said nothing since I knew I would be free in several months. But I saw the others who had named me, and they were in very bad shape.

It is hard to avoid talking, but being prepared for the experience is the most important thing. Then you know that it is better not to talk at all - if you tell them something they will always want more, and they will hurt you any way to get it. You can never give them enough to satisfy them.

2. I was arrested in late 1978, as I was coming home from a celebration during Palestine week. The soldiers stopped me in the street, asked me what I thought of autonomy, what I thought of Sadat. I told them exactly what I thought about these issues - this has happened before and usually, after such questions, they let you go. But this time they went in and searched my house, and then took me into my house, where my books were

strewn all over. They told me that books on communism were illegal, but I answered that if this was so, they should go to the libraries and bookstores where all these books are lent and sold. I was then handcuffed, made to sit outside, in the rain, waiting for them.

The first place I was taken to was the cell, where my hands were tied to the window grating. I was made to stand like that for two days. I had to go to the toilet then, and I cried out for about two hours, and they allowed me to go. Then I was taken to the corridor, blindfolded and handcuffed, and told to stand without moving, or I would get hit. Here again I had to stand for two days and a night. I now hadn't slept for four days.

Now I was taken to the interrogators, and all I wanted to do was sleep. My head fell on the desk, and the questioning began: about the PLO, Palestine Week, Sadat, my friends. I talked to them, but I was very sleepy. They wanted a confession that I was a member of the Democratic Front for the Liberation of Palestine, but I denied this. They began to hit me. They stood me next to the wall and tied my hands to the window. Then they pulled my legs away from the window so that the weight of my whole body was on my hands, and the handcuffs started to cut my skin. Then they put salt in my mouth, a lot of it. And one of them put his hand over my mouth so that I had to swallow some of the salt. And then they forced me to lie down, and stepped on me, and beat my genitals with a club. All of this took about one hour. Then I was returned to my cell, and allowed to sleep that night.

The next day I got the same treatment, for about three hours. I felt almost unconscious for most of the time.

This interrogation continued in this way for seven days. Finally I signed a confession to membership in the Democratic Front for the Liberation of Palestine, to their political wing, not the military wing.

I was tried about four months after my arrest, and sentenced to six months'.

3. In 1977, Ramallah Secondary School was on strike, and planned to make a demonstration. The demonstration succeeded. About 150 persons went out and moved to the Hashemite Secondary School. The students there were on strike in the school courtyard, which is very near the police station. After about one hour, most of the students left the school and pelted police and army cars with stones. After that, students from inside the school began to throw stones at the police station. An order came from the Military Governor to close the school and to arrest all the students. Soldiers invaded the school and clashed with the students.

I fled with about 15 students of my school into the interior of the school, and we hid in one of the classrooms. After about five minutes, the soldiers lobbed three tear-gas cannisters into the room in which I was. We were not able to bear it, so we left the classroom.

The soldiers were awaiting us, and arrested the 15 of us. A soldier seized me from behind and led me, together with four other youths, to an army car. They flung us into the middle of the car and took us to Ramallah prison. On the way, a soldier was sitting by my side and hitting me on my knee with a stick. Then he put his foot on my head and began to laugh.

After about 10 minutes, we arrived at the prison. They did not take us to prison immediately, but put us in an earth-floored room in the prison area which had been a stable for horses in the Jordanian period. We were about 35 students. After about one hour, an Egyptian Jewish soldier came and began to kick us. Then he demanded that all the students stand with hands raised for one hour without moving. Then he left, and after an hour he returned and found a friend of mine sitting from exhaustion. He became infuriated and seized him by the hair and threw him on the ground. With forceful kicks, he made all the students go over to him. He made us stand again after we had rested for about 10 minutes. He made us stand on one foot, raising our hands high for about half an hour. After that, none of us were able to bear it, so we sat down.

After about an hour and a half, the same soldier returned, with two European soldiers with him. He seized one of the students, threw him to the ground, and stepped on his head. Then he took out his penis and urinated on him. The situation was that way all the first day and all the first night. No one was permitted to sit on the ground.

On the second day, after the interrogation of five people took place, they returned with blood streaming from their bodies. My turn came. One of the students whispered, "They don't interrogate and torture one who is exhausted." I believe that he saw me afraid. He whispered, saying, "We are defiant. He who keeps his anger does not know fear." One of the soldiers took me to the prison in a military vehicle. The prison is about two or three minutes away.

After I entered the prison, I went into a room on the first floor. In the room was a desk. Standing in the room was a cabinet for files. Also, there were some sticks placed in corners of the room. I sat down in a chair and the interrogation began. With the first questions, the interrogation was artful and without beating. In the room were Captain Yaqub, Captain Mansour and an intelligence officer. They directed several charges against me, including throwing stones at soldiers, organization membership in a secret party. Also, they directed at me the charge of membership in the Communist Party. There was no place for us to gather except in the labour union.

After I denied all the charges and stirred up the interrogator, he took the ashtray before him and threw it at my head, which made the blood stream from my head. I put my hand to my head, and I saw the blood flowing from my head. The interrogator laughed and said, "How do you like that?" I said, "I don't - and I didn't do anything." He forced me to touch my head to take the blood from my head and wash it in my mouth.

After that, three soldiers entered the room. One of them was an Egyptian Jew. They beat me continuously for half an hour. After that,

the interrogator tried to force me to confess and to tell him the names of my friends. However, I refused. After that, the intelligence officer lit a cigarette and put it out on my hand, which hurt me very much. The period of interrogation was one hour. After that, they took me to the room in which I had been. The blood was streaming from my head and my nose. I remained there until the afternoon of the next day.

They took me for interrogation again. This time, in the beginning the interrogator tempted me with money. He told me, "Ask what you want, and you will find it before you." I told him, "I don't need all these things." Also in the room were the same soldiers who beat me on the previous day. After he tried to tempt me and I refused, he turned me over to the three soldiers for beating. An Israeli soldier seized me and pulled me up to the wall, my hands raised, for an hour. After the soldiers and the interrogator had taken their lunch, they returned to me. One of the soldiers put a wooden stick in my rectum and beat it. Then another soldier seized me and put my hands behind the chair and pressed them. He took a very sharp knife and wounded me in the palm of my hand. The traces of that remain until now. After that, the interrogator tried to force me to confess. I told him that I had done absolutely nothing. After that, I was returned to the same room in which I had been, and that was as before. After the interrogation had lasted two and one half hours, they took me there.

After about two days, they took me for interrogation again. They tried to persuade me to confess and to sign a confession which was written in handwriting. However, I refused. The beating this time lasted 45 minutes. The beating was on my head, with their hands and with rifle butts. I was not beaten or tortured after this. I was returned to the same room and remained there about four days.

Then we were transferred to the actual prison. In Ramallah prison, I was detained with three persons -one of them, a friend, and the other two I did not know. However, it was evident that they had not been tortured, which made me doubt them.

After about 10 days, they took us to court. We faced the judge. The trial was in Hebrew, and there was an interpreter, but he did not translate everything. We denied the charges and did not confess to anything, although there were some students who confessed. However, in the court they repudiated the confessions on the ground that the confessions were written in Hebrew and were false, and they had been forced to sign the confessions by torture. We were not sentenced on the first day. On the second day, we went to court and were sentenced either to six months' imprisonment or to pay a fine of 5,000 Israeli pounds.

After that, they took us to prison. My father came to me and tried to persuade me to pay the fine and get out of prison. However, I refused, because some of my friends were unable to pay the fine. After about 15 days, we got out on the bond of the Mayor and the Director of Education. During the 10 days which I spent in the room separate from the prison, in addition to the beating, we were given one or two meals every 24 hours. This meal was two pieces of bread, between which was some jam - and on it black pepper, plus a glass of tea with salt in it. There was

also a barrel of drinking water in the corner of the room. This water was quite filthy. Some of my friends even saw a soldier urinating in it.

4. Allegations of ill-treatment brought by former Amnesty International adopted prisoner, Isma'il Ajweh.

a. The following report, written by correspondent Eric Silver, was published in the London-based newspaper the *Guardian* on 3 May 1979:

The Israeli Government has ordered an urgent investigation of allegations by Jerusalem Arab journalist and publisher of nationalist tracts that he was tortured during 93 days' detention without trial in the city's central police station ...

What distinguishes the case of Isma'il Ajweh is that he volunteered to take a lie-detector test, which convinced one of Israel's leading experts in the field that he was telling the truth.

Mr. Mordechai Gazit, former head of the police polygraph laboratory, reported after examining Mr. Ajweh at his private laboratory: "On the basis of the findings of the polygraph examination, it seems to us that Mr. Ajweh told the truth, and in fact was tortured during his investigation."

Mr. Ajweh was released from the so-called Russian Compound police station last month after his pregnant wife, Basma, had appealed to the Prime Minister, Mr. Menachem Begin. I interviewed the 30 year-old Interpress News Agency reporter yesterday in the Moslem hospital on the Mount of Olives, where he was being treated for appendicitis - not blamed on his interrogators - and tested for pain in his head, legs, back and chest which was so blamed.

"At one o'clock in the morning on December 15", he told me, "about 30 soldiers came to my house. They searched all of the house and my library. They took many books and a mask of Yasser Arafat which I had bought in a shop for my child. Then they took me to El Moscobiya (the Arab nickname for the Russian Compound) and put me in cell number 10, where they kept me on my own for 93 days.

"They took me daily to investigate me in their offices. Sometimes for about two hours. They accused me that I have a connection with the PLO and asked about my relations with some of the West Bank mayors. During the first 18 days in prison one officer beat me very hard. He handcuffed me to a water pipe outside the investigation offices and left me standing there for 72 hours. The chains were on both hands to prevent me sitting down.

I asked Mr. Ajweh if he was unchained to go to the lavatory. "No, nothing." he replied. "I just had to stay like that. They tried to make me say I was working for the PLO. He said he would kill me if I didn't say yes.

"He beat me many times with his fist on my head and chest, and he put his hand on my throat and began to press till my tongue came out of my mouth. He hit me many times on my legs with a stick. He shouted the name of a book I had written in 1976 - *The Revolution Will Not Die* - and ordered me to put on the child's mask of Arafat.

"I said there was nothing between me and the PLO. As a Palestinian, my representative is the PLO, but this does not mean that I have a connection with the PLO. He threatened to come to my house daily, to my job daily, to bring me to investigation. He said my wife was going with other men. I taunted back that I had given her permission before I came to prison.

"After the first 18 days another interrogator called Abu Nihad took over. He asked me many questions, but without beating. But throughout the 93 days in cell number 10 I slept on the floor. It was winter and very cold. I had four blankets but no bed, no mattress. The toilet was a hole in the floor.

"I asked for medical treatment and for the Red Cross to come, but they prevented them coming until I had been in prison 87 days. I asked the Red Cross to bring me a doctor. I asked the Israelis to bring me a doctor. Not once did they bring a doctor. I never saw an Israeli doctor."

When I visited Mr. Ajweh in a private ward at the Moslem hospital, it was almost four months after the interrogator was alleged to have finished with him. Not surprisingly, there was little visible evidence of the beating he said he had got.

His lip was bruised and he had lost a tooth. He showed me hard, bony bumps on both legs, below the knee and above the ankle, but there were no scars and a layman could not judge how or when they had been caused. The doctors were waiting for X-ray results before expressing an opinion.

A reporter on the independent Hebrew daily newspaper, *Ha-aretz*, suggested to Mr. Ajweh that he should submit himself to a lie-detector test. He agreed immediately. The polygraph could not fault him.

b. A report in the *Jerusalem Post* of 29 September 1979 gave details of the Attorney General's investigation into Mr. Ajweh's case:

East Jerusalem journalist Ahmed Isma'il Ajweh had his face slapped at least once by an interrogator of the General Security Services *("Shin Bet")*, and a number of times his hands were bound to a pipe, at hip level, and his head was masked.

These are among the main findings in the report of Attorney General Yitzhak Zamir to the government ...

The report says there is no basis for Ajweh's claim that he was tortured and severely and systematically beaten. But it says that in addition to the one proven instance of face-slapping, it would appear that the interrogator struck Ajweh's hand a number of times. Ajweh was not denied any necessary medical treatment during his detention, the report says. All his requests on this score were met, "and there are no grounds for saying that the conditions and manner of his interrogation caused injury or any significant aggravation to the state of his health, which was impaired even before the detention." ...

Ajweh alleged that he had been throttled and chained to a pipe with his arms pinned behind his back and a mask over his head for 72 hours. The Attorney General's report is silent about his arms being pinned behind his back, but says that on the occasions when he was chained to a pipe or had his head covered, it was never for more than an hour ...

The report says that the detention cell in which Ajweh was kept while he was undergoing interrogation by the *Shin Bet* man in question was an ordinary police detention cell and that the conditions were reasonable.

Ajweh received more than the customary number of visits, the report says. Two days after his arrest he was visited by his wife and his lawyer. Altogether, he had 30 visits during his four months of detention.

In accordance with Zamir's recommendation, the interrogator was tried by a disciplinary court. He was given a reprimand and it was decided to transfer him to another job.

Zamir also discussed the matter with the head of the General Security Services, who promised to take the necessary steps to prevent the repetition of such an incident.

IV Critique of Legal and Administrative Procedures and Practices Applied to Security Suspects in the Occupied Territories

Official Israeli denials of allegations of ill-treatment notwithstanding, the persistent nature of these allegations causes Amnesty International serious concern. While it may be true, as the authorities claim, that some of these allegations have been falsely brought to serve as ammunition in a propaganda campaign, it is also true that official rebuttals are not convincing and do not seriously weaken the allegations. Furthermore, since most of the allegations refer to the period immediately after arrest and many are related to an accused challenging his or her own confession and conviction, two central issues arise in considering the legal and administrative measures applied to arrested suspects:

1) the extent to which the physical safety of the person in custody is ensured;

2) the extent to which the prisoner's right to a fair trial and to the fair administration of justice is protected.

The following survey and evaluation of these safeguards is not primarily directed towards verification of the numerous allegations of ill-treatment, but rather towards an assessment of those areas in which the procedures are deficient and in which they can be improved to provide better protection for the prisoner.

A. Powers of arrest and detention

Under Security Provisions Order 378, the military authorities in the West Bank have broad powers of arrest: "A soldier may, without an arrest warrant, arrest any person who commits, or is suspected of having committed, an offence under this Order" (SPO, paragraph 78(a)). This corresponds to the practice within Israel proper which allows a police officer to arrest without warrant (CPO, paragraph 3). In both areas, the arrested person must be handed over to an authorized police station or detention centre "as soon as possible" (SPO, paragraph 78(b)) or "forthwith" (CPO, paragraph 7).

B. The physical protection of the person in custody: procedures leading to prolonged incommunicado detention

The following aspects of procedures governing custody are of concern:

1. Notification of arrest;
2. Period until appearance before a judge;
3. Visiting rights for legal counsel and family members;
4. Medical care;
5. Character of the interrogation process.

1. Notification of arrest

In Israel there are explicit provisions requiring the arresting authority to notify both family and defence counsel of arrest "as soon as possible" (ICPL, paragraph 27) (although notification may be delayed upon an order from the Minister of Defence for a period of up to seven days (ICPL, paragraph 28)). Amnesty International is not aware of such explicit instructions governing notification of arrest in the West Bank, but knows of several cases where delays in notification have been substantial.

2. Period until appearance before a judge

In the Occupied Territories an arrested person may under existing legislation be held for the first four days after arrest on the warrant of a soldier or policeman, for another seven days on the warrant of a police officer, and for another seven days on the warrant of a senior police officer (SPO, paragraph 78). Only by the 18th day of imprisonment must the arrested person be brought before the Military Court, which may order an extension of confinement for up to six months (SPO, paragraph 78). (It should be stressed that this is not "administrative detention", which requires simply an order by the Military Governor and no court appearance at all.)

Within Israel proper, on the other hand, the arrested person must be brought before a judge within 48 hours of arrest (CPO, paragraph 16). The judge may then order further confinement for 15 days, and then again for 15 days, beyond which it can be extended only by an order of the Attorney General (CPO, paragraph 17). Even with the Attorney General's order, a suspect's confinement within Israel may not exceed 90 days total; by that time, the suspect must be either charged or released (ICP, paragraph 46).

3. Visiting rights

a. Lawyer

In the West Bank, there is no legal limit to the length of time an arrested security suspect may be denied a meeting with a lawyer, although according to the regulations the prisoner should be represented by a lawyer when he or she appears before a judge.

The Israeli authorities explained in the course of their meeting with the Amnesty International delegates that interrogation of suspects in Israel and the Occupied Territories is regulated by the Judges' Rules, a non-statutory but binding set of rules drawn up and applied in England and retained in Israel after the Mandate period. Paragraph (c) of the Introduction to the Judges' Rules states clearly the right of arrested persons to have access to a lawyer, but also makes temporary deprivation of this right possible in certain circumstances: "That every person at any stage of an investigation should be able to communicate with and consult privately with a solicitor. This is so even if he is in custody, provided that in such a case no unreasonable delay or

hindrance is caused to the processes of investigation or the administration of justice by his doing so." Israeli officials told the Amnesty International delegation that, in many cases, the aims of the investigation could not be fulfilled if arrested security suspects were allowed speedy access to a lawyer. They also remarked that the right to early access to lawyers could in practice be denied in accordance with the concluding passage of paragraph (c) of the Judges' Rules, cited above.

Although according to the regulations an arrested security suspect should have access to a lawyer when his or her case comes before the military tribunal, prison officials may refuse such access at all other times: "Where a detainee requests a meeting with an advocate ... (the Superintendent of the Prison) shall permit a meeting with him in the gaol, provided that there is no objection to the meeting on security grounds and that the meeting does not interfere with the course of any investigation." (OGO, paragraph 11). Thus an arrested person may be denied any access at all to a lawyer until his or her first appearance before a judge (up to 18 days after arrest), and thereafter for the subsequent period of confinement until the next court appearance (up to six months).

These restrictions are subject only to the discretion of interrogators, prison authorities and the Military Governor, and are not open to independent judicial review. One indication of the extent of the practice of limiting lawyers' visits was that the Israeli authorities told Amnesty International's delegates that, until recently, those in charge of detention centres had been routinely refusing to permit lawyers' visits to arrested security suspects during the first 18 days of detention and thereafter until all interrogation was completed. The authorities pointed out that a directive had recently been sent to prison officials in the Occupied Territories stating that visits should be refused only when security considerations required it.

Furthermore, although the authorities told Amnesty International's delegates that the accused is represented by a lawyer at the time of appearance before a judge after a maximum of 18 days, both ex-prisoners and lawyers alike point out that there is frequently little or no consultation between lawyer and suspect before this appearance. In practice, the one meeting between lawyer and defendant prior to the appearance before a judge involves only the formal conferral of a power of attorney. It is quite common, therefore, for no substantive encounter between accused and lawyer to have taken place from the moment of arrest until a confession has been given and even until the prisoner has been charged. Even after this, consultation is permitted only at the discretion of the detaining authorities and a number of lawyers have informed Amnesty International that, in their view, they are often denied the consultation with their clients necessary for preparing an adequate defence.

Whatever the practical effect of the new directive on lawyer visits may ultimately be, the practice until the present has been for months to elapse from time of arrest until the lawyer's first substantive encounter

with the client. The one prisoner interviewed by the Amnesty International delegates in the presence of Israeli prison officials had not seen his lawyer until more than three months after his arrest. An analysis by Amnesty International of data from other prisoners' experiences shows that the delay between arrest and the first lawyer's visit often exceeds two months.

While the procedures themselves permit only delayed and limited access of lawyers to arrested security suspects, other factors must also be taken into account. There is little official provision for notification to families of arrest and, once notified, the families themselves may be reluctant to contact a lawyer very soon after the arrest is made. The reasons given by residents of the Occupied Territories for this are: (1) that many people are frequently detained without warning, only to be released 24 or 48 hours or a few days later, thus making recourse to a lawyer unnecessary; (2) that to bring an advocate into the case may lead the authorities to assume that a crime has indeed been committed and that there is a real need for legal defence.

One result of the delay in access to a lawyer, whether through official restrictions or family reticence, is that the accused is not only denied access to immediate legal remedies such as *habeas corpus* which a lawyer might suggest, but is also severely hampered in preparing his or her defence. Such preparation must therefore wait until interrogation is completed, that is, usually until after a confession is signed.

b. Family

Visits to the prisoner by family members are subject to much the same discretionary control, primarily that of the Prison Superintendent, as visits by lawyers (OGO, paragraph 12). The one prisoner interviewed by Amnesty International delegates had had his first family visit 40 days after his arrest.

4. Medical care

a. Medical care within the prison

Essential for the protection of the prisoner's physical safety when in custody is a system of close medical attention, and it is conspicuous that the authorities generally have not responded to the numerous allegations of ill-treatment by reporting comprehensively on the contents of those medical reports in their possession.

The Amnesty International delegation in June 1979 repeatedly asked the Israeli governmental and judicial authorities for detailed information on the current procedures for medical examination of arrested persons in the Occupied Territories. Given the importance of this matter for verifying allegations of ill-treatment and for preventing ill-treatment, the Amnesty International delegates were discouraged that most officials they met were apparently not familiar with, and could not give a clear and unequivocal account of, procedures and practice in this matter.

The authorities pointed out that such procedures were administrative and not legal ones and lay within the competence of the prison authorities.

The medical care given to detained persons is subject to the following basic provisions: that "every detainee, on admission to gaol, shall be examined so as to determine whether he is suffering from any infectious disease, before he is allowed to come into contact with other detainees ..." (OGO, paragraph 22); and "(a) Detainees shall receive requisite medical treatment. (b) Detainees shall not be prevented from presenting themselves for examination before the medical authorities of the gaol. (c) Every detainee receiving medical treatment shall, on request, be furnished by the medical authorities of the gaol with an official certificate stating the nature of his illness or injury, the date of the medical treatment administered, and the nature thereof. (d) A medical inspection of detainees shall take place at least once a month." (OGO, paragraph 5).

These provisions are clearly designed to ensure that routine medical problems in prison are taken care of, but they do not provide the much closer protection that prisoners under interrogation require. For example, the prisoner who was interviewed by the Amnesty International delegates stated that he had been examined by a medical orderly eight days after his arrest, and that at that time he had not received a thorough medical examination but had only been asked whether he was ill. After the prisoner left the interview with the Amnesty International delegates, the prison officials had his medical file brought in. According to this file as it was read to the delegates, the prisoner had been seen by a doctor on the first day of his arrest when he was given a thorough medical examination. This discrepancy remains unexplained.

Amnesty International is not in a position to say whether the existing regulations for medical examinations are strictly adhered to in every case. But it is clear that such examinations as are mandated by the existing legislation are not of a nature to provide the kind of evidence needed to substantiate or refute allegations of ill-treatment. In any event, whether the prisoners are correct when they claim that rigorous medical examinations are rarely given, or the authorities are justified in stating that such examinations are standard practice, the authorities have not used whatever records of medical examinations exist to refute allegations of ill-treatment except in a very small number of cases.

b. Access to private medical attention

According to the authorities, every prisoner at the time he or she appears before a judge has the right to request a visit from a personal doctor, and the lawyer may make such a request at any time. However, several lawyers remarked that although this was indeed possible in principle, in practice such a request was an administrative one and had to be approved by the detaining officials. The experience of lawyers who had made such requests was that long delays often ensued - sometimes months - and that the request was therefore not usually worth the effort.

c. The role of the International Committee of the Red Cross (ICRC)

In defending their treatment of prisoners and, in particular, the medical attention given to the prisoners, the Israeli authorities often point to the role that the International Committee of the Red Cross plays in monitoring the prisoner's state of health. Here, the authorities' argument makes the point that the ICRC has been allowed access to prisoners within the first 14 days of detention (under a new agreement reached in spring 1979, the ICRC is to be allowed access within 12 days). These meetings are held in the absence of prison officials so the prisoners are free to explain their problems. The argument of the Israeli authorities continues by asserting that in little more than 6% of the visits have the ICRC transmitted complaints of ill-treatment to the authorities, and that this number was so low that the ICRC sent home the doctor it had stationed permanently in Israel for this work. In addition, the authorities maintain, the complaints are each carefully investigated and, where necessary, disciplinary measures are taken.

While it cannot be denied that the ICRC performs an important function in its visits to security prisoners, the nature of the agreement between the ICRC and the Israeli authorities, and the actual implementation of this agreement, are not sufficient to ensure the full protection of prisoners' rights. In the first place, an "escape clause" in this agreement allows the authorities to exempt any individual from the 14 day (now 12 day) rule for imperative reasons of security. It is difficult to assess exactly how often this "escape clause" is invoked since in these cases, unless the ICRC specifically requests to visit the prisoner, the authorities do not have to inform the ICRC that the prisoner has been placed in this category.

Moreover, it is quite clear that the ICRC does not actually get to visit all security prisoners within the first 14 days. Reliable estimates state that between one third and one half of those arrested are not seen within this period, that the delay sometimes stretches past 20 days, and that the average delay between arrest and visit is about 14 days. Furthermore, according to other informed estimates, the ICRC manages to visit only 30% - 40% of those prisoners who are under interrogation (because of notification delays, the ICRC's own manpower limitations, problems in transport and the movement of prisoners with the ICRC's consequent difficulty in locating them). This is particularly important since it is usually the interrogation period which is referred to in allegations of ill-treatment.

Even so, according to press reports, both the ICRC and the Israeli authorities agree that within the past year the ICRC transmitted a complaint to the authorities in no less that 6% * of their almost 1,300 visits to prisoners. The authorities have argued, to counter this, that the ICRC doctor was insufficiently employed and was returned to Geneva

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* The original Memorandum included the parenthetical phrase, now deleted, "(some informed estimates state that this figure may be closer to 10%)".

for lack of work. However, testimony recently received by Amnesty International most frequently involves allegations of ill-treatment which, though serious, is of such a nature that only in very few cases - particularly if occuring within the first few days of interrogation - would it leave traces requiring expert medical testimony ...*

Furthermore, the Israeli authorities' contention that all ICRC complaints are investigated thoroughly must be taken on faith since such investigations have not been open to public scrutiny.** (The general question of Israeli investigations into allegations of ill-treatment is discussed below in section C.5.)

5. Interrogation personnel and practice

Two other features which may enhance the likelihood of ill-treatment of arrested security suspects relate to the personnel conducting the investigation and the guidelines governing interrogation practice. According to the Israeli authorities, the questioning of security suspects in the Occupied Territories may be done either by military personnel, by security personnel *(Shin Bet)*, or by members of the police including the Israeli "Special Tasks Unit" *(La Tam)*. In general, interrogators

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* The preceding sentence is a rewording of the sentence which appeared in the original Memorandum. The passage which followed the original sentence has been deleted because it contained a specific description, which Amnesty International has no possibility of verifying, of forms of ill-treatment.

The forms of ill-treatment which have recently come to Amnesty International's attention include: hair pulling; being beaten with a stick or slapped, punched and/or kicked; being made to stand for prolonged periods; being deprived of sleep and/or food; being chained or handcuffed to pipes; being made to drink salt water; being made to take freezing cold showers; being threatened with rape, death, or insult to family members; cigarette burns.

** The original Memorandum included the statement, now deleted, that "Even the ICRC itself receives no further information on any particular case once it has filed a complaint, nor a report of the results of any investigation that may have been carried out." This question is discussed further in section C.3. of Amnesty International's response to the Attorney General.

are not obliged to identify themselves to the person being questioned and, at least in the case of *Shin Bet* and *La Tam* (who are involved in the questioning of many suspects), they may work in plain clothes. This makes it difficult for the prisoner to identify even the service to which the interrogators belong.

In response to questions from the Amnesty International delegates, the Israeli authorities were unable to refer to any regulations governing the length of interrogation sessions, or to any code of practice for interrogating officers which might spell out types of treatment that are forbidden. The latter point is important: investigating officers may either commonly or in individual cases regard certain types of behaviour as not constituting violent treatment of the arrested person (for example, verbal abuse, threats, ridicule, humiliation) even though such treatment would by international standards clearly constitute "cruel, inhuman or degrading treatment". This "non-violent" behaviour would not only be wrong in itself, but can lead, in Amnesty International's experience, to the most direct sort of ill-treatment, particularly in the form of beatings.

Another fact related to interrogation practices is that prisoners may, on the authority of the officer in command of their place of detention, be moved about from one prison to another. This further increases the prisoner's isolation and exposure to those investigating the case.

C. The protection of the suspect's legal rights and the quality of Israeli military justice

1. The Military Court system

Israeli military courts, which operate both in the Occupied Territories and in Israel itself, are of two types: (1) "A Military Court shall be composed of a President, who shall be a legally qualified officer of the Israel Defence Forces of the rank of captain or above, and two judges who shall be officers" (SPO, paragraph 4); (2) "A Military Court of a Single Judge shall be set up by the Commander of the Region and shall be composed of a legally qualified officer who shall be appointed by the Commander of the Region." (SPO, paragraph 50(a)). The powers of these two types of courts are distinct in that "a single judge shall not have power to decree the death sentence; a single judge shall not have power to decree in one judgment imprisonment exceeding five years or a fine exceeding IL 3,000.00 or both such imprisonment and fine together." (SPO, paragraphs 50(c)2, 50(c)3.)

The Commander of the Region must review each conviction and has the ultimate power to revise that conviction. That is, every judgment is transmitted to the Commander of the Region for confirmation (SPO, paragraph 39), and upon confirmation the Commander of the Region may,

"(1) confirm the conviction and sentence; or

(2) set aside the finding of the court, acquit the accused, and direct his release; or

(3) confirm the conviction and either pardon the convicted person or mitigate his punishment; or

(4) set aside the hearings and order a new trial before any other Military Court." (SPO, paragraph 42).

In addition, "The Commander of the Region may at any time review a sentence of a Military Court which has been confirmed, and shall have power to mitigate or remit the sentence." (SPO, paragraph 44).

The Israeli authorities emphasized in the course of meetings with the Amnesty International delegates in June 1979 that not only was the trial of security suspects before military tribunals in accord with Article 66 of the Fourth Geneva Convention, but the specific nature of the military courts in the Occupied Territories was such that justice of the highest standard was ensured. In particular, the authorities said that the judges were usually legal figures who even in a military court were able to bring the finest legal training to bear, and that they were, in fact, much fairer than civil courts in the Occupied Territories would be. Also, the authorities stressed that the military courts were obliged to use the same procedures and follow the same rules of evidence as Israeli civil courts (as is made explicit in the Courts Procedure Law of 1965).

This official praise of the system of military justice has been challenged on several counts. Many defence lawyers argue that a clear distinction must be made between military judges drawn from the ranks of career army officers (who need not necessarily have had formal legal training) and those judges who are reserve officers serving on the court only for their annual one month term of army duty. The latter always have had formal legal training, are often lawyers in civilian life, and are characterised by defence lawyers as much fairer and more equitable than career army officers, regardless of whether the latter have had legal training. Several career officers serving as military judges were cited by a number of defence lawyers as particularly harsh and vindictive in their judgments.

The alleged difference in judicial fairness between career and reserve officers may be especially significant since according to legal provision all judges on any military court may be career army officers. The only requirement is that at least one member of the three-judge court have legal training (SPO, paragraph 4). Amnesty International has no figures on the actual composition of the military courts with respect to these criteria but informal estimates given to Amnesty International state that in any three-judge court, the two side judges are always career officers and only the President of the Court is, on occasion, a reserve officer. These estimates conclude that, in roughly 75% of all military trials, all three judges are career officers. This percentage varies from tribunal to tribunal and is estimated at 50% for the military court in Ramallah, 85% for Nablus and 90% in Lod (a military court in Israel proper). Amnesty International therefore questions whether sufficient emphasis is being given by the Israeli authorities to that provision of Article 66 of the Fourth Geneva Convention which specifies that military courts are to be "non-political".

Also, although the Israeli authorities cite the similarity of evidential and procedural requirements for both military and civil trials, Amnesty International would like to point out that: "A Military Court may deviate from the rules of evidence for special reasons which shall be recorded, if it deems it just to do so." (SPO, paragraph 9); and "A Military Court may in regard to procedural matters not laid down by this order adopt any course which shall appear to it best calculated to do justice" (SPO, paragraph 10). Amnesty International has no information as yet as to how often, and for what reasons, such deviations may occur.

2. Participation of legal counsel in the case for the defence

a. Choice of counsel

The accused has the right to a lawyer of his/her own choosing in most cases before military courts. Where the accused has not exercised this right, the Regional Legal Advisor, or the Military Court itself, may appoint defence counsel but only with the consent of the accused (DMCO, paragraphs 2-5). In such cases, the costs of the defence are covered by the treasury of the regional command (DMCO, paragraph 10).

There is one important limitation to the free choice of defence counsel: in situations where the court has determined that the security interests of the state require the military trial to be held in secret, the defendant must select legal counsel from among those on a specially approved list. While this list includes the overwhelming majority of all advocates, it excludes several of the best known and most sought after. This exclusion has, in fact, made it impossible for a number of defendants to be defended by a counsel of their choice.

b. Developing the defence

We have described above the great discretion given the detaining authorities in refusing visits by legal counsel to the suspect and noted that months often elapse before a lawyer's first visit, and that the visit may involve nothing more than giving the lawyer a power of attorney. One obvious corollary to this is that the accused does not see counsel before a confession is elicited.

Furthermore, the requirement that an advocate be given time to prepare the case is no stricter than that "a copy of the charge sheet shall be delivered to the defendant prior to his trial." (SPO, paragraph 21(a)). Several lawyers have told Amnesty International that the charge sheet was given to them only a very short time before the trial began, sometimes on the day of the trial itself.

3. The role of the confession

Amnesty International attaches importance to aspects of the judicial process which may offer investigating personnel incentive to ill-treat arrested security suspects in the Occupied Territories. Obviously, the interrogation of any arrested person is designed to elicit information.

The desire for such information has been a demonstrable motive for ill-treatment in investigations in many countries and numerous persons in the Occupied Territories who have been arrested and then released without being formally charged have alleged that they were ill-treated as a means of forcing them to supply information.

Equally important, however, is that in cases where confessions themselves provide the major and perhaps the only admissible evidence, and where the prosecution may secure a conviction solely on the basis of such a confession, there is great incentive for interrogators to resort to brutal interrogation methods in order to obtain confessions.

In a great many systems of law this incentive is to a certain extent counterbalanced by legal provisions that stipulate that only a confession made in the presence of a judicial or other independent authority, or of the suspect's solicitor, is admissible as evidence in court, and/or by provisions that require corroboration of a confession by other independent evidence in order to convict. The International Association of Penal Law at its 12th International Congress on Penal Law held in Hamburg in September 1979, "having regard to the fundamental importance of safeguarding the innate dignity of every person in criminal proceedings", adopted in its resolutions, *inter alia*, the principle that "no one shall be convicted on the basis of an uncorroborated confession alone" (Resolution 4(b)).

In the military trials in the Occupied Territories, confessions often do constitute the main body of the evidence against the accused. In order to protect the rights of the accused in such cases, the Israeli system provides certain safeguards:

1) The admissibility of a confession is determined by whether or not the confession was obtained in accordance with the Judges' Rules, that is, freely, without fear and without hope of advantage;

2) That additional evidence of a particular sort, known as "something else", must be adduced to support the confession.

a. The Judges' Rules

Paragraph (e) of the Introduction to the Judges' Rules states:

> "That it is a fundamental condition to the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression."

(1) "Hope of advantage" and plea-bargaining

The Israeli authorities told the Amnesty International delegation in June 1979 that by far the greatest number of persons (the figure 95% was cited) who are convicted of the security offence of membership of a terrorist organization are convicted on the basis of a confession to that offence. They further explained that persons often confess to this offence as a kind of "plea-bargaining", since the penalty for this offence is usually no more than one year's imprisonment, considerably lighter than for other offences for which they might be tried. There was no suggestion to Amnesty International that the military tribunals refuse to accept such confessions in evidence on the grounds that they are obtained "by hope of advantage". This in itself raises questions as to the manner in which the Judges' Rules are applied regarding admissibility of evidence.

(2) "Fear of prejudice" or "oppression": confessions under duress and the "little trial"

In any trial where the accused tells the court that his or her confession was obtained by means of ill-treatment, the court undertakes a procedure known as the "little trial", or the "trial within the trial", to examine the complaint and to decide whether the confession should be admitted in evidence. In the "little trial", the court hears all evidence related to the complaint of ill-treatment and, if it decides that the confession was in fact obtained by means of ill-treatment, the court must refuse to accept the confession in evidence.

The Israeli authorities told the Amnesty International delegation in June 1979 that many suspects complain of ill-treatment and invoke the "little trial" procedure for the purpose of avoiding conviction and a sentence of imprisonment. Indeed, the authorities offered this as one of the main explanations for the frequency of allegations of ill-treatment. Certainly, accused persons who have confessed to security offences may in some, or even many, cases allege ill-treatment as a means for avoiding conviction. However, the claim of the authorities does not explain the fact that allegations have also frequently been made by persons who were already convicted, or who had been released without being charged or tried. Furthermore, it does not appear that accused persons who resort to the "little trial" have a large chance of success.

It should be mentioned at this point that the explanation that suspects allege ill-treatment in order to avoid conviction is diametrically opposed not only to the analysis of many defence lawyers, but to their practice in defending security suspects: lawyers have stated to Amnesty International that they do not advise clients to dispute confessions unless there is an absolutely compelling reason to do so and unless the evidence to support their claim is very strong. The lawyers offer this advice on the basis of their experience that to enter and lose a "little trial" often means, they claim, the risk of higher sentence.

Israeli authorities took pains to point out to the Amnesty International delegates that during little trial proceedings to examine complaints of ill-treatment the burden of proof is on the prosecution to show that the accused person's confession was given voluntarily. In spite of this, as far as is known to Amnesty International, confessions

contested in this way have been ruled admissible in a great majority of cases. The defendant who alleges ill-treatment is likely to have little or no evidence for the allegation; under present procedures, it is difficult to see how this could be otherwise. The defendant may have been denied access to family and lawyer throughout the period of alleged ill-treatment and has probably had only cursory and weakly documented medical examinations. Only he or she can bear witness to the allegations, whereas the several interrogating officers - the object of the complaint - will testify to the contrary.

Just as significant, perhaps, is the attitude of the courts themselves which, in spite of the nominal obligation of the prosecution to prove that the confession was freely given, seems to have a clear tendency to give benefit of the doubt to the prosecution. In the words of State Attorney Bach, in his July 1977 response to the *Sunday Times* report on ill-treatment in Israeli prisons:

> "Generally speaking, it is true not only of Israeli judges but, I think, of all judges having experience with criminal cases, that they will relate to allegations concerning ill-treatment or torture of prisoners with a certain degree of healthy scepticism, if there is no independent evidence to corroborate these allegations."

This attitude has received judicial support in the landmark Supreme Court decision where it was stated:

> "It is the obligation of the prosecution to positively prove that the confession was given out of free will. But if the accused objects to the admissibility of the confession, he has to give arguments to explain his objection. The only purpose of the above mentioned rule is to make the prosecution alert to the details on which the accused will base (his objection) and will bring evidence to disqualify the confession, that is to say that (the prosecution) will know 'which proofs it has to bring to refute it'." (Criminal Appeal 307/60)

It is clear from this that the requirement "to give arguments to explain his objection" is particularly disadvantageous to a defendant who is deprived, through the very deficient procedures which have been described above, of just the kind of evidence which would allow confessions to be excluded. The prosecution, on the other hand, is likely to have at its disposal the testimony of any number of investigation officials denying that they obtained the accused's confession by means of ill-treatment. In particular, the prosecution will always be able to call upon the testimony of the police officer before whom the accused, once having agreed to a confession before the interrogators, will actually sign the official confession. Furthermore, the prosecution may argue that the complaint of the accused is motivated by the hope of avoiding accusations by his or her confederates that he or she willingly gave evidence to the authorities, or that the allegations are part of a politically motivated smear campaign.

There is further support for the view that not only is access to telling evidence in such matters heavily weighted in favour of the prosecution, but the attitude of the military courts seems weighted in the same direction. Eye-witnesses to military trials, and to "little trials" in particular, have stated that "the Israeli military authorities made no real effort to investigate the charges of mistreatment. Indeed, both the military judge and the prosecutor made it clear throughout the trial that they considered the questions of mistreatment and coercion to be irrelevant and trivial." Judges have been heard to state, before the evidence for ill-treatment is actually presented, that they "doubt the defence's claim of mistreatment", and have frequently conveyed the impression that investigation into such claims is "a waste of time".*

b. Evidence to support confessions: the "something else"

Although in many of the trials before military courts in the Occupied Territories, the confession of the accused constitutes the main evidence for the prosecution, the Israeli judicial system also requires that the court receive something in addition to the confession, known as "something else". There have been frequent claims that the "something else" which courts accept in evidence often has nothing to do with the criminal action of which the accused person stands charged and does not constitute either direct or significant evidence that the accused committed the offence.

The Amnesty International delegation raised this matter with Israeli governmental and judicial authorities. The latter confirmed that under the applicable rules of evidence, the "something else" is distinct from "corroborating" evidence (which may be understood as independent admissible evidence such as the indentification of the suspect, or the nature of the act, or which might be something which ties the person to the time and place of the offence). Rather, the Amnesty International delegation was told that the "something else" must be evidence which "relieves the inherent fear that the accused has confessed to something he hasn't done"; it must be of such a nature as to prove "that the accused has not taken on himself something he could not have done", and to show "that it was possible for him to have done that which he has confessed to."

These definitions allow a "something else" to be adduced which may in only the most indirect way be connected with the crime or tie the accused to the crime. Thus, in a number of cases tried before military courts in the Occupied Territories where the confession of the accused constituted the only evidence against him or her, the "something else" has variously been:

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* (These two quotations are from a United States consular telegram recording the observations of two consular officials who attended the military trial in August and September 1978 of two American citizens in Ramallah.)

1) the "indication report" (also known as the "pointing report") where after the arrest the accused is photographed by police officals at the site where the offence is alleged to have been committed;

2) the confirmation of details, such as date and place of birth, names of relatives, that were mentioned in the confession;

3) the actual existence of certain persons whom the accused mentioned in the confession;

4) indication on the accused's passport that he or she was indeed in a certain country at the time when the offence was allegedly committed there;

5) someone else's confession.

From such examples, it can be seen that the "something else" is commonly used in a way which does not necessarily constitute independent evidence to substantiate the charge.

In fact, it may be a fault in many commentaries on this issue to assume that the "something else" is intended to provide anything approaching "corroborating" evidence. It appears that in Israeli practice (basing itself on the English precedent in the Rex v. Sykes case (1913)) the purpose of the "something else" is quite different: rather than being intended to protect the accused against a confession which may have been extracted under duress, it appears designed to protect the judicial process from an accused who, for psychological reasons such as a desire to assume the burden of guilt or a longing for punishment, will confess to something he or she did not in fact commit. This is stated quite clearly in the Israeli Supreme Court decision in Criminal Appeals Case 290/59:

> "The fear of false confession therefore relates to external motives of pressure, physical or moral, exercised by others, and also to internal motives of the 'confessor' without any immediate external motive. According to the law there is an effective protection from the possibility of external pressure according to section 9 of the Evidence Order, which states that the prosecution has to prove that the confession was given out of free will and in goodwill. But there is no similar statutory measure for the second danger, of false confession, out of hidden motives. Perhaps the desire to create this protection gave rise to the doctrine of the 'something else' in this court."

And in the same decision, the court goes on to say:

> "As a final word, the tendency to be satisfied with a slight 'something else' to support the confession is prominent in the judgments of this court. The final decision depends of course not only on the nature of the 'something else' before the court, but first of all on the circumstances in which the confession was given

> and on its weight - whether signs of truth or fantasy are recognisable, whether it has internal logic and detailed reasonable account of facts, and other similar considerations."

It is clear from this that even a confession which has been extracted under duress will almost necessarily, at some point, be able to provide from within a "something else" acceptable by the court; it is also clear that the "something else" should perhaps not even be looked at as a protection for the accused from external pressure, since it was not designed to serve that purpose. Indeed, one lawyer referred to a case in which the "something else" adduced to confirm the truth of a confession was constituted by the minor, "natural" errors in the confession. In the judgment of the court, these errors showed that the confession was true and that it therefore satisfied the court's standards "according to logical considerations and common sense".

4. The right of appeal under the military justice system

The military justice system as it operates in the Occupied Territories and in Israel presents the accused with very limited rights of appeal.

a. Occupied Territories

People convicted by the military courts who are residents of the Occupied Territories have no possibility to make judicial appeal (SPO, paragraph 43), although they may apply to the Supreme Court for certain legal remedies (see below). Application may be made, however, to the Regional Commander with respect to either the conviction or the sentence (SPO, paragraph 43) and we have already noted that, in fact, the Regional Commander must pass judgment on each military court decision and may revise the decision as he sees fit. According to the Israeli authorities, during 1979 the Regional Commander in the Territories granted early release to 168 prisoners and mitigated the sentences of another 108. Of these, say the authorities, only a small minority were for health or family reasons, or for good behaviour.*

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* The preceding two sentences constitute an amendment to the original Memorandum in the light of figures furnished by the Attorney General in his reply. The original Memorandum contained the statement (the first sentence of which is cited in the Attorney General's reply), now deleted, that "Amnesty International knows of no instances where the Regional Commander has overturned convictions of Palestinian security offenders, or reduced their sentences for other than health or family reasons, or accorded any reductions other than the one-third time taken off a sentence for good behaviour. Yet there are two recent examples of the exercise of this right by the Regional Commander with respect to convictions of Israeli Jews, both of which have aroused the indignation not only of the Arab community, but of wide sections of the Jewish community as well. In the first, the Commander reduced from 10 to three years the sentence of a Jew found guilty of shooting an Arab in cold blood in East Jerusalem (the original sentence of 20 years having already been reduced to 10 years by the Military Appeals Court in Lod); in the second, the Commander ordered the release of an Israeli soldier found guilty of shooting four Palestinians captured during the incursion into Lebanon during March 1978."

b. Israel

Convicted security offenders who are residents of Israel proper and of East Jerusalem (which Israel annexed after the 1967 war) have a right of judicial appeal before a Military Appeals Tribunal in Lod, created by virtue of a Defence Order of 1970.

c. Application to the Supreme Court

The Israeli authorities mentioned repeatedly to the Amnesty International delegates in June 1979 that any procedural violations of the rights of suspects and people under detention constituted grounds for application to the Supreme Court. They further emphasized that this right obtained not only for residents of Israel but also for those of the Occupied Territories, and noted that it was an unusual and positive provision that, in conditions of military occupation, such a right was accorded to the "aliens" of the Occupied Territories. These rights of application range from the right to petition for *habeas corpus* (that is, for immediate release on grounds of unlawful arrest) to challenges concerning conditions of imprisonment, allegations of ill-treatment, and so on. The authorities pointed out to the Amnesty International delegates that the Supreme Court hears about 800 cases a year, and that about 30% of these are applications by prisoners.

However, in spite of this number, and of the apparent great possibility of irregularities at every stage of the process, the Amnesty International delegation was told by the authorities that substantive petitions to the Supreme Court by or on behalf of arrested security suspects in the Occupied Territories are very rare and, in most cases, involve small complaints such as those over prison food. (One official told the delegates that there have probably been "none" of real substance in recent years.)

There are several reasons for the rare use of this right of application. In the first place, the right to petition for *habeas corpus* is rendered ineffective as a remedy for wrongful arrest since the legal grounds for arrest on suspicion of security offences are very broad and leave little room for a court ruling that in a particular case the arrest was illegal. More generally, the Supreme Court has taken a rather restricted view of its ability to challenge decisions taken on security grounds. In decision 46/50, Alyubi vs. the Minister of Defence, the Supreme Court stated:

> "The jurisdiction of this Court, in scrutinizing the competent authority's exercise of its power emanating from the DER, 1945, is very limited. When the given Regulation empowers the competent authority to act against any individual in any case in which it 'thinks' or 'it seems to it' that there are conditions that require this, then that same authority is the final arbiter in determining the existence of these conditions. In such situations this Court's function is limited to examining whether the authority exceeded its power under the law by virtue of which it was empowered to act, if the said authority acted in good faith. Since it is restricted to this limited jurisdiction, this Court is not to scrutinize the reasons encouraging the competent authority to issue the given order."

These limitations have been supported in more recent decisions * and are further buttressed by the Right of Privilege which, according to the laws of evidence, permits the Executive to withold disclosures which might violate the security of the state. In cases where the Regional Commander has claimed this privilege, the Supreme Court has taken his word at face value and this Supreme Court attitude has persisted even after the 1968 changes in the Law of Evidence, where the Right of Privilege was no longer defined as absolute. One commentator on these developments noted that:

> "This position prevents the petitioner from initiating a substantive investigation of the considerations of the authorities by the High Court of Justice and in fact also prevents the Court from analysing the authorities' good faith." **

Furthermore, it should be noted that a number of defence lawyers have remarked in the course of statements to Amnesty International researchers over the years that, given the climate against the rights of security suspects, they themselves are afraid to bring certain kinds of challenges to the Supreme Court, for fear that an adverse ruling will enshrine a dangerous precedent.

Another significant reason for the small number of substantive applications to the Supreme Court lies in the fact that although residents of the West Bank are themselves able to petition the Supreme Court, in by far the largest number of cases their lawyers are not since West Bank lawyers are not registered members of the Israeli Bar. This situation stems from a West Bank lawyers' boycott of the Israeli judicial system following the 1967 war. At that time, almost all West Bank lawyers were refusing to argue cases before the Israeli military courts. Even now, the boycott is followed by between two-thirds and three-quarters of practising West Bank lawyers, although a number of them, feeling that to continue the boycott would severely limit any accused's right of defence, have agreed in the period since the 1967 war to argue before the military courts. None, however, has agreed to join the Israeli Bar, and West Bank lawyers are therefore unable to argue cases before the Supreme Court. Any such cases must be brought by Israeli lawyers who are, in general, much less accessible to West Bank residents.

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* For example, see IYHR, Vol.8, pp.314-316.

** BRACHA, Baruch. "Restrictions of personal freedom without due process of law according to the Defence (Emergency) Regulations, 1945" in IYHR, Vol.8, p.317.

5. On extra judicial investigations into violations of prisoners' rights

The Israeli authorities repeatedly told the Amnesty International delegates in June 1979 that, while almost all allegations of ill-treatment were totally without foundation, and while in a very few isolated cases there had indeed been some ill-treatment, in every case brought to the attention of the authorities a full investigation had been carried out. If this is so, then the authorities are certainly not taking the steps necessary to convince the public that the investigations are thorough and sincere, and they are also leaving unconvinced those individuals and groups who register the complaints. Indeed, several members of the *Knesset* and a number of individuals outside the government have expressed great concern at the way in which the parties against whom complaints were lodged were "investigating themselves".

For example, it was pointed out to Amnesty International's delegates by the authorities that, in the Occupied Territories, any complaint of ill-treatment goes first to the Legal Advisor of the Region, who then transmits the complaint to the Minister of Defence. At this point, an investigation may be initiated: if the complaint was lodged against the police, it will be investigated by the police; if lodged against the Israeli Defence Forces, it will be investigated by the Ministry of Defence. Other investigations, such as those into ICRC complaints, and into those brought by the *Sunday Times* and other recent allegations, are carried out by the Attorney General's office.

A number of Israelis, both within and outside government, have expressed dissatisfaction with these investigative procedures. Police investigators, for example, apparently found approximately 1,000 complaints (one third of the total number of complaints) against the police in Israel over the last year justified, of which 300 involved complaints of brutality against criminal suspects. Yet, when these were passed on to the Attorney General's office, many complaints (estimates say more than 1,000), received no further action reportedly due to staff shortages.* *Knesset* Law Committee Chairman David Glass has charged that the Attorney General's office ignored numerous requests to probe police brutality.**

D. Summary

Throughout the present critique of the legal and administrative procedures and practices applied in the Occupied Territories to security suspects in custody and relating to allegations of ill-treatment, emphasis has been placed 1) on the incommunicado conditions in which such persons may - and very often are - held for long periods after arrest and 2) on aspects of the military justice system which might allow convictions to

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* *Jerusalem Post*, 3 July 1979 and 17 July 1979.

** *Jerusalem Post*, 29 June 1979.

be obtained on the basis of nothing more than the accused's confession and which therefore accomodate the use of brutal interrogation methods to extract confessions.

It is Amnesty International's experience that, in any country, prolonged incommunicado detention, especially of persons suspected of offences against state security and especially during the investigation stage of the person's detention, greatly enhances the likelihood of ill-treatment. Many of the allegations of ill-treatment which have been made regarding arrested security suspects in the Occupied Territories relate to the period of incommunicado detention. In publicly responding to these allegations, the Israeli authorities have not been able to deny that the suspects were indeed left alone in the company of their interrogators for prolonged periods and that the opportunity for ill-treatment was thus increased.

Under the procedures now in force, the accused may have spent months after the time of alleged ill-treatment effectively isolated from the outside world, with no visits from family or lawyer. The accused may not have been brought before any court until 18 days after arrest. He or she may thus have spent weeks after the alleged ill-treatment in the company only of the interrogators, and may not know the names of the interrogators or even their branch of service. He or she may have been visited by the ICRC, but usually not until 14 days after arrest and in many cases later than that. At that time the accused may bear no obvious visible signs of physical ill-treatment and any evident symptoms of trauma may be as easily attributed to something which happened outside the prison as to the alleged ill-treatment. Furthermore, the accused has probably had no access to medical consultation other than the routine care offered by the prison medical staff itself.

Once charged and brought to trial and faced with the evidence of his or her own confession, the accused is placed at a great disadvantage in securing a fair assessment of guilt or innocence. In particular, the accused will have great difficulty challenging the admissibility of a confession that may have been extracted under duress.

Not only has the role of defence counsel been very limited - and often non-existent - prior to the trial, but at the trial itself the accused is more likely than not to be judged by a panel of three career army officers, only one of whom need have had legal training, and whose fairness and impartiality are open to question. The case for the prosecution may rest solely on a confession elicited under shadowy circumstances and the accused is very poorly placed to shed light on these. The "little trial" which may be held to examine the confession will be heard by military officers whose attitude toward the allegations made by the accused is, even when it is serious, already sceptical.

Furthermore, because of the incommunicado period and the strict limitations on visits to the prisoner by lawyer, family and doctor, and the paucity of relevant medical documentation, it is only in the rarest of cases that the accused is able to bring any evidence at all to support his or her claims. The prosecution, on the other hand, has at its

disposal interrogators, police officials and prison medical personnel who have every reason to testify in its favour. As well, the confession may provide, in effect, all of the prosecution's evidence and this may serve to increase the pressure on interrogators to obtain confessions. Finally, if the decision goes against the accused, the only feasible avenue of appeal leads not to a higher judicial instance, but to a review by the Regional Military Commander. Eventually, there may be an investigation into the allegations of ill-treatment, but this will more than likely be carried out by the very sectors of the administration charged with committing the offence.

Taken individually, the factors mentioned in the preceding paragraphs may not be vital in any particular case to the nature of the treatment accorded any arrested suspect. Taken together, however, they make any external control over the prisoner's treatment impossible and increase the likelihood that ill-treatment may occur. In any event, they allow a situation to endure where the conclusive evidence necessary to either refute or substantiate any prisoner's allegations of ill-treatment cannot be obtained and where, with deficient procedures at every stage of the process leading from arrest to conviction, security suspects may be denied, routinely, their right both to the safety of their person, and to the fair and impartial administration of justice.

V Conclusions

1. Amnesty International reaffirms its view stated on several occasions since 1970 that there is sufficient *prima facie* evidence of ill-treatment of security suspects in the Occupied Territories by interrogators and detaining officials to warrant the establishment of a public inquiry into this matter.

2. Amnesty International is concerned that the present administrative procedures do not enable the Israeli authorities to bring forward conclusive evidence to refute allegations of ill-treatment.

3. The lack of such conclusive evidence is directly related, in Amnesty International's view, to the extended period of incommunicado detention permitted and often practised under the procedures now in effect in the Occupied Territories. During this period the arrested person is in the company only of interrogators and prison officials, may be denied visits from family, lawyer or personal doctor, and may not be brought speedily before the courts.

4. It is Amnesty International's view that certain legal provisions and practices enhance the possibility of ill-treatment of security suspects. These legal provisions and practices include:

   a) restrictions on the role of defence counsel in preparing the defence;

   b) security trials by military courts which are commonly composed of judges sometimes all of whom are career army officers and most of whom do not have formal legal training. Amnesty International questions whether sufficient weight is being given to that provision of Article 66 of the Fourth Geneva Convention which specifies that military courts are to be "non-political";

   c) the frequent reliance in security cases on uncorroborated confessions given to police officers as the effective basis for conviction;

   d) the absence of effective opportunities for judicial appeal for those convicted of security offences.

5. The evidence available to Amnesty International suggests that the machinery for investigating complaints of ill-treatment by interrogating and detaining officials is inadequate.

VI Recommendations

Amnesty International, therefore, recommends that:

1. For reasons relating to the protection of suspects and security officials alike, a public and impartial committee of inquiry should be established to investigate the allegations of ill-treatment in their totality and the administrative and legal procedures and practices relevant to the arrest, confinement, interrogation and trial of security suspects. The committee's findings, conclusions and recommendations should be made public.

2. The terms of reference of this inquiry should include consideration of the interrogation process and the procedures permitting incommunicado detention. This committee of inquiry should examine:

   a) the rules relating to notification of arrest;

   b) the procedures governing visits to detainees by family and lawyer;

   c) methods both to improve the medical documentation available for assessing the treatment of arrested suspects and to facilitate the examination of suspects by private medical doctors;

   d) guidelines governing proper interrogation methods.

3. The terms of reference of this inquiry should also include examination of the legal rules and practices which may encourage ill-treatment. The committee should therefore consider:

   a) the composition of the military courts;

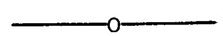
   b) ways to expand the role of defence counsel in preparing the accused's defence;

   c) providing legal rules whereby a conviction cannot be based effectively on an uncorroborated confession made in the presence only of police officers or other security personnel;

   d) the establishment of the right of judicial appeal for convicted security offenders.

4. The terms of reference of this inquiry should also include an investigation into the effectiveness of existing machinery for investigating complaints of ill-treatment.

5. Pending the establishment and reporting of such an inquiry, Amnesty International recommends that immediate steps be taken to ensure that security suspects under interrogation are protected against possible ill-treatment. Measures to this end should include access to family, lawyer and independent medical doctor promptly after arrest and at regular, brief intervals thereafter.



The Israeli Government's Reply
and
Amnesty International Comments

STATE OF ISRAEL

THE ATTORNEY GENERAL *Jerusalem, 31 December 1979*

164.1A

Mr. Martin Ennals
Secretary General
Amnesty International
10 Southampton Street
London WC2E 7HF
England

Dear Mr. Ennals,

Further to our letter of 9th November 1979, and after having had the opportunity of reading and considering the Amnesty International memorandum to the Government of Israel of October 1979, I am now in a position to reply to the memorandum on behalf of the Government of Israel.

It must be indicated at the very outset that notwithstanding Amnesty International's repeated claims to impartiality, the memorandum blatantly fails to offer an impartial, even-handed portrayal of Israel's treatment of security detainees in the administered areas. In the memorandum, Amnesty International has seen fit to make allegations and direct criticism, without attempting objectively to analyze all the inherent aspects of the problem or to take account of the realities in which these issues arise.

(A. Human Rights in the context of politically-motivated violence)*

We need hardly point out to Amnesty International that Israel's situation in the administered areas is not one of a normal state of peace, in which the application by any Government of the principles of human rights can be applied without reference to these extraordinary circumstances. International law has always recognized that in governing of areas under military rule after a period of armed conflict, in addition to ensuring the welfare of the local population, the administration also has a clear duty to protect its own population against the dangers of disorder and terrorism. In these circumstances, the question of human rights takes on a very different complexion. We have reminded Amnesty International on more than one occasion that every country in the free world has at some time faced the need, during periods of hostility, to counter the activities of armed terrorists, even when it was impossible to follow regular judicial procedure prevailing in time of peace.

Nor is the problem of terrorism and disorder a theoretical one in Israel's case. Amnesty International knows full well of the existence, purposes and activities of the "Palestine Liberation Organization" - a terrorist organization financed by Arab capital and armed and encouraged

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* Subtitles in parentheses have been added by Amnesty International.

by a number of world powers. Amnesty International is not ignorant of the declared aim of this terrorist organization, which is, according to its published covenant, to terminate by means of "armed struggle" the existence of the State of Israel. Amnesty International is also well aware of the activities of the terrorist groups within the framework of the PLO, both in Israel and in the administered areas - terror activities for which such groups readily and openly claim responsibility. The massacre of 26 school-children at Ma'alot in 1974, the murder of 15 innocent civilians in Jerusalem's central Zion Square in 1975, the wanton killing of 34 men, women and children in the civilian bus-hijacking on Israel's coastal road in 1978, and the systematic elimination of prominent local Arab political and religious notables in the administered areas, are but a few of the grim realities of the situation of which Amnesty International is well aware. Yet nowhere are these realities mentioned in the memorandum. Nowhere does Amnesty International - an organization which purports, as a matter of principle, to decry the use or advocacy of violence - choose to appreciate the obvious connection between the activities of this terror organization and the situation in Israel and the administered areas. Nowhere is there so much as an attempt to put the issue of civil rights in the administered areas in its appropriate context, taking into consideration the flagrant violations of all civilized norms by the PLO and its associated terrorist groups. We note that Amnesty International's June 1978 report on Northern Ireland described the political background to the problem. It is thus all the more disturbing that such was not the case with the Amnesty International memorandum presented to Israel.

Amnesty International's answer

Amnesty International does not condone violence in any form. Amnesty International, an organization whose mandate relates solely to prisoners, condemns human rights violations falling within its mandate, such as the taking of hostages, their ill-treatment or killing, and politically motivated assassinations whether committed by governments or by non-governmental entities.

The fact that this was not mentioned in the text of the Memorandum which was sent to the Government of Israel in October 1979 does not in any way signify that Amnesty International is indifferent to such acts by opposition groups as those mentioned in the Attorney General's reply. The Memorandum was submitted to the Government as a confidential document, and Amnesty International had every intention of including a statement of its view of human rights violations by opposition groups in any public statement it might make subsequent to the Israeli Government's reply to the Memorandum. Such a statement now appears in the Preface to the Memorandum.

Nonetheless, it is Amnesty International's experience from its work on many countries around the world that when national concern with opposition violence is coupled with the availability of legislation which even marginally restricts human rights in the name of national security or public safety, human rights violations are liable to occur.

In such contexts those working for the protection of human rights must be especially vigilant, and it is in this spirit that Amnesty International submitted its Memorandum to the Government of Israel.

In addition, Amnesty International views with concern the Attorney General's statement that when there is not a state of normal peace, "the question of human rights takes on a very different complexion". Amnesty International recognizes the obligation of a government to protect its citizens from the dangers of violence. However, in fulfilling this obligation every government must do so in a manner compatible with respect for and protection of the fundamental human rights of all people under its administration.

Amnesty International's position on this matter is consonant with provisions in international human rights instruments. The United Nations' International Covenant on Civil and Political Rights formulates the view in Article 4 that in times of public emergency which threaten the life of a nation, states which are party to the Covenant may take measures derogating from their obligations under the Covenant. Yet, the same article of the Covenant stipulates that there may be no derogation from states' obligation to respect and protect *(inter alia)* the right to freedom from torture and cruel, inhuman or degrading treatment or punishment. Similar provisions governing the rights of a population under belligerent occupation exist in the Fourth Geneva Convention and limit a state's right to take measures derogating from their obligations under the Convention.

In general, Amnesty International would like to emphasize its view that neither the United Nations International Covenants nor the Geneva Conventions, nor other similar instruments, may be allowed to preclude specific human rights violations from international concern in instances where governments interpret broadly the more permissive provisions.

(B. Amnesty International's use of sources)

In addition to the basic factor described above, the sense of a lack of even-handedness in the memorandum may be traced as well to a number of disturbing examples. Most prominent among these is a long and detailed personal account of the alleged ill-treatment of three detainees, which Amnesty International has agreed to publish without reference to names, places or dates. The difficulties for Israel in even beginning to investigate or refute allegations presented in this manner are obvious.

Amnesty International would presumably have the reader understand that the individuals involved live in fear of vengeful Israeli authorities.

But in the dozens of complaints brought to the authorities' attention in the past, has there ever been a serious suggestion of undue consequences? Have anyindividuals named in the Sunday Times report complained of having been punished for their supposed candour? Did not the account of the fourth individual, Mr. Isma'il Ajweh, both begin and end with the fact that his complaints led the Israeli Government to order and conduct an urgent investigation, resulting in the disciplining of an interrogative officer? Is this manner of presenting allegations in keeping with the principle of impartiality on which Amnesty International is based? Surely Amnesty International is capable of more acceptable methods of reporting.

The issue of an impartial examination of the situation is further highlighted by the fact that Amnesty International has chosen to rely - and rely heavily - on sources whose credibility has been publicly and repeatedly questioned. Thus, with regard to the Sunday Times report, the very fact that no attempt was made by that newspaper to verify any of its allegations with the Israeli authorities prior to publication - a point previously brought to your attention - itself questions the advisability of using such material as a reliable source of information, particularly for a memorandum which claims to be based upon a visit by your delegates and upon the "continuing research your organization has undertaken on its issues of concern". Indeed, the head of the International Red Cross Delegation in Israel at the time, M. Andre Tscheffeli - an individual who would presumably be as familiar with the facts as any professional observer - himself rejected the conclusions of the Sunday Times.

As to the reliance upon the claims of Ms. Alexandra Johnson, the former U.S. consular official in Jerusalem, whose reports were published in the Washington Post, doubts about the reliability of this information have been raised on numerous occasions. Surely we could have at least expected a reference in the memorandum to the Washington Post's own Ombudsman, who described the publication as "seriously flawed" and "confusing and misleading". Here again, Israel has not been able to investigate the allegations due to a consistent refusal to supply us with details of the individual cases involved.

With respect to the National Lawyers' Guild Report, it is somewhat surprising that Amnesty International has lent such credence to their conclusions, in light of the fact - recently confirmed by a United States Court in the matter of the extradition of Ziyad Abu Eain - that the Guild's mission to the Middle East and the publication of their Report, were partly financed by none other than the "Palestine Liberation Organization". One might have expected a reference to this rather salient point, and to the fact that there was also published a detailed Minority Report which rejected in toto, the methodology, the findings and the eventual conclusions contained in the Report of the Majority. Amnesty International has completely ignored this Minority Report.

Similarly, the memorandum makes reference to the investigation by the International Association of Catholic Jurists "Pax Romana", and

quotes from its findings, yet neglects to mention that the principle conclusion of that organization's report was that Israel's treatment of security detainees was fair, and that with respect to the use of torture, the mission "has not found the slightest element of proof concerning the existence of a deliberate policy in this regard".

In sum, the basic premise upon which the memorandum has been prepared, the sources upon which Amnesty relies for much of its information and the imbalanced manner in which these sources are presented in the memorandum, raise questions about the credibility and impartiality of the findings.

Amnesty International's answer

The Attorney General's comments here refer to sections III.B and III.C of the Memorandum. The Attorney General's criticism of Amnesty International's use of sources is misdirected on several counts.

1. The Attorney General mistakes the use to which the sources cited are put in the Memorandum - they are used as an indication of the nature of alleged ill-treatment and of the inadequacy of official rebuttals, not as sources of verified, proven instances of ill-treatment. The Memorandum refers to sources of three sorts: 1) those of a general nature, such as the U.S. State Department reports, compilations of press reports and the United Nations reports, which conclude that the allegations of ill-treatment are sufficiently serious to warrant concern; 2) material showing the character of alleged ill-treatment, for example, the kinds of ill-treatment, at what point during custody they are alleged to have been committed, and including the first-hand testimony of former detainees who themselves requested that their identity remain confidential and whose request Amnesty International must honour; 3) a detailed presentation of the dispute concerning the allegations of ill-treatment published by the *Sunday Times*, for it is to these allegations that the Israeli authorities have given their most complete reply.

Amnesty International stated clearly in the Memorandum its recognition of the difficulty in conclusively proving or rebutting individual allegations of torture, particularly where the detainee has been held incommunicado. It was in the light of this that Amnesty International did not pronounce on the veracity of the specific allegations cited. At the same time, Amnesty International believes that the various Israeli responses to allegations of ill-treatment do not lay to rest the suspicion that prisoners may have been subjected to deliberate ill-treatment. As Amnesty International said in the Memorandum, "While it may be true, as the authorities claim, that some of these allegations have

been falsely brought to serve as ammunition in a propaganda campaign, it is also true that official rebuttals are not convincing and do not seriously weaken the allegations." (AI Memorandum p.22). Amnesty International then went on to stress that its survey and evaluation of the legal and administrative measures applied to arrested security suspects "is not primarily directed towards verification of the numerous allegations of ill-treatment, but rather towards an assessment of those areas in which the procedures are deficient and in which they can be improved to provide better protection for the prisoner." (AI Memorandum p.22).

The entire thrust of the Memorandum may be summed up in a passage in Section I where, referring to the legal and administrative procedures applied to arrested persons, Amnesty International states: "In submitting this memorandum, Amnesty International has concluded that these procedures are so deficient as they now stand that they do not provide adequate minimum protection for arrested persons. This enhances the possibility that the basic rights of prisoners may be routinely violated. Law enforcement officials too are denied the protection which tighter procedures might afford: allegations of ill-treatment may be easily brought, and blanket denials just as easily issued, yet the procedures are such as to make most difficult a factual assessment of either the allegations or the denials." (AI Memorandum p.2).

That, in fact, is the basic premise informing Amnesty International's Memorandum and the failure of the Attorney General to directly address that basic premise corresponds to his misreading of Amnesty International's essentially constructive purposes in presenting the allegations of ill-treatment.

2. The Attorney General accuses Amnesty International of bias in its use of sources such as the report of the National Lawyers Guild, the articles in the *Sunday Times* and the reports of former U.S. consular official Alexandra Johnson. He fails to mention that Amnesty International also referred to other sources, such as the reports of the U.S. Department of State and those in the Israeli press, which he has not accused of systematic bias against the State of Israel. The Attorney General also implies that Amnesty International unfairly presented the *Pax Romana* report. Readers should refer to the footnote on page 7 of the Memorandum which mentions the *Pax Romana* delegates' view that they found no proof of a "deliberate policy" of ill-treatment.

Also, it should be understandable that Amnesty International, in presenting in section III.B.1. of its Memorandum the summary conclusions of a number of organizations

which had published reports on their collection and analysis of allegations of ill-treatment, could not dwell at length on the procedures and methods followed by each organization, nor on minority reports, such as the one written by a member of the National Lawyers Guild delegation. The Minority Report was not available to Amnesty International at the time of writing of the original Memorandum, and in any case Amnesty International is not in a position to comment on the allegations made by the Attorney General concerning the National Lawyers Guild Report.

Nonetheless, the common conclusions of these reports, each differing in its methods, procedure, quality and substance, is that instances of ill-treatment occur too frequently. Amnesty International's purpose in presenting such summary conclusions was simply to show that such conclusions show a sufficient level of consistency to warrant serious concern.

3. The Attorney General dismisses much too summarily the two reports to which Amnesty International devoted greatest space: the *Sunday Times* report and the *Washington Post's* presentation of the allegations of ill-treatment collected by Alexandra Johnson. While it may be true that certain procedures, such as the submission to the Israeli authorities of the allegations before publication, were not observed by either newspaper, Amnesty International's use of the allegations for a particular purpose - not as a source of verified, proven instances of ill-treatment, but as an indication of the nature of such allegations and the inadequacy of official rebuttals - remains appropriate.

It should also be noted that since presenting these allegations, both newspapers have been vindicated in ensuing complaints procedures. The Press Council of Britain dismissed a complaint brought against the *Sunday Times*. While stating that it was "not the function of the Press Council to determine whether torture has been conducted either as a matter of policy by the Israeli government or at all..." (quoted in *Jerusalem Post* 15 October 1978), the Press Council concluded that, "the editor had reasonable grounds for believing that the story he published was true and was thus entitled to publish it." (paraphrased in *Jerusalem Post* 15 October 1978).

The *Washington Post* Ombudsman's report, cited by the Attorney General as invalidating the reports of Ms Johnson, does nothing of the sort. It does point out several improvements which could have been made in the Post's presentation of the news story, but it vindicates the Post's decision to publish a news story on the allegations. The Ombudsman's report states: "As a check on the authenticity of the cables

(sent by Ms. Johnson of the U.S. Consulate in Jerusalem and based on interviews she had with Palestinians who had been in Israeli prisons), an Arabic-speaking Post reporter was sent to Chicago where he interviewed three of the Palestinians who figured in the cables. Those interviews, which were the subject of the side story published last Wednesday, could not, of course, establish the truth of the allegations. But they did satisfy the reporter and his editors that Johnson had accurately reported in her cables what the Palestinians had told her" (*Washington Post* 12 February 1979).

The Ombudsman also noted that Post Executive Editor Benjamin C. Bradlee "says he spent three hours with Johnson, subjecting her to intensive interrogation about her background, her relations with associates, her relations with the Palestinians who figured in her cables, and, of course, her engagement to one of them. He said he came out of that session and an examination of the cables themselves convinced the Post had to pursue the story" (*Washington Post* 12 February 1979).

(C) *The role of the International Committee of the Red Cross* (ICRC)

These concerns notwithstanding, we now wish to deal with some of the substantive allegations made in the memorandum.

The first point to be made with regard to the role of the ICRC in the administered areas is that to the best of our knowledge, the arrangement between the ICRC and the Government of Israel is unique; in no other country in the world is the ICRC permitted to visit security detainees during interrogation. Amnesty International is well aware of this fact, and it is thus surprising that it has not found its way into the memorandum... *

In fact:

(a) The allegation that 60%-70% of detainees are never visited by the ICRC is completely untrue. During the past year, every security detainee was visited by an ICRC delegate, and 97% of those were seen within 14 days of the date of arrest.

(b) The figure of 10% as the percentage of complaints transmitted by the ICRC to the authorities is an invention. The figure of 6% has been publicly stated not only by the Israeli authorities but by the ICRC itself, as the memorandum admits. What more informed estimates could there be?

(c) With regard to the "escape clause" in Israel's arrangement with the ICRC, whereby the Israeli authorities can suspend the application of its provisions because of exceptional military or security considerations, the actual situation is that only in the rarest of occasions has use been made of this special provision.

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* A passage referring to an excised portion in the Memorandum has been deleted here. (See the final paragraph of the Preface.)

(d) ...*

(e) The allegation that the ICRC receives no further information on any particular case once it has filed a complaint is untrue. The Israeli authorities investigate and reply to each and every complaint submitted to them by the ICRC.

Amnesty International's answer

1. Amnesty International has taken into account the Attorney General's point (b) and has amended the Memorandum on page 27 accordingly.

2. Amnesty International did not state, as the Attorney General claims, that 60% - 70% of detainees are never visited by the ICRC. The Memorandum did state that, "according to informed estimates, the ICRC manages to visit only 30% - 40% of those prisoners who are under interrogation" (AI Memorandum p.27). It should be noted that the period of a detainee's interrogation varies greatly from case to case, but usually involves the initial days in custody and may last for an extended period thereafter. Since most allegations of ill-treatment refer to the early interrogation period, it is clearly during this period and immediately thereafter that ICRC visits are necessary if they are to constitute an effective safeguard against ill-treatment.

The Attorney General's reply in point (a) therefore does not contradict Amnesty International's view that 30% - 40% of security detainees are not visited during their period of interrogation - the period to which most allegations of ill-treatment refer - and that such visits do not in themselves constitute an effective safeguard against ill-treatment.

Furthermore, if, as the Attorney General asserts, every security detainee was visited by an ICRC delegate, and 97% of those were seen within 14 days of the date of arrest, Amnesty International would like the Israeli authorities to make public answers to the following questions:

a) how many, or what proportion, of those arrested are seen by the ICRC during the interrogation period?

b) is there any overlap between the 6% of cases in which the ICRC transmits complaints, and the 3% of detainees not seen within 14 days?

c) what are the exact delays in the 3% of cases not seen within the 14 day period? What are the reasons for these delays falling outside the agreement?

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* A passage referring to an excised portion in the Memorandum has been deleted here. (See the final paragraph of the Preface.)

d) does the Attorney General's statement that "every security detainee was visited by an ICRC delegate" mean that the escape clause has not been used at all? If it has been used, how often? Does "every" include all those detained, interrogated and then released within 14 days?

3. The Attorney General's statement in his point (e) is, according to Amnesty International's information, strictly correct and Amnesty International has amended the original Memorandum on page 28. Amnesty International requests that the Attorney General publicly specify the nature of his reply to a complaint transmitted by the ICRC: does the reply contain an indication of the procedures followed in investigating the complaint, mention the kinds of evidence heard and the manner in which this evidence is evaluated, or does it simply convey the summary conclusion of the investigation?

4. In sum, Amnesty International recognizes the importance of the agreement between the Israeli authorities and the ICRC, and has already stated publicly that, "the formal rights given to the ICRC in the Occupied Territories are among the most favourable that have been granted anywhere" (the *Amnesty International Annual Report 1979*, p.164). Nonetheless, Amnesty International retains its major conclusion in this regard, that "the nature of the agreement between the ICRC and the Israeli authorities, and the actual implementation of this agreement, are not sufficient to ensure the full protection of prisoners' rights." (AI Memorandum p. 27).

(D) *Access to Lawyers*

It is perhaps worthwhile to keep in mind the fact that the question of access of lawyers to individuals suspected of having committed acts of terrorism, must be examined in the context of the realities of the prevailing situation, and not from an isolated point of view. In such circumstances, international law, including in particular Article 5 of the Geneva Convention, recognizes that a State may modify such ordinary procedures as immediate access to lawyers, in the light of its legitimate concern to protect the civilian population from the scourge of terrorism. Thus, during preliminary interrogation by security authorities - an interrogation aimed at ascertaining general information and intelligence in order to foil further acts of terrorism - immediate access by a lawyer is accordingly limited. However, Israel has nevertheless endeavoured to provide security detainees with reasonable access to a lawyer as set out in Article 11 of the Operation of Gaols Order (Judaea and Samaria), 1967, as follows:

"Meeting with Advocate

11. Where a detainee requests a meeting with an advocate and the Superintendent of the Prison is satisfied that the request was made for dealing with legal affairs of the detainee, he shall permit a meeting with him in the gaol, provided that there is no objection to the meeting on security grounds and that the meeting does not interfere with the course of any investigation."

A similar Order has been issued with respect to the Gaza District.

Instructions have recently been issued to the appropriate authorities in the administered areas which repeat the right of access provided for in the above Article 11 and also require the authorities to permit detainees to grant power of attorney to their lawyers at the earliest opportunity, so that the preparation of the defence may commence forthwith.

The allegation that the security detainees in the administered areas are seriously limited in their free choice of defence counsel is entirely without foundation. In trials before the military courts in the administered areas, any lawyer whether local or Israeli, is entitled to represent the accused. With respect to applications to the Supreme Court of Israel, legal representation before that court is naturally limited to members of the Israeli Bar. But to suggest that this factor seriously limits the detainees' free access to counsel is somewhat ludicrous. Surely it is not too much to expect that such detainee or his family will contact one of the many Israeli lawyers, both Jewish and Arab, who have shown themselves willing to represent such applicants and whose names are generally well known.

Finally, with regard to the contention that lawyers are not contacted because this "may lead the authorities to assume that a crime has indeed been committed" - this surely borders on the absurd.

Amnesty International's answer

1. Amnesty International is, of course, aware of Article 5 of the Geneva Convention which the Attorney General cites as justification for limitations on a suspect's access to a lawyer. However, the meaning of Article 5 is not as unequivocal as the Attorney General argues. The "rights of communication" to which the Israeli authorities refer and which may be forfeited "in those cases where absolute military security so requires" (Article 5, paragraph 2) must be interpreted in conjunction with paragraph 3 of the same article which states: "In each case, such persons shall nevertheless be treated with humanity, and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention." These rights are stipulated in Article 72: "Accused persons shall have the right to present evidence necessary to their defence and

may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence." (Emphasis added).

2. This part of the Attorney General's reply underlines Amnesty International's concern that the regulations in the Occupied Territories leave the authorities very considerable discretion as to how long an arrested suspect may be denied access to a lawyer and do not set a time limit on such denial (except at the moment of the 18-day review of the arrest order). The Attorney General does not say anything to allay Amnesty International's expressed concern that arrested security suspects have often been held for periods exceeding two months without access to a lawyer.

The Attorney General refers to recent instructions to the authorities to permit detainees to grant power of attorney to their lawyers at the earliest opportunity, so that preparation of the defence may commence forthwith. Amnesty International would appreciate information from the Attorney General which indicates that the new instructions improve upon a situation whereby prolonged non-access to a lawyer has been part of a general pattern of incommunicado detention for arrested security suspects.

3. Amnesty International stated that "the accused has the right to a lawyer of his/her own choosing in most cases before military courts" (AI Memorandum p.31, emphasis added) but pointed to two limitatations on this right:

a) the need for counsel to be chosen from an officially sanctioned list in cases where the court determines that the interests of state require the military trial to be held in secret (AI Memorandum p.31).

b) that, in applications to the Supreme Court of Israel, counsel must be a member of the Israeli Bar.

Amnesty International maintains its judgement that both aspects constitute "limitations to the free choice of defence counsel" (although it did not use the word "serious" to qualify these limitations, as the Attorney General's reply states).

4. Finally, Amnesty International cannot sympathize with the sentiment behind the Attorney General's final paragraph. Residents of the Occupied Territories clearly stated to Amnesty International that one reason for their reluctance to contact a lawyer immediately after arrest was a feeling "that to bring an advocate into the case may lead

the authorities to assume that a crime has indeed been committed and that there is a real need for legal defence." (AI Memorandum p.25). Amnesty International sees no reason to retract its presentation of this testimony.

(E) *Interrogation Personnel and Practice*

It has already been made clear that Israeli security authorities categorically deny the incredible practices with which they are charged in the memorandum.

After having commented on the practice of basing allegations of mistreatment on the unsubstantiated stories of anonymous "victims", it remains under this heading to repeat a fact with which Amnesty International should already be familiar, and of which the delegation to Israel was specifically made aware: contrary to what is stated in the memorandum, there does exist a code of practice with respect to methods of interrogation by Israeli authorities, which, inter alia, forbids the use of physical coercion in any form. Where cases of violation of these rules are brought to the attention of the legal authorities, appropriate measures, whether criminal or disciplinary, are taken, and this will continue to be our clear policy.

Finally, another serious error must be corrected in the discussion of interrogation practices: Israeli interrogation officers do identify themselves to the detainees in such a way as to enable them to be called to give evidence in any legal proceedings in which allegations of mistreatment are raised. The mere fact that such officers are called to appear in court surely verifies this.

Amnesty International's answer

As Amnesty International has already pointed out (above, section B), the Attorney General fails to distinguish between Amnesty International's presentation of testimony alleging ill-treatment and Amnesty International's own conclusions that the allegations of ill-treatment are sufficiently serious to warrant a thorough investigation into such allegations and into the legal and administrative procedures applied to arrested persons. This failure is reflected in his statement that "the Israeli security authorities categorically deny the incredible practices with which they are charged in the memorandum."

In the Memorandum Amnesty International stated "In response to questions from the Amnesty International delegates, the Israeli authorities were unable to refer to any regulations governing the length of interrogation sessions, or to any code of practice for interrogating officers which might spell out types of treatment that are forbidden." (AI Memorandum p.29). The Attorney General's reference

to a code which contains a general prohibition on "the use of physical coercion in any form" does not in itself answer Amnesty International's concern. In Amnesty International's view, for such a code of practice to provide effective protection for the suspect in custody, it must contain very clear, detailed provisions specifying permissible and impermissible interrogation practices. It should spell out, for example, the length of interrogation sessions, the time allowed for sleeping and eating, the need to log all sessions, who must be present and so on, and should explicitly forbid non-physical abuse of arrested persons. Amnesty International wishes to know how specific the code of practice cited by the Attorney-General is, beyond its general interdiction on "the use of physical coercion in any form", and calls upon the Israeli authorities to publish this code and specify what steps are being taken to ensure that it is followed.

Also, Amnesty International notes the Attorney General's assertion that "interrogation officers do identify themselves to the detainees in such a way as to enable them to be called to give evidence in any legal proceedings in which allegations of mistreatment are raised."

(F) *Medical Care within the Prison*

Under this heading too, a number of seriously misleading statements in the memorandum require correction.

As the Amnesty International delegation was advised during its visit here, every detainee is examined by a medical orderly on entering prison and is seen by a doctor at the first opportunity. A medical orderly is present in the prison infirmary daily and a doctor visits every prison at least once a week. A doctor examines any detainee who so requests.

As part of an ongoing review of the procedures of medical staff in the prisons directives were issued in August 1979 emphasizing the requirement that prison personnel keep detailed and accurate records of each detainee's medical history.

With regard to the prisoner visited by your delegation in Nablus prison, and the apparent discrepency between his story and the prison's medical files, an investigation of the case has convinced us that the prisoner was in fact examined as the medical records indicated. Might it not have occurred to Amnesty International that the prisoner was not telling the truth?

Amnesty International's answer

Amnesty International made two points in its analysis of medical care (AI Memorandum pp.25-26); 1) that the medical care available within the prison appeared designed to provide for routine medical attention to individuals in custody. It clearly guaranteed neither the attention necessary to protect prisoners under interrogation, nor the documentation needed to convincingly refute or corroborate allegations of ill-treatment; 2) that procedures as they stand do not offer adequate access to independent medical care.

Amnesty International welcomes the new directive cited by the Attorney General which was issued in August 1979 (two months after the visit to Israel by Amnesty International delegates), and which "emphasize(s) the requirement that prison personnel keep detailed and accurate records of a detainee's medical history". This obviously constitutes an improvement over previous practice if it is effectively implemented. However, the directive will not necessarily provide sufficient safeguards for prisoners under interrogation unless it requires repeated visits to the suspect by a doctor, perhaps as frequently as every 48 hours.

It should also be noted here that the Attorney General's reply makes no mention of the inadequate access to private medical care.

Amnesty International takes exception to the Attorney General's final paragraph. We refer to page 26 of the AI Memorandum which shows that Amnesty International drew no conclusion as to whether or not the Israeli authorities were at fault in the instance cited.

(G) *The Military Courts*

Israel totally rejects out of hand the suggestion that the composition of Israel's military courts in any sense diminishes the quality of justice provided or taints the proceedings with a political character.

First, the memorandum itself confirms that every military justice bench must be chaired by a qualified lawyer. Even Amnesty International might acknowledge the fact that in a country justifiably priding itself on its legal system, the Israeli lawyer remains imbued with a sense of justice and fair procedure whether he happens to be in civilian or military garb.

Second, Amnesty International is surely aware of the fact that in Israel one is forbidden by law during the whole period of military service, from taking any active part in politics, and that political views are completely irrelevant to anything connected with one's military service.

Third, we are particularly astounded by the allegation that career legal officers sitting as judges give military justice proceedings a political tone, and are thus somehow in violation of the relevant principles of the Geneva Convention. Nowhere in the Geneva Convention is a distinction drawn between career and reserve military judges, nor is the appointment of career judges a violation of the proper standards of military justice required by the Convention. In Israel, moreover, the principle of impartial, apolitical military justice is confirmed by a very significant section of the Military Justice Law, 1955, which specifically provides, with respect to all military judges: "In judicial matters a military judge is not subject to any authority save that of the law, and is not subject in any way to the authority of his commanders. (Section 184).

But the clearest refutation of the allegations in this regard can doubtless be found in the fact that they are completely novel: never before have the legal system and Israeli courts of law been seriously questioned. Of the many sins of which our country has been accused, the claim that our courts of law - civil or military - are anything but fair and impartial, has never been among them.

Amnesty International's answer

1. Amnesty International, on page 30 of its Memorandum, was making a simple point: that in a situation of belligerent occupation, where there exists an almost daily confrontation between the military authorities and the local population, career military officers for whom the military constitutes a full-time, life-time occupation, may indeed be more likely to judge security suspects harshly, and even unfairly, than would reserve officers who serve as military judges for their annual one-month term of army duty. This is an even greater possibility when, as is the case in the Israeli system of military justice, reserve officers serving as military judges must have had formal legal training (and may even be civilian lawyers) while career officers serving as judges need not (with the exception of the President of the Court).

The Attorney General has not addressed this and refers, in defence of the military court system, to an imbued "sense of justice and fair procedure", to the fact that those on military service are "forbidden by law during the whole period of military service from taking any active part in politics" and that "a military judge is not subject to any authority save that of the law". The Attorney General's appeal to such general imperatives does not answer the point being made by Amnesty International.

2. The fact, referred to by the Attorney General, that "nowhere in the Geneva Convention is a distinction drawn between career and reserve military judges", and that

"the appointment of career judges (is not) a violation of the proper standards of military justice required by the Convention" does not prevent the Israeli authorities from drawing such a distinction and from making every attempt to ensure that military judges be as fair and impartial as possible, both by vocation and outlook.

3. Finally, the last paragraph of the Attorney General's reply is incorrect. The *Sunday Times*, the reports of the U.S. Consular officials in Jerusalem and others have been critical of the military justice system, as State Attorney Gabriel Bach allows in his statement quoted in the AI Memorandum on page 11.

(H) *Rules of Evidence*

The reference to the authority of the military courts to deviate from the ordinary rules of evidence, and the suggestion that this authority might be used in a large number of instances, constitutes, once again a serious misapprehension.

The authority referred to does indeed exist, and it is fully consistent with the relevant provisions of the Geneva Convention. However, to the best of our knowledge, such authority has never been exercised by the military courts in the administered areas.

Amnesty International's answer

Amnesty International did not suggest that military courts deviate "in a large number of instances" from the ordinary rules of evidence but stated quite clearly that it had "no information as yet as to how often, and for what reasons, such deviations may occur." (AI Memorandum p.31). Amnesty International welcomes the Attorney General's statement that such deviations have never occured.

The Attorney General did not address the question of deviations by the military courts from normal rules of procedure and Amnesty International respectfully requests an answer to this question.

(I) *"The Little Trial"*

To say the least, Amnesty International's discussion of the special procedures relevant to the admissibility of a detainee's confession contains many seriously misleading statements. Since these special procedures in actuality represent an important protection for the defendant, and since they are applied with full force by the military courts in the administered areas, it would seem necessary to attempt to correct the impression obtained from the memorandum.

The argument, that the requirement of the accused to explain his objections to the admissibility of the confession at the beginning of the "little trial", is "particularly disadvantageous to a defendant...," is really quite without foundation and discloses a general lack of familiarity with the rules of evidence and procedure.

First of all, it should be pointed out that the same requirement exists in the criminal procedure of all Common Law countries in which "little trials" or "trials within trials" are held in order to determine the admissibility of a defendant's confession.

And indeed how could it be different? How can the prosecutor be expected to disprove allegations which are as yet unknown to him? Just as the accused cannot be expected to defend himself without first knowing the nature of the indictment against him, so the prosecutor has to know of what the policemen and interrogators are being "accused" by the defendant. And in order to know what he has to disprove, he obviously has to be told by the defence whether the allegation is that the confession was obtained by beating the defendant, or by threats and intimidation, or by humiliating the defendant, or by holding out promises to him, or by some other improper means.

The truth is that the little trial procedure, a protection unknown in other systems of law (such as the Continental System, where every confession is admitted in evidence, and its voluntariness can merely influence the question of the weight to be attached to the confession), is "particularly advantageous" to the defendant.

Finally, there would appear to be a complete lack of understanding of the rules relating to the admissibility of confessions. The memorandum confuses confessions obtained in the course of interrogation with pleas of guilty made in court pursuant to some form of "plea bargaining". Whereas in the former case the question of the voluntariness of the confession may be in issue and therefore the Judges' Rules apply, in the latter case the question of voluntariness obviously does not arise at all and our rules in this regard are completely in accord with those of other Anglo-American jurisdictions.

"Plea-bargaining", whereby an accused pleads guilty to a less severe offence on the basis that the prosecution will not ask for his conviction on a more serious charge or will agree to a lighter penalty, is a well recognized practice in many legal systems.

Amnesty International's answer

The Attorney General criticizes Amnesty International for its statement that it is "particularly disadvantageous to a defendant" to be required to explain his/her objection to the admissibility of the confession and argues that such a requirement is similar to that by which any accused must first be informed of the charges in order to be able to

defend against them. Here, the Attorney-General has taken Amnesty International's statement out of context and has drawn an unwarranted parallel.

It is, of course, self-evident that if the accused objects to the admissibility of the confession by claiming that it was extracted under duress, the prosecutor must know "of what the policeman and interrogators are being 'accused' by the defendant". But, as Amnesty International clearly states on page 34 of the Memorandum, this requirement is "particularly disadvantageous to a defendant who is deprived, through the very deficient procedures which have been described above, of just the kind of evidence which would allow confessions to be excluded" (AI Memorandum p.34 emphasis added). Amnesty International had, on page 34, outlined why this is the case: "the defendant may have been denied access to family and lawyer throughout the period of alleged ill-treatment and has probably had only cursory and weakly documented medical examinations. Only he or she can bear witness to the allegations, whereas the several interrogating officers - the object of the complaint - will testify to the contrary." And Amnesty International continued, "the prosecution will always be able to call upon the testimony of the police officer before whom the accused, once having agreed to a confession before the interrogators, will actually sign the official confession." (AI Memorandum p.34).

Amnesty International's purpose, then, was not to challenge the obvious need for anyone who must defend him/herself to be first informed of what the accusation is (and this holds for any interrogator just as well as for any arrested person); rather, it was to draw attention to a set of deficient procedures whereby the accuser - in this case the security suspect who alleges ill-treatment - is almost certainly deprived of the kind of documentary, independent evidence which could support his/her allegations.

With regard to the final two paragraphs in the Attorney General's reply, Amnesty International does not see where it has confused confessions obtained in the course of interrogation with those given in court. Nor does Amnesty International accept the Attorney General's suggestion that because "plea-bargaining" is a well-recognized practice in many legal systems, the practice is therefore immune to criticism. This is particularly so when suspects frequently allege that under interrogation they have been faced with a clear choice between confessing to a lesser offence or facing prosecution on an offence carrying with it a greater penalty. It is notable that in his letter the Attorney General refers to "holding out promises" to a person under interrogation as an "improper means" (p.62).

(J) *Evidence to Support Confessions: "the something else"*

Here, too, a detailed explanation is necessary to correct a distorted picture.

1) While the "something else" required does not have to amount to full corroboration in the technical sense, it does have to strengthen the credibility of the confession on a material point. Even if the confession has been ruled admissible in the "little trial", because it was proved that no undue pressure had been brought to bear on the defendant, it is always possible that the prisoner was afraid that something might be done to him, and he thus confessed to a deed he did not in fact commit. The requirement of the additional evidence, "the something else", is therefore an important safeguard against the danger of miscarriage of justice.

2) Amnesty International refers to the English case of R. v Sykes (1913) 8 Cr. App. R. 233, in which the "something else" was first mentioned and on which the Israeli rule is based. It omits, however, to disclose that while under English and American law the "something else" is not generally a mandatory requirement, and juries may convict on the strength of a confession before a police-interrogator alone, in Israel the courts have leaned further in favour of the defendant and have ruled that the "something else" is essential for a conviction.

3) The examples given in the memorandum as to the "something else" which was accepted by military courts in the administered areas as sufficient, are obviously intended to ridicule the rule as applied by the military courts. In actual fact, most of the examples take on a very different complexion when seen in their proper factual context.

Let us examine these examples one by one:

a) The "indication report"

If, in addition to confessing, for example, to having smuggled arms and explosives into the area, the accused is able to point to the hiding place in which the arms were actually found, or if in some other way he points something out which is objectively true and could be known only to the perpetrator of the criminal act, then of course this is legitimately regarded as evidence which adds weight to the confession on a material point.

b) "Confirmation of details, such as date and place of birth, names of relatives that were mentioned in the confession".

Not a single case is known to us in which such points have been relied upon by a military or any other Israeli Court. It is extremely improbable that such a finding could have been made, unless those facts were, in the particular case, of some peculiar relevance to the issues raised in the trial.

c) "the actual existence of certain persons whom the accused mentioned in the confession".

Here again, this appears superficially unreasonable. But if we assume - and this happens in many such cases - that in his confession the accused mentions the name of a foreign espionage agent with whom he has been in contact, and then an official of the Israeli Security Services testifies that a person of that name is a known foreign agent, actively engaged in carrying out espionage missions or acts of terrorism in the administered areas, such evidence no doubt enhances the credibility and weight of the confession.

d) The movements of the accused, the countries he visited.

This can at times be highly relevant. If, for example, the accused confesses to having disclosed secret information to the Syrian Secret Service after having crossed the border illegally, it is relevant if it is proved that the accused in fact was, on the relevant dates, in Syria, and that it was likely that he was subjected to intense interrogation by the Syrian authorities in order to gain such information. Such evidence as a whole might be recognized as adding material weight to the confession.

e) Under Israel's Rules of Evidence, the confession of a co-accused is not admissible unless repeated in Court by oral evidence.

In sum, Amnesty International has seriously underestimated the value of this additional safeguard, and completely distorted its specific application. In so doing, Amnesty International has also seriously misrepresented the workings of Israeli Courts.

Amnesty International's answer

The Attorney General challenges Amnesty International's contention that the "something else" may "in only the most indirect way be connected with the crime or tie the accused to the crime", (AI Memorandum p.35) and that the "something else" therefore may not constitute effective protection for the accused. To support his argument, the Attorney General points out that in each of the examples cited by Amnesty International (with the exception of (b), which he states does not occur), a particular "something else" may indeed "add weight to the confession of a material point".

Despite the Attorney General's claim that the "something else" may add weight to the confession, Amnesty International remains concerned that, according to testimony received from a number of sources and as the Supreme Court decision cited on page 36 of the Memorandum states, "the tendency to be satisfied with a slight "something else" to support the confession is prominent in the judgements of this court", and that it may be prominent in other courts as well. However, in light

of the Attorney General's comments Amnesty International will seek further clarification and case material on this point, both from the Israeli authorities and from other sources.

Amnesty International addressed itself to this area of procedure because of concern that in many security convictions the sole effective basis for conviction lies in the confession of the accused, and that this may offer incentive to interrogators to use improper means to obtain self-incriminating statements from suspects. The "something else" may itself have been elicited from the suspect in this way and the court's requirements for the "something else" do not appear sufficiently strict to eliminate this danger.

In light of this, the "something else" cannot be said to provide independent evidence enhancing the credibility of the confession.

(K) *Mitigation of Sentences*

At page 37 of the Memorandum, we find the following statement:

"Amnesty International knows of no instances where the Regional Commander has overturned convictions of Palestinian security offenders, or reduced their sentences for other than health or family reasons, or accorded any reduction other than the one third taken off a sentence for good behaviour. Yet there are two recent examples of the exercise of this right by the Regional Commander with respect to convictions of Israeli Jews..."

This statement is absolutely astounding, both because of the completely false information it conveys and because of the picture it is obviously intended to create with respect to Israel's treatment of Arab detainees.

The truth may perhaps be ascertained from the facts: In Judaea, Samaria and the Gaza District during 1979, the Regional Commander granted early release to 168 prisoners, and mitigated the sentences of another 108. Of these, only a small minority were for health or family reasons, or for good behaviour. The Amnesty International delegation's ignorance of these facts must be attributed either to a startling lack of research or perhaps to a reluctance to ask the Israeli authorities the appropriate questions.

Whatever the background to this distortion, we cannot but take offence at the allegations made in the memorandum and the completely unfounded insinuation that they convey.

Amnesty International's answer

Amnesty International has amended its Memorandum on page 37 to take into account the figures provided by the Attorney General.

(Concluding remarks of the Attorney General)

We have thus far referred to a number of instances in Amnesty International's memorandum of false or seriously misleading allegations. We do not, however, intend to engage in a debate on civil rights, when Amnesty International refuses to take into account Israel's special security situation.

The disturbing international rise in terrorist activities in recent years has forced a number of the world's most progressive societies to reflect on the appropriate response to such violent disregard for human life. Your distinguished countryman, Lord Shackleton, in the context of terrorism in Northern Ireland, has been forced to make reference to:

> *"...the truism that basic civil liberties include the rights to stay alive and to go about one's business without fear. A society will always seek to defend itself against threats to its security. We must be prepared to forego some of our civil liberties for a time if that is the cost, on the best assessment we can make, of preserving the essentials..."*
>
> *(Conclusion to the Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Acts, 1974 and 1976, published in August 1978)*

And the European Court of Human Rights, when weighing the reasonableness of regulations designed to counter terrorist activities in Germany, recognized that the European Convention on Human Rights has not altered the principle that in an exceptional situation, a State must have effective means of defeating complex forms of espionage and terrorism when they constitute a threat to democratic society.

How much clearer must these issues be to Israel, faced by almost daily acts of ruthless terrorism threatening her very existence?

Israel is a democratic society, and the respect for human rights and the rule of law is rooted deep in the traditions of its people. Unfortunately, during the thirty-one years of statehood we have had to turn our attention, first and foremost, to surviving the onslaughts of those bent on our destruction, and it is in this atmosphere that our principles have been practised. It is against this background that we have refused to adopt an unrealistic set of practices and procedures which no enlightened society in Israel's position could responsibly accept.

In the light of Israel's exceptional security dilemma, we believe that the rights afforded to security detainees in the administered areas are reasonable. Indeed, Amnesty International is fully aware of two unique features of Israel's system in this regard. First, there is the previously-mentioned agreement with the International Committee of the Red Cross assuring early access by ICRC delegates to detainees. Furthermore, the system includes the right of any detainee to petition directly the Supreme Court of Israel sitting as a High Court of Justice. However

much the memorandum might seek to belittle this right, it is in fact unprecedented and of vital importance. We know of no other occasion when detainees in areas under military administration have been afforded the right to petition the Supreme Court of the administering State on an equal footing to that of its own citizens.

Conclusion

The Ministry of Justice and the other officials concerned with the administration of justice in Israel and the administered areas, conduct an ongoing review of the treatment of security detainees, and there is thus no need for the committee of inquiry you recommend.

Our review of the existing situation will continue, and regular consideration will be given to improving the practices and procedures of the authorities. In this context, it is noteworthy that the Mandatory Regulations of 1945 concerning administrative detainees in Israel, have recently been replaced by an Israeli law which enhances judicial supervision and provides right of appeal to our Supreme Court, these new provisions have now been extended, with minor necessary modifications, to detainees in the administered areas (presently numbering only twenty-three).

In conclusion, the Government of Israel will continue to ensure that the civil rights of security detainees in the administered areas are duly respected. Israel will, moreover, continue to investigate all specific allegations of maltreatment which are properly presented.

Yours sincerely,

Professor Itzhak Zamir
Attorney General

Amnesty International's concluding remarks

The reply of the Attorney General on behalf of the Israeli authorities makes a positive contribution in pointing out several errors in the Memorandum submitted by Amnesty International in October 1979 to the Government of the State of Israel. Amnesty International has noted these in the course of the present response to the Attorney General and has incorporated corresponding corrections into this published version of the Memorandum.

Nonetheless, on questions of substance, the Attorney General's reply is unsatisfactory. In essence, his reply ignores the constructive purpose motivating and given expression throughout the Memorandum and, at the same time, fails to address the Memorandum's central argument.

In the Memorandum, Amnesty International repeatedly insisted on the need to move beyond the rather sterile and unproductive exchange of allegations of ill-treatment and government denials. State Attorney Bach had already alluded to the impasse growing out of such exchanges in his July 1977 statement that "anyone who lives in this country (Israel) ... would find it hard to believe that this... nation would tolerate systematic ill-treatment or torture of defenceless prisoners. For such people, no clarification is, of course, necessary. For those, however, who might be inclined to accept the veracity of the allegations... it is rather doubtful whether any statement by myself, as State Attorney, to the effect that these allegations are unfounded, and in support of the testimony of the police and the security services, would be of much value as such."

This impasse is a result of the simple fact that administrative procedures applied to security suspects in the Occupied Territories do not furnish evidence and documentation sufficient to conclusively either support or refute allegations of ill-treatment. This fact has serious implications for the legal process itself since in many cases the sole effective basis for conviction of security suspects is the confession of the accused. The effect of such legal protections for the accused, as the "little trial" and the "something else", is vitiated when confessions are alleged to have been obtained under duress and where administrative procedures governing detention are not designed to furnish the evidence necessary for objectively assessing the nature of such duress. In situations such as obtains in the Occupied Territories, these legal safeguards no longer provide effective protection for the accused.

The Attorney General has expressed commitment to existing procedures and practices and has rejected in whole Amnesty International's critique and recommendations for improvement. It should be noted that in doing so the Attorney General has not responded to a number of issues raised by Amnesty International in the Memorandum. These include: the lack of notification of arrest given to families of the detainee; the substantial delays from arrest until appearance before a judge; the difficulty of preparing a suspect's defence when the suspect is often unable to consult with a lawyer until after confession; the restrictions on family visits to the prisoner; the inadequate access of the prisoner to private medical care; the lack of appeal procedures in military trials; problems in the complaints procedure.

The Attorney General has repeatedly appealed to concepts such as the "survival of the state" to justify restrictions imposed on the rights of individual's under the state's protection. This appeal is phrased, however, in so general a manner as to obscure the limit to which a state

may justifiably impose such restrictions. Missing from the Attorney General's reply is any clearly reasoned statement explaining how the prospects for the survival of the state would be damaged by permitting, for example, freer access to suspects by lawyers and independent doctors or by allowing greater latitude for family visits; by enacting stricter controls over interrogation practice; by, in sum, instituting a set of administrative procedures and practices which would provide greater protection for detainees from ill-treatment. Amnesty International is deeply concerned that the absence of such arguments from the Attorney General's reply reflects unwillingness on the part of the Israeli Government to make changes in procedures which Amnesty International believes necessary both for the protection of the rights of suspects in custody and for enabling effective and satisfactory examination of allegations of ill-treatment of arrested suspects.*

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* In the Attorney General's references to the Geneva Convention, to Lord Shackleton and to the European Court of Human Rights, he appeals to pronouncements which support the prerogative of a state, in exceptional situations, to deny basic human rights. For example, the Attorney General has interpreted the Geneva Convention very broadly to justify extending considerably the state's right to limit a suspect's communication and meaningful consultation with his/her lawyer. The same stance informs the Attorney General's references to Lord Shackleton, and to the European Court of Human Rights.

The Attorney General's reference to European debate on these issues is eloquent in a negative way, since it does not include reference to the 1979 report of the Bennett Committee, set up by the government of the United Kingdom as a committee of inquiry into police interrogation procedures in Northern Ireland. The Attorney General does not refer to this despite its direct relevance to the subjects under discussion and despite the fact that two copies of this report were given to each government official met by Amnesty International's delegates in June 1979. The recommendations of the Bennett Committee include, among others, "that detainees be given an unconditional right of access to a solicitor after 48 hours and every 48 hours thereafter" (paragraphs 277-278); that "prisoners (be) offered medical examinations during each 24 hours' period of detention" (para. 249); that "the prisoner's private doctor be routinely informed of any illness or injury). Amnesty International would like to point out that the Bennett Report presents a sustained inquiry into various revisions which might be introduced into procedures, and carefully weighs the advantages and disadvantages of such revisions. The absence of such considerations from the Attorney General's reply and its failure to draw upon similar reasoned arguments that take into account both the rights of the individual suspects and the obligation of the state to protect its own citizens, is in itself a serious cause for concern.

Instead of accepting the need for improvement in administrative and legal procedures for protecting the rights of arrested persons, the Attorney General rhetorically invokes the "sense of justice and fair procedure" of Israeli military judges and "the respect for human rights and the rule of law ... rooted deep in the traditions of its (Israel's) people" and suggests that it is reasonable to rely on these for protecting the fundamental rights of arrested persons.

It is Amnesty International's experience that while a tradition of justice shared by populace and officials alike is important, it is essential that administrative and legal provisions affecting arrested suspects be so designed and so implemented as to ensure that those rights are respected under all circumstances for every prisoner.

It is Amnesty International's conclusion, based on the arguments presented in its Memorandum and in its response to the Attorney General's reply to that Memorandum, that the procedures in effect in the Occupied Territories do not provide such insurance, and in some respects facilitate violations of prisoners' basic human rights. The Attorney General, in his reply, has not relieved Amnesty International's concern that the procedures now in effect neither provide sufficient protection to suspects in custody nor enable a factual assessment of allegations of ill-treatment. Amnesty International therefore calls upon the Israeli authorities once again to act positively on the recommendations made in the Memorandum.

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