

## Torture in Israel – A Question of Getting Away With It

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The question always arises of whether we should simply restate what is happening, how detainees are treated, telling everyone what they already know, or whether we should try to think ahead. I say this because I agree that what has actually changed since the 1999 Supreme Court judgment is not only the methods of torture themselves – the General Security Services or GSS continues to use those methods that were banned by the Court, as well as some others – but also the number or percentage of interrogees who are exposed to a particular method. Before continuing, it is very important to recall that the Israeli Supreme Court declared that there was an absolute prohibition on the use of torture or any brutal or inhuman means. However, when the court examined actual methods and passed its judgment, it never stated that the interrogation methods which were used by Israeli security forces and subsequently prohibited constituted torture. What it said was that, as a general rule, it was illegal to use shaking, "shabeh" stress positions, the "frog crouch," and sleep deprivation as methods of interrogation. More importantly, the court also stated that in cases of necessity, application of these methods in interrogation may not give rise to criminal liability.

Let me be more concrete: The court ruled that the "necessity defense" did not constitute a source of *a priori* authority for GSS interrogators to use physical means during an interrogation. However, physical pressure in extreme circumstances, in the "ticking bomb" scenario, may not result in criminal prosecution of interrogators, since they may rely on the necessity defense against any criminal charges. Furthermore, there is a myth that the use of physical torture is now limited only to those detainees

considered to fit the “ticking bomb” criteria, while the vast majority of detainees are subjected only to psychological pressure, psychological torture, degradation or ill-treatment.

While it is extremely difficult to obtain reliable statistical data, because it is all classified, we do try to verify our information. Last year, PCATI obtained information about the use of torture and/or ill-treatment in up to 240 interrogations. It is important to recall that, like many NGOs, our capacity is limited and therefore PCATI’s lawyers cannot visit every person who is detained and interrogated by the GSS in order to verify whether or not he or she was tortured. Rather, we rely on information that we receive from attorneys in the field, from family members, and from the various Palestinian organizations. Therefore, several months may pass from the time a person is detained until we receive the information, and from then until a lawyer from PCATI gains access to the victim to conform the information in a signed affidavit.

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Far more important is the fact that many victims choose not to submit a complaint, for many reasons. First, when we meet detainees and ask them about the way in which they were treated during the interrogation, they often reply *‘ādi* (عادي). *‘ādi* means “as usual”, or “normal”. When you ask them for details you hear the whole scenario, starting from the brutal treatment they received, including women and children, when they were arrested at their homes by Israeli soldiers, usually after midnight. And then there is the humiliation, the threats, the painful

shackling, being spat on while blindfolded, the kicking and beatings all the way to the army detention center. This treatment usually lasts between eight hours and three days, until they are delivered to one of the main interrogation centers. They are exhausted and then either taken straight to interrogation or to the detention cells, which detainees describe as dirty and very small, with rough, darkly-painted walls, a very thin and foul smelling mattress, and a hole in the floor to use as a toilet. The authorities refuse to allow independent monitors access to these areas, even the International Committee of the Red Cross or representatives of the Public Defender’s Office.

Therefore, if they are not severely beaten, but were “just” slapped in their face, it is unlikely that they will report it to their attorney. I will give you an example. One of the victims, a Palestinian with Israeli citizenship who lives in Jerusalem, was detained last December [2010], arrested and taken from his home after midnight. The authorities have now leaked allegations to the press that he is a member of Hamas and that he may have connections to three detainees suspected of preparing a missile attack against a sports complex in Jerusalem. For the first five days following his arrest and

during the last week of his 33-day incommunicado detention he was interrogated by four to five GSS interrogators for up to 22 hours daily, while being humiliated and handcuffed painfully. He was held in putrid cells for the duration of his detention. The interrogators threatened to arrest members of his family and told him that his twin babies would grow up without him. During the thirtieth day of his detention they told him that his father had been arrested and tried to convince the two to meet. In actual fact the detainee's father was being interrogated but had not been arrested and the two refused any offers to meet each other. A case like his is considered *'ādi*. If PCATI's lawyers were to submit a complaint in every case of this kind we would need a much larger legal staff to deal with all the detainees.

In the more severe cases, as in the case of one of the three East Jerusalem residents suspected of planning to fire a missile at a sports complex in the city, the victim was interrogated intensively for 40 days, during which he was allowed to sleep for only two hours every three days. He was painfully shackled while in the interrogation room, and his interrogators regularly shouted directly into his ears. He was beaten and received threats to his life, as well as threats that his sick father would be detained, along with his brothers and wife, whom they threatened to deport from Jerusalem. In the end he confessed to everything they demanded. When he met an attorney, which was 21 days after his arrest, he stated that all the confessions he made had been false. His attorney is a colleague and a very good lawyer. She said that in such cases, there is no way that we can even consider challenging his confession in an evidentiary hearing. In such cases attorneys, including good, experienced attorneys, do not even contemplate challenging the evidence, because both the military and civil courts tend not to dismiss confessions given by Palestinians or evidence obtained in such circumstances.

It is not merely the lack of monitoring that allows all this to happen, but also the fact that detainees are held incommunicado until the end of the interrogation. PCATI recently published a report on the use of incommunicado detention, "When the Exception Becomes the Rule," together with Nadi al-Aseer [the Palestinian Prisoners' Club]. We found that in 70% to 90% of cases a person will not be released from incommunicado detention or permitted to meet an attorney until he or she confesses. There are other "light" cases in which the detainee is not prevented from meeting a lawyer, some of which involve children, who tend to confess at the first interrogation session, and some cases involving participation in protests and throwing stones.

Although we make more than 250 visits every year, in 2010 we submitted only 50 complaints against soldiers, the GSS or the police, on behalf of 33 victims who agreed to file a complaint, and a joint group complaint submitted on behalf of 40 victims. Many victims refuse to file a complaint. Obtaining permission to submit a complaint is almost always complicated by victims' lack of trust in the system. When we tell them, "We are from PCATI and we want to document what happened to you", their first response is, "Okay, so how will that help me or my fellow prisoners?"

Will I ever get justice? Will I be given compensation? Will I get released earlier? Will it help anyone else?" Unfortunately, we cannot answer with a definite "yes" to any of these questions simply because the GSS's impunity is absolute. That is, while more than 700 complaints of torture have been submitted over the past decade, there has not been a single instance in which a GSS interrogator has been criminally charged, prosecuted or convicted.

So how do we choose when to file complaints to the Israeli authorities? Usually it is in very harsh cases, or when the complaint is made on behalf of women or minors, but only in cases where the victim wants and asks us to represent him or her. When we find that a specific method of ill-treatment or torture is being used against several victims, we tend to submit a group complaint, especially if the victims refuse to have their names disclosed because the fear, for example, that the minute they or any

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of their family members file a complaint they will be denied a permit to receive medical treatment or to work in Israel. This fear stems from the fact that many aspects of their lives and their family members' lives are controlled by the Israeli army and they are still living under Occupation. One example involves a child who was raped. When we asked his father if he would consider filing a complaint he replied, "No way. I'm the only person who works and I have to feed three families. I'm not going to challenge what happened to my son. He's home now and that's the main thing."

As I said earlier, 100% of the 700 complaints of torture made against GSS interrogators over the past decade were closed without a criminal investigation. Analysis of PCATI's cases shows that complaints are met with two types of answers: either those that deny all or some of the facts, or – as was the case in 25 complaints that constitute around 15% of the cases submitted by PCATI between 2003 and 2009 – those in which the authorities do not deny the facts of the case, but decide that there is no legal basis to take any legal action, typically because of the "necessity defense". These complaints, in which the facts are not denied by the Israeli authorities, elucidate the meaning of being brutally tortured in Israel. The undisputed facts show that detainees were interrogated intensively by several interrogators for three to seven days, while being totally deprived of sleep. In a recent case we were very fortunate that the victim had the wherewithal to tell the military judge – when his lawyer was not in the courtroom, in accordance with his being held incommunicado – that he had been tortured. He said that he had been kept awake for more than 80 hours and brutally beaten. He said that the soldiers had broken his mother's arm when they arrested him, and that the interrogators had led him to believe that she was dying. All of this was recorded in the court's protocol. When his lawyer read the protocol he contacted us and we submitted a petition to the High Court of Justice to demand the GSS to stop the torture and allow him to meet an attorney, as he had already been



held incommunicado for twelve days. At the hearing the justices spoke to him on his own, in the absence of PCATI's lawyers and his criminal attorney, but also, and for the first time in such a case, in the absence of the GSS interrogators.

We were happy with this case, even though the court decided not to lift the incommunicado detention order, because Chief Justice Beinisch led us to believe that the victim had been heard and that the interrogation methods against which we complained would not be used in his interrogation. However, forty days after his arrest, when even the military court had decided to lift the incommunicado detention order, the state's attorney submitted a petition to the High Court of Justice to request that the incommunicado detention remain in force! Justice Levy eventually gave the GSS all the time it needed by deciding to hold the hearing on the day after the new incommunicado detention order, rejected by military court, was due to expire. Furthermore, he also decided during the hearing to grant the GSS an extra four days of incommunicado detention. (This is the same judge who decided last year that nine days of incommunicado for a Jewish security detainee accused of planning a terror attack against a Palestinian girls' school in East Jerusalem was excessive.)

We finally managed to meet the detainee only ten days after the incommunicado detention order had been lifted. The delay is a result of the many bureaucratic obstacles that are placed before actual meetings between attorneys and clients by the authorities. PCATI's attorney finally met him 50 days after his arrest. He told us that the GSS had interrogated him using all of the usual very painful stress positions, such as the "banana" and the "half-banana", and the various forced standing positions, which include being forced to stand on your toes, straight as an arrow, and being beaten if unable to maintain any of these positions (I would fall down after two seconds). All of these methods are considered torture, especially when combined with severe sleep deprivation and degrading conditions of detention. In addition, he was very painfully shackled in a manner that we refer to as "high shackling", where the detainee is not only shackled at the wrists, but the shackles are also pulled upwards, causing them to dig painfully into the flesh. More seriously, he indicated that his interrogators had tried to rape him, but did not want to go into the details in the presence of a female attorney. When asked about the High Court hearing, he said that it had been used by the interrogators to convince him that they had unlimited power over him, and that even Justice Beinisch, the head of the Israeli justice system, had approved the torture. A month has passed since that meeting, during which we have been trying to meet him in order to get a full affidavit, via a male attorney, and submit a complaint. And one should remember that he will remain in prison until the end of the trial, which could take years.

The "Sweti" case is the last issue that I am going to raise today. Sweti was arrested at the end of 2006 and was subjected to physical and psychological torture that we refer to as "family matters". His wife and father were brought to the same detention center, and the victim's father was shown to him dressed in a prison uniform as a



way of manipulating him. He was threatened that they would be harmed if he didn't talk. The aim was to make him believe that his father and wife had not only been detained but were also being tortured. As a result, he attempted to commit suicide on two occasions by smashing his head against a wall. In April 2007, we submitted a complaint on his behalf following two petitions to the High Court. When we presented his case to a Knesset committee in April 2008, we managed to get a rare admission from the GSS that his interrogation had not been conducted in accordance with the rules. We then went to court with his case, plus an additional four cases, to demand that family members should never be used as a method of interrogation.

The petition was submitted in 2008, and was dismissed in September 2010 for being overly general. The court noted the Attorney General's assertion that, following the Supreme Court's torture ruling of 1999, it was clear that the GSS could not use such interrogation methods, and that, as a rule, if a family member is not directly involved in the case itself, he or she should not be arrested or exploited. At the same hearing the court asked the State Attorney's representative what steps were being taken against the interrogators who had not followed the rules during his investigation, and we learned that nothing had been done. No one had been held accountable for his torture. We therefore submitted another petition, on 15 February 2010, this time specifically demanding the criminal investigation and indictment of specific interrogators who had broken the rules in his case. The response we received from the state was, however, that they would not be indicted because too much time had passed since the interrogation took place. They said, "Well, it is four years later now and they [the interrogators] have moved on with their lives." The case is still pending.

So what can be done? And what will happen? What will the court decide? Just as in all other cases of torture that have ended with no investigation or indictment, we do not know if justice will ever be done. For now we are waiting for a hearing, and you will probably hear about it in three or four years from now, when the court issues its decision.