



Report on Torture Practices in PNA Prisons and Detention Centers

Palestinian Centre for Human Rights / August 2010



Palestinian Centre for Human Rights (PCHR)

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Introduction:

A complete prohibition on torture is one of the most fundamental protections in human rights law, and constitutes a *jus cogens* norm of international law. It is enshrined in numerous international instruments, including the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966 and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984. Torture is also a violation of the right to life because torture risks a victims' life. In addition to risking a physical persons' life, it has long-lasting negative physical and psychological ramifications on both the victim and on their family.

There are different motivations for torture. Examples of why it is used are: in attempts to obtain confessions from prisoners and detainees; for criminal or political purposes; for real or alleged security reasons; for revenge; to damage political opponents or parties; based on racial and religious affiliations; or as a tool that enables the authorities to take control over an area from what they call internal and external enemies when they feel that their legitimacy is threatened.¹

There are a number of different definitions of torture. The most comprehensive definition of torture is articulated in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which was opened for signatures in December 1984. The Convention defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."²

Many international human rights instruments explicitly prohibit and criminalize all forms of torture and cruel, inhumane or degrading treatment. Article 2 (2) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that: "No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture."³ This quote illustrates that

1 Jacobsen Lone and Knud Smidt-Nielsen, the International Rehabilitation Council for Torture Victims, IRCT, and the Arab Institute for Human Rights, 2000.

2 Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN General Assembly Resolution 39/46 dated on 10 December 1984.

3 The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

these instruments do not allow for any derogation. In other words, there is no excuse or reason that can justify the practice of torture even based on maintaining the public interest or maintaining public order. "Thus, the prohibition on torture is absolute can be adopted as a motive to violate the prohibition of torture and other forms of maltreatment because the prohibition of torture is absolute."⁴ Relevant international instruments provide explicit provisions that prohibit torture under any circumstances, unlike, for example, other human rights such as the right to freedom of movement that can be restricted in some instances during states of emergency in specific geographical areas for time limited durations. The prohibition on torture is also enshrined in international humanitarian law, in particular in common Article 3 to the four Geneva Conventions of 1949.

Generally, for an action to constitute torture three essential elements must be present: (1) "the infliction of severe mental or physical pain or suffering, (2) by or with the consent or acquiescence of the state authorities and (3) for a specific purpose, such as gaining information, punishment or intimidation."⁵ However, with respect to, inter alia, war crimes and crimes against humanity, the second requirement, that of state involvement, is not present; torture may be committed by any individual regardless of their political affiliation.

While the world is witnessing unprecedented promotion of human rights norms and an ever-growing respect for human rights in accordance with the provisions and spirit of International Human Rights Law, physical and mental torture is still constantly committed all over the world. Incidents involving torture are reported in the news and in human rights reports all over the world every day. These reports address different brutal torture methods committed by official, and unofficial, authorities. These methods undermine human dignity and undermine the credibility of authorities when they talk about respecting human rights principles.

The issue of torture has remained one of the most controversial issues for the Palestinian National Authority (PNA) since its creation in 1994. Many Palestinians have been subjected to torture at the hands of members from the Palestinian security services. It should be noted that Palestinians have suffered for a long time from torture practiced by the Israeli occupation forces who used brutal torture methods, and many Palestinians died in Israeli prisons in solitary confinement cells from injuries resulting from torture.

Unfortunately, since its creation in 1994, the PNA has practiced different forms of torture in its prisons and detention centers, causing many

Punishment, UN General Assembly, 1984.

4 Younis, Mohammed Mustafa, *Treatment of Prisoners in View of the Rules and Principles of the International Law*, page 101, Arab Renaissance Publishing House, 1992.

5 Camille Gifard, *Torture Reporting Handbook*, Human Rights Center, Essex University, page 10, February 2000.

civilians to lose their lives. What is strange is that many interrogators, security officers and members of the different Palestinian security services who practice torture inside PNA prisons and detention centers experienced different forms of brutal torture in Israeli prisons.

With the beginning of the al-Aqsa Intifada (the Second Intifada) on 28 September 2000, the Israeli occupation forces systematically targeted the Palestinian security services which caused a decrease in politically motivated arrests and torture. However, this decrease was not brought about through a political decision-making process to prohibit torture. Instead it came about because of the political instability resulting from the Palestinian Intifada. It should be noted that torture did not cease completely but continued to be practiced in PNA prisons and detention centers.

The fact that law enforcement officials who practiced torture were not held accountable has aggravated the situation. PCHR has received dozens of complaints from Palestinians, including civilians, who were detained in PNA prisons and subjected to torture and to cruel, inhumane and degrading treatment. In response, PCHR has submitted many complaints to competent authorities but as of this report PCHR has not received any response. PCHR expresses grave concern over this inaction by competent authorities which shows, at a minimum, a lack of respect for human rights norms and, at the most, complicity with torture.

Acts of torture peaked during the reporting period with an increase in incidents beginning after the events of June 2007. Following the Palestinian Legislative Council (PLC) elections of January 2006, Palestinian society has witnessed an unprecedented rise in political tensions between the Fatah and Hamas movements. These political tensions erupted in very serious and bloody conflicts that peaked in June 2007. The armed conflict came to an end when Hamas took control of the Gaza Strip.

Following these events, the Palestinian President Mahmoud Abbas issued three presidential decrees. One declared a state of emergency in the Occupied Palestinian Territory (OPT), another dismissed Prime Minister Isma'il Haneya and the final decree formed a government to implement the rules and regulations of emergency rule. The result has been a split in the Palestinian political pyramid resulting in the formation of two governments, one in the West Bank and the other in the Gaza Strip.

The internal fighting and fragmentation has had serious repercussions for many elements of Palestinian society. Following the events of June 2007, there has been an unprecedented increase in human rights violations in PNA controlled areas and there has been a serious decrease in respect for human rights in the Gaza Strip and the West Bank. In

both the West Bank and the Gaza Strip institutions of the opposition have been closed, opposition newspapers have been banned from distribution and there has been a sharp increase of political arrests.

Torture has been utilized by both governments against Palestinians. Members of security forces have committed serious abuses against both political opponents and civilians. There has been an increase of political arrests documented against Fatah supporters in the Gaza Strip and against Hamas supporters in the West Bank. The two parties to the conflict regularly summon Palestinian civilians based on their political affiliations to security headquarters where they are threatened, interrogated or detained.

This report sheds light on acts of torture in PNA prisons since June 2007 and includes three main parts:

The introduction presented a brief definition of torture in Palestinian and international law, and presents a brief overview of the political conditions that have prevailed during the reporting period.

Part I shows examples of torture practiced by the PNA following the events of June 2007, and discusses torture methods adopted in PNA prisons and detention centers in the West Bank and the Gaza Strip. This Part also gives examples of acts of torture in both the Gaza Strip and the West Bank. It documents cases of victims who died because of torture and other cases of victims who were subjected to torture and to cruel, inhumane and degrading treatment.

Part II discusses the many international instruments constituting the body of International Human Rights Law and International Humanitarian Law that prohibit acts of torture and cruel, inhumane or degrading treatment. It also discusses Palestinian law, which prohibits these acts.

Part III includes the conclusion and PCHR recommendations.

Part I

Torture Practiced by the PNA Following the Events of June 2007

Torture is one of the most serious human rights violations practiced by the PNA since its creation in 1994. From 1994-2006, many civilians were tortured by the PNA. Some civilians died as a result of this torture. However, 2006 witnessed an increase, both in political arrests and in torture, being practiced by the PNA. Hundreds of Palestinians were put in prison and subjected to torture and cruel, inhumane or degrading treatment. Many prisoners died as a result of this torture. Torture was not only practiced against political prisoners but also against those accused of criminal violations. This fact indicates that torture has become an acceptable practice for anyone detained in PNA prisons and detention centers in the Gaza Strip and the West Bank.

The outbreak of the al-Aqsa Intifada (the Second Intifada) in September 2000 marked the beginning of a period of decreased hostility between the PNA and its opponents. Because of the warmer relationship there were fewer politically motivated arrests and a new atmosphere between the two parties was created. Within this atmosphere, public freedoms were respected in preparation for the Presidential elections in 2005 and the PLC elections in January 2006. PCHR considered this an important point in the process of democratization and considered the elections to be transparent because they expressed the will of voters.

The Change and Reform Bloc of Hamas were declared the winners of the PLC elections of January 2006 gaining the majority of PLC seats. Hamas formed a government and the international community boycotted the new government causing political fragmentation and a sharp increase of political tensions manifesting in armed conflict. Violence peaked during the second week of June 2007 with bloody clashes between the Fatah and Hamas Movements. The fighting concluded with Hamas taking full control over the Gaza Strip on 15 June 2007. The result was a split in the executive, judicial and legislative powers between the West Bank and Gaza Strip.

This fragmentation has significantly affected all aspects of Palestinians' life. Palestinian society has witnessed violations committed by both parties to the conflict which negatively impacts public freedoms and human rights. Media institutions have been closed, journalists attacked and there have been further restrictions on, and violations to, the right to freedom of opinion and expression and the right to peaceful assembly. In addition, charities, sports clubs and offices of political parties have been closed. In the Gaza Strip, the government took control over the judiciary and the two parties made numerous political arrests often

resulting in the torture of political opponents⁶.

Evidence available to PCHR indicate that torture in prisons and detention centers generally takes place in two ways. The first is when security services affiliated with PNA in the West Bank and with the government in the Gaza Strip torture political opponents. This is an effect of the political fragmentation. Periods of political tension between the two parties and failure of the reconciliation efforts witnessed notable increase in summons delivered to supporters of Fatah in the Gaza Strip and supporters of Hamas in the West Bank who were subjected to torture and cruel and degrading treatment in PNA prisons and detention centers in the Gaza Strip and the West Bank. The second is torture being committed during criminal investigations on persons suspected to have committed criminal offenses.

PCHR fieldworkers interviewed hundreds of civilians who were subjected to different forms of torture at the hands of members of the security services in the Gaza Strip and the West Bank. The majority of them reported that they were subjected to torture and to cruel, inhumane or degrading treatment in the West Bank at the hands of members from the Preventive Security Service (PSS), the Palestinian General Intelligence Service (GIS) or the Military Intelligence Service (MIS). In the Gaza Strip people reported torture from members from the Internal Security Service and the Police (Criminal Investigation Service, Drug Control Service and the Executive Force).

Beginning in 2007, instances of torture rose. The year 2009 witnessed an unprecedented increase in the number of torture victims who died in prisons and detention centers in the Gaza Strip and the West Bank. During 2009, 9 Palestinian prisoners (5 prisoners in the Gaza Strip and 4 in the West Bank) died in PNA prisons. In 2008, 3 prisoners (2 in the West Bank and 1 in the Gaza Strip) died in PNA prisons and detention centers. Investigations conducted by PCHR and statements given by eyewitnesses and families of the victims have proven that the deceased were subjected to torture or suffered cruel detention conditions which lacked minimum standards provided for in domestic and international laws.

PCHR has encountered many difficulties in attempting to observe, document and follow up on the issue of torture. These difficulties include, problems reaching torture victims and PCHR lawyers being repeatedly prevented from visiting prisons and detention centers to check detention conditions.⁷ PCHR also faced challenges and difficulties trying to convince many torture victims to talk about their experience as

6 See PCHR press release, Ref: 77/2008, «PCHR Calls upon the Two Palestinian Governments to Put an End for Political Arrests,» published on 28 August 2008.

7 See PCHR press release, Ref: 71/2008, published on 06 August 2008 and PCHR press release, Ref: 88/2009 «PCHR Denied Access to Clients Detained in ISS Prisons in Gaza.»

the majority of them said they were afraid of being arrested and tortured again for giving testimonies.

PCHR was able to follow up many cases in which prisoners were subjected to torture and cruel, inhumane and degrading treatment at the hands of authorities. PCHR sent many complaints to the appropriate authorities regarding torture being committed by members of the different security services. PCHR also sent a complaint to the head of the General Supervision, Human Rights and Public Freedoms Commission in the Palestinian Legislative Council (PLC) in the Gaza Strip asking him to determine the location of detention centers and to allow PCHR lawyers to visit prisoners in these centers to check their conditions. Unfortunately, PCHR has not received any responses from the PLC General Supervision, Human Rights and Public Freedoms Commission. PCHR also sent a complaint to the General Supervisor of the Ministry of the Interior, in his capacity as the competent authority supervising the members of the security services, calling upon him to open investigations into torture incidents but PCHR has not receive any response.

It should be noted that the cases reported in this report are only examples of incidents of torture practiced against a sample of prisoners. These cases do not necessarily represent the most significant and flagrant torture cases. It also should be noted that this report does not include many incidents of torture practiced by unknown armed groups which has resulted in the loss of many civilians' lives.

This section of the report presents a detailed explanation of physical and mental torture methods employed in detention centers in the West Bank and the Gaza Strip according to testimonies collected from torture victims.

Torture Methods Employed in PNA Prisons and Detention Centers

PCHR has documented methods of torture, both physical and mental, employed by the security services in prisons and detention centers in the West Bank and the Gaza Strip. These methods were documented through testimonies given by torture victims, reports of the forensic medicine department and testimonies of the torture victims' families. The most significant physical and mental torture methods included:

- » **Severe beating:** prisoners are severely beaten using sticks and cables.
- » **Slapping in the face:** prisoners are slapped in the face to cause them harm and to infringe on their dignity.
- » **Punching:** prisoners hit with closed fists in the face, teeth and abdomen.
- » **Kicking:** prisoners are kicked in the abdomen and the buttock and they are violently pushed to the ground.
- » **Beating prisoners on the soles of their feet:** the feet of prisoners are lifted with a rope and a stick. Sticks or cables are then used to beat the soles of the feet until their feet become swollen and the prisoners

cannot walk. According to testimonies collected, the majority of the torture victims were then forced to walk in cold water. This appears to be a method used by the jailers to hide the signs of beating and to prevent swelling.

- » **Shabah:** prisoners are blindfolded and their hands are handcuffed behind their back. Then they are hanged from the wrists without allowing the feet to touch the ground. In some cases, prisoners are hanged from the feet with their head hanging just above the ground. During Shabah, prisoners are beaten with clubs and insulted.
- » **Putting cigarettes out on prisoners' naked bodies:** cigarettes are put out on the naked bodies of prisoners.
- » **Hair shaving:** prisoners have their hair and moustache shaved in an attempt to cause indignity.
- » **Solitary confinement:** prisoners are held in narrow cells in an area not exceeding 2 m.2 The cells have a foul smell and are intentionally kept hot and humid. They lack minimum level of humanitarian needs such as blankets and WCs. Prisoners are totally isolated from the outside world in these cells. In most of cases, cold water is poured on the floor so prisoners cannot sleep.
- » **Threats of sexual abuse:** prisoners are threatened with sexual abuse. Together with this, they are insulted and their female relatives are yelled at using obscene words.
- » **Insulting prisoners with obscene words:** prisoners are insulted and yelled at in an obscene manner. They are insulted with accusations that they cooperated with the Israeli cooperation. This is the cruelest psychological torture because the majority of prisoners are detained on political grounds and they consider themselves leaders of the national movement.
- » **Death threats:** prisoners are threatened with death if they do not confess.
- » **Practicing torture against a third party:** prisoners are forced to hear the cries of other prisoners while they are being subjected tortured. Or they are made to believe that other persons being subjected to torture and they will be the next.
- » **Repeated summons in cruel conditions based on political grounds:** dozens of civilians reported that they were summoned and as they headed to detention centers they were forced to stand in the cold weather or in the sun for lengthy periods. Then they were released at the end of the day.
- » **Cleaning detention cells using toothbrushes:** it a new torture method observed by PCHR. Prisoners are forced to clean cells using a toothbrush.
- » **Standing on small cans (tomato cans):** it is also a new torture method. Prisoners are forced to stand for lengthy periods on small cans.

It should be noted that the effects of torture affect the entire family. In several cases, civilians were arrested and detained and their families

were not informed of their detention place for days and in some times for weeks. These families remained anxious for their sons, subjecting them to psychological torture.

Torture in the Gaza Strip

During the period between June 2007 and the publication of this report there was a sharp increase in the practice of torture by security members. It has become a main tool to deal with prisoners in prisons and detention centers. Many civilians were killed as a result of torture at the hands of members of the security forces. During the reporting period, PCHR documented 8 cases in which detainees died in prisons and detention centers belonging to the security services in the Gaza Strip. PCHR has verified conclusively that the majority of deaths were caused by torture. While it cannot be proven conclusively that the other deaths were caused by torture the deaths were mysterious and PCHR strongly believes they were caused by torture. PCHR also documented cases in which civilians were subjected to cruel, inhumane and degrading treatment. PCHR notes that many civilians died of torture committed by unknown persons or armed groups. These cases are not mentioned in this report⁸.

8 See PCHR press release, Ref: 141/2007, «PCHR Calls for Investigation into the Death of a Palestinian Who Was Detained by Militants», published on 21 October 2007.

Torture Cases Resulting in the Death of the Victim in the Gaza Strip

Case no. (1):

Death of Fadel Mohammed Saleem Dahmash (whose deceased body was transferred to the hospital with signs of torture evident on his body)

On 10 July 2007, Fadel Mohammed Saleem Dahmash, 31, from Deir al-Balah died.

That evening his body was brought into al-Shifa Hospital in Gaza City from Gaza Central Prison. His body showed signs of torture.

Mr. Dahmash was captured by the al-Quds Brigades (the armed wing of the Islamic Jihad) on suspicion of collaboration with Israeli occupation authorities. On Thursday 5 July 2007 the al-Quds Brigades posted a video clip on its website of a person, whom it described as a collaborator with Israeli security services. They identified that person as F.D. The web page reported that the al-Quds Brigades captured him red-handed on Wednesday, 4 July 2006, in the eastern section of the Gaza Strip. The video clip shows a person getting out of an Israeli military jeep, taking off his military uniform and putting on civilian clothes at the border between the Gaza Strip and Israel and then jumping over the border to enter the Gaza Strip. Samir Dahmash, the victim's brother, informed PCHR's fieldworker that al-Quds Brigades released his brother on Thursday, 5 July 2007. At that time there were signs of torture on his body.

On Friday, 6 July 2007 the Executive Force detained him and he was taken to Al-Aqsa Martyrs Hospital in Deir El-Balah. The Executive Force then took Mr. Dahmash to an undisclosed location later that morning. Hospital records indicate that the victim was admitted to the surgery ward and released on the same day. No information was available until the body of Dahmash was transferred to al-Shifa Hospital from Gaza Central Prison on 10 July 2010. PCHR maintains a file for Dahmash including photos of his body showing signs of torture in the different parts of the body.

Case no. (2):

Death of Waleed Salman Abu Dalfa (who was subjected to torture, Shabah and beating)

On Sunday evening, 15 July 2007, the body of Waleed Salman Abu Dalfa, 45, from Gaza City, was carried on a litter by security members into the reception area at al-Shifa Hospital in Gaza City. According to the doctor who conducted the initial examination there were "bruises on the hands and the legs, hematomas in the legs and signs of stranglehold on the neck." A forensic specialist who examined the

body on Monday morning, 16 July 2007, verified these results. This examination was conducted in the presence of a representative of PCHR and a relative of the victim.

Members of the Internal Security Service arrested Abu Dalfa and his brother Khalil on Monday, 9 July 2007 at approximately 23:30 from their home in the al-Nasser neighborhood of Gaza City. The two brothers were taken to al-Mashtal outpost in the north of al-Shati refugee camp, west of Gaza City. According to investigations conducted by PCHR, the two brothers were blindfolded, handcuffed and detained in two separate, but adjacent rooms. They could hear each other's voice. The two brothers were subjected to beating and torture, including forcing them into the Shabah position and pouring cold water onto their bodies. The two brothers were screaming from pain and lost consciousness more than once. At approximately 20:30 on Sunday, 15 July 2007, Khalil could not hear the voice of his brother Waleed so he started screaming for him. Then, a number of masked persons entered the room and took the cover off his eyes and told him that his brother refused to eat. Khalil heard one of those persons saying "You tied him in a wrong way," and requested the release of Khalil. However, Khalil refused to leave the outpost without information about his brother Waleed. He was informed that Waleed lost consciousness and was taken to al-Shifa Hospital. As soon as they were released, Khalil and his brother Wa'el who was arrested on 12 July 2007 went to al-Shifa Hospital where they found their brother Waleed dead.

PCHR maintains a file of Abu Dalfa including photos of his body showing signs of torture.

Case no. (3)

the Death of Rami Khalifa (suspicious circumstances)

On 13 December 2007, Rami Mohammed Khalifa, 26, from Rafah city, in southern Gaza, died. Khalifa was arrested by members of the Palestinian police on 4 December 2007 and was detained in Gaza Central Prison on criminal charges. The police in Rafah arrested Khalifa and his brother Mohammed, 17, on suspicion of murdering 15-year-old Mahmoud Bassem al-Sha'er, who disappeared on 2 December 2007. On 6 December 2007, his body was discovered in Khalifa's house in al-Shaboura refugee camp in Rafah.

According to investigations conducted by PCHR, at approximately 15:15 on Thursday, 13 December 2007, the body of Rami Mohammed Khalifa was transported in a police vehicle from Gaza Central Prison to Shifa Hospital in Gaza City. According to the forensic department at the hospital, no signs of torture or injuries were seen on the body but Khalifa was suffering from stomach ulcer. Samples were taken from tissues to find out the cause of death. According to Khalifa's family, he had not suffered from any health problem before being arrested by the

Palestinian police on 4 December 2007. His father said that they did not receive a copy of the forensic report explaining cause of death. At the time, PCHR called upon the Attorney-General to investigate Khalifa's death as mandated by the Criminal Procedures Law of 2001.

Case no. (4):

Death of Taleb Mohammed Abu Sitta (death witnessed by his son)

On 27 June 2008, Taleb Mohammed Abu Sitta from al-Zawaida village in the central Gaza Strip died. According to investigations conducted by PCHR and testimonies of Abu Sitta's family, at approximately 01:00 on Thursday, 26 June 2008, police officers went to Taleb Mohammed Abu Sitta's house accompanied by his son, 26-year-old Mustafa, who had been arrested on the previous day. They searched the house for drugs. They then arrested Abu Sitta and took him to Deir al-Balah police station. At approximately 07:00 on Friday, 27 June 2008, Abu Sitta's body was transported in an ambulance from the police station to al-Aqsa Martyrs Hospital in Deir al-Balah. From there the body was transported to the forensic department at al-Shifa Hospital in Gaza City.

The victim's son, Mustafa, whom the police released after the death of his father, told PCHR that he was violently beaten and tortured during interrogations in Deir al-Balah police station. He indicated he was detained with his father. He added that police officers tied his father's hands and feet to a bed and beat him. They violently beat him and his father during several rounds of interrogation, which continued until Friday morning. At approximately 06:00 on Friday, 27 June 2008, police officers woke him and ordered him to help his father who was lying on the ground near the door of the room. They then ordered him to fill a bottle of water and splash it on his father's face but Taleb Abu Sitta died. A PCHR field worker reported that he could see clear signs of beating on Mustafa's feet.

Case no. (5):

Death of Jameel Shaqqura (who was beaten till he lost consciousness and died)

On 06 February 2009, the Internal Security Service (ISS) arrested Jameel Shafiq Shaqqura, 51, from Khan Yunis refugee camp located in the southern Gaza Strip. The victim's brother, 'Aatef Shaqqura gave PCHR the following testimony:

"At approximately 20:30 on Friday, 30 January 2009, I got a phone call from my brother Jameel who told me that he received a phone call from ISS members telling him to appear before the ISS to give his testimony in a criminal case of three friends of his. He was asked to appear before ISS in Khan Yunis Sports Club within half an hour of the call. I told him to go to meet with ISS. I met with him near the

Sports Club and saw him entering into the Club. Then I returned to my home. At approximately 06:30 on Saturday, 31 January 2009, a staff member of Nasser Hospital informed me (unofficially) that my brother Jameel had been admitted into the hospital and that he was in a serious condition and suffered from brain clot. I went to the hospital immediately. Jameel was in a bad condition. His arm and left leg were paralyzed. I saw signs of beating on his head and limbs. On Sunday, 01 February 2009, Dr. (A. H.) told me that my brother was suffering from a hard brain clot and from heart problems. He was admitted to the Heart Diseases Department where he remained 24 hours. Jameel told me that as soon as he and his friends entered Khan Yunis Sports Club, they were handcuffed, blindfolded and taken to an unknown destination. At that location they were violently beaten. He fainted from the violent beatings and was transferred to Nasser Hospital. His condition deteriorated and he was admitted to the intensive care unit. He went into a coma and was pronounced dead on Friday, 06 February 2009."

It should be noted that on Friday, 06 February 2009, a delegation of Hamas members including Sheikh Said Zu'rub, a leader of Hamas in Khan Younis, went to pay their condolences to the Shaqqura family. They told the family that what happened was an error and that they were ready to make reparations. They returned later in the day and repeated their willingness to make reparations. On Saturday evening, 7 February, another delegation of Hamas members, headed by Dr. Younis al-Astal, Member of the Palestinian Legislative Council (PLC) went to pay their condolences to the Shaqqura family in Khan Yunis. Dr. al-Astal delivered a speech indicating that: "Shaqqura was unjustly killed. Hamas movement is responsible for his death."

Case no. (6):

Death of Nehad Sa'adi al-Dabbaka (two days after being arrested, his family saw him in the mortuary with torture signs on his body)

On 09 February 2009, Nehad Sa'adi al-Dabbaka, 47, from the al-Maghazi refugee camp in the central Gaza Strip died as a result of torture. Medical sources from the Forensic Unit at al-Shifa Hospital spoke to a PCHR field worker, and confirmed that the body of Nehad al-Dabbaka bore clear signs of beating on the hands and feet as well as marks from torture throughout his body. This clearly indicates that Nehad al-Dabbaka may have died as a result of having been beaten and tortured by members of the Palestinian police. PCHR interviewed the victim's brother, Majed Sa'adi al-Dabbaka, who told the PCHR fieldworker the following:

"At approximately 10:00 on Saturday, 07 February 2009, my wife told me that masked gunmen arrested my brother Nehad at approximately 23:00 on Friday, 06 February 2009. I headed to al-Maghazi Services Center which was used by the Palestinian police

after the police station was bombarded by the Israeli forces. I met with a member of the police who I know personally. I asked him if my brother Nehad was detained by the police, or by armed groups. He told me that his name was listed among persons who were detained by the police. At approximately 11:00 on Monday, 09 February 2009, I got a call phone and I was told that the body of Nehad was in al-Aqsa Martyrs Hospital. When I arrived at the hospital, I saw the body of my brother in the mortuary. After doctors checked the body, we were allowed to see his face and hands only. He was then transferred to the Forensic Unit. At approximately 13:30 on 09 February 2009, (S. Q.)⁹ came to our house as a mediator sent by the ISS. He asked us to bury Nehad's body. He told us that the ISS did not torture him but only beat him on his feet. He said that when Nehad was informed of the charges directed to him he lost his nerves and had a heart attack. We refused to bury Nehad's body before receiving the report of the Forensic Unit. At approximately 15:00 on the same day, I headed with my brothers and other relatives to al-Shifa Hospital. We entered to the mortuary room and saw the body of Nehad. Signs of torture were apparent on his feet, back, arms and torso. I took photos of him using my mobile. On Tuesday, 10 September 2009, we went to al-Shifa Hospital and requested a copy of the report of the Forensic Unit but we were told that we had to get it from the office of the Attorney General after two days."

Case no. (7):

Death of Zayed 'Ayesh Mabrouq Jaradat (one days after being arrested, his family found him dead in the hospital)

On 16 March 2009, Zayed 'Ayesh Mabrouq Jaradat, 40, from the al-Shoka village in east Rafah in the southern Gaza Strip died. Zayed Jaradat was pronounced dead on arrival at Martyr Mohammed Yousif al-Najjar Hospital in Rafah. Sources from the police stated that Jaradat was detained in the police station in Rafah. The PCHR fieldworker who visited the forensic department at al-Shifa Hospital in Gaza City took photographs of the body which showed clear signs of torture throughout the body as well as signs of shackles on his arms and legs. The PCHR fieldworker also reported that Jaradat's toenails had been removed. This evidence clearly indicates that Jaradat had been subjected to torture during his detention. The victim's wife told the PCHR fieldworker the following:

"At approximately 12:30 on Sunday, 15 March 2009, Zayed came to the house with the police because he had admitted that he possessed drugs in the house. At the house he denied that he had drugs saying he had only made the admission because he thought the policemen would stop beating him. This sequence of events took place a number of times. Every time he was beaten. At

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9 PCHR maintains the name.

approximately 15:30 on Monday, 16 March 2009, my relative Nayef Abu Jarad received a phone call from someone who did not mention if he was a policeman or staff of Martyr Mohammed Yousif al-Najjar Hospital in Rafah city. The caller told my relative that the body of Zayed was in the hospital and that they wanted to transfer it to the Forensic Department in Gaza City.”

Case no. (8):

Death of Zayed ‘Ayesh Mabrouq Jaradat (one day after being arrested, his family found him dead in the hospital)

Jamil Naser ‘Assaf, 20, from the ‘Asqoula neighborhood in Gaza City, died after he was tortured by members of the security services. According to PCHR’s investigation, at approximately 01:30am on Tuesday 24 March 2009, medical staff at al-Shifa Hospital in Gaza City pronounced Jamil Naser ‘Assaf dead. ‘Assaf died from severe kidney failure resulting from beatings and other torture carried out by members of the Security Services. The injuries were sustained while Jamil ‘Assaf was being detained at al-Tufah police station on charges of theft. The victim’s mother, Nuha Zaki ‘Assaf, 46, gave the following statement to PCHR:

“At approximately 09:00am on Sunday 8 March 2009, members of the General Intelligence Service arrested my son, Jamil, from his house. They accused him of theft and led him to an unknown destination. On 12 March 2009 we heard that Jamil was detained at al-Tufah police station on theft charges. The following day, 13 March 2009, Jamil was transferred to al-Shifa Hospital in Gaza City. He was unconscious. After medical checks, it was found out that he suffered severe kidney failure after he had been severely beaten and tortured by members of the Security Services. He was immediately admitted to the intensive care unit due to the seriousness of his health condition. He died of his injuries on Tuesday, 24 March 2009.”

Dr. Abdullah al-Qishawi, a specialist in kidney and internal diseases, said that “‘Assaf was admitted to hospital because he suffered severe kidney failure due to muscle tearing, and bruises on the body.” Medical sources in the forensic medicine department at al-Shifa Hospital said that ‘Assaf was beaten and tortured, and that bruises could clearly be seen on his upper and lower limbs.

Torture and Degrading Treatment in Prisons and Detention Centers in the Gaza Strip

Hundreds of Palestinian civilians in the Gaza Strip were tortured and subjected to cruel, inhumane or degrading treatment at the hands of members from the security services, especially the Internal Security Service (ISS) and the police (Police (Criminal Investigation Service, Drug Control Service and the Executive Force). PCHR has documented many cases of detainees held on different charges including criminal, security and political, who were tortured while being detained. PCHR also documented dozens of cases of political activists, especially activists from Fatah, who were subjected to inhumane and degrading treatment in the Gaza Strip.¹⁰ Dozens of those who were detained on political grounds reported that they were detained for long hours in cruel and degrading circumstances in an attempt to humiliate them or break them down. They also reported that they were beaten, forced into the Shabah position, insulted and accused of collaboration with the occupation. Some of them had their heads and moustaches shaved in an attempt to insult them, degrade them and affront their dignity.¹¹ PCHR received dozens of complaints and statements in which the complaining persons reported that they were tortured.

The following presents a number of examples of torture practiced by members of the security services against Palestinian detainees. PCHR notes that these cases do not necessarily represent the most significant examples.

Case no. (1):

(A. Sh.) "They forced me into the Shabah position and they beat me."

At approximately 19:00 on 6 November 2009, a force from the Drug Control Service stopped the car of (A. Sh.), born in 1972, from Jabalia refugee camp and arrested him. The members of the force were in civilian clothes. A. Sh. who is a taxi driver was taken to the police Station (drug control section) in Jabalia without any explanation and without an order from the Attorney General. A. Sh. Was forced into the Shabah position and was violently beaten. He was also beaten on the soles of his feet. He stated the following to PCHR:

"At approximately 19:00, four or five people in civilian clothes ordered me to stop. Three of them got into my car and told me that they were members of the police. They forced me to get out of the car and to get into another car. They took me to Jabalia police station. They handcuffed my hands behind my back and used a rope to tie the handcuffs to my legs. They tied me to a cord attached to a

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 10 See PCHR press release, Ref 99/2008, published on 09 November 2008.

11 See PCHR press release, Ref: 164/2007, «PCHR Calls for Investigation into Methods of Torture Practiced by Palestinian Police in the Gaza Strip,» published on 18 November 2007.

pulley in the ceiling. I was hung from the ceiling for approximately 45 minutes. In the meantime, they swung me and questioned me about collaboration with the occupation. One of the interrogators said 'you are collaborator'. He asked me about the members of my group and who employed me. Because of the severe pain, I told them 'I am a collaborator. Please release me.' They said 'not now. We need to know what you have.' The cord ruptured.... I was then taken to a solitary confinement cell and they forced me to take off all of my clothes. I was handcuffed and blindfolded. They poured cold water on me every approximately five minutes. Approximately one hour later, they took me out of the cell and pushed me to the ground. They then tied my legs with a cord and attached it to a stick. They beat me on the soles of my feet. Every time they beat me they ordered me to get up and walk on cold water. They beat me with military shoes on my chest. They pressed my chest. They handcuffed my hands behind the back again and forced me into the Shabah position. Two of them tied me with the cord that was attached to the pulley. One of me pushed me from my shoulders and the other from my legs. They swung me. They tortured me a while and had fun for a while. This took approximately 20 minutes. The cord ruptured again and I fell on my face to the ground. I lost consciousness. When I woke up, I was in the hospital. At the hospital, one of the members of the security forces said to me 'if you want to be released, if the doctor asks you about the cause, tell him that you fell to the ground.' they also asked me to give them money to buy medicine for me. I told them that I had 70 NIS in my car. They bought me medications at my expense. They then left me to go to the investigation office. One of them came to me and told me to call my family. Approximately 15 minutes later, members of my family came and I left the police station. It was approximately 13:00 on 07 November 2009."

Case no. (2):

(W. S.) "They beat me on the soles of my feet"

On 08 January 2010, W.S.¹², from al-Falouja area in the northern Gaza Strip, was summoned appear before the Investigation section at the Jabalia police station. W.S. was violently beaten on different areas throughout his body using clubs and hoses. W.S. is married and a father of five children. In the past, he suffered from injuries in his left leg and he takes medications because he is suffers from a heart clot. In his testimony to PCHR, W.S. stated the following:

"On Friday, 08 January 2010, I was summoned to appear before the General Investigations at the Jabalia police station. I went to the police station. As I arrived, I heard people shouting 'Allahu Akbar'. The screaming was coming from the General Investigations Department.

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12 PCHR maintains the name.

I was frightened. I saw two policemen and asked them where to go. They pointed to the door of the room from where the screaming was coming. When I entered the room, an interrogator asked me if I was W.S. I said 'Yes, it's me.' Beside him, there were four men who had cables and clubs in their hands. They asked me if I had a mobile and I told them that I did not have a mobile. They asked me to take my clothes off. I took off my jacket. I did not take off my trousers or my underwear. They then blindfolded me and handcuffed my hands. They pushed me into an adjacent room causing me to fall to the ground. They wanted to raise my legs in order to tie them but they saw an old injury. One of them asked me about the cause of the injury asking 'is it from the war or did the Izz Addin al-Qassam Brigades shoot you?' I told him that I sustained this injury during the First Intifada and that I had five injuries in different part of my body. I also told them that I had the main vein cut. They did not care about what I said. They tied my legs and beat me on the soles of my feet. Five minutes later, I heard someone telling them 'he has injuries.' They dropped my left leg and resumed beating me on the sole of my right leg. They stopped after 15 minutes and asked me to get up and walk. I was not able to get up so they beat me on different part of my body. Then they removed the blindfold and placed me in a solitary confinement cell. During this time, they beat me every five or ten minutes. One of them hit me on the back and I lost consciousness as a result. Other persons who were detained with me told me later that they left me for ten minutes. When I regained consciousness, I asked one of them about the charges directed against me. He told me 'you are the leader of Fatah in the region. The Interior Minister wants that.'"

Case no. (3):

(A. H.): "They punched me, slapped me on my face and forced me to sign documents that I have no idea about"

On 10 January 2010, A.H.¹³ was summoned to appear before the police in Jabalia. A.H was born in 1988 and he lives in Tal al-Zaatar in Jabalia refugee camp. He is a volunteer in the emergency department of the Ministry of Health. A.H. was summoned to appear before the police in Jabalia. When he arrived at the police station he was violently beaten by members of the police. They punched him, slapped him on the face and beat him on wounds from a surgery that he undergone. A.H. was threatened and forced to sign documents. He does not know what they said. In his testimony to PCHR, A.H. stated the following:

"As soon as I arrived at the police station, five persons attacked me. They blindfolded me and put me in a solitary confinement cell. I remained there for approximately 30 minutes. Then they took me out of the cell and handcuffed me. One of them pushed me to the

ground. They tied my legs with a cord to a stick and beat me on the soles of my feet for approximately 45 minutes. They then asked me to jump to prevent blood from gathering in my feet. I told them that I suffer from heart disease and that I had undergone an operation on my heart. The interrogator pinched me directly on the surgical wounds. I placed my hand on the wound but he slapped me on my face. I tried to protect myself but he punched me again on the wound. He said to me 'you must admit that you deal Tramadol.' He then ordered some of the police to tie me. They blindfolded me, handcuffed my hands and tied my legs. They beat me on the soles of my feet again. While they were beating me, I told them that I wanted to admit that I deal Tramadol. They removed the tie on my legs and the blindfold. The interrogator, (N.Kh.), was sitting behind his desk. He gave me a document that had a number of questions and answers. I read the document and found that it said that 'I have 23 cartons of Tramadol.'¹⁴ The interrogator asked me to relax my hand and he forced me to sign the document. They then blindfolded me and returned me to the solitary confinement cell. Approximately 30 minutes later, I was taken out of the cell and other members of the police beat me on the soles of my feet for the third time. They also forced me to sign another two documents and then returned me to the cell. At approximately 09:00 on the following day, [11 January 2010], they told me 'If you tell anybody about what happened here, we will kidnap you and you will not see your son.' They gave me my mobile, ID card and other things that I had and they released me."

Case no. (4): (H.N.):

"They put me in the boot of a car. They beat me with an iron hammer"

(H.N.)¹⁵, 23, from Maan village in Khan Younis, reported that he was tortured by members of the security forces in the police station in Khan Younis. N.H. had a dispute with a member of the security forces who tried to arrest him on Tuesday, 30 March 2010, as N.H. was walking near Jaser building near Khan Younis refugee camp. After he fought with members of the security forces one of them took out his pistol but it was broken so they didn't arrest H.N.. Members of the security forces managed to arrest H.N. in the early morning hours of Wednesday, 31 March 2010, in Maan village. In his testimony to PCHR, H.N. told the PCHR fieldworker the following:

"At approximately 01:00 on Wednesday, 31 March 2010, I was in a vacant piece of land in Maan village when a man called (H.Gh.)¹⁶ surprised me on a motorcycle. I tried to escape but he pointed his pistol at me. I stopped and he asked me to lie down on the ground.

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14 Chemical drugs that affects the central nerve system.

15 PCHR maintains the name.

16 PCHR maintains the name.

I asked him who he was but he ordered me to keep silent and he threatened me with the pistol. I sat down on the ground and he attacked me and beat me with his pistol on my head and on different parts of my body. Then another person who I recognized later to be (F.S.) who works with (H.Gh.) in the General Investigations Service came to the scene.

They put me in a Subaru car. They handcuffed me and tied my legs and drove me to an area that I did not recognize. They beat me when I was in the car. We drove for between five and ten minutes. They dropped me in a vacant piece of land and beat me some more. They then put me back in the car and they drove me to another place and beat me again. This time one of them was jumping on my back. They also insulted me. This took approximately one hour and a half. I heard one of them talking in his mobile. He said: 'We captured the dog H.N..' Then they put me in the boot. The car drove for a short while and I was dropped in Khan Younis police station. Many members of the police started shouting 'Allahu Akbar' when they saw me. They pushed me to the ground and beat me violently. They pulled me to a room in the police station and between 7 and 15 members of the police beat me on different parts of my body. Then H.Gh. came and beat me. During this time they called the guy with whom I had the dispute. He came with civilian clothes and he put a bullet in his pistol and said: "I will shoot you.' Members of the police stopped him and took the pistol. He then brought a large hummer and beat me on my legs, my abdomen and on my arm. Some members of the police said to him: 'You cannot do this. You will make problems for us.' He stopped beating me and he brought a scarf. He blindfolded me and tied my hands and legs together. He put the hummer between my hands and legs. Then somebody started beating me for half an hour. Then I heard him saying: 'Like this I am happy. I restored my right.' Then members of the police removed the tie. I tried to get up but he hit my head with a chair. He also hit my shoulder with a stone and left the room. Five minutes later, members of the police poured water on my clothes and me got wet. One of them brought a hose and hit me on my head. He then brought a loaf of bread and ordered me to eat. I could not eat and they started laughing at me. When the members of the morning shift came in they spat at me from the window of the room where I was detained. They beat me sporadically until the afternoon. In the afternoon, some of them came and beat me with their hands and with clubs. At approximately 14:00 on Wednesday, 31 March 2010, they interrogated me about my work with the Preventive Security Service. During the interrogation they spat at my face and they beat me. They ordered me to clean some rooms and WCs.

They then transferred me to Khna Younis Services Club where I was detained with other persons until 09:00 on Thursday, 01 April 2010,

when they transferred me to the Office of the Attorney General. They threatened me and told me not to tell the judge that I was tortured. The Supervisor General of the Ministry of Interior visited me in the detention center and witnessed signs of torture on my body. He gave instructions to the members of the police to take me to hospital. I was admitted to hospital on 04 April 2010 and remained there until 11 April 2010.”

Torture in the West Bank

The period from June 2007 until the date of this publications witnessed a remarkable increase in the practice of torture by members of the security services against detainees in prisons and detention centers in the West Bank. There is overwhelming evidence of the practice of torture despite many official denials. PCHR documented many cases in which torture was practiced by members of the Palestinian security services in PNA prisons and detention centers in the West Bank. Since mid-June 2007, seven Palestinians have died in prisons and detention centers in the West Bank.

This part of the report discusses cases in which detainees died in prisons and detention centers in the West Bank as a result of torture or under mysterious conditions, which evidence suggests was caused by torture. Through its investigations, PCHR stresses that the majority of these deaths were caused by the practices of members of the Palestinian security services in the West Bank, especially the Palestinian General Investigations Service, the Preventive Security and the Military Investigations Service.

Torture Cases Resulting in the Death of the Victim in the Gaza Strip

Case no. (1):

Death of Majed Abdul Aziz al-Barghouthi (who was beaten, forced into the Shabah position and beaten on the soles of his feet, causing his death inside the prison)

On 22 February 2008, Majed Abdul Aziz Mustafa al-Barghouthi, from Kober village, northwest of Ramallah, died. Members of the General Intelligence Service (GIS) in Ramallah arrested al-Barghouthi on 14 February 2008. Azzam Fathi Musa Nahel who was detained by the GIS in a solitary confinement cell neighboring to the one where al-Barghouthi was detained in the GIS prison near Jawwal street in Ramallah told the PCHR fieldworker the following:

“I was arrested on 10 February 2008 and detained in a solitary confinement cell in the interrogation headquarters of the GIS. At approximately 18:00 on Thursday, 14 February 2008, I heard

a members of the GIS asking al-Barghouthi 'Why do you say take the dogs away?'. I recognized the voice of al-Barghouthi when he replied saying: 'You arrested me wildly. I then heard the interrogator telling al-Barghouthi: 'The men made admissions that convict you.' I heard al-Barghouthi replying: 'They are liars. I do not know them.' Then I heard them beating al-Barghouthi in the abdomen. I could recognize that because of the sound of the beating and because of al-Barghouthi's screaming. Al-Barghouthi tangled with the interrogator. Then the interrogator asked an officer to bring iron chains and I could hear the sound of the chains. I could see al-Barghouthi chained. He was handcuffed and the chain was connected to the top of a windowpane. He was forced into the Shabah position as they pulled the chain suspending al-Barghouthi's body over the ground. He remained in the Shabah position from midnight [on 14 February 2008] till 13:00 on the following day [15 February 2008]. During that time, members of the GIS came and beat him sporadically with plastic tubes. They also insulted him. They suspended his legs and placed him on a chair. One of them sat down on his legs and another two members beat him on the soles of his feet. While he was forced into the Shabah position, I noted that the voice of al-Barghouthi was getting lower. After that they put him in a balcony that was covered with curtains. I could hear him asking for help and groaning. At approximately midday on the third day, Saturday, 16 February 2008, I heard al-Barghouthi vomiting. I could hear him groaning sometimes. At approximately 15:00, al-Barghouthi was taken away from the area. At approximately 19:30 on Monday, 18 February 2008, they brought al-Barghouthi to the cell where I was detained.... At 08:00 on Tuesday, the interrogator came and said to al-Barghouthi: 'Get up.' Al-Barghouthi replied 'I do not have any thing to say.' We were calling him to prayer but he was not responding. At approximately 08:30 on Thursday, 21 February 2008, an officer came and asked al-Barghouthi to eat, and to drink water and juice, but he [Al-Barghouthi] vomited. I then heard the cell door being opened. Through a small hole in the wall, I saw the officer pulling al-Barghouthi The officer said to him 'get up, you are suffering from nothing.' We just gave you shots of medicine.' Al-Barghouthi replied that he could not stand anymore. Four hours later, the officer came and took al-Barghouthi to the balcony, and I could hear him groaning until 02:30 on Friday morning [22 February]. He then became silent. I knew later that he died."

Case no. (2):

Death of Shadi Mohammed Shaheen in the Rehabilitation and Discipline Center in Jericho

On 29 September 2008, Shadi Mohammed Mohammed Shaheen, 27, from al-Bireh near Ramallah died in police custody at the Rehabilitation and Discipline Center in Jericho. On 08 March 2008, Shaheen was

summoned by the General Intelligence Service (GIS) in Ramallah, and was interrogated regarding charges of committing 'Crimes that endanger the safety of internal homeland security.' He was detained by the GIS until 15 June 2008. He was then transferred to the Palestinian Police Rehabilitation and Discipline Center in Jericho. He remained in the Center until he died. At the time, Brigadier 'Adnan Dumairi, Public Relations and Information Officer of the Palestinian police, spoke to a PCHR fieldworker, and stated that on Monday evening, 29 September 2008, Shadi Mohammed Shaheen died from a sudden deterioration of health. Brigadier Dumairi added that at approximately 11:30 on 29 September, Shaheen was observed exhausted, and was immediately evacuated by ambulance to Jericho Hospital where he died. Brigadier Dumairi reiterated that Shaheen had been detained since 15 June 2008 when an arrest warrant had been issued by the military prosecution. The military judiciary had subsequently extended his detention until 26 August 2008. Shaheen's family, however, claimed his detention was extended until 15 November 2008, and that he had been in detention until his death.

The Ramallah police stated that, according to a report issued by the Forensic Medicine Institute, Shaheen died as a result of a pulmonary clot, without any external intervention. A PCHR fieldworker attempted to obtain a copy of the report from the Attorney-General's office in Ramallah, but was informed that the Attorney-General's office had already initiated an investigation into the circumstances of Shaheen's death.

Shaheen was a member of the Special Units of the Palestinian police. He had been imprisoned in Israeli jails for 4 years. He had been released at the beginning of 2008. Former Minister of Information, Nabeel 'Amru, stated in a press conference held in Ramallah on 05 October 2008, that he had testified before the Attorney-General about an attempt by Shaheen to assassinate him. Shaheen's family reiterated that Shaheen was arrested and interrogated on grounds relating to this attempt. At the time, PCHR had concerns that the death was the result of torture or maltreatment and that the death is relating to the interrogation about the attack on Former Minister of Information, Nabeel 'Amru.

Case no. (3):

Death of Mohammed 'Abdul Jameel al-Hajj (who died in prison)

On 08 February 2009, Mohammed 'Abdul Jameel al-Hajj, 30, from Jalqamous village, east of Jenin, died while he was in the custody of the Preventive Security Service (PSS) in Jenin. Sources from the government claimed that al-Hajj had committed suicide and that the PSS had transferred his body to a medical center to ascertain the cause of death.

Mohye al-Hajj, the brother of the dead man, told PCHR that at

approximately 15:00 on the previous Thursday, 05 February 2009, a vehicle with a Palestinian registration plate came to his brother's house in Jalqamous village. Two people wearing civilian clothes got out of the vehicle and, claiming they were members of the PSS, said they wanted to speak to Mohammed al-Hajj for just five minutes. Since 05 February 2009, no one from Mohamed al-Hajj's family had seen him. They had not asked about his whereabouts because he had been arrested on five separate occasions since June 2007. He was arrested on two occasions by the Military Intelligence Serves and on three occasions by the PSS. Mohye al-Hajj also indicated that his brother had been released from detention ten days before his last arrest, and that Mohammed al-Hajj had told him he had been subjected to torture during previous detentions. Mohammed al-Hajj also told his brother he had previously been interrogated by PSS about owning a pistol. Mohye denied that his brother had committed any criminal offences. He also reiterated that his brother was not an activist of Hamas.

The Governor of Jenin, Qaddoura Mousa, stated to the Wafa Palestine News Agency that a Palestinian detainee had committed suicide in a detention cell in the PSS headquarters in Jenin. He indicated the individual had been found dead in his cell and had hung himself using a piece of cloth. The body was transferred to hospital, where doctors confirmed the death. Qaddoura Mousa also stated that an autopsy would be performed on the body and that the office of the Attorney General would investigate the death with all due process. He added that the PSS had arrested al-Hajj because there was evidence that he had been involved in criminal offenses. Mousa stated that al-Hajj had not been detained on a political basis but purely as a result of being suspected of committing criminal offences. He said al-Hajj had been arrested in the past and had signed a commitment not to re-offend. Qaddoura Mousa denied that al-Hajj was subjected to torture during his detention.

Case no. (4):

Death of Haitham 'Abdullah 'Abdul Rahman 'Amru (who died in prison)

On 15 June 2009, Haitham 'Abdullah 'Abdul Rahman 'Amru, 33, from Upper Beit al-Roush village southwest of Hebron died. 'Amru was arrested on 11 June 2009 by members of the General Intelligence Service (GIS) in Hebron. The PCHR fieldworker who saw the corpse before burial reported that he noticed blue marks on his back, buttocks, legs, feet and the left hand. He also saw large blue spots on the thighs and a large red spot on the left buttock. PCHR's investigations show that at approximately 20:00 on Thursday, 11 June 2009, a joint force of approximately 50 members of the Palestinian security forces, stormed a house belonging to the family of 'Amru in Upper Beit al-Roush village. 'Amru was arrested, and taken to the GIS headquarters in Hebron. At noon on Sunday, 14 June 2009, 'Amru's father went to the detention centre and requested that he

be allowed to visit his son. He waited till 19:00 o'clock but he was not allowed to visit his son. He also was not allowed to meet with the GIS Chief. At midnight on 14 June 2009, 'Amru was transferred to Hebron Hospital in critical condition. At approximately 02:00 on Monday, 15 June 2009, he was pronounced dead. At approximately 07:00, the family was informed of his death through notable members of his clan.

Case no. (5):

Death of Kamal 'Aamer Abu Tua'ima (who was subjected to torture)

On 04 August 2009, Kamal 'Aamer Abu Tua'ima, 44, from al-Fawar refugee camp south of Hebron died. Members of the Preventive Security Service (PSS) in Hebron arrested Abu Tua'ima who was a member of Hamas on 15 September 2008. While in custody in the PSS headquarters, he was denied family visitation for 48 days. During that time he was interrogated and subjected to torture. Later in 2008, Abu Tu'aima was transferred to al-Zahiriya Prison, south of Hebron, where he served two months of imprisonment. He was then taken back to the headquarters of the PSS where he was interrogated again. At this point members of his family were able to visit him. He told family members that he had been tortured while under interrogation in the PSS headquarters. He also told them that he was forced into the Shabah position several times for prolonged periods. The Palestinian High Court of Justice ordered his immediate release on 02 November 2008. However, the PSS did not abide by the ruling of the Court. During his detention, Abu Tu'aima suffered from a brain clot, which caused disabilities in his mouth, right hand and leg and affected his ability to speak and hear. He was transferred secretly to Hebron Governmental Hospital. On 31 May 2009, a PSS officer phoned Abu Tu'aima's family and informed them of a decision to release him from the hospital. He was taken home on the same day. However, his health condition deteriorated. His family was forced to take him back to the hospital. Doctors decided to transfer him abroad to receive advanced medical treatment. On 30 June 2009, he was transferred to a Jordanian hospital. His health conditions continued to deteriorate and he died on 04 August 2009 from the effects of torture committed by members of the GIS.

Case no. (6):

Death of Fadi Hosni 'Abdul Rahman Hamadna (who was found dead in his cell)

On 10 August 2009, Fadi Hosni 'Abdul Rahman Hamadna, 27, from Northern 'Assira village north of Nablus died while in the custody of the GIS in Nablus. Hamadna had been in the custody of the General Intelligence Service (GIS) in Nablus since 15 June 2009. Brigadier Adnan al-Dumairi, Spokesman of Palestinian security services, stated that Fadi Hamadna was found dead in his cell on 10 August 2009. Al-Dumairi indicated Hamadna had committed suicide and was found

with a blanket tied around his neck.

According to investigations conducted by PCHR, which included eyewitness testimony, at approximately 10:00 on Monday, 10 August 2009, the Municipality of Northern 'Assira was informed of the death of Hamadna through a phone call from the Commander of the GIS in Nablus. The Mayor, Mohammed Abu Halima, contacted the victim's uncle, Tahseen 'Abdul Rahman Hamadna, and informed him of the death of his nephew. The two then headed towards Junaid Prison following coordination between the Mayor and the Commander of the GIS in the prison. The GIS Commander informed them that Hamadna had hung himself using a blanket from his cell and expressed his apology. Approximately an hour later, Hamadna's body was transferred to the autopsy institute at an-Najah National University, and the victim's uncles, Tahseen 'Abdul Rahman Hamadna and Hassan Saleh Samara, were invited. A doctor met with them and told them that a committee of 13 doctors would conduct the autopsy and would swear before them to tell the truth.

They entered the room and saw the corpse covered by white cloth, except for the head and the neck. They told PCHR that his neck was blue and lines appeared on it. They also indicated that they saw some bruises on one shoulder. Then they left the room. Two hours later, they were asked to return by Dr. Samir Abu Za'rour. The victim's brother, Mohammed, who wanted to see the corpse accompanied them. He told PCHR that he saw blue bruises on the neck and the chest and lines on the neck. Dr. Abu Za'rour asked members of the family to sign a document granting permission for an autopsy. Before answering the request, the General Prosecutor arrived and said to them: "If you do or do not sign, the autopsy will be performed." Tahseen Hamdna replied that the victims' father should sign the document. Dr. Abu Za'rour asked them about the father, and they told him that he was in Rafidya Hospital because security officers had attacked him near Junaid Prison. Dr. Abu Za'rour went to the hospital to convince the father to sign the document but he refused.

Torture and Degrading Treatment in Prisons and Detention Centers in the West Bank

Following the events of June 2007, torture and arbitrary arrests against members of Hamas in the West Bank increased. The Palestinian security forces arrested hundreds of Hamas activists in the West Bank. According to PCHR records, the West Bank witnessed an extensive campaign to arrest political opponents. Many people were arrested, held in detention centers, tortured and subjected to cruel, degrading and inhuman treatment.¹⁷ Members of the Palestinian General Intelligence Service (GIS), the Military Intelligence Service (MIS) and the Preventive Security Service (PSS) carried out these arrests. Dozens of prisoners and detainees

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17 See PCHR press release, Ref: 94/2008, published on 29 October 2008.

reported that they had been subjected to torture and cruel, degrading and inhumane treatment at the hands of members of the Palestinian security forces. Some detainees continued to be held despite court orders calling for their release. This shows that the security forces have no respect for the judiciary.¹⁸ The following cases present examples of torture practiced by members of the security services against Palestinian detainees. PCHR notes that these cases do not necessarily represent the most significant examples.

Case no. (1):

(N.M.) was beaten, cigarettes were put out on his back and neck and he was threatened with sexual abuse

On 28 April 2009, members of the Military Intelligence Service (MIS) arrested N.M., 26, from Beit Leqia village, west of Ramallah. N.M.¹⁹ was arrested near the northern entrance of Ramallah city near the 'Best Eastern' hotel while travelling in a private car. He was stopped near a checkpoint administered by the Palestinian National Security. Members of the National Security held him at the checkpoint until a MIS car arrived and transported N.M. to the headquarters of Ramallah Directorate in um al-Sharayet neighborhood. N.M. was detained for six months for investigation. His lawyer was allowed to visit him after three months of detention. N.M. stated that interrogators used to continually hold him by the hair and strike his head against the wall. They beat him on his leg with their shoes. He was subjected to psychological torture as he continually had his head and beard shaved and he was prevented from going to the W.C. He was allowed to bathe every 15 days in a W.C. room but he was not allowed to use soap. Interrogators ordered him to clean the rooms and cells in the prison, to take the refuse away and to clean W.C. rooms. He was ordered to clean a big room using a toothbrush. They said obscene words about his mother and sisters. On 4 September 2009, the court ordered his release. He was released on 5 September 2009. N.M. talked to PCHR about the torture he was subjected to in the MIS in Ramallah. He stated the following:

"At approximately 16:00 on 28 April 2009, I was arrested by the MIS near a military checkpoint near the 'Best Eastern' hotel in Ramallah. I was transferred in a MIS vehicle to the MIS headquarters in Ramallah. I was beaten and kicked on the way to the MIS headquarters. When we arrived at the headquarters, they took me to the medical services department. They asked me if I was suffering from any diseases. I told them that I suffered from sinusitis but they refused to allow me to undergo checkups. Then transferred me to Ramallah Directorate and beat me on the way there. They continually slapped me on my face and insulted me. They called me a 'liar.' They were referring to

¹⁸ See PCHR press release, Ref: 146/2007, published on 23 October 2007.

¹⁹ PCHR maintains the name.

an election debate in 2009 in which I represented the Islamic Bloc at Birzeit University. At the Ramallah Directorate they forced me into the Shabah position and hanged me on a door from 17:00 on 28 April 2009 until 02:00 on 29 April 2009. During this time, I was prevented from eating and praying.... Then they sent me to a prison in Jericho and held me in a solitary confinement cell for 96 days. During my solitary detention, they tortured me for 16 days. During the first week, they offered me only two meals and forced me to eat them while I was forced into the Shabah position. They prevented me from praying during the first ten days. They forced me to stand on a single leg during 9 days. They prevented me from sleeping in my cell for 10 days. They poured water on the ground of the cell so I could not sleep. They forced me to stay without clothes in my cell for long nights. The interrogators used many torture methods on me. These included forcing me to stand on a small tomato can continuously for 4 hours, beating me on the soles of my feet and forcing me into the Shabah position on a chair. One of the officers put cigarettes out on my neck and on my back in front of the interrogator. The prison director (A.S.) threatened me with sexual abuse. In the interrogation office, I was slapped and kicked. I was beaten by a cable.”

Case no. 2:

Anonymous:20 “Members of the PSS forced me into the Shabah position, beat me and held me in a foul-smelling cell.”

On 15 July 2009, members of the Preventative Security Service arrested a Palestinian, whose name is maintained²¹ by PCHR. The Palestinian, who lives in Tallouza village in Nablus, stated that members of the PSS tortured him. This Palestinian had previously been held in Israeli jails and was released on 13 July 2009. He was arrested by the PSS just 48 hours after his release from the Israeli jail. He told PCHR the following:

“I was arrested by members of the PSS on 15 July 2009 just 48 hours after I was released from the Negev prison after I serving 18 months of administrative detention.... They arrested me from my house in Nablus while I was preparing to go to my village, Tallouza,.... Outside my house, there were a bus and a number of military vehicles. I was blindfolded and got onto the bus. I was transferred to the PSS headquarters in al-Tour where I was placed in a small cell for 30 minutes. Nobody talked to me in the PSS headquarters in al-Tour. I was then taken to Junaid prison for interrogation.

I arrived at Junaid prison at approximately 11:30 on 15 July. There I met with a number of interrogators who said: ‘tell us your story.’ I replied asking ‘which story?’ Their reply was directed to officers present: ‘Take him and deal with him duly.’ They blindfolded me

.....
20 PCHR maintains the name of the civilian who didn’t want to reveal his name.

21 PCHR maintains the name of the detainee upon his request.

and handcuffed my hands behind my back with iron handcuffs. I was then forced into the Shabah position for several hours. One of the interrogators came to me and asked: 'Shall we talk about your story?' I replied that I did not have a story to talk about. Then he beat me with a hose on my back and shoulders. When I asked him why he was beating me he told me it was not beating and he just providing hospitality. He said to me: 'If you do not tell you story, you will experience amazing things.' Then I was forced into the Shabah position for 5 hours. They took me to a cell that lacked any humanity. It did not include a cabinet. There was no water in the cell and even the mattress was foul-smelling. I stayed in the cell approximately one hour. I prayed and took my dinner.

Then I was taken out of the cell and forced into the Shabah position. They forced me to stand on my feet until dawn. In the meanwhile, one of the interrogators came and asked me to tell him my story. My reply was the same. I told him that I had nothing to tell.... On the following day, they beat me on the soles of my feet. They blindfolded me, handcuffed my hands behind my back, placed me on the ground, raised my legs and fixed them to an iron door and then beat me, at least 50 strikes, with a hose on the soles of my feet. I was screaming. One of them placed his feet on my chest so I couldn't move. After that, they forced me to run to prevent blood getting trapped in my feet. Then I was placed into the Shabah position.

I was forced into the Shabah position for 19 hours everyday. From 7:00 to midday they forced me into the Shabah position. Then they allowed me to pray and have my lunch. Then I was put in the Shabah position again from 14:00 o'clock till 18:00 o'clock, which is dinnertime. From approximately 20:00 o'clock until 05:00 o'clock the following day I was put in the Shabah position. Each day the torture increased. I was beaten on the head by a hose and sometimes by a club. Then they changed the Shabah method. They handcuffed my hands behind the back, attached the handcuff to a cord, which is attached to a tube in the ceiling. Then they pulled the cord causing me to be hanged into the air with my back bent. Sometimes they allowed my toes to touch the ground. Also sometimes they pulled me making me swing in the air for approximately five minutes. They concentrated torture on my shoulders. They changed the Shabah method several times. They beat me on the soles of my feet every second day. One day, the interrogator asked me: 'Don't you want to tell us about your story?.' I replied him that I did not have any thing to tell. He asked an officer to take me and beat me on the soles of my feet. I asked the interrogator to allow me to talk. I asked him: 'Is your duty to enjoy watching me be tortured and hearing my screams or do you want to obtain information?' He slapped me on the face and kicked me and said: 'You are a rude person.' He beat me on the soles of my feet but this

time with a beech stick. They beat me until I felt that the bones of my foot were fractured. They forced me to bring a chair to sit on during Shabah because I was not able to stand on my feet. When I asked them to make a CT of my foot one of the interrogator replied: 'You cut legs in Gaza and you want us to have you a CT of your foot?' They following day, they refused to bring me a chair at the time of Shabah. I was forced to stand on my feet throughout the interrogation period.

They interrogated me for 16 days. Then one of them came and took statements from me about my life, study, marital status and arrests by the Israeli occupation. After they finished the interrogation they detained me in a cell for one month and a half. There was not a W.C. room in the cell where I was detained. Every time I wanted to go to the W.C., I asked the officers to allow me to go. Some times they allowed me to go to a W.C. directly and in other times they made me wait. Sometimes I waited for more than three hours. The first time they allowed me to bathe was two weeks after I was arrested. Two months later, I was transferred to the Intelligence Service and stayed in cells administered by the Intelligence Service until 28 December 2009."

Case no. (3):

(K.S.) was tortured by the General Intelligence Service (GIS) in Salfit

K.S., 32, from Bedia village in Salfit, in the northern West Bank, was arrested by the GIS and was subjected to torture and to cruel, inhumane and degrading treatment whilst in detention. A GIS force arrested K.S.²² on Monday evening, 19 November 2009 as he left the mosque in Bedia village after the Isha prayer with his father and brother. K.S. was held in custody for 18 days during which he was tortured. In his testimony to PCHR, K.S. stated that:

"At approximately 19:00 on Monday, 19 November 2009, a GIS force in two vehicles arrived at the mosque. GIS members got out of one of the two cars and took my brother. This all happened in front of my father who is sick. My father's health condition deteriorated and I immediately went to the pharmacy to buy medication for my father. As I entered the pharmacy, two GIS officers.... They beat me and pulled me out of the pharmacy. They beat me violently because I refused to leave the pharmacy. I was asking them what was happening and where they were taking me. I was telling them that I did nothing. They continued beating me more violently with their hands.

Then the chief of the police arrived at the scene in a police vehicle and convinced me to go with him to Bedia police station to reach

an understanding. I got into the private car of a GIS officer. Two policemen were sitting beside me from both sides. My father arrived at the police station. I could hear him talking to the chief of the police. He asked the chief of the police about me but the chief told him I was not there. The door was open and I got out and said loudly 'I am here.' Then they took me inside the room and closed the door. I was not able to hear the voice of my father. Half an hour later, they transferred me in a GIS vehicle from the police station to Salfit. On the way, I said to them: 'Allah will wreak vengeance upon the oppressors.' They insulted me until we arrived at the GIS headquarters.

Before entering the GIS headquarters, they ordered me to hold my head down. I refused but I was surprised by a strong strike on my head from behind. I do not know what they used to hit me but the strike was very strong. I could not see things clearly. As I entered into a room, between five and ten officers attacked me and beat me violently with their hands and legs. The chair on which I was sitting broke down and I fell to the ground. They continued beating me for ten minutes. Then they took me to the interrogation room. They accused me of having threatened a GIS officer who is a relative of mine. I told them that I do not threaten the GIS.... The interrogator hit me violently with his hand. I was continually bleeding. I went to wash the blood. Then the GIS chief came and accused me again of having threatened a GIS officer. He asked me: 'Did you threaten the GIS?' I replied 'No.' The guard who was with him beat me on my face.... As I put my head on a pillow, I found that the pillow was full of blood. I called them to come. They came after half an hour and took me to a doctor in the medical services department. I was still bleeding from my head. The doctor found a 5 cm long wound near my right ear. The doctor stitched up the wound. I asked him twice to use anesthetic. He used anesthetic and continued stitching up. Then I returned back to the interrogation room where I stayed for seven days. I refused eat or drink anything during these seven days. On the fourth day, they sent me to the medical services department as I was not able to stand up and they gave me a nutrient solution. Also on the fifth day they took me to the medical services department and gave me the nutrient solution. On the way to the medical services department, they insulted me and swore at Allah. Even the doctor was saying: 'Bring me the man of Gaza.' On the eighth day, they transferred me to the police upon an order from the Attorney General. I remained held by the police for 18 days until I was released on bail."

Case no. (4):

(J.S.) was slapped and kicked in the abdomen and he was threatened

GIS members in Ramallah tortured J.S., 40, from Qebia village in

Ramallah. J.S.²³ was summoned on 07 April 2010 to appear before GIS. At approximately 09:00 on Thursday, 08 April 2010, J.S. headed to the GIS headquarters. J.S. said he was beaten, insulted and threatened. In his testimony to PCHR, he stated the following:

“At approximately 09:00 on Thursday, 08 April 2010, I headed to the GIS headquarters. At approximately 12:00, I was taken to an interrogation room where I found an interrogator. He immediately asked me: ‘What do you do?’ I told him that I was a university teacher.... He immediately slapped me twice on the face. I stood up because the slaps were very strong. The guard who was near the door and another person who was in the corridor came.... Then the interrogator slapped me again several times. One of them kicked me in the abdomen. They forced me to stand against the wall. They insulted me and yelled at me. The interrogator continually asked me ‘Why do you swear at the president?’ They were continually yelling at me and insulting me. Then they took me to a neighboring room. A fourth person came and placed me under interrogation. He threatened me. He accused me of swearing at the president. When I told him that I did not swear at the president, he said: ‘I will fire you from your job and I will hold you for 48 hours.’ Then he said: ‘I will put you in prison for seven days.’ I said: ‘As you like.’ Then he asked me: ‘Are you against the elections and against the policy adopted by the Palestinian Authority?’ He ordered me to sign a document. When I refused, he put strong pressure on my head and said: ‘You will sign it. You will not swear at the president otherwise I will fire at your house.’ I refused to sign the document. It was around 15:00. Then the interrogator came and used a new method with me. He said: ‘I did not mean to beat you or to insult you. It’s just a part of my work in the GIS....’ Then they took me outside. Policemen were waiting for me and took me to Jerusalem outskirts police station.... I was later taken to the military medical services department. They asked me about my health condition. I told them that I suffer from leukemia and that I suffered from severe pain in the abdomen. I was transferred to Ramallah Governmental Hospital where I underwent medical tests. Then I was transferred again to the military medical services department where doctors advised the police not to hold me because of my health conditions. The police released me accordingly.”

Case no(5):

(Y.N.) was arbitrarily arrested and subjected to maltreatment

On 03 January 2010, Y.N.²⁴, 28, from Athna village in Hebron, was arrested by the GIS in Hebron. Y.N. was stopped by GIS members near

.....
23 PCHR maintains the name.

24 PCHR maintains the name.

Jericho Rest while he was coming back from Jordan. They interrogated him in Jericho and checked his mobile. They interrogated him about the names on his mobile. He was subjected to maltreatment whilst in custody. He was detained in a dark cell and was not given any blankets or humanitarian needs. After that, he was summoned to appear before the GIS in Hebron. In his testimony to PCHR, Y.N. stated the following:

“At approximately 10:30 on Sunday, 03 January 2010, I arrived at the GIS headquarters. As I arrived, they held me in a corridor until after the Maghrib prayer. They then took me to an interrogation office and a GIS officer interrogated me about everything in my life and about people with whom I have relationships. The interrogation took approximately two hours. I was then placed in a solitary confinement cell. At approximately 01:00 o'clock on the following day [04 January 2010] they began to interrogate me. They interrogated me about the names and numbers saved in my mobile and about my relationship with the persons whose names and numbers are saved in my mobile. They accused me of contacting people from the Gaza Strip. They interrogated me for an hour and a half and then returned me to the cell. On 04 January 2010, they interrogated me for the third time and accused me of having relationships with Hamas movement and al-Aqsa TV channel in Gaza. The interrogator asked me to sign a document and warned me saying that: 'If you do not sign this document, you will be held in prison for long months.' I was then taken to another solitary confinement cell which they call the 'Refrigerator.' It is located in the upper floor in the GIS headquarters. It is a poorly ventilated and a dark cell. There are no covers, mattresses or any humanitarian needs in this cell. It is connected to a device that sends very cold wind. I was held for 48 hours in this cell. I was very cold in this cell. I felt that my limbs were getting frozen. I barely slept one or two hours. I suffered severe pains in the back and the left leg which was trembling. I went on hunger strike.... I was threatened to be sent to the GIS prison in Jericho if I did not stop the hunger strike. They insulted me and held me in an open place from midnight till 08:00 o'clock on the following day. Then they transferred me to the prison.”

Part II

The International Legal Framework Prohibiting Torture

The legal framework prohibiting and criminalizing acts of torture committed by official, and unofficial, authorities in times of peace and war is found in the main documents constituting International Human Rights Law and International Humanitarian Law. In this section, PCHR aims to connect the legal framework prohibiting torture with the domestic legal system that also comprehensively prohibits the commission of acts of torture.

First: International Human rights Law

In light of the atrocities witnessed by the international community during World War II which claimed the lives of millions of people and that resulted in catastrophic damages, there was international consensus regarding the necessity to develop a new international system based on ensuring peace and security, protecting human dignity and rights and the need to regulate the relationship between States on one hand and between States and their citizens on the other hand. The Universal Declaration of Human Rights, which was adopted in 1948, was the foundational document of International Human Rights Law (IHRL). It was an important starting point for lawmakers to declare that all human beings are born free and equal in dignity and have rights without distinction of any kind.

The years that followed witnessed huge developments in IHRL. The Universal Declaration of Human Rights was followed by other international instruments including the International Covenant on Civil and Political Rights (ICCPR) of 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 which came to be known as the International Bill of Human Rights. In addition to these fundamental documents many other human rights treaties came into force.

The Universal Declaration of Human Rights adopted in December 1948

The Universal Declaration of Human Rights is the first global instrument that gained international consensus. The Declaration which was adopted by the General Assembly of the United Nations on 10 December 1948, stipulates in Article 3 that "Everyone has the right to life, liberty and security of person."²⁵ Article 5 of the Declaration provides that: "No

²⁵ Adopted by UN General Assembly Resolution 217 A (III) dated on 10 December 1948

one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."²⁶ The Declaration may be criticized for not explicitly stating States were legally bound but lawmakers felt it did represent universal moral values that should be seen as binding.

The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was adopted and opened for signature in 1966 and entered into force on 23 March 1976 as a part of the historical development of human rights. It constitutes a quantum leap forward in human rights protections not only because it sets forth civil and political rights but also creates mechanisms to supervise the conduct of States in the application of their obligations stated in the ICCPR. This Covenant is considered to be the second document in the International Bill of Human Rights. The ICCPR prohibited acts of torture in multiple Articles. Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."²⁷ Article 9 definitely prohibits measures that lead to torture and obligates States to protect individuals' rights to liberty and security of person. It prohibits arbitrary arrest and detention and deprivation of liberty except on legal grounds. In Paragraph 1, Article 9 stipulates that: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

The ICCPR allows States to temporarily suspend its adherence to some obligations under certain circumstances. However the Covenant does not allow States to suspend its prohibition against torture. Articles (1) and (2) specifically state that the provisions that prohibit torture and maltreatment can never be suspended. Article 4 (1) stipulates that: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." While Article 4 (2) stipulates that: "No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision." The Articles referred to in Article 4 (2) prohibit arbitrary arrests, imposition of improper punishment, interference in private affairs, violation of the right to life, slavery and

.....
26 Ibid.

27 The International Covenant on Civil and Political Rights, United Nations General Assembly Resolution 2200A [XXI]. 16 December 1966

servitude, imposition of hard labor and medical experimentation without prior consent. These acts are all kinds of torture or inhumane and degrading treatment.

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 1975

This Declaration was adopted in December 1975. The Declaration constituted a good addition to the continued international efforts aimed at prohibiting all forms of torture and cruel, inhuman and degrading treatment. All 15 Articles of the Declaration address the nature and forms of torture and the right of victims to redress and compensation in accordance with national laws. Article 1 (1) of the Declaration defines torture: "For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

The Declaration requires States to both prohibit, and put an end to the practice of, torture and cruel, inhumane and degrading treatment. It stresses the lack of any exception to the prohibition on torture. In other words, a State cannot rely upon exceptional conditions and public emergencies to practice torture under the umbrella of law. Article 3 of the Declaration stipulates that: "No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment." Also the Declaration tries to prevent acts of torture resulting from the ignorance of the law enforcement officers entrusted to protect individuals by requiring training for them on the prohibition of the acts of torture. Article 5 of the Declaration states that: "The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment."

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 1984

This Convention was adopted by UN General Assembly Resolution 39/46 on 10 December 1984. It constitutes a significant achievement

in the international efforts against torture. All 32 Articles focus on the prohibition of torture. Article 1 (1), the Convention defines torture as: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”²⁸ This definition is the most comprehensive definition found in international law.

The Convention obligates the States signatories to the Convention to work to eliminate the practice of torture including the imposition of restrictions on those who commit acts of torture by enacting domestic legislation prohibiting torture. Article 4 of the Convention states that: “Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person, which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”

The convention totally prohibits torture even in the case of exceptional circumstances. Also it prohibits torture even in the case of orders from superior authorities. Article 2 (1), (2) and (3) stipulates that:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

In order to ensure that States fulfill their obligations set forth in the Convention, Article 17 of the Convention requires the formation of a Committee against Torture to follow up States’ actions. Article 19 provides that: “The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and

such other reports as the Committee may request.” Article 20 indicates that the Committee may open investigations if the Committee receives reliable information, which appears to contain well-founded indications that torture is being systematically practiced in the territory of a State Party.

The Convention excludes psychological pain resulting from the implementation of a lawful sanction, i.e., serving a term of imprisonment. This is considered part of a legal sanctions imposed on the person for an offence that he/she has committed. Thus, torture does not include pain or suffering arising from lawful sanctions.²⁹

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which was adopted on 18 December 2002.

This Optional Protocol, which was adopted in 2002, represents another tangible effort by the international community to eliminate torture. It shows the international effort to find effective methods and mechanisms to put an end to acts of torture.

New issues are covered by the Protocol include requiring the formation of the Subcommittee on Prevention of Torture. Article 2 of the Protocol Stipulates that “A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.” In particular, this Subcommittee undertakes the organization of regular visits to the States Parties to this Protocol to check prisons, detention centers and detention conditions. The Protocol also obligates the States Parties to receive the members of the Subcommittee and to allow them to visit detention centers. Article 4 (a) states that: “1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.”

The Subcommittee on Prevention of Torture also advises and assists States Parties, when necessary, in creating national preventive mechanisms to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment

.....
29 Ibid.

or punishment. Also the Subcommittee assists States Parties to cooperate in the effort to prevent of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Second: International Humanitarian Law

International Humanitarian Law (IHL) is the body of law that aims to protect human beings during armed conflicts. It has been developed over centuries initially in the form of temporary agreements between conflicting parties and then later in the form of international agreements starting in 1864.³⁰ The International Committee of the Red Cross (ICRC) defines IHL as “International rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limits the right of Parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict.”³¹

The Geneva Conventions of 12 August 1949

The four Geneva Conventions, which were adopted on 12 August 1949, constitute the main body of the IHL. Article 3, common to the four Geneva Conventions, requires that detainees, patients or those unable to fight be treated humanely without discrimination of any kind. Article 3 (1) states that “...including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.”³²

Article 3, common to the four Geneva Conventions, also prohibits many acts that form attacks on life and person, humiliating and degrading treatment and arbitrary actions in arrests and trial. In Paragraphs (a), (c) and (d), Article 3 prohibits the following acts, which are all forms of torture, at any time and in any place:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b)

30 Al-Majthoub Mohammed, al-Majthoub Tareq, International Humanitarian Law, P 33, El Halabi Law Books, Beirut, 2009.

31 International Committee of the Red Cross (ICRC), The rules of customary international humanitarian law, Geneva, Switzerland.

32 Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

This Protocol states that it is necessary to humanely treat, in all circumstances, those who are in the power of the adverse party. It guarantees that persons in the power of the adverse party are not subjected to any form of torture or cruel, inhuman or degrading treatment. Article 75 prohibits a number of practices, which are considered forms of torture. Article 75 (2) (a) prohibits “violence to the life, health, or physical or mental well-being of persons, in particular: (i) murder; (ii) torture of all kinds, whether physical or mental; (iii) corporal punishment; and (iv) mutilation.” Also Article 75 (2) (b) prohibits: “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault.”

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

This Protocol requires the parties to a conflict not to cause any form of physical or mental harm to any of the individuals who are protected under international agreements. It also requires the parties to a conflict to treat persons protected under international agreements humanely without degradation. Article 4(1) of the Protocol stipulates that: “All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.” The Protocol also mentions the prohibition of a number of practices that differ from one another in terms of torture levels and degrees. Article 4 (2) of the Protocol states that: “Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever: (a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;.....(e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;.....(h) threats to commit any of the foregoing acts.”

Third: the Rome Statue of the International Criminal Court, adopted in Rome on 17 July 1998

The Rome Statue of the International Criminal Court addresses the crimes the international community considers the most serious crimes. Article 5 of the Statue lists crimes that fall under the jurisdiction of the International Criminal Court including the crime of genocide; crimes against humanity; war crimes; and the crime of aggression. The Statue defines torture and considers it to be one of the most serious crimes against the international community. Torture can be a crime against humanity or a war crime.

Article 7 (2) (e) of the Statute defines torture as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.”

Article 7 (1) states that “...”crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, ...: (f) Torture.”³³

Article 8 of the Statue which addresses war crimes states that torture and maltreatment fall under the jurisdiction of the Court as a war crimes. Article 8 (2) states that “For the purpose of this Statute, “war crimes” means:....

- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Willfully causing great suffering, or serious injury to body or health;”³⁴

The Palestinian Legal Framework Prohibiting the Practice of Torture

The 2003 Palestinian Basic Law and the 2005 Amendments thereto explicitly indicate that the PNA is committed to respect human rights and to work without delay to promote human rights in PNA controlled areas. Article 10 (1) and (2) provides that: “1. Basic human rights and liberties shall be protected and respected and 2. The Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights.” Torture constitutes serious insult to the safety and security of human beings because it seriously risks the right to life. It was addressed in different provisions in Palestinian laws including: the Palestinian Basic Law, Code of Criminal Procedure, Penal Code no. 74/1936 applicable in the Gaza Strip and Penal code no. 16/1960 applicable in the West Bank.

.....
³³ The Rome Statue of the International Criminal Court, adopted in Rome on 17 July 1998, UN Doc. PCNICC/1999/INF/3.

³⁴ Ibid.

However, none of these laws addressed torture as an independent crime to be punished without prejudice. In general, “Many national laws have some general procedural or legal provisions addressing torture. However, these provisions do not criminalize torture as a crime independent of other acts prejudicing the safety of the body.”³⁵

The Palestinian Basic Law explicitly prohibits torture in article 13(1) and (2) which stipulates that: “1. No person shall be subject to any duress or torture. Those indicted and all persons deprived of their freedom shall receive proper treatment; and 2. All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this article shall be considered null and void.” Article 32 provides that violation of personal freedoms or of the sanctity of the private life of human beings are not subject to a statute of limitation: “Any violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage.”

Palestinian law guarantees preventive measures to prevent the commission of torture. It also guarantees protection to prisoners in prisons and detention centers in PNA controlled zones. Article 37 of Law no. 6/1998 Concerning Rehabilitation and Reform Centers requires the staff of prisons and detention centers not to practice any form of torture or degrading treatment. It further requires the administrations of prisons to provide a long series of rights that ensure the comfort of prisoners and detainees.

The Code of Criminal Procedure no. 3/2001 Concerning the Arrest of the Accused stipulates in Article 19 that: “Nobody shall be arrested or put in prison unless it is in accordance with an order issued by a competent legal authority. If anybody is arrested or put in prison upon an order from a competent legal body, they shall be treated humanely and they may not be physically or morally abused.” The Law also nullifies any confessions obtained from prisoners by means of torture, threats or coercion. Article 214 of the Code provides for that: “Prisoners must make confessions voluntarily, without pressure, material or moral coercion, promises or threats.”

Palestinian law requires law enforcement officials to prosecute perpetrators of acts of torture. Article 16 of the Penal Code no. 74/1936 applicable in the Gaza Strip states that: “Except in provisions explicitly provided by the law, a judicial employee shall nor be criminally responsible for any act made by him or forgot to make while on duty,

³⁵ A series of legal reports (69), **Legal Review of Torture Provisions in the Palestinian Legal system**, the Independent Commission for Human Rights, 2009.

even if he, by doing this act, exceeds his powers or even if he must have made the act that he forgot." Thus a judicial employee is responsible for his acts as stated by the Palestinian judiciary which criminalizes the acts of torture or cruel, inhumane and degrading treatment. Thus a judicial employee cannot ignore the occurrence of legal violations, such as committing an act of torture.

Article 19 (b) of the same Code requires the law enforcement officials to obey orders, unless they relate to illegal acts. In a reference to torture and degrading treatment, "Law enforcement officials shall obey orders from competent authorities, as specified by the law, unless they are clearly illegal orders." Article 19 also states that justifying the commission of illegal acts by obeying orders from top officials does not exempt law enforcement officials from assuming legal responsibility for acts such as torture as they are clearly unlawful acts. It is clear that Palestinian law provides protection to law enforcement officials who refuse to obey orders which are clearly illegal. As torture is clearly illegal, the law provides protection to security members and law enforcement officials in case they refuse to obey orders from top officials to practice torture. Otherwise, they will be held legally responsible.

Penal code no. 16/1960 applicable in the West Bank holds, in Article 217, law enforcement officials responsible in case of disregard to crimes committed in his workplace or in case he delays reporting on these crimes. Article 217 (1) stipulates that "Any employee in charge of searching for and prosecuting crimes who neglects or delays reporting on crimes relating to his job shall be punished by imprisonment for between one week and one year or by paying a fine between 5 and 20 Dinars." Paragraph 2 of the same Article states that: "Any employee who neglects or delays informing the competent authorities about a crime or an offense that he knew about while on duty shall be punished by imprisonment for between one week and three months or by paying a fine between 5 and 20 Dinars." Paragraph 3 holds health workers responsible in case they cover up a crime or an offense that they know about while on duty: "Any health worker who rescues somebody who seems to be a victim of a crime or an offense and who does not report on this crime or offense to the competent authority shall be liable to the penalty provided for in Paragraph 2.

Crimes Going Unpunished

Palestinian law prohibits, in several provisions, torture and cruel, inhumane and degrading treatment and sets forth mechanisms to hold perpetrators of crimes of torture accountable. Palestinian law also considers torture to be a crime that cannot go unpunished. However, the reality is that perpetrators of torture are not actively held accountable by a transparent institutional system that initiates prosecutions aimed at putting an end to torture crimes and ensuring remedy to the victims.

This report by PCHR constitutes its latest effort to bring attention to the issue of torture. It is part of a large body of work that illustrates PCHR's long history of advocacy to bring attention to the violations against the safety of persons and cruel, inhumane and degrading treatment that has claimed the lives of many civilians since the establishment of the Palestinian Authority in 1994. These crimes have gone unpunished. Hundreds of prisoners in PNA prisons and detention centers were subjected to these crimes leaving them with bitter memories. One of the most painful things about their treatment is that the perpetrators of these crimes were not held accountable.

PCHR reiterates that it has not received, officially or unofficially, any information indicating the status of investigations into torture crimes. It has not received any information regarding the prosecution of any perpetrators of torture crimes. PCHR has no knowledge of any investigations that resulted in the prosecution of perpetrators of torture or providing remedy, material or physical, to victims. PCHR notes that the verbal assurances received in meetings from officials who repeatedly reiterated their objection to torture, are not sufficient and do not meet the minimal actions required under international and domestic law. The only guarantee to put an end to torture is represented in a robust and effective judiciary system who hold perpetrators of torture accountable through public trials. These measures will deter those who think of violating the law by committing such heinous crimes. The internal investigations held by security services normally result in changing the place of work of perpetrators, deductions from the salary, ...etc. These measures and punishments cannot replace public trials in courts.

Conclusion:

This report illustrates how torture is being committed in the Palestinian territory. Hundreds of prisoners in PNA prisons and detention centers have been subjected to this crime. The report documents many torture cases that resulted in the death of detainees and other cases in which detainees were inhumanely treated in PNA prisons and detention centers. It covers the period between the events of June 2007 and the date of the publication of this report.

The report concludes by reiterating the following facts:

- Torture continues to be systematically practiced in prisons and detention centers in the West Bank and the Gaza Strip.
- Political affiliation is the most significant reason for a person to be tortured. The rise in torture is connected with the state of political fragmentation.
- All indicators provide that the practice of torture is one of the tools of the political fight between Fatah and Hamas. It is largely connected to the political situation in PNA controlled zones. It was discovered that the political fragmentation has served as an umbrella under which many acts of torture were committed. Indicators also show that torture will continue at the same pace in the near future at least.
- PCHR concludes that there is no evidence that measures taken to put an end to the practice of torture have not been sincere.
- During the preparation of this report, it was observed that law enforcement officials have failed to open investigations or prosecute perpetrators of torture in the Gaza Strip and the West Bank. PCHR notes that none of the cases investigated have resulted in bringing perpetrators of torture acts to trial. PCHR has submitted many complaints to competent bodies calling upon them to open necessary investigations into different incidents of torture committed against detainees. PCHR has not received any responses to such complaints.
- New torture methods were adopted by security members in the Gaza Strip and the West Bank including forcing detainees to clean detention cells using toothbrush and standing for lengthy periods on small cans (tomato cans).

Recommendations:

In view of what was reported herein PCHR recommends the following:

1. Putting an immediate and final end to the practice of torture in PNA prisons and detention centers in the West Bank and the Gaza Strip as this crime constitutes attacks on human beings' physical and mental safety.
2. Opening genuine investigations and prosecuting all the security members who are suspected to have engaged, or been involved in, acts of torture. PCHR notes that crimes of torture are not subject to a statute of limitations thus perpetrators of torture crimes cannot escape justice.
3. Repairing prisons and detention centers to be brought in line with international standards required to maintain the safety and dignity of prisoners.
4. Relevant parties committing to arrest persons when necessary in accordance with Palestinian law. This is the responsibility of law enforcement officers, including the members of the civil police, who receive orders directly from the Attorney General who supervises them.
5. Opening prisons and detention centers to human rights organizations and allow them to visit prisoners and to ensure that they are not subjected to torture.
6. Organizing training courses in participation with security members and law enforcement officers in order to raise their professional awareness on how to deal with prisoners.

Annexes

Annex I:

the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CONVENTION AGAINST TORTURE and Other Cruel, Inhuman or Degrading Treatment or Punishment

The States Parties to this Convention, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that those rights derive from the inherent dignity of the human person, Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms, Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment, Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452 (XXX)), Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world, Have agreed as follows:

Part I

Article 1

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public

emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 - When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - When the alleged offender is a national of that State;
 - When the victim was a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present, shall take him into custody or take other

legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offenses. Extradition shall be subject to the other conditions provided

by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with civil proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of 10 experts

- of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and are willing to serve on the Committee against Torture.
 3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
 4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
 5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3.
 6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
 7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that
 1. Six members shall constitute a quorum;
 2. Decisions of the Committee shall be made by a majority vote of the members present.
 3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
 4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
 5. The State Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement of the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 above.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of this Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken, and such other reports as the Committee may request.
2. The Secretary-General shall transmit the reports to all States Parties.
3. [Each report shall be considered by the Committee which may make such comments or suggestions on the report as it considers appropriate, and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments or suggestions made by it in accordance with paragraph 3, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1.]

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been

submitted by the State Party concerned as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article 3 that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
 1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, references to domestic procedures and remedies taken, pending, or available in the matter.
 2. If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee by notice

- given to the Committee and to the other State.
3. The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
 4. The Committee shall hold closed meetings when examining communications under this article.
 5. Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in the present Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission.
 6. In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information.
 7. The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing.
 8. The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report.
 - If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.
 - If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.
 2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party to the Convention which has not made such a declaration.
2. The Committee shall consider inadmissible any communication under this article which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communication submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
5. The Committee shall not consider any communication from an individual under this article unless it has ascertained that:
 1. The same matter has not been, and is not being examined under another procedure of international investigation or settlement;
 2. The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit parties thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless

the State Party concerned has made a new declaration.

Article 23

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on missions for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

Part III

Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the State Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective. Nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.
3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all members of the United Nations and all States which have signed this Convention or acceded to it, or the following particulars:

1. Signatures, ratifications and accessions under articles 25 and 26;
2. The date of entry into force of this Convention under article 27, and the date of the entry into force of any amendments under article 29;
3. Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.



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