



מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)

B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

Cooperating against Justice

**Human Rights Violations
by Israel and the Palestinian National Authority
following the Murders in Wadi Qelt**

רחוב התעשייה 8 (קומה רביעית), ירושלים 93420, טלפון 6735599 (02), פקס 6749111 (02)
8 Hata'asiya St. (4th Floor), Talpiot, Jerusalem 93420, Tel. (02) 6735599, Fax (02) 6749111
e-mail: mail@btselem.org <http://www.btselem.org>

Researched and written by: Yehezkel Lein and Renata Capella

Edited by Jessica Montell

Fieldwork by Najib Abu-Rokaya and Sa'ada Shaker Sa'ada

B'Tselem and LAW thank the following persons and organizations:

- Khalida Jarrar, Adameer Prisoners Support Association
- Clarisa Bencomo from Human Rights Watch
- Liz Hodgkin from Amnesty International
- Attorneys Rhys Johnson, Mussa Shakarni, Dan Assan and Khaled Quzmar.

Introduction

Two Israeli hikers were murdered on 18 July 1995 in Wadi Qelt. The hikers were Ohad Bachrach, an eighteen year-old soldier from the Beit El Jewish settlement, and Uri Shahor, a nineteen year-old yeshiva student from Ra'anana. The two were shot at close range while bathing in a spring.

The Popular Front for the Liberation of Palestine (PFLP), a leftist movement opposed to the Oslo Accords, was suspected of the murders. On 3 August 1995, Jamal al-Hindi, a PFLP member from the West Bank town of Qalqilya, was arrested and subsequently interrogated by the Israeli General Security Service (GSS). Al-Hindi initially admitted to taking part in the killings and implicated other PFLP activists in the killings: Shaher and Yusef a-Ra'i, two cousins from Qalqilya, and Khader Abu 'Abareh, from Bethlehem. Based on al-Hindi's confession, the a-Ra'i cousins were arrested in Jericho by the Palestinian General Intelligence (*mukhabarat*) on 3 September 1995 and detained for ten days. On the night of 13 September, in what appears to be a move to prevent extradition to Israel, the State Security Court (SSC) hastily tried and convicted the a-Ra'i cousins on vague charges and sentenced them to twelve years' imprisonment at hard labor, five of which were suspended. Jamal al-Hindi later revoked his confession, alleging that it had been extracted under torture. Israel never charged him with the murders and subsequently released him. Shaher and Yusef a-Ra'i remain in prison.

The Israeli Government and part of the Israeli press categorically state that the a-Ra'i cousins are the terrorists who participated in the murder of Ohad Bachrach and Uri Shahor. However, the Wadi Qelt murders remain unsolved. The PFLP's leadership has never confirmed nor denied responsibility. Shaher and Yusef a-Ra'i maintain that they are innocent. They were convicted of charges unrelated to the Wadi Qelt murders in a trial, which did not adhere to the most basic internationally recognized standards for fair trial.

The Wadi Kelt case is paradigmatic of the kind of human rights violations against Palestinians from the Occupied Territories, which are involved in the new "security cooperation" between Israel and the Palestinian Authority. It illustrates the interaction of torture, arbitrary arrests and unfair trials as part of a "policy of zero tolerance for terror"¹. The framework allowing these human rights violations to occur are the complex relations between Israel, the Palestinian National Authority and the United States; one of its main characteristics, as apparent in this case, is the pressure exerted by Israel and the United States on the Palestinian National Authority to fight terror relentlessly. This pressure has resulted in increased human rights violations by different organs of the PNA.

This report, jointly prepared by **B'Tselem** and **LAW**, has two objectives. In its first part it seeks to outline the human rights violations committed by both Israel and the PNA, following the Wadi Qelt murders; in its second part it aims at analyzing the political and judicial context from which these violations arose.

¹Wye Memorandum of 23/10/1998, Security Actions (II/A/1/a)

The first part of the report, documenting the human rights violations committed by Israel and the PNA, deals with the interrogation of Jamal al-Hindi, the detention and trial of Yusef and Shafer a-Ra'i and the role of the Wye Plantation Memorandum in the Al Rai case.

The second part of the report describes the political and legal background to the case: torture by the GSS during the interrogation of Palestinian detainees and its ramifications on the request for extradition of Palestinian suspects; violation of detainees' rights by the PNA and contravention of international standards for fair trial by the State Security Court (SSC); and the approach of the Wye Memorandum and its accompanying documents to human rights.

B'Tselem and LAW acknowledge the duty of states to protect its citizens and to bring to justice those suspected of acts of violence. However, B'Tselem and LAW emphasize that all measures taken to fulfil this duty must be done in accordance with universally accepted human rights standards and international law.

Section I: THE WADI QELT CASE

1. Jamal al-Hindi

Jamal Amin Mustafa al-Hindi, born in 1969, married with two children, resides in Qalqilya. He is active in the Popular Front for the Liberation of Palestine (PFLP). He has been arrested several times and served prison sentences in Israel. In 1986, he was sentenced to three years' imprisonment for throwing a Molotov cocktail. In April 1989, he was sentenced to four months' imprisonment for putting up PFLP posters, and in 1991, he was sentenced to forty months' imprisonment for abducting collaborators.

On the night between 2-3 August 1995, following reports that the PFLP was responsible for the murder of Bachrach and Shahor, the Israeli authorities took al-Hindi from his home to a small detention facility near the Trans-Samarian Highway.² Until the next evening, al-Hindi was kept shackled and blindfolded. From there, he was taken to the detention center in Petah-Tikva, where his interrogation began. GSS interrogators used the following interrogation methods:³

1. *Shabeh*: Al-Hindi's hands and legs were tightly shackled to a small chair, angled to lean forward so that he could not sit in a stable position. His head was covered with a filthy sack and loud music was played non-stop through loudspeakers.
2. Threats and curses: During the interrogation itself, the interrogators threatened to murder al-Hindi, mentioning detainees who had died during interrogation or detention. The interrogators also threatened to demolish al-Hindi's house and to bring him a picture of the demolition.
3. "The Frog Position": The GSS compelled al-Hindi to kneel on his toes, his arms tied behind him. When he fell, the interrogators forcefully compelled him to return to the position, at times by beating and kicking him.
4. Violent Shaking: The interrogators grabbed al-Hindi, who was sitting or standing, by the lapels of his shirt, and shook him violently, so that the interrogator's fists beat against al-Hindi's chest and his head was thrown backward and forward.
5. Slapping, Beating, Kicking, and Other Infliction of Pain: In addition, to slapping, punching, and kicking, the interrogators tightened the shackles to cause pain greater than that normally suffered when remaining shackled for a prolonged period.

² It should be noted that the detention took place a short time before the IDF redeployment in Qalqilya. This area was still therefore under Israeli control.

³ Taken from the testimony al-Hindi gave to **B'Tselem** on 31 December 1998 at his home, and from the civil complaint he filed against Israel, the GSS, and the GSS agents who interrogated him.

6. Sleep Deprivation: al-Hindi was not allowed to sleep at all for several days in succession. Whenever he fell asleep one of the interrogators woke him violently.

During his interrogation in Petah-Tikva, al-Hindi was not asked about the Wadi Qelt murders. In his testimony to **B'Tselem**, Al-Hindi stated: ⁴

They kept me in *shabeh* for two hours and then took me to the interrogator. He asked me about past events and about my previous arrests. For a week they interrogated me in the same manner. They asked me if I have a pistol.

They interrogated me about my relationship with two persons, Shaher a-Ra'i and Yusef a-Ra'i, from Qalqilya, who were wanted by Israel and were living in Jericho. I admitted that they were good friends of mine. I was asked why I visited them in May 1995 in Jericho. I answered that they are my friends and that I played chess with them. I am a chess player at the Terra Sancta Club. There was a chess tournament in Jericho that day. I went there as an observer and not to play.

They also interrogated me about cases where Jews were killed in the Occupied Territories. For almost a month, they put me in *shabeh* and deprived me of sleep.

From Petah-Tikva, al-Hindi was taken to Nablus Central Prison, where the violence against him increased: ⁵

On the 27th or 28th of August, I was taken for interrogation to the central prison in Nablus. That is where I met "Zadok," who had interrogated me in Petah-Tikva. He told me that there had been an explosion in Jerusalem. I asked, "what, am I guilty of that, too?" He said, no, but that they had a court order allowing them to use violent methods to make me admit to the accusations. ⁶ They accused me of being involved in the murder of Jews in Nablus.

The interrogation became more and more violent. They tied me to the *shabeh* chair - my hands behind me and my legs under it - and the interrogator would push my stomach and chest with his feet. They shook me, and I had to change my shirt three times because it ripped as a result of the shakings. At times, while I was in the *shabeh* chair, my body leaning backwards, they hit me in the stomach, which really hurt. They also frightened me by showing me pictures of bodies of persons who had committed suicide.

A few days of intensive interrogation followed before the murders at Wadi Qelt were mentioned. After several days of torture, al-Hindi confessed:

⁴ From the testimony of al-Hindi, 31 December 1998.

⁵ At that time, Nablus was still under complete Israeli control.

⁶ No such procedure exists whereby the GSS obtains a court order to use specific interrogation methods.

In Nablus, the interrogator informed me that I was suspected of taking part, along with Shaher and Yusef a-Ra'i, in the murder of two Israelis in Wadi Qelt. After five or six days of violent interrogation, which included *shabeh*, violent shaking, beatings, sleep deprivation, and other ill treatment, such as being pushed to the ground while I was bound to the *shabeh* chair, I broke.

I told the interrogators "Zadok" and "Nader": "Don't ask me what I know about the murder of Jews and the activities of the Popular Front. Give me a specific charge, a clear allegation, and I'll admit to it. Just let me be."

They said, "there is an allegation. Tell us how you and Yusef and Shaher killed the two Jews in Wadi Qelt."

Then I began to make up stories for them. I told them that I, together with Yusef and Shaher, killed the two of them. I said, "Let me go, and I'll show you where we did it." At first, I told them that we stabbed them with knives. They said, "that's not true. Not by stabbing." I said, "by gunfire?" They said yes.

They asked me what items the two who were killed had with them. I said whatever I thought a hiker would have. They said, "right, but they had something else." "Zadok" hinted that they had weapons, so I said that they also had a Kalatchnikov. He responded, "no. Since when do Israelis use Kalatchnikovs?" I said, "OK, then they had a *Galil* or M-16." The interrogator wanted me to say M-16, so that is what I said.

He asked me where I got the weapon to commit the act. I said it was from Abu Ghassan, the senior representative of the Popular Front in the West Bank. He said, "no, not from Abu Ghassan." I said, "we got it from Khader Abu 'Abareh." I knew Khader from when I was detained in 1986-1987. Another detainee, Ahmad Sajadiyeh, had told me that Khader was now in Jericho, so that's why I mentioned him. He asked me where the weapon was and I said that I buried it in Jericho.

After the confession, al-Hindi was taken back to the interrogation facility in Nablus to give a statement to the Police. In effect, the statement he had given to the GSS served as his statement to the Police. The GSS interrogator called by the nickname "Abu-Suleiman" requested al-Hindi to point out on the map the precise site where the murders took place. Al-Hindi explained that he knew nothing about the incident, and that he had confessed only because of the torture.

After ten days in Nablus, the authorities returned him to the detention center in Petah-Tikva, where the GSS interrogated him again, apparently as a result of his insistence that the confession he had given was false. Al-Hindi then suddenly remembered that, on the day of the murders, he was working in Alfe Menashe and Tsofim, Israeli settlement towns. According to the procedures governing Palestinian workers, every Palestinian working in a Jewish settlement must sign-in when entering and leaving a Jewish settlement. This requirement was al-Hindi's good fortune. He also recalled that, on that day, his work supervisor, Hezi, and another person, Samir Mendi Alias, were with him. These two persons confirmed al-Hindi's claim.

Al-Hindi was detained for 45 days before he was allowed to meet with his attorney. From Petah-Tikva, he was transferred to Megiddo Military Detention Center, where he was charged with membership in the PFLP, an illegal organization, and with recruiting others. No mention was made of the Wadi Qelt murders. The authorities held him in Megiddo for three months awaiting trial. In a plea bargain arranged through his attorney, Khaled Qusmar on behalf of Addameer, al-Hindi admitted to being a member of the PFLP and assisting the organization. He was sentenced to the time he had already spent in detention. He was released on 6 February 1996, after having been detained for over six months.

In October 1996, Al-Hindi filed a compensation suit for the injuries he suffered in interrogation. The defendants are the state, the GSS, and the agents who interrogated him. According to the medical report of Dr. Rafas, prepared on behalf of the plaintiff, al-Hindi suffers a thirty-percent psychological disability.⁷ This suit is still pending.

⁷ Civ. App. 78615/96 (Peace Court, Tel Aviv, 4410/96). Attorney Dan Assan provided this information.

2. Yusef and Shaheer a-Ra'i

Arbitrary detention

Like al-Hindi, the cousins Yusef and Shaheer a-Ra'i are from Qalqilya and were active in the PFLP. During the intifada, Israel detained them both several times and sentenced them to short periods of imprisonment. In April 1995, following reports that the IDF was about to arrest them, the two moved, without their families, to the Ein a-Sultan refugee camp, outside Jericho, which was under the control of the PNA. On the night of 3 September 1995, Palestinian intelligence agents (*Mukhabarat*) came to their residence in Ein a-Sultan. The agents indicated that they had come to search the premises. They found political material of the PFLP and a counterfeit identity card, all of which the agents confiscated. The agents told the cousins that the head of intelligence, Colonel Tawfiq a-Tirawi, wanted to talk to them for five minutes and took them to the detention center of the *mukhabarat* in Jericho.

They were held overnight and the following day they were told that Col. a-Tirawi had not been able to meet with them because his wife and daughter had had a traffic accident. They were kept for an additional nine days, without being told the reason for the arrest, if there were any charges against them, or how long they would remain in detention. "We frequently asked about the reasons for our detention but we were not told."⁸ During their time in detention they were not questioned. They did not have access to a lawyer nor were they brought before a judge. Their families tried to visit them but were not allowed.

On 13 September, in the middle of the night and without prior warning, the two cousins were taken to the *Muqata'ah* (The PNA's administrative headquarters in Jericho), and brought before the PNA's General Military Prosecutor, Colonel Muhammad al-Bishtawi. Here they were told for the first time about the reasons for the arrest and their imminent trial. Shaheer a-Ra'i described this as follows:⁹

On 13 September, two intelligence officers, Abu Hassan and Abu 'Omar, woke us up at one o'clock in the morning and took us to the *Muqata'ah*. There we met with prosecutor Colonel Muhammad al-Bishtawi. I did not know where I was. He introduced himself and told me: "You and your cousin killed the two Jews in Wadi Qelt!"

I said that it was not true. He hit me with the drill that was on his desk. He said that I was lying, and that he had proof... He asked me if I was a collaborator, and I said that I wasn't. He asked me if I was active in the PFLP, and I answered that I was. Then he said that a man from Qalqilya named Jamal Mustafa al-Hindi, who was imprisoned in Israel, confessed that he, me, and my cousin Yusef had killed two Israelis in Wadi Qelt. He added that we were going to be tried very soon. I asked him to wait and to detain me until the truth was known...

⁸Testimony of Shaheer a-Ra'i, given to B'Tselem and LAW on 7 February 1999 in Jericho Central Prison

⁹ Ibid.

According to Shaher, he and his cousin then asked Colonel al-Bishtawi to be transferred to Israel and even drafted a written request. About one hour later they were visited by leading PFLP personalities who reportedly tried to convince them to abandon the request for extradition:

After one hour we were taken out of the cell and saw Samir Johar, Saeb Natheef and Ahmad Sa'adat, who tried to convince us not to ask for extradition to Israel. I insisted however that I wanted to be extradited to Israel and that there I would prove that I was innocent, and that I was willing to appear before any court.

Trial in the State Security Court

On 13 September, 1995 Shaher and Yousef a-Ra'i were convicted by the State Security Court of "damaging Palestinian interests." Shaher a-Ra'i described the different stages of the trial:¹⁰

Our trial started at 2:30 A.M. and ended at 2:45 A.M. It took place in an ordinary room of *al-Muqata'ah*. There were three judges, one of whom I knew, Marwan Abu Faddah. We were unshackled as we stood before them. The president of the court told me that they had appointed an attorney for us, Mahmoud Qarre'in, but I refused. Then the president responded: "no, my son. You are not allowed to appear before the court without an attorney."

In addition to the judges, the prosecutor and about fifteen to twenty soldiers were present. Nobody spoke during the trial except for prosecutor al-Bishtawi. One of the judges wanted to speak, but the prosecutor prevented him. We were charged with damaging Palestinian interests, disturbing the peace process, and distributing political pamphlets. I interrupted him and asked what political pamphlets he was talking about, but he silenced me immediately. The Wadi Qelt murders weren't raised at all...

The defendant's lawyer, who at the time of the trial was a member of the Preventive Security Service (PSS), was appointed by the court, but the a-Ra'is had no chance to meet him before the trial. His intervention during the trial is reported to have lasted two minutes only. He reportedly said that no crime had been committed, that there was no evidence and that the procedure was unfair. In fact, the a-Ra'is did not know until two hours earlier that they were going to be tried. The judges did not ask the defendants any questions and no witnesses were heard. The three judges, the prosecutor and the court-appointed lawyer were all military officials. One of the judges, Marwan Abu Faddah, is reported to be the director of the Military Intelligence (*Istikhbarat*) in Jericho.

The trial was secret, the defendants did not know until two hours earlier that they were going to be tried, and the family was not notified at all. Shaher's wife Manal learnt about the trial and the sentence from the media.

¹⁰ Ibid.

According to confidential information received by LAW and B'Tselem, the judges, the defense lawyer and representatives of the PFLP were called by Haj Isma'il (head of the National Security) in the middle of the night and asked to go immediately to the *Muqata'ah*. Once there they were told about the murder at Wadi Qelt, the confession of al-Hindi to the GSS, and the request to transfer the a-Ra'i cousins that Israel was about to make. Haj Isma'il reportedly explained that it was necessary to try them very quickly in order to thwart their transfer to Israel. According to this source, the a-Ra'i cousins wanted to be transferred to Israel because they were innocent and thought that a trial in Israel would be longer and would better enable investigation of what really had occurred.

Shaher and Yusef a-Ra'i were sentenced to twelve years imprisonment at hard labor (seven years' imprisonment and five years' probation). They have yet to obtain a copy of the charge sheet, the trial transcript or their sentence. After the trial they were imprisoned in Jericho Central Prison, where they remain to this date. Since being detained, they have gone on five hunger strikes, lasting a total of sixty days, in protest and to demand that they be released or given a fair trial. Until their demand is met, the two cousins have asked to be separated from the criminals and "collaborators" in the jail, and to be transferred to Qalqilya prison, where it would be easier for their families to visit them. Shaher's wife Manal described the hardship caused by her husband's imprisonment:¹¹

My husband's detention is very hard on me financially. I spend NIS 100 a week on travel to the prison - from Qalqilya to Jericho - and for the things I buy for him. I have to provide him with everything: meat, vegetables, coffee, cigarettes, clothes, shaving cream and even gas. This has financially exhausted me. I do not have a regular job, and I also have to support my two daughters, so I have to rely on assistance from my parents. I requested that they transfer him from Jericho to Qalqilya, but the PNA refuses.

The reasons behind the detention and rapid trial

Yusef and Shaher a-Ra'i were detained by the PNA immediately after Jamal al-Hindi gave his confession to the Israeli GSS. This suggests that the GSS forwarded the confession to the Palestinian security services and that this confession was the impetus for the a-Ra'is' arrest. Immediately after their detention, senior Israeli officials stated in the press¹² that the government intended to request the extradition of the two, relying on a provision of the Cairo Agreement, which stipulates that,

Both sides, upon receipt of a request in accordance with this Article, shall effect the arrest and transfer requested.¹³

Extradition from the PNA to Israel is a point of contention between the parties. Palestinian jurists and politicians occasionally raise an objection to the fundamental asymmetry of the extradition clauses in the Oslo Accords. Under the agreement, Israel may request transfer of anyone who committed an offense for which Israel has

¹¹ Testimony given by Manal a-Ra'i to B'Tselem and Law in her house in Qalqilya on 18 February 1999.

¹² *Ha'aretz*, 13 September 1995.

¹³ Agreement on the Gaza Strip and the Jericho Area (Cairo, 4 May 1994), Annex III, article II, 7(f)2).

criminal jurisdiction. The PNA may request extradition of Palestinians, but is not allowed to request the transfer of Israeli civilians, even if they are suspected of having committed offenses in territory under PNA control.¹⁴

However, the primary reason for the PNA's refusal to extradite is political. Several senior officials in the PNA have spoken out on the question of extradition, the most explicit of them being the head of the Preventive Security Service in Gaza, Muhammad Dahlan, who stated:

We made a decision, at our highest levels, with the approval of Arafat of course, that we shall not extradite our people to Israel, even if those wanted are members of Hamas. We do not want the history of our people to include that we extradited Palestinians to Israel. Transfer of our people to Israel will prejudice the interests of the Palestinian Authority in the internal-Palestinian sector, the Arab world, and the Islamic world.¹⁵

The role of the PFLP and the reasons why leading members of the party were called the night of the trial remain unclear. However, from the information gathered, it would seem fair to assume that the PNA wanted the PFLP's cooperation in dealing with this case, thereby hoping to prevent the political damage inherent in extraditing Palestinian suspects to Israel or imprisoning opposition members as a ruse to avoid extradition.

In order to evade extradition of Palestinians to Israel, the PNA used another provision of the Cairo Agreement, which stipulates that,

If the individual requested is detained in custody or is serving a prison sentence, the side receiving the request may delay the transfer to the requesting side for the duration of the detention or the imprisonment.¹⁶

In their trial before the State Security Court, Shaher and Yusef a-Ra'i were not charged with murdering two Israelis in Wadi Qelt. Instead, they were tried and convicted for damaging Palestinian interests, disturbing the peace process, and distributing political pamphlets. According to information received by **LAW**, the legal basis of these charges were Articles 147 and 148(1) of the 1960 Jordanian Penal Code No 16, which deal with "terrorist acts." However, the connection between the charges and the laws on the basis of which they were sentenced is dubious. Articles 147 and 148(1) of the 1960 Jordanian Penal Code No 16 do not establish that "disturbance to the peace process" is punishable, and distributing political pamphlets can hardly be seen as a terrorist act. The dubious nature of both the charges and the legal basis for the sentence supports the conclusion that the trial of the al Ra'i was politically motivated and that the State Security Court was used by the PNA to provide a politically motivated decision with a semblance of justice.

In fact, the PNA was not able to try the a-Ra'is for the Wadi Qelt murders, as according to the Cairo Agreement, it lacks jurisdiction for crimes committed outside

¹⁴ Ibid., article II, 7(a) and (b).

¹⁵ Interview with Roni Shaked, *Yediot Aharonot*, 8 September 1995.

¹⁶ Agreement on the Gaza Strip and the Jericho Area, Annex III, article II, 7(f)(2).

the autonomous areas.¹⁷ Wadi Qelt is in Area C, which remains under complete Israeli control.

According to Prosecutor Bishtawi,

These two [Shaher and Yusef a-Ra'i] had no connection with the Wadi Qelt murder, either directly or indirectly. They did other things that prejudice public order, the welfare of the Palestinian Authority, and the peace process... They are members of the Popular Front and the Popular Front opposes the peace process.¹⁸

The timing of these events, however, indicates otherwise. Whether or not they are responsible for the Wadi Qelt murders, these murders and Israel's extradition request were the impetus for their arrest and speedy trial. Indeed, a few days after the trial, Israel officially requested transfer of Shaher and Yusef a-Ra'i as suspects in the murder of Ohad Bachrach and Uri Shahor in Wadi Qelt.¹⁹ The PNA predictably responded that the Cairo Agreement does not enable transfer at this time since the two are serving a prison sentence for other crimes. The Israeli Ministry of Justice has never withdrawn its request for transfer.²⁰

In this case, the PNA faced a dilemma: on the one hand, the Oslo Accords require it to fight terrorism and to cooperate with Israel in the prosecution of terrorist suspects. On the other hand, the PNA was concerned about the political price of extradition, which could be portrayed by opponents as "collaboration with the enemy."

The PNA's solution to this dilemma was to sacrifice the individual rights of Yusef and Shaher a-Ra'i. By speedily convicting them of vague charges unrelated to the Wadi Qelt murders, the PNA could avoid extradition for years to come, while at the same time claiming that it is acting under the terms of the Oslo Accords.

¹⁷ Agreement on the Gaza Strip and the Jericho Area, Annex III, article II (1).

¹⁸ *Ha'aretz*, 13 September 1995.

¹⁹ *Ha'aretz*, 17 May, 1995.

²⁰ The spokesperson of Israel's Ministry of Justice, Eti Eshed, stated that, regarding the case of Shaher and Yusef a-Ra'i, "The request for an arrest warrant and their transfer to Israel was submitted some time ago to the Palestinian Authority, and was based on testimonies we had obtained then, and after the Attorney General had examined them. We have received nothing that changes the investigation material." *Ha'aretz*, 29 May 1998.

3. The a-Ra'i Cousins and the List of Thirty

In October 1998, Israel, the Palestinian National Authority and the United States signed the Wye Memorandum regarding continued implementation of the Oslo process. Article A(1)(d) of Part II of the Memorandum, which deals with security matters, provides that,

The Palestinian side will apprehend the specific individuals suspected of perpetrating acts of violence and terror for the purpose of further investigation, and prosecution and punishment of all persons involved in acts of violence and terror.

Relying on this provision, Israel prepared a list of thirty persons suspected of having perpetrated acts of violence whom the PNA must apprehend. The Government Press Office published this list on 4 November 1998. The list includes the three persons incriminated by Jamal al-Hindi: Shaher a-Ra'i, Yusef a-Ra'i and Khader Abu-'Abareh.

Given that al-Hindi claims to have randomly given Abu-'Abareh's name to the GSS (as opposed to the a-Ra'i cousins, whom the GSS asked about on their own initiative), it is possible that Abu-'Abareh is included on the list of 30 solely on the basis of al-Hindi's false confession.²¹ Since his name appeared on the list of thirty wanted persons, Abu-'Abareh has maintained his innocence and waged a persistent battle to clear his name. He wrote to President Clinton during his trip to the region in December 1998, to U.S. Secretary of State Albright, to then-Israeli Foreign Minister David Levy, to Amnesty International, and to diplomatic representatives in Israel and the Occupied Territories. Abu-'Abareh has not been arrested by the PNA, though he lives in fear that he will be.²²

There is no contradiction between respect for human rights norms and the requirement of the Wye Memorandum that the PNA apprehend those suspected of committing acts of violence in order to investigate, and to try and punish those found guilty. Israel's preparation of a list of thirty such suspects is also legitimate. However, the wording of Israel's list indicates a basic disregard for the internationally recognized right of suspects to be presumed innocent until proven guilty in a fair trial.²³ Israel's list of 30 "wanted persons" opens with the following statement:

The following is a list of thirty *terrorist fugitives* whom the Palestinian Authority is obligated to arrest under the Wye River summit Memorandum. The terrorists on the list *are responsible* for the death of nearly 100 Israelis [our emphasis].

²¹ Abu-'Abareh is politically active in the PFLP. From 1982-1988 he served six years in prison for organizing demonstrations and other political activity. Between 1990-1994, he served four periods of administrative detention, for periods ranging from three to six months. In 1996, he was detained several times by the Palestinian Authority and held either in prison or under house arrest without charge for periods of a few days up to five months.

²² Testimony given to B'Tselem on 27 December 1998, in his home at Bet Jala.

²³ See Article 11 (1) of the Universal Declaration of Human Rights and Article 14 (2) of the International Covenant on Civil and Political Rights

The language suggests that the Israeli government views a fair trial and all the rights this entails as completely superfluous to determining guilt. The persons mentioned in the list are stamped as "terrorists" whose responsibility for the death of Israelis is categorically stated, despite the fact that they were never proven guilty of these crimes.

Alongside each of the thirty names, the document states the charges attributed to each. Next to the names of Yusef and Shaheer a-Ra'i is written:

... participated in the murder of two Israeli hikers, Ohad Bachrach and Uri Shahor in Wadi Qelt on 18 July 1995.

Rather than stating that the two are "suspected of participating" or "ostensibly participated," the language is categorical: they "participated" in the murder." Yet the a-Ra'is were never tried for this crime; their conviction by the Palestinian State Security Court (which itself falls far short of meeting the minimal standards for a fair trial) was for offenses unrelated to the murders in Wadi Qelt.

As an aside, the Israeli media's treatment of the Wadi Qelt case echoed the Israeli Government's disregard for the right to be presumed innocent until proven guilty. Israel's two largest newspapers *Yediot Aharonot* and *Ma'ariv* refer to Jamal al-Hindi and the a-Ra'is as murderers, rather than as suspects.²⁴

An obvious question regarding the list of thirty is why Israel includes the a-Ra'i cousins among the Palestinians to be detained, when they were arrested two years earlier and were already serving a seven-year prison sentence in Jericho Prison? B'Tselem posed this question to the Foreign Ministry and to the Prime Minister's Office, but received no reply. In the absence of official information, we can only surmise that the inclusion of the a-Ra'is on the list may be intended to prevent their release.

This conclusion is supported by Israel's protest of a phenomenon it calls "the revolving door," i.e. the PNA's symbolic detention of Palestinians suspected of having perpetrated acts of violence, only to release them within a short time.²⁵ Israel raised its concerns about the existence of such a "revolving door" in the security discussions at the Wye summit. United States' ambassador to Israel, Edward Walker, stated his government's position in a letter to then-Israeli government Secretary Danny Naveh, which is attached to the Wye Memorandum:

As for the issue of prisoner releases and the question of a "revolving door," the statement [of the State Department] said: we have had discussions with the Palestinians and they have given us a firm commitment that there will be no "revolving door."²⁶

²⁴See for example, *Yediot Aharonot*, 13 September 1995 and *Ma'ariv*, 12 September 1995.

²⁵ The term "revolving door" first appeared in a document of the former Israeli government secretary Danny Naveh prepared in early 1997, in which he enumerates those sections of the Oslo Accord which, in Israel's opinion, the Palestinian Authority violated.

²⁶ The letter, dated 31 October 1998, appears on the Israeli Foreign Ministry's Website.

Were the PNA to convict individuals of grave crimes in fair trials, only to release them immediately, such a practice would be contrary to the rule of law, and Israel and the United States would be justified in protesting. However, the rhetoric surrounding the “revolving door” suggests that this term would be applied to any Palestinian released by the PNA, including those against whom there is no evidence to try them, or those acquitted by a court of law. Such use of the “revolving door” allegations demonstrates additional blatant disregard for basic rights of due process.

Given the patently unfair conviction of Shaher and Yusef a-Ra’i, the PNA has been subject to pressure from their families and from human rights organizations to either release them or give them a fair trial. In this context, their inclusion on the list of thirty, and the use of the revolving door rhetoric appears to be a preemptive move to prevent granting them their basic rights. In other words, a PNA decision to release a person on Israel’s list of 30 wanted persons would be considered a violation of the understandings.

The fact that the Wye Memorandum and the accompanying “revolving door” rhetoric serves to continue the a-Ra’is’ imprisonment is clear from statements of senior PNA officials. The PNA’s chief military prosecutor, Muhammad al-Bishtawi, who prosecuted the a-Ra’is, was asked why the a-Ra’is had not been released after al-Hindi’s incriminating testimony was found to be false. Rather than addressing the fact that the a-Ra’is were not convicted of the Wadi Qelt murders, Bishtawi responded that, “the political conditions do not allow it.”²⁷ Palestinian Justice Minister Freih Abu Medein was more explicit:

I am certain that they [Shaher and Yusef a-Ra’i] are innocent. There were three wanted persons in regard to the murder: Israel arrested one and released him, and the two that we arrested are in jail. This is ridiculous. I already recommended that they be released, and Israel automatically complained to the Americans that the Palestinians began the “revolving door.”²⁸

The United States shares responsibility for the continued imprisonment of Shaher and Yusef a-Ra’i, given its categorical statements about “the revolving door” in the context of the Wye Memorandum implementation. As a witness to the Memorandum, the United States also undertook responsibilities to ensure its implementation (see Part B, Section 3 of this report). In addition, following claims by the families of Ohad Bachrach and Uri Shahor that “their sons’ murderers” were moving around freely, the head of the Tel Aviv office of the CIA visited Jericho Prison to ascertain that Yusef and Shaher a-Ra’i were indeed imprisoned.²⁹ The visit took place on 22 January, 1998, apparently at the PNA’s initiative. Such a mission grants legitimacy to the imprisonment and increases the United States’ culpability.³⁰

We can only speculate as to Israel’s motives in acting to prevent the a-Ra’is’ release. The Government has not made public any information to substantiate its claim that the

²⁷ The statement was made to LAW during an interview in Bishtawi’s office on 4 February 1999.

²⁸ Interview with Amira Hass, *Ha’aretz*, 4 November 1998.

²⁹ *Ha’aretz*, 25 January 1998.

³⁰ B’Tselem wrote on 2nd March 1999 to Ambassador Walker requesting details on this matter. John Scott, the embassy’s political counselor, answered that the inquiry had been referred to the State Department, which has yet to respond.

a-Ra'is perpetrated the murders. In the absence of such additional information, the Israeli government may want to perpetuate the impression among its public that the Wadi Qelt murders were solved and the perpetrators punished. It may also want to demonstrate its firm stand on Israel's security interests. Alternatively, it may simply want to keep known opponents to the Oslo Accords in prison.

Whatever the reason, the result is that the Wye Memorandum helps to ensure that Yusef and Shafer a-Ra'i remain in prison on the basis of a patently unfair conviction on absurd charges.

Section II: Principal Aspects

1. Torture in Israel: The Legal Framework and International Law

Torture of Palestinians during interrogations by the GSS is a widespread and well-documented phenomenon in Israel. The methods used during the interrogation of Jamal al-Hindi, such as *shabeh*, shackling, threats, beating, forceful shaking, and sleep deprivation are not unusual, but rather constitute common GSS practices.³¹ B'Tselem estimates, based on official sources, human rights organizations, and attorneys, that the GSS annually interrogates between 1,000-1,500 Palestinians. Some eighty-five percent of them - at least 850 persons a year - are tortured during interrogation.³²

The GSS uses these methods pursuant to secret procedures that were initially based on the recommendations of a 1987 government commission of inquiry headed by retired Supreme Court Justice Moshe Landau. The Landau Commission recommended that the GSS combine "non-violent psychological pressure of an intense and prolonged interrogation.... with a moderate measure of physical pressure."³³ The exact methods to be used were detailed in a classified section of the Landau Recommendation, which has never been made public. Interrogation procedures are revised periodically by a special ministerial committee. In October 1994, following a suicide attack committed by a Palestinian on the #5 bus line in Tel Aviv, the ministerial committee gave special permission to the GSS to use "intense physical pressure" against members of Hamas and the Islamic Jihad.³⁴ This special permission has since been routinely extended every three months.

The Landau Commission states that it is the obligation of GSS interrogators to attempt to carry out the interrogation with "less severe measures in a reasonable way, taking into account danger," before "physical pressure" is applied.³⁵ However, the testimony of Jamal al-Hindi indicates that torture was used from the beginning of the interrogation, in order to extract a confession which would confirm the GSS' pre-conceived suspicions. This case shows that, at least in some cases, the authorization of torture may lead to a situation where other means of interrogation are neglected, and a faulty investigation is the result. Had the GSS interrogated al-Hindi properly, it is likely that they would have found out much earlier where he was at the time of the murder.

The UN Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, to which Israel is party, defines torture as intentionally inflicted "severe pain or suffering, whether physical or mental" on a person to, among

³¹ B'Tselem has published eight reports on torture in GSS interrogations, analyzing the various aspects and ramifications of GSS interrogation methods. See most recently B'Tselem, *Routine Torture: Interrogation Methods of the General Security Service* (Jerusalem, February, 1998).

³² B'Tselem, *Routine Torture*, p. 8.

³³ Report of the Commission of Inquiry in the matter of Interrogation Methods of the General Security Service regarding Hostile Terrorist Activity, First Part (Jerusalem, October 1987), par. 4.7.

³⁴ *Ha'aretz*, 13 April 1995.

³⁵ Landau Commission Report, 1987, para. 3.16.

other purposes, obtain "information from him or a third person."³⁶ Article 2(2) of the Convention unequivocally prohibits torture under any circumstances. Other treaties, such as the UN International Covenant on Civil and Political Rights, and conventions dealing with war-time situations,³⁷ also prohibit torture and other forms of cruel, inhuman, or degrading treatment and punishment (hereafter: ill-treatment) in all circumstances. The prohibition on torture and ill-treatment is, therefore, absolute; no "exceptional" circumstances, including the need to fight terrorism, may justify disregarding it. Israel is a party to all of these treaties,³⁸ and has never officially protested the articles stipulating the absolute prohibition on torture and ill-treatment.

In virtually every case in which Palestinian detainees petitioned the High Court of Justice in order to stop the torture against them, the Court did not intervene. The High Court has, on several occasions, issued injunctions temporarily prohibiting the GSS from using specific interrogation methods. However, in cases where the state appealed against such injunctions, the High Court has consistently sided with the state, permitting the GSS to continue the use of physical force and "pressure." In January 1998, the High Court, in an expanded panel of nine justices, began discussion of a series of petitions contesting the legality of the use of various forms of physical force in GSS interrogations.³⁹ The Court held three additional hearings, and concluded its discussions on 26 May, 1999. The Court has yet to issue a ruling.

Israel's routine use of torture in interrogation of Palestinians has direct bearing on the issue of extradition of suspects from the PNA to Israel. Under international law, states may not extradite persons if they will be subject to persecution or ill-treatment.⁴⁰ This prohibition, known by its French name - *non-refoulement* - is found, for example, in article 3 of the Convention against Torture. Furthermore, many jurists consider this prohibition to be within the scope of customary law, i.e., obligatory to all states regardless of whether they are party to a relevant treaty.⁴¹

The prohibition on *refoulement* is not only declaratory. There are many cases in which domestic and international courts have forbidden the return of refugees, or the

³⁶ Art. 1(1) of the convention was adopted by the UN General Assembly in 1984 and took effect in 1987. Israel ratified the convention in 1991.

³⁷ For example: The Hague Regulations of 1907, art. 4, dealing with prisoners of war, and art. 44, regarding civilians; art 3(1), common to the four Geneva conventions of 1949, regarding a non-international conflict; the Third Geneva Convention, articles 13-17, and others, regarding prisoners of war; the Fourth Geneva Convention, articles 27, 31, and 32, regarding civilians under enemy control.

³⁸ Israel also ratified the International Covenant on Civil and Political Rights, and the Geneva conventions. The Hague Convention of 1907 is considered customary international law, and as such is part of Israeli domestic law.

³⁹ HCJ 5104/94, *The Public Committee against Torture in Israel v. Government of Israel et al*; HCJ 4054/95, *The Association for Civil Rights in Israel v. Prime Minister et al*; HCJ 5188/96, *Wa'al al-Ka'ka and HaMoked: Center for the Defence of the Individual v. General Security Service et al*; HCJ 6536/96, *Hatem Yusef Abu Zaida (represented by Andre Rosenthal) v. General Security Service*; HCJ 7563/97, *'Abd al-Rahman Ghaneimat and the Public Committee against Torture in Israel v. Minister of Defense et al*; HCJ 7628/97, *Fu'ad 'Awad Qur'an and the Public Committee against Torture in Israel v. Minister of Defense et al*.

⁴⁰ While the Palestinian Authority is not a state, it is obligated by customary international law. See page 21.

⁴¹ T. Meron, *Human Rights and Humanitarian Norms as Customary International Law* (2nd ed.) (Oxford: Clarendon, 1989), p. 23; G.S. Goodwin-Gill, *The Refugee in International Law* (Oxford: Clarendon, 1996), pp.167-170.

extradition of criminals to states where they would be subject to persecution, torture, or ill-treatment. In 1989, the European Human Rights Court handed down a significant decision against Great Britain in the appeal of a murder suspect named Soering.⁴² The British planned to extradite Soering to the United States, where he would likely have faced a death sentence. The European Court ruled that the U.S. phenomenon of death row - many years of living in the shadow of death, because of the lengthy judicial process involved in capital punishment cases - constitutes inhuman and degrading treatment, and forbade Britain from extraditing Soering to the United States. More recently, the Italian High Court refused to extradite the Kurd leader Abdallah Ocalan to Turkey because he would face the death penalty. This despite the fact that such a decision created severe tension between the two countries.⁴³

In the article on extradition in the Oslo II agreement, Israel and the PNA undertook "to ensure that the treatment of the individuals transferred under this article complies with the applicable legal arrangements in Israel and in the Territory and with internationally-accepted norms of human rights regarding criminal investigations."⁴⁴ Consequently, as long as there is a concern that a Palestinian extradited to Israel would be tortured, the PNA is absolutely prohibited – both by general international law and by the Oslo Accords – to effect the extradition.

⁴²*Soering v. UK*, Series A, No. 161 (1989).

⁴³ See *Ha'aretz*, 22 November 1998.

⁴⁴ Article II (7) (f), in annex IV.

2. The State Security Court and Arbitrary Arrests by the PNA

As in the case of Jamal al-Hindi's torture by the GSS, the PNA's abuse of the rights of the a-Ra'is did not take place in a vacuum. Rather, arbitrary detention and unfair trials are common practices under the PNA. Such practices constitute a violation of applicable international law.

a. The Palestinian National Authority and Human Rights Law

Since the PNA does not constitute an independent state recognized by the international community, it is not able to be a party to international human rights treaties. However, this fact does not exempt the PNA from its legal and moral obligation to observe internationally recognized human rights standards.

The Universal Declaration of Human Rights is widely accepted as customary international law, which sets a standard for all states regardless of whether they are party to specific treaties. Since the PNA has several of the characteristics of a state, it is obligated to act according to the norms of customary international law.

PLO leaders, who now head the PNA, have repeatedly proclaimed their commitment to observe human rights. In a public statement, issued on 30 September 1993 in Tunis, the PLO vowed that it would respect all international human rights instruments.⁴⁵ The Palestinian Charter of Independence, which was proclaimed in Algeria in November 1988, also states its commitment to human rights.⁴⁶

The Oslo Accords confirm the obligation of both Israel and the PNA to respect international human rights principles. Article XIV of the 1994 Agreement on the Gaza Strip and the Jericho Area stipulates that:

Israel and the Palestinian Authority shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.

Article VI (1b) of the same agreement provides that the PA "will administer justice through an independent judiciary."

The Oslo II agreement on the transfer of autonomy within the West Bank contains an identical obligation, obligating both Israel and the PNA to act according to human rights and the rule of law.

⁴⁵ See LAW, *People's Rights Magazine*, January 1999, p. 26.

⁴⁶ "Government will be based on principles of social justice, equality and non-discrimination on grounds of race, religion, color or sex under the aegis of a constitution ensuring the rule of law and an independent judiciary... The State of Palestine proclaims its commitment to the principles and purposes of the United Nations, and to the Universal Declaration of Human Rights."

The Palestinian Basic Law, which is awaiting President Arafat's signature in order to be enacted, explicitly refers in Article 10 to the commitment of the PNA to adhere to international human rights standards.⁴⁷

b. Detainees' Rights

The Universal Declaration of Human Rights (Article 9) categorically states one of the pillars of every judicial system: "No one shall be subjected to arbitrary arrest, detention or exile." The International Covenant of Civil and Political Rights (ICCPR) details in Article 9 the minimal rights which are intended to ensure freedom from arbitrary arrest or detention:

- the right to be informed of the reasons for the arrest;
- the right to be promptly informed of any charges;
- the right to be promptly brought before a judge;
- the right to a lawyer of choice in all stages of criminal proceedings.

In the West Bank, pre-1967 Jordanian law, specifically the 1961 Code of Criminal Procedure Number 9 and the 1960 Jordanian Penal Code Number 16, govern arrest procedures. These laws grant broad authority to the General Prosecutor in determining the fate of a detainee. A detainee has to be brought before him within 24 hours. If the crime is punishable by a prison sentence, the General Prosecutor may, on his own authority, repeatedly extend the detention period for additional periods of 15 days, subject to issuing a warrant specifying the charges and the reasons for the continued detention.

This law provides the General Prosecutor with the power to authorize extended periods of detention without judicial supervision, and is thus inconsistent with international law. By comparison, according to Article 11 of the Palestinian Basic Law, arrests and detentions have to be supervised by the judiciary. The Basic Law has not yet been signed by the President, and is therefore not yet in force.⁴⁸

In the case of the a-Ra'i cousins, even these faulty procedures were not implemented. They were not brought before the General Prosecutor within 24 hours, nor informed of the reasons for their detention, as required by law. Only after 10 days of detention, were they brought before the General Military Prosecutor. There is no provision in Jordanian law for bringing a civilian before the Military Prosecutor.

Yusef and Shaher a-Ra'i did not enjoy any of the detainee rights enshrined in international law. Detention in violation of the minimal international standards has been a common practice by PNA security forces since its establishment in 1994.

⁴⁷ "1. Fundamental rights and freedoms shall be recognized and respected. 2. The Palestinian National Authority will work without any delay on joining international conventions and covenants which secures human rights." Cited as in: LAW, *Palestinian Legislative Council, Basic Law Draft Resolution* (Jerusalem, 1997).

⁴⁸ After the signing of the Declaration of the Principles in September 1993 the Palestinian National Council's Legal Committee started drafting a Basic Law, which was designed to serve as the PA constitution during the interim period. The Basic Law was passed in the Palestinian Legislative Council on 2 October 1997. However, in order to become law, bills require the signature of the President. Thus far, President Arafat has refused to sign the Basic Law.

Hundreds of Palestinians have been detained on the basis of their political affiliation and have been held without charge or trial, many of them for periods longer than a year.⁴⁹ During the two weeks following the signing of the Memorandum, the PNA began a widespread wave of arbitrary detentions of members of the “Islamic opposition.” This arrest campaign focused on those suspected of being members of Hamas and Islamic Jihad movements in the Gaza Strip and resulted in the arrest of over 200 persons. Additional arrest campaigns also targeted activists of the PFLP and the DFLP, both in Gaza and in the West Bank, some of whom were detained for extended periods of time without charge or trial.⁵⁰

c. The State Security Court

In 1995 Arafat issued a presidential decree establishing the State Security Court (SSC) as a special court with jurisdiction over security offences.⁵¹ As such it functions outside the Palestinian civil court system in the West Bank and the Gaza Strip, which has jurisdiction over criminal offences, as well as outside the military court system.

The decree provides the SSC with jurisdiction “over crimes which infringe internal and external state security and over the felonies and misdemeanors mentioned in Order 555 of 1957.” Order 555, issued under the period of Egyptian rule in the Gaza Strip, refers to activities of collaboration with the enemy and establishes punishments (in some cases the death penalty) for a series of security offences.

The decree thus limits the jurisdiction of the SSC to security cases. However, defendants have also been tried for offences such as libel, homicide and sale of rotten food.⁵² This suggests that the meaning of “security” is subject to wide interpretation and illustrates the danger of the existence of such courts as a means of bypassing the ordinary court system.

The decree establishing the SSC also refers to Articles 23 and 59 of the 1962 Palestinian Constitution for the Gaza Strip, and to Article 55 of the 1964 law regulating the establishment of military courts. Article 59 of the 1962 Palestinian Constitution for Gaza determines that decisions by the SSC shall be subject to ratification by the executive rather than to appeal to a higher court.

The decree shifted jurisdiction over security related offences from the ordinary court system in the Gaza Strip and the West Bank, which guarantees the right to appeal to a higher tribunal, to this special court, which is not subject to scrutiny by any other judicial authority.

⁴⁹ Amnesty International, *Palestinian Authority Defying the Rule of Law: Political Detainees*, MDE 21/3/99, April 1999; LAW, *Human Rights Report*, 1997; LAW, *Annual Report*, 1998; The Palestinian Human Rights Monitoring Group, *The State of Human Rights in Palestine II: The Judicial System*, Issue 3, August 1997.

⁵⁰ See *Ha'aretz*, 30 October 1998; Amnesty International Press Release, 23 December 1998.

⁵¹ Presidential decree of 7 February 1995.

⁵² Human Rights Watch, *Palestinian Self Rule Areas: Human Rights under the Palestinian Authority*, Vol. 9, 10 (E), September 1997, p. 15

The decree also provides the basis for trying civilians before military judges, as it states that the SSC shall be composed of three military officers, “a high-ranking officer with two lower-ranking officers.” In practice the provisions of the decree are exceeded, since the prosecutors and the court-appointed lawyers in the SSC often are also members of the military, as in the a-Ra’is’ case.

The law by which people are tried in the State Security Court is, inter alia, the 1979 PLO Revolutionary Code, which was formerly used by the PLO for trying dissident PLO fighters.⁵³ The use of this code in the PNA is however in itself of dubious legality, since it has never been officially incorporated into domestic law.

The mere establishment of the State Security Court contravened minimum requirements for fair trial, and is a blatant violation of the (fifth) UN Basic Principle of the Independence of the Judiciary⁵⁴ that states:

Everyone shall have the right to be tried in ordinary courts or tribunals using established legal procedures. Tribunals that do not use duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

The operating procedures of the SSC conflict with internationally accepted norms of due process:

The right to a fair and public hearing:

The trial of Shaher and Yusef a-Ra’i was held in secret and in the middle of the night. As in the a-Ra’is’ case, public attendance at SSC trials is usually prevented by failing to give advance notice of the trial to relatives, lawyers, representatives of human rights organizations and the media. In this case, as in most, even the defendants were not notified in advance of the date and the venue of the trial.

The right to a public hearing extends beyond the legal proceedings in the court-room themselves. Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) states that “any judgement rendered in a criminal case or in a suit of law shall be made public” As stated earlier, the a-Ra’is have never seen a copy of their charge-sheets, the trial transcript or their sentences, as is the case with most people tried by the State Security Court.

The right to a competent, independent and impartial tribunal⁵⁵

Judges serving in the SSC are security force personnel, who in many cases lack legal training and experience in either civil or ordinary military courts. As members of the security forces, SSC judges are subordinated to the executive branch of government, which prejudices their independence. Their independence is further prejudiced by the procedures for their selection and removal from office. Judges serving in the SSC are

⁵³ Interview with Muhammad Bishtawi, see footnote 27.

⁵⁴ Adopted by the UN General Assembly in 1985.

⁵⁵ “ICCPR, Article 14 (1).

appointed on an ad hoc basis and have no guaranteed tenure of office. A lawyer and member of the security forces, who has served in the State Security Court, confidentially reported to LAW, how he was appointed defense attorney in one case:

[a high-ranking officer of the National Security] called me in the middle of the night and asked me to serve as a judge. He explained that it was hard to find someone at that time with legal training, and that at least the president of the court had to have legal background. I told him that I preferred not to. Then he suggested that I be the defense attorney, and I agreed. I felt that I could not refuse.

Reports from other SSC trials indicate that judges do not act in an impartial manner, and that harsh sentences are passed down after extremely hasty trials in which no witnesses are examined and no conclusive evidence presented. Such was the case in the a-Ra'is' trial, which lasted a total of 15 minutes. It is not unusual for State Security Court trials to last an hour or less, including reading the charges, hearing the case, reaching a verdict and issuing a sentence.

The a-Ra'is were tried by the SSC in order to avoid extradition to Israel. Such political considerations, which have no place in an impartial judicial process, are commonplace in SSC proceedings.

*The right to be promptly charged and the right to have adequate time to prepare one's defense*⁵⁶

Prompt information about the charges is indispensable in order to have adequate time to prepare one's defense, including consulting with a lawyer, gathering evidence and seeking witnesses. Shaher and Yusef a-Ra'i were not informed of the reasons for their arrest and the charges against them until the night of the trial, after having been kept ten days in detention. Neither were their relatives informed of the reasons for the arrest, the charges and the date of the trial. Furthermore the charges against them were of a vague and general nature ("damaging Palestinian interests, disturbing the peace process, and distributing political pamphlets"), which did not allow them to mount a defense. Such vague charges have been brought in other SSC trials. For example, Colonel Ahmad 'Atiya Abu Mustafa was executed in February 1999 after being convicted by the State Security Court of "inciting the public against the Palestinian Authority."⁵⁷

*The right to be represented by a lawyer of one's choice*⁵⁸

As in the case of the a-Ra'is, most of the defendants before the SSC are not represented by a lawyer of their own choosing, but by court-appointed lawyers, who often are employed by the security forces. Many defendants report that they did not

⁵⁶ ICCPR, Article 14 (3) (a).

⁵⁷ Abu Mustafa was also convicted of raping a six-year old boy, for which he was sentenced to 15 years imprisonment. See also LAW, *The Death Penalty Under Public Pressure in PNA-Controlled Areas*. March 1999.

⁵⁸ ICCPR, Article 14 (3) (b).

have a chance to meet their court-appointed lawyers before the trial, and complained that these lawyers said little if anything during the trial.⁵⁹

The right to appeal

As opposed to the ordinary civil court system in the West Bank and Gaza, the SSC provides no right of appeal. This contravenes one of the basic requirements of fair trial.⁶⁰ This right is crucial since, in courts throughout the world, sentences are frequently overturned on appeal to a higher court. Sentences issued by the State Security Court, including life imprisonment and death penalties, are only subject to ratification by the President of the PNA.

⁵⁹ For example, in a recent case, Jamil Munir Khalifeh was sentenced by the SSC in Hebron to life imprisonment on charges of killing a Jewish settler. *Ha'aretz* (12 February, 1999) reported: "A lawyer was appointed to defend Khalifeh just minutes before the court session began and did not have the chance to review his client's file. 'I didn't know anything about my client except through the discussions during the court session,' Attorney Yousuf al-Wahid told Reuters."

⁶⁰ Article 14 (5) of the ICCPR states that "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to the law."

3. The Wye Memorandum

As illustrated in the previous section, the Wye Memorandum contributes to the continued imprisonment of Shaher and Yusef a-Ra'i on the basis of a patently unfair conviction on absurd charges. This example is consistent with a broader phenomenon that has evolved over the Oslo process, in which Israeli and U.S. pressure on the PNA to fight terrorism results in increased PNA human rights violations. The text of the Wye Memorandum and the events which followed indicate a willingness on the part of all sides to sacrifice Palestinian human rights in the war against terrorism.

Despite numerous human rights violations committed by both Israel and the PNA, the Wye Memorandum focuses on security issues without a countervailing emphasis on the protection of human rights. This fact is reflected in the language of the Memorandum, which contains broad and categorical formulations, such as the requirement that the PNA pursue a policy of “zero tolerance to violence and terror”⁶¹ and that both sides should “take all the measures necessary in order to prevent acts of terrorism.”⁶² In this context, expressions such as “zero tolerance for human rights violations” may have been an appropriate counterweight to “zero tolerance for terrorism”. Yet such categorical support for human rights is absent. As a consequence, the Memorandum can be read as accepting and even promoting human rights violations, when Israel and the PNA argue that they are necessary for security and the fight against terrorism.

The Memorandum does contain a provision regarding human rights:⁶³

Pursuant of Article XI (1) of Annex I of the Interim Agreement, and without derogating from the above, the Palestinian Police will exercise powers and responsibilities to implement this Memorandum with due regard to internationally accepted norms of human rights and the rule of law, and will be guided by the need to protect the public, respect human dignity, and avoid harassment.

This article is incomplete and its language is ambiguous. First, the phrase “without derogating from the above,” (i.e. the security provisions) seems to imply that human rights concerns are secondary to security concerns. Such blanket subordination of human rights to security concerns conflicts with international law, which clearly limits the circumstances in which departures from human right standards are permissible. For example, even during “times of public emergency which threaten the life of the nation,” article 4 of the ICCPR allows only very limited restrictions on rights, and only “to the extent strictly required by the exigencies of the situation.” International law also absolutely prohibits departure, under any circumstances, from certain fundamental rights such as freedom from torture.⁶⁴

⁶¹ Article II (A) (1) (a).

⁶² Article II.

⁶³ Article II (C) (4).

⁶⁴ “No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture” Convention Against Torture article 2(2). See also ICCPR article 4(2). Convention Against Torture article 2(2).

Second, the human rights article in the Wye Memorandum represents a significant retreat from previous agreements in that it applies only to the Palestinian Police. The Memorandum is silent on Israel's human rights obligations. This contrasts with the Interim Agreement, which obligated both Israeli and Palestinian civil and military forces.⁶⁵

Third, contrary to the elaborate mechanisms for monitoring compliance with the security provisions, the Memorandum does not establish any system for monitoring compliance with human rights standards. This suggests that the Memorandum merely pays lip service to human rights, with no intention by any of the parties – Israel, the PNA or the United States – to hold either side accountable for human rights violations.

The Wye Memorandum has no affect on the legal obligation of Israel and the PNA to respect human rights. Both sides remain bound by customary international law. In addition, all previous human rights treaties signed by Israel remain in force. This includes multilateral human rights agreements, such as the International Covenant on Civil and Political Rights and the Convention Against Torture. The weak human rights language of the Wye Memorandum is only significant as an indicator of the political will of all parties regarding human rights, not of their legal obligations.

The previous section discussed Israel's treatment of Palestinian suspects as guilty prior to trial. The United States appears to share Israel's understanding that terrorist suspects should be imprisoned regardless of the evidence against them. In a letter of support attached to the Memorandum, Secretary of State, Madeleine Albright wrote to Prime Minister Netanyahu:

With respect to Palestinian decisions regarding the prosecution, punishment or other legal measures that affect the status of individuals suspected of abetting or perpetrating acts of violence or terror, there are procedures in place to prevent *unwarranted releases*. Furthermore, we will express our opposition to any unwarranted releases of such suspects... [our emphasis]

The demand not to release suspects before conclusion of judicial proceedings is important and legitimate. However, when this demand is addressed, without any reservation, to a party that systematically violates rights related to detention and due process, such as the PNA, the result is additional arbitrary arrests, prolonged detentions without trial and unfair trials. Again, in this context, an opposition to *unwarranted releases* without an opposition to *unwarranted detentions* grants legitimacy to the prolonged arbitrary detentions which result from the PNA's crackdown against opposition groups.

In contrast to previous Israeli-Palestinian agreements, the U.S. role at the Wye Summit and in the subsequent Memorandum was not simply one of mediator and facilitator, but also included significant implementation responsibilities. For example, the Memorandum states that "in addition to the bilateral Israeli-Palestinian security cooperation, a U.S.-Palestinian committee will meet biweekly to review the steps

⁶⁵ Article XVIII of the Interim Agreement.

being taken to eliminate terrorist cells and their support structure.”⁶⁶ The Memorandum established similar bi- and tri-lateral committees regarding various aspects of the agreement. The centrality of the U.S. role as monitor and adviser in the implementation of the Memorandum makes it complicitous in human rights violations which result.

⁶⁶ Wye Memorandum, part II (A) (1) (c).

Conclusions and Recommendation

Ohad Bachrach and Uri Shahor were murdered in Wadi Qelt over three years ago. However, the consequences of the murder are still manifest today. First, Yusef and Shaher a-Ra'i are still serving a long prison sentence imposed during a rapid and patently unfair trial of the PNA State Security Court. Although they have never been tried for the Wadi Qelt murders, the "wanted list" of the Wye Memorandum categorically asserts their responsibility, and requires the PNA "to arrest" them under this charge. Second, Jamal al-Hindi has filed a civil suit against the State of Israel and the GSS to receive damages for injuries suffered as a result of his torture in interrogation; the suit is still pending. Third, Khader Abu 'Abareh still fears that he will be arbitrarily detained given the inclusion of his name on this "wanted list," which is likely the result of the false confession of Jamal al-Hindi, extracted through torture.

The human rights violations documented in this report are not isolated incidents, but rather characterize the "war against terror" in the post-Oslo period. The General Security Service continues to systematically torture most Palestinians whom it interrogates. The Palestinian Authority conducts arbitrary arrests and detains individuals in violation of their rights. Trials by the Palestinian State Security Court constitute a gross violation of basic standards of due process. Pressure by Israel and the United States on the PNA to fight terrorism, with no concurrent pressure that this fight against terrorism respect human rights, only exacerbates the PNA's abuse of individual rights.

These human rights violations by Israel and the PNA do not take place in a vacuum; they are endemic to the political and judicial systems of both actors, and to the relationship between Israel, the PNA and the U.S. in the post-Oslo period. Furthermore, all of these phenomenon are characteristic of "the war against terror" in the post-Oslo period. The Wadi Qelt case is therefore illustrative of larger human rights problems.

The PNA is fully responsible for its human rights record – both for the violations it perpetrates in response to Israeli pressure and for those its perpetrates for its own internal reasons. However, Israel also bears responsibility, not only for the violations it directly perpetrates, but for those it pressures others to perpetrate.

B'Tselem and **Law** urge the Palestinian National Authority:

- To immediately release Yusef and Shaher a-Ra'i, unless there is enough evidence to charge them with an internationally recognized criminal offence. If they are charged, to try them in a civil court with all due process according to the internationally recognized standards of fair trial;
- To end the practice of violating the right to due process. In particular, to end the use of unfair trials in the State Security Court for political reasons, including silencing political opponents and preventing extradition of suspects to Israel;

- To refuse to extradite Palestinian suspects to states, such as Israel, where there are substantial grounds for believing that they would be in danger of being subjected torture.
- To ensure that arrests and detention are conducted according to international legal safeguards and to cease the widespread practice of arbitrary arrests and detention.
- To cease the activity of the State Security Court, and to retry all those convicted by it, through the normal judicial system.

B'Tselem and **LAW** urge Israel:

- To incorporate the provisions of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into domestic law and to follow the recommendations issued by the UN Committee Against Torture.
- To cancel the permission given to the GSS, based on the Landau Commission Recommendations, to torture detainees, and to regulate the authority of the GSS by law.
- To cease the pressure that it systematically imposes on the PNA “to fight terrorism” in ways that involve violation of human rights and contravene international law.

B'Tselem and **Law** urge the United States:

- To withdraw its support for actions taken by both Israel and the PNA that violate human rights;
- To ensure that every agreement signed in the future between Israel and the PNA will guarantee proper respect for internationally accepted norms of human rights.