PHYSICIANS AND TORTURE - THE CASE OF ISRAEL

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Abstract

This essay was written after Physicians for Human Rights-Israel was presented with a number of cases indicating that doctors were cooperating in the process of torture, most notably by performing examinations before an interrogation involving torture and by examining and providing treatment during the interrogation itself. These cases strengthen our suspicion that the GSS is using doctors as a “safety net” and turning them into an integral part of the process of torture.

A careful reading of the UN’s and the World Medical Association's international conventions, which ban the use of torture in general and the participation of doctors in particular, as well as the interpretations these have given rise to, leads to the conclusion that a medical examination before an interrogation involving torture and an examination during the process of torture in which the prisoner has been detained for the purpose of this interrogation, constitute collaboration in torture.

These activities cannot be justified with any reference to special circumstances, states of emergency or bureaucratic, humanitarian and/or efficiency arguments. The ban on the use of torture is absolute; any justification to the contrary would create a “slippery slope”. Furthermore, it would turn the doctor into an integral part of the system of torture. This position is supported by the detailed ethical codes of medical associations in countries such as Great Britain and Chile, where such issues have been faced in the past.

In view of the UN Committee's resolution that moderate physical pressure and shaking indeed constitute torture, and since the GSS admits that it uses these interrogation methods, Physicians for Human Rights-Israel believes that any - direct or indirect - participation by a doctor in an examination undertaken before and during interrogation constitutes collaboration in torture.

We have consequently recommended that:

**Doctors do not collaborate in any way - especially through medical procedures - in any interrogation involving torture and/or cruel, inhuman or degrading treatment and punishments (subsequently “interrogation under torture”).**

No doctor shall examine a prisoner prior to an interrogation involving torture. (Since it is well known that the GSS, even according to its own statements to the Appeal Court, uses these methods, doctors should not examine GSS prisoners).

When faced with a prisoner who claims to have been tortured, or when a prisoner has been examined by a doctor and the doctor suspects that he has been interrogated under torture etc.:

- the doctor should provide the necessary treatment, after being authorised to do so by the prisoner;
- he must categorically prevent, by means of a doctor's order, the prisoner's return to the interrogation or to the place where he was held; and
- he must inform an authorised body within the system and outside it.

A doctor who receives information regarding torture (even through hearsay) must inform the abovementioned authorised bodies.

Only a categorical ban on any collaboration with the GSS can protect doctors from the “slippery slope” of implicating doctors in the act of torture. It is, therefore, the duty of Physicians for Human Rights and, in our opinion, the Israeli Medical Association to act as the most ardent ethical guardians against this potential danger.

Introduction

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1 For the purpose of this report, torture will be defined according to the Declaration of Tokyo (1975):
“For the purpose of this Declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.”
There is a need for an Israeli report which will consolidate the issue of torture in general and the participation of physicians in particular rather than continuing to rely exclusively on literature from foreign countries where either in the past or in the present torture was used. This stems from the unique nature of the institution of torture in Israel. The has led, in our opinion, to acceptance and apathy on the part of Israeli society when it comes to the issue of torture.

Torture in Israel has taken on a semi-legal character. The report of the Landau Commission of 1987 which addressed the work of the General Security Service (GSS) is, in some respects, responsible for the semi-legalization of torture. Ironically, the commission was created in the aftermath of Izzat Nafsu's Supreme Court petition. This petition exposed GSS denials to the Court - in which they claimed that they do not use physical force as a means of extracting confessions - as fabrications. It thus showed that confessions extracted in this manner are unreliable. It further revealed the GSS to be guilty of obstruction of justice by using its credibility to deceive the court.

It is surprising then, that the approach to torture as being a necessary part of reality was so prominent in the Landau Report when it was published. In order to overcome the dissonance between Israel's image as a moral society based on the rule of law and its use of torture which is decidedly immoral, the Landau Commission tried to define Israeli torture as “Moderate Physical Pressure.” Since the Commission accepted the use of “moderate physical pressure” the logical course open to it was to institutionalize it through the creation of surreptitious regulations. Thus, torture gained legitimacy in that it became grounded in the law. The logical follow-up to this is the introduction of legislation which would actually enshrine and protect this practice in a law. In the event that such a law is indeed passed, Israel will be the only nation in which torture enjoys the protection of the law. In fact, in the High Court of Justice, Attorney Shai Nitzan of the State Attorney’s Office announced that in the near future these practices will indeed be legalized. Mr. Nitzan further reported that the special Ministers Committee on GSS interrogations decided to present to the Knesset its proposed law to delineate the extraordinary authority of the GSS in regards to interrogations intended to prevent terror attacks.

The nature of the participation of physicians in torture in Israel is also unique. The GSS and the physicians themselves assert that the participation of physicians is in the best interest of the detainee. They maintain that the true purpose is to protect the health of the detainee in the event that complications should arise in the course of the interrogation or to examine the detainee before the commencement of the torture (or in their words “moderate physical pressure”) in order to determine his physical condition and to advise against the use of certain methods of torture which may exacerbate any medical problems he may have. For example,

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2 “Izzat Nafsu was an Israeli Circassian army officer who had been sentenced in 1982 to an 18 year prison term for offenses of treason and espionage. In his ‘trial within a trial’, he maintained that he was innocent and that his confession had been extracted by force during Shin Bet interrogation. The Shin Bet officers denied this oath...in May 1987, the Supreme Court accepted his appeal, (with the corollary that the investigators had lied...” from B’Tselem, The Interrogation of Palestinians During the Intifada: Ill-treatment, “Moderate Physical Pressure” or Torture?, (Jerusalem March 1991), 22.

3 In the opinion of the Commission “The real way for the rule of law to operate” in such cases is to allow the law itself “to provide a proper framework for the GSS to conduct its interrogations.”


5 See the state answer appendix **. The physicians moral dilemma was presented to PHR-Israel in meetings with Dr. Assaf Feller, the Prison General Services chief doctor, and Dr. Reuben Goldsmith Police chief Doctor.
the physician may determine that the interrogee has respiratory problems. Based on this information, the interrogators will know not to cover his head with a sack. This necessarily confirms that physicians accept torture in the same manner as the authors of the Landau Commission Report did. Only then is their claim that they are protecting the interrogees life by examining him prior to the commencement of the interrogation and by treating him during the course of the interrogation in any way credible. Physicians and all of those linked to the institution of torture in Israeli society relate to the issue of torture in a manner which justifies it or at least recognizes it as a necessary evil.

The semi-formal status of torture supposedly protects it from corruption and from deterioration to a more “barbaric” form. Given a more palatable name - “moderate physical pressure” - a public attitude has evolved which actually supports the continued use of torture. Even the Supreme Court leaves the victims of torture unprotected as they consistently refuse to ban the use of torture until a law is passed. Such passive cooperation allows the authorities to succeed in eliminating any sympathies for the victims of torture by vilifying them and by labeling the interrogee as a ticking bomb. Physicians are not detached from this process either. This document was therefore composed because we recognize our responsibility to oppose the participation of physicians in torture and to separate them from this institution, in part by challenging the assumption on which their participation is based. In the end PHR-Israel hopes that Israeli society, after receiving and digesting the information found in this report, will become disenchanted with the systematic use of torture and begin to call for its cessation and we expect physicians to take a leading role in this campaign.

Chapter one of this report surveys a number of international and regional conventions which prohibit the use of torture and the associated commentaries of various international bodies. The UN decision which defines the Israeli method of interrogation as torture is also examined.

Chapter two presents physician involvement in torture in Israel. It then examines the various ethical codes which apply to medical professionals such as the Tokyo Convention and the UN Principles which outlaw the participation of physicians in torture as well as their respective commentaries. The third part of this chapter focuses on the issue of examinations conducted prior to and in the course of interrogations. Our contention is that such examinations are what comprise the participation of physicians in torture in Israel.

The final chapter of the report relates to those claims which are used to promote the continuation of the practice of torture such as that of the “ticking bomb.” It goes on to support PHR-Israel's call for the immediate cessation of the participation of physicians in torture.

The end of the report incorporates a number of appendices. It is especially important to note the medical documents which PHR-Israel secured from Attorney Andre Rosenthal who represented the detainee Jawed Mahmoud Yahia Ja'abari for the Center for the Defense of the Individual. He turned to us when he realized that this matter involved the participation of a physician in the process of torture. These documents allowed us to better define the nature of physician involvement in torture.

An earlier draft of this report, in addition to its attachments, was submitted to Professor Eran Dolev, Chairman of the Ethics Section of the Israeli Medical Association (IMA). In addition to submitting this report, a meeting was held at the offices of the IMA in Ramat Gan. The participants included IMA Chairman Dr. Balsher, Professor Dolev, Dr. Zabu the Chairperson.
of the Psychiatric Ethics Section, Dr. Goldschmidt, the chief medical officer of the police, Dr. Feller, the chief medical officer of the prison services, Dr. Ilan Gull, Chairperson of PHR-Israel, Hedva Radovanitz, Executive Director of PHR-Israel and Hadas Ziv, Director of Projects of PHR-Israel. At this meeting the IMA assured PHR-Israel that they would come to a definition on the participation of physicians in torture. This report was submitted to the members of the Ethics Committee and to Dr. Balsher to enable them to study its contents before coming to a final decision on the issue. Yet despite numerous follow-up meetings and conversations, the IMA has yet come to reach any conclusions on this issue, nor, to the best of our knowledge, was the issue raised in its meetings.

PHR-Israel is of the opinion that the IMA’s obvious evasion of this issue is tantamount to a serious dereliction of its duty and represents its acquiescence to the silence which allows for the continued involvement of physicians in torture. PHR-Israel believes that a society which sends its investigators and physicians to take part in the process of torture, must eventually come to terms with this when this practice is finally condemned. Society is no less responsible than its representatives in that it has not created an atmosphere in which the price of silence is greater than that of disobedience. The moral price paid by those involved in the system is enormous. In consideration of this, and in consideration of the fact that the use of torture is all-encompassing, society has a responsibility to assist those individuals involved in the system of torture to escape it. With respect to the involvement of physicians in this system, responsibility lies directly with the IMA to supply physicians with a mechanism by which they can refuse to cooperate with the GSS. The most logical means to this end is to explicitly prohibit physicians from participating in GSS activities.

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Chapter 1: Ban on Torture

Torture and other forms of humiliating treatment are banned by a number of international and regional conventions, the most important ones of which are listed below:

1. **The Universal Declaration of Human Rights (UN General Assembly, 1948), Article 5:**

   “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

2. **The International Covenant on Civil and Political Rights (UN, 1966), Article 7:**

   “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...”

3. **The Geneva Convention relative to the Protection of Civilian Persons in Time of War (August 12, 1949), Article 3, paragraph 1:**

   “the following acts are and shall remain prohibited at any time and in any place whatsoever...:
   
   (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.”

4. **The Declaration Against Torture (UN, 1975)** and three regional conventions:

   - The European Convention on Human Rights (1950)

   The clearest definitions of the term torture can be found in:

1. **The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN, 1984)**

   Israel became a signatory to this convention on 22nd October 1986 and reaffirmed it on 4th August 1991. The convention came into force on 2nd November 1991.

   Basing themselves on Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights, both of which state that no individual should be exposed to torture or cruel, inhuman or degrading treatment or punishment, the countries which signed this declaration agreed that “for the purposes of this Convention, the term ‘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

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7 Declaration on the Protection of all Persons from Torture and other Cruel, Inhuman or Degrading Treatment of Punishment (Declaration against Torture, United Nations, 1975).
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” (Part 1, Article 1).

It is important to note that although it is a signatory to the Convention, Israel does not acknowledge the right of the UN Commission for the Investigation of Torture to appeal to an international court in order to resolve disputes over the interpretation and application of the Convention (a right enshrined in Art. 30 of the Convention). Nor does it accept Art. 20, which allows for an investigation of torture in a specific country.

2. The Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment (UN, 1988)

“Principle 6: No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹ No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.”

“...The term ‘cruel, inhuman or degrading treatment or punishment’ should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.”

*It should be noted that the conventions which permit some deviation from these rules during a state of emergency exclude torture and degrading treatment.* Moreover, we are not aware of any country which officially legitimises torture.⁸ The ban on torture and degrading treatment resembles an international law which may not be transgressed, even by countries who are not signatories to conventions banning it explicitly.

**Chapter 1A: Some Interpretations of the Definitions of the Term Torture**

**European Commission of Human Rights:**

N.S. Rodley⁹, who studied the interpretations given by the European Commission for Human Rights and the European Court to Torture, quotes the Commission's ruling in the debate regarding the case of Greece. In order for an act to be defined as torture it must be (i) degrading, (ii) inhuman, and (iii) a severe form of inhuman treatment resorted to for specific purposes (confession, information etc.).¹⁰

In addition, it was ruled that a number of factors must be present:

• 1 mental or physical suffering has to be caused
• 2 the suffering has to be grave

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⁹ Ibid, 77-78. The following represents our reading of Rodley.
¹⁰ Ibid, 73-74.
3 the suffering has to be intentional
4 the suffering must appear unjustified in proportion to the given situation

This last factor, argues Rodley, has prompted debates about whether one can ever justify the causing of suffering; for example, the shackling of the mentally ill in hospital, the amputation of a leg as a life-saving measure and the utilitarian claim of acting for the greater good (by measuring the mass of people who will be hurt against the single individual tortured, i.e. “the case of the ticking bomb”). This debate continues, although the members of the European Commission have already responded by ruling that the ban on torture remains absolute.

According to Rodley, the correct way to discuss the element of justification is by looking at the purpose of the treatment: It must only be aimed at the good of the treatment’s recipient. In the two initial examples, it can be said that the justification lies in consent (either by the treatment’s recipient or of his/her legal representative etc.).

The utilitarian argument, on the other hand, risks creating the slippery slope which will take us from essential use to worthwhile use and then finally to unjust use. It also runs counter to the absolute ban on torture. In addition, it is unlikely that the European Commission’s ruling included this justification as a special exception, as indeed becomes clear from its debates concerning the Northern Irish complaint against British interrogation methods (see details below). To the contrary, the Commission’s rulings were explicitly designed to reject this element of justification. This can be deduced from the fact that it is stated that, when considering the pressure faced by the interrogators of someone suspected of holding information about a ticking bomb, “any such strain... cannot justify the application on a prisoner of treatment amounting to a breach of Art. 3.”

This decision was endorsed by the European Court, although it disagreed with part of the definition of torture reached by the Commission and subsequently defined the use of these interrogation methods as inhuman and degrading treatment as follows:

* Torture or Inhuman and Degrading Treatment: Northern Ireland brought before the European Commission for Human Rights five methods used by the British during “in-depth interrogation” of terrorism suspects: standing [a person] against a wall, covering their head, continuous noise, sleep deprivation, denial of food and drink. The Commission, as well as the European Court, ruled that the purpose was to obtain information.

While the Commission ruled that the use of all five techniques together amounts to torture, given that sensory deprivation directly affects personality and does so deliberately in physical and mental form so as to break the individual’s will power and extract information, the European Court ruled that the practice amounted to inhuman and degrading treatment (a minority of four judges supported the Commission). The Court did not address sensory deprivation but instead the extent of suffering caused. This decision was severely criticised, since it appears to distinguish between barbaric tortures used by countries which are regularly criticised and more “sophisticated” forms of torture used by more developed countries.

In this matter, Rodley quotes the position taken by the American Convention against Torture which does not require grave suffering as an essential element of torture. An action may be

11 Ibid, 77.
regarded as torture even if it does not cause pain but is designed to erase the personality and/or the physical or mental capabilities of the individual under interrogation.\(^{12}\)

**Chapter 1B: The Case of Israel**

According to B’Tselem estimates based on official sources\(^{13}\) (the legal adviser to the government and the press), human rights organisations and lawyers, between 1,000 to 1,500 Palestinians are interrogated by the GSS every year. Methods which amount to torture are used in 85 per cent of these cases (i.e. at least 850 cases).

The UN Committee on Torture in the Case of Israel\(^{14}\)

The Commission's discussions with Israeli representatives in May 1997 raised the following points:

- **5** Representatives of Israel claimed that the Landau Commission allows “moderate physical pressure” (the methods used remain classified), a form of pressure which it does not define as torture. The [UN] Committee refuses to regard moderate physical pressure as legal and regards the Appeal Court decision which permits moderate physical pressure as a breach of the Convention Against Torture. In discussions with Israeli representatives on the subject of prisoners being shaken [“tiltulim”], the Committee's delegate also stated that it had been proven (by the death of Harizat)\(^{15}\) that the use of this method amounts to torture: shaking (a) caused severe pain, (b) was done deliberately, (c) was done for a purpose, and (d) was caused by an official figure.

- **6** In regards to mental torture, the Committee referred to an interrogation record submitted to the Appeal Court which recorded the times of interrogation, as well as records of sleep deprivation and of causing mental disorientation, and determined this to be proof that Israel uses mental torture.

- **7** The Grounds of Necessity argument enshrined in Israeli law was raised, together with the Ticking Bomb argument, in order to justify moderate physical pressure. The Committee regarded Israel's use of “the State of Emergency” as a breach of its commitment to the Convention Against Torture (Art. 2, which bans any deviation also in special circumstances and during an emergency). The Committee regards moderate physical pressure as torture.

The Committee quoted the various methods used during interrogation: shackling in extremely painful positions, covering an individual’s head in special circumstances and the playing of very loud music for long periods. The Committee regards all these as torture, especially (but not exclusively - H.Z.) if all these methods are used together, as appears to be the case.

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\(^{12}\) Ibid, 83-90.


\(^{15}\) In April 1995, Abed Harizat was interrogated by the GSS and died as a result of violent shaking used during his interrogation. The State admitted that he was shaken and died of his injuries.
The Committee called for an end to the use of these methods.

Chapter 2: Ethical Codes for Medical Staff and the Case of Israel

PHR-Israel has opposed the participation of doctors in torture for a number of years now. In 1992, we approached the Israeli Medical Association with a request for it to join PHR-Israel in its opposition to interrogations involving torture and especially to ensure that physicians fulfill their ethical duty to report all instances of torture.

In the activity report “Focus on Torture in Israel”, we emphasised the role doctors play in the mechanism of torture. Since then, we have explicitly indicated that the IMA must take a decisive stance in regards to doctors who participate in the process of torture as it is their duty to report on every case of torture.

In 1993, PHR-Israel arranged a conference that was dedicated to the struggle against the use of torture and, in particular, torture in Israel. As a result of this conference, PHR-Israel formed a relationship with Dr. Zangen, the head of the IMA in regards to the participation of doctors in torture. This issue was first exposed by Adv. Tamar Peleg-Shriq when she discovered fitness evaluation forms filled out by physicians. Dr. Zangen condemned these forms in a strongly worded letter to Yitzhak Rabin, then Minister of Security and as a result, these forms were no longer used.

The head of the delegation, Dr. Ruchama Marton, director of PHR-Israel, met with the Minister of Justice David Libai and presented him with a petition of 3,000 signatures demanding a law explicitly forbidding the use of torture. This proposal was introduced by Knesset member Tamar Gozanski but was removed from the Knesset docket in December 1993.

In 1995, “Torture - Human Rights, Medical Ethics and the Case of Israel” was published by Neve Gordon and Dr. Ruchama Marton regarding the issues raised in the conference in order to bring international attention to the issue of torture in Israel.

This report is essential not only because the use of torture and the struggle against this horrible practice continue; rather, it is needed because new fitness evaluation forms have been introduced. Fitness evaluation forms that were presented to us by Adv. Andre Rosenthal (attached hereto as Appendices A and B), indicate that they are merely a more “refined” substitution of the old forms. These forms prove that physicians continue to be an integral part of the process of torture.

Chapter 2A: Physicians and Torture - The Current Situation in Israel

During the past 2 years, PHR-Israel has established the following:

- Only detainees of the GSS (General Security Service) are medically examined on their entry to detention

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16 Both documents have been translated from the Hebrew. Appendix A is a copy of a 1993 medical form and Appendix B is a copy of Jawed Ja‘abari’s medical form from 1997. Although the 1993 form requires far more explicit information regarding a prisoner’s ability to withstand methods of torture, the 1997 form clearly reveals that physicians continue to play an integral role in the process of torture.
PHR-Israel was told by Police officials that due to budgetary problems, only GSS detainees are examined on their entry to detention. Police and the Shabak (Prison Services) are paid by the GSS for those medical services. With the budget comes a problematic bond between the service those doctors are giving and the GSS.

• The GSS finances the physicians of the night shift in Shabak prisons

According to the State’s Attorney response to a petition to the High Court of Justice by a coalition of NGOs on the subject of torture, it is evident that all active GSS interrogation centers are staffed by physicians 24 hours a day. The State Attorney claims that this is for the purpose of providing skilled and immediate medical care to detainees who are in need of treatment or examinations. Furthermore, the State Attorney used the fact of the physicians’ proximity to claim that the medical damage that might occur as a result of “shaking” is therefore reduced.

The Shabak does not have a budget to staff physicians during the night shift, but rather has a doctor on call. Therefore, the GSS finances and provides its own physicians for the night shift. The bond between those physicians who are directly paid by the GSS creates the problem of split loyalties.

• The nature of doctors activities in examinations of GSS detainees

A few cases that reached PHR-Israel offered a clearer view of the physician’s role in the process of torture.

Shabak Facilities:

In a petition submitted to the high court by Attorney Andre Rosenthal (attached hereto as Appendix C and translated from Hebrew), who represented the detainee Jawed Ja’abari, it was revealed in the medical report (Appendix B) that on 3rd December 1997 a paramedical examination considered Ja’abari to be fit. That same day, however, he was examined by a physician who wrote “not to make him sit on the small chair”.

Four days later, according to the medical report, a sensitivity of the sacrum was noted. The detainee stated that the physician informed the interrogators of his recommendations. However, despite the physician’s medical opinion, the detainee was still forced to remain seated on the small chair.

Police Facilities:

It has become evident that the medical forms in police facilities are addressed directly to the GSS chief interrogator.

Case No. 1 - A physician noted that the detainee is “fit” to stay in the detention center. However, due to hypertension, the detainee “should avoid long periods of standing and needs to be held in a well ventilated area” (attached hereto as Appendix D and translated from Hebrew).
Case No. 2 - A physician examined Omar Ghanimet (a well-known and publicized case) and determined him to be fit enough to stay in the detention center.

Summary of Ghanimet medical report:

On 24th May 1998 Ghanimet complained to the paramedic of a “blow” to his chest. The following day he did not complain of injuries. He was examined by a physician who found abrasions to the wrists (not fresh), full movement of hands and found no need for treatment (attached hereto as Appendix E and translated from Hebrew). When Ghanimet was released Dr. Jaber, an orthopedist, stated that, “these positions, as described, could cause damage to the meniscus of the knee...”. Dr. Lee Cranberg, a neurologist, stated that Mr. Ghanimet’s allegations of the use of very tight handcuffs are supported by the neurological examination findings.17

• PHR-Israel’s activities to end physician participation in the process of torture

The nature of physician activity and cooperation with the GSS brought PHR-Israel to a dilemma: on the one hand, every detainee should be examined before entry to detention, yet on the other hand, such a medical examination in GSS detention centers clearly amount to cooperating in the process of torture. The described cases strengthen the suspicion that the Shabak is using physicians as a “safety net” and turning them into an integral part of the process of torture.

PHR-Israel therefore maintains that the only way to prevent physician involvement in torture is to:

(i) meet with physicians who work in GSS detention centers; and
(ii) discuss the matter with the IMA.

To this end PHR-Israel staff met with the chief doctors of the Prison Services and the Police Services and received the impression that they do indeed face an ethical problem.

In addition PHR-Israel met several times with the chief staff of the Israeli Medical Association (which included the executive director, the ethical section and the chairman). The IMA assured PHR-Israel that they would come to a definition of torture and on the participation of physicians in torture.

Chapter 2B: Ethical Codes for Medical Staff

Two documents ban medical involvement in torture or other degrading treatment:

1. The Declaration of Tokyo (World Medical Association, 1975)

“For the purpose of this Declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.

17 Both reports appeared in B’Tselem’s Torture as a Routine: Interrogation Methods of the General Security Service.
1. The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.

2. The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.

3. The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment is used or threatened.

4. A doctor must have complete clinical independence in deciding upon the care of a person...The doctor's fundamental role is to alleviate the distress of his or her fellow men, and no motive, whether personal, collective or political, shall prevail against this higher purpose.”


“Principle 2: It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.”

“Principle 4: It is a contravention of medical ethics for health personnel, particularly physicians:

(a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments.

(b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of such treatment or punishment which is not in accordance with the relevant international instruments.”

Principle 6 emphasises that “there may be no derogation from the foregoing principles on any grounds whatsoever, including public emergency.”

Chapter 2C: Interpretations of International Conventions
According to the British Medical Association\textsuperscript{18}, a physician may find himself involved in torture at three points:

1. During the preparation for torture.
2. While it is taking place.
3. At the recovery stage.

Involvement in torture, in its view, can occur when the doctor comes into contact with the prisoner:

1. \textit{Before, during or after torture}.\textsuperscript{19}
2. Without the freely given consent of the prisoner.
3. When either of them is not free to identify himself.
4. \textit{When the doctor is acting in the interest of persons other than the prisoner}.
5. \textit{When the doctor writes a report in which he fails to mention the prisoner's complaints, any signs of inhuman treatment or injuries relevant to the case}.

The Chilean Medical Association\textsuperscript{20} defined collaboration in the following terms: \textit{extending the ability of the victim to undergo torture, supervision of torture by providing medical care in case of complications, putting one's professional knowledge and skills at the disposal of the torturer, false recording of medical data in reports and in post mortems, providing medical assistance within the framework of torture without condemning torture or resigning from the job, committing torture by direct collaboration or by remaining silent despite one's knowledge of the assault}. As one way of fighting these practices, the Association published the Tokyo Declaration at its own expense in a daily paper. It also changed its ethical code and made it far more explicit.

**Chapter 2D: The Question of (Medical) Examination Before and During Interrogation involving Torture**

As described earlier, physician involvement in torture, as it is known to us, occurs primarily when they examine the detainee prior to and during GSS interrogations, and by both failing to report and to remove the victim away from the interrogators. Confronted with PHR-Israel’s opinion that this activity falls under the definition of participation in torture, the Israeli Medical Association promised to provide its opinion. The following is an explanation of how PHR-Israel based its views.


\textsuperscript{19} The actions in italics are those in which we suspect Israeli doctors to be involved.

\textsuperscript{20} Ibid, 34-35.
According to Rodley\textsuperscript{21}, the fact that the principles of the UN exclude anything amounting to a “lawful sanction” from the definition of torture results in gray areas. For the purpose of this essay, the following questions must be asked (according to the ethical code of the United Nations for medical personnel):

Is a doctor permitted to assess the prisoner's health and to verify it for (the purpose of) torture?

Is he/she permitted to treat a prisoner in order to return him to health before an interrogation?

The answer to both questions is a decisive “no” if banned methods are used during those interrogations (according to principle 2 of the UN's Code of Ethics - the ban on active or passive participation in actions amounting to torture or other inhuman and degrading treatment).

Since par. 3 of the same ethical code permits an “assessment” in the relations between patient and doctor, it initially appears permissible to assess someone's “fitness” for the death sentence. (It should be pointed out that the “assessment” is not mentioned in the CIOMS text, as adopted by the WHO). Similarly, a doctor may assess someone's fitness for interrogation (again, only if it does not include torture, for this would be banned according to par. 2). The essential questions, thus, remain unanswered.

On first sight, par. 4 appears to offer a negative answer to these questions. However, the words “and which is not in accordance with the relevant international instruments” result in the doctor having to assess not just whether the interrogation will have an effect on the prisoner's health, but also if it is in accordance with international standards. Rodley concludes that since medical personnel are able to turn to other conventions which will extend rather than restrict and since the General Assembly has stated that it intends to add further standards with regards to torture, the answer is indeed no.

The matter becomes even clearer when one examines the Tokyo Declaration, which is far stronger and removes any doubts with respect to the answer to these questions being no. Thus, for instance, the doctors who supervised and anaesthatised someone whose hand was amputated as a punishment in Mauritania were condemned in accordance with the Tokyo Declaration.\textsuperscript{22}

Members of the British Medical Association have also discussed these questions. Regarding examinations prior to interrogation\textsuperscript{23}, it is said that a medical examination will be offered to every prisoner or detainee as soon as possible after his arrival at the place of detention, with subsequent medical supervision or treatment given as required. However, with respect to the issue of examination before an interrogation involving torture, the authors quote M. Phillips, J. Dawson, Doctors' Dilemmas: Medical Ethics and Contemporary Science. Brighton: Harvester Press, 1985, p. 101:

“a clear distinction [should] be drawn between the doctor acting on behalf of the prisoner and at his request, and action on behalf of the administration. In the former role, a doctor is acting entirely properly in attending to need and alleviating distress; in

\begin{itemize}
  \item Rodley, 292-293 (the following is our reading of Rodley).
  \item Ibid, 297.
  \item British Medical Association, 43.
\end{itemize}
the latter, however, he is not only part of the process that is causing the distress but by virtue of his professional standing he is lending that process some spurious respectability since he appears to condone it...The problem is that in practice it is extremely difficult to separate the two. *Examining a prisoner before he is tortured is more straightforward, the only reason for such an examination is to pronounce the prisoner fit to undergo duress and therefore must be wrong.*” (emphasis added)

With respect to examination after torture, the authors vacillate because such an examination may be in the interest of both the prisoner and the torturers. In practice, they are concerned that the doctor who is permitted to perform an examination during torture is not really free and that the treatment or the medical opinion he may provide might become a tool in the hands of the torturers. However, in the case of a prisoner coming out of interrogation with signs of or complaints about torture, the British Medical Association argues that he clearly ought to be given immediate care.

However, according to the Tokyo Declaration, the doctor is obliged to report any complaints or suspicion of torture. Furthermore, he must take into account the prisoner's right of consent to receive treatment and must be sensitive to a refusal, since the treatment might, in practice, lead to the prisoner being returned to interrogation and to continued suffering. It is the duty of the doctor to work out what is in the best interest of the patient and to recommend steps appropriate to this interest. And here the authors are adamant:

“The return of the prisoner to the prison cell and to the control of the military personnel clearly is not in the prisoner's best interest.”

24 Ibid, 50.
Discussion and Recommendations

Having discussed in this report the ways of defining what constitutes torture in general and what constitutes medical collaboration in particular, with particular emphasis on the medical examination of the prisoner before and after interrogation, we conclude that an examination undertaken by a doctor before entry into a GSS building directly constitutes collaboration with torture. Similarly, treatment which amounts only to the medical relief of pain but permits the patient’s return to the place where the pain has been caused - i.e. the interrogation - also constitutes collaboration.

1. The very sorting of prisoners into those who will undergo an examination (which is funded and ordered by the GSS) before entering the detention center and between those who do not undergo an examination (no funding) indicates the existence of a selection process which is acknowledged even by the system itself. The purpose of this selection process is clear in our opinion: the risk to the health and livelihood of the prisoner increases once he enters GSS territory and, therefore, the GSS requests an examination in order to limit that risk.

2. This process clearly proves that the assessment of an individual’s fitness for interrogations which are known to involve torture is a breach of the convention. It is well established that the GSS uses torture and it is evident, therefore, that one must not undertake such an assessment. The previous forms in which the wording was clear (approval of covering [his] head etc.) have been replaced by the current forms. However, these are merely a “refinement” of the previous ones. They also, in practice, serve the same purpose.

We believe that in order to fight the phenomenon of the doctor who turns a blind eye, and in order to make him refuse to take part in torture that utilises his medical skills, we must fight the factors which make such actions possible in the first place. These include mistaken assumptions and a mood of tolerance towards torture. The widespread justifications for the participation of doctors in the process of torture are as follows:

The Bureaucratic Argument

The bureaucratisation of a medical task leads to a lowering of ethical standards and makes it possible to reduce the treatment process to a purely technical one - directed at the body, not the person - without any moral considerations concerning the general situation.

This creates a kind of division of labour between the torturer and the doctor which blurs responsibility and to a certain extent clears both of blame.25

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The Humanitarian Argument

The humanitarian argument has been put forth numerous times. We regard it as dangerous because it leads to the collaboration of doctors in torture. The argument must be rejected on the following grounds:

- It runs counter to the absolute ban on torture.
- It strengthens the mistaken assumption that torture can be humane.

Torture victims who were interviewed viewed the doctor as part of the system of torture - even in cases when treatment was given during the course of it and medical examinations took place. They were also angry at the fact that the doctors did not try to remove them from the place of abuse.

In our opinion, the humanitarian argument is also responsible for the devising of allegedly “less barbaric” methods of torture. These do not pose a risk to life but certainly constitute torture and are aimed at erasing the willpower and personality of the person under interrogation. They also cause mental damage.

In regards to “shaking”, it should be pointed out that there is some disagreement concerning the physical danger posed by this method.\(^{26}\) Even the GSS explicitly states in its defence statement that “we are talking about a method which only extremely rarely poses a risk to the person under interrogation”. It adds that “the restrictions imposed following the case in question [the death of Harizat - H.Z.] have reduced to almost zero the risk posed by this method” [author's emphasis]. In Israel, the doctor acts as a safety net for the interrogators (he is there in order to provide care in case of complications).

In addition, Professor Sohar points out in his professional opinion, which has been commissioned by the state attorney, that neurological ocular oedemas are not known to most doctors as a complication of severe head injuries to the brain stem: “Most doctors who are not neurological experts or experts in intensive care do not even know the term”. Therefore, the deceased did not receive the appropriate treatment from the nurse present. This runs blatantly contrary to the assumption that it is possible to create a form of safe torture.

Equally importantly, the “relatively safe” method of vertical shaking quoted in Professor Sohar's professional opinion could not have been developed without the involvement and advice of a medical expert in the field. (After all, it is enough to shake someone in a circular or sweeping motion for the risk to increase substantially). This involvement is banned by the Tokyo Declaration and the UN's ethical code since it amounts to contributing professional knowledge to the torture process.

Furthermore, it is reasonable to assume that without the physician's presence the torturing interrogators would feel less confident of themselves and less justified in using their methods. By being present, by tolerating the suffering caused and by accepting it without protest, the doctor provides them not just with professional but also with moral backing.

The Efficiency Argument (The Utilitarian argument)

\(^{26}\) See attached professional opinion by Professor Sohar and Dr. Robert Kirschner.
Just as this argument cannot legitimately be used by torturers (see above: the Ticking Bomb), it also cannot be used to defend doctors collaborating in torture. This is because the sole and ultimate interest that ought to be guiding them in their treatment is that of the person under their care.

The prominent use of the ticking bomb as an excuse should not lead the physician to think that there are legitimate reasons for the use of torture or for him/her to participate in it. A physician is absolutely prohibited from participating in torture. However, it is, in our opinion, necessary to discuss this issue because it is impossible to ignore the fact that in the prevailing climate physicians may tend to look in the other direction or even to participate in torture by way of supervision.

As opposed to the majority of those who deal with the question of the ticking bomb and torture, PHR-Israel is convinced that the prohibition on torture is an absolute moral prohibition. If we do not halt the institution of torture now we are liable to slip even further into this abyss.

In this regard it is important to refer to Professor Daniel Statman’s article “The Question of Moral Absolutism and the Prohibition on Torture”\(^{27}\) in which he attempts to deal with the issue of torture. Statman examined this issue and reached the conclusion that in the case of a ticking bomb there is no prohibition on torture which can be considered legitimate. However it is important to outline his admonitions and practical conclusions.

“Given the fact that, as a matter of principle, there will be circumstances, such as the case of the ticking bomb, when the use of torture will be permissible... this does not mean that in the realm of human reality it is unlikely that such circumstances actually exist...” (page 172)

Likewise, he states that whereas torture is one of the most serious and shocking actions from a moral perspective the heavy burden of proof rests on the shoulders of those would justify it. Statman points out that the results of the majority of interrogations decidedly prove that the pretext of the ticking bomb has no basis in reality. Most of the instances of torture were actually employed to gather collateral information. In fact the interpretation of what comprised a ticking bomb was reached in an unacceptable manner. Statman traces the problematic nature of the definitions back to the Landau Commission’s conclusions: Their report attempted to justify the expansion of this principle by creating the impression that every interrogation by the GSS borders on “protecting the very existence of society and the State.” Therefore there is no need for the existence of the ticking bomb principle in order to permit the use of torture. He concludes by saying that this expansion is “intolerable from a moral perspective.”

Statman also emphasizes that the violent and humiliating treatment of Palestinian detainees deviates sharply from any acceptable interpretation of the ticking bomb principle. The fact that this treatment is only directed towards Palestinians and not towards Jews affirms, to a certain extent, Edward Peter’s statement that “It is not primarily the victim’s information, but the victim that torture seeks to win - to reduce to powerlessness.”\(^{28}\) This treatment’s first and foremost goal is to gain control over the population which is seen as menacing and to frighten

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and contain it, not to gain information on “ticking bombs.” Furthermore, one can claim that information gathered by torture is often incorrect and therefore the supposed purpose is not even met.

The peril of using torture “just once” was also raised and warned against by the authors of “Torture in the Eighties.” They wrote that “those who torture once will go on using it, encouraged by its ‘efficiency’ in obtaining the confession or information they seek, whatever the quality of those statements. They will argue within the security apparatus for the extension of torture... they may form elite groups of interrogators to refine its practice... What was to be done ‘just once’ will become an institutionalized practice and will erode the moral and legal principles that stand against a form of violence that could affect all of society.”

It is therefore reasonable to conclude that the utilitarian argument (to gain crucial information that will save lives) for the continued use of torture is intellectually dishonest. It is obvious that the continued use of torture can only create hatred among the affected population and encourage them to continue their participation in “hostile” activity. Torture simply does not work on a practical level nor is it humane.

The Environment in which the Doctor is Operating

One must take into account that there is a comprehensive system within Israel which is engaged in dehumanizing the victim and putting “higher interests”, i.e. security considerations, before that of the patient. The general atmosphere, the legislation and even the Appeal Court are part of a comprehensive structure within Israel which legitimises torture and even regards it as legal.

Furthermore, the doctor working in a prison or detention center not only finds himself in this atmosphere but is also faced with having to operate within a quasi-military system (in which obedience is expected), which ultimately weakens his independence. Indeed, one of the recommendations made by the British Medical Association is that there should be strong involvement by doctors outside that system, as this might introduce standards from the independent medical sector.

The Absence of a Strong Source of Professional Support

Doctors who oppose torture greatly appreciate the advice and support they receive from outside the system in which they are operating.

Unlike doctors in Chile during the Pinochet era, doctors who refuse to collaborate with torture in Israel do not face any threat to their lives. One can therefore attribute their collaboration to their own free will or to the external (professional and political) environment. These do not provide enough support or guidance to encourage refusal of participation. In a country in which a refusal is not heroic or life-threatening, the professional association must take a strong stand in the formulation and supervision of ethical standards. We are convinced that the Israeli Medical Association has not done enough and has not taken a strong enough nor clear enough stand which could provide a basis of support and guidance for a doctor faced with collaboration in torture.

30 British Medical Association, 168.
In Dr. Balsher's letter to the Lancet (attached hereto as Appendix F), he defends the use of moderate physical pressure and, by basing his arguments on the European Court, claims that this form of pressure does not constitute torture or degrading and inhuman treatment unless the five methods are used simultaneously (see Chapter 1A: Torture or Inhuman or Degrading Treatment). However, this position contradicts that of the UN representative (see Chapter 1B: The UN Committee on Torture in the Case of Israel). The same applies to his reliance on the Landau Commission. In addition, Dr. Balsher insinuates that the prisoners make false complaints regarding torture out of political and personal motives.

We believe that the Israeli Medical Association ought to take a broader view of what amounts to torture. This belief is shared by the UN Committee and by the European Commission on Human Rights. Furthermore, it is not duty of the doctor to check the truthfulness of complaints but to report them to the appropriate body.

Accordingly, and in view of everything discussed above, Physicians for Human Rights-Israel recommends that:

**Doctors do not collaborate in any way - especially through medical procedures - in any interrogation involving torture and/or cruel, inhuman or degrading treatment and punishments (subsequently “interrogation under torture”).**

1. No doctor shall examine a prisoner prior to an interrogation involving torture. (Since it is well known that the GSS, even according to its own statements to the Appeal Court, uses these methods, doctors should not examine GSS prisoners).

2. When faced with a prisoner who claims to have been tortured, or when a prisoner has been examined by a doctor and the doctor suspects that he has been interrogated under torture etc.:

   (i) the doctor should provide the necessary treatment, after being authorised to do so by the prisoner;

   (ii) he must categorically prevent, by means of a doctor's order, the prisoner's return to the interrogation or to the place where he was held; and

   (iii) he must inform an authorised body within the system and outside it.

3. A doctor who receives information regarding torture (even through hearsay) must inform the abovementioned authorised bodies.

   Only a categorical ban on any collaboration with the GSS can protect Israel from the “slippery slope” of implicating doctors in the act of torture. It is, therefore, the duty of Physicians for Human Rights-Israel and, in our opinion, the Israeli Medical Association to act as the most ardent ethical guardians against this potential danger.

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31 For this purpose torture will be defined according to the Tokyo Convention:
““For the purpose of this Declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or any other reason.”"
Bibliography


