

רופאים לזכויות אדם - ישראל (ע"ר)  
أطباء لحقوق الإنسان - إسرائيل  
Physicians For Human Rights - Israel



THE PUBLIC COMMITTEE AGAINST

**TORTURE**  
IN ISRAEL

The Public Committee Against Torture in Israel  
Physicians for Human Rights – Israel

Periodic Report: **OCTOBER 2011**

# **DOCTORING THE EVIDENCE, ABANDONING THE VICTIM**

THE INVOLVEMENT OF MEDICAL PROFESSIONALS IN TORTURE  
AND ILL TREATMENT IN ISRAEL

[www.stoptorture.org.il](http://www.stoptorture.org.il)

The work of the Public Committee Against Torture in Israel is made possible through the support of foundations in Israel and abroad, private individuals and Friends of PCATI. We are grateful to all of them.

**British Shalom Salaam Trust** - UK

**Cordaid** - Holland

**Haella** - Holland

**Humanitair Fonds** - Holland

**ICCO** - Holland

**Kios** - Finland

**New Israel Fund**

**RCT, the Rehabilitation and Research Centre for Torture Victims** - Denmark

**Sivmo** - Holland

**The Embassy of Belgium in Tel Aviv** - Belgium

**The pooled funds of the Swiss Agency for Development and Cooperation (SDC),**

**THE Royal Danish Representative Office to the PA, the Swedish International Development Cooperation (Sida) and the Netherlands Representative Office to the PA channeled through the NGO Development Center (NDC)**

**- HR/GG secretariat**

**The Sigrid Rausing Trust** - UK

**United Nations Voluntary Fund for Victims of Torture**

The participation of Physicians for Human Rights – Israel in the writing of this report has been made possible through the generous contributions of private donors in Israel and abroad as well as the following institutions:

**AECID** - Spain

**Diakonia** - Sweden

**EPER HEKS** - Switzerland

**EED**- Germany

**Medico International**- Germany

[www.stoptorture.org.il](http://www.stoptorture.org.il)

The Public Committee Against Torture in Israel

Physicians for Human Rights - Israel

Periodic Report: October 2011

## Doctoring the Evidence, Abandoning the Victim

The Involvement of Medical Professionals in Torture and Ill-Treatment in Israel

Periodic Report: October 2011

Doctoring the Evidence, Abandoning the Victim

The Involvement of Medical Professionals in Torture and Ill-Treatment in Israel

Research and writing: Atty. Irit Ballas

Writing of Chapter 4: Anat Litvin

Advice and Editing: Anat Litvin

Graphic Design: Lahav Halevi

English Translation: Ron Makleff

Thanks to all those who commented and otherwise contributed to this publication: Ms. Malka Benjamin Tepperberg, Ms. Eva Duvdevani, Dr. Zeev Winer, Hadas Ziv, Carmi Lecker, Dr. Ishai Menuchin, Mr. Ron Makleff, Mr. Muhammad Sarahne, Ms. Hannah Friedman, Atty. Bana Shoughry-Badarne.

***DISCLAIMER: The following is a non-binding translation of the original Hebrew document. It is provided by the Public Committee Against Torture in Israel for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, PCATI is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. For queries about the translation please contact [pcati@stoptorture.org.il](mailto:pcati@stoptorture.org.il).***

“All that is necessary for the triumph of evil is that good men do nothing”.

– Edmund Burke, 1729 - 1797

*Meissa Irshaid, an attorney working for the Public Committee Against Torture in Israel, was arrested while accompanying protesters prior to the publication of this report. Before her arrest, a police officer slapped her forcefully across the face. Later, she was exposed to humiliation and curses from the police officers. In pain, Meissa asked to see a doctor who might examine the injury to her face. Two policemen escorted her to Ziv Hospital in Zefat, where she was examined while handcuffed. She began to tell one of the doctors who examined her that the injury was the result of police violence at a demonstration. Except that at this point the doctor cut her off: "That does not interest me." The nurse who examined her, for his part, said: "If you don't like it here, leave this land and go somewhere else."*

## **Medical Professionals and Torture?**

When we think of doctors, it is often the Hippocratic Oath and its mythical status that comes to mind. We believe that doctors help the sick, standing beside them in times of troubles at any hour of the day or night, remaining loyal to those under their care, and so on. In general, doctors are seen as professionals who can be trusted to do the utmost to bring health to their patients – good people working day and night so that we will be healthier and the world a better place. It may be for this reason that, when they turn their backs to a patient’s distress, the betrayal is exponentially worse. It is for this reason that we must understand what brings medical professionals to avert their gaze in this way, and explore what can encourage them to protect the tortured.

Apparently, when a patient is helpless and in the custody of the security forces, the focus on his or her well-being oftentimes is weakened and the demands of the security authorities play a significant and inappropriate role in some doctors’ considerations regarding the patient. This report reveals significant evidence arousing the suspicion that many doctors ignore the complaints of their patients; that they allow Israel Security Agency interrogators to use torture; approve the use of forbidden interrogation methods and the ill-treatment of helpless detainees; and conceal information, thereby allowing total impunity for the torturers.

Unfortunately, there are doctors who do not act in accordance with their ethical obligations when interacting with prisoners – either because they are unaware of these obligations or because they submit to the hierarchy of the security apparatus and the powerful social status it enjoys. What’s more, the very professional associations which are supposed to ensure doctors’ proper behavior in fact allow the perpetuation of the current situation, failing to take even the most minimal steps necessary to end such conduct. They are not sufficiently firm in their effort to bring an end to this behavior and to strengthen the status of medical ethics against the might of outside pressures.

We are hopeful that this report will help the medical system change its ways and those of the doctors who ignore their ethical obligations. The world will be a better place if the doctors conduct themselves in a moral fashion.

Dr. Ishai Menuchin

Ran Cohen

Executive Director

Executive Director

The Public Committee Against Torture in Israel

Physicians for Human Rights - Israel

## **Table of Contents**

Introduction and Chapter Contents

A: Layers upon Layers of Defenses

B: Ethics, Doctors and Detention Centers

C. The Bitter Pill: On the Actions and Failures of Medical Staff

D: Holding Doctors Accountable: A Glance at the World

E: Summary and Conclusions

Appendix: Responses



## **Introduction and Chapter Contents**

This report deals with the involvement of medical professionals in torture and ill-treatment. Based on a series of testimonies and other evidence, primarily the files of over 100 victims of torture and ill-treatment handled by the Public Committee Against Torture in Israel since 2007, the report demonstrates that medical professionals are frequently involved either actively or passively in torture or ill-treatment. This, of course, contradicts a whole series of ethical and legal obligations to which they are beholden, and is in opposition to the moral duty thrust upon them by their unique status as medical professionals.

The report consists of five chapters:

The first chapter deals with the layers of protection enjoyed by torturers. This chapter briefly presents the legal situation which enables the persistence of torture in Israel. It demonstrates how ISA interrogators are wrapped in a number of layers of defense, providing them with full impunity and shielding them from any oversight, trial or punishment. These protections, primarily the law enforcement system which systematically refuses to investigate the conduct of ISA personnel, enable the continued perpetration of torture and ill-treatment in Israel. Medical professionals who interact with the imprisoned,<sup>1</sup> whether they are employed by the Israel Prison Service or are on hospital staff, comprise another layer in this system of protection. They do this by failing to document an injury to which they were a witness, by failing to report such an injury, or by returning victims of torture or ill-treatment to the purview of those who have harmed them. In this way medical professionals also deny victims a crucial piece of evidence which may have been used in their struggle against their abusers, in essence granting authorization for what goes on in the interrogation rooms. Whether through action or silence, all of this occurs with the full support of the medical system which employs them and is entrusted with overseeing their conduct.

The second chapter presents the ethical and legal obligations which apply to doctors and medical professionals who interact with the imprisoned. Medical professionals have a unique societal role, which has led to the creation of ethical rules guiding their work. Over the years, these rules have been anchored in codes entrusted to various professional bodies, both in Israel and internationally. These ethical obligations, which apply to every medical professional, have a special importance when the patients are in custody: they are subjected to the authority of the security forces and the prison service in a manner which does not allow them to care for their own needs. Such situations may present medical professionals with numerous dilemmas arising from their unique role in protecting the rights of the imprisoned. Various bodies in Israel, primarily the Israel Medical Association (hereinafter: IMA), have recognized the unique position of doctors who interact with the imprisoned and the possibility that they will be subjected to the pressures of the security apparatus. Yet the IMA's ethical guidelines on this matter are, to our deep sorrow, overly vague in asserting the duty of the doctor to the well-being of the patient; they allow the doctor to compromise the patient's health in the face of the demands of the security apparatus. This chapter further demonstrates that the Penal Code, too, expresses some of the

---

<sup>1</sup> In this report we use the word "imprisoned" to denote both detainees and prisoners.

ethical obligations of medical professionals, all the more so when those they are treating those defined under the law as helpless, as are the imprisoned,.

**The third chapter** surveys the central ways in which medical professionals become involved in torture and ill-treatment: **first**, the systematic failure to properly document injuries inflicted upon the victims of torture and ill-treatment. The failure to document is manifested primarily in that descriptions of injuries – when they exist at all – are often extremely laconic; furthermore, there are serious problems with the administration of the Israel Prison Service’s medical files. **Second**, the failure to report: save one case (which itself raises some serious concerns), we have not encountered any situations where a doctor reported a prisoner’s injury to his or her superiors either in prison or outside it. The guidelines and working procedures on this matter seem to be lacking, as do protections for doctors who would like to report such cases. **Third**, the return of detainees to the hands of interrogators even after doctors have seen evidence of the harm done to them; this entails a gross violation of the doctors’ obligation to care for their patients’ well-being and to protect them from harm. **Fourth**, the transferring of medical information to interrogators: the Israeli prison system allows the transfer of medical information from doctors to interrogators by means of a form appearing in a number of the files which reached us. As far as we know, such transferring of information takes place without the consent of the prisoner and thus entails a grave violation of medical confidentiality. **Fifth**, we have encountered several particularly grave cases in which medical professionals explicitly preferred the requirements of the interrogation over the well-being of the patient. These cases, more than anything else, attest to the organizational conflation of the roles of doctor and interrogator. **And finally**, even when brought to hospital, an institution ostensibly more independent and less subject to the demands of the security apparatus, the imprisoned encounter the same forbidding walls of silence, the failure to document their injuries and their return to the authority of those who have harmed them.

**The fourth chapter** examines how doctors have been held responsible for their actions in various parts of the world and which bodies play a role in holding them accountable. Varying countries have dealt in differing ways with doctors’ cooperation in torture and ill-treatment. In the United States, doctors have gone unpunished despite corroborated evidence of medical professionals condoning, failing to report and misattributing signs of ill-treatment carried out in the context of the “war on terror” at detention centers in Guantanamo Bay and Abu Ghraib. Likewise, medical cooperation with torture was rampant in apartheid South Africa. Though most doctors turned a blind eye, serving as a stamp of approval for systematic police violence, Dr. Wendy Orr chose to appeal to the Supreme Court. She serves as an example of the impact one ‘whistle-blower’ doctor can have on an entire system; nevertheless, the vast majority of complicit doctors went unpunished when apartheid fell. In the 1970s and 1980s doctors in South American military dictatorships took an often active part in the torture, kidnapping and murder of political opponents of the regimes as part of the CIA’s “Operation Condor”. The vast majority of these remain unpunished, and those punishments meted out were overwhelmingly disciplinary rather than criminal; nevertheless, civil society has played a role in ostracizing these doctors by publishing information on their crimes.

**The fifth chapter** presents the conclusions suggested by the report, which details how the conduct of medical professionals who interact with prisoners does not accord with their ethical and legal

obligations. This conduct has grave consequences for prisoners who have fallen victim to torture or ill-treatment: doctors do not serve as effective recourse for the victims' complaints in real time, preventing them from receiving the protection which they are in such dire need of and which doctors are obliged to provide them. The lack of documentation and the failure to report denies the imprisoned evidence with which they could later pursue justice against their tormenters. The very presence of medical professionals adjacent to the interrogation facilities where torture is carried out grants a certain stamp of approval to the entire system: whether explicitly or tacitly, the authoritative presence of doctors gives an impression of normalcy and propriety. All of this elicits a state of affairs in which, over the course of his interrogation, a detainee under interrogation for security violations does not meet a single individual not identified with the system and its goals. A number of additional professional associations are also responsible for this situation, particularly for the absence of any available channels for reporting, lack of appropriate oversight and punishment, and the lack of protection for medical professionals who would like to act in accord with their obligations. The chapter concludes with a series of recommendations. We are hopeful that these, along with the report itself, will be useful in changing this state of affairs.

## A: Layers Upon Layers of Defenses

This chapter deals with the social, legal and professional networks of protection which shield torturers. There are numerous barriers which stand before a torture victim seeking justice, difficulties which the victim is presented with when attempting to point an accusatory finger at his or her attackers: concealed identity, unreported actions, and immunity to trial. Medical professionals in interrogation facilities, along with their colleagues in other institutions of the security apparatus and in hospitals, constitute one of these networks of protection. We will examine how their silence regarding the torture they observe, not to mention their contribution to these 'interrogation methods', provides the torturers, mostly ISA interrogators, with a further layer of protection against accountability.

### I. Torture in Israel – a Situation Report

Torture is an insufferable violation of the dignity, spirit and body of humans as well as the values of democracy and humanism. The prohibition on torture in international law is thus **absolute**: it may not be disregarded under any circumstance or in response to any emergency. Furthermore, the prohibition on torture is **customary**: it obliges all the states of the world, even if they have not signed an agreement or treaty explicitly prohibiting torture.<sup>2</sup> The State of Israel has signed and ratified the Convention Against Torture,<sup>3</sup> and by force of this signature is obliged not only to the prohibition itself but also to a series of mechanisms intended to uphold it, including the duty to report torture and ill-treatment to several bodies, and the duty to investigate complaints of torture.<sup>4</sup> On the other hand, in contravention of the state's explicit obligations under the Convention, Israeli law contains no explicit legislation prohibiting torture.<sup>5</sup> In the Israeli Penal Code several provisions refer to aspects of the act of torture such as assault or abuse of the helpless. Indeed, there is an explicit prohibition against public officials using force or threatening interrogees.<sup>6</sup> Nevertheless, save rare and trifling cases, no torturing ISA interrogator has been brought to trial for these or any other violations.<sup>7</sup>

After routinely employing interrogation methods which amount to torture and ill-treatment both before and after the publication of the conclusions of the Landau Commission (established to discuss ISA failures and interrogation methods), in the late 1990s the Justices of the High Court of Justice discussed

---

<sup>2</sup> Orna Ben-Naftali and Yuval Shany, International Law Between War and Peace. Tel Aviv 2006, p. 282.

<sup>3</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified December 12, 1984. Available at website of Office of the UN High Commissioner on Human Rights: <http://www2.ohchr.org/english/law/cat.htm>.

<sup>4</sup> See Articles 12 and 13 of the Convention, among others.

<sup>5</sup> The UN Committee Against Torture addressed this issue explicitly in the conclusions regarding Israel in a report from May 2009. See the report by the Public Committee Against Torture in Israel and the World Organization Against Torture, Implementation of the UN Convention Against Torture: Israel, Jerusalem 2009.

<sup>6</sup> Penal Code – 1977, articles: 192.277, 280, 322, 333-335, 341, 368(b), 368(c), 378-380, 382, 427 and 428.

<sup>7</sup> Two junior investigators were brought to trial for manslaughter in 1992 following the findings of the "Zucker Committee" which investigated the case of Khaled Sheikh Ali, who died as the result of violence at the hands of ISA interrogators during his interrogation. The interrogators were convicted as part of a plea bargain and served a prison term of six months.

several petitions filed by the Public Committee Against Torture and other human rights organizations. The petitions sought a prohibition of ISA interrogators' use of interrogation methods and practices amounting to torture or ill-treatment, methods which are, as noted above, absolutely forbidden under customary international law. On 6 September 1999, the HCJ published its decision, a significant milestone in the struggle against torture in that it proclaims the prohibition against torture to be absolute:

“A reasonable investigation is one free of torture, free of cruel or inhuman treatment towards the interrogee, and free of any degrading treatment. There is a prohibition on the use of ‘brutal or inhuman means’ in the course of an investigation... Human dignity includes also the dignity of the suspect subjected to interrogated... This conclusion is in accord with international treaties – to which Israel is a party – which prohibit the use of torture, of ‘cruel, inhuman treatment’ and of ‘degrading treatment’... These prohibitions are ‘absolute’. There are no ‘exceptions’ to them and there is no room for balancing.”<sup>8</sup>

Yet alongside the absolute nature of the prohibition on torture as presented above, the Court ruled that ISA interrogators who employed physical means of interrogation in order to save human life could, if brought to criminal trial, avail themselves of the ‘necessity defense’ under the appropriate circumstances.<sup>9</sup> The Court went further, adding that the Attorney General was authorized to set the guidelines with regards to the circumstances under which interrogators who ostensibly acted out of necessity would not be brought to trial. This ruling has had far-reaching consequences: the Attorney General has interpreted this authority broadly, and prepared a document essentially granting *a priori* permission for these same interrogation methods. This document became one of the central tools upon which the approval of torture in Israel is based.<sup>10</sup>

It seems the court was wary of setting a legal precedent which would explicitly contradict the absolute prohibition on torture in international law, but was simultaneously at pains to convey a more lenient message to the investigative apparatus. And so, alongside the very proclamation of an absolute prohibition against torture we see the creation of structures enabling the retroactive authorization of torture by means of the law enforcement system. In practice, such authorization is given beforehand, possibly because of the dissonant ambivalence of the ruling.

Indeed, the testimonies reaching the Public Committee Against Torture – tens of them every year – reveal a brutal picture: the systematic use of interrogation methods which amount to torture or ill-treatment. This evidence shows that ISA interrogators continue to inflict physical and psychological violence upon interrogees. Furthermore, there is ample evidence of the existence, in contravention of

---

<sup>8</sup> HCJ 5100/94 Public Committee Against Torture in Israel v. Government of Israel Piskei Din 43(4) 817, para. 23 of President Barak's ruling (see High Court's website for unofficial English translation).

<sup>9</sup> Ibid, para. 35 of President Barak's ruling.

<sup>10</sup> Under the Attorney General's interpretation, the ‘necessity defense’ permits the *a priori* setting of guidelines for bringing interrogators who employ torture to criminal trial. These guidelines thus essentially grant *a priori* authorization to interrogators to use interrogation methods forbidden by the HCJ, in cases of ‘ticking bombs’. See: Public Committee Against Torture in Israel, “Ticking Bombs”: Testimonies of Torture Victims in Israel, May 2007. Available at: <http://www.stoptorture.org.il/en/node/69>.

the HCJ's ruling, a **permit system** through which torture or ill-treatment has been approved *a priori* in a considerable number of cases. Thus, despite being a landmark in implementing the prohibition on torture in Israel, more than a decade after the court's ruling, **not only do torture and ill-treatment continue to be implemented in interrogations, they also continue to receive the full institutional backing of the state.**

## **II. Layers of Impunity for ISA Personnel**

As noted, the HCJ's prohibition against torture stands on shaky ground as it is, having been interpreted by law enforcement authorities over the years in a manner not in accordance with the absolute nature of the prohibition in international law. Yet even in its most narrow sense, the prohibition necessarily remains meaningless insofar as several networks of protection guarantee ISA interrogators complete impunity. ISA interrogators are able to rest assured that even if they do violate the prohibition, no harm will come to them. Under these circumstances the prohibition against torture, already infirm, **becomes a dead letter.**

First of all, the identity of ISA personnel is classified, obscured by the use of aliases. In addition to creating a threatening specter of mystery, this denies torture victims the chance to cite their interrogators' names in their complaints. Documentation of the interrogation, which can serve as evidence of torture or ill-treatment, is also out of the victim's reach. The ISA is exempt from the audio and video documentation required for criminal interrogations, as is the Police during interrogations of those suspected of security violations.<sup>11</sup> Written documentation of the interrogation, termed "Interrogation Logs" (*Ziharon D'varim* or *Zakad*), consist of watered-down and laconic descriptions of polite, anemic interrogations, and are meant for the eyes of the courts and the defendants' attorneys. Alongside this series of interrogation logs, there apparently exists a parallel system of more detailed documentation for internal purposes, the nature of which is unknown to us.<sup>12</sup>

It is through these and other means that the interrogation room becomes a no-man's land: a space outside the law, where interrogators assume new identities, not subject to a known and defined system

---

<sup>11</sup> Criminal Procedure Law (Interrogation of Suspects) 2002, meant to protect the rights of suspects from violation during Police interrogations regarding crimes punishable by at least ten years imprisonment, requires that some of these interrogations be videotaped. The legislators were, however, careful not to oblige the ISA to fulfill this requirement from the very first day of the law's validity. See petition: HCJ 9416/10 Adalah: The Legal Center for Arab Minority Rights in Israel v. Ministry of Internal Security. The first hearing of the case has been set for November 28, 2011. It should be noted that the Knesset amended the law such that the requirement to videotape Police interrogations of **security detainees** has been pushed back until the year 2012. Thus, even the small portion of interrogations of security detainees carried out by the Police – primarily the taking down of their confessions delivered in the ISA interrogation rooms – are not recorded. This means that there is no recorded evidence regarding the physical and mental condition of the interrogee even at the moment when a confession is given to the Police upon exiting the ISA' interrogation rooms.

<sup>12</sup> The factual basis for this claim rests upon confidential, classified protocols of military court hearings. See paragraphs 19, 42 (5), and 113-120 of the Contempt of Court Petition filed by the Public Committee Against Torture and others as part of HCJ 5100/94, which appears in Hebrew on the PCATI website: [www.stoptorture.org.il](http://www.stoptorture.org.il).

of rules. Within the interrogation room, interrogators are not beholden to any of the obligations which apply on the outside; the world of external enforcement remains beyond the threshold. The victim of torture and ill-treatment is left bare before his interrogators, stripped of all protection.

Secondly, these abstract networks of protection are made palpable through the full backing of the law enforcement system, primarily the Attorney General and the State Attorney. The handling of complaints of torture and ill-treatment by ISA interrogators is unambiguous: of the hundreds of complaints of torture or ill-treatment filed by victims of torture with the Attorney General in recent years (over 700 such complaints since 2001), not a single criminal investigation has been initiated. Moreover, complaints regarding torture and ill-treatment by ISA interrogators filed with the Attorney General are always forwarded to the Examiner of ISA Interrogee Complaints (hereinafter: EGIC), himself in the employ of the ISA.<sup>13</sup> Unsurprisingly, the ISA personnel who have served as EGIC over the past decade have recommended the comprehensive closure of all the complaints, which are then shelved because, it is claimed, they were unfounded or because the interrogators' actions were justified.<sup>14</sup>

The 2002 Israel Security Agencies Law firmly anchored these networks of protection. The law ensures that a ISA employee "shall not bear criminal or civil responsibility for any act or omission performed in good faith and reasonably by him within the scope and in performance of his function."<sup>15</sup> In addition, the law guarantees that all operating methods and names of ISA personnel remain secret; this legal anchoring prevents complainants and their representatives from knowing who interrogated them, who approved their interrogation and whether the actions implemented in the interrogation were in accordance with the working guidelines or were approved retroactively.

All of this protects ISA interrogators, creating a situation in which the HCJ's prohibition against torture, already partial, is left totally ineffective; violating the prohibition carries no costs at all. The result is the continuation of torture and ill-treatment as institutionalized interrogation methods in Israel.

### **III. Medical Professionals as a Network of Protection**

The system of impunity detailed here also includes the medical professionals who interact with interrogees before, during and after their interrogations. Often, for extensive periods they are the only ones to meet an interrogee save their interrogators and prison guards. Medical personnel are the only witnesses to injuries sustained by the interrogee as a result of the 'interrogation methods' implemented against him. Yet we have found that they are oftentimes **silent** in the face of injuries and wounds which they detect or which interrogees report to them. Furthermore, in many instances they fail to fulfill their

---

<sup>13</sup> On this matter, the Ministry of Justice released a statement to the press in November 2010, according to which the EIC would from that moment forward be an employee of the Ministry of Justice. Despite repeated appeals for more details on the matter, we do not know the nature or meaning of this announced change. To date, it has yet to be carried out.

<sup>14</sup> For more on this topic see: [Accountability Denied: The Absence of Investigation and Punishment of Torture in Israel](#), The Public Committee Against Torture, Periodic Report December 2009.

<sup>15</sup> Article 18 of the [General Security Service Law, 5762-2002](#). Of course, the act of torture can never be considered a reasonable action, as it entails a crime in and of itself.

obligation to fully **document** physical and psychological harm experienced by the victim of torture or ill-treatment, documentation which makes up crucial evidence victims may use in proceedings against their tormenters. Such conduct on the part of medical professionals, which we expand upon below, contradicts their duty to provide medical treatment to the imprisoned, to prevent harm from being done to them, and to apprise the appropriate bodies of such injuries. Such conduct is therefore a significant force in maintaining the impunity of ISA interrogators.

Yet medical professionals' support for violent "interrogation methods" is not limited solely to silence. Because of their unique professional authority, cooperation the part of medical professionals amounts to a kind of 'authorization' for interrogators to continue using their methods. When medical professionals return a detainee to the interrogation room they are essentially **authorizing** the continued infliction of torture or ill-treatment upon him or her. In passing on medical information about the interrogee to his or her interrogators, medical professionals abandon their duties still more grossly: medical personnel know, or at the very least should know, that violent 'interrogation methods' often amounting to torture or ill-treatment are regularly implemented within the interrogation rooms.

To the silent complicity of medical personnel we must also add the failure of the Prison Service's medical system, which is obliged to provide proper medical care, to ensure documentation and reporting, and to maintain clinical medical independence. We found many flaws in IPS performance in this regard. The medical system thus serves as an additional layer serving to deny torture victims legal remedy.

The conduct of civilian hospitals interacting with prisoners hospitalized there – sometimes due to health problems or injuries resulting from the interrogation itself – is also inadequate. At most, doctors at such hospitals note the nature of the injury in the patient's medical file; but we have yet to encounter a case in which any authority within the hospital or beyond it were informed of such an injury. Hospital medical personnel, further, do not prevent the return of victims to interrogation or to the custody of their interrogators, thus enabling their continued abuse. Moreover, certain cases arouse the suspicion that doctors submitted to the pressures of the security apparatus and agreed to release detainees where prolonged hospitalization was deemed to conflict with the purposes of the interrogation.

In conclusion, the victim of torture or ill-treatment under ISA interrogation has an arduous task in ensuring those responsible for his injuries are brought to trial justice. ISA interrogators are vigilantly shielded from trial. The underlying message imparted to them by the various systems is that they are entitled to carry out torture or ill-treatment in interrogations, and no one will call for them to be held accountable. Medical professionals partake in this when they shirk their responsibility to care for their patients' well-being and fail to do everything in their power to prevent the continuation of torture and ill-treatment.



## **B: Ethics, Doctors and Detention Centers**

This chapter deals with the ethical and legal duties of medical professionals, and more specifically with the obligations of those working in detention centers. First we present a general outline of the fundamental principles of medical ethics and of the Israeli and international bodies entrusted with them. Then we discuss the unique challenges to medical professionals presented by treating the imprisoned. Furthermore, behind the detention facility doctors there are powerful public institutions which should attend to the unique role of medical professionals who treat the imprisoned. Finally we show how some of these ethical standards have over the years become laws, the violation of which can under certain circumstances be considered a crime. We conclude the chapter with a list of doctors' duties with regards to torture and/or ill-treatment of detainees.

### **I. Why Medical Ethics?**

Why are medical ethics necessary? Shouldn't the doctor's personal judgment suffice? How are medical professionals distinct from those in other fields without a fixed ethical code? And who is responsible for drafting and enforcing the codes of medical ethics?<sup>16</sup>

Medical practitioners have always been perceived as having a unique social role. The task of the doctor is first and foremost to alleviate pain, heal and, at times, save lives. It is this central goal of aiding human beings and the universal nature of the medical profession which have precipitated the development of professional ethical rules which have long accompanied the medical profession. These rules are based on an understanding that scientific considerations alone cannot capture the full depth and complexity of the professional field: such considerations are unable to incorporate the position of the doctor in society and the unique obligations which such a position creates. The basis of modern medical ethics is widely considered to be the Hippocratic Oath which, though not a legally binding document, most doctors now swear to uphold.<sup>17</sup> Its core principles are the doctor's duty to provide equal care to every individual, not cause harm to a patient, and behave with integrity.

At the same time, doctors' skills and professional knowledge enable them to cause great damage. Far too often, medical professionals have misused their special status and become involved in some of the greatest injustices known to humankind. For instance, doctors were involved in the forced sterilizations of those seen as 'weakening the race', common in the United States in the 1920s; the experiments carried out on human subjects in the concentration camps of the Nazi regime in Germany; and executions in the United States to this day.<sup>18</sup> Involvement in **torture** is another stain on the record of

---

<sup>16</sup> For a discussion of this and other issues, see Dr. Daniel Eisenberg, "Why Medical Ethics?", 2006. Available at <http://www.aish.com/ci/sam/48949121.html>.

<sup>17</sup> For the full text of the oath see Wikipedia.

<sup>18</sup> On the forced sterilizations, for example, see: Peter Irons, "Forced Sterilization: a Stain on California", *Los Angeles Times*, 16 February 2003; *Buck v. Bell*, 274 U.S. 200 (1927), the infamous court ruling on forced sterilizations. On the experiments carried out on humans under the Nazi regime, see Yad Vashem's website:

medical professionals. In many of the places where torture has been used, including the infamous Guantanamo Bay Detention Center, doctors have been involved in these crimes.<sup>19</sup>

Out of an understanding that medical professionals have in the past and continue to forsake the ethical duties imposed on them by their unique status, systems of rules were developed in the international sphere in order to prevent the recurrence of such cases. These systems of rules serve to both inspire and guide states, professional unions and medical institutions which enact systems of oversight for the ethical conduct of doctors, in addition to doctors themselves. The **World Medical Association (WMA)** is the leading organization dealing with ethical standards in medicine. Since its establishment in 1947, its guidelines have served as the basis for the ethical codes of its national member medical associations. Over the years the WMA has made declarations and published protocols fixing the ethical obligations of medical professionals with regards to a number of issues including patient rights, experiments on human subjects, the treatment of the injured during war, torture, and family planning.

One of the founding documents of medical ethics is the **WMA International Code of Medical Ethics**.<sup>20</sup> The code details the ethical obligations of doctors and, among other things, orders them always to maintain independent judgment, not to allow their judgment to be influenced by personal profit or any other motivation save the well-being of the patient, and to maintain the dignity and privacy of the patient. Over the years, the WMA has drafted additional documents which regularize the relations between doctors and their patients, societies and colleagues. Among these are the *Helsinki Declaration* dealing with rules and limitations for medical experiments on human beings, the *Malta Declaration* regarding hunger strikes, the *Ottawa Declaration* regarding children's health, and the *Tokyo Declaration* regarding torture, cruel, inhuman and degrading treatment.<sup>21</sup> The latter deals directly with the obligations of medical professionals in detention facilities and their duty to abstain from any involvement whatsoever in torture; we discuss it in more detail below.

The UN General Assembly also sees itself as having a role in setting ethical rules; in cooperation with the **World Health Organization (WHO)**, it adopted a series of ethical rules anchoring the obligation of medical professionals to act first and foremost in the interest of their patients and protecting them from any sort of danger which they may be exposed to because they choose to act in accordance with the ethical rules.<sup>22</sup>

---

[www.yadvashem.org](http://www.yadvashem.org). And on the involvement of doctors in executions in the United States:

[www.physiciansforhumanrights.org/investigations/death-penalty/](http://www.physiciansforhumanrights.org/investigations/death-penalty/).

<sup>19</sup> Vincent Iacopino, Stephen N. Xenakis, "Neglect of Medical Evidence of Torture in Guantanamo Bay: A Case Series, *PLoS Med* 8(4), 2011. Physicians for Human Rights, PHR Urges Rumsfeld to Conduct Inquiry into Medical Role, 31/8/2004 <http://physiciansforhumanrights.org>; Ed Pilkington, CIA doctors face human experimentation claims, *The Guardian*, 2 September, 2009 [www.guardian.co.uk](http://www.guardian.co.uk).

<sup>20</sup> World Medical Association, WMA Code of Medical Ethics, available at <http://www.wma.net>.

<sup>21</sup> Amnesty International, *Ethical codes and declarations relevant to health professionals: An Amnesty International compilation of selected ethics and human rights texts*, 4<sup>th</sup> ed., available at <http://www.amnesty.org>; *Declaration of Ottawa on Child Health*, available at: <http://www.wma.net/en/30publications/10policies/c4/index.html>.

<sup>22</sup> UN General Assembly A/RES/37/194 *Principles of Medical Ethics*, 1982, <http://www.un.org/documents/ga/res/37/a37r194.htm>.

In Israel, too, professional and regulatory bodies are entrusted with the development and enforcement of professional ethics for doctors. The Doctors' Ordinance, which arranges for the licensing and employment of physicians, states that only a "decent individual" is eligible to practice medicine.<sup>23</sup> Furthermore, the Ordinance grants authority to the Minister of Health to revoke or condition licenses in certain cases, including behavior "unbecoming of a medical specialist".<sup>24</sup> In its attempt to forge content out of this provision, the High Court determined that, "behavior unbecoming of a doctor is that which does not accord with the guiding principles in the field of medicine, whether with regards to the dignity of the profession, to patient-doctor relations, or to other rules, ethical or otherwise, which form the values and perceptions that should properly apply to the medical professional".<sup>25</sup>

Though not a statutory body – its authorities are not anchored in law – the **Israel Medical Association** (IMA) incorporates the majority of doctors in Israel, and is publicly perceived as the body responsible for a variety of issues relating to the medical profession. Among these, the IMA handles doctors' residencies, professional insurance, and promotes and oversees relevant legislative processes. In addition, the IMA is a member of various international organizations, where its voice is publicly heard on a number of subjects related to the right to health, doctors' employment and training, and so on. The IMA is also a central body in the drafting of ethical rules: its ethical code is widely distributed, and it publishes detailed position papers on a variety of subjects, including prisoners and detainees. These are central, founding documents in the debate over medical ethics in Israel. At this point we should already note that there are serious doubts that the IMA is willing and able to enforce these rules: persistently repeated requests by the Public Committee Against Torture and Physicians for Human Rights - Israel calling the IMA's attention to cases arousing suspicion of doctors' involvement in torture and cruel or degrading treatment, have not been dealt with substantively.<sup>26</sup>

Alongside the authorities of the Minister of Health and the IMA, the organizations employing medical professionals are obligated to uphold ethical rules, be they Health Maintenance Organizations (HMOs), hospitals or clinics. Similarly, official state institutions such as the Army, Police and Prison Service, which have their own medical branches, see themselves as being bound by the rules of medical ethics, though the clarity of the rules and their enforcement vary.

To conclude: bodies entrusted with developing and upholding the rules of medical ethics have arisen in Israel and worldwide, out of a view of medicine as a profession devoted to the values of universalism, fairness, and benevolence. These bodies differ in terms of the scope of their authority, their responsibilities and the formality of their means of oversight. As this report deals with those medical

---

<sup>23</sup> Doctors' Ordinance, 5737-1977 Article 4(a)(1).

<sup>24</sup> Doctors' Ordinance, *ibid*, Article 41(1).

<sup>25</sup> Civ App 580/86 Dr. Amiram Fishman v. Minister of Health, Piskei Din 41(2) 614.

<sup>26</sup> See the IMA's response dated 26.7.10 to our correspondence dated 13.5.10, in which Atty. Malke Borow, head of the Legal Department, wrote: "We once again emphasize that the IMA is not an investigatory body and does not have the tools to investigate the claims raised. Nevertheless, we are examining them by means of the tools available to the IMA Ethics Department, and if the conclusion is reached that a violation of ethics has occurred, we shall enact the existing sanctions".

professionals who treat prisoners, we shall now focus on detention centers and the unique aspects of treating prison populations.

## II. Medical Ethics, Prisoners and Torture

The prison population is in especially grave danger of human rights violations. The imprisoned are held behind bars, denied various liberties, subjected to the complete authority of the prison staff,<sup>27</sup> and sometimes to that of other prisoners. Furthermore, society considers the actions for which they are serving their sentences to be indecent. Together, these factors enable gross violations of their rights, and, have also led to their being defined as “helpless” for the purposes of certain violations in the Israeli Penal Code. Indeed, prisons are known worldwide as places where human rights are in danger of being violated. Among these endangered rights, one of the bitterest, most tangible of these is the right not to be subjected to torture or ill-treatment.

The central document relating to the prohibition against doctors’ participation in torture or ill-treatment is the World Medical Association’s **Tokyo Declaration** (1975), which states:

“The physician shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offense 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. The physician 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”.<sup>28</sup>

In other words, the declaration **forbids even the most indirect and distant involvement in torture on the part of doctors.**<sup>29</sup> Thus, both active cooperation and the sharing of information regarding the patient to his or her interrogators are examples of violations of the rules of medical ethics.<sup>30</sup> Yet the WMA does not stop at prohibiting active participation in torture and ill-treatment; rather it compels action on the part of doctors even in cases where a doctor is a **passive** witness to violence: according to the WMA’s Declaration, doctors must report torture or ill-treatment which they have seen, diagnosed or heard about.<sup>31</sup> **Doctors who learn of the torture of prisoners may not continue their work as if all is well: they must actively oppose, document and protest.**

---

<sup>27</sup> Their being subjected to the complete authority of the prison staff, and as such their inability to care for the necessities of their own lives, led to their definition under criminal law as “helpless”.

<sup>28</sup> Clauses/Articles 1 and 2 of the Declaration of Tokyo. For the full text see <http://www.wma.net/en/30publications/10policies/c18/index.html>.

<sup>29</sup> Clauses/Articles 1 and 4 of the Declaration of Tokyo.

<sup>30</sup> Clause/Article 3 of the Declaration of Tokyo.

<sup>31</sup> WMA Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment, at the WMA’s website: [www.wma.org](http://www.wma.org).

**The Istanbul Protocol**<sup>32</sup> is a collection of rules and guidelines for the prevention of torture adopted by the UN in 1999. Written by a large team of experts and organizations from around the world, including Physicians for Human Rights - Israel, it is intended for professionals, primarily doctors, attorneys and psychologists. It deals with effective documentation and investigation of torture, advising these professionals on how to overcome the difficulties inherent in these tasks. Among other things, the Protocol details the doctor's role in prison and how it is to be carried out; the ethical rules which should guide these doctors; the types of injuries which torture and ill-treatment can cause; and how to examine them. Over the years, the Protocol has become a founding document in the documentation and investigation of torture, and courts around the world have recognized it as having an obligatory status on states.<sup>33</sup>

The ethical rules pertaining to prisoners in **Israel**, especially the ethical code written by the IMA and its accompanying position papers, adopt many of the international organizations' aforementioned ethical principles,<sup>34</sup> and regularly address the issues pertaining to the treatment of prisoners by medical professionals. The IMA's ethical code states, for example, that a doctor must neither grant medical permission for the carrying out of torture nor provide professional knowledge, instruments or medications for this purpose; must strictly maintain the confidentiality of medical information he or she holds and not make use of such information for the purpose of torture or interrogations; maintain the patient's right to privacy; not pass the patient's medical information on to another person except upon the patient's request or with his or her explicit agreement; not grant medical permission for solitary confinement, and if identifying a concrete danger in such isolation, enact his or her professional authority and protest in order to end it.<sup>35</sup> As for the duty to report torture, the code states that doctors who suspect that a patient arriving for treatment is currently or has in the past been subjected to torture or ill-treatment, will implement all the means at their disposal in order to protect the patient, and apprise the appropriate authorities in accordance with the circumstances. The code goes further, adding that a doctor working at an institution or organization is not freed from these ethical obligations by the instructions of the employer. Here, the IMA is addressing the situation of dual loyalty and advises its doctors to act for the good of the patient, in accordance with the demands of the rules of international ethics. The code states, for example:

“Doctors have long enjoyed a large degree of professional autonomy and clinical freedom because of the recognition that only when liberated from any type of pressure, can they make the most proper and correct medical decisions for the well-being of their patients... The rules of medical ethics are meant to enable such oversight... In order to

---

<sup>32</sup> The Istanbul Protocol can be found at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>. See also Michael Peel and Noam Lubell with Jonathon Beynon, Medical Investigation and Documentation of Torture: A Handbook for Health Professionals, (Essex University Publications, 2005), available at: [http://www.essex.ac.uk/human\\_rights\\_centre/publications/midt.aspx](http://www.essex.ac.uk/human_rights_centre/publications/midt.aspx).

<sup>33</sup> See for example: *Bati and Others v. Turkey* (nos. 33097/06 and 57834/00, ECHR 2004-IV).

<sup>34</sup> The IMA has, for example, adopted the Declaration of Tokyo.

<sup>35</sup> Chapter 4, Articles/Clauses B, C, E, K of the Ethical Code.

ensure that every member of the medical community and the community in its entirety will act first of all for the well-being of the patient...”<sup>36</sup>

All this is rather euphonious, and seems to accord with international ethical codes. Indeed, in meetings conducted by Physicians for Human Rights - Israel with representatives of the IMA and the Ministry of Health, the latter two declared themselves firmly opposed to the involvement of doctors in torture or ill-treatment in any way.

Yet despite the IMA’s condemnation of the involvement of doctors in torture in its publications, the Association is derelict in its role in two grave manners: **first**, over the years the IMA has systematically refused to inspect complaints filed with it, and as such to act on its authority to revoke the membership of, censure or otherwise sanction those members who were involved in torture, even when presented with strong evidence to that effect. An example will be provided in the following chapter. And **second**, the IMA’s ethical code contains clauses which do not accord with the obligation to maintain the professional autonomy of the doctor:

**The Ethical Code, Chapter 4.2. Doctor-Society Relations, Article I, “Cooperation between the Doctor and the Legal Authorities”**

...

3. The doctor will simultaneously respect the good of society as a whole and its right to protect itself. Doctor may assist the security authorities, upon their request, even when this may harm the rights of the patient, only in cases in which there exists a **high likelihood** [emphasis added] that if he does not do so, the patient in question will cause society harm.
4. When in doubt, the doctor will turn to the courts in order that the latter may pass judgment between the individual’s rights and freedom, and the good of society as a whole.

**Position Paper 22, “Cooperation between Medical Institutions and the Legal Authorities”:**

- “This protection [of undocumented persons and criminals] is not absolute, and may be outweighed at times by the good of the society and its right to protect itself.
- Thus the medical institution will cooperate with the security authorities in harming the rights of the patient only in cases wherein there is a **reasonable certainty** [emphasis added] that if it does not do so, the patient in question will cause society harm.

---

<sup>36</sup> The Ethical Code, Chapter 1, p. 11. The code can be viewed in full at [www.ima.org.il](http://www.ima.org.il) (Hebrew).

- Discretion over the balance between an individual's rights and freedom, and the good of society as a whole lies with the courts rather than the doctors themselves.
- Thus in case of any doubt, when doctors are required to harm the individual rights of their patients for the good of society as a whole, the matter is to be addressed by the courts to rule on the matter.

These clauses contradict the spirit of the international covenants and the principle maintaining a doctor's right to professional autonomy. **For one**, because they contradict the fundamental principle of medical ethics, that **the well-being of the patient should be the doctor's sole concern**.

**Secondly**, protecting society from threatening forces is the responsibility of the security apparatus, not of doctors. A doctor's medical opinion regarding the degree of threat to society should be given only when the threat results from the individual's **medical condition**, for example the revocation of a driver's license in the case of epilepsy.

**Thirdly**, according to the position paper "reasonable certainty" is sufficient for the doctor to cooperate with the security forces by violating the rights of the patient. In the ethical code, harm to society must reach "high likelihood" in order to allow such cooperation. A doctor's obligation first and foremost to the well-being of his or her patients is absolute, and the degree of certainty that harm will come to society is not relevant to the doctor's considerations.

**Fourthly**, only when the doctor has **doubts** regarding the request of the security apparatus does the IMA instruct him to consult the courts. The fact that the IMA fails to set down a clear guideline for doctors on this matter raises suspicions that such doubts never will arise. **Further**, the option of consulting the courts is in effect empty of all content and is unavailable to the doctor under the circumstances within a reasonable amount of time. Indeed, we do not know of a single case in which this option was implemented. Moreover, the accompanying procedures are nebulous: what legal proceeding exists for this purpose? Who is responsible for providing legal consultation and representation for the doctors? Who will pay the costs of going to court?

Before us then, is a blatant contradiction: on one hand is the declarative condemnation in the Code, which accords with the global ethical principles of preferring the patient's well-being. On the other hand, when providing specific guidance on appropriate conduct in the face of security authorities, the Code contradicts itself and instructs the doctor to prefer the considerations of that same authority even when this means harming the patient. This mixed message set down in the code is liable to suggest to doctors that they may avoid their ethical obligations in certain situations, and the IMA will not hold them accountable. Even worse, **with these clauses, the IMA enables the needs of the security apparatus to be seen as coming before the Code and the ethical duties of doctors. In so doing it in practice renders the Code meaningless.**

In August 2010 the Public Committee Against Torture and Physicians for Human Rights - Israel appealed to the IMA asking that it **immediately cancel** the aforementioned clauses. The response came in a letter signed by Prof. Avinoam Reches, Chairman of the Ethics Department. It explained in three short

paragraphs that, though there was no doubt that “the well-being of the patient must be the top priority of every doctor”, at the same time, “if the doctor believes that the patient entails a danger to himself or to the society, in our opinion ethics cannot ignore this fact”. Prof. Reches explains that the rights of the individual are sometimes subordinated to the rights of society, for example with the prohibition of smoking in public spaces, obligatory wearing of seatbelts and vaccination requirements.<sup>37</sup>

This answer lacks any substance, and it does not confront the foundations of the arguments detailed above. Furthermore, the examples provided by Prof. Reches testify primarily to the weakness of his stance: he does not confront the blatant violation of the fundamental principle of medical ethics. Instead he compares this violation with the social considerations weighed by policymakers between individual rights and the needs of society, totally unrelated to a doctor’s absolute obligation to prefer the well-being of the patient. In addition, the examples he provides do not include bodily harm to the individual but rather the limitation of autonomy – something essentially different from torture or ill-treatment.

#### The Origins of the Contradictory Clauses

Physicians for Human Rights - Israel broached the issue of the contradiction in the IMA’s Code of Ethics in a meeting with the Ministry of Health held on 16.2.11 along with representatives of the IMA and the Israel Prison Service. The IMA representatives explained that these clauses were the product of an appeal from “Kaplan” Hospital, where doctors were asked to hospitalize an informer adjacent to the bed of a detainee who was a patient at the hospital. They did not say explicitly whether or not the IMA approved the request, yet the fact that the code was changed – in response to this appeal, according to the IMA – this would seem to be the case. The hospitalization of an informer next to a patient at the request of the security apparatus is of course a blatant and grave violation of the international Code of Ethics. It entails the exploitation of the medical apparatus for purposes which have no connection with medical needs, and a violation of the fundamental confidence between patient and doctor. What’s more, the formulation of the clauses presented above is significantly more broad than the case described by the IMA at the meeting – in effect it permits the doctor to do anything

### **III. Locked in by the System**

Whether their place of work is a detention center or a hospital, medical professionals who interact with prisoners do not act in a vacuum, and are not the only ones entrusted with the rules of medical ethics in this context. The relevant medical systems are supposed to supervise their conduct and to ensure that they do indeed carry out their ethical and legal obligations, including the obligation to do everything in

---

<sup>37</sup> See Prof. Avinoam Reches’ 1.9.10 letter in response to our correspondence regarding the existence of unlawful provisions in the ethical code.



their power in order to prevent torture or ill-treatment and to report and document suspected cases of such treatment.

**All prison doctors in Israel**, whether employed directly or indirectly,<sup>38</sup> are subject to the Chief Medical Officer (CMO) of the Prison Service; and in professional and thus also in ethical terms, to the IPS and the Ministry of Health. In a meeting with the CMO we asked about a clear set of ethical rules to guide doctors. The CMO responded that a cooperative effort with the Ministry of Health was under way to formulate such a set of rules, and that the rules would be published when that work had been completed.<sup>39</sup> On January 26, 2011 we once again appealed to the CMO inquiring after the status of the rules and requesting to receive them. We were informed that the work on the rules was still in progress. A reminder sent on our behalf in May 2011 has received no response.

Since prisoners are a vulnerable population at risk of rights violations, one would expect **external oversight** of the conduct of the medical apparatus treating them. Yet external and independent oversight of the conduct of IPS medical professionals is apparently far from simple. **First**, the Ministry of Health does not bother to enforce the prohibition against medical professionals' involvement in torture. In June 2006, Physicians for Human Rights - Israel appealed to the Director General of the Ministry of Health at the time, Professor Avi Israeli, demanding that he issue guidelines on the subject to medical professionals. Only in May 2009 was a response received from the Director General, in which he claimed: "(a) Insofar as the information regarding torture is correct, these entail exceptional or extreme cases; (b) The issuing of guidelines to the entire system as a means of dealing with a few exceptional cases would inflict a deep stain on the medical and security professions in Israel". In other words, the Ministry of Health preferred the good name of the security and medical establishments over the specter of taking an unequivocal public stance against the participation of medical professionals in torture and in ill-treatment.

**Second**, the Ministry of Health has a jurisdictional difficulty here: though it does carry out periodic examinations of the Israel Prison Service Medical Center, the Ministry remains ineffectual, because the IPS medical apparatus is subject to the Ministry of Internal Security. The IPS is not obliged to act in accordance with the recommendations precipitated by such visits by the Ministry of Health.<sup>40</sup> Also, the National Health Insurance Law does not apply to prisoners, further contributing to the lack of adequate oversight of the health services they receive.<sup>41</sup> Nevertheless, we do not know of a body other than the Ministry of Health, which effectively oversees the prison medical apparatus.

Oversight systems are also ostensibly responsible for **doctors working in hospitals** who interact with the imprisoned brought in for treatment of injury or sickness. This is carried out mostly by the Ministry of Health. Unlike IPS doctors, hospital doctors are members of the IMA, and as such subject to its ethical code.

---

<sup>38</sup> Some of the doctors employed by the IPS are IPS employees, while others are employees of temporary work agencies. All are professionally subject to the Chief Medical Officer of the IPS.

<sup>39</sup> See protocol of meeting with the Public Committee Against Torture in Israel from October 27, 2010.

<sup>40</sup> Oversight and Transparency in the Israeli Penal System, Physicians for Human Rights - Israel, July 2008.

<sup>41</sup> See: Article 3(a) of the National Health Insurance Law – 1995.

Here we should mention the dilemma of **dual loyalty**,<sup>42</sup> experienced by medical professionals in various systems: explicit or tacit simultaneous obligation to the patient on the one hand and a third party on the other. Such situations create a conflict between the well-being of the patient and the third party's demand. Often this third party is the doctor's employer; its motivations can be economic, political or security-based. One of the elements which facilitate the resolution of dual loyalty dilemmas is clinical and decision-making autonomy. Due to their hierarchical employment structures and the totalitarian manner in which they are run, prisons are known as workplaces where medical professionals habitually encounter situations of dual loyalty. Such situations are even more frequent in prison systems such as the Israeli one which employ their doctors directly rather than through a more experienced, specialized medical body.

The demand that a doctor turn a blind to torture or ill-treatment can supposedly be considered a situation of dual loyalty. Yet, because of the clear illegality of torture, such a situation should not present a dilemma, and the doctor must unequivocally refuse to take any active or passive part in torture. As the following illustrates, many medical professionals have trouble implementing this logic in practice.

The IMA, the IPS and the Ministry of Health should all have provided support and guidance for doctors and, if necessary, punish them and oversee the fulfillment of their ethical obligations. Yet, as the rest of this report shows, the performance of these systems of oversight is sorely lacking.

### **Keeping Medical Records**

Medical files, their management, content and use are often the key to realizing the rights of a prisoner who was been the victim of torture or ill-treatment, including the right to pursue justice against his or her tormenters. A victim's medical file often contains extremely valuable information: when well-managed, it describes the medical condition of the prisoner upon entering detention, the background to this situation, documentation of every medical problem encountered over the course of detention and documentation of the treatment received. For security detainees – those suspected of 'security violations', whose rights are severely limited both in the Israeli legal system and the military courts of the West Bank<sup>1</sup> – the prison doctor is the only individual they meet during the period of their interrogation, save interrogators and prison guards. Here, medical documentation of prisoners' complaints acquires the highest level of importance for oversight of interrogations and prevention, treatment and punishment of physical and psychological injuries inflicted over the course of the interrogation.

---

<sup>42</sup> See Dual Loyalty Working Group - Physicians for Human Rights, November 2005

The Patient's Rights Law<sup>1</sup> defines the medical record as "information in accordance with Article 17, documented by means of notes or photocopies or in any other manner, which includes the patient's medical file containing the medical forms concerning him". Article 17 in turn instructs the caretaker to note all medical information on the patient and the medical treatment received, the patient's medical history as told by the patient, diagnosis of current medical condition and treatment instructions in the medical record. It further states, "the caregiver – and in a medical institution, the director – are responsible for the timely management of the medical record and its maintenance in accordance with all legal standards."

The law supports a view of the medical record as belonging to the patient and not the institution, implying that it must be forwarded by those responsible for the record to the patient upon his or her request. It further determines that medical staff must maintain the confidentiality of the contents of the medical record and details cases where it is permissible to pass on medical information – listing as possible rationales for this the consent of the patient, the referral of the patient to another caregiver, or obligation under the law.<sup>1</sup>

As for the medical records of detainees while they are in prison, the Prison Service Ordinance sets the duty of a doctor at the detention center to administer an initial medical examination of detainees brought into the facility and to document the results of the examination.<sup>1</sup> The remainder of the Ordinance also details the roles of detention center and prison facility doctors, stating that a doctor examine every prisoner upon arrival and before release and list his or her health condition and related details as instructed in the Ordinance. The Prison Service Commissioner's Ordinances<sup>1</sup> also require that there be a medical file for all prisoners and that this file include a record of the patient's complaints, the findings of medical examinations, diagnoses, manner of treatment and every medical examination the doctor requests be done. The Ordinances state that "in general, the prisoner may peruse the medical information regarding him which is held by the Prison Service and subject to the Patient Health Law and the Freedom of Information Law."<sup>1</sup>

It is thus indisputable that prisoners' and detainees' medical files belong to them, that the prison administration must ensure the organized listing of their complaints, that doctors must document injuries which they see on a prisoner's body, and that the medical record must not be forwarded to any organization or group except in accordance with the patient's request. Nevertheless, PCATI and PHR-Israel have encountered frequent difficulties with the implementation of these duties. We have found that medical information is passed on to interrogators and can be used against the detainee in interrogation; that prisoners' medical files are forwarded to us incomplete; and that injuries suffered by the detainee are often described in an extremely laconic and perfunctory manner. We shall expand on these difficulties in the following chapter.

#### **IV. The Penal Code**

As noted above, various laws sometimes reinforce the internationally-accepted ethical obligations of doctors. The violation of some of these obligations can thus, at times, amount to a criminal violation.

Torture has been recognized in **international criminal law** as a grave crime for which international legal institutions have not hesitated to bring suspects to trial.<sup>43</sup> It stands on its own as a crime, but under certain circumstances can also entail a crime against humanity or a war crime.

Certain cases have made clear that international courts do not suffice with pursuing justice against the individual criminal who committed torture, but rather go further by examining the support systems which allowed him or her to act. Thus, criminal responsibility has been recognized also for aiding and abetting torture.<sup>44</sup> An individual who aids or abets torture is one who provides practical assistance, mental support or encouragement for the perpetration of a crime while cognizant of the fact that his or her action or failure to act do indeed assist in the perpetration of the crime.

Thus, medical professionals who return an individual to the interrogation room in which they know violent acts are perpetrated, who witness injuries left by soldier violence, by prison guards or interrogators but do not protest this both within the system and outside of it – examples of all of which will be provided in the following chapter – **may find themselves responsible for aiding and abetting the crime of torture because they know that these bodies frequently commit such acts of violence.**

**The Israeli Penal Code** cites several violations of which medical professionals can be convicted under certain circumstances if they do not report or properly document torture or ill-treatment. Article 369D(b) of the Penal Code, for example, states: “a doctor, nurse... or one employed in a paramedical field... who, as a result of their profession or as part of their duty, had reasonable grounds to think that a crime was committed against a minor or other helpless individual by those responsible for him or her – has an obligation to report this as soon as possible to a government-appointed social worker or to the Police.” The punishment for a medical professional who does not report such a violation is six months’ imprisonment.<sup>45</sup> Incidentally, the preceding sub-clause (a) sets the punishment for an ordinary person (persons not in the medical profession) who had reasonable grounds to believe that such an assault had taken place, at three months imprisonment. Herein becomes evident the legislature’s opinion on the **magnified obligation of medical professionals to report injuries** perpetrated upon those who cannot report their own injuries. Furthermore, the Penal Code imposes punishments upon those who provides false documentation, for example an incomplete or mendacious medical file; upon a public servant who

---

<sup>43</sup> A famous case is the trial of the dictator Augusto Pinochet. See: R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (1999) All E.R. 97, 109, 188.

<sup>44</sup> Ben-Naftali and Shany, International Law Between War and Peace, p. 294.

<sup>45</sup> As noted earlier, a prisoner is considered helpless under the law. This is because of the organizational structure of the prison, where prisoners are not able to care for the necessities of their own lives and certainly not to report their injuries or act to bring them to an end. This is illustrated by the wording of Article 322 of the Penal Code, which defines one responsible for a helpless individual is: “one responsible for an individual who, due to age, disease, mental deficiencies, arrest or any other reason cannot take responsibility and cannot provide themselves with the necessities of his or her own life.”

deliberately abstains from fulfilling his or her duties; upon those responsible for a detainee who did not fulfill his or her obligations to them; and upon those who violate their obligation to prevent abuse, injury or harm to an individual.<sup>46</sup>

The **Public Health Ordinance** too fixes doctors' duty to report every victim of violence they encounter as part of their work. Violation of this duty is a criminal violation.<sup>47</sup> In case of reasonable suspicion on the part of the hospital director or the person responsible for accepting patients that an individual arriving at the hospital injured, unconscious or dead was involved in an act of violence, the Guideline<sup>48</sup> dictates he or she must inform the nearest Police station of this fact.

## **V. Conclusion**

From all this it is clear that doctors' professional duties oblige them not to participate in or countenance torture. Indeed, it is their duty to actively oppose torture they have witnessed. Still more duties follow from this:

- A doctor or medical professional shall not be present in a place where torture or cruel, inhuman or degrading treatment is perpetrated. The very presence of medical professionals in interrogation facilities where torture or ill-treatment regularly takes place provides a safety net for the interrogators and as such supports torture and ill-treatment. Such presence is in opposition of their ethical duties and provides interrogators with a layer of defense both before and after the interrogation. Since we know that interrogation methods which amount to torture or ill-treatment are implemented in ISA interrogation facilities, we believe that medical professionals must not work in a place which provides medical treatment to interrogees held in these facilities. Furthermore, medical professionals' presence in the facilities where interrogations are conducted seems suspiciously not to be for purely medical purposes but is rather intended to provide that very safety net so desperately needed by the interrogators.

The following duties are relevant in prison facilities where torture or ill-treatment are not part of routine practice and for medical professionals who interact with prisoners:

- Doctors shall categorically prevent, by means of a doctor's order, the return of a detainee to the place where torture takes place;
- Doctors shall not provide space, tools, materials or information which enable torture or reduce the victim's ability to oppose such treatment;
- Doctors examining the imprisoned shall be especially vigilant with the confidentiality of medical information;
- Doctors shall document marks or complaints of torture;
- Doctors shall report torture which they saw, diagnosed, or of which they heard;

---

<sup>46</sup> Articles/Clauses 281, 285, 322, 337 of the Penal Code – 1977.

<sup>47</sup> Public Health Order, Article 20b.

<sup>48</sup> Public Health Order (Notification of Suspected Violence) – 1975.

- Doctors shall treat the victim of torture after receiving the victim's permission;
- Doctors shall support the victim of torture both physically and emotionally.

These duties apply not only to doctors and other medical professionals, but also to the prison system and the heads of the medical community. In Israel these include the Ministry of Health, the IMA, the IPS and the various hospitals which treat the imprisoned: they too are responsible, whether actively or through silence, for the cooperation of medical professionals with torture and/or ill-treatment.

Finally, we must also note the unique situation of security detainees in Israel. During their interrogations, they are almost ubiquitously prevented from meeting an attorney or any other external, independent authority –they are in effect held incommunicado.<sup>49</sup> Thus, **in many cases, medical professionals are the only individuals these detainees meet aside from their interrogators.** As such, their responsibility to document the detainee's injuries and description of the interrogation, to report these and to prevent the complainant from being returned to the violence, is exponentially more urgent. The next chapter illustrates our finding that in many cases doctors neglect this responsibility.

---

<sup>49</sup> See When the Exception Becomes the Rule: Incommunicado Holding of Palestinian Detainees, Periodical Report November 2010, the Public Committee Against Torture in Israel, note 43 above.

### C. The Bitter Pill: On the Actions and Failures of Medical Staff

This chapter describes the primary manifestations of doctors' involvement in torture. It is based on the findings of a study surveyed over one hundred files the Public Committee Against Torture has handled since 2007. The research shows that medical professionals who interact with prisoners regularly neglect their obligations and play a role, whether active or passive, in torture and ill-treatment. We present some of the most substantial and frequent aspects of doctors' involvement in torture: doctors lending a hand to torture by failing to properly document it in medical records; abstaining from reporting violence; returning interrogees to interrogations despite knowing they have been harmed; and supporting the interrogation by passing on medical information about interrogees to interrogators.

The findings of the study delineate a gloomy picture of the professional and ethical outlooks of doctors who interact with prisoners: it seems that medical professionals see themselves as part of the imprisoning apparatus, and see themselves as serving this system and its needs even at the price of the patient's well-being – the consideration which ought to be their top priority. It is also apparent that the systems responsible for enforcing the ethical codes, primarily the Israel Prison Service's medical apparatus, the Ministry of Health and the Israel Medical Association, do not bother to enforce the ethical rules they themselves proclaim. Though these groups see themselves as entrusted with the conduct of doctors in detention centers, they fail to provide a suitable infrastructure to facilitate the reporting of torture or, when appropriate, support, or punish doctors who interact with prisoners.

#### I. Failure to Document

The Patient's Rights Law, applicable also to prison doctors, requires that doctors maintain a proper medical record, to include among other things identifying details of the patient and the caregiver, medical information regarding the medical treatment received by the patient, the patient's medical history as reported by him or her, and diagnosis of the patients current health and treatment instructions. The medical record is of primary importance: it provides documentation of an individual's health before, during and at the conclusion of interrogation, documents the treatment provided and may serve as the basis for future medical treatment. If properly managed, **the medical record is usually the only evidence which a torture victim can present in judicial proceedings regarding injuries suffered during interrogation.** Effective documentation of the injury can be a decisive factor in initiating an investigation, in bringing the perpetrators to trial, and in ensuring that justice is carried out.

The Public Committee Against Torture and Physicians for Human Rights - Israel have encountered countless cases wherein individuals testified to injuries inflicted upon them during detention or in interrogation, and yet the medical record from the hospital or the Prison Service makes no mention of it, or includes no more than a dearth of details falling far short of proper documentation of the injury and treatment of the victim. To be precise, there are next to no cases of such injuries that we know of in which the medical record does in fact include everything it ought to: a precise description of the injury; a photograph of the area of the injury; the diagnosis; a description of the case as described by the victim; treatment of the injury; and the reporting of and the subsequent treatment of the victim.

### The Case of M.A.<sup>50</sup>

A. was 22 years old at the time of his arrest on 11.6.08. In his affidavit he testifies that during his arrest, soldiers cuffed his hands behind his back with plastic cuffs so firmly that the marks lasted a week.<sup>51</sup> While being arrested he was seated in a kneeling position and forced to rest on his fingertips for hours. A soldier slapped him across the face some ten times and slammed his head into the bench twenty more. The resulting eye pain was so serious that one month later, while giving his affidavit, he was unable to read at all.

A. was subjected to a preliminary medical examination on 12.6.08, the day after the injuries inflicted upon him by the soldiers described in his affidavit. In the space marked "Prisoner's complaints during examination", the record states: "No known regular medications or sensitivities to medications. Two months ago was involved in a car accident but was not injured, and later felt fine." The "Doctor's comments" column reads: "Overall condition satisfactory, heartbeat regular," followed by a completely illegible sentence. And further along: "Not in need of treatment at this point", over the signature of Dr. Liakh Victoria. Though additional visits to the clinic in the next two weeks are noted, there is no documentation of the injury until, on 26.6.08, the following record appears: "Complains of pain in teeth, eyes." This last listing is under the signature of Dr. Rodvan Yelena.

We do not know if M.A. told the doctors about what had happened to him. However, according to his statements the injury was substantial and ought to have been conspicuous. If this is the case, the doctors should have documented, photographed, and reported the injuries even without an explicit request from the detainee. Moreover, M.A. was referred to an eye doctor on 30.6.08 upon the court's request. The referral states: "Claims he was beaten in the course of his arrest, complains that he does not feel well and complains of blurring in the eyes." That is, **more than two weeks after the preliminary examination, A. complained before a judge of the assault and the subsequent pains he felt. This fact exacerbates the doctors' failure to document; according to M.A.'s testimony the doctors were aware of the injury far earlier.** If, so long after the arrest, a judge was convinced of the necessity of treatment, the same should certainly have been expected of a doctor whose job this is.

On 21.7.08, a complaint was filed in M.A.'s case with the Military Advocate General alleging soldier violence during his arrest. On 5.4.11 we were informed that the complaint had been closed. On 18.4.11 we wrote requesting to peruse the file in order to consider filing an appeal. To date no response to our request has been received.

### The Case of A.R.

---

<sup>50</sup> In the interest of the right to privacy we have opted not to publish the full names of the victims and to refer to all of them in the masculine form. Their full names are held at the offices of the Public Committee Against Torture.

<sup>51</sup> PCATI has dealt at length with the issue of painful cuffing. See: Shackling as Torture and Abuse, Public Committee Against Torture in Israel, Periodical Report June 2009.



A.R. was 19 years old when arrested on 17.6.10. His affidavit reveals that the soldiers arresting him degraded, painfully handcuffed and struck him during the drive to the detention facility. Upon arrival at Etzion, he was brought to the clinic. The doctor examined his hands and asked that the cuffs be removed during the examination; yet upon leaving the clinic, in the presence of the doctor, his hands were once again cuffed in the same painful manner. The affidavit further establishes that A.R. was interrogated for six days while cuffed in this painful position all day save short breaks for meals. He was transferred to Shikma Prison where he was once again examined at the clinic, this time both cuffed and blindfolded.<sup>52</sup>

On 12.10.10, A.R. told a visiting PCATI attorney about the painful cuffing and the marks it had left. He tried to display them before the attorney through the visitation window, but due to the conditions they were unclear.<sup>53</sup> **A.R.'s medical file contains no documentation of these injuries**, though marks apparently remained on his forearms for months after handcuffing in question.

In his affidavit A.R. also reported that he “suffers from kidney pains”, which he says are a result of a previous illness seriously exacerbated by the beating he suffered. Though his medical record does mention the previous illness, it does not note its worsening which, according to the patient, resulted from torture or ill-treatment.

A complaint was filed with the Attorney General on 28.10.10. To date no substantive response has been received. A complaint was filed with the Military Advocate General on 20.12.10. A response was received on 13.3.11 delaying a decision and explaining that the complaint would be handled after his case was decided in military court.

The failure to properly manage medical records go beyond missing or inadequate entries by doctors. The **organizational level**, of the IPS apparatus, too, suffers from deficiencies in the forwarding and maintaining of medical records. As noted in the previous chapter, medical systems are obliged to keep medical records, properly maintain them, and forward them to the patient – the legal owner of the record – upon their request. The Chief Medical Officer of the IPS confirmed this in response to our correspondence complaining of prolonged delays in the forwarding of a medical record, writing: “It is clear to us that what is written in the medical record is the property of the patient, who has every right to receive it upon his request.”<sup>54</sup>

When handling cases of torture or ill-treatment, PCATI, PHR-Israel and additional organizations often approach the IPS in the name of the prisoner and request a copy of his or her medical file. There are

---

<sup>52</sup> The rules of medical ethics forbid doctors from treating a patient or providing him or her with treatment while handcuffed, to say nothing of being blindfolded. For more information see the Physicians for Human Rights - Israel position paper from October 2006, and can be found at <http://www.phr.org.il> (in Hebrew). See also the Israel Prison Service guidelines regarding the cuffing of a detainee in a public place, from 30.11.08, at <http://www.ips.gov.il> (in Hebrew).

<sup>53</sup> Visitation of security detainees takes place in the presence of a prison guard, across a plastic barrier; under these conditions the development of intimacy and trust with the detainee is, of course, difficult.

<sup>54</sup> Correspondence of Dr. Diny Tishler Orkin, Deputy Warden, Chief Medical Officer of the IPS, to PCATI on 27.6.10 regarding “Prolonged Delays in the Forwarding of Medical Records”.

certain problems with the forwarding of the files, which we will expand upon below. We should note that in the past year, primarily since the medical records were computerized, there has been a marked improvement regarding some aspects of this; other problems, meanwhile, remain unsolved.

- **Prolonged delays in the forwarding of the records:** Medical records are often delayed for months in reaching us. The IPS record for 2010 should provide a good indication of this. In 2010 we requested 65 medical records from the IPS. As of March 2011, 22 of these were delayed and yet to be received for over three months; of these, 20 have been delayed for six months and 8 files have not arrived after over a year. No official explanation has been given for these prolonged delays; in response to a petition aggregating such cases, the IPS expressed willingness to find all the files and promptly forward them to us.<sup>55</sup> Even with regards to the files which have been delayed for many months, no written response whatsoever was received explaining the meaning of the delay. Such delays can substantially encumber prisoners whether in receiving medical treatment after their release, in their ability to supervise the quality of the care they are receiving (by seeking out a second opinion regarding the treatment they have received, for example), or in their ability to provide evidence for proceedings or complaints regarding injuries suffered as a result of torture or ill-treatment.
- **Lost records:** In several cases, after repeated attempts to receive a record or a missing portion of a record sent to us incomplete, we were informed by phone that the record had been lost. Our requests to receive an official answer on this matter in order to determine the scope of the phenomenon were unsuccessful. We should note that the transition to computerized records reduced this phenomenon significantly, and that the difficulties relate mostly to the receipt of files from the period before computerization.
- **Partial records:** Prisoners' medical files often reach us only partially complete. In some cases the missing portions seem to have been deliberately omitted; not incidentally, the missing portions often correspond to the period of interrogation. Based on these suspicions, PCATI and PHR-Israel petitioned the medical authorities at the IPS on 2.9.08, requesting six detainees' medical materials in their entirety: "The fact that in these cases, which arouse suspicions of torture or ill-treatment during the interrogation, medical documents from IPS detention facilities are not forwarded, while in the case of detainees who were not tortured the files are typically forwarded in their entirety... raises suspicions of deliberate concealment of certain documents by the IPS." As no response was received, we petitioned the Ministry of Internal Security and the Commissioner of the Prison Service to order the forwarding of the medical records in their entirety. The continuing correspondence on this issue eventually led to several petitions on behalf of a prisoner, in response to which some of the demanded documents were received. With the transition to a computerized system, the absence of records from the period of interrogation remains but is limited to a small number of cases.

The computerization of the system has created an additional problem with regards to partial records: often documents scanned into the medical file and attached to it in separate files are not forwarded to us. These may include medical examinations the prisoner underwent outside

---

<sup>55</sup> E-mail correspondence from the Chief Medical Officer of the IPS on 27 January 2011.

the prison, the medical files forwarded from a military facility in which the prisoner was held, and other relevant files.

- **Illegible records:** Until recently, all the medical listings were made in the doctor's handwriting. Popular jokes about doctors' penmanship abound, of course, but the state of the files forwarded to us was not at all entertaining: many were illegible even to an experienced individual familiar with the enigmas of medical shorthand. As noted, in the past year IPS has introduced a computerized system which solved the problem of deciphering the doctors' handwriting. Yet the system was not retroactively computerized, so that many of the documents reaching us, written before the computerization, remain impossible to read. Needless to say, a medical record written illegibly does not fulfill its purpose.

To emphasize, the computerized system recently introduced to the network of detention center clinics has alleviated some of the problems discussed here, and we have observed certain improvements in both the speed and clarity with which files are forwarded to us. Despite the welcome change, however, there remain problems with the medical records which have not been definitively solved and many records are forwarded to us in partial form or after grave delays.

Similarly, and at the crux of the matter: the transferring of the medical records to a computerized system has not solved the fundamental problem, one that is more essential than the technical difficulties described above. **A computerized system cannot take the place of the professional obligations of both the doctor and the medical system to fully document and report injuries inflicted upon prisoners who are the victims of torture and ill-treatment.** Thus, the inadequate medical records which reach us, even if they haven't been delayed and have been forwarded in full, do not fulfill their purpose and typically cannot be of assistance to the victims.

## **II. Silence as Consent**

As noted in the previous chapter, doctors' duties extend beyond simply recording, precisely describing, and treating an injury. It is also their obligation to **report** its very existence. Doctors' duty to report is magnified when it comes to prisoners. In terms of the doctors' duties, they are considered 'helpless' and are defined as such for the purposes of certain crimes in the Penal Code,<sup>56</sup> because their ability to independently complain of injuries is very limited. Similarly, the fact that the patients are in custody and subjected to the same prison system which employs the doctors also reinforces the doctors' duty to report and the system's obligation to create effective channels of reporting which initiate investigations.

Except for one case which we present below, our research did not discover a single case where torture and ill-treatment were reported. This is true even in cases documented – though only partially – in the medical record, removing any doubt that the doctor did not witness the injury. "Injury Reports", incidentally, are used primarily to report violence involving fellow prisoners or prison guards rather than

---

<sup>56</sup> Article 322 of the Penal Code-1977.

injuries incurred under interrogation or during arrest. It is unclear how the system responds to these reports, and it is unlikely that they are meant to apprise superiors in order to initiate examination.

### **The Case of J.M.**

*J.M., born 1980, from Jenin, was arrested on 22.4.10. His affidavit testifies to widespread violence at the time of his arrest. Soldiers broke into his bedroom and began to beat him, using their guns. One of the soldiers seized his arm so violently that his shoulder was dislocated. J.M. lost consciousness and woke to find himself in a clinic; where, he did not know. According to his affidavit, he was then transferred to Kishon Detention Center, brought to the clinic there and told the doctors what had happened to him. In his medical file, under the title "Initial Absorption", the detention center doctor Dr. Saliman Fares noted that J.M. suffered from pain in the right shoulder. Yet there is documentation neither of his having been unconscious at this or any other clinic, **nor of his claims of soldier violence.***

*A complaint was filed with the Chief Military Advocate General in J.M.'s case on 23.1.11. His complaint is still being examined.*

### **The Case of T.S.**

*T.S., born 1980 and residing in Ramallah, was arrested on 25.1.09. Among other brutal violence he was subjected to during his arrest he was bitten by a dog who accompanied the soldiers. After spending a short while at a military base where he was further ill-treated, he was transferred to the Russian Compound. T.S. says that the prison doctor there did not agree to accept him in his condition and that he was referred to the hospital, where he was treated while handcuffed and blindfolded, forced to communicate with his doctors through his interrogators. T.S. further notes in his affidavit that he was not told he was being sent to hospital; he ascertained this fact only because he saw the legs of nurses through his blindfold. From the hospital he was returned to the Russian Compound Clinic and was transferred to Kishon Detention Center the next day.*

*His medical file contains documents from "Sha'arei Tzedek" hospital in Jerusalem signed by Dr. Alexander Bergman, which describe in detail the bite on his shoulder and the treatment received. The medical examination form of the military base – where he was held for several hours – also details the bite marks, and is signed by Paramedic Amit Iton. The detention center doctor, Dr. Emil Erkin, took the trouble of updating the interrogators of T.S.'s injury by means of a special form (an act which in and of itself amounts to a violation of the ethical rules, which we address below). The medical record further details the injury and its treatment.*

*Nevertheless, **neither in the medical file nor anywhere else is there any record suggesting that the case was reported to an external body of any kind by any of the doctors who encountered him, not those at the military facility, the Russian Compound, the hospital or Kishon.***

*A complaint in T.S.'s case was filed with the Military Advocate General on 12.1.10. A response was received on 8.4.10 stating that because the arrest had been made by the Police, the petition had been forwarded to the Police Investigations Division at the Ministry of Justice (PID). On 25.1.11 the complaint was closed by the PID, citing lack of guilt. The filing an appeal is currently being considered.*

From among the over 100 files which our research examined, only in a single case did we find that a detainee's medical file contained any type of appraisal of superiors of violence inflicted upon a victim:

### **Need it be so? The Case of T.C.**

*T.C., born 1983, was arrested on 1.7.06. He testifies in his affidavit to having been beaten during his arrest. Over the course of his interrogation, which lasted on-and-off for several months, his interrogators used a variety of methods including hitting, isolation, sleep deprivation, prolonged cuffing to a chair in a position so painful it led to a loss of consciousness, threats and curses. Likewise, he suffered from strong pains in his left eye as a result of the violence; his body was so badly harmed that an attorney who met him several days after the interrogation had ended was able to easily make out the injury marks.*

*His affidavit also depicts the failures of the doctors who saw him over the course of his interrogation: one admonished him to cooperate with his interrogators and another refused to check his injured eyes, ignoring the patient's explicit request. The medical file reveals that the doctors only partially documented his claims and that some of the doctors who saw his injuries did not report them. T.C. was also treated at a civilian hospital following fears that his hand had been broken during interrogation.*

*A complaint in T.C.'s case was filed through PCATI with the Attorney General, the National Prison Guards Investigation Unit (NPGIU) and the Police Investigations Department (PID). All the complaints were shelved.*

*In the course of our attempts to appeal the PID's decision to shelve the complaint, we received the entire contents of PID's investigation. In perusing the files, we were astounded to find a document titled 'Memorandum', dated 5.3.07. It was addressed to the Commander of the Detention Center and signed by the Detention Center Doctor. The doctor details how the detainee was brought in to the clinic and complained that on 1.3.07 he was struck by Detention Center Police. He further notes that a bodily examination revealed several injury marks. Beneath the doctor's stamp, the Detention Center Commander scrawled an instruction to forward the document to the PID.<sup>57</sup> Alongside these there appears the "Received" stamp of the Police Investigations Department at the Ministry of Justice (PID), indicating 11.3.07.*

---

<sup>57</sup> At the time of the memorandum's writing, the prison facility at the Russian Compound was under the jurisdiction of the Israel Police. In March 2008 it was transferred to the jurisdiction of the Israel Prison Service in March 2008.

*This case presents more than meets the eye. Why did we only discover the document through a photocopy of the PID's investigation materials? Why did the PID not handle the complaint, which was forwarded to it by the Detention Center Commander half a year before PCATI's complaint? And did the Detention Center Commander completely fulfill his obligation by forwarding the complaint to the PID? Were any steps taken to ensure that the torture victim would not be exposed to such treatment again? Above all, the aforementioned 'Memorandum' suggests the absence of a proper infrastructure or incentives to encourage reporting injuries, possibly even **the system silencing criticism from within.***

The efforts of PHR-Israel and PCATI regarding doctors' duty to report torture include repeated attempts to convince the Ministry of Health to issue an executive statement on the matter, requests to meet doctors in hospitals, and the forwarding of specific cases and issues of principle to the media, the IMA, IPS and the Ministry of Health. Nevertheless, it is dubitable that IPS doctors, along with their counterparts in civilian hospitals, know who they are to apprise of the existence of torture or ill-treatment, or what the system's response would be were they to do so. As noted above, we were informed by the Chief Medical Officer of the Prison Service (CMO) that the rules regarding apprising are being drafted in conjunction with the Ministry of Health and other bodies. Despite repeated reminders from PCATI requesting these promised rules for reporting, no formulation has yet reached us.

On a related note, the CMO has forwarded us directives for perusal stating that digital cameras had been purchased for all detention center clinics with the purpose of photographing and documenting injuries to prisoners. The directives detail how to use these cameras and store the photographs on the computer. Note that the procedural addresses several possible reasons for injury, but that these do not include torture or ill-treatment at the hands of prison guards or interrogators. The directives furthermore do not address any special duty to report injuries and do not elucidate to whom a doctor should report in such cases. Finally, it is worth noting that none of the medical files forwarded to us has ever included an attached photograph, as the directives dictate.

### **III. Refoulement**

Doctors must do everything in their power to ensure that a prisoner who has been subjected to torture or ill-treatment not be returned to a place where these may recur. In the unique situation of security detainees – almost all of whom are held incommunicado, prevented from meeting their attorney or any other outside entity which can effectively criticize the conditions of their interrogations or to hear their testimony in real time – this obligation that doctors not expose a victim to further violations is exponentially more important: often doctors are the only ones who interact with a security detainee during interrogation, except for interrogators and the prison authorities,.

Unfortunately, according to the evidence we have accumulated, not only do doctors not document or report torture; they actually **return the victim to the hands of the torturers**, often after perfunctorily treating or documenting the torture or ill-treatment – sometimes without even this. The return of interrogees to the hands of interrogators from the clinic is not only a violation of the ethical obligations of doctors towards their patients. It also serves as a stamp of approval for the interrogators, who rely on

the doctor's action as having granted medical permission to continue with their practices. In this sense, return of a victim to interrogation amounts to doctors' active participation in torture or ill-treatment.

### **The Case of B.A.**

*B.A. was arrested in his home on 25.11.10. In his affidavit he depicts an intensive interrogation including sleep deprivation, cuffing which led to numbness in his arms and legs, prolonged subjection to painful positions which brought about strong pains in the head, back and shoulders, and serious knee pains. During his interrogation he was transferred for a week to Shikma Prison where he was held in a cell with informers and subsequently returned to the Russian Compound for continued interrogation.*

*His affidavit further shows that, over the course of his interrogation, he was twice brought to the clinic at the Russian Compound: once during the first week of his interrogation and again when he returned from his week with the informers. He told the doctor that he was suffering from severe arm, leg and back pains. He says the doctor checked his blood pressure and poked him with his fingers before announcing that, "all is well and there is no problem". He was returned to interrogation. He testifies that after his interrogation was completed on 10.1.11, he was transferred to Gilboa Prison while still suffering from grave pain resulting from his interrogation.*

*In B.A.'s medical file there is no record whatsoever of the clinic visit described in his affidavit. The file does record his absorption at Shikma. At that time Dr. Shimon Kaslesi noted that the patient had no complaints and that his overall condition was good.*

*The medical file does not accord B.A.'s description as it appears in the affidavit. Nevertheless, both the record and the affidavit establish that doctors did attend to B.A. during his interrogation. **He says doctors heard his complaints; if this is the case, they were obliged to prevent his return to such conditions.***

*On 11.4.11 a complaint was filed in B.A.'s case with the Attorney General and the PID. To date no substantive response has been received.*

### **The Case of S.A.**

*S.A., born 1978, was arrested at a checkpoint on 22.4.11 on his way home from work. After being held for a short while at a police station, he was transferred to the Russian Compound. In his affidavit he testifies that his interrogation there included painful cuffing positions, insufficient food, harassment, and refusal of access to the toilet. Over the course of his interrogation he visited the clinic twice, in part because of pre-existing digestion problems exacerbated during the interrogation. During the interrogation, S.A. felt ill and asked to be examined by a doctor. The interrogator transferred him to the prison doctor, who gave him medication, **and from there he was returned to the interrogation room.** Subsequently, one of the interrogators decided that he should be returned to his cell. Once there, S.A.*

*began to vomit blood. In response the prison guard pulled him aggressively towards the prison clinic and threw him to the floor. The doctor gave him two injections and a pill and kept him in the clinic for half an hour for supervision, at which point he was returned to his isolation cell and, the next day, to his interrogation.*

*S.A.'s medical file documents several visits to the clinic during interrogation. All of these record his complaints of pain. The file also contains an 'Injury Report' dated May 2, 2010, in which Dr. Vladimir Gudin describes "use of reasonable force" and "light redness on wrists without any bleeding." The next day an additional visit to the clinic is recorded. It notes S.A.'s complaint of an injury to the right big toe and includes a doctor's recommendation that the patient use slippers.*

***On what basis did the doctor know that "reasonable force" had been used? Is it his role to determine the reasonableness of the use of force? S.A.'s medical file shows that, though a number of doctors were witness to his distress, which itself resulted in part from interrogation conditions, they nevertheless chose to return him to the control of his interrogators and to the very same despicable imprisonment conditions, over and over again.***

*On 20.5.10 a complaint was filed in S.A.'s name with the NPGIU (National Prison Guard Investigations Unit) and with the Attorney General. On 12.7.10 a response was received from the PID (Police Investigations Unit, to whom the file had been forwarded by the NPGIU) shelving the complaint. An appeal of this decision was filed on 4.8.10. To date the results of the appeal have not been received. From the Attorney General's office, no response has been received.*

### **The Case of Kh.Z.**

*Kh.Z., born 1980, arrested on 13.1.11. While being arrested he was subjected to harsh violence at the hands of soldiers. He was struck in the head, losing consciousness, and was brought to hospital. The same day he was transferred to the Russian Compound. During his interrogation there he suffered degradation, was forced into painful positions, threatened with rape, deprived of sleep, and his family members were used as means of pressure. In his affidavit, Kh.Z. testifies that during his detention he was in great pain and suffered from nausea and vomiting. He attributes these symptoms to prolonged seating in a chair during the interrogation and injuries suffered during his detention. According to his testimony, he saw doctors on an almost daily basis. When he told the doctor about the severe sleep deprivation, the doctor approached the prison guard accompanying him and asked the he pass on to the interrogations that Kh.Z. was in need of sleep and better food. **Nevertheless, he was returned to interrogation.***

*His medical file documents two visits to the clinic from the interrogation period: a document from 16.1.11 signed by Dr. Ganady Lesitza listing his complaint of headaches; and a document from 10.2.11 under the same signature lists his complaint of lack of sleep. The medical record does not include anything beyond the documentation of the complaints.*



*In this case the doctor did choose to document and describe the sleep prevention his patient complained of. Still, he chose to return Kh.Z. to interrogation, the very place he was being subjected to continued sleep deprivation and other means of torture and ill-treatment.*

#### **IV. Serving the Interrogation over Medical Confidentiality**

The presence of doctors in detention and interrogation facilities not only fails to protect the patient: in effect, their presence serves as a **stamp of approval** for the torture and ill-treatment which occur within their walls. One organizational practice by means of which doctors for all practical purposes grant permission for torture or ill-treatment is the **forwarding of medical information to interrogators which serves as medical approval of the interrogee's ability to withstand certain interrogation conditions.**

An individual's medical record, including the things he or she tells their doctor, comes under the duty to maintain medical confidentiality in the framework of the Patient's Rights Law. And yet the passing on of information by doctors to other bodies is institutionalized and anchored in IPS procedures. This is done **by means of a special form containing medical information about the detainee which is used to forward such information from a doctor or medic to ISA interrogators.** They are addressed to the "Officer in Charge of Special Interrogations Wing" from "Detention Center Clinic". At the bottom they read, "Signature of Authorizing Authority". Apparently, **this form amounts to a stamp of approval signifying that an individual is capable of withstanding certain interrogation methods.** We can only assume that this is done without the patient's agreement.

#### **The Case of G.Tz.**

*G.Tz., born 1984, arrested on 1.2.08. His interrogation included a series of painful positions, hitting, cuffing to the point of bleeding, and the use of family members' arrest as a means of pressure. The following document appeared in his medical file:*

To: "Officer in Charge of Special Interrogations Wing".  
From: "Kishon Detention Center Clinic/Infirmary".  
"The aforementioned detainee was examined by a doctor. Comments: The aforementioned detainee suffers from pain in the hands due to an injury to a nerve in the hand. Receiving medication. The aforementioned has been referred for an EMG examination on 12.3.08."

*The form is signed by Dr. Galina Veiner. Plain and unadorned, **medical information about the interrogee is passed on to an outside body.***

*A complaint in G.Tz.'s case was filed on 11.3.08. Almost three years later, on 20.2.11, a response was received announcing the shelving of the file. A criticism we filed against this decision was also rejected. A petition to the Supreme Court in this case is currently being drafted.*

#### **The Case of M.J.**

*M.J., 47 years old when arrested on 14.3.2010. His affidavit attests to painful cuffing and soldier violence. He was interrogated for over fifty days, during which his life was threatened, he was deprived of sleep and his family members were used as a means of pressure – his ten-year-old son was even interrogated.*

*In M.J.'s medical file we found the following document: "Medical Certificate for Detainees of ISA Wing. The detainee was given a full bodily examination, his condition is satisfactory. Recommendations: holding conditions – regular." In his file there is another, identical form, filled out a week later, which recommends medication for skin problems. The first document is signed by Dr. Vladimir Gudin. The signature on the second is unclear.*

*The aforementioned document is not part of the computerized file, so although it does not explicitly cite the interrogators as addressees, **the suspicion arises that it was intended for their eyes.***

*A complaint in M.J.'s case was filed on 20.3.11. On 28.3.11 a message was received from the Military Advocate General according to which an Investigative Military Police (IMP) investigation had been opened. The Attorney General's office has yet to respond to a complaint regarding the investigators' conduct in the case.*

Physicians for Human Rights - Israel wrote to the Ministry of Health on this matter on 20.7.10, presenting eight cases from November 2003 to June 2009 in which IPS doctors forwarded medical information regarding their patients to ISA interrogators. Addressed to Director General Dr. Roni Gamzo and Ombudsman Prof. Chaim Hershko, the letter requested that they study the cases detailed in the letter and, if the doctors involved were indeed found to have violated their obligation to maintain medical confidentiality and thus to have violated the rules of medical ethics, that steps be taken against them including the revocation of their licenses. Likewise, the Ministry of Health's representatives were asked to disseminate ethical rules on the subject, advance relevant legislation and remove doctors from interrogation facilities.

An answer to this letter reached PHR-Israel in the form of a letter from the IPS Chief Medical Officer (CMO) dated 13.1.11, according to which the computerized medical record system being developed at the time provides a solution to this problem in that it does not technically enable the possibility of forwarding information. Yet the CMO's letter did not address the fact that some of the cases which were brought to her attention, in addition to other cases we know of, occurred **after** the introduction of the computerized system, meaning that **the aforementioned form we know of is not part of the computerized medical records system**, and apparently is not used through this system. Furthermore, though the CMO acknowledged that, in the cases noted in PHR's letter, "medical information was indeed forwarded by doctors," her action in response was limited to the dissemination of a reminder to doctors employed in interrogation facilities, ignoring the demand to take steps, disciplinary or otherwise, to censure the doctors cited in the letter.

## V. Doctors or Interrogators?

Cooperation between doctors and interrogators can occur in various forms and in a more or less formal fashion. This section provides two extreme examples in which the good of the interrogation was the sole factor considered by the doctors involved; they explicitly used their role and status in order to advance the interrogation. These examples speak volumes about the structural conflation between the roles of doctor and interrogator, a nebulousness which isolates the interrogee from any individual or body not part of the interrogation apparatus.<sup>58</sup>

### The Case of S.D.

*S.D., from Qalqilya and born in 1981, was arrested on 28.3.07. According to his affidavit he was attacked by soldiers and suffered grave injuries during his arrest. His interrogation included, to list only a few, threats, hitting, cuffing to the point of bleeding, the use of his mother as a means of pressure, violent shaking and several sets of kneeling in the “frog” position.<sup>59</sup>*

*In his affidavit, taken on 13.9.09, S.D. testifies that he was brought before a doctor many times. The doctor told him to drink water and gave him the painkiller ‘Acamol’. The doctor told him that he could “get out of it”: that his “military interrogation” (a euphemism for an interrogation involving torture) would cease if he were to cooperate with the interrogators.*

*Since S.D.’s medical file reached us incomplete, a group petition was filed in his name, along with several other prisoners, demanding the portion of their medical files from the interrogation period be disclosed (see page 33 for more on this petition). In response we were informed that the IPS does not possess all of the medical materials requested in the petition, and it was dismissed.*

*A complaint in S.D.’s case was filed with the Attorney General on 30.10.07. On 18.3.09 a response shelving the file was received.*

### The Case of S.Tz.

*S.Tz. was arrested on 17.3.08. The soldiers who arrested him treated S.Tz. with crude violence, further injuring him with the knife they used to removed his handcuffs. His interrogation was also brutally violent; at one point he lost consciousness. In his affidavit he describes how **a medic named Shalit struck him, kicked him** and, finally, took the infusion bag and forced it into his mouth. The same medic gave him an injection of painkiller in the leg; the injection was painful and led to swelling. The medic told him that there was a serious problem with his kidneys and that he would require treatment. **He demanded***

---

<sup>58</sup> When the Exception Becomes the Rule, see note 43 above.

<sup>59</sup> On this see the joint report by B’tselem and HaMoked: Center for the Defense of the Individual, Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees, May 2007. On page 71 of the report the “frog” position is described as follows: “The interrogators force the interrogee to crouch on tiptoes for several minutes at a time, his hands cuffed behind his back. While the interrogee crouches in this manner, the interrogators push or beat him until he loses his balance and falls forward or backward.”

***that S.Tz. begin to cooperate with the interrogators; only then would the medic help him get treated at the hospital.***

*A complaint in S.Tz.'s case was filed with the Attorney General on 15.12.2009. To date no substantive response has been received. We should note that repeated attempts in writing and by phone to receive his medical file were unsuccessful.*

## **VI. Behind Bars or Hospital Walls?**

As we have already noted, the involvement of medical professionals in torture or ill-treatment extends beyond the medical services of the IPS. Such involvement also exists in the hospitals to which prisoners are brought for treatment. Thus, even when leaving the walls of the prison for treatment at hospital, where medical professionals are not subjected to the command system of the detention center and are supposedly more independent, prisoners continue to encounter the very same fortifications of support and silent backing for their tormenters.

When the imprisoned are in need of urgent medical treatment or the IPS medical system cannot provide the required treatment, prison guards or interrogators take them to the hospital. The medical professionals at hospitals receive the prisoners from their interrogators, to be treated and returned to them. The evidence we have collected shows that not only do they return the prisoners to their captors even when they have witnessed the violence inflicted upon them; they furthermore tend not to precisely document the injuries or to report them. This in spite of the duty to do so under their ethical obligations as medical professionals and under the Israeli Penal Code, as detailed in the previous chapter.

In what follows we present two examples and describe the doctors' failures and our own efforts to bring about their examination and punishment in these cases. Despite persistent correspondence on the matter both on the general level and in particular cases, our efforts have come to naught. To date we do not know of a single case which any of the relevant institutions, be they the Ministry of Health, the Israel Medical Association or the hospitals themselves, have opened an investigation or even an internal examination into the circumstances of such occurrence after it was brought to their attention.

### **The Case of S.B.**

*S.B. was arrested on 7.12.2009. His affidavit he testifies describes how he was injured and bitten by a dog who accompanied the soldiers arresting him. After being held for a few hours at the Huwara Detention Facility, his wounds continuing to bleed, he was transferred to the prison facility at Kishon and brought in for interrogation. The next day he was transferred to the "Bnei Tzion" Medical Center near Haifa.*

*He describes being handcuffed while undergoing treatment at the hospital. He told the doctor who treated him that his swollen eye was the result of a beating. The prison guard who accompanied S.B. tried to give another explanation, but the doctor told him the injury was indeed a result of being beaten. The doctor wanted to photograph the injured area, the guards said this would delay them but the doctor insisted. After being photographed, S.B. was returned to the detention center for the resumption of his interrogation.*

*His hospital release form reads as follows: "says that two days ago was struck in the head, left eye and upper back without losing consciousness. Fully conscious, calm during examination. Hematoma of left eye, abrasion on right upper back." An 'Advisory Examination' from the hospital describes the injuries similarly.*

***Though they diagnosed S.B. as having been the victim of violence while in custody, the doctors in hospital did not bother to report this to any external body, and after treatment they returned him to the custody of his escorts.***

*A complaint in S.B.'s case was filed with the Attorney General, with the NPGIU and with the Military Advocate General on 29.4.10. A response received on 2.5.10 from the NPGIU argued that the matter was not under their purview. The remaining bodies have yet to reply.*

### **The Case of J.M.**

*J.M. was arrested from his house in Tulkarem on 26.4.08. The first twenty days of his interrogation were intensive and, according to his affidavit including sleep deprivation as well as violent methods which caused him pain lasting until several days after the interrogation. Over three months later, still under interrogation, J.M. was taken to a housing unit by interrogators in civilian clothing. There he was brutally beaten by two unidentified young men until he bled from the head and mouth and his face was injured from the punches. The two young men cuffed him and called a doctor. The man who arrived, in civilian clothes but with a "doctor's bag," seated J.M. on a chair, removed his shirt and saw marks of the beating. When he noticed that J.M. was having difficulty breathing, he placed an oxygen mask on his face. Upon the doctor's request, one of the young men who had beaten J.M. called an ambulance. His interrogator arrived and told everyone present (the two who had beaten J.M., the doctor and the ambulance crew) not to tell about what had happened. If asked, they were to say J.M. had fallen down some stairs. All present agreed to the proposed version of events.*

*J.M. was brought into the ambulance on a stretcher, his hands and feet cuffed, and taken to the emergency room at "Laniado" Hospital in Netanya. At hospital, the examining doctor asked what had happened. After she was told that he had fallen down the stairs, J.M. told her this was a lie and that he had been beaten. The doctor told him **that this was not her business, that her role was to treat him and that the cause of injury was of no interest to her.** Two more doctors saw J.M. in hospital; both answered him much like the first doctor had when he tried to tell them what had happened. All this time the security personnel were standing around him in a large group. At the hospital his head injury was*

*stitched and X-Rays of his chest and shoulders were administered. After some two hours, J.M. was released from the hospital. In his affidavit he testifies that he overheard his interrogator tell the doctor to try and avoid continued hospitalization. The files show that J.M. was examined on 5.8.08 by Dr. Alexander Afensayev in the Urgent Care Department at “Laniado” Hospital.*

*J.M.’s affidavit and a perusal of the medical documentation from the hospital it is clear that the doctors at the hospital ignored his complaints of violence; that the injuries were not properly documented in a way which would allow their origin to be identified; and that the medical staff did not report these injuries to authorities outside the hospital. Most severe, the doctors did not hesitate to return J.M. to the custody of his interrogators despite the fact that he was injured and had explicitly testified before the doctors that the injuries were the result of violence inflicted upon him. In March 2010 we appealed to Laniado Hospital, the Ministry of Health and the IMA, inquiring whether J.M.’s doctors had apprised any authority; how the hospital administration intended to identify the medical professionals involved and investigate the case; requesting that the hospital take steps to raise awareness among doctors of their obligation to properly document and report cases arousing suspicions of violence and/or torture inflicted upon prisoners and do everything in their power in order to prevent the continuation of the torture of the prisoner – all of these being obligatory under the ethical values which apply to medical professionals.*

*Despite reminders sent on the matter, no substantive response has been received from either the Ministry of Health or the hospital to date.<sup>60</sup>*

*The IMA responded on 10.3.10 asking whether we had approached the Police regarding the crimes cited in our letter. To this we responded that, as far as we were concerned, the IMA’s role is to act against violations of the ethical code, and most certainly against crimes committed by doctors against their patients.*

*As described in the previous chapter, violation of doctors’ duty to report is not only a violation of the ethical code but also entails a violation of the Penal Code. Thus, we approached the Police on 16.1.11 and requested that they investigate the doctors for involvement in a crime. On 21.3.11 the Police requested we forward them additional documents, which we did on 6.4.11. As for the trial of J.M.’s interrogators, a petition to the High Court of Justice is currently pending.<sup>61</sup>*

It seems, then, that hospital medical staff are not sufficiently informed of their duties to thoroughly document the marks of violence on prisoners under their care, and furthermore do not see the necessity or the possibility of reporting such cases to bodies outside the hospital itself. The medical professionals

---

<sup>60</sup> The hospital’s response was published in a 29.4.11 article in *Yediot Ahronot*’s Sharon region edition in an article by Tzipi Capel, “Gray Beating” in *Yediot Netanya*, available in Hebrew: <http://www.mynet.co.il/articles/0,7340,L-4063365,00.html>. There the hospital claimed that, since J.M. had been escorted by the Police, they did not find it appropriate to report the injury. See also: Dan Even, “Health Min., Israel Medical Association probing whether physicians failed to report torture of Palestinian detainee”, *HaAretz*, 14.3.10, available in English: <http://www.haaretz.com/print-edition/news/health-min-israel-medical-association-probing-whether-physicians-failed-to-report-torture-of-palestinian-detainee-1.266495>.

<sup>61</sup> HCI 1910/10 M. v. Attorney General.

at hospitals, too, do not act exclusively for the well-being of their patients as obliged under the rules of medical ethics, and in certain cases under criminal law as well; in this way they **involve themselves in torture and ill-treatment**.

In another case,<sup>62</sup> medical professionals from Hadassah Ein Karem Hospital returned an individual to the custody of his escorts without reporting the injuries inflicted upon him. We appealed to Hadassah and the Ministry of Health on the matter on 14.3.11. The response from the Ministry of Health was received on 10.4.11, the Hospital Director's reply attached. In these responses the Ministry of Health and Hadassah informed us that they did not understand our demand to report the violence, since the individual had arrived in the company of the Police. The Hospital Director further complained that he could not examine the case in light of the medical record because it was missing; he accused the prisoner of "apparently taking the hospitalization protocol and all its contents without permission." For this reason, he continued, he was unable to examine the case. Finally, the Hospital Director claims that the Prison Service doctors' referral explicitly states that the prisoner had "been injured during the course of detention," meaning that the IPS knew of the injury.

Apparently, the Hospital Director and the representative of the Ministry of Health concluded that the IPS or the Police's knowledge of the injury exempts them of their responsibility to report the injury. This in spite of the existence of channels for reporting violations carried out by the authorities, the Police and the IPS included – for example the PID, NPGIU or Attorney General – of which doctors, and certainly hospital administrators, must be aware. The fact that an individual arrives at the hospital accompanied by the Police **strengthens rather than weakens** the duty to report injuries: it is clear that the patient is in custody and hence under absolute control, and should be considered helpless in terms of the doctors' duties to him or her.

As for the accusations regarding the taking of the medical file, the Hospital Director must examine how it is that medical files at his institution are not managed in accord with the requirements and that there is no oversight of their removal. We received the medical file from the IPS. Thus we can only assume – and this would not be the first time – that the prisoner's escorts received the medical file or took it without permission, which would amount to an additional violation of the ethical rules on the part of the hospital staff.

Thus, it seems the systems responsible for the conduct of doctors in hospitals are in no rush to investigate violations of ethical rules or even criminal behavior on the part of doctors. **Hospitals serve, then, as an additional layer of protection in the conspiracy of silence surrounding torture and ill-treatment**, and amount to another layer of defense, civilian in this case, for the interrogators, prison guards, police and soldiers who employ torture and ill-treatment.

---

<sup>62</sup> The details of this case remain unpublished here because of the complainant's fear of harassment or worse, a fear which we can unfortunately not dispute seeing as he has been re-arrested every time he complained. The details of the case are thus held at the offices of the Public Committee Against Torture.

To conclude, this chapter has surveyed the central aspects of doctors' involvement in torture and ill-treatment. We showed that doctors systematically fail to fulfill their duty to document, report and prevent the continuation of torture and ill-treatment. Medical professionals who provide services to interrogation facilities grant a seal of approval to interrogators and enable them to continue to implement methods of torture or ill-treatment. In certain cases, as shown here, the doctor's role becomes obfuscated, and ceases to be sufficiently distinguished from the goals of the interrogator. On rare occasions this conflation of roles can amount to torture or ill-treatment instituted by doctors or medical professionals themselves. Such conduct also persists outside the prison walls, in hospitals, ostensibly unaffected by the demands of the imprisoning apparatus. The next chapter will move on to examine how other states and regimes have dealt with this phenomenon and the degree to which doctors across the world are held responsible for their involvement in atrocities.



## **D: Holding Doctors Accountable: A Glance at the World**<sup>63</sup>

This chapter examines how doctors are held accountable for their involvement in torture and/or ill-treatment and the roles of the judicial system, the health care system and civil society in this process. As noted earlier in this report, Israel is not the only country in the world where, in times of political conflict, medical professionals abandon the fundamental ethical rules which apply to them. Indeed, the history of doctors' involvement in the torture of prisoners is a long one: as early as 1532, Germanic criminal legislation (*Constitutio Criminalis Carolina*) stated that doctors must determine the extent of an individual's ability to withstand torture and give a confession. The torture of a blind person, for example, could not elicit a confession of what they had seen.<sup>64</sup> Unfortunately, more recent times also provide numerous examples of involvement and even active participation of doctors in torture. Doctors in the former USSR, psychiatrists especially, aided the state in the control and suppression of individuals who deviated from the Communist regime's accepted line. Doctors also participated in torture during the 1970s and the 1980s in South and Central America, even maximizing their sophistication: the doctors' presence allowed torturers to do their worst, knowing that a professional was there to reinvigorate the collapsed victim; doctors advised torturers as to the victim's weak points and warned against methods of torture which could result in the victim's embarrassing death; doctors wrote out false death certificates in case the victim did indeed die and, if they survived, cleaned them up to make them presentable in court.

The investigation of medical professionals' involvement in human rights violations and their being held responsible through sanction and punishment varies from state to state. There are several ways to take action against doctors who abandon ethical rules and participate in torture and/or ill-treatment committed against their patients. Indeed, though many bodies have set out to oppose such participation by doctors in torture, only in rare cases and in a few countries have the individual roles of specific doctors been investigated. Official government bodies have never carried out detailed investigations of medical professionals' involvement in torture and the institutions which enabled such involvement; only a few exceptional cases have been investigated by professional bodies such as medical associations. Instead, civil society organizations play an important role in exposing these doctors.

In what follows we provide several examples of doctors' involvement in torture from countries around the world, whether as individuals or as part of a professional body, and examine how their societies did or did not act against them.

### **The United States of America**

In April 2004 photographs from Abu Ghraib Prison in Iraq depicting detainees who had undergone torture at the hands of American and British soldiers circulated in the world media. Subsequently released information began to expose the layers of impunity which protected the tormenters: the silence of those commanders who learned of these acts, which served as permission for their

---

<sup>63</sup> This chapter was written by Anat Litvin of Physicians for Human Rights-Israel.

<sup>64</sup> Steven H Miles MD, Alfred M Freedman MD, "Medical ethics and torture: revising the Declaration of Tokyo", *The Lancet*, Vol. 373, No. 9660, pp. 344-8, 344.

persistence; administration guidelines ordering the expansion of permitted interrogation methods; and pressure by American society to bring those who had harmed American soldiers to justice. These circles of impunity include doctors who treated the tortured detainees. These doctors were derelict of both their professional duties and their human obligation to report and expose the torture. Even after the revelations exposing what was going on in Guantanamo Bay, the American military chose to conduct internal investigations and “update guidelines”, thus giving soldiers a message of support for the use of torture. Though some junior soldiers were brought to justice, the court sentences were relatively light and the legal system did not bother to bring responsible senior officials to trial.

The Guantanamo Detention Camp at the American Military base in Guantanamo Bay, Cuba was founded in 2002 in response to the September 11 attacks as part of the U.S.A.’s ‘war on terror’. The facility continues to be controversial internationally because of the detention conditions and interrogation methods employed there, methods amounting to severe torture. Claims of such torture have been repeatedly corroborated by detainee testimony, the exposure of torture methods approved by the Pentagon and the American Department of Justice in 2003, and declassified interrogation logs and medical files.

At Guantanamo, much like Abu Ghraib, the torturers seem not to have acted alone but to have enjoyed the support of the security, legal and medical systems. Although the conduct at Guantanamo was widely criticized – by, among others, experts in medicine and medical ethics, professional associations in the United States and Europe, academics and large segments of the population – there were those who decided to support torture in spite of their ethical duties. The American Psychological Association is unique among American professional medical associations in that it granted legitimacy to American interrogation policy and supported the government’s declaration that torture was not being used. Psychologists and psychiatrists participated in the planning and implementation of torture at Guantanamo, a gross violation of the rules of medical ethics.<sup>65</sup>

Two experts from Physicians for Human Rights (USA) have recently published an article based on interviews with Guantanamo detainees and their medical files. They showed that medical doctors and mental health professionals employed by the Department of Defense who worked at Guantanamo assisted in the development of interrogation methods and later ignored evidence of intentional harm inflicted upon detainees.<sup>66</sup> According to the evidence, medical professionals could and should have seen and documented physical marks of torture and ill-treatment, but did not. They further failed in that they did not protest the torture. The medical files clearly show that whoever approved torture did so having been assured of cooperation on the part of medical personnel both in the planning of methods and in the turning of a blind eye to their implementation and the marks of the resulting injuries. For example, when mental health professionals at Guantanamo identified psychological symptoms in detainees which were the result of torture, they often attributed them to pre-existing personality disorders and/or to the

---

<sup>65</sup> Steven H Miles, MD, *Oath Betrayed: America’s Torture Doctors*, University of California Press, 2009 (previously published in 2006 by Random House).

<sup>66</sup> Vincent Iacopino, Stephen N. Xenakis, “Neglect of Medical Evidence of Torture in Guantanamo Bay: A Case Series, *PLoS Med* 8(4), 2011.

'routine stresses of confinement'. All of this, of course, in spite of the detainees' complaints that they were being subjected to torture.

Despite severe censure on behalf of leading figures in the medical community and various organizations around the world, the medical professionals who took part in, planned, or turned a blind eye to torture at Guantanamo Bay and Abu Ghraib have not been punished for their actions to this day.

### **South Africa**

Probably the most famous case of torture during the apartheid period in South Africa was the death of Steve Biko in 1977, involving the doctors Tucker and Lang. Biko was beaten by police, but then found medically fit to be transferred from the prison facility in Port Elizabeth to Pretoria, over 1,000 kilometers away. Biko did not survive the journey. The South African Medical and Dental Council (SAMDC) accused the doctors involved of not having fulfilled their roles as doctors and not carrying out a proper medical examination. Tucker, the senior doctor, had his doctor's license rescinded for three months by the SAMDC; Lang, the junior doctor was censured.<sup>67</sup>

The apartheid regime's collapse was accompanied by a model of reconciliation based on the exposure of various human rights violations by the Truth and Reconciliation Commission (TRC). The TRC functioned between 1996 and 1998 and among its concerns was an examination of the role of professional institutions and bodies in torture and ill-treatment. The Commission examined the responsibility of specific individuals for human rights violations, as well as the involvement of influential sectors of society in such crimes through their collective failure to condemn human rights violations, their official actions facilitating the implementation of torture, or their failure to support those who struggled against it. The Commission's discussions enjoyed broad public support and in certain cases progressed thanks to the lobbying and intervention of civil society organizations. The Truth and Reconciliation Commission entailed a compromise in that it neither recommended nor enacted any sanction or punishment against medical professionals who were found to have taken part in torture and to have violated ethical rules: like all other individuals who testified before the Commission, doctors who agreed to come before it and confess to the acts they had taken part in were promised full amnesty.<sup>68</sup>

South Africa also provides an example of a torture whistleblower, Dr. Wendy Orr, who as a young doctor in 1985 worked at a government job where she found herself treating tens of detainees who had undergone torture at the hands of the Police. The doctors she worked with were also aware of the torture of detainees but chose to ignore it. Dr. Orr, however, chose to appeal to the South African Supreme Court demanding the Police's use of torture and ill-treatment against detainees cease. Her request was granted when the court issued limitations on Police treatment of detainees. In 1996, Dr. Orr was appointed by then-President Nelson Mandela to the Truth and Reconciliation Commission. Indeed,

---

<sup>67</sup> Kenneth Mostad, Eva Moati, "Silent Healers – A Study of Medical Complicity in Torture", *Torture*, Volume 18, October 2008.

<sup>68</sup> Laurel Baldwin-Ragaven, Jeanelle de Gruchy and Leslie London, *An Ambulance of the Wrong Colour: Health Professionals, Human Rights and Ethics in South Africa*. University of Cape Town Press, 1999.

one of the most important results of the discussions conducted by the Commission in South Africa was the documentation of additional cases in which medical professionals had opposed coercion and struggled to maintain ethical rules and human rights despite threats upon their lives and safety.

### **South America**

In the 1970s and 1980s the intelligence agencies of numerous South American countries took part in what was termed “Operation Condor”. The Operation lasted for years and took tens of thousands of victims, tortured and murdered for opposing the dictatorial regimes which ruled many South American states of the time. It was conducted under the supervision and support of the United States government, which saw it as a means for removing the socialist and communist threat from South America. Doctors took an active role in torture and even became torturers themselves: they forged medical records and death certificates, and participated in the abduction of the babies of tortured women who later died.

So far we have seen examples where the system for punishing doctors who take part in torture is to a large degree based on the activities of civil society and human rights organizations. A perusal of the websites of human rights organizations in several South American countries shows that even if doctors are not officially censured, they are often denounced by the media and on rights groups’ websites, which expose their names, places of work and actions.

**Argentina:** “Fahrenheit” is an activist group from Argentina which works to expose and educate the public about the crimes of torture and murder which were carried out in the country. Their website displays a list of doctors who took part in the regime of oppression in Argentina between 1976 and 1983. The site’s writers note that most of these doctors continue to practice medicine, and warn readers to pay attention to the list and make sure that none of their own doctors appear on it. Readers are also requested to pass on information about the current workplace of these doctors. The list includes the doctors’ names, places of work, the accusations against them, and the names of those they harmed. Some of the doctors noted on the list were sentenced to prison terms but released when the Due Obedience law came into force.<sup>69</sup>

**Chile:** According to Chilean Interior Ministry data, almost 28,000 individuals were imprisoned or tortured under the Pinochet dictatorship between 1973 and 1990. It is widely assumed that the actual numbers are far higher. The Medical College of Chile, **which also serves as the professional medical association for some 1,500 doctors**, works against torture and for the implementation of the rules of medical ethics by its members. By 2006 the College had revoked the license of three doctors and as of

---

<sup>69</sup> The Due Obedience law, which states that security personnel who tortured or killed civilians under orders cannot be brought to trial, was approved by the Argentine Supreme Court on July 27, 1987 by a 4-1 majority.

2008 an additional doctor was under investigation on suspicion of complicity in the kidnapping and murder of Manuel Leyton.<sup>70</sup>

Chilean websites also publish lists of doctors who participated in torture. One argues that, although some of these doctors enjoy senior positions in various medical institutions, it is important that the public be aware of their pasts. One website includes pictures of the torturers as well.<sup>71</sup>

**Uruguay:** In 1984, the Sindicato Médico del Uruguay, the Medical Association of Uruguay, formed a commission to try military doctors for their participation in torture. Of the 80 or so doctors brought before the commission on such suspicions, nine were found guilty and their membership in the medical association was revoked.<sup>72</sup>

According to a study carried out by Dr. Steven H. Miles, Telma Alencar and Brittney N. Crock<sup>73</sup> which examines the investigation of doctors' involvement in torture in various countries, other than the punishments meted out at the Nuremberg Trials, there are very few documented cases of doctors being punished for their participation in torture or crimes against humanity since World War Two. Their study describes and categorizes the hearing procedures; identifies the roles of those doctors punished; categorizes the acts for which doctors have been punished; and describes the political cultures in which punishment of doctors has been implemented. The overarching goal was to examine whether the existing cases reveal any universal policymaking strategies which can help punish and deter medical misconduct. The researchers focused on four legal mechanisms of punishment: international courts, national criminal courts, military courts, and medical associations (various institutions of the medical community). For every case in which a doctor was punished, other doctors gave incriminating testimony against themselves, usually in exchange for immunity or amnesty. In every such case, human rights organizations listed the names of many others and took steps to hold them responsible.

According to the study, as of 2009, 56 doctors in eight countries had been punished for torture or crimes against humanity. Of these, 46 doctors (82% of those punished) from five countries were punished by the medical community or by bodies responsible for granting medical licenses. Meanwhile, ten doctors in four countries have been convicted by local (national) courts and typically imprisoned, including two doctors punished by the Chilean and Argentine medical associations as well.<sup>74</sup> International courts have imprisoned two doctors (4% of those punished) from the former Yugoslavia. There are also 18 open cases against doctors, 15 of whom had just undergone a first hearing at the time the study was

---

<sup>70</sup> Mostad and Moati, "Silent Healers – A Study of Medical Complicity in Torture," p. 12.

<sup>71</sup> <http://albanoticias.wordpress.com>; <http://www.memoriando.com>; <http://www.vientodelsur.ch>; <http://pelusardical.blogspot.com>.

<sup>72</sup> <http://www.larepublica.com>; <http://www.smu.org.uy/publicaciones/noticias/separ99/art6.htm>; <http://www.cintras.org/textos/libros/libro%20linares/eticamedicaytortura.pdf>.

<sup>73</sup> Steven H. Miles, MD, Telma Alencar, Brittney N. Crock, "Punishing physicians who torture: a work in progress," *Torture* Vol. 20(1), 2010, pp. 23-31.

<sup>74</sup> The data in this paragraph is from Miles, Alencar and Crock, "Punishing physicians," p. 25. Dr. Steven H. Miles' website contains an up-to-date spreadsheet of cases of physician punishment for torture: [http://www.ahc.umn.edu/bioethics/facstaff/miles\\_s/home.html](http://www.ahc.umn.edu/bioethics/facstaff/miles_s/home.html) (link to spreadsheet at bottom of page).

published. Two of these, in turn, died during the period between the filing of complaints against them and the conclusion of the trial. In nine cases, criminal complaints were filed against doctors who had already been punished by medical associations. Meanwhile, a South African doctor who had been acquitted of criminal allegations is now facing a licensing board hearing. The study also points out one Argentine physician subject to concurrent international and national trials.

Although medical associations and courts punish for identical acts (torture, murder, kidnapping, forgery of death certificates and so on), the basis for disciplinary and criminal punishment is distinct. Medical associations punish violations of the rules of medical ethics. In Uruguay, for example, the medical association condemned the participation of doctors in torture and approved the Declaration of Tokyo against doctors' participation in torture. Later, a court of medical ethics was convened, declaring military and civilian doctors to be bound by the same ethical obligations with regards to the treatment of prisoners. The process resulted in the annulment of the doctors' membership in the medical association. An Argentine university held a conference on medical ethics at which three doctors who had violated the Hippocratic Oath, the national code of ethics, and international standards of medical ethics were symbolically censured. The Argentine Ministry of Health fired a fourth doctor from an executive position in emergency services at a hospital, though he continues to treat patients. Non-governmental medical associations can mete out various punishments such as public and private censure, modest fines, the revocation of prizes, suspension or annulment of licenses, or expulsion from membership in the medical association.

Courts, on the other hand, judge crimes. Most accusations heard in court include murder, kidnapping (the forgery of birth certificates for the babies of murdered female prisoners) or the forgery of medical files, especially death certificates. "Torture" itself is rarely identified since it is usually not specifically cited in national laws. The Spanish judge Baltazar Garzón turned to international legal mechanisms in 1999 in an attempt to use the right of extradition in filing charges against members of the Argentine security forces – including three doctors – for crimes against humanity.

Courts have not ruled doctors responsible for torture specifically, save one exception. After the fall of the Greek military junta, Dr. Dimitros Kofas was sentenced in military court and imprisoned for "dereliction of duty" as the doctor responsible for prisoners who were tortured. Military courts enforce the payment of various fines or the serving of prison terms which can reach life in prison. Miles, Alencar and Crock's study was unable to determine fixed tendencies for punishment which paralleled the gravity of the violations. Civil suits against torturers have also been filed, though apparently the only one of these resulting in a ruling was a Brazilian court's ruling revoking a doctor's pension and forcing him to pay compensation to the family of the victim.

Another form of prosecution takes place when local or international courts deal with mass atrocities in which the doctor on trial served a non-clinical administrative role in government. The accusations in such cases relate to crimes carried out against groups rather than individuals. In such a trial, an international court sent two doctors to prison and is trying a third over their governmental roles during the genocide in the former Yugoslavia.

So the representatives of civil society, human rights groups and professional associations of doctors play an important role in exposing doctors who have been involved in and supported torture. At the same time, doctors like the South African Dr. Wendy Orr are of crucial significance: **a doctor who refuses to condone torture and is willing to expose its existence can singlehandedly change an entire state's policy on torture.** In Israel, as the previous chapters of this report have illustrated, professional associations of doctors typically ignore the participation of doctors in torture and ill-treatment – at best, sending out mixed messages on the issue. This situation provides no support or protection for doctors who want to refuse involvement in torture or protest against torture they know is taking place.

## E: Summary and Conclusions

This report is a product of the long, frustrating experience of two organizations which have struggled since their founding against torture, the professionals who enable it, and in attempting to understand the circumstances which allow them to persist. Our experience on this matter is unequivocal: medical professionals are indeed among those working for the authorities who interact with prisoners and take part in what goes on in the prison system and the interrogation rooms.

Medical professionals abandon their duty by failing to document and report torture; by passing on medical information to interrogators; returning interrogees to the custody of their interrogators when in danger of being exposed to further torture or ill-treatment; and in extreme cases, by taking an active part in the interrogation. Because of their unique social status, the presence of medical professionals in facilities where torture or ill-treatment are carried out indicates the boundary between the permissible and the impermissible; it grants ISA interrogators a stamp of approval, whether explicit or tacit, that their conduct is acceptable.

Such behavior by doctors has far-reaching consequences for the victims of torture or ill-treatment: not only do medical professionals fail to serve as effective recourse for victim's complaints of injuries inflicted upon them by their interrogators or other authorities; **their conduct furthermore precludes the victim from presenting evidence which can aid in pursuing justice through various legal and administrative proceedings.**

The hierarchical structure of the Prison Service is organized such that doctors are subject to non-medical authorities. This prevents them from reaching independent clinical and ethical decisions and creates direct organizational, social and economic connections between doctors and their 'colleagues', the prison guards and interrogators. Such a situation conflates the professional duties of these employees and pushes them to abandon their ethical duties. Widespread views in Israeli society condoning the violation of Palestinian human rights, and the inherent hostility towards them, exacerbate the situation.

And yet the situation described in this report is not attributable solely to medical professionals. Medical staff at prisons, detention centers and hospitals which treat prisoners are part of broader administrative systems, primarily the medical apparatus of the Prison Service, the Israel Medical Association and the Ministry of Health. The actions and silences of medical professionals are also the concern of those at the helm of these systems. Indeed, we at PCATI and PHR-Israel believe that it is they who must lead the change: it is their job to advise doctors regarding their roles and ethical duties, to ensure an appropriate level of professionalism and a working environment as free as possible from the pressures of authorities whose concerns ignore the well-being of the patient. It is these systems which must ensure not only that doctors who violate ethical rules be punished; but first and foremost they must build effective mechanisms enabling, even requiring doctors to prevent and report torture, all while protecting such doctors from the abuse of their employers or other bodies. As things stand, even if a doctor were interested in acting for the good of his or her patient, in the absence of both support and clear mechanisms to report cases of torture, they are unlikely to dare oppose such powerful defenses as exist to protect the continuation of torture.



The result of all this is that in the chain of events following a suspect's arrest – and this is especially the case with security detainees hailing from the Occupied Territories – the suspect will not interact with even a single individual whose motivations are not to some degree those of the interrogation and imprisoning authorities. From the moment of arrest at the hands of soldiers, through the remand of detention hearing before a military judge, the detention in a cell of informers, and on to a visit at the detention center clinic or even a hospital, the detainee interacts solely with individuals who are identified with the security apparatus. Clearly, this has much impact on the detainees' mental state, on their confession, and on the possibility of pursuing justice against their tormenters at a later date.

There are many ways to change the current situation and many bodies which should take part in this change. Here are a few of the main recommendations suggested by the findings of this report:

- The Ministry of Health and the medical apparatus of the Israel Prison Service must draft clear guidelines and working procedures regarding the treatment of prisoners who may currently or previously have been victims of torture or ill-treatment, and ensure their enforcement. These rules must accord with the recommendations of the *Istanbul Protocol*.
- The Ministry of Health and the medical apparatus of the Israel Prison Service must build an effective enforcement mechanism which will initiate investigations of doctors and medical personnel who violated the rules, and discipline them when necessary.
- Medical associations must provide maximum protection for medical personnel who would like to object to the demands of the security apparatus and/or report torture or ill-treatment of prisoners, in much the way that the Whistleblower Protection Act protects employees who expose corruption.
- The Ministry of Health and the Israel Medical Association must resolutely and unequivocally announce to the public their opposition to torture and to the participation of medical personnel in torture. They must unequivocally condemn cases where doctors abandoned their ethical duties, whether through involvement in torture or ill-treatment or by any other means, and hold those doctors responsible for their actions. Though the IMA may not revoke a doctor's license, it can recommend that the Ministry of Health do so.
- The medical apparatus treating prisoners must be removed from the jurisdiction of the Israel Prison Service and the Ministry of Internal Security and its doctors be transferred to the responsibility of the Ministry of Health.
- Independent investigations against all those involved in torture, including doctors, must be launched. The investigation of a complaint of torture must be carried out by an independent and unbiased body with full investigatory authorities. This body must investigate all the parties involved in the complaint.
- Those found to have been involved in acts of torture or ill-treatment must be brought to trial.
- The guidelines must anchor the duty of the State, including the IPS and hospitals, to preserve evidence which can assist the victim of a crime in proving his or her claims.
- Doctors and their employers must ensure that doctors not be present in interrogation facilities where well-founded suspicions suggest that interrogations include the use of torture.

## Appendix: Responses

### I. Response of Israel Medical Association

[IMA EMBLEM]

30 June 2011

Documentation: 2011-00196

To:

Irit Ballas

Anat

Litvin

The Public Committee Against Torture

Physicians for Human Rights - Israel

RE: Draft of Joint Report by PHR and the Public Committee Against Torture

Documentation: Your correspondence 115/R

We received the draft of the report, which was attached to your correspondence, and our response is as follows:

1. As you well know, the Israel Medical Association [IMA] does and will continue to work for the implementation of the prohibition against the involvement of doctors in interrogations and in torture, in accordance with the instructions of the ethical code for doctors in Israel.
2. We again emphasize that the IMA is not an investigatory but an advisory body, and that our clear instructions unequivocally prohibit the involvement of doctors in torture or "approval" of torture and demand that the doctors report every suspicion of this kind.
3. Although the report ignores the progress made during the meeting at the Ministry of Health on the matter, we believe that the agreements reached on the outline for a duty to report whenever suspicion of the implementation of torture is aroused, are fundamentally important for providing a proper response the issue. You will recall that the IMA was among the initiators of the meeting with the Israel Prison Service [IPS] at the Ministry of Health and provided concrete suggestions which were eventually accepted.
4. At the aforementioned meeting on 16/2/2011, it was decided that the Ministry of Health would form a committee on the matter of suspected torture, to which every doctor could report directly, and which would in turn forward their reports for examination and response. The Ministry of Health also announced it would evaluate the necessity of releasing an Executive Director's circular and/or guidelines which would include the reporting channels available to the doctor, and would advance the cooperation with various security bodies.

5. We can only lament your failure to mention these decisions in the report and your choice of adopting a mistaken understanding of the IMA's position papers.
6. Our view was, and continues to be, that it would be preferable for the doctors working in the IPS to be subject to the Ministry of Health and not to the IPS.
7. The IMA is obligated to protect doctors who may be subjected to harm at their place of work in response to a report they gave.
8. The IMA cannot concur with the assertion that medical professionals are frequently involved in torture or ill-treatment, and will continue to do everything in its power, within the limits of the tools at its disposal, in order to inform doctors of their duty to report and to bring about proper conduct.

Respectfully,

[signature]

Dr.  
Chairman, Israel Medical Association

Leonid

Idelman

cc: Dr. Boaz Lev, Ministry of Health

## **II. Response of the Ministry of Health**

**[EMBLEM]**

**STATE OF ISRAEL**

Ministry of Health  
Jerusalem

Office of the Associate  
Director-General

[handwritten]: For: Ms. Irit Ballas, Ms. Anat Litvin

11 July 2011

Documentation: 26044411

(Please note our number in response)

To:

The Public Committee Against Torture  
Physicians for Human Rights - Israel

Greetings,

What follows is my response to the report which was forwarded to us for my perusal –

1. A committee has been appointed, “Committee for Medical Staff Reporting Harm to Interogees’ Medical Condition”.

Structure of the committee – Chairperson – Director of Public Hospital

Members – Chief Medical Officer of Israel Prison Service [IPS], Ethics Expert, attorney from Ministry of Health Public Response Team, and a member of the Israel Medical Association’s Ethics Committee (with the appropriate clearance if necessary).

Authorities of the committee:

- A. To receive reports and forward them to the relevant organizations for examination and response.
  - B. To recommend that the Ministry of Health and the Ethics Department of the Medical Association consider continued examination and proceedings.
2. A request will be sent to the Union of Hospital Directors in order to work together to increase the attention and awareness of doctors and hospital staff by providing information in professional meetings and written notices which will detail the procedures for reporting.
  3. The issue of IPS’ medical staff being beholden to the Ministry of Health has been discussed at several junctures in light of the possible conflict of interest between the doctor’s role and the actions of the organization. The balance between the possible conflict of interest on the one hand and the utility and efficaciousness of the doctors’ belonging to the organization on the other has been examined, and it was decided that the doctors will continue to serve under the IPS in order to enable continuity of treatment and in order to enact professional authority within the organization.

[next page]

4. The Israel Prison Service staff is subject to the laws of the State of Israel and its justice system, including to the Doctors’ Ordinance and obligatory ethical rules. Actions taken by medical personnel not in accord with these frameworks is liable to result in criminal and disciplinary measures and may lead to punishment including the revocation of licenses.  
The Ministry of Health and the Medical Association have repeatedly expressed their clear stance against the participation of doctors in proceedings not in fields not directly under their professional responsibility and which do not accord with the rules of professional ethics.
5. The investigation of complaints regarding the actions of security bodies is left to those authorized on the matter of investigations in accordance with the law.

6. There is an obligation to preserve evidence in every case for which there is suspicion of the carrying out of a crime.

Respectfully Yours,

[signature]

Dr. Boaz Lev

cc:

MK Rabbi Ya'akov Litzman, Deputy Minister of Health

Professor Roni Gamzo, Executive Director, Ministry of Health

Dr. Hezi Levi, Head, Medical Authority

Dr. Michael Dor, Head of General Medical Branch and Deputy and Interim Head of Medical Authority

Atty. Mira Hivner-Har'el, Legal Advisor

Atty. Sharona Ever-Hadani, Legal Bureau

### **III. PCATI and PHR-I's Response to the Ministry of Health**

**[EMBLEM]**

11.08.2011

[File No.] AA-11-219-AS

To:

Dr. Boaz Lev

Deputy Director General

Ministry of Health

RE: **Your Response to Report on Doctors' Involvement in Torture**

Your letter from 11.7.11

Greetings,

We appreciate your response and welcome the appointment of a "**Committee for Medical Staff Reporting Harm to Interogees' Medical Condition.**" Likewise, we warmly welcome the plan to explain the matter and raise awareness among doctors and hospital staff. This amounts to a response to our repeated requests for such a plan to the Ministry of Health and the Israel Medical Association.

We would appreciate an explanation of several points relating to the committee's structure and functioning:

1. From your letter we understand that the committee is meant to serve as recourse for medical professionals who want to report injuries to interrogees inflicted by the security services. Will the committee also provide recourse for those who would like to report unethical behavior on the part of doctors towards interrogees?
2. How will the committee's existence be publicized and how can the writ of appointment and the names of its members be perused? Who appoints the committee's chairperson and its members? We suggest that the committee's existence, its function, makeup, and the manner of approaching it be distributed widely in all interrogation and imprisonment facilities in Israel, among both staff and the prisoners.
3. Who may forward reports to the committee and how does one approach it? Will prisoners and detainees (the imprisoned) be able to approach the committee regarding the involvement of medical staff in torture? We suggest that, insofar as this matter is within the committee's mandate, it will receive reports from every relevant source: medical staff, prison guards, interrogators and interrogees.
4. What are the "relevant organizations" to which the committee will forward reports for examination and response?
5. Seeing as Israel Prison Service (IPS) doctors may be among those who approach the committee, the suspicion arises that the appointment of the IPS Chief Medical Officer to the committee may discourage IPS doctors from approaching it.
6. What protections will be promised by or on behalf of the committee in case steps are taken against the medical professionals who report an interrogee's injury? We recommend that the committee articulate the protections it will provide to reporting doctors. For example: confidentiality, protection from firing or harassment, informing the complainant at all stages of the examination, and respecting the will of the complainant.
7. Physicians for Human Rights - Israel has acquired decades of experience handling the complaints of numerous interrogees. We also play an active role in the work of international organizations dealing with torture and take part in drafting protocols advising medical staff how to deal with the problem. Thus we request:
  - A. To be granted observer status and to share our rich experience with the committee.
  - B. To nominate a candidate for the role of ethics expert on the committee.
  - C. To join the Ministry of Health in raising awareness and explaining the issue to medical staff in hospitals and in the prison system and security apparatus.
8. Your response notes the committee is authorized to recommend that the Ministry of Health and the Ethics Department of the Israel Medical Association (IMA) consider continued examination

and proceedings. The IMA has repeatedly stated in correspondence with us that it does not have the necessary tools to carry out examinations or to initiate proceedings against doctors suspected of involvement in torture, primarily if these doctors are employed by the IPS. What, then, are the committee's authorities and which steps can it take if it finds that medical professionals were involved either in harming interrogees' medical condition or in torture?

9. We would like to know how the committee's conclusions and the proceedings it initiates will be brought to the knowledge of the public and the imprisoned or their representative.

We would appreciate your response.

Regards,

Anat Litvin

Director

Prisoners & Detainees Department

Physicians for Human Rights - Israel

Atty. Irit Ballas

Public Committee Against Torture in Israel