At the Supreme Court **HCJ 9390/04**
Sitting as the High Court of Justice

In the matter of:

1. **I. Qawasme**
   detained for interrogation by the General Security Service at Shiqma Prison
2. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger**
3. **Physicians for Human Rights**
4. **The Public Committee Against Torture in Israel**
5. **B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories**

all by attorneys Andre Rosenthal and/or Mustafa Yahya
15 Salah a-Din Street, PO Box 38788, Jerusalem 95908
Tel. 6280633; Fax. 6283312

The Petitioners

v.

General Security Service
by the State Attorney's Office

The Respondent

Petition for Order Nisi and Temporary Injunction

The Honorable Court is requested to summon the Respondent to appear and show cause why he does not interrogate Petitioner 1 without using "permissions" [exceptional interrogation methods] as defined in HCJ 5100/94, *The Public Committee Against Torture in Israel v. Government of Israel et al., Piskei Din* 53 (4) 817.

As interim relief, the Honorable Court is requested to order the Respondent not to use the "permissions" until the hearing on this petition is completed.

Because of the nature of the petition, the Honorable Court is requested to set an urgent hearing date.

For the same reason, the Honorable Court is requested to accept the petition without a supporting affidavit.

The grounds for the petition are as follows:

1. Petitioner 1 [hereinafter: the Petitioner], a resident of Hebron, was arrested on 13 October 2004 and taken to the interrogations wing of the General Security Service in Shiqma Prison. His arrest was reported in the press, and the Petitioner was filmed, showing him with his eyes covered with a piece of cloth, his hands raised, and dressed only in his underwear.

2. Immediately upon his arrest, the Respondent issued an order prohibiting the Petitioner from meeting with an attorney for eight days, in reliance on Article 78C(c)(2) Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970, which applies in the West Bank.

3. In his petition filed with this Honorable Court, HCJ 9271/04, *Qawasme v. General Security Service*, the Petitioner strongly objected to the order prohibiting him from meeting with his attorney. A copy of the decision is not attached hereto because it has not yet been released for distribution.

4. During the hearing, the Petitioner's counsel requested the court to take into account the methods of interrogation used against the Petitioner while it was deciding on the matter of prohibiting him from meeting with his attorney. The Court referred to its decision in HCJ 5100/94, *Public Committee Against Torture in Israel v. Government of Israel et al., Piskei Din* 53 (4) 817 (hereinafter: HCJ 5100/94).

5. At the end of the confidential hearing, the president of the Court stated that methods pursuant to the permissions [the exceptional interrogation methods] were used at the beginning of the interrogation of the Petitioner. It was also stated that, at the present time, as of 17 October 2004 at about 4:00 P.M., the permissions were not being practiced. When the Petitioner's counsel requested the State Attorney's Office to make a commitment that the Respondent would not make any further use of those methods, the counsel for the Respondent refused, and the Court did not force him to do so. It was also stated that the state intends – apparently – to extend the period of the order prohibiting the Petitioner from meeting with counsel.

6. The Petitioners contend that the Respondent does not have the authority to employ the "permissions" – that is, torture as defined in Article 1 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Treaty Instruments 1039, which took effect as regards Israel on 2 November 1991. Article 2 of the Convention states, as follows:

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

7. In HCJ 5100/94, this Honorable Court stated its opinion on the interrogation methods used in the past by the Respondent. In its judgment, the Court held, at page 836:

> **… a reasonable investigation is necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever. There is a prohibition on the use of "brutal or inhuman means" in the course of an investigation (FH 3081/91 *Kozli v. The State of Israel*, *Piskei Din* 35 (4) 441 at 446). Human dignity also includes the dignity of the suspect under interrogation. (Compare HCJ 355/59 *Catlan v. Prison Security Services*, *Piskei Din* 34(3) 293 at 298 and CA 4463/94 *Golan v. Prison Security Services, Piskei Din* 50 (4) 136). This conclusion is in accord with (various) International Law treaties – to which Israel is a signatory – which prohibit the use of torture, "cruel, inhuman treatment" and "degrading treatment" (See M. Evans and R. Morgan, *Preventing Torture* (1998) at 61; N. S. Rodley, *The Treatment of Prisoners under International Law* (1987) at 63). These prohibitions are "absolute". There are no exceptions to them and there is no room for balancing. Indeed, violence directed at a suspect's body or spirit does not constitute a reasonable investigation practice.**

At pages 842-843, the Court held:

> **Consequently, it is decided that the order nisi be made absolute. The GSS does not have the authority to "shake" a man, hold him in the "Shabach" position (which includes the combination of various methods, as mentioned in paragraph 30), force him into a "frog crouch" position and deprive him of sleep in a manner other than that which is inherently required by the interrogation. Likewise, we declare that the "necessity defense," found in the Penal**

Law, cannot serve as a basis of authority for interrogation practices, or for directives to GSS investigators, allowing them to employ interrogation practices of this kind. Our decision does not negate the possibility that the "necessity defense" will be available to GSS investigators—either in the choice made by the Attorney-General in deciding whether to prosecute, or according to the discretion of the court if criminal charges are brought.

8. In light of the above, the Honorable Court is requested to give the orders requested and to make them absolute. The Honorable Court is also requested to order the Respondent to convey to the Petitioner the substance of this petition and the decisions of the Honorable Court.

Jerusalem, 18 October 2004

[signed]
Andre Rosenthal, Attorney
Counsel for Petitioners