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Convention against Torture
and Other Cruel, Inhuman
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or Punishment

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1996*

Addendum

ISRAEL

[26 February 1998]

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* The initial report submitted by the Government of Israel is contained in document CAT/C/16/Add.4; for its consideration by the Committee, see documents CAT/C/SR.183 and 184 and Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44, paras. 159-171). For the special report, see CAT/C/33/Add.2/Rev.1; for its consideration, see CAT/C/SR.295, 296 and 297/Add.1 and Official Records of the General Assembly, Fifty-second session, Supplement No. 44 (A/52/44, paras. 253-260).

GE.98-15479 (E)

Introduction

1. This report is submitted pursuant to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force with regard to Israel on 2 November 1991.

2. The present report supplements the initial report submitted by Israel in 1994 (CAT/C/16/Add.4) and the report submitted in 1996 (CAT/C/33/Add.2/Rev.1). Thus, for a comprehensive review it should be read in conjunction with those reports.

3. The report is divided according to the articles of the Convention. Since article 16 of the Convention widens its scope to also include a prohibition on cruel, inhuman and degrading treatment or punishment, the discussion under each article should be construed as covering both torture and cruel, inhuman or degrading treatment or punishment.

INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

Article 2 - Measures to prevent torture

Legislative measures bearing on the prohibition of torture and of cruel, inhuman or degrading treatment or punishment

Basic Law: Human Dignity and Liberty

4. In 1992, the Israeli Knesset enacted the Basic Law: Human Dignity and Liberty. The fundamental rights guaranteed in that basic law not only form the basis for interpretation of previous legislation and the limiting criteria for new laws; in addition, the Basic Law has itself stimulated numerous legislative efforts, in areas such as arrest and detention, searches and seizures, emergency legislation, privacy, imprisonment for civil debts, and the rights of patients, which aim to give the fullest practical realization of the principles embodied in the Basic Law.

5. Section 2 of Basic Law: Human Liberty and Dignity, which prohibits any violation of the life, body or dignity of any person as such, and section 4 of the Basic Law, which grants all persons the right to protection against such violations, have constitutional status in Israel's legislative framework. The Supreme Court arguably has the power to void any legislation enacted after the entry into force of the Basic Law which violates the above provisions; previously enacted laws may not be deemed void by the Court for this reason, but they will be interpreted in accordance with the fundamental principles of the sanctity of life, integrity of the body and primacy of human dignity, broadly construed. These provisions in the Basic Law, then, may be deemed to constitute a general prohibition of cruel, inhuman or degrading treatment or punishment, including torture, and are binding both vis-à-vis public and private entities.

General Security Service Bill

6. The functions, powers and structure of the General Security Service (GSS) have, to date, not been determined in any law but solely, and partially, in government decisions. Over the years, a process has developed of giving expression in legislation to various powers of the GSS - for example, in the Secret Monitoring Law, 5739-1979, in the Criminal Record and Rehabilitation Law, 5741-1981, in the Privacy Protection Law, 5741-1981, in the Equal Opportunities in the Workplace Law, 5748-1988, and others. However, all of these concern only piecemeal arrangements in specific areas. The status, structure, functions and powers of the GSS and the modes of supervision over its activity have not as yet been given an overall arrangement in legislation.

7. This does not mean, of course, that the GSS exists and acts outside the law. It is a division in the Office of the Prime Minister, and the legal basis for its activity, in those areas that have not been set out in legislation, is found in government decisions, by virtue of the general powers of government granted to it in accordance with section 40 of Basic Law: The Government, and subject to the legal constraints on the exercise of such powers (*see* H.C.J. 5128/94, *Federman* v. *Minister of Police*, 48(5) P.D. 647, 651-654).

8. Over the last few decades there has been a growing international trend towards setting out, in legislation, the activities of the various secret services, and several countries have enacted laws in this area. The proposed law is intended to fill the gap in Israeli law in all matters related to the structure, purpose, functions and powers of the GSS, as well as scrutiny over its activities.

9. Because the GSS activity is, by definition, classified and protected, the efficacy of normal mechanisms of control, deterrence and balance that exist in a democratic society to guard against governmental arbitrariness and abuse of its power, such as a free press, parliamentary supervision, public opinion and judicial review, is severely limited with regard to such organizations. It is thus particularly important to create effective institutionalized arrangements and mechanisms for scrutiny, control and review of the activity of the GSS. This is achieved in the bill by a range of provisions and mechanisms.

10. Under the proposed law, the GSS will be subject to the authority of the Government, in a manner similar to the Israel Defence Forces as set out in Basic Law: The Army. The Government will appoint the Head of the GSS, on the proposal of the Prime Minister. The Government will approve the objectives of the GSS's activity, and will establish various directives regarding the fulfilment of its functions, in accordance with and subject to the provisions of the proposed law, which also include parliamentary oversight.

11. The Prime Minister is responsible for the GSS on behalf of the Government. To this end he or she has been given various powers in the proposed law, including the authority to promulgate regulations and rules, with the approval of the Ministerial Committee for Service Affairs and the Knesset Committee for Service Affairs, in all matters relating to the implementation of the law. The Prime Minister is also the person who will approve GSS Directives determined by the head of the GSS.

12. Under the proposed law, the Government has to appoint a special Ministerial Committee for Service Affairs, headed by the Prime Minister, which will act in the name of the Government in matters which the Government will determine. The law also prescribes provisions for the composition of the Committee, to ensure that it will remain compact and businesslike.

13. The Committee will have various functions, in particular with respect to scrutiny and oversight of the GSSs activity. It is empowered to approve regulations and rules in respect of the implementation of the law. It is also entitled to receive periodic reports from the head of the GSS, and may demand special reports upon request.

14. Under the proposed law, the Subcommittee for Secret Services of the Knesset Defence and Foreign Affairs Committee will be established as the Knesset Committee for Service Affairs. Regulations and rules for the implementation of the law require the approval of this Committee. It is also entitled to receive periodic reports from the head of the GSS.

15. The proposed law determines, for the first time, the functions and powers of the GSS. The objective of the GSS consists principally of protecting the security of the State, its governance and institutions, from the threat of terrorism, espionage, and other, similar threats. To this end the task of the GSS is to foil and prevent unlawful activity aimed at harming the aforementioned objectives. The GSS is also given duties in the realm of protecting persons, information and sites, security classification and vetting, settling security procedures for bodies designated by the Government, gathering and receiving information, and giving counsel and situation appraisals to the Government and other bodies which it designates.

16. To carry out its objectives and functions, the GSS has been given various powers, including conducting investigations, gathering and receiving information, powers of arrest and search, and search powers for intelligence purposes.

17. Also, a service Comptroller, who is not an employee of the GSS, is to be appointed by the Prime Minister. The Comptroller will be subject to the provisions of the Internal Audit Law, 5752-1992, with slight modifications. Among other duties, the Comptroller is to assist the Government and the Ministerial Committee in fulfilling their various functions, and may be charged with other functions, including handling inquiries, complaints and disciplinary complaints against the GSS from the general public, as well as complaints by GSS employees.

18. In addition, the GSS will continue to be subject to the scrutiny of the State Comptroller by virtue of section 9 of the State Comptroller Law [Consolidated Version], 5718-1958, and of the Division for the Investigation of Police Misconduct in the Ministry of Justice under chapter 4.2 of the Police Ordinance [New Version], 5731-1971; and also, of course, to judicial review, first and foremost by the High Court of Justice.

19. The bill was adopted by the Israeli Government on 2 February 1998. It was then put on the Knesset table for further consideration.

Proposed amendment of the Evidence Ordinance

20. The proposed amendment seeks, *inter alia*, to bring the Evidence Ordinance [new Version] in line with Basic Law: Human Liberty and Dignity and with article 15 of the Convention. It is therefore discussed under that article.

Other measures bearing on the problem of torture and of cruel, inhuman or degrading treatment or punishment

The Kremnitzer Committee

21. Following a report in 1993 by the Comptroller of the Israel Police which examined the systemic response to acts of violence by police personnel, the Minister of Police (now renamed the Minister of Internal Security) appointed a public commission, headed by the former dean of the Law Faculty at the Hebrew University, Professor Mordecai Kremnitzer, to propose a plan of action for dealing with the issue. The Kremnitzer Committee, as it is called, issued its report in June 1994, which included specific recommendations for the prevention and deterrence of violence by police officers. These recommendations may be summarized as follows.

22. Prevention of police violence should be achieved by:

(a) Improvement in screening candidates for enlistment;

(b) Involving more women in detective and fieldwork, so as to soften the contact between the police and citizens;

(c) Examining the disciplinary profile of police personnel prior to promotion;

(d) Placing emphasis on the responsibility of commanders to transmit the educational message directly to their charges, and especially regarding the equality of all persons and the rights of minorities; and

(e) Videotaping investigations and field operations.

23. The response to incidents of violence should include:

(a) Distinguishing between severe violence and the use of force which does not amount to severe violence; the former cases, according to the committee's recommendation, should be adjudicated before a specially appointed Magistrate Court judge. Where there are acts attributed to a police officer and the officer admits to them, or where there exists unequivocal evidence against such officer, then dismissal from the Police should be mandatory;

(b) Any police officer who is convicted of severe violence should likewise be dismissed; and

(c) Occurrences of unlawful use of force which do not amount to severe violence should be dealt with in disciplinary proceedings or by senior commanding officers. Repeat occurrences should result in dismissal from the police force.

24. Following publication of the Kremnitzer Committees report, the Israel Police adopted its recommendations, and the Minister of Police appointed an oversight committee to ensure their implementation. While the oversight committee has only recently begun to function actively, the Israel Police has taken several measures to implement the committee's recommendations, such as strict screening of candidates for enlistment in the police, including weighing of sociometric tests indicating capacity for self-control and interpersonal skills; periodic evaluations of performance; training workshops in questioning persons who are not designated as criminal suspects, as well as in prevention of violence, human rights and equality before the law (some of these workshops were taught by members of independent human rights groups); giving an annual prize for tolerance to particular precinct stations; publishing a newsletter on police ethics; and starting an experimental community policing project in 10 precincts. In addition, the disciplinary desk of the Israel Police was expanded to a fully-fledged department, with added personnel, to improve the efficiency and quality of handling disciplinary complaints.

25. The response of the Israel Police thus far in implementing the recommendations of the Kremnitzer Report has met with praise from at least one prominent independent civil rights group.

Public Defender's Office

26. In 1995, a national public defender's office was created by legislation. The major impetus for forming the new department derived from the difficulties encountered by the courts in appointing experienced criminal attorneys to represent indigent persons suspected of serious offences. While it is too early to assess the performance of the new, State-funded department, it is anticipated that the augmented protection of the rights of criminal defendants and detainees by a highly trained corps of criminal defence attorneys will result, among other things, in a decrease in violent treatment on the part of law enforcement officials.

Article 4 - Criminal Legislation

27. In 1994, the Penal Law was amended by a revision of the general part, which sets out the legal principles of Israeli criminal law. This amendment includes a revision of the provisions relating to attempt, assistance, encouragement and incitement. These provisions are a matter of particular importance in cases of physical or psychological abuse. The following are the relevant provisions of Chapter Five of the Penal Law, entitled Derivative Offences (*As no official translation of the amendment is yet available, the above is an unofficial translation.:)*

Title One: Attempt

What constitutes an attempt

A person attempts to commit an offence, if he - with intent to commit it - commits an act that does not only constitute preparation, provided the offence was not completed.

Commission of offence is impossible

For purposes of attempt, it shall be immaterial that the commission of the offence was impossible, because of circumstances of which the person who made the attempt was not aware or in respect of which he was mistaken.

Special penalty for attempt

If a provision sets a mandatory penalty or a minimum penalty for an offence, then it shall not apply to an attempt to commit that offence.

Exemption for remorse

If a person attempted to commit an offence, he shall not bear criminal liability therefor, if he proved that, of his own free will and out of contrition - he stopped its commission or substantively contributed to the prevention of results on which the completion of the offence depends; however, the aforesaid shall not derogate from his criminal liability for another completed offence connected to the same act.

Title Two: Parties to an Offence

Perpetrator

(a) 'Perpetrator of an offence' includes a person who committed the offence jointly or who committed through another.

(b) Participants in the commission of an offence, who perform acts for its commission, are joint perpetrators, and it is immaterial whether all acts were performed jointly or some were performed by one person and some by another.

(c) A perpetrator of an offence through another is a person who contributed to the commission of the act by others who acted as his instrument, the other person being in one of the following situations, within their meaning in this Law:

(1) he is a minor or mentally incompetent;

(2) he lacks control;

(3) he has no criminal intent;

(4) he misunderstands the circumstances;

(5) he is under duress or has a justification.

(d) for the purposes of subsection (c), if the offence is conditional on a certain perpetrator, then the person in question shall be deemed to have committed that offence even if the condition is only met by the other person.

Incitement

If a person causes another to commit an offence by means of persuasion, encouragement, demand, cajolery or by means of anything else that constitutes the application of pressure, then he incites an offence.

Accessory

If a person does anything, before an offence or during its commission, to make its commission possible, to support or protect it, or to prevent the perpetrator from being taken or the offence or its spoils from being discovered, or if he contributes in any other way to the creation of conditions for the commission of the offence, then he is an accessory.

Penalty of accessory

The penalty for being an accessory to the commission of an offence shall be half the penalty determined by legislation for the commission of that offence; however, if the penalty set is:

(1) the death penalty or mandatory life imprisonment, then his penalty shall be 20 years' imprisonment;

(2) life imprisonment, then his penalty shall be 10 years' imprisonment;

(3) a minimum penalty, then his penalty shall not be less than half the minimum penalty;

(4) any mandatory penalty, then it shall be the maximum penalty and half thereof shall be the minimum penalty.

Attempted incitement

The penalty for attempting to incite another to commit an offence shall be half the penalty for the commission of the offence itself; however, if the penalty set is:

(1) the death penalty or mandatory life imprisonment, then his penalty shall be 20 years' imprisonment;

(2) life imprisonment, then his penalty shall be 10 years' imprisonment;

(3) a minimum penalty, then his penalty shall not be less than half the minimum penalty;

(4) any mandatory penalty, then it shall be the maximum penalty and half thereof shall be the minimum penalty.

Exemption for remorse

(a) If a person was an accessory or if he incited another to commit an offence, he shall not bear criminal liability for being an accessory or for incitement, if he prevented the commission of the offence or its completion, or if he informed the authorities of the offence in time, in order to prevent its commission or its completion, or if - to that end - he acted to the best of his ability in some other manner; however, the aforesaid shall not derogate from his criminal liability for another completed offence connected to the same act.

(b) For the purposes of this section, 'authorities' means the Israel Police or any other body lawfully empowered to prevent the commission or completion of an offence.

Other or additional offence

(a) If, while committing an offence, a perpetrator also committed another or an additional offence, and if, under the circumstances, an ordinary person could have been aware of the possibility that it would be committed, then:

(1) the other joint perpetrators shall also bear liability for it; however, if the other or additional offence was committed intentionally, then the other joint perpetrators shall bear liability for it only as an offence of indifference;

(2) a person who incited or was an accessory to it shall also bear liability, as an offence of negligence, if such an offence exists based on the same facts.

(b) If the court found an accused guilty under subsection (a) (1) for an offence for which there is a mandatory penalty, then it may impose a lighter penalty on him.

Article 10 - Education and information

Israel Police

28. The Israel Police and the Prisons Service maintain thoroughgoing training programmes for personnel at all levels, in which their obligations regarding the respect and realization of civil and human rights are taught. These training programmes take three basic forms: required courses for all entry-level personnel, and subsequently for all personnel as a condition prior to promotion in rank; voluntary continuing education seminars on specific topics, which typically last between several days and one week; and periodic refresher courses.

29. Required courses for Israel Police personnel are taught at the National Police Academy in Shfar'am or at the Senior Officers' College near Netanya. All police employees must pass a two-month basic training course, which includes a total of 47 hours of instruction in the areas of professional ethics, providing service to citizens, police powers, use of force, unlawful commands, and disciplinary violations.

30. The required courses for sergeants, captains, and senior staff officers also devote between 42 to 80 hours to instruction regarding the above matters, as well as to modules on competence in human relations, conflict resolution, investigation of police personnel, media in a democracy, citizens' complaints, family violence, treatment of juvenile offenders, legal and practical duties deriving from the right to human dignity, and inculcation of awareness of human rights. In addition, continuing education courses on specific topics, such as methods of investigation, arrest and searches, and so on, involve practical instruction in observance of human rights.

General Security Service

31. The GSS conducts courses and seminars at all levels of command and employment. These courses and seminars aim to instil principles and norms of human dignity and fundamental rights in employees, both at basic training and throughout the GSS. Special attention is given to the instruction of interrogators and their superiors. Particular emphasis is given to the rule of law and the GSS's commitment to the balance of interests required by law and by the practice of the courts.

Article 11 - Review of interrogation practices and treatment of persons subjected to detention and imprisonment

Review of interrogation practices

32. As explained under article 2, the Government of Israel recognized the importance of establishing systems of review of interrogation practices to ensure that GSS investigators do not violate the guidelines.

The State Comptroller's Office

33. In 1995, the State Comptroller's Office completed an examination of the GSSs investigator's unit during the years 1990-1992. The State Comptroller's findings, which were submitted to a special subcommittee of the Knesset State Comptroller Committee, found several instances of deviations from the Landau Commission's guidelines, and recommended measures to ensure compliance. The findings themselves have not yet been made public.

Ministerial oversight

34. In accordance with the recommendations of the Landau Commission, a special Ministerial Committee headed by the Prime Minister was established in 1988 to review the GSS interrogation guidelines periodically.

35. In April 1993, the Ministerial Committee determined that several changes should be made in the GSS guidelines. On the basis of the committee's recommendations, new guidelines were issued to GSS investigators. The new guidelines clearly stipulate that the need and justification for the use of limited pressure by investigators must be established in every case, according to its own special circumstances. The guidelines emphasize that the use of exceptional methods is intended only for situations in which vital information is being concealed, and not as a way to humiliate or mistreat those under investigation. They place a duty on the investigator to consider whether the means of pressure the use of which is being contemplated is proportional to the degree of foreseeable danger of the activity under investigation. Senior GSS staff must approve in writing the use of measures deemed to constitute moderate physical pressure, once again on a case-by-case basis, in light of the above criteria. In any case, it is expressly forbidden to injure or torture suspects, to deny them food or drink, to refuse permission to use the bathroom, or to subject the person to extreme temperatures for prolonged periods.

36. Since then, the guidelines have been reviewed from time to time by the Ministerial Committee, in the light of conclusions drawn from recent experience. The Ministerial Committee also reviews, in real time, specific cases of persons under investigation who are known to be active members of the military echelons of terror groups, and with regard to whom there are grounds to believe that they have knowledge of future terror attacks in the planning or execution stages.

Judicial review

37. All complaints of alleged mistreatment during investigation may be challenged directly to the Supreme Court sitting as a High Court of Justice. Any party who believes he or she has been wronged - not only the detainees themselves or their families, but, under the extremely flexible rules of standing in Israeli law, also virtually any person or group who claims an interest in legal or humanitarian issues involved - may have its petition heard by the High Court of Justice within 48 hours of being filed. Over the past few years several petitions have been filed with the Court seeking injunctions to forbid the GSS from using any force, or particular methods of pressure, throughout the investigation. The Court reviews each of these cases for their compliance with the detailed guidelines, and often, with the approval of the petitioner or his attorney, hears sensitive evidence in camera to examine whether the magnitude of foreseeable or imminent danger, and the grounds for believing that the suspect actually has vital information which is crucial to preventing such danger, are sufficiently clear to justify the use of the specific methods of interrogation in question. Two recent

cases may be summarized briefly as follows.

38. Raaji Mahmad Saba (HCJ 5304/97) was arrested by the security services on 27 August 1997, on the grounds that he was a member of the armed wing of Hamas, the Islamic terrorist organization that has been responsible for many terrorist attacks, including the suicide bomb attacks on Israeli civilians in recent years.

39. On 14 September, Mr. Saba (through his own counsel) petitioned the Supreme Court, alleging that he was being subjected to torture during interrogation (this petition is currently pending before the Supreme Court). That same day the Supreme Court, in the light of this serious claim, made an interlocutory order requiring the Attorney-General to respond immediately to these allegations. In a night sitting on 15 September, counsel for the Attorney-General replied that no physical means of interrogation were to be used against the petitioner at this stage. As a result of this, the Supreme Court dismissed the petition, but ordered the Attorney-General to personally oversee the interrogation process, in order to ensure that no unlawful forms of interrogation were used.

40. In addition, Mr. Saba twice petitioned the Israeli Supreme Court against a decision prohibiting him from meeting with his lawyer. The Supreme Court, having heard the attorney for the GSS and having received intelligence materials submitted to it with the consent of the petitioner, decided that the measure was justifiable on security grounds and in the interests of the investigation. The prohibition against meeting with his lawyer was later lifted. Three weeks later, the Supreme Court was again petitioned by Mr. Saba (through his counsel) who complained that he had once more been denied the right to meet with his lawyer. On the same day, the Court also received a notice from the attorney representing the GSS, stating that the prohibition would cease that night. On the basis of this notice Mr. Saba's counsel withdrew the petition. The prohibition was indeed lifted that night. On 18 October, Mr. Saba's interrogation ceased, since which time he has been held in administrative detention and is due for release in April 1998.

41. A number of facts in Mr. Saba's case may be highlighted. Firstly, at no point has Mr. Saba denied the accusations against himself, namely that he is a member of the military wing of Hamas, and has himself been involved in the organization of terrorist attacks. Additionally, while the GSS admitted that his interrogation was a matter of necessity, since Mr. Saba was in possession of information that was crucial for the investigation, to prevent imminent terrorist attacks. In any event, the measures used were designed to avoid both physical and mental harm, something that has been verified by several medical examinations of Mr. Saba. Finally, it should be noted that Mr. Saba has had recourse to the highest judicial authority in the country which, because of the seriousness of Mr. Saba's allegations, heard each of his petitions immediately.

42. It should be emphasized that the Supreme Court has convened - so far -on three occasions to hear his petitions and has even instructed (in order to ensure that there is no doubt that Mr. Sabas basic rights are being respected) the Attorney-General to personally oversee the course of Mr. Sabas interrogation.

43. The second case in point is that of Abd al-Rahman Ismail Ghanimat. Mr. Ghanimat is accused of being the leader of the Surif terrorist cell, which was responsible for the killing of tens of Israeli civilians and soldiers. He has admitted in investigation that he is a member of this cell and has admitted involvement in the terrorist actions attributed to it. These actions include the following: shootings on cars driven by Israelis between November 1995 and July 1996, including gunfire attacks on 9 December 1995, in which Jonathan Moschitz (44) and his 10-year-old daughter Lior were injured; on 16 January 1996, in which Oz Tivon, a 28-year-old doctor and Yaniv Shimel, his 21-year-old passenger, were killed; on 9 June 1996, in which Yaron (26) and Efrat Unger (26), a married couple, were killed; and on 26 July 1996, in which Uri Monk (53) was killed together with his 30-year-old son Zeev and his 25-year-old daughter-in-law Rachel. In each of these instances, Mr. Ghanimat was personally involved.

44. Following the July murders, the cell changed its modus operandi, deciding to abduct and murder soldiers. On 9 September 1996, members of the cell abducted Sharon Edri, a 20-year-old soldier, and within minutes of taking him, murdered him. The cell attempted further abductions unsuccessfully.

45. On 21 March 1997, members of the cell bombed the Apropos cafe in Tel Aviv in which three women, Anat Winter-Rosen (31), Yael Gilad (32) and Michal Midan Avrahami (31), were killed and 30 civilians injured.

46. It should be noted that the uncovering of the Surif terrorist cell in the wake of the Apropos bombing, and the investigation of various members of this group, led to the discovery of a large explosive device in the village of Surif - identical to the one used in the Apropos bombing and which, according to the investigation conducted into the members of the cell, was intended for a further attack similar to the Apropos bombing. Additionally, the body of Sharon Edri, which had been missing for over six months since his abduction, was located as a result of the interrogation of members of the Surif cell.

47. Following the arrest of Mr. Ghanimat and his subsequent confession, his investigators had reasonable grounds to suspect that he was in possession of additional information which would have helped in the prevention of further imminent terrorist attacks. It is clear therefore that the methods of interrogation used against Mr. Ghanimat were necessary in order to obtain as quickly as possible information that was essential in uncovering further terrorist actions, which would have led to the loss of further civilian lives.

48. Concerning the allegation made by Mr. Ghanimat that he was not permitted to sleep and was forced to sit for hours with a thick sack over his head, the attorney for the State argued that because of the urgency of the investigation and the fact that in the opinion of the GSS, Mr. Ghanimat was in possession of information vital for the prevention of further terrorist attacks, the investigation had to be intensive and Mr. Ghanimat was indeed not permitted to sleep whenever he so desired. Nevertheless, he was allowed to sleep whenever the requirements of the investigation so permitted. With regard to the sack covering Mr. Ghanimats head, this was only used when he was in the presence of other suspects and was simply to prevent communication between them.

49. In the light of the above, it should be clear that urgent steps were necessary in order to stop further terrorist attacks. In any event, the measures used could hardly be viewed as forms of torture in any objective sense.

50. At the end of January, the investigation was concluded and an indictment was served on Mr. Ghanimat containing several counts, including all of the incidents recounted above. A remand hearing was held on 8 February and the next hearing is due for mid-March, Mr. Ghanimat being

represented by an attorney of his choice.

51. In several other cases, the Court issued interim injunctions forbidding the use of physical pressure during GSS interrogations, which remained in force throughout the investigation. See, e.g., HCJ 2210/96, *Algazal v. General Security Service* (not yet published). Another petition, which challenged the legality of the GSS interrogation guidelines then in force and demanded that the secret portion of the Landau Commission report be made public, was denied by the Court, inter alia because it was not linked to the application of these guidelines in the circumstances of a particular case (HCJ 2581/91, *Salkhat et al. v. State of Israel et al*., 47(4) P.D. 837).

Treatment of persons subjected to detention or imprisonment

52. The fundamental right of detainees and prisoners to conditions ensuring basic maintenance of their human dignity has been articulated and enforced in a long line of judgements of the Israel Supreme Court. In *Yusef v. Director of Central Prison*, for example, the Court held that the order of life in the prison by its nature requires an infringement of liberties which a free person enjoys, but such infringement must derive from the nature and needs of imprisonment, and not beyond that .... [t]he purposes of criminal punishment may not be achieved through violation of the prisoner's dignity or his humanity .... It is the right of every person in Israel who is sentenced to imprisonment (or lawfully detained) to be confined in conditions that allow for civilised human life .... Only 'the most serious reasons', such as special security measures that must be taken, may justify any deviation from this basic approach. (HCJ 540-546/84, 40 (1) P.D. 567, 573, see also HCJ 114/86, *Weill v. State of Israel et al*., 41 (3) P.D. 477 (minimal civilized arrangements include the right to conjugal visits)).

53. Most of the basic conditions granted to prisoners and detainees as a matter of right, as well as limitations on measures that may impair their liberty or dignity and procedures for adjudicating prisoners' complaints, are provided for in legislation, primarily in the Prisons Ordinance [New Version], 5732-1971, and regulations thereunder. Other privileges or services have been given the status of a legal right by decisions of the Supreme Court, such as the presence in the prison facility of a social worker to deal with certain prisoner's concerns (*Yusef v. Director of Central Prison*, supra). Still other privileges, such as use of television and telephone, visits beyond the minimum provided by law, purchase of goods from the prison canteen, or receipt of newspapers and books, are granted as a matter of discretion by the prison director; in practice, these latter privileges are routinely granted.

Segregation and solitary confinement

54. Under section 21 (a) of the Prisons Regulations, 5738-1978, a senior prison official may order that a prisoner be confined separately from the rest of the prison population if he is convinced that doing so is necessary for reasons of State security, for maintenance of security, order or discipline in the prison, for protection of the safety or health of the prisoner or other prisoners, or at the prisoner's own request. This type of separate confinement is a preventive, not a punitive measure, and is to be distinguished from solitary confinement, which is discussed below.

55. Segregated prisoners have all of the rights and privileges of ordinary prisoners, except for conditions deriving by their nature from the fact of segregation. Such prisoners remain in their cells during the day hours, except for their daily excursion, family visits, medical care, visits with legal counsel, parole officer, social worker and so on. They are always accompanied by a warden whenever they are outside of their cell. Prisoners convicted of a criminal offence who are held in segregation for more than three months may be granted additional privileges and personal effects (Part 14 of the Prison Commissioner's standing orders). The term of segregation is for 48 hours when ordered by a senior prison official; it may be extended for additional periods up to a total of 14 days with the consent of the director of the prison. Thereafter, separation may be extended only by order of the prison director, with the consent of the Commissioner of Prisons, provided that the justification for separation must be reviewed periodically (between 48 hours and two months, depending on the type of case in question), or at earlier intervals if the prisoner requests his separation. Any prisoner who is confined separately for a period exceeding eight months may lodge an appeal to the Commissioner of Prisons, who decides whether the separation will continue or cease. Certain classes of prisoners or detainees are segregated as a matter of law or policy from the rest of the prison population, such as known drug addicts or persons under administrative detention, and persons suspected or convicted of security-related offences.

56. Solitary confinement, on the other hand, is one of several punitive measures that may be imposed on a prisoner for violation of the prison code of conduct (section 56 of the Prisons Ordinance). Solitary confinement may be imposed only by the director or deputy director of the prison. As with all punitive measures, the decision to place a prisoner in solitary confinement may not be taken except following an investigation and a hearing at which the prisoner may hear the charges and evidence against him, and may defend himself properly (section 60 of the Prisons Ordinance). The maximum term of solitary confinement is 14 days, though the prisoner may not serve more than seven days consecutively, and must be given a break of at least seven days before solitary confinement is resumed.

57. All decisions regarding segregation and solitary confinement may be appealed directly to the appropriate District Court, and the District Court's decision may be appealed to the Supreme Court.

Contacts with the outside world

58. Immediately upon the arrest of any person, notification must be made to a relative or other person close to the detainee regarding the fact of the arrest and the place of detention.

59. Other rights of incarcerated persons to maintain contacts with the outside world vary according to the type of detention.

Visitation rights

60. Prisoners who have been convicted and sentenced for a criminal offence have the right to receive visitors, apart from legal counsel, at least once every two months, beginning after three months of imprisonment; such visitation rights may be increased as a privilege for good behaviour (section 47 (b) of the Prisons Ordinance). Persons who have been formally charged with a criminal offence have the right to receive visitors at least once a month (regulation 27A (b) of the Prison Regulations), and are to be given every reasonable opportunity to have contact with their friends and legal counsel (section 45 of the Prisons Ordinance). Persons who have been detained for criminal investigation, and have not yet been formally

indicted, are not allowed visitors except with the permission of the police official in charge of the investigation.

61. Administrative detainees have a right to receive visits from immediate family members every two weeks; more frequent visits, as well as visits by persons other than immediate family and legal counsel, may be granted at the discretion of the director of the prison. The total number of visitors in any particular visit is limited to three persons in addition to the detainees spouse and children, unless the prison director permits otherwise. The visitation rights of administrative detainees may be restricted only for reasons of State security. If such visitation rights are withheld for more than two months, the detainee may appeal before the Minister of Defence. All restrictions on the visitation rights of administrative detainees must be reviewed at least once every two months, if not earlier at the request of the detainee (regulation 11 of the Emergency Powers (Detention) (Conditions of Confinement in Administrative Detention) Regulations, 5741-1981). As with all decisions affecting the detainee or imprisoned convict, restrictions on visitation rights may be appealed before the District Court, and thereafter to the Supreme Court if necessary.

Correspondence

62. Prisoners who have been convicted and sentenced may write a first letter upon entering the prison, and then may write and receive correspondence freely after a period of three months. Detainees who have not been formally indicted are granted the right to maintain correspondence upon permission of the official in charge of the criminal investigation, or according to a court order. All detainees and prisoners who have the right to maintain correspondence are provided with writing paper, and may be exempt from postal expenses if the director of the prison decides that the prisoner's financial situation warrants such an exemption (regulation 32 of the Prisons Regulations).

63. Administrative detainees have the right to receive mail, and may normally send four letters and four postcards per month, not including correspondence with legal counsel or with official authorities (regulation 14 of the Emergency Powers (Detention) (Conditions of Confinement in Administrative Detention) Regulations, 5741-1981), or more with the permission of the prison director. The right of administrative detainees to send and receive mail may be restricted by the prison director if he is convinced that doing so is necessary for reasons of State security; in such circumstances, the prison director does not have to notify the detainee that a letter written by or to him has not been forwarded, except in the case of letters to or from family members (Id.).

Telephone

64. Until recently, the use of a telephone by prisoners and detainees was not granted by law, although it is routinely granted in practice. Under the recently enacted Criminal Procedure (Enforcement Powers - Arrest and Detention) Law, 5756-1996, detainees are specifically granted the right to use a telephone. Under both the current law and the previous regime, detainees who have not been formally indicted may have use of the telephone if the official in charge of the criminal investigation decides that such use will not impair a criminal investigation being undertaken at that time.

Furloughs

65. Detainees who have not yet been convicted and sentenced are not granted furloughs except by court order or by special permission in extenuating circumstances. While the right of convicted and sentenced prisoners to furloughs is not provided for in primary legislation, furloughs are granted according to the provisions of Prisons Commission standing order 12.05.01 of 1 December 1992, which has the status of law (section 80C (a) of the Prisons Ordinance). Such prisoners are categorized, within 30 days of their incarceration, into one of three groups for the purpose of determining their rights to furloughs: those who may not be granted furloughs except by permission of the Minister of Internal Security, either because their leaving the prison may pose a danger to public order and security, or due to an outstanding arrest warrant, or those who are detained by virtue of an extradition or deportation order; those who may be given furloughs according to conditions determined by the Israel Police; and those who may be granted furloughs with no such conditions. In general, prisoners have the right to furloughs after having completed one quarter of their sentence, or three years, whichever is earlier. Prisoners who are sentenced to life imprisonment may be granted furloughs only after their sentence is commuted to a specific period by the President of the State.

66. The length of the furlough is between 36 and 96 hours, and the frequency varies between once every three months and once a week (from Friday afternoon to Sunday morning), depending on the type of offence which the prisoner committed, his behaviour record in the prison, the type of rehabilitation programme in which the prisoner is participating, and other considerations. The interval between furloughs may be shortened in order to enable the prisoner to observe religious holidays outside of prison, or for family or medical reasons.

67. In addition, furloughs may be granted even though the prisoner has not completed the minimum portion of his sentence noted above, or even if the interval between furloughs has not transpired, in special circumstances, such as births, marriages or deaths in the family, memorial services, vocational testing, preparation of a rehabilitation programme, or medical reasons.

68. Persons imprisoned in the context of civil proceedings may be granted furloughs of 48 hours after having completed one quarter of their term of imprisonment or three months, whichever is earlier, and additional furloughs of 48 hours once every three months thereafter. If the term of civil imprisonment is four months or less, then the prisoner may be granted a furlough after having completed half of his sentence.

Conjugal visits

69. Under standing orders now in force, conjugal visits are allowed only for criminal prisoners who are serving long sentences and are not eligible for furloughs. The Prisons Service and the Ministry of Internal Security are currently investigating the possibility of extending this privilege to all persons incarcerated for criminal offences who are not granted furloughs.

Articles 12 and 13 - Procedures for complaints and disciplinary and criminal proceedings

70. The actions of law enforcement officials are subject to several overlapping legal institutions for review and sanctions. In general, each arm of the law enforcement authorities has disciplinary procedures, which may be initiated by the person claiming a violation, by other entities, or by the authorities themselves; all public servants are subject to the provisions of the criminal law; and detainees or prisoners may apply directly to the courts for relief against the action or decision in question.

Israel Police

71. Disciplinary proceedings are initiated by submission of a complaint to the disciplinary department of the Personnel Division at Central Headquarters or to one of its several branch offices. The Police may initiate disciplinary proceedings when it becomes aware of violations from other sources (e.g. statements of witnesses in the course of investigations or information forwarded by police personnel). In addition, the Department for Investigation of Police Personnel (DIPP) in the Ministry of Justice, which is responsible for most criminal investigations against police officers, transfers files to the Disciplinary Department of the Police both when the actions complained of fall short of a criminal offence but constitute a prima facie disciplinary violation, and also when criminal proceedings are brought against a police officer for actions which may entail parallel disciplinary sanctions.

72. If the Disciplinary Department, upon investigating the incident, finds that there is sufficient evidence of an infraction, then the matter is referred to a disciplinary tribunal, composed of either a single judge or a three-judge panel, depending on the gravity of the violation. (See generally Police (Disciplinary Proceedings) Regulations, 5749-1989; Police (Definition of Disciplinary Offences) Regulations, 5715-1955; Police Ordinance (New Version), 5731-1971, chapter 5.)

73. Alongside the disciplinary sanctions that may be imposed by a tribunal or single judge, the Police is bound to consider administrative sanctions against an officer who violates the law or internal standing orders. Administrative sanctions may be imposed at any time during the disciplinary or criminal proceedings, as well as after they are concluded. Such sanctions include dismissal from the police force, suspension, transfer to another position or department, demotion, postponement of promotion, and probation.

74. In 1992, a special department was set up at the Ministry of Justice -the Department for Investigation of Police Personnel (DIPP) - to investigate allegations of criminal conduct by police generally. Criminal investigations against police officers may be initiated by a complaint filed with the DIPP by the victim or his representative, by the DIPP itself as a result of information submitted to it by independent human rights groups or by entities within the Israel Police. A preliminary screening is carried out by a DIPP staff lawyer, who decides either to open an investigation or to close the file if the acts accused of do not give rise to a criminal offence (in the latter case the file may be transferred back to the Police for appropriate disciplinary measures). In the course of investigation, the DIPP staff takes testimony from the complainant, the suspect and other witnesses, as well as any other evidence relevant to the case. If the investigation indicates sufficient evidence of a criminal offence, then the file is transferred to the District Attorney's Office in the region where the offence occurred, or, in cases of unlawful use of force, to the State Attorney's Office, for a final decision as to whether to file criminal charges against the police officer. Under current guidelines, all criminal trials against police officers are prosecuted by the District Attorney's office. The DIPP may also decide that the police officer should stand trial in disciplinary proceedings for the unlawful use of force, in lieu of criminal proceedings.

75. Following are statistics compiled by the Israel Police and the DIPP regarding treatment of disciplinary and criminal complaints, respectively.

Unlawful use of force by police officers Number of complaints and results of investigation
Circumstances1993199419951996 a/
Investigation119959770
Arrest524611554384
Conditions of detention2535187100
Refusal of citizen to identify himself or to accompany police officer17375964
Search of suspect or premises1039910981
Violation of public order110122233106
Violation of order or discipline in a detention facility44342635
Use of crude language1142
Traffic offences101120161113
Carrying out orders of the Execution Office (for civil judgement debts)93714328
Holding persons in custody103404754
Abuse of authority28328633470
Disputes between neighbours2642
Family disputes1111
Private disputes45413
On-duty dispute between two police officers18311621
Argument between drivers17323
Training incidents1112-
Demonstrations b/--132

Total files received	1 960	1 861	2 155	1 301
Referred for disciplinary trial	280	208	184	104
Final recommendation to file criminal indictment	52	40	53	20

Total files completed (including files from previous years)	1 979	1 876	2 001	1 428

a/ 1996 figures are for January-July.

b/ Demonstrations were inserted as a statistical category in 1996.

Disciplinary investigations and results	
Type of proceedings	19941995
Charge sheets (three-judge panel) Complaints (single judge)	252 217 251 49
Disciplinary indictments adjudicated (all offences)	
Charge sheets Complaints	301 217 215 51
Files received from DIPP	
Regarding use of force - recommendation to file criminal charges (total number of officers involved)	41 (64)
Regarding use of force - with recommendation to file disciplinary charge sheet (total number of officers involved)	168 (246)
Regarding use of force - with recommendation for trial before a single disciplinary judge (total number of officers involved)	79 (93)
Recommendation to weigh disciplinary sanctions (total number of officers involved)	307 (388) 50 (92)
	127 (180)
	47 (55)

76. Between 1992 and July 1996, DIPP investigated 211 cases involving the use of firearms, and 25 cases involving the use of force, or threat of using force, in order to extract a confession. In 1993, 15 officers were tried in criminal proceedings for involvement in offences amounting to assault; 12 of these officers were convicted, and 3 were acquitted. In 1994, 10 officers were convicted of such offences in criminal proceedings. In one noteworthy case, 5 police investigators in the Minorities Division of the Jerusalem Region were convicted in July 1995 for unlawful use of force in investigating suspects (Cr.F. 576/91, in the Jerusalem District Court). In September 1995 the defendants were sentenced to varying terms of imprisonment. The case is currently on appeal in the Supreme Court.

77. In 1994, 22 police officers were dismissed from the force, 2 of whom as a result of their involvement in violent offences (down from 18 dismissals as a result of violent offences in 1993); 13 others were dismissed for "unsuitability", which includes those who were involved in repeated incidents of unlawful use of force (in 1993, as a result of a special effort by the Police to remove the most problematic employees, 30 officers were dismissed for unsuitability). In 1995, 29 officers were similarly dismissed for unsuitability, and no officers were dismissed in 1995 as a result of violent offences.

78. One officer was suspended in 1994 (out of a total of 20 suspensions that year) and 8 in 1995, as a result of involvement in violent offences; in 1993, no such suspensions were made.

79. Alongside the ordinary criminal and disciplinary processes described above, detainees held in police lock-ups have the right to file for habeas corpus relief against any unlawful treatment, including torture or other cruel, inhuman or degrading treatment on the part of police officers.

Prisons Service

80. Currently, the disciplinary and criminal investigation procedures regarding Prisons Service personnel differs from those followed with regard to police officers. Any prisoner or detainee under the care of the Prisons Service may file a complaint regarding ill-treatment or conditions of detention to the director of the prison. In cases involving use of force, a special committee within the Prisons Service investigates the complaint and transfers the file to the Attorney-General, who decides whether to institute disciplinary or criminal proceedings. Disciplinary trials are held before a tribunal within the Prisons Service, which is similar in structure and procedures to that of the Israel Police (see generally the Prisons Ordinance, sect. 101 *et seq*. and second schedule defining disciplinary offences; and the Prisons (Disciplinary Procedures) Regulations, 5749-1989), while criminal files are transferred first to the Israel Police, for completion of the investigation, and then to the appropriate District Attorney's office for filing a charge sheet.

General Security Service

81. Complaints by persons detained by the General Security Service regarding their treatment during investigation may be filed by the detainee or his or her legal representative, by local or international human rights organizations (complaints have been filed by the Public Committee Against Torture in Israel, the Physicians Association for Human Rights, Amnesty International and the ICRC, among others). All complaints are examined by a complaints review unit within the GSS, which is subordinate to the State Attorney's Office. In the event that complaints are submitted to other governmental authorities, they are transferred to the above complaints unit, which is solely responsible for the initial investigation. Complaints that give rise to a suspicion that a criminal offence was committed are transferred to DIPP at the Ministry of Justice.

82. In 1995, 81 such complaints were received regarding treatment of detainees during GSS investigations. Thirty-four of these complaints were filed by the detainee, 23 by the detainees legal counsel, 9 by local organizations and 15 by international organizations. In some instances, several entities filed complaints regarding a particular case. In four cases during 1995, the complaints unit found deviations from lawful authority; these cases were dealt with administratively within the GSS, including sanctions against the persons involved. In one case, that of Samed abd al Harizat, a GSS investigator was tried in disciplinary proceedings before a special tribunal.

83. Detainees in the custody of GSS also have the right to petition the High Court of Justice directly for habeas corpus relief.

General Security Service Comptroller

84. Initially, the GSS Comptroller was instructed to examine all claims of torture or maltreatment during interrogation. From 1987 until 1994, the Comptroller carried out this review function, initiating disciplinary or legal action against interrogators in cases where they have been found to have deviated from the legal guidelines.

Department for Investigation of Police Personnel

85. In 1994, in accordance with the recommendations of the Landau Commission that there be external oversight of General Security Service activities, responsibility for claims of maltreatment by GSS interrogators was also transferred to DIPP, described above, under the direct supervision of the State Attorney. The activity of DIPP appears to have had a significant deterrent impact on the incidence of intentional physical abuse of detainees and citizens by law enforcement officials, including GSS interrogators. Statistical information regarding the performance of the DIPP appears above.

Israel Defence Forces

86. The IDF maintains a strict policy of investigating every claim of mistreatment of detainees by IDF investigators. Soldiers who are found to have deviated from IDF standing orders forbidding violence or the threat of violence in interrogations are either court-martialled or have disciplinary

proceedings brought against them, depending on the severity of the charges. In 1991, IDF also appointed a commission to review its interrogation practices and policies, headed by Major General (Reserve) Raphael Vardi, which resulted in the punishment of several interrogators. The Vardi Commission also submitted a list of recommendations designed to reduce the possibility of mistreatment by IDF investigators, which have been adopted.

Article 14 - Compensation to victims

87. Persons who have been subjected to torture or to any other unlawful mistreatment may, in addition to criminal, disciplinary or habeas corpus proceedings, initiate a tort action for damages against the perpetrators and against the State. In cases of assault, the State, like any private employer, is immune from liability unless it is found to have approved the unlawful assault or to have retroactively ratified it.

88. In addition, victims may receive a certain degree of compensation in the context of criminal proceedings under section 77 of the Penal Law, 5737-1977, which empowers a convicting court to order the payment to the victim of a crime for damages or suffering. Such compensation is recovered in the same manner as a fine. Currently, the maximum amount payable to a particular victim is fixed at NIS 60,000 (about US$ 17,000).

Article 15 - Rules of evidence

Goldberg Committee

89. In 1993, the Minister of Justice and the Minister of Police appointed a public committee, headed by Supreme Court Justice Eliezer Goldberg, to examine the efficacy of convictions based solely or almost solely upon the defendant's confession, the availability of retrial, and other topics related to the rights of those investigated by the police. The Goldberg Committee's report, published in 1994, included recommendations aimed at ensuring that false confessions were not extracted by illegal means. Among other things, the Committee recommended employment of investigation techniques and technologies which have been developed elsewhere, and which have proven effective in fulfilling the purposes of the criminal investigation without resort to violence; increasing supervision of investigation by senior investigators; videotaping of any interview at which the interviewee's lawyer is not present; and giving the judge who presides over detention hearings more of a role in actively investigating the conditions of detention and the investigation.

90. An amendment to the Evidence Ordinance [New Version], 1971 is currently being prepared at the Ministry of Justice to implement the above recommendations of the Goldberg Committee.

91. The draft law stipulates that the statement of a defendant given outside the court shall not be admissible as evidence if it was given pursuant to inhuman treatment, real violence, physical torture, mental torture, severe humiliation, or as a result of the threat of any of the above to the defendant. However, independent evidence of guilt that was discovered by an inadmissible confession will still be admissible.

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