

## ISRAEL

### CAT A/49/44 (1994)

159. The Committee considered the initial report of Israel (CAT/C/16/Add.4) at its 183<sup>rd</sup> and 184<sup>th</sup> meetings on 25 April 1994 (CAT/C/SR.183 and 184), and has adopted the following conclusions and recommendations:

#### A. Introduction

160. Israel ratified the Convention on 3 October 1991 and made reservations on articles 20 and 30. It also did not make the declarations to accept the provisions of articles 21 and 22 of the Convention.

161. The initial report was filed in a timely fashion and was well supported by the oral presentation of the delegation, which was both focused and informative.

#### B. Positive aspects

162. The Committee notes the way in which public debate is allowed in Israel on such sensitive matters as ill-treatment of detainees, both in Israel and the occupied territories.

163. The Committee is pleased to acknowledge the way in which the Israeli Medical Association reacted to prevent its members from participating in ill-treatment of detainees by filling in the "medical fitness forms".

164. The Committee is pleased to note that the General Security Service and police are no longer responsible for reviewing complaints of ill-treatment of detainees by their own members, and that such function is now the responsibility of a special unit of the Ministry of Justice. The Committee is also pleased to note that Israel has prosecuted interrogators who have breached domestic standards of conduct and has disciplined others.

#### C. Subjects of concern

165. There is real concern that no legal steps have been taken to implement domestically the Convention against Torture. Thus, the Convention does not form part of the domestic law of Israel and its provisions cannot be invoked in Israeli courts.

166. The Committee regrets the clear failure to implement the definition of torture as contained in article 1 of the Convention.

167. It is a matter of deep concern that Israeli law pertaining to the defenses of "superior orders" and "necessity" are in clear breach of that country's obligations under article 2 of the Convention.

168. The Landau Commission Report, permitting as it does "moderate physical pressure" as a lawful mode of interrogation, is completely unacceptable to this Committee:

- (a) As for the most part creating conditions leading to the risk of torture or cruel, or inhuman or degrading treatment or punishment;
- (b) By retaining in secret the crucial standards of interrogation to be applied in any case, such secrecy being a further condition leading inevitably to some cases of ill-treatment contrary to the Convention against Torture.

169. The Committee is greatly concerned at the large number of heavily documented cases of ill-treatment in custody that appear to amount to breaches of the Convention, including several cases resulting in death that have been drawn to the attention of the Committee and the world by such reputable non-governmental organizations as Amnesty International, Al Haq (the local branch of the International Commission of Jurists) and others.

#### D. Recommendations

170. The Committee recommends:

- (a) That all the provisions of the Convention against Torture be incorporated by statute into the domestic law of Israel;
- (b) That interrogation procedures be published in full so that they are both transparent and seen to be consistent with the standards of the Convention;
- (c) That a vigorous programme of education and re-education of the General Security Service, the Israel Defence Forces, police and medical profession be undertaken to acquaint them with their obligations under the Convention;
- (d) That an immediate end be put to current interrogation practices that are in breach of Israel's obligations under the Convention;
- (e) That all victims of such practices should be granted access to appropriate rehabilitation and compensation measures.

171. Finally, the Committee expresses its wish to cooperate with Israel and it is sure that its recommendations will be properly taken into consideration.

## **CAT A/52/44 (1997)**

253. The Committee considered the special report of Israel (CAT/C/33/Add.2/Rev.1) at its 295<sup>th</sup>, 296<sup>th</sup> and 297<sup>th</sup> meetings, on 7 and 9 May 1997 (CAT/C/SR.295, 296 and 297/Add.1), and adopted the following conclusions and recommendations.

### **1. Introduction**

254. The special report of Israel was submitted on 18 February 1997, pursuant to the request contained in the letter to the Permanent Representative of Israel to the United Nations Office at Geneva, dated 22 November 1996 (see para. 25 above). It responded to a number of concerns of the Committee contained in its conclusions on the first periodic report of Israel and the Committee's reaction to certain decisions of the Supreme Court of Israel. The Committee thanks the Israeli delegation for its informative opening statement and its frank and open responses to the Committee's questions.

### **2. Conclusions**

255. The information provided by Israel in its special report and in the opening statement of its representatives was essentially a reiteration of its position described in the initial report, namely, that interrogation, including the use of "moderate physical pressure" where it is thought that interrogatees have information of imminent attacks against the State which may involve deaths of innocent citizens, is lawful if conducted in accordance with the "Landau rules", which permit "moderate physical pressure" to be used in strictly defined interrogation circumstances.

256. It is Israel's position that interrogations pursuant to the "Landau rules" do not breach prohibitions against cruel, inhuman or degrading treatment as contained in article 16 of the Convention against Torture and do not amount to torture as defined in article 1 of the Convention.

257. However, the methods of interrogation, which were described by non-governmental organizations on the basis of accounts given to them by interrogatees and appear to be applied systematically, were neither confirmed nor denied by Israel. The Committee must therefore assume them to be accurate. Those methods include: (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill, and are, in the Committee's view, breaches of article 16 and also constitute torture as defined in article 1 of the Convention. This conclusion is particularly evident where such methods of interrogation are used in combination, which appears to be the standard case.

258. The Committee acknowledges the terrible dilemma that Israel confronts in dealing with terrorist threats to its security, but as a State party to the Convention Israel is precluded from raising before this Committee exceptional circumstances as justification for acts prohibited by article 1 of the Convention. This is plainly expressed in article 2 of the Convention.

259. The Committee is also concerned that the effect of the Hamdan decision by the Israeli Supreme Court dissolving the interim injunction was to allow some of the interrogation practices referred to above to continue and to legitimize them for domestic purposes.

### 3. Recommendations

260. The Committee recommends that:

- (a) Interrogations applying the methods referred to above and any other methods that are in conflict with the provisions of articles 1 and 16 of the Convention cease immediately;
- (b) The provisions of the Convention be incorporated by legislation into Israeli law, particularly the definition of torture contained in article 1 of the Convention, as is currently under consideration by the expert committee of the Ministerial Committee for Legislation;
- (c) Israel consider making the declarations provided for under articles 21 and 22 and withdrawing its reservation to article 20 of the Convention;
- (d) Interrogation procedures pursuant to the "Landau rules" in any event be published in full;
- (e) Israel include information on the measures taken in response to these conclusions and recommendations in its second periodic report, which was due on 1 November 1996. That report should be submitted as soon as possible and in any event no later than 1 September 1997, in order to allow the Committee to consider it at its next session.

## **CAT A/53/44 (1998)**

232. The Committee considered the second periodic report of Israel (CAT/C/33/Add.3) at its 336<sup>th</sup> and 337<sup>th</sup> meetings, on 14 and 18 May 1998 (CAT/C/SR.336 and 337), and adopted the following conclusions and recommendations.

### **1. Introduction**

233. Israel signed the Convention on 22 October 1986 and deposited its instrument of ratification on 3 October 1991. The Convention entered into force in Israel on 2 November 1991. Upon ratification, Israel made a reservation in respect of articles 20 and 30. Israel has not declared in favour of articles 21 and 22. The second periodic report was due on 1 November 1996 and was received on 6 March 1998.

234. Israel had presented a special report (CAT/C/33/Add.2/Rev.1) at the Committee's request, and the Committee's conclusions and recommendations included the recommendation that the second periodic report of Israel be presented for consideration at the November 1997 session of the Committee. The second periodic report was prepared in accordance with the general guidelines concerning the form and content of such reports.

### **2. Positive aspects**

235. Israel has embarked upon a number of reforms, such as the creation of the Office of Public Defender, the creation of the Kremnitzer Committee to recommend oversight of police violence, amendments to the Criminal Code, ministerial review of several security service interrogation practices and the creation of the Goldberg Committee relating to the rules of evidence.

236. Another positive aspect was the genuine dialogue that engaged the Committee and the Israeli delegation.

### **3. Factors and difficulties impeding the application of the provisions of the Convention**

237. Israel points to the state of insecurity with which it copes, but the Committee notes that, pursuant to article 2, paragraph 2, this cannot justify torture.

### **4. Subjects of concern**

238. The Committee is concerned about the following:

(a) The continued use of the "Landau rules" of interrogation permitting physical pressure by the General Security Services, based as they are upon domestic judicial adoption of the justification of necessity, a justification which is contrary to article 2, paragraph 2, of the Convention;

(b) Resort to administrative detention in the occupied territories for inordinately lengthy periods

and for reasons that do not bear on the risk posed by releasing some detainees;

(c) The fact that, since military law and laws going back to the Mandate pertain in the occupied territories, the liberalizing effect of the reforms referred to in paragraph 235 above will not apply there;

(d) Israel's apparent failure to implement any of the recommendations of the Committee that were expressed with regard to both the initial and the special report. 5/

## 5. Conclusions and recommendations

239. Israel expressed concern that the Committee had not set out in extenso the reasoning behind its conclusions and recommendations with regard to Israel's special report. Of course, the dialogue between a State and the Committee forms part of the context upon which the Committee's conclusions and recommendations are made. However, in order to ensure that there is no room for doubt, it was on the basis of the following that the Committee found that its conclusions and recommendations with regard 6/ to the Israeli special report should continue to form part of its conclusions and recommendations to the present report:

(a) Since the State party admits that it applies force or "physical pressure" to those in the custody of its officials, the State party bears the burden of persuading the Committee that such force or pressure offends neither articles 1 or 2 nor article 16 of the Convention;

(b) Since the State party admits to hooding, shackling in painful positions, sleep deprivation and shaking of detainees (through its delegates and courts, and supported by the findings of the United Nations Special Rapporteur on Torture) 7/ the bare assertion that it is "not severe" is not in and of itself sufficient to satisfy the State's burden and justify such conduct. This is particularly so when reliable evidence from detainees and independent medical evidence made available to Israel reinforce the contrary conclusion;

(c) Given that Israel itself asserts that each case must be dealt with on its own "merits", but that for matters of security, material particulars of the interrogation cannot be revealed to the Committee, it follows that the conclusions of breach of articles 1, 2 and 16 must remain.

240. Accordingly, the Committee reaffirms its conclusions and recommendations with regard to Israel's initial and special reports:

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5/ See [*Official Records of the General Assembly, Forty-ninth Session, Supplement No. 44 (A/49/44)*], paras. 159-171; and *ibid.*, *Fifty-second Session, Supplement No. 44 (A/52/44)*, paras. 253-260.

6/ See *ibid.*, *Fifty-second Session, Supplement No. 44 (A/52/44)*, para. 260 (a)-(d).

7/ E/CN.4/1998, 38, para.121.

(a) Interrogations applying the methods referred to above are in conflict with articles 1, 2 and 16 of the Convention and should cease immediately;

(b) The provisions of the Convention should be incorporated by legislation into Israeli law, particularly the definition of torture contained in article 1 of the Convention;

(c) Israel should consider withdrawing its reservations to article 20 and declaring in favour of articles 21 and 22;

(d) Interrogation procedures pursuant to the "Landau rules" should in any event be published in full.

241. The practice of administrative detention in the occupied territories should be reviewed in order to ensure its conformity with article 16.

242. The Committee would be remiss if it did not acknowledge that the Israeli delegation had initiated upon this occasion a genuine dialogue that revealed Israel's unhappiness with the current situation (without acknowledging any breach of the Convention) and its desire to cooperate with the Committee. The Committee, in its turn, respects Israel's right to present its position, even if the Committee disagrees with its reasons and conclusions, and expresses the genuine desire to continue the dialogue and to resolve the differences between Israel and itself.

## **CAT A/57/44 (2002)**

47. The Committee considered the third periodic report of Israel (CAT/C/54/Add.1) at its 495th and 498th meetings, on 20 and 21 November 2001 (CAT/C/SR.495 and 498), and adopted the following conclusions and recommendations.

### **A. Introduction**

48. The Committee welcomes the third periodic report of Israel, due on 1 November 2000 and received on 15 March 2001. The report is in full conformity with the guidelines of the Committee on the preparation of State party periodic reports.

49. The Committee compliments the State party for ensuring the submission of its periodic reports in a timely fashion and welcomes the continuation of a constructive dialogue with Israel.

### **B. Positive aspects**

50. The Committee welcomes the following:

(a) The September 1999 Supreme Court judgement in the case of Public Committee against Torture in Israel v. The State of Israel which held that the use of certain interrogation methods by the Israel Security Agency (ISA) involving the use of "moderate physical pressure" was illegal as it violated constitutional protection of the individual's right to dignity;

(b) The issuance by authorities of the ISA of a directive to all personnel that the decision of the Court should be strictly adhered to in all investigations conducted by the ISA;

(c) The decision by the Government of Israel not to initiate legislation that would authorize the use of physical means in interrogations conducted by the police or the ISA;

(d) The Israeli Supreme Court decision of April 2000 according to which the continued detention of Lebanese detainees held in Israel who did not constitute a threat to national security could not be authorized and the subsequent release of many Lebanese detainees;

(e) Israel's regular contribution to the United Nations Voluntary Fund for Victims of Torture;

(f) The provision of prompt judicial review of persons under detention upon their petition to the Supreme Court;

(g) The transfer, in 1994, of the responsibility for investigation of complaints against the ISA to the Ministry of Justice;

(h) The creation of a judicial commission of inquiry into the events of October 2000, which resulted in the death of 14 persons.



### C. Factors and difficulties impeding the application of the Convention

51. The Committee is fully aware of the difficult situation of unrest faced by Israel, particularly in the Occupied Territories, and understands its security concerns. While recognizing the right of Israel to protect its citizens from violence, it reiterates that no exceptional circumstances may be invoked as justification of torture (art. 2, para. 2, of the Convention).

### D. Subjects of concern

52. The Committee expresses concern about the following matters:

(a) While acknowledging the importance of the September 1999 Supreme Court decision, the Committee regrets certain of its consequences:

(i) The ruling does not contain a definite prohibition of torture;

(ii) The Court prohibits the use of sleep deprivation for the purpose of breaking the detainee, but stated that if it was merely incidental to interrogation, it was not unlawful. In practice, in cases of prolonged interrogation it is impossible to distinguish between the two conditions;

(iii) The Court indicated that ISA interrogators who use physical pressure in extreme circumstances ("ticking bomb cases") might not be criminally liable as they may be able to rely on the "defence of necessity";

(b) Despite the Israeli argument that all acts of torture, as defined in article 1 of the Convention, are criminal offences under Israeli law, the Committee remains unconvinced and reiterates its concern that torture as defined by the Convention has not yet been incorporated into domestic legislation;

(c) Allegations continue to be received concerning the use of interrogation methods by the ISA against Palestinian detainees that were prohibited by the September 1999 ruling of the Supreme Court;

(d) Torture and ill-treatment of Palestinian minors is alleged, in particular of those detained in the Gush Etzion police station. The difference in the definition of a child in Israel and in the Occupied Territories is also a matter of concern. While under Israeli law majority is attained at the age of 18, military order No. 132 defines a minor as someone under the age of 16. (In Israel, including the Occupied Territories, no minors under the age of 12 years can be held criminally responsible);

(e) While noting a substantial decrease since the examination of its previous report in the number of persons held in administrative detention, the Committee continues to be concerned that administrative detention does not conform with article 16 of the Convention;

- (f) The continued use of incommunicado detention, even in the case of children, is a matter of grave concern to the Committee;
- (g) Despite the numerous allegations of torture and ill-treatment by law enforcement officials received by the Committee, very few prosecutions have been initiated against alleged perpetrators;
- (h) While noting that according to the delegation any allegation of physical violence against a detainee is always treated and investigated as a criminal offence, the Committee is concerned that the Department for the Investigation of Police Misconduct (DIPM) may decide that a police officer or ISA investigator should only be subject to disciplinary action, in lieu of criminal proceedings. This may amount to a violation of article 7, paragraph 1, of the Convention;
- (i) Israeli policies on closure may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (article 16 of the Convention);
- (j) Israeli policies on house demolitions may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (article 16 of the Convention);
- (k) The judicial practice of admitting objective evidence derived from an inadmissible confession is of concern to the Committee;
- (l) The Committee is also concerned at instances of "extrajudicial killings" drawn to its attention.

#### E. Recommendations

53. The Committee makes the following recommendations:

- (a) The provisions of the Convention should be incorporated by legislation into the domestic law of Israel; in particular, a crime of torture as defined in article 1 of the Convention should be enacted;
- (b) The practice of administrative detention in the Occupied Territories should be reviewed in order to ensure its conformity with article 16;
- (c) The State party should review its laws and policies so as to ensure that all detainees, without exception, are brought promptly before a judge and are ensured prompt access to a lawyer;
- (d) The State party should ensure that interrogation methods prohibited by the Convention are not utilized by either the police or the ISA in any circumstances;
- (e) In view of the numerous allegations of torture and other ill-treatment by law enforcement personnel, the State party should take all necessary effective steps to prevent the crime of torture and other acts of cruel, inhuman or degrading treatment or punishment and institute effective complaint, investigative and prosecution mechanisms relating thereto;

- (f) All victims of torture and ill-treatment should be granted effective access to appropriate rehabilitation and compensation measures;
- (g) The State party should desist from the policies of closure and house demolition where they offend article 16 of the Convention;
- (h) The State party should intensify human rights education and training activities, in particular concerning the Convention, for the ISA, the Israel Defence Forces, police and medical doctors;
- (i) Necessity as a possible justification for the crime of torture should be removed from the domestic law;
- (j) Such legislative measures as are necessary should be taken to ensure the exclusion of not merely a confession extorted by torture, but also any evidence derived from such confession;
- (k) Israel should consider withdrawing its reservation to article 20 and declaring in favour of articles 21 and 22.