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COMMITTEE AGAINST TORTURE

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

Initial reports of States Parties due in 1992

Addendum

ISRAEL

[25 January 1994]

I. GENERAL INFORMATION

1. The State of Israel is a parliamentary democracy in which the Knesset (the legislature) enacts statutes which are interpreted and applied by an independent judiciary and enforced by the executive. Acts of torture, etc. as defined by the Convention are designated as criminal offences by penal legislation (see below) and perpetrators of such offences are tried and punished by the courts.

2. In addition to the criminal law, the law of civil wrongs enables a victim of torture to seek civil redress in damages for torts such as assault or false imprisonment. In appropriate cases, such civil action is available against the State or public officials.

3. Israel is a party to the International Covenant on Civil and Political Rights, provisions of which may be considered as of wider application than those of the Convention against Torture.

4. Under the Israeli constitutional system customary international law is a part of its legal system; however, international conventions are not part of the law of the land, nor can they be directly invoked before the courts. The provisions of international

conventions have to be explicitly incorporated into national legislation. For details of such legislation applying the provisions of the Convention, see below.

5. As already stated, the ordinary courts have jurisdiction to try offences against the penal provisions prohibiting torture and similar acts. Moreover, those courts can award compensation in civil actions for damages. In addition, public officials who violate the criminal law or administrative directives by which they are bound (see below) are subject to disciplinary jurisdiction and may incur sanctions imposed by disciplinary bodies. This includes members of the General Security Services (GSS), as well as members of the Israel Defence Forces who are subject to court martial in respect of violation of military law involving torture or similar acts.

II. IMPLEMENTATION OF SPECIFIC PROVISIONS OF THE CONVENTION

Article 1

6. While Israeli legislation does not specifically define torture, statutory provisions clearly cover all acts of torture as found in the definition in article 1 of the Convention. (See remarks on art.4, below).

Article 2

7. A number of sections of the Penal Law, 5737-1977 provide criminal sanctions against acts of torture (see below). Reference should also be made to the Basic Law: Human Dignity and Freedom, enacted recently. Moreover, strict guidelines relating to methods of interrogation of security suspects are also directed to prevention or torture (see below).

8. Another relevant statutory provision is section 12 of the Evidence Ordinance [New Version], 5731-1971 which invalidated any confession made by an accused person not made freely and voluntarily.

9. Regarding article 2(3) of the Convention, we refer to section 24(1)(a) of the Penal Law, 5737-1977 which allows the defence of acting under superior orders only where the orders are lawful. Where an order is manifestly illegal, as would be the case with an order to commit acts of torture, acting under such order would clearly not constitute a defence for a person accused of committing such acts. On this, we would refer to the decision of the Supreme Court, sitting as High Court of Justice (27.12.89) to make absolute decree against the chief Military Advocate, the chief of the General Staff and others, requiring them to commit an army officer for trial before a court martial for committing acts of torture against residents of certain Arab villages in Samaria (administered territories) during the course of putting down the Arab uprising (intifada) at its inception in January 1988. According to the findings of an investigation instituted at the request of the International Red Cross, the residents had been bound and severely beaten by orders of the said army officer. The court characterized such acts as repugnant to civilized standards of behaviour and rejected the plea that they were carried out as a result of the "uncertainty" that prevailed as to

orders for quelling the intifada. (High Court case No. 425/89 Piskei Din (Supreme Court Judgements), vol. 43, Part IV, p. 718).

Article 3

10. Under the Extradition Law, 5714-1954, a prior condition for any act of extradition is the existence of an extradition convention between Israel and the State to which it is proposed to extradite the offender.

11. Where a request for extradition is submitted by a foreign State, the Minister of Justice may direct that the person concerned be brought before a District Court to determine whether he is subject to extradition, and in pursuance of such direction, the Attorney General or his representative submits to the court a petition to declare the person concerned subject to extradition. If the statutory conditions are fulfilled, the court will make such a declaration, and the extradition will then eventually be carried out. A person declared subject to extradition does have a right of appeal to the Supreme Court sitting as a Court of Criminal Appeal within 30 days of the decision of the District Court. However, the final decision as to his extradition is, under the Extradition Law, at the discretion of the Minister of Justice.

Article 4

12. The following are the relevant provisions of the Penal Law, 5737-1977 providing criminal sanctions for acts of torture:

"CHAPTER NINE: Offences relating to Public Authority and the Administration of Justice

Article Four: Offences Committed in or Against the Public Service

277. Oppression by public servant. A public servant who does one of the following is liable to imprisonment for three years:

(1) uses or directs the use of force or violence against a person for the purpose of extorting from him or from anyone in whom he is interested a confession of an offence or information relating to an offence;

(2) threatens any person, or directs any person to be threatened, with injury to his person or property or to the person or property of anyone in whom he is interested for the purpose of extorting from him a confession of an offence or any information relating to an offence."

"CHAPTER ELEVEN: OFFENCES RELATING TO PROPERTY

Article Six: Deceit, Blackmail and Extortion

427. Blackmail with use of force. (a) A person who unlawfully uses force to induce a person to do some act or to refrain from doing an act which he is permitted to do is liable to imprisonment for seven years or, if the use of force leads to the doing or omission of the act, nine years.

(b) for the purposes of this section, a person who administers drugs or intoxicating liquors shall be treated as a person using force."

13. Regarding complicity of participation in torture, the following general provisions of the Penal Law, 5737-1977, are relevant:

"CHAPTER FOUR: PARTIES TO AN OFFENCE

25. In this chapter, 'offence' does not include a contravention.

26. Where an offence is committed, each of the following is deemed to have taken part in its commission and to bear responsibility for it:

(1) a person who does one of the acts or makes one of the omissions which constitute the offence;

(2) a person who, whether or not he is present at the time the offence is committed, does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

(3) a person who, whether or not he is present at the time the offence is committed, counsels or procures any other person to commit the offence;

(4) a person who aids another in committing an offence by being present at the place where it is committed for the purpose of overawing opposition or of strengthening the resolution of the perpetrator or of ensuring the carrying out of the offence.

27. A person who procures another to do an act or make an omission which if he had himself done or made it would have constituted an offence on his part is guilty of that offence.

28. Where two or more persons associate to pursue an unlawful purpose, and in the course of its pursuit an offence is committed which by its nature is a probable consequence thereof, each of them present at the commission of the offence is deemed to have committed it.

29. Where a person counsels another person to commit an offence, and an offence is thereafter committed by the other person, the first-mentioned person is deemed to have counselled the offence actually committed even if it is not committed in the way counselled or is not the offence counselled, so long as the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

30. If any person has procured or counselled another person to commit an offence and before the commission of the offence has countermanded the commission, he shall not be deemed to have committed the offence if it is subsequently committed."

14. Regarding attempts to commit torture, the following general provisions of the Penal Law, 5727-1977 are relevant:

"CHAPTER FIVE: ATTEMPT AND INCITEMENT

31. In this chapter, 'offence' does not include a contravention.

32. A person who attempts to commit an offence shall unless some other punishment is provided be liable:

(1) to imprisonment for twenty years if the offence is punishable by death;

(2) to imprisonment for fourteen years if the offence is manslaughter;

(3) to imprisonment for ten years if the offence is any other offence punishable by imprisonment for life;

(4) in every other case, to half the punishment prescribed for the offence.

33. (a) A person is deemed to attempt to commit an offence when he begins to put his intention to commit it into effect by some overt act and by means adapted to achieve such intention, but does not achieve such intention to such an extent as to commit the offence.

(b) It is immaterial, except as regards punishment, whether the offender does all that is necessary on his part to complete the commission of the offence or whether the complete commission thereof is prevented by circumstances independent of his will or whether he desists of his own motion from further prosecution of his intention.

(c) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

34. Any person who attempts to procure or incite another to do any act or make any omission, in Israel or elsewhere, which if it were done or made would constitute an offence under Israeli law or the laws of the place where it is proposed to be done or made shall be liable to the same punishment as if he had himself attempted to do the act or make the omission in Israel:

Provided that if the act or omission is proposed to be done or made at a place outside Israel:

(1) the punishment shall not exceed that which he would have incurred under the laws of that place if he had himself attempted to do the act or make the omission;

(2) he shall not be prosecuted save at the request of the State having jurisdiction in that place."

15. Mention must also be made of the Police Ordinance [New Version], 5731-1971, section 50 (a) of which, as amended in 1988, defines as a disciplinary offence as "an offence which prejudices good order and discipline, as specified in the Schedule." Item 19 of the Schedule to the Ordinance states the following to be a disciplinary offence: "Use of force against any person within the scope of fulfilment of duty, contrary to the standing orders of the Israel Police or to any other order lawfully given."

16. Police standing orders prohibit the use of force except in very clearly defined cases, i.e. resistance to arrest, attempt to escape from lawful custody, to overcome mob violence, in self-defence or to prevent a crime involving violence. In none of these circumstances would the use of torture be justified. An indictment under this provision may only be brought by decision of the Attorney General or of a person authorized by him.

17. The following are the penalties which a Police Disciplinary Tribunal may impose for disciplinary offences: reprimand; severe reprimand; fine of up to two month's pay; confinement to place of duty for up to 45 days; detention for up to 45 days; reduction in rank. Disciplinary proceedings may be instituted in addition to criminal proceedings for the same offence.

18. Equivalent provisions apply to prison officers under section 101 of the Prisons Ordinance [New Version], 5731-1971 and item 19 of the Schedule to that Ordinance.

19. Section 65 of the Military Justice Law, 5715-1955 provides as follows: "A soldier who strikes or otherwise maltreats a person committed to his custody or a soldier inferior to him in rank is liable to imprisonment for a term of three years." A soldier would be tried before a court-martial for such an offence.

Article 5

20. Israeli criminal jurisdiction is territorial in nature, covering all acts committed within the territory under its jurisdiction. The basic jurisdictional provision of the Penal Law, 5737-1977, is to be found in section 3 thereof:

"CHAPTER TWO: TERRITORIAL APPLICATION

3. Extent of jurisdiction. The jurisdiction of the courts in Israel in the matter of offences extends to the area of the State and its territorial waters and, by Law, also beyond the said area. Where an offence is committed partly within the jurisdiction, the person who commits it may be tried and punished as if he had committed it wholly within the jurisdiction."

21. Furthermore, Israeli courts are competent under section 6 of the said Law to try a national, a resident or a public servant of Israel who has committed a number of specific offences, among which are included oppression by a public servant (section 277) abuse of office (section 280) and blackmail with use of force (section 427), all of which are quoted above (see remarks on art. 4). Section 6 reads as follows:

"Offences by public servants and offences in respect of public property.

6. (a) The courts in Israel are competent to try a national, a resident or a public servant of Israel who committed abroad one of the following offences:

(1) an offence under any of the sections of articles 4 and 5 of Chapter Nine of this Law;

(2) an offence under any of the sections of Chapter Eleven, except sections 401 and 429, and Chapter Twelve or under section 381 (2) or 489, which harms any property or rights of the State or of one of the bodies or associations specified in the Schedule.

(b) The Minister of Justice may, with the approval of the Constitution, Legislation and Law Committee of the Knesset, vary the Schedule by adding or deleting the names of bodies or associations."

22. Section 7 extends criminal jurisdiction to instances of injury to Israeli nationals and residents committed abroad:

"Injury to nationals or residents of Israel.

7. (a) The courts in Israel shall be competent to try under Israeli Law a person who committed abroad an act which would have been an offence had it been committed in Israel and which injured or was intended to injure the life, person, health, freedom or property of an Israeli national or resident of Israel.

(b) If the offence was committed in a place under the jurisdiction of another State, no information shall be filed under this section unless the act is also an offence under the law which applies in that place."

23. In this context, the following additional provisions of the Penal Law regarding jurisdiction should be noted:

"9. Attempt, incitement and conspiracy. The courts in Israel shall be competent to try, in addition to the parties to an offence under Chapter Four, a person who, in respect of an offence which a court is competent to try under this chapter, has done any of the acts mentioned in Chapters Five and Fourteen or in sections 260 to 262 of this Law.

"10. Restrictions. (a) No information shall be filed in respect of an offence under sections 4 to 9 save by the Attorney General or with his written consent.

"(b) No information shall be filed in respect of an offence under section 7 unless the penalty prescribed for it by Israeli law is imprisonment for a term of one year or more.

"(c) No person shall be brought to trial under sections 6 or 8 for an act or omission for which he has been brought to trial, and convicted or acquitted, abroad.

"(d) A person who has committed an offence under sections 4, 5 or 7 may be brought to trial in Israel even if he has already been brought to trial abroad for the act or omission; but if a person is convicted in Israel of an offence as aforesaid after being convicted thereof abroad, the court in Israel shall, in determining the penalty, have regard to the penalty he has undergone abroad.

"11. Saving of powers. The provisions of this chapter shall not derogate from any power under another law to try offences committed abroad."

Article 6

24. Under the general rules of criminal procedure, where jurisdiction exists, a person suspected of having committed an offence such as those constituting torture would be arrested and detained in custody, or he may be released on adequate bail in

appropriate cases. Police investigation of the alleged offence would be initiated without delay.

25. Detainees who are foreign nationals are permitted to communicate with the diplomatic or consular representatives of their State of nationality.

Article 7

26. Persons suspected of having committed acts of torture would be prosecuted, if they are not extradited.

Courts or tribunals would decide on cases of alleged torture in the same way as they decide on any other cases of serious crimes. Standard of evidence required for proof of torture are the same whatever the basis of jurisdiction of the court.

Article 8

27. For Israeli provisions regarding extradition, see under article 3 above. Israeli law makes extradition conditional on the existence of an extradition treaty with the State requesting extradition. A multilateral treaty providing for extradition to which Israel and another State are party and fulfilling the provisions of Israeli law satisfies the statutory requirement.

Article 9

28. The statute regulating judicial assistance, both civil and criminal, is known as the Legal Assistance to Foreign States [Consolidated Version] Law, 5737-1977. The statute provides for service of documents, taking of evidence, production of documents, seizure of documents or other articles, carrying out of searches and performance of other legal acts on behalf of foreign courts. Moreover, it provides for transfer abroad of prisoners and detainees for the purpose of giving evidence in foreign proceedings. The statute provides that judicial assistance may be withheld where it is likely to prejudice the sovereignty or security of Israel or any matter of public policy, or where there is lack of reciprocity between Israel and the State requesting the assistance.

29. Special regulations govern judicial assistance in criminal matter to States parties to the Strasbourg (Council of Europe) Convention of 20 April 1959, to which Israel is also a party.

Articles 11, 12 and 13

30. The State of Israel maintains that the basic human rights of all persons under its jurisdiction must never be violated, regardless of the crimes that the individual may have committed. To prevent terrorism effectively while ensuring that the basic human rights of even the most dangerous of criminals are protected, the Israeli authorities have adopted strict rules for the handling of interrogations. These guidelines are designed to enable investigators to obtain crucial information on terrorist activities or

organizations from suspects who, for obvious reasons, would not volunteer information on their activities, while ensuring that the suspects are not maltreated.

The Landau Commission

31. The basic guidelines on interrogation were laid down by the Landau Commission of Inquiry. The Commission, headed by the former Supreme Court President, Justice Moshe Landau, was appointed following a decision of the Israeli Government in 1987 to examine the General Security Service's (GSS) methods of interrogation of terrorist suspects. In order to compile its recommendations, the Landau Commission examined international human rights law standards, existing Israeli legislation prohibiting torture and maltreatment, and guidelines of other democracies confronted with the threat of terrorism.

32. The Landau Commission envisioned its task as defining "with as much precision as possible, the boundaries of what is permitted to the interrogator and mainly what is prohibited to him". The Commission determined that in dealing with dangerous terrorists who represent a grave threat to the State of Israel and its citizens, the use of a moderate degree of pressure, including physical pressure, in order to obtain crucial information is unavoidable under certain circumstances. Such circumstances include situations in which information which an interrogator can obtain from the suspect can prevent imminent murder, or where the suspect possesses vital information on a terrorist organization which could not be uncovered by any other source (e.g. locations of arms or explosive caches or planned acts of terrorism).

33. The Landau Commission recognized the danger posed to the democratic values of the State of Israel should its agents abuse their power by using unnecessary or unduly harsh forms of pressure. As a result, the Commission recommended that psychological forms of pressure be used predominantly and that only "moderate physical pressure" (not unknown in other democratic countries) be sanctioned in limited cases where the degree of anticipated danger is considerable.

34. It should be noted that the use of such moderate pressure is in accordance with international law. For example, when asked to examine certain methods of interrogation used by Northern Ireland police against IRA terrorists, the European Human Rights Court ruled that "[i]ll-treatment must reach a certain severe level in order to be included in the ban [of torture and cruel, inhuman or degrading punishment] contained in article 3 [of the European Convention on Human Rights]". In its ruling, that Court sanctioned the use of certain forms of pressure in the interrogation process, such as hooding (except during the actual questioning), sleep deprivation and reduction of food and drink supply.

35. The Landau Commission was aware that the issue of moderate pressure during interrogation is both a serious and a sensitive one. The guidelines regarding interrogation provide for limited forms of pressure under very specific circumstances, to be determined on a case-by-case basis. They by no means authorize indiscriminate use of force. Rather, specific circumstances have been identified and interrogation practices have been strictly defined in a manner that, in the opinion of the Landau Commission, "if these boundaries are maintained exactly in letter and in spirit, the effectiveness of the interrogation will be assured, while at the same time it will be far from the use of physical or mental torture, maltreatment of the person being interrogated, or the degradation of his human dignity".

36. To ensure that disproportionate pressure is not used, the Landau Commission identified several measures, which have been adopted and are now in force, namely:

1. Disproportionate exertion of pressure on the suspect is not permissible - pressure must never reach the level of physical torture or maltreatment of the suspect, or grievous harm to his honour which deprives him of his human dignity.

2. The use of less serious measures must be weighed against the degree of anticipated danger, according to the information in the possession of the interrogator.

3. The physical and psychological means of pressure permitted for use by an interrogator must be defined and limited in advance, by issuing binding directives.

4. There must be strict supervision of the implementation in practice of the directives given to GSS interrogators.

5. The interrogators' supervisors must react firmly and without hesitation to every deviation from the permissible, imposing disciplinary punishment, and in serious cases, causing criminal proceedings to be instituted against the offending interrogator.

37. Once these measures were set down, the Landau Commission went on, in a second section of its report, to detail precisely the exact forms of pressure permissible to the GSS interrogators. This section has been kept secret out of concern that, should the narrow restrictions binding the interrogators be known to the suspects undergoing questioning, the interrogation would be less effective. Palestinian terrorist organizations commonly instruct their members, and have even printed a manual, on techniques of withstanding GSS questioning without disclosing any information. It stands to reason that publishing GSS guidelines would not only enable the organizations to prepare their members better for questioning, but would reassure the suspect as to his ability to undergo interrogation methods without exposing vital information, thus depriving the GSS of the psychological tool of uncertainty.

Safeguards

38. Since the interrogation guidelines are secret, the Israeli Government recognized the importance of establishing safeguards and a system of review of interrogation practices in order to ensure that GSS investigators do not violate the guidelines. As a result, the GSS Comptroller was instructed to check every claim of torture or maltreatment during interrogation. Since 1987, the Comptroller has carried out this responsibility, initiating disciplinary or legal action against interrogators in cases where they have been found to have deviated from the legal guidelines.

39. The Landau Commission recommended that there be external supervision of GSS activities in addition to the GSS Comptroller. Since the Landau Commission issued its recommendations, the State Comptroller's Office has launched an examination of the GSS investigator's unit. Upon the completion of its inquiry, the State Comptroller's findings will be submitted to a special subcommittee of the Knesset (Israeli Parliament) State Comptroller Committee. Also in accordance with the recommendation of the Landau Commission, an additional review procedure exists whereby the conclusions of the special ministerial committee, referred to below, as well as the annual reports of the investigators' unit are brought to the attention of the Subcommittee for Services of the Knesset Foreign Affairs and Defence Committee.

40. In addition, an agreement between the State of Israel and the International Committee of the Red Cross (ICRC) provides for the monitoring of conditions of detention. Delegates from the ICRC are permitted to meet with detainees in private within 14 days of the arrest. ICRC doctors may examine detainees who complain of improper treatment. All complaints made by the ICRC regarding treatment of prisoners are fully investigated by the relevant Israeli authorities and the findings are made known to the ICRC.

41. In May 1991, a special ad hoc committee composed of members of the GSS and the Justice Ministry was appointed to review complaints against the conduct of GSS investigators during interrogation. The committee identified a number of cases in which investigators did not act in accordance with the guidelines for treatment of detainees. As a result of the Committee's findings, action has been taken against GSS investigators involved in these cases.

42. In order to further ensure the effectiveness of the review process it has recently been decided to set up an independent body to check claims of maltreatment instead of the GSS Comptroller. To this end, a unit has been established in the Justice Ministry under the supervision of the State Attorney, which will investigate all complaints of maltreatment in the future.

Review

43. As recommended by the Landau Commission, a special ministerial committee headed by the Prime Minister was established in 1988 under the previous Government to review periodically the interrogation guidelines themselves. This committee held several sessions but its work was cut short by the national elections which were held in June, 1992. Following the establishment of the new Government in July 1992 a new ministerial subcommittee composed of the Ministers of Justice and Police was appointed. This committee is currently reviewing the interrogation guidelines and will soon submit its conclusion and recommendations to the Cabinet.

44. In 1991, a petition was submitted to the Supreme Court of Israel sitting as the High Court of Justice by a detainee named Murad Adnan Salkhat and a private group named the Israel Public Committee Against Torture, challenging the legality of the guidelines and demanding that they be made public. This petition, which is currently pending, demonstrates the openness of the independent judiciary of Israel to adjudicate even highly sensitive matters relating to human rights and security.

IDF investigators

45. The Israel Defence Forces (IDF), like the GSS, has a strict policy of investigating every claim of maltreatment of detainees by IDF investigators. Soldiers who are found to have deviated from the strict IDF orders against violence or threat of violence in interrogation are either court-martialled or have disciplinary proceedings brought against them, depending on the severity of the charges. The IDF also appointed a commission to review interrogation practices and policies. On 10 May 1991, Major General (Reserve) Raphael Vardi was appointed to investigate claims of maltreatment of detainees in military investigation facilities in the administered areas. As a result of his inquiry, a number of interrogators found to have violated the norms were punished. In addition, Major General Vardi submitted a list of recommendations

to the IDF Chief of Staff designed to reduce the possibility of maltreatment by IDF investigators. These recommendations have been adopted.

Article 14

46. In addition to the possibility of bringing a tort action for damages, the victim of an act of torture has a right to compensation under the general provisions relating to compensation for victims of crime. Section 77 of the Penal Law, 5737-1977 empowers a court that has convicted a person to require him to pay to the victim of his offence compensation for damage or suffering caused to him, and calculated on the basis of the time of commission of the offence or of the time of the decision, whichever sum is higher. Compensation is recovered in the same way as a fine. The maximum amount payable to any individual is at the moment fixed at 37,500 New Shekels.

Article 15

47. Section 12 of the Evidence Ordinance (New Version), 5731-1971, entitled "Confessions" provides as follows:

"12. Evidence of confession by the accused that he has committed an offence is admissible only when the prosecution has produced evidence as to the circumstances in which it was made and the court is satisfied that it was free and voluntary."

Article 16

48. The recently enacted Basic Law: Human Dignity and Freedom is relevant to this article, especially section 2, entitled "Preservation of Life, Body and Dignity", which states as follows: "2. No act shall be committed that harms the life, bodily integrity or dignity of any person as a human being." Section 4, entitled "Protection of Life, Body and Dignity", reads "Every person is entitled to protection of his life, bodily integrity and dignity." Section 11 provides:

"Application 11. Every governmental authority shall be bound to respect the rights under this Basic Law."

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