

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

Conclusions and Recommendations of the Committee against Torture

Israel

1. The Committee considered the third periodic report of Israel (CAUC/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.

Introduction

2. 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.

3. The Committee compliments the State party for ensuring periodicity of reports in a timely fashion and welcomes the continuation of a constructive dialogue with Israel.

Positive aspects

4. 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 Israeli Security Agency 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) That the Israeli Government has decided not to initiate legislation that would authorize the use of physical means in interrogations conducted by the police or ISA.

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

e) Israel's periodical contribution to the Voluntary Fund for Victims of Torture.

f) The provision of real time judicial review of persons under detention to the Supreme Court.

g) Since 1994, the responsibility for investigation of complaints against the ISA has been transferred to the Ministry of Justice.

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

Factors and difficulties impeding the application of the Convention

5. 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. 2.2 of the Convention).

Subjects of concern

6. The Committee expresses concern about the following matters:

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

- 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 will be 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) Continuing allegations 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) Allegations of torture and ill-treatment of Palestinian minors, in particular 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 taken against alleged perpetrators.

h) While noting that according to the Delegation any allegations 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 the ISA investigator should only be subject to disciplinary action, in lieu of the criminal proceedings. This may amount to a violation of article 7.1 of the Convention.

i) Israeli policies on closure which may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (article 16 of the Convention).

j) Israeli policies on house demolitions, which 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.

l) The Committee is also concerned at instances of "extra-judicial killings" drawn to its attention.

Recommendations

7. 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 Israeli Defence Forces, police and medical doctors.
- i) Necessity as a possible justification to 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.