

Torture in Israel

Developed in collaboration with the The Treatment and Rehabilitation Center for Victims of Torture (TRC) and the Public Committee against Torture in Israel (PCATI)

1 How many victims?

NGOs estimate more than 10,000 Palestinians at least 7,000 survivors of torture in third countries, mostly from Sudan and Eritrea.

2 Who are the victims?

- Primarily Palestinian men, women and youth, mainly accused or suspected of “security” crimes including “inciting illegal riots”
- Palestinian citizens of Israel and Syrian residents of Golan Heights
- Eritrean and Sudanese asylum seekers
- To a lesser extent, young Ethiopian men and political dissidents

3 Who are the perpetrators?

- Interrogators of the Israel Security Agency.
- Israeli Defense Force (IDF) soldiers
- Israel Police and Border Police
- To a lesser extent, Israel Prison Service personnel

4 Where does torture take place?

- Places of detention including Israeli military bases and posts, detention centers, prisons, and police centers in Israel and in settlements in the West Bank
- During arrest, at detainees’ houses and in public

Overall situation of torture

While torture was widely and indiscriminately used against Palestinian in the 1980s and 1990s, the turn of the century brought about a dramatic decline of reported physical torture methods and the apparent elimination of some commonly used methods of interrogation, following the 1999 landmark ruling by the Israeli High Court of Justice (HCJ). On the other hand, the ongoing creation and development by state mechanisms of legal structures make it possible for “enhanced” interrogation methods to take place. Torture is still used routinely and systematically against ‘security’ prisoners, with the state’s knowledge and agreement.

Israeli law does not include a prohibition or criminalization of Torture. Torture and ill-treatment by Internal Security Administration are not prosecuted, and perpetrators enjoy immunity. As a corollary to this attitude, all victims of torture, including refugees and asylum seekers who have suffered from torture are not recognized as Victims of Torture do not have recourse to legal or rehabilitative aid attuned to their needs. There is currently no effective monitoring of places of detention.

Torture in Israel

When does torture take place

Usually during the course of the arrest and in the first week following the arrest. Torture during interrogation is more likely to happen during incommunicado detention. On occasion, prisoners and detainees have been pulled out of the prison facilities after a few months and returned to interrogations involving physical and psychological torture.

Rehabilitation

Prisoners have practically no access to rehabilitation services for torture-related injuries, physical or psychological. In extreme cases, a prisoner may receive some physical physiotherapy; likewise, prisoners will be seen as needed by psychiatrists and receive medication, though there are no professional translation services and that function is filled by prison guards. Health services in detention centers are provided by employees of the security forces, and health providers thus suffer from a conflict of interests when treating alleged victims of torture.

Outside prison, Palestinians living in the oPt – the state of Palestine - are not entitled to Israeli rehabilitation services as non-residents (the National Health Insurance Act specifically excludes Palestinian residents). We are not aware of any instance in which the government covered the cost of rehabilitation for any victim of torture: in the first instance because there is no recognized category of “victim of torture” with attendant rights and provision of services.

Forensic documentation of torture and ill-treatment

Until recently, the Istanbul Protocol (IP) was barely known, both among government officials and civil society, and hardly used. It has recently gained limited prominence in public discourse, partly through calls from external bodies such as the UN Human Rights Committee, but also internal bodies, as in the recommendations of the governmental enquiry committee known as the Turkel Commission, which called for investigators to be trained using the IP. These recommendations have not yet been implemented.

Medico-legal reporting is generally limited to particular and specific medical problems, and not as part of a wider independent assessment. Independent medical-legal reporting is very rare, and complicated by the restrictions on access to prisoners.

To date, few reports have been written by Forensic Specialists – private or state, paid, or by volunteers for one of the NGOs. Interviews have been conducted in prison and in clinics, by physicians of all kinds of fields, not necessarily familiar with IP.

Abu Kabir is the National Forensic Institute, staffed by 6-9 physicians. It is under the jurisdiction of the Health Ministry, deals with autopsy of victims of violence or unclear circumstances, identification of body parts and bodies, and examination of living victims of violence. In theory, the physician on call may be summoned into any prison to examine complaints of torture. In practice, the forensic physicians are very rarely called to examine scenes of crime or living victims of violence.

Torture in Israel

Legal framework

Israel is a parliamentary democracy and defined as both democratic and Jewish. Israel has no formal constitution. Instead, it adopted, in 1992, two Basic Laws, which constitute the human rights regime in Israel: Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation. Basic Law: Human Dignity and Liberty includes the preservation of life, body and dignity, protection of property, protection of life, body and dignity, personal liberty and privacy. At the same time, Article 10 stipulates that the Basic Law shall not affect any law in force prior to the commencement of the Basic Law. Furthermore, Article 8 to this Basic Law enables violation of rights by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required. This means that de jure and de facto, there is no non-derogable right to be free of torture.

In addition to this derogation clause, Israel is in a state of emergency since its establishment in 1948. Due to the state of emergency, Israel limits the right to liberty by administrative detentions of its residents as well as protected civilians from the oPt. The tool of administrative detention deprives Palestinians of liberty up to a period of six months, renewable, without total time limit, on grounds of secret and inadmissible evidence, to which the detainee has no access. In addition to administrative detention, Israel also has a specific law for “unlawful combatants”. The Law defines an unlawful combatant as a person who has taken part in hostilities against the State of Israel, directly or indirectly, or who is a member of a force carrying out hostilities against Israel. The Law is currently used to detain without trial Palestinians from the Gaza Strip.

No specific crime of torture exists in Israeli penal code, although Israel has repeatedly insisted that all act of torture are offenses under its laws. These “alternate offences” – such as assault - do not encapsulate the essence of the torture offense: they make no reference to non-physical torture, the crimes make no reference to the criteria and definition of torture in the CAT or to the right to rehabilitation and reparation, and the punishments set out are far from being appropriate to the crime of torture. In addition, interrogation involving torture of “security” detainees often falls under the so-called “necessity” defense, in effect exempting these cases from prosecution.

Reparation

We are not aware of any instance in which the government agreed to any formal financial compensation for a Palestinian victim of torture per se, as that would amount to an admission of responsibility. There have been isolated incidents where victims of torture from the 1980s and 1990s have reached a settlement with the State, resulting in payment to the victims or the victim’s family;. These settlements were reached in civil tort cases, not criminal, and included a clause absolving the State from declaring the plaintiff a victim of torture. In addition, a recent HCJ ruling states that enemy combatants have no standing in civil tort cases, limiting the access of victims of torture to reparation.

Torture in Israel

Accountability

The criminalization of torture in Israel is still out of sight, while under Israeli law torture in certain circumstances entails no legal consequences for the perpetrator. Indeed, according to PCATI's updated cases data, of more than 950 complaints of torture in ISA interrogations submitted since 2001, in dozens of which Israel admits to have used "irregular means of interrogation", not a single criminal investigation was opened, let alone indictments served.

Victim participation in the legal process is not only discouraged but often impossible: as former "security" prisoners, most complainants do not receive permission to attend the hearings in appeals presented in their name, nor is adequate translation provided.

Is the legal and political framework conducive to civil society operations?

In general, the last years have seen an attempt on the part of the Israeli Government to curtail the activities of NGOs operating within Israel. This has most obviously taken the form of a proposed law which would make foreign donations – NGOs primary source of income – practically impossible. This law has not been passed as yet, but it is shelved and may be reintroduced in the future.

Applicable international law

Israel signed the UNCAT on October 22, 1986 and ratified it on August 4, 1991; it has not joined the Optional Protocol or enacted other effective means of supervision on the implementation of the Convention. Israel is also party to the ICCPR, while maintaining that both UNCAT and ICCPR doesn't apply in the Occupied Territories, meaning outside of Israel's territory. Speaking broadly, Israel's interactions with the various international mechanisms have been characterized by silence, mutual mistrust and limited cooperation.

Priorities and Concerns

Recommendations from the IRCT and its member centres

The main lacuna in Israel is the refusal to criminalize torture according to the Convention Against Torture. Without effective local legislation, in line with international standards, it is difficult to see any change in the current situation: currently the entire legal system is built around the "necessity defense", creating a loophole which allows for systematic torture. From the lack of criminalization flow all incipient problems, such as lack of rehabilitation and impunity for all state agents. Any such legislation must ensure the elimination of any exemptions, recognizing the nature of torture as non-derogable. It must also ensure that all complaints of torture are criminally examined by a single and effective body, implementing recognized international standards of effective investigation – in contrast to the current situation, where several different investigative bodies, with diverse professional skills and norms, deal with the complaints.

The practice of torture is also enabled in practice by the lack of effective basic safeguards, such as audio-visual documentation of all interrogations, prompt and non-derogable access to legal counsel, and the establishment of independent visitors with access to all detentions centers.

Torture in Israel

Recommendations from International bodies

SPECIAL PROCEDURES

The Special Rapporteur on Torture has since 2002 repeatedly requested that Israel to allow him to visit the country; he has not been invited. The Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism visited the country in 2007 and expressed harsh criticism concerning the use of torture by the ISA. In 2012 his successor repeated his predecessor's criticism and concerns in his follow-up report and requested that Israel address these concerns. No official response was forthcoming.

COMMITTEE AGAINST TORTURE

Since Israel submitted its first country report to the CAT in 1994, the latter has five times criticized the deficiencies in Israeli law, which ostensibly justifies interrogation methods that amount to cruel, inhuman or degrading treatment, or torture. NGOs have consistently presented independent reports to the Committee and attended the State appearances.

HUMAN RIGHTS COMMITTEE

In October 2014 Israel appeared before the HRC, which repeated its previous concern that to date no crime of torture in conformity with CAT has been incorporated into the Israeli legislation. The Committee also reiterated its concern that the "necessity" defence continues to be legal and is used as a possible justification for torture, and called for prompt, thorough, effective, independent and impartial investigations into all allegations of torture and ill-treatment.

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Israel is a State Party to CEDAW, which it ratified in October 1991. Israel has not signed the Optional Protocol to the CEDAW. As a result, individual women or groups of women may not submit claims of violations of rights protected under the Convention, nor may the Committee initiate inquiries into situations of grave or systematic violations of women's rights. In practice, women are often abused in interrogations, whether directly or as a means of influencing detained family members.

COMMITTEE ON THE RIGHTS OF THE CHILD

Israel ratified the Convention on the Rights of the Child in August 1991. In practice, minors are often arrested and subjected to violations of the Convention Against Torture. The CRC periodically reviews Israel – most recently in June 2013 - and has criticized Israel for violations during detention and interrogation.

Torture in Israel

About the contributors

The Treatment and Rehabilitation Center for Victims of Torture (TRC)

TRC is a non-profit human rights organization which provides mental health support to direct and indirect victims of torture and their families. TRC provides individual, group, family and child psychological treatment, and medication when required, through a multi-disciplinary and holistic human rights-based approach, in addition to vocational rehabilitation, and psychosocial summer camps for child victims. TRC also engages in community-based awareness raising and national and international advocacy aimed at enforcing obligations under signed international treaties and conventions which bar the practices of torture and protect human rights.

Country coverage:

Occupied Palestinian Territories (West Bank & East Jerusalem)

Number of clients in 2014: 845 (393 Men - 317 Women - 135 Children)

Funding: TRC is currently funded by the United Nations Voluntary Fund for Victims of Torture, the European Union, the Australian Palestinian Partnership for Education and Health, the Kuwaiti Government, and several other donors.

Website: <http://www.trc-pal.org>

Public Committee Against Torture in Israel

PCATI is a social change organization, helping victims of torture in the effort to obtain restitution and justice. PCATI visits prisoners and other victims of torture on a regular basis, bringing their claims to court and engaging in national and international advocacy. Although not a health treatment center, PCATI sees rehabilitation as an essential component of the right of victims of torture to justice.

Country coverage: All victims of torture found in Israel or subjected to torture or CIDT in Israel, regardless of gender or ethnic, religious, or national affiliation

Number of clients in 2014: 119 (111 Men - 5 Women - 3 Children)

Funding: PCATI is funded by the UNVFVT, the EU, Dignity, Cordaid, and other generous supporters.

Website: www.stoptorture.org.il



The International Rehabilitation Council for Torture Victims (IRCT) is an independent, international health-based human rights organisation, which promotes and supports the rehabilitation of torture victims, promotes access to justice and works for the prevention of torture worldwide. The vision of the IRCT is a world without torture.

Copenhagen Europe Center
Vesterbrogade 149, building 4, 3rd
floor
1620 Copenhagen V
Denmark

2015 © International Rehabilitation
Council for Torture Victims (IRCT)

All rights reserved

For more information please
visit: www.irct.org