

Module 03 - Torture and Abusive Detentions in Israel

May 29, 2008



Landau Commission - History

- In 1987, the Landau Commission of Inquiry into the Methods of Investigation of the GSS Regarding Hostile Terrorist Acts, was established to investigate the interrogation practices of the main body responsible for fighting terrorism in Israel, the General Security Service (the GSS), and to reach legal conclusions concerning them.
- The report concluded: "the effective interrogation of terrorist suspects was impossible without the use of means of pressure (...)".
- The report further stated that: "the means of pressure should principally take the form of non-violent psychological pressure through a vigorous and extensive interrogation, with the use of stratagems, including acts of deception. When these do not attain their purpose, *the exertion of a moderate measure of physical pressure cannot be avoided*" (emphasis added).
- The Landau Commission recommended, that GSS interrogators should be guided by clear rules "to prevent the use of inordinate physical pressure arbitrarily administered" and formulated a code of guideline (which was included in a secret part of the report) which defined appropriate actions.
- The Commission finally concluded that the moderate measure of physical pressure did not conflict with the standards set forth in international human rights conventions such as the UDHR, the ICCPR and the European Convention, which prohibited torture and cruel, inhuman or degrading treatment or punishment.

1999 Israeli Supreme Court Decision

- The legality of GSS interrogation methods was again taken up by the Israeli Supreme Court in 1999.
- The court explicitly recognized that the Landau Commission had approved the use of “moderate degree of physical pressure” and that the Landau Commission’s recommendations had been accepted by the Israeli Government.
- In examining the legality of the GSS interrogation methods, the Israeli Supreme Court acknowledged that taken individually, some of the components of the “shabach” position had legitimate goals (e.g. hooding prevented communication between detainees).
- The Israeli Supreme Court thought that there should be a balance between the state’s duty to fight terrorism and its duty to ensure the protection of human rights.
- The Court formulated procedural rules for a “reasonable interrogation”, defined as an interrogation which is: “necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever” and free from any handling that is “likely to cause discomfort”.
- The Court ruled that “the legality of an investigation is deduced from the propriety of its purpose and from its methods”.
- The Court concluded that heavy shaking, the “frog crouch”, the “shabach position”, cuffing causing pain, hooding, the consecutive playing of loud music and intentional sleep deprivation for a prolonged period of time were all prohibited interrogation methods. “They are not deemed as included within the general power to conduct interrogations”.

1999 Decision – the Ticking Time Loophole

- The Israeli Supreme Court considered the “ticking time bomb” scenario: “A suspect is arrested by the GSS and holds information about a bomb which will imminently explode. There is no way to defuse the bomb without this information. It can be defused with the information. If the bomb is not defused, scores will be killed and maimed. A GSS investigator is authorized to employ physical means in order to elicit information regarding the location of the bomb in such instances?”
- The Court stated it was prepared to allow a GSS investigator who has applied physical interrogation methods for the purpose of saving human lives, if criminally indicted, to use the “necessity” defence recognized under Israeli Penal Law.
- Furthermore, the Court acknowledged that the legislature could enact laws permitting the interrogation methods that its decision had just struck down.

International Law and Torture

- The primary source of international humanitarian law (also called the laws of war) is the four Geneva Conventions of 1949. The Third Geneva Convention concerns prisoners-of-war, while the Fourth Geneva Convention safeguards so-called "protected persons," most simply described as detained civilians. It is explicitly stated that detainees must at all times be humanely treated (Geneva III, art. 13, Geneva IV, art. 27). Furthermore, detainees may be questioned, but any form of "physical or mental coercion" is prohibited (Geneva III, art. 17; Geneva IV, art. 31). Women shall be protected from rape and any form of indecent assault (Geneva IV, art. 27).
- Torture or inhuman treatment of prisoners-of-war (Geneva III, arts. 17 & 87) or protected persons (Geneva IV, art. 32) are grave breaches of the Geneva Conventions, and are considered war crimes (Geneva III, art. 130; Geneva IV, art. 147).
- War crimes create an obligation on any state to prosecute the alleged perpetrators or turn them over to another state for prosecution. This obligation applies regardless of the nationality of the perpetrator, the nationality of the victim or the place where the act of torture or inhuman treatment was committed (Geneva III, art. 129; Geneva IV, art. 146).
- Detainees in an armed conflict or military occupation are also protected by Common Article 3 to the Geneva Conventions. Article 3 prohibits "[v]iolence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; ...outrages upon personal dignity, in particular humiliating and degrading treatment."
- Even persons who are not entitled to the protections of the 1949 Geneva Conventions (such as some detainees from third countries) are protected by the "fundamental guarantees" of article 75 of Protocol I of 1977 to the Geneva Conventions. Article 75 has long been considered part of customary international law. It prohibits murder, "torture of all kinds, whether physical or mental, "corporal punishment" and "outrages upon personal dignity, in particular humiliating and degrading treatment, ... and any form of indecent assault.

Torture and International Law (cont'd)

- International Human Rights Law also strictly forbids the torture and mistreatment of persons in custody in times of war and peace.
- Relevant treaties include the International Covenant on Civil and Political Rights (articles 7 & 10) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both of which are ratified by Israel.
- The standard definition of torture can be found in article 1 of the Convention against Torture: "the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."
- Torture is also prohibited in international documents such as the Universal Declaration of Human Rights, the U.N. Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, and the U.N. Standard Minimum Rules for the Treatment of Prisoners.

Reality on the Ground

- In a 2001 report, the Public Committee against Torture in Israel estimated that despite the Israeli Supreme Court's 1999 ruling, dozens of Palestinians interrogated by Israel's GSS every month continued to be exposed to methods of torture and ill-treatment.
- Detainees were held in incommunicado detention as GSS interrogators "exhaust them, inflict pain upon them, frighten and humiliate them."⁵ Methods used by GSS interrogators included "a combination of sleep deprivation; prolonged shackling in painful positions; slapping, hitting and kicking; exposure to extreme heat and cold; threats, curses, and insults; complete isolation from the outside world for days and weeks; and detention under sub-human conditions."
- Many reports by Israeli human rights organizations since the 1999 Court ruling confirm that the GSS has continued to use torture right up to present day.
- Torture practices include sleep deprivation, "dry" beatings, painful tightening of the handcuffs, pulling of the handcuffed body, sharp twisting of the head, imposing the "frog" crouch, imposing the "banana" position.



Administrative Detentions

Administrative Detention under International Law

- The Fourth Geneva Convention recognizes the eventuality of an occupying country to hold a civilian in administrative detention.

Military Order Regarding Administrative Detentions

- This military order empowers commanders to detain an individual for up to six months if they have reasonable grounds to presume that security of the area or public security require the detention.
- There is no explicit mention of a time limit for detentions, leaving legal room for an individual to be held indefinitely.
- Exactly what constitutes threats to “public security” and “security of the area” is not made explicit in the Military Order, leaving it up to a military commander to define these concepts.

International Law and Administrative Detentions

- The legal sources on which the present standards are based are the Fourth Geneva Convention; Article 75 of Additional Protocol I to the Geneva Conventions, which is considered to reflect customary international law; Article 3 common to the Geneva Conventions; Additional Protocol II thereto; and customary rules of international humanitarian law.
- Even though internment in international armed conflicts is regulated by the Fourth Geneva Convention and Additional Protocol I, these treaties do not sufficiently elaborate on the procedural rights of internees, nor do they specify the details of the legal framework that a detaining authority must implement. In non-international armed conflicts there is even less clarity as to how administrative detention is to be organized. Article 3 common to the Geneva Conventions, which is applicable as a minimum standard to all non-international armed conflicts, contains no provisions regulating internment, i.e. administrative detention for security reasons, apart from the requirement of humane treatment.

Administrative Detention is an Exceptional Measure

- The Fourth Geneva Convention makes it explicitly clear that administrative detention is a severe measure. It states that an Occupying Power may take this step only if the security of the State makes it “absolutely necessary” (GC IV, Article 42) or for “imperative reasons of security” (GC IV, Article 78).
- It is left up to the State to define how its security might be threatened, making it “absolutely necessary” for “imperative reasons of security” to detain individuals without official charges.
- Internment/administrative detention is a measure of control aimed at dealing with persons who pose a real threat to State security, currently or in the future, in situations of armed conflict, or to State security or public order in non-conflict situations; it is not a measure that is meant to replace criminal proceedings. A person who is suspected of having committed a criminal offence, whether in armed conflict or other situations of violence, has the right to benefit from the additional stringent judicial guarantees provided for in humanitarian and/or human rights law for criminal suspects, which include the right to be tried by a regularly constituted, independent and impartial court.

Limits to abuse of administrative detention

- Administrative detentions must be subject to judicial review that meet minimal standards of a fair trial
- The Laws of occupation forbid the occupier from transferring civilians from occupied territory to its own territory.
- Internment/administrative detention must cease as soon as the reasons for it cease to exist. One of the most important principles governing internment/administrative detention
- is that this form of deprivation of liberty must cease as soon as the individual ceases to pose a real threat to State security, meaning that deprivation of liberty on such grounds cannot be indefinite. The longer internment lasts, the greater the onus on a detaining authority to prove that the reasons for it remain valid. The principle that internment must cease as soon as the reasons for it cease to exist is clearly enunciated in the Fourth Geneva Convention (Article 132) and in Article 75 (3) of Additional Protocol I, which is considered to reflect customary international law in international armed conflicts.

Reality on the Ground

- B'Tselem reports that in 2007, an average of about 830 Palestinians were held in administrative detentions per month, without being officially charged with an offence.
- The fact that all but one of the detentions centers are located in Israel creates problems for detainees. Given the existing permit regime in Israel, visitation and contact with family members is rendered very difficult. According to international law, an internee/administrative detainee must be allowed to have contacts with — to correspond with and be visited by — members of his or her family.
- The preservation of family life and contacts is one of the basic aims of international humanitarian law and may be said to constitute an element of the broader obligation that persons deprived of their liberty in both international and non-international armed conflicts must be treated humanely.
- The Fourth Geneva Convention contains provisions facilitating contact between internees and their families. The general presumption is that family contacts must be allowed within a reasonable time frame in all but very exceptional circumstances.
- There shall be no case in which a detainee's contact with his or her family will be made dependent on his/her "cooperativeness" with the detaining authority or be used as a form of incentive or reward for other behaviour.