Torture and ill-treatment in interrogations

Published: 1 Jan 2011

The right of every person not to be subjected to ill-treatment or torture (whether physical or mental) is one of the few human rights that are considered absolute. As an absolute right, it may never be "balanced" against other rights and values, nor suspended or limited, even in difficult circumstances such as war or fighting terrorism. This right now holds the highest and most binding status in international law.

Until the end of the 1990s, the Israel Security Agency [ISA, formerly the General Security Service] routinely used methods that constituted ill-treatment and even torture in interrogating Palestinian residents of the Occupied Territories. The government allowed use of these methods, based on the recommendations of a state commission headed by retired Supreme Court Justice Moshe Landau. The Commission had held that, in order to prevent terrorism, ISA agents were permitted to use "psychological pressure" and a "moderate degree of physical pressure". This permission was grounded, in the Commission's opinion, in the "necessity defense" in the Penal Law.

In a precedential decision [1] given in September 1999, the High Court of Justice ruled, contrary to the opinion of the Landau Commission, that Israeli law does not empower ISA interrogators to use physical means in interrogation, and that the specific methods discussed in the petition filed were illegal. However, the court also held that ISA agents who exceed their authority and use forbidden "physical pressure" may bear criminal responsibility for their actions, if it is subsequently found that the methods were used in a "ticking-bomb" case.

The court's decision led to a significant drop in the number of reports of torture and ill-treatment in ISA interrogations. However, relying on the "ticking-bomb" exception, ISA agents have continued to use forbidden interrogation methods, albeit in less instances. For example, in July 2002, Ha'aretz quoted a senior ISA official as saying that, since the High Court's decision, ninety Palestinians had been declared "ticking bombs" and had been subjected to "exceptional interrogation means" – i.e., to torture.

In an interview with three ISA interrogators published in Ma'ariv in July 2004, one of the interrogators admitted that the ISA uses "all possible manipulations including shaking and beating." The Public Committee Against Torture in Israel has taken dozens of affidavits from Palestinians who were interrogated by the ISA and claimed that violent methods of interrogation had been used against them.

In October 2010, B'Tselem and HaMoked: Center for the Defence of the Individual [2] published a comprehensive report [3]examining the ISA's treatment of detainees held in a detention facility in Petah-Tikva. The report was based on the testimonies of 121 Palestinians suspected of security offenses, who were detained in the first and last quarters of 2009. The findings support those of B'Tselem's and HaMoked's report of May 2007, which was based on the testimonies of 73 detainees whom the ISA interrogated between July 2005 and January 2006.

The findings of both reports indicate that ISA interrogations routinely include mental and physical ill-treatment. The main aspects of the interrogation regime are detachment of the detainee from the outside world, use of incarceration conditions as a means of psychological pressure and to physically weaken the detainee, binding the detainee in a painful position, degradation, and threats. The two reports differ in the reality they portray and in their objectives. The 2007 report also documented several cases, which the ISA classified as "ticking bombs," in which violent methods amounting to torture were used. These methods included beating, tight cuffing of hands, sudden pulling of the body, bending of the back, and more. The report on treatment in the Petah-Tikva facility sought to investigate routine interrogation practices in 2009, rather than document only the most severe violations that constitute serious physical torture.

The report covering 2009 shows that detainees in the Petah-Tikva facility are held in inhuman conditions, with the objective of physically and psychologically breaking them. The detainees are held in windowless, narrow cells, sometimes moldy and stinking, constantly lit with artificial lighting painful to the eyes. Some detainees reported being held in total isolation. Some reported exposure to temperatures that are too high or too low, and sleep deprivation. The hygiene in the cells is shameful; among other things, the prison authorities did not allow detainees to shower, to change clothes, or even use toilet paper. The food is poor in quality and quantity, and detainees lose weight during their time in the facility. In the interrogation room, interrogators force them to sit on a chair, hands tightly bound and unable to move their bodies, for hours and even days. The interrogators threaten the detainees, including threats regarding relatives, and also use violence against them.

From time to time, B'Tselem is given testimonies of Palestinian detainees who have undergone ill-treatment and torture by members of the Israel Police. Some of these cases involve detainees who are interrogated on suspicion of terrorist activity, while some involve Palestinians who are arrested and interrogated regarding their staying in Israel without a permit.

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