

ISRAEL

I. INTRODUCTION

1. The legal framework

1.1. The Constitution

Israel has a population of about 6 million people, comprising Jews, Palestinians, and others. In 1948, the State of Israel was established as a Jewish and democratic state. The Israeli Declaration of Independence, issued on 14 May 1948, following the termination of the British mandate over Palestine, envisioned a formal Constitution for Israel. By virtue of the Harare Resolution of 1950, the Knesset (Israel's parliament) agreed that the Israeli Constitution would contain separate chapters, each called a "basic law." To date, thirteen of such laws have been passed, among them the Basic Law on Human Dignity and Freedom. Israel's Supreme Court, in a 1995 landmark case, *Bank Hamizrahi Hameuchad Ltd. et al. v. Migdal Kfar Shitufi*, recognised that even before the completion of a single-document Constitution, two basic laws - the Basic Law: Human Dignity and Freedom and the Basic Law: Freedom of Occupation, were of a higher normative status than statutory legislation.¹

The Basic Law: Human Dignity and Liberty stipulates several civil and political rights, including the right to life, body and dignity, personal liberty and privacy. An amendment to section 1 adopted in 1992 provides that: "Fundamental human rights in Israel are founded upon recognition of the value of the human being, the sanctity of human life, and the principle that all persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel."

The Israeli court system is composed of general and specialised courts. Judicial power is vested in the Supreme Court, District Courts,² Magistrates Courts and other court designated by Law. Magistrates courts have original jurisdiction in criminal matters over most offences that carry a maximum punishment of seven years. The jurisdiction of magistrates court in civil matters generally depends upon the monetary value of the claim. District courts have jurisdiction over all criminal and civil matters that do not fall within the jurisdiction of the magistrates courts. They also have general residual jurisdiction to hear any matter that is not under the exclusive jurisdiction of any other court or tribunal. The Supreme Court hears appeals against judgments and other decisions of the District Courts as well as other matters conferring it jurisdiction by law, such as sitting as the High Court of Justice.³ Article 2 of the Basic Law: Judiciary provides for the independence of the judiciary.

¹ See Ruth Levush, A guide to the Israeli Legal System, 2001. See <http://www.llrx.com/features/israel.htm>

² Geographically, jurisdiction is divided among five judicial districts: Jerusalem, Tel-Aviv, Haifa, Beer-Sheva, and Nazareth. Magistrates' and district courts have jurisdiction throughout their respective areas or districts where these courts sit.

³ See Basic Law: Judiciary, 1984.

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Recently, new administrative courts were established. Special courts, such as military justice courts have jurisdiction over the armed forces in accordance with the Military Justice Law of 1955. In addition, there are Courts Martial in the Occupied Territories under orders of the Military Commander of the Territories and the Courts Martial under the Defense (Emergency) Regulations 1945.

1.2. Incorporation and status of international law in domestic law

Israel has ratified or acceded to the following relevant international treaties on human rights and humanitarian law⁴:

- Genocide Convention (9 March 1950)
- Geneva Conventions (6 July 1951)
- CERD (3 January 1979)
- ICCPR (3 October 1991)
- ICESCR (3 October 1991)
- Convention against Torture (3 October 1991)
- CRC (3 October 1991)
- CEDAW (3 October 1991)

Israel is a dualist state, which means that for international treaties to have status in domestic law, the Knesset needs to enact specific legislation incorporating the treaty into domestic law, unless a treaty (or specific provisions thereof) is deemed to be part of general international law. Customary international law is part of the law of the land and binding without incorporation by statutory legislation unless it conflicts with an existing statute.⁵ No legislative measures have been introduced to incorporate the above treaties into domestic law with the exception of the Genocide Convention.⁶ International treaties, including the Convention against Torture, have been referred to both by lawyers and NGOs petitioning the Supreme Court, and by the State in response to such petitions. The Court has also mentioned such treaties, but has not held them directly applicable in domestic Israeli law.⁷ For example, in the 1999 case on the legality of torture, the Public Committee against Torture in Israel (PCATI) and other NGOs argued that interrogation methods used by the General Secret Service (*Shabak*) (GSS) constituted torture under the Convention against Torture, the State argued that they did not, and the Court refrained from pronouncing on that matter.⁸ However, as a general rule,

⁴ Date of accession or receipt of instrument by UN.

⁵ See Eyal Bevenisti, The Attitude of the Supreme Court of Israel towards the Implementation of the International Law of Human Rights, in B.Conforti and F. Francioni (eds.), *Enforcing International Human Rights in Domestic Courts*, 1997, pp.207-221, at 207, 208.

⁶ Crime of Genocide (Prevention and Punishment) Act of 29 March 1950.

⁷ See overview of jurisprudence of the Israeli Supreme Court, *ibid.*, at pp. 211 et seq.

⁸ See *infra*, I, 2.2.

existing statutes are to be interpreted in such a manner that they conform to the greatest extent possible with international law.⁹

2. Practice of torture: Context, Occurrence, Responses

2.1. The practice of torture

Torture and ill-treatment are reported to have been applied systematically since 1987, especially during the course of the first and second Palestinian uprisings known as intifada, the first of which lasted from 1987 to 1991, when the Oslo accords were signed, and the second, ongoing, which began in October 2000.

Before the ruling of the Supreme Court on the legality of torture in 1999, certain methods of torture were considered to be legal in accordance with the guidelines of the Landau Commission issued in 1987.¹⁰ Even after the Supreme Court ruling, these methods reportedly continued to be used albeit to a lesser degree.¹¹ The main perpetrators of torture have been the GSS, in some cases with the assistance of physicians¹², the Israel Defense Forces (IDF) and the police, including the border police. The GSS and the IDF have reportedly been largely responsible for torture committed against Palestinians¹³, most of which occurred in the occupied areas.¹⁴ While police have reportedly also ill-treated and tortured suspects of ordinary criminal crimes to coerce

⁹ *Hilu et al. v State of Israel et al.*, 27 (2) P.D. 169,177 (1993); *Custodian of Absentee Property v Samra et al.*, 10 P.D. 1825, 1831; 22 ILR 5 (1956); *Poraz v The Major of the Municipality of Tel-Aviv-Jaffa et al.*, 42 (2) P.D. 309,329 (1988) cited in Beyestini, supra, at 208, Fn.6, 7.

¹⁰ See on this point infra, 2.2.2. The human rights organisation B'Tselem estimates that between 1987 and 1999, the GSS annually interrogated between 1,000 and 1,500 Palestinians. It used methods constituting torture against some 85 % of them, that is, at least 850 persons a year. The torture methods routinely used by the GSS have been documented and illustrated by hundreds of testimonies given by Palestinian detainees to Israeli, Palestinian, and international human rights organizations, in affidavits submitted by detainees to the High Court of Justice, and in the state's responses to petitions against torture. Representatives of the GSS and the State Attorney's Office confirmed the use of most of the methods, which included the following techniques: depriving the detainee of sleep for a number of days by binding him or her in painful positions; playing loud music; covering their head with a filthy sack; exposing the detainee to extreme heat and cold; tying them to a low chair, tilting forward; tightly cuffing the detainee's hands; having the detainee stand, hands tied and drawn upwards; having the detainee lie on his back on a high stool with his body arched backwards; forcing the detainee to crouch on his toes with his hands tied behind him; violent shaking of the detainee, the interrogator grasping and shaking him; using threats and curses, and feeding him poor-quality and insufficient amounts of food. See B'Tselem, *Torture as a Routine: The Interrogation Methods of the General Security Service*, Jerusalem, February 1998, and *The Public Committee against Torture, The Case against Torture in Israel: A Compilation of Petitions, Briefs and Other Documents submitted to the Israeli High Courts of Justice*, Jerusalem, May 1999.

¹¹ See Public Committee against Torture in Israel, *Flawed Defense, Torture and Ill-treatment in GSS Interrogations following the Supreme Court ruling*, 6 September 1999-6 September 2001, September 2001, pp.24 et seq.

¹² See Hadas Ziv, *Physicians and Torture-The case of Israel, Physicians for Human Rights-Israel, 1998???*

¹³ See B'Tselem, *Standard Routine, Beatings and Abuse of Palestinians by Israeli Security Forces during the Al-Aqsa Intifada*, May 2001, PCAT, supra, and Amnesty International, *Israel and the Occupied Territories, Mass Detention in cruel, inhuman and degrading conditions*, May 2002, AI Index: MDE 15/074/2002.

¹⁴ See on the legal framework, i.e. international human rights and humanitarian law applicable in the West Bank and Gaza Strip, Amnesty International, *Israel and the Occupied Territories: Shielded from scrutiny: IDF violations in Jenin and Nablus*, November 2002, AI-Index: MDE 15/143/2002, pp.58 et seq. and *Question of the violation of human rights in the occupied Arab territories, including Palestine*, Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, UN Doc. A/57/366, 29 August 2002, VIII.

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confessions in the course of criminal investigations, the bulk of torture cases have been reported in investigations relating to "terrorist activities" carried out by the GSS. The targeted persons included political activists of Islamic movements, students and religious persons suspected of being pro-Islamic, or active in Islamic charitable organizations, relatives of persons listed as "wanted." Those abducted or transferred from the territory in South Lebanon under Israeli occupation until 2000 have also been tortured and ill-treated. Reportedly, wives of detainees were also arrested during their husbands' detention, and mistreated to put further pressure on their husbands. Also, GSS agents have reportedly tortured Palestinians to coerce them into becoming collaborators. The interrogation methods are mainly employed to force confessions but appear to be part of an institutionalized form of ill-treatment, some of which have not been explicitly outlawed in Israeli law.¹⁵ Since the beginning of the second uprising, numerous cases of torture and ill-treatment, including incommunicado detention, have been documented by national and international human rights organisations.¹⁶

Israeli forces have reportedly also committed serious human rights violations as part of the acts of violence committed by both sides of the conflict throughout the last two years, some of which, such as the destruction of houses and settlements and the blocking of medical and humanitarian relief, may amount to torture or constitute ill-treatment.¹⁷

2.2. Domestic Responses

In 1987, the government appointed the Landau commission headed by former Supreme Court President Moshe Landau. Its brief was to examine the GSS interrogation report. The Commission held 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."¹⁸ "The Commission argued that the state and the GSS interrogators could raise the defence of "necessity" as provided in Penal Law, which would be applicable in the "ticking bomb" scenario. In the second part of its report that has not been made public, the Commission laid down guidelines that prohibit "excessive" use of force and the principle of proportionality.¹⁹

In 1995 and 1996, two proposals to enact laws which would have allowed the use of physical pressure in exceptional situations were submitted to the Knesset but not

¹⁵ See on the use of "moderate physical pressure", *infra*, 2.2.

¹⁶ See PCATI, *supra*, pp. 24 et seq. and the recent reports and press releases by BTselem (www.btselem.org); PCATI (www.stoptorture.org.il); the Association for Civil Rights in Israel (www.acri.org); Amnesty International (www.amnesty.org) and Human Rights Watch (www.hrw.org).

¹⁷ See AI, *Israel and the Occupied Territories, Shielded from scrutiny*, *supra*.

¹⁸ "Such circumstances include situations in which information sought from a detainee believed to be personally involved in serious terrorist activities can prevent imminent murder, or where the detainee possesses vital information on a terrorist organization which could not be uncovered by any other source..." See Second periodic reports of States parties due in 1996: Israel, UN Doc. CAT/C/33/Add.2/Rev.1, 18 February 1997, para.5.

¹⁹ See on this point *ibid.*, Third periodic reports due in 2000, Israel, UN Doc. CAT/C/54/Add.1, 4 July 2001 and The Public Committee against Torture in Israel, *The Case against Torture in Israel: Compilation of Petitions, Briefs and Other Documents Submitted to the Israeli High Court of Justice*, Jerusalem, May, 1999.

adopted. The Supreme Court ruled on the legality of using interrogation methods which amount to torture or ill-treatment in the case of *Public Committee Against Torture in Israel v. the State of Israel* (HCJ 5100/94) of 6 September 1999.²⁰ It held that GSS interrogators have no special interrogation powers differing from the powers of ordinary police force investigators. It stated, in addressing claims of the State Attorney's Office to the effect that international law allows torture and ill-treatment in the form of "moderate physical pressure" that: "(A) reasonable investigation is necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever. These prohibitions are "absolute." There are no exceptions to them and there is no room for balancing." The Court considered each specific interrogation method and found them not to be reasonable and therefore prohibited. It further held that the necessity defence did not constitute a source of authority for GSS investigators to make use of physical means of coercion during the course of interrogations. Consequently, the general directives authorising the use of physical means during interrogation infringed upon a suspect's liberty and were for this reason nullified by the Court. However, the Court did not clearly state that the interrogation methods constituted torture.

In response to the court ruling, Likud MK Reuven Rivlin submitted a bill that would have allowed the use of physical force by the GSS in its interrogations. Various public officials have since called for similar legislation allowing such methods. However, also in light of the strong international reactions, none of these proposals won sufficient support to become law.

In 2000, the Ministry of Justice appointed a steering committee, which was tasked with carrying out thorough research on the development of a Human Rights Commission in Israel.²¹ It is expected that such a Human Rights Commission will be established in due course.

2.3. International Responses

Since Israel submitted its first country report to the CAT, the latter has repeatedly criticised the deficiencies in Israeli law, which ostensibly justify interrogation methods that amount to cruel, inhuman or degrading treatment, or even torture. The Committee reviewed the methods of interrogation used by the GSS and held that: "The methods of interrogation, which were described by non-governmental organizations on the basis of accounts given to them by interrogees and appear to be applied systematically, were neither confirmed nor denied by Israel. The Committee must therefore assume them to be accurate. Those methods ... are, in the Committee's view, breaches of article 16 and also constitute torture as defined in article 1 of the Convention. This conclusion is particularly evident where such methods of interrogation are used in combination, which appears to be the standard case. The Committee acknowledges the terrible dilemma that Israel confronts in dealing with terrorist threats to its security, but as a State party

²⁰ See *Public Committee Against Torture in Israel v. the State of Israel* (HCJ 5100/94), excerpts of which can be found in Israel's third report to CAT, supra, paras. 4 et seq.

²¹ See *Consideration of reports submitted by States parties under article 40 of the Covenant: Israel*. UN Doc. CCPR/ISR/2001/2, 4 December 2002, para.13.

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to the Convention Israel is precluded from raising before this Committee exceptional circumstances as justification for acts prohibited by article 1 of the Convention. This is plainly expressed in article 2 of the Convention.²² This conclusion was echoed by the Human Rights Committee.²³

In 2001, the Committee against Torture expressed its concerns about the lacunae left by the 1999 Supreme Court ruling, continuing allegations concerning the use of interrogation methods against Palestinian detainees that were prohibited by that ruling, allegations of torture and ill-treatment against Palestinian minors, continued use of incommunicado detention and the fact that despite numerous allegations of torture and ill-treatment by law enforcement officials, very few prosecutions have been taken against alleged perpetrators.²⁴ Since the beginning of the present uprising, several international bodies and countries have expressed their concern about the inhuman treatment of Palestinians, mainly in the occupied territories, at the hands of Israeli security forces.²⁵

II. PROHIBITION OF TORTURE UNDER DOMESTIC LAW

There is no specific prohibition of torture in Israeli law. However, section 2 of Basic Law: Human Liberty and Dignity prohibits any "violation of the life, body or dignity of any person as such", and section 4 of the Basic Law states that: "All persons are entitled to protection to their life, body and dignity." While the Supreme Court in its 1999 judgment held that the prohibition of torture is absolute, the Basic Law appears to allow derogations to sections 2 and 4.²⁶

Israeli legislation does not contain a definition of torture. The Supreme Court, in its 1999 judgment described above, refrained from using the term 'torture,' as defined in Article 1 of the Convention against Torture, as the yardstick in assessing the interrogation techniques used by the GSS.

²² Committee Against Torture, Concluding Observations/Comments: Israel, UN Doc. A/52/44, 9 May 1997, paras. 255-258.

²³ Concluding observations of the Human Rights Committee: Israel, UN Doc. CCPR/C/79/Add.93, 18. August 1998, para.19.

²⁴ Conclusions and Recommendations of the Committee against Torture: Israel, UN Doc. CAT/C/XXVII/Concl.5, 12-23 November 2001, para.6. See also Summary record of the 480th meeting: Israel, UN Doc.CAT/C/SR.480, 21 May 2001 entitled Discussion on the Situation of the Palestinian occupied territory in the light of article 16 of the Convention.

²⁵ See e.g. Concluding observations of the Committee on the Rights of the Child: Israel, UN Doc. CRC/C/15/Add.195, 9 October 2002, paras. 36, 37; the Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, UN Doc. A/57/207, 16 September 2002 and Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, supra, which concludes with the following remarks (para.31): "The Occupied Palestinian Territory is a testing ground for human rights and humanitarian law. The great advances in the two bodies of law are undermined by a situation in which human rights and humanitarian law are denied and disregarded with no meaningful response from the international community. The rule of law is one casualty of the conflict in the Occupied Palestinian Territory, but the main casualties are the people of Palestine and of Israel."

²⁶ Section 12: "This Basic Law cannot be varied, suspended or made subject to conditions by emergency regulations; notwithstanding, when a state of emergency exists, by virtue of a declaration under section 9 of the Law and Administration Ordinance, 5708-1948, emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than is required."

III. CRIMINAL ACCOUNTABILITY OF PERPETRATORS OF TORTURE

1. The substantive law: Criminal offences and punishment

There is no specific offence of torture in the Israeli Criminal Code. Several criminal offences allow for the imposition of punishments for certain acts amounting to torture. For example, Section 277 of the Penal Law 1977 provides that: "A public servant who does one of the following shall be liable to three years of imprisonment: (1) uses, or orders the use of force or violence against a person in order to force out of him, or out of another in whom he has an interest, an admission to an offence or information relating to an offence; (2) threatens a person, or orders that a person be threatened, with bodily harm or harm to property, either his own or that of another in whom he has an interest., in order o force out of him an admission to an offence or information relating to the offence."

Assault,²⁷ grievous bodily harm, assault in aggravated circumstances and the offence of maliciously causing bodily harm are subject to punishment of up to 3, 7, 10 and 20 years imprisonment respectively.²⁸ Manslaughter carries a maximum penalty of 20 years imprisonment, murder is punishable by life imprisonment and causing death by negligence by up to three years' imprisonment.²⁹

The attempt to commit any of the above-mentioned crimes is itself a criminal offence, and those who incite or act as accessories in a crime are considered parties to a crime and liable to punishment.³⁰

Perpetrators of torture or ill-treatment may be able to invoke the defence of necessity in the circumstances outlined by the Supreme Court in its 1999 ruling. Section 34 (11) of the Penal Code defines the defence of necessity as follows: "A person shall not bear criminal liability for an act which was immediately necessary in order to save the life, freedom, person or property, be it his own or that of another, from a concrete danger of severe harm stemming from the conditions existing at the time of the act, and having no other way but to commit it."

The Military Justice Law applicable to military personnel also contains an offence of ill-treatment punishable by imprisonment of up to three years.³¹

²⁷ "Assault" is defined as directly or indirectly striking, touching, pushing or otherwise applying force to the person of another without his consent or with his consent obtained by fraud; it specifically includes "the application of heat, light, electricity, gas, odour or any other thing or substance if applied in such a degree as to cause injury or discomfort", see Section 378 Penal Code.

²⁸ Sections 380, 333, 382 and 329 Penal Code, the latter of which provides: "A person who does one of the following with intent to disable, disfigure or do grievous harm to another or to resist or prevent the lawful arrest or detention of himself or another is liable to imprisonment for 20 years: (1) unlawfully wounds or does grievous harm to a person; (2) unlawfully attempts to strike a person with a projectile, knife or other dangerous or offensive weapon..."

²⁹ Sections 298, 300 and 304 Penal Code.

³⁰ See relevant provisions of Chapter V of the Penal Code, the English version of which can be found in Second periodic reports of States parties due in 1996: Israel, UN Doc. CAT/C/33/Add.3, 6 March 1998, para.27.

³¹ Section 65 of the Military Justice Law, 5715-1955: "A soldier who strikes or otherwise maltreats a person committed to

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Disciplinary sanctions are imposed in accordance with the Police Ordinance or similar regulations for the security forces. They are issued by the Disciplinary Department of the Israel Police or imposed by Disciplinary Tribunals.

2. The procedural law

2.1. Immunities

There are no laws providing immunity or amnesty to perpetrators of torture.

2.2. Statutes of Limitation

Criminal offences are prescribed after twenty years in the case of a felony punishable by death or imprisonment for life and ten years in the case of any other felony. Misdemeanours are subject to a statute of limitations of five years and contraventions to a limitation period of one year.³² Genocide and crimes stipulated in the Nazis and Nazis Collaborators (Punishment) Law, 5710-1950 are not subject to any prescription.³³ As a result, most criminal offences applicable in lieu of a specific crime of torture are subject to a period of limitation of ten years.

2.3. Criminal investigations

Any person may lodge a complaint with the police.³⁴ In addition, charges can be brought directly to the court by filing a private complaint with the court for a number of specified offences that carry minor punishments, including assault but not extortion of confessions or abuse of office.³⁵ Moreover, "no private complaint under this Article shall be filed against a State employee for an act done in the discharge of his functions."³⁶

Since 1994, detainees' complaints are to be made to the State Attorney or can be made in *habeas corpus* proceedings or directly before the High Court.³⁷ Complaints against the military are processed by the Military Prosecution (Military Investigation Unit).

The police are responsible to investigate all criminal offences and the prosecution service is competent to bring prosecutions.³⁸ The Department for Investigations of Police Misconduct (DIPM), which is responsible to the State Attorney, investigates allegations

his custody or a soldier inferior to him in rank is liable to imprisonment for a term of three years."

³² Section 9 (a) Criminal Procedure Law (Consolidated Version) 5742-1982.

³³ Section 9 (b) CPL.

³⁴ Section 58 CPL.

³⁵ Section 68 CPL.

³⁶ Section 69 CPL.

³⁷ See Israel's second report to CAT, *supra*, paras.37 et seq. See for available complaints procedures, *ibid.*, paras.80 et seq.

³⁸ Sections 59, 62 and 11,12 CPL.

of criminal conduct by members of the police. Investigations concerning the conduct of the GSS are processed by the Special Tasks Division of the State Attorney's Office. As a matter of general practice, complaints against GSS members are investigated by the GSS's department of internal investigations, i.e. the "Official in Charge of Investigating Interrogees' Complaints" who is himself a member of the GSS. According to information provided by the State Attorney, this official receives "professional guidance" from the State Attorney's Office, and acts according to their instructions.³⁹

The police are obliged to investigate every complaint. However, a chief-inspector or a higher ranking officer can decide not to investigate if the act does not constitute an offence and if the chief inspector believes that there is no public interest in investigating the complaint or if another authority has jurisdiction over the crime.⁴⁰ The police will carry out an initial investigation where all available evidence is compiled and they may, as part of this process, have the victim of a crime medically examined. Medical records should also be available in prison records, as a suspect who has been arrested should be brought for a medical examination within 48 hours.⁴¹

The police are to submit any material obtained in the course of the investigations to the competent District Attorney who may direct the police to continue investigations if deemed necessary for a decision as to whether to prosecute the suspect.⁴² The District Attorney's Office is to indict the suspect if there is sufficient evidence that the suspect has committed the crime.⁴³ However, the prosecutor can decide not to indict the suspect if he or she is of the opinion that there is no public interest for doing so.⁴⁴ If the suspect is indicted, he/she may be taken into custody.⁴⁵

If the police or the District Attorney's Office decide not to investigate or prosecute, the complainant, who shall be notified of such a decision and the reasons for it in writing, has the right to lodge an objection with the Attorney General within thirty days of notification.⁴⁶ Anyone can file a petition to the High Court of Justice against the Attorney General if he/she decides not to prosecute a suspect either on the ground of no public interest or of insufficient evidence. The High Court of Justice will intervene in the Attorney General's decision only on the grounds of extreme unreasonableness.⁴⁷

³⁹ See PCATI, Flawed Defense, *supra*, p.23.

⁴⁰ Section 59 CPL.

⁴¹ Israel Prison Services Guidelines, Chapter 4, No.04.44.00. See also Physicians for Human Rights-Israel, Rights in Custody, 2000.

⁴² Sections 60, 61 CPL.

⁴³ Section 62 CPL. In HCJ 2534/97 *M.K. Yahav et al v. State Attorney et al* 51 (3) P.D.1, the court ruled that sufficient evidence means that the prosecutor must be convinced that there is a reasonable possibility of conviction.

⁴⁴ Section 62 CPL.

⁴⁵ Section 2 (1) Arrest Law.

⁴⁶ Sections 64, 65 CPL. Such an objection may not be lodged in respect of offences enumerated in the Second Schedule of the CPL as they are subject to a private complaint procedure, *supra*.

⁴⁷ *HCJ Afel v The State's Attorney* 55 (3) P.D. 406.

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In cases of death in custody or in other suspicious circumstances, relatives of the deceased or the Attorney-General, a police captain or a doctor may apply to a magistrate to carry out an investigation.⁴⁸ The magistrate has the power to investigate the cause of death of a person when there are reasonable grounds that the death was not due to natural causes, or was caused by a criminal act, or the person died while detained or imprisoned.⁴⁹ In the latter case, the officer in charge of the detention centre or prison must to notify the police of the death.⁵⁰ In carrying out the investigation, the magistrate may examine witnesses and order an autopsy. If he or she considers the evidence sufficient to prove the commission of a criminal offence, the magistrate has the discretionary power to order the District Attorney to file an indictment for the offence in question.⁵¹

The recently enacted Crime Victims Rights Act of 21 June 2001 provides for a number of rights in addition to the procedural rights of victims existing under general criminal procedure. According to the Act, victims of crime have the right to protection from intimidation from offenders, to have their identity concealed from the public, to be informed about any developments in the case, to make and present a victim impact statement, to be notified if the offender escaped from legal custody, to a hearing before granting the offender early release from custody and, for victims of a sex crime, to special consideration during investigation and trial.⁵²

2.4. Trials

Upon indictment by the District Attorney General,⁵³ cases against police officers and members of the GSS are heard by magistrates or district courts. Cases against members of the IDF are tried by military courts having jurisdiction over criminal offences.

Trial proceedings are adversarial and the prosecution has to prove the guilt of the accused beyond reasonable doubt. The court has discretionary sentencing power. Convicts may apply for parole after the completion of 1/3 of their sentence and the President may pardon convicts.⁵⁴

⁴⁸ Section 19 of the Criminal Procedure Amendment (Investigation of Felonies and Causes of Death) Law, 5718-1958.

⁴⁹ Ibid.

⁵⁰ Sections 22-23 *ibid.* The failure to notify the police carries a punishment of a term of up to three years' imprisonment.

⁵¹ Section 32 *ibid.*

⁵² Victims of a sexual offence or violence have the right to express their views to the prosecutor if he/she intends to reach a plea-bargain. However, the District Attorney can oppose this if he/she believes that exercising this right may seriously harm criminal proceedings. Moreover, victims have a right to send a written statement to the parole committee that is hearing the convict's request to be paroled or to the President before he/she decides whether to pardon or reduce the convict's sentence. These rights are transferred to family members of the victim if the offence caused his/her death.

⁵³ Sections 67 and 85 CPL.

⁵⁴ See Section 11 (6) (b), Basic Law: The President of the State, 16 June 1964.

3. The Practice

Torture survivors have lodged numerous complaints about torture and ill-treatment. While criminal proceedings have been successfully instituted against police officers,⁵⁵ members of the GSS and IDF have largely escaped prosecution for torture and ill-treatment committed against Palestinians.

From 1987 to 1999, most complaints of torture were rejected as unfounded since the methods employed were considered legal under the guidelines of the Landau commission. In a noteworthy case in 1995, in which a suspect died after having been violently shaken to extract information, the State Attorney found the shaking to be justified under the circumstances and decided against bringing criminal charges on the grounds that the interrogators could not have foreseen the possibility of causing death.⁵⁶ During the same period, the High Court received hundreds of petitions of detained Palestinians who complained that physical force and psychological pressure had been used against them during GSS interrogations. The majority of these petitions were rejected with reference to the legality of the interrogation methods under the guidelines of the Landau commission.⁵⁷ In so doing, the High Court refused to rule on questions of principle, such as whether the GSS interrogation methods constituted torture and whether they are legal under Israeli and international law. Following the judgment, government legal advisers reportedly reviewed the legality of the use of "moderate physical pressure", however no cases are known in which such reviews resulted in a decision to open criminal proceedings against the alleged perpetrators.

The current procedures for the investigation of allegations of torture against the GSS discourages victims from complaining as such investigations are effectively carried out by the GSS itself. Such investigations lack transparency and complainants have often received a simple notification stating that the acts complained about have been investigated and that the concerned officers acted in accordance with regulations.

This has also been the case in relation to investigations against members of the police or the IDS before 1999 who had used torture methods permitted by guidelines of the Landau commission. As a general rule, "ticking bomb" cases would be referred to the Attorney General, who would then decide if the facts justified the defence of necessity in which case the concerned officer would be exempt from criminal liability.⁵⁸ After the

⁵⁵ The official statistics provided by Israel do not provide a break-down as to the number of complaints of torture and action taken in response to such complaints. See 2001 State Report to the Human Rights Committee, *supra*, pp.26, 27, which contains an overview of the cases handled by the Department for Investigation from 1997 to 1999, of which less than 10% resulted in charges being brought. See for earlier figures, Initial report of States parties due in 1993: Israel, UN Doc. CCPR/C/81/Add.13, 9 April 1998, paras.205 et seq.

⁵⁶ See Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission Resolution 1995/137, UN Doc. E/CN.4/1997/Add.1, 20 December 1996, para.267.

⁵⁷ See, e.g., *Crim. App. 532/91, Anonymous Persons v. the State of Israel*, in which Justice Aharon Barak held that the solution offered by the Landau Commission for the problem of GSS interrogations "is appropriate", and *HJC 2581/91, Salhat v. the Government of Israel, 47(4) P.D. 837* in which the Court rejected a petition against the adoption of the Landau Commission's recommendations. See also *HJC 7964/95, Bilbeisi v. the General Security Service, HJC 8049/96 and Hamdan v. the General Security Service*. In both of these cases, the Court allowed the GSS to exercise "physical measures," and the use of the "necessity defense." See also *HJC 8124/96, Mubarak v. the General Security Service*.

⁵⁸ The State Attorney General, Dr. Elyakim Rubinstein, published a document containing the principles according to which he would guide himself in such cases. See State Attorney General, GSS Interrogations and the Necessity Defense – Framework for Attorney General's Deliberation (following the HCJ ruling), Jerusalem, 28 October 1999. Document

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ruling of the Supreme Court, the same holds true for some methods possibly amounting to torture that have not been clearly outlawed in the judgment. In another noteworthy case, the State Attorney's office informed PCATI in early 2002 that an investigation into serious complaints of torture which the organisation had filed, concluded that the interrogation methods used against each of the two tortured detainees were justified, as they had been suspected of placing 'a ticking bomb.' The interrogators therefore enjoyed immunity from prosecution under the defence of necessity, and no criminal or disciplinary measures were taken against them.⁵⁹ The State Attorney's office did not deny any of the factual claims made in PCATI's letters regarding the torture methods used by GSS agents. In other cases, detainees have refrained, largely out of a fear of adverse repercussions, from recounting their complaints before GSS investigators in the course of the investigation, which has in turn led to the dismissal of such complaints by the State Attorney as false and unreliable. Reportedly, since 1994, when the investigation of detainees' complaints was transferred to the State Attorney, there has not been a single trial of GSS interrogators even in cases where detainees left GSS custody with visible injuries. The only sanction imposed on an interrogator who had reportedly tortured a detainee to death was a temporary suspension.⁶⁰

Complaints against the military are routinely sent by the Judge Advocate's Office to MIU for investigation. In most of these cases, the MIU has reportedly investigated the allegations superficially.⁶¹ The MIU mainly confined itself to questioning the soldiers against whom the complaints were filed but did not interview victims and other witnesses nor examine medical evidence. Moreover, at the beginning of the present conflict, the Judge Advocate's office informed B'Tselem that, unlike its previous policy, it does not intend to open MIU investigations where Palestinians are injured by security forces' gunfire.⁶² This policy deviates from the one that had been followed prior to the beginning of the present conflict, according to which the MIU was to investigate every case where a Palestinian was killed or seriously injured by security forces' gunfire.⁶³ Consequently, most cases against Palestinians who complained of beatings and abuse by IDF soldiers are closed without charges being brought.⁶⁴

available at PCATI office.

⁵⁹ See Letters from the State Attorney's Office regarding PCATI's complaints concerning Nasser 'Ayyad, 28 February 2002, and regarding Jihad Shuman, 7 March 2002.

⁶⁰ See PCATI, *Flawed Defense*, p.24.

⁶¹ B'Tselem, *Standard Routine: Beatings and Abuse of Palestinians by Israeli Security Forces during the Al-Aqsa Intifada*, Jerusalem, May 2001.

⁶² According to the Judge Advocate's Office, "Based on a view of the current situation in the areas as an armed conflict and based on customary military norms in a combat situation, we think that it is improper to open MIU investigations solely on the basis of persons being injured as a result of the combat situation, unless there is suspicion of a gross violation of the binding rules of conduct." Letter of 28 January 2001 from Lt. Col. Liron Liebman, Deputy Chief Military Prosecutor, to B'Tselem.

⁶³ See B'Tselem, *Illusions of Restraint: Human Rights Violations during the Events in the Occupied Territories*, 29 September – 2 December 2000, December 2000, pp. 18-20.

⁶⁴ HaMoked, Center for the Defence of the Individual, *Fleeing Responsibility: The Military's Handling of Palestinian Complaints against Soldiers*, November 1997 and Amnesty International, *Press Release, Israel/Occupied Territories: Conscientious objectors jailed while soldiers who commit grave violations enjoy impunity*, Press Release, December 2002, AI Index MDE 15/169/2002.

There have, however, been some instances arising in the course of the present conflict where members of the army were charged with torture. In one case in October 2002, an army commander was charged with torturing a boy and was awaiting court martial.⁶⁵

The role of courts in ensuring the proper investigation and prosecution of perpetrators of torture has been limited. The courts are not seen to have taken a pro-active stance against torture, neither during the period when the guidelines of the Landau Commission were in force nor since the beginning of the present conflict.⁶⁶

IV. CLAIMING REPARATION FOR TORTURE

1. Available Remedies

1.1. Constitutional Law

The Basic Law does not provide for a right to reparation for human rights violations. While the Supreme Court may acknowledge that the violation of basic rights guaranteed in the basic law could give rise to the right to reparation, to date there has not been any such case.

1.2. Civil Law

Claims for compensation for torture under civil law can be based on the torts of assault, battery, malicious prosecution, breach of statutory duty, wilfully causing damage and negligence.⁶⁷ Such claims may also be based on a violation of the basic right to dignity and to physical integrity as set forth in the Basic Law. The State is liable for wrongs committed by its officials, either directly or vicariously.⁶⁸ This applies to intentional wrongs and negligence.⁶⁹ However, the State is exempt from tortious strict liability for any action done under authority conferred by law or *bona fide* belief in the purported exercise of lawful authority. The same principle applies to the personal liability of public officials.⁷⁰ In addition, the State and its officials are only liable for the acts of other officials if they explicitly authorised such tortious conduct, either before or after the act was committed.⁷¹ If there was no such authorisation or the perpetrator cannot be identified, the claim for compensation can only be based on negligence, which covers

⁶⁵ See Chris McGreal, Commander charged with torturing Palestinian boy, Guardian, 22 October 2002.

⁶⁶ See supra, fn.57 on jurisprudence before the 1999 ruling. See also, LAW (The Palestinian Society for the Protection of Human Rights and the Environment), PCATI (The Public Committee against Torture in Israel) and OMCT (The World Organisation Against Torture), Submission Concerning Israel's Policies in the Occupied Palestinian Territories relevant to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, May 2002, p.11.

⁶⁷ See Sections 3, 23-34a and 42-63 of the Civil Wrongs Ordinance (New Version), 2 L.S.I. 5 (1972).

⁶⁸ Section 2 Civil Wrongs (Liability of the State) Law, 6 L.S.I. (1951-1952).

⁶⁹ Section 3 State Liability Law.

⁷⁰ Section 6 and 7 (a) State Liability Law.

⁷¹ Section 7 (b) State Liability Law and Section 25 CWO.

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any act or omission, which a reasonable and conscientious person would have abstained from in the circumstances.⁷²

A significant limitation on liability exists with regard to military action. The State and soldiers are not liable for any act committed in the course of wartime operations by the Israel Defense Force.⁷³ However, jurisprudence has not construed the relevant provisions as excluding liability for acts committed in the course of maintaining public order and law enforcement, such as torture. Against this background, in 1997, the Israeli Ministries of Justice, Finance and Defense brought a joint initiative to prevent Palestinians killed and injured during the first uprising (estimates range from 1,000 Palestinians killed and 18,000 injured) from claiming compensation before the courts. The proposed law would have denied compensation to Palestinians living in the occupied territories and would have granted complete exemption of the state from liability for wrongful acts that caused bodily injury during the time specified. The victims of such act would have been able to receive *ex gratia* payments on the basis of humanitarian considerations only.⁷⁴ The proposal did not succeed but in 2001, a similar law was proposed which was approved by the Knesset on 24 July 2002 as the Fourth Amendment to the Civil Wrongs (Liability of the State) Law, (1951-1952). This law is intended to prevent Palestinians from claiming compensation for injuries or damages suffered at the hands of Israeli security forces in the occupied territories during the present conflict. According to the act, the definition of "wartime action" in section 5 of the State Liability Law is extended to cover "any action of combating terror, hostile actions, or insurrection, and also an action as stated that is intended to prevent terror and hostile acts and insurrection committed in circumstances of danger to life or limb." While the Act does not expressly cover torture, it might be invoked to avoid liability in certain cases of ill-treatment.⁷⁵

Where liability exists, damages can be for pecuniary harm, including loss of income and costs of rehabilitation, and non-pecuniary harm. Neither exemplary nor punitive damages are allowed. In case of the death of the victim, the dependants of the victim may claim compensation from the perpetrator and the State.⁷⁶

A torture survivor or relatives of a torture victim may bring a suit for damages before the competent civil court within a time limit of seven years.⁷⁷ The plaintiff is required to pay 2.5% of the amount demanded as court fees. The order of payment depends on the

⁷² Sections 35 and 36 CWO.

⁷³ Sections 5 and 7 B of the State Liability Law. The courts have construed these sections as not applying to non-combat military activities, including the enforcement of orders during a war. See *Levi v State of Israel* (1986) 40 (i) P.D.477; *State of Israel v Ohana* (1988) 42 (iii) P.D.

⁷⁴ State of Israel, Ministry of Justice, Memorandum of Law Concerning Handling of Suits Arising from Security Force Activities in Judea, Samaria and the Gaza Strip (Exemption from Liability and granting of Payment) 1997-5757, 20 March 1997, File No.2-1878.

⁷⁵ See Position of Human Rights Organizations on the Proposed Law to Deny Compensation to Persons Injured by Israeli Security Forces in the Occupied Territories, 26 June, 2002, at http://www.btselem.org/English/Special/Compensation_Law/Position_Paper.asp.

⁷⁶ Section 7 CWO, Section 2, State Liability Act.

⁷⁷ Civil Procedure Regulations, 1984.

court the suit is filed with. If the suit is filed with a municipal court, which may rule in proceedings worth not more than 1.5 million NIS (approx. \$320,103 the plaintiff has to pay an amount of about 5,445 NIS (approx. \$1,162) upon filing the suit, whilst if the suit is filed with the District court, relevant for suits of more than 1.5 million NIS, the amount to be paid upon filing the suit is about 34,030 NIS (approx. \$ 7,262).⁷⁸

Plaintiffs are required to plead special damages and prove liability. The burden of proof is on the plaintiff who has to show that it was more probable that events occurred as claimed than not.⁷⁹ Each party must disclose all documents in its possession. The defendant may invoke defences provided for in criminal law, such as necessity, against the tort claim. The decision in the civil suit is independent of the outcome of any related criminal case.

The court has discretion in awarding compensation and costs usually follow the outcome.⁸⁰ A favourable judgment is enforced according to the Execution Law, 1967.

1.3. Criminal Law

It is not possible for a torture survivor to file a supplementary civil lawsuit as part of criminal proceedings.⁸¹ However, he/she may receive compensation as courts have the power to impose an order for compensation on the convicted person, as part of the sentence.⁸² The maximum amount of such compensation is fixed but is increased from time to time.⁸³

2. Practice

No figures of the total number of suits filed for compensation by or on behalf of torture survivors and relatives of victims of torture are available.

Since the first claims for torture filed by NGOs in the 1990s, a considerable number of suits have been filed against the state and individual perpetrators before civil courts many of which have been successful. The repeated attempts by the Israeli government to block compensation claims by Palestinians from the occupied territories attest to the fact that the latter have filed suits against the State and have been awarded compensation for various human rights violations, including torture and ill-treatment. A case has also been brought in relation to the treatment of a Lebanese citizen abducted from Lebanon by IDF soldiers and subsequently tortured in Israel.⁸⁴

⁷⁸ As to legal fees, they may be agreed upon freely between the plaintiff and the attorney. The parties may agree upon hourly fees, as well as a contingency fee. Contingency fees are quite common in tort claims and the Israeli Bar Association recommends contingency fees between 11 - 20%.

⁷⁹ Civil Appeal 6238/97, *Hayo vs. Ventura*, published in PADI, 52 (3), 254.

⁸⁰ Section 511 of the Civil Procedure Regulations.

⁸¹ See the express wording to this effect in section 4 CPL.

⁸² Section 77 Penal Code.

⁸³ According to section 77 Penal Code, the current amount is 84,000 NIS, which equals about \$10,243.

⁸⁴ Mustafa Dib Mar'i Dirani v. The State of Israel, In the District Court of Tel-Aviv - Jaffa TA /2000 Un-Official Translation (from the Hebrew) Al Dirani's Claim for Compensation for Torture, *Translated By Amnesty International*,

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While high costs are an obstacle common to all torture survivors who are pursuing civil lawsuits, Palestinians, especially those from the occupied territories, face additional hurdles. Palestinian torture survivors are often distrustful of Israeli Courts. They also have genuine difficulty in accessing justice. Many of them are not allowed to enter the country on the grounds that they present a security risk. While most are eventually allowed entry, the initial refusal leads to delays and an additional barrier. For this reason it is in general difficult to have the plaintiff appear in court. Moreover, Palestinian plaintiffs encounter difficulties in obtaining medical opinions due to the fact that the plaintiffs have to be examined in Israel by Israeli doctors. As they have to enter Israel in order to do this, the lack of timely physical access for many among the Palestinians seriously weakens their case. Finally, even where suits have been filed with Israeli courts, defendants have in some currently pending cases invoked the defence of necessity.⁸⁵

No overview of lawsuits in torture cases is available. There have only been very few rulings so far and the only case published is the Zbeidi case (see below). Some cases have been settled.⁸⁶ Confidentiality in respect of the existence and contents of the settlement agreement is generally one of the State's preconditions for the conclusion of such an agreement. In a case that was settled shortly after the High Court ruling on torture in 1999, the state agreed to pay the torture survivor, Mr. Zbeidi, 438.230 NIS (\$93,519) for the permanent functional disability of 25% suffered as a result of torture by the security forces. The settlement followed a partial ruling on the quantum of damages that was largely based on the consideration of medical opinions submitted. However, the District Court in Jerusalem did not rule on the responsibility of the State and the settlement prevented it from doing so.⁸⁷

V. GOVERNMENT REPARATION MEASURES

There are no government reparation schemes for victims of serious human rights violations. There is, however a program providing financial compensation to victims of "terrorism" but not for victims of crimes in general. Under the scheme operated by the National Insurance Department for Victims of Violence, compensation is awarded for medical expenses, rehabilitation, pension for disabled victims, lost wages or support, rest and recreation allowances, funeral expenses (fixed award) and replacement services.⁸⁸

<http://www.hrw.org/press/2000/04/dirani-brief.htm>.

⁸⁵ Information provided by REDRESS' contacts in Israel.

⁸⁶ There are no official estimates but according to the estimate of an Israeli lawyer the number is small and does not amount to more than ten cases.

⁸⁷ *Zbeidi vs. the State of Israel*, Jerusalem District Court, Civil File 203/93. See on this case Efrat Steiglitz, Compensation Proclamation, in Ha'aretz Magazine, March 10,2000.

⁸⁸ See US Department of Justice, Office of Justice Programs, International Crime Victim Compensation Program Directory, 1998-1999, Resource Directory, p.35. See <http://www.ojp.usdoj.gov/ovc/intdir/pdf/txt/intdir.pdf>

VI. LEGAL REMEDIES IN CASES OF TORTURE COMMITTED IN THIRD COUNTRIES

1. Prosecution of Acts of Torture committed in a third country

1.1. The Law

1.1.1. Criminal Law

Israeli criminal law recognises the active personality and passive personality as well as the protective principle.⁸⁹ Universal jurisdiction can be exercised on the basis of Section 16 of the Penal Code which was inserted in 1995 and provides that: "Israeli penal law shall apply to foreign offences which Israel, by multilateral international conventions, has undertaken to punish even if they are committed by a person who is not an Israeli national or resident of Israel regardless of where they were committed, (b) The restrictions imposed by section 14 (b) (2) and [(3)] shall regulate the incidence of Israeli penal law also under this section."⁹⁰ However, it is not clear whether Section 16 could only be applied in such cases where the concerned international treaty has been incorporated into domestic law. Another basis for the exercise of such jurisdiction is section 17 Penal Code which allows Israeli courts to try cases provided for by an international treaty upon the request of another state on the basis of reciprocity, i.e. the requesting state must have jurisdiction over the crime which Israel is being requested to prosecute. Universal jurisdiction may also be exercised over German war crimes committed during the Second World War and over the crime of genocide.⁹¹ Universal jurisdiction for war crimes may be exercised over those persons falling within the scope of the Military Justice Law.⁹²

Prosecutions involving the exercise of universal jurisdiction require the approval of the Attorney-General which is subject to such prosecutions being in the public interest.

The immunity of diplomatic personnel, heads of states and other government officials is not covered by any statutory law. There have been no decisions on diplomatic immunity up to date. The Supreme Court in the Eichmann case did not recognise any immunity from criminal prosecution for official acts that constitute international crimes. Such immunity might well be refused by Israeli courts to any foreign state officials regardless of their position.⁹³

⁸⁹ See sections 15 and 13 of the Penal Code respectively.

⁹⁰ According to section 14 (b) (2) Israeli law shall apply to such offences only if there is no defence to criminal liability for that offence under the law of the concerned state. Furthermore, Israeli law shall apply only if "the person concerned has not already been acquitted of it in that state and, if he has been convicted of it there, has not served the penalty imposed on him therefore (section 14 (b), (3) Penal Code)."

⁹¹ Israeli Nazi and Nazi Collaborators (Punishment) Law, 5710/1950 and section 5 of the Crime of Genocide (Prevention and Punishment) Act of 29 March 1950.

⁹² See on the exercise of universal jurisdiction in Israel, Amnesty International, Universal Jurisdiction, The duty of States to enact and implement legislation, September 2001, AI-Index IOR 53/009/2001, Chapter IV, Part B, II, Israel.

⁹³ See Attorney-General of the Government of Israel v. Eichmann, 36 ILR 5 (Dist.Ct. Jerusalem 1961), *aff'd*, 36 ILR 277 (Israel 1962).

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1.1.2. Extradition Law

Extradition is governed by the Extradition Law, 514-1954 (in effect as of March 2002). "An extradition offense is an offense which, had it been committed in Israel, would be punishable by imprisonment for one year or by a more severe penalty."⁹⁴ Extradition is carried out on the basis of agreements existing between Israel and the requesting State.⁹⁵ A requested person shall not be extradited if the request for extradition was submitted for an offence of a political character. An offence for which both States have an obligation to extradite in accordance with a multilateral treaty is not deemed to be such an offence.⁹⁶ Moreover, a requested person shall not be extradited if "there are grounds to suspect that the request for extradition was submitted for reasons of racial or religious discrimination against the wanted person."⁹⁷ Israeli nationals shall not be extradited unless the requesting State "has undertaken, in advance, to return the wanted person to the State of Israel for the purpose of serving his sentence in the event he is convicted and a prison sentence is imposed on him."⁹⁸ The District Court decides on the extradition request upon a petition by the Attorney General following directions by the Minister of Justice.⁹⁹

1.2. Practice

Israel has exercised jurisdiction over war crimes committed during World War II in the Eichmann case in 1961 and the John Demjanjuk case in 1993.¹⁰⁰

2. Claiming reparation for acts of torture committed in a third country

Jurisdiction may be established by service of process on the defendant present in Israel, even if such presence is only temporary. However, a court might refuse to exercise jurisdiction on the grounds of *forum non conveniens* if neither the respondent nor the cause of action has any reasonable connection with Israel as the forum.¹⁰¹ If a court

⁹⁴ Section 2 (a) Extradition Law.

⁹⁵ Section 2 A. (a) Extradition Law. A "requesting State" also includes "an international tribunal, as set out in Part A of the Schedule (ICTY and ICTR), requesting the surrender of a person in order to try him, to sentence him or to determine the place where the person will serve a sentence imposed on him by that tribunal (Section 2A. (c) *ibid.*). Section 2 A. (b) *ibid.* provides that "The State of Israel shall act with reciprocity in extradition relations, unless the Minister of Justice determines otherwise."

⁹⁶ Section 2B. (a) and (b) Extradition Law.

⁹⁷ Section 2B. (a) Extradition Law, which also lists the other grounds for refusing an extradition request. This list does not include circumstances where there are substantial grounds to believe that the wanted person will be subjected to torture in the requesting State following extradition.

⁹⁸ Section 1A. (a) Extradition Law.

⁹⁹ See for applicable procedures, Sections 3 et seq. Extradition Law.

¹⁰⁰ See Amnesty International, *Universal Jurisdiction, The duty of States to enact and implement legislation*, September 2001, AI-Index IOR 53/009/2001, Chapter VI, for further references.

¹⁰¹ See Stephen Goldstein, *Declining Jurisdiction: Israel*, in: J.J. Fawcett, *Declining Jurisdiction in Private International Law*, Report to the XIVth Congress of the International Academy of Comparative Law, Athens, August 1994, Oxford, 1995, pp. 259-277, in particular 260, 261, and Benvenisti, *supra*, 219 who refers to section 500 of the Civil Procedure Regulations which specifies circumstances in which the courts would be able to service the process abroad, requiring a necessary link between the defendant and the forum.

decided to hear a claim for tort damages, such tort would have to be actionable under Israeli law and the law where the tort took place. The particulars of the case would be decided on the basis of the *lex loci delicti*.¹⁰²

A torture survivor may alternatively obtain compensation as part of a judgment entered against a perpetrator over whom the Israeli courts exercised universal jurisdiction.

There is no specific law on state immunity but foreign states are granted immunity in accordance with the applicable rules of customary international law.¹⁰³

No cases are known in which torture survivors have claimed reparation either against individual perpetrators of torture or against foreign States for acts of torture committed abroad.

¹⁰² Ibid.

¹⁰³ Israeli courts have lately followed the doctrine of restrictive immunity while the Supreme Court had in an earlier decision, *Sansur v The Greek Consulate General*, 26 (2) P.D. 328 (1972) not distinguished between the nature of the conduct. See on this point Benvenisti, *supra*, 220.