

27 November 2014

Prohibition of Torture and Cruel, Inhuman or Degrading Treatment and Punishment Bill, 2014

Section A: Objective and definitions

Objective 1. The objective of this law is to establish a prohibition on torture in Israel in the spirit of the principles of the Basic Laws and the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Applicability 2. The directives of this law will apply to actions it prohibits, even if committed outside of the state.

Definitions 3. “torturer” – a person who conducts torture.

“torture” – an action performed by a public official or a person acting on his/her behalf, upon his/her instruction, with his/her approval, encouragement or knowledge, which intentionally inflicts severe pain or suffering, physical or emotional, and this –

(1) with the intention of extracting from him/her or from a third person information or a confession, or to intimidate him/her, or to intimidate a third person, or;

(2) for any other reason based on discrimination of any kind.

“public official” – including a state employee, a person holding an official state position and working in the state’s name or on its behalf, including law enforcement and security personnel.

“assistance services” – services designed to ensure the rehabilitation of a victim of torture, including psychological, medical and social rehabilitation.

Section B: Prohibitions

Prohibition of torture

4. (A) The torturing of a person is completely prohibited; to dispel any doubt, an emergency situation, including war, fear of security or political instability, or fear that such situations will occur, does not justify an exception from the provisions of this article.

- (B) An order to engage in torture is a blatantly illegal order and must be refused.

Prohibition of cruel, inhuman or degrading treatment or punishment

- 5. (A) No person shall be subjected to cruel, inhuman or degrading treatment [CIDT] that does not amount to torture as defined in Article 3 of this law, by a public official or a person acting on his/her behalf, upon his/her instruction, or with his/her approval, encouragement or knowledge, and no punishment that constitutes such treatment shall be imposed. To dispel any doubt, an emergency situation, including war, fear of security or political instability, or fear that such situations will occur, does not justify an exception from the provisions of this article.
- (B) An order to impose treatment or punishment as stipulated in clause (A) is a blatantly illegal order and must be refused.
- (C) Any public employee who witnesses the torture of a person during the course of his/her work has a duty to report the incident to the relevant authorities.

Section C: Punishment

Punishment for torture

- 6. (A) For someone who tortures a person: imprisonment for fifteen years.
- (B) For someone who tortures a person and thereby causes his/her death: life imprisonment.
- (C) For someone who fails to report suspected incidents of torture: imprisonment for two years.

Punishment for cruel, inhuman or degrading treatment or punishment

- 7. For someone who violates the directives of Article 5: imprisonment for seven years.

Inadmissibility of evidence

- 8. (A) Evidence obtained through torture or CIDT or based on information obtained through torture will not serve as proof of this evidence in any legal proceeding.
- (B) A request to disqualify evidence under clause (A) will be heard by a judge and, to the extent possible, will be brought before a judge who is not adjudicating the charges.
- (C) Without regard to the provisions of clause (A), evidence obtained through torture or based on information obtained through torture can be

admissible in a proceeding required to prove the fact that torture was conducted.

Section D: Committee for Investigating Complaints by Interrogatees

Establishing the committee

9. (A) The Committee for Investigating Complaints by Interrogatees [hereinafter: the Complaints Committee] pertaining to criminal offenses under this law will be established and operate within the Ministry of Justice.
- (B) The Minister of Justice will define via regulations the composition of the Complaints Committee and its operating procedures in a way that will ensure, *inter alia*, its professionalism and institutional independence, and will appoint officials with relevant expertise to investigate acts of torture, including personnel from the fields of medical science, mental health, forensic medicine and social work.

The Complaints Committee's role

10. (A) Without regard to the provisions of other laws, the investigation of a person suspected of committing crimes under this law shall not be conducted by the Israeli Police, but by the Complaints Committee; the Complaints Committee will also be authorized to investigate any criminal offense linked to the crimes under this law.
- (B) Clause (A) will also apply when a public official is suspected of committing a criminal offense together with another person, and the Complaints Committee will be authorized to also investigate the other person with regard to any crimes linked to the criminal offenses under this law.
- (C) Upon learning that a criminal offense under this law has been committed, whether via a complaint or any other means, the Complaints Committee will open an investigation.
- (D) Without regard to the provisions of other laws, an investigation pertaining to criminal offenses under this law will not be closed on grounds of lack of public interest.

The Complaints Committee's authorities

11. (A) In order to carry out their roles under this article, the Complaints Committee and its personnel will assume the authorities and immunities of the police and a police officer, respectively.

(B) In every action the Complaints Committee is authorized to take, it is permitted to receive help from any authority or government entity, in accordance with rules to be formulated by the Minister of Justice, or by a person he/she appoints in this matter.

(C) Where statutory authority is not explicitly granted to a police officer by definition of his/her rank or position, the Minister of Justice, or a person he/she appoints in this matter, will determine which officials in the Complaints Committee shall be granted this authority.

Duty to report

12. (A) From the date on which this law comes into effect, the head of the Complaints Committee will report to the Minister of Justice and to the Knesset's Constitution, Law and Justice Committee once a year on the implementation of the law; the report will include, *inter alia*, the number of incidents in which –

(1) complaints were submitted on criminal offenses under this law;

(2) investigations were opened on suspicion of criminal offenses under this law;

(3) indictments were filed on suspicion of criminal offenses under this law; and

(4) investigations were closed;

(5) in addition to any other information the Minister of Justice specifies in the regulations.

(B) The reports under clause (A) will be attached to reports which the state submits to the United Nations' Committee Against Torture and will be open to public scrutiny.

Section E: Assistance services for torture victims

The right to assistance services

13. A victim of torture or CIDT is entitled to assistance services [hereinafter: assistance services] free of charge, including mental and physical medical treatment and rehabilitation.

Responsibility for providing free service

14. The state is responsible for providing assistance services under this law.

Implementation

15. The assistance services under this section will be provided by officials authorized by the Minister of Welfare and Social Affairs, in consultation with the Committee for the Assistance for Torture Victims [see article 16].

Committee for the Assistance for Torture Victims

16. (A) The Minister of Welfare and Social Affairs and the Minister of Justice will appoint a Committee for the Assistance for Torture Victims [hereinafter: the Assistance Committee]; the composition of the Assistance Committee and its officials will be defined in the regulations.
(B) The Assistance Committee will include, *inter alia*, the following officials:
 - (1) a rehabilitation psychologist;
 - (2) a physician;
 - (3) a social worker.
(C) The Assistance Committee will outline and define the areas of activity of the provider of assistance services and will supervise the implementation and delivery of these services.

The Assistance Committee's roles

17. The Assistance Committee will act:
 - (A) to provide assistance services to victims of torture or CIDT;
 - (B) to publicize information about the rights and assistance services to which torture victims are entitled;
 - (C) to develop a plan for conducting workshops for officials in the public service to boost awareness of the prohibition on torture, enlisting the help of professionals with pertinent expertise, including psychologists, attorneys, and physicians.

Budget

18. Funding for the Assistance Committee's activities will be allocated in the Budget Law in a separate clause, as defined in the Budget Foundations Law – 1985.

Section F: Compensation

Entitlement

19. (A) A victim of torture or CIDT is entitled to compensation according to a schedule to be defined in the regulations.

(B) For the purposes of this section, eligibility of first-degree family members for compensation will be granted according to the following order:

(1) a spouse and the children of a victim who died as a result of torture;

(2) his/her parents.

(C) The compensation will be awarded within a reasonable period of time.

Special entitlement

20. In case of a criminal offense against the body or the mind, the victim of the crime will be entitled to a monthly assistance allowance, in accordance with the conditions and rules to be defined in the regulations by the Minister of Justice.

Applicability of other laws

21. Compensation under this law does not detract from the rights of a torture victim under any other law, but he will be entitled only to the highest compensation or benefit among the sums he is entitled to as a result of the injury.

Creating a Fund

22. The Ministry of Justice will establish a compensation fund for victims of a criminal offense [hereinafter: the Fund].

The role of the Fund

23. The Fund will compensate a victim of a criminal offense who is entitled to compensation under this law.

Funding

24. The Ministry of Finance will provide funding for the Fund; in addition, money from the fines imposed under section 77(D) of the Penal Code – 1977 will be deposited in the Fund.

Implementation and regulations

25. The Minister of Justice will institute regulations for determining ways of compensating torture victims, awarding an assistance allowance, and set forth the rules for operating the Fund, in accordance with this law.

Explanatory notes

The proposed legislation aims to anchor in the state's laws its commitments under the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CIDT) [hereinafter: the Convention]. Israel signed the Convention on 22 October 1986 and ratified it on 4 August 1991. As of today, the Convention's directives have yet to be anchored in the state's domestic law.

Despite Israel's signing and ratification of the Convention, its employees, whether from the law enforcement authorities or the security authorities, continue to employ means that constitute torture or CIDT or punishment that contradict the prohibitions in the Convention in the course of carrying out their work.

It is proposed herein, *inter alia*, to define two criminal offenses: the first is the crime of torture, in accordance with its definition in the Convention, and the second is the crime of cruel, inhuman or degrading treatment or punishment. The second expression refers to actions that do not amount to actual torture, but come sufficiently close to torture to justify their prohibition.

With regard to the crime of torture, this bill emphasizes that there is no justification whatsoever for the use of torture, including political or security instability and/or states of war. The main concern of this directive is addressed to the state's security authorities and law enforcement authorities: the police, the army and the Shabak [General Security Services], which in the course of their work are required to interrogate detainees and extract information from them while employing methods of interrogation that may constitute torture. Therefore, it is essential to clarify that in no situation is there justification for the use of such methods. Such methods include, for example: the use of verbal or physical violence, threats aimed at intimidating an interogatee, whether the threats are issued against the interogatee or against a member of his/her family; as well as methods designed to exert pressure on the detainee, such as painful sitting positions or painful handcuffing; sleep deprivation; the denial of medical treatment; the denial of food or drink; or denial of access to toilet facilities as means of pressuring the detainee.

Regarding the relations between a commander and a subordinate, and in any other relations of authority concerning this matter, the proposed legislation clearly states that a command that includes a directive to conduct torture is blatantly illegal and should not be obeyed.

In light of the severity of the crime of torture, the proposed punishment is set at fifteen years' imprisonment. And in cases where the torture leads to the death of the victim, the proposed punishment is life imprisonment, as is customary in crimes of murder. The emphasis in this article is on the severity of the crime of torture and the desire to create a deterrent against the use of torture to extract information or confessions, to intimidate, or for any other reason based on discrimination of any kind. Further, the severity of this crime warrants the punishment of public employees

who fail to report suspected incidents of torture or CIDT, including doctors and social workers, who may witness torture during the course of the work. The punishment imposed on these employees will be equal to the punishment that the law stipulates for the offense of failing to prevent a crime.

With regard to the crime of cruel, inhuman or degrading treatment or punishment, it is impossible to reach an exhaustive definition of ‘cruel, inhuman or degrading treatment or punishment’, and this matter should be left for the courts to determine. However, it is clear that this concept is linked to torture by definition, even if it does not reach the level of torture or does not include all the elements thereof.

For example, violence and humiliating treatment by soldiers and other security forces against detainees during the process of detention and the conditions of incarceration in the cells where detainees suspected of security offenses are held during their interrogation can fall within the bounds of the expression ‘cruel, inhuman or degrading treatment or punishment’. The same applies to being held in solitary confinement, whether as disciplinary punishment or for purposes of interrogation. Similarly, the current conditions in which prisoners and detainees are transported by Israel Prison Service (in ‘Posta’ vehicles), and the waiting facilities in the courts amount to such ill-treatment. Thus, in the wake of the proposed legislation, changes will be required in numerous areas about which complaints have been made by many prisoners: prisoners spend many hours, more than necessary, being transported to their destination from their cell, while in hand and leg shackles; the seats in the Posta vehicles are made of iron, which makes them too cold in the winter and too hot in the summer; the Prison Service does not allow prisoners to use pillows, rugs or anything else to pad or cover their seats. An example of the unnecessarily long transportation times is the prisoners’ journey in Posta vehicles from prisons in the north to the Israel Prison Service’s medical center in Ramle, which takes 8-12 hours, while normal travel time is at most two hours.

Prisoners also complain about the lack of a regular supply of food and drinking water during the long hours they spend in transit and in waiting rooms. Furthermore, even when the Prison Service offers them water, many prisoners refrain from drinking during the trip because they fear they will not be allowed to go relieve themselves during the long journey. Due to the harsh conditions, many prisoners are compelled to forego travel for medical checkups, and the Prison Service considers them to have refused treatment. When the prohibition [on cruel, inhuman or degrading treatment or punishment] is made law, the authorities will have to improve these transportation conditions.

A further example is the conditions in which security detainees are held in hospital, including administrative detainees and security prisoners and detainees, which in some cases includes being continuously shackled to their beds.

According to this bill, a violation of Article 5 – that is, the prohibition of cruel, inhuman or degrading treatment or punishment – will be defined as a criminal offense that carries a maximum sentence of seven years’ imprisonment. The main purpose

underlying this sentence is to deter state officials, the Shin Bet, the police, the Israel Prison Service, and the Israeli military, and employees of other state entities from engaging in any form of ill-treatment or punishment that violates human dignity and basic rights, something that a democratic society cannot condone.

Additionally, in order to prevent the offender from deriving benefit [from his/her actions], the proposed legislation contains a rule for suppressing evidence. According to this rule, evidence will not be accepted for verification purposes if it was obtained through the use of torture or if it was obtained on the basis of information acquired through improper means. This is a model of suppression or disqualification similar in essence to the rule of the 'fruit of the poisonous tree', according to which anything obtained improperly is inadmissible in legal proceedings. However, in criminal proceedings against the torturer, in which proof is required that he/she engaged in torture or cruel, inhuman or degrading treatment or punishment, it will be permissible to present evidence obtained through the use of torture.

In Section D, the bill proposes the formation of a committee within the Ministry of Justice to be responsible for investigating complaints of torture and of CIDT, as defined in this bill, and will recommend to the State Prosecutor's Office that indictments be filed in appropriate cases. This Complaints Committee is based on a similar concept to that of the Police Investigations Department, but an attempt has been made to rectify the structural defects of the latter. The Minister of Justice will be responsible for appointing officials to the Complaints Committee, based on need, while adhering to the criteria stipulated herein.

The Complaints Committee will enjoy complete independence in its work, and special attention will be made to avoiding conflicts of interests and bias. The bill also seeks to anchor in law the duty to appoint special officials with the expertise required for investigating criminal offenses under this legislation.

The proposed roles of the Complaints Committee will be to investigate a person suspected of committing criminal offenses under this law, even if the incident entails a number of additional offenses that are not within its purview. Moreover, if the Complaints Committee's authority extends to one party, the department will also be authorized to investigate any other parties involved with regard to their role. In addition, the Complaints Committee will be obliged to investigate in each case in which information is received, and not necessarily in the form of a complaint, about crimes committed pertaining to this law. It is also proposed that the Complaints Committee should be denied the authority to close an investigation on the grounds of lack of public interest, in light of the view that every case of crime under this law, requires investigation, regardless of the circumstances, and as long as there is a sufficient evidentiary foundation in the case, the conclusive presumption is that the public interest is to indict the offender.

According to the bill, the Complaints Committee will enjoy the same authorities and immunities as the Israeli Police and its officers, in order to enable it to execute its roles. It is also recommended that the Complaints Committee will be authorized to

enlist the assistance of the police in carrying out its roles, except when it is feared that such assistance would compromise the investigation due to concerns about bias or conflicts of interest, for example, if the suspect is a policeman or a police investigator. Moreover, the bill proposes that the Minister of Justice be authorized to formulate in the regulations a hierarchy of roles within the Complaints Committee that will parallel the hierarchy of roles in the police, for the purpose of exercising authorities granted to a particular official.

The proposed legislation also requires the Complaints Committee to report to the Knesset with data to enable it to conduct a comprehensive examination of the committee's work and of the way it handles complaints of torture and other ill-treatment or punishment. It is proposed that the Minister of Justice and the Knesset's Constitution, Law and Justice Committee serve as supervisory bodies. It is further proposed that this information be made open to public scrutiny in order to increase the transparency of the Complaints Committee's work.

In Section E, the bill proposes the formation of a committee to provide assistance to victims of torture. The Assistance Committee will be a professional body with the expertise required for addressing the unique cases that are likely to arise from the cases it receives. The bill proposes that a special clause in the Budget Law be devoted to this purpose to enable the committee to perform its duties.

In Section F, the bill proposes that torture victims be granted the right to compensation from a fund to be created within the Ministry of Justice specifically for this purpose. It should be noted that the obligation to provide compensation is anchored in Article 14 of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.