

Israel

The Israeli judicial system guarantees judicial independence and this is respected by the government. However, the courts tend to acquiesce in government arguments of national security in sensitive cases. Respect for human rights was more pronounced with the Supreme Court delivering several ground breaking judgements on equality, torture and ordering the release of Lebanese hostages. Human rights violations in the occupied territories, however, remained a serious concern.

In July 1999, Ehud Barak was inaugurated as Prime Minister of Israel after winning the elections held on May 6, 1999. He was elected on the basis of a campaign promising a unified Jerusalem, despite East Jerusalem being part of the territory occupied by Israel in 1967, continuation of the middle east peace process and a withdrawal from Southern Lebanon within a year. The signing of the Sharm el-Sheikh agreement in September 1999 restarted the Palestinian peace process and set a September, 2000 deadline for the conclusion of final status negotiations. These negotiations will deal with the permanent status issues agreed on in the 1993 Oslo Accords, i.e. Jerusalem, refugees, settlements, security arrangements, borders, relations and co-operation with neighbours. Talks regarding development of a permanent peace settlement with Syria also commenced in January 2000.

Israel does not have a single constitutional document, instead its governing bodies are established in a series of basic laws which act as its Constitution. The President is the head of state and is elected by the legislature for a period of 5 years. The President's powers are largely ceremonial and the position is currently held by Ezer Weizman. Israel's legislative body is a unicameral parliament called the Knesset. It consists of 120 members and is elected for a 4 year term by popular elections. The executive authority is exercised by the government, consisting of the Prime Minister and at least 8 other ministers. The Prime Minister is elected directly by the public on the same day as Knesset elections and appoints the other ministers, subject to approval of the Knesset. The Prime Minister and at least half of the other ministers must be members of the Knesset.

Most of the West Bank, including East Jerusalem, and more than a third of the Gaza Strip are still under Israeli Military Government control. In accordance with the agreements that have been signed since the 1993 Oslo Accords the military government has slowly been returning areas in the occupied territories to Palestinian control. At the conclusion of the redeployments on 20 January 2000, as required by the Sharm el-Sheikh agreement, Israel will still exercise control over 80% of West Bank territory. As of 1 February 2000, Israel had failed to comply with the remaining provisions to transfer 6.1% of the West Bank to Palestinian control.

Human Rights Background

Although the human rights of the majority Jewish population are generally well respected, there are serious threats to the human rights of minority groups within Israel. Israel has ratified many international rights treaties including the Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant of Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. Israel has enacted two laws relating to human rights: Basic law: Human Dignity and Liberty 1994 and Basic Law: Freedom of Occupation 1994.

The Principle of Equality

Israeli Basic Laws do not explicitly guarantee equality amongst ethnic or religious groups within Israeli society. The Supreme Court has asserted a general commitment to equality in Israeli law, including several recent cases in relation to Arabs, outlined below. However, a question remains as to whether the principle of equality in Israeli law is strong enough to overrule explicit legislation to the contrary. The Supreme Court, sitting as the High Court of Justice, noted in 1998 that there is prima facie discrimination in the allocation of funds to the various religious communities. In that year the government allocated only 1.86% of the budget to the Muslim, Christian and Druze communities even though they comprise almost 20% of the population. The court, however, declined to rule in favour of the petitioners and asked them to return with more specific claims of discrimination.

In April 2000 the court unanimously accepted a petition by Adallah, the Legal Centre for Arab Minority Rights in Israel, which claimed that allocations to non-Jewish cemeteries were much lower than those for Jewish ones. The petition requested the court to order the Ministry of Religious Affairs to set criteria that would ensure equality in the allocation of funding. The judgement of the court stated that "the resources of the state, whether land or money, or other resources as well, belong to all citizens and all citizens are entitled to enjoy them according to the principle of equality." The court ordered that the budget for that year be amended so that allocations to cemeteries would be equal.

The Supreme Court decided another case (H.C. 6698/95) in March 2000, which could have far reaching implications for the Arab minority in Israel. The case concerned an application by an Arab family to build a home in Katzir, a Jewish communal settlement. The land for this settlement was allocated by the Israel Land Authority to the Jewish Agency and the Katzir Co-operative Society, which only accepted Jewish members. The petitioners claimed that this policy constituted discrimination on the basis of religion or nationality. In the decision the court reaffirmed the general principle of equality and ruled that the Israeli state may not discriminate directly, or indirectly through a third party, in the allocation of state land. However, the court limited its decision to the particular facts of the case and to future allocations of land. The court explicitly stated that it did not take a position with regard to other kinds of settlements and that other "special circumstances, beyond the type of settlement, may be relevant."

The Arab minority do not enjoy equal quality and access in the provision of basic services. The government discriminates against Arab villages, of which approximately 100 are yet to be recognised. This deprives these villages of basic infrastructure such as electricity, sewerage, water and roads. Recent court decisions have ordered that these settlements be granted minimal electricity, health and educational services, but these are substantially lower than those supplied to Jewish villages and the problem requires a more comprehensive solution.

Gender Discrimination

Matters of personal status are decided in accordance with religious law resulting in discrimination against women. Under both Jewish and Islamic religious law women are not allowed to request a divorce without their husband's consent, which is frequently not given, or only given after obtaining concessions. There is also widespread violence against women and children, committed by both Arabs and Jews, including killings in the name of honour.

Lebanon

In areas in Lebanon occupied by Israel since 1982 human rights violations are committed by the Israeli Defence Forces and the South Lebanon Army, a militia controlled by Israel. Lebanese civilians continued to be administratively detained in the Al-Khiam prison, held in sub-standard conditions and reportedly subjected to torture. Israel has detained Lebanese nationals without charge or trial for periods up to 11 years as "bargaining chips" in negotiations for the return of Israeli soldiers. This illegal detention was permitted by the Supreme Court of Israel in a decision by a three judge bench in 1997. On 12 April 2000 a nine judge bench, with six judges in the majority, ruled that the 1979 Emergency Prerogatives Law does not allow the Defence Minister to place a person in administrative detention if the person does not pose a threat to the security of the state. As this was the only basis of detention for these prisoners, they must be released. Thirteen of the fifteen hostages were released. Mustafa al-Dirani, detained since 1994, and Sheikh Abdel-Karim Obeid, detained since 1989, were not released as the government sought to continue their detention on the basis that they constitute a danger to the security of the state.

Administrative Detention

Although Palestinian political prisoners have been released as a part of the peace process, their number remains high and Israel continues the practice of administrative detention. The Minister of Justice can issue detention orders for periods of six months which can be renewed indefinitely. Osama Barham, who had been administratively detained since November 1993, was released on 18 July 1999. Major efforts by human rights groups, both Jewish and Arab, have brought the number of administrative detainees down and at this stage they do not number more than a dozen. All Palestinian security detainees from the occupied territories are held in Israel contrary to international law and subject to different conditions of incarceration, even within the same prison, than Israeli prisoners. All Palestinians are subject to Israeli Military Law, even if detained within Israel.

The use of torture in interrogations continued to be used contrary to Israel's obligations under the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see following section).

Occupied Territories

Israel occupied the West Bank and Gaza Strip in 1967 and exercises control over these areas through a military government, committing numerous violations of international humanitarian and human rights law. Since 1993 areas containing most of the population have been returned to Palestinian control. However, Israel still controls the majority of the occupied land.

The report of the Special Rapporteur, Mr Giorgio Giacomelli, on the situation of human rights in the Palestinian territories (E/CN.4/2000/25) identified several major concerns regarding human rights in these areas.

In addition to the question of Palestinian refugees to be decided within the permanent status negotiations, displacement also continues to occur with the eviction of Palestinians from their property in the West Bank and Gaza Strip. Evictions and house demolitions occur for a variety of reasons, such as security concerns or the lack of appropriate permits, and often

involve the use of force. This land may then be reallocated to Jewish settlers, or reserved for other purposes such as military zones, bypass roads and quarries. Israel exercises planning control over the majority of the occupied territories and Palestinians face difficulties and discrimination in the granting of permits to build. The Special Rapporteur reported that Israel had confiscated approximately 60% of the West Bank, including 33% of Palestinian land in Jerusalem and 33% of the land in the Gaza Strip. The Special Rapporteur also noted that settlement activity continued to increase, with the settler population increasing by 12.5% in 1999. Settlement in the occupied territories constitutes a violation of Article 49 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War (4th Geneva Convention).

Restrictions on the freedom of movement continued to be placed on persons travelling between the occupied territories and Israel, and within the occupied territories itself. Complete closures of the territories are applied in anticipation of, or in the aftermath of, terrorist attacks and on major Jewish holidays. Internal closure can also be applied, which prohibits travel between towns and villages of the occupied territories. Many Palestinians work in Israel or are required to travel through Israel from the Gaza Strip to study in the West Bank. The effect of the policy of closures on trade seriously undermines the economic well being of the West Bank and the Gaza Strip. A safe passage was opened between the West Bank and the Gaza Strip on 25 October 1999 facilitating movement between these areas, but Israel maintained total control over the route, including the provision of permission to travel. Palestinians have to travel through Israeli controlled checkpoints within the West Bank where they are frequently subjected to verbal and physical harassment. The Special Rapporteur noted the construction of the "Erez II" checkpoint which "de facto would completely separate the northern part of the West Bank from the southern part."

Palestinians in East Jerusalem are subject to a wide variety of restrictions on their freedom of movement, and the dispossession and destruction of their homes. Israel applied a "centre of life" policy to Palestinians resident in Jerusalem until October 17 1999. This policy allowed Israel to revoke the permanent residency permits of Palestinians who resided for any period outside of Jerusalem. After the revocation of the policy, in the context of a Supreme Court challenge, the Israeli Government announced that it would reconsider individual cases where the validity of residence permits was previously questioned, and that Palestinians could retain their residency permits if they could show an appropriate connection to Jerusalem during the period they were absent. This determination remains exclusively at the discretion of the Interior Ministry.

Israel also continued carrying out extra-judicial executions. On 15 December, 1999 the Israeli Defence Force killed two Palestinian men, Iyad al-Battat and Nadir al-Massalmah. Israel suspected that Iyad al-Battat was involved in a Hamas attack in January 1999 that killed an Israeli policeman.

The Supreme Court Decision Regarding the Legality of GSS Interrogation Methods

The Supreme Court of Israel, on 6 September 1999, decided in a landmark judgement that certain interrogation methods employed by the Israeli General Security Service (GSS) were illegal. This judgement is a welcome movement towards the prevention of torture and increased respect for the human rights of all within Israel.

Background

In 1987 the Landau Commission of Inquiry released its report concerning the GSS and its interrogation methods. The report concluded that even in the absence of express statutory regulation of its activities the GSS was authorised to investigate those suspected of committing terrorist attacks. This power was derived from the government's residual prerogative powers contained in Art 40 of the Basic Law: Government. More disturbingly, the Commission concluded that GSS investigators were entitled to apply both psychological pressure and a moderate degree of physical pressure. This was said to only apply in cases where the saving of human lives necessarily requires the obtaining of certain information. This report was widely condemned by human rights groups as it effectively sanctioned the use of torture or cruel, inhuman or degrading treatment of detainees during interrogations.

Israel ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in October 1991, but has not explicitly enacted its provisions into domestic law. The Committee against Torture, in 1997 and 1998, called for Israel to implement the Convention into its domestic law, and found that the interrogation practices used by the GSS constitute torture and therefore violate the Convention. Israel has so far failed to implement any of the recommendations of the Committee.

The Basic Law: Human Dignity and Liberty 1994 protects individuals from violations of their life, body or dignity. The use of moderate physical pressure clearly violates this principle. Article 8 provides that rights granted under this Basic Law can be violated by laws befitting the values of the state of Israel, enacted for a proper purpose, and to an extent no greater than is required. Further, the Basic Law provides that members of the GSS, among others, shall not be subject to a restriction of their rights, nor shall conditions be placed on their rights except by law and to an extent not greater than is required by the nature and character of their service.

Applicants and Arguments

The case resulted from the joining of several High Court petitions regarding the use of interrogation methods by the GSS. The petitions came from individuals who stated they had been subject to GSS interrogation methods during their detentions, and other human rights organisations generally concerned with the GSS interrogation procedures. The applications ranged from assertions that the GSS was not empowered to investigate hostile terrorist activities at all, to protests against the use of particular methods in individual cases. The state responded with arguments asserting that the GSS investigators are duly authorised to interrogate terrorist activities and that the physical means employed do not violate international law and do not cause pain and suffering. The state further asserted that these methods are legal under Israel's domestic law due to the necessity defence.

The Judgement

The Supreme Court concluded that GSS investigators derive their powers from the Criminal Procedure Ordinance (Testimony) which entitles police officers to hold enquiries into the commission of offences. The court ruled only fair and reasonable methods of interrogation would be allowed depending on the circumstances of the case. A fair and reasonable interrogation would never involve the use of torture or other cruel, inhuman or degrading treatment.

The Supreme Court, sitting as the High Court of Justice, specifically stated that the interrogation methods used by the GSS at issue in this case were illegal. The methods examined included shaking, waiting in the Shabach position, the Frog Crouch, excessive tightening of handcuffs, prolonged exposure to noisy music and sleep deprivation. It was acknowledged by the court that during an interrogation a person may be deprived of normal sleep but stated that intentional deprivation of sleep for excessive periods of time for the purpose of breaking the individual was not within the scope of a fair and reasonable investigation.

The court assumed that while the necessity defence, available in Israeli criminal law, was available to GSS investigators, it could not form the basis of an authority to permit GSS investigators to infringe human rights. Any permission to use physical force in interrogations "must be rooted in an authorisation prescribed by law." Therefore in the absence of an explicit authority, any criminal liability arising from the use of physical pressure in interrogations can be dealt with by the Attorney General. The Attorney General has the discretion to decide in what circumstances investigators shall be prosecuted if they claim to have acted from necessity. The court concluded by saying that:

Endowing GSS investigators with the authority to apply physical force during the interrogation of suspects suspected of involvement in hostile terrorist activities, thereby harming the latter's dignity and liberty, raise basic questions of law and society, of ethics and policy, and of the Rule of Law and security. These questions and the corresponding answers must be determined by the legislative branch.

This statement by the court allows the Israeli Knesset to enact legislation that can sanction the use of physical force in interrogations by members of the GSS. The court added that this legislation, if passed, will have to pass the requirements of Article 8 of the Basic Law: Human Dignity and Liberty. This requires the legislation to befit the values of the state of Israel, to be enacted for a proper purpose, and to be of an extent no greater than is required.

However, the judgement also leaves the government a wide discretion to decide when to prosecute those who use physical pressure in interrogations. As a party to the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Israel is obliged under Article 2 to take effective measures to prevent acts of torture in territory under its jurisdiction. Article 2 of that convention also clearly states that no exceptional circumstances whatsoever may be invoked as a justification of torture. Acts of the GSS involving the placing of any physical pressure on a person come within the definition of torture provided in Article 1 and an official sanctioning of the practice by the Knesset, or a permissive attitude by the government, would breach Israel's international obligations under the Convention.

On 15 September 1999 the Ministerial Committee for GSS affairs established a commission to examine alternatives for developing a lawful manner in which physical force could be used if there was an immediate security danger. The commission, in January 2000, proposed three alternatives which would either allow GSS interrogators to apply moderate physical pressure, allow physical pressure in certain limited circumstances or to not alter the situation created by the Supreme Court decision. In October 1999, forty members of the Knesset submitted the draft Criminal Procedure (Powers and Special Interrogation Methods for Security Offences) Law for enactment. This law would allow the use of physical pressure by GSS investigators where there was a reasonable suspicion that a person had information which if immediately

revealed could prevent danger to human life or state security. Both the Minister of Justice and chair of the Knesset Committee on Security and Foreign Affairs strongly opposed the legislation.

The Judiciary

The independence of the civil judicial system is protected in basic laws of Israel, and is generally respected by the legislature and the executive. However, members of the judiciary have tended to acquiesce in government arguments of national security in sensitive cases. The court structure is based on the British Mandate system but the current form of the basic laws has strongly been influenced by the Canadian Constitution. The Basic Law: Judicature, in Article 1, vests all judicial power in the Supreme Court, District Court, Magistrate Court, Religious Courts and any other court designated by law as a court. Article 2 guarantees the independence of persons vested with judicial power when exercising that power. Laws regulating the structure of the court system are contained in Basic Law: Judicature and the Courts Law (Consolidated Version).

Magistrate Courts are at the base of the court structure and are courts of first instance. They hear criminal cases where the penalty does not exceed seven years and civil cases for immovable property or where the value of the claim does not exceed one million shekels. Cases in this court are usually heard by a panel of one judge, but in a particular matter may be heard by a panel of three. Judgements from this court are appealable to the District Court. Currently there are 29 Magistrate Courts, with approximately 220 judges presiding over cases in these courts.

District Courts sit as courts of first instance in limited matters and as an appellate court. As a court of first instance, District Courts hear cases involving serious criminal offences with a penalty exceeding seven years imprisonment and civil matters where the claim exceeds one million shekels. As a court of appeal, District Courts hear appeals from Magistrate Courts and Administrative Tribunals. Certain District Courts act in special capacities as Maritime Courts or Appeal Courts for elections. In District Courts single judges usually hear cases, but in particularly serious criminal cases or as a court of criminal appeal it sits in a panel of three. The jurisdiction of these courts is slowly being reduced in an overall rationalisation of the court structure. Currently there are 5 District Courts, with approximately 90 judges presiding over cases in these courts.

The Israeli judicial system suffers from long delays and overburdening. A special commission, headed by Supreme Court judge, Theodor Orr, was constituted to suggest structural reforms of the courts. According to the proposed reforms, the Magistrate Courts would become the general courts of first instance, with District Courts hearing appeals from them and being the first instance for the majority of administrative petitions (now submitted to the Supreme Court as High Court of Justice sitting in the first and last instance). The reform proposals have been met with some opposition, and it is not clear at this stage which parts of them will be enacted.

The Supreme Court is the head of the court structure and sits as an appellate court and a High Court of Justice. As a court of final appeal it hears cases from the District Court and its decisions act as a binding precedent for all other courts. As a High Court of Justice it acts as a court of first instance in matters concerning the powers and responsibilities of all those exercising public functions and can order the release of persons unlawfully detained or

imprisoned. The Supreme Court also has the power to order the retrial of any person if it appears that a case was based on false evidence that would have changed the outcome of the case or that new evidence has come to light. Cases before the Supreme Court are heard by a panel of three judges, or if a party requests a rehearing of a case already decided by the court, the rehearing is heard by a panel of 5 judges. Questions of fundamental importance or those regarding constitutional issues can be heard by a larger number of judges. The Supreme Court sits in Jerusalem.

Various other courts have been established to deal with specific subjects. Religious Courts are vested with jurisdiction to hear cases that involve personal status. This jurisdiction derives from the Palestine Order in Council 1922. Fourteen religious denominations, inter alia, Jewish, Muslim and Christian, have their own courts. Labour Courts have jurisdiction to try offences that arise out of various pieces of legislation concerning labour relations between employer and employee, between two workers or employee unions, or any disputes arising out of a collective agreement. Cases from these courts are appealable to the Supreme Court. The Magistrates Courts also sit as the Family Court, Small Claims Court, Municipal Court, Traffic Court and the Tenancy Tribunal.

Military Courts

Israeli Military Courts established by the Military Justice Law hear cases involving military personnel for military and civilian offences. Separate Military Courts, based on emergency defence regulations enacted during the mandate period, can also try civilians, but are rarely used for this purpose. The definition of military personnel includes all those in compulsory or career service, those in reserves whilst actively on duty, and also, with certain limitations, civil employees in the army and prisoners of war. This is an expansive jurisdiction and removes cases from the civil court system which do not involve active military personnel committing purely military offences. The military court system consists of Military Courts of First Instance and the Military Appeals Court. Decisions from the Military Court of Appeals can be procedurally reviewed by the Israeli Supreme Court. Judges of these courts are military personnel, with the President of the Court having legal training.

Israeli Military Courts also have jurisdiction in the areas of the occupied territories that have not been returned to full Palestinian control (see chapter on Palestinian Autonomous Areas). Military Courts in these areas have an expanded jurisdiction covering all cases involving security considerations of the Israeli Military government.

Judges

The independence of the judiciary is secured by a non-political selection process and the guarantee of life tenure. Judges are appointed by the President of the state upon the recommendation of a Judges Election Committee. This committee consists of the President of the Supreme Court, two other Supreme Court judges elected by the body of judges, the Minister of Justice and another minister designated by the government, two members of the Knesset, usually one from the coalition and one from the opposition, elected by the Knesset, and two members of the Chamber of Advocates elected by its National Council.

Judges have guaranteed life tenure and a salary that cannot be reduced except in the case of a general reduction in salary for public officials. Judges can only be removed from office by a majority decision of seven members of the Judicial Election Committee or by a decision of

the Court of Discipline. The Court of Discipline consists of a panel of three or five judges with at least two being members of the Supreme Court, and is appointed by the President of the Supreme Court. The grounds for removal are the conviction of the judge for an offence which involves moral turpitude, the judge acting in a manner unbecoming his status as a judge or if the Judicial Elections Committee finds that the judge has obtained his appointment unlawfully. These provisions guarantee members of the judiciary procedural and substantive independence from interference by the state.

Lawyers

The legal profession is regulated by the Chamber of Advocates Law, which established the Israeli Bar. The Israeli Bar is headed by a president who is elected every 4 years by all the Bar's members. The President heads the Central Committee which is the Bar's executive organ and is responsible for the management of its affairs. Members of the Central Committee are elected by the National Council. The National Council makes rules concerning the organisation of the Bar and its activities and is responsible for proposals to amend the Chamber of Advocates Law. The National Council consists of the President of the Bar and his predecessor, the Director General of the Ministry of Justice, the State Attorney, the Military Advocate General, 25 members elected by the other members of the profession generally and 3 members from each district elected by each district committee. This structure ensures that the legal profession maintains a sufficient degree of independence from the executive, and that the interests of lawyers are properly represented.

The ability of Israeli or Palestinian Lawyers to visit their Palestinian clients is often restricted. Palestinian lawyers are frequently unable to visit their clients in Israel jails because of the difficulty in obtaining travel permits due to general security concerns. Even if an Israeli lawyer is representing a Palestinian client, they will frequently be denied access through court orders. For instance, Elia Theodory attempted to visit his client Iyad Habib Mohammad on 31 January 1999, who had been detained by Israeli General Security Services on 26 January 1999. This request was refused because a prevention order denying access to a lawyer had been issued. This order was renewed several times until 4 March 1999. Also, Andre Rosenthal was denied access to his clients, Bassam and Hasan Al-Arabid, for 35 days after their arrest. Mr Rosenthal's clients were arrested to obtain information about his client's brother who was wanted by Israeli security forces. This is a serious breach of every detainee's right and a state's obligation to ensure assistance by a lawyer upon arrest or detention within 48 hours of that detention.

Cases

Fares Abu Hassan *lawyer, Director of Solidarity International*: In October 1999, the Israeli Military Commander of the Central Division issued a six month administrative order preventing Fares Abu Hassan from representing any individuals in Military Courts unless he received prior permission. No reasons were given for this order, apart from that it was required for security reasons. In January 2000 the issuance of the order was appealed to an appeals committee, but the appeal was rejected. Fares Abu Hassan is the Director of the West Bank office of the human rights organisation Solidarity International, and his practice focuses on the representation of Palestinians in Israeli Military Courts. On 23 January 2000 a request was placed to represent 15 individuals before these courts, but as of 1 March 2000 no response had been received.