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STATE COMPTROLER

Summary of the Report of the Review regarding Interrogations in the Israel Security Agency (ISA) for the years 1988-1992

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Report of the State Comptroller

Regarding Interrogations in the Israel Security Agency (ISA) for the years 1988-1992

In 1995, State Comptroller, Ms. Miriam Ben Porat, presented to the Intelligence Sub-Committee of the Knesset State Control Committee, a report on a review of the issue of interrogations by the Israel Security Agency (ISA)ⁱ in the years 1988-1992.

In 1997, following consultation with the State Comptroller at the time, the State Control Committee decided that, due to national security requirements, the report would not be presented to the Knesset and would remain classified. The committee also decided not to release the executive summary of the report in the format recommended for publication by the State Comptroller at the time.

Following the decision of the High Court of Justice (HCJ) in HCJ 607/98 dated November 11, 1999 in which it recommended that the State Control Committee reconsider its previous decision from 1997, on February 6, 2000, in view of the change in circumstances since its previous decision, the sub-committee decided to allow presenting the executive summary of the report to the Knesset. The decision was made pursuant to the powers of the sub-committee under the State Comptroller Law and following consultation with the State Comptroller.

The report published herein is, therefore, the executive summary of the report on the issue of interrogations by the ISA for 1988-1992, which has been declassified.

Executive Summary

The report on ISA interrogations relies on two sources: A. In recent years, the State Comptroller's Office has conducted more in-depth inspections of the special activities of intelligence agencies, as part of the effort to fully serve its function as the public's eye on what transpires in agencies that come under the Comptroller's purview, including classified matters; B. The Landau Commission Report (hereinafter: the Landau report) of October 1987 on the methods of interrogation used by the ISA with respect to hostile terrorist activities. This report includes, *inter alia*, a recommendation that the State Comptroller's Office inspect whether the agency's interrogation unit conducts proper interrogations in accordance with the law and lawfully issued directives. The Landau report also included recommendations for directives related to interrogations regarding hostile terrorist activities. These included a consolidated file of standing directives for agency interrogators which details the means of pressure permitted for use during interrogations and, where permission is required, each means and the rank competent to grant permission for use thereof.

From September 1991 to December 1992, the State Comptroller's Office conducted a review of ISA interrogations related to hostile terrorist activities. The review concerned the objectives and operations of the hostile terrorist activity interrogation system within the ISA and its definition; factors that impact the interrogators' functioning and achievements; the propriety of the interrogations under the law and directives; reporting protocols and credibility and enforcement of the rules of conduct on the interrogators. The review was carried out in the ISA. Supplementary inquiries were carried out at the Prime Minister's Office, the Ministry of Defense, the Ministry of Justice, the Military Advocacy, the Israel Police and the Israel Prison Service.

The report addresses the main issues related to the interrogation process carried out by the ISA, but does not encompass all of them. The main focus of the report is the period beginning in late 1987 and ending in the summer of 1992. The fact that the report is submitted only in late 1994 is the result of the amount of work that went into preparing, processing and reviewing it, as well as the lengthy process of formulation and submission of the responses of the inspected agencies to the State Comptroller's Office. The severity of the conclusions was reexamined several times in light of the tremendous appreciation for the devotion and achievements of the individuals who carry out the ISA's work in general and those conducting interrogations in particular, especially during the Intifada, a time when violence in the Territoriesⁱⁱ soared and terrorism intensified. The ISA has borne a major part of the responsibility for countering terrorism both then and now.

The conduct of ISA interrogators was examined vis-à-vis the array of norms by which they are bound: primarily, the law, including the judgments of the Supreme Court which are part of common law, the Landau Commission recommendations, the decisions of the Ministerial Committee for ISA interrogation (hereinafter: the ministerial committee), and the ISA's own procedures and directives.

The report primarily focuses on the question of the degree to which the conduct of the agency during interrogations was consistent with these norms and how severely practices that deviate from these norms or violate them should be viewed. The report examines some of the physical conditions under which work is conducted in interrogation facilities, the difficulties created by workload and pressure and the assimilation of the interrogation permit protocol among

interrogators. The report puts a particular emphasis on the need to follow the three rules enumerated below to the letter:

- a. An interrogation is fundamentally an intellectual confrontation. Inasmuch as means of pressure are required during an interrogation, they must be employed only according to rules which were lawfully established and only with the required authorization.
- b. Actions taken during interrogations must be fully reported and documented.
- c. False reporting has no place in the ISA – whether it is inside the agency, to the official in charge thereof or to the judiciary and other review and monitoring authorities.

With respect to the need to uphold the three aforesaid principles, the review uncovered deficiencies, some of which were severe. Therefore, the report determines that it is necessary for ISA actions to be based on the law and on lawfully issued directives.

The review mostly covered incidents that occurred in the interrogation facility in Gaza, as representative of the state of affairs that has developed in the four years following publication of the Landau report. The review indicated that all command and staff ranks play a role in this state of affairs: [the review] showed an array of failures which indicates that those responsible for the agency in its entirety have severely failed to keep the actions of the ISA within confines of the law.

Between January 1988, shortly after the outbreak of the Intifada (December 1987) until the end of the period under review, December 1992, 19,775 terrorist attacks¹ took place in Judea and Samaria, the Gaza Strip and inside the Green Line, including: 2,000 incidents of gun fire and explosive devices; more than 7,000 incidents of Molotov cocktail and grenade throwing; more than 5,000 incidents of assault, including more than 500 stabbing incidents; more than 4,000 incidents of arson and some 900 incidents of damage to property.

In these terrorist attacks, 123 Israeli citizens, 799 Arabs from the Territories and three tourists were killed and 671 Israeli citizens, 2,168 Arabs from the Territories and 23 tourists were injured.

All in all, during the relevant period, thousands of individuals were put in administrative detention, tens of thousands were held in IDF riot control facilities and a few thousands in ISA interrogation facilities. Most of the individuals who were interrogated by the ISA admitted during interrogation to at least some of the offenses they were suspected of committing; few were cleared of any suspicion.

Interrogators marked major achievements in fighting terrorist activities and political insurgency in Israel and in the territories: collecting intelligence, recruiting agents, solving terrorist attacks, bringing terrorists to justice, uncovering cells and turning in weapons. Interrogators have withstood the difficult tests and significant dangers their work involves. This work also involves pressure and stress that demand the utmost mental strength. It is hallowed work and it is done tirelessly, with dedication and risk, sometimes in substandard conditions, all with a sense of purpose and without expecting rewards.

¹ The term terrorist attack refers to an act that causes physical harm to or an attempt to physically harm a person or property which has national, religious, political or ideological motivations.

As a result of the interrogations that were carried out during these years, thousands of terrorist attacks were solved, thousands of terrorist cells were uncovered and many hundreds of various weapons were turned in – from light weapons and grenades to landmines and explosive devices. As a rule, when an individual under interrogation admits to the offense attributed to him, or when enough evidence is provided by other witnesses, his file is transferred to the military prosecution for preparation of an indictment and trial.

The Intifada led to a significant change in the conditions under which interrogators operate:

- a. The number of individuals being interrogated increased continually, reaching unprecedented numbers.
- b. The number of interrogated individuals who were ideologically resolute and motivated to withstand interrogation increased significantly.
- c. The swift return to action of individuals who had been interrogated helped the organizations become more sophisticated, more familiar with some of the interrogation methods and their limitations and better able to devise techniques
- d. [*sic*] for withstanding interrogation. This practice, which was known before the Intifada, greatly increased during the Intifada.
- e. During the period under review, the number of interrogators and the size of the interrogation facilities were not adjusted to keep up with rate at which the number of individuals who were interrogated increased.
- f. The pressure of terrorist incidents necessitated quick solutions in order to provide intelligence that would enable handling terrorists and preempting planned terrorist attacks that had yet to materialize. Thus, the interrogators were under time pressure, which made it difficult to conduct orderly and thorough interrogations and presented a powerful temptation to stray from the permitted rules in order to get quick results.

The ISA informed the State Comptroller's Office of further difficulties that stood in the way of interrogators during the Intifada:

- a. Plea bargains leading to shorter jail terms increased.
- b. Due to the limitations of the security forces, there was an increase in incidents of: delay of suspect arrest for the purpose of interrogation, transfer of individuals under interrogation from one incarceration facility to another in order to advance their interrogation, collection of testimonies from individuals under interrogation by police officers subsequent to an ISA interrogation and based thereupon and transfer of individuals under interrogation from ISA facilities to facilities operated by the Israel Prison Service (IPS) upon conclusion of the interrogation.

Indeed, interrogators worked under severe constraints, but the Landau Commission took the difficulties of the interrogation into account and provided solutions for this problem. It determined how the ISA must act in such situations and issued written instructions on this issue. However, the review revealed that despite this, wide scale breaches of the instructions of the Landau Commission and of ISA protocols continued in the ISA interrogation facility in Gaza. Some breaches also occurred in other facilities.

The breaches were not the result of a lack of awareness of what is permitted and what is not, but were rather committed willfully. Veteran, even senior, interrogators in the Gaza facility

committed severe and systematic breaches during the period under review. During this period, senior management in the ISA failed to prevent these breaches, whether by permitting in ISA protocols means and measures of pressure that were not listed in the file compiled by the Landau Commission, whether by removing reservations the Landau Commission had placed on the use of permits and whether by refraining from eliminating these practices, as their position would require.

Even after the Landau Commission report was published, the practice of lying by interrogators was not eradicated: some lied during their testimonies before the courts or other inquiry and investigation authorities and some lied in their reports to their superior officers and others within the ISA itself. The strong position senior ISA officials presented to the Landau Commission that the ISA had a zero tolerance policy towards fabrications and that this policy was strictly upheld was examined by the State Comptroller's Office and was found to have no basis in reality.

It is not the State Comptroller's role, nor is it within her power, to determine whether it is desirable or necessary to make changes to the interrogation methods, to make them suitable for of circumstances that have changed since the Landau Commission. Whether or not this is necessary is a matter for the competent officials or the legislator to determine. A situation in which the ISA is required to achieve speedy results in interrogations relating to hostile terrorist activities under rules that make this goal very difficult to achieve, and sometimes, unattainable, is unhealthy and self-contradictory. A legitimate course of action would have been for ISA officials to clarify the problem and demand its solution by way of amending rules and procedure or through legislation. However, since they did not do so, they should have adhered to the rules, whatever the consequences, including decreased ability to preempt attacks. The ISA headquarters chose an unacceptable course of action. It did not contact the ministerial committee with the aim of having the rules changed because they did not meet the demands of the interrogations, or to have suitable legislation passed. At the same time, breaches continued in the interrogation facilities without headquarters – which knew or ought to have known about them – taking action to prevent these breaches. The result was de facto acquiescence with transgressions during interrogations.

ISA senior officials send the message not just with words, which are important in and of themselves, but primarily with actions, both on a daily basis and when special circumstances occur. With respect to transgressions during interrogation, the ISA sends a double message, which is in effect two common messages that exist side by side: One can, if one wishes, act according to one [message] and profess the other.

This report indicates that there is a mixed message in the agency, both with respect to exceeding permission and with respect to non-adherence to honest reporting as an inalienable value.

There is practically only one way to fully monitor what goes on in interrogation facilities – accurate recording of the interrogation, particularly the permissions for using means of pressure. The ISA must take decisive action to ensure full, true and accurate records of interrogations and permissions in order to make such records readily available to the entities that have the power to access this information: these entities would be judicial instances,

external or internal review and monitoring bodies, ISA training and education departments (for debriefing and teaching purposes) or commanding officers.

Since the Landau Commission has permitted the use of means of pressure during interrogations conducted with respect to hostile terrorist activity under certain conditions, the ISA should have expressed this in all the educational and training materials provided to interrogators, both in the moral-normative context and in the practical-technical context. In so doing, the agency would have provided the interrogators with a fundamental understanding of the very need for using such means and their limitations. This would have also contributed to a more accurate and correct use [of such means]. The State Comptroller's Office found that during the period under review, the ISA did not put enough effort into institutionalized training with respect to interrogation theory and protocol.

The allocation of resources for interrogation – manpower, the various interrogation facilities and their different components and other means, as well as the resources allocated to the IPS in terms of manpower and holding facilities for individuals whose interrogation had concluded – must be determined vis-à-vis the ISA's operative goals and must be qualitatively and quantitatively suitable for these goals. Any increase in one of the resources must be complimented by an increase in any other relevant resource, as required by their consolidated use as part of the war against hostile terrorist activities. This would enable the ISA to attempt to overcome the backlog of individuals awaiting interrogation as well as overcrowding in interrogation facilities.

During the period under review, improvements were made in the areas under review. The major improvements are the following: control and monitoring have increased; “permissions during interrogation” have been reevaluated and the conditions for using them have been reformulated; breaches by interrogators have been uncovered and investigated and punitive measures have been taken. These improvements were made by the ISA with the assistance of the State Attorney's Office and other officials in the Ministry of Justice and with the support of the Minister of Justice. These officials were assisted by the decisions of the ministerial committee. Moreover, in response to the draft of the State Comptroller's report on the findings of the review, the ISA has notified that some of the deficiencies listed in the report had already been addressed. This notwithstanding, the State Comptroller joins the remark the State Attorney made in her response to the report that “there is still a lot of work to do” and that “many more deficiencies must be addressed with diligence”.

The ISA has the responsibility to prevent hostile activity. This is indeed a very desirable goal, but it is unattainable. However, the ISA clearly makes a great contribution and covers a lot of ground on the way to reaching this goal. Responding to the State Comptroller in November 1993, the Secretary of the Government notified that the State Comptroller's suggestion to review the definition of the ISA's mission in fighting hostile terrorist activity merits consideration, particularly, according to him, in view of the new circumstances that have arisen since the agreement with the Palestinians.

The means of pressure during interrogation that have been permitted by the Landau Commission must be reviewed by the ministerial committee frequently. On one hand, some believe that even the means permitted by the Landau Commission should be moderated; on the other, some believe that the harsh reality requires broader permission in order to achieve

vital results. It is possible to say with certainty that the reality since the Intifada broke out and during the relentless wave of terrorism we are witnessing at the time the report is issued, is substantially different from the reality considered by the Landau Commission. The ministerial committee must take this reality into account, as well as the lessons drawn from the use of means of pressure by the ISA. These means must be evaluated bearing in mind respect for human dignity, which is required in a proper democracy on the one hand, and the need to protect the very existence of this democracy on the other.

The Landau Commission struggled with the issue of ISA interrogations in the summer of 1987, after it became clear that there were substantive aberrations in the ISA's conduct. The special role entrusted with the ISA, which sometimes compels it to operate in a gray area both in terms of method and content, does not detract from the requirement that its actions be based on a legal foundation, but rather strengthens it. Since this fundamental principle has been compromised, the Landau Commission stepped in and determined how the ISA's activity in the realm of interrogation must be conducted. The Commission also determined when, how and in what way the principle that interrogation must not include means of physical pressure may be breached. It appears that the crisis that gave rise to the need for an official commission of inquiry whose conclusions and recommendations have been endorsed by the government should have led to strict adherence to the rules set therein. The main findings of this report reveal that this is not the case and that at least during a substantial part of the period under review in this report, negative practices such as disregard for the law, false or incomplete reporting and others have persisted.

What is missing, but essential, is a decisive position on the part of the heads of the ISA that the provisions contained in the law and the competent decisions based thereupon must be followed in the line of duty. There is no dispute that the tasks the ISA performs are important and worthy and that they are performed with great dedication. However, this cannot justify breaking the law and departing from the authoritative decisions and rules of the Landau Commission and the ministerial committee, even if such are carried out for the vital purpose of obtaining fast results during interrogation. If this so, then a fortiori, it is impossible to provide justifications for actual breaches, while at the same time making baseless verbal statement that the law and the rules are followed to the letter. Over and above all these hangs a clear warning sign cautioning that false reporting is the original sin and that it must be completely eliminated from the ISA.

If improvements have been made after the conclusion of the collection of material for this report, they must be commended. If working conditions have changed in the context of the peace process, it may be that the conditions under which interrogators work now are different from those described herein. However, this does not detract from the need to study what has been stated in this report and to act accordingly.

ⁱ The ISA was formerly known as the General Security Service (GSS) or Shin Beit; translator.

ⁱⁱ The Territories refers to the Occupied Palestinian Territories; translator.