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US looks to Israel to justify torture

By: Vijay Prashad

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When the CIA looked for legal cover for its post-9/11 torture programme, it is little surprise it looked to Israel. Washington's ally has its own Guantanamo, Camp 1391, which the Israeli Supreme Court has consistently shielded from investigation.

Footnotes in government reports are often the place where disgruntled bureaucrats leave clues. It is where bits of information that lead elsewhere are suggestively placed. Senior officials might not allow potentially controversial information into the body of a report.

In the Senate report on CIA torture there is such a footnote. Early in the report's more than five hundred pages, footnote 51 concerns the November 26, 2001 Draft of Legal Appendix, Hostile Interrogations: Legal Consideration for CIA Officers.

This draft memorandum, according to the Senate report, "cited the 'Israeli example' as a possible basis for arguing that 'torture was necessary to prevent imminent, significant, physical harm to persons, where there is no other available means to prevent the harm.'"

US law is fairly clear: torture is illegal in all cases. There is no "ticking-time bomb" scenario that allows for the cruel and inhuman treatment of prisoners. If it has no basis in US law, the CIA suggests, then its officers could use Israeli practice as a precedent. The Israeli judiciary has been kinder on torture.

In 2007, the CIA was worried: could they be held accountable for the torture their officers had been conducting at the so-called "black sites"?

Correspondence between the Principal Deputy Attorney General Steven Bradbury (of the US Justice Department) and Acting General Counsel of the CIA, John Rizzo, testifies to that anxiety. Rizzo sought justification in the "Israeli example."

The US Congress had been discussing the McCain Amendment – to prohibit the "inhumane treatment of prisoners". Rizzo wrote there was a "striking" similarity between the US discussions and those held in Israel in 1999. Rizzo wrote the Israeli Supreme Court ruled "that several techniques were possibly permissible, but require some form of legislative sanction". He hoped Congress would provide such sanction. If not, Rizzo invoked the "necessity defense" – imported from Israel – that if it became necessary, it was acceptable to use torture.

Why did the CIA seek justification in the Israeli example? After all, says Laleh Khalili, author of *Time in the Shadows*, the CIA has its own history of torture. It was used in Latin America to decisive effect and enshrined in the CIA's 1963 KUBARK Counterintelligence Interrogation manual.

That manual is not for the faint of heart. Its style makes torture appear decidedly banal – "the electric current should be known in advance, so that transformers and other modifying devices will be on hand if needed", it notes in a section on electric shocks.

Sections of the current Senate report on Torture could very well have been lifted from the 1963 manual: detainees should be imprisoned "in a cell which has no light"; although "an environment still more subject to control, such as water-tank or iron lung, is even more effective". The more honest justification for CIA torture in the War on Terror should not have been in Israeli practice, but in what historian Greg Grandin calls "empire's workshop", Latin America.

Nevertheless, Khalili notes, the CIA likely wanted legitimacy in the courts – Israeli if not American – rather than referring to its history. The Israeli Supreme Court is staffed by people who have had distinguished fellowships from Princeton and Harvard – "and whose supposedly liberal rulings nevertheless leave room for a range of methods of torture". It seemed an ideal place to seek a precedent.

Normal Torture

However, the 1999 Israeli Supreme Court ruling has a massive hole in it. It assumes that only in extraordinary circumstances can Israeli officials use torture. However, as lawyers for the Public Committee Against Torture in Israel confirm, there is "normal" torture and then "extraordinary" torture.

Lawyer Bana Shoughry-Badarne says that when she interviews Palestinians who have been released from Israel's prisons, they often say that the treatment was *'adi*, normal or as usual. But what is usual for them has been described by attorney Lea Tsemel: "Almost every Palestinian who was interrogated can tell you about the sleep deprivation, the denial of access to a toilet or

shower, the hunger, the physical pressures, including being made to sit tied to a small stool for days, the beatings and the kicks, the threats, the hanging, the bending, the shaking (sometimes) to death, etc."

The sheer length of the list of routine tortures Tsemel rattles off should concern the reader. What is an *'adi* detention? Shoughry-Badarne tells the story of a Palestinian with Israeli citizenship held for thirty-three days in incommunicado detention. Toward the end of his time in prison, four or five members of Israeli intelligence (GSS) interrogated him, "while he was being humiliated and handcuffed painfully". GSS officers threatened his family, told him that his twin babies would not have a father – and then told him that his father had been arrested. He was knocked about a bit. This is *'adi*.

I asked Laleh Khalili if she saw any similarities between CIA torture techniques and the 'adi methods of the GSS. She made a list for me: "placing people inside boxes in which they have to contort their bodies to fit; sleep-deprivation; food control; extremes of cold and hot. Dogs have been used in all cases, as has loud music and darkness. A mid-1990s lawsuit by two Lebanese detainees accused their jailers of using tools to anally rape the men, which is remarkably reminiscent of the 'rectal hydration' torture."

Israel has its own Guantánamo: Camp 1391 – between Hadera and Afula in northern Israel. In 2009, the UN Committee Against Torture asked for access to this Camp, but their request was summarily denied. Remarkably, the Israeli Supreme Court has prevented any investigation of Israel's Guantánamo. Unspeakable treatment of prisoners was the norm in 1391.

Shoughry-Badarne notes that none of the seven hundred complaints of torture made to the GSS authorities have resulted in any serious investigation, let alone criminal charges. In 2009 Israel's High Court of Justice decreed that the Supreme Court ruling of a decade earlier was unenforceable. In other words, Israel's policy of torture could continue without any legal barrier.

No wonder the CIA lawyers salivated over the Israeli example.