ISRAEL

Follow-up - State Reporting
Action by Treaty Bodies, Including Reports on Missions

CCPR A/59/40 vol. I (2004)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

...
260. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Of the 27 States parties (detailed below) that have been before the Committee under the follow-up procedure over the last year, only one (Republic of Moldova) has failed to provide information at the latest after dispatch of a reminder. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

261. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

State party	Date information due	Date reply received	Further action
...			
Seventy-eighth session (October 2003)			
...			
Israel	7 August 2004	-	-

CCPR, A/60/40 vol. I (2005)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

...

233. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the comprehensive table presented below. Since 18 June 2004, 15 States parties (Egypt, Germany, Kenya, Latvia, Lithuania, Morocco, the Netherlands, the Philippines, Portugal, the Russian Federation, Serbia and Montenegro, Slovakia, Sweden, Togo and Venezuela) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only six States parties (Colombia, Israel, Mali, Republic of Moldova, Sri Lanka and Suriname) have failed to supply follow-up information that had fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

224. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

State Party	Date Information Due	Date Reply Received	Further Action
...			
Seventy-eighth session (*[July] 2003*)			
Israel	7 August 2004	-	A reminder was dispatched. Consultations have been scheduled for the eighty-fifth session.

CCPR, CCPR/C/SR.2392 (2006)

HUMAN RIGHTS COMMITTEE
Eighty-seventh session
SUMMARY RECORD OF THE 2392nd MEETING
Held at the Palais Wilson, Geneva,
on Wednesday, 26 July 2006, at 11 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO VIEWS UNDER THE OPTIONAL PROTOCOL (agenda item 7)

...

Report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/87/CRP.1/Add.7)

...

[Mr. RIVAS POSADA, speaking as Special Rapporteur for follow-up on concluding observations]

48. Israel had also failed to respond to the Committee's request at its seventy-eighth session in August 2003 for information on five paragraphs of its concluding observations. He had met in October 2005 with representatives of the State party, who had assured him that replies would be submitted but had not committed themselves to a specific date. He had sent a reminder on 6 July 2006 and requested a meeting with the Special Representative but had received no reply, which was not surprising in view of the current armed conflict.

...

61. Mr. SHEARER noted that the Special Rapporteur had mentioned in the case of Mali and Israel that no reply had been received to a communication dated 6 July 2006. It was somewhat unfair, in his view, to expect a State party to send the Committee its response on such an important matter within 20 days. He suggested that a reference should simply be made to the dispatch of a reminder.

62. Mr. RIVAS POSADA agreed to amend the report accordingly.

...

CCPR, A/61/40 vol. I (2006)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

234. In chapter VII of its annual report for 2003 (A/58/40, vol. I), the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/60/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2006.

235. Over the period covered by the present annual report, Mr. Rafael Rivas Posada continued to act as the Committee's Special Rapporteur for follow-up to concluding observations. At the Committee's eighty-fifth, eighty-sixth and eighty-seventh sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions on a State-by-State basis.

236. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Over the reporting period, since 1 August 2005, 14 States parties (Albania, Belgium, Benin, Colombia, El Salvador, Kenya, Mauritius, Philippines, Poland, Serbia and Montenegro, Sri Lanka, Tajikistan, Togo and Uganda) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only 11 States parties (Equatorial Guinea, Greece, Iceland, Israel, Mali, Moldova, Namibia, Suriname, the Gambia, Uzbekistan and Venezuela) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

237. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

State party	Date information due	Date reply received	Further action

...

Seventy-eighth session (October 2003)

Israel	7 August 2004	-	A reminder was dispatched.
Second periodic report examined	Paras. 13, 15, 16, 18 and 21		At its eighty-fifth session, the Special Rapporteur held consultations with representatives of the State party, who reported that follow-up replies will be submitted in the future. On 6 July 2006, the Special Rapporteur wrote to the Permanent Representative to recall that follow-up replies remain to be submitted. The Special Rapporteur proposed a meeting. No answer from the State party was received. Consultations have been scheduled for the eighty-eighth session.

...

CCPR, A/62/40 vol. I (2007)

CHAPTER VII. FOLLOW-UP ON CONCLUDING OBSERVATIONS

220. In chapter VII of its annual report for 2003 (A/58/40, vol. I), the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/61/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2007.

221. Over the period covered by the present annual report, Mr. Rafael Rivas-Posada continued to act as the Committee's Special Rapporteur for follow-up to concluding observations. At the Committee's eighty-fifth, eighty-sixth and eighty-seventh sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State. In view of Mr. Rivas-Posada's election to the Chair of the Committee, Sir Nigel Rodley was appointed the new Special Rapporteur for follow-up on concluding observations at the Committee's ninetieth session.

222. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. [1] Over the reporting period, since 1 August 2006, 12 States parties (Albania, Canada, Greece, Iceland, Israel, Italy, Slovenia, Syrian Arab Republic, Thailand, Uganda, Uzbekistan and Venezuela) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only 12 States parties (Brazil, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Mali, Moldova, Namibia, Surinam, Paraguay, the Gambia, Surinam and Yemen) and UNMIK have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

223. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided before 1 August 2006 to take no further action prior to the period covered by this report.

...

Seventy-eighth session (July 2003)

State party: Israel

Report considered: Second periodic (due since 2000) submitted on 20 November 2001.

Information requested:

Para. 13: Protracted detention without access to a lawyer (arts. 7, 9, 10 and 14.3 (b)).

Para. 15: Ending "targeted killings"; establishment of a policy of proportionate response to terrorist attacks; investigation of those responsible for abuse (art. 6).

Para. 16: Immediate halt to the demolition of property and homes in the Occupied Territories (arts. 7, 12, 17 and 26).

Para. 18: Review of the "necessity defence" argument; ensuring that instances of ill-treatment and torture are investigated and prosecuted by genuinely independent mechanisms; statistics from 2000 onwards on complaints made to the Attorney-General, including (a) how many have been turned down as unsubstantiated, (b) how many have been turned down because the necessity defence has been applied and (c) how many have been upheld, and with what consequences for the perpetrators (art. 7).

Para. 21: Repeal of the Nationality and Entry into Israel Law of 2003; reconsideration of policy on family reunification (arts. 17, 23 and 26).

Date information due: 7 August 2004

Action taken:

29 September 2004 A reminder was sent.

11 October 2005 A further reminder was sent.

October 2005 At the eighty-fifth session, the Special Rapporteur met a representative of the State party, who stated that the replies would be forwarded in due course.

21 February 2006 A further reminder was sent.

6 July 2006 The Special Rapporteur wrote to the Permanent Representative to remind him that the replies had yet to be received and to request a meeting. No reply was received from the State party.

20 September 2006 A fresh reminder was sent to the State party.

12 October 2006 The Special Rapporteur requested a meeting with a representative of the State party.

Date information received: 14 December 2006, complete response.

Recommended action: No further action.

Next report due: 1 August 2007

...

Note

1/ The table format was altered at the ninetieth session.

Follow-up- State Reporting
ii) Action by State party

CCPR, CCPR/CO/78/ISR/Add.1 (2007)

Comments by the Government of Israel on the concluding observations of the Human Rights Committee

I. Allegations of "prolonged detention without access to a lawyer" (paragraph 13)

Arraignment before a judge

Criminal Offences

1. In Israel, pursuant to Section 29 of the *Criminal Procedure (Powers of Enforcement - Arrests) Law*, specifies that a person arrested without a warrant must be brought before a judge as soon as possible, and no later than 24 hours following the arrest, with a special provision regarding weekends and holidays.

2. Section 30 allows for an additional 24-hour extension based on the need to perform an urgent interrogation, which cannot be performed unless the detainee is in custody, and cannot be postponed following his arraignment; or if an urgent action must be taken regarding an investigation in a security-related offence. Following the completion of the above measures, the detainee shall be brought before a judge swiftly, or released from custody.

3. The *Criminal Procedure (Powers of Enforcement - Arrests) (Arrangements for Holding Court Hearings according to Section 29 to the Law) Regulations*, 5757 - 1997 provide special arrangements concerning the arraignment of detainees on weekends and holidays in order to properly balance respect for the holidays with the individual rights of the detainee.

Security Related Offences

4. A person arrested in accordance with the *Emergency Powers (Arrests) Law*, 5739 - 1979 ("the *Emergency Powers (Arrests) Law*"), according to an order issued by the Minister of Defence, shall be arraigned before the president of a District Court no later than 48 hours following the arrest. If not brought before the president within 48 hours, he shall be released unless another ground for arrest is proven to the president of a District Court (section 4). The 48-hour period does not include holidays.

5. On June 26, 2006, the Knesset approved the *Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law, 2006*, that constitutes a Temporary Provision set for a defined period of 18 months.

6. The law regulates the powers required for the enforcement authorities in order to investigate

a detainee suspected of terrorism or security offences. Such investigations necessitate special enforcement powers due to the special characteristics of both the offences and the perpetrators. The main provisions of the law result from the exceptional circumstances of such a security offence.

7. Section 3 of the law stipulates that the appointed officer may delay the arraignment before a judge to a maximum of 48 hours from the arrest, if the officer is convinced that the cessation of the investigation would truly jeopardize the investigation. The officer may decide to delay the arraignment for another 24 hours if he is convinced that the cessation of the investigation would truly jeopardize the investigation or may harm the possibility to prevent harming human lives.

8. The officer may delay the arraignment for additional 24 hours for the same reason, provided that he explains his decision in writing and obtains the approval of the relevant approving authority. A delay of over 72 hours also requires the approval of the Head of Investigations Department of the ISA, or his deputy. In any case, the maximum delay would not exceed 96 hours from the time of the arrest.

9. It must be emphasized that the initial stage of the investigation of a detainee suspected of terrorism and security offence is critical for the investigation in many ways, such as the possibility to use the information obtained during the investigation to prevent additional imminent terror attacks. Therefore the legislator asserted that the provision concerning this delay in arraignment is properly balanced with the need to protect human lives.

10. Moreover, as a way of further assuring the rights of the detainee, and in light of the temporary nature of the law, during the duration of the law, the Minister of Justice would be obligated to report to the Committee of Constitution, Law and Justice of the Knesset on the implementation of the law every six months. The report would include, *inter alia*, detailed information concerning postponements in bringing a detainee before a judge (including the number of cases in which the postponement occurred and the duration of such postponements).

Soldiers - IDF

11. According to the *Military Justice Law*, following an amendment in 2000, the maximum period a soldier can be held under arrest before he is brought before a judge is 48 hours.

Access to Legal Counsel

12. In a recent decision by the Supreme Court, the Court held that "[t]here is no dispute as to the high standing and central position of the right to legal counsel in our legal system." (C.A. 5121/98, Prv. *Yisascharov v. The Head Military Prosecutor et. al.* (4.5.06)) Here, the Court adopted a relative exclusion doctrine, according to which the court may rule on the inadmissibility of a confession due to the interrogator's failure to notify the soldier of his right to legal counsel.

Criminal Offences

Detainees

13. In Israel, pursuant to Section 11 of the *Criminal Procedure (Powers of Enforcement - Arrests)(Terms of Detention) Regulations*, 5757 - 1997, stipulates that the date of a detainee's meeting with an attorney shall be predetermined, and that the commander of the detention facility shall enable the first meeting of a detainee with an attorney, at their request, even during extraordinary hours.

14. Section 34 of the *Criminal Procedure (Powers of Enforcement - Arrests) Law*, states that a detainee has the right to meet and consult with a lawyer. Following a detainee's request to meet with an attorney or the request of an attorney to meet a detainee, the person in charge of the investigation shall enable the meeting without a delay. This meeting can be delayed if, in the opinion of the police officer in charge, such a meeting necessitates terminating or suspending an investigation or other measures regarding the investigation, or substantially puts the investigation at risk. The officer in charge shall provide a written reasoned decision to postpone the meeting for the time needed to complete the investigation, provided this deferment does not exceed several hours.

15. The officer in charge can further delay this meeting if he issues a sufficiently reasoned decision that such a meeting may thwart or obstruct the arrest of additional suspects in the same matter, prevent the disclosure of evidence, or the capture of an object apprehended regarding the same offence. Such additional delay shall not exceed 24 hours from the time of arrest. An additional 24 hours deferment (to a total of 48 hours) can be granted, if the officer in charge provides an elaborated written decision that he is convinced that such postponement is necessary for safeguarding human life, thwarting a crime, or is in relation to a security offence under certain provisions. However, such a detainee shall be given a reasonable opportunity to meet or consult with a legal counsel prior to the arraignment before a court of law.

Prisoners

16. A recent amendment to the *Prisons Ordinance*, 1971 (amendment no. 30, dated July 2005) further stipulates the conditions for a prisoner meeting with an attorney for professional service. According to section 45, this meeting shall be held in private and in conditions allowing for the confidentiality of the matters and documents exchanged, and in such a manner that enables supervision of the prisoner's movements. Following the prisoner's request to meet with an attorney for professional service, or the request of an attorney to meet a prisoner, the director of the prison shall facilitate the meeting in the prison during regular hours and without delay.

17. Section 45A of the *Prisons Ordinance* relates to all prisoners, except for detainees who have yet to be indicted. This section authorizes the Israeli Prisons Service (IPS) Commissioner and the director of the prison to postpone or stop such a meeting for a set period of time if there is a substantial suspicion that meeting with a particular lawyer will enable the commission of an offence risking the security of a person, public security, state security or the prison security, or a prison offence substantially damaging to the prison discipline and that brings about a severe disruption of

the prison procedures and administration. The director of the prison may delay such a meeting for no longer than 24 hours, and the IPS Commissioner may order an additional 5 days delay, with the agreement of the District Attorney. Such a reasoned order shall be given to the prisoner in writing, unless the IPS Commissioner specifically orders it shall be given orally. The reasoning may be withheld under certain limited provisions. Decisions rendered according to section 45A may be appealed to the relevant District Court.

18. The District Court may further extend the above time-periods up to 21 days, following an application of the representative of the Attorney General, based on one of the grounds specified above. The maximum delay shall not exceed 3 months. Such a decision can be appealed to the Supreme Court. A Supreme Court judge may further extend these periods based on one of the grounds specified above.

II. "Targeted killings" (paragraph 15)

1. As was stated by Israel to the Committee, in the context of its attempts to cope with the scourge of terrorism, Israel's occasional resort to the targeting of terrorists, as a matter of military necessity, is carried out in compliance with international law of armed conflict. Clearly, Israel shares the Committee's concern for the loss of all innocent life and makes every effort to ensure that even during active warfare and the conduct of military operations in response to terrorist threats and actual attacks, utmost consideration is given to the principles of necessity and proportionality.

2. Without prejudice to Israel's position regarding the non-applicability of the ICCPR to the present armed conflict against Palestinian terrorism, which is governed by the laws of armed conflict, Israel confirms that it does not use "targeted killings" as a means of deterrence or punishment.

3. This measure is carried out with respect to identified terrorists who are directly and substantially involved in serious terrorist activities (either in the carrying out of such attacks or in other ways, such as their planning or dispatch). All such operations are reviewed in advance to ensure full compliance with the laws of armed conflict, including the principles of military necessity, distinction, proportionality and humanity. Such a measure is only carried out as an extraordinary measure, where there is no feasible way to apprehend the identified terrorist, and only after all feasible precautions have been taken with a view to avoiding - and in any event minimizing - incidental damage to innocent individuals. Accordingly, targeting of terrorists is authorized only after carefully examining all available evidence and considering all operational alternatives.

4. Israel's legal position on this issue is a matter of public record, and was presented to the Israeli Supreme Court sitting as the High Court of Justice as part of the State's written and oral responses to a petition, still pending before the Court, concerning the legality of this measure (*HCJ 769/02 - Public Committee Against Torture et al v. Government of Israel et al*).

5. In this context, Israel has consistently maintained an absolute preference, where possible, to arrest terrorist operatives. However, in areas under the control and jurisdiction of the Palestinian Authority (the "PA"), arrest has not always been a realistic alternative. This is particularly true in the Gaza Strip, where Israel no longer exercises law-enforcement capacities, and in some areas in the

West Bank under the security control of the PA. The difficulty of arresting senior and active terrorists is further compounded by the unwillingness of the PA to make such arrests and the operational difficulties, including the grave danger to the lives of soldiers and the local civilian population, that would be entailed in requiring the IDF to send forces to enter such areas, not to mention the time it would give those terrorists to escape.

6. Despite the fact that during active warfare, armed hostilities and terrorist attacks against its population, Israel is not obliged under international law of war to take all measures to arrest a suspected terrorist before considering resort to the use of deadly force, it nevertheless has, to the extent possible in such difficult conditions, applied such policy in its fight against terrorists, to the extent possible in these difficult conditions.

7. Furthermore, Israel attaches importance to the principle of proportionality in dealing with terrorist threats and activities. Accordingly, attacks are only carried out if the collateral damage anticipated is not excessive in relation to the military advantage to be obtained from the attack, in accordance with the rule of proportionality. Indeed, on this basis, operations have been aborted, delayed or modified, in order to avoid causing damage to innocent individuals.

8. The authority to take final decisions regarding "targeted killings" is reserved to the very highest levels of the IDF and the Government of Israel with the guidance of legal counsel. Such decisions are taken only after carefully reviewing their compliance with all of the relevant principles noted above. IDF commanders at all levels (including regional military commanders) are issued with clear and compulsory instructions governing all operational activity. These instructions are drafted in consultation with legal counsel to ensure that they embody, and are fully consistent with Israel's obligations under Israeli law and the laws of armed conflict.

9. IDF operational guidelines, instructions and activities are also subject to the regular scrutiny of the Israeli Supreme Court sitting as the High Court of Justice according to norms of Israeli and international law.

10. With respect to the investigation of complaints regarding disproportionate use of force, the IDF is constantly acting to accelerate and streamline investigation procedures, which are regularly reviewed and evaluated. All IDF operations and activities which result in civilian casualties are reported to the Chief of Staff and the Military Advocate General within 48 hours. In each case, the Military Advocate General can then instruct that an operational investigation, be conducted, in order to determine whether there is any evidence of criminal behavior. Where there is such evidence or suspicion, the Military Advocate General is authorized to order that criminal investigations be carried out by the Military Police and where there is sufficient evidence, prosecutions are undertaken by the Military Prosecutor's office. It should be noted that the Military Advocate General is the highest legal authority in the IDF who, by virtue of his role, is independent from the command hierarchy of the IDF and is subject only to the rule of law.

III. Allegations of "Partly punitive demolition of property and homes" (paragraph 16)

1. As mentioned above, since September 2000 Israelis have been the victims of a relentless and

ongoing campaign by Palestinian terrorists to spread death and destruction, killing more than 1,100 Israelis and injuring nearly 8,000. In light of this unprecedented lethal threat, Israeli security forces have sought to find effective and lawful counter-measures that may minimize the occurrence of such terrorist attacks in general, and suicide terrorism in particular, and discourage potential suicide bombers. Faced with the failure of the Palestinian leadership to comply with its obligations to fight terrorism, Israel has been compelled to combat this ongoing threat to the inherent right to life. One such security measure is the demolition of structures that pose a real security risk to Israeli forces.

2. Palestinian terrorists often operate from within densely crowded civilian neighborhoods in grave breach of international law, whether firing from within these buildings or activating roadside charges from orchards and fields. In such instances, military necessity dictates the demolition of these locations. Under international law, such locations are considered legitimate targets for attack. Therefore, in the midst of combat, when dictated by operational necessity, Israeli security forces may lawfully destroy structures used by terrorists.

3. A further instance necessitating the possible demolition of buildings is the use made by terrorist groups of civilian buildings in order to conceal openings of tunnels used to smuggle arms, explosives and terrorists from Egypt into the Gaza Strip. Similarly, buildings in the West Bank and the Gaza Strip are exploited for the manufacturing and concealment of weapons and explosive devices used against Israel, including the Kassam missiles fired on an almost daily basis against Israeli civilian population centers. The demolition of these structures is often the only way to combat these threats effectively.

4. Another method previously employed by Israel against terrorists was the demolition of homes of those who had carried out suicide attacks or other grave terrorist attacks, or those who are responsible for sending suicide bombers on their deadly murderous missions. The legality of this measure, used for deterrence and not as a punitive measure, was upheld by the Israeli High Court of Justice. The use of this measure has presently been discontinued by the IDF.

5. In this regard, Israel's security forces adhere to the rules of international law of armed conflict and are subject to the scrutiny of Israel's High Court of Justice in hundreds of petitions frequently brought by Palestinians and human rights organizations.

6. These counter-terrorism measures, by any reasonable standard, do not constitute a form of "collective punishment" as some have claimed. While the security measures do unfortunately cause hardships to sectors of the Palestinian population, this is categorically not their intent. Wherever possible, even in the midst of military operations, Israel's security forces go to great lengths to minimize the effects of security measures on the civilian population not involved in terrorism. In this context, Israel adopts measures in order to ensure that only terrorists and the structures they abuse are targeted.

7. Finally, another practice used when necessary, is the demolition of illegally constructed buildings, such as in cases where buildings interfere with plans for the construction of public facilities including schools or roads; pose a safety threat to their inhabitants; or interfere with historic landmarks. It should be stressed that all demolitions are conducted in accordance with due process

guarantees, after a fair hearing opportunity is given and subject to judicial review with the right to appeal and without distinction on the basis of race or ethnic origin. Those affected by a demolition order are entitled by law to appeal to the Israeli Supreme Court

IV. "Certain interrogation techniques" (paragraph 18)

1. Following the High Court of Justice ruling in HCJ 5100/94, *The Public Committee Against Torture in Israel v. The State of Israel*, dealing with the use of "moderate physical pressure" in interrogations, the Attorney General is not authorized to grant an approval in advance permitting the use of such "exceptional measures".

2. The Israeli Security Agency (ISA) interrogators operate in accordance with standard operational procedures, detailing acceptable interrogation techniques, and receive extensive training on permissible investigation methods.

3. Every detainee undergoing an interrogation is allowed full access to a medical examination on a regular basis, as well as upon request.

Accountability issues:

4. Complaints against Israel Security Agency personnel alleging the use of prohibited investigation measures are dealt with in the following manner:

4.1 Persons who are detained by the Israel Security Agency for purposes of investigation are entitled to file complaints concerning any alleged mistreatment during such investigations. All such complaints are thoroughly investigated by the Comptroller of interrogates complaints.

4.2 According to ISA rules of operation, the Comptroller functions independently and no factor in the ISA, including its Head, has jurisdiction to interfere with the findings of the Comptroller.

4.3 Furthermore, the Comptroller functions under the close supervision of a high ranking member in the State Attorney's Office. Additionally, following the termination of the examination of the complaints, the Comptroller's report is thoroughly reviewed by the aforementioned high ranking official in the State Attorney's Office and in cases when the issues at hand are sensitive or circumstances so necessitate - also by the Attorney General and the State Attorney.

4.4 A decision regarding a complaint is made by the Attorney General, the State Attorney and the high ranking member of the State Attorney's Office who is in charge of dealing with this matter, only following a thorough examination of the Comptroller's findings. These decisions are administrative, subject to the judicial review of the High Court of justice, like any other administrative decision.

4.5 Since October 2000, thousands of investigations have been conducted, and a relatively low number of complaints have been filed - 65 complaints in 2001; 81 complaints in 2002; 127 complaints in 2003; 115 complaints in 2004; 64 complaints in 2005; 55 complaints in 2006; Most of these complaints were found to be unjustified. When complaints were found to be justified, measures were

taken against the investigator involved.

4.6 Since the Supreme Court handed down its decision concerning the investigation methods of the ISA, virtually no petitions have been submitted to the High Court of Justice regarding investigation methods. In contrast, previous to the year 2000, hundreds of such petitions were filed. At present, there are no petitions pending from suspects interrogated, or Non-Governmental Organizations such as B'tselem, and Physicians for Human Rights. This is a strong indication of the fact that the investigations are just and lawful, and conducted in accordance with the Supreme Court's ruling. The change has indeed been dramatic.

4.7 To this date, no complaint has led to findings that a criminal offence has been committed. However, several disciplinary proceedings have been taken against several ISA personnel. Furthermore, several complaints resulted in reevaluation of interrogation techniques and conditions, and subsequent amendments were made.

4.8 The following list details incidents of complaints which led to the disciplinary measures detailed below:

- Following the complaint regarding the interrogation of **F.T.A**., it was found that an ISA interrogator behaved in an inappropriate manner and he was reprimanded. A general guidance in this matter was issued to all ISA interrogators.

- Following the complaint regarding the interrogation of **H.M.H.A.**, two general remarks were issued concerning reports during an interrogation to all ISA interrogators.

- Following the complaint regarding the interrogation of **M.A.R.B**., certain general remarks concerning the methods of interrogation to all ISA interrogators were relayed.

- Following the complaint regarding the interrogation of **K.M.K.K**., a general remark as to the documentation of methods of interrogation was issued.

- Following the complaint regarding the interrogation of **Z.A.K.**, certain general remarks concerning the methods of interrogation was issued.

- Following the complaint regarding the interrogation of **M.M.M**., a general remark concerning the methods of interrogation to all ISA interrogators was issued.

- Following the complaint regarding the interrogation of **F.T.A.S**., the ISA interrogators were issued a general remark concerning the methods of interrogation. It was found that there have been difficulties in providing inmates with change of clothing and the Prison Authority was notified accordingly. Additionally, it was concluded that the conditions of the food, both its quantity and quality, did not comply with the accepted standards during the period in question and that there was a necessity for immediate improvement. Accordingly, the Police and the Prison Authority have taken steps to rectify the situation.

- Following the complaint regarding the interrogation of **M.A.Y**., it was found appropriate to clarify the guidance pertaining to an immediate report regarding a change in a detainee's medical condition whilst undergoing an interrogation.

V. "Issues of family reunification in the context of the Nationality and Entry into Israel (Temporary Order) of 31 July 2003" (para. 21)

1. Since the outbreak of the armed conflict between Israel and the Palestinians towards the end of the year 2000, which led, *inter alia*, to the commission of dozens of suicide bombings inside Israel, there has been a growing involvement in assistance to terrorist organizations on the part of Palestinians originally from the West Bank and the Gaza Strip. Such individuals carry Israeli identity cards pursuant to procedures of family unification with Israeli citizens or residents, allowing their free movement between the West Bank and the Gaza Strip and into Israel.

2. In order to prevent such potential danger posed by *former* residents of these areas during the current armed conflict, the Government decided in May 2002 to temporarily suspend granting them legal status in Israel , through the process of family unification. The decision was adopted following the horrendous wave of terror attacks in March of 2002, when 135 Israelis were killed and other 721 were injured.

3. It should be noted that a State has the right to control entry into its territory, and more so, during times of armed conflict, when persons requesting to enter may potentially be involved in acts of violence against its citizens.

4. On July 31, 2003, the Knesset enacted the *Citizenship and Entry into Israel Law (Temporary Provision)*, 5763-2003 which limits the possibility of granting residents of the territories Israeli citizenship pursuant to the *Citizenship Law*, including by means of family unification; and the possibility of granting such residents residence permits into Israel pursuant to the *Entry into Israel Law*.

5. The Law is the direct result of 23 murderous terrorist attacks, made possible by the involvement of persons who were granted legal status in Israel based on their marriage to an Israeli citizen, and took advantage of their Israeli ID to pass checkpoints and carry into Israel either suicide bombers or explosives. The Law enables entry to Israel for the purposes of medical treatment, employment, or other temporary grounds, for an overall period of up to six months, as well as the unification of a minor up to the age of 12, with a parent lawfully residing in Israel. Furthermore, the Law does not change the status of people who already received their status prior to the day the Law came into effect. However, those people's status shall not be advanced, yet left static.

6. The Law was enacted for a period of one year. At the end of that period in August, 2004, the Law was extended for another six months. It was re-extended in February 2005 for a period of four more months and has been further extended until August 31, 2005. Simultaneously, the Government had prepared an amended draft of the law, while extending the exceptional cases to which the law does not apply. The revised law was published on August 1, 2005 and was invoked until March 31, 2006. At the end of that period it was extended again and is set to expire in January 2007.

7. The Law, which is a temporary measure, does not change the status of persons who already received their status prior to the day the Law came into effect. However, the Law provides that those people's status shall not be advanced, but instead left static.

8. The amendment to the Law (entitled *The Citizenship and Entry into Israel Law (Temporary Order) (Amendment), 2005)* sets several new instructions:

- The Minister of the Interior may authorize a request for family unification for those who are married to an Israeli spouse, and are residents of the area, for men over the age of 35 and women over the age of 25;

- Furthermore, the law authorizes the Minister of the Interior to grant residence permits to children of such a couple that are minors **under the age of 14**;

- Additionally, with regard to children of such a couple that are minors **over the age of 14**, the law stipulates that the Minister of the Interior has the authority to grant temporary permits under certain conditions;

- A request can be denied in cases where the Minister of the Interior or certain security functionaries assert that the person, or a family member of first relation, poses a security threat.

- In cases where a person or a family member has been known to act for the benefit of the State of Israel, the law enables the Minister of the Interior and certain security functionaries to grant permits to a resident of the area.

9. The Law's constitutionality was scrutinized and recently upheld by the Supreme Court in *H.C.J. cases 7052/03, 7102/03 Adalah and others v. The Minister of the Interior (14.5.06)*. The High Court of Justice, residing in an extended panel of eleven judges, rejected the petitions against the legality of the Law, by a six to five vote. The dissenting opinion was given by the President of the Court, Chief Justice Aharon Barak, whose position was that the law infringes on the constitutional right to family life and equality, in a manner exceeding that required, and the law must therefore be annulled.

10. The majority opinion was given by the Deputy President (retired), Justice Cheshin, whose position was that the law does not harm constitutional rights, and that even if some such harm occurs, it is proportionate. He concluded that the law is constitutional. Judge Naor fully concurred; Judge Gronis held that the law may harm the constitutional right to family life, but the harm is nevertheless proportionate; Judge Adiel also held that the law harms the constitutional right to family life, but the harm is proportionate; similarly, Judge Rivlin held that the law harms the constitutional rights to family life and equality, but the harm is proportionate.

11. Judge Levi held that the law harms the constitutional rights to family life and equality, in a manner exceeding that required, but that the State should be given nine months duration to establish an alternate legislative arrangement.

12. The Court noted that the Government has decided to prepare an amendment to the Law adding exceptions to the general rule that would allow withholding application of the Law to groups of individuals who pose a lower security risk to the lives and security of Israeli citizens. The Supreme Court also pointed out the limited time frame of the Law and that the Government did not extend the Law for the full year. The Court thus did not issue any order concerning the Law, leaving open the possibility to request further information from the Government, if necessary, following the envisioned changes to the Law.

Following this judgment, a discussion was held by the Minister of Justice, which concluded with administrative work headed by the Attorney General, along with the Ministry of the Interior, for the preparation of a Law regulating the acquisition of status in Israel, as a result of a marriage. At present, comprehensive ongoing consultations are taking place as part of these governmental efforts to prepare a Bill that will reflect the Supreme Court's remarks.