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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE
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List of issues to be considered during the examination of the fourth periodic report of ISRAEL (CAT/C/ISR/4)

Articles 1 and 4

1. In its previous Concluding Observations on the State party's third periodic report, the Committee recommended that the provisions of the Convention be incorporated into the domestic law of Israel, in particular, a crime of torture as defined in article 1 of the Convention. Notwithstanding the State party's clarification that "all acts of torture (…) are criminal acts" under Israeli law, please indicate what measures have been taken to implement the recommendation calling for all provisions of the Convention to be specifically incorporated in law.[1] According to information before the Committee, the Knesset Constitution Law and Justice Committee discussed in 2007 a proposal for inclusion of a prohibition of torture in its draft Constitution. Please describe the content of the proposal and indicate its current state of adoption.

Article 2

2. Please explain what measures the State party has undertaken to implement the Committee's previous recommendation[2] to remove from its legislation *defense of necessity* as a possible justification for the crime of torture.

3. The report notes that administrative detention can only be used on an exceptional basis "when evidence is clear, concrete and trustworthy but for reasons of confidentiality and protection of intelligence sources, cannot be presented as evidence in ordinary criminal proceedings."[3] The Committee expressed concern that the practice of administrative detention does not conform to article 16 of the Convention because it is used for "inordinately lengthy periods" and "for reasons that do not bear on the risk posed by releasing some detainees." The State party explains[4] that the practice is regularly reviewed and used only on an exceptional basis when confidentiality and protection of intelligence sources make it impossible to present evidence in ordinary criminal proceedings. Please clarify what actions have been taken to

[1] CAT A/57/44 (2002), para. 53 a).
[2] CAT A/57/44 (2002), para. 53 (i).
[3] CAT/C/ISR/4, para. 90.
[4] CAT/C/ISR/4, para. 90.

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prevent resort to such a practice. How does the government support its statement that this is an exceptional measure when taking into account that, according to information before the Committee, 900 Palestinians were held in administrative detention in 2007, and that some, including former ministers of Hamas, were "seemingly held to exert pressure on Hamas to release Gilad Shalit, an Israeli soldier (…)".The State party should also explain the compatibility with article 16 of the Convention of both *Military Order 1226 (1988)*, which empowers Israeli military commanders in the West Bank to detain Palestinian citizens for up to six months when there is "reasonable grounds to presume that the security of the area or public security require the detention"[5], and the *Detention of Unlawful Combatants Law – 2002*, which allows "unlawful combatants" to be held for up to 14 days before bringing them before the competent judge.

4. Further to the Committee's previous recommendation[6], please explain how the State party has ensured that all detainees, without exception, are brought promptly before a judge and are ensured prompt access to a lawyer. Indicate, in particular, whether sufficient safeguards are provided to eradicate lengthy *incommunicado* detention of security detainees.

5. The State party report[7] refers to several provisions of the *Criminal Procedure (Powers of Enforcement-Arrests) Law* regulating detention conditions for criminal offenders in Israel. However, *Israeli Military Order 378*, which applies in the West Bank, allows for Palestinian detainees, including children from the age of 12, to be held for a period of up to eight days before being brought before a military judge whether or not the person is charged with a security offense. This same order allows for detainees to be held up to 90 days without access to a lawyer and up to 188 days before being charged with an offence.[8] How does the State party reconcile the Order with its obligation under article 2 of the Convention to take effective measures to prevent torture?

6. The State party report[9] notes that pursuant to section 3 of the *Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law – 2006*, persons suspected of security offences may be detained and interrogated for up to 96 hours before being brought before a judge and held for up to 21 days without access to a lawyer[10]. This law also provides for subsequent judicial remand hearing in the absence of the detainee for up to 20 days. Please justify the compatibility of this law with article 2 of the Convention. Also justify whether this law, which was enacted for an initial period of 18 months, has been extended until the end of 2010 with the intention of incorporating its provisions into an anti-terror law.

7. According to information before the Committee, the Israeli Security Agency (ISA) has allegedly been operating a secret detention and interrogation facility, known as "Facility 1391" in an undetermined location within Israel, not accessible to the International Committee of the Red Cross (ICRC) or detainees' lawyers or relatives. In response to a petition filed by Hamoked to the Supreme Court to examine the facility's legality, the Supreme Court refused interim measures to prevent holding detainees and required the State to inform it about any persons

[5] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, Mission to Israel, including visit to Occupied Palestinian Territory, A/HRC/6/17/Add.4, November 2007, para. 23.
[6] CAT A/57/44 (2002), para. 53 (c)
[7] CAT/C/ISR/4, paras 91 to 93.
[8] Article 78 of Israeli Military Order 378.
[9] CAT/C/ISR/4, paras. 94 to 100. UAT
[10] Report of the Special Rapporteur on terrorism, Martin Scheinin, Mission to Israel, including visit to Occupied Palestinian Territory, A/HRC/6/17/Add.4, November 2007, para. 24.

being held in the facility. The military prosecutor later informed Hamoked that there had been no investigations and in 2005, the Court found that the authorities had acted reasonably in not conducting the investigations. Please clarify how a decision not to investigate can be justified and how this conforms to article 12 of the Convention. Allegations of torture, ill-treatment and poor detention conditions in this facility have been reported to the Committee. What measures have been undertaken to ensure appropriate access by ICRC to all detainees in this facility.

8. The State party report[11] refers to the High Court of Justice decision *The Centre for Defense of the Individual v the Attorney General* [12], where the Court rejected two petitions requesting an additional investigation of alleged torture in the facility 1391. Please indicate what other cases, if any, have been brought to justice for acts of torture and ill-treatment at this facility and the results of these investigations and proceedings.

9. Please provide information on allegations received by the Committee that Palestinian detainees are subjected by Israeli security officials to acts in violation of the Convention before, during and after interrogations, including claims of beatings, binding in "shabah" position, denial of basic needs, sleep deprivation, tightening of handcuffs, sudden pulling of the body, sharp twisting of the head, crouching in the "frog" position and bending the back in the "banana" position. Have these allegations of torture and ill-treatment been investigated? Have the offenders been prosecuted? How many have been convicted and what sanctions have been imposed? Please comment, in particular, on allegations of ill treatment of the so-called "ticking bomb suspects", i.e., terrorist suspects or persons otherwise holding information about potential terrorist attacks.[13]

10. According to reports before the Committee, both Hamas security forces in Gaza and Fatah authorities in the West Bank have carried out arbitrary arrests and unlawful detentions of political opponents, denied them access to a lawyer and subjected detainees to acts of torture and ill-treatment, especially aggravated after June 2007. Reportedly, those detained have been denied, *inter alia*, basic due process rights and the right to prompt and effective investigations. Please indicate whether the State party exercises effective control in this area in order to implement the Convention obligations, and what measures the State party has been able to take, if any, with regard to investigation of these acts and prosecution of perpetrators.

11. Please provide information on the legislative, administrative and other measures taken by the State party to respond to terrorism threats and, in that case, explain how these measures have affected human rights safeguards in law and in practice.

12. According to information from NGO sources contained in the Report of the Special Rapporteur on violence against women,[14] an increase since 2000 in the number of Palestinian women detained and held in Israeli military prisons was found, with 86 of the 91 women reportedly detained in 2004 as security detainees; 4 are administrative detainees. Furthermore, the Special Rapporteur stated that "entire families may be arrested when IDF fails to find a suspected terrorist and may be held for indefinite periods of time in order to put pressure on

[11] CAT/C/ISR/4, para. 77.
[12] HCJ 11447/04, *The Centre for Defence of the Individual v the Attorney General*, decision of 14 June 2005.
[13] Report of the Special Rapporteur on Terrorism, Martin Scheinin, Mission to Israel, including visit to Occupied Palestinian Territory, A/HRC/6/17/Add.4, November 2007, para 21.
[14] Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Addendum, *Mission to Occupied Palestinian Territory*, adopted on 2 February 2005 (E/CN.4/72/Add.4), para. 35.

relatives who may be wanted or under interrogation.[15] The Special Rapporteur further stated that the majority of detainees are held for alleged security offences such as attempting to kill settlers or military personnel. Because some females have trained as suicide bombers women have become "prime suspects at checkpoints where they may be subject to body searches and detained under administrative detention (para 40). Please provide up to date information on the number and situation of Palestinian women detainees and their children. Indicate, in particular, what measures are in place to protect their physical integrity and to ensure adequate detention conditions, access to independent counsel and family visits. Who conducts the body searches and with what results and how are these women protected against degrading searches? Please produce case examples and statistics regarding the number of such cases, the names and any complaints.

Article 3

13. The State party report[16] notes that the *Extradition law* forbids the extradition of a person if acceding to the request militates against *order public* or an essential interest of the State. In addition, the Minister of Justice must (…) act in a reasonable manner in exercising the authority to decide on extradition." How does the State party ensure that the principle of *non-refoulement* contained in article 3 of the Convention is applied whenever there are substantial grounds for believing that a person would be in danger of being subjected to torture?

14. Please comment on the use of diplomatic assurances as cited in para 73 of the State party report and on whether they were used in the *Genadi Yegudayev v State of Israel* case cited, and what measures the State party took to follow up, if any. Please indicate whether such assurances have been used in other cases and with what result.

15. Please inform the Committee on the nature and scope of the "Coordinated Immediate Return Procedure", established by IDF order 1/3.000. Explain, in particular, how this procedure ensures an assessment of a risk of torture of persons seeking protection in Israel.

16. According to information before the Committee, an amendment to the *1954 Infiltration to Israel Law (Jurisdiction and Felonies) Act* was passed on 19 May 2008 in first reading by the Knesset. Article 11 of this proposal allows Israeli Defence Forces officers to order the return of an "infiltrator" to the State or area from which he arrived within 72 hours, without any exceptions, procedures or safeguards. Please inform the Committee on the status of this proposal; what measures has the legislature taken to ensure State party compliance with its obligations under article 3 of the Convention (and the refugee convention of 1951)?

17. According to information before the Committee, 48 people were summarily deported to Egypt on 19 August 2007 shortly after having crossed the Israeli border, allegedly without following any legal procedure or allowing potential refugees to apply for asylum in Israel or to seek judicial review of the deportation decision. Please provide information on this incident, what procedure, if any, was applied, and information on the treatment and whereabouts of these deportees, if known, with reference to State party's obligations under article 3 of the Convention.

[15] Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Addendum, *Mission to Occupied Palestinian Territory*, adopted on 2 February 2005 (E/CN.4/72/Add.4), para. 39.
[16] CAT/C/ISR/4, paras. 26 and 27.

Article 5

18. Please explain the compatibility of the State party's position, confirmed by the Israeli Supreme Court's decision of 30 January 2008, *Jaber AlBasyouni Ahmed v The Prime Minister*, that Israel is not in "effective control of Gaza" and that its duties are therefore limited to prevention of a humanitarian crisis, with article 5 of the Convention.

19. What use does the State party make of private security contractors operating at checkpoints along the separation barrier between Israel and the occupied Palestinian territories? Allegations of ill-treatment by these contractors, including strip searches and the use of underground facilities as *de facto* temporary places of detention have been alleged in reports to the Committee. What responsibility does the State party bear for any offences committed by these contractors? Do they receive any training on the prohibition against torture?

20. Please comment on the measures adopted by the State party to respond to the United Nations High Commissioner for Human Right's call for an immediate end to the Israeli blockade of Gaza, by which 1.5 million Palestinians have been forcibly deprived of their most basic human rights for months.[17]

Article 11

21. According to information before the Committee, the *Criminal Procedure (Interrogating Suspects) Law of 2002* requires that all stages of a suspect's interrogation be recorded by video. However, this requirement is said not to apply to Israeli General Security service (GSS) or ISA. Additionally, the Law is reported to have been amended by the Knesset in 2008 exempting Israeli police from this requirement when interrogating suspects charged with security offences. Please provide updated and detailed information on the use of video, the number of cases and whether it has ever been invoked in a court case resulting in release of a detainee because of impermissible treatment?

22. Further to the Committee's concern expressed in its previous concluding observations[18], what measures has the State party taken to address the differing definitions of a child in Israel and in the occupied Palestinian territories? Please comment on the allegation that sentences in the occupied territories are meted out based on the child's age at the time of sentencing rather than when the offence was committed.

23. Please indicate the competent jurisdiction for dealing with children charged under military orders. Are judges and court officials dealing with minors trained in international law and standards protecting the rights of the child?

24. The Committee has received reports of Palestinian child detainees being interrogated in the absence of a lawyer or family member. Further, it is alleged in NGO reports before the Committee that 95% of cases in Israeli military courts involving Palestinian children rely on confessions to obtain a conviction." Please comment on these claims and provide detailed information on measures undertaken by the State party to ensure protection of child detainees in the occupied territories, including through provision of fundamental safeguards.

25. According to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 700 Palestinian minors were

[17] UN Press release of 18 November 2008.
[18] CAT A/57/44 (2002), para. 52 (d).

arrested in 2006, 25 of whom were held in administrative detention orders. The Rapporteur also received reports of solitary confinement used by prison authorities as a means of encouraging confessions from minors or as a punishment for infractions of prison rules. How does the State party reconcile these allegations with rule 67 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which prohibits disciplinary measures against children, including solitary confinement? Does the State party ensure that imprisonment of a minor is used as a measure of last resort?

Article 12

26. According to the State party report[19], 1,273 complaints were filed with the Department of Investigation of Police Officers in the Ministry of Justice during 2004. How many of these complaints were on counts of torture or ill-treatment? The report further shows that[20], out of these 1,273 complaints, criminal proceedings have been initiated in 49 cases. How many of these proceedings have ended up in the conviction of the accused? What sanctions have been imposed on those convicted?

27. The report refers to some provisions of the *Israel Security Agency Law 5762-2002*.[21] (Please explain how the State party ensures impartiality in the handling of complaints against ISA or its employees when, according to section 7 of the Law, the Agency Comptroller is appointed by the Prime Minister, in consultation with the head of the ISA. According to section 18 of the Law, "an ISA employee (…) shall not bear criminal or civil responsibility for any act or omission performed in good faith and reasonably by him within the scope and in performance of his function". Please provide detailed information on the number, type and results of complaints against ISA or its employees. How many are dismissed under section 18? Please explain how the broad exemption of section 18 is applied, whether there is any independent oversight or challenge to its application and how this comports with the obligations under article 12 and other provisions of the Convention.

28. Please provide detailed information on the results of the judicial commission cited in para. 50 (h) of the committee's conclusions and update the Committee as to the reasons for the Attorney General's decision of 27 January 2008 not to file indictments against police officers or commanders accused of the killing of 13 unarmed Palestinian citizens of Israel during the October 2000 protest demonstrations in Israel.

29. Please provide updated statistical data regarding complaints of torture filed against ISA and IDF and the Israeli Prisons Service (IPS), the results of the investigations of these complaints and the prosecution and punishment imposed on those found responsible.

Article 14

30. Please provide updated information on the status of adoption of the *Civil Damages (Liability of the State) (Amendment No.8) Bill 2008*. According to NGO information before the Committee, this bill is designed to deny residents of the occupied Palestinian territories the possibility of submitting tort claims against Israeli security forces in Israeli courts for any

[19] CAT/C/ISR/4, para. 38, table 1.
[20] CAT/C/ISR/4, para. 38, table 1.
[21] CAT/C/ISR/4 paras. 16 to 25.

damages incurred, even as a result of acts performed other than through an "act of war". Please comment on this allegation and on how this law would be compatible with article 14 of the Convention.

Article 15

31. The State party report[22] notes the decision adopted by the Israeli Supreme Court, C.A. 5121/98, *Prv. Yisascharov v the Head Military Prosecutor et al,* laying down its doctrine on the exclusion of unlawfully obtained evidence. However, the question on whether or not to admit illegally obtained evidence seems to be left at the discretion of the judge[23]. Additionally while the report explains that the Courts demanded a wider interpretation of section 12 of the Evidence Ordinance, it expressly notes that the Court did not rule on exclusion of the defendant's confession on the basis of torture and that "a wider array of circumstances may now justify excluding confessions".[24] On the basis of this, how does the State party ensure, in conformity with article 15 of the Convention, that any statement made as a result of torture is not used as evidence in any proceedings? Please provide updated information on whether and when section 12 has been used to exclude evidence. According to reports before the Committee, Palestinian detainees are being forced to given *ex ante* confessions written in Hebrew at the end of interrogation process, which are then used as primary evidence against them in military courts. What measures exist to provide translation services in interrogations to detainees?

Article 16

32. Please provide information on allegations received by the Committee that Palestinian "security detainees" are kept in solitary confinement cells in interrogation facilities, ranging from three to six square meters, with no windows or access to daylight or fresh air. Please explain whether and in what circumstances the Criminal Procedure Regulations, which establish certain minimum detention conditions, apply to security detainees. Please provide statistics and information on any complaints challenging such conditions, including their outcome(s).

33. What measures has the State party taken to implement the Committee's previous recommendation[25] to desist from its policy of closure and house demolitions where they offend article 16?

34. According to information before the Committee, Israeli military has resorted to the use of Palestinian civilians in sometimes dangerous situations, such as the "neighbor's knock". Please report on the current resort to such a practice, if any, and on the measures undertaken by the State party to prevent or to investigate such a practice effectively.

35. According to information before the Committee, all but one of the prisons where Palestinian security detainees are being held are located inside Israel, which prevents prisoners from receiving family visits as relatives are denied entry permits into Israel. Please provide detailed updated information on how the SP enables Palestinian detainees to receive family visits, what restrictions apply and provide detailed statistical information on such visits.

[22] CAT/C/ISR/4, para. 80.
[23] CAT/C/ISR/4, para. 82.
[24] CAT/C/ISR/4, para. 85.
[25] CAT A/57/44 (2002), para. 53 (g)

36. Please provide detailed and updated information on allegations of conscientious objectors, men and women, who oppose Israel's occupation of the Palestinian territories, having been imprisoned for terms up to 4 months.

37. Please provide information on the legislative and other measures the State party has taken to prevent domestic violence and to classify these acts as specific criminal offences. Please provide information on the number of investigations into complaints of domestic violence and the number of prosecutions and convictions of offenders.

38. According to the Advisory Opinion of the International Court of Justice of 9 July 2004[26], the separation barrier, a considerable part of which is being built outside the Green Line, constitutes a restriction on freedom of movement of Palestinians. Reports before the Committee also note that many farmers have been left without access to their land and have lost their livelihoods as a result of the construction of the separation barrier. It is alleged that this treatment of Palestinians violates article 16 of the Convention. It is further alleged that, although Palestinians have the right to petition the High Court against the route of the separation barrier, such petitions have been rejected in many instances and, where decisions to change the route have been adopted, these decisions have not been implemented by the Israeli authorities. Please comment on these allegations taking into account the State party's obligations under articles 12 and 16 of the Convention and, as appropriate, other relevant provisions of international law.

Other issues

39. Has the State party considered withdrawing its reservation to article 20?

40. Is the State party considering making the relevant declarations under article 22?

41. Does the State party envisage ratifying the Optional Protocol to the Convention? If so, has the State party taken any steps to set up or designate a national mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?

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[26] International Court of Justice, Legal consequences of the construction of a wall in the Occupied Palestinian Territories, Advisory opinion of 9 July 2004.