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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Fourth periodic reports of States parties due in 2004

Addendum

ISRAEL* **

[2 November 2006]

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* For the initial report of Israel, see CAT/C/16/Add.4; for its consideration, see CAT/C/SR.183, CAT/C/SR.184 and CAT/C/SR.184/Add.1; and *Official Records of the General Assembly, Forty-ninth session, Supplement No. 49* (A/49/44), paras. 159-171.

For the special report, see CAT/C/33/Add. 2/Rev.1; for its consideration, see CAT/C/SR.295; CAT/C/SR.296; CAT/C/SR.297/Add.1; *Official Records of the General Assembly, Fifty-second session, Supplement No. 52* (A/52/44), paras. 253-260.

For the second periodic report, see CAT/C/33/Add.3; for its consideration, see CAT/C/SR.336 and CAT/C/SR.337; and *Official Records of the General Assembly, Fifty-third session, Supplement No. 53* (A/53/44), paras. 232-242.

For the third periodic report, see CAT/C/54/Add.1; for its consideration, see CAT/C/SR.495, and CAT/C/SR.498 and its conclusions and recommendations CAT/C/XXVII/Concl.5.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

CONTENTS

Introduction

1. The Government of the State of Israel is pleased to submit its Fourth Periodic Report Concerning the Implementation of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This Report describes the developments that took place since the submission of the Third Report in 2001 pursuant to article 19 of the Convention. In accordance with the reporting guidelines, this Report builds upon our previous reports.

2. Israel signed the Convention on 22 October 1986, and deposited its instrument of ratification with the Secretary-General of the United Nations on 3 October 1991. In accordance with Article 27(2), the Convention entered into force for Israel on 2 November 1991.

3. Israel submitted an initial report in 1994 (CAT/C/16/Add.4), a special report in 1996 (CAT/C/33/Add.2/Rev.1), a second periodic report in 1998 (CAT/C/33/ Add.3) and a third periodic report in 2001 (CAT/5/54/Add.1).

4. This Report was compiled by the Department for International Agreements and International Litigation in the Ministry of Justice.

5. The following is a short summary of the major changes since the submission of Israel's previous report; a full and complete description shall follow, as well as responses and additional relevant data to the committee's previous concluding observations.

6. In the realm of legislation, the State of Israel has concluded the *Israel Security Agency Law, 5762-2002*, regularizing the activities of its security agency.

7. Israel also amended its *Extradition Law*, 5714-1954 ("the *Extradition Law*"), to permit extradition of nationals in all cases. However, under the Amendment, the extradition of any person who is an Israeli citizen and resident at the time the offence was committed, is subject to a condition that he[1] be permitted by the requesting state to serve any sentence imposed on him following his extradition in Israel.

8. On 26 June 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, and also establishes specific provisions regarding delay in arraignment before a judge, as detailed in sections 95-100 below.

9. The courts play a pivotal role in promoting the Convention in Israel through their judicial decisions. Such a ruling since the submission of Israel's previous report is the May 2006 Supreme Court landmark decision laying down a court-made doctrine on the exclusion of unlawfully obtained evidence. The Court held that under appropriate circumstances, substantial

[1] Relating in this report to male and female alike.

illegality in obtaining the evidence shall lead to its exclusion, even if there is no suspicion as to the veracity of its content. (C.A. 5121/98, *Prv. Yisascharov v. The Head Military Prosecutor et. al*., as detailed in sections 80-85 below.

10. The Military Court of Appeals in A. 153/03 *Geva Sagi v. Chief Military Prosecutor*, accepted an appeal by the Military Prosecution against the ruling of the special court which convicted lieutenant colonel Geva Sagi, upon his confession, of an "inappropriate behaviour", as detailed in sections 57-65 below. The court demoted lieutenant colonel Geva to the rank of a First Lieutenant and described his threats as "shameful and extremely ugly", directly citing the Convention and previous High Court of Justice rulings.

11. In addition, law enforcement agencies continue to undergo comprehensive training regarding the Convention, its contents and values, to ensure that those are instilled among law enforcement personnel.

12. Educational programs run by the Police Education and Information Section are one example of law enforcement training. Such programs aim at assimilating various values among police officers, including human rights, tolerance in a multicultural society, elimination of prejudice, as well as issues relating to the Convention and its values. The Police School for Investigation and Intelligence incorporates the main provisions of the Convention regarding procedures and investigation ethics into the training of investigators and investigation officers.

13. The instruction of the Israel Security Agency (hereinafter "ISA") interrogators includes various components, such as training regarding the main issues of the Convention, its implications on interrogation methods, and the Supreme Court's landmark ruling in HCJ 5100/94, *Public Committee against Torture in Israel v. the State of Israel*. These contents are also an integral part of the ISA courses and seminars, both at basic training, and regular courses throughout the ISA.

14. The School for Military Law holds specific training activities for Israel Defence Forces (hereinafter "IDF") regarding human rights in general, and the prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment, in particular. These activities include lectures, producing learning aids and circulating informational material.

15. The Israel Prisons Service (hereinafter "IPS") officers and wardens undergo regular training and instructions through courses held in the Nir School for IPS officers and wardens, as well as in their respective units. Training regarding the Convention is an integral part of the IPS training at the individual unit level, in addition to the courses given to officers and wardens.

I. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

16. As detailed in previous reports, Israel took upon itself to legislate a specific law regarding the ISA. The enactment of the *Israel Security Agency Law, 5762-2000* is the most significant new development since the submission of Israel's third periodic report to this committee. This

law addresses the major relevant issues concerning the mandate, operation, and scope of functioning of the ISA, as will be discussed below. [A translation is attached to this periodic report and marked "A".]

17. The Law states that the head of the Agency shall be appointed for a five-year term by the Government upon the proposal of the Prime Minister, unless the Government has prescribed a shorter term in its appointment resolution. The head of the Agency shall be in charge of the administration and operation of the ISA as well as the development of its capabilities.

18. The law specifically provides that the Prime Minister shall be in charge of the ISA on behalf of the Government; no mission shall be imposed on the ISA for the promotion of party-political interests.

19. The law also establishes a Ministerial Committee for the ISA which shall operate on its behalf in matters prescribed and be composed of five members, including the Prime Minister, the Minister of Defence, the Minister of Justice and the Minister of Public Security.

20. Section 7 of the law details the mission of the Agency, as follows:

> "The Agency shall be in charge of the protection of State security and the order and institutions of the democratic regime against threats of terrorism, sabotage, subversion, espionage and disclosure of State secrets; and the Agency shall also act to safeguard and promote other State interests vital for national State security, all as prescribed by the Government and subject to every law."

21. Next, the law particulates the ISA's functions:

> "(1) foiling and preventing illegal activities aimed at harming State security, or the order or institutions of the democratic regime;
>
> (2) protecting persons, information and places determined by the Government;
>
> (3) determining directives on security classification for positions and offices in the public service and in other bodies, as determined by the Government, except for public appointees and judges; and determining the security suitability of a person for a position or office that holds a security classification, including by the use of polygraph tests, all as shall be prescribed by rules. In this paragraph, "judges" means any person holding judicial authority under the *Basic Law: Judicature*, except candidates for the judiciary and except a military judge under the *Military Justice Law, 5715-1955* ("*Military Justice Law*");
>
> (4) establishing protection practices for bodies determined by the Government;
>
> (5) conducting intelligence research and providing advice and position appraisals for the Government and other bodies determined by the Government;
>
> (6) activities in any other area determined by the Government, with the approval of the Knesset Service Affairs Committee, which is designed to safeguard and promote State interests vital to the national security of the State;

(7) collection and receipt of information for safeguarding and promoting the interests set forth in this section.

22. Section 8 to this law also grants the ISA the following general powers for the purpose of fulfilling its functions in the receipt and collection of information: to pass on information to other bodies in accordance with rules to be prescribed and subject to the provisions of any law; to investigate suspects and suspicions in connection with the commission of offences or to conduct investigations for the purpose of preventing offences in certain prescribed areas; to enlist the assistance of any person who is not an ISA employee for the carrying out of tasks in accordance with rules to be prescribed; ISA officials shall have the powers of a police officers to fulfil certain functions, following authorization from the head of the ISA to enter certain premises not being a closed private structure, in order to conduct inspections and to carry out protective and preventative actions for a limited period.

23. Section 12 compels routine reports of the head of the ISA to the Ministerial Committee and to the Knesset Service Affairs Committee, from time to time and no less than every three months, on the activity of the Agency. Special reports shall be submitted to these Committees, at their request, pursuant to rules prescribed.

24. Section 13 to the law also affixes an agency comptroller, to be appointed by the Prime Minister in consultation with the head of the ISA. The Comptroller shall conduct internal auditing of the ISA pursuant to the provisions of the *Internal Auditing Law, 5752-1992*, and shall assist the Government and the Ministerial Committee in fulfilling their functions. The Comptroller shall submit an annual report on his findings, and any periodic report made by him, to the head of the ISA, the Ministerial Committee, and the Knesset Service Affairs Committee.

25. According to section 18, an ISA employee or a person acting on behalf of the agency 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; yet the provisions of this section shall not derogate from disciplinary responsibility under the provisions of any law.

Article 3

26. The *Extradition Law* provides for the following procedural guarantees, as was reported in previous reports: where a request for extradition is submitted by a foreign state, the Minister of Justice may order that the person concerned be brought before a District Court judge to determine whether that person is subject to extradition, and in pursuance of such direction, the Attorney General or his representative submits to the Court a petition to declare the person extraditable. A person declared extraditable by the Court has a right of appeal to the Supreme Court sitting as a Court of Criminal Appeal within 30 days of the decision of the District Court. The final decision as to his extradition is, under the *Extradition Law*, at the discretion of the Minister of Justice. The discretion of the Minister may, however, be challenged before the Supreme Court sitting as the High Court of Justice on the grounds that the administrative decision whether to extradite was manifestly unreasonable.

27. The *Extradition Law* forbids the extradition of a person if acceding to the request for extradition militates against *ordre public* or an essential interest of the State. In addition, the Minister of Justice, like every other administrative functionary, must act in a reasonable manner in exercising the authority to decide on extradition. These legal principles would render it essentially impossible for someone to be extradited from Israel to a country where there are substantial grounds for believing that the extradited person would be in danger of being subjected to torture.

28. Furthermore, under Section 2B(a)(1) of the *Extradition Law*, a person shall not be extradited if the request for extradition was submitted for an offence of a political nature or was submitted in order to prosecute or punish a wanted person for an offence of a political character, although the extradition is not purportedly requested for such an offence.

29. According to the *Extradition Law*, an Israeli District Court will declare a person extraditable to a foreign country only if it is proven in court that there is evidence which would be sufficient for committing that person to trial for such an offence in Israel. The requirement to consider the prima facie evidence in the case also provides a safeguard against extradition requests that are groundless or arbitrary.

Article 5

30. Section 16 of the *Penal Law*, 5373 - 1977 ("the *Penal Law*"), was enacted in order to enable the prosecution of offenders accused of crimes against the law of the nations, to which the State of Israel is committed by international treaties to prosecute, regardless of whether the offender is an Israeli citizen or resident, and regardless of the place where the offence has been committed. Under this provision, Israel would have the jurisdiction to prosecute torture cases ,in any case where it did not extradite the accused person.

Article 7

31. As stated in Israel's response regarding Article 5, under Israeli law, Israel has the authority to prosecute acts of torture in any case where it did not extradite the accused person. It may be noted that Israel amended its *Extradition Law* in 1999 and 2001 to permit extradition of nationals. Under the current law, where a person was an Israeli citizen and resident at the time of the crime, extradition is subject to a condition that that person be granted by the requesting state the right to serve in Israel any sentence imposed on that person following that person's extradition. In short, Israel fully possesses the ability of extradition or prosecution in all torture cases.

32. As reported previously, courts or tribunals would decide on cases of alleged torture in the same way as they decide on any other cases of serious crimes. Standards of evidence required for proof of torture are the same regardless of the court's jurisdictional basis.

Article 8

33. The *Extradition Law* provides that an extradition offence is an offence which, had it been committed in Israel, would be punishable by a minimum imprisonment of one year or more. Acts of torture, which are cognizable offences under the *Penal Law*, are punishable by a term of imprisonment of more than one year. Therefore, they are extraditable offences.

34. Israel is a party to the European Convention on Extradition, which provides that every offence, for which the punishment is one year of imprisonment or more, is an extraditable offence. The new Extradition Convention concluded recently between Israel and the United States provides for a similar provision.

35. According to the *Extradition Law*, a prior condition for any act of extradition from Israel is the existence of an agreement on extradition between Israel and the state requesting the extradition. The term "agreement" has been defined in the Israeli law to include a bilateral or a multilateral treaty, such as the Convention Against Torture, which while not specifically an extradition treaty, contains provisions providing for extradition. Under Israeli law, an extradition agreement also includes a special agreement concluded between the State of Israel and a Requesting State concerning the extradition of a wanted person (an "ad-hoc agreement").

Articles 12 and 13

36. As detailed in Israel's previous reports, the actions and conduct of law enforcement officials are subject to several legal institutions for review and oversight. Overall, each branch of the law enforcement authorities has disciplinary procedures, which may be initiated by the person claiming a violation, by other entities, or by the authorities themselves. All public servants are subject to the provisions of the *Penal Law* and most of them to the regulations pertaining to governmental employees, detainees, prisoners or any other relevant person may apply directly to the courts or administrative proceedings for relief against the action or decision in question.

Israel police

37. As detailed in Israel's previous reports, the Department for Investigation of Police Officers in the Ministry of Justice is responsible for most criminal investigations against police officers. Disciplinary proceedings are initiated by submitting a complaint to the Disciplinary Department of the Personnel Division at the Police Central Headquarters, or to any of its branches. Also, administrative sanctions may be imposed at any time during the proceedings, as well as after the proceedings are completed.

38. Following are statistics compiled by the Department for Investigation of Police Officers regarding unlawful use of force by police officers:

Table 1

Unlawful use of force by police officers (2001-2004)

	2001	2002	2003	2004
Total complaints of unlawful use of force by police officers investigated	1 257	1 552	1 531	1 273
Criminal Proceedings	70	53	58	49
Disciplinary Measures	116	93	119	121
Lack of Guilt	331	322	306	354
Lack of Public Interest	97	70	87	65
Unknown Felon	53	39	49	47
Lack of Evidence	735	605	800	637

Source: The Department for Investigation of Police Officers, 2005.

39. The following are some of the most noteworthy examples of the Department's cases, indicative of the Department's diligence in completing the relevant investigations and ensuring utilization of the full extent of the law:

(a) Cr.C. 390/04 (District Court-Jerusalem) *The State of Israel v. Itai Brayer et. al.* (5.4.05). Three border police officers were convicted of causing severe bodily harm in aggravated circumstances, abuse of a minor or a helpless person, and obstruction of court procedures. They were sentenced to six to ten months of imprisonment, following a vigorous investigation by the Department for Investigation of Police Officers. The charge stemmed from an incident where the officers detained and assaulted two Palestinian teenagers. The Department considered the verdict too lenient and recommended that the State Attorney's Office appeal the verdict. Such an appeal was filed and is now pending before the Court;

(b) Cr.C. 436/04 (District Court-Jerusalem) *The State of Israel v. Nir Levy et. al.* (19.5.05). Five border police officers were convicted of assault under circumstances constituting a severe injury in aggravated circumstances, abuse of a minor or a helpless person, and obstruction of court procedures. They were sentenced to between four and fourteen and a half months of imprisonment. The indictments were filed shortly after an immediate and extensive investigation was completed by the Department, as to the circumstances of the case, involving the officers detaining a Palestinian resident, beating and abusing him;

(c) Cr.C. 907/05 (District Court-Jerusalem) *The State of Israel v. Bassam Wahabi et. al*. Four border police officers were indicted of man slaughter for detaining a Palestinian resident of Hebron and later throwing him off a moving military vehicle, which caused a severe head trauma that resulted in his death. The vehicle driver was recently convicted and sentenced to four and a half years of imprisonment. Proceedings against the remaining officers are still pending.

40. Following are statistics compiled by the Police Disciplinary Department regarding the treatment of cases forwarded by the Department for Investigation of Police Officers, recommending disciplinary measures:

Table 2

Cases handled by the Disciplinary Department (2001-2004)

Year	Cases received	Indictments filed to the Disciplinary Tribunal	Complaints Fact Sheets submitted
2001	151	61	41
2002	115	43	67
2003	80	16	28
2004	149	11	33

Source: Israel Police, 2005.

Israel Security Agency (ISA)

41. As detailed in Israel's previous reports, complaints against ISA personnel alleging the use of unlawful investigation techniques are dealt with by the Inspector for the Complaints within ISA (hereinafter, "the Inspector").

42. The head of this unit is appointed directly by the Minister of Justice and is granted the authority of a disciplinary investigator. Moreover, according to ISA rules of operation, the Inspector functions independently. No member in the ISA has the authority to interfere with its findings.

43. The Inspector functions under the close supervision of a high-ranking prosecutor from the State Attorney's Office. Additionally, following a full examination of the complaints, the Inspector's report is thoroughly reviewed by the above-mentioned prosecutor and in cases in which the issues at hand are sensitive or circumstances so necessitate, also by the Attorney General and the State Attorney.

44. A decision is made regarding the complaint, by the Attorney General, the State Attorney and the prosecutor only following a thorough examination of the Inspector's findings. The decision is an administrative decision, subject to the judicial review of the Supreme Court sitting as High Court of Justice, like any other administrative decision.

45. In 2004, section 49I1 of the *Police Ordinance* was amended, expanding the Department for Investigation of Police Officers' scope of authority over ISA interrogators. Their expanded authority of review now applies to every criminal offence committed in the course of fulfilling the ISA interrogators' undertaking, or in relation with their undertaking. This scope was previously limited to criminal offences committed in the course of an interrogation, or as regards to a detainee in custody for interrogation.

46. Statistics indicate that the Inspector has initiated 81 examinations in the year 2002, 129 examinations in 2003, 115 examinations in 2004, and 61 examinations in 2005 (as of mid-December). These examinations were the result of exterior complaints, as well as incidents alleged in internal ISA reports. Four cases resulted in disciplinary measures and several cases resulted in general remarks to ISA interrogators.

47. The following are details of complaints which lead to the disciplinary measures detailed below (detainees' actual names can be provided to the committee upon request):

(a) Following a complaint regarding the interrogation of F.T.A. it was found that an ISA interrogator behaved inappropriately, for which he was reprimanded. A general guidance on this matter was issued to all ISA interrogators;

(b) Following a complaint regarding the interrogation of H.M.H.A., two general remarks were issued to all ISA interrogators concerning reports transmitted during an interrogation;

(c) Following a complaint regarding the interrogation of M.A.R.B., Z.A.K. and M.M.M., certain general remarks concerning interrogation methods were relayed to all ISA interrogators.

(d) Following a complaint regarding the interrogation of K.M.K.K. a general remark as to the documentation of interrogation methods was issued;

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

Israel Defence Forces (IDF)

48. As detailed in Israel's previous reports, the IDF maintains a strict policy of investigating every claim of maltreatment by IDF soldiers. The IDF instructions specifically prohibit any improper attitudes towards detainees, and instruct as to the denunciation of any instance of an inappropriate behaviour of a soldier in relation to detainees. In cases of soldiers' misbehaviour of detainees and interrogatees, soldiers are either court-martialled or face other disciplinary proceedings, depending on the severity of the charges and policy of the Military Attorney's Office.

49. The interrogation of soldiers suspected of the above violations is performed by the Investigative Military Police. This unit is subordinate to the IDF General Staff, independent from the IDF regional commands, and therefore autonomous to handle the investigations within the auspices of the Military Attorney's Office.

50. The Military Attorney's Office and the military courts vigorously assist in upholding the above stipulated norms. Below are some noteworthy examples of such enforcement against soldiers deviating from the above norms: two soldiers charged with beating cuffed detainees while transporting them from the Beit El military court to a detention facility were sentenced to seven to ten months of imprisonment by the Military Court of Appeals; In another case several soldiers charged with assault, aggravated assault, and abuse of Palestinian residents at the Calandia checkpoint were sentenced to four to nine months of imprisonment.

Article 14

51. The Tel Aviv District Court, in *C.C. 22502/04 State of Israel v. Mustafa Dirani* (19.12.05), rejected the State's request to dismiss the civil suit brought by Mr. Mustafa Dirani for the torture he allegedly suffered during his detention in Israeli prison.

52. Mustafa Dirani, a Lebanese citizen and a member of the Hezbollah terrorist organization, was captured and brought to Israel by IDF forces in 1994. Due to his activities in the Lebanese Amal movement and his responsibility in the capture of Ron Arad, a missing IDF navigator, he was interrogated for several months in 1994. Mustafa Dirani was held in administrative detention from 1994 until his release and return to Lebanon in the course of a prisoners-exchange pact completed in early 2004.

53. The State claimed that since Mustafa Dirani was released in a prisoners-exchange pact, and due to the fact that since his return to Lebanon he has rejoined the Hezbollah terrorist organization, the Court should dismiss his request for damages The Court emphasized that according to Israeli law, even if Mustafa Dirani is to win his lawsuit and found to be entitled for damages, he will not be able to receive the money because the law prohibits any transfer of money to citizens of an enemy state. The Court however rejected the State's position that the inability to transfer the money renders the entire lawsuit "theoretical".

54. The Court stipulated that "[t]his lawsuit is brought in order for the court to determine whether the applicant's rights have been violated, whether he is entitled for damages and what is the amount of damages he should receive. The law prohibiting him for physically obtaining the money does not make the issue theoretical". The Court further stated that "[i]t is hard to accept the claim that a person who claims that he had been severely tortured while detained in Israel has no real interest in clarifying this issue in the court of law and that he has no interest that the court impose upon those who are responsible the duty to pay damages for such a severe harm inflicted on his body and honour, even if the applicant will not, at this stage or even ever, be able to receive the money."

55. After discussing relevant international law instruments, the Court concluded that although customary international law requires states to allow persons who have been injured by faults of the state to bring lawsuits, they are mute on the issue whether such obligation arises when the persons involved are enemies. The Court held that "[t]his is an issue to be determined by Israeli law."

56. The court stipulated that: "the position claiming that the purpose of the lawsuit is to slander the state is unacceptable, noting that: "[i]f the claims of the applicant that he has been severely tortured are proven true, this would not constitute a defamation of the country, on the contrary, this would be an act of unveiling the truth, a matter necessary in order to purify the system. It is the state's interest that these difficult claims, whose mere presentation severely shadows the investigation techniques in Israel, be thoroughly examined and clarified." The Court's concern was that by dismissing the lawsuit after Dirani had already given testimony, and with the state not providing any response, might "be interpreted as [having a] lack of willingness or ability to deal with the applicant's claims. This would severely damage the state's reputation locally and abroad as a state governed by the rule of law."

Article 16

57. On 5 August 2004, the Military Court of Appeals accepted an appeal by the Military Prosecution against the ruling of the Special Court which convicted lieutenant colonel Geva Sagi, upon his confession, of "inappropriate behaviour" under section 130 of the *Military Justice Law* (A. 153/03 *Geva Sagi v. Chief Military Prosecutor*).

58. Lieutenant colonel Geva had been sentenced to 60 days imprisonment, and his rank was demoted from Lieutenant Colonel to a Major. In the appeal, the prosecution requested the Court of Appeals to further demote his rank.

59. The Court convicted lieutenant colonel Geva after he admitted to threatening Tarek, a 28 year-old resident of the Duha village, whose father was requested for questioning by the security forces.

60. The Court held that lieutenant colonel Geva, while searching for a person requested for questioning, threatened that person's son, Tarek, telling him that he would kill him if he did not indicate his father's whereabouts. The Court's judgement also described a series of humiliating and sexually degrading acts made by the defendant, including a threat to burn Tarek if he did not indicate where certain weapons were hidden.

61. The Court of Appeals ruled that the described abuse was performed during an investigation, which in itself, was for a worthy purpose. On the other hand, the Court stressed that acts of abuse against the local population are harmful both to the victim and to the IDF. "A commander who does not understand and assimilate the limits of the military use of force established by the principle of human dignity, and substantially deviates from these limits, is not worthy of command. No difference exists between an abuse of a subordinate, a soldier, an enemy or a simple person. The same rule applies for a commander who deviates from the orders concerning his subordinates and the commander who abuses a Palestinian, a suspect or an innocent, in order to force him to disclose information. Both commanders are unworthy of the command."

62. Regarding the case at hand, the Court of Appeals ruled that "it is possible that details could have been taken from Tarek concerning his father and concerning the place the gun was hidden. However, even if in that situation it was appropriate to interrogate him, there exist legal and moral rules which dictate the proper method of interrogation. The same applies even if Tarek himself had been the primary suspect."

63. The Court described lieutenant colonel Geva's threats towards Tarek as "shameful and extremely ugly", and stated that: "[n]o words can describe our shock." "Although it is only one incident, yet its escalation into a series of continuous actions, is inappropriate and ugly from its very beginning to its end".

64. Citing the Convention and previous High Court of Justice rulings, the Court held that "even if we accept the claim that the aggressive dimension in the defendant's behaviour had been relatively limited, for there had been no physical contact between him and Tarek, it appears that the defendant's actions fall within the absolute prohibitions referred to by the High Court of Justice. This is so both because of the severe humiliation entailed in the undressing of a person in front of other people, as well as because of the harsh violence towards the man's spirit."

65. The Court accepted the appeal and, as noted above, demoted lieutenant colonel Geva to the rank of a First Lieutenant.

Legislative developments since the Third Periodic Report

66. As detailed above, the most significant and important new development since the submission of Israel's Third Periodic Report to the Committee Against Torture was the enactment of the *Israel Security Agency Law, 5762-2002*.

Article 9

67. Israel is in compliance with the obligations of Article 9 of the Convention.

68. The Statute replacing Israel's previous *Legal Assistance Law* of 1977 and regulating judicial assistance, both civil and criminal, is known as the *International Legal Assistance Law*, 5758-1998 ("*International Legal Assistance Law*"). This Statute provides for the service of documents, taking of evidence, production of documents, seizure of documents or other articles, carrying out of searches and performance of other legal acts on behalf of foreign states.

69. Moreover, it provides for transferring prisoners and detainees abroad for the purpose of testifying in proceedings taking place overseas. The Statute provides that judicial assistance may be withheld where it is likely to prejudice the sovereignty or security of Israel or any matter of public policy, or where the assistance is requested with respect to a political, a military or a fiscal offence, or where the request relates to a procedure that intends to harm a person due to their political opinions, their race, nationality, religion, sex or social group, or in the absence of reciprocity between Israel and the state requesting the assistance.

70. The *International Legal Assistance Law* permits assistance to be granted even in the absence of a treaty on legal assistance.

Article 12 and 13

71. In 2004, section 49I1 of the *Police Ordinance* was amended, expanding the Department for Investigation of Police Officers' scope of authority over the ISA interrogators, applying to every offence committed in the course of fulfilling their undertaking, or in relation with their undertaking. This scope was previously limited to offences committed in the course of an interrogation, or during a detainee's custody for interrogation.

Article 14

72. Section 77 of the Penal Law, enabling the courts to order compensatory damages to a victim of a crime for damages or suffering, was amended in 2004 in order to raise the amount awarded to the victim. Presently, the maximum amount payable to a particular victim is fixed at 228,000 NIS (app. 50,000 US$). Rulings of the Supreme Court since the Third Periodic Report.

Article 3

73. In accordance with article 3, prohibiting the extradition of a person to another state where there are grounds for believing that he would be in danger of being subjected to torture, the court in Cr.A. 7569/00 *Genadi Yegudayev v. State of Israel* (23.5.02), ruled that Mr. Yegudayev is extraditable only after receiving the following assurances from the Government of Russia. (1) It

was assured that Mr. Yegudayev will not be subject to any kind of torture or inhuman treatment; (2) he would be entitled to a visit by an Israeli representative; and (3) he would be entitled to due process of law for all the rights provided to him in the European Extradition Treaty.

74. Section 2B(a)(8) of Israel's *Extradition Law* states that a person shall not be extradited to the requesting state where the extradition is likely to harm public order. The term "public order" has been interpreted by the Israeli Supreme Court to mean "the basic values of the State and the society, those values which express the moral and justice sense of the public in Israel." Specifically, in Cr.A. 7569/00 *Yegudayev v. the State of Israel*, Deputy President M. Heshin declared that "a substantial concern as to physical injury or abuse of someone extradited to another country would clearly contradict the public order of Israel, and where the Court is convinced that such is the danger to a person, the Court shall deny the request of the [requesting] state and shall not declare the person extraditable."

Article 11

75. In accordance with article 11, and in conformity with the ongoing cooperation with the International Committee of the Red Cross (ICRC), the High Court of Justice accepted the petition of Sheikh Abd El Karim Ubeid and Mustafa Dirani (HCJ 794/98, *Sheikh Abd El Karim Ubeid and Mustafa Dirani v. Minister of Defence et al., (23.8.01)*), and ordered the Minister of Defence to allow representatives of the Red Cross to visit the petitioners, who were being held in administrative detention.

76. Here, the Court held that although the petitioners are members of the Hizbollah terrorist organization, the State is committed to their humanitarian rights as provided by international law. The Court has stated that "… Israel is a democracy that respects human rights and takes humanitarian considerations seriously. Israel adheres to these principles because of the humanism and mercifulness which form an integral part of its character as a Jewish and democratic state. Israel makes these considerations because the human dignity of a person is important for the state even if that person is an enemy".

Articles 12-13

77. In HCJ 11447/04, The *Centre for Defence of the Individual v. the Attorney General* (14.6.05), the Court rejected two petitions requesting an additional investigation of alleged torture and humiliation in the facility known as 1391.

78. The Court held that the decision was made following a very thorough preliminary examination carried out by the Military Attorney General and the Ministry of Justice, and was supported by the evidence gathered. The Court therefore held that in the instant case, the process which led to the decision not to open a criminal investigation was reasonable.

79. The Court also stated that it is difficult to establish criteria for the extent and quality of the examination needed; and that its thoroughness depends on various considerations that are particular to each case. In the case, the Court rejected the petition, stating that they were convinced that the extent and quality of the examination undertaken by the authorities was reasonable.

Article 15

80. In May 2006, the Supreme Court gave a landmark decision, laying down a court-made doctrine on the exclusion of unlawfully obtained evidence (C.A. 5121/98, *Prv. Yisascharov v. The Head Military Prosecutor et. al.*), relating to a soldier who was not advised of his right to legal counsel prior to his interrogation, and its affect on the admissibility of his confession while under interrogation.

81. The Court held that "[a]chieving justice is also based on the manner by which the court reaches a decision under the circumstances of the case before it. Basing an indictment on evidence obtained unlawfully or through the substantial violation of a protected human right, allows the investigation bodies to enjoy the fruit of their sin and may create an incentive for improper investigation methods in the future … under appropriate circumstances, substantial illegality in obtaining the evidence, shall lead to its exclusion, even if there is no suspicion as to the veracity of its content".

82. In this case, the Court adopted a relative exclusion doctrine, according to which the court may rule on the inadmissibility of evidence on the basis of the manner by which it was obtained, if two conditions are fulfilled: (1) the evidence was obtained unlawfully; and (2) admission of the evidence will harm the defendant significantly in regard to his right to fair proceedings, in a way and to an extent which is not in accordance with the limitation paragraph of *Basic Law: Human Dignity and Liberty*.

83. The Court held that "… the exclusion of evidence according to the said doctrine requires a causal connection between the administration of the improper methods of investigation and the collection of the evidence." The Court also held that exclusion of evidence can be exercised even when the right violated is not of a constitutional nature.

84. The Court enumerated a list of non-exhaustive circumstances which should be considered by courts deliberating upon the possibility of excluding evidence: (1) The nature and severity of the illegality involved in obtaining the evidence; (2) The influence of the improper method of investigation upon the evidence obtained; and (3) The social harm versus benefit involved in exclusion of the evidence.

85. This judgment also analyzed section 12 of the *Evidence Ordinance (new Version)*, 5731 - 1971 ("the *Evidence Ordinance*"). While the Court did not rule on exclusion of the defendant's confession on these grounds, it held that the said section should be interpreted more widely on the basis of the new Basic Laws. According to this holding, a wider array of circumstances may now justify excluding confessions on the basis of section 12.

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

86. The Committee, in its concluding observations following its consideration of Israel's third periodic report (C/XXVII/Concl. 5 (2001)), did not request additional information from the State of Israel.

III. COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

87. The Committee, in its concluding observations on Israel's Third Periodic Report (C/XXVII/Concl. 5 (2001)), made the following recommendations (paras. 7 a)-k)):

(a) The provisions of the Convention should be incorporated by legislation into the domestic law of Israel, in particular a crime of torture as defined in article 1 of the Convention should be enacted

88. As stated in our previous report, all acts of torture, as defined in article 1 of the Convention, are criminal acts under Israel's legislation. In addition, all forms of torture or other cruel, inhuman or degrading treatment or punishment are prohibited by Israel's Basic Law: Human Dignity and Liberty.

89. Moreover, the Supreme Court has recently held that "… the nature and extent of the unacceptable methods of interrogation included today in the scope of 'harming the human character of the interrogatee' may be wider than in the past. This, in light of the interpretative impact of the *Basic Law* and considering the international contractual law that Israel is a party to." (C.A. 5121/98, *Prv. Yisascharov v. The Head Military Prosecutor et. al.* (4.5.06))

(b) The practice of administrative detention in the Occupied Territories should be reviewed in order to ensure its conformity with article 16

90. Israel's position on the applicability of CAT beyond its territory has been presented at length to the Committee on previous occasions and remains unchanged. In our view, the current procedure of administrative detention conforms with the principles of international humanitarian law, and indeed it has regularly been reviewed by the Israeli judicial system and the military legal system on this basis. Israel wishes to clarify that this measure can only be used on an exceptional basis when the evidence in existence is clear, concrete and trustworthy but for reasons of confidentiality and protection of intelligence sources, cannot be presented as evidence in ordinary criminal proceedings.

(c) The State party should review its laws and policies so as to ensure that all detainees, without exception, are brought promptly before a judge, and are ensured prompt access to a lawyer

Arraignment before a judge

Criminal offences

91. 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. Following the completion of the above measures, the detainee shall be brought promptly before a judge, or released from custody.

92. 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.

93. 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

94. 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.

95. On 26 June 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.

96. 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.

97. 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.

98. 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.

99. It must be emphasized that the initial stage of the investigation of a detainee suspected of terror 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 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.

100. 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

101. 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

102. 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

103. 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.

104. 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.

105. 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

106. 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.

107. Section 45A of the *Prisons Ordinance* relates to all prisoners, except for detainees who have yet to be indicted. This section authorizes the 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.

108. 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.

Security-related offences

109. According to section 35 of the *Criminal Procedure (Powers of Enforcement - Arrests) Law*, a detainee in a security related offence shall have access to legal counsel as soon as possible, unless one of the following applies: the meeting may thwart the arrest of other suspects; the meeting may disrupt the disclosure of evidence or its capture, or disrupt the investigation in any other manner; or preventing the meeting is necessary to hinder an offence, or preserve human life.

110. Further details are given in the *Criminal Procedure (Powers of Enforcement - Arrests)(Deferral of a Detainee in Security Offence's Meeting with an Attorney) Regulations*, 5757 - 1997. Under this enactment, a meeting between an attorney and a detainee held on security related offences may be postponed for a maximum 6 day period if a well reasoned statement is submitted by one of the following authorities: the head of an investigative team or the head of the Investigation Department in the ISA authorized by the head of the ISA; a police officer ranked chief superintendent and above, as authorized by the Chief of the Police; or an officer of the IDF ranked Lieutenant Colonel and above, as authorized by the head of the Intelligence Branch of the army.

111. This period can be extended to a maximum limit of 10 days, in a reasoned written decision, by the head of the Investigation Department in the ISA, a police officer ranked commander and above, or an IDF officer ranked colonel and above. Such a decision can be appealed to the president of a District Court and subsequently, to the Supreme Court. Following the termination of such an interrogation, the detainee shall be allowed to meet with an attorney.

112. According to section 35(d) of the *Criminal Procedure (Powers of Enforcement - Arrests) Law*, the president of a District Court may further extend the above 10 day period for an additional period, up to 21 days, following a written application, substantiated by an affidavit and authorized by the Attorney General, based on one of the grounds specified above.

113. Recently, in Cr.C. 10879/05, *Al Abid v. State of Israel (18.12.05)*, the Supreme Court addressed the issue of a detainee's right to meeting with an attorney while in custody. During Al Abid's detention, a court order was issued postponing his meeting with an attorney. When that period concluded, he was not informed of his right to meet with an attorney.

114. The Court stipulated that "the postponement of a meeting between a detainee and his lawyer on the basis of security reasons compels the authorities to inform the detainee of the postponement. Moreover, when the security impediment no longer exists, it is the duty of the authorities to inform the detainee that he is entitled to meet a lawyer. This is a fundamental right; the parties concerned must, through appropriate instructions, ensure the fulfilment of this right frequently". The court added that even during regular police interrogations, where the detainee relinquishes the right to meet with an attorney and in cases where the interrogation is prolonged, "it is appropriate to remind the detainee of his right to meet an attorney". By interpreting the *Criminal Procedure (Powers of Enforcement - Arrests) Law*, the Court explained that when there exists an impediment (prescribed by the law) for a meeting between a detainee and an attorney, and whenever this impediment is removed, the detainee must be immediately informed of the removal and must be allowed to meet with an attorney.

Soldiers - IDF

115. According to section 227A1 of the *Military Justice Law*, a soldier who is detained and likely to be arrested has the right to legal counsel, and the right to be notified thereof. This was recently upheld by the Supreme Court in C.A. 5121/98, *Prv. Yisascharov v. The Head Military Prosecutor et. al.* (4.5.06).

(d) The State party should ensure that interrogation methods prohibited by the Convention are not utilized be either the police or the ISA in any circumstances

ISA

116. The ISA interrogators operate in accordance with standard operational procedures, detailed acceptable interrogation techniques, and receive extensive training on permissible investigation methods. These methods and techniques are evaluated routinely by the ISA in order to assess their adaptability to the current situation.

117. The ISA rules and procedures are fully in accordance with the provisions of the Convention, and the ISA interrogators are instructed to uphold them meticulously.

(e) In view of the numerous allegations of torture and other ill treatment by law enforcement personnel, the State party should take all necessary effective steps to prevent the crime of torture and other acts of cruel inhuman or degrading treatment or punishment, and institute effective complaint, investigative and prosecution mechanisms relating thereto

118. Effective complaint, investigative and prosecution mechanisms exist throughout the relevant law enforcement authorities, as detailed in our previous reports, as well as in sections 36-50 above. In addition, the following are important highlights affecting these mechanisms:

Israel police

119. The Israeli Police and the Department for Investigation of Police Officers in the Ministry of Justice views instances of police officers' violence against citizens in general, and specifically, against those who are in custody, with great severity. Serious efforts are being undertaken to eliminate any form of such abuse. Cases of alleged violence are investigated thoroughly and meticulously, using all means to exhaust the interrogation and bring to justice those found to be unnecessarily violent or acting in an unreasonable manner.

120. Some of the major considerations in determining the reasonableness of such action are the purpose and specific circumstances of the use of force, the justification for the use of force and the extent in which it exceeded reasonable use of force, the severity of the use of force and the severity of the physical harm caused, if any.

121. The Police Disciplinary Tribunal, residing in a case of unlawful use of force towards a non-officer, shall be composed of two police officers and a public representative. The purpose of convening such a tribunal is to elevate the public's trust in police treatment of complaints regarding the unlawful use of force. The tribunal may impose penalties ranging between fines, warnings, reprimands, confinement, demotion, or incarceration.

122. In certain cases, when the use of force is relatively trivial, the Department submits complaint fact sheets, judicially reviewed by a single Tribunal judge through an expeditious process, without legal counsel. The Tribunal considers the type of injury, the results of the use of force, the location of the offence, the officer's disciplinary record and his personal circumstances.

ISA

123. Since the submission of Israel's previous report, thousands of investigations have been conducted, and a relatively low number of complaints have been filed - numbering around several dozen a year. Most of these complaints were found to be unjustified. When complaints were found to be justified, measures were taken against the investigators involved.

124. Prior to the year 2000, hundreds of petitions concerning the investigation methods of the ISA were filed to the Supreme Court, sitting as High Court of Justice. In sharp contrast, since the Supreme Court handed down its decision concerning the investigation methods of the ISA, only several petitions have been submitted to the High Court of Justice challenging investigation

methods. At present, there are no petitions pending from interrogated suspects, or from non-governmental organizations such as B'tselem, and Physicians for Human Rights. As the figures indicate, the High Court of Justice's ruling has had dramatic effect.

125. 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 a re-evaluation of interrogation techniques and conditions, and subsequent amendments and clarifications of procedures were made.

126. The criteria for distinguishing between a recommendation for a criminal procedure and disciplinary measures are not obvious or precise, as demonstrated in Supreme Court rulings in related matters. In order to make such a distinction, the Court considers the investigator's degree of deviation from normal investigative behavior as well as his mental state. These factors help determine the type of punishment or disciplinary measure.

127. It is noteworthy to mention that the ISA has a highly evolved process of examining certain deviations, including those not resulting in formal complaints. The ISA is constantly adjusting its procedures and regulations in this regard.

Israel Prisons Service (IPS)

128. Every prisoner or detainee under the care of the IPS has the following complaint mechanisms regarding the staff and wardens' use of force:

(a) Filing a complaint to the director of the prison;

(b) Petitioning the relevant District Court in a prisoner's petition, in accordance with section 62A of the *Prisons Ordinance* and the *Procedures (Prisoners Petitions) Regulations*, 5740-1980;

(c) Filing a complaint to the Warden's Investigation Unit (WIU), through the IPS or directly to the Unit. This Unit is part of the Israeli Police, and its members are police officers. The findings of the WIU are subject to the State Attorney's Office scrutiny, who decides whether to institute disciplinary measures or criminal proceedings; or

(d) Filing a complaint to the Prisoners Complaint Ombudsman, who is a member of the Ministry of Public Security's internal comptroller unit that has the authority to inquire. Following the completion of the inquiry, and based on its findings, the complaint shall be forwarded to the WIU or the Disciplinary Branch in the IPS.

129. Additionally, Section 71 of the *Prisons Ordinance* establishes rules for official visitors in prisons. These visitors are appointed by the Minister of Public Security and are comprised of lawyers from the Ministry of Justice and other Governmental Ministries, who are appointed on a yearly basis, either for a specific prison, or nationwide. Section 72 of the *Prisons Ordinance* grants official visitor authorities to Supreme Court judges and the Attorney General [in prisons] throughout Israel, and to District and Magistrate Courts judges in prisons in their jurisdiction. Official visitors are allowed to enter the prisons at any given time (unless special temporary circumstances apply), inspect the state of affairs, prisoners' care, prison management, etc. During these visits, the prisoners may approach the visitors and present their complaints,

including grievances pertaining to use of force. Prisoners may also make a complaint with the director of the prison and ask for an interview with an official visitor. Attorney General's Guideline (No. 4.1201. (1.5.75), updated - 1.9.2002) broadened the scope of the above to also include detention facilities and detention cells in police stations.

130. According to the IPS' recent statistics, in 2004, 231 cases of use of force were opened in the WIU; as well as 160 in 2005 (as of 15 November). Roughly 30% of the cases resulted in disciplinary measures, and 3% resulted in criminal proceedings.

131. Disciplinary measures are mostly instituted when the findings indicate that Prison Services' procedures were deviated from to a significant enough degree that would merit a criminal offense, or due to lack of evidence. The penalties in these disciplinary measures range between punishments such as fines, warnings, reprimands, confinement, and demotion.

(f) All victims of torture and ill-treatment should be granted effective access to appropriate rehabilitation and compensation measures

132. In C.C. 1569/98, *Guneimat v. Ami et al*. (27.11.05), the Jerusalem District Court ordered the payment of 50,000 NIS (roughly 13,000$), as compensation for the pain and suffering caused to Mr. Guneimat for physical and emotional harm inflicted upon him during an ISA interrogation. The Court emphasized that the use of the claimed methods had not been proven. However, the defendants requested the Court to consider the claims raised by the applicant as if they were true (for the tort claim only).

133. The Court here held that: "Accepting the applicant's version obliges the grant of appropriate compensation for the pain and suffering inflicted upon him due to the violation of his rights. Previous rulings had granted compensation for lesser violations of greatly more important rights. It is therefore obvious that severe violations of such fundamental rights entitle the applicant to compensation for the suffering inflicted upon him during the torture."

(g) The State party should desist from the policies of closure and house demolition where they offend article 16 of the Convention

134. See Israel's reply in section 90 above.

(h) The State party should intensify human rights education and training activities, in particular concerning the Convention, for the ISA, the Israel Defence Forces, police and medical doctors

Police

135. The Police Education and Information Section operates educational programs aimed towards incorporating various values into police officers' work, including tolerance within a multicultural society, elimination of prejudice and promotion of human rights, as well as awareness of issues relating to the Covenant and its values.

136. The educational programs operate in the police units through special educational workshop days as well as within the overall training framework that includes seminars, courses, etc. In the last few years, special emphasis is given to the training of commanders in all levels, since they are in the best position to influence the values of their subordinates.

137. The Police School for Investigation and Intelligence incorporates the main provisions of the Covenant regarding procedures, basic flaws, investigation ethics, and "right and wrong" behaviors, into the training of investigators and investigation officers.

ISA

138. The instruction of the ISA interrogators includes various contents, such as training regarding the Convention, its subject matter, and its broader implications. As well, such instruction brings interrogators up to date on the Supreme Court ruling in HCJ 5100/94, *Public Committee against Torture in Israel v. the State of Israel*. These contents are also an integral part of the ISA courses and seminars both at basic training and throughout the ISA.

139. These courses and seminars aim to instil principles and norms of human dignity and fundamental rights in employees, both at basic training and throughout the ISA. Particular emphasis is placed on adherence to the rule of law and to the ISA's commitment to the balance of interests required by law and by the practice of the courts.

IDF

140. The School for Military Law holds a variety of training activities for IDF forces regarding human rights in general, and the prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment, in particular. These activities include lectures, learning aids and comprehensive written materials.

141. In the period since the submission of Israel's previous report, hundreds of lectures were given to regular forces, as well as reserve forces prior to their reserve duty. Lectures were attended by combat forces, officers' course cadets, military police investigators, security analyzers and medical care personnel in detention facilities, as well as to commanders throughout the army.

142. These activities specifically laid emphasis on issues such as arrest and detention practices, detainee's rights, international humanitarian law and rules of conduct during an armed conflict.

143. Additionally, the School for Military Law issued an educational computer program, titled "Principles of Conduct during Armed Conflict", regarding the adequate treatment of prisoners and detainees, emphasizing the strong prohibition against inhuman or degrading treatment of prisoners and detainees. This program is a vital tool in IDF combatants and commanders' instruction.

IPS

144. The IPS officers and wardens undergo regular training and instructions through courses held in the Nir School for IPS officers and wardens, as well is in their respective units. Training regarding the Convention is an integral part of the IPS overall training at the unit level, as well as in courses given to officers and wardens.

(i) Necessity as a possible justification to the crime of torture should be removed from the domestic law

145. The use of the "necessity" defence is regulated in article 34K of the *Penal Law,* exempting a person from a criminal liability "… for committing an act that was immediately necessary for the purpose of saving the life, liberty, body or property, either of himself or his fellow person, from a real danger of serious harm, due to the *conditions* prevalent at the time the act was committed, there being no alternative means for avoiding the harm."

146. As explained in Israel's previous report, the Supreme Court, in HCJ 5100/94, *Public Committee against Torture in Israel v. the State of Israel* addressed the issue of the "necessity" defence in length.

147. The Court here held that if investigators used physical means in the course of an investigation, under the circumstances set out in the law, and if an indictment was submitted against them for the use of such means, it was willing to assume that this defence might be available to them. The Court specifically stated that the "necessity" defence does not constitute a source of authority that allows ISA investigators to make use of physical means during the course of interrogations.

(j) Such legislative measures as are necessary should be taken to ensure the exclusion of not merely a confession extorted by torture but also any evidence derived from such confession

148. As detailed in sections 80-85 above, on May 2006, the Supreme Court rendered a landmark decision, laying down a court-made doctrine for the exclusion of illegally obtained evidence. (C.A. 5121/98, *Prv. Yisascharov v. The Head Military Prosecutor et. al.*).

(k) Israel should consider withdrawing its reservation to article 20 and declaring in favour of articles 21 and 22

149. Having reviewed the aforementioned declaration, and taking note of the Committee's recommendations, Israel maintains that it is unlikely that circumstances in the foreseeable future will permit it to change its position in this regard. However, Israel will continue periodic reviews of its position.
