



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

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COMMITTEE AGAINST TORTURE

Forty-second session

SUMMARY RECORD (PARTIAL)* OF THE 878th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 5 May 2009, at 10 a.m.

Chairperson: Mr. GROSSMAN

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

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

Fourth periodic report of Israel (CAT/C/ISR/4; CAT/C/ISR/Q/4)

1. At the invitation of the Chairperson, the members of the delegation of Israel took places at the Committee table.
2. Mr. YAAR (Israel) said that since his country had presented its previous report to the Committee in 2001 there had been several significant developments in terms of law and practice that had brought it into line with its commitments under the Convention against Torture, despite increasing challenges from State and non-State actors. Israel was fully committed to respecting its international obligations under the Convention and recognized that it must impose restraints on its own actions in conformity with its responsibilities under international law.
3. Israel faced exceptional and unique circumstances. The security, political and social environment in which progress had been made in implementing the Convention must be understood, as must the challenges his country continued to face in view of its limited resources and security threats. In that context, the progress made in the areas of policy and legislation was all the more encouraging.
4. Mr. NITZAN (Israel) said that his country had been involved in seven wars since its inception and had had to endure terrorism, particularly during the past decade. The Gaza Strip was controlled by a terrorist organization that subjected his country to unremitting and indiscriminate acts of aggression, violating the rules of international law. During the current period of continuing terrorism, more than 1,100 Israelis had been killed and some 8,000 wounded, including civilians and military personnel, in Israel and in the West Bank and Gaza by various means. Since Hamas had come to power in the Gaza Strip, rocket fire against southern Israel had intensified, terrorizing hundreds of thousands of Israelis and causing the death and injury of many civilians.
5. Nevertheless, his country remained fully committed to respecting its international human rights obligations. It recognized that its stance, namely that the basic human rights of all persons under its jurisdiction must never be violated regardless of the crimes committed, required it to act with restraint, in conformity with human rights and the principles of international law. The task of preventing terrorism while ensuring the human rights of dangerous and brutal criminals who did not respect international humanitarian law was complex and demanded restraint.
6. Among major developments relating to his country's implementation of the Convention, the Supreme Court had decided in 1999 that the Israel Security Agency (ISA) investigators had no authority to use physical means of interrogation against terrorist suspects unless such means were fair, reasonable and essential to the interrogation. It had specified that a reasonable investigation was necessarily free of torture and cruel, inhuman or degrading treatment; brutality was absolutely prohibited. That ruling had been implemented immediately.

7. Another significant development had been the enactment of the Israel Security Agency Law in 2002 addressing the mandate, operation and scope of the ISA. The new law did not authorize the use of physical force by interrogators but did explicitly define the responsibilities and limits of the ISA. It stipulated that its operations, headed by the Prime Minister, were to be supervised by a number of bodies, including a Ministerial Committee, the State Comptroller and the Ministry of Justice.

8. The Supreme Court's decision in 2006 on the exclusion of unlawfully obtained evidence had been a landmark development. The Court had emphasized that the reason for its decision was that indictments obtained on the basis of such evidence, even if there were no doubt as to the veracity of their content, could encourage the investigation bodies to benefit from improper investigations. The Court considered to be inadmissible any evidence that had been obtained unlawfully and that would also significantly harm the right of the defendant to due process if admitted.

9. With regard to the rights of prisoners and detainees, all allegations of inappropriate treatment were investigated by the competent authorities, and criminal or disciplinary action was taken if there was a legal basis for doing so; decisions not to take action were subject to judicial review. The Supreme Court had demonstrated its respect for the right to dignity in its decision of 2007 that every prisoner in an Israeli prison had the right to sleep on a bed; that decision was fully implemented by the Israel Prison Service (IPS). The Criminal Procedure (Interrogating Suspects) Law of 2002 also protected the rights of prisoners and detainees in that it required all investigations of suspects to be recorded; police and investigation officers received the relevant training.

10. The majority of detention facilities in Israel were currently under the authority of the IPS, which had taken over some 6,000 cells formerly controlled by the police and Israel Defence Forces (IDF).

11. Allegations of the use of unlawful investigation techniques by ISA personnel were dealt with by the Inspector for Complaints within the ISA, who had the authority of a disciplinary investigator and functioned independently. On the basis of the Inspector's findings, the State Attorney's Office took administrative decisions in relation to individual complaints; those decisions were subject to review by the Supreme Court. Moreover, since 2004, the authority of the Department for Investigation of Police Officers to investigate criminal offences alleged to have been committed during ISA interrogations had been expanded to apply to every allegation of an offence committed by ISA personnel in the course of their duty. Four cases examined by the Inspector had resulted in disciplinary measures while a number of others had resulted in general observations addressed to ISA interrogators.

12. Civil society played an active role in his country. The Government recognized the value of the role it played in monitoring human rights and therefore engaged with the relevant NGOs in the preparation of its reports to treaty bodies and other international human rights forums. It included civil society representatives in its delegations to international forums, and worked with them to promote human rights awareness and conduct training programmes. The authorities also encouraged public debate by engaging with representatives of academia and non-governmental human rights organizations in round tables and joint conferences as part of the follow-up to Israel's periodic reports to United Nations treaty bodies.

13. The authorities did not dispute inmates' rights to family visits and sought to overcome the security and administrative difficulties involved in order to enable them to take place. Requests for visits were filed with the civil authorities; although a minority were refused on security grounds, most were approved promptly and visits went ahead on a regular basis, although they could be temporarily stopped for security reasons. Thousands of family visit permits were granted every month and thousands of visits were made, facilitated by the International Committee of the Red Cross (ICRC). The authorities approved every request from ICRC to visit prisoners and detainees, with the result that hundreds of such visits to detention facilities took place every year.

14. His Government had studied in depth the Committee's concluding observations concerning its previous periodic report and had acted on many of them. As to the recommendation that the prohibition against torture should be anchored in domestic legislation, he reiterated that that prohibition was embodied in section 277 of the Penal Law. The concluding observation on the exclusion of evidence obtained through torture had been addressed by the landmark decision of the Supreme Court on the exclusion of illegally obtained evidence. With regard to the Committee's concern that persons subjected to torture were entitled to compensation, the courts recognized that right and had granted compensation to several applicants. Moreover, effective complaint, investigative and prosecution mechanisms relating to the provisions of the Convention existed within the relevant law enforcement authorities.

15. Cases of alleged police misconduct were examined by the Department for Investigation of Police Officers and dealt with rigorously. Since the Supreme Court ruling of 1999, only a handful of petitions against ISA investigators had been submitted challenging investigation methods; in those few cases, the High Court of Justice had not found that illegal methods had been used. A number of complaints mechanisms were available to prisoners and detainees under the authority of the IPS in the case of the use of force by prison officers. In the area of training and education, all members of all the security forces received training on the Convention as part of their routine basic training.

16. Mr. MARIÑO MENÉNDEZ, Country Rapporteur, said that, while the Committee acknowledged recent developments relating to the implementation of the Convention, including the enactment of the Israel Security Agency Law, the challenges faced by Israel in its fight for survival and against terrorism could not be used to excuse or justify its failure to comply fully with international law. The prohibition of torture and cruel or inhuman treatment was a compulsory norm in war, in peace or in a state of emergency, and the human right not to be subjected to torture could not be counterbalanced by any other right. Any act of torture committed by Israel, its agents or its organs, whether within or outside Israel, entailed the State's international responsibility.

17. The Committee was concerned that no Israeli law established the offence of torture as defined in the Convention. In Israel, the victims of offences involving cruel and inhuman treatment in the form of physical or mental abuse were usually detainees or defenceless persons, and acts causing mental suffering or severe distress perpetrated by public agents or with their consent were not entirely covered by Israeli criminal law. Moreover, the penalties for offences that were equivalent to torture were too lenient. Measures should be taken to eliminate torture

and other cruel, inhuman or degrading treatment, irrespective of the purpose for which it was inflicted. In particular, the definition of torture contained in the Convention should be incorporated into Israeli law and a future constitution should explicitly prohibit torture.

18. Interrogations by the ISA, which was responsible for questioning persons suspected of possible terrorist activities or acts against State security, were not recorded and, according to information received from NGOs, its methods involved torture, based on the defence of necessity. Some 600 complaints of torture or inhuman treatment had been made by detainees between 2001 and 2008, but not one investigation had been carried out. Consequently, the guarantee mechanisms were not operating and a state of impunity existed. The Committee would appreciate the delegation's comments on whether, in practice, the heightened state of emergency in Israel provided an implicit authorization to obtain information at any cost, using methods of interrogation that were similar to torture in extreme cases. Also, could due obedience to orders be used as an excuse when torture was involved? Did impunity exist in practice, because it was known that, even if torture occurred, there would be no consequences for the perpetrators? And, owing to the existence of the continuing state of emergency, did defence counsel have access to classified information?

19. Under the anti-terrorism legislation, pretrial detention, which included administrative detention under military law in the occupied Palestinian territories, could be prolonged for inordinately lengthy periods, which meant that individuals were not brought before a judge for weeks or months. Further information on the use of administrative detention in defence of State security would be welcome. All States faced the problem of striking a balance between the defence of State security and respect for human rights, but prolonged administrative detention without specific charges and without the intervention of a judge constituted inhuman treatment.

20. The Committee understood that civilians arrested in Gaza were being detained in Israeli prisons as illegal combatants and, according to Israeli law, an illegal combatant could be kept under administrative detention for any length of time without being brought before a judge and without the guarantees accorded to prisoners of war. In its answers to the Committee's questions, Israel had insisted that the Convention did not apply outside its territory and therefore it did not have to answer certain questions relating to the treatment of prisoners under administrative detention. The Committee reiterated that the Convention applied to the actions of Israel and its agents within and outside its territory, a situation that had particular relevance to the occupied territories. It wished to know whether such prisoners were granted access to a lawyer and, if so, under what conditions, and which authority was responsible for exercising control.

21. During the recent invasion of Gaza, wounded persons had been denied access to medical care in Israel because they were civilians. Also, in the occupied territories and especially the West Bank, there were many complaints of humiliating treatment of inhabitants in the interests of preserving the security of Israel in the context of its fight against terrorism. The delegation should provide further information on how such actions could be justified in the light of the need for respect for fundamental human rights and the right not to be subjected to torture or inhuman treatment.

22. The Convention stipulated that persons who requested asylum could not be expelled to countries where they might be subjected to torture, even if they were suspected terrorists. The Committee had received information about persons who had requested asylum in Israel,

allegedly to infiltrate the country for criminal purposes, being returned to Egypt without considering whether they risked torture. The Committee wished to know if there was an unwritten agreement between Israel and Egypt to return certain foreigners immediately and, if so, what guarantees had been sought that they would not be tortured. Were such guarantees effective?

23. Ms. GAER, Alternate Country Rapporteur, acknowledging the difficulties that Israel faced in combating terrorism and violence, welcomed the delegation's assurances that the Government intended to act in conformity with the principles of international human rights law, including the Convention against Torture.

24. In relation to article 11 of the Convention, she noted that the State party's response to question 21 of the list of issues had not indicated the number of cases dismissed as a result of a video recording showing torture or ill-treatment. Could the delegation provide that information now? She would also like clarification of why the video recording requirement did not apply to interrogations conducted by the ISA or to interrogations of any detainees accused of security offences. Did the Government plan to extend the requirement to include those types of interrogations? The State party had also failed to answer several of the Committee's questions regarding the treatment of minors. She invited the delegation to provide information on the safeguards in place to protect the rights of children during interrogations, particularly with respect to the presence of a lawyer or family member. NGO reports indicated that 95 per cent of cases involving Palestinian children in Israeli military courts relied on confessions to obtain a conviction. Was that true?

25. She would like to know whether security detainees were granted prompt access to legal counsel, medical attention and contact with family members and how long they could be held without such access.

26. Turning to matters relating to article 12 of the Convention, she enquired what oversight mechanisms were in place to ensure that the bodies responsible for investigating allegations against ISA interrogators, police officers and members of the IDF could carry out their functions with the requisite independence and impartiality. According to reports received from both NGOs and the Government of Israel, there had been allegations of abuse and torture by ISA interrogators. The NGO information, however, indicated that none of those allegations had been the subject of a criminal investigation. She wondered whether that was true. If not, could the delegation provide information on the number of investigations conducted and on their outcome? NGO reports also indicated that, while IDF regulations required a criminal investigation of any complaint of violence or cruelty towards a person in custody, such investigations rarely led to prosecution of the offender, and detainees therefore seldom made the effort to lodge a complaint. She invited the delegation to comment on those assertions. NGOs had also questioned the credibility of investigations of abuses by military personnel during Operation Cast Lead because those investigations had been conducted by the IDF itself. She would like to know why the Government had not established an independent investigation body, modelled, for example, on the Kahan Commission.

27. With regard to question 27 of the list of issues, it remained unclear to the Committee how the exemption provided for under section 18 of the Israel Security Agency Law was applied in

practice, how many complaints had been dismissed under that section, and whether there was an oversight mechanism for that section. The Committee would also like detailed information on the number, type and results of complaints against the ISA or its employees.

28. The State party's response to question 28 of the list of issues in turn raised questions about the procedures followed to investigate deaths involving the police and government authorities. Why, for example, had the bodies of the victims of the October 2000 incident not been autopsied before burial? Was there a standard protocol for conducting prompt and impartial investigations of civilian killings by police or security forces and were all such killings, including those occurring in the occupied Palestinian territories, investigated?

29. Referring to Israel's response to question 29, she enquired whether the "Palestinian residents" mentioned therein included detainees. She also requested data on the number of complaints of torture filed against IDF personnel.

30. Concerning article 15 of the Convention, it was not clear from the State party's response to question 31 whether decisions regarding the admissibility of evidence were left to judges. If so, did they act alone, was there any oversight of their actions and how was the exclusion of coerced evidence ensured?

31. With regard to article 16, the Committee would be grateful if the delegation would reply to its questions about the use of solitary confinement and the conditions under which "security detainees" were held. Information provided to the Committee indicated that administrative detention could be extended indefinitely. Was that true? Israel had stated, in its response to question 35 of the list of issues, that 85,818 entry permits had been granted to Palestinian residents for family visits to security detainees in Israel. Could the delegation provide information on how many permits had been denied and the reasons for those denials?

32. The State party's response to the Committee's questions concerning the nature and scope of the "Coordinated Immediate Return Procedure" (list of issues, question 15) made no reference to torture. She would like to know how the risk of torture for persons seeking protection in Israel was assessed under that procedure and whether the authorities who interviewed such persons underwent any special training. She would also like to know what safeguards were in place under the procedure to ensure persons would not be expelled, returned or extradited to a State where they were likely to be subjected to torture. The response to question 16 made reference only to the Convention relating to the Status of Refugees, not to the Convention against Torture. Would the delegation explain the differences between the prohibitions against refoulement as articulated in article 33 of the former Convention and article 3 of the latter.

33. The Committee had received information from NGOs concerning violence by Israeli settlers against Palestinians in the West Bank and Gaza. That information indicated that such incidents were often not investigated by the authorities, nor was any action taken against the settlers. She invited the delegation to comment on those allegations and enquired whether Israeli military courts had jurisdiction over settler violence cases. NGO reports also contained numerous accounts of maiming and killing of civilians, and torture and other cruel, inhuman or degrading treatment of detainees in the occupied Palestinian territories. She would like to know whether the Israeli Government had the capacity to investigate such acts occurring in the occupied territories and to hold the persons responsible to account.

34. Ms. BELMIR, referring to paragraph 20 (3) of the State party's report, requested clarification of the meaning of the term "judge" under the Israel Security Agency Law and the Military Justice Law. She would also like to know whether the recent jurisprudence of the Israeli Supreme Court might provide useful guidance for the discussions of a draft Constitution, particularly with regard to the question of discrimination between the various elements of Israeli society.

35. The Israeli Government had stated that the international instruments to which it was a party did not apply outside its territory, but that position failed to acknowledge the fact that it was an occupying power. Various treaty bodies had highlighted the differential treatment under Israeli legislation of persons living in Israel and persons living in the occupied Palestinian territories. One example was the age of majority, which was deemed to be 16 for Palestinians in the occupied territories but 18 for Israelis. That amounted to discrimination.

36. She wished to register her concern about the State party's practice of targeted killings and about reports of a secret detention facility ("Facility 1391") being operated by the ISA.

37. Mr. GALLEGOS CHIRIBOGA requested information on the numbers of people, both in Israel and in the occupied Palestinian territories, who had been disabled as a result of violence. NGO reports indicated that numerous Palestinians injured during Operation Cast Lead had been denied access to medical care, even when they had been at risk of losing a limb. The Israeli Supreme Court had ruled, however, that the risk of losing a limb was an issue of quality of life for patients, but not a danger to their life, and as a result it would not necessarily warrant a permit for patients to leave Gaza for medical treatment. It seemed to him that losing a limb was far more than an issue of quality of life; indeed, it was a matter of life itself. Denying access to medical care for critically injured people would certainly seem at least to border on cruel, inhuman or degrading treatment.

38. Ms. SVEAASS asked whether any of the laws of Israel contained a derogation on the prohibition of torture. She also asked whether the reduction in the number of complaints of torture was due to the fact that there were problems in the procedure for lodging complaints and that people were accordingly reluctant to lodge complaints even if they felt their rights had been violated.

39. She enquired about measures to ensure that independent doctors were designated to assess the health status of detainees upon arrest, prepare forensic reports and detect physical and mental ill-treatment, particularly when complaints were lodged. She invited comments on the allegation that doctors had been implicated as perpetrators and accomplices in the practice of torture. She would like to hear more about the "code of secrecy" among military doctors and the role of "whistleblowers" among them.

40. Given the wealth of scientific data on rehabilitation and the long-term consequences of torture, imprisonment and war, written by international and Israeli experts in the field of rehabilitation, she asked for further details on the scale of compensation, treatment and training provided to victims of torture. Regrettably, there had been large-scale damage of infrastructure during the military action in Gaza, including a number of buildings where community mental health care had been provided, hospitals for older persons and rehabilitation centres. She therefore wished to know how the Government of Israel intended to reconstruct those facilities,

which rendered valuable social services. Had there been a public response to the report issued by the independent fact-finding mission of medical experts commissioned by Physicians for Human Rights-Israel and the Palestinian Medical Relief Society after their visit to Gaza?

41. In closing, she drew the attention of the delegation to reports of aggressive treatment and humiliation of Palestinians at checkpoints and the obstacles to family reunification caused by the blockade. She asked what steps had been taken to ensure the security of human rights defenders operating in the areas under Israeli control.

42. Mr. WANG Xuexian said that while the Committee welcomed the delegation's statement of commitment to respect its obligations under the Convention, it would be further encouraged if the actions of the Government fulfilled that commitment in practice. While States parties were understandably concerned about their security, no exceptional circumstances could be invoked in an attempt to justify torture. A State party's security should not be founded on the insecurity of others.

43. The population of over half a million settlers in the West Bank was reportedly growing at a rate of 5 per cent annually; the land occupied by settlements had presumably belonged to other groups of persons before the settlers had arrived. He therefore inferred that some groups had suffered deprivation, which, in his view, was a violation of article 16 of the Convention. Moreover, the reported estimate of 9,000 persons arrested by the IDF, including 700 minors, represented a very high rate of arrest, and he urged the Government to consider the psychological and other traumatic effects of such action.

44. Ms. KLEOPAS endorsed the views expressed by the previous speaker and said she hoped that, after its frank dialogue with the Committee, the Government of Israel would rectify the lapses in the implementation of the Convention. NGOs had raised concerns about the situation on the ground. Reports of ill-treatment, beatings, torture, arbitrary arrests and solitary confinement of persons, including minors, had been corroborated by the special-procedures missions and other credible sources during their visits to monitor the situation. In that context, she referred to the January 2008 report of the Special Rapporteur on the situation of human rights in the Palestinian territories since 1967, which described routine ill-treatment of Palestinians.

45. Stressing that security could not be achieved by resorting to torture and that there was no justification whatsoever for it, she asked the delegation to explain why the policy of punitive demolition of homes in East Jerusalem had been resumed, and how many fatalities had resulted from the Government's use of white phosphorus during the recent offensive in Gaza. It had been disturbing to note that the interrogation of patients, including minors, at the Erez crossing had increased dramatically. It was particularly reprehensible that patients in urgent need of medical attention were often intimidated and threatened with refusal of permission to cross the border from Gaza for medical attention if they refused to provide intelligence. Since the introduction of that policy in 2007, over 50 persons in need of medical care that was not available in Gaza had died while awaiting permission to leave.

46. Mr. GAYE said that he shared the concerns of colleagues regarding the occupied territories, particularly in the light of problematic initiatives taken by non-State actors. He

wondered whether torture and degrading and inhuman treatment were defined in Israeli law, and whether it was possible to take action against an Israeli official who was aware of such practices engaged in by an Israeli national but failed to intervene.

47. The CHAIRPERSON said that there was general agreement on the need for balance in weighing a State party's legitimate desire to maintain security against the protection of civil liberties and human rights. There was, however, no such balance with respect to the provisions of the Convention. A 1999 landmark decision of the Israeli Supreme Court had recognized the provisions of article 2 of the Convention, which clearly established that no exceptional circumstances might be invoked as a justification of torture. He asked the delegation to explain the legal justification for a decision not to proceed with prosecution when an allegation of torture was made.

48. With reference to paragraph 12 of the periodic report, he asked whether civil society and NGOs were involved in the organization of educational and law-enforcement training by the Police Education and Information Section. He requested further examples of instances in which an ISA employee had incurred criminal or civil liability under the Israel Security Agency Law. In that context, he wished to know the court's interpretation of "reasonable" and "good faith" in the performance of duties.

49. The statement, in paragraph 32 of the report, that the standards of evidence required as proof of torture in decisions on cases of alleged torture were the same as for any other serious crimes was problematic. The element of secrecy involved in the commission of acts of torture hampered the ability of victims to provide absolute proof. He therefore wondered whether, under Israeli law, victims of torture were required to present proof beyond reasonable doubt, or whether the fact that such individuals were in the hands of the State and consequently restricted in their capacity to provide such proof had been taken into account. An analysis of table 1, presented in paragraph 38, showed that complaints of unlawful use of force by police officers investigated in 2004 totalled 1,273, of which 637 were considered as lacking evidence. He was of the opinion that there was a direct link between the placement of the burden of proof and the lack of evidence.

50. With reference to paragraph 50, he asked for the ratio of complaints to indictments and decisions in cases handled by the Military Attorney's Office and military courts enforcing the relevant provisions against soldiers who deviated from them. NGOs had provided information on repeated acts of abuse during the process of transferring detainees to interrogation centres; he was therefore curious about the existing system for receiving complaints.

51. Concerning the case of Mustafa Dirani, a Lebanese national and member of Hezbollah, he said the decision of the Tel Aviv District Court, referred to in paragraphs 51 to 56, to grant compensation for damages on the basis of Israeli law was positive. However, the Convention against Torture and other instruments established the duty to compensate even in the absence of a treaty. Pursuant to paragraph 75, he asked the delegation to clarify the system of permitted visits to detainees, and whether the ability of ICRC representatives, family members and lawyers to visit persons in administrative detention was considered a right or a policy matter.

52. He gathered that a doctrine of exclusion of evidence allegedly obtained under torture had been adopted by the courts, but he had also noted that in the information provided in response to the list of issues raised by the Committee, the exclusion of such evidence was not absolute. He reiterated that the Convention clearly established the inadmissibility of confessions made as a result of torture.

53. He was interested in knowing whether there was a system of review of administrative detention to ensure that such detention did not violate important provisions.

54. Since he found the information in the written replies to the list of issues relating to the implementation of the Convention somewhat ambiguous, he sought confirmation that the commission of acts of torture by an Israeli officer against an individual in the West Bank was indeed considered a crime under Israeli law.

The discussion covered in the summary record ended at 12.25 p.m.