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COMMITTEE AGAINST TORTURE
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ADVANCED UNEDITED VERSION

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

Concluding Observations of the Committee against Torture

ISRAEL

1. The Committee considered the fourth periodic report of Israel (CAT/C/ISR/4) at its 878th and 881st meetings (CAT/C/SR.878 and 881), held on 5 and 6 May 2009, and adopted, at its 893rd meeting (CAT/C/SR.893), the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Israel, which is in conformity with the Committee's guidelines for reporting.

3. The Committee expresses its appreciation for the extensive written responses to its list of issues (CAT/C/ISR/Q/4/Add.1), which provided important additional information, and for the oral responses to the numerous questions raised and concerns expressed during the consideration of the report. The Committee also appreciates the expert delegation of the State party and the open and comprehensive dialogue conducted.

B. Positive aspects

4. The Committee welcomes that, in the period since the consideration of the last periodic report, the State party has ratified the following instruments:

a) the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and

b) the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

5. The Committee notes with appreciation the decisions of the Supreme Court of Israel on the case *Yisacharov v The Head Military Prosecutor et. al.*, C.A. 5121/98; which calls for the exclusion of a confession or evidence obtained unlawfully or in violation of a defendant's right to fair procedure; and the case *Physicians for Human Rights et al. v. Minister of Public Security*, HCJ 4634/04, declaring that the State of Israel must provide a bed to every prisoner held in an Israeli prison as a basic condition for living in dignity.

6. The Committee also notes with appreciation the enactment of the *Israel Security Agency Law 5762-2002*, regulating the mandate, scope and function of this institution and regularizing its activities so that it is supervised by and reports to a Ministerial Committee and other official bodies.

7. The appointment of the Israel Prison Service as the authority in charge of many Israeli detention facilities, some of which were formerly controlled by the military and the police.

8. Additionally, the Committee welcomes the State party's affirmation that training concerning the Convention and the prohibition of torture is conducted in courses for security, police and military officials, including with regard to the Supreme Court's 1999 ruling on the prohibition on torture, affirming that "these prohibitions are 'absolute'. There are no exceptions to them and there is no room for balancing."

9. The Committee also notes again, with appreciation, the way in which public debate ensues on such sensitive matters as torture and ill-treatment of detainees, both in Israel and the occupied Palestinian territories. It welcomes the State party's cooperation with non-governmental organizations that provide relevant reports and information to the Committee and encourages the State party to further strengthen its cooperation with them with regard to the monitoring and implementation of the provisions of the Convention. In this connection, the Committee also notes with appreciation the prompt judicial review of persons under detention upon their petition to the Supreme Court, and the role of non-governmental organizations in facilitating and lodging such appeals.

C. Factors and difficulties impeding the application of the Convention

10. The Committee is fully aware of the situation of unrest prevailing in Israel and in the occupied Palestinian territories. The Committee reiterates its recognition of the State party's legitimate security concerns and its duty to protect its citizens and all persons under its jurisdiction or *de facto* control from violence. However, the Committee further recalls the absolute nature of the prohibition of torture contained in article 2, paragraph 2 of the Convention, stating that "no exceptional circumstances whatsoever may be invoked as a justification of torture."

11. The Committee notes the State party's continued argument that the Convention is not applicable to the West Bank or the Gaza Strip, and the claim that this position stems *inter alia* from longstanding legal considerations that encompass the original drafting history of the Convention as well as from changed practical developments since Israel's last appearance before the committee, including the 2005 withdrawal of Israeli forces from the Gaza Strip, the dismantling of its military government and its evacuation of over 8,500 civilians from Gaza. In addition, it notes the State party's argument that the 'law of armed conflict' is the *lex specialis* legal regime that takes precedence. However, the Committee recalls its General Comment No 2

that State parties' obligation to prevent acts of torture or ill-treatment in any territory under its jurisdiction must be interpreted and applied to protect any person, citizen or non-citizen, without discrimination subject to the *de jure* or *de facto* control of a State party. The Committee further notes (i) that the State party and its personnel have repeatedly entered and established control over the West Bank and Gaza; (ii) that, as acknowledged by the State party's representatives during the dialogue with the Committee, security detainees from the area are, in substantial numbers, detained in prisons within the boundaries of the State of Israel; and (iii) that Israel admittedly maintains "full jurisdiction" over cases of violence in the territories by Israeli settlers against Palestinians. Thus, the State party maintains control and jurisdiction in many aspects on the occupied Palestinian territories. Furthermore, the Committee notes with appreciation the State party's affirmation that "an Israeli official is liable to Israel's criminal jurisdiction for any unlawful conduct committed inside or outside the territory of Israel, provided that the official operates within his official capacity." As to the *lex specialis* argument, the Committee recalls that it considers that the application of the Convention's provisions are without prejudice to the provisions of any other international instrument, pursuant to paragraph 2 of its articles 1 and 16. Additionally, the Committee considers that, as stated by the International Court of Justice in its Advisory Opinion, international human rights treaties ratified by the State party, including the Convention, are applicable in the occupied Palestinian territories.¹

12. In any event, the Committee notes that the State party has acknowledged that its actions in the West Bank and Gaza warrant scrutiny. It also notes that the State party has responded to and elaborated on many questions regarding the West Bank and Gaza posed by the Committee in the written List of Issues and the oral discussion.

D. Principal subjects of concern and recommendations

Definition of torture

13. The Committee notes the State party's explanation that all acts of torture are criminal acts under Israeli law. Nevertheless, the Committee reiterates its concern expressed in its previous concluding observations that a crime of torture as defined in article 1 of the Convention has not been incorporated into Israeli domestic legislation.

The Committee reiterates its previous recommendation that a crime of torture as defined in article 1 of the Convention be incorporated into the domestic law of Israel.

Defense of 'Necessity'

14. Notwithstanding the State party's assurances that following the Supreme Court's decision in H.C.J. 5100/94, *Public Committee against Torture in Israel v. The State of Israel* determined that the prohibition on the use of 'brutal or inhuman means' is absolute, and its affirmation that 'necessity defense' is not a source of authority for an interrogator's use of physical means, the Committee remains concerned that the 'necessity defense' exception may still arise in cases of 'ticking bombs,' i.e., interrogation of terrorist suspects or persons otherwise holding information about potential terrorist attacks. The Committee further notes with concern that, under Section 18

¹ International Court of Justice, Legal consequences of the construction of a wall in the Occupied Palestinian Territories, Advisory opinion of 9 July 2004.

of the *Israel Security Agency Law 5762-2002*, “an ISA employee (...) shall not bear criminal or civil responsibility for any act or omission performed in good faith and reasonably by him within the scope and in performance of his function”. Although the State party reported that Section 18 has not been applied to a single case, the Committee is concerned that ISA interrogators who use physical pressure in “ticking bomb” cases may not be criminally responsible if they resort to the necessity defense argument. According to official data published in July 2002, 90 Palestinian detainees had been interrogated under the “ticking bomb” exception since September 1999.

The Committee reiterates its previous recommendation that the State party completely remove *necessity* as a possible justification for the crime of torture. The Committee requests that the State party provide detailed information on the number of “ticking bomb” Palestinian detainees interrogated since 2002.

Basic Safeguards for Detainees

15. The Committee is concerned that while the Criminal Procedure Law and the Prisons Ordinance stipulate conditions under which detainees are entitled to meet promptly with a lawyer, these can be delayed, subject to written requests, if it puts the investigation at risk, prevents disclosure of evidence, or obstructs the arrest of additional suspects, and security-related offenses or terrorism charges permit further delays. Notwithstanding the safeguards provided by law and reaffirmed by the Supreme Court of Israel in its 2006 decision on the case *Yisacharov v The Head Military Prosecutor et. al.*, C.A. 5121/98 for ordinary cases, there are repeated claims of insufficient legal safeguards for security detainees. The Committee also notes with concern that the Criminal Procedure Law-2006 allows detention for up to 96 hours of persons suspected of security offenses before being brought before a judge -although the State Party claims a majority of cases are brought within 14 hours- and up to 21 days without access to a lawyer- despite the State Party’s claim that more than 10 days is “seldom used”.

The Committee calls upon Israel to examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer. The Committee also emphasizes that detainees should have prompt access to a lawyer, an independent doctor and family member are important means for the protection of suspects, offering added safeguards against torture and ill-treatment for detainees, and that these should be guaranteed to persons accused of security offenses.

16. While appreciating the adoption of the *Criminal Procedure (Interrogating Suspects) Law of 2002*, which requires that all stages of a suspect’s interrogation be recorded by video camera, the Committee notes with concern that the 2008 amendment to this law exempts interrogations of detainees accused of security offenses from this requirement. The State party has justified this on budgetary limitations and stated that the exemption of security-related suspects will only apply until December 2010.

Video recording of interrogations, too, is an important advance in protection of both the detainee and, for that matter, for law enforcement personnel. The Committee recommends that, as a matter of priority, the State party extend the legal requirement of video recording of interviews of detainees accused of security offenses as a further means to prevent torture and ill-treatment.

Administrative Detention and solitary confinement

17. The Committee has expressed concern that administrative detention does not conform to article 16 of the Convention because, among other reasons, it is used for “inordinately lengthy periods.” Administrative detention thus deprives detainees of basic safeguards including the right to challenge the evidence which is the basis for the detention, warrants are not required, and the detainee may be *de facto* in incommunicado detention for an extended period, subject to renewal. While the State party explains that this practice is used only exceptionally when confidentiality make it impossible to present evidence in ordinary criminal proceedings, the Committee regrets that the number of persons held in administrative detention has risen significantly since its last periodic report. According to the State party, 530 Palestinians are being held in administrative detention under Israeli security legislation and, according to non-governmental sources, as many as 700. The Committee further notes with concern that the *Unlawful Combatants Law 5762-2002*, as amended in August 2008, allows for the detention of non-Israeli citizens falling into the category of “unlawful combatants”, who are described as “combatants who are believed to have taken part in hostile activity against Israel, directly or indirectly” for a period of up to 14 days without any judicial review. Detention orders under this law can be renewed indefinitely; evidence is neither made available to the detainee nor to his lawyer and, although the detainees have the right to petition to the Supreme Court, the charges against them are also reportedly kept secret. According to the State party, twelve persons are detained under this law at present.

The State party should review as a matter of priority its legislation and policies to ensure that all detentions, and particularly administrative detentions in the West Bank and Gaza Strip, are brought into conformity with article 16 of the Convention.

18. The Committee is concerned at reports received by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism of solitary confinement used by prison authorities as a means of encouraging confessions from minors or as a punishment for infractions of prison rules. It is alleged that security detainees are kept in interrogation facilities, ranging from three to six square meters, with no windows or access to daylight or fresh air.

The Committee once again calls upon Israel to examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer. The State party should amend current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards.

Allegations of torture and ill-treatment by Israeli interrogators

19. The Committee is concerned that there are numerous, ongoing and consistent allegations of the use of methods by Israeli security officials that were prohibited by the September 1999 ruling of the Israeli Supreme Court, and that are alleged to take place before, during and after interrogations. According to the State party, there were 67 investigations opened by the Inspector for Complaints against ISA interrogators in 2006, and 47 in 2007, but none resulted in criminal charges.

The State party should ensure that interrogation methods contrary to the Convention are not utilized under any circumstances. The State party should also ensure that all allegations of torture and ill-treatment are promptly and effectively

investigated and perpetrators prosecuted and, if applicable, appropriate penalties are imposed. The Committee reiterates that, according to the Convention, “no exceptional circumstances” including security or a war or threat to security of the state justifies torture. The State party should intensify human rights education and training activities to security officials, including training on the prohibition of torture and ill-treatment.

Complaints and Need for Independent Investigations

20. The Committee notes that, out of 1,185 complaints investigated by the Israeli police for improper use of force during 2007, 82 criminal procedures have been initiated. The State party has noted the difficulty in investigating this type of complaints arguing that police officers are authorized to use reasonable force in the necessary cases.

The Committee requests information on the number of criminal procedures that have resulted in convictions of the accused and the penalties imposed.

21. While noting the State party’s clarification that “every claim regarding the use of allegedly impermissible means of interrogation is examined by the Inspector for Complaints,” the Committee is concerned that none of the over 600 complaints of ill-treatment by ISA interrogators received by the Inspector of Complaints between 2001 and 2008 has resulted in a criminal investigation. Although under supervision of the Attorney General, the Inspector of Complaints is an ISA employee. The Committee notes that, according to information received by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, out of 550 examinations of torture allegations initiated by the General Security Services (GSS) inspector between 2002 and 2007, only four resulted in disciplinary measures and none in prosecution. While the State party’s representatives explained that there is a lack of evidence for pursuing and substantiating these complaints, and that the persons submitting them are engaged in a “campaign” alleging false information, the Committee has been informed by NGOs that there is a decline in the number of complaints submitted, allegedly due to a sense of futility based on the absence of indictments and a sense of *de facto* impunity.

The State party should duly investigate all allegations of torture and ill-treatment by creating a fully independent and impartial mechanism outside the ISA.

Non-refoulement and risk of torture

22. While the Committee is aware of the fact that Israel hosts increasing numbers of asylum-seekers and refugees on its territory, and whereas the principle of *non-refoulement* under article 3 of the Convention has been recognised by the High Court as a binding principle, the Committee regrets that this principle has not been formally incorporated into domestic law, policy, practices or procedure. The responses submitted by the State party all refer only to the State Party’s obligations under the 1951 Convention Relating to Refugees and its 1967 Protocol, but do not even allude to the State party’s distinct obligations under the Convention Against Torture.

The principle of *non-refoulement* should be incorporated into the domestic legislation of the State party, so that the asylum procedure includes a thorough examination of the merits of each individual case under article 3 of the Convention.

An adequate mechanism for the review of the decision to remove a person should also be in place.

23. The Committee notes with concern that, under article 1 of the draft *amendment to the 1954 Infiltration to Israel Law (Jurisdiction and Felonies) Act*, which was passed on 19 May 2008 in first reading by the Knesset, any person having entered Israel illegally is automatically presumed to constitute a risk to Israel's security and falls within the category of "infiltrator" and can therefore be subjected to this law. The Committee is concerned that article 11 of this draft law allows Israeli Defence Forces officers to order the return of an "infiltrator" to the State or area of origin within 72 hours, without any exceptions, procedures or safeguards. The Committee considers that this procedure, void of any provision taking into account the principle of *non-refoulement*, is not in line with the State party's obligations under article 3 of the Convention. The Israeli government reported 6,900 "infiltrators" during 2008.

The Committee notes that the draft amendment to the Infiltration to Israel Law, if adopted, would violate article 3 of the Convention. The Committee strongly recommends that this draft law be brought in line with the Convention and that, at a minimum, a provision be added to ensure an examination into the existence of substantive grounds for the existence of a risk of torture. Proper training of officials dealing with immigrants should be ensured, as well as monitoring and review of those official's decisions to ensure against violations of article 3.

24. The Committee notes with concern that, on the basis of the "Coordinated Immediate Return Procedure", established by Israeli Defense Force order 1/3,000, IDF soldiers at the border - whom the State party has not asserted have been trained in legal obligations under the Convention Against Torture - are authorized to execute summary deportations without any procedural safeguards to prevent *refoulement* under article 3 of the Convention.

The Committee notes that such safeguards are necessary for each and every case whether or not there is a formal readmission agreement or diplomatic assurances between the State party and the receiving state.

Prohibition of unlawful or coerced evidence

25. While welcoming the Supreme Court decision *Prv. Yisascharov v the Head Military Prosecutor et al*, C.A. 5121/98, which laid down the doctrine of exclusion of unlawfully obtained evidence, the Committee notes that the question of determining whether or not to admit such evidence is left to the discretion of the judge.

The State party should prohibit by law that any statement which is established to have been made as a result of torture cannot be invoked as evidence in any proceedings against the victim, in line with article 15 of the Convention.

Detention Facility 1391

26. Notwithstanding the information from the State party that ISA secret detention and interrogation facility known as "Facility 1391" has not been used since 2006 to detain or interrogate security suspects, the Committee notes with concern that several petitions filed to the Supreme Court to examine the facility were rejected and that the Supreme Court has found that Israeli authorities acted reasonably in not conducting investigations on allegations on torture and ill-treatment and poor detention conditions in the Facility.

The State party should ensure that no one is detained in any secret detention facility under its control in the future, as a secret detention center is *per se* a breach of the Convention. The State party should investigate and disclose the existence of any other such facility and the authority under which it has been established. It should ensure that all allegations of torture and ill-treatment by detainees in Facility 1391 be impartially investigated, the results made public, and any perpetrators responsible for breaches of the Convention be held accountable.

Juvenile Detainees

27. While noting the State party's argument that several measures are being implemented to ensure children's rights, including the preparation of a draft bill on the establishment of a new youth court, the Committee remains concerned at the differing definitions of a child in Israel – where legal age is attained at the age of 18- and in the occupied Palestinian territories – where legal age is attained at 16-. The Committee notes the State party's explanation that Palestinian juveniles under age 18 are treated as minors when imprisoned within the state of Israel. Nonetheless, it expresses deep concern at reports from civil society groups that Palestinian minors are detained and interrogated in the absence of a lawyer or family member and allegedly subjected to acts in breach of the convention in order to obtain confessions. The Committee is further concerned by the allegations that approximately 700 Palestinian children annually were charged under military orders and prosecuted by Israeli military courts and that 95% of these cases have relied on confessions as evidence to obtain a conviction.

Military order 132 should be amended to ensure that the definition of minor is set at the age of 18, in line with international standards.

28. The Committee also notes with concern that all but one of the prisons where Palestinian juveniles are detained, are located in Israel, which hinders prisoners from receiving family visits, not only because of the distances, but also since some relatives have been denied necessary permits for security reasons, in 1,500 out of 80,000 cases, according to the State party and more often according to non-governmental sources.

The State party should ensure that juvenile detainees are afforded basic safeguards, before and during interrogations, including prompt access to an independent lawyer, and independent doctor and family member from the outset of their detention. Furthermore, the State party should ensure that cases against juveniles are not decided solely on the basis of confessions, and that the establishment of a youth court is completed as a matter of priority. In addition, every effort should be made to facilitate family visits to juvenile detainees, including by expanding the right to freedom of movement of relatives.

Use of Force or Violence during Military Operations

29. Notwithstanding the ongoing indiscriminate rocket attacks against civilians in southern Israel which reportedly provoked Israel to exercise its right to defend its population by launching operation "Cast Lead" against Hamas in the Gaza Strip, the Committee is concerned over the insufficient measures taken by the State party to protect the civilian population of the Gaza Strip and to prevent the harm, including many hundreds of deaths of Palestinian civilians, including minors, caused as a result of the Israeli military operation. A report of nine United Nations experts describes civilians, including medical workers -16 having allegedly been killed and 25

injured while on duty-. As confirmed by Israeli investigators, there were severe effects on civilians as a result of Israeli weaponry containing phosphorus, although it was reportedly aimed to create smoke screens or uncover tunnel entrances in Gaza. Notwithstanding the State party's argument that this weapon is not banned by international humanitarian law and was not aimed at personnel, the Committee is concerned about its use in a densely populated area and the severe pain and suffering that this weapon caused, including deaths of persons who reportedly could not be duly treated at hospitals in Gaza, which were unable to provide palliative services for several reasons, including a lack of proper knowledge of the weaponry employed, as well as being used as headquarters, command centres and hiding places for Hamas attacks.

The State party should conduct an independent inquiry to ensure a prompt, independent and full investigation into the responsibility of state and non-state authorities for the harmful impact on civilians, and to make the results public.

30. The Committee has received reports that the "blockade" imposed on the Gaza Strip, especially aggravated since July 2007, has obstructed the distribution of humanitarian aid before, during and after the recent conflict, and has limited other human rights of the inhabitants, particularly the right to freedom of movement, of both juveniles and adults.

The State party should reinforce its efforts to ensure that humanitarian aid is accessible to ease the suffering of Gaza inhabitants as a result of the restrictions imposed.

31. Notwithstanding the State party's legitimate security concerns, the Committee is seriously concerned at the many allegations provided to the Committee from non-governmental sources on degrading treatment at checkpoints, undue delays and denial of entry, including for persons with urgent health needs.

The State party should ensure that such security controls are conducted in accordance with the Convention. In this regard, the State party should provide sufficient and adequate training for personnel to avoid unnecessary stress on persons travelling through checkpoints. The State party should consider, as a safety measure, establishing an urgent complaints mechanism for any persons claiming they have been subjected to undue or improper threats or behaviors. Further, consideration should be given as a matter of urgency to the availability of emergency medical personnel to assist persons in need.

Settler violence

32. The Committee notes with interest the State party's acknowledgement that "Israel has full jurisdiction" over cases of settler violence in the West Bank against Palestinians. It appreciates the statistics provided regarding the criminal enforcement of such matters as disorderly conduct, land disputes, and the overall increase in law enforcement involving Israelis, including investigations and indictments as well as administrative measures limiting movement of Israeli settlers who may endanger the lives and security of Palestinians. While appreciating that a special inter-ministerial committee has been created to address these cases, and to coordinate among the IDF, the Police, the State Attorney's Office, and the ISA, the Committee expresses concern about such violence, especially its rising number.

Any allegation of ill-treatment by Israeli settlers, like others under the State party's jurisdiction, should be promptly and impartially investigated, that those responsible be prosecuted and, if found guilty, appropriately punished.

House demolitions

33. While recognizing the authority of the State party to demolish structures that may be considered legitimate military targets according to international humanitarian law, the Committee regrets the resumption by the State party of its policy of purely "punitive" house demolitions in East Jerusalem and the Gaza Strip despite its decision of 2005 to cease this practice.

The State party should desist from its policies of house demolitions where they violate article 16 of the Convention.

Allegations of torture and ill-treatment by Palestinian forces

34. According to reports before the Committee, both Hamas security forces in Gaza and Fatah authorities in the West Bank have carried out arbitrary arrests, abductions and unlawful detentions of political opponents, denied them access to a lawyer and subjected detainees to acts of torture and ill-treatment. Reportedly, those detained have been denied, inter alia, basic due process rights and the right to prompt and effective investigations. Additionally, an increase in such incidents, including deliberate maiming, as well as extrajudicial killings, was reported to have been conducted by Hamas forces in Gaza, allegedly against Fatah security services officials or persons suspected of collaboration with Israeli forces, during and after Operation Cast Lead.

The Palestinian authorities in the West Bank should take immediate measures to investigate, prosecute and appropriately punish persons under their jurisdiction responsible for these abuses; additionally, Hamas authorities in the Gaza Strip should take immediate steps to end its campaign of abductions, deliberate and unlawful killings, torture, and unlawful detentions, and to punish those responsible. The creation of an independent, impartial and non-partisan commission of experts to investigate these abuses should receive attention as a matter of priority.

35. The Committee encourages the State party to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

36. The Committee also encourages the State party to consider making the declarations under articles 21 and 22 of the Convention, thereby recognizing the competence of the Committee to receive and consider inter-state and individual communications.

37. The Committee encourages the State party to withdraw its declaration prohibiting article 20 inquiries.

38. The Committee invites the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance.

39. The State party is encouraged to disseminate widely the report and response to the List of Issues submitted by Israel to the Committee and the concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

40. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 15, 19, 20, 24 and 33 above.

41. The State party is invited to submit its next periodic report, which will be considered as its fifth periodic report, by 15 May 2013.
