



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

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**Committee against Torture**

**Consideration of reports submitted by States parties  
under article 19 of the Convention**

**Follow-up responses of Israel to the conclusions and recommendations  
of the Committee against Torture (CAT/C/ISR/CO/4)\***

[3 August 2010]

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\* In accordance with the information transmitted to State parties regarding the processing of their reports, the present document was not formally edited.



As requested by the Committee in its concluding observations (observation no. 40) dated 23 June 2009, pursuant to paragraph 2 of rule 67 of the Committee's rules of procedure, the State of Israel respectfully presents the information requested:

**Concluding Observation no. 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."**

**Access to Legal Council**

1. In a recent decision released 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 Israel's legal system" (C.A. 5121/98, *Prv. Yisascharov v. The Head Military Prosecutor et. al.* (4.5.06)). In the case at hand, 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**

2. Section 34 of the *Criminal Procedure (Powers of Enforcement - Arrests) Law, 1996-5756*, states that a detainee is entitled 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 with a detainee, the person in charge of the investigation shall enable the meeting without delay, unless as stipulated below. The 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 places 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.

3. The officer in charge can further delay this meeting if he/she 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 regarding the same offence. Such additional delay shall not exceed 24 hours from the time of arrest. An additional 24 hour deferment (to a total of 48 hours) can be granted, if the officer in charge provides a detailed written decision that he/she is convinced that such postponement is necessary for safeguarding human life, or thwarting a crime. However, such a detainee shall be given a reasonable opportunity to meet or consult with legal counsel prior to their arraignment before a court of law. Data indicates that this additional extension is seldom used.

4. In Israel, 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 coordinated in advance, 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.

### **Prisoners**

5. A 2005 Amendment to the 1971 *Prisons Ordinance*, further stipulates the conditions for a prisoner's meeting with an attorney for receipt of professional services. According to Section 45, this meeting shall be held in private and under conditions guaranteeing the confidentiality of the matters discussed 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 with a prisoner, the director of the prison shall facilitate the meeting in the prison during regular hours and without delay.

6. Section 45A of the *Prisons Ordinance* relates to all prisoners, except for detainees who have yet to be indicted. This section authorizes the Israel Prisons Service's (IPS) Commissioner and the Prison Director 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's security, or a prison offence substantially damaging to the prison discipline and which brings about a severe disruption of the prison's procedures and administration. The Prison Director may delay such a meeting for no longer than 24 hours, and the IPS Commissioner may order an additional five 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.

7. The District Court may further extend the above time-periods up to 21 days, following an application by a representative of the Attorney General, based on one of the grounds specified above. The maximum delay shall not exceed a period of three 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**

8. In accordance with Article 35 to the *Criminal Procedure Law, (Enforcement Powers - Arrests) 1996- 5756*, in exceptional cases (the meeting may thwart the arrest of other suspects; the meeting may disrupt the discovery 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), it is possible to postpone a meeting with legal counsel on specific grounds. Preventing a detainee from meeting his/her attorney constitutes grave harm to his/her rights, and thus such harm is tolerated only when such prevention is necessary due to security reasons and for the sake of the interrogation.

### **Arraignment before a Judge**

#### **Criminal Offences**

9. 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 special provision being made regarding weekends and holidays. Following the completion of the above measures, the detainee shall be brought promptly before a judge, or released from custody.

10. 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/her 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.

11. The Criminal Procedure (Powers of Enforcement - Arrests) (Arrangements for Holding Court Hearings according to Section 29 to the Law) Regulations, 5757 – 1997 provides 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**

12. The Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law 5766-2006 (hereinafter: The Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision)) regulates the powers required by 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.

13. 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 time of 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 a further 24 hours if he/she is convinced that the cessation of the investigation would truly jeopardize the investigation or may harm the police's ability to prevent harm to human lives.

14. The officer may delay the arraignment for an additional 24 hours for the same reason, provided that he/she explains his/her 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 the Investigations Department of the Israel Security Agency (ISA), or his/her deputy. In any case, the maximum delay should not exceed 96 hours from the time of arrest.

15. The initial stage of the interrogation of a detainee suspected of terrorist and security offences is critical for the investigation in many ways, such as the possibility to use the information obtained during the investigation to prevent imminent terrorist attacks. Therefore the legislator asserted that the provision concerning this delay in holding an arraignment is properly balanced with the need to protect human lives.

16. 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 is obligated to report to the Constitution, Law and Justice Committee of the Knesset regarding the implementation of the law every six months. The report shall include, *inter alia*, detailed information concerning postponements in bringing a detainee before a judge (including the number of cases in which postponements occurred and the duration of such postponements).

17. According to information brought by the Israel Security Agency before the Knesset Constitution, Law and Justice Committee, from July 1, 2006 up until December 31, 2006 – the arraignment of **one** person was postponed between 48-72 hours in accordance with Section 3(1) of the Law, and the arraignments of **2** persons were postponed between 72-96 hours in accordance with Section 3(2) of the Law. In 2007 – the arraignments of **4** persons were postponed between 48-72 hours in accordance with Section 3(1) of the Law, and the arraignment of **one** person was postponed between 72-96 hours in accordance with Section 3(2) of the Law. In 2008, the arraignments of **2** persons were postponed between 48-72 hours in accordance with Section 3(1) of the Law, and the arraignment of **none (0)** was postponed between 72-96 hours in accordance with Section 3(2) of the Law. In 2009, the arraignments of **5** persons were postponed for no longer than 48 hours in accordance with Section 3(1) of the Law, and the arraignment of **none (0)** was postponed between 72-96 hours in accordance with Section 3(2) of the Law.

18. Israel maintains its position that the provisions of the Law dealing with arraignments before a judge and access to legal counsel are in accordance with Article 2 of the Convention:

- Arraignment before a judge – A decision to extend an arrest must be brought before a judge, as a rule, within 24 hours from the time of arrest. This occurs in the vast majority of cases. This limitation is deviated from only in rare instances, and even in those cases, the maximum delay is a total of 96 hours;
- Access to legal counsel - The authorities take every measure to limit the use of the provision allowing for the authorities to postpone a meeting with legal counsel; hence, the use of this tool in Israel is exceptional. Prevention of a meeting for more than 10 days is seldom used;

Note also that for the purpose of extending the arrest period, the suspect is brought before a judge.

19. As for the issue of a court session in absentia, it should be stressed that in February 2010, the Israeli Supreme Court repealed Section 5 to the *Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law*, which allowed a court to decide on detention on remand without the presence of the detainee for no longer than 20 days (*Cr.C 8823/07 Anonymous v. The State of Israel*). The initial purpose of this Section of the Law was to improve the ability of law enforcement agencies to conduct effective interrogations of suspects in security offences. In its decision, The Supreme Court found that this section, particularly when combined with other legal provisions, might gravely harm the rights of the suspect and prejudice the effectiveness and fairness of the judicial process. The Court was not convinced that the purpose of the Section could not be achieved by way of other means. Thus, the Court ruled that Section 5 is unconstitutional since it is incompatible with *Basic Law: Human Dignity and Liberty*.

**Concluding Observation no. 19:**

**Allegations of torture and ill-treatment by Israeli interrogators**

**"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."**

20. The allegations referred to by the Committee are based on complaints made by individuals who for the most part have a clear interest against the State of Israel and the Israeli security forces. Thus, this mechanism is often used as a method by which to burden the security agencies in Israel in their ongoing fight against terrorism.

21. Nevertheless, every complaint made by an interrogatee is examined by the Inspector for Complaints against ISA Interrogators (hereinafter: The Inspector). The Inspector functions under the close supervision of a high-ranking prosecutor from the State Attorney's Office, who answers to the State Attorney and the Attorney General. The purpose of the examination is to examine whether the interrogators acted according to the law and procedures. The examination is performed thoroughly and impartially.

22. The fact that none of the examinations opened during the years 2006-2009 resulted in the submission of criminal charges indicates that all the interrogations were conducted according to law and procedures, and no ill-treatment or torture took place during the interrogations. However, certain procedures and interrogation techniques were modified as a result of some investigations. Additionally, during the years 2003-2009, ten examinations were opened as a result of complaints forwarded solely by the investigators themselves. Further, 55 examinations were opened based on the reports of investigators to the inspector regarding complaints of interrogees made to the ICRC and other public organizations.

23. The number of examinations, per year are as follows:

- 4.1. 2006 – 67 examinations;
- 4.2. 2007 – 47 examinations;
- 4.3. 2008 – 30 examinations;
- 4.4. 2009 – 50 examinations;

24. Israel's Security Agency and its employees act within the framework of the law, and are subject to internal and external review by, *inter alia*, the State Comptroller, the State Attorney, the Attorney General, the Knesset and the High Court of Justice in Israel.

25. Detainees receive all the humanitarian rights provided by the Conventions Israel is a party to and by Israeli law, including access to legal counsel and meetings with ICRC representatives.

26. In 2009, Israel's High Court of Justice rejected a petition claiming that the Government and the ISA disregarded the High Court of Justice ruling in *H CJ 5100/94 The Public Committee against Torture in Israel v. The State of Israel*. Thus, the Court found no legal and/or factual basis for this claim.

**Concluding Observation no. 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."**

27. In order to fulfill their duties, police officers are authorized to use reasonable force in necessary cases. The difficulty in investigating complaints regarding the improper use of force is in the examination of circumstances which justified the use of force, and the justification for the amount of force used.

28. Since the use of force can be seen as a tool for police officers when exercising their duties, in certain cases the complaints are handled by way of disciplinary measures. Disciplinary measures are used in cases where the police officers were authorized to use force, but the force used has slightly deviated from the reasonable force needed. The advantage of the disciplinary procedure is the opportunity it provides for an examination of an event from organizational, educational and other important points of view.

29. 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:

- In Cr.A 5136/08 *The State of Israel v Ynai Lalza* (31.3.09), the Supreme Court accepted the State's appeal and raised the period of incarceration of a Border Patrol policeman who was convicted by the Jerusalem District Court, from six and a half years to eight and a half years' imprisonment. The defendant was convicted for participating in a series of acts of severe abuse and aggression against several Palestinians in Hebron, one of whom died after he was pushed out of a moving police vehicle. The Court described the acts committed by the defendant as severe, outrageous and villainous and added that these actions undermine the fundamental bases of justice and human decency. The Court indicated that the punishment for such offenses must serve to condemn the behavior and express its anomalousness;

- 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's driver was recently convicted and sentenced to four and a half years' imprisonment. Proceedings against the remaining officers resulted in sentences of between four and a half and eight and a half years of imprisonment;

- 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;

▪ Cr.C. 436/04 (Jerusalem District Court) *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. 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. They were sentenced to between four and fourteen and a half months of imprisonment.

30. In 2009, 93 proceedings against police officers ended: 68 cases concluded with a conviction, 20 cases concluded with acquittals and five cases had different outcomes. There is no correlation between the lack of proceedings that were initiated in one year and others that have been closed during the same year, due to differences in the length of proceedings following each complaint.

31. Below are further examples which evidence the above principles:

1. A border police officer was convicted of manslaughter and sentenced to two years' imprisonment for killing an infiltrator in Jaffa.

2. A police officer was sentenced to one year's imprisonment for assaulting a detainee and accepting a bribe.

3. Two Border police officers were convicted of assault causing actual bodily harm in aggravating circumstances and subornation in connection with an investigation, and were sentenced to six and four months' imprisonment respectively.

4. Border police officers who assaulted a woman were sentenced to one year's imprisonment.

5. A police officer was sentenced to one year's imprisonment for assaulting a demonstrator.

#### **Concluding Observation no. 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."**

#### **Data Regarding the Scope of the Infiltration Phenomenon**

32. During 2008, 7,703 people infiltrated Israel unlawfully through the Egyptian border. 75% of the infiltrators that were caught during 2008 came from Sudan and Eritrea and 10% of them were women and children.

33. In 2008, there was an increase of more than 30% compared to 2007 in the rate of infiltrations of African origin entering Israel through the Egyptian border.

34. In 2009, 4,439 people infiltrated Israel unlawfully through the Egyptian border, whereas since January 2010 more than 7,300 people have infiltrated Israel unlawfully - a further increase in this phenomenon.

35. The infiltrators have entered Israel unlawfully, directly from a country in which they had already found protection or from a country that is a party to the Refugees Convention where an effective possibility to apply for asylum already exists. The infiltrators can therefore be returned to the country of "First Asylum". This practice also complies with the general understanding of conclusion No. 58 of the UNHCR ExComm (UNHCR ExComm, 'Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection', Conclusion No. 58 (XL), 13.10.89).

#### **“Coordinated Immediate Return Procedure”**

36. In accordance with the understanding between the former Israeli Prime Minister and the President of Egypt, an immediate return to Egypt of an infiltrator who crossed the border unlawfully into Israel is possible, following coordination with the relevant Egyptian authorities and in accordance with the criteria and guidelines established in the Procedure.

37. "Coordinated Immediate Return" is conducted at the Israeli-Egyptian border under Israel Defense Force (IDF) standard operational order no. 1/3.000 titled "Immediate Coordinated Return Procedure – Infiltrators Crossing the Egyptian-Israeli Border". The procedure is currently under the review of the Israeli Supreme Court, in a case pending before the Court (H.C.J. 7302/07 *The Hotline for Migrant Workers v. The Minister of Defense*). It should be stressed that for the time being, the court has decided not to intervene with the Procedure.

38. The Procedure's goal is to determine the actions for dealing with infiltrators, commencing at the time of their apprehension by IDF forces and/or Border Patrol units and until the time of their coordinated return to Egypt. In addition, the Procedure aims to define the reasons and circumstances for an immediate coordinated return of infiltrators and the relevant persons involved in the procedure and their authorities.

39. According to the principle of non-refoulement, a customary principle of international law, a person shall not be expelled to a country where his life or liberty might be at risk on the grounds of race, religion, nationality, affiliation to certain social groups or a political agenda.

40. As stated by the Committee, this principle was recognized in Article 3 of the Convention. According to this Article, a state party shall not expel or return a person to another state where there are substantial grounds for believing that he/she would be in danger of being subjected to torture. In addition, this principle is also recognized in Article 33 of the Convention relating to the Status of Refugees, and constitutes part of Israeli law according to the Supreme Court of Israel, sitting as the High Court of Justice, in *HCI 4702/94, El- Tahii et. al. v. Minister of Interior*.

41. In accordance with the Procedure, a limited number of high-ranking officers were authorized to order the coordinated immediate return of infiltrators to the Egyptian authorities.

42. The Procedure specifies several conditions for the execution of the Procedure. For example, the authorized commander can order the coordinated return, only after confirming with the relevant Egyptian authority that no harm will be done to the returned infiltrator. Additionally, it is also required that the infiltrator undergo questioning by a specially trained agent prior to his/her return, in which it will be determined whether there is any concrete danger or a possibility of such danger posed to him/her.

43. Under the Procedure, the authorized commander is required to consider all the data gathered during the questioning, including the personal circumstances of every infiltrator, prior to ordering the coordinated immediate return. In any situation where there are grounds

on which to believe that there is danger to the life or liberty of the infiltrator in Egypt, the return to Egypt will not be carried out.

44. Further, in the event of a dilemma arising in regard to a certain case, the Authorized Commander must seek guidance from the Southern Command Legal Advisor.

45. Thus, the authority to act in accordance with the Procedure is satisfied only in suitable cases and subject to the abovementioned conditions of the Procedure and the principal of non-refoulement. There had been several cases in which an Authorized Commander decided not to carry out the return due to developments in the field that led him to think that the infiltrator(s) might be in danger once they are returned to Egypt.

46. In addition, following H.C.J. 7302/07 *The Hotline for Migrant Workers v. The Minister of Defense*, the IDF Deputy Chief of Staff appointed a high-ranking officer to examine the implementation of the Procedure by IDF soldiers in the field. **The investigating officer found that return of infiltrators at the Egyptian border is carried out according to the Procedure.**

47. Further, below is detailed account of the process of the Procedure, as well as the training provided to the officials in charge of implementing the Procedure:

#### **The Procedure's Stages**

48. Apprehension - Immediately after capture, an infiltrator or a group of infiltrators will be examined in order to rule out and if needed to neutralize any security threats posed by him/her/them.

49. Questioning – After ruling out any threat, the infiltrator will undergo an initial questioning either at the site where he/she was apprehended or at an IDF base. This questioning shall be conducted by a trained IDF soldier or by a Border Patrol Policeman for no more than three hours after the apprehension (or no more than six hours in case of a group of infiltrators). The purpose of the questioning is to gather crucial information about the infiltrator and to allow him/her to make claims regarding any threat against his/her life if he/she is returned to Egypt or regarding his/her status as an asylum seeker. If the person makes such claims, he/she will be asked to specify the circumstances his/her claims are based upon.

50. If the questioning provides preliminary possible grounds for such claims, the person shall not be returned through this Procedure, but shall be transferred to the Ministry of Interior for extensive questioning by the specially designated unit.

51. If the questioning does not give rise to suspicion that the infiltration was related to state security or criminal activity – the person will be dealt with according to the Procedure with the aim being his/her immediate coordinated return to Egypt, so long as this is possible and in accordance with international law and the State's obligations. If however the questioning does reveal that the infiltration was related to state security or criminal activity the person will be transferred to the relevant security authorities.

#### **Holding of an Infiltrator by the IDF**

52. Holding of an infiltrator in the short period of time until his/her coordinated return, shall be affected, based on legal authority, at an IDF's military base. Immediately after his/her capture and during his/her holding in a military facility, the infiltrator shall be held in proper conditions including the provision of water, food and if necessary medical examination by an IDF physician.

### **Registration and Documentation**

53. According to the Procedure, every infiltrator should be registered and documented, to the extent possible:

- Photographs of the infiltrator should be taken near the border;
- Photographs of the area of infiltration;
- Registration and documentation of the documents in the infiltrator's possession, such as immigration documents (e.g. passport), documents regarding contacts with U.N. agencies in Egypt and in other countries, information regarding the person's status in Egypt, regarding places he/she stayed before his/her apprehension etc;
- Photographs of the infiltrator's possessions and equipment, including weapons;
- The possessions of an infiltrator who is to be returned to Egypt according to the Procedure will be returned to him/her. The possessions of an infiltrator who is to be transferred to the immigration authorities for further security interrogations – his/her possessions will be handled according to the relevant procedures.

### **Temporary Deportation Order**

54. No later than three hours after the apprehension of an infiltrator (or six hours in cases of a group of infiltrators) a temporary deportation order will be issued against him/her. The Order will be valid for 24 hours, and will be issued by an officer of the rank of Lieutenant Colonel or Captain, who has been authorized for this purpose by the Minister of Defense according to the *Prevention of Infiltration Law 5714-1954* (the "*Prevention of Infiltration Law*"). The temporary deportation order constitutes a legal document authorizing the holding of the infiltrator at a military base.

### **Permanent Deportation Order**

55. After the expiry of the temporary deportation order, and in cases where the coordinated return is delayed, a permanent deportation order will be issued in accordance with the *Prevention of Infiltration Law*. The order will be issued by the head of the operations division, and constitutes the legal authorization for the IDF's holding the infiltrator until his/her coordinated return (or until he/she is transferred to the immigration authorities).

### **Examination of the return of the infiltrator**

56. A person will not be returned to Egypt according to the Procedure, if the authorized persons' consider that there is a risk to the infiltrator's life or liberty if he/she is returned. Note that the possibility of a trial or a prison sentence imposed on the returned person for infiltration or any other criminal offences does not constitute a risk to life or liberty. In addition, a person will not be returned to Egypt according to the Procedure if the findings of his/her questioning give rise to the suspicion that the infiltration was carried out for security related purposes.

### **Training of personnel for questioning infiltrators**

57. Article 14 of the Procedure stipulates that the officials who perform the questioning and the authorized commanders shall participate in a training seminar every four months. The seminar contents include background to the phenomenon of refugees; the authorities and responsibilities of IDF soldiers; IDF procedure regarding immediate coordinated returns; emphasis on treatment and questioning and more.

58. In its response to H.C.J. 7302/07 *The Hotline for Migrant Workers v. The Minister of Defense*, the State took upon itself to train soldiers for the purpose of questioning infiltrators. Hereinafter are the main training programs which were carried out to that end by the State.

59. On September 21, 2008, a training seminar was held for over 30 IDF's soldiers and officers and Border Patrol Policemen serving in the Southern Command in high ranking command positions. The training included the following:

- Law and judicial review – description of the legal background of the IDF's treatment of infiltrators, including *Prevention of Infiltration Law, Entry into Israel Law* and the U.N. 1951 Convention Relating to the Status of Refugees. This chapter also included reference to the above mentioned appeal, the sensitivity needed when dealing with infiltrators, as well as a description of the Governmental Ministries and agencies dealing with this issue and the relations between these factors and the IDF;

- The powers granted to IDF soldiers – description of the authorities given to IDF soldiers in the field. Special emphasis was placed on the powers afforded to soldiers regarding arrest, detention and search according to the *Criminal Procedure (Enforcement Powers - Arrests) Law 5756-1996*, and the *Prevention of Infiltration (Offences and Trial) Law 5714-1954*. In addition, the authority of the IDF to hold infiltrators until they are deported under deportation orders was also detailed;

- IDF procedure regarding immediate coordinated returns – the procedure was explained while emphasizing the importance of questioning the infiltrators, completing a report containing the infiltrator's answers, and the report's importance to the entire process of coordinated return. In addition, every question in the questionnaire was explained and rationalized and the participants were presented with cases and reactions regarding questions and statements of infiltrators during the questioning. The participants were also presented with the State's position regarding the possibility of coordinated return and different aspects of the importance of coordination with Egypt.

60. On November 11, 2008, another training session was held for 25 soldiers and officers serving in various units dealing with infiltrators in the IDF's Southern Command. This particular training session was wider and more extensive and was presented by personnel of the Ministry of Justice, the Ministry of the Interior and the Southern Command Legal Advisor. The training focused on the operational and legal aspects of the coordinated return process, while emphasizing the importance of completing a detailed report regarding the apprehension of an infiltrator. During the training, the soldiers and officers were presented with different aspects of the importance of questioning an infiltrator, the importance of clarifying dilemmas which may arise during the questioning, the need to obtain the identity of the infiltrator in order to assist the immigration authorities and certain political aspects regarding the return of infiltrators to their state of origin. In addition, the trainees were presented with governmental activities held at the inter-ministerial level for dealing with the phenomenon, the severity of the phenomenon, the importance of conducting proper questioning of infiltrators etc.

61. These training sessions have continued to be conducted every few months in 2009-2010, or less when needed, so that the units dealing with infiltrators will be capable of questioning them properly, according to the Procedure.

62. The participants stated that the training contributed greatly to their understanding of the issue and the importance of the questioning procedure.

63. In accordance with the IDF's Southern Command guidelines, the participants will act as focal points in their units regarding the Procedure. In addition, according to the Southern Command guidelines, only soldiers that attended the above-mentioned training will be

authorized to question infiltrators, complete questioning reports and deal with the Procedure together with the coordination units and in accordance with the IDF guidelines.

64. There is a great improvement in the assimilation of the Coordinated Return Procedure among the Southern Command units. The brigade stationed on the Israeli-Egyptian border issued a leaflet to all of its soldiers and commanders, clarifying the importance of the Procedure.

**Concluding Observation no. 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".**

65. Since September 2000, Israelis have been the victims of a relentless and ongoing armed conflict with Palestinian terrorist group's intent on spreading death and destruction, killing more than 1,178 Israelis and injuring more than 8,000.

66. In light of this unprecedented lethal threat, Israeli security forces have sought to find effective and lawful measures that may minimize the occurrence of such terrorist attacks in general, and suicide terrorism in particular, and discourage potential suicide bombers. Faced with the failure of the Palestinian leadership to comply with its obligations to fight terrorism, Israel has been compelled to combat this ongoing threat to the inherent right to life of Israeli citizens throughout Israel.

**Demolition of Structures that Pose a Security Risk**

67. One such security measure is the demolition of structures that pose a real security risk to Israeli forces.

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

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

70. In this regard, Israel's security forces adhere to the rules of the International Law of Armed Conflict and are subject to the scrutiny of Israel's High Court of Justice in hundreds of petitions frequently brought by Palestinians and human rights organizations.

71. These counter-terrorism measures, by any reasonable standard, do not constitute a form of "collective punishment" as some have claimed. While the security measures do

unfortunately cause hardship, in certain cases, to those not involved in terrorism, this is categorically not their intent.

72. Wherever possible, even in the midst of military operations, Israel's security forces go to great lengths to minimize the effects of security measures on the civilian population not involved in terrorism. In this context, Israel adopts measures in order to ensure that only terrorists and the structures they abuse are targeted.

#### **Demolition of Structures due to Planning and Zoning violations**

73. The Military Commander enforces the planning and building laws which were in place prior to 1967, in order to fulfill his/her duty under international law to respect, unless absolutely prevented, the law in place and to safeguard public order in the Area.

74. Accordingly, the demolition of buildings constructed illegally is carried out lawfully and in order to enforce the planning and building laws.

75. All demolitions are conducted in accordance with due process guarantees, such as the right to a fair hearing and the full opportunity to take measures towards the legitimization of an illegal building by completing and submitting requests for a building permit or by proposing a planning amendment.

76. Moreover, the process is subject to judicial review before the Israeli High Court of Justice, without distinction on the basis of race or ethnic origin

#### **Demolition of Homes of Perpetrators of Suicide Attacks**

77. Another method employed by Israel against terrorists is the demolition of houses resided in by those who had carried out suicide attacks or other grave terrorist attacks, or those who are responsible for sending suicide bombers on their murderous missions. The legality of this method, used for deterrence and not as a punitive measure, was upheld in numerous cases by the Israeli High Court of Justice, relating both to houses situated in the West Bank as well as in Israel's own territory.

78. In early 2005, Israel temporarily suspended the use of this method, following prolonged internal deliberations. However, in the first six months of 2008, the city of Jerusalem suffered a series of terrorist attacks, claiming the lives of 11 Israelis and injuring over 80. These attacks were the "peak" of a terrorist wave which began in 2007, characterized by the direct and active participation of inhabitants of the neighborhoods of eastern Jerusalem, who abused their status in Israel as permanent residents. In light of this rapid deterioration and the tremendous risk posed by the involvement of the residents of the neighborhoods of eastern Jerusalem in terrorist activities, the Minister of Defense found it necessary to resume the use of this method. Subsequently, the Chief of the Homefront Command decided to partially seal (as an alternative to total or partial demolition) one house and partially destroy another, resided in by the perpetrators, both of which are located in the neighborhoods of eastern Jerusalem.

79. Consequently, the families of the perpetrators petitioned the High Court of Justice. In its judgment denying the petition, the Court reaffirmed the legality of the measure; once again, it reiterated that the measure is employed not as a form of punishment but as a deterrent, the employment of which is at the discretion of the Government. Accordingly, the latter may change its policy on the matter in light of changing circumstances. Therefore, the Court rejected the argument made by the petitioners that the decision to suspend the use of the measure rendered its application illegal, and accepted the State's position that the terrorist wave in the neighborhoods of eastern Jerusalem, due to its unique characteristics, presented a substantial risk to Israel's security which justified the recourse to the measure of

house demolition (H.C.J. 9353/08 *Hisam Abu-Dhim et. al. v. The Chief of the Homefront Command* (05.01.2009).

80. A request for a further hearing was denied by the High Court of Justice, who determined that its judgment was grounded in its previous rulings on the issue, and that the matter did not warrant further deliberations (Re.Ad.H. 181/09 *Hisam Abu-Dhim et. al. v The Chief of the Homefront Command* (06.01.2009).

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