United Nations CAT/C/ISR/Q/4/Add.1

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

Distr.: General
20 August 2010

Original: English

Committee against Torture
Forty-second session
Geneva, 27 April-15 May 2009

Written replies by the Government of Israel to the list of issues (CAT/C/ISR/Q/4) to be taken up in connection with the consideration of the fourth periodic report of Israel (CAT/C/ISR/4)* **

[1 May 2009]

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

** Annex can be consulted in the files of the Secretariat.

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Annex

Articles 1 and 4

1. Reply to the issues raised in paragraph 1 of the list of issues (CAT/C/ISR/Q/4)

1. In recent years, many discussions and administrative work were held on the issue of a Bill to amend Section 12 of the Evidence Ordinance, inclusive of the exclusion of evidence obtained through torture. Extensive internal deliberations were raised regarding different aspects of the proposed amendments. The various proposals are still examined by the relevant bodies, following a decision to allow the judgment in C.A. 5121/98, *Prv. Yisascharov v. The Head Military Prosecutor et al*. (4.5.06) a certain time to take root in the courts, prior to its implementation in legislation.

2. During the term of the 17th Knesset's Constitution, Law and Justice Committee, during its deliberations regarding the right to life and the integrity of the body with regards to the consensual-based constitution, a discussion was held regarding prohibition of torture. Among the various views and opinions heard in the committee's deliberations there was also the opinion that a future constitution should explicitly forbid torture, even though this prohibition can also be interpreted from other rights to be found in the constitution, such as the right to life, dignity, integrity of the body and privacy. Discussions on this issue are expected to continue during the term of the new Knesset.

Article 2

2. Reply to the issues raised in paragraph 2 of the list of issues

3. The Supreme Court, in H.C.J. 5100/94 The Public Committee against Torture in Israel v. The State of Israel determined that:

> [A] reasonable investigation is necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever. There is a prohibition on the use of 'brutal or inhuman means' in the course of an investigation. Human dignity also includes the dignity of the suspect being interrogated … These prohibitions are 'absolute'. There are no exceptions to them and there is no room for balancing. Indeed, violence directed at a suspect's body or spirit does not constitute a reasonable investigation practice.[1]

4. Furthermore, in its decision, the Supreme Court held:

> That the "necessity" exception is likely to arise in instances of "ticking time bombs", and that the immediate need ("necessary in an immediate manner" for the preservation of human life) refers to the imminent nature of the act rather than that of the danger. Hence, the imminence criteria is satisfied even if the bomb is set to explode in a few days, or perhaps even after a few weeks, provided the danger is certain to materialize and there is no alternative means of preventing its materialization. In other words, there exists a concrete level of imminent danger of the explosion's occurrence.

5. The ISA operates according to the above and fully adheres to the Supreme Court ruling.

6. Although the Court was ready to assume that the "necessity defense" could arise in instances of "ticking bombs," the "necessity defense", as such did not constitute a source of

authority to utilize physical means. The Court held that any future directives governing the use of those means during interrogations had to be anchored in an authorization prescribed by law, and not in defenses to criminal liability. To date no such directives were introduced.

3. Reply to the issues raised in paragraph 3 of the list of issues

7. Israel's position on the inapplicability of CAT beyond its territory has been presented at length to the Committee on previous occasions and remains unchanged. Nevertheless, and in the interest of constructive dialogue with the Committee, efforts were made to respond to the Committee's List of Issues.

8. Hence, it is noteworthy that the authority to arrest under administrative detention order in the West Bank is lawful and anchored in Article 78 of the Fourth Geneva Convention, which provides the legal basis for the action of the Military Commander in Judea and Samaria. Currently, there are only 530 administrative detainees.

9. Note that a person is held in administrative detention solely on the grounds of imperative reasons of security stemming personally from him/her, to the security of the area. Furthermore, no administrative detainees are held by Israel to exert pressure on Hamas to release Gilad Shalit.

The Incarceration of Unlawful Combatants Law 5762-2002

10. Section 1 of the Law reads:

> This Law is intended to regulate the incarceration of unlawful combatants not entitled to prisoner-of-war status, in a manner conforming with the obligations of the State of Israel **under the provisions of international humanitarian law**. (emphasis added)

11. The Incarceration of Unlawful Combatants Law, 5762-2002, establishes in domestic Israeli legislation the inherent right of a State under international Law of Armed Conflict to detain persons who take part in hostilities and endanger the security of the State, while not being entitled to Prisoner of War status (as accorded by Article 4 of the Third Geneva Convention Relative to the Treatment of Prisoners of War (1949)). This incarceration is consistent with the administrative detention provisions in the Fourth Geneva Convention, and has long been recognized by many authors in the field of international law, and remains a vital tool in the struggle against terrorist organizations, which tend to operate in blatant disregard of the Law of Armed Conflict (as exemplified by their persistent violation of the duty to distinguish themselves from the civilian population).

12. According to Section 5, a prisoner shall be brought before a judge of the District Court no later than 14 days after the date of granting the incarceration order. The authorities' procedure is to reduce this time frame to the minimum and prisoners are usually brought before a judge following shorter periods.

13. At present, 14 persons are incarcerated under this Law, all of whom are residents of the Gaza Strip. Periodical judicial review of the incarceration takes place in a civil District Court every 6 months, as required by the Law, and the decision may be appealed before the Supreme Court.

14. Recently, in June 2008, the Supreme Court rejected an appeal submitted by two of the detainees. Here, the Supreme Court addressed the substantial legal aspects of unlawful combatant incarceration, for the first time since the Law was enacted (Cr.A. 6659/06 Anonymous v. The State of Israel).

15. While reaffirming the legality of the specific incarceration orders, the Supreme Court held that the Law meets the standards of both Israeli Constitutional Law and

International Humanitarian Law (which it found to be applicable to the Israeli fight against the various Palestinian terrorist groups) - noting that the Law as a whole does not infringe the right to liberty in a disproportional manner and finding it to be consistent with the administrative detention provisions in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949). In addition, the Supreme Court interpreted the principal Sections of the Law as intended to strike a delicate balance between generally accepted Human Rights standards and the legitimate security needs the Law was designed to address.

16. It is Israel's position that in light of the current security situation facing Israel, the use of this method is obligatory, and is essential in preventing terrorist activity.

4. Reply to the issues raised in paragraph 4 of the list of issues

Access to legal counsel

17. In a recent decision by the Supreme Court, the Court held that "there 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)) Here, the Court adopted a relative exclusion doctrine, according to which the court may rule on the inadmissibility of a confession due to the interrogator's failure to notify the soldier of his right to legal counsel.

Criminal Offences

Detainees

18. Section 34 of the Criminal Procedure (Powers of Enforcement - Arrests) Law, 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 a detainee, the person in charge of the investigation shall enable the meeting without a delay, unless as stipulated in the following. This meeting can be delayed if, in the opinion of the police officer in charge, such a meeting necessitates terminating or suspending an investigation or other measures regarding the investigation, or substantially puts the investigation at risk. The officer in charge shall provide a written reasoned decision to postpone the meeting for the time needed to complete the investigation, provided this deferment does not exceed several hours.

19. 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 hours deferment (to a total of 48 hours) can be granted, if the officer in charge provides an elaborated written decision that he/she is convinced that such postponement is necessary for safeguarding human life, thwarting a crime. However, such a detainee shall be given a reasonable opportunity to meet or consult with a legal counsel prior to the arraignment before a court of law. Data indicates that this additional extension is seldom used.

20. 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

21. A 2005 Amendment to the Prisons Ordinance, 1971, further stipulates the conditions for a prisoner meeting with an attorney for professional service. According to section 45, this meeting shall be held in private and in conditions allowing for the confidentiality of the matters and documents exchanged, and in such a manner that enables supervision of the prisoner's movements. Following the prisoner's request to meet with an attorney for professional service, or the request of an attorney to meet a prisoner, the director of the prison shall facilitate the meeting in the prison during regular hours and without delay.

22. 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 (IPS) Commissioner and the director of the prison to postpone or stop such a meeting for a set period of time if there is a substantial suspicion that meeting with a particular lawyer will enable the commission of an offence risking the security of a person, public security, State security or the prison security, or a prison offence substantially damaging to the prison discipline and that brings about a severe disruption of the prison procedures and administration. The director of the prison may delay such a meeting for no longer than 24 hours, and the IPS Commissioner may order an additional 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.

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

24. In exceptional cases, the Law allows postponing a meeting with legal counsel for specific grounds.

25. In Cr.C 1144/06 *Abu-Hashish Zyad v. The State of Israel* (9.2.06), the defendant, a resident of the Gaza Strip, was arrested while illegally staying in Israel for reasons of activity in a terrorist organization, contact with a foreign agent and illegal entry to Israel.

26. The Court asserted that preventing a detainee from meeting his attorney constitutes grave harm to his rights. Such harm can be tolerated only when such prevention is necessary due to security reasons and for the sake of the interrogation. The Court added that the duration set by law for prevention of a detainee from meeting with his lawyer is the maximal period of time, and that the relevant authorities, when considering imposing such a restriction, should set this period to the minimal number of days required for the interrogation and whilst considering the interrogation's progress.

Arraignment before a judge

Criminal Offences

27. Section 29 of the Criminal Procedure (Powers of Enforcement - Arrests) Law, specifies that a person arrested without a warrant must be brought before a judge as soon as possible, and no later than 24 hours following the arrest, with a special provision regarding weekends and holidays. Following the completion of the above measures, the detainee shall be brought promptly before a judge, or released from custody.

28. Section 30 allows for an additional 24-hour extension based on the need to perform an urgent interrogation, which cannot be performed unless the detainee is in custody, and

cannot be postponed following his arraignment; or if an urgent action must be taken regarding an investigation in a security-related offence. Following the completion of the above measures, the detainee shall be brought before a judge swiftly, or released from custody.

29. 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

30. The Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law, 2006, regulates the powers required for the enforcement authorities in order to investigate a detainee suspected of terrorism or security offences. Such investigations necessitate special enforcement powers due to the special characteristics of both the offences and the perpetrators. The main provisions of the law result from the exceptional circumstances of such a security offence.

31. Section 3 of the Law stipulates that the appointed officer may delay the arraignment before a judge to a maximum of 48 hours from the arrest, if the officer is convinced that the cessation of the investigation would truly jeopardize the investigation. The officer may decide to delay the arraignment for another 24 hours if he is convinced that the cessation of the investigation would truly jeopardize the investigation or may harm the possibility to prevent harming human lives.

32. The officer may delay the arraignment for additional 24 hours for the same reason, provided that he explains his decision in writing and obtains the approval of the relevant approving authority. A delay of over 72 hours also requires the approval of the Head of Investigations Department of the Israel Security Agency (ISA), or his deputy. In any case, the maximum delay would not exceed 96 hours from the time of the arrest.

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

34. Moreover, as a way of further assuring the rights of the detainee, and in light of the temporary nature of the Law, during the duration of the Law, the Minister of Justice would be obligated to report to the Committee of Constitution, Law and Justice of the Knesset on the implementation of the law every six months. The report would include, inter alia, detailed information concerning postponements in bringing a detainee before a judge (including the number of cases in which the postponement occurred and the duration of such postponements).

35. According to information received from the Israel Security Agency, brought 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 arraignment of **two** persons was postponed between 72-96 hours in accordance with Section 3(2) of the Law. In 2007, the arraignment of **four** persons was 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 arraignment of **two** persons was 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.

5. Reply to the issues raised in paragraph 5 of the list of issues

36. Please see the first paragraph to Israel's response to Question 3, above.

6. Reply to the issues raised in paragraph 6 of the list of issues

37. In addition, Israel maintains its position that the provisions of the Law are in accordance with Article 2 of the Convention.

38. Arraignment before a judge – Please see Israel's reply to Question 4, above.

39. An extension of an arrest must be held before a judge, as a rule, within 24 hours, and that is the case in the absolute 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.

40. Access to legal counsel - the authorities take every measure to limit the use of the provision allowing the postponement of meeting with legal counsel; hence, the use of this tool in Israel is exceptional. Prevention for over 10 days is seldom used.

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

42. A court session in absentia - can only be held with a court's approval, and only after the judge saw the detainee and approved its detention. The suspect must be represented in this session by legal counsel. The legality of this provision is currently pending before the Supreme Court.

43. Judicial review - Note that every administrative decision in this matter can be challenged by the detainee before a higher court.

44. The inter-ministerial work on the Anti-Terrorism Bill is still being under way, and its provisions remain subject for further deliberation.

7. Reply to the issues raised in paragraph 7 of the list of issues

45. Any allegations of torture and ill-treatment in Facility 1391 were investigated by the competent authorities, and no grounds for criminal proceedings were found. This issue was further examined by the Supreme Court, which upheld the decision. For several years now, the ISA is not involved in any way in operating that facility, and no ISA interrogations are conducted there. Furthermore, since September 2006, the Facility has not been used for detention.

8. Reply to the issues raised in paragraph 8 of the list of issues

46. Israel is not aware of any additional petitions.

9. Reply to the issues raised in paragraph 9 of the list of issues

47. The means of interrogation detailed in the above Question are prohibited by the ISA procedures. Every claim regarding the use of these means of interrogation is examined by the Inspector for Complaints against ISA Interrogators.

48. In recent years, the findings of these examinations did not yield evidence of the performance of criminal offences by ISA interrogators in the course of their interrogations, and subsequently, no ISA interrogators were indicted.

Treatment of Interrogatees defined as "Ticking Bomb"

49. Please see Israel's reply to Question 2, above.

50. The definition of a "Ticking Bomb", is based on the Supreme Court ruling in H.C.J. 5100/94 *The Public Committee against Torture in Israel v. The State of Israel*, quoted in Israel's reply to Question 1, above.

51. The Attorney General's guidelines instruct that the ISA must operate according to established internal procedures, also relating to a system of internal consultations, relevant to its operations. Accordingly, internal guidelines were prepared in the ISA, setting the manner of consultation with high-ranking officials of the ISA, when the circumstances of a specific interrogation support the necessity requirement. These guidelines were presented before the Attorney General.

52. The State of Israel adheres to its position that the current wording in the Penal Law is in accordance with international law, as can also be seen from the above ruling of the Supreme Court.

53. The ISA is obligated to perform interrogations of suspects in terrorist activity in order to gather information which will enable to foil, prevent and disrupt the execution of terrorist activities and related infrastructures. ISA interrogations are conducted according to the law and according to the relevant guidelines and regulations. The interrogations are monitored regularly by the ISA, the Ministry of Justice, the State comptroller and by the Courts.

54. The Inspector for Complaints against ISA Interrogators operates independently under the instruction and close guidance of the Inspector's supervisor in the Ministry of Justice, who is a high-ranking attorney in the Ministry of Justice. The Inspector is guided professionally by the supervisor that approves his/her decisions, these decisions are further examined by the Attorney General and the State Attorney when the issues mentioned are sensitive or when the circumstances so necessitate. Every complaint regarding improper treatment made by an interogatee is examined by the Supervisor, with no relevance, whatsoever, to the matter of that person being a "Ticking Bomb".

Investigations

55. Please see Israel's reply to Question 29, below.

10. Reply to the issues raised in paragraph 10 of the list of issues

The Gaza Strip

56. On September 12, 2005, the last Israel Defense Forces (IDF) soldiers left the Gaza Strip. Military rule over Gaza was effectively terminated and the military administration dismantled on completion of the disengagement. On that date, Israeli governing authorities ceased to operate with regard to the Gaza Strip and its inhabitants. According to the "effective control" criteria, Israel no longer holds Gaza under belligerent occupation. This

analysis was upheld by the Supreme Court, in H.C.J. 9132/07 *Jaber al Bassiouni Ahmed et al. v. The Prime Minister et Al., Tak-Al 2008(1), 1213 (2008),* quoted in Israel's reply to Question 18, below. Accordingly, since Israel is not exercising effective control in the Gaza Strip, it is not obligated – nor able - to take measures to investigate acts performed by Hamas in the Gaza Strip. Nevertheless, in certain cases Israel approved the entry to Israel of residents of the Gaza Strip due to danger to their lives by the Hamas terrorist organization.

The West Bank

57. It is Israel's position that the Convention does not apply beyond its territory, in the West Bank, especially as long as there is a situation of armed conflict and hostilities in this area. Furthermore, the provisions of the Convention which may, for the sake of argument only, be considered as applicable with regard to the West Bank relate to spheres of authority which to a large extent have been transferred to the Palestinian Authority, and which are subject to its jurisdiction and control regarding its population. Hence, as a practical matter, Israel is unable to take measures to investigate acts performed by the Fatah authorities.

58. It should be noted, however, that Israel has established a Committee for individuals under threat from Palestinian terrorist organizations, due to suspicion of collaborating with Israel, in order to consider the grant of permits to enter and remain permanently in Israel. Hundreds of such individuals have already received permits in this framework.

11. Reply to the issues raised in paragraph 11 of the list of issues

59. The State's response to terrorist threats is governed by a variety of legislative instruments, primarily the Prohibition on Terrorist Financing Law 5765-2004, the Prevention of Terrorism Ordinance, 1948, the Prohibition on Money Laundering Law 5760-2000, the Combating Criminal Organizations Law 5763 – 2003 and the Penal Law 5737-1977.

60. The above legislation fully adheres to the provisions of the CAT and their application is subject to routine judicial review.

12. Reply to the issues raised in paragraph 12 of the list of issues

61. Regretfully, the extent of Palestinian women's involvement in terrorist activities is on the rise. Women increasingly take part in terrorist acts, and have been suicide bombers, smuggled explosive devices through checkpoints, whilst using their relative freedom of movement as women to conceal these devices, etc. Also on the ascent is the involvement of minor-females in terrorist activities, including stabbing incidents. Subsequently, more women are detained and arrested.

62. As of April 28, 2009, there were 62 female Palestinian detainees in IPS facilities, 3 of them were administrative detainees. One security-related female inmate is currently residing in prison with her child that was born during her incarceration.

Women detainees

63. Women detainees are not held in the military regional holding facilities, but are referred directly to the IPS detention facilities. In these facilities they are held in separate wings and receive the following conditions.

Women prisoners in IPS detention facilities

64. The routine care of female prisoners is performed by female wardens, this including daily searches, escorts, etc. upon the entry of a male warden to a women's wing, the inmates are made aware of his presence, in consideration of their dignity and modesty.

65. Babies residing with their mothers are given medical care, baby food, baby equipment and every needed care.

66. Essential searches in the inmates' cells as well as bodily searches are made by female wardens in a proper and respectable manner.

67. According to Warden's Investigation Unit (WIU) statistics, during 2007-2009 there were no complaints by female security prisoners regarding illegal searches.

68. The attitude towards security related inmates, including women and their children, is appropriate and respectful; the inmates are cared for in a fair manner and are given assistance, support, openness, an open door and routine response for their needs.

Arrest and interrogation of women by the ISA

69. In 2008, 22 women were arrested and interrogated by the ISA for suspicions of committing security offences. The ISA is sensitive to interrogations and arrest of women and children and is making efforts to shorten, as much as possible, their stay in interrogation facilities. Suspects' arrest is only made based upon substantiated suspicions and sufficient and solid information of involvement in terrorist activities, and subject to monitoring by judicial instances. Every detainee is entitled, during the arrest to receive visits of representatives of the ICRC and legal counseling.

70. See also Israel's reply to Question 16 below.

Article 3

13. Reply to the issues raised in paragraph 13 of the list of issues

71. As our Supreme Court has made clear in the *Genadi Yegudayev v. State of Israel* decision (Cr.A 7569/00 (23.05.02)) and in other decisions, where there are substantial and concrete grounds for believing that a person would be in danger of being subjected to torture, the person will not be extradited; The court would not declare the person extraditable, and if the information providing the substantial and concrete grounds for suspecting torture arose subsequent to the court's declaration of extraditability, the Minister of Justice would clearly not order the extradition.

14. Reply to the issues raised in paragraph 14 of the list of issues

72. The use of assurances which were utilized in the case of *Genadi Yegudayev v. State of Israel* and in a number of other cases, is helpful in cases where there is concern, or an allegation raised as to the possibility of mistreatment following extradition. Where such assurances are requested and provided, this supplies a basis for the extraditing State to contact the requesting State following extradition with questions regarding the treatment of the extradited person and the fairness and lawfulness of the proceedings against him. Absent the provision of a prior assurance, inquiries by the extraditing State following extradition regarding such matters could be seen as unwarranted interference with procedures and practices in the requesting State.

73. An example of this can be seen in Cr.A *5275/01 A.Z. v. State of Israel* (14.5.02). A.Z. was an organized crime figure extradited for murder to the Russian Federation. Here, assurances were requested and provided regarding the treatment of the extradited person following extradition. When subsequent to *A.Z.*'s extradition, his family raised allegations of mistreatment, the Israeli authorities were able, on the basis of the assurances, to enquire with the Russian authorities concerning the matter in a way that did not seem untoward, despite the fact that *A.Z.* was a Russian citizen.

74. Israeli enquiries, which included visits by consular officials, determined and assured that the treatment afforded to *A.Z.* was fully adequate. The Israeli authorities were also able, based on the assurances, to raise questions concerning procedural matters regarding *A.Z.*'s rights as a defendant. It is important to stress that no evidence of either mistreatment or unfairness was discovered and the defendant was eventually acquitted in Russia.

15. Reply to the issues raised in paragraph 15 of the list of issues

General

Data regarding the scope of the infiltration phenomenon

75. According to the data forwarded to us by the relevant authorities, 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.

76. According to the data, in 2008 there was an increase of more than 30% compared to 2007, in the rate of infiltrations to Israel of people of African origin through the Egyptian border.

77. Those people infiltrated Israel unlawfully, directly from a country in which they had already found protection or from country that is a party to the Refugees Convention where an effective possibility to apply for asylum already exists, and thus can be returned to the country of "First Asylum". This practice also complies with the general understanding of conclusion No. 58 of the UNHCR ExCom (UNHCR ExCom, "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, available at http://www.unhcr.org/3ae68c4380.html).

78. According to Israel Defense Forces (IDF) standard operational order no. 1/3.000 titled "Immediate Coordinated Return Procedure – Infiltrators Crossing the Egyptian-Israeli Border" of November 2007, unlawful infiltrations from Egypt to the sovereign territory of the State of Israel occur for various reasons, inter alia, for security reasons, criminal, economic and humanitarian reasons etc.

79. 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 set in the Procedure.

80. The Procedure's goal is to determine the actions for dealing with infiltrators, commencing at the stage of their apprehension by IDF forces and/or Border Patrol units and until 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.

The Procedure's stages:

81. 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.

82. Questioning – After ruling out any threat, the infiltrator will go through an initial questioning either on 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 no later than three hours after the apprehension (or six hours in case of a group of infiltrators). The purpose of the questioning is to gather crucial information about the infiltrator and allow him/her to make claims regarding any threat to his/her life if he/she is to be returned to Egypt or regarding the status of an asylum seeker. If the person made such claims, he/she will be asked to specify the circumstances his/her claims are based upon.

83. 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 the Interior for an extensive questioning by the especially designated unit.

84. If the questioning's findings reveal no suspicions of security or criminal background for the infiltration – the person will be dealt with according to the Procedure with the aim of his/her immediate coordinated return, as long as it is possible and in accordance with the international law and the State obligations. If the questioning's findings do reveal suspicions of security or criminal background for the infiltration, the person will be transferred to the security authorities.

Holding of an infiltrator by the IDF

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

An infiltrator's possessions

86. As a rule, the possessions of the Infiltrator will remain with him/her until his/her return to Egypt or until his/her transfer to the immigration authorities. If the infiltration was carried out for security reasons, the equipment will be dealt with according to the appropriate procedures.

Registration and documentation

87. According to the Procedure, every infiltrator should be registered and documented, as much as possible:

a) Photographs of the infiltrator near the border.

b) Photographs of the area of infiltration.

c) 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 in before his/her apprehension etc.

d) Photographs of the infiltrator's possession and equipment, including weapons.

e) 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

88. According to the law, 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 in the rank of Lieutenant Colonel or Captain, which were authorized for that 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

89. After the expiry of the temporary deportation order, and in case 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 holding the infiltrator by the IDF until his/her coordinated return (or until he/she is transferred to the immigration authorities).

Examination of the return of the infiltrator

90. After completing the questioning and shortly after the time of taking into custody, the data regarding an infiltrator will be brought before the persons authorized to examine the possibility of immediate coordinated return in to Egypt. The authorized persons are officers in the rank of Colonel or Lieutenant-Colonel. The authorized persons will examine if all the conditions for the coordinated return are met, while taking into consideration the infiltrator's personal data, the circumstances of the his/her apprehension and his/her status in Egypt before being caught by IDF forces. If needed and according to the circumstances of each case, the decision will be reached following consultations with the Military Advocacy.

91. A person will not be returned to Egypt according to the Procedure, if the authorized persons consider that there is risk to the infiltrator's life or liberty if he/she is to be returned. Note that the possibility of trial or prison sentence imposed on the returned person for infiltration or other criminal offences does not constitute 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.

Immediate coordinated return

92. The return of an infiltrator to Egypt under the immediate coordinated return mechanism, will be carried out, as much as possible, through regular border crossings and subsequent to coordination with the Egyptian authorities

93. If the authorized persons decided that it is impossible to return an infiltrator to Egypt according to the Procedure, the infiltrator will then be transferred to the immigration authorities, according to the Entry into Israel Law 5712 -1952 (the "Entry into Israel Law").

94. Most importantly, the State informed the Court that following an infiltrator's claim that he/she requires asylum and provided a preliminary examination does not indicate that the asylum request is baseless, that person shall not be returned through this Procedure. Rather, he/she will be transferred to the Ministry of the Interior for an extensive questioning by the especially designated unit.

Data regarding the scope of the infiltration phenomenon

95. The returns that were carried out were performed according to the Procedure, after questioning and filing the necessary reports. Note that the majority of the infiltrators stated at their initial questioning that they came to Israel in order to work or because they heard that "Israel is a good place".

96. Furthermore, according to the data, each case and decision was examined separately and taken individually. Some of the infiltrators were not returned to Egypt, some for medical reasons and some based on the assumption that their return shall lead to the separation of their families. In addition, a number of infiltrators whose initial questioning gave rise to the possibility of threat to their lives (even if not concrete) upon return to Egypt, were not returned. Accordingly, a group of infiltrators that were questioned and it was clear that the group might be in real danger if returned to Egypt was not returned according to the Procedure, but transferred to the Israel Prisons Service (IPS).

Training of personnel for questioning infiltrators

97. 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.

98. On September 21, 2008, a training seminar was held for over 30 IDF soldiers and officers and Border Patrol Policemen serving in the southern command in high-ranking commanding positions. The training included the following:

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

b) The powers granted to IDF soldiers – description of the authorities given to IDF soldiers on the field. Special emphasis was given to powers 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 deportation according to deportation orders was also detailed.

c) IDF procedure regarding immediate coordinated returns – the procedure was explained while emphasizing the importance of questioning the infiltrators, filing a report containing the infiltrator's answers, and the report's importance to the whole 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 upon past experience. The participants were also presented with the State position regarding the possibility of coordinated return and different aspects of the importance of coordination with Egypt.

99. 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 was wider and more extensive and was presented by personnel of the Ministry of Justice, the Ministry of the Interior and legal advisors of the IDF's Southern Command. The training focused on the operational and legal aspects of the coordinated return process, while emphasizing the importance of filing 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 arising 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 the Governmental activities held in the inter-ministerial level for dealing with the phenomenon, the severity of the phenomenon, the importance of conducting proper questioning of infiltrators etc.

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

101. In accordance with the IDF's Southern Command guidelines, the participants will act as focal points in their units regarding the coordinated return procedure. In addition, according to the Southern Command guidelines, only soldiers that attended the above-mentioned training will be authorized to question infiltrators, file questioning reports and deal with the procedure of coordinated return together with the coordination units and in accordance with the IDF guidelines.

102. There is a great improvement in the assimilation of the coordinated return procedure among the Southern Command units. The brigade stationed in the Israeli-Egyptian border issued a leaflet to all its soldiers and commanders, clarifying the importance of the coordinated return procedure. In addition, a briefing was held by the brigade commander to all its field units regarding the importance of the questioning procedure.

Treatment of infiltrators – H.C.J. 7964/05 The Hotline for Migrant Workers v. The Minister of the Interior – State response

103. Between the 17 and 18 of August, 2007, the IDF apprehended 51 infiltrators near the Israeli-Egyptian border. 44 of them were Sudanese, 3 were from the Ivory Coast, 3 from Eritrea and 1 was from Somalia. Shortly following their apprehension, the infiltrators were questioned by the force commanders in a language they understood - English or Arabic. During the initial questioning the personal details of the infiltrators were registered and recorded (State of birth, identification number or passport number).

104. According to IDF's sources, in the stage of questioning, none of the infiltrators made any claim regarding threat to their lives or any other threat if they will be returned to Egypt. The infiltrators were then transferred for a short period of time to a nearby IDF base, in order to supply them with humanitarian needs such as rest, food and drink etc.

105. According to IDF's sources, on August 18, 2007, at 23:30, after coordination between political levels of Israel and Egypt, 48 of the infiltrators were returned to Egypt (44 Sudanese, 3 from the Ivory Coast and 1 from Somalia). The 3 infiltrators from Eritrea were not returned due to claims raised regarding fear for their lives if they were to be returned to Egypt. Note that none of the infiltrators that were returned made any claim regarding fear or threat to their lives if returned to Egypt.

106. After the above-mentioned incident the Hotline for Migrant Workers organization wrote to the State's Attorney's Office claiming that the State violated its obligation which was presented to the High Court of Justice in H.C.J. 7964/05.

107. In its response to the above-mentioned appeal and in response to the letter of the Hotline for Migrant Workers organization, the State clarified its position regarding coordinated return procedure and stated that Israel does not consider “coordinated return” of infiltrators directly relevant to the above-mentioned appeal, since there is a fundamental difference between deporting illegal aliens – a matter that was discussed in H.C.J. 7964/05 – and “coordinated return” of infiltrators to Egypt soon after the infiltration. The State

pointed to a number of infiltrators groups entering Israel from Egypt and portrayed its position regarding each group:

108. As described above, all infiltrators are questioned to rule out any security threat, and then go through an initial questioning either on the site where he/she was apprehended or at an IDF base. The purpose of the questioning is to gather crucial information about the infiltrator and allow him/her to make claims regarding any threat to his/her life if he/she is to be returned to Egypt or regarding the status of an asylum seeker. If the person made such claims, he/she will be asked to specify the circumstances his/her claims are based upon. 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 the Interior for an extensive questioning by the especially designated unit.

109. In case no such claims were made, or that the preliminary examination has indicated that the claims are baseless, the State pointed to a number of infiltrators groups entering Israel from Egypt and portrayed its position regarding each group:

a) Group 1 – Infiltrators from States that have diplomatic relations with Israel, entering from Egypt (the main countries of origin are China, Turkey, Georgia, Uzbekistan and Russia). According to the State response, since Israel has diplomatic relations with these countries of origin, there is a legal and practical way to remove them directly to their countries. Israel further stated that according to its current position, infiltrators belonging to this group, in the meantime, shall not be returned to Egypt, but emphasized its fundamental position according to which it is authorized, as principle, to return these infiltrators also through the Egyptian border. The State further replied that currently, the coordinated return mechanism does not include infiltrators of this group, under one limitation, the existence of a legal and practical possibility to remove infiltrators not through Egypt to their countries of origin. According to that limitation there is no contradiction between the State response in H.C.J. 7964/05 and the current situation.

b) Group 2 – Infiltrators who are citizens and residents of Egypt. Israel stated that it has the right and obligation to return these infiltrators directly to Egypt, which is their country of origin. Regarding this group there is also no contradiction between the State response in H.C.J. 7964/05 and the current situation.

c) Group 3 – Infiltrators from Sudan. Regarding this group Israel stated in its response that the matter of Sudanese infiltrators is not relevant to the present appeal. According to the State's position, Sudanese infiltrators are not considered labor immigrants, they are citizens of a country which is a security threat to Israel, and there is no reasonable and practical legal way to deport them but through Egypt, which is obligated to receive them according to international law. The State further emphasized that in its response in H.C.J 3208/06 (still pending), in which the Hotline for Migrant Workers organization was the appellant, it specified the coordinated return mechanism regarding this group (see below), and stated that there is no contradiction between the State response in H.C.J. 7964/05 and the current situation.

110. In H.C.J. 3208/06 the State emphasized that infiltrators from Sudan will be questioned by the IDF near the point of crossing the border and apprehension. In case of suspicion that an infiltrator is related to hostile terrorist activities or other security risk, he/she will be handled by the relevant authorities. When there is no such suspicion, the infiltrator will be returned to Egypt through the regular border crossings after coordination with Egypt, and based on the understandings with Egypt that is a party to the Refugee Convention.

d) Group 4 – Infiltrators from countries with no diplomatic relations with Israel, but which are not considered to be a security threat to Israel. Regarding this group Israel stated that currently the Immigration Authority is dealing with a small number of infiltrators belonging to this group. Furthermore, deportation of these infiltrators is delayed until further examinations regarding the legal and practical possibility of deporting them to their countries of origin through a third country and with assistance of the relevant international organizations. Israel stated that if there will be such a possibility these infiltrators shall not be returned through Egypt. Israel added in its response that some infiltrators belonging to this group prefer, of their own free will, to be returned through Egypt in order to shorten their time in custody until their return to their country. The State further clarified regarding this group, that in the future the Immigration Authority will be guided to consult with the State Attorneys Office prior to their return through Egypt.

111. Following the State's response, the petitioners in H.C.J. 7964/05 withdrew their petition.

16. Reply to the issues raised in paragraph 16 of the list of issues

112. According to estimates of the Ministry of the Interior, hundreds of people infiltrate Israel every month through the Egyptian border. In 2007, approximately 5,300 persons infiltrated into Israel and were detained by Israeli soldiers patrolling near the Israeli-Egyptian border. In 2008, the number of infiltrators exceeded 7,000.

113. Based on initial questionings, many of the infiltrators are economic migrants, who are not refugees according to the definition of “refugee” in the Refugee Convention. According to UNHCR assessment in 2007, less than 30% of the infiltrators from Sudan came from Darfur and most of them stayed in Egypt a few years before infiltrating into Israel. Some of them were even recognized there as refugees, years before they infiltrated into Israel. However, all asylum seekers from Darfur were recognized (back in 2007) and received refugee status in Israel.

114. The Bill was proposed in order to replace the Prevention of Infiltration (Offences and Jurisdiction) Law 5714-1954 (hereinafter: the Current Law), which was enacted in 1954 as part of the State of Emergency legislation. The Bill was designated to disconnect the treatment of infiltrators from the State of Emergency. The Bill will significantly improve the present situation subject to the current law, by improving the regulations of the detention of infiltrators and illegal sojourners while balancing protection of human rights and Israel’s national security interests.

115. For example, the Bill determines timetables to issue deportation and detention orders, regulates temporary detention and judicial review regarding the detention of infiltrators. All these procedural measures constitute real innovation and improvement compared with the current law.

116. Moreover, according to the Bill, there is an administrative discretion in applying the Entry into Israel Law 5712-1952 upon infiltrators. Thus, allowing deportation of an infiltrator out of Israel, if it is evident that he does not pose a threat to national security, instead of detention or criminal proceedings, as can be done in the appropriate cases. The Bill does not aim to regulate asylum seekers as well, and under the discretion mentioned above they will be regulated under another law.

117. In this context we want to emphasize that Israel is fully aware of its obligations according to international law in general and the Refugees Convention in particular. As an active member of the drafting team, and one of the first signatories to the convention, Israel

is fully committed to observe its obligations according to these international mechanisms and the Bill will not lessen its obligations thereof.

118. The Bill does not restrict infiltrators' rights to request humanitarian assistance, such as access to refugee protection. Moreover, as written specifically in the explanatory notes of the Bill, the possibility to return an infiltrator to the State or region that he/she came from, within 72 hours, immediately after the infiltration into Israel, is subject to international conventions, including the principle of non-refoulement, anchored in Section 33 to the Refugee Convention. As mentioned before, Israel is fully committed to observe its international obligations.

119. As any other sovereign State, Israel is entitled to determine who will be allowed to enter its borders and who will be allowed to stay in Israel. Similarly, Israel is entitled and, indeed, has the duty to take proper measures to guarantee the safety of its citizens.

17. Reply to the issues raised in paragraph 17 of the list of issues

120. Please see Israel's detailed reply to Question 15, above.

Article 5

18. Reply to the issues raised in paragraph 18 of the list of issues

121. It should be noted, that even prior to the termination of effective Israeli control over Gaza, under Israeli-Palestinian agreements the parties had agreed that territorial jurisdiction in Gaza, except for settlements and military installations, was an exclusively Palestinian responsibility (Interim Agreement 1995, Article XVII(2)).

19. Reply to the issues raised in paragraph 19 of the list of issues

122. The operational method of the security checkpoints located at the security fence (as an international land passages) was approved by the legal adviser of the Ministry of Defense and by the Knesset's Internal Affairs Committee.

123. The security examination and security methods and procedures are guided by the following guiding authorities: Israel Security Agency (ISA) – regarding the passengers, their luggage and the Israeli Police – regarding vehicles, goods and security arrangements at the checkpoints.

124. The passages management staff is comprised of Civil Service employees and employees of private security firms hired according to tenders issued by the Ministry of Defense. Every employee is required to undergo an extensive professional training course, which was authorized and is supervised by the guiding authorities. During this course, the employees were given professional expertise in the fields of security and security examinations, the required levels of service to the population, and specific service and behavior rules of the persons using the checkpoints. In addition, the employees are required to undergo a specific training course on the culture of Islam and rules of conduct with the Arab population.

125. The passages do not contain underground holding or detention facilities, and no cases of torture ever took place in these passages. The passages have routine presence of members of human right NGOs and no such allegation was ever raised.

20. Reply to the issues raised in paragraph 20 of the list of issues

126. Please see the first paragraph to Israel's response to Question 3, above.

127. Without prejudice to Israel's position on the question of whether this matter falls within the purview of the Committee, it must be noted that the characterization of the situation in Gaza as a "blockade" and one in which Palestinians have been "forcibly deprived of their most basic human rights" is erroneous in the extreme.

128. Even during the height of the Gaza military operation, Israel remained keenly aware of its responsibility to have regard to the humanitarian needs of the population, and notwithstanding the continued security and terrorist threats emanating from Gaza, and the repeated abuses of movements of goods and humanitarian aid for terrorist purposes, Israel has enabled a total of 1,503 trucks carrying 37,159 tons of supplies to enter the Gaza Strip through the Karni and Kerem Shalom Crossings, since the commencement of the operation. Constant communication was maintained with the Civil Affairs Committee of the Palestinian Authority, as well as with members of the Palestinian private sector for the purpose of coordinating supplies of goods and humanitarian assistance. Constant communication was maintained with the Palestinian Electricity, Water & Sewage Communications Authorities in Ramallah and their crews in Gaza, in order to ensure the functioning of essential utilities during the operation. Israel coordinated the entry of 706 trucks (48% of total goods entering Gaza) carrying donations from international organizations and various countries, and an Infrastructure Coordination center, manned 24/7 was set up by the IDF to coordinate repairs to infrastructure in areas of hostilities, to track the economic situation in Gaza and to coordinate deliveries of humanitarian aid to the Gaza Strip. Furthermore, during the operation, substantial amounts of industrial diesel for the Gaza power station were transferred to Gaza from Israel.

129. At the same time, it should be noted that Hamas, which has responsibility in practice for the distribution of aid and basic supplies once these enter Gaza, has a deliberate strategy of frustrating humanitarian assistance. For example, Hamas operatives fired rockets and mortars into Israel, from nearby international installations and from civilian populated areas, during the Humanitarian recesses. Another representative example relates to seizure by Hamas of humanitarian supplies transferred to Gaza (for example, on 18 January 2009 under the auspices of the UN. These supplies were sent by the Palestinian Authority and were designated for distribution by UNRWA.

Article 11

21. Reply to the issues raised in paragraph 21 of the list of issues

130. According to information forwarded by the Police, the obligation to record investigation of suspects is gradually implemented according to the type of offence, as detailed by the Criminal Procedure (Investigation of Suspects) Law 5762-2002: Since August 1, 2006, the obligation applies to murder offences; from August 1, 2007, it applies to manslaughter offences as well. Furthermore, as of January 1, 2009, the obligation applies to all other offences punishable by a minimum of 15 years' imprisonment. Beginning on January 1, 2010, the requirement will also apply to offences punishable by a minimum of 10 years' imprisonment.

131. The interrogation of a suspect in security offences was made an exception to the requirement of recording interrogations, for a period of five years since the Law came into effect. Afterwards, the exception period was extended for a period of four additional years. No additional changes have been made.

132. Furthermore, there are additional requirements of recording investigations stipulated by the Law, for example - when the investigation is not documented in writing in the language it is conducted in, it is possible to use audio recording. When a person cannot read or write or if he/she is a person with a disability that makes it difficult for him/her to confirm the correctness of the documentation in writing - it is also possible to make do with audio recording. However, when the investigation is conducted in sign language - there is an obligation to record the interrogation with visual methods.

133. The Police do not have any knowledge as to cases in which prohibited conduct of investigators towards suspects was recorded, and of cases in which the court decided to release a suspect due to such misconduct.

134. With regard to implementation of the above-mentioned law - 34 investigation rooms were equipped with the recording equipment in 2007, and 70 additional rooms were chosen to be equipped with recording equipment in 2008.

135. With regard to training - during the first half of 2008, 250 police investigators and investigation officers underwent training in 6 cycles of training.

136. The following table contains figures regarding investigations documented by the Police (January – June 2008) (according to Section 16 of the Criminal Procedure (Investigation of Suspects) Law :

	No. of exposed cases[1]	No. of suspects in the exposed cases[2]	No. of suspects in exposed cases whose investigation was documented by visual recording	No. of cassettes and CD's with visual recording	No. of cassettes and compact-discs that were translated		Costs for translation and transcription [3]
					By the police	By a translation company	
Murder	57	180	593	1,353	221	334	
Manslaughter	4	4	4	22	2	18	
Other offences (punishable by over 10 years' imprisonment – in the addendum to the Law	7,299	13,726	2,194	3,068	427	903	
Total (for offences in the addendum to the Law	7,360	13,910	2,791	4.443	650	1,255	

[1] Cases in which a suspect is interrogated under a warning and his details were fed into the criminal system.
[2] The number of suspects may change during the investigation of the case.
[3] It is worth mentioning that the length of the cassette/disc may vary from 4-17 hours (according to the company's report. The translation cost has also variants in different conditions. In addition, this figure may also include translation or word-to-word translation that is not needed from the interrogation.

Offence not included in the addendum to the Law	-	-	650	860	113	444	
Total January-June 2008	------	-----	3,441	5,303	763	1,699	2.7 million NIS

137. To date, there were no cases in which the use of video has been invoked resulting in release of a detainee because of impermissible treatment.

22. Reply to the issues raised in paragraph 22 of the list of issues

138. Please see the first paragraph to Israel's response to Question 3, above.

23. Reply to the issues raised in paragraph 23 of the list of issues

139. Please see the first paragraph to Israel's response to Question 3, above.

24. Reply to the issues raised in paragraph 24 of the list of issues

140. Please see the first paragraph to Israel's response to Question 3, above.

25. Reply to the issues raised in paragraph 25 of the list of issues

141. Please see the first paragraph to Israel's response to Question 3, above.

Article 12

26. Reply to the issues raised in paragraph 26 of the list of issues

142. Hereinafter are data related to complaints against Police officers for improper use of force. Note that some inaccuracies may occur due to the new computer system used. However, if such inaccuracies do exist, they are minor and cannot harm the trend presented in the table below.

Parameter	2002	2007
Total complaints investigated regarding improper use of force	1,074	1,185
Criminal procedure	60	82
Disciplinary procedure	94	78
Lack of guilt	345	331
Lack of public interest	36	42
Unknown assailant	42	67
Lack of sufficient evidence	497	585

143. It should be emphasized, that in order to fulfil their duties, Police officers are authorized to use reasonable force in the necessary cases. The difficulty in investigating

complaints regarding improper use of force is in the examination of circumstances which justified use of force, and the justification for the amount of force used.

144. In addition, 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 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 examination of an event from organizational, educational and other important points of view.

145. An example of the harsh penalties can be found in Cr.A 5136/08 *The State of Israel v Ynai Lalza* (31.3.09). Here, 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.

146. The defendant was convicted for participating in a series of acts of severe abuse and aggression against several Palestinians in Hebron, one of whom was killed 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 condemn it and express its anomaly.

27. Reply to the issues raised in paragraph 27 of the list of issues

147. Section 13 to the Israel Security Agency Law, 5762-2002, does not authorize the Agency Comptroller to examine complaints made by interrogatees by the ISA, as this authority is granted primarily to the Inspector for Complaints against ISA Interrogators and later, subject to an approval by the Attorney General, to the Department for Investigation of Police Officers, according to Section 49I1 of the Police Ordinance, 5731-1971 (the "Police Ordinance").

148. The Agency Comptroller is an internal comptroller, charged with responsibilities such as internal auditing, efficiency, etc, and does not address allegations regarding interrogations.

149. Section 18 to the Israel Security Agency Law addressed restriction of liability concerning an Agency employee or a person acting on its behalf, for any act or omission performed in good faith and reasonably by him/her within the scope and in performance of his/her function. Clearly, a criminal or disciplinary offence is not performed in good faith, and thus the above does not apply to their performance. Subsequently, Section 18 is in full conformity with the Convention.

150. Please see also Israel's reply to Question 29, below.

28. Reply to the issues raised in paragraph 28 of the list of issues

151. The Orr Commission recommended that a criminal investigation be made into the various events as to which suspicion arose that criminal offenses had been committed by police officers who took part in handling the disturbances in October 2000, this "so that the competent authorities will decide if it is proper to initiate criminal or other proceedings against anyone regarding his involvement in those events." The Commission did not establish, therefore, a criminal evidentiary foundation for the filing of indictments, but pointed out suspicions and suspects, in various events, as arose from its inquiry, and its

recommendation, as stated, that a criminal investigation be conducted to examine these suspicions.

152. Indeed, the Department for Investigation of Police Officers (DIPO) thoroughly studied all the vast amount of material gathered by the Commission, and conducted a comprehensive investigation in every case in which it found it possible and reasonable to do so. At the end of the investigations and examination of the material, the DIPO arrived at the conclusion that it had no option but to close the files, and stated in its decision its findings and the reasons for doing so.

153. In light of the exceptional nature and severity of the events and their tragic consequences, The Attorney General decided to conduct an additional examination of all the events, in the framework of an appeal of the decision of the DIPO, even though such an appeal was not submitted. The additional examination was unique in scope and thoroughness. A staff of five senior attorneys, headed by the Deputy State Attorney, dedicated thousands of work hours in conducting a specific and precise examination of the vast amount of evidence that had been gathered by the Orr Commission and DIPO. The Ministry of Justice also carried out many supplemental investigations in performing the additional examination. The products of this multi-scope procedure were examined in a long series of discussions that the Attorney General held, at which members of the staff and others from the State Attorney's Office and the Ministry of Justice participated, and the products of this comprehensive work were reflected in the comprehensive opinions, regarding each of the events separately.

154. Ultimately, following this long and complicated procedure, all members of the team reached the conclusion that no sufficient evidentiary foundation exists to file criminal indictments in the different events that were investigated. Indeed, team members did not agree on each and every point with the positions reached by DIPO, as is described in the various opinions. But, in the end, there was no basis for changing the decision not to file indictments in this matter.

155. The picture arising from the evidentiary material is that some of the tragic results were not caused by an offense, but even in those cases in which it ostensibly appeared an offense was involved, neither the original investigation nor the supplemental investigations that the Attorney General ordered DIPO to carry out, finally led to an evidentiary basis that is sufficient to file criminal indictments. This resulted, in part, because of the objective difficulties entailed in this investigation.

156. In two cases there remains a certain potential for supplemental investigation that was not exhausted. It involves removal of bodies from their graves and an autopsy of the body, which might enable seizure of the bullets that struck them and apparently remained in their bodies, and comparison of the bullets with the weapons that were seized. Indeed, there is no guarantee that removal of the bodies and the autopsies will lead to findings that can form the basis for the filing of indictments, but certain likelihood does exist. However, to date, the bereaved families oppose this action for reasons that are, of course, understandable. In any event, in such complicated and sensitive circumstances, it seemed improper to make another application to the court – against the position of the families – for an order to remove the bodies from their graves and to conduct the autopsy to remove the bullets. The reasons for this are set forth at length in the relevant opinions. Therefore, under these circumstances, there was no option but to close these files as well. However, if in the future, for a reasonable period of time, any of the relevant bereaved families changes its position, it would be possible to reopen the investigation and complete this as stated.

157. The fact that civilians were killed in these events requires every effort be made to investigate them in an attempt to reach the truth. Indeed, the events were investigated first by a State commission of inquiry, and later by DIPO. Also, following the investigation by

DIPO and publication of its results, the Attorney General decided, because of the uniqueness of the events and the tragic consequences, to conduct a further examination, at its initiative, to ensure that indeed every investigative possibility had been exhausted. Accordingly, an intensive and thorough examination, of unprecedented proportions, was conducted, which results and conclusions were as delineated above and in the detailed opinions.

158. Indeed, the result, in which thirteen persons were killed in these events, is grave and worrisome. However, the criminal law has clear and rigid rules regarding criminal responsibility and the prosecution of persons, so that, when the details of the events and the evidentiary material gathered by the Orr Commission and the investigation by the DIPO, including the supplemental invention conducted in the framework of the additional examination, provided no evidentiary foundation to support the criminal responsibility of any of the persons involved in these events, there was no alternative but to close the file.

29. Reply to the issues raised in paragraph 29 of the list of issues

The Police

159. Hereinafter are data related to complaints against Police officers for improper use of force. Note that some inaccuracies may occur due to the new computer system used. However, if such inaccuracies do exist, they are minor and cannot harm the trend presented in the table below.

Parameter	**2002**	**2007**
Total complaints investigated regarding improper use of force	1,074	1,185
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Disciplinary procedure	94	78
Lack of guilt	345	331
Lack of public interest	36	42
Unknown assailant	42	67
Lack of sufficient evidence	497	585

ISA

160. In 2006, 67 investigations of interrogated persons complaints were made by the Inspector for Complaints against ISA Interrogators (hereinafter, “the Inspector”). 50 investigations were opened regarding detainees who were arrested in 2006, 15 investigations were opened regarding persons arrested in 2005, and 2 investigations were opened regarding persons arrested in 2004.

161. During 2007, 50 complaints were filed by interrogated persons and 47 investigations were opened by the Inspector. Three complaints which were not directed towards ISA interrogators were transferred to the DIPO in the Ministry of Justice according to the decision of the Inspector and the Inspector's supervisor in the Ministry of Justice, who is a high-ranking attorney in the Ministry of Justice

162. As of June 20, 2008, the handling of 30 cases opened in 2007 has ended and 17 investigations are still pending.

163. In 2007, no complaint against an ISA interrogator was transferred to the DIPO and no disciplinary measures were taken against ISA interrogators.

164. As indicated in Israel's response to Question 27 above, every examination held by the Inspector is transmitted to the Supervisor, a high-ranking attorney in the State

Attorney's Office, and fully independent in his/her consideration. Many of the examination cases are closed due to lack of evidentiary basis for the accusations submitted against ISA interrogators. It is worth reiterating that often, the complainants are members of terrorist organizations that that conduct a campaign to influence public opinion, as part of the campaign against Israel, and thus it is to be expected that submitting false complaints against ISA interrogations is part of this campaign.

Israel Defense Forces (IDF)

165. The IDF maintains a strict policy of investigating every claim of maltreatment by IDF soldiers. The IDF instructions specifically prohibit any improper attitudes towards detainees, and instruct as to the denunciation of any instance of an inappropriate behaviour of a soldier in relation to detainees.

166. In October 2007, the IDF established a designated department in the Military Attorney General's Office, aimed at handling claims regarding offences committed by IDF soldiers, in the course of military operations, and harming civilians and their property. The Department is titled the "Operational Matters Military Attorney General's Office" and it receives application from a variety of bodies and individuals – Palestinian residents, NGOs and the media, and assesses the need to conduct investigating military police investigations as to the actions of IDF soldiers and prosecutes those involved.

167. Due to the reduced extent of contact between IDF solders and security related detainees, largely following the handing over of detention facilities to the IPS, most complaints concern acts of violence, rather than torture. Thus, in 2007, 223 investigating military police investigations were held and 211 in 2008. In 2008, 22 indictments were filed on accounts of violence against Palestinian residents. Of these proceedings, one is pending, three cases resulted in an acquittal, two indictments were dropped and the remaining cases resulted in indictments.

Article 14

30. Reply to the issues raised in paragraph 30 of the list of issues

168. Without prejudice to the incorrect characterization of this Bill provided to the Committee, Israel notes that there is little value in engaging in a detailed discussion of a preliminary draft bill which may well undergo significant changes in the course of the legislative process. The draft has been currently been transferred to the Knesset Constitution, Law and Justice Committee for discussions. To date, these discussions have yet to begin.

169. In view of the incorrect characterization of the draft bill, it should be noted that in the past, a law which was intended to limit Palestinians in conflict areas a component of the right to claim compensation for damages incurred to them, whether or not arising from the conflict, was declared unconstitutional and annulled by Israel's Supreme Court.

Article 15

31. Reply to the issues raised in paragraph 31 of the list of issues

Cr.A. 5121/98 Private (Ret.) Refael Yisascharov v. the IDF's Advocate General

170. On May 4, 2006, the Supreme Court issued its ruling in the case of Cr.A. 5121/98 *Private (Ret.) Refael Yisascharov v. The IDF's Advocate General*. The verdict was given by

a panel of nine judges. The decision dealt with the interpretation of Section 12 to the Evidence Ordinance (new Version), 5731 – 1971 (the Evidence Ordinance) in light of Basic Law: Human Dignity and Liberty. In addition, the Court set a judicial exclusion rule according to which evidence collected illegally and which substantially infringes the rights of suspects and persons being interrogated may be excluded.

171. According to the Court's decision, evidence that was obtained illegally is, inter alia, evidence that was obtained through unfair means, or by means which illegally infringe protected basic rights.

The principles of the Yisascharov case

172. With regard to Section 12 of the Evidence Ordinance, the Court ruled that in light of the principles of the above-mentioned Basic Law, the interpretive center of gravity has changed, and currently, aside from the protection of the credibility of confessions given before persons of authority, the protection of investigatees' rights is an independent and central objective, which allows exclusion of admissibility of confessions according to Section 12 of the Ordinance. Note that the investigatee's rights, of which Section 12 was meant to protect, are the right to physical and mental integrity and the right to autonomy and free will.

173. In addition, the Court determined a relative judicial exclusion rule, according to which evidence that was obtained illegally may be excluded according to the Court's consideration. The purpose of this exclusion rule is protection of the fairness of the criminal procedure and its clarity.

Interpretation of Section 12 of the Evidence Ordinance

174. In light of the spirit and principles of Basic Law: Human Dignity and Liberty, the Court determined in its verdict that the purpose of protection of an investigatee's rights should be strengthened, and made a central rationale, which stands on its own in the framework of examination of the admissibility of a confession. Thus, a confession may be excluded according to Section 12 of the Evidence Ordinance, for unlawful damage to an investigatee's rights, even if there is no concern regarding the candor of the confession.

175. The Court rejected the claim according to which every harm to an investigatee's protected right compels the exclusion of the confession according to Section 12. According to the Court, harming the aforesaid rights shall be a considerable consideration when examining the admissibility of a confession; however, it is not the only or the decisive consideration. According to the purpose and wording of Section 12, a confession shall only be excluded if the right to remain silent or the right to consult a lawyer, substantially and severely damaged the autonomy and the freedom of choice of the defendant when confessing.

176. The Supreme Court emphasized that Section 12 is not a comprehensive arrangement regarding admissibility of confessions made by a defendant in the course of his/her investigation. Therefore, the judicial exclusion doctrine may apply to this evidence as well.

177. The major and most significant innovation in this verdict is the acceptance of a judicial exclusion doctrine for exclusions of evidence obtained unlawfully. This doctrine does not limit itself to a defendant's confessions, and it applies generally - on all kinds of evidence in the criminal procedure obtained unlawfully by law enforcement agencies.

178. The Court determined that there are exclusion rules based on grounds unrelated to the search for the truth, but rather on the desire to protect differing social values and interests. In these cases there is a need to balance between the contradicting goals; according to the relative weight of their core values. In this regard the Court stated:

179. “Admitting evidence that was obtained illegally by the law enforcement authorities may in certain cases harm crucial values in Israel's legal system, including the administration of justice, safeguarding the fairness and integrity of the criminal proceeding and protecting the dignity and liberty of the accused. According to a broad conception of the work of dispensing justice, it is not restricted to discovering the truth and a correct application of the law to the facts of a specific case; the administration of justice is also based on the way in which the court reaches its decision in the circumstances of the case before it.”

180. That position lead the Court to rule that in certain circumstances, substantial illegality in obtaining evidence will lead to its exclusion, even if there is no doubt regarding its truthfulness.

181. “Therefore, the administration of justice in its broad sense and maintaining public confidence in the judicial system, protecting the rights of the accused and the fairness and integrity of the criminal proceeding, and the common interest of both the public and the individual in invalidating illegal investigation methods and deterring the investigative authority from employing similar methods in the future – all of these support the conclusion that, in appropriate circumstances, a significant breach of the law in obtaining the evidence will lead to it being inadmissible, even if there is no concern with regard to the truth of its content.”

182. However, the Supreme Court reiterated in its verdict that the change in the balance point does not mean that protection of defendant's rights becomes the main objective of evidence law and the criminal procedure. The main objective of these remains the search for truth in order to determine guilt or innocence and protecting the public from crime. In addition, the criminal procedure does not focus solely on protecting the rights of suspects and defendants, but also on safeguarding human dignity and the rights of victims of crime.

183. The question of admissibility of evidence obtained unlawfully necessitates finding proper balance between protection of the defendant's rights and protection of the fairness and integrity of the criminal procedure, and between the value of discovering the truth, fighting crime and protecting the public and rights of crime victims.

184. According to the judicial exclusion rule, a court has the discretion to exclude the admissibility of an evidence in the criminal procedure, if it finds that an evidence was obtained unlawfully and its admissibility in court shall create substantial harm to the defendant's rights to a fair criminal procedure, which exceeds the limitation clause set in Section 8 of Basic Law: Human Dignity and Liberty. In accordance with the “Preventative Model”, exclusion of evidence is used to prevent unlawful damage to the right to fair procedure due to acceptance of the evidence in the trial, separate from the initial damage to the defendant that was finalized upon obtaining the evidence.

<u>The conditions for exclusion of evidence according to the judicial exclusion rule</u>

185. The judicial exclusion rule is conditioned on two accumulative conditions:

1. Evidence which was obtained illegally,

2. Accepting the evidence in the trial will substantially damage the defendant's right to a fair procedure, not in accordance with the limitation clause of the above-mentioned Basic Law.

186. According to the first condition, illegally obtained evidence is evidence obtained by illegal means of investigation, in other words, in a way that is contrary to the law, regulations or compelling procedures; by unfair means or by means unlawfully infringing a protected basic right, and according to the circumstances of each case. In addition, in order

to exclude the evidence, a linkage between the illegal means of investigation and obtaining the evidence is required.

187. According to the second condition, evidence may be excluded if its admissibility will significantly damage the defendant's right to a fair procedure, not in accordance with the limitation clause of the above-mentioned Basic Law. The right to a fair procedure applies to every phase of the criminal procedure, including the Police investigation, which is a preliminary procedure to the trial itself. Deficiencies in the framework of the investigation might influence the fairness of the entire criminal procedure. These principles shall also apply to other investigation authorities in the necessary changes.

188. The Court emphasized that protection of the right to a fair criminal trial is not confined to examining the potential effect of procedural defects specifically on the outcome of the trial; this context requires a broader perspective that is based on general considerations of fairness, justice and preventing a miscarriage of justice. Finally, we should point out that the right to a fair criminal trial is a multifaceted right, which may serve as a basis for deriving many procedural rights of the investigatee, the suspect and the accused in criminal proceedings. Justice Beinisch, currently serving as the Supreme Court's President, gave a few examples for these procedural rights, among them: a defendant’s right to know the reasons for his/her arrest and the charges against him/her, the right to be represented by an attorney, the right to consult with a lawyer, the right to remain silent, the right against self-incrimination at the stage of investigation, the right to be present at the trial, the presumption of innocence etc.

189. In accordance with the judicial exclusion rule, in order to exclude evidence obtained illegally, it is required that its admissibility in court shall infringe the fairness of the procedures towards the defendant – an infringement that is not for a worthy cause and that is not proportionate.

190. The limitation of the doctrine to circumstances in which the admissibility of evidence will lead to substantial damage to the right to a fair procedure inconsistent with the limitation clause of the above-mentioned Basic Law, expresses the relative nature of the said right. Although, like all the rights in the Israeli legal system, the right to a fair criminal procedure is not absolute, the level of its protection derives from the need to balance it with other competitive values, rights and interests. Among them: exposing the truth, the need to fight crime, protecting the public and protecting the rights of crime victims.

Considerations when using the exclusion rule

191. In addition to the above-mentioned necessary conditions for the application of the judicial exclusion rule, a court deliberating on admissibility of evidence should consider a wide range of considerations according to the circumstances. The Supreme Court named three groups of such considerations:

A. *The nature and severity of the illegality in obtaining the evidence*

192. These are considerations aimed at examining the behavior of the investigation authorities. The Court draws a distinction between a minor technical breach of investigation rules, which does not infringe a defendant's right to a fair procedure substantially and therefore shall not give a reason for its exclusion, and between severe breach of these rules which considerably infringes a basic right of the investigatee.

Good faith versus malice

193. Among the first group of considerations, the Court must examine whether the law enforcement authorities used unlawful means of questioning deliberately and maliciously or if these were used in good faith. The use of illegal means of questioning deliberately and maliciously may intensify the severity of the infringement of the investigation rules and

strengthen the possible damage caused to the fairness of the procedure if the evidence shall be admitted by the court. Deliberate and malicious acts by the authorities may lead the court to exclude the evidence even when the infringement is not severe.

194. However, the Court also noted that the fact that the authority acted in good faith does not necessary prevent the exclusion of an evidence when the exclusion is required to protect the defendant's right to a fair criminal procedure.

195. The court should also examine if there are mitigating circumstances that may abate the severity of the illegality in obtaining the evidence. For example, when the defendant contributes to the illegality of the investigation by abusing his/her rights or when the illegality resulted from an urgent need to protect the public.

The possibility of lawfully obtaining the evidence

196. The Court should also examine how simple it was for the enforcement authorities to lawfully obtain the evidence. If the evidence were easier to obtain in a lawful procedure, then the breach of investigation rules might be considered as more severe, thus the admissibility of the evidence shall create substantial and a disproportionate infringement of the defendant's right to a fair procedure.

197. In addition, the court should examine if the illegal evidence would have been revealed by the enforcement authorities even without the unlawful means of investigation. If so, this might decrease the level of infringement of the defendant's right to a fair trial, if the evidence is to be accepted by the court.

B. *The influence of the illegitimate means of questioning on the evidence obtained*

198. In this regard, two questions should be examined:

a) To what extent the illegality entailed in obtaining the evidence might affect its credibility and its evidential value. When there is a suspicion that the evidence is not credible, this may cause its exclusion.

b) Does the evidence “stand alone” and is it separate of the illegality entailed in obtaining it? When the illegal means of investigation may not influence the substance of the evidence, this might cause the admissibility of the evidence in court.

199. The Court stated that the nature of the evidence, whether object, verbal etc., is very important in regard to the two questions above. When the evidence is an object, such as weapon, drugs or stolen property, it is independent of the illegality entailed in obtaining it, and generally, its integrity will not be damaged by the said illegality.

C. *The social damage versus the social benefit in excluding evidence*

200. The Court also ordered to consider the effects of exclusion of evidence on the administration of justice in its broader sense. The main question in this regard is whether the social price of excluding evidence is higher than its possible social benefit. The main parameters in this regard are the importance of the evidence to proving the defendant's guilt, the nature of the offence and its severity.

201. When the evidence is important and crucial to the prosecution and the offence attributed to the defendant is grave, the exclusion of the evidence may excessively damage interests such as fighting crime and protecting the public and crime victims. In such circumstances, excluding evidence may result in a person guilty of committing severe offences not being held accountable for his/her actions.

202. On the other hand, when the illegality in obtaining the evidence is severe and the offences attributed to the defendant are minor, than the protection of the defendant's right to a fair procedure might lead to the exclusion of the evidence.

203. The Court emphasized that the above list of considerations is not an exhaustive list. It is also important to note that the relative weight of the considerations mentioned above shall be determined regarding the specific circumstances of each case.

The right to be informed– practical aspects

204. The Yisascharov case also deals with the right to be informed. A detainee's right to be represented by a lawyer and consult with him/her was recognized as a central basic right in the Israeli legal system. That right is anchored in Section 34(a) of the Criminal Procedure Law, (Enforcement Powers - Arrests)1996-5756 (the "Criminal Procedure Law, (Enforcement Powers - Arrests"), The right to counsel is a fundamental right, for it helps to ensure that a detainee is aware of his/her rights regarding the investigation. This way, according to the court, the defense attorney may contribute to the integrity of the investigation, and the legality of the means used in its duration.

205. The right to legal counsel requires from the State an obligation imposed on the Police to allow a detainee who requested it to meet with his/her attorney, "without postponement". That right is not absolute and the law sets certain limitations which allow the deferment of such meeting. It also obliges to inform a detainee regarding his/her right to legal counsel. The right of a detainee to legal counsel and to be represented by a lawyer gives rise to his/her right to be informed of this right by the investigating authorities.

206. The right to be informed is anchored in Section 32 of the Criminal Procedure Law, (Enforcement Powers – Arrests) and is supplemented by Section 19(a) of the Public Defense Attorney's office Law 5755-1995.

207. The Court did not state an exact moment in time in which a suspect is entitled of the right to be informed, whether only upon the decision of his/her arrest or upon him/her being held in suspicion of committing an offence and held in detention by the Police or another investigating authority. The Court however expressed its opinion that it is inclined towards the second option, which broadens the right to be informed.

208. In light of all the above, the obligation to inform a detainee must be executed every time a person suspected of committing an offence is held in Police custody or another investigating authority for investigation.

209. Additionally, a suspect must be notified and informed of his/her right to consult a lawyer, when in the course, or following his/her investigation, a reasonable ground was found for his/her detention or arrest, even if the authority to detain or to arrest him/her was not used in practice.

210. The "fruit of the poisonous tree" principle was established as part of the doctrine on judicial exclusion in the Israeli law. The exclusion of the admissibility of evidence depends on a variety of considerations based on the circumstances of the case. The main considerations are the character and severity of the illegality that was involved in obtaining the evidence, the degree of influence of the illegal method of investigation on obtaining the evidence, and the degree of damage valued against the social benefit gained in exclusion of the evidence.

Implementation of the Yisascharov Case

Courts Rulings

211. In a recent case, the Court excluded a knife obtained in an illegal search based solely on the fact that the defendant had a criminal record. The defendant was delayed by policemen and was required to present his identity card. Following the identity check, and due to his criminal record, he was asked to empty his pockets, where the knife was found. The Court held that the knife was obtained in an illegal search, which violated the defendant's right to privacy. Hence, the whole criminal proceeding was based on an illegal

search. The Court further held that the degree of social damage in this case was minor since there was no victim and the defendant thought by mistake he is not violating the law by holding a small knife. Therefore, the Court determined that the knife should be excluded as evidence and acquitted the defendant. (Cr.C. 6454/07 *The State of Israel v. Ben-Haim Abraham* (13.1.2009))

212. Also, on January 21, 2009, the Central District Court canceled an imprisonment sentence imposed on a defendant convicted of tax offences. The Court canceled the imprisonment sentence, after being presented with the consent of both the Prosecution and the defendant for the cancellation, given that the defendant was not represented before the Magistrate Court. (Cr.A. 08-09-1009 *Amir v. The State of Israel* (21.1.2009).

The State Attorney's Office

213. Following the decision in the Yisascharov case, the State Attorney's Office initiated two major measures to ensure that a confession exerted through torture or without maintaining the defendant basic rights will not be accepted:

a. Following a guideline issued to the Police, a procedure was prepared regarding a suspect's right to legal counsel – the implementation of the duty to inform and the right of counsel. This procedure was circulated to every investigating body. Concurrently, the Police prepared a draft for another procedure, together with the Ministry of Justice Department of Counseling and Legislation, regarding the entirety of the rights of suspects in a criminal investigation, including the duty to warn, informing of the right to counsel, means of fulfilling the right, conditions of an investigation, etc.

b. The Naor Committee is currently preparing a Bill for the rights of suspects in the course of an investigation, possibly whilst amending Section 12 of the Evidence Ordinance.

Use of Section 12 – exclusion of evidence

214. Without prejudice to Israel's position as stipulated in the aforementioned response to Question no. 3, it should be noted that as a rule, the Israeli evidence practices apply in proceedings held before Military Courts in the West Bank, according to Section 9 of the Security Regulations. Accordingly, Section 12 also applies, as interpreted and implemented by the Supreme Court. Subsequently, the Military Courts have “a trial within a trial” in the course of which the admittance of defendants' confessions are examined and they are able to raise claims concerning the conditions of their interrogations and the terms in which their confessions were taken.

Translation services

215. According to Section 2 of the Criminal Procedure Law, 5762-2002, the investigation of a suspect shall be conducted in his/her language or a language the suspect comprehends and speaks, including sign language.

216. At the preliminary stages, the implementation of the Law encountered technical difficulties, yet as of 2007, Police officers conducting investigations were ordered to fully adhere to the above provision, and supplementary measures were taken through purchasing additional equipment, supplementary Arabic-speaking manpower, etc.

217. The provisions of the Law do not apply formally to the West Bank, but every effort is made to adhere to its principles.

218. Security related interrogations of Arabic-speaking suspects are conducted in the Arabic language, and therefore translation is not necessary. The texts stemming from these

interrogations, are later translated into Hebrew, for the benefit of the Hebrew-speaking military prosecutors and judges.

Article 16

32. Reply to the issues raised in paragraph 32 of the list of issues

The conditions in IPS detention facilities

The legal basis

219. The conditions regarding imprisonment conditions of security related inmates are set out in regulation 22 of the Criminal Procedure (Powers of Enforcement - Arrests)(Terms of Detention) Regulations, 5757 – 1997.

220. Regarding the obligations relating to building of new detention facilities - there is no application of instructions concerning electricity infrastructure and communications. In addition, in Paragraphs (1) and (2) there is no obligation to install shelves. There is an obligation however, to accommodate the cells with a maximum of four prisoners.

221. Regarding health conditions (paragraph (a)(2)) – there is an obligation to perform whitewashing of the cell at least once a year, and perform disinfection and pest control activities in a way that will not damage the prisoners' health.

222. Regulation 22(b)(1) and the Fourth Addition specify the rights of security related inmates to maintain certain objects in his/her cell and an obligation to supply him/her with a double mattress and blankets as specified in the orders.

223. Paragraph (3) restricts the application of regulations 9, 10 and 15 regarding the right to a daily walk in the prison courtyard, using a phone and prisoners' labor.

Internal IPS procedures

General

224. The conditions granted to security related inmates are set in the IPS rules regarding security related inmates.

225. The security risk posed by security related inmates necessitates separating them from criminal prisoners and specific limitations on their vacations, visits and conjugal visits.

226. Alongside these limitations, they are given a variety of services and benefits that enable their detention in appropriate and adequate conditions, whilst granting them respect, sensitivity and alert for unique needs.

227. Breaches of order and discipline in detention facilities necessitates the use of disciplinary and administrative measures according to IPS procedures, including confinement that does not revoke the prisoner's basic rights.

228. The security related inmates' living conditions enable them appropriate existence according to their needs, their cells are ventilated and they are provided with cleaning products to maintain the cleanliness of their cells and wings. The prisoners are allowed to store private artifacts and food in their rooms.

Medical care

229. Every IPS detention facility employs a general practitioner, a dentist, a narcology specialist, a psychiatrist and a professional infirmary stuff providing regular infirmary

services. Examinations by expert doctors are made possible in the IPS medical center, prison infirmary and hospital clinics. Inmates are also allowed to have private doctors at their own expense.

Visits and family relations

230. Contact with the families is maintained through letter correspondence, postcards and family visits. In specific cases, the transfer of video cassettes and photographs is also made possible.

231. The State of Israel acknowledges the importance of maintaining family visits, and as clarified in H.C.J. 11198/02 *Salah Diria v. The Head of the military detention facility*, Tak-Al 2003(1)1695, - "The State does not dispute the inmates' right to receive family visits". The State has been acting relentlessly, despite the many security and administrative difficulties involved, to enable the existence of these visits.

232. Family visits are allowed for security related inmates according to IPS procedures. First relation family (parents, spouses, children, siblings and grandparents) visits are allowed and the Prison Director may also allow family visits before holidays and an additional monthly visit pending positive performance. A detainee is entitled to a weekly visit and a sentenced inmate to a visit once every two months.

233. Regarding the issue of open visits, as a rule, visits are held through a divider preventing the transfer of objects between the visitor and the inmate, yet the Prison Director may allow open visits under certain conditions detailed in the IPS procedures. Thus, the Prison Director may enable a security related inmate, for the last 10 minutes, direct contact with his/her minor child aged less than 6.

234. Telephone privileges are not given to security related inmates, other than in exceptions and humanitarian cases, such as the death of a relative, terminal illness of a relative, the marriage of a close relative, etc. The Prison Director may also grant phone privileges to an inmate that has not received family visits for over two years.

235. During visits the Prison Director may allow the inmate to offer sweets and drinks to his relatives, the inmate's family may purchase cigarettes for the inmate in the prison's canteen.

236. Smoking in the visitors' room is prohibited, and visitors undergo searches.

Living conditions

237. In addition to family visits, security related inmates receive visits from representatives of the ICRC and diplomatic representatives. Furthermore, the living conditions of security related inmates, as all other inmates, are also inspected by official visitors in prisons, as further elaborated in Israel's reply to Question 41, below. Any complaints concerning living conditions raised before ICRC representatives or before official visitors are brought to the attention and care of the IPS authorities.

238. Inmates are entitled to meet with their lawyers and receive consultation; these meetings are held behind a divider, and with the Prison Director's approval, in exceptional cases, without a divider.

239. Inmates are allowed to uphold their religious duties under the security limitations of the prison, including holidays, holding group prayers and sermons. A security related inmate may also receive visits form authorized clergy, upon approval of the IPS Commissioner.

240. Security related inmates are given food provided by the IPS and may, as a privilege pending on his/her performance, purchase food at the prison's canteen.

241. Inmates are allowed to hold educational activities, receive books and magazines and papers and are allowed to partake in the Palestinian Authority's matriculation exams. A special educational program for youth operates 5 days a week. According to IPS statistics, a total of 90 inmates were taking part in this program in September 2008. Inmates are also allowed to take classes through correspondence in the Open University. As of September 2008, 260 security related inmates were enrolled in the Open University.

242. Inmates are allowed one daily hour in the prison courtyard and the Prison Director is authorized to prolong this hour. They are mostly given three hours per day. Through the ICRC, inmates may receive sports equipment for their courtyards.

The ISA

243. Detainees' incarcerations' conditions (Palestinians, Israelis and aliens) are set by law and regulations and the ISA is operating accordingly. The detention facilities are operated by the IPS or the Police and they are responsible for the physical conditions of the detainees. As mentioned above, during the period of interrogation a detained person in not allowed to meet with his/her relatives but he/she is not isolated as he/she is generally allowed to meet with ICRC representatives, a lawyer, medical staff etc.

244. The ISA comptroller is not authorized by law to investigate complaints made by interrogated persons; this authority is vested with the Supervisor. The ISA comptroller is also not authorized to investigate complaints regarding criminal offences made by ISA employees, this authority is of the Department for Investigation of Police Officers within the Ministry of Justice, outside of the ISA itself.

Judicial Review

245. Any inmate requesting to contest an individual decision in his/her matter, or to challenge a general claim regarding the conditions of detention, may address the prison authorities or petition the District court in an Inmate Petition, according to Section 62A of the Prisons Ordinance.

246. In recent years, thousands of petitions were filed and several were accepted.

33. Reply to the issues raised in paragraph 33 of the list of issues

247. Please see the first paragraph to Israel's response to Question 3, above.

34. Reply to the issues raised in paragraph 34 of the list of issues

248. Without prejudice to Israel's position as stated in its answer to Question 3 above, Israel notes that the Supreme Court in Add. H.C.J. 10739/05 *The Minister of Defense v. Adalah, The Legal Center for Arab Minority Rights in Israel*, prohibited in the most sweeping manner the legality of this use of local residents. Subsequently, a General Staff Order was issued revoking the previous “Preliminary Warning” procedure and prohibiting every type of aid or assistance by local population. This Order is fully adhered to by IDF forces, and every violation results in criminal investigations.

249. In 2007, nine investigative military police investigations were conducted regarding claims of such violations; in 2008, no investigations were held. Up to now, no indictments were filed regarding these cases, due to lack of evidence concerning these allegations. In 2009, to date, four investigations are conducting following the events of operation “Cast Lead”.

35. Reply to the issues raised in paragraph 35 of the list of issues

250. The allegation that the location of prisons in Israel prevents family visits is unfounded.

251. Family visits are arranged on a regular basis by the ICRC, and the State of Israel refrains from interfering with the manner of arranging the visits, except for individual security hindrance of a potential visitor. Between December 1, 2007 and April 16, 2009, the Civil Administration in the West Bank issued 85,818 entry permits to Palestinian residents for family visits. The majority of permits are issued for three months and enable numerous visits, thus the number of permits does not indicate the actual number of visits taking place that was higher.

252. Please see also Israel's reply to Question 32 above.

36. Reply to the issues raised in paragraph 36 of the list of issues

253. It is Israel's position that the issue of the imprisonment of conscientious objectors is by no means a violation of the Convention. However, in the interest of constructive dialogue, the following information is provided.

254. According to Section 36 of the Israeli Defense Service Law (Consolidated Version), 5746 - 1986, the Minister of Defense has the authority to exempt any man or woman from fulfilling his/her national army service for reasons that are listed in the Law (or, as an alternative, to defer his/her conscription). Among those reasons are the extent of the annual recruitment to the regular and reserve forces, educational needs, the national economical situation, extenuating family circumstances, or other reasons.

255. Further exemptions by law are granted in Section 39 of the Law, to women that wish to be exempt from their duties for one of the following reasons: a) Marriage, parenthood or pregnancy. b) Conscientious objection. c) Religious familial background.

256. In H.C.J. 7622/02 *David Zonsien v. Military Advocate General* the High Court of Justice addressed the issue of conscientious objection and determined that the difficulty lies in balancing conflicting considerations: the respect to the conscience of the individual objector, stemming from the individual's right to dignity; and the nature of army service in Israel, as a general duty imposed on all members of society.

257. Furthermore, in H.C.J. 2383/04 *Liora Milo v. Minister of Defense et al.* the High Court of Justice affirmed that where conscientious objection has been proven, exemption from army service is granted to **men and women alike** in the context of the above-mentioned Section 36, according to the balance set in the above-mentioned *H.C.J. David Zonsien* judgement. Israel considers the freedom of conscience to be a fundamental human right and views this attitude as integral for maintaining a tolerant society, being that conscientious objection is a human phenomenon. Therefore, the IDF respects the views of conscientious objectors, provided that it is satisfied that these views are genuine. To this end, a special military committee, headed by the IDF’s Chief Enlistment Officer (or his/her deputy), reviews the applications of those who wish to be exempted from the army on the basis of conscientious objection. Among the members of this committee are an officer with psychological training, a member of the IDF Military Advocate General's Corps and a member of the Academia.

258. The committee is also authorized to recommend that an enlistee will receive special treatment throughout his/her military service – such as an exemption from carrying a weapon or assignment to a non-combatant position – so he can perform his/her duty without it conflicting with his/her beliefs.

259. The committee first examines the reliability and authenticity of the request and the nature of the reasons presented. In other words, the conscientious claim must not be revealed to be a cover for other reasons, such as convenience; and then it must be proven to be truly conscientious, and not politically, socially or otherwise motivated. Secondly, the committee looks at the type of conscientious claim brought before them – whether it is inclusive and unconditional, as explained below.

260. An enlistee whose request for exemption was denied must, of course, perform his/her duty of military service. If he/she refuses to do so, the IDF employs a variety of disciplinary measures at its disposal – and if the enlistee's refusal persists, he/she may also be criminally prosecuted.

261. Note that the disciplinary measures that Israel has taken against objectors who illegally refuse to fulfill their duties are lenient in nature. This despite the imminent security threat, which places a higher value on the preparedness of each individual soldier in its comparatively small army.

262. In the aforementioned *Milo* judgment, the High Court of Justice emphasized that even where it is clear that the objection stems from genuine motives, there is still a need to distinguish between conscientious objection cases and civil disobedience. The latter is a form of protest, one that is motivated by ideological and political opinions and is oriented to influence a change in State policy; thus, it is usually performed publicly by numerous people, trying to “get a message across” to the authorities. The individual's needs and conscientiousness are not the reasons behind this phenomenon.

263. Conversely, conscientious objection is compelled by specific personal motives. It is not purported to change State policy. Rather, it stands on its own as a completely individual decision. The conscientious objector has no interest in influencing others to join him.

264. Furthermore, the Court in *Zonsien* distinguishes between a general conscientious objection and a selective conscientious objection. The former is unrelated either to the circumstances of time and place or to the army's policy, but rather stems from the lack of correlation between the nature of the individual and that of army service (and is therefore acceptable). Oppositely, the selective objection is a result of ideological and political beliefs and is directly linked to the prevailing circumstances under which duties need to be performed by the army. Inherent in the army system is the fact that individuals do not choose what orders to fulfill or not. Selective objection signals discrimination and consequently dismantles the unity needed in every army.

265. The IDF is non-political. Soldiers are not permitted to engage in partisan politics while in uniform. Nevertheless, as citizens of a democracy, soldiers are permitted to be members of political parties and to advocate change in government policies. IDF soldiers, just as all Israeli citizens, are encouraged to vote in national elections. By voting and exercising their individual right to party membership, soldiers are able to participate in the democratic process with the intention of achieving change.

266. Note that during the execution of the “disengagement” plan in August 2005, the IDF employed legal measures against various “selective” objectors, who refused to participate in the evacuation of the Israeli settlers.

267. Analytically speaking, this position is grounded in the widely accepted distinction between “civil disobedience” and “conscientious objection”. This is the practice of other countries as well.

37. Reply to the issues raised in paragraph 37 of the list of issues

Domestic violence legislation

268. In order to better fight violence in general and domestic violence in particular, a number of laws were enacted in the last 20 years, with the aim of broadening the deterrence regarding offences in the field of domestic violence – physical, sexual and verbal, and in order to break the cycle of silence which characterize this type of offences.

The Prevention of Violence in the Family Law 5751-1991

269. This Law deals, inter alia, with the procedure of issuing protection orders against a person who behaves violently or there is a threat that he/she will act violently against a member of his/her family or towards a person who mentally abuses a member of his/her family. A protection order may instruct the removal of the violent person from his/her place of residence and additional measures for the protection of the victim. The procedure of issuing a protection order has clear advantages: the procedure is a civil procedure which does not require a high level of evidence as in a criminal procedure; the order may be requested from Magistrate Court, Family Matters Court and from a Religious Court. The Court must hold a hearing on the request within seven days from the date of its submission, and may issue the order in an ex-parte hearing. Due to the order's unique nature, it is given for a period of up to 3 months but may be prolonged up to one year. This procedure may be taken in addition to a criminal procedure against the violent family member.

270. Two unique Sections in the Law should be noted:

1) The Prohibition to carry weapons – Section 2B determines that generally, every protection order shall include a prohibition to carry weapons. In addition, even if the order does not include such prohibition, the person against whom the order was issued may carry weapons only under approval of the Court, and only if the Court is convinced that there is no threat to the wellbeing of the family member and in special circumstances. If the Court authorizes the carrying of a weapon, it must, according to Section 3C, specify the reasons and the terms for protection of the family member. If an order prohibiting the carrying of weapons was issued, it shall remain in force yet after the expiration of the protection order, provided it has not been revoked by the Court.

2) The obligation to notify – Section 11A obligates a number of professionals, both in the public and private sectors, to notify a person on his/her option to approach the Police, welfare services or to centers for prevention of domestic violence, when in the course of treatment or counseling given to that person, in the framework of their profession, they have reasonable ground to believe that the person was a victim of domestic violence. Professionals obligated by the Law are: physicians, nurses, education personnel, social workers, police personnel, psychologists, clinical criminologists, persons working in Para-medical professions, lawyers, clergymen and rabbinical pleaders. Accompanying Regulations were issued by the Ministers in charge.

The Prevention of Stalking Law 5762-2001

271. The law deals with stalking which include various forms of harassment, stalking and threats, explicit or implied toward a spouse (male or female). Stalking is characterized with a series of acts, of which, each act may not necessarily be considered an offence and can even be innocent, but the accumulation of such acts makes it hard for the spouse to lead a peaceful life. This phenomenon is known worldwide as a preliminary phase of escalation in couples' relations, which in most cases turn to real violence and may further deteriorate. The Law duplicates the procedure of issuing protection and expulsion orders set in the Prevention of Violence in the Family Law to cases of stalking, including prohibition on carrying of weapons. An order for prevention of stalking may also be issued ex-parte.

Crime Victims' Rights Law 5761-2001

272. This Law sets a list of rights for crime victims regarding the criminal procedure. The Law broadens the rights of victims of sexual and violence offences, due to the nature and severity of these offences. These victims are entitled to receive detailed information regarding the progress of the criminal procedure in their regard (mainly about the offender's release on bail, stay of procedures etc.). In addition, the Law entitles a victim to present his/her opinion prior to important decisions in the criminal case such as: a decision on a plea bargain, stay of procedures, sentencing, parole and pardon.

Public Health (Notification Regarding Suspicion of Violence) Regulations, 5736-1975

273. According to Section 2 of the regulations, if a person in charge of patients' admittance has a reasonable suspicion that a wounded, unconscious or dead person, that was brought to the hospital, was involved in a violent act, including domestic violence, he shall immediately notify the nearest Police station.

Women's Employment Law 5714-1954

274. Section 7(c)(5) of the Law recognizes the right of an employed woman to be absent from her workplace during the period in which she resides in a shelter for battered women for up to six months, under certain conditions (specified in that Section). Such absence will be considered as an unpaid vacation. In addition, an employer is prohibited from firing such employee while she resides in the shelter and for an additional period of 30 days unless he/she has a written authorization of the Minister of Trade and Welfare. Such authorization will not be granted if the reasons for firing the employee relate to her stay in the shelter. Section 7A to the Compensation for Dismissal Law 5723-1963, was amended so that if a female employee resigned her job because of her stay in a shelter for battered women, her resignation shall be considered as dismissal, if her resignation was made soon after she stayed in a shelter for a period of at least 60 days.

Amendment of the Criminal Procedure Law 5742-1982

275. The period of time for decision in an appeal – According to Section 64 of the Law, the decision not to investigate or prosecute for lack of sufficient evidence, lack of guilt or lack of public interest entitles the complainant to the right of appeal. Amendment No. 29 added Section 65A to the Law, which determines that generally, a decision in an appeal submitted for reasons of lack of sufficient evidence or lack of public interest, in sex or violence crimes, should be issued and delivered to the complainant within six months of the date of submission of the appeal.

Closure of cases in domestic violence offences

276. A woman's request to withdraw her complaint against her spouse does not in itself give a reason to close the case against him for lack of public interest. When deliberating on closing a case, inter alia, for abandonment of the woman's complaint, the Law allows referring the woman to a treatment center for domestic violence, which shall provide a report regarding the situation at home and assist in reaching a decision concerning the closing of the case. In addition, closing a case must receive the approval of a senior officer in the Police or the District or State Attorney's Office. The same applies for revocation of an indictment regarding these offences. The Amendment also broadened the term "spouse" for a person who is in or was in a couple relationship.

Release under Conditions of Imprisonment Law 5761-2001

277. Section 11 of the Law obligates the release committee deliberating the early release of a prisoner for offences of domestic violence to receive a special professional opinion of a team of representatives of the Ministry of Industry, Trade and Labor and the Israeli Prisons Service, regarding the level of threat and risk posed to the public if the prisoner will be

released, including the threat to the victim's family. The level of threat posed by the prisoner is assessed by an inter-ministerial Committee for Domestic Violence. The Committee's members are representatives of the Ministry of Social Affairs and Social Services, the IPS, a social worker and of the Probation Service. The Committee issues its opinion at the request of the IPS and also regarding vacations of prisoners.

278. Relevant Sections in the Penal Law 5737-1977:

a) Severe punishment regarding assault – Section 382(B) determines that every violent assault towards a family member, including a spouse, is considered as an aggravated circumstance. While the punishment for assault is two years of imprisonment, the punishment for assault of a family member is four years of imprisonment.

b) Severe punishment regarding grievous harm – Section 335 which sets a severe punishment for offences of inflicting grievous harm against a family member, including a spouse, was amended and the penalty was raised from seven to ten years of imprisonment.

c) Section 329(b) determines the application of a minimum punishment regarding an offence of injury with grave intent of a family member. This Section contains a minimum punishment of one fifth of the maximum punishment allowed by law, unless the court, for special reasons that must be noted, decided otherwise.

d) Reduced Punishment for murder – Section 300A(c) determines that although murder is a life sentence offence, a court may impose a reduced sentence, inter alia, if the defendant was under severe mental distress due to severe and continuous abuse that was inflicted against him/her or against his/her family member, by the person who was murdered. The courts made use of this Section in certain cases in which a woman murdered her spouse after many years of enduring his abuse.

e) Grave punishment for sexual offences in the family and by persons responsible for a helpless person – Section 351 sets severe punishment for a person who commits sexual offences, including rape, sodomy and indecent act, where the defendant committed the offence on a helpless person under his/her responsibility, and also when the crime victim is a family member of the perpetrator.

f) Obligation to report – Section 368D sets an obligation to report an offence committed against a minor or a helpless person, by the person who is responsible for him. The Section determines severe punishment for violating this obligation by certain professionals such as: physicians, social workers, police personnel, psychologists etc.

g) Severe punishment for pandering – Section 199(b) determines harsh punishment regarding pandering for prostitution committed, inter alia, against a spouse, a child or an adopted child. The level of punishment was raised from five to seven years' imprisonment. Section 203(a) also raised the punishment for reducing a person to prostitution or to engage in prostitution, inter alia, while exploiting relations of authority, dependency, education or supervision, to ten years of imprisonment.

h) Punishment for violation of a protection order – Section 278(b) determines a four years' imprisonment on a person violating a judicial protection order that was issued for the protection of the life or body of a person, including an order issued under the Prevention of Domestic Violence Law.

i) Prolonging of the limitation period regarding sexual offences committed against a minor – Section 354 determines that the limitation period regarding offences in this Section commences when the victim turns 28 years old.

Enforcement

279. The State Attorney's Office attaches great importance to the fight against sexual and physical violence towards women, inter alia, by giving them high priority, assigning senior prosecutors with substantial professional knowledge for these cases, professional guidance of senior members of the State Attorney's Office and comprehensive professional training.

280. The State Attorney's Office gives precedence to exercising the full rigor of the law with defendants accused of committing violent and sexual offences towards women. Therefore, the prosecutors' work regarding such offences begins, in many cases, at the stages of investigation, in guiding and accompanying the investigating teams in order to ensure optimal handling of these cases. After completing the investigation stage, the case is then transferred to a prosecutor, who examines it thoroughly, and in many cases summons the complainant to ensure full transparency of the procedure, and to allow her to express her wishes, fears and anticipations of the procedure.

281. If the State Attorney's Office is convinced, according to the evidence and considerations of public interests, that there is ground to proceed with the case, an indictment is filed and the whole procedure is conducted in a professional manner with immense sensitivity to the circumstances of the case, and especially to the complainants.

282. The State Attorney's Office, as part of a constant desire to improve and increase efficiency, is gathering quantitative data regarding its work. Note that due to difficulties in gathering, processing and aggregation of the information, the information system is not yet fully operational and cannot produce information regarding all types of offences; therefore the following data should be regarded as close estimates.

Number of Indictments Served Regarding Rape Offences in 2008

District prosecution office	No. of indictments served
Jerusalem	18
Southern district	30
Northern district	6
Haifa	9
Central district	19
Tel-Aviv	26
Total	**108**

Number of Indictments Served Regarding Forbidden Intercourse with a Minor in 2008

District prosecution office	No. of indictments served
Jerusalem	2
Southern district	1
Northern district	4
Haifa	0
Central district	7
Tel-Aviv	6
Total	**20**

Offences of spousal assault

283. Tel-Aviv District Attorney's Office:

a) Number of cases opened – 56

b) Number of cases closed without an indictment – 31

c) Cases concluded with a conviction in court – 7

d) Pending cases – 63

284. Haifa District Attorney's Office:

a) Number of cases opened – 820 (770 regarding spousal assault and 50 regarding threat against a spouse)

b) Number of cases closed – 579 for lack of evidence, 93 due to circumstances not justifying an indictment and 12 for lack of guilt.

d) Cases concluded with a conviction in court – 8

285. Southern District Attorney's Office:

a) Number of cases opened – 487

b) Number of cases closed – 340

c) Cases concluded with a conviction in court – 8

d) Pending cases – 21

Enforcement regarding public figures and persons of authority regarding the above-mentioned offences

286. During 2009, the State Attorney's Office handled several cases, together with the investigating authorities, and served a number of indictments against public figures and persons of authority regarding sexual and violence offences against women, including physicians and lawyers. Some of these cases were publicized by the media and emphasized the basic principle implemented by the enforcement authorities, according to which every person is equal in the eyes of the law.

Activity in the field of enforcement and protection of victims

287. Severe sexual and violence offences against women receive special attention in several fields as shall be detailed below:

288. In general, grave sexual and violence offences are handled by experienced and senior prosecutors, who acquired professional experience in handling such offences.

289. In most of the District Attorney's Offices there are senior referents who guide the prosecutors regarding the above-mentioned offences. The referents are responsible, inter alia, for preparation and execution of training seminars regarding these issues, implementation of the Public Protection of Sex Offenders Law 5766-2006, and the Limitation on the Return of a Sex Offender to the Surrounding of the Victim Law 5764-2004, assistance to women victims of crime etc. In addition, there are national referents for the implementation of the Crime Victims' Rights Law 5761-2001, headed by a senior prosecutor in the State prosecution office.

290. The State Attorney's Office is doing its utmost to include crime victims in the decision making processes, and in most cases the case prosecutor, before making a decision on serving an indictment or closing a file, meets with the complainant, presents him/her with the meaning of every possible decision and allows him/her to present his/her position.

291. In order to ensure professionalism of a large number of prosecutors handling these offences, a large number of professional training seminars are conducted regarding sexual offences and the special procedure of handling them, both on the national level and also in the districts level. Among the various national seminars and training sessions held, there were seminars on investigation of sexual offenders, public protection of sex offenders, a workshop regarding the feminist way of thinking, accompanying victims of crime (men and women) etc.

292. In addition, during 2008, the Institute of Legal Training for Attorneys and Legal Advisers in the Ministry of Justice has held a seminar titled "Domestic Violence – Between the Law and Treatment" and a 12-session seminar on accompanying victims of sexual assault (both men and women).

293. As of 2006, the Central District Attorney's Office is conducting a pilot program for improving the handling of domestic violence cases.

State and District Attorney's Office cooperation with various organizations regarding sexual and violence offences

294. In order to ensure optimal treatment of women victims of sexual and violence offences, the State and District Attorney's Office maintain close ties with various organizations (governmental and non-governmental) dealing and treating with women, men and children who experienced physical or sexual assault. In most cases the relation begins even prior to the serving of the indictment, and is maintained until the conclusion of the proceedings (including an appeal, if served).

295. Among the various organizations there are the Association of Rape Crisis Centers in Israel, the Noga Legal Center for Victims of Crime, "Bizchut" – the Israel Human Rights Center for People with Disabilities, The Israel National Council for the Child (for minor victims) etc.

296. The Department for International Affairs within the State Attorney's Office

297. During 2008, this Department served a request to Turkey regarding a testimony by videoconference in the matter of a defendant accused of assaulting his wife, a case which is held before the Tel-Aviv District Court.

298. On July 2008, the Department served an application to Argentina for the arrest of a defendant who was convicted in Israel for many sexual offences against his family members and additional woman, but fled Israel after his conviction. On September 10, 2008, the person was arrested in Argentina and his extradition procedure should begin shortly.

299. State Attorney's Office policy regarding filing appeals

300. According to Israeli law, each side in the criminal procedure has a right of appeal to a higher judicial instance over the verdict and the sentence imposed. If the case was held in the Magistrates Court than both sides may also appeal to the Supreme Court after receiving its permission to do so. Such permission will be granted where the case brings up judicial issues or principle issues greater than the specific interests of both sides to the case, or where there is a real concern of distortion of justice.

301. Accordingly, every year the State and District Attorney's Office file appeals regarding verdicts it considers wrong and regarding verdicts that it considers lenient and unbalanced.

302. The Criminal Department in the State Attorney's Office attaches great importance to filing State appeals to the Supreme Court in cases it deems fit, both regarding judicial

issues and principle issues, and for determining the proper level of punishment or correction of a judicial decision which deviated from it.

303. With regard to sexual and violence offences against women, the prosecution goal is to ensure, as much as possible, that the unique considerations of these cases will be brought before the Court and shall be apparent in the verdict and sentence. This, while highlighting the importance of punishment which serves as a deterrence against sex offenders and domestic violence.

304. In 2008, the Criminal Department filed eight appeals over verdicts of District Courts, of which seven are against the leniency of the sentence and one for acquitting the defendant.

Important judicial rulings and decisions

305. The Tel-Aviv-Jaffa District Court sentenced a defendant to 13 years' imprisonment and compensation of 20,000 NIS ($5,000) for each of the three victims, for offences of rape, sodomy, indecent acts, assault under aggravated circumstances and threat against the defendant wife and her two sisters. In January 2008, the Supreme Court rejected the defendant's appeal regarding both the verdict and the sentence. (Cr.A. 2719/08)

306. The Haifa District Court sentenced a defendant to 30 years' imprisonment and conditional imprisonment for one year for offences of rape, sodomy, indecent acts, several attempts to commit indecent acts and offences of violence and threats. These offences were committed against nine women and young girls from Ukraine. In April 2008, the Supreme Court rejected the defendant's appeal regarding his sentence. The Court stated that "The petitioner has committed a long line of severs acts, part of which were done with extreme cruelty. […] the girls and women who testified in Court were injured, each in her own way, not only a physical injury but also a severe mental injury […]. Acts such as these, […] obligates sending a clear message to the public. Such is the punishment sentenced by the District Court upon a person which was proven that his hazard to women is great in its severity, and we have not found any reason to ease it." (Cr.A. 7045/05)

307. In a number of verdicts, the Supreme Court emphasized the need of substantial and deterring punishment regarding spousal violence offences, inter alia, in order to increase the trust and confidence of women in the law-enforcement agencies, and to encourage them to file complaints against their violent spouses.

Various requests and decisions

308. During 2008, the District Attorney's Office filed dozens of requests for supervision orders of sexual offenders according to the Public Protection of Sex Offenders Law 5766-2006, and additional requests for limitation of sexual offenders who concluded serving their sentence and were categorized with medium to high risk levels.

309. The Supreme Court, in a number of decisions in 2008, ruled that when filing a request to deny the compensations that were granted by the Court to the victim of the crime, the victim must be added as a respondent to the request.

310. The Supreme Court, in a number of judgments in 2008, reiterated that considerations regarding the mental wellbeing of a victim of sexual and violence offence against women, is a major consideration, when deciding on the arrest of the offender.

38 Reply to the issues raised in paragraph 38 of the list of issues

311. Please see the first paragraph to Israel's response to Question 3, above.

Other issues

39. Reply to the issues raised in paragraph 39 of the list of issues

312. While currently the considerations which led to Israel's reservation remain relevant, Israel will continue to conduct regular reviews of its position.

40. Reply to the issues raised in paragraph 40 of the list of issues

313. While currently the considerations which led to Israel's declarations remain relevant, Israel will continue to conduct regular reviews of its position.

41. Reply to the issues raised in paragraph 41 of the list of issues

314. Despite periodic consideration of its position, Israel is not considering accession to the Optional Protocol at this stage as it is not persuaded that this will provide substantial added value to the eradication of torture. Israel's domestic legal system affords numerous opportunities to seek remedies and redress for any alleged violations. Furthermore, numerous mechanisms are available to ensure that the rights of persons in detention are protected and that adequate remedies and protections are available.

[1] Paragraph 23 of the Supreme Court decision, p. 17 of the English translation (see Annex 1).