



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

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## Committee against Torture

### List of issues prepared by the Committee prior to the submission of the fifth periodic report of Israel (CAT/C/ISR/5)\*, adopted by the Committee at its forty-eighth session, 7 May–1 June 2012

#### Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee’s previous recommendations<sup>1</sup>

##### Articles 1 and 4

1. Please provide information on any steps taken by the State party to amend its legislation and incorporate a crime of torture as defined in article 1 of the Convention, as recommended by the Committee following the consideration of the previous report (para. 13).
2. Referring to the previous recommendation by the Committee (para. 14), please indicate whether the State party completely removed the doctrine of “defence of necessity” in its Penal Law as a possible justification for the crime of torture in the context of physical interrogation methods by the Israel Security Agency (ISA). Please comment on the reports of painful shackling and binding, immobilization in stress positions, sleep deprivation and the use of threats and verbal abuse during the interrogations.
3. Please also provide detailed information on the number of Palestinian detainees interrogated since 2002 under the “ticking time-bomb” exception which allows for the use of physical pressure during interrogation by ISA of terrorist suspects or persons otherwise holding information about potential terrorist attacks (para. 14).
4. The Committee kindly requests further information about the 9 September 2009 ruling of the Supreme Court prohibiting psychological pressure exerted by making threats

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\* The present list of issues was adopted by the Committee at its forty-eighth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

<sup>1</sup> Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/ISR/CO/4.

against family members of detainees, and the subsequent modification by the Attorney General of the guidelines for interrogation by ISA.

#### **Article 2<sup>2</sup>**

5. Referring to the previous recommendation by the Committee (para. 16), please describe steps taken to install the audio records and video surveillance system in cells and interrogation rooms used by ISA, in particular the video recording of interviews of detainees accused of security offences as a further means to prevent torture and ill-treatment.

6. Referring to the previous recommendation by the Committee, please indicate what steps have been taken to examine the legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer. Have the safeguards against torture and ill-treatment to detainees and persons accused of security offences been extended, in particular the right of suspects to have prompt access to a lawyer, an independent doctor and family members (para. 15)?

7. Please provide the Committee with documentation indicating the number of cases in which detainees have been denied the right to meet with a lawyer for 24 hours or longer. Please indicate the maximum amount of time during which contact with a counsel may be postponed pursuant to article 35 of the Criminal Procedure Code “in exceptional cases”, and the number of times such an “exception” has been invoked. Please clarify whether, in practice, the State party is taking measures to ensure that minors detained by police or military personnel receive prompt access to a lawyer. Please provide data on the number of persons apprehended pursuant to the military legislation and amount of time between apprehension and appearance before a judge in such cases.

8. Given the previous recommendation of the Committee to ensure that all detentions are brought into conformity with article 16 of the Convention (para. 17), please clarify the reported increase in the number of persons subjected to administrative detention through military orders based on secret information that is not provided to detainees and their lawyers. Please indicate the extent of application of the Incarceration of Unlawful Combatants Law, passed in 2002 and amended in 2008, which allows for indefinite detention without trial, based on secret information. What steps have been taken to abolish the administrative detention and repeal the Incarceration of Unlawful Combatants Law (see Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: mission to Israel, including visit to Occupied Palestinian Territory, A/HRC/6/17/Add.4, para. 55)?

9. What steps have been taken to ensure that definitions of terrorism and security suspects are precise and limited to the countering of terrorism and the maintenance of national security, and that relevant legislation, regulations and military orders comply with the principle of legality with regard to accessibility, precision and non-retroactivity (see A/HRC/6/17/Add.4, para. 55)? Is the Government considering the derogation of the State of Emergency which has been in force since 1948?

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<sup>2</sup> The issues raised under article 2 could also involve other articles of the Convention, including but not limited to article 16. General Comment No. 2 (2007) on implementation of article 2 by States parties, paragraph 3, sets out: “the obligation to prevent torture in article 2 is wide ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “ill-treatment”) under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture ... In practice, the definitional threshold between ill-treatment and torture is often not clear.” See further chapter V of the same general comment.

10. Have any steps been taken to amend current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards, as recommended by the Committee following the consideration of the previous report (para. 18)?

11. Please explain in detail the extent of application of solitary confinement, provision of medical care and the regime of family visits of Palestinian prisoners held for security-related reasons. Please comment on the reports that since June 2007, there has been a blanket ban on family visits to over 700 prisoners from the Gaza Strip.<sup>3</sup>

12. Please provide an explanation of the impact of Prevention of Infiltration Law, adopted on 10 January 2012, which allows for the automatic and lengthy detention of irregular migrants and asylum seekers, as exemplified by the detention of some 1890 African migrants on 19 January 2012.

13. Please indicate what further measures have been taken, following the adoption of the 2006 Anti-Trafficking Law, to prevent and stop human trafficking, as Israel continues to be a transit country and destination for human trafficking for labour and coerced sex work. Please indicate the number of complaints, investigations and prosecutions, including the information about the type of sentences handed down to perpetrators of human trafficking and reparations to the victims of such crimes, in particular of labour trafficking.

14. Please update the Committee about the measures to combat violence against women and girls, including the implementation of the existing legislation and prosecution and punishment of perpetrators of such violence, and about the training on domestic and sexual violence provided to the police, public prosecutors, the judiciary and other relevant Government bodies (concluding observations of the Committee on the Elimination of Discrimination against Women on Israel, CEDAW/C/ISR/CO/5, para. 21). Please also provide statistical data on the incidents of violence against women and girls within religious communities in Israel, in particular the information on access to safe shelters and legal support for victims of gender violence, including from ultra-orthodox communities and from the Palestinian minority, and other minorities such as the Ethiopian and Russian Jewish minorities.

15. Please explain the progress of investigation into 1 August 2009 killing by a gunman of two persons, Nir Katz, aged 26, and Liz Trobishi, aged 16, and injuring 10 other people, during a weekly meeting at an lesbian, gay, bisexual and transgender (LGBT) social and advocacy centre in Tel Aviv and describe the measures taken to prevent violent attacks against LGBT-rights demonstrations from members of the religious communities and administrative obstacles to organizing the demonstrations from among the police.

### Article 3

16. Please indicate if the practice of “immediate returns” of asylum seekers at the Israel–Egypt border, without being interviewed, has been discontinued without any conditions and if due appeal process against the decision of expulsion and an examination into the existence of substantive grounds for the existence of a risk of torture have been established.

17. Referring to the previous recommendation of the Committee, what measures have been taken to ensure that the principle of non-refoulement is incorporated into the domestic legislation of the State party, so that the asylum procedure includes a thorough examination of the merits of each individual case under article 3 of the Convention (para. 23)? What

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<sup>3</sup> International Committee of the Red Cross, ‘Gaza detainees barred from family visits’, 23 June 2011, <http://www.icrc.org/eng/resources/documents/news-footage/palestine-israel-tvnews-2011-06-23.htm>.

safeguards against refoulement have been put in place when returning persons to receiving States in the absence of a formal readmission agreement or diplomatic assurances, as recommended by the Committee (para. 24)?

18. Referring to the previous recommendation of the Committee, please indicate the measures taken to put in place an adequate mechanism for the review of the decision to remove a person (para. 22).

19. Please indicate any requests for extradition received and provide detailed information on all cases of extradition, return or expulsion that have taken place since the previous report and the use, if any, of diplomatic assurances or guarantees including the State party's minimum requirements for such assurances or guarantees; follow-up action taken in such cases; and the enforceability of the assurances or guarantees given.

20. Please provide data, disaggregated by age, sex and nationality, collected during the reporting period in regard to:

- (a) The number of requests for asylum;
- (b) The number of asylum requests granted;
- (c) The number of applicants whose requests were granted because they had been tortured or because of a real personal risk of torture if they were to be returned to their country of origin. Recent examples of decisions in this regard would be useful.

21. Please clarify the steps taken to identify at the earliest stage possible asylum seekers who may have been subjected to torture or ill-treatment, and ensure medical and psychological assistance and care to those individuals and free legal aid to facilitate the application procedure. Please provide information on the regime applied to the irregular immigrants interned in the Saharonim field in the Negev Desert.

#### **Articles 5–9**

22. Please indicate whether the State party has rejected any request for extradition by another State of an individual suspected of having committed an offence of torture, and has instead started its own prosecution proceedings, since the consideration of the previous report. If so, please provide information on the status and outcome of such proceedings.

23. Please provide information on whether the State party has extradited offenders, in accordance with article 5 and 8 of the Convention, suspected of having committed acts of torture.

24. Please provide information on judicial assistance and cooperation with neighbouring countries in connection with criminal proceedings brought in respect of any of the offences referred to in article 4 of the Convention, including the supply of all available evidence necessary for the proceedings.

#### **Article 10**

25. What steps have been taken to provide and intensify human rights education and training to security officials, including training on the prohibition of torture and ill-treatment, as previously recommended by the Committee (para. 19)?

26. Please provide information on efforts to combat excessive use of force and ill-treatment by the police, including the initial and ongoing training on the Convention, international human rights law and on other standards relevant to their work, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms, with the aim of ensuring that force used by police officers when

performing their duties should be no more than is strictly necessary and that, once persons have been brought under control, they must not be subject to excessive use of force.

27. Please inform the Committee whether all professionals who are directly involved in the process of documenting and investigating torture, as well as medical personnel and other officials involved with detainees, are trained on the provisions of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the result of such training. Please also indicate whether the Istanbul Protocol is used in asylum determination procedures.

28. Please clarify what training on the rights of asylum seekers and refugees, especially how they relate to the Convention, has been provided to the staff of the Office for Refugees, members of the judiciary and all other officials involved in the asylum process.

#### **Article 11**

29. Referring to the previous recommendation of the Committee, please explain the measures taken to ensure that interrogation methods contrary to the Convention are not utilized under any circumstances (para. 19). Given the concerns about the lack of independence of the ISA Inspector for Complaints, please explain if any steps have been taken to ensure that complaints of torture or cruel, inhuman or degrading treatment against ISA personnel be referred to the Attorney General's office for investigation (A/HRC/6/17/Add.4, para. 56).

30. Please indicate what measures have been taken to ensure that any allegations of ill-treatment by law enforcement officials made before a prosecutor or judge are recorded in writing and immediately and properly investigated, including through a forensic medical examination regardless of the fact whether or not the person concerned bears visible external injuries.

31. Please explain what measures have been taken to ensure that no one is detained in any secret detention facility under its control, as incommunicado detention constitutes a violation of the Convention. Have there been any investigations into the existence of incommunicado detention facility and the authority under which it has been established? What steps have been taken to ensure impartial investigations into allegations of torture and ill-treatment of detainees in "Facility 1391" and have any perpetrators been held accountable for violations of the Convention, as recommend by the Committee (para. 26)?

32. Please indicate how many of the Palestinian prisoners from the Occupied Palestinian Territory are held within Israel and how frequently the families from the Occupied Palestinian Territory are permitted by the Israeli army to visit their relatives in prison.

33. Please indicate the measures taken to ensure that the detention or imprisonment of a child be used as a measure of last resort, that solitary confinement never be used by prison authorities as a means of coercion or punishment of children, and that all facilities in which children are detained provide educational care appropriate to the age of each child (A/HRC/6/17/Add.4, para. 58). Please also explain the regime applied to children under military detention, in particular whether their interrogations are recorded and their parents or other legal representatives can have access to them.

#### **Articles 12 and 13**

34. Please indicate how many of around 700 complaints of alleged torture or ill-treatment during ISA interrogation have been properly and impartially investigated. Please provide data on the perpetrators prosecuted and penalties imposed for the acts of torture or ill-treatment, as requested by the Committee (para. 19).

35. Please report on the number of complaints of torture and ill-treatment and criminal procedures that have resulted in convictions of the accused and the penalties imposed, as requested by the Committee following the consideration of the previous report (para. 20). Please provide information on any criminal investigations into law enforcement officials accused of committing torture or ill-treatment against detainees during the reporting period and indicate if any of these resulted in the conviction of the accused and the penalties imposed. Please provide additional information regarding the 68 cases against police officers that concluded with a conviction in 2009, as referenced in the State party's follow-up submission (CAT/C/ISR/CO/4/Add.1). Please submit more information about the precise penalties imposed in these cases and indicate the offence for which the defendant was convicted in each case. Please also provide data on the number of convictions of accused members of the border police and the penalties imposed.

36. Referring to the previous recommendation of the Committee (para. 21) and the Attorney General's announcement that the person in charge of investigating complaints against ISA – the Interrogee Complaints Comptroller would become independent from its structures, please indicate the measures taken to ensure external and independent supervision of ISA interrogation practices.

37. In the light of the Committee's previous concluding observations, please give information on the measures taken to conduct an independent inquiry in relation to the Israeli military's operation "Cast Lead" in the Gaza Strip to ensure a prompt, impartial and effective investigation into the responsibility of State and non-State authorities for the harmful impact on civilians, and to make the results public (para. 29). Please indicate the number and type of sentences handed down to the responsible Israeli officers as a result of internal military investigations.

38. Please indicate the circumstances of illegal arrest and transfer to Israel of Dirar Abu Sisi on 18 February 2011 and what measures have been put in place to ensure that no similar incidents occur.

39. Please describe the measures, if any, to improve mechanisms to facilitate the submission of complaints by victims of torture and ill-treatment to public authorities, including obtaining medical evidence in support of their allegations. Is there any judicial revision of compliance with the Law on the Military Activities in the Occupied Territories?

40. Please provide information on the guarantees of protection from reprisals, especially against the persons who are deprived of their liberty, for reporting the acts of torture or ill-treatment and the guarantees of thorough investigation and prosecution thereof.

41. Regarding the functioning of the judiciary, please indicate any effective measures undertaken to strengthen the independence of the judiciary and to provide adequate training on the prohibition of torture and ill-treatment to judges and prosecutors.

#### **Article 14**

42. Please indicate what guarantees have been put in place for all the persons convicted of terrorism-related crimes to have their conviction and sentence reviewed by a higher court, in accordance with article 14, paragraph 5, of the International Covenant on Civil and Political Rights.

43. The Committee would also appreciate an update on the application of legal and other mechanisms to ensure fair and adequate compensation for all victims of torture and ill-treatment and information on instances and types of compensation granted. Please also inform the Committee about whether any programmes or services for rehabilitation are available and accessible to victims of torture and ill-treatment. Please, inform on the operation and efficiency of the Committee on claims by the medical staff, related to

damages caused to detainees when submitted to interrogation. May Palestinians in the Occupied Palestinian Territory present any civilian claims in order to obtain reparation for damages caused by security or military forces?

44. Please indicate whether there are any statutory limitations, amnesties or prescriptions that would exclude or limit the right to a remedy under article 14 of the Convention.

#### **Article 15**

45. Referring to the Supreme Court judgement in *Prv. Yisascharov v. the Head Military Prosecutor et al*, laying down the doctrine of exclusion of unlawfully obtained evidence, please comment on reports about the continued use of evidence obtained through torture and other ill-treatment of witnesses deemed admissible in court, in particular the admissibility of the testimony of Islam Dar Ayoub, aged 14, arrested on 23 January 2011, as evidence by a military judge although it was obtained through breach of his rights.

46. Have any legislative measures been taken to prohibit the use as evidence in any proceedings against the victim of any statement which is established to have been made as a result of torture, as recommended by the Committee (para. 25)?

#### **Article 16**

47. Please comment on the reports that some 2,300 Jahalin Bedouin Palestinians, from around Maale Adumim settlement to the east of Jerusalem, were at risk of losing their homes and were forcibly transferred to a location that is not of their choosing in early 2012. Does the Government envisage in any way the adoption of a Law on the Rights of Minorities?

48. Given the prevalence of checkpoints and roadblocks in the West Bank, limiting movement and access between Palestinians towns and villages, closing off East Jerusalem, part of Hebron and the Jordan Valley to Palestinian access, please indicate the statistical data about the numbers of permits requested and granted to Palestinians. Please report on the inquiries undertaken to investigate reported abuse by soldiers at checkpoints during inspections.

49. Please provide further information about the arrest of Massam Rehan, a 24-year-old man suffering from nerve failure in the leg, while travelling in January 2012 to a specialized hospital in Hebron in the West Bank. Please update the Committee about the framework governing the access of Palestinians from the Gaza Strip to essential medical care, including in Israel and the West Bank, for which a permit from the Israeli military is required.<sup>4</sup>

50. Please provide updated information about the investigation into the death of Mustafa Tamim, of Al-Nabi Saleh, who died of wounds on 10 December 2011, after being shot in the face at close range with a tear gas canister, during a protest against the fence/wall that separates Palestinian villages from their lands.

51. What measures have been taken to desist from the policies of house demolitions in violation of article 16 of the Convention, as recommended by the Committee (para. 33)? Please provide data on the number of cases in which the State party has partially sealed, totally demolished, or partly demolished houses on punitive or deterrent grounds.

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<sup>4</sup> See World Health Organization, "Referral of Patients from Gaza: Data and Commentary for 2010" (2011).

**Other issues**

52. Please comment on the reported incidents of October 2011 forcing around 40 Palestinian prisoners into exile in Qatar, the Syrian Arab Republic and Turkey.

53. Please clarify the continued restrictions which prevent Palestinians from Gaza from living with spouses from the West Bank or Israel, or Palestinians from the West Bank from living with spouses from Jerusalem or Israel.

54. Taking due account of the follow-up responses of Israel to the previous concluding observations of the Committee (CAT/C/ISR/CO/4/Add.1), please provide updated information about further measures taken in relation to specific concerns listed in paragraphs 15, 19, 20, 24 and 33 of the Committee's previous concluding observations (para. 40).

55. Taking into account that the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 has been ratified by Israel, please explain whether the Government is considering its comprehensive incorporation into the domestic law.

56. Please also indicate whether the Government has considered ratifying the Optional Protocol to the Convention and whether it has considered making the declarations under articles 21 and 22 of the Convention recognizing the competence of the Committee to receive and consider inter-state and individual communications.

**General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

57. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

58. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

59. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2009, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention. Have the Committee's recommendations been translated into and published in Hebrew?

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