

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE AGAINST TORTURE 42<sup>ND</sup> SESSION ISRAEL, 4<sup>TH</sup> REPORT 5 AND 6 MAY 2009

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### Key facts<sup>1</sup>

Ratification	Reservations	Recognises Committee's competency under Article 22 <sup>2</sup>	Other core treaties ratified	Due date of report and submission
1991	Article 20	No	ICCPR, ICESCR, CERD, CRC, CEDAW	12 December 2007

<sup>1</sup> The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at [www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx](http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx).

<sup>2</sup> Article 22 provides that a State Party to the Convention may at any time declare under this article that it recognises the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention

## Opening remarks by the delegation

The eight-person delegation of Israel was led by Ambassador Aharon Leshno Yaar, Permanent Representative of the Permanent Mission of Israel in Geneva, and Mr Shai Nitzan, Deputy State Attorney for Special Affairs, from the Ministry of Justice. They were supported by Ministry officials and mid-ranking officials of the Ministries of Justice and Foreign Affairs, the Prime Minister's Office and the Permanent Mission in Geneva. Ms Hila Tene-Gilad, Acting Director Human Rights and Liaison with International Organisations, and Mr Gilad Shirman, from the Attorney General's Office of the High Court of Justice Department, represented the Ministry of Justice. Ms Ady Schonmann, Deputy Head of International Law Department from the Office of the Legal Adviser, represented the Ministry of Foreign Affairs. Mr Halevi represented the Prime Minister's Office and Mr Walid Abu-Haya, First Secretary, and Ms Amanda Grudinskas, Adviser, represented the Permanent Mission of Israel in Geneva.

During the 30-minute presentation, both Ambassador Yaar and Mr Nitzan provided opening remarks. They expressed Israel's open-mindedness and willingness to listen and actively engage in a transparent and constructive dialogue, recognising the Committee as a professional body. They underlined the many challenges and security threats faced by Israel, both from State and non-State actors. Mr Nitzan highlighted Israel's 'unceasing struggle against terrorism', noting that 'the terrorists [...] do not oblige to international humanitarian law, contrary to Israel'. Ambassador Yaar stressed that, despite all challenges, Israel has opened itself to international scrutiny through interaction with the UN and 'several NGOs'. He reiterated Israel's full commitment to respecting its international obligations under the Convention. Both Ambassador Yaar and Mr Nitzan recognised that Israel 'must impose restraints on its own actions, in conformity with its responsibilities under international law'. Ambassador Yaar, however, underscored in this regard the importance of putting 'things into perspective', and 'that understanding Israel's pressing security, political and social situation is critical for recognising the context' in which advancements were made.

Mr Nitzan noted that, since the last presentation before the Committee,<sup>3</sup> major developments had taken place in Israel in the implementation of the Convention. He gave a short summary of the main developments, as outlined in the report and in the written replies, addressing the enactment of the *Israeli Security Agency Law*; a Supreme Court ruling which did not authorise Israeli Security Agency (ISA) interrogators to use physical force during interrogations; the exclusion of unlawfully obtained evidence; rights of detainees, such as providing a bed to every prisoner; the Inspector for complaints against ISA personnel; cooperation with NGOs, UN Committees and rapporteurs; and visits by inmates' families and the International Committee of the Red Cross.

## Overview of key issues

The following overview addresses 13 of the Committee's concluding observations following the examination on the basis of those themes that the Committee dedicated most time to, whether they requested follow-up on implementation, and whether the final recommendation was specific and implementable within a certain timeframe. Each is assessed according to how they were addressed in the examination, including the initial views of the State, questions, comments and responses provided.

The Israeli delegation appeared very co-operative and interacted with the Committee in an open and constructive manner. Although many of the questions and answers were open-ended and in many instances not concrete, the Committee noted its appreciation for the often detailed oral responses to the numerous questions raised and concerns expressed. However, the fact that many issues are mentioned in the concluding observations leaves room to believe that the Committee was not really satisfied with the answers provided.

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<sup>3</sup> CAT 27th session Geneva, 12 to 23 November 2001, CAT/C/XXVII/Concl.5; International Service for Human Rights, combined report CAT 27<sup>th</sup> session [http://www.ishr.ch/hrm/tmb/treaty/cat/reports/cat\\_24-35/CAT\\_27.htm](http://www.ishr.ch/hrm/tmb/treaty/cat/reports/cat_24-35/CAT_27.htm).

The country rapporteurs for Israel's review were Mr Fernando Marino Menendez from Spain and Ms Felice Gaer from the United States. In this regard, it is noteworthy that during the Committee's meeting with State parties before the start of the 42<sup>nd</sup> session, Egypt asked about the criteria used to appoint country rapporteurs. It showed a persistent interest in the identity of the rapporteurs chosen for Israel's review.<sup>4</sup>

### Definition of torture in domestic law

In its concluding observations, the Committee stated:

*'The Committee reiterates its previous recommendation that a crime of torture as defined in article 1 of the Convention be incorporated into the domestic law of Israel.'*<sup>5</sup>

Country rapporteur Mr Marino and chairperson Grossmann regretted that domestic legislation does not include the 'crime of torture' as defined in article 1 of the Convention. Mr Marino therefore expressed the Committee's doubt about the full compliance of the current Israeli definition of torture with the Convention. He also questioned whether the penalty in the Israeli criminal code is sufficiently serious or severe to punish.

Mr Nitzan, in his answers, reiterated that 'all acts of torture are criminal acts' under Israeli law and that Israeli penal law totally forbids the use of force, violence or threats against a person for the purpose of extorting from him a confession of an offence or information relating to an offence. He stated that the Penal Code fully covers all components of the definition of torture in the Convention, including mental suffering. By giving this answer, he acknowledged the fact that torture as defined in article 1 of the Convention is not incorporated into Israeli law. He gave no explanation for this. Therefore, it seemed that he did not fully address the Committee's concerns.

During follow-up, Ms Sveaas stated that 'hopefully the Penal Code also included the prohibition of ill-treatment'. She emphasised that reports of torture keep coming to the Committee 'again and again'.

### Absolute nature of the prohibition of torture

In its concluding observations, the Committee stated:

*'The Committee reiterates its previous recommendation that the State party completely remove necessity as a possible justification for the crime of torture. The Committee requests that the State party provide detailed information on the number of "ticking bomb" Palestinian detainees interrogated since 2002.'*<sup>6</sup>

Country rapporteur Mr Marino and chairperson Grossman addressed the Committee's continued concern that the 'necessity defence' exception may still arise in the cases of 'ticking bombs', that is interrogation of terrorists suspects or persons otherwise holding information about potential terrorist attacks. The Committee acknowledged the decision by the Supreme Court<sup>7</sup> determining that the prohibition on the use of 'brutal or inhuman means' is absolute, and the Court's affirmation that 'necessity defence' cannot be used to justify physical means of interrogation. However, the Committee reiterated its concerns and emphasised the absolute nature of the prohibition of torture. Mr Marino stressed that, according to NGO information received, acts of torture are committed by security agencies during interrogations. He emphasised that even though complaints are submitted against these acts, there is often no reaction to these complaints from Israel, although the State is responsible for monitoring these agencies. He requested more information on the actual practice and whether there is any implicit authorisation granted resulting in the use of harsher methods of interrogation.

<sup>4</sup> International Service for Human Rights, Annual CAT meeting with State parties raises issue of transparency, [http://www.ishr.ch/index.php?option=com\\_content&task=view&id=494&Itemid=538](http://www.ishr.ch/index.php?option=com_content&task=view&id=494&Itemid=538).

<sup>5</sup> CAT/C/ISR/CO/4, at para. 13, available at <http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf>

<sup>6</sup> CAT/C/ISR/CO/4, at para. 14.

<sup>7</sup> H.C.J. 5100/

The Committee furthermore noted that according to official data published in 2002, 90 Palestinian detainees had been interrogated under the ‘ticking bomb’ exception since September 1999.

In response, Mr Nitzan, quoted the Supreme Court’s decision, as he did in his opening statement, stating that the decision is ‘very clear’ and that ‘there is no room for balancing’. However, he added that there is an exception where an ISA agent can claim in a criminal law procedure that he has a defence in exceptional circumstances, and that it is the prosecutor’s responsibility to decide whether there was indeed defence of ‘necessity’. He highlighted that this does not mean, however, that there is authorisation in advance.

Furthermore, the Committee noted its concerns about Section 18 of the *Israeli Security Agency Law 5762-2002*, which states that ‘an ISA employee [...] shall not bear criminal or civil responsibility for any act or omission performed in good faith and reasonably by him within the scope and in performance of his function’. The Committee emphasised its concerns that ISA interrogators who use physical pressure in ‘ticking bomb’ cases may not be criminally responsible if they resort to the necessity defence argument.

Mr Nitzan responded that, since a criminal or disciplinary offence, in particular if it involves torture, is clearly not performed in good faith and this provision therefore does not apply to such cases. Therefore he argued that Section 18 is in full compliance with the Convention. He added that it has not been applied to a single case.

During follow-up on ‘necessity defence’, Mr Marino underscored that it appeared that the applicability of that defence was established on a case-by-case basis. He was still concerned that the assertion of necessity could be used to approve unusually harsh interrogation techniques in practice. During the follow-up on Section 18, Ms Gaer noted that none of the complaints submitted against ISA agents was dismissed based on Section 18. In this regard, she asked why there were so very few actions based on the submitted complaints and asked for further explanation.

### Other issues not reflected in concluding observations

The Committee also raised concerns about Israel’s position on the inapplicability of the Convention beyond its territory, that is the West Bank and Gaza. It recalled its General Comment No. 2 which holds that the obligation on State parties to prevent acts of torture or ill-treatment in any territory under their jurisdiction must be interpreted and applied to protect any person, citizen or non-citizen, without discrimination subject to *de jure* or *de facto* control of the State party over these persons.<sup>8</sup>

In its concluding observations, the Committee stated:

*‘As to the lex specialis argument, the Committee recalls that it considers that the application of the Convention’s provisions are without prejudice to the provisions of any other international instrument, pursuant to paragraph 2 of its articles 1 and 16. Additionally, the Committee considers that, as stated by the International Court of Justice in its Advisory Opinion, international human rights treaties ratified by the State party, including the Convention, are applicable in the occupied Palestinian territories.’*

Ms Ady Schonmann, Deputy Head of International Law Department from the Office of the Legal Adviser of the Ministry of Foreign Affairs, responded that this issue had been the subject of considerable debate over the past years. In its national report, Israel had only stated that its position on the inapplicability of the Convention beyond its territory had been presented at length to the Committee on previous occasions and remained unchanged. Ms Schonmann noted that Israel had not further referred to the implementation of the Convention in the West Bank and Gaza for several reasons, ranging from legal considerations to ‘practical reality’. She in particular claimed that the law of armed conflict is the *lex specialis* legal regime and therefore

<sup>8</sup> General Comment 2: <http://www2.ohchr.org/english/bodies/cat/comments.htm>; CAT/C/ISR/CO/4, at para. 10-13.

takes precedence in Gaza and the West Bank. She furthermore stressed that any attempt to insist on the applicability of the Convention to the West Bank or Gaza failed to take into account the unique status of those areas. Following Israel's 'disengagement initiative' and the dissolution of the military government, Israel could not be said to have 'effective control' in the sense envisaged by international humanitarian law.

### **Administrative detention and solitary confinement**

In its concluding observations, the Committee stated:

*'The State party should review as a matter of priority its legislation and policies to ensure that all detentions, and particularly administrative detentions in the West Bank and Gaza Strip, are brought into conformity with article 16 of the Convention'.<sup>9</sup>*

It added:

*'The Committee once again calls upon Israel to examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer. The State party should amend current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards.'<sup>10</sup>*

The two country rapporteurs, Mr Marino and Ms Gaer, and the Committee's chairperson, Mr Grossman, raised concerns about administrative detention and solitary confinement. Mr Marino observed that the time periods for administrative detention were excessively long, and that detainees under that regime could be held for weeks or even months before coming before a judge. He addressed different Israeli laws, allowing to hold prisoners for long periods, namely the *Military Order 1126* (1988), empowering Israeli military commanders in the West Bank to detain Palestinian citizens up to six months when there is 'reasonable grounds to presume that public security requires detention' and the *Israeli Military Order 378*, which applies in the West Bank and allows to hold Palestinian detainees, including children from the age of 12, to be held for a period up to eight days before being brought before a military judge whether or not the person is charged with a security offence. Ms Gaer expressed concern that administrative detention does not conform to article 16 of the Convention, because, among other reasons, it is used for 'inordinately lengthy periods'. The Committee noted that the number of persons held in administrative detention has risen significantly since the last periodic report.

In a detailed response to the different concerns, Mr Nitzan stressed that administrative detention orders against detainees who pose a danger to the security of the area are recognised by international law and in conformity with the Fourth Geneva Convention. He added that this measure was only used in cases where there was 'corroborating evidence' that an individual was engaged in illegal acts that endangered the security of the State and the lives of civilians, and each order was subject to judicial review with a right to appeal to the Military Court of Appeals, and to a subsequent petition to the Israeli High Court of Justice. He noted that such detentions were limited to six months and extensions required a re-evaluation of the relevant intelligence, as well as further judicial review and appeal. Furthermore, he added that every administrative detainee has the right to meet with a lawyer of his choice from the first day of the administrative detention and that there was no limit to such meetings.

With regard to a review system to ensure that the rights of the detainees were maintained, as raised by chairperson Grossman, Mr Nitzan noted that all evidence, which 'could be revealed', had to be provided to the detainee and to his lawyer. The remaining evidence, which included confidential evidence that could not

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<sup>9</sup> CAT/C/ISR/CO/4, at para. 17.

<sup>10</sup> CAT/C/ISR/CO/4, at para. 18.

be revealed for security reasons, had to be brought before the judge. This judge would also be entitled to investigate the expert responsible for collecting the evidence and the evidence's credibility.

Furthermore, the Committee noted with concern that the *Unlawful Combatants Law 5762-2002*, as amended in 2008, allows for the detention of non-Israeli citizens falling into the category of 'unlawful combatants'<sup>11</sup> for a period up to 14 days without any judicial review.

In responding, Mr Nitzan noted that it is the inherent right of a State under international humanitarian law to detain persons who took part in hostilities and endangered the security of the State, while not entitling them to 'prisoner of war' status. He added that incarceration is consistent with the administrative detention provisions of the Fourth Geneva Convention and that at present only 12 persons were incarcerated under this law, all of whom were residents of the Gaza Strip. He also noted that detainees are usually brought before a court before the 14 day deadline. Furthermore, judicial review of the incarceration took place in a civil district court every six months, and the decision could be appealed before the Supreme Court. Mr Nitzan mentioned a rejection of an appeal submitted by two detainees by the Supreme Court in June 2008, where it held that the law met the standards of both Israeli constitutional law and international humanitarian law, which Mr Nitzan stated 'is applicable in the fight against Palestinian terrorist groups'. He underscored that, in light of the current security situation, the use of this methods was 'obligatory in the fight against terrorism'.

During follow-up on the issue, Ms Gaer suggested that if detainees are usually brought before a court before the 14 day deadline, Israel should consider reducing the maximum time period.

### **Allegations of torture and ill-treatment during interrogation**

In its concluding observations, the Committee stated:

*'The State party should ensure that interrogation methods contrary to the Convention are not utilised under any circumstances. The State party should also ensure that all allegations of torture and ill-treatment are promptly and effectively investigated and perpetrators prosecuted and, if applicable, appropriate penalties are imposed. The Committee reiterates that, according to the Convention, "no exceptional circumstances" including security or a war or threat to security of the state justifies torture. The State party should intensify human rights education and training activities to security officials, including training on the prohibition of torture and ill-treatment.'*<sup>12</sup>

The Committee also stated in its concluding observations:

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

The Committee expressed concerns about numerous, ongoing and consistent allegations of the use of methods by Israeli security officials that were prohibited by the September 1999 ruling of the Israeli Supreme Court, and that are alleged to take place before, during and after interrogations. Mr Nitzan responded that there were 67 investigations opened by the Inspector for Complaints against ISA interrogators in 2006, and 47 in 2007, but none resulted in criminal charges. The Committee requested Israel to provide follow-up information on its response to the Committee's recommendation on ensuring that interrogation methods contrary to the Convention are not utilised under any circumstances within one year.

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<sup>11</sup> Described as 'combatants who are believed to have taken part in hostile activity against Israel, directly or indirectly'.

<sup>12</sup> CAT/C/ISR/CO/4, at para. 19.

The Committee highlighted the need for independent investigations. It expressed concerns about over 600 complaints of ill-treatment by ISA interrogators received by the Inspector of Complaints between 2001 and 2008, none of which resulted in a criminal investigation. The Committee noted that the Inspector is also an ISA employee. Ms Gaer asked about any safeguards in place to ensure that the Inspector, along with the Attorney General, the State Attorney and the prosecutor, correctly fulfilled their oversight function.

Mr Nitzan responded that every claim regarding the use of allegedly impermissible means of interrogation is examined by the Inspector for Complaints, under the supervision of a high ranking attorney of the State Attorney's Office that oversaw all the Inspector's actions and that no ISA official could interfere with his work. He stressed that the fact that there had been 600 complaints did not mean that 600 indictments had been filed. He noted that the accused investigators usually denied that they had used force, and that many of the cases had to be closed due to lack of evidentiary basis for the accusations. He highlighted that in the Israeli criminal system, indicting a person required sufficient evidence that would enable the prosecutor to prove his guilt beyond reasonable doubt. Generally, the only evidence was the suspect's testimony contradicting that of the accused interrogator, which often made indictment impossible.

Based on information received by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Committee noted that out of 550 examinations of torture allegations initiated by the General Security Services (GSS) inspector between 2002 and 2007, only four resulted in disciplinary measures and none in prosecution. In his response, Mr Nitzan reiterated that there is a lack of evidence for pursuing and substantiating these complaints. He even claimed that the persons submitting them are engaged in a 'campaign' of spreading false information.

Following up to these responses, Chairperson Grossman noted the 'special system of prosecution within the ISA'. However, he emphasised that the Committee's experience with special systems of security agencies is that such systems 'almost never lead to good action'.

### **Refugees, asylum and non-refoulement**

In its concluding observations, the Committee stated:

*'The principle of non-refoulement should be incorporated into the domestic legislation of the State party, so that the asylum procedure includes a thorough examination of the merits of each individual case under article 3 of the Convention. An adequate mechanism for the review of the decision to remove a person should also be in place.'*<sup>13</sup>

The Committee also made the following specific recommendation with regard to the 'Coordinated Immediate Return Procedure':

*'The Committee notes that such safeguards [...] are necessary for each and every case whether or not there is a formal readmission agreement or diplomatic assurances between the State party and the receiving state.'*<sup>14</sup>

The Committee asked about the procedures in place in Israel to prevent refoulement, expulsion or return. It expressed its regret that the principle of non-refoulement has not been formally incorporated into domestic law, policy, practices, or procedure. It stressed that the responses submitted by Israel refer only to its

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<sup>13</sup> CAT/C/ISR/CO/4, at para. 22.

<sup>14</sup> CAT/C/ISR/CO/4, at para. 24.

obligations under the 1951 *Convention Relating to the Status of Refugees* and its 1967 Protocol, but do not allude to its distinct obligations under the *Convention against Torture*.

The Committee expressed particular concern about Israel's 'Coordinated Immediate Return Procedure' of foreigners crossing the border from Egypt that are returned to Egypt immediately, which allows IDF soldiers at the border to execute summary deportation without any procedural safeguards to prevent refoulement. It asked how this procedure assures an assessment of a risk of torture of persons seeking protection in Israel. The Committee underscored that there is systematic torture in Egypt, and that it is not a safe country for the return of foreigners. Mr Marino noted that, according to information before the Committee, 48 people were summarily deported to Egypt in August 2007, shortly after having crossed the Israeli border, allegedly without following any legal procedure or allowing potential refugees to apply for asylum in Israel or to seek judicial review of the deportation decision. He asked about people coming from Sudan or Eritrea and about the guarantees given by Israel to these people.

In his response, Mr Nitzan stated that Israel is fully committed to the principle of non-refoulement. He stressed that the UNHCR regards Egypt as a safe asylum state. Presumably speaking of asylum seekers and refugees, Mr Nitzan emphasised that the vast majority of 'infiltrators' who entered Israel in recent years had originated from African countries that had no borders with Israel. They generally entered illegally directly from Egypt, a country in which he argued 'they had already found protection or could have done so'. He stressed that these people could generally be returned to the country of 'first asylum'. This practice, he added, complies with the UNHCR conclusions. Nevertheless, he added that 'infiltrators' who raised a substantiated claim that there was a risk he would face torture in Egypt would not be returned until a comprehensive examination was performed, even if the actual asylum claim was baseless. With regard to persons from Sudan and Eritrea, Mr Nitzan responded that when there is fear that a person would be sent back to Sudan, and there is a substantial base that he will be tortured in his home country, he would not be sent back to Egypt. He also noted that Israel and Egypt have an 'understanding' that Egypt will not return refugees or asylum seekers that have been refused entrance into Israel.

During the follow up, Mr Marino asked whether some of the persons 'infiltrating' from Egypt into Israel are returned 'very promptly' and 'without further investigations'. In this regard, he also asked again if the principle of non-refoulement was being observed. Although he acknowledged that UNHCR considers Egypt to be safe, he again highlighted cases of Sudanese and Eritrean persons who were returned to their home countries by Egypt. He argued that this made Egypt an unsafe country. He also stated that Israel therefore does not recognise the principle of non-refoulement. Ms Gaer criticised the use of the word 'infiltrators' in Israeli law, which she considers a military term, and instead proposed the term 'asylum seekers' or 'refugees'. She asked if Israel had a coordinated returns policy and what steps had been taken to follow the status of returned people. The Committee requested Israel to provide follow-up information to the Committee's recommendations in this regard within one year,

### **Prohibition of unlawful or coerced evidence**

In its concluding observations, the Committee stated:

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

Although the Committee generally welcomed the Supreme Court decision<sup>16</sup> which calls for the exclusion of a confession or evidence obtained unlawfully or in violation of a defendant's right to fair procedure, Ms Gaer

<sup>15</sup> CAT/C/ISR/CO/4, at para. 25.

<sup>16</sup> Prv. Yisascharov v the Head of Military Prosecutor et al, C.A. 5121/98

emphasised that the question whether or not to admit illegally obtained evidence seems to be left at the discretion of the judge. She asked whether this judge acts alone or whether there is any oversight. Mr Grossman criticised that the prohibition to use illegally obtained evidence in the Court ruling, also called the ‘exclusion doctrine’, is ‘not an absolute prohibition’, but ‘a relative doctrine’. He firmly underscored that ‘the Convention does not allow for [such] a balancing test’.

Mr Nitzan responded to this by stating that this ‘exclusion doctrine’ has a wider scope than article 15 of the Convention that prohibits the use of evidence obtained through torture. It seems that the ‘exclusion doctrine’ does not only relate to evidence obtained through torture but to all illegally obtained evidence. It confers some discretion on the judge to admit evidence where obtaining that evidence was illegal for reasons other than torture. He seemed to imply that evidence which in principle was obtained unlawfully but not through torture could be accepted in some cases. Therefore, he argued, the ‘exclusion doctrine’ could not be absolute, and had to be relative.

### Juvenile detainees

In its concluding observations, the Committee stated:

*‘Military order 132 should be amended to ensure that the definition of minor is set at the age of 18, in line with international standards.’<sup>17</sup>*

Country rapporteur Ms Gaer expressed concern about the varying definitions of children in Israel. In Israel legal age is attained at the age of 18, but in the occupied Palestinian territories legal age is attained at 16.

In his response, Mr Nitzan stated that ‘the Commander of the Israeli Defence Forces in Judea and Samaria respected, unless absolutely prevented, the laws previously in force in the area under his authority, namely Jordanian Law’. According to this law, a person became criminally liable at nine years. He added that the Military Commander had, however, issued ordinances to establish initial criminal liability at 12. With regard to age, he furthermore noted that discrepancies in the age of adulthood between Israel and the West Bank are due to the domestic law of the West Bank, ‘as Israeli law did not apply there’. He also explained that Palestinian juveniles under the age of 18 are treated as minors when imprisoned within Israel.

The Committee also made the following recommendation:

*‘The State party should ensure that juvenile detainees are afforded basic safeguards, before and during interrogations, including prompt access to an independent lawyer, and independent doctor and family members from the outset of their detention. Furthermore, the State party should ensure that cases against juveniles are not decided solely on the basis of confessions, and that the establishment of a youth court is completed as a matter of priority. In addition, every effort should be made to facilitate family visits to juvenile detainees, including by expanding the right of freedom of movement of relatives.’<sup>18</sup>*

Ms Gaer expressed deep concern that Palestinian minors are detained and interrogated in the absence of a lawyer or family member and allegedly subjected to acts in breach of the Convention in order to obtain confessions. The Committee was furthermore concerned by allegations that approximately 700 Palestinian children were charged under military orders and prosecuted by Israeli military courts each year and that 95% of these cases have relied on confessions as evidence to obtain a conviction. Another concern of the Committee was that almost all prisons where Palestinian juveniles are detained are located in Israel. This effectively hinders prisoners from receiving family visits, not only because of the distance, but also since some relatives have been denied necessary permits for security reasons.

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<sup>17</sup> CAT/C/ISR/CO/4, at para. 27.

<sup>18</sup> CAT/C/ISR/CO/4, at para. 28.

Mr Nitzan stated that specific protections were implemented in cases involving minors, including the provision of legal representation in all cases; refraining, to the extent possible, from postponing legal counselling; and minimising the detention period prior to a court hearing. He stated that minors were held separately from adult prisoners and were not held in cells alone as a punishment or for coercing confession. He added that holding a minor in a cell alone was done only in exceptional cases where the minor threatened to harm himself or others. He informed the Committee that as of April 2009, there were 378 minor security-related inmates and that ten minors were in administrative detention, all of them males and over the 17 years old. Furthermore, he stressed that the competent jurisdiction for dealing with minors in the West Bank lay with the Military Courts and that while the Military Court System in the West Bank did not provide designated courts for minors, a draft bill to establish a youth court was currently under review. With regard to permits and family visits, Ambassador Yaar informed the Committee that only 1,500 permits<sup>19</sup> out of 80,000 cases had been rejected.

During follow-up, Ms Gaer asked if any 16 to 18 year old Palestinian detainees brought to Israel were regarded as minors and were held separately from adults, and how many Palestinians from the West Bank were brought to Israel to be held in custody.

### Use of force or violence during military operations

In its concluding observations, the Committee stated:

*‘The State party should conduct an independent inquiry to ensure a prompt, independent and full investigation into the responsibility of state and non-state authorities for the harmful impact on civilians, and make the results public.’*<sup>20</sup>

The Committee raised concerns about the insufficient measures taken by Israel to protect the civilian population of the Gaza Strip during the Israeli military operation ‘Cast Lead’. The Committee noted the severe effects on civilians as a result of Israeli weaponry containing phosphorus and noted its concerns of its use in a densely populated area. It especially highlighted reports of denial of medical care for the wounded and reports of targeting of health workers, hospitals and ambulances. The Committee underscored that what happened during operation ‘Cast Lead’ ‘was not a clean practice’.

Mr Nitzan responded that in recent years, including since Hamas had taken over Gaza, Israel had maintained access to the residents of Gaza that required medical care. He noted, however, that, when imperative security considerations arose, people were not allowed to enter Israel unless medical treatment was essential. With regard to the attacks on hospitals, medical personnel and ambulances, he stressed that Israel’s ‘careful examination’ of those claims had shown that the ‘Hamas terrorist organisation’ had deliberately placed itself near facilities with special status under international law. He added that ‘even in the height of fierce battle’ Israeli forces at all levels had been directed to take extra caution to avoid harming medical crews and facilities. The investigation had clearly showed that the forces had been well aware of and had respected that special status. However, he also mentioned that ‘in certain instances, incidental harm to medical facilities was caused [...] but never intentionally’. With regard to the use of phosphorus, he stated that the use of this is not banned by international humanitarian law.

It seems noteworthy that the Committee did not attempt to link operation ‘Cast Lead’ to the *Convention against Torture*, and the delegation did not dispute the mandate of the Committee to deal with these issues. Following up to the delegations responses, Mr Marino highlighted once again the tremendous difficulties

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<sup>19</sup> The Committee noted that according to non-governmental sources more permits were rejected.

<sup>20</sup> CAT/C/ISR/CO/4, at para. 29.

faced by Palestinians trying to leave Gaza in order to receive medical treatment. He stated that the situation ‘might have reflected inhuman treatment’.

### **Other issues reflected in concluding observations**

Other issues raised during the interactive dialogue and in the concluding observations included basic safeguards for detainees and the use of video recording during interrogations,<sup>21</sup> settler violence,<sup>22</sup> house demolitions,<sup>23</sup> allegations of torture and ill-treatment by Palestinian forces,<sup>24</sup> and a secret detention and interrogation facility known as ‘Facility 1391’<sup>25</sup>. Regarding house demolitions and basic safeguards for detainees, the Committee requested Israel to provide follow-up information to the Committee’s recommendations within one year.

### **Conclusions and next steps**

The delegation thanked the Committee for the open and transparent discussion and the constructive dialogue. It stated that the dialogue had given Israel a ‘self-critical look’ at its policies on torture and that the dialogue would work ‘toward the greater effect on the Israeli people’. The delegation emphasised its hope that the Committee will acknowledge the developments and achievements of Israel. It reiterated the constant security threats and that therefore Israel had to strike a delicate balance between human rights and security considerations. It further reiterated the importance of participation of civil society.

As a general remark, the Committee encouraged Israel in the concluding observations to disseminate all information about the review process, including in particular responses to the List of Issues and the concluding observations, widely and in appropriate languages. It suggested that this be done through official websites, the media and non-governmental organisations.

The Committee did not have an opportunity to make concluding comments, other than thanking the Israeli delegation for its constructive cooperation and elaborate answers, because the meeting exceeded the time limit by an hour. However, in the concluding observations the Committee requests Israel to provide follow-up information to the Committee’s recommendations contained in paragraphs 15, 19, 20, 24 and 33 of the report within one year. The State party is invited to submit its next periodic report by 15 May 2013.

*Last revised and updated: 11 December 2009.*

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<sup>21</sup> CAT/C/ISR/CO/4, at para. 15, 16.

<sup>22</sup> CAT/C/ISR/CO/4, at para. 32.

<sup>23</sup> CAT/C/ISR/CO/4, at para. 33.

<sup>24</sup> CAT/C/ISR/CO/4, at para. 34.

<sup>25</sup> CAT/C/ISR/CO/4, at para. 26.

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The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the six treaty bodies (all but the Committee on the Rights of the Child) and provides an overview of every treaty body session. It is currently an online publication that can be found at [www.ishr.ch](http://www.ishr.ch).

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