



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

REFERENCE: cc/jmn7/jli/follow-up/CAT

16 May 2012

Excellency,

We are writing about the examination of the fourth and fifth periodic reports of Israel (CAT/C/ISR/4) on 5 and 6 May 2009, and in the framework of the follow-up procedure of the United Nations Committee against Torture (CAT). As you will recall, the Committee requested further information from the Government of Israel in response to the recommendations in paragraphs 15, 19, 20, 24, and 33 of the Concluding Observations (CAT/C/ISR/CO/4)).

On behalf of the Committee, thank you for your Government's reply of 3 August 2010 (CAT/C/ISR/CO/4/Add.1) regarding those recommendations. We have reviewed them with care and are writing to seek further clarification, as soon as possible, as there remain outstanding questions about the implementation of the recommendations in practice.

Basic Safeguards for Detainees (paragraph 15).

*Access to a lawyer:* The Committee appreciates the information regarding the content of laws governing basic safeguards for persons in detention, including access to lawyers and the requirement that all detainees are promptly brought before a judge. The Committee notes with appreciation the information provided indicating that criminal detainees are generally entitled to meet with a lawyer "without delay" unless the police officer in charge makes a determination and provides "a written reasoned decision" justifying the delay, for up to 24 hours, and thereafter, in no more than 48 hours after arrest. While your reply (CAT/C/ISR/CO/4/Add.1, paras. 3 to 9) notes that meetings with lawyers are seldom prolonged beyond 24 hours, the reply also states that 'data' reveals this latter time period is seldom used. Please provide the number of cases in which detainees were denied the right to meet with a lawyer for 24 hours or longer.

Also, according to paragraph 9 of the follow-up submission, detainees' meetings with counsel can be further postponed "in exceptional cases," and paragraph 21 indicates that persons suspected of security-related offenses are "seldom" denied meetings with counsel for more than 10 days. Please indicate the maximum amount of time that contact with counsel may be postponed under this provision, how many times exception has been invoked, and the total length of time that a detainee's meeting with counsel was postponed in each case.

Additionally, the Committee has received information alleging that detainees held pursuant to military legislation can be denied the right to meet with counsel for up to 30 days at the discretion of the person in charge of the investigation, and for an additional 60 days pursuant to judicial order. Please clarify the accuracy of this information by providing data on the number of instances, if any, in which the right of such detainees to meet with counsel has been delayed, and the length of the delay in each case. The Committee has also received information stating that the Illegal Combatant Law permits denial of access to counsel for up to 21 days.

.../...

H.E. Mr. Aharon Leshno-Yaar  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative of Israel  
to the United Nations Office at Geneva  
Fax: 022 716 05 55



Please comment on this information and indicate the length of time between apprehension and the first meeting with counsel for all persons detained pursuant to this provision.

The Committee has received allegations that the General Security Service (GSS) regularly denies persons in its custody the ability to meet with legal counsel or to contact family members until they have signed a confession. Please indicate the measures the State party has taken or is taking to ensure that persons in the custody of the GSS have prompt access to a lawyer. The Committee has received information from non-governmental sources alleging that, in practice, minors detained in the West Bank do not receive legal consultation before or during interrogations, partly because Military Order 1676 requires police to contact a lawyer on a minor's behalf only if the individual can name an attorney, and does not place a requirement on members of the military to contact a lawyer on behalf of minors in their custody. 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.

The Committee also appreciates the information provided in paragraph 2 indicating that the Supreme Court has determined in the *Yisascharov* decision that confessions may be deemed inadmissible in court in cases where an interrogator has failed to notify a detainee of his or her right to legal counsel. Please clarify whether this rule applies to all detainees, and provide data on the number of cases since the decision was rendered in which the State party's courts have actually found a confession to be inadmissible as evidence on this ground.

*Arraignment before a judge:* The Committee appreciates the information from the State party indicating that detainees generally must be brought before a judge no later than 24 hours following arrest. The Committee understands that arraignment of persons arrested on suspicion of having committed "security-related" offenses may be delayed for up to 96 hours. In this regard, the Committee appreciates the State party's provision of data from 2006-2009 reflecting the number of instances in which arraignment of such detainees was postponed between 48-72 hours and 72-96 hours. Please indicate whether the State party has taken measures to review the cases in which these exceptions were invoked to determine the effect of the delay on detainees. The Committee has received information alleging that military legislation enables detainees to be held for up to eight days before they are brought before a judge, although this period will be reduced to four days following the entry into force of an amendment to the law in question on 1 August 2012. Please comment on this information and provide data on the number of persons apprehended pursuant to military legislation and the time that elapsed between apprehension and appearance before a judge in such cases. Also, please clarify whether claims that the 2002 Illegal Combatant law permits holding a detainee for 14 days before review by a district court judge are accurate. Please indicate the number of persons apprehended pursuant to this law and the time that elapsed between apprehension and appearance before a judge.

Please also clarify whether any police or military personnel have been disciplined or criminally prosecuted for denying detainees the right to promptly contact an attorney or failing to bring a detainee before a judge within the required time period. Notwithstanding the information provided about the legal framework governing basic safeguards, the Committee seeks to clarify whether the State party plans to consider revising provisions of its laws that might allow such safeguards to be denied. Finally, please provide updated information on any additional measures taken by the State party to ensure that all detainees have prompt access to a lawyer, an independent doctor, and family member and are promptly brought before a judge.

Allegations of torture and ill-treatment by Israeli interrogators (paragraph 19)

The Committee appreciates the data provided by the State party on the number of examinations undertaken by the Inspector for Interogee Complaints (IIC) between 2006 and

2009. Please provide updated data indicating the number of investigations opened by the IIC in 2010 and 2011, and indicate whether any of these has resulted in a criminal trial.

While noting the State party's information in paragraph 25 that no examinations from 2006-2009 resulted in a criminal charges or trial against an interrogator because the interrogations were conducted in accord with law and procedures, the Committee notes that "ten examinations were opened as a result of complaints forwarded solely by the investigators themselves" and another 55 were opened because of "complaints made to the ICRC and other public organizations." Please provide information about the results of those cases, including what disciplinary measures or other actions were taken regarding the interrogators or other persons responsible for the actions concerned, and the present positions of those persons.

While noting the State party's claim in paragraph 23 that allegations referred to it by the Committee are from persons who mostly "have a clear interest against the State of Israel and the Israeli Security forces," the Committee notes that it has received further information from non-governmental organizations which allege that interrogators subjected detainees to inappropriate treatment including (a) a report from the non-governmental organization Defense for Children International stating that 37% of 311 minors held in the military detention system and interviewed reported experiencing physical violence in detention; and (b) a report from the non-governmental organization B'Tselem stating that 19 of 50 minors interviewed claimed that they were subject to physical and/or verbal violence during interrogation at police stations, most of them at Etzion. Please comment on any measures taken to investigate these allegations

Please discuss measures the State party is taking to ensure that investigations into complaints of torture against security and law enforcement personnel are conducted effectively and impartially. Please clarify if the State party is considering ensuring that responsibility for preliminary investigation of such complaints will be delegated to independent investigators. The Committee understands that in November 2010 the Attorney General announced that the IIC would be transferred from the ISA to the Ministry of Justice. Please update the status of this transfer and on any decisions made as to the selection process for the IIC, its working procedures, or its complaint referral procedures. In this regard, please also comment on complaints of mistreatment made by Jihad Mughrabi and on the independence of an ISA inquiry into his complaint that concluded he had struck ISA security personnel, causing them injuries.

The Committee would also appreciate information on whether, as the Committee recommended, the State party has intensified human rights education and training activities to security officials, including training on the prohibition of torture and ill-treatment.

#### Complaints and need for independent investigations (paragraph 20)

The Committee appreciates receiving information with the specific details of cases in which law enforcement officials were sentenced to imprisonment for committing abuses against detainees, as provided in paragraph 32 of the State party's follow-up submission. The Committee notes the data provided in paragraph 33 indicates that, in 2009, 68 cases against police officers concluded with a conviction. In line with the Committee's recommendation, please provide more information about the precise penalties imposed in these cases, and indicate the offense for which the defendant was convicted in each case. Please also provide data on the number of criminal procedures that resulted in convictions of accused members of the border police (cited in three of the five examples in paragraph 34) and the penalties imposed.

The Committee takes note of the information provided in paragraph 31 of the follow-up submission noting that "[d]isciplinary measures are used in cases where...the force used has slightly deviated from the force needed." Please provide data on the types of disciplinary measures imposed against police officers for improper use of force and other similar violations, and the number of cases in which such measures have been imposed.



The Committee understands that an April 2010 audit by the Ministry of Public Security's Internal Audit Department found that in 2008-9 police officers were not transferring complaints of ill-treatment to the DIP in four police districts and that it recommended instituting disciplinary proceedings against officers who did not pass along complaints. Please comment on this information, indicate whether disciplinary proceedings were initiated in connection with this audit and the outcome of these proceedings, and describe any other measures taken by the State party to ensure that DIP receives all complaints of ill-treatment against police officers.

Non-refoulement and risk of torture (paragraph 24)

The Committee appreciates the information provided by the State party regarding the "coordinated immediate return" policy whereby authorized IDF commanders can carry out summary deportations at the Israel-Egypt border. The Committee reiterates that procedural safeguards to prevent *refoulement* – including the right to appeal rejection of *refoulement* claims to an independent judicial body – are necessary for every case of deportation.

The Committee has received information indicating that the IDF terminated its "coordinated immediate return" policy in April 2011, that this was attested to by the Commander of the Edom Unit before the Supreme Court in 2011, and that on the basis of this declaration, the Supreme Court closed its investigation into the aforementioned policy on July 7, 2011. The Committee also understands that in August 2011, complaints were filed with the State Attorney's office on behalf of soldiers who claimed that the "coordinated immediate return" policy continued to be carried out by senior officers in Edom Unit, and recounted several incidents when refugees were returned to Egypt by IDF soldiers after June 2011. The Committee understands that in response to these complaints, military police opened an investigation. Please indicate whether the "coordinate immediate return" policy remains in effect and whether there are any ongoing investigations into allegations that IDF soldiers continue to summarily return refugees to Egypt, and the status of any such investigations. Please also indicate whether any IDF personnel have been subjected to disciplinary or criminal penalties for engaging in such activity, and if so, please indicate the precise penalties prescribed.

House demolitions (paragraph 33)

The Committee appreciates the information provided regarding the criteria governing the State party's acts to demolish homes and structures in connection with its efforts to combat terrorism, which since 2000 has taken the lives of more than 1,178 persons in the State party and injured more than 8,000. The information provided suggests that the State party has not suspended demolitions of houses as punishment for the actions of people associated with the houses. 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.

The Committee looks forward to continuing a constructive dialogue on the implementation of the Convention and looks forward to receiving clarification on these matters.

Accept, Excellency, the assurances of our highest consideration.

Felice D. Gaer  
Rapporteur for Follow-Up  
on Concluding Observations  
Committee against Torture

Fernando Mariño Menendez  
Member and Country  
Co-Rapporteur  
Committee against Torture