



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

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**Committee against Torture**  
**Forty-second session**

**Summary record of the 881st meeting**

Held at the Palais Wilson, Geneva, on Wednesday, 6 May 2009, at 3 p.m.

*Chairperson:* Mr. Grossman

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*The meeting was called to order at 3 p.m.*

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

*Fourth periodic report of Israel* (continued) (CAT/C/ISR/4; CAT/C/ISR/Q/4)

1. *At the invitation of the Chairperson, the members of the delegation of Israel resumed their places at the Committee table.*
2. **The Chairperson** invited the delegation to continue a dialogue that promised to be both substantial and constructive.
3. **Mr. Nitzan** (Israel) said that the members of his delegation would endeavour to answer to the best of their ability, within the time constraints and by thematic cluster, the one hundred or so questions they had received.
4. **Ms. Schonmann** (Israel) said that the applicability of the Convention against Torture to the West Bank or to the Gaza Strip had been the subject of considerable debate in recent years, including in the Committee. In its report (CAT/C/ISR/4), Israel did not refer to the implementation of the Convention in those areas for a variety of both legal and practical reasons. In particular, an overly broad interpretation of article 16 of the Convention, suggesting that the issues under consideration were covered by that article, was problematic given the drafting history of the Convention, which clearly showed that that had not been the intention of the authors, who furthermore had adopted that article under an agenda item relating to the rights of individuals in detention.
5. Critical to effectively assessing and interpreting the nature of Israel's obligations under the Convention were the changing reality and the dramatic developments on the ground since 2001. Examples included Israel's initiative to disengage from the Gaza Strip in August 2005, which had resulted in a full withdrawal of Israeli forces; the dismantling of its military government and the evacuation of more than 8,500 civilians. That had been followed by the establishment of a violent terrorist administration led by Hamas, which was committed to the destruction of Israel.
6. The negotiating history of the Convention supported Israel's position on the issue, which was shared by a number of other States, concerning the extraterritorial inapplicability of the Convention to areas beyond the national territory of States. Those areas were governed by a separate body of law, primarily the law of armed conflict and the conduct of hostilities. Anyone who sought to establish that the Convention was applicable to the West Bank or the Gaza Strip failed to take account of the unique status of those areas and the changes they had undergone and continued to undergo. That was particularly true of the Gaza Strip. Since Israel's disengagement, the situation had become even more clear-cut: with the dissolution of the military government and the removal of the Israeli armed forces and all Israelis, it could not be claimed that Israel exercised effective control in the sense envisaged by the Hague Regulations concerning the Laws and Customs of War on Land. Israel was thus called upon to consider the relationship between two distinct bodies of law: the law of armed conflict and warfare and human rights law. That relationship was the subject of serious academic and practical debate; for its part, Israel acknowledged that human rights law and the law of armed conflict were closely related, and that there was a convergence between the two in some respects. However, in the current state of international law and State practice, those two legal systems, which were codified in separate instruments, remained distinct and were applicable in different circumstances, with the *lex specialis* regime of the law of armed conflict taking precedence. The Convention against Torture was a key component of human rights. Its provisions were to some extent and in a certain manner covered by the law of armed conflict; however, any attempt to apply those two distinct legal systems simultaneously could only work to their detriment.

Israel had never made a specific declaration seeking to reserve the right to extend the applicability of the Convention to the Gaza Strip or the West Bank. In the absence of such a voluntary declaration, it was a basic principle of treaty law that the Convention, which enjoyed territorial applicability, did not apply to areas outside the national territory of States. However, although the situation in the territories fell outside the competence of the Committee and the purview of the Convention, Israel considered that it could be the subject of scrutiny or public discussion, and that it did not absolve Israel of its humanitarian responsibilities. In that context, the situation of the Palestinians was currently the subject of extensive debate in many international forums in which Israel took part. Without prejudice to Israel's approach to the scope of the Convention regarding territorial application and substantive issues, the delegation intended to respond in detail to the Committee members' questions relating to the territories.

7. **Mr. Nitzan** (Israel), recalling the allegations made against interrogators from the Israel Security Agency, claiming they had employed methods prohibited by the Convention, reiterated that Israel's Penal Law totally forbade the use of force, violence or threats against any individuals for the purpose of extorting from them a confession or information. The provisions of that law fully covered all the components of the definition of torture contained in the Convention, including with regard to mental suffering. In that connection, the debate in the Knesset on the prohibition of torture had dealt with the future Constitution. The only question was whether it was appropriate to include that prohibition in the Constitution or whether it was sufficient to incorporate it in existing legislation.

8. With regard to the defence of necessity, the Supreme Court had unequivocally decided that the Israel Security Agency had no authority under domestic law to use physical means of interrogation against terrorist suspects. In that connection, he cited a judgement by the Court forbidding absolutely and without exception any use of brutal or inhuman means and any violation of a suspect's dignity; no circumstances could warrant a derogation. Nonetheless, the Court had held that, while interrogators from the Agency were not authorized to use physical force, if one of them stated that he or she had used reasonable physical force by reason of necessity, that could work in his or her favour in criminal proceedings. Clearly, that did not mean that interrogators were authorized in advance to resort to the use of force during an interrogation. With regard to grounds of defence in the Israeli criminal justice system, a prosecutor could not file an indictment if he found that the suspect had an effective defence. Only a high-ranking prosecutor could take the decision to file such an indictment, and the decision would be subject to judicial review. Further, Israeli prosecutors were independent jurists appointed on the strength of their qualifications; they were not political appointees.

9. Questions had been raised about the 600 complaints filed against interrogators from the Agency that had not led to criminal proceedings, although it should be mentioned that disciplinary procedures had in some cases been initiated. Of course, the fact that there had been 600 complaints did not necessarily mean that 600 indictments should have been filed. Many of those cases had been closed because of lack of evidence. To indict a person under the Israeli criminal justice system, a prosecutor must have sufficient evidence to establish guilt beyond all reasonable doubt. Indictment became very difficult when the only evidence was the suspect's testimony, contradicted by the interrogator. Further, major contradictions had often been observed in the suspect's account of the facts, making any indictment impossible. In some cases in which a non-governmental organization had filed a complaint on behalf of a suspect, the latter had subsequently stated that he or she had undergone no ill-treatment and had not intended to file a complaint. Whatever the reasons, indictment became impossible under those conditions. In addition, some allegations were manifestly baseless; the complainants were members of terrorist organizations waging a campaign against Israel, part of which included making false allegations against the interrogators to influence public opinion. It could also happen that persons who had been interrogated made

false allegations in order to exonerate themselves in the eyes of the terrorist organization to which they belonged, by explaining that they had made a confession because they had been tortured during interrogation. Lastly and most importantly, in the vast majority of the 600 cases that had been examined by the inspector responsible for reviewing the complaints, the relevant interrogator had claimed not to have used physical force, and the inspector had been unable to refute those claims owing to lack of sufficient evidence. In only a few cases had it been acknowledged that the interrogators had resorted to physical force because of the exigencies of the situation. In such cases, it was up to the prosecutor to determine whether that assertion was credible. If the prosecutor decided that the suspect had a good defence, the suspect could not be indicted. Lastly, the head of the investigation department of the Israel Security Agency had submitted an affidavit to the Supreme Court stating that in recent years there had been very few and exceptional cases in which interrogators from the Agency considered that they had been faced with a state of necessity and had acted accordingly. Those cases had related to only a very small percentage of persons under investigation for suspected terrorist activities.

10. Section 18 of the Israel Security Agency Law stated that an Agency employee did not bear criminal or civil liability for acts or omissions performed reasonably or in good faith; clearly, a criminal or disciplinary offence could not be committed reasonably or in good faith. As a result, section 18 did not apply in those cases, and that was fully consistent with the Convention. Moreover, none of the complaints filed against Agency investigators had been dismissed on the basis of section 18. The independence of the inspector responsible for examining complaints against interrogators from the Israel Security Agency was not open to question, as his actions were supervised by a high-ranking official from the State Attorney's Office and no official from the Agency could interfere with his work. All complaints, whether originating from a detainee or a non-governmental organization, were followed up; in fact, in most cases inquiries were initiated as a result of complaints filed by non-governmental organizations on behalf of a detainee. It had been suggested that the number of complaints had declined because they rarely led to indictments. The number of complaints had indeed fallen, but only slightly, and it would not have been reasonable to increase the number of indictments without sufficient evidence, solely to encourage further investigations.

11. A question had been asked about the burden of proof in proceedings concerning allegations of torture. In all criminal proceedings in Israel the prosecution had to prove beyond all reasonable doubt that a criminal offence had been committed; that rule applied to all criminal cases, including cases of torture. In contrast, the burden of proof in civil cases lay on the plaintiff, but the requirements were less stringent compared with criminal cases. That seemed to be the case in most legal systems; further, many civil suits had been instituted in Israeli courts as a result of interrogations by the Israel Security Agency. In some cases, compensation had been awarded on an *ex gratia* basis.

12. Administrative detention of persons posing a danger to security was a measure recognized under international law and in full conformity with article 78 of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. That measure was applied solely in cases in which there was evidence of a person's involvement in illegal acts that endangered the security of the State and the lives of civilians. All detention orders were subject to judicial review and the person concerned could appeal the decision to the Military Court of Appeals and then petition the High Court of Justice to repeal the order. Petitioners could be represented by counsel of their choice at every stage of the proceedings and were entitled to be informed of the evidence against them if it was unclassified. All measures of administrative detention were limited to six months; an extension required a re-examination of the information about the person concerned, as well as further judicial review and appeal. Such measures could be used solely in exceptional cases, when the evidence was concrete and trustworthy, but for reasons of confidentiality

and protection of sources could not be presented in ordinary criminal proceedings. As soon as that evidence could be submitted in the context of criminal proceedings, administrative detention was out of the question. All detainees had the right to consult with counsel of their choice from the first day of their detention and as often as necessary. A member of the Committee had referred to a case in which a measure of administrative detention had been extended 13 times. That was an extremely rare case, and the only reason for so many extensions was the existence of highly convincing evidence indicating that the immediate release of the person concerned would endanger the lives of civilians. For example, if there was reliable and verifiable information concerning a detainee's declared intention to carry out a suicide attack when released from prison, and if that information could not be used in criminal proceedings because it would endanger the life of the source, should that person be freed? The answer was no. The right to life was the most fundamental of all human rights, and article 78 of the Fourth Geneva Convention placed no limit on the duration of detention. However, the Supreme Court had on numerous occasions stressed that the temporal aspect was very important when envisaging the extension of a measure of administrative detention, and it would be all the more difficult to authorize the longer the person had been in detention. The best means of ensuring that such a measure was not unduly extended was the legal provision whereby all extensions had to be approved by a court of law and could be appealed before a military court of appeal, and then before the Supreme Court. Such procedures were brought before the Court on almost a daily basis. Whatever the case, criminal proceedings were preferable to administrative detention whenever possible. Lastly, specific information had been requested about the system of review ensuring respect for detainees' rights. All evidence not classified as confidential had to be communicated to the persons concerned and their attorneys. All information considered confidential for security reasons had to be submitted to the judge, who could question the expert who had gathered the information about its content and credibility. If the judge deemed that a certain piece of information could be revealed, he or she was obliged to disclose it. The persons concerned had the right to legal counsel during all stages of the proceedings.

13. The Incarceration of Unlawful Combatants Law of 2002 incorporated in Israeli domestic legislation the right of all States under the international law of armed conflict to imprison persons who took part in hostilities and endangered State security but were not entitled to prisoner-of-war status under article 4 of the third Geneva Convention relative to the Treatment of Prisoners of War. The incarceration of such combatants was in conformity with the administrative detention provisions of the Fourth Geneva Convention; it had long been accepted by many international law experts and remained an essential tool in the fight against terrorist organizations, which operated in blatant disregard of the law of armed conflict, for example by not distinguishing themselves from the civilian population. It had been asked why those detainees were not brought before a judge. Under article 5 of the above-mentioned law, all prisoners must appear before a judge no later than 14 days following the issue of an incarceration order, which was an administrative order. The Supreme Court had decided that the period should be as short as possible, and prisoners were usually brought before a judge more rapidly. To date, only 12 persons, all Gaza Strip residents, had been incarcerated under that law. A judicial review of the incarceration was conducted every six months by a civil court and the decision could be appealed to the Supreme Court. In June 2008, the Supreme Court had rejected an appeal made by two inmates, and for the first time since the enactment of the law, had considered various legal aspects of the incarceration of unlawful combatants. In reaffirming the legality of the incarceration orders that had been appealed, the Supreme Court had held that the legislation was in conformity with Israeli constitutional law and international humanitarian law, which was applicable to Israel's fight against the Palestinian terrorist groups. The Court had noted that the law as a whole did not disproportionately infringe the right to freedom and was consistent with the relevant provisions of the Fourth Geneva Convention. Further, the

Supreme Court had interpreted the principles enshrined in the Incarceration of Unlawful Combatants Law as being intended to strike a delicate balance between generally accepted human rights standards and legitimate security requirements. In the light of the current situation, Israel was of the view that it was necessary to have recourse to those provisions to prevent terrorist activity.

14. The allegation had been made that Israel had not allowed Palestinians from the Gaza Strip to enter Israel to receive medical care during Operation “Cast Lead”. In recent years, including since Hamas had seized power in Gaza, residents of the Gaza Strip who needed medical care had been allowed into Israel without interruption. However, when imperative security considerations so required, only those persons in need of urgent care were allowed entry, even if that posed a danger to security. Statistics showed that, between 2007 and 2008, in the midst of ongoing armed conflict and continuous launching of rockets against Israel, more than 14,000 Gaza Strip residents had received medical attention in Israel, contrary to allegations that such attention had been refused. Even during Operation “Cast Lead” and despite serious security problems, persons needing medical care had been given access thereto. Further, all decisions denying entry because of security risks could be appealed before the Supreme Court. A similar policy had been applied with regard to West Bank residents: in 2007–2008, some 270,000 patients and accompanying persons had been authorized to enter Israel. The security fence did not hinder West Bank residents’ access to medical care because there were many passages for entry to Israel. In that connection, a question had been raised about the Supreme Court upholding a decision to prevent the entry into Israel of a Gaza resident who had required medical care. The ruling stressed that the Court attached great importance to the risk of losing eyesight or a limb, which were crucial to a person’s quality of life, and in such a case, the State should do everything possible to help that person. It had been alleged that the Israel Defence Forces (IDF) had attacked medical establishments and personnel during Operation “Cast Lead”. An in-depth investigation conducted recently by Israel had shown that the terrorist organization Hamas had deliberately positioned itself with heavy weaponry near facilities enjoying special protection and status under international law, such as hospitals and infirmaries. There was substantial evidence confirming that terrorists had even hidden inside the main hospital in Gaza and had used ambulances to transport munitions and men from one point to another, in flagrant violation of international law. Yet even at the height of fierce fighting, the IDF had received instructions to be particularly careful not to harm medical crews and facilities, and they had often interrupted their operations if a vehicle or medical staff were found to be in the vicinity. The IDF had even sometimes refrained from attacking medical vehicles it suspected were being used by Hamas and other terrorist organizations. Orders concerning precautions to be taken near medical vehicles had been strengthened during the operation, making the regulations even stricter than those imposed by international law. Moreover, the IDF had set up a medical situation room within the Gaza coordination and liaison service, which had been in charge of coordinating the evacuation of bodies, the wounded and trapped civilians from the combat zone. During the operation, the medical situation room had handled 150 different requests. While the IDF had scrupulously respected the norms of international law and the law of armed conflict when conducting military operations, it was true that it had accidentally struck medical facilities during attacks against Hamas targets, for example when those facilities had been close to rocket-launching bases. Likewise, if ambulances were clearly being used to transport munitions or terrorists, Israel had been compelled to respond. Finally, despite continuous attempts by the Hamas terrorist organization to attack crossing points between Israel and Gaza, the Israeli authorities had managed to keep them open — not without risk to those operating them — to ensure the flow of supplies into Gaza. Humanitarian pauses had been implemented by the IDF to enable the civilian population to receive supplies. Unfortunately, that unilateral initiative had been exploited by Hamas, as it had routinely launched rockets at those times.

15. With regard to the application of article 3 of the Convention, Israel was fully committed to the principle of non-refoulement. The vast majority of infiltrators that had entered Israel in recent years had come from African countries which did not have a common border with Israel. They had entered Israel illegally from Egypt where they had already received protection or would have been able to receive protection since Egypt was a signatory to the Convention relating to the Status of Refugees. Such persons could generally be sent back to the first-asylum country, a practice that was also in line with Conclusion No. 58 (XL) of the Executive Committee of the Office of the United Nations High Commissioner for Refugees on the problem of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection. However, if infiltrators coming from Egypt stated that they were in danger of being tortured if they were expelled, and if they furnished convincing supporting evidence, they would not be sent back to a country where they would be in danger of being tortured or killed until a comprehensive examination of their allegations had been conducted. The United Nations High Commissioner for Refugees considered Egypt to be a safe country of asylum, and Israel took account of that fact. According to a recent Supreme Court decision, if infiltrators requested asylum, and as long as a preliminary examination did not establish that the asylum requests were unfounded, they should not be returned to a country where their lives would be in danger as long as their requests had not been examined. They would be transferred to the Ministry of the Interior for extensive questioning by a special unit.

16. The implementation of the law relating to the video recording of the investigation of suspects, requiring investigation rooms and specialized training for police personnel, was being carried out gradually because of budget constraints. Once those measures were in place, Israel intended to apply the law to all police interrogations. Currently, however, the law was not being applied to interrogations conducted by the Israel Security Agency or those involving national security. By law, the exception regarding security-related suspects was valid only until December 2010.

17. Regarding the question on safeguarding minors' rights, under international law and in the absence of absolute impossibility, the Israel Defence Forces commander in Judea and Samaria respected the Jordanian legislation previously in force in the area under his authority. The age of criminal liability was set at 9 years, but children under 12 could not be considered to be criminally liable unless it had been proven that they had been capable of understanding the wrongful nature of their acts at the time they had been committed. However, the relevant ordinances issued by the IDF commander further enhanced the protection provided to children under the age of 12 by setting the age of criminal liability at 12, in line with Israeli criminal law. The military courts, as well as the prosecutorial and legislative systems, ensured the protection of human rights, including the right to due process, for all accused persons, minors and adults alike. In addition, specific protection measures were implemented in cases involving minors: the person concerned benefited systematically from the help of an attorney, the authority to postpone legal counselling was not exercised and the detention period prior to a court hearing was minimized. In addition, the arrest of a minor was subject to the preliminary approval of the Chief of Military Prosecution in Judea and Samaria. Owing to the limitations prescribed in the applicable military order, the level of sentencing of minors in the West was similar, de facto, to sentencing implemented in Israel by the domestic courts. The military courts system in the West Bank did not provide designated courts for minors similar to those in Israel. However, military justices were instructed to take into consideration a defendant's age, particularly when determining the sentence. Several measures had recently been taken to promote children's rights: a draft bill on the establishment of a youth court had been prepared and was currently under consideration.

18. The competent jurisdiction for dealing with minors in the West Bank was the military courts. All the military justices were professional jurists with independent

discretion and were subject only to the rule of law. They were appointed in a similar manner to judges in the Israeli civilian judicial system. Interrogations of minors suspected of security-related offences were conducted by specially trained interrogators and in accordance with the law. According to Israel Prisons Service rules, minors were held in separate facilities from adults. Solitary confinement was never used to punish them or coerce them into making a confession. Solitary confinement was used only in exceptional cases, when minors threatened to harm themselves or others, and Israel Prisons Service procedures were followed strictly. Minors had the right to meet with representatives of the International Committee of the Red Cross (ICRC), medical staff and others. Like adults, they were entitled to receive medical care at all times, without restriction. In accordance with the rules of the prison service, minors, like all other detainees, could receive visits from family members. As at April 2009, 378 minors had been held for security-related offences in Israel Prisons Service detention facilities. In addition, 10 minors, all of them males aged over 17, had been placed in administrative detention. If the age of majority was 16 in the West Bank and 18 in Israel, that was because the age of majority was defined in domestic law in the West Bank, and Israel did not apply Israeli law in those territories. However, anyone between the ages of 16 and 18 held in detention in Israel was considered to be a minor for detention purposes.

19. The reason why the internal investigation into the alleged offences relating to Operation “Cast Lead” had been conducted by IDF investigators was that they had been professionally, morally and legally bound to examine thoroughly a certain number of complaints relating to the conduct of the operation. Several operational investigations had been carried out in the context of that examination in line with standard procedures in the IDF and in western armies. Those investigations had been conducted by five expert investigators with the rank of colonel who had had no direct involvement in the incidents in question. The investigation of the allegations was still under way. According to established practice, a summary of each investigation and the relevant allegations would be submitted to the Military Advocate-General who was empowered to decide whether additional checks were needed or whether there was sufficient evidence to open another investigation. The Advocate-General’s decision was entirely independent and subject only to the law. Given the significance of those cases, the findings of the investigations, the allegations and the opinions of the Military Advocate-General would be presented for review to the Attorney-General, who would decide whether to open a criminal investigation.

20. With regard to the events of October 2000 in which 13 Arab citizens had been killed by the police in wide-scale rioting, the report explained in detail that there had been insufficient evidence to indict the police officers concerned. In two of those cases, an autopsy might have made it possible to gather additional evidence, but the families had been opposed to the idea, bringing the investigation to a standstill. A Committee member had asked why autopsies had not been performed prior to burial of the bodies and what procedure was followed when an autopsy was required to determine the cause of death. He explained that the police must obtain judicial approval to proceed with an autopsy. The judge examined the need for an autopsy and sought the family’s opinion on the matter. In the two aforementioned cases, the families had been opposed to the autopsy from the start and their wishes had been respected. Some years later, in an effort to move the investigation forward, the Department of Investigation of Police Officers had submitted a request to the judge to exhume one of the bodies for the purpose of conducting an autopsy. Given the family’s strong opposition, the judge had recommended that the request be withdrawn, and the State had decided not to go against the family’s wishes.

21. A member of the Committee had asked why no police officers had been indicted when 34 Arab Israelis had been killed during riots following the events of October 2000. That information had come from a non-governmental organization and, according to the preliminary investigation carried out by police officers from the department of



investigations, only 15 cases had been reported, all of which had been investigated. One case had been closed because the perpetrator had not been identified and three cases had been closed for lack of evidence. In five cases criminal proceedings for manslaughter had been instituted in district courts, and in six, the accused had been acquitted because it had been found that the use of force had been justified on grounds of self-defence.

22. Statistics concerning investigations on the use of force against detainees requested by a member of the Committee could be found in the written responses to the list of issues (response to question 29), except for the statistics relating to the Warden Investigations Unit in charge of examining complaints against the Israel Prisons Service. In 2008, 226 cases relating to the illegal use of force had been opened; 218 of those cases were related to assault and 8 to threats. In 16 cases, it had been recommended that criminal action be brought against the wardens; the others had been transferred to the State Attorney's Office. In 2009, as at 30 April, 54 cases relating to the illegal use of force had been opened; in 8, legal proceedings concerning acts of violence had been recommended. In many cases detainees filed a complaint containing a false account of the facts to take revenge on the wardens.

23. Concerning the *Yisascharov* case in which the Supreme Court had set a relative exclusion rule whereby evidence gathered illegally and in a manner that infringed upon the rights of suspects could be excluded, it had been asked on what grounds the judge decided whether or not to exclude unlawfully obtained evidence. Was there oversight over the judge's discretion? The Supreme Court had ruled on guidelines on judges' discretion, as described in the written response to question 31 of the list of issues. Further information was available on the Israeli courts administration website where the Supreme Court verdict had been posted. The discretion of judges could be subject to review by the Court of Appeals and, in some cases, by the Supreme Court. The judges were independent and not subject to influence over the exercise of their discretion. A member of the Committee had asked why the exclusion rule had been relative, whereas article 15 of the Convention provided that any statement obtained as a result of torture could not be invoked as evidence in any proceedings. The exclusion rule set by the Supreme Court was much broader in scope than the rule set forth in article 15 of the Convention, since it dealt with evidence obtained as a result of torture as well as of any flaws found during the investigation. Hence, in the *Yisascharov* case, the evidence had been excluded not because of an allegation of torture or ill-treatment, but because the person concerned had not been informed of his or her right to legal counsel. Given the wide scope of that rule, it had not been possible to make it an absolute rule.

24. With regard to the visits of family members to detainees, the delegation did not know the exact number of visit requests that had been refused for security reasons, but it could state with certainty that there were few.

25. Settlers suspected of having committed criminal offences against Palestinians came under the jurisdiction of Israel. Hundreds of investigations were opened each year and indictments were filed when there was sufficient evidence. The Israeli Government, which attached great importance to that issue, had set up an inter-ministerial group to coordinate the activities of the IDF, the police, the State Attorney's Office and the Israel Security Agency. That group dealt in particular with issues relating to the legal sanctioning of disorderly conduct and the resolution of land disputes, which required constant attention. The police and the IDF were even more vigilant during tense periods of the year, such as the olive picking season, and in the handling of sensitive cases, particularly land disputes. Recent police data indicated that a considerable number of police files had been opened in the West Bank, signifying genuine law enforcement in that district. In 2007, the police had initiated 491 investigations concerning disturbances of peace by Israelis in the West Bank, and 57 indictments had been filed against 73 persons, compared with 525 such

investigations and 106 indictments against 140 persons in 2008. Those figures clearly demonstrated an increase in law enforcement against Israelis and gave the lie to the allegation that Israel did not apply the law to Israeli settlers. Administrative penalties had also been imposed on Israeli settlers. Thus, Israelis who endangered the lives and security of Palestinians could be subject to orders limiting their movement or forbidding entry to the West Bank. In exceptional cases, administrative detention orders could be issued against Israeli settlers if there was sufficient evidence. Such measures were generally subject to supervision by the military courts. The establishment of settlements on private Palestinian property was prohibited and many illegal outposts that had been established on such property in recent years had been evacuated, with fierce clashes between the security forces and the settlers in several cases.

26. A member of the Committee had asked a question about the terrible violence that was sometimes inflicted by Palestinians upon other Palestinians, in particular by Hamas terrorists upon Fatah militants. As was explained in detail in Israel's written response to question 10 in the list of issues, Israel had no jurisdiction when such violence took place in the Gaza Strip. The number of complaints filed against IDF soldiers and the number of indictments and sentences handed down were provided in the written response to question 29 in the list of issues.

27. With regard to the Supreme Court's decision relating to Facility 1391, it had concluded that allegations of ill-treatment had been duly examined and did not warrant criminal proceedings. In fact, the Israel Security Agency had not used that facility for many years and no one had been held there since September 2006.

28. The allegation made by a non-governmental organization that article 8 of the Basic Law on human dignity and liberty could be interpreted as derogating from the total prohibition of torture was groundless. That law made no derogation from the prohibition. No physicians were present during interrogations by the Israel Security Agency, which did not employ physicians at interrogation sites. However, all suspects were examined by a physician of the Israel Prisons Service or of the police in the interrogation facility's infirmary. A report by a non-governmental organization which claimed that buildings and medical staff had been attacked had been received recently and was being carefully studied.

29. A reply had already been provided concerning the definition of torture in Israeli domestic law, but it was very difficult to define other cruel, inhuman or degrading treatment or punishment for which no definition was given, even in the Convention. Whatever the case, all forms of ill-treatment were prohibited by Israeli law.

30. ICRC representatives were authorized to make visits to all Palestinians held in custody by the State of Israel and all detainees from countries lacking diplomatic representation in Israel. Unfortunately, that was not the case for the Israeli soldier Gilad Shalit who had been held in incommunicado detention for over 1,000 days by Hamas and whose fate was still unknown.

31. Several non-governmental organizations, including the ICRC, took part in training activities relating to the Convention.

32. All State officials were subject to the jurisdiction of Israeli criminal courts, before which they had to answer for any offences committed by them on or outside of Israeli territory. Therefore, all State officials who had committed torture, in any location, would be tried and sentenced by an Israeli court. In areas where the law of armed conflict was enforced, effective mechanisms were implemented to ensure respect for the prohibition of torture and other forms of ill-treatment. In other words, while Israel was of the view that the Convention was not applicable as such in areas outside its national territory, it did not at all dispute the fact that the law of armed conflict, which was the applicable law in the Gaza Strip, strictly forbade the use of torture or other ill-treatment.

33. **Mr. Mariño Menéndez** (Country Rapporteur) thanked the Israeli delegation for its detailed and candid answers, particularly with respect to the situation in the West Bank and the Gaza Strip. He recalled that the International Court of Justice in the Hague had held that universal human rights principles should also be applied in the occupied territories, that according to international jurists the prohibition of torture was a peremptory rule of international law and that the International Criminal Tribunal for the former Yugoslavia had held that there could be no derogation from or suspension of that rule, even in situations of emergency, war, conflict or others. The State of Israel was thus bound to enforce that rule in all areas under its jurisdiction, including in the occupied territories. Under the Vienna Convention on the Law of Treaties, treaties were open to interpretation; nevertheless, States remained bound to apply all rules of international law. Yet Israel had clearly indicated that the Convention was not applicable outside the territories under its jurisdiction. That issue would merit extensive debate.

34. The Committee wished to know whether the Israeli security services had access to a manual specifying those interrogation techniques that were authorized and those that were prohibited. It might be necessary to draft an interrogation protocol stipulating the rules to be followed imperatively.

35. With regard to the *defence of necessity* which, according to a Supreme Court ruling, could be invoked in specific situations, and in those alone, the Committee had received many communications from non-governmental organizations and other sources reporting the use of particularly harsh interrogation methods in practice; the authorities always put forward the argument that interrogations were “necessary”, creating the impression that the necessity of having recourse to such methods had been established by tacit agreement.

36. Concerning land ownership, he wished to know if an up-to-date cadastral map of property in East Jerusalem and the occupied territories was available to the public. In principle, the settlements were located on public land that had been expropriated by the Israeli authorities. Yet farmers sometimes had no official title to property. Under Roman law, possession gave title. Once possession was certified, for example by witnesses, title could be recorded, providing a legal guarantee.

37. Persons attempting to “infiltrate” Israel from Egypt were sent back or deported promptly, without an assessment of their situation. While Egypt was considered to be a safe country of refuge, in particular by the Office of the United Nations High Commissioner for Refugees (UNHCR), reliable sources indicated that citizens of Eritrea and Sudan who had been turned away or expelled by Israel had later been sent back to their country of origin by the Egyptian authorities, where they had been subjected to ill-treatment. Yet the principle of non-refoulement prohibited sending persons to a country that might in turn return them to another country where they ran the risk of becoming victims of torture or other inhuman treatment. The Committee wished to know whether Israel was aware of the possibility that Egypt might return persons turned away or expelled by Israel to other countries where they could be subjected to ill-treatment. Cooperation could be established with UNHCR to determine what happened to individuals in those situations.

38. Information had been provided on the number of Gaza residents who had gone to Israel for medical care during the recent military operation of the Israeli armed forces; yet according to other sources, those people had encountered great difficulty in entering Israel. While it was true that security concerns were paramount in that type of situation, it appeared that unjustified obstacles had been put in place. The tactic requiring an authorization to enter Israel to receive medical attention seemed to have been used to obtain a change in behaviour, which constituted a form of inhuman treatment.

39. **Ms. Gaer** (Alternate Country Rapporteur) wondered whether Israel had any observations to make about the position of the United Nations Office of Legal Affairs

concerning the principle of *lex specialis*, a position that was diametrically opposed to that of Israel. The Office had outlined its position on the issue to the Committee in 2001 and at the time, Israel had not made any comments.

40. She noted with interest that none of the complaints filed against the Israel Security Agency had been dismissed by virtue of article 18 of Law No. 5762–2002 relating to the Agency and therefore wished to know why so few complaints, even if some were unfounded, gave rise to an investigation.

41. The State party had indicated that persons detained under the law of 2002 on the detention of unlawful combatants were usually brought before a judge before the expiration of the prescribed 14-day deadline. If that was the case, did Israel plan to shorten that period, which would be more in line with acceptable international rules on the matter and would therefore be welcomed?

42. Referring to article 3 of the Convention, she expressed surprise at the use of the term “infiltrators” to describe persons that the Committee would consider to be migrants or asylum-seekers. She wished to know whether Israel had attempted to monitor the situation of people who had been deported as of August 2007 under its coordinated return policy or to obtain information on the treatment they had received. It was also surprising that, in its reply to the questions relating to article 3 of the Convention, the State party had referred solely to the Convention relating to the Status of Refugees, not to the Convention against Torture. The two instruments were different in that the latter focused primarily on the risk of a person who had been deported, returned or extradited being subjected to torture. It would be helpful to know whether the officials who made decisions concerning migrants, asylum-seekers or refugees were trained in the definition of torture, whether they drew a distinction between the two aforementioned conventions and whether they were aware of the obligations incumbent upon the State party under the Convention against Torture. It appeared that border post officials or inexperienced soldiers assessed the situation of persons sent back or deported.

43. The delegation had indicated that all Palestinians between the ages of 16 and 18 years who were taken to Israel for incarceration were considered to be minors. It was important to know whether those persons were placed in separate facilities, exclusively reserved for minors, and how many minors arrested or detained in the West Bank had been incarcerated in Israel.

44. The information according to which the number of Arab Israelis killed after the October 2000 demonstrations in Israel had been 34 did not emanate from a non-governmental organization, but rather from an Israeli civil rights defence association that had not submitted information to the Committee. She wished to know what sentences had been handed down in the five cases that had led to charges of manslaughter. According to some sources, indictments for that type of act had been rare and sentences had been very light. The same association also indicated that the police officers who had been implicated in the cases and examined by the Orr Commission had kept their posts and had not been punished. Was that information correct?

45. According to the delegation, the number of cases in which Palestinians had been denied a permit to enter Israel to visit imprisoned family members had been relatively low. She asked how many and what percentage of visit requests had been refused.

46. **Mr. Gallegos Chiriboga**, referring to information contained in the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, dated 21 January 2008, and information provided by Amnesty International and other organizations, wished to know the number of people whose physical or mental disabilities had been caused by the violence in the occupied Palestinian territories. The

issues of hospital services in a conflict situation and medical care provided should be fully explored.

47. **Mr. Wang Xuexian**, recalling Mr. Mariño Menéndez's question about the Israeli settlements, said that the State party had been very cautious in its replies, utilizing the term "private Palestinian land", and thus distinguishing private from public land, which called for comments.

48. A television station had reported that, according to a United Nations source, some 1,300 people, including women, children and elderly persons, had lost their lives during Operation "Cast Lead". If verified, that information pointed to the excessive use of force. According to the State party, the Israeli armed forces had exercised great caution during their operations and any damage caused had been accidental. The United Nations had set up a commission to investigate the attacks that had targeted its facilities in Gaza. In its report, the commission criticized Israel for its negligence and imprudence. Attacks had been launched against schools and hospitals, including the Al-Wafa hospital. Despite the presence of armed Hamas elements within the hospital, it was not legitimate to target a hospital and it was questionable whether all necessary precautions had been taken.

49. **Ms. Belmir** said that it appeared that the Committee and the State party were not following the same line of reasoning. The Committee had only reiterated what had already been pointed out by other committees, namely that Israel had obligations that it must meet. Persons living in the occupied territories had not materialized out of nowhere; they were engaged in an endless struggle to obtain a legal status they did not enjoy. Those territories lay within the State party's jurisdiction and the Committee had stated in its general comment No. 2 relating to the implementation of article 2 of the Convention that the States parties were bound to respect the prohibition of torture in all territories under their jurisdiction.

50. **Ms. Kleopas** reiterated her request to the State party to explain why it had resumed punitive house demolition after abandoning that practice. When she had taken the floor earlier, she had also referred to the consequences of Israel's blockade of Gaza, and in particular, to the report of 21 January 2008 of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, indicating that those consequences could be equated with ill-treatment (paragraph 17 and following paragraphs).

51. According to the State party, 600 complaints had been filed but in 4 cases only had the evidence been sufficient to warrant disciplinary measures. That raised a question as to whether the evidence admitted had comprised mere testimonies or medical reports. In that regard, it was important to know at what point persons under arrest were examined by a doctor and where the medical files were kept. Since the State party was often accused of practising torture, it should ensure that detainees were examined by a physician before and after the interrogations. That would provide the State party with tangible proof to refute any accusations made against it.

52. With regard to the question of settlements, the State party had stated that numerous authorized outposts set up on private Palestinian land had been evacuated in 2008, meaning that others had not. The Committee also had access to information indicating that 40 per cent of the land on which there were Israeli settlements belonged to Palestinians, and the remainder, to the State. She asked how the State had acquired that land and whether it had been confiscated.

53. **Ms. Sveaass** said that the delegation had emphasized that the Penal Code formally prohibited the use of force, violence and torture, and had given clear information concerning the complaints under investigation. She wondered why, under those conditions, the same accusations concerning reprehensible interrogation methods had come up time after time, year after year. The State party would benefit from further strengthening its

independent monitoring mechanisms, for example, by involving non-governmental organizations to a greater extent. To ensure that detainees did not suffer ill-treatment, they should be examined at every stage of detention by an outside physician according to procedures laid down in the torture detection manuals. The participation of physicians in interrogations had long been a subject of debate; even recently, Israeli physicians had not been opposed to a certain degree of pressure being exerted on suspects. It was therefore reassuring to hear that physicians were not present during interrogations.

54. It was her understanding that the Knesset was currently considering a bill requiring enlightened consent to be obtained from the subjects of any medical or scientific experiments, the terms of which would also apply to members of the Israel Defence Forces. Heretofore that requirement had been limited to civilians. Had that law been adopted?

55. **Ms. Sveaass** said that she had taken note of the Israeli delegation's replies concerning the contents of the report by the five independent experts on their fact-finding mission to the Gaza Strip following the military operations of December 2008 and January 2009. However, she requested further information on the shortage of medical equipment and the problems related to access to hospitals and she wished to learn the opinion of the delegation concerning the reported use of white phosphorous bombs and anti-personnel mines. Finally, she asked the delegation to indicate whether the work of Israeli specialists in post-traumatic disorders and the rehabilitation of victims of armed conflict, such as Z. Solomon and A. Shalev, was used to help in trauma recovery, including for persons subjected to violence in detention.

56. **Mr. Kovalev** asked the delegation to comment on article 277 of the Penal Code, according to which a public official who used force to obtain confessions or information from a suspect or who threatened to use force for that purpose — in other words, who had committed or threatened to commit acts of torture — was liable to only three years' imprisonment.

57. **The Chairperson** said he believed that he had understood from the oral replies of the delegation that the Israel Security Agency (ISA) had its own investigation unit but that its findings could be appealed to the Supreme Court. He asked the delegation to specify whether the Supreme Court could rule only on points of law or whether it could reconsider the merits of a case when dealing with an appeal of that kind and whether the compensation awarded to victims of torture by the civil courts were in all cases made *ex gratia*. Lastly, he recalled that all penal provisions without exception must be applicable in all circumstances and to all citizens. Regarding the question of access by personnel of the International Committee of the Red Cross (ICRC) to Palestinian prisoners, if the Committee had had to examine the report of a State party in which the ICRC had been refused access to Israeli prisoners, it would have questioned the delegation of the State concerned in the same manner.

58. **Mr. Nitzan** (Israel) said that the Attorney General and the prosecution service were completely independent from the ISA and that complaints against members of that body were dealt with according to the same procedure as complaints against members of the police, the army or individuals. Therefore, there was no prosecution system specific to the ISA. The Supreme Court could entertain an appeal against findings given in human rights cases against members of the ISA and it could review both the proceedings and the merits of a case. On the question of the compensation awarded to victims of torture by the civil courts, only some of the payments had been awarded *ex gratia*.

59. Criminal legislation in Israel was applicable in all circumstances in the occupied territories and any Israeli who committed a criminal offence (including rape, theft and murder) in those territories would be subject to criminal prosecution, whether or not that person was a public official. An Israeli national suspected of having committed acts of

torture abroad would be prosecuted under the Israeli justice system if he had committed those offences in the performance of his duties; however, an Israeli national who committed acts of torture abroad but who had acted in an individual capacity and not as a public official of the State of Israel should be prosecuted and tried by the authorities in the country in which those violations had taken place.

60. He agreed with Mr. Mariño Menéndez that the Convention was applicable in theory in the occupied territories and he did not deny that the prohibition of torture applied equally to those territories and the territory of Israel. The Attorney General had drawn up specific guidelines on interrogation methods to be used by investigators of the Israel Security Agency, in which the use of torture and ill-treatment was explicitly proscribed.

61. Work was in hand to record land in the occupied territories in the land register but, in view of the scale of the task, only half of it had been recorded thus far. In any event, anyone who believed they had land ownership rights in respect of land in the areas concerned could make a claim before the courts and, if they could prove that their claim was well-founded, the judge would order the land to be evacuated. He acknowledged that the outposts set up on land belonging to Palestinians were not legitimate and that they should be removed. They had not yet all been evacuated as the task would take some time.

62. He rejected categorically the allegation that 40 per cent of settlements had been built on land owned by private individuals; he could not quote exact figures but maintained that the percentage was in reality much lower. Indeed, currently in Israel, 87 per cent of land belonged to the State and, in the West Bank, a comparable proportion of land had belonged to the State of Jordan until 1967. Therefore, very few settlements had been built on privately owned land. Furthermore, in a landmark decision, a court had declared that it was illegal to confiscate private property in order to build settlements and had held that privately owned land could only be confiscated for compelling reasons of national security.

63. With regard to the risks of torture to which individuals who were deported to Egypt might be exposed, he stated that the principal danger for those concerned was not that they would be tortured in that State but that they would subsequently be transferred to Sudan, where they might be subjected to torture. For that reason, the Government of Israel had entered into an agreement with President Mubarak under the terms of which Egypt undertook not to send deportees from Israel back to Sudan if there were reasons to believe that they could be tortured there.

64. In reply to the concerns expressed about the situation of persons who should have had access to medical care during Operation "Cast Lead" and who had not been authorized to enter Israel to receive treatment, he recalled that, in time of war, civilian freedom of movement was inevitably restricted and emphasized that the Government of Israel had done everything possible to ensure that Palestinian civilians could travel to Israel for treatment, especially during the final stages of the military operation. Contrary to what had been reported, thousands of people had been able to travel to Israel to receive medical care. On that subject, he wondered whether many other States would let their enemies cross the border to receive treatment in their countries as Israel had done, and he emphasized that there was no difference in the treatment provided to Palestinian patients and Israeli patients in Israeli hospitals, and that the doctors frequently did not even know whether an Arabic-speaking patient was an Israeli Arab or a Palestinian from the occupied territories.

65. The length of time unlawful combatants could be held without charge was 14 days according to the Law of 2002 on unlawful combatants, as the legislator had envisaged situations of real war where it was quite conceivable that hundreds of combatants could be taken prisoner at one time; in which case it would be impossible to bring them all before a judge within 48 hours or even within 96 hours. It was to take account of that possibility that such a lengthy time limit had been established, although in practice, and in line with a

Supreme Court decision requiring suspects to be brought before a judge as soon as possible, presumed enemy combatants were brought before a judge before expiry of the 14-day legal time limit. For all of those reasons, the Government of Israel did not see the need to modify the provisions concerned.

66. Replying to questions relating to minors in detention, he stated that minors between the ages of 16 and 18 were held separately from adults and that the majority of Palestinian minors deprived of their liberty were held in detention centres in Israel where detention conditions were exactly the same for them as for Israeli minors. Concerning the allegation that police officers implicated in murders committed during the suppression of riots in 2000 had kept their jobs, a commission of inquiry, the Orr Commission, had investigated the incident and had made recommendations as to how each of the public officials involved in the affair should be dealt with, including the Chief of Police and the Minister of the Interior. Those recommendations had been approved and then implemented by the Government, which had dismissed one high-ranking official and barred another from promotion for a period of five years.

67. On the question of whether excessive force had been used during Operation “Cast Lead”, he recalled that the civilian populations of Sderot and Ashkelon had endured daily rocket attacks launched by Hamas — an average of 1,000 attacks per year — and that the Government of Israel had had a duty to respond to them. The fact that Hamas terrorists had hidden among the civilian population and fired from private homes had made the military operation extremely difficult. The Israeli army had voluntarily refrained from bombing the hospital in Gaza, even though it had known that the leader of Hamas was hiding in a shelter underneath the hospital. As for the bombing of the school run by the United Nations and the 42 people said to have been killed as a result, the United Nations itself had published a communiqué confirming that the missiles had not fallen on the school, but close by and that, in reality, that there had been substantially fewer than 42 deaths. In fact, most of those killed had been Hamas terrorists.

68. Contrary to the assertion by a member of the Committee, persons living in the West Bank had a legal status: their status was that of persons living in an occupied territory and, on that basis, they were entitled to protection under the provisions of article 4 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). Concerning the demolition of homes in East Jerusalem, since 2005 no further houses had been demolished as a punitive measure in that part of the city. Nevertheless, following the terrible series of attacks committed in recent months and in accordance with a decision of the Supreme Court, which had declared that the demolition of dwellings was legal in exceptional cases, the authorities had demolished the home of a terrorist as a deterrent; nevertheless, only the part of the house in which he had lived had been destroyed.

69. Finally, it was mandatory for any person questioned by Israel Security Agency (ISA) investigators to be examined by an independent doctor, and the medical file of the person concerned was kept indefinitely. If he so requested, a suspect could be examined by a doctor after his interrogation; it was mandatory for his request to be granted. The medical certificate issued after the examination could be submitted as evidence in legal proceedings and carried more weight than oral statements. The 600 complaints filed against members of the ISA had been spread out over a period of nine years and none of the complainants had submitted medical evidence in support of their allegations. Concerning the so-called leaks from doctors who were reported to have denounced certain illegal ISA practices, it was difficult to see how a doctor could have witnessed such practices given that the ISA did not have any doctors in its ranks. In any event, if a doctor were to have any knowledge of torture or ill-treatment, it would be his professional duty to do everything in his power to prevent such acts. Finally, concerning the penalty provided for in article 277 of the Penal Code, which had been described as too weak, he said that a person who tortured a suspect



in order to obtain a confession would be prosecuted not only under article 277 of the Penal Code but also under articles of the Penal Code dealing with violations of physical integrity according to the circumstances of the case and that the perpetrator would be liable to a prison sentence of at least 15 years.

70. **Mr. Yaar** (Israel), referring to the question of family visit requests made by relatives of Palestinians detained in Israel, said that, out of 75,000 requests, only 1,000 had been rejected.

71. In conclusion, he welcomed the frank and constructive dialogue which had taken place between the delegation and the Committee and the possibility it had afforded his country to analyse its own policies on combating torture. Improvements in that area could only benefit both Israeli citizens and other peoples. Although it was deeply involved in fighting terrorism, Israel spared no effort to remain faithful to its ideals and endeavoured to strike a balance between respect for human rights and the need for security measures. The Government of Israel would not fail to examine closely the concluding observations to be drafted by the Committee following consideration of the periodic report, and it would continue to cooperate with civil society and non-governmental organizations in order to contribute to the achievement of human rights.

72. **The Chairperson** thanked the delegation of Israel for its detailed replies and announced that the Committee had completed its consideration of the fourth periodic report of Israel.

73. *The Israeli delegation withdrew.*

*The meeting rose at 5.45 p.m.*