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Human Rights Committee

Ninety-ninth session

Geneva, 12–30 July 2010

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Israel

1. The Human Rights Committee considered the third periodic report of Israel (CCPR/C/ISR/3) at its 2717th, 2718th and 2719th meetings, held on 13 and 14 July 2010 (CCPR/C/SR.2717, 2718 and 2719). At its 2740th meeting, held on 29 July 2010 (CCPR/C/SR.2740), it adopted the following concluding observations.

A. Introduction

2. The Committee notes the submission of the State party's third periodic report, which provides detailed information on measures adopted by the State party to further the implementation of the Covenant. While also noting the written replies to the list of issues (CCPR/C/ISR/Q/3/Add.1), it regrets their late submission. It also regrets the absence of disaggregated data and of any substantive answer to questions 3, 11, 12, 16, 18, 19, 20, 24 and 28. The Committee appreciates the dialogue with the delegation, the answers provided orally during the consideration of the report and the additional written submissions.

3. The Committee notes and recognizes Israel's security concerns in the context of the present conflict. At the same time, it stresses the need to observe and guarantee human rights, in accordance with the provisions of the Covenant.

B. Positive aspects

4. The Committee welcomes the following legislative and other measures, as well as ratifications of international human rights treaties:

(a) Investigation and Testimony Procedures Law (Adaptation to Persons with Mental or Psychological Disability) 5765-2005 (the "Investigation and Testimony Procedures Law (Adaptation to Persons with Mental or Psychological Disability)");

(b) Anti Trafficking Law (Legislative Amendments) 5766-2006, (the “Anti Trafficking Law”);

(c) Gender Implications of Legislation Law (Legislative Amendments) 5768-2007, which imposes the duty to systematically examine gender implications of any primary and secondary legislation before it is enacted by the Knesset;

(d) The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2008);

(e) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2005).

C. Principal subjects of concern and recommendations

5. The Committee reiterates its view, previously noted in paragraph 11 of its concluding observations on the State party’s second periodic report (CCPR/CO/78/ISR) and paragraph 10 of its concluding observations on the State party’s initial report (CCPR/C/79/Add.93), that the applicability of the regime of international humanitarian law during an armed conflict, as well as in a situation of occupation, does not preclude the application of the Covenant, except by operation of article 4, whereby certain provisions may be derogated from in a time of national emergency. The Committee’s position has been endorsed, unanimously, by the International Court of Justice in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion, I.C.J. Reports 2004, p. 136), according to which the Covenant is applicable in respect of acts done by a State in exercise of its jurisdiction outside its own territory. Furthermore, the applicability of the regime of international humanitarian law does not preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of their authorities or agents outside their own territories, including in occupied territories. The Committee therefore reiterates and underscores that, contrary to the State party’s position, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the occupied territories, including in the Gaza Strip, for all conduct by the State party’s authorities or agents in those territories affecting the enjoyment of rights enshrined in the Covenant (arts. 2 and 40).

The State party should ensure the full application of the Covenant in Israel as well as in the occupied territories, including the West Bank, East Jerusalem, the Gaza Strip and the occupied Syrian Golan Heights. In accordance with the Committee’s general comment No. 31, the State party should ensure that all persons under its jurisdiction and effective control are afforded the full enjoyment of the rights enshrined in the Covenant.

6. While noting that the principle of non-discrimination is incorporated in several pieces of domestic legislation and that it has been upheld by the State party’s Supreme Court, the Committee is concerned that the State party’s Basic Law: Human Dignity and Liberty (1992), which serves as Israel’s bill of rights does not contain a general provision for equality and non-discrimination. It is further concerned at long delays for deciding cases invoking the principle of non-discrimination, as well as their implementation (arts. 2, 14 and 26).

The State party should amend its Basic Laws and other legislation to include the principle of non-discrimination and ensure that allegations of discrimination brought before its domestic courts are promptly addressed and implemented.

7. In reference to paragraph 12 of its previous concluding observations (CCPR/CO/78/ISR) and to paragraph 11 of its concluding observations on the State party's initial report (CCPR/C/79/Add.93), the Committee reiterates its concern at the State party's prolonged process of review regarding the need to maintain the state of emergency it declared in 1948. While noting the State party's declaration under article 4 with regard to derogations from article 9, the Committee, nonetheless, expresses concern at the frequent and extensive use of administrative detention, including for children, under Military Order No. 1591, as well as the Emergency Powers (Detention) Law. Administrative detention infringes on detainees' rights to a fair trial, including their right to be informed promptly and in detail, in a language which they understand, of the nature and cause of the charge against them, to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing, to be tried in their presence, and to defend themselves in person or through legal assistance of their own choosing (arts. 4, 14 and 24).

Referring to its general comment No. 29, the Committee reiterates that measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature and be limited to the extent strictly required. Therefore, the State party should:

(a) Complete as soon as possible its review of legislation governing the state of emergency. Pending the completion of its review, the State party should carefully re-examine the modalities governing the renewal of the state of emergency;

(b) Refrain from using administrative detention, in particular for children, and ensure that detainees' rights to fair trial are upheld at all times; and

(c) Grant administrative detainees prompt access to counsel of their own choosing, inform them immediately, in a language which they can understand, of the charges against them, provide them with information to prepare their defence, bring them promptly before a judge and try them in their own or their counsel's presence.

8. The Committee notes with concern the State party's military blockade of the Gaza Strip, in force since June 2007. While recognizing the State party's recent ease of the blockade with regard to the entry of civilian goods by land, the Committee nevertheless is concerned at the effects of the blockade on the civilian population in the Gaza Strip, including restrictions to their freedom of movement, some of which led to deaths of patients in need of urgent medical care, as well as restrictions on the access to sufficient drinking water and adequate sanitation. The Committee also notes with concern the use of force when boarding vessels carrying humanitarian aid for the Gaza Strip, which resulted in the death of nine individuals and the wounding of several others. While noting the preliminary findings of the State party's investigation into the incident, the Committee is concerned at the absence of independence of the commission of inquiry and the prohibition to question the officials of the State party's armed forces involved in the incident (arts. 1, 6 and 12).

The State party should lift its military blockade of the Gaza Strip, insofar as it adversely affects the civilian population. The State party should invite an independent, international fact-finding mission to establish the circumstances of the boarding of the flotilla, including its compatibility with the Covenant.

9. Referring to the findings and recommendations of the United Nations Fact Finding Mission on the Gaza Conflict dated 5 November 2009, the Committee notes that the State party's armed forces have opened few investigations into incidents involving alleged violations of international humanitarian law and human rights law during its military

offensive in the Gaza Strip (27 December 2008–18 January 2009, “Operation Cast Lead”), which led to one conviction and two indictments. It notes with concern, however, that the majority of the investigations was carried out on the basis of confidential operational debriefings. While noting that the findings led to the elaboration of new guidelines and orders on the protection of the civilian population and property and the assignment of humanitarian affairs officers to each military unit, the Committee nevertheless regrets that the State party has not yet conducted independent and credible investigations into the serious violations of international human rights law, such as direct targeting of civilians and civilian objects, including infrastructure such as waste water plants and sewage facilities, use of civilians as “human shields”, refusal of evacuation of wounded, firing live bullets during demonstrations against the military operation and detention in degrading conditions (arts. 6 and 7).

The State party should launch, in addition to the investigations already conducted, credible, independent investigations into the serious violations of international human rights law, such as violations of the right to life, prohibition of torture, right to humane treatment of all persons in custody and right to freedom of expression. All decision makers, be they military and civilian officials, should be investigated and where relevant prosecuted and sanctioned.

10. The Committee notes the State party’s affirmation that utmost consideration is given to the principles of necessity and proportionality during its conduct of military operations and in response to terrorist threats and attacks. Nevertheless, the Committee reiterates its concern, previously expressed in paragraph 15 of its concluding observations (CCPR/CO/78/ISR), that, since 2003, the State party’s armed forces have targeted and extrajudicially executed 184 individuals in the Gaza Strip, resulting in the collateral unintended death of 155 additional individuals, this despite the State party’s Supreme Court decision of 2006, according to which a stringent proportionality test must be applied and other safeguards respected when targeting individuals for their participation in terrorist activity (art. 6).

The State party should end its practice of extrajudicial executions of individuals suspected of involvement in terrorist activities. The State party should ensure that all its agents uphold the principle of proportionality in their responses to terrorist threats and activities. It should further ensure that utmost care is used to protect every civilian’s right to life, including civilians in the Gaza Strip. The State party should exhaust all measures to arrest and detain a person suspected of involvement in terrorist activities before resorting to the use of deadly force. The State party should further establish an independent body to promptly and thoroughly investigate complaints about disproportionate use of force.

11. The Committee notes with concern that the crime of torture, as defined in article 1 of the Convention against Torture and in conformity with article 7, of the Covenant, still has not been incorporated into the State party’s legislation. The Committee notes the Supreme Court decision on the exclusion of unlawfully obtained evidence, but is nevertheless concerned at consistent allegations of the use of torture and cruel, inhuman or degrading treatment, in particular against Palestinian detainees suspected of security-related offences. It is also concerned at allegations of complicity or acquiescence of medical personnel with the interrogators. The Committee further expresses its concern at information that all complaints of torture are either denied factually, or justified under the “defence of necessity” as “ticking time bomb” cases. The Committee observes that the prohibition of torture, cruel, inhuman or degrading treatment in article 7 is absolute and according to article 4, paragraph 2 no derogations thereof are allowed, even in times of public emergency (arts. 4 and 7).

The State party should incorporate into its legislation the crime of torture, as defined in article 1 of the Convention against Torture and in conformity with article 7, of the Covenant. It further reiterates its previous recommendation (CCPR/CO/78/ISR, para. 18), that the State party should completely remove “necessity” as a possible justification for the crime of torture. The State party should further examine all allegations of torture, cruel, inhuman or degrading treatment pursuant to the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

12. While noting that the conduct of law enforcement officials is subject to review and oversight, the Committee expresses concern at the independence of these oversight mechanisms and at the fact that despite numerous allegations of torture, cruel, inhuman or degrading treatment and excessive use of force, only few cases result in criminal investigations and sentences. Regarding the independence of the Ministry of Justice Police Investigation Unit (“Mahash”), the Committee notes that investigators employed by the police but working on a temporary basis in the unit are being replaced by civilians, but is concerned that they still outnumber their civilian colleagues. The Committee is further concerned that the Inspector for complaints against the Israeli Security Agency (ISA) interrogators is a staff member of the ISA and that, despite supervision by the Ministry of Justice and examination of the Inspector’s decisions by the Attorney General and the State Attorney, no complaint has been criminally investigated in the reporting period. It is also concerned at the provision in the General Security Service Law, which exempts ISA personnel from criminal or civil responsibility for any act or omission performed in good faith and reasonably by the official in the scope of his/her functions. Moreover, the Committee notes with concern that allegations against members of the Israel Defence Forces are being investigated by the Investigative Military Police, a unit subordinate to the Head of General Staff of the armed forces (arts. 6 and 7).

The State party should ensure that all alleged cases of torture, cruel, inhuman or degrading treatment and disproportionate use of force by law enforcement officials, including police, personnel of the security service and the armed forces, are thoroughly and promptly investigated by an authority independent of any of these organs, that those found guilty are punished with sentences that are commensurate with the gravity of the offence, and that compensation is provided to the victims or their families.

13. The Committee notes that the State party is currently reviewing the definition of terrorism and other related issues. It regrets, however, the absence of information on whether the Committee’s recommendation in paragraph 14 of its previous concluding observations (CCPR/CO/78/ISR) has been taken into account. While welcoming the State party’s Supreme Court judgement according to which preventing a detainee suspected of security-related offences from meeting a lawyer constitutes a grave harm to his/her rights, nevertheless, the Committee is particularly concerned at the State party’s intention to include, in its revised anti-terror legislation, provisions based on the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law which allow for important delays before trial, before providing access to a lawyer, as well as for decisions on the extension of detention to be taken, in exceptional circumstances, in the absence of a suspect. Moreover, in certain circumstances, a judge can decide not to disclose evidence to the detainee owing to security concerns. Furthermore, it is concerned at the continued application and declaration of conformity with Basic Laws by the State party’s Supreme Court, of the Detention of Unlawful Combatants Law as amended in 2008. The Committee also regrets the absence of information on the possibility for a detainee to challenge any decision of postponement (arts. 2, 14).

The Committee reiterates its previous recommendation that measures designed to counter acts of terrorism, whether adopted in connection with Security Council resolution 1373 (2001) or in the context of the ongoing armed conflict, should be in full conformity with the Covenant. The State party should ensure that:

(a) Definitions of terrorism and security suspects are precise and limited to countering of terrorism and the maintenance of national security and are in full conformity with the Covenant;

(b) All legislation, regulations and military orders comply with the requirements of the principle of legality with regard to accessibility, equality, precision and non-retroactivity;

(c) Any person arrested or detained on a criminal charge, including persons suspected of security-related offences, has immediate access to a lawyer, for example by introducing a regime of Special Advocates with access to all evidence, including classified evidence, as well as immediate access to a judge;

(d) A decision of postponement in accessing a lawyer or a judge can be challenged before a court; and

(e) Repeal the Detention of Unlawful Combatants Law as amended in 2008.

14. The Committee notes with concern the issuance by the General Officer Commander of the Israeli Occupation Force of military orders No. 1649 “Order regarding security provisions” and No. 1650 “Order regarding prevention of infiltration”, amending military order 329 from 1969 and widening the definition of “illegal infiltration” to persons who do not lawfully hold a permit issued by the military commander. While noting the assurances by the State party’s delegation that the amended military orders would not affect any residents of the West Bank or anybody holding a permit issued by the Palestinian National Authority, the Committee is concerned at information that, with the exception of 2007–2008, Israel has not processed any applications for renewal of West Bank visitor permits of foreign nationals, including spouses of West Bank residents, and applications for granting of permanent residency status, which therefore leaves many long-term residents, including foreigners, without permit. It is further concerned at information that persons in the West Bank holding residency permits with addresses in the Gaza Strip are forcibly returned, including those with entry permits into the West Bank. The Committee is also concerned that under the amended military orders, deportations may occur without judicial review if a person is apprehended less than 72 hours after entry into the territory. While noting the creation of a committee for the examination of deportation orders, the Committee is concerned that it lacks independence and judicial authority, and that review of a deportation order is not mandatory (arts. 7, 12 and 23).

The State party should carry out a thorough review of the status of all long-term residents in the West Bank and ensure that they are issued a valid permit and registered in the population registers. The State party should refrain from expelling long-term residents of the West Bank to the Gaza Strip based on their former addresses in the Gaza Strip. In light of the State party’s obligations under article 7, the Committee recommends that the State party review military orders No. 1649 and 1650 to ensure that any person subject to a deportation order is heard and may appeal the order to an independent, judicial authority.

15. Recalling its previous recommendation in paragraph 21 of the preceding concluding observations (CCPR/CO/78/ISR), the Committee reiterates its concern at the Citizenship and Entry into Israel Law (Temporary Provision), as amended in 2005 and 2007, remains in force and has been declared constitutional by the Supreme Court. The Law suspends the

possibility, with certain rare exceptions, of family reunification between an Israeli citizen and a person residing in the West Bank, East Jerusalem or the Gaza Strip, thus adversely affecting the lives of many families (arts. 17, 23 and 24).

The Committee reiterates that the Citizenship and Entry into Israel Law (Temporary provision) should be revoked and that the State party should review its policy with a view to facilitating family reunifications of all citizens and permanent residents without discrimination.

16. Referring to paragraph 19 of the Committee's previous concluding observations (CCPR/CO/78/ISR), the Advisory Opinion of the International Court of Justice, as well as the State party's Supreme Court ruling of 2005, the Committee expresses concern at the restrictions to freedom of movement imposed on Palestinians, in particular persons residing in the "Seam Zone" between the wall and Israel, the frequent denial of agricultural permits to access the land on the other side of the wall or to visit relatives, as well as irregular opening hours of the agricultural gates. Moreover, the Committee is concerned that despite the State party's temporary freeze on the construction of settlements in the West Bank, East Jerusalem and the occupied Syrian Golan Heights, the settler population continues to increase (arts. 1, 12 and 23).

The State party should comply with its previous concluding observations and take into account the Advisory Opinion of the International Court of Justice and stop the construction of a "Seam Zone" by means of a wall, seriously impeding on the right to freedom of movement, as well as to family life. It should cease all construction of settlements in the occupied territories.

17. The Committee is concerned that, despite its previous recommendation in paragraph 16 of its concluding observations (CCPR/CO/78/ISR), the State party continues its practice of demolishing property and homes of families whose members were or are suspected of involvement in terrorist activities, without considering other less intrusive measures. This practice was exacerbated disproportionately during the State party's military intervention in the Gaza Strip ("Operation Cast Lead"), leading to the destruction of housing, as well as civilian infrastructure, such as hospitals, schools, farms, water plants etc. Moreover, the Committee is concerned at frequent administrative demolition of property, homes, as well as schools in the West Bank and East Jerusalem due to the absence of construction permits, their issuance being frequently denied to Palestinians. Furthermore, it is concerned at discriminatory municipal planning systems, in particular in "area C" of the West Bank, as well as East Jerusalem, disproportionately favouring the Jewish population of these areas (arts. 7, 17, 23 and 26).

The Committee reiterates that the State party should cease its practice of collective punitive home and property demolitions. The State party should further review its housing policy and issuance of construction permits with a view to implementing the principle of non-discrimination regarding minorities, in particular Palestinians and to increasing construction on a legal basis for minorities of the West Bank and East Jerusalem. It should further ensure that municipal planning systems are not discriminatory.

18. The Committee is concerned at water shortages affecting disproportionately the Palestinian population of the West Bank, due to prevention of construction and maintenance of water and sanitation infrastructure, as well as the prohibition of construction of wells. The Committee is further concerned at allegations of pollution by sewage water of Palestinian land, including from settlements (arts. 6 and 26).

The State party should ensure that all residents of the West Bank have equal access to water, such as in accordance with the World Health Organization quality and quantity standards. The State party should allow the construction of water and sanitation infrastructure, as well as wells. Furthermore, the State party should address the issue of sewage and waste water in the occupied territories emanating from Israel.

19. The Committee notes that certain exemptions from obligatory military service have been granted on the grounds of conscientious objection. It is concerned at the independence of the “Committee for Granting Exemptions from Defence Service for Reasons of Conscience”, which is composed, with the exception of one civilian, of officials of the armed forces. It notes that persons, whose conscientious objection was not accepted by the Committee, may be repeatedly imprisoned for their refusal to serve in the armed forces (arts. 14 and 18).

The “Committee for Granting Exemptions from Defence Service for Reasons of Conscience” should be made fully independent, persons submitting applications on the grounds of conscientious objections should be heard and have the right to appeal the Committee’s decision. Repeated imprisonment for refusal to serve in the armed forces may constitute a violation of the principle of *ne bis in idem*, and should therefore be ceased.

20. While noting the State party’s argument regarding security concerns, the Committee is nevertheless concerned at frequent disproportionate restrictions for non-Jews to access places of worship. It further notes with concern that the regulations containing a list of holy sites only include Jewish holy places (arts. 12, 18 and 26).

The State party should increase its efforts to protect the rights of religious minorities and ensure equal and non-discriminatory access to places of worship. Furthermore, the State party should pursue its plan to include also holy sites of religious minorities in its list.

21. The Committee notes with concern that the State party’s Supreme Court upheld the ban on family visits to Palestinian prisoners in Israel, including for children. In addition, the Committee is also concerned that detainees suspected of security-related offences are not allowed to maintain telephone contact with their families (arts. 23 and 24).

The State party should reinstate the family visit programme supported by the International Committee of the Red Cross for prisoners from the Gaza Strip. It should enhance prisoners’ suspected of security-related offences right to maintain contact with their families, including by telephone.

22. The Committee is concerned at a number of differences in the juvenile justice system between Israeli legislation and under military orders in the West Bank. Under military orders, children of the age of 16 are tried as adults, even if the crime was committed when they were below the age of 16. Interrogations of children in the West Bank are conducted in the absence of parents or close relatives and a lawyer and they are not audio-visually recorded. The Committee is further concerned at allegations that children detained under military orders are not promptly informed, in a language they understand, of the charges against them and that they may be detained up to eight days before being brought before a military judge. It is also very concerned at allegations of torture, cruel, inhuman or degrading treatment of juvenile offenders (arts. 7, 14 and 24).

The State party should:

- (a) Ensure that children are not tried as adults;**

(b) Refrain from holding criminal proceedings against children in military courts, ensure that children are only detained as a measure of last resort and for the shortest possible time period, guarantee that proceedings involving children are audio-visually recorded and that trials are conducted in a prompt and impartial manner, in accordance with fair trial standards;

(c) Inform parents or close relatives where the child is detained and provide the child with prompt access to free and independent legal assistance of its own choosing;

(d) Ensure that reports of torture or cruel, inhuman or degrading treatment of detained children are investigated promptly by an independent body.

23. While noting the State party's efforts to facilitate access to the public administration for its Arab minority, the Committee expresses concern at the continued limited use of the Arabic language by the State party's authorities, including absence of translations of leading cases of its Supreme Court into Arabic. It is also concerned at the process of transliteration of road signs from Hebrew into Arabic, as well as frequent unavailability of road signs in Arabic. Moreover, the Committee is concerned at severe limitations on the right to cultural contact with other Arab communities based on the ban to travel to an "enemy State", the majority of which are Arab States (arts. 26 and 27).

The State party should continue its efforts to make its public administration fully accessible to all linguistic minorities and that full accessibility in all official languages is provided, including Arabic. The State party should further consider translating cases of its Supreme Court into Arabic. It should also ensure that all road signs are available in Arabic and should reconsider its transliteration process from Hebrew into Arabic. Furthermore, the State party should increase its efforts to guarantee the right of minorities to enjoy their own culture, including by travelling abroad.

24. The Committee notes that school enrolment rates increased and infant mortality declined among the Bedouin population. Nevertheless, the Committee is concerned at allegations of forced evictions of the Bedouin population based on the Public Land Law (Expulsion of Invaders) of 1981 as amended in 2005, and of inadequate consideration of traditional needs of the population in the State party's planning efforts for the development of the Negev, in particular the fact that agriculture is part of the livelihood and tradition of the Bedouin population. The Committee is further concerned at difficulties of access to health structures, education, water and electricity for the Bedouin population living in towns, which the State party has not recognized (arts. 26 and 27).

In its planning efforts in the Negev area, the State party should respect the Bedouin population's right to their ancestral land and their traditional livelihood based on agriculture. The State party should further guarantee the Bedouin population's access to health structures, education, water and electricity, irrespective of their whereabouts on the territory of the State party.

25. The Committee requests the State party to publish its third periodic report, the replies to the list of issues and these concluding observations, making them widely available to the general public and to the judicial, legislative and administrative authorities. The Committee also requests the State party to make the third periodic report, the replies to the list of issues and these concluding observations available to civil society and to the non-governmental organizations operating in the State party. In addition to Hebrew, the Committee recommends that the report, the replies to the list of issues and the concluding observations be translated into Arabic and other minority languages spoken in Israel.

26. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the recommendations in paragraphs 8, 11, 22 and 24 above.

27. The Committee requests the State party to include in its fourth periodic report, due to be submitted by 30 July 2013, specific, up-to-date information on follow-up action taken on all the recommendations made and on the implementation of the Covenant as a whole in the entirety of the State party's territory, including the occupied territories. The Committee also requests that the fourth periodic report be prepared in consultation with civil society organizations operating in the State party.
