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Concluding observations of the Human Rights Committee : Israel. 05/08/2003.

CCPR/CO/78/ISR . (Concluding Observations/Comments)

Convention Abbreviation: CCPR

UNEDITED VERSION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

SECOND PERIODIC REPORT OF ISRAEL

Israel

1. The Committee considered the second periodic report of Israel (CCPR/C/ISR/2001/2) at its 2116th, 2117th and 2118th meetings (see CCPR/C/SR.2116-2118), held on 24 and 25 July 2003, and adopted the following concluding observations at its 2128-2130th meeting (CCPR/C/SR.2128-2130), held on 4 and 5 August 2003.

A. Introduction

2. The Committee welcomes the second periodic report submitted by Israel and expresses its appreciation for the frank and constructive dialogue with a competent delegation. It welcomes the detailed answers, both oral and written, that were provided to its written questions.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee has noted and recognizes the serious security concerns of Israel in the context of the present conflict, as well as the difficult human rights issues related to the resurgence of suicide bombings which have targeted Israel's civilian population since the beginning of the second Intifada in September 2000.

C. Positive factors

4. The Committee welcomes the positive measures and legislation adopted by the State party to improve the status of women in Israeli society, with a view to promoting gender equality. In this context, it welcomes in particular the amendment to the Equal Rights for Women Law (2000), the Employment of Women Law (Amendment 19), the adoption of the Sexual Harassment Law (1998), the Prevention of Stalking Law (2001), the Rights of Victims of an Offence Law (2001), and other legislative measures designed to combat domestic violence. It further welcomes the establishment of the Authority for the Advancement of the Status of Women but would appreciate up to date further information on its responsibilities and functioning in practice.

5. The Committee welcomes the measures taken by the State party to combat trafficking in women for the purpose of prostitution, in particular the prohibition on trafficking law enacted in July 2000 and the prosecution of traffickers since that date.

6. The Committee notes, the efforts to increase the level of education for the Arab, Druze and Bedouin communities in Israel. In particular it notes the implementation of the Special Education Law and the Compulsory Education Law Amendment (2000).

7. The Committee also notes the State party's information about the significant measures taken for the development of the Arab sector, in particular through the 2001-2004 Development Plan.

8. The Committee welcomes legislation adopted by the State party in respect of persons with disabilities, in particular the enactment of the Equal Rights for People with Disabilities Law (1998). It expresses the hope that those areas where the rights of disabled people, acknowledged by the

delegation as not being respected and requiring further improvements, will be addressed as soon as possible.

9 The Committee notes the efforts by the State party to provide better conditions for migrant workers. It welcomes the amendment to the Foreign Workers Law and the increase in penalties imposed on employers for non-compliance with the law. It also welcomes free access to labour courts for migrant workers and the provision of information to them about their rights in several foreign languages.

10. The Committee welcomes the Supreme Court's judgment of September 1999, which invalidated the former governmental guidelines governing the use of "moderate physical pressure" during interrogations and held that the Israeli Security Agency (ISA) has no authority under Israeli law to use physical force during interrogations.

D. Principal subjects of concern and recommendations

11. The Committee has noted the State party's position that the Covenant does not apply beyond its own territory, notably in the West Bank and in Gaza, especially as long as there is a situation of armed conflict in these areas. The Committee reiterates the view, previously spelled out in paragraph 10 of its concluding observations on Israel's initial report (CCPR/C/79/Add.93 of 18 August 1998), that the applicability of the regime of international humanitarian law during an armed conflict does not preclude the application of the Covenant, including article 4 which covers situations of public emergency which threaten the life of the nation. Nor does the applicability of the regime of international humanitarian law preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of their authorities outside their own territories, including in Occupied Territories. The Committee therefore reiterates that, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by its authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of state responsibility of Israel under the principles of public international law.

The State party should reconsider its position and to include in its third periodic report all relevant information regarding the application of the Covenant in the Occupied Territories resulting from its activities therein.

12. While welcoming the State party's decision to review the need to maintain the declared State of Emergency and to prolong it on a yearly rather than an indefinite basis, the Committee remains concerned about the sweeping nature of measures during the State of Emergency, which appear to derogate from Covenant provisions other than article 9, derogation from which was notified by the State party upon ratification. In the Committee's opinion, these derogations extend beyond what would be permissible under those provisions of the Covenant which allow for the limitation of rights (e.g. articles 12(3), 19(3), and 21(3)). As to measures derogating from article 9 itself, the Committee is concerned about the frequent use of various forms of administrative detention particularly for Palestinians from the Occupied Territories entailing restrictions on access to counsel and to full reasons of the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively than what in the Committee's view is permissible pursuant to article 4. In this regard, the Committee refers to its earlier concluding observations on Israel and to its General Comment No. 29.

The State party should complete as soon as possible the review initiated by the Ministry of Justice of legislation governing States of Emergency. In this regard and pending the adoption of appropriate legislation, the State party should review the modalities governing the renewal of the State of Emergency and specify the provisions of the Covenant it seeks to derogate from, to the extent strictly required by the exigencies of the situation (article 4).

13. The Committee is concerned that the use of prolonged detention without any access to a lawyer or other persons of the outside world violates articles the Covenant (articles 7, 9, 10 and 14, paragraph 3 (b) of the Covenant).

The State party should ensure that no one is held for more than 48 hours without access to a lawyer.

14. The Committee is concerned about the vagueness of definitions in Israeli counter-terrorism legislation and regulations which, although their application is subject to judicial review, appear to run counter in several aspects to the principle of legality due to the ambiguous wording of the provisions and the use of several evidentiary presumptions to the detriment of the defendant. This has adverse consequences on the rights protected under article 15 of the Covenant, which is non-derogable under article 4, paragraph 2, of the Covenant.

The State party should ensure 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, are in full conformity with the Covenant.

15. The Committee is concerned by what the State party calls 'targeted killings' of those identified by the State party as suspected terrorists in the Occupied Territories. This practice would appear to be used at least in part as a deterrent or punishment, thus raising issues under article 6. While noting the delegation's observations about respect for the principle of proportionality in any response to terrorist activities against civilians and its affirmation that only persons taking direct part in hostilities have been targeted, the Committee remains concerned about the nature and extent of the IDF's responses to Palestinian terrorist attacks.

The State party should not use 'targeted killings' as a deterrent or punishment. The State party should ensure that the utmost consideration be given to the principle of proportionality in all its responses to terrorist threats and activities. State policy in this respect should be spelled out clearly in guidelines to regional military commanders, and complaints about disproportionate use of force should be investigated promptly by an independent body. All measures to arrest a person suspected of being in the course of committing acts of terror must be exhausted in order to avoid resorting to the use of deadly force.

16. While fully acknowledging the threat posed by terrorist activities in the Occupied Territories, the Committee deplores what it considers to be the partly punitive nature of the demolition of property and homes in the Occupied Territories. In the Committee's opinion, the demolition of property and houses of families, some of whose members were or are suspected of involvement in terrorist activities or suicide bombings, contravenes the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (art. 17), freedom to choose one's residence (art. 12), equality of all persons before the law and equal protection of the law (art. 26), and not to be subject to torture or cruel and inhuman treatment (art 7) .

The State party should cease forthwith the above practice.

17. The Committee is concerned about the IDF practice, in the Occupied Territories, of using local residents as "volunteers" or shields during military operations, especially in order to search houses and to help secure the surrender of those identified by the State party as terrorist suspects.

The State party should discontinue this practice, which often results in the arbitrary deprivation of life (article 6).

18. The Committee is concerned that interrogation techniques incompatible with article 7 of the Covenant are still reported to be frequently resorted to, and the "necessity defence" argument, which is not recognized under the Covenant, is often invoked and retained as a justification for ISA actions in the course of investigations.

The State party should review its recourse to the "necessity defence" argument and provide detailed information to the Committee in its next periodic report, including detailed statistics covering the period since the examination of the initial report. It should ensure that alleged instances of ill-treatment

and torture are vigorously investigated by genuinely independent mechanisms, and that those responsible for such actions are prosecuted. The State party should provide statistics from 2000 to the present day on how many complaints have been made to the Attorney-General, how many have been turned down as unsubstantiated, how many have been turned down because of the defence of necessity applied and how many have been up-held, and with what consequences for the perpetrators.

19. While again acknowledging the seriousness of the State party's security concerns that have prompted recent restrictions on the right to freedom of movement, for example through imposition of curfews or establishment of an inordinate number of roadblocks, the Committee is concerned that the construction of the 'Seam Zone', by means of a fence and, in part, of a wall, beyond the Green Line, imposes additional and unjustifiably severe restrictions on the right to freedom of movement of, in particular, Palestinians within the Occupied Territories. The 'Seam Zone' has adverse repercussions on nearly all walks of Palestinian life; in particular, the wide ranging restrictions on freedom of movement disrupt access to health care, including emergency medical services, and access to water. The Committee considers that these restrictions are incompatible with article 12 of the Covenant.

The State party should respect the right to freedom of movement guaranteed under article 12. The construction of a "Seam Zone" within the Occupied Territories should be stopped.

20. The Committee is concerned by public pronouncements made by several prominent Israeli personalities in relation to Arabs, which may constitute advocacy of racial and religious hatred that constitutes incitement to discrimination, hostility and violence.

The State party should take necessary action to investigate, prosecute and punish such acts in order to ensure respect for article 20, paragraph 2, of the Covenant.

21. The Committee is concerned about Israel's temporary suspension order of May 2002, enacted into law as the Nationality and Entry into Israel Law (Temporary Order) on 31 July 2003, which suspends for a renewable one-year period, the possibility of family reunification, subject to limited and subjective exceptions especially in the cases of marriages between an Israeli citizen and a person residing in the West Bank and in Gaza. The Committee notes with concern that the suspension order of May 2002 has already adversely affected thousands of families and marriages.

The State party should revoke the Nationality and Entry into Israel Law (Temporary Order) of 31 July 2003, which raises serious issues under articles 17, 23 and 26 of the Covenant. The State party should reconsider its policy with a view to facilitating family reunification of all citizens and permanent residents. It should provide detailed statistics on this issue, covering the period since the examination of the initial report.

22. The Committee is concerned about the criteria in the 1952 Law on Citizenship enabling the revocation of Israeli citizenship, especially in its application to Israeli Arabs. The Committee is concerned about the compatibility with the Covenant, in particular article 24 of the Covenant of the revocation of citizenship of Israeli citizens.

The State party should ensure that any changes to citizenship legislation are in conformity with article 24 of the Covenant.

23. Notwithstanding the observations in paragraphs 4 and 7 above, the Committee notes with concern that, the percentage of Arab Israelis in the civil service and public sector remains very low and that progress towards improving their participation, especially that of Arab Israeli women, has been slow (Articles 3, 25 and 26).

The State party should adopt targeted measures with a view to improving participation of Arab Israeli women in the public sector and accelerating progress towards equality.

24. While noting the Supreme Court's judgment of 30 December 2002 in the case of eight reservists of the Israeli Defence Forces (Judgment HC 7622/02), the Committee remains concerned about the law, criteria and generally adverse determination, in practice, by military judicial officers in individual cases of conscientious objection (article 18).

The State party should review the law, criteria and practice governing the determination of conscientious objection, to ensure compliance with article 18 of the Covenant.

25. The State party is invited to disseminate widely the text of its second periodic report, the replies provided to the Committee's list of issues and the present concluding observations.

26. In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party is invited to provide, within one year, relevant information on the implementation of the Committee's recommendations in paragraphs 13, 15, 16, 18 and 21 above. The State party's third periodic report should be submitted by 1 August 2007.