



**Adalah Briefing Note: Palestinian Prisoners' Rights
April 2010**

**Contacts: Rina Rosenberg, International Advocacy Director (rina@adalah.org) and
Abeer Baker, Adalah Attorney (abeer@adalah.org)**

This short briefing note is being presented to the EU Parliament Sub-Committee on Human Rights in advance of its meeting on 10 May 2010 on the question of Palestinian prisoners in Israeli prisons and in particular Palestinian children. The note reviews four new **Israeli Supreme Court decisions** and recent concluding observations, concerns and recommendations of three **UN human rights treaty bodies** - the Committee Against Torture, the Human Rights Committee, and the Committee on the Rights of the Child - and **the UN Fact-Finding Mission on the Gaza Conflict ("The Goldstone Mission")**.

As of March 2010, **6631 Palestinians were imprisoned in Israel**, of which 8 were detained under the Illegal Combatants Law (7 of whom are from Gaza) and 237 were administratively detained. 35 were women; 337 were child prisoners, including 39 under the age of 16; and 773 were from Gaza.¹

I. Israeli Supreme Court Decisions

(1) Supreme Court upholds ban on Gaza family visits

Adalah, Al Mezan Center for Human Rights in Gaza, and the Association for Palestinian Prisoners filed a petition to the Supreme Court in 6/08 demanding that Palestinians from Gaza be permitted to visit their relatives incarcerated in Israeli prisons following a total ban imposed in 6/07.² At a hearing held in 10/08, the state argued that it is not obliged to allow residents of Gaza to enter its borders as Gaza is considered an "enemy entity". In 12/09, the Court ruled that family members from Gaza have no right to visit their relatives incarcerated in Israeli prisons.³ The court reasoned that family visits are not a basic humanitarian need; that there are no rights of "aliens" (Palestinians from Gaza) to enter Israel; that the government's decision stems from security reasons, which the court is reluctant to interfere

¹ See Addameer, "Quarterly Update on Palestinian Prisoners," April 2010 and B'Tselem, http://www.btselem.org/English/Statistics/Detainees_and_Prisoners.asp

² HCJ 5399/08, *Adalah et al. v. The Defense Minister et al.* (decision delivered 9 December 2009).

³ See Adalah press release: http://www.adalah.org/eng/pressreleases/pr.php?file=09_12_10; Grietje Baars, "Palestinian Political Prisoners: Unfair Game for Israel's Persecution," *Adalah's Newsletter*, Volume 68, January 2010, available at:

http://www.adalah.org/newsletter/eng/jan10/Grietje_Article_Prison_Visits_English_FINAL.pdf

See also: Supreme Court decision (English translation):

<http://www.adalah.org/features/prisoners/Isr%20Sup%20Ct%20decision%20No%20family%20visits%20Gaza%20prisoners%20English.doc>

in; that the policy of no entry was not set forth to target prisoners directly, although they are affected indirectly by a legitimate government decision; and that the need for family visits, including the families' provision of basic supplies, is unnecessary since prisoners may obtain these items through the prison canteen. Since 11/09 Israel has banned the transfer of money to Palestinian prisoners unless a family member appears before the bank. Thus, families from Gaza are unable to transfer money to their relatives since they are banned from entering Israel. According to the International Committee of the Red Cross (ICRC), "Palestinian families must be allowed to visit their next of kin in Israeli prisons. This is a humanitarian issue of utmost importance."⁴

(2) Supreme Court strikes down provision of harsh criminal security law that allowed the holding of detention hearings in the absence of detainees; other articles of the law which severely restrict detainees' due process rights remain in force

In 2/10, an expanded nine-justice panel of the Supreme Court struck down article 5 of the Criminal Procedures (Detainees Suspected of Security Offences) (Temporary Order) Law – 2006, which stipulated that “security suspects” could have their pre-trial detention extended in their absence and thus without their knowledge and without the opportunity to defend themselves.⁵ The ruling was issued on an appeal submitted by the Israeli Public Defenders' Office in 2007 on behalf of a detainee following a decision by the lower courts to extend his detention in his absence. Three human rights organizations – Adalah, the Association for Civil Rights in Israel (ACRI) and the Public Committee Against Torture in Israel (PCATI) – also submitted a petition in 2008 demanding that the court annul the law.⁶ In addition to the provision noted above, the organizations also challenged the severe due process rights violations of other provisions of the law: (i) Article 3 - allowing persons suspected of committing security offenses, in certain circumstances, to be detained for 96 hours without being brought before a judge; (ii) Article 4.1 - for the extension of their pre-trial detention up to 20 days; and (iii) Article 4.2 - for a suspect to be detained for 35 days without indictment (paragraph 4.2). Furthermore, these articles are usually implemented in tandem with article 35 to the Detention Law, which allows a detainee suspected of committing security offenses to be prevented from meeting a lawyer for 21 days. However, in a rare step, the three human rights organizations withdrew the case in 3/09 following an illegal and unprecedented decision by the court to hear General Security Service (GSS) secret evidence in this constitutional law case. Since the petition was withdrawn in protest, the constitutionality of these provisions was not subject to judicial review.

(3) Supreme Court permits children under the age of eight to hug their incarcerated parent, at least once every two months

In 2004, Adalah filed a petition to the Supreme Court on behalf of 10 children of Palestinian prisoners classified by the Israel Prison Service (IPS) as “security prisoners”, the Prisoner Association and in Adalah's own name, against the IPS demanding permission for the

⁴ ICRC, *Families should be allowed to resume visits to relatives detained in Israel*, 10 June 2009, available at: <http://www.icrc.org/web/eng/siteeng0.nsf/html/gaza-news-100609>

⁵ See Adalah's press release: http://www.adalah.org/eng/pressreleases/pr.php?file=23_02_10 and Supreme Court decision (Hebrew): <http://elyon1.court.gov.il/files/07/230/088/p25/07088230.p25.htm>

⁶ HCJ 8823/07, *Anonymous v. The State of Israel* (decision delivered 11 February 2010)

prisoners to embrace their young children during family visits.⁷ These visits are conducted with a glass wall separating the prisoners from their children and other family members. Until 2002, the IPS permitted children under the age of ten to hug their parents during the final 15 minutes of the visit. However, the IPS began limiting this contact, after an alleged attempt by a child to smuggle a proscribed object to his imprisoned father. In 2008, the Supreme Court issued an *order nisi* on the case, ordering the IPS to explain its “no contact” policy.⁸ At the time 9,000 Palestinian prisoners were incarcerated in Israeli prisons. The IPS replied that on the basis of the security threat and practical difficulties in arranging such visits, they were prohibited. In subsequent hearings, the Court sought to establish the acceptable age criterion for children to have contact with their detained parent. The IPS claimed that children under the age of six was appropriate, while the petitioners argued that based on the prisoners’ right to family contact, the age should be under ten years. In 3/10, the Supreme Court accepted the petition and confirmed that children under the age of eight are allowed to embrace their incarcerated parent, at least once every two months.⁹ The court noted, however, that a prisoner’s individual circumstances need to be taken in consideration, which in certain cases may prohibit visits.

(4) Supreme Court re-affirms legality of detaining Palestinian prisoners from OPT in Israel

In 3/09, Yesh Din, the Association for Civil Rights in Israel (ACRI) and HaMoked filed a petition to the Supreme Court against the commander of the Israeli army in the West Bank to refrain from holding Palestinian detainees and prisoners from the OPT in prisons in Israel and to halt holding detention proceedings in Israel.¹⁰ The petitioners argued that the current policy violates the Fourth Geneva Convention, in particular Articles 76, 66, and 49, which forbid an occupying power from transferring and holding prisoners from the occupied territory in the occupying state. In addition, the petitioners claimed that the policy violates international law and the prisoner’s right to counsel and due process, as well as the right to have contact with their families. In the *Sajadiya* case¹¹ which dealt with the same issue, the court ruled that the Israeli incarceration policy is legal, relying on 1967 emergency regulations for the West Bank and Gaza Strip.¹² These regulations and their subsequent amendments are part of Israeli domestic law and are, therefore, legally binding and superior to international law. In the present case, the court ruled that the *Sajadiya* decision is still valid, and declared that there has been no change in the legal status of the Fourth Geneva Convention and its application in Israel.¹³ The court also ruled that holding military court hearings in Israel is legal, relying on the *Wajia* decision.¹⁴

⁷ H CJ 7585/04, *Hakeem Kana'ni, et al. v. The Israel Prison Service* (decision delivered 13 April 2010).

⁸ See Adalah press release, http://www.adalah.org/eng/pressreleases/pr.php?file=08_07_17

⁹ See Supreme Court decision (Hebrew): <http://elyon2.court.gov.il/files/04/850/075/R32/04075850.R32.htm>

¹⁰ H CJ 2690/09, *Yesh Din et al. v. Commander of the IDF Forces in the West Bank et al.* (decision delivered 25 March 2010). See HaMoked’s press release and petition (English):

http://www.hamoked.org.il/itemsb_en.asp?cat_id=6&sub_cat_id=20§ion01_id=1

¹¹ H CJ 253/88, *Sajadiya v. Minister of Defense*, PD 42(3)801.

¹² Article 6(b) the Emergency Regulations (Judea and the Gaza Strip - Adjudication of Offences and Legal Aid) - 1967.

¹³ Supreme Court decision (Hebrew): <http://elyon2.court.gov.il/files/09/900/026/N05/09026900.N05.htm>

¹⁴ H CJ 6504/95, *Wajia Muhammad et al. v. State of Israel*.

II. UN Human Rights Treaty Bodies

(1) **UN Committee against Torture (CAT) - Concluding Observations on Israel, 2009**¹⁵

The concluding observations raise a number of key concerns about Palestinian prisoners and detainees in Israeli detention facilities. Several Palestinian and Israeli human rights organizations, including Adalah, submitted NGO reports to the CAT.¹⁶

- ***Safeguards against torture and ill-treatment***

- “The Committee calls upon Israel to examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer.” (para. 15)
- “The Committee recommends that, as a matter of priority, the State party extend the legal requirement of video recording of interviews of detainees accused of security offences as a further means to prevent torture and ill-treatment.” (para. 16)
- “The State party should prohibit by law that any statement which is established to have been made as a result of torture cannot be invoked as evidence [...]” (para. 25)

- ***Administrative detention and solitary confinement***

- “While the State party explains that this practice [of administrative detention] is used only exceptionally [...] the Committee regrets that the number of persons held in administrative detention has risen significantly since its last periodic report.” (para. 17)
- “The State party should amend current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration.” (para. 18)

- ***Juvenile Detainees***

- “[Israeli] Military Order 132 [applicable to West Bank child detainees] should be amended to ensure that the definition of a minor is set at the age of 18, in line with international standards.” (para. 27)
- “[The Committee] expresses deep concern at reports [...] that Palestinian minors are detained and interrogated in the absence of a lawyer or family member and allegedly subjected to acts in breach of the convention in order to obtain confessions.” (para. 27)
- “The State party should ensure that juvenile detainees are afforded basic safeguards [...] from the outset of their detention.” (para. 28)

(2) **UN Human Rights Committee (which monitors the International Covenant on Civil and Political Rights (ICCPR)) – List of Issues for Israel, 2009**¹⁷

In its “List of Issues”, the HRC posed numerous questions to Israel concerning the rights of Palestinian prisoners and detainees in Israeli detention facilities.¹⁸ Israel will be reviewed by the HRC in July 2010. The Committee asked:

¹⁵ See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/431/65/PDF/G0943165.pdf?OpenElement>

¹⁶ See United Against Torture (UAT) Coalition, *Alternative Report for Consideration Regarding Israel’s Fourth Periodic Report to the UN Committee Against Torture (CAT)*, September 2008 and *Supplementary Reports for Consideration Regarding Israel’s Fourth Periodic Report to the UN Committee Against Torture (CAT)*, April 2009: <http://www2.ohchr.org/english/bodies/cat/cats42.htm>

¹⁷ See <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR-C-ISR-Q3.doc>

¹⁸ See Adalah, Al Mezan Center for Human Rights in Gaza and Physicians for Human Rights-Israel, *Suggested Questions for the UN HRC Considering Israel’s Compliance with the ICCPR*, August 2009: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/AdalahAlMezanPHR_Israel97.doc

- ***The prohibition on torture and investigations into allegations of torture***
 - Whether Israel will fully incorporate the prohibition on torture into its domestic law (para. 13), and whether the “necessity defense” exception may still arise where physical pressure is used during the interrogation of terrorist suspects (para. 14).
 - Whether any complaints of torture or cruel, inhumane or degrading treatment against the interrogators of "ticking bombs" have been referred to the Attorney General’s office for the filing of criminal charges. Also for detailed information about the number of complaints and their outcomes, and the number of persons classified as “ticking bombs” (para.14). Israel to elaborate on measures taken to ensure that no acts of torture or ill-treatment are committed by ISA interrogators (para. 15).

- ***Recording of interrogations of security suspects***
 - What measures are in place to guard against torture during the interrogations of security suspects, as well as against the extraction of false confessions? (para. 13)

- ***The Incarceration of Unlawful Combatants Law - 2002***
 - Israel for disaggregated data by sex, age, nationality and ethnic origin on persons detained as “unlawful combatants” since 2003, whether and when Israel may repeal the Incarceration of Unlawful Combatants Law, as recommended by human rights international experts (para.8).

- ***Administrative detention***
 - About the frequent use of administrative detention, in particular of Palestinians in the OPT, and for detailed information on the rules and modalities governing it, both in Israel and in the OPT, including the use of secret evidence (para. 16).

- ***Prolonged detention without access to a lawyer***
 - According to Section 3 of the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law – 2006, access to a lawyer can be denied for up to 21 days, and held for up to 96 hours before being brought before a judge. What measures Israel may take to bring the law in conformity with the Covenant and the Committee’s previous recommendations regarding both access to a lawyer and to a judge (para. 17).

- ***Solitary confinement and Incommunicado detention***
 - Please provide detailed information on the conditions of solitary confinement; and disaggregated data on the persons held in solitary confinement and grounds for their detention and solitary confinement (para. 17). What safeguards are in place to ensure that the persons held in prolonged incommunicado detention are not subjected to torture (para. 17).

- ***Family visits to Palestinian prisoners held in Israel***
 - What measures are taken by Israel to reinstate the possibility of family visits for Palestinian prisoners from Gaza? (para. 27)

(3) Committee on the Rights of the Child (CRC) – Concluding Observations on Israel’s Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, January 2010¹⁹

The concluding observations raise a number of key concerns about Palestinian child prisoners and detainees in Israeli detention facilities.²⁰

- ***Military Courts and Administrative Detention***

- “The Committee furthermore notes with concern information regarding attempts to incorporate juvenile justice standards within military courts.” (para. 33)
- “The Committee urges [Israel] to never hold criminal proceedings against children in military courts and not subject children to administrative detention.” (para. 35)
- “The Committee is disturbed over information indicating that children have been subjected to administrative detention orders for renewable periods of up to six months.” (para. 34)

- ***Juvenile Justice and Fair Trial Standards***

- “The Committee is gravely concerned over reports that more than 2 000 children, some as young as twelve, have been charged with security offenses between 2005 and 2009, held without charge for up to 8 days and prosecuted by military courts.” (para. 34)
- “The Committee urges [Israel] to guarantee that juvenile justice standards are applied to all children within its jurisdiction and any trials should be conducted in a prompt and impartial manner, in accordance with minimum fair trial standards.” (para. 35)

- ***Detention of Juveniles***

- “The Committee is particularly concerned that children charged with security offences are subjected to prolonged period of solitary confinement and abuse in inhumane and degrading conditions, that legal representation and interpretation assistance is inadequate and that family visits are not possible as relatives are denied entry to Israel.” (para. 34)
- “The Committee furthermore recommends the State party to ensure that children are only detained as a measure of last resort and for the shortest possible time period. If in doubt regarding the age, young persons should be presumed to be children.” (para. 36)
- “The Committee furthermore recommends the State party to guarantee that children, if accused of having committed security offenses, are detained in adequate conditions in accordance with their age and vulnerability.” (para. 36)
- “The Committee furthermore recommends the State party to inform parents or close relatives where the child is detained and allow contact.” (para. 36)
- “Ensure that children in detention have access to an independent complaints mechanism. Reports of cruel, inhuman and degrading treatment of detained children should be investigated promptly in an impartial manner.” (para. 36)

¹⁹ See: <http://www2.ohchr.org/english/bodies/crc/docs/CRC-C-OPAC-ISR-CO-1.pdf>

²⁰ Extensive information was provided to the Committee by Defense of Children International-Palestine and its partners. See: <http://www.dci-pal.org/english/display.cfm?DocId=1403&CategoryId=2>

III. UN Human Rights Council

UN Fact-Finding Mission on the Gaza Conflict (“The Goldstone Mission”), September 2009²¹

The Goldstone Mission report dedicates a chapter to the “Repression of Dissent in Israel” (paras. 1692-1772) and in particular, the arbitrary arrest and harassment of protestors against the War in Israel. On this basis, the Mission recommended that Israel “set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory, in terms of both charges and detention pending trial.” (para. 1972g).

The report also dedicates a chapter to the “Detention of Palestinians in Israeli Prisons” (paras. 1441-1507) and makes several recommendations in this regard including:

- “The Mission analysed information it received on the detention of Palestinians in Israeli prisons during or in the context of the military operations of December 2008–January 2009 and found those practices generally inconsistent with human rights and international humanitarian law. The military court system to which Palestinians from the OPT are subjected deprives them of due process guarantees in keeping with international law.” (para. 1942)
- “The Mission finds that the detention of members of the Palestinian Legislative Council by Israel violates the right not to be arbitrarily detained, as protected by article 9 of ICCPR. Insofar as it is based on political affiliation and prevents those members from participating in the conduct of public affairs, it is also in violation of its articles 25 recognizing the right to take part in public affairs and 26, which provides for the right to equal protection under the law. Insofar as their detention is unrelated to their individual behaviour, it constitutes collective punishment, prohibited by article 33 of the Fourth Geneva Convention. Information on the detention of large numbers of children and their treatment by Israeli security forces point to violations of their rights under ICCPR and the Convention on the Rights of the Child.” (para. 1943)
- “The Mission recommends that Israel should release Palestinians who are detained in Israeli prisons in connection with the occupation. The release of children should be an utmost priority. The Mission further recommends that Israel should cease the discriminatory treatment of Palestinian detainees. Family visits for prisoners from Gaza should resume.” (para. 1972 (e))

²¹ See: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>