



RESPONSE TO THE LIST OF ISSUES TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE THIRD PERIODIC REPORT OF ISRAEL

NGO Report to the UN Human Rights Committee Submitted 23 June 2010

Three human rights organizations – Adalah - The Legal Center for Arab Minority Rights in Israel, Al Mezan Center for Human Rights, and Physicians for Human Rights-Israel – are pleased to submit this report to the UN Human Rights Committee to assist it in its consideration of Israel's Third Periodic Report of November 2008 during its review sessions on 12 and 13 July 2010. The partners are working together on a joint, EU-funded project to combat and prevent torture and ill-treatment of Palestinian prisoners and civilians in the Occupied Palestinian Territory by the State of Israel. This report supplements and updates a report submitted by the three organizations to the Human Rights Committee in August 2009, attached hereto as an annex.

Question 4

Please provide data on the number of house demolitions carried out since 2003, in particular with regard to non-Arab citizens of Israel in the West Bank, including East Jerusalem. Please explain the grounds for such demolitions, the definition of illegal dwellings and illegal construction, and indicate who bears the responsibility for the decision to carry out a demolition. Please also provide information on: (a) the policies of the State party regarding punitive home demolitions pursuant to the Israeli Supreme Court judgment HCJ 9353/08 of 5 January 2009 (Abu Dahim v. Commander of the Rear Forces); (b) the current housing situation of the owners and residents of demolished houses and victims of forced evictions; and (c) whether the State party envisages establishing an independent commission to provide equitable restitution and compensation for victims of the policy of home demolitions, and victims of forced eviction. In addition, please provide comparative disaggregated data on the number of building permits issued to Palestinians in the West Bank and East Jerusalem and the number of building permits issued to citizens of Israel, including those belonging to the Palestinian and Arab community in Israel.

New data on house demolitions in the West Bank, including East Jerusalem

The Israeli Committee Against House Demolitions (ICAHD) estimates that in 2009 at least 350 Palestinian homes were demolished in the West Bank including East Jerusalem, the majority of them for administrative reasons.¹ Taking East Jerusalem alone, in 2009, 80 homes were demolished,

¹ ICAHD, *Statistics on House Demolitions (1967-2009)*, available at: <http://www.icahd.org/eng/docs/ICAHD%27s%20updated%20House%20demolition%20statistics.pdf>, and correspondence with ICAHD, 27 May 2010.

leaving 300 people homeless.² According to UN reports, from January to April 2010 the Israeli authorities demolished a total of 65 Palestinian-owned structures in Area C, displacing 129 people, including 47 children.³ Between 2000 and September 2007, more than 94% of building permit applications submitted to the Israeli planning authorities by Palestinians in Area C were rejected.⁴

According to UN estimates, there are currently over 1,500 pending demolition orders in East Jerusalem alone, potentially affecting several thousand Palestinian residents.⁵ In December 2008, an “EU Heads of Mission Report on East Jerusalem” concluded that, “Israel is, by practical means, actively pursuing the illegal annexation of East Jerusalem,” by demolishing Palestinian homes, employing a restrictive permit regime, and building new Jewish settlements.⁶ According to the report, from November 2007 to March 2009 Israel approved building permits for 3,000 housing units for Jewish settlers in East Jerusalem, but fewer than 400 building permits for Palestinian residents, and that in recent years Palestinians have received fewer than 200 building permits per year, after a wait of several years and after incurring sizeable costs.

Of particular concern are recent events in the Palestinian neighborhood of Sheikh Jarrah in East Jerusalem. According to the Office for the Coordination of Humanitarian Affairs – occupied Palestinian territory (OCHA), on 2 August 2009, Israeli forces evicted nine families from their homes in two buildings, displacing 53 Palestinians, including 20 children.⁷ The buildings were immediately handed over to an Israeli settler organization and the families’ belongings were loaded on a truck and dumped in the street. These events came in the context of attempts by settlers to construct hundreds of housing units in midst of Sheikh Jarrah, making hundreds of other Palestinians vulnerable to future displacement.

Compensation is not paid to families whose homes are demolished and they are not provided with alternative housing; indeed, Palestinians can face not only the demolition of their home, but also heavy fines for illegal construction and the cost of the demolition and clean-up. To avoid these often crippling financial penalties, some residents of East Jerusalem have even resorted to demolishing their homes themselves.⁸ Many families would be left homeless if they were not taken in by their relatives and if not for the assistance of charities.

² The Association for Civil Rights in Israel, *Human Rights in East Jerusalem: Facts and figures*, May 2010.

³ Office for the Coordination of Humanitarian Affairs – occupied Palestinian territory (OCHA), *Protection of Civilians 2-8 June 2010*, available at:

http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_2010_06_11_english.pdf

⁴ Amnesty International, *Safe as Houses? Israel’s Demolition of Palestinian Homes*, June 2010, available at:

<http://www.amnesty.ie/reports/safe-houses-israels-demolition-palestinian-homes>

⁵ OCHA, *Fact Sheet August 2009*, p. 4, available at:

http://www.ochaopt.org/documents/ocha_opt_shiekh_jarrah_english_2009_08_15.pdf

⁶ EUObserver, *EU heads of mission report on East Jerusalem*, 9 March 2009, available at:

<http://euobserver.com/9/27736>

⁷ OCHA, *Humanitarian Monitor July 2009*, p. 5, available at:

http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2009_june_english.pdf;

OCHA, *Sheikh Jarrah*, August 2009, available at:

http://www.ochaopt.org/documents/ocha_opt_shiekh_jarrah_english_2009_08_15.pdf; and

The Civic Coalition for Defending the Palestinians’ Rights in Jerusalem and Adalah, *Dispossession and Eviction in Jerusalem*, December 2009, available at: http://www.adalah.org/newsletter/eng/feb10/docs/Sheikh_Jarrah_Report-Final.pdf

⁸ Human Rights Watch, *57 Palestinians Forced From Their Homes in One Week*, 6 November 2009, available at:

<http://www.hrw.org/en/news/2009/11/06/israel-stop-east-jerusalem-home-demolitions>

House Demolitions in the Gaza Strip: Figures⁹

The following table details the number of homes in Gaza that were partially and completely destroyed by Israel between 2003 and June 2010.

Dates	Partially destroyed	Completely destroyed	Total
2003 to 6 June 2010	11,736	4,824	16,560
15 September 2005 (after the disengagement) to 30 April 2010 (not including Cast Lead)	343 (in the buffer zone*)	311 (in the buffer zone)	654 (in the buffer zone)
27 December 2008 to 19 January 2009 (during Operation Cast Lead) ¹⁰	8,522	2,632	11,154
End of January 2009 to 6 June 2010	64	58	122

* The “**buffer zone**” is a closed military area that extends deep inside the Gaza Strip’s northern and eastern borders. Originally established under the 1995 Palestinian-Israeli Interim Agreement as a 50 meter-wide buffer zone, it was increased by Israel to 150 meters following the start of the Second Intifada in September 2000. On 23 May 2009, the Israeli military formally expanded the zone by dropping leaflets on Gaza warning the population to maintain a distance of at least 300 meters from the border, or else risk being fired on.¹¹ However, in effect the buffer zone reaches as far as 1,000 meters inside Gaza and more in some areas, eating up one fifth of the area of the North Gaza and Gaza Districts.¹²

Methods of demolition and no compensation

Of the 16,560 homes destroyed since 2003, approximately 9,500 were destroyed by tanks, bulldozers, and mines during incursions into the Gaza Strip, or before the disengagement in 2005, when the Israeli military had a number of military sites in Gaza, or to make way for settlements, by-pass roads or security zones around settlements (prior to the disengagement in 2005); approximately 6,500 were destroyed by air strikes (from drones, helicopters and fighter jets).¹³

Of those homes bombarded from the air, hundreds were deliberately targeted. Dozens of these were homes of persons “wanted” by Israel. These demolitions are punitive in their nature; i.e. they are not

⁹ Figures taken from Al Mezan’s database, unless otherwise noted.

¹⁰ Al Mezan, *Cast Lead Offensive in Numbers Statistical Report on: Persons Killed and Property Damaged or Destroyed in the Gaza Strip by the Israeli Occupation Forces during Operation Cast Lead* 2 August 2009, available at: http://www.mezan.org/en/details.php?id=8941&ddname=Gaza%20destruction&id_dept=22&id2=9&p=center and *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, A/HRC/12/48, 25 September 2009, paras. 497-540 (hereinafter: “The Goldstone Report”).

¹¹ OCHA, *Locked In: The humanitarian impact of two years of blockade on the Gaza Strip*, August 2009, available at: http://www.ochaopt.org/documents/Ocha_opt_Gaza_impact_of_two_years_of_blockade_August_2009_english.pdf

¹² For more information on the buffer zone see, e.g., OCHA, *Farming Without Land, Fishing Without Water, Gaza Agriculture Sector Struggles to Survive*, May 2010, available at:

http://www.ochaopt.org/documents/gaza_agriculture_25_05_2010_fact_sheet_english.pdf

¹³ Al Mezan’s database.

intended to respond to any kind of materialized military actions. Sometimes during these air attacks residents would be warned by the Israeli military that their homes would be targeted. People were usually given ten to thirty minutes to evacuate.¹⁴ For example, according to Al Mezan's investigations, at 11:30pm on 15 November 2006 Israeli jet fighters fired a missile at the house of Mahmoud Mas'oud north of Jabalia. The house had five floors and housed 43 people, including 28 children. The attack caused major damage to the house and three neighboring houses. The Israeli military had telephoned the Mas'oud family and notified them that it would be bombarded in 15 minutes. The Committee Against Torture recently called on the State of Israel to desist punitive demolitions where they violate Article 16 of the Convention Against Torture (prohibiting cruel, inhuman or degrading treatment or punishment).¹⁵

There is a distressing lack of accountability for Palestinian victims of violations of international human rights law and international humanitarian law in the Israeli legal system. Al Mezan is unaware of any claim filed by an individual from the Gaza Strip that has provided an equitable restitution and compensation for victims of the policy of home demolitions, including punitive demolitions.

Recent amendments to Israeli tort law contravene Israel's obligations under international law by narrowing the eligibility of Palestinians from the OPT to submit claims for compensation for damages caused to them by Israeli security forces, including damages relating to home demolitions, and those caused outside of the context of a military operation (with some minor exceptions).¹⁶ The law exempts Israel from compensating for damages sustained by "A citizen of an Enemy State," or "An activist or member of a Terrorist Organization"; Gaza has been declared by Israel to be an "enemy entity."¹⁷

Housing in Gaza since Operation Cast Lead

The current housing situation in Gaza has changed very little since the end of Operation Cast Lead (OCL), which ended in January 2009. Most people displaced during the military attack are still living in temporary accommodation. The reconstruction and repair of homes has been prevented because of the illegal blockade on the Gaza Strip imposed by Israel, which prohibits the entry of construction materials.¹⁸ The UN has introduced a cash-assistance program to provide cash to

¹⁴ See, e.g., Al Mezan's press releases on these attacks:

http://www.mezan.org/en/details.php?id=1852&ddname=IOF&id_dept=9&id2=9&p=center (November 2006);

http://www.mezan.org/en/details.php?id=1867&ddname=Incursion&id_dept=9&id2=9&p=center (October 2006);

http://www.mezan.org/en/details.php?id=1876&ddname=Incursion&id_dept=9&id2=9&p=center (September 2006).

¹⁵ Concluding observations of the Committee against Torture on Israel, CAT/C/ISR/CO/4, 23 June 2009, para. 33.

¹⁶ An English translation of the *Civil Wrongs (Liability of the State) Law – 1952* (as amended 2005) is available at:

<http://www.adalah.org/features/compensation/law-e.pdf>

¹⁷ Another main provision of the law was struck down by the Israeli Supreme Court in December 2006. The article in question stated that "the State shall not be subject to liability under the law of torts for damage sustained in a Conflict Zone due to an act performed by the security forces." The decision was delivered on a petition filed against the law in September 2005 by Adalah, HaMoked and the Association for Civil Rights in Israel (ACRI) on behalf of six other human rights organizations. HCJ 8276/05, *Adalah, et al. v. The Minister of Defense, et al.* (decision delivered 12 December 2006). The court ruled that this provision disproportionately violated the rights of Palestinians to life, dignity, and property. For more information, see Adalah, *Supreme Court Cancels Racist Law, Ruling that Palestinians Harmed by Israeli Military in the Occupied Palestinian Territories are Eligible for Compensation from Israel*, 12 December 2006, available at: http://www.adalah.org/eng/pressreleases/pr.php?file=06_12_12

¹⁸ Under heavy international pressure, on 20 June 2010 the Israeli government decided to alter its siege policy, reportedly to "liberalize the system by which civilian goods enter Gaza and expand the inflow of materials for civilian projects under international supervision," while continuing "existing security procedures to prevent the inflow of weapons and war material." See decision of the Israeli Security Cabinet in English at:

http://www.mfa.gov.il/MFA/Government/Communiques/2010/Security_Cabinet_decision_17-Jun-2010.htm. See also statement by the Prime Minister's Office, 20 July 2010, available at:

households whose homes were destroyed or largely damaged during OCL and compensation to households whose homes sustained minor damages.¹⁹ Some private individuals using materials bought on the local market or obtained through the tunnels have managed to repair or partially repair houses. However, this is not an adequate solution to the need for reconstruction, which also extends to homes destroyed or damaged before OCL.

The psychological impact of house demolitions on children in Gaza

Today, around 25,000 children are still waiting for their homes to be reconstructed following Israeli military attacks prior to and during OCL. A report by Save the Children published in April 2009 demonstrates that home demolitions have significant negative psychological effects on children. This study found that compared to children of similar demographics, children who had their home demolished fare significantly worse on a range of mental health indicators, including: withdrawal, somatic complaints, depression and anxiety, social difficulties, higher rates of delusional, obsessive and compulsive thoughts, delinquency and violent behavior. These psychological symptoms have persisted, and were still present six months after the end of the war on Gaza. Families have also reported deterioration in children's educational achievement and ability to study.²⁰

House demolitions during OCL – Psychological Effects on Children

Hundreds of families were forced to flee the Ezbet Abed-Rabbo neighborhood when their houses were attacked or they were ordered to leave the area by the Israeli military. Twelve-year-old Lamis fled with her family after the third floor of the house she was sheltering in (owned by relatives) was shelled. Instead of providing safe passage to the fleeing civilians, Israeli soldiers ordered the men and boys aged 16 to 50 years old to strip naked and then detained them. Lamis' home was taken over by Israeli soldiers after the family fled and her toys and clothes were destroyed. After OCL, Lamis saw a psychologist who tried to help her sleep; she is unable to sleep unless curled into a ball in a room with a light on.

During OCL, the home of Ahmed Mohammed Abdel-Rahman Salha was heavily damaged after the family, including five children – Wisam (12), Wisal (11), Marah (9), Nisma (5) and Noor (2) – fled to a UN shelter. Ahmed's children have been treated for psychological problems. In his affidavit to Al Mezan, Ahmed described these problems, "I have noticed that my children started to have bad, fearful dreams. They wake up scared, crying and, sometimes, screaming in a strange way. My son Wisam started to fall unconscious frequently. I took him to psychotherapy by the psychological support teams that started to work in our refugee camp. The children's health is good now; however, they continue to have bad dreams and say they are scared. I repaired part of my house and we have returned to it because we could not find a house or apartment to rent."²¹

http://www.mfa.gov.il/MFA/Government/Communiques/2010/Prime_Minister_Office_statement_20-Jun-2010.htm.

The impact of the change in policy on the ground remains to be seen. See, e.g., Attila Somfalvi, "Cabinet: All non-military items can enter Gaza freely," *Ynet News*, 20 June 2010, available at:

<http://www.ynetnews.com/articles/0,7340,L-3907978,00.html>; Reuters, "U.N. agency calls for full lifting of Gaza blockade", 21 June 2010, available at: <http://www.reuters.com/article/topNews/idUSTRE65K4NO20100621>; Amira Hass, "Easing of siege may have negligible effect on Gaza," *Haaretz*, 22 June 2010, available at: <http://www.haaretz.com/print-edition/news/amira-hass-easing-of-siege-may-have-negligible-effect-on-gaza-1.297552>

¹⁹ UNDP, *Gaza One Year After: Early Recovery and Reconstruction Needs Assessment*, May 2010, p.51, available at: <http://www.undp.ps/en/newsroom/publications/pdf/other/gazaoneyear.pdf>

²⁰ Save the Children, *Broken Homes: Assessing the Impact of House Demolitions on Palestinian Children and Families*, April 2009, available at: www.savethechildren.org.uk/en/docs/Broken_Homes_English_low_res.pdf

²¹ Al Mezan and Defense for Children International-Palestine, *Bearing the Brunt Again: Child Right Violations during Operation Cast Lead*, September 2009, p. 93.

The Housing and Land Rights Network – Habitat International Coalition reported to the UN Fact-Finding Mission on the Gaza Conflict that, “of those forced to seek shelter following the military damage or destruction of their home, over half were children. While female-headed households constitute only a relatively small percentage of the total affected families (7%), their number in absolute terms, 763 such families, is significant.”²² The UN Fact-Finding Mission found that the “the widespread destruction, the displacement, the inability to find a safe place anywhere, together with the direct exposure to life-threatening events will continue to have a serious impact on the population.”²³

Adalah, Al Mezan and PHR-Israel urge the Committee to recommend that Israel cease its policy of demolishing Palestinian homes, whether in cases of punitive home demolitions, the disproportionate demolitions of homes in the context of military operations, or administrative home demolitions, and to find, consistent with the conclusions of the UN Committee Against Torture in *Dzemajil, et al. v. Yugoslavia (CAT 161/00) [9/]*, that the circumstances surrounding the three patterns of house demolition described above constitute cruel, inhuman or degrading treatment.

Question 8

Please provide detailed and updated information on the measures taken by the State party to ensure that definitions of terrorism and security suspects are precise and limited to the countering of terrorism and the maintenance of national security respectively, in full conformity with international human rights standards and in particular with the Covenant. Please provide disaggregated data by sex, age, nationality and ethnic origin on persons detained as “unlawful combatants” since 2003, elaborate further on the legal status of these persons (see State party report, paras. 270 to 277) and indicate whether and when the State party envisages repealing the Incarceration of Unlawful Combatants Law 5762-2002, as recommended by various human rights international experts

Data on unlawful combatants

In 2007, two Palestinians were classified as “unlawful combatants”.²⁴ At the end of December 2008 there were five prisoners being held as unlawful combatants in Israeli custody.²⁵ By the end of Operation Cast Lead (OCL) in January 2009, their number had reached 19. During OCL dozens of Palestinians civilians were arrested by the Israeli military on the basis of being unlawful combatants. Of these dozens, 12 Palestinians were detained as unlawful combatants.²⁶ **As of 6 June 2010, eight Palestinians were being held in Israel as unlawful combatants.**²⁷ Since the law’s enactment, at least 54 individuals have been detained pursuant to it: 15 Lebanese and 39 Palestinians from the Gaza Strip.²⁸

²² The Goldstone Report, para. 1240.

²³ Ibid. para. 1258.

²⁴ According to Al Mezan’s legal unit.

²⁵ According to the Israeli Prison Service

²⁶ According to Al Mezan’s legal unit.

²⁷ According to Al Mezan’s legal unit. Of the eight remaining in detention, three had completed their sentences and were then charged as unlawful combatants: one from 2007, one from before OCL, two from during OCL, and one after OCL.

²⁸ B’Tselem and HaMoked, *Without Trial: Administrative Detention of Palestinians by Israel and the Internment of Unlawful Combatants Law*, October 2009. Available at:

http://www.btselem.org/Download/200910_Without_Trial_Eng.pdf

The legal status of “unlawful combatants”

According to the Incarceration of Unlawful Combatants Law – 2002 (and its subsequent amendments in 2008), an “unlawful combatant” is “a person who has participated either directly or indirectly in hostilities against the State of Israel or is a member of a force perpetrating hostilities against the State of Israel, to whom the conditions prescribed in Article 4 of the Third Geneva Convention of 12th August 1949 with respect to prisoners of war and granting prisoner-of-war status in international humanitarian law, do not apply.”²⁹ All detainees held under the law can be held *indefinitely* without charge or trial as long as the hostilities against Israel continue. In June 2008, the Israeli Supreme Court upheld the constitutionality of this law on the grounds that it had been legislated for a proper purpose and was proportionate. In the case in question, the appellants were two Gaza residents who were detained due to their purported association with Hezbollah.³⁰

There is no category of “unlawful combatant” recognized in international law.³¹ Under international humanitarian law (IHL), an individual must fulfill several conditions in order to be included in the category of “combatant”. Civilians are defined negatively, that is, anyone who is not a combatant, according to the definition in the conventions,³² or more generally, “persons taking no active part in the hostilities”. The Unlawful Combatants Law creates a category of persons who are denied fundamental due process rights, who may be attacked in time of war or military operation because of their being “combatants”, but who if captured are not entitled to the rights and protections to which combatants are entitled. The Israeli Supreme Court rejected the existence of a third category,³³ but by upholding the constitutionality of the law, it in practice approved such a category.

The classification of an individual as an “unlawful combatant” has serious consequences for his or her most basic rights. Thus:

- Judicial review may be delayed for up to 14 days from the date the imprisonment order was taken out;
- Meeting with an attorney can be prevented for up to 21 days;
- Secret evidence may be used and evidence taken in the absence of the detainee;
- The detention order is not limited in time and thus in theory, the individual can be detained indefinitely, with judicial review of the detention mandated only once every six months.
- The law contains legal presumptions that the release of an “unlawful combatant” will endanger state security so long as hostile acts by his force against the State of Israel have not ceased. These presumptions render a fair trial impossible and constitute a reversal of the presumption of innocence.

²⁹ Article 2 of the Incarceration of Unlawful Combatants Law. See The Public Committee Against Torture in Israel and Adalah: The Legal Center for Arab Minority Rights in Israel, *Exposed: The Treatment of Palestinian Detainees During Operation “Cast Lead,”* forthcoming June 2010 (English). See also Al Mezan, *Unlawful Combatants: The Violation of Gazan Detainees’ Rights in Israeli Prisons*, 1 April 2009.

³⁰ Criminal Appeal 6659/06, *Anonymous v The State of Israel*, P.D. 54(1) 721 (2008) (Hebrew). The decision is available in English at: http://elyon1.court.gov.il/files_eng/06/590/066/n04/06066590.n04.htm

³¹ HCJ 769/02, *PCATI v The Government of Israel*, Tak-El 2006(4) 3958 (in Hebrew), para. 26 of former Chief Justice Barak’s ruling. On the definition of a combatant, see Article 1 of the Protocol I Additional to the Geneva Conventions and Article 13 of the First and Second Geneva Conventions, Article 4 in the Third Geneva Convention.

³² Article 51 of the Protocol I Additional to the Geneva Conventions (1977). It is accepted legal practice to consider this article to be a part of customary international law.

³³ HCJ 769/02, *PCATI v The Government of Israel*, para. 28 of former Chief Justice Barak’s ruling (2006).

No steps to repeal the law

No steps are being taken by Israel towards repealing the law. At least two appeals have been filed to the Israeli Supreme Court by persons detained as unlawful combatants since the end of OCL. In both cases the court rejected the appeals and concurred with the state that the two persons in question were unlawful combatants.³⁴

Unlawful combatant status used as an additional punishment after completion of sentence

At least nine detainees from Gaza held as “unlawful combatants” have been moved to this track after serving out their prison sentences;³⁵ currently three detainees are being held as such.³⁶ The use of the law in this way gives rise to the suspicion that one of its purposes is to hold detainees as bargaining chips. This suspicion is strengthened by indications that the law was originally legislated in order to enable Israel to continue holding Lebanese citizens Mustafa Dirani and ‘Abd al-Karim ‘Obeid as bargaining chips for Israel in a future prisoner exchange deal.³⁷ Subsequently, in addition to detainees from Gaza, Lebanese nationals captured during the Second Lebanon War were imprisoned under this law until being released in a prisoner swap in July 2006. Adalah, Al Mezan and PHR-Israel urge the Committee to recommend that Israel repeal the law.

Question 10

Please provide information on the measures taken by the State party to ensure that the military comply with the fundamental requirement of distinguishing between civilians and military objectives when resorting to the use of force and that utmost consideration be given to the principle of proportionality in all the State party’s responses to terrorist threats and activities. Please also indicate whether the State party envisages establishing an independent body to monitor the strict compliance of military forces with international human rights law. According to information received by the Committee, “targeted killings” have continued to be used by the State party in response to terrorist activities. Please indicate (a) the number of “targeted killings” carried out since 2003; (b) whether any complaints were lodged in light of the Supreme Court decision of December 2006 imposing certain limitations and restrictions on such acts; and (c) the outcome of these complaints. In addition, please provide specific information on the status of investigations and prosecutions initiated by the State party on alleged violations of international law resulting from the conduct of Defense Forces during: (a) the Second Lebanon War, including the investigations following the Commission of Inquiry into the Events of Military Engagement in Lebanon 2006 (Winograd Commission); and (b) Operation Cast Lead.

Data on extra-judicial executions / “targeted killings”

Since 2003 the Israeli military have targeted and extra-judicially executed 184 individuals in Gaza and an additional 155 individuals (e.g. people living in the same building, passersby, etc.) have been

³⁴ For more information, see the Israel Democracy Institute, *Two Unlawful Combatants Cases in the Israeli Supreme Court*, available at:

http://www.idi.org.il/sites/english/ResearchAndPrograms/NationalSecurityandDemocracy/Terrorism_and_Democracy/Newsletters/Pages/4th%20Newsletter/1/UnlawfulCombatants.aspx

³⁵ PCATI learned of at least nine such detainees from Gaza who remained in prison under the Unlawful Combatants Law after having served out their sentences received according to the criminal legal procedures. See also, Criminal Case 40211-03-10 (Jerusalem District Court) *The State of Israel v. Tariq Issa Issawi*, given on 21 April 2010. See also *Al Mezan Condemns the Israeli Increasing Indictments of Gazans as 'Unlawful Combatants'; Calls International Community to Intervene*, 16 November 2009, available at:

http://www.mezan.org/en/details.php?id=9231&ddname=detention&id_dept=9&id2=9&p=center

³⁶ See note 27, above.

³⁷ Crim. FH 7048/97 *Anonymous v Minister of Defense*, P.D. 54(1) 741 (Hebrew).

killed as a result of these assassinations.³⁸ During Operation Cast Lead (OCL), 19 individuals were targeted and extra-judicially executed by the Israeli military; 17 other individuals were also killed. These killings are continuing despite the Israeli Supreme Court's decision of December 2006, which imposed certain restrictions on their use, and the Committee's previous recommendation from 2003 that, "The State party should not use "targeted killings" as a deterrent or punishment... Before resorting to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted" (para. 15).

Complaints lodged: no remedy

On 15 January 2009, during OCL, the Israeli military announced that it had killed **Sa'eed Siam**, who was a senior member of Hamas, the Interior Minister in the Gaza Government.³⁹ The targeted attack also resulted in the deaths of six people in neighboring buildings, and the injury and maiming of dozens of others, in addition to the destruction of many buildings. Human rights organizations filed a complaint on 22 November 2009 to the Israeli Military Advocate General (MAG) and the Attorney General (AG) demanding the opening of a criminal investigation into the assassination of Sa'eed Siam and the resultant killing of civilians.⁴⁰ As of 12 June 2010, there is no further update on the status of this investigation.

The Israeli Supreme Court refused to intervene in the case of **Salah Shehadeh**, the Hamas leader in Gaza whose house was hit by a one-ton bomb dropped by the Israeli Air Force in July 2002. The bombing killed Shehadeh and at least 14 civilians, including nine children, injured at least 100, and caused massive destruction to residential buildings. As a response to long-running litigation on the issue initiated in 2003,⁴¹ the Supreme Court avoided ruling on this highly sensitive question, and delegated the decision to an "independent" committee. This committee was appointed in January 2008, and originally consisted of three former members of the Israeli security and military forces. Its objective was to draw lessons and conclusions on the operational level, and if relevant to inform the AG or the MAG of any fears that a disciplinary infraction or criminal felony had been committed. The committee is not a criminal investigatory body, nor was it granted the powers thereof, and its recommendations have no legal status. After over a year of doing very little, the committee's chair, Zvi Inbar, died in August 2009, leaving it virtually inactive to this day, despite the reported appointment in February 2010 of a new Chair, former Supreme Court Justice Tovah Strassberg-Cohen.⁴² Thus, eight years after the attack, a preliminary decision has yet to be taken over whether to open a criminal investigation in the *Shehadeh* case.

A further petition filed to the Israeli Supreme Court by Adalah, Al Haq, and the Palestinian Center for Human Rights in April 2007, sought criminal investigations into the killing of civilians and

³⁸ Al Mezan's database. Information is current as of 6 June 2010.

³⁹ See, *IDF Targets Senior Hamas Leader Said Siam*, IDF website, 15 January 2009, available at: <http://dover.idf.il/IDF/English/News/today/09/01/1502.htm>; and *Senior Hamas leader Said Siam killed in IAF strike*, Israeli Foreign Affairs Ministry, 15 January 2009, available at: http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Senior_Hamas_leader_Said_Siam_killed_15-Jan-2009.htm.

⁴⁰ Joint Press Release, *Adalah, Al Mezan and Al Haq Submit New Complaints and Demands to Israel for Criminal Investigations into Suspected War Crimes in Gaza*, 25 November 2009, available at: <http://www.adalah.org/eng/pressreleases/NU%20GAZA%20WAR%20CRIME%20FINAL%5B1%5D.pdf>

⁴¹ HCJ 8794/03, *Hess v. The Military Advocate General* (decision delivered on 23 December 2008).

⁴² See, e.g., Dan Izenberg, "Analysis: Goldstone fire far from extinguished," *The Jerusalem Post*, 12 February 2010, available at: <http://www.jpost.com/Israel/Article.aspx?id=168514>

extensive home demolitions in 2004 during two Israeli military attacks launched on Gaza.⁴³ The petition provided detailed documentation of grave breaches of the Fourth Geneva Convention; it, too, remains pending, three years after being filed. Here the AG repeated the state's position that criminal responsibility will attach only for intentional killings or injuries.⁴⁴

Anat Kamm, a former Israeli soldier, is currently being prosecuted in Israel for grave espionage for allegedly leaking classified Israeli military documents to Uri Blau, a reporter from *Haaretz*. The documents were the subject of an article by Blau published in *Haaretz* in November 2008, entitled "License to Kill."⁴⁵ The documents suggest that the Israeli military was continuing to carry out extra-judicial killings against Palestinians in the West Bank even though it was possible to arrest them, and thus that the military acted in defiance of conditions set forth by the Supreme Court in its ruling on this issue from 2006.

Following the publication of the Blau article, attorneys on behalf of The Public Committee Against Torture in Israel (PCATI) submitted a complaint demanding a criminal investigation by the Attorney General (AG); the request was refused in January 2009. The AG stated that, "the legal aspects of the operation were examined at each one of the planning stages and there is no basis to the charge that the IDF 'ignored' the Supreme Court's instructions regarding targeted assassination operations. On the contrary, the operational officers in the general staff, who had close legal consultation, were aware of the Supreme Court instructions and stressed and carried them out in all stages of the planning and the approval of the operation."⁴⁶

The status of investigations and prosecutions initiated in relation to OCL

During OCL, at least 1,440 Palestinians were killed, including 431 children and 114 women, and over 5,300 Palestinians injured,⁴⁷

The Israeli military investigations into OCL are incompatible with international standards of independence, effectiveness, transparency and promptness.⁴⁸

⁴³ HCJ 3292/07, *Adalah, Al Haq and PCHR et al. v. The Attorney General* (case pending). The state responded that the case should be dismissed as its arguments were general and it was brought too long after the end of military operations.

⁴⁴ See also *Adalah, Briefing Paper: Israeli military probes and investigations fail to meet international standards or ensure accountability for victims of the War on Gaza*, January 2010, available at: <http://www.adalah.org/newsletter/ara/jan10/paper.pdf>

⁴⁵ The article, published in *Haaretz* on 27 November 2008, has been posted by the Palestine Media Center at: <http://www.palestine-pmc.com/details.asp?cat=4&id=3899>

⁴⁶ See Dan Izenberg, "Stamp of approval by the Attorney General," *The Jerusalem Post*, 10 April 2010, available at: <http://www.jpost.com/israel/article.aspx?id=172983>

⁴⁷ See the Goldstone Report, "Data on casualties during the Israeli military operations in Gaza from 28 December 2008 to 17 January 2009", paras. 352-363. See also Al Mezan, *Cast Lead Offensive in Numbers Statistical Report on: Persons Killed and Property Damaged or Destroyed in the Gaza Strip by the Israeli Occupation Forces during Operation Cast Lead*, 2 August 2009 (1,409 Palestinians killed of whom 111 were women, 355 children, and 163 policemen, excluding police who are affiliated with Palestinian armed resistance groups; 237 casualties were combatants), available at:

http://www.mezan.org/en/details.php?id=8941&ddname=Gaza%20destruction&id_dept=22&id2=9&p=center

⁴⁸ See, e.g., *Adalah Briefing Paper: Israeli military probes and investigations fail to meet international standards or ensure accountability for victims of the War on Gaza*, January 2010, available at:

<http://www.adalah.org/newsletter/ara/jan10/paper.pdf>; letter sent by a coalition of human rights organizations based in Israel to the Israeli Prime Minister calling for an independent and impartial investigation mechanism into violations of international law during Operation Cast Lead, 25 January 2010, available at:

<http://www.adalah.org/newsletter/ara/jan10/HR%20organization%20independent%20investigation%2024.1.10.pdf>; Amnesty International, *Accountability regarding the conflict in Gaza and southern Israel: Written statement to the*

To date, Israel has released two main reports on its military investigations into OCL, the first in July 2009⁴⁹ and the second in January 2010.⁵⁰ The 52-page report from January 2010 included sections on the procedures employed by Israel for reviewing allegations of misconduct by soldiers, on alleged violations of IHL, and on investigations into specific complaints of violations of IHL during OCL. According to the report, the military has investigated 150 incidents in Gaza that occurred during the military attack however, it does not provide any identifying details about these cases.

Only 36 cases are under criminal investigation by the military police, while 90 cases are being scrutinized through operational debriefings conducted by the same military units that were involved in the incidents. According to a prior report by Israel, 48 files have already been closed with no clear details given regarding their identity or the considerations involved.⁵¹ The report from January 2010 provides no further details.

According to Israel's January 2010 report the criminal investigations have led to only one conviction of a soldier to date (for the theft of a credit card), and other military inquiries have led to two disciplinary reprimands (which are now in doubt, as they have since been denied by the Israeli military).

Israel's report from January 2010 states (paras. 111 and 112) that the military has investigated 10 incidents involving attacks on medical crews and facilities, yet the MAG found no basis to order criminal investigations into these events. Reports by human rights organizations, the ICRC, and the UN indicate that 41 medical facilities and 29 ambulances were damaged, and that 16 medical workers were killed and 25 injured.⁵²

The January 2010 report shows that the military investigations focus on specific incidents and on deviations from orders, rules of engagement or policies, rather than on the broader orders and policy decisions that were described as leading to severe violations of international law. Senior military and political policy-makers are not subject to scrutiny under the current mandate of the Israeli military investigations.

The Israeli military investigations are not open to the public and almost nothing is known about them. Whereas the January 2010 report provides detailed responses regarding some of the individual incidents cited in the Goldstone report (e.g. the el Bader flour mill), it fails to address

Human Rights Council, *Thirteenth session*, 15 February 2010, available at:

<http://www.amnesty.org/en/library/info/MDE02/001/2010/en>

⁴⁹ The State of Israel, *The Operation in Gaza - Factual and Legal Aspects*, 29 July 2009, available in English at:

http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Operation_in_Gaza-Factual_and_Legal_Aspects.htm

⁵⁰ The State of Israel, *Gaza Operation Investigations: An Update*, 29 January 2010, available in English at:

http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Gaza_Operation_Investigations_Update_Jan_2010.htm

⁵¹ The Israeli Ministry of Foreign Affairs, *Status of IDF investigations of Gaza incidents*, 5 November 2009, available at:

http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Examination_allegations_by_IDF_Oct_2009.htm

⁵² See the World Health Organisation, *Health Situation in Gaza*, 4 February 2009, available at:

http://www.who.int/hac/crises/international/wbgs/sitreps/gaza_4feb2009/en/index.html; Al Mezan, *The Targeting of Medical Centers, Ambulance Teams and Civil Defense Teams during the Israeli Offensive "Operation Cast Lead" against the Gaza Strip 27 December 2008 – 18 January 2009*, 17 March 2009, available at: http://www.mezan.org/en/details.php?id=8569&ddname=gaza%20destruction&id_dept=22&id2=9&p=center

others (e.g. the attack on Al Quds hospital; judging from para. 111-112, it would seem this case is closed and it is unclear why).

Few developments since the January 2010 report have been reported. In February 2010, Israeli military radio announced that the MAG had closed military investigations into two cases involving the Israeli army's use of Palestinian civilians as human shields during OCL on the grounds that there was "no basis to the complaints".⁵³ These findings contradict the facts as borne out by the Goldstone report and reports of other human rights organizations.

In a separate case, in March 2010, *Haaretz* reported that an indictment had been filed against two soldiers suspected of "inappropriate conduct" and "violating their authority" for using a nine-year-old Palestinian boy as a human shield during OCL.⁵⁴ The soldiers forced him to open bags they thought to contain explosives during a raid on the building in which he and his family were living. These charges are unduly lenient and do not reflect the gravity of the violations involved.⁵⁵ In June 2010, the army announced that a soldier would be charged with the killing a 65 year-old woman, Raya Salma Abu Hajaj and her 35-year-old daughter Majda, during OCL, one of the famous "white flag" cases investigated by the Goldstone Mission; the Mission found in this case that the Israeli military had violated the prohibition in customary international law that the civilian population as such will not be the object of attacks.⁵⁶ The actual charges to be filed have not yet been made public.⁵⁷

Adalah, Al-Haq and Al Mezan have filed several complaints with the MAG in cases involving the killing of civilians and the use of Palestinian civilians as human shields during OCL, and requested that the Israeli military open criminal investigations into these cases.⁵⁸ To date, the Israeli military police has closed one of the human shields cases and has initiated only one investigation into one of the killings cases, with no conclusions yet reported.⁵⁹ The organizations have not received any updated information from the MAG regarding the remainder of the cases. The continuing use of Palestinian civilians as human shields by the Israeli military violates Article 6 of the ICCPR, and disregards the Committee's previous recommendation from 2003 that Israel should discontinue this practice (para. 17).

⁵³ See, Adalah, *Israeli Army Closes Military Investigations into Two Human Shields Cases from the War on Gaza without Informing the Victims*, 25 February 2010, available at:

http://www.adalah.org/eng/pressreleases/pr.php?file=25_02_10_2

⁵⁴ Anshel Pfeffer, "Two IDF soldiers charged with using 9-year-old 'human shield' in Gaza War," *Haaretz*, 11 March 2010 (English), available at: <http://www.haaretz.com/news/two-idf-soldiers-charged-with-using-9-year-old-human-shield-in-gaza-war-1.264652>

⁵⁵ For more information, see Defence for Children International – Palestine Section, *Two soldiers charged over human shield case reported by DCI*, 14 June 2010, available at: <http://www.dci-pal.org/english/display.cfm?DocId=1407&CategoryId=1>

⁵⁶ The Goldstone Report, paras. 764-769, 812. See also Amos Harel, "IDF to charge soldier with killing two Palestinian women during Gaza War," *Haaretz*, 16 June 2010, available at: <http://www.haaretz.com/news/diplomacy-defense/idf-to-charge-soldier-with-killing-two-palestinian-women-during-gaza-war-1.296500>

⁵⁷ Amira Hass, "Who will be punished for killing civilians in the Gaza War," *Haaretz*, 21 June 2010, available at: <http://www.haaretz.com/news/diplomacy-defense/who-will-be-punished-for-killing-civilians-in-the-gaza-war-1.297390?localLinksEnabled=false>

⁵⁸ See, e.g., Joint Press Release, *Adalah, Al Mezan and Al Haq Submit New Complaints and Demands to Israel for Criminal Investigations into Suspected War Crimes in Gaza*, 25 November 2009, available at:

http://www.mezan.org/en/details.php?id=9283&ddname=goldstone&id_dept=31&id2=9&p=center

⁵⁹ See Joint Press Release, *Israeli Military Police Begin Probe into Killing and Wounding of Palestinians Carrying White Flags during Operation Cast Lead*, 3 September 2009, available at:

http://www.mezan.org/en/details.php?id=9023&ddname=court&id_dept=31&id2=9&p=center

Question 11

Please provide detailed information on Operation Cast Lead, which took place in Gaza in December 2008 and January 2009, in particular on measures taken to ensure the distinction between civilian and military objects and persons during the Operation. Please comment on allegations regarding: (a) direct targeting of civilians and civilian objects with lethal outcome despite the absence of any justifiable military objective; (b) the use of Palestinian civilians by the Israeli military forces as human shields, despite the 6 October 2005 ruling of the High Court of Israel on this practice; (c) the refusal of Israeli forces to allow the evacuation of the wounded and permit access to ambulances; and (d) a sharp increase in the use of force by security forces, including different “open fire regulations” to deal with disturbances where only Palestinians are present.

In dozens of reports Palestinian, Israeli and international human rights organizations have documented hundreds of incidents in which the Israeli military during OCL: directly targeted civilians and civilian objects resulting in deaths; refused to allow the evacuation of the wounded or permit access to ambulances; used Palestinian civilians as human shields; and used different “open fire regulations” to deal with disturbances where only Palestinians are present.⁶⁰ Most of this information was provided to the UN Fact-Finding Mission on the Gaza Conflict, headed by former justice Richard Goldstone, which examined actions by both Israel and the Palestinians.

The main findings of the Goldstone Mission regarding Israel included the following:

- There were numerous instances of deliberate attacks on civilians and civilian objects (individuals, whole families, houses, mosques) in violation of the fundamental international humanitarian law principle of distinction, resulting in deaths and serious injuries. In these cases the Mission found that the protected status of civilians was not respected and the attacks were intentional, in clear violation of customary law.⁶¹
- In several of the incidents investigated, the Israeli army not only did not use their best efforts to permit humanitarian organizations access to the wounded and medical relief, as required by customary international law, but arbitrarily withheld such access.⁶²
- The Israeli armed forces used Palestinians as human shields to enter houses which might be

⁶⁰ See, e.g., Amnesty International, *Israel/Gaza: Operation “Cast Lead”: 22 days of death and destruction*, July 2009; Breaking the Silence, *Cast Lead: Testimony of Soldiers who Served in Operation “Cast Lead”*, July 2009; FIDH, The International Federation for Human Rights, *Operation Cast Lead, Gaza Strip One Year After, Accountability: A key challenge for peace*, December 2009; Human Rights Watch, *White Flag Deaths: Killings of Palestinian Civilians during Operation Cast Lead*, August 2009; Al Mezan Center for Human Rights, *Hiding Behind Civilians: Al Mezan report on the Use of Palestinian Civilians as Human Shields by the Israeli Occupation Forces*, April 2009; Al Mezan Center for Human Rights, *The Targeting of Medical Centers, Ambulance Teams and Civil Defense Teams during the Israeli Offensive “Operation Cast Lead” against the Gaza Strip, 27 December 2008-18 January 2009*, March 2009; Palestinian Centre for Human Rights, *Targeted Civilians: A PCHR Report on the Israeli Military Offensive against the Gaza Strip (27 December 2008-18 January 2009, September 2009)*; Physicians for Human Rights-Israel, *Independent Fact-Finding Mission of Medical Experts to Gaza*, April 2009; PCATI, *No Second Thoughts: Changes in the IDF’s Combat Doctrine In Light Of “Operation Cast Lead,”* November 2009; Report of UNHQ Board of Inquiry into incidents in the Gaza Strip between 27 December 2008 and 19 January 2009 - SecGen Summary, letter to SecCo President, May 2009; Report of the Independent Fact-Finding Committee to the League of Arab States on Gaza: No Safe Place, April 2009; Adalah, *Prohibited Protest: Law Enforcement Authorities Restrict the Freedom of Expression of Protestors against the Military Offensive in Gaza*, September 2009.

⁶¹ The Goldstone Report, para. 1921.

⁶² Ibid.

booby-trapped or harbor enemy combatants, as prohibited by international humanitarian law.⁶³

- Israeli security forces used seemingly discriminatory “open fire regulations” for security forces dealing with demonstrations, based on the presence of persons with a particular nationality [i.e. Palestinians].⁶⁴
- The Israeli military committed grave breaches of the Fourth Geneva Convention, notably wilful killing, torture and inhumane treatment, wilfully causing great suffering or serious injury to body or health, and extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly. As grave breaches these acts give rise to individual criminal responsibility.⁶⁵
- The Israeli military committed violations of IHRL and IHL, amounting to war crimes and some possibly amounting to crimes against humanity. Investigations into numerous instances of deadly attacks on civilians and civilian objects revealed that the attacks were intentional, and that some were launched with the intention of spreading terror among the civilian population with no justifiable military purpose.⁶⁶
- A series of acts by Israel that deprive Palestinians in Gaza of their means of subsistence, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their rights to access a court of law and an effective remedy, could amount to the crime of persecution, a crime against humanity.⁶⁷

The Mission also found various violations of Article 6 of the ICCPR (the right to life) in incidents involving the killing of civilians.⁶⁸ Below we provide a few examples of cases documented by the submitting organizations.

Direct attacks on civilians resulting in death – The al-Samouni family

On 4 January 2009, 100 members of the al Samouni family, including women and children, were gathered at the house of Wa’el al-Samouni, after being ordered to do so by Israeli soldiers. At around 6:30-7:00 a.m. on 5 January, three or four projectiles struck the house, killing 21 family members and injuring 19 more. The Palestinian Red Crescent Society (PRCS) tried to evacuate the injured, in coordination with the ICRC, but Israeli soldiers on the roof of a nearby building and on the ground stopped and searched the ambulance and told the PRCS to go back to Gaza City. Further requests for medical evacuation by the ICRC to the Israeli military were denied. Only two days later, 7 January, were the PRCS and the ICRC allowed access to the area during a ceasefire period. This attack was investigated by the UN Fact-Finding Mission for the Gaza Conflict. The

⁶³ Ibid. para. 1925.

⁶⁴ Ibid. para. 1939.

⁶⁵ Ibid. para. 1935.

⁶⁶ Ibid. para. 1921.

⁶⁷ Ibid. para. 1936.

⁶⁸ Ibid. paras. 1921, 1922, 1923, 1925, and 1938. See also, United Against Torture (UAT) Coalition, *Israeli “Operation Cast Lead” – Gaza Strip 27 December 2008-18 January 2009: Supplementary Report For Consideration Regarding Israel’s Fourth Periodic Report to the UN Committee Against Torture (CAT)*, April 2009, available at:

<http://www.adalah.org/newsletter/eng/apr09/UAT%20Supplementary%20Report%20-%20Gaza%20Update.doc>

⁶⁹ The Goldstone Report. paras. 710-733.

Mission concluded that the Israeli armed forces had “arbitrarily prevented the evacuation of the wounded from the al-Samouni area.”⁶⁹ The Mission also found that in this case (and others) the Israeli armed forces had carried out direct intentional strikes against civilians.⁷⁰

Direct attack on civilians resulting in death – The Salha family

At about 3 a.m. on 9 January 2009, an Israeli military drone fired a missile that penetrated the roof of the home of Fayiz Salha, located near the Al-Harthani School in Beit Lahiya. About ten minutes later, the military dropped a bomb that destroyed the entire house. The bomb struck the house as Salha’s wife, their four children, and her sister were heading down the stairs towards the external door. All six were instantly killed. Al Mezan, Adalah and Al Haq filed a complaint in October 2009 to the Military Advocate General (MAG) and the Attorney General (AG) demanding the opening of a criminal investigation; to date, no response has been received.

Using Palestinian civilians as human shields, including children⁷¹

On 5 January 2009 Majdi al-Abed Ahmed Abed Rabbo was taken from his home by Israeli soldiers in northern Gaza. He was forced to enter several houses, including one in which Palestinian fighters were staying. Al Mezan and Adalah filed a complaint to the MAG and AG in Israel, and the Military Police opened an investigation. As of 6 June 2010, there is no further update on this investigation.

On 5 January 2009, at approximately 12:05 am the Israeli military took Abbas Ahmed Ibrahim Halawa from his home and used him as a human shield for several days. He was forced to enter into houses along a road, and then taken and held at an Israeli detention centre. Al Mezan and Adalah filed a complaint to the MAG and the AG in Israel, and the Military Police opened an investigation. On 24 February 2010, Israeli military radio announced the closure of the investigation without providing reasons.⁷²

On 15 January 2009, Israeli troops forced 9-year-old Majed Rabah to open cases they suspected containing explosives. They shouted at the boy, pushed and slapped him in the face while pointing a gun at him. In March 2010, two Israeli soldiers were indicted for the lenient offenses of violating their authority and for inappropriate conduct.⁷³

On 15 January 2009, Ala’ Mohammed Ali Attar, aged 16, was taken from his home by Israeli soldiers. He was used as a human shield and then detained by the Israeli military in a hole in the ground with around 100 others for four days in the North Gaza District. Al Mezan and Adalah filed a complaint to the MAG and the AG and the Military Police opened an investigation. As of 6 June 2010, the investigation has not been concluded.

⁷⁰ Ibid. para. 808.

⁷¹ Al Mezan documented in detail six cases in particular that are reported in Al Mezan, *Hiding Behind Civilians: An April 2009 Update*, available at: http://www.mezan.org/en/details.php?id=8632&ddname=crimes&id2=7&id_dept=22&p=center

⁷² See Adalah and Al Mezan, *Israeli Army Closes Military Investigations into Two Human Shields Cases from the War on Gaza without Informing the Victims*, 25 February 2010, available at: http://www.adalah.org/eng/pressreleases/pr.php?file=25_02_10_2

⁷³ See, “Soldiers charged with using boy, 10, as human shield,” *The Independent*, 5 May 2010, available at: <http://www.independent.co.uk/news/world/middle-east/soldiers-charged-with-using-boy-10-as-human-shield-1962561.html>

⁷⁴ The Goldstone Report, paras. 1090-1107.

These cases were also investigated by the Goldstone Mission, which found Mr. Abed Rabbo and Mr. Halawa to be reliable and credible witnesses. The UN Mission found that the armed forces had captured them and forced them at gun point to search houses; and that they were subject to cruel, inhuman and degrading treatment during their captivity.⁷⁴

Obstruction of medical access

During OCL, on multiple occasions Israeli tanks blocked the passage of ambulances, and opened fire on medics who were trying to rescue the wounded, as well as targeted medical facilities. 15 hospitals and 41 primary health centers were partially damaged and two were completely destroyed. In addition, 29 ambulances were partially damaged or destroyed and 16 health workers were killed and 22 were injured while trying to provide medical care.⁷⁵ The targeting of medics and ambulances meant that injured people had to wait hours or days until they were able to access medical aid, and in many cases this long delay resulted in their death. 164 people died because medical access was obstructed during OCL.⁷⁶

Targeting medical workers, obstructing medical care

On 9 January 2009 in the evening, Israeli artillery shelling in the Al-Mahkama Street area east of Jabalya set four houses on fire and injured ten of its residents, most of whom were women and children. When the civil defense and ambulance teams went to the scene, Israeli forces opened fire at them, forcing them to retreat.⁷⁷

Question 12

Please provide information on the provision of supplies, in particular food and medical supplies, to people in the Gaza Strip since Operation Cast Lead. In addition, please provide information about the access of Palestinians in the OPT to adequate water supplies.

As expressed by the ICRC in its statement of 14 June 2010, “The whole of Gaza’s civilian population is being punished for acts for which they bear no responsibility. The closure therefore constitutes a collective punishment imposed in clear violation of Israel’s obligations under international humanitarian law.”⁷⁸

The Goldstone Mission noted as one of its key findings that it, “holds the view that Israel continues to be duty-bound under the Fourth Geneva Convention and to the full extent of the means available to it to ensure the supply of foodstuff, medical and hospital items and other goods to meet the humanitarian needs of the population of the Gaza Strip without qualification.”⁷⁹

⁷⁵ The World Health Organisation, *Health situation in Gaza*, 4 February 2009, available at: http://www.who.int/hac/crises/international/wbgs/sitreps/gaza_4feb2009/en/index.html

⁷⁶ Al Mezan, *Cast Lead Offensive in Numbers: Statistical Report on: Persons Killed and Property Damaged or Destroyed in the Gaza Strip by the Israeli Occupation Forces*, 2 August 2009, available at: http://www.mezan.org/en/details.php?id=8941&ddname=Gaza%20destruction&id_dept=22&id2=9&p=center

⁷⁷ Al Mezan, *The Targeting of Medical Centers, Ambulance Teams and Civil Defense Teams during the Israeli Offensive “Operation Cast Lead” against the Gaza Strip*, 17 March 2009, available at: http://www.mezan.org/en/details.php?id=8569&ddname=gaza%20destruction&id_dept=22&id2=9&p=center

⁷⁸ The International Committee of the Red Cross, *Gaza Closure: Not Another Year!* 14 June 2010, available at: <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/palestine-update-140610>

⁷⁹ The Goldstone Report, para. 28.

Provision of food

Israel's policy concerning the provision of goods and supplies into Gaza has no obvious logic and is shrouded in secrecy. In October 2009, Gisha, an Israeli human rights organization, submitted a Freedom of Information Act petition to the District Court requesting information on Israel's policy in this regard.⁸⁰ In January 2010, the Israeli Coordinator for Government Activities in the Territories (COGAT), in his response to the petition, denied the existence of lists of permitted or prohibited items.⁸¹ The military also refused to produce the so-called "Red Lines" document, alleged to contain calculations made by the military of the caloric needs of Gaza's civilian population.⁸² In April 2010, the state admitted that, contrary to its previous claims, it did indeed have a list of permitted goods and other documents relating to the transfer of goods to Gaza, but claimed that revealing them would harm state security and/or Israel's foreign relations.⁸³ Gisha has produced a partial list of items that are prohibited from entering Gaza and those that are permitted based on information from Palestinian traders and businesspersons, international organizations, and the Palestinian Coordination Committee.⁸⁴ The status of some of the goods is unknown due to a lack of transparency. However, recent additions to the list of items allowed into Gaza include sage (since 26 May 2010), jam and halva (since 7 June 2010).

Food security has deteriorated rapidly since the imposition of the blockade on Gaza in June 2007. According to Palestinian Central Bureau of Statistics (PCBS) figures published in 2009, only 23% of all households in the Gaza Strip are considered "marginally secure" and "food secure,"⁸⁵ with the average household spending 56 cents of every US dollar earned on food.⁸⁶ Access to food is exacerbated by the high unemployment levels, which in the second quarter of 2009 stood at 32%-44% across the six governorates of the Gaza Strip.⁸⁷

According to the UNDP, most agriculture infrastructure damaged or destroyed during OCL, including poultry and livestock farms, greenhouses, storage facilities and irrigation infrastructure has not been repaired, and USD \$30 million worth of orchards have not been replanted.⁸⁸

The agricultural sector in Gaza continues to be severely hampered by the blockade and buffer zone, which effectively extends 1 km and in some areas even further inside the Gaza Strip. Most farmers are unable to work their lands near or inside the buffer zone because of the dangers of being shot at by the Israeli military. The rich fertile lands along the border which could provide a vital source of

⁸⁰ See Gisha, *Gisha's Petition Under the Freedom of Information Act: Lack of Public Oversight Raises Questions of Corruption, Impropriety in Transfer of Goods to Gaza*, 28 October 2009.

⁸¹ Gisha, *Restrictions on the transfer of goods to Gaza: Obstruction and obfuscation*, January 2010.

⁸² Ibid.

⁸³ See Gisha, *Gisha responds to a State submission in its Freedom of Information Act petition: How Will Disclosing Whether Coriander Is or Isn't Allowed into the Gaza Strip Harm Israel's National Security?* 6 May 2010. Translated excerpts to English of the state's response is available at:

<http://www.gisha.org/UserFiles/File/HiddenMessages/StateResponseEng250410.pdf>

⁸⁴ See Gisha, *Partial List of Items Prohibited/Permitted into the Gaza Strip*, June 2010, available at:

http://www.gisha.org/UserFiles/File/publications/Products060610_Eng%281%29.pdf

⁸⁵ Socio-Economic and Food Security (SEFSEC) *Survey Report Gaza Strip, data collected by the Palestinian Central Bureau of Statistics*, November 2009, p.7.

⁸⁶ Ibid. p.8.

⁸⁷ Ibid. p.16.

⁸⁸ UNDP, *Gaza One Year After: Early Recovery and Reconstruction Needs Assessment*, May 2010, p.10. See also OCHA, *Farming Without Land, Fishing Without Water, Gaza Agriculture Sector Struggles to Survive*, May 2010, available at: http://www.ochaopt.org/documents/gaza_agriculture_25_05_2010_fact_sheet_english.pdf

fresh food to the Gazan population, 80% of which is dependent on food aid,⁸⁹ are laying waste.

The limited fishing zone – which is limited to only three nautical miles as opposed to the 20 nautical miles agreed upon in the Oslo Accords – prevents fishermen from being able to fish beyond the narrow strip of sea along the Gaza coastline. Fishing in the neighboring Sinai sea is prohibited, although sometimes Gazan fishermen do venture into Egyptian waters, increasingly so as stocks are severely depleted along the narrow stretch of the Strip due to chronic over-fishing. Fishing is an important source of income for the Palestinian people in Gaza; the fishing industries provide the basic necessities of life for around 35,000 people. It provides a vital source of food for the population and income for the fishing men and related professions, such as boat building and net weaving, fish merchandising and the restaurant trade.⁹⁰ The little fishing that is available is made difficult and dangerous by the regular Israeli naval attacks on the fishing boats. Typically, the Israeli navy approaches and surrounds fishing boats. Sometimes they force the fishermen to take off their clothes and swim towards the naval boats where there are arrested and detained. At other times fishing nets are severed or the boats rammed. Since 1 January 2003, two fishermen have been killed, 24 injured and 156 arrested in the Gaza Strip by the Israeli navy.⁹¹

Provision of medical supplies to Gaza

Periodical studies conducted by the Health Ministry in Gaza point to shortages in medication and equipment. In March 2010, for example, the ministry reported a severe lack of medication for cancer and cystic fibrosis, supplies required for kidney dialysis treatment, and medical syringes and needles.⁹² It also noted that Israel had refused to allow radioactive materials necessary for radiation treatment and for detecting secondary growth among cancer patients and x-ray machines to be brought into Gaza.⁹³

In May 2010 there were severe shortages of infant medications and medical baby milk, of medication for epilepsy, hemophilia, and thalassemia, and of supplies used during childbirth and surgery.⁹⁴ The Health Ministry in Gaza reported that 110 types of medication and 123 types of medical equipment ran out of stock and that an additional 76 types of medication and 60 types of equipment are expected to run out within the next three months, harming first and foremost patients suffering from chronic diseases.⁹⁵

These shortages are caused by problems within the Palestinian healthcare system (including a lack

⁸⁹ Food and Agriculture Organization, *Despite constraints, FAO helping Gaza farmers*, 21 February 2008, available at: <http://www.fao.org/newsroom/en/news/2008/1000790/index.html>

⁹⁰ Addameer Association for Human Rights, *A special report on marine environment in the Gaza Strip*, June 2009.

⁹¹ Al Mezan's database. These figures are valid as of 23 June 2010. Also see the Palestinian Center for Human Rights, *Israeli attacks on Palestinian Fishermen in Gaza*, 5 May 2010; and weekly OCHA Protection of Civilians Reports, e.g., 10-16 February 2010, 24-30 March & 21-27 April 2010.

⁹² PNA Council of Ministers, Ministry of Health Announces 88 Kinds of Medicine Run Out, 15 March 2010 (Arabic), available at: http://www.pmo.gov.ps/index.php?option=com_content&view=article&id=405:----88--&catid=25:news&Itemid=67

⁹³ Ibid.

⁹⁴ See, PCHR, *110 Types of Medication and 123 Types of Medical Supplies Out of Stock at Health Facilities in the Gaza Strip*, 19 May 2010, available at:

http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=6681:110-types-of-medication-and-123-types-of-medical-supplies-out-of-stock-at-health-facilities-in-the-gaza-strip-&catid=36:pchrpressreleases&Itemid=194

⁹⁵ Ibid.

of funding, which prevents the Health Ministry from purchasing equipment and medication, as well as delays caused by the authorities in Ramallah). Another reason for these shortages is the delays caused by Israel in processing the entry of already-purchased supplies into Gaza.

Confiscation of patients' personal goods (other than medicines) upon their re-entry to Gaza

Increasingly, Palestinian patients who return to Gaza after receiving medical treatment have had some of their personal belongings confiscated by soldiers at the Erez crossing. Patients were told that according to procedures they were not allowed to enter the Strip carrying more than one bag. Even those who carried only one bag were still forced to throw away every new piece of equipment they acquired during their stay outside Gaza (which sometimes lasts many months). These items have included children's clothing, shoes and toys. Conversations with army sources reveal that this is a systematic policy at the Erez crossing. In response to PHR-Israel's letter of April 2010, the Coordinator of Government Activities in the Territories (COGAT) argued that, "sadly, there is an increasing phenomenon of residents taking advantage of the permits to transfer merchandise into the Strip."

Denial of entry of Palestinian doctors from the West Bank to Gaza

In 2010, Israel rejected two requests by a medical delegation from the Musallam Center in Ramallah to enter Gaza in order to perform eye surgery and cornea transplants.⁹⁶ Gaza patients are in great need of services in these fields as the local healthcare system suffers from a lack of knowledge, expertise, and equipment. Patients who require cornea transplants are being referred each month for medical treatment in the West Bank, including East Jerusalem. Yet, similar to other patients, many patients who require eye surgery are also rejected or experience delays in getting permits to exit Gaza for such treatment.

For example, in January 2010 Israel prevented 17 patients from Gaza from traveling to Ramallah in the West Bank to undergo cornea transplants, resulting in the disposal of all corneas that were donated from the United States and that were only useable for a limited period of time.⁹⁷ Thus, it is essential to facilitate the entry of doctors into Gaza in order to perform surgery and treat patients who are otherwise unable to receive adequate care. In fact, the Musallam Center's delegation, whose applications have been rejected, was scheduled to treat 19 patients unable to reach the West Bank for treatment. This decision undermines the efforts to develop medical capacities in Gaza, train local doctors, and reduce the dependency of the Gaza healthcare system on external sources.

Israel has also prevented PHR-Israel's medical delegations from entering Gaza over the past year. These delegations operated during 2008 as part of the organization's Mobile Clinic to provide treatment and medical counseling, perform surgery, train Palestinian medical staff, distribute medication, and sometimes refer patients for follow-up treatment in Israeli hospitals. Preventing PHR-Israel's doctors from entering Gaza since the summer of 2009 has therefore undermined the organization's humanitarian activity and has added to the Israeli restrictions on medical delegations seeking to enter Gaza.⁹⁸

⁹⁶ PHR-Israel, *Israel does not allow a medical delegation to enter Gaza in order to perform cornea transplants on Eye patients and at the same time it prevents the exit of patients for surgeries* (Hebrew), available at:

<http://www.phr.org.il/default.asp?PageID=60&ItemID=670>

⁹⁷ PHR-Israel, *Israel prevented 17 sight-impaired Gazans from leaving for cornea transplant*, available at:

<http://www.phr.org.il/default.asp?PageID=190&ItemID=488>

⁹⁸ PHR-Israel, *Israel deliberately impairs humanitarian efforts in West Bank & Gaza*, available at:

<http://www.phr.org.il/default.asp?PageID=190&ItemID=313>

Access to Water

The water available in Gaza is insufficient to meet the needs of the population.⁹⁹ Each year there is a shortage of between 80 and 100 million liters of drinking water. Only about 5% to 10% of the water in Gaza is safe; the rest contains very high levels of contamination caused by bacteria and nitrates.¹⁰⁰ The inability to access clean water affects human health in many ways. People need water to establish routine hygiene, for cleaning food, clothes and homes. The use of polluted water to irrigate agricultural crops can also have adverse effects on human health. Some 80 million liters of raw or partly-treated sewage water is pumped daily into the sea alongside Gaza, owing to the inability to build or rehabilitate permanent sewage treatment plants. The water has become further contaminated by chemicals, including fertilizers and pesticides.

Around 78% of water and sanitation facilities have been repaired following the Israeli military attacks on this infrastructure during OCL, excluding house connections of destroyed houses and the Jabalia reservoir.¹⁰¹ However, the situation before OCL was already very grave. According to the UNDP the situation today poses serious environmental and public health concerns.¹⁰²

The blockade policies have severely limited new equipment and building materials from entering Gaza. As consequence, repairs could not be made to damaged infrastructure nor could new facilities be built. Currently the Coastal Municipal Water Utility (CMWU), responsible for the provision of the water supply and sanitation services in Gaza, is struggling to maintain the 150 water wells, 37 sewage pumping stations and three waste-water treatment plants under its control. Most of the wells, stations and plants are in desperate need of replacement parts, and new construction on water infrastructure has been halted since 2007 because of the lack of necessary materials.¹⁰³ In addition, restrictions on electricity and fuel have severely hindered the operations of the pumps and plants that are still able to function.

Question 13

Please provide further information on the legislation referred to in paragraph 173 of the State party's report, designating torture and ill-treatment as a criminal offence, and on any additional legislative measures the State party envisages taking to fully incorporate the prohibition of all forms of torture and other cruel, inhuman or degrading treatment or punishment into domestic law, as set out in article 7 of the Covenant. According to information before the Committee, Amendment No. 4 made in 2008 to the Criminal Procedure (Interrogation of Suspects) Law – 2002, has extended for an additional four years the existing exemption of the Israel Security Agency (ISA) and the police from making audio and video recordings of interrogations of security suspects. What measures does the State party have in place to guard against torture and ill-treatment during such interrogations, as well as against the extraction of false confessions?

⁹⁹ Amnesty International, *Troubled Waters – Palestinians Denied Fair Access to Water*, October 2009, available at: <http://www.amnesty.org/en/news-and-updates/report/israel-rations-palestinians-trickle-water-20091027>

¹⁰⁰ Al Mezan, News Brief, *On International Human Rights Day, Al Mezan and the High Commissioner Organize a Conference, Gaza and the Right to Water*, 12 December 2009, available at: http://www.mezan.org/en/details.php?id=9341&ddname=Human%20Rights%20Day%202009&id_dept=14&id2=9&p=center

¹⁰¹ UNDP, *Gaza One Year After: Early Recovery and Reconstruction Needs Assessment*, May 2010, p. 12.

¹⁰¹ Ibid. p. 12. See also, Al Mezan, *The Impact of the Israeli Offensive on the Right to Water in the Gaza Strip*, February 2009, available at:

http://www.mezan.org/en/details.php?id=8675&ddname=gaza%20destruction&id_dept=22&id2=9&p=center

¹⁰² UNDP, *Gaza One Year After: Early Recovery and Reconstruction Needs Assessment*, p. 40.

¹⁰³ Al Mezan, *The Impact of the Israeli Offensive on the Right to Water in the Gaza Strip*, February 2009, available at: http://www.mezan.org/en/details.php?id=8675&ddname=gaza%20destruction&id_dept=22&id2=9&p=center

Given the further extension of the exemption for a period of four years, does the State party intend to make it permanent?

Torture is not designated as a crime in Israel

Contrary to the state's assertion in paragraph 173 of its report, there is no provision in the Israeli Penal Code that specifically outlaws torture. Regarding the 2008 amendment to *The Criminal Procedure (Interrogation of Suspects) Law – 2002*, please see the previous report provided to the Committee by Adalah, Al Mezan and PHR-Israel in August 2009, section 15, "Recording of interrogations of security suspects," p. 15 (See annex).

Question 14

Notwithstanding the State party's assurances that the prohibition on the use of "brutal or inhuman means" is absolute, and its affirmation that "necessity defense" is not a source of authority for an interrogator's use of physical means, please explain whether the "necessity defense" exception may still arise where physical pressure is used during the interrogation of terrorist suspects or persons otherwise holding information about potential terrorists ("ticking bombs"). Have complaints of torture or cruel, inhuman or degrading treatment been referred to the Attorney-General's office for filing of criminal charges against interrogators during the questioning of security detainees considered to be "ticking bombs"? If so, please provide the Committee with detailed information about the number of complaints, their outcome and reasons for which an investigation or prosecution was not pursued in certain cases, if any. Please also provide information on the total number of persons classified as "ticking bombs" who have been interrogated since 2003 as well as the outcome of these interrogations.

Lack of investigations into complaints of torture

Complaints of torture and ill-treatment in Israeli detention centers continue to be made on a regular basis. In this regard, in June 2009 the UN Committee against Torture reiterated a number of concerns about torture in places of detention operated by Israel in concluding its fourth periodic review of Israel.¹⁰⁴

According to data published by PCATI in 2009, of the over 600 complaints of torture and ill-treatment submitted to the Israeli authorities since 2001, **not one** has resulted in a criminal investigation.¹⁰⁵ In March 2010, a group of human rights NGOs in Israel wrote to the incoming Attorney General demanding that he order an independent unit within the Justice Ministry or the Israeli Police to conduct criminal investigations of all complaints submitted against Israel Security Agency (ISA) interrogators involving suspected torture or abuse.¹⁰⁶ The letter described how the over 600 complaints had all been transferred to an internal body of the ISA for preliminary examination, but were then closed without investigation.

By failing to effectively and independently investigate these allegations, Israel is disregarding the Committee's recommendation of 2003 that, "It should ensure that alleged instances of ill-treatment and torture are vigorously investigated by genuinely independent mechanisms, and that those

¹⁰⁴ The Committee Against Torture, Concluding Observations on Israel, CAT/C/ISR/CO/4, 23 June 2009. See also, e.g., PCATI, *10 Years, Hundreds of Complaints, No Investigations*, December 2009 (English), available at: <http://www.stoptorture.org.il/en/node/1520>

¹⁰⁵ PCATI, *Accountability Denied: The absence of investigation and punishment of torture in Israel*, December 2009, p. 15 (English), available at: http://www.stoptorture.org.il/files/Accountability_Denied_Eng.pdf

¹⁰⁶ The human rights organizations included PCATI, PHR-Israel, Adalah, ACRI, HaMoked, and Yesh Din.

responsible for such actions are prosecuted” (para. 18).¹⁰⁷

Will the Health Ministry or the Israel Medical Association investigate claims of torture?

In March 2010, PHR-Israel and PCATI submitted a complaint to the Israeli Ministry of Health and the Israel Medical Association (IMA) demanding that they investigate the case of a 21-year-old Palestinian prisoner, Jihad Mughrabi.¹⁰⁸ Mr. Mughrabi was arrested by the ISA in 2008 and was heavily beaten during his interrogation. As a result, Mughrabi needed medical care. Unlike other torture cases, there are medical records from Laniado hospital and from the Kishon Detention Center which support Mughrabi’s claims of abuse.¹⁰⁹ The IMA responded to the complaint by asking whether PHR-Israel and PCATI filed a complaint with the Israeli Police or the Attorney General (AG).¹¹⁰ PCATI submitted a complaint in Mughrabi’s name to the AG in July 2008 but no response has been received thus far.

Over the past year, Israeli physicians at prison facilities have continued supplying ISA interrogators with medical assessments of detainees’ medical status, serving on call during interrogations, and failing to report or document claims of abuse, all of which violate medical ethics, including the Tokyo Declaration which was adopted by the IMA. For example, PHR-Israel obtained 13 medical forms from May and June 2009 that were signed by doctors at the Kishon Detention Center and addressed to interrogators in the Special Investigations Wing at the Center. These forms relate to Mr. F.M.A., a Palestinian prisoner, and describe his medical condition in detail.

Prohibition on meeting with lawyers

Recently, the Israeli Supreme Court refused to order the state to release information regarding Palestinians who have been interrogated by the ISA. In March 2009, NGOs Yesh Din and the Movement for Freedom of Information filed a FOIA petition to the Supreme Court¹¹¹ asking for information to be released about:

- a. The number of Palestinians that the ISA prohibited from seeing a lawyer during interrogation from 2004 to 2008, based on Military Order 378, Articles 78C (c)(1) and (2) [the maximum prohibition is 90 days¹¹²];
- b. The average duration of the prohibition; and
- c. The number of Palestinians interrogated by the ISA from 2004 to 2008.

¹⁰⁷ In March 2010, Adalah filed a request under the Freedom of Information Act (FOIA) for updated information about the number of complaints filed against the ISA for alleged incidents of torture and ill-treatment in 2008 and 2009, as well as the number of criminal investigatory files opened, the number of files that were closed and for what reasons, and the number of complaints that lead to criminal indictments and convictions. In May 2010, the Ministry of Justice requested an extension of time in which to gather the information. To date, no information has been received.

¹⁰⁸ PHR-Israel’s letter to the Ministry of Health, available at:

http://www.phr.org.il/uploaded/Mugrabi_Ministry%20of%20Health_eng%2017%203%2010.pdf and letter to the IMA, available at: http://www.phr.org.il/uploaded/Mugrabi_IMA_eng%2015%203%2010.pdf

¹⁰⁹ Dan Even, “Health Min., Israel Medical Association probing whether physicians failed to report torture of Palestinian detainee,” *Haaretz*, March 14, 2010, available at: <http://www.haaretz.com/print-edition/news/health-min-israel-medical-association-probing-whether-physicians-failed-to-report-torture-of-palestinian-detainee-1.266495>

¹¹⁰ Letter to PHR-Israel from the IMA, dated 10 March 2010, available in English at:

<http://www.phr.org.il/uploaded/%2014%203%2010תשובתאנגליתלרלא%20הרי%20תשובת2010.pdf>

¹¹¹ HCJ 2662/09, *The Movement for Freedom of Information, et al. v. The Prime Minister’s Office, et al.* (pending).

¹¹² A “security detainee” may be held and prevented from meeting a lawyer for up to thirty days at the request of the Israeli security services in accordance with Military Order 378, Articles 78C (c)(1) and (2). The detention may be extended for an additional 30 days with the authorization of a military court judge, and for a further 30 days – i.e. for a total maximum of 90 days – with the authorization of the Judge of the Military Appeals Court, in accordance with Military Order 378, Articles 78D (b)(2-4).

In its initial response, submitted on 17 May 2010, the state refused to reveal the requested information. It claimed that the information was related closely and directly to the ISA's work on combating terror, and that there was a very high chance that its publication would harm the security of the state and the work of the ISA. At a hearing held on the petition on 31 May 2010, the Supreme Court reviewed secret evidence brought before it by the state. It then suggested that the petitioners withdraw the petition on the basis of this evidence. The petitioners refused and asked for a detailed ruling from the court. To date, the court has not issued its decision.

The state's claims in this case raise grave concerns and reflect the worrying lack of transparency that surrounds information on Palestinian prisoners in general and their detention and interrogation by the ISA in particular. Such a lack of transparency and public supervision risks nurturing a culture of impunity and lack of accountability in which torture and ill-treatment are allowed to persist without effective monitoring.

Question 16

Please elaborate on the frequent use of administrative detention, in particular of Palestinians in the OPT, which entails restrictions on access to lawyers and the disclosure of full reasons for detention, and provide disaggregated data by sex, age and ethnic origin on administrative detainees. Please also provide detailed information on the rules and modalities governing administrative detention, both in Israel and in the OPT, including information on the use of secret evidence as a basis for administrative detention. Please comment on information according to which Palestinians were arrested and sent to detention facilities in Israel during Operation Cast Lead, and elaborate on information about the detention of Palestinian men, women and children in sand pits in degrading conditions as regards their treatment, food, water, exposure to the elements and access to sanitary facilities.

Data on administrative detention

According to figures obtained by B'Tselem, as of April 2010 Israel was holding more than 222 Palestinians in administrative detention in facilities run by the Israel Prison Service.¹¹³ According to DCI-Palestine, as of April 2010, there are two Palestinian children (under 18) being held under administrative detention in Israeli prisons. Since 2008, thirteen Palestinian children have been released from administrative detention.¹¹⁴

Treatment of Palestinian detainees during Operation Cast Lead

Palestinian prisoners from Gaza were held in cruel, inhuman and degrading conditions during their initial period of detention in Gaza during the attacks on Gaza in Operation Cast Lead (OCL). For example, detainees, including minors, were held in 2-3 meter deep pits for hours and sometimes days, exposed to the bitter cold, shackled and in some cases blindfolded. Each pit held around 60-70 people. These pits contained no sanitary facilities, and food or blankets, to the extent they were available, were provided only in very limited quantities. The detainees were not allowed to leave the pits to relieve themselves. Further, detainees were held adjacent to areas of fighting, endangering their lives.¹¹⁵ The detainees' descriptions of their holding conditions indicate that the security forces

¹¹³ B'Tselem, *Statistics on administrative detention*, available at:

http://www.btselem.org/english/Administrative_Detention/Statistics.asp

¹¹⁴ See DCI-Palestine statistics available at:

<http://www.dci-pal.org/english/Display.cfm?DocId=902&CategoryId=11>

¹¹⁵ See PCATI and Adalah, *Exposed: The Treatment of Palestinian Detainees During Operation "Cast Lead,"* forthcoming June 2010, p. 21 (English).

contravened their basic obligation towards the detainees to protect their dignity and to prevent their humiliation and debasement, as required international human rights and humanitarian law.¹¹⁶

After their transfer, the detainees were isolated in cells or trailers without toilets or showers. In other cases, dozens of handcuffed prisoners were held in a room in a house, sometimes also blindfolded, in the toilet or in the shower, and also for many hours, or even for days.¹¹⁷

The Goldstone Mission investigated several incidences of the detention of Palestinians by the Israeli military during OCL at three locations located close to the Gaza-Israel border. In relation to the detention of Palestinian civilians in sand pits, the Mission found, inter alia, that:

- In all cases a number of persons were herded together and detained in open spaces for several hours at a time and exposed to extreme weather conditions;
- The soldiers deliberately subjected civilians, including women and children, to cruel, inhuman and degrading treatment throughout their ordeal in order to terrorize, intimidate and humiliate them. The men were made to strip, sometimes naked, at different stages of their detention. All the men were handcuffed in a most painful manner and blindfolded, increasing their sense of fear and helplessness;
- Men, women and children were held close to artillery and tank positions, where constant shelling and firing was taking place, thus not only exposing them to danger, but also increasing their fear and terror. This was deliberate, as is apparent from the fact that the sandpits to which they were taken were specially prepared and surrounded by barbed wire.¹¹⁸

The Mission further noted that there were several common features to these incidents that disclose a pattern of behavior by Israeli soldiers which indicates ill-treatment of the persons in the instances investigated by the Mission.¹¹⁹

The Mission further concluded that, “The abuse, which required a considerable degree of planning and control, was sufficiently severe to constitute inhuman treatment within the meaning of article 147 of the Fourth Geneva Convention and thus a grave breach of the said Convention that would constitute a war crime,”¹²⁰ and that, in relation to article 76 of Additional Protocol I to the Geneva Conventions – which stipulates that “Women shall be the object of special respect” – “the treatment of the women in the sandpits, where they endured especially distressing circumstances, was contrary to this provision and would also constitute a war crime.”¹²¹

According to Israel’s report of January 2010,¹²² a special command investigation will look into allegations made in the Goldstone Report that, inter alia, Israeli soldiers mistreated Palestinians detainees, and specifically that “IDF forces held the detainees in cruel, inhumane and degrading conditions,” such as “in pits, exposed to cold and bad weather conditions, handcuffed and with their eyes covered, without food or ability to relieve themselves” and “during the night in trucks, while

¹¹⁶ Ibid. pp. 21-22.

¹¹⁷ As reported, e.g., in a complaint submitted to the MAG and the AG by PCATI, ACRI, and HaMoked, on behalf of those organizations and on behalf of PHR-Israel, Adalah, B’Tselem and Yesh Din on 28 January 2009.

¹¹⁸ The Goldstone Report, para. 1164.

¹¹⁹ Ibid. para. 1164.

¹²⁰ Ibid. para. 1172.

¹²¹ Ibid. para. 1173.

¹²² The State of Israel, *Gaza Operation Investigations: An Update*, 29 January 2010.

they are handcuffed, without having enough blankets.”¹²³ No information about the progress or conclusions of this investigation has been released to date.

Question 17

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. Please explain the reference to a maximum delay of up to three months mentioned in paragraph 252 of the State party’s report. Furthermore, a detainee suspected of a security offence can be held for up to 96 hours before being brought before a judge (paras. 256-257 of the State party’s report). Please indicate what measures the State party envisages to take to bring the law in conformity with the Covenant and the previous recommendations of the Committee (CCPR/CO/78/ISR, para.13) regarding both access to a lawyer and to a judge. Please also provide: (a) disaggregated data on prisoners classified as security prisoners; (b) detailed and updated information on the conditions of solitary confinement; and (c) disaggregated data on the persons held in solitary confinement, including their age at time of detention, length of total detention and solitary confinement, and grounds for detention and solitary confinement. Bearing in mind the possibility provided under various laws and regulations to hold security suspects, including minors, in incommunicado detention for prolonged periods of time, please indicate what safeguards are in place to ensure that the persons concerned are not subjected to torture or ill-treatment during such detention and explain the reasons for holding detainees in prolonged incommunicado detention.

Data on “security prisoners”

According to Palestinian prisoners’ rights organization Addameer, in April 2010 6,631 Palestinian prisoners classified as “security prisoners” were being held by Israel.¹²⁴ The total number of Palestinian child prisoners in Israeli prisons as of April 2010 is 335; of those 32 are between the ages of 12-15 and one is a girl, according to Defence for Children International – Palestine Section (DCI-Palestine).¹²⁵ According to information obtained by B’Tselem, as of 30 April 2010, around 6,500 Palestinians were being held in Israel, almost all of whom are classified as “security prisoners.”¹²⁶

Update on the Criminal Procedure (Detainees Suspected of Security Offences) (Temporary Order) Law – 2006

On 11 February 2010, an expanded nine-justice panel of the Israeli Supreme Court struck down article 5 of *The Criminal Procedure (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. The individuals subjected to this law are predominantly Palestinians from Gaza.

The appeal, submitted by the Israeli Public Defenders’ Office in 2007, related only to the unconstitutionality of article 5 of the law. However, the legal rationale behind the Supreme Court’s decision to strike down article 5 pertains equally to the law’s other unconstitutional provisions, which should also be voided. A petition filed by Adalah, the Association for Civil Rights in Israel

¹²³ Ibid. pp. 33-34.

¹²⁴ See, Addameer, *Quarterly Update on Palestinian Prisoners*, April 2010, available at, <http://addameer.info/wp-content/images/addameer-quarterly-update-on-palestinian-prisoners-april-2010.pdf>

¹²⁵ See DCI-Palestine statistics available at: <http://www.dci-pal.org/english/Display.cfm?DocId=902&CategoryId=11>

¹²⁶ B’Tselem, *Statistics on Palestinians in the custody of the Israeli security forces*, available at: http://www.btselem.org/english/statistics/Detainees_and_Prisoners.asp

(ACRI) and PCATI also requested the annulment of additional unconstitutional provisions of the law that severely violate the due process rights of suspects by: allowing persons suspected of committing security offenses, in certain circumstances, to be detained for 96 hours without being brought before a judge (paragraph 3), for the extension of their pre-trial detention up to 20 days (paragraph 4.1), and for a suspect to be detained for 35 days without indictment (paragraph 4.2).¹²⁷ Furthermore, these articles are usually implemented in tandem with article 35 of the Detention Law, which allows a detainee suspected of committing security offenses to be prevented from meeting a lawyer for up to 21 days, contrary to the Committee's Concluding Recommendation from 2003 that, "The State party should ensure that no one is held for more than 48 hours without access to a lawyer" (para. 13).

Military orders that apply to Palestinians in the West Bank allow the ISA to prevent a meeting between a detainee and a lawyer for *up to 90 days*, in accordance with Military Order 378.¹²⁸

Thus, despite the cancellation of Article 5 of *The Criminal Procedure (Detainees Suspected of Security Offences) (Temporary Order) Law – 2006*, a security suspect can still be held in incommunicado detention, in the hands of ISA interrogators, for a period of up to 21 days, a situation that renders him or her vulnerable to torture and ill-treatment.

No preventative mechanism or effective safeguards against torture and ill-treatment during detention

Israel lacks a system of unannounced visits to ISA detention centers by qualified, independent professionals, including lawyers and doctors. While a visiting mechanism does exist, it is neither independent nor ad hoc.¹²⁹ Section 71 of the *Prisons Ordinance – 1972* establishes rules for official visitors in prisons, who are appointed by the Minister of Public Security and comprise lawyers from the Ministry of Justice and other ministries. Section 72 grants official visitor permission to the judiciary and Attorney General. According to guidelines of the Israel Prison Service (IPS),¹³⁰ the

¹²⁷ Adalah, ACRI and PCATI filed a petition to the Supreme Court in 2008 challenging the constitutionality of the law and demanding that it be repealed. See HCJ 2028/08, *The Public Committee Against Torture in Israel, et al. v. The Minister of Justice*. The Supreme Court decided to join the two cases for hearings. At a hearing held in March 2009, the court made an unprecedented decision to hear secret evidence relating to the constitutionality of the law presented by the ISA *ex-parte*, at the request of the state and in the absence of the petitioners. The petitioners withdrew the petition on 24 March 2009 in protest against the court's decision, which meant that it would decide on the constitutionality of the law on the basis of secret evidence, without allowing the petitioners to examine or question it. The organizations argued that the decision had no legal basis and set a dangerous precedent that threatened future possibilities for judicial review of laws that violate human rights. The appeal submitted by the Public Defenders' Office remained pending for further deliberation.

¹²⁸ A "security detainee" may be held and prevented from meeting a lawyer for up to 30 days at the request of the Israeli security services in accordance with Military Order 378, Articles 78C (c)(1) and (2). The detention may be extended for an additional 30 days with the authorization of a military court judge, and for a further 30 days – i.e. for a total maximum of 90 days – with the authorization of the Judge of the Military Appeals Court, in accordance with Military Order 378, Articles 78D (b)(2-4).

¹²⁹ Official visitors are allowed to enter prisons at any given time (unless special temporary circumstances apply), inspect the state of affairs, prisoners' care, management, etc. During these visits, the prisoners may present their complaints to the visitors, including grievances pertaining to the use of force. Attorney General's Guideline (No. 4.1201 of 1 May 1975, updated 1 September 2002) broadened the scope of the above to also include detention facilities and detention cells in police stations. See, Israel's Fourth Periodic Report to the UN Committee Against Torture, Addendum, 12 December 2007, CAT/C/ISR/4, p. 24, available at:

http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.ISR.4_en.pdf

¹³⁰ Guidelines no. 3.04.00, available in Hebrew at: <http://www.ips.gov.il/NR/rdonlyres/0DBB15A5-53C4-444D-9C51-148A8069D581/0/0>

Minister of Internal Security has the discretion to authorize entry to certain areas of the prison, while restricting access to other areas. While representatives of the Public Defender's Office and the Israeli Bar Association do conduct visits to prisons and often issue severely critical reports about prison conditions, they have been denied permission to visit ISA detention cells, and to visit detainees held in such cells. Only lawyers from the Justice Ministry are allowed to check conditions in ISA detention cells, and even then only without reporting on them to the public.¹³¹ In addition, Israel has entered a reservation to Article 20 of the CAT, thereby denying the Committee Against Torture the authority to visit Israel in order to investigate any evidence it receives about the systematic practice of torture. Moreover Israel has not signed or ratified the Optional Protocol to the CAT.¹³²

Further, the IPS does not allow doctors affiliated with PHR-Israel to visit prison facilities for inspection. PHR-Israel has made numerous requests for its physicians to take part in the official visits to prisons; all of their requests were rejected. In 2008, representatives of PHR-Israel met the IPS Commissioner to repeat its request for PHR-affiliated physicians to conduct regular inspections of prisons; the commissioner rejected the request stating that such visits would create an unnecessary burden on the IPS.

Finally, security suspects are routinely denied access to independent doctors during the period of their interrogation. PHR-Israel filed a prisoner's petition on 25 May 2010 to request that an independent doctor be permitted to conduct a medical examination of a detainee suspected of committing security offenses, and access to his medical reports.¹³³ The Legal Adviser to the ISA (Northern District) responded to the petition on 26 May, stating that, "Generally speaking, we object to the conduct of [medical] examinations by external doctors during an investigation."

Question 18

In its previous concluding observations, the Committee urged the State party to respect the freedom of movement guaranteed under article 12 of the Covenant and stop the construction of a "Seam Zone" including a wall, within the Occupied Territory. This recommendation of the Committee was reiterated by the International Court of Justice in its 2004 Advisory Opinion. Please provide information about any measures taken by the State party to comply with the 2004 Advisory Opinion of the International Court of Justice. Please provide information with regard to all restrictions of movement in the OPT, including those arising from checkpoints, the imposition of travel permits for movement in, out and within the "Seam Zone" and the whole of the OPT, and the lack of access to roads for exclusive use by Israelis.

Restrictions on movement in Gaza: The Israeli military buffer zone

The Israeli military has established a "buffer zone" in Gaza, which bears parallels to the "Seam Zone" in the West Bank in terms of its purpose and its effects. Officially, Israeli military forces declared that the buffer zone extended 300 meters inside the Gaza Strip, along the northern and

¹³¹ On this issue, see correspondence between ACRI, in the name of ACRI, PCATI and PHR-Israel, beginning in October 2009 with a demand to allow supervision by the representatives of the Public Defender's Office over the holding conditions in ISA facilities. The Deputy State Attorney for Special Tasks responded by supporting the current policy in a letter dated 21 January 2010. For more information, see PCATI and Adalah, *Exposed: The Treatment of Palestinian Detainees During Operation "Cast Lead,"* forthcoming June 2010, pp. 29 (English).

¹³² See Adalah, PHR-Israel, Al Mezan and PCATI, *Israel Should Ratify the Optional Protocol to the UN Convention Against Torture as an Effective Means of Eliminating Torture*, April 2010, available at: <http://www.adalah.org/newsletter/eng/apr10/English.pdf>

¹³³ Prisoner's Petition Appeal 39911-05/10, *Makhoul v. IPS Chief Medical Officer*. See also the response of the Legal Advisor to the ISA (Northern District), on file with PHR-Israel (Hebrew and English).

eastern border with Israel. However, in effect it extends as far as 1,000 meters, i.e. it covers a total of one fifth of the area of the North Gaza and Gaza Districts. The economic cost for Gaza of this policy is exorbitant, as it covers an area that includes most of the fertile agricultural land in Gaza (*see the response to question 12, above*). Most farmers are unable to work their lands near or inside the buffer zone for fear of being shot at by Israeli military forces.

The enforcement of the buffer zone has been characterized by the use of excessive and lethal use by the Israeli military. 493 people have been killed and 583 injured without any justification in the buffer zone.¹³⁴ Most farmers have already abandoned their homes and lands due to the continuous attacks. Children have been killed in such attacks, when they were in their fields with their families, when they were hunting birds, or when they were passing from roads close to the border. The Israeli military has also opened fire on Palestinian civilians collecting rubble from destroyed buildings near the border between Gaza and Israel. This rubble is the only source of materials needed for making bricks and concrete for construction that is available in the Gaza Strip, which suffers from an acute shortage of construction materials due the blockade.¹³⁵

Adalah, Al Mezan and PHR-Israel request the Committee find that this wide Buffer Zone unjustifiably imposes severe restrictions on the right of Palestinians in Gaza to freedom of movement.

Question 19

Please provide information about regulations that determine the ability of persons with a Gaza identity card to move to the West Bank and East Jerusalem and vice versa. Please provide information on the movement of persons in and out of Gaza, and in particular about the issuance of permits to patients from Gaza to seek treatment abroad. Please comment on information before the Committee according to which patients are denied exit, including those with serious medical conditions, due to “security reasons”. Furthermore, according to information before the Committee, in at least 35 cases since July 2007, the ISA has interrogated patients with permits at the Erez Crossing, in the course of which they were asked to provide information about relatives and acquaintances as a precondition for being allowed to exit Gaza. According to patients’ testimonies, they were denied permission to exit Gaza for the purpose of receiving medical treatment if they refused or could not provide the information requested by the ISA. Please indicate whether investigations into these allegations have taken place and with what results.

Military Orders 1649 and 1650: Deportation and forcible transfer

Two new military orders that restrict freedom of movement and allow for deportation and forcible transfer of Palestinians and foreigners from the West Bank, Military Order 1650 – Order Regarding Prevention of Infiltration, and Military Order 1649 – Order Regarding Security Provisions, issued

¹³⁴ Al Mezan’s database, figure for the period between 15 September 2005 (after the Israeli disengagement) and 30 April 2010.

¹³⁵ Al Mezan regularly reports incidents involving attacks on Palestinians civilians in the buffer zone including on Palestinian civilians collecting rubble. See, e.g., Al Mezan, *Fisherman and Rubble Collector Injured; Five Arrested by IOF in Gaza: Al Mezan Condemns IOF Attacks and on Calls for the International Protection of Civilians*, 25 March 2010, available at: http://www.mezan.org/en/details.php?id=9871&ddname=IOF&id_dept=9&id2=9&p=center. OCHA also regularly documents incidents in the buffer zone in their weekly Protection of Civilians Reports on the OPT. See, e.g., reports dated 31 March-13 April 2010 and 21-27 April 2010.

by the Israeli Commander of the Central Command, entered into force on 13 April 2010.¹³⁶ These orders radically broaden the definition of “infiltration”, subjecting almost every person living in the occupied West Bank to possible criminal charges, transfer, imprisonment, fines and/or deportation, and allow for the deportation of thousands of Palestinians from the West Bank to the Gaza Strip.¹³⁷

Military Order 1650 is so vaguely worded that it could apply to anyone, but the groups that appear to be targeted are: bearers of Palestinian ID cards whose registered addresses are in the Gaza Strip in the Population Registry (controlled by Israel); individuals without official status (the “status-less”), including spouses of Palestinian residents for whom Israel refuses to approve ID cards and others who have not been added to the population registry or have had their status revoked or deleted by Israel; and foreigners visiting or working in the West Bank, including those for whom Israel refuses to renew visas.¹³⁸ Under Military Order 1650, anyone who is a member of one of these groups who entered the territory unlawfully, or whose entry permits have expired, or who is present in the West Bank, whether they entered the territory or have always been there, could potentially be subject to deportation. Finally, there is a serious lack of judicial oversight and the mechanisms available to challenge deportation orders are inadequate.

The order violates a range of human rights including the right of Palestinians to freedom of movement, travel and residence in their own country (Article 12 of the ICCPR), the right to protection and assistance accorded to the family and, in particular, children; the right to marry and start a family; and the right not to be subjected to arbitrary or unlawful interference with his family (Articles 17 and 23 of the ICCPR).¹³⁹ It is also important to stress the discriminatory nature of this military order, which violates Article 26 of the ICCPR.

The deportation of Mr. Ahmed Said Sabbah to the Gaza Strip

On 21 April 2010, the order was implemented and the Israeli authorities deported Mr. Ahmed Said Sabbah, 38, to the Gaza Strip. Since 1995, Mr. Sabbah has been living in the West Bank, prior to which he lived in the Gaza Strip. Mr. Sabbah had just been released from prison after serving a nine-year sentence. He was informed by the Israeli prison authorities that he would be released at the Erez Crossing into the Gaza Strip, and that if he refused, he would be detained for six months and face further sanctions. Mr. Sabbah had no opportunity to challenge or appeal his deportation before any judicial or military body prior to his deportation.¹⁴⁰

¹³⁶ Military Order 1649 addresses procedural matters stemming from Military Order 1650. English translations of the texts of Military Order Regarding Prevention of Infiltration (Amendment No. 2) and Order Regarding Security Provisions (Amendment No. 112) are available at: http://www.hamoked.org.il/news_main_en.asp?id=904.

¹³⁷ See Al-Haq, *Al-Haq's Legal Analysis of Israeli Military Orders 1649 and 1650: Deportation and Forcible Transfer as International Crimes*, available at: <http://www.alhaq.org/pdfs/legal-analysis-of-new-israeli-military%20Orders.pdf>.

See also, Gisha, *Frequently Asked Questions: The Threat of Deportation from the West Bank*, available at: <http://www.gisha.org/index.php?intLanguage=2&intItemId=1728&intSiteSN=119>

¹³⁸ See also, Gisha, *Frequently Asked Questions: The Threat of Deportation from the West Bank*.

¹³⁹ The military order violates article 49 of the Fourth Geneva Convention Relative to the Protection of Civilians in Times of War, of 1949, which prohibits an occupying power from forcibly transferring protected persons, and limits the expulsion to very strict conditions. The occupying power may undertake expulsion only if imperative military reasons so demand, which is not currently applicable because there are no hostilities in the West Bank at present.

¹⁴⁰ For more information, see Al Mezan, *Israel Implements New Military Order 1650; Authorities Expel Palestinian Man from the West Bank to the Gaza*, 22 April 2010, available at: http://www.mezan.org/en/details.php?id=10008&ddname=expel&id_dept=9&id2=9&p=center

On 25 May 2010, sixteen Israeli and Palestinian human rights organizations filed a petition to the Supreme Court of Israel demanding an immediate end to the draconian practice of the expulsion and forced transfer of Palestinians from the West Bank to Gaza solely on the basis of their registered address.¹⁴¹

The exit of patients from Gaza for medical treatment

In view of the lack of accessible healthcare services in Gaza, hundreds of patients are referred each month for medical treatment outside the Gaza Strip. 40% of referred patients suffer from medical problems in four fields in which the local healthcare system shows particular weakness: oncology, ophthalmology, orthopedics, and cardiology.¹⁴²

Between January and May 2010, 5,361 patients applied for permits to cross Erez for medical treatment unavailable in Gaza. 4,046 patients (75%) were approved during this period. The applications of 1,315 patients (25%) were either rejected or delayed, causing them to miss hospital appointments. During this period there was also an increase in the number of patients referred for cancer treatment due to the ongoing lack of medication and available treatment in Gaza. Between January and December 2009, 7,534 patients applied for permits and 5,211 (69%) were approved; over 2,300 patients (31%) were either rejected or delayed.¹⁴³

Coercive interrogation of patients by the ISA

Between January and May 2010, 247 patients who applied to exit Gaza for medical treatment were summoned for interrogation by the ISA at Erez. This number represents close to 5% of the total number of patients who applied for an exit permit during this period. During 2009, over 600 patients were summoned for interrogation, representing around 8% of the total number of patients who applied for such permits.¹⁴⁴

These numbers reflect a continuation of ISA policy to coercively interrogate patients, a policy PHR-Israel first identified in 2007.¹⁴⁵ As in past years, the ISA regularly summons patients for interrogation *after their hospital appointment date has already passed*, thus causing them to miss their appointment and forcing them to reschedule with the hospital. Moreover, while the most patients being interrogated eventually receive permits, many are subject to threats and extortion by ISA interrogators. Others decide to stay home and avoid interrogation out of fear of being threatened by the ISA and of possible reaction in Gaza if they are viewed as collaborating with Israel.¹⁴⁶

¹⁴¹ See Hamoked's Press Release, *Stop immediately the expulsion of Palestinians from the West Bank to the Gaza Strip*, 25 May 2010, available at: http://www.hamoked.org.il/news_main_en.asp?id=921

¹⁴² Médecins du Monde (MdM), *One year after the Cast Lead Operation: Gaza: a health care system impeded*, January 2010, available at: <http://www.medecinsdumonde.org/>

¹⁴³ Based on WHO Monthly Reports on Referral Abroad of Patients from the Gaza Strip, available at: <http://www.who.int/hac/crises/international/wbgs/en/>

¹⁴⁴ Ibid.

¹⁴⁵ Physicians for Human Rights, *Holding Health to Ransom*, August 2008, available at: http://www.phr.org.il/uploaded/HoldingHealthToRansom_4.pdf. An update from May 2009 is available at: <http://www.phr.org.il/uploaded/UpdateOPT%204.5.09.pdf>

¹⁴⁶ A public opinion poll, initiated and sponsored by PHR-Israel and conducted in January 2010 by the independent New Wave Research company, reveals that a significant portion of the population from various backgrounds is averse to the ISA's policy of threatening and extorting patients as a condition for crossing roadblocks and checkpoints for medical treatment (42%). Moreover, more people surveyed strongly disapproved of the policy (28%) than strongly approved of it (17%).

Illegal distinction made between danger to life and quality of life in Gaza medical cases

A position paper recently published by PHR-Israel, Adalah and Al Mezan includes an analysis of 48 appeals that PHR-Israel submitted during 2009 on behalf of patients whose applications for permits were rejected.¹⁴⁷ This analysis indicates that the applications of patients whose lives were not in danger were approved significantly less frequently than those of patients in life-threatening situations. This distinction was made even in cases in which patients suffered from medical problems that might have led to limb amputation or vision loss, and in contrast to medical ethics demanding the equal treatment of patients and in violation of international law.

Moreover, in several correspondences with PHR-Israel, the Israeli authorities noted that there are specific criteria against which patients' applications are measured and that these criteria take the seriousness of an individual's medical condition into account. These criteria are not consistent with international and Israeli human rights law; nor are they consistent with normative medical ethics standards. Ethical standards mandate that all patients receive the best medical treatment available to them without giving consideration to the urgency or seriousness of their condition. International law mandates that as the occupying power, Israel must allow every patient requiring medical treatment that is unavailable in Gaza access to treatment outside of Gaza without delay.

Denial of access to medical case: Danger to life v. Quality of life

A.T., 24 years old, was shot in his right arm in 2007. Since then he has completely lost the use of his hand and has been suffering from intense pains and atrophied muscles. According to a medical opinion issued by Dr. Josef Leitner, a specialist in orthopedic surgery, the only treatment available to restore partial functioning to A.T.'s hand would be a tendon transplant. Shifa Hospital, the largest and most advanced medical center in the Gaza Strip, does not have the technical capacity to carry out such a procedure. As a result, A.T. was referred by his doctors to Al-Makassad Hospital in East Jerusalem. A.T.'s permit request was submitted in August 2009 and was later denied. A.T. immediately contacted Al Mezan in Gaza, which then transferred the case to PHR-Israel. On 9 September 2009 PHR-Israel resubmitted the patient's request, yet it was not until three months later, on 13 December, that the Israeli army finally responded. The appeal was also denied, effectively blocking the patient's ability to receive medical treatment.

Denial of exit of patients for operations which are available in Gaza, regardless of the medical standards or patients' preferences

Israel has recently prevented Palestinian patients in Gaza from receiving treatment in advanced medical centers outside the OPT and has referred them to centers within the OPT where the quality and/or availability of treatment is significantly lower. As described above, the low quality of the Palestinian healthcare system results in hundreds of patients being referred each month to medical facilities outside the OPT. In some cases, the patients themselves seek to fulfill their right to adequate medical treatment and ask to be treated in hospitals in Israel and East Jerusalem, where medical capacity is better. Yet, to the extent that treatment in Gaza or the West Bank exists – and even if it is of lower quality – the Israeli authorities often refuse to allow patients access to treatment outside the OPT. By so doing, Israel violates the right of patients to receive the best medical treatment available to them. It also demonstrates how Israel's policy on patients' access fails to sufficiently take medical considerations into account.

¹⁴⁷ Physicians for Human Rights – Israel, Al Mezan and Adalah, *Who Gets to Go? In Violation of Medical Ethics and the Law: Israel's Distinction between Gaza Patients in Need of Medical Care*, forthcoming June 2010.

Denial of access to better available medical care

A.K., 28 years old, suffers from recurring dislocation and pain in his left shoulder. He required surgery to correct the tendons in his arm and a cartilage tear in his shoulder socket. The accepted method for the procedure, especially with young patients, is to use arthroscopic surgery. For this reason, A.K. was referred for treatment at Al-Makassad Hospital in East Jerusalem where the procedure is available. His request for an exit permit from Gaza was rejected at the beginning of January 2010. PHR-Israel appealed against the army's decision, submitting an expert opinion from Dr. Har'el Arzi, an orthopedic surgeon. According to Dr. Arzi, the treatments A.K. received in Gaza were causing limited function in his hand and pains that were not necessarily a direct result of his injury. Dr. Arzi added that arthroscopic procedures leave virtually no scarring and have a fast recovery rate, while A.K.'s current treatment was leading to extensive scarring and a very long recovery period. Despite the information from Dr. Arzi, the patient's permit request was again rejected, this time on grounds that it "strayed from the criteria," or in other words, that some form of treatment was available in Gaza.

Medical permits to exit Gaza as a pretext for the arrest and detention of Gaza residents

Based on testimonies received by patients, the ISA misled four patients who recently applied for an exit permit from Gaza to believe they would be permitted to leave for medical treatment immediately or after undergoing questioning. However, upon arriving at the Erez crossing, three were immediately arrested and taken to detention facilities in Israel. The fourth was arrested and imprisoned after his interrogation. There appears to be a deliberate policy of taking advantage of patients' medical condition in order to lure them into contact with security officials so that they can then be detained.

PHR-Israel, Adalah and Al Mezan filed a complaint against this policy to the Attorney General in January 2010. A response received from the Prime Minister's Office said, "The State of Israel reserves the right to detain those who seek medical treatment in Israel following information indicating that they are terror activists or that their entry to Israel might pose a security risk." The response also stated that Israel may consider informing the Palestinian health coordinator of this policy so that patients are aware of the possibility of detention. This response confirms that Israel not only has a policy which allows patients to be detained but also that it does not consider using patients' medical conditions to make an arrest as a violation of their rights.¹⁴⁸

Pretextual Arrest: Permit for medical treatment or security detainee?

A.Z., 26 years old, was referred for stomach surgery at the Hussein Hospital in Jordan after suffering a gunshot injury in 2006. To review his current application to exit Gaza for follow-up treatment and plastic surgery on his stomach in Israel, A.Z. was recently summoned for ISA interrogation at Erez, after he had already missed the original appointment set for him at the Hospital in Jordan. At the end of the interrogation, A.Z. was arrested and taken to Ashkelon Prison, where he has been held ever since.

Denial of access to medical treatment outside Gaza based on suspicions that exit permit will be used for family unification purposes

Patients' requests to travel for medical treatment, including in urgent cases, have recently been rejected on the grounds that they might use their permits to leave Gaza permanently and unite with

¹⁴⁸ For more information, see PHR-Israel, *The Israeli Security Agency's unacceptable practice: setting traps for sick patients*, available at: <http://www.phr.org.il/default.asp?PageID=116&ItemID=546>

their families in the West Bank.¹⁴⁹ In all of these cases, Israel admitted it has *no security objection* to the patients' passage and that its sole purpose in denying them access to medical treatment was its fear that they may move to live in the West Bank. These rejections signal a new and alarming step in preventing patients from Gaza from accessing healthcare. While in the past patients were prevented first and foremost on security grounds, Israel now admits that it has political grounds for rejecting patients' applications. As such, Israel's policy can only be interpreted as advancing its political goal of separation between Palestinians in the OPT and of strengthening the Gaza blockade at patients' expense.

Question 27

Please provide information on: (a) the measures taken to revoke the Citizenship and Entry into Israel Law (2003) (temporary order) as recommended by the Committee in 2003; and (b) measures and practices with regard to family reunification concerning Israel and the OPT. What measures are taken by the State party to reinstate the possibility of family visits for Palestinian prisoners from Gaza?

Supreme Court upholds ban on Gaza family visits

Families in Gaza have not been able to visit their relatives in Israeli prisons since June 2007. In December 2009, the Supreme Court ruled that family members from Gaza have no right to visit their relatives incarcerated in prisons in Israel.¹⁵⁰ This ruling came in response to two petitions filed in June 2008 by Adalah, Al-Mezan, the Association for the Palestinian Prisoners and families of Palestinian political prisoners from Gaza, and by HaMoked.¹⁵¹

In its judgment, the Court stated that: 1) family visits are not a basic humanitarian need for Gaza residents, which Israel must grant; 2) the Israeli government decision on this issue stems from security reasons, and the court is reluctant to interfere with such decisions; 3) there is no right of "aliens" [Palestinians from Gaza] to enter Israel; 4) this policy was not instated to target prisoners directly, but they are affected indirectly by a legitimate government decision; and 5) the need for

¹⁴⁹ For example, the Israeli army refused to allow Mr. Issam Hamdan, 40 years old, entry for treatment for severe back pains due to cervical disc disorders that are pressuring the nerves in his left limbs. Mr. Hamdan's doctors ordered urgent neurosurgical treatment but concluded that such treatment was unavailable in the Gaza Strip. He was therefore referred for urgent care in East Jerusalem. An Israeli specialist in orthopedic surgery at the Sheva Medical Center wrote that urgent surgical intervention was required to avoid irreversible harm. The army's refusal was based on the on the fear that he might permanently join his wife and four of his children who live in the West Bank after concluding his medical treatment. The decision was taken despite the fact that Mr. Hamdan was willing to commit that at the end of his treatment he would return to Gaza where he lives with his parents and daughter. PHR-Israel and Gisha petitioned the administrative court in Beer Sheva on behalf of Mr. Hamdan but the petition was denied. It was only after an appeal to the Supreme Court on 8 February 2010 that the army withdrew its objection and allowed Mr. Hamdan to go to East Jerusalem for treatment. Administrative Appeal 1063/10, *Hamdan v. The Minister of the Interior, et al.*, available in Hebrew at:

[http://www.gisha.org/UserFiles/File/HiddenMessages/Hamdan080210\(1\).pdf](http://www.gisha.org/UserFiles/File/HiddenMessages/Hamdan080210(1).pdf). See also, Akiva Eldar, "Border Control / Let Him Go to Haiti," *Haaretz*, 2 February 2010, available at: <http://www.haaretz.com/print-edition/features/border-control-let-him-go-to-to-haiti-1.263028>

¹⁵⁰ HCJ 5399/08, *Adalah, et al. v. The Defense Minister, et al.* (decision delivered 9 December 2009).

¹⁵¹ See Joint Press Release, *Israeli Supreme Court: No Family Visits for Gaza Prisoners in Israeli Prisons*, 10 December 2009, available at:

http://www.mezan.org/en/details.php?id=9334&ddname=detention&id_dept=31&id2=9&p=center; 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), available at: <http://www.adalah.org/features/prisoners/Isr%20Sup%20Ct%20decision%20No%20family%20visits%20Gaza%20prisoners%20English.doc>

family visits, including the families' provision of basic supplies, is unnecessary since prisoners may obtain these items through the prison canteen. Since November 2009, however, Israel has banned the transfer of money to Palestinian prisoners unless a family member appears in person 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."¹⁵² The ongoing ban on family visits to "security prisoners" constitutes a violation of the right to a family life, and a breach of Israel's obligation, as set forth in Article 23 of the Convention to protect the family.

No telephone calls for "security prisoners"

In May 2009, four Palestinian prisoners petitioned the Israeli Supreme Court demanding that Regulation 19 of the Israel Prison Service (IPS) Regulations be canceled as it denies "security prisoners" their right to telephone calls.¹⁵³ This regulation applies to the thousands of Palestinian prisoners who are held at various prison facilities in Israel. According to IPS Regulations, IPS officials may authorize phone calls to these individuals only in rare cases that involve family emergencies and based upon a prisoner's "positive behavior." The total lack of access to the telephone makes it almost impossible for Palestinian security prisoners to report to their relatives in a timely fashion on serious problems they encounter in prison (e.g., health problems, abuse at the hands of prison guards, etc.). Prisoners' access to communication is crucial as it serves as a monitoring mechanism of their health and human rights. Preventing such access seriously violates the rights of Palestinian security prisoners compared to all other prisoners.¹⁵⁴

Health problems of security prisoner denied access to telephone

A 45-year-old Palestinian prisoner was arrested in 2006 and diagnosed with Interstitial Lung Disease (ILD) in 2007. His medical file shows that since the diagnosis, his condition has not been monitored, nor was he placed under any medical supervision. Following PHR-Israel's intervention in December 2009, the prisoner was referred to a lung specialist in May 2010 but none of the tests required (including chest X-ray) was conducted prior to that appointment or after it took place. If the prisoner had been able to access the telephone, he could have reported his medical condition to his family or to PHR-Israel directly.

The proposed "Shalit Laws"

A set of legislative proposals currently before the Knesset's House Committee seek to impose further restrictions on Palestinian "security prisoners" held in Israeli jails, including in receiving family visits. All have passed a preliminary vote in the Knesset plenum and enjoy strong, broad-based support among MKs. By referring to "terrorist organizations" that hold Israeli captives, the bills all clearly target Hamas and aim to bring pressure to bear on the organization to release captured Israeli soldier Gilad Shalit; this is an illegitimate political purpose than cannot be used to justify depriving prisoners of rights to visitation and other basic rights.

¹⁵² 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

¹⁵³ HCJ 4531/09, *F.B. v. The IPS* (submitted 27 May 2009).

¹⁵⁴ The petition was rejected on procedural grounds on 16 June 2010 with the Justices ruling that the four petitioners should have submitted individual prisoner's petitions to the District Court rather than a principle petition to the Supreme Court.

- *The Preventing Visits Bill – 2009*¹⁵⁵ seeks to impose a blanket ban on prisoners who belong to an organization designated as a terror organization from receiving visits in prison. According to this bill, such prisoners would only be entitled to visits by the International Committee of the Red Cross (ICRC), and these would be limited to once every three months.
- *The Release of Captives and Kidnapped Persons Bill – 2009*¹⁵⁶ states that if an organization designated as a terror organization holds an Israeli captive and demands the release of a specific prisoner held in an Israeli jail, then this prisoner should be placed in “absolute isolation and be prevented from contact with another human being,” including with a relative, lawyer or representative of an international human rights organization. The bill further states that such a prisoner should also be denied access to any reading materials or source of entertainment.
- *The Restriction of Visitation for a Security Prisoner Bill – 2010*¹⁵⁷ proposes that any prisoner who belongs to an organization designated as a terror organization that holds an Israeli captive should be denied visits in prison and the right to meeting a lawyer.
- *The Imprisonment of Requested Prisoners – 2009*¹⁵⁸ states that any prisoner whose release is conditioned on the release of an Israeli held captive by an organization designated as a terror organization should be denied any right that could be restricted on security reasoning, which could include access to reading material, education, exercise, etc. It proposes that such a prisoner should be held in isolation indefinitely and should not be entitled to early release or parole. Furthermore, once the prisoner has served his or her sentence, he or she should be declared a detainee and continue to be held.

If approved by the Knesset, these bills would render Palestinian prisoners vulnerable to being used as hostages or bargaining chips in negotiations for prisoner exchanges.

Question 30

Please provide disaggregated data by sex, age and ethnic origin on employees in the public service. Please also provide updated information on the progress achieved to meet the targets set out in Government Resolution 2579, as well as on the five-year work plans (para. 527 of the State party’s report) to improve the representation of Arab citizens of Israel in the public service. Please comment on information regarding the detention of members of the Palestinian Legislative Council based on their political affiliation.

The imprisonment of PLC members

As of April 2010, fifteen members of the Palestinian Legislative Council (PLC) were incarcerated in Israeli prisons, including members of Hamas, Fatah and the Popular Front for the Liberation of Palestine (PFLP).¹⁵⁹ The Goldstone Mission Report notes that following the capture of Israeli soldier Gilad Shalit in June 2006, the Israeli military arrested 65 members of the PLC, mostly

¹⁵⁵ Bill no. P/18/735, passed by the Knesset by a 52-10 majority, with 1 abstention.

¹⁵⁶ Bill no. P/18/829, passed by the Knesset by a 53-9 majority.

¹⁵⁷ Bill no. P/18/2396, passed by the Knesset by a 51-10 majority.

¹⁵⁸ Bill no. P/18/758, passed by the Knesset by a 54-10 majority, with 1 abstention.

¹⁵⁹ See, Addameer, *Quarterly Update on Palestinian Prisoners*, April 2010, available at, <http://addameer.info/wp-content/images/addameer-quarterly-update-on-palestinian-prisoners-april-2010.pdf>

Hamas members.¹⁶⁰ These parliamentarians were all incarcerated for two-to-four years, generally in inadequate conditions. The report concludes that the detention of the PLC members has left the Palestinian parliament unable to operate.¹⁶¹

The Mission stated that it, "...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..."¹⁶²

The revocation of Jerusalem residency status of PLC members and threatened deportation

Three Palestinian parliamentarians, Mr. Muhammad Abu-Teir, Mr. Ahmad Attoun and Mr. Muhammad Totah, as well as the former Palestinian Minister for Jerusalem Affairs, Mr. Khaled Abu Arafeh, all from Jerusalem, were arrested by Israel in June 2006 (four days after the capture of Israeli soldier Gilad Shilat in Gaza), after being elected to the PLC on the Change and Reform List in January 2006. They subsequently received sentences of between two and four years for membership in and/or an official position on the party list.¹⁶³

Upon the release of Mr. Abu Teir in May 2010, the police notified him that he must leave Jerusalem by 19 June 2010, while Mr. Attoun, Mr. Totah and Mr. Abu Arafeh were ordered to leave by 3 July 2010. On 15 June 2010, a motion for an injunction was submitted to the Israeli Supreme Court asking to halt the deportation on the grounds that the Fourth Geneva Convention prohibits the deportation of protected persons from occupied territory, and that it violates their constitutional rights to continue to live in their place of residence and homeland, as well as their right to family life.¹⁶⁴ The Supreme Court rejected the motion for injunction on 20 June 2010 and the deportation to other parts of the West Bank is therefore due to take affect. The case is scheduled to be heard again in July.

In May 2006, the Israeli Interior Minister ordered their permanent Jerusalem residency status to be revoked on the grounds that as residents of Jerusalem, all were obliged to be loyal to Israel; however, their actions and membership in the PLC demonstrated their allegiance to the Palestinian Authority. The four petitioned the Israeli Supreme Court to contest the revocation of their status.¹⁶⁵

The petitioners argued that with the Occupation of Jerusalem in 1967, Israel imposed permanent

¹⁶⁰ The Goldstone Report, para. 90.

¹⁶¹ Ibid.

¹⁶² Ibid. para. 1943.

¹⁶³ The letter of the Minister of the Interior stated that, "Pursuant to [the Law of Entry into Israel], you are deemed to be a resident in the State of Israel. You are obliged to pay allegiance to the State of Israel. Nonetheless, your actions prove otherwise and indicate that your allegiance is paid to the Palestinian Authority." Letter on file with Adalah.

¹⁶⁴ See Adalah, *Motion for Injunction filed to Israeli Supreme Court to Stop Imminent Deportation Process of Palestinian Legislative Council Members from Jerusalem*, 15 June 2010, available at:

http://www.adalah.org/eng/pressreleases/pr.php?file=15_06_10

¹⁶⁵ Attorney Usama Sa'adi filed the petition, and Adalah and ACRI then submitted an amicus brief to the court in 2007 to challenge the Interior Minister's decision. The petition remains pending. H CJ 7803/06 *Khalid Abu Arafeh, et al. v. The Minister of the Interior*. See also, Adalah, *Israeli Supreme Court: Members of the Palestinian Legislative Council whose Jerusalem residency status was revoked must be given an opportunity to submit application to reinstate it*, 17 September 2008, available at: http://www.adalah.org/eng/pressreleases/pr.php?file=08_09_17

residency status on the local Palestinian population; their residency status essentially by virtue of birth is not like that of immigrants and was never made conditional on any terms. Thus, the special classification of Palestinians under Israeli law as permanent residents is tantamount to citizenship status.

Further, pursuant to the Oslo Accords, Israel has recognized the right of Palestinian residents of Jerusalem to vote and be elected in the PLC elections, and the petitioners in this case were exercising this right in the elections of 2006. Moreover, the revocation of their residency status will make them stateless, which violates international and Israeli law.

The withdrawal of permanent residency status and deportation of Palestinians from Jerusalem for “disloyalty” based on their legitimate political affiliation and activities is dangerous and unprecedented. This step could have far-reaching and irrevocable consequences for all Palestinian residents of Jerusalem.

Until now, Israel has predominantly revoked the residency status of Palestinians from Jerusalem in cases where they failed to prove that their “center of life” was in Jerusalem.¹⁶⁶ Setting an all-time record, in 2008, the Israeli Interior Ministry revoked the residency permits of 4,577 Palestinians from East Jerusalem. From 1967 to 2007, with the exception of 2002 during which no statistics were available, Israel revoked a total of 8,558 Jerusalem identity cards from Palestinians.¹⁶⁷

¹⁶⁶ See, B’Tselem, *Revocation of Residency in East Jerusalem*, available at: http://www.btselem.org/English/Jerusalem/Revocation_of_Residency.asp

¹⁶⁷ See HaMoked, Update, 1 December 2009, available at: http://www.hamoked.org.il/news_main_en.asp?id=870

Supplementary Issue: Israeli Naval Attack on the Gaza Freedom Flotilla

Adalah, Al Mezan and PHR-Israel would like to draw the Committee's attention urgently to an attack committed by the Israeli military against the "Gaza Freedom Flotilla." At around 4 am on 31 May 2010, in international waters, the Israeli navy intercepted and attacked the *Mavi Marmara*, one of six ships taking part in the "Freedom Flotilla" to Gaza. The attack left at least nine individuals, all Turkish citizens (one of whom had dual US nationality), dead and dozens more wounded. The flotilla was carrying around 700 passengers including human rights activists, journalists, parliamentarians and other civilians from 40 countries, in addition to 10,000 tons of humanitarian aid and supplies. The purpose of the Freedom Flotilla was to protest and defy the illegal Israeli military blockade of the Gaza Strip by means of non-violent, direct action. Five ships previously succeeded to deliver humanitarian cargo to Gaza in 2008 without incident. The passengers on the *Mavi Marmara* were hospitalized, detained or deported, along with the passengers of the remaining ships in the flotilla.

Emergency habeas corpus petition filed to the Israeli Supreme Court

The state maintained an almost total blackout on information regarding the attacks and the condition of the Flotilla's passengers and crew throughout 31 May. That evening, Adalah, PCATI and PHR-Israel submitted an extraordinary petition for habeas corpus and a demand for information to the Israeli Supreme Court.¹⁶⁸ The petitioners demanded that the Israeli authorities provide the names of the dead and injured; the names, locations and conditions of the detained; the legal status of the ships' passengers; and access to those arrested, detained or in hospital. Once Israel had taken control over the ships, it prevented all contacts with their passengers, either by internet or telephone.

Based on inquiries made throughout the day, Adalah and PHR-Israel learned that some of the injured had been taken to hospitals in Israel, and others from hospitals to detention centers. Regarding the detainees, the Attorney General's (AG) Office stated that individuals given deportation orders had been taken to detention centers in Beer el-Sabe (Beer Sheva). The Attorney General's office also stated that attorneys could contact a center in the Ashdod Port, and that in order to see passengers, powers of attorney for each individual would be necessary.

On 1 June, around 20 attorneys went to Ela Prison in Beer Sheva, and were brought to meet 240 detainees in the space of just two hours, clearly insufficient to allow them to inform them of their rights or to take detailed testimonies. The detainees were told by the Israeli authorities that they had entered Israel illegally and that they were therefore to be deported. All of the documents that the detainees had been asked to sign were in Hebrew; no one explained their contents to non-Hebrew readers other than to state that their purpose was to enable their deportation from Israel.

Initial testimonies gathered from some participants in the flotilla suggest that Israel committed several acts in carrying out the attack that constitute violations of the ICCPR, including: willful killings; cruel, inhuman and degrading treatment; willfully causing great suffering or serious injury to body or health; unlawful deportation or transfer; unlawful confinement; and the extensive appropriation and confiscation of property

The AG responded to the habeas corpus petition on the evening of 1 June, providing a barely legible list in Hebrew of the names and legal status – either "waiting to be deported" or "detained for

¹⁶⁸ HCJ 4193/10, *Adalah, et al. v. The Minister of Defense, et al.* (petition rejected 2 June 2010). For more information, see Adalah, *Special Report: The Freedom Flotilla*, available at: <http://www.adalah.org/eng/ff.php>

criminal prosecution” – of 488 detainees at the Ela prison in Beer Sheva; no other information on the remaining detainees or their legal status was provided. The state’s list did not include a breakdown of the detained activists by their country of origin, but rather classified the individuals predominantly as “foreigners” or “from Arab countries.” All access to the dozens of wounded persons being held in hospitals was denied.

On 2 June 2010, the Israeli Supreme Court rejected the petition. Following the release of some information on the number and the locations of the wounded, and representations made by the state to the effect that all foreign detainees had been deported or were in the process of being deported from Israel, the court ruled that the main remedies requested by the petitioners had been met and that the case was moot. The foreign detainees were released and deported from Israel without their personal possessions. Israel has seized and is continuing to hold cameras, mobile phones, laptops, recording devices, videos, film, credit cards, and hard currency and this property has not been returned to its owners. Israel is also continuing to hold the ships and their cargo.

Palestinian Arab citizens of Israel: Passengers on the Flotilla detained and taken to court

Arab leaders detained

Four Palestinian Arab citizens of Israel were arrested from the *Mavi Marmara*: three political leaders — Mr. Muhammed Zeidan, the Chairman of the High Follow-up Committee for Arab Citizens of Israel; Sheikh Raed Salah, the Head of the Islamic Movement in Israel; and Sheikh Hamad Abu Daabes, the Head of the Islamic Movement in Israel (southern branch) — and Ms. Lubna Masarwa of the Free Gaza Movement and Al Quds University. Adalah and the Meezaan Center for Human Rights in Nazareth represented the four before the Magistrates’ Court in Ashkelon on 1 June.

The police prosecutor asked to remand the four, arguing that a range of criminal offenses could apply, including conspiracy to commit an offense, and possession and use of weapons. He further contended that it was the state’s policy to detain citizens of Israel who had participated in the flotilla. While the prosecution argued that the Israeli naval soldiers had been attacked by the passengers on the ship, it did not furnish any evidence to demonstrate that any of these four individuals had participated in or bore responsibility for the attack. Despite a range of additional arguments put forth by the legal defense team, the court ordered the four individuals remanded for one week. These arguments included that, since the incident took place in international waters the Israeli courts had no jurisdiction to hear the case, and that the detention was prima facie illegal, as the law requires those arrested to be brought before court within 24 hours and in this case they were kept in detention for 40 hours. Despite the court’s ruling from 1 June, the four were released on 3 June under restrictive conditions: a week-long house arrest, a 45-day foreign travel ban, and the posting of a NIS 150,000 bond. To date, no indictment has been filed against them.

Member of Knesset (MK) Haneen Zoabi (The National Democratic Assembly – BALAD)

MK Haneen Zoabi also participated in the Gaza Freedom Flotilla and was a passenger on the *Mavi Marmara*. As MK Zoabi enjoys parliamentary immunity, she was released from detention and was thus one of the first eyewitnesses to describe what had happened on the boat. MK Zoabi’s description of the attacks contradicts the official version of the events put forward by the Israeli government.

On 7 June 2010, the Knesset House Committee voted by a 7-1 majority to revoke MK Zoabi’s parliamentary privileges. If approved by the Knesset plenum, she stands to lose her diplomatic passport, any privileges in overseas travel enjoyed by MKs, and the right for the Knesset to cover her legal fees should her immunity be revoked for the purposes of criminal prosecution.

The House Committee's decision followed several stormy sessions in the Knesset, during which MK Zoabi was branded by fellow parliamentarians as a "terrorist" and "traitor," and subjected to racist and sexist remarks, some of which were so profane and abusive that they were deleted from the public record. Various Israeli ministers and MKs have called for the revocation of her Knesset membership, for her to be criminally prosecuted, and even for her Israeli citizenship to be revoked, as proposed by Interior Minister Eli Yishai.¹⁶⁹ She has also received dozens of death threats. No Israeli government official has spoken out in support of her rights to life, liberty and freedom of expression.

Investigations into the attack

The UN Security Council promptly condemned the acts resulting in nine civilian deaths during the Israeli attack and called for a "prompt, impartial, credible and transparent investigation conforming to international standards."¹⁷⁰ Israel rejected an international inquiry, as proposed by the UN Secretary General on 6 June 2010.¹⁷¹ The UN Human Rights Council adopted a resolution, by a vote of 32-3, with 9 abstentions, "to dispatch an independent international fact finding mission to investigate violations of international law, including international humanitarian and human rights law."¹⁷²

On 14 June 2010, the Israeli government decided to establish an internal inquiry (the "Turkel Commission," named after retired Israeli justice Jacob Turkel), composed of three Israeli citizens and two international observers.¹⁷³ It has the limited mandate of examining: the legality of Israel's naval blockade on Gaza, Israel's actions to enforce the blockade under international law, and the identity and actions of the flotilla's organizers and participants.¹⁷⁴ The commission's two foreign observers will not be allowed to view confidential material, or vote on any decision by the commission. The commission will not hear the oral testimony from the flotilla passengers and will not interview the Israeli soldiers involved in the attack. It will rely on the Israeli military's internal investigation report, which found that Israel acted in compliance with international law.

This internal Israeli inquiry is not an impartial, independent or competent official commission of inquiry under Israeli law; it even lacks the limited powers of a state committee of examination. It lacks the statutory power to compel witnesses to appear before it. As a result it will be conducted without interviews with the crew, human rights activists and others on board the flotilla, nor the Israeli forces involved in the attack, making it wholly inadequate.

Adalah, Al Mezan, and PHR-Israel urge the Committee to recommend a prompt, impartial, fully independent inquiry by an impartial body into all of the circumstances of the Israeli naval attack on the *Mavi Marmara* and the aftermath.

¹⁶⁹ See, e.g., "Haaretz Editorial: Dangerous Incitement," *Haaretz*, 7 June 2010, available at: <http://www.haaretz.com/print-edition/opinion/dangerous-incitement-1.294595>

¹⁷⁰ Security Council, *Statement by the President of the Security Council*, S/PRST/2010/9, 1 June 2010.

¹⁷¹ Harriet Sherwood, Adam Gabbatt and agencies, *Israel rejects UN call for international inquiry into flotilla raids*, 6 June 2010, available at: <http://www.guardian.co.uk/world/2010/jun/06/israel-flotilla-inquiry-un-chief>

¹⁷² Human Rights Council's Resolution A/HRC/RES/14/1, 2 June 2010, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/RES-14-1.doc>

¹⁷³ The Israeli members are Former Supreme Court Justice Jacob Turkel (Chair); Professor of International Law Shabtai Rosen, a former legal adviser in the Foreign Ministry; and Brigadier General Amos Horev. The international observers are Lord William David Trimble of Northern Ireland, co-founder of "*Friends of Israel*", and former Canadian Judge Advocate General Ken Watkin.

¹⁷⁴ Mandate and terms of reference for the commission to examine the flotilla events of 31 May 2010, issued by the Prime Minister's Office on 14 June 2010, available at: <http://www.pmo.gov.il/PMOEng/Secretarial/Cabinet/2010/06/govmes140610.htm>

ANNEX

SUGGESTED QUESTIONS FOR THE UN HUMAN RIGHTS COMMITTEE CONSIDERING ISRAEL'S COMPLIANCE WITH THE ICCPR

Submitted 10 August 2009

Three human rights organizations – Adalah - The Legal Center for Arab Minority Rights in Israel, Al Mezan Center for Human Rights, and Physicians for Human Rights-Israel – are pleased to submit this report to the UN Human Rights Committee to assist it in its consideration of Israel's Third Periodic Report of 2008. The partners are working together on a joint, EU-funded project to combat and prevent torture and ill-treatment of Palestinian prisoners and civilians in the Occupied Palestinian Territory by the State of Israel.

1. Prolonged detention without access to a lawyer

Articles 7, 9, 10, 14, para. 3(b).

Suggested questions

Pursuant to section 3 of *the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law – 2006*, security suspects may be detained for up to 96 hours before being brought before a judge, as opposed to 48 hours in other cases. The law also provides for subsequent judicial remand hearing in the absence of the detainee for up to 20 days. Security suspects can concurrently be denied access to a lawyer for up to 21 days, as opposed to 48 hours in other cases, according to Section 34 of *the Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996*. What is the current status of *the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law – 2006*, which was enacted for an initial period of 18 months and extended until the end of 2010?¹⁷⁵

According to these laws security suspects, who are most vulnerable to acts of torture and ill-treatment, are denied the procedural safeguards that are provided to other suspects. Based on information received by the Committee, Israeli Jewish prisoners classified as security prisoners number 16 out of a total of 6,552 prisoners, whereas Palestinian prisoners classified as security

¹⁷⁵ The Public Committee Against Torture in Israel (PCATI), the Association for Civil Rights in Israel (ACRI) and Adalah submitted a petition to the Israeli Supreme Court challenging the constitutionality of this law in 2008. The organizations withdrew the petition in protest against the court's unprecedented decision to hear secret evidence provided by the state on the constitutionality of a law, in the absence of the petitioners and the public. The state argued that the secret evidence was needed to justify the restrictions on rights in the law, and to demonstrate why some investigations require "continuity," which would be disrupted by taking the detainee to court. The petitioners argued that the court's decision to hear secret evidence has no legal basis and contradicts previous Supreme Court judgments, and furthermore, sets a dangerous precedent that significantly harms future possibilities for the judicial review of laws that violate human rights. See H.C. 2028/08, *The Public Committee Against Torture in Israel, et al., v. The Minister of Justice, et al.* (petition withdrawn on 24 March 2009). A challenge to the law by the Public Defenders' office remains pending. See H.C 1548/08, *The Israeli Bar, et al, v. The Minister of Justice, et al.*

prisoners number 7,734 out of a total of 12,990 prisoners incarcerated in Israeli prisons.¹⁷⁶ What measures does the State party plan to take to bring these laws into conformity with articles 7, 9, 10 and 14, para. 3(b) of the Covenant, and with the Committee's previous recommendation¹⁷⁷ that no one should be held in custody for more than 48 hours without access to a lawyer?

2. Extra-judicial executions

Articles 6, 7

Suggested questions

According to information received by the Committee, Israel continues to pursue the policy of extra-judicial executions (EJEs) in the Occupied Palestinian Territory (OPT), following the Supreme Court's decision of December 2006, limiting the circumstances in which EJEs can be used.¹⁷⁸ How many EJEs have been carried out since the Committee issued its last set of Concluding Observations in 2003? In accordance with the Committee's previous recommendations,¹⁷⁹ has the State party promulgated guidelines for military commanders governing the use of EJEs, including to regulate who constitutes a legitimate target for EJE operations, who makes this decision, and what is the timeframe allowed for carrying out these operations; if yes, what are these guidelines? How does Israel determine that all measures to arrest a person are exhausted before resorting to the use of EJEs? Are complaints into alleged incidents of EJEs and complaints about the disproportionate use of force investigated promptly by an independent body that includes civilian oversight? Have any investigations conducted into alleged EJE operations lead to criminal prosecutions?

Background to the questions

Between 29 September 2000 and 26 December 2008, 387 Palestinians were killed during the course of an EJE, of whom 234 were the target.¹⁸⁰ According the Palestinian Centre of Human Rights (Gaza), between 29 September 2000 and 20 December 2008, 742 Palestinian have been killed as a result of EJEs, including 512 targeted persons and 230 non-targeted civilians.¹⁸¹

In its decision, the Israeli Supreme Court did not rule EJEs illegal, but determined that the legality of EJE operations must be determined on case-by-case basis, according to several criteria, including whether or not the targeted individuals were "direct participants in hostilities" – defined broadly by the court¹⁸² – during EJEs, and whether the attack conforms to the principle of proportionality.¹⁸³

¹⁷⁶ See, "New Data on Arabs Incarcerated in Israeli Prisons," edited by Adalah Attorney Abeer Baker based on information received from the Israel Prison Service on 25 June 2009, in *Adalah's Newsletter*, Volume 62, July 2009, available at: http://www.adalah.org/newsletter/eng/jul09/New_Prisoner_Data_july_2009.pdf.

¹⁷⁷ CCPR/CO/78/ISR (2003), para. 13. See also the Concluding Observations of the Committee Against Torture, CAT/C/ISR/CO/4, 14 May 2009, para. 15; and List of issues to be considered during the examination of the fourth periodic report of Israel, CAT/C/ISR/Q/4, 15 December 2008, para. 6.

¹⁷⁸ H.C. 769/02, *The Public Committee Against Torture in Israel v. The Government of Israel* (decision delivered on 14 December 2006).

¹⁷⁹ CCPR/CO/78/ISR (2003), para. 15.

¹⁸⁰ See B'Tselem, Statistics – Fatalities, available at: <http://www.btselem.org/english/statistics/Casualties.asp>. Site accessed on 9 July 2009.

¹⁸¹ See Palestinian Centre of Human Rights, Statistics, available at: <http://www.pchrgaza.org/alaqsaintifada.html>. Site accessed on 9 July 2009.

¹⁸² The court determined that taking a direct part in hostilities covers, e.g., "a person who collects intelligence on the army, whether on issues regarding the hostilities (...) or beyond those issues (...) a person who transports unlawful combatants to or from the place where the hostilities are taking place; a person who operates weapons which unlawful combatants use, or supervises their operation, or provides service to them, be the distance from the battlefield as it may." Para. 35 of the ruling.

Putting aside justified and severe criticisms of the decision, Israel is even acting in breach of this flawed judgment. Since the Supreme Court's decision, the Israeli military has not announced any EJE in the West Bank. However, it has continued to carry out these operations to kill wanted men, instead relabeling them as, "arrest operations" or "exchanges of fire."¹⁸⁴

The above noted figures do not include deaths caused as a result of EJE carried out during Israel's military attacks on Gaza in December 2008 and January 2009. On 27 December 2008, the Israeli military fired a missile at a parade to mark the graduation of police cadets in the Gaza Strip, which was held at the police headquarters in Gaza City. Dozens of civilians were killed in the attack, the majority of whom were members of the civilian police force.¹⁸⁵ On 2 January 2009, Israel assassinated Dr. Nizar Rayan, a senior Hamas leader, together with his four wives and eleven of his children in an EJE operation in Gaza.¹⁸⁶

In November 2007, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism recommended that extra-judicial executions, "be strictly limited to persons directly participating in hostilities as a means of last resort after all possible measures to apprehend the person have been take."¹⁸⁷

3. Punitive home demolitions

Articles 7, 12, 17 and 26.

Suggested questions

According to information before the Committee, Israel has not ceased its policy of punitive home demolitions, in violation of articles 7, 12, 17 and 26 of the Covenant, and contrary to both the previous recommendation of the Committee¹⁸⁸ and the Defense Minister's announcement before the Israeli Supreme Court in 2005 of the army's decision to discontinue this policy.¹⁸⁹ Please explain how the extensive home demolition operations carried out by Israel in the OPT and against the families of suspected Palestinian attackers do not constitute punitive measures, in breach of Israel's

¹⁸³ Para. 40 of the ruling.

¹⁸⁴ See Uri Blau, "License to Kill," *Haaretz*, 4 December 2008. Available at: <http://www.haaretz.com/hasen/spages/1041622.html>. See also, The Palestinian Center for Human Rights-Gaza (PCHR), *Extrajudicial Executions as Israeli Government Policy*, August 2008. Available at: http://www.pchrgaza.org/files/Reports/English/pdf_killing/killing%20report9.pdf.

¹⁸⁵ See the weekly report on the protection of civilians issued by the UN Office of the Humanitarian Coordinator (OCHA-OPT), 24-31 December 2008 (291), available at: http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_2008_12_31_Hebrew.pdf; and Fatmeh El-'Ajou, "Position Paper – Israeli Military Attacks on the Civilian Police Force and Government Buildings and Institutions of Hamas in Gaza," *Adalah's Newsletter*, Volume 57, February 2009, available at: <http://www.adalah.org/newsletter/eng/feb09/feb09.html?navi=%2Fnewsletter%2Feng%2Ffeb09%2Ffeb09.html>.

¹⁸⁶ For details of the Rayan case, see the Palestinian Center for Human Rights – Gaza. IOF Offensive on the Gaza Strip Continues for the 7th Consecutive Day, 2 January 2009, available at: <http://www.pchrgaza.org/files/PressR/English/2008/125-2008.html>; and Al Mezan Center for Human Rights, Israeli Attacks on Gaza Continue for the 7th Day, 2 January 2009, available at: http://www.mezan.org/en/details.php?id=1518&ddname=gaza%20destruction&id_dept=9&id2=9&p=center.

¹⁸⁷ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, A/HRC/6/17/Add.4, 16 November 2007.

¹⁸⁸ CCPR/CO/78/ISR (2003), para. 16.

¹⁸⁹ See H.C. 4969/04, *Adalah, et al. v. IDF Major General, Central Command, Moshe Kaplinski, et al.* (decision delivered 17 July 2005). For more information, see: http://www.adalah.org/eng/pressreleases/pr.php?file=05_07_27-3.

obligations under the Covenant.

Background to the questions

In 2009, the Israeli Supreme Court upheld two cases of punitive home demolitions in East Jerusalem against Palestinian families of two Palestinian individuals suspected of carrying out attacks in Jerusalem, sanctioned by the Prime Minister, Defense Minister and the Attorney General.¹⁹⁰ The Prime Minister and the Defense Minister explicitly called for the punitive home demolitions in 2008, following a series of fatal attacks by Palestinians from East Jerusalem. In these cases, the alleged perpetrators were shot dead by the Israeli security forces at the sites of the attacks; the homes to be demolished belonged to their families. The Attorney General also announced that there was no legal impediment to demolishing the homes under Israeli law.¹⁹¹ On 17 March 2009, the Supreme Court of Israel¹⁹² ruled that the house of Dweiyat's family could be demolished. Supreme Court Justice Edmund Levy wrote that demolishing a house is an effective deterrent against acts of terror and thus is important.¹⁹³

Punitive house demolitions have also been carried out in the context of military operations: The civilian population in the Gaza Strip has been particularly devastated by punitive house demolitions during military operations. During "Operation Rainbow", 18-24 May 2004, 400 houses (117 completely) inhabited by 4,171 individuals were demolished in densely populated areas of Rafah.¹⁹⁴ During "Operation Days of Penitence," 30 September – 15 October 2004, 91 houses inhabited by 675 Palestinians were demolished in northern Gaza.¹⁹⁵ Israel has argued that these demolitions have taken place to locate weapons-smuggling tunnels and in response to the launching of Qassam rockets from Gaza into Israel.¹⁹⁶

The number of home demolitions carried out by Israeli military forces during "Operation Cast Lead" (27 December 2008 to 18 January 2009) is staggering: The latest UN figures based on a large scale house-to-house survey reveal that 3,500 shelters were demolished beyond repair, 2,100 shelters sustained major damages and 40,000 shelters sustained minor damages.¹⁹⁷ Home

¹⁹⁰ H.C. 9353/08, *Abu Dheim v. GOC Home Front Command* (decision delivered 5 January 2009) available in English at: http://hamoked.org.il/items/110991_eng.pdf and H.C. 124/09, *Tayseer Dwaiyat v. The Minister of Defense, et al.* (decision delivered 18 March 2009) available in Hebrew at: <http://elyon1.court.gov.il/files/09/240/001/o03/09001240.o03.htm>.

¹⁹¹ Efrat Weiss, "Mazuz: No Legal Obstacle to Razing Terrorists Homes," YNET, 7 March 2008. Available at: <http://www.ynet.co.il/english/articles/0,7340,L-3563794,00.html>. See also notice of intention to confiscate and demolish the Abu Dheim's family house by the GOC Homefront Command. Available at: http://hamoked.org.il/items/110463_eng.pdf.

¹⁹² H.C. 124/09, *Hisham Abu Dweyat v. Minister of Interior et al.* The Supreme Court's ruling is available in Hebrew at <http://elyon1.court.gov.il/files/09/240/001/o03/09001240.o03.htm>.

¹⁹³ *Ibid.*, para. 6. The demolition was carried out under Regulation 119 of the Defence (Emergency) Regulations 1945, which authorizes a Military Commander to order the forfeiture and destruction or sealing of any house from which gun fire has issued or explosive or incendiary material was thrown unlawfully, and of any house in an area or village residents of which violated the Emergency Regulations involving violence or intimidation.

¹⁹⁴ See Al Mezan Centre for Human Rights, *Operation Rainbow: A Report on Human Rights Violations perpetrated by the Israeli Occupation Forces in Rafah, from 18 to 24 May 2004*, July 2004.

¹⁹⁵ See Adalah – The Legal Center for the Arab Minority Rights in Israel, Briefing Paper, "The Israeli Army Exploitation of the 'Absolute Military Necessity' Exception to Justify its Policy of Home Demolition in the 1967 Occupied Palestinian Territories," February 2005. Available at: <http://www.adalah.org/features/rafah/ABP170205.pdf>.

¹⁹⁶ *Ibid.*

¹⁹⁷ Figures from UNRWA and UNDP, assessments of damage caused during the "Cast Lead" offensive, as reported in OCHA-OPT, "The Humanitarian Monitor," April 2009, available at:

demolitions on this scale constitute the collective punishment of the entire population of the Gaza Strip. These demolitions cannot be sweepingly justified under IHL as absolute military necessity.

4. Human shields

Articles 6, 7

Suggested questions

Based on information provided to the Committee, several incidents of the use of Palestinian civilians as human shields by the Israeli military have occurred since the Israeli Supreme Court's decision banning the practice on 6 October 2005,¹⁹⁸ and contrary to the Committee's previous recommendation.¹⁹⁹ Some of these cases reportedly led to the death or injury of those being used in this way. Please provide details of the outcomes of the numerous requests for investigations submitted with regard to alleged incidences of the use of civilians as human shields by the Israeli military since the Supreme Court's decision. Please also provide information on directives given to the Israeli military and security forces regarding the ban on the use of human shields.

Background to the questions

Since September 2000 and the start of the second Intifada, the Israeli military has routinely resorted to the use of Palestinian civilians as human shields, forcing them to carry out life-threatening tasks to assist military operations and arrests. Such tasks include the use of Palestinian civilians to enter buildings to check if they are booby-trapped, remove suspicious objects from roads, stand inside houses where soldiers have set up military positions so that Palestinian combatants will not fire at the soldiers, walk in front of the soldiers to shield them from gunfire and stone-throwing, and remain tied to military jeeps at which stones are being thrown by protestors.²⁰⁰ Some of these cases reportedly led to the death or injury of those being used in this way.²⁰¹ Based on testimonies received from B'Tselem and Al-Mezan, Adalah has been demanding that the Attorney General and the Military Advocate General (MAG) initiate investigations into these matters and criminal prosecutions against those responsible.²⁰²

During the recent military operation in Gaza (December 2008 – January 2009), soldiers ordered civilians to enter buildings to ensure that they were not booby-trapped or to bring people outside, as well as to remove suspicious objects from roads, and to stand in front of soldiers in order to prevent

<http://domino.un.org/unispal.nsf/7b1b9e1db706652385257539006849fa/3a64f6fbdba71939852575c9004943f5?OpenDocument>

¹⁹⁸ H.C. 3799/02, *Adalah, et al. v. Yitzhak Eitan, Commander of the Israeli Army in the West Bank, et al.*

¹⁹⁹ CCPR/CO/78/ISR (2003), para. 17.

²⁰⁰ The use of human shields contravenes Articles 28 and 51 of the Fourth Geneva Convention, which prohibit the use of civilians "to render certain points or areas immune from military operations" and coercing civilians into "taking part in military operations" respectively. Furthermore, in the case of minors, the practice infringes Article 38 of the Convention on the Rights of the Child (CRC), which imposes a duty on States Parties to ensure that no child under 15 takes part in hostilities. Israel is a State Party to both conventions. Under the Rome Statute of the International Criminal Court, which Israel has signed but not ratified, the use of human shields is a war crime. The use of human shields is also a violation of Article 6 of the Covenant.

²⁰¹ See Al Mezan Center for Human Rights, "Hiding behind Civilians: The Continued Use of Civilians as Human Shields," July 2008, pp 9-10 available at <http://www.mezan.org/upload/8600.pdf>. Accessed on 3 August 2009.

²⁰² Rana Asali, "Adalah Update Report on the Israeli Military's Routine Use of Palestinian Civilians, including Minors, as Human Shields," *Adalah Newsletter*, Volume 62, July 2009. Available at:

http://www.adalah.org/newsletter/eng/jul09/Rana_Human_Shields_update_report_English_july_2009.pdf

Palestinians from shooting at them.”²⁰³ One of the documented examples involved three brothers from Gaza (14, 15 and 16 years old) who were taken by Israeli soldiers at gunpoint from their home on 5 January 2009, and made to kneel in front of tanks in order to deter Hamas fighters from firing; they were also sent by Israeli soldiers into houses to clear them.²⁰⁴ In another incident, between 5 and 12 January 2009, the Israeli army forced around 20 Palestinians to carry out “escort and protection” missions of various kinds in the I’zbet Abed Rabbo neighborhood of Gaza.²⁰⁵ In one of these cases, a civilian was ordered to search tens of homes and made to enter an empty house in which three fighters were taking positions many times. The civilian was compelled to relay oral messages to the fighters to surrender themselves, give information about them, and take footage of them after the house was bombed from the air.²⁰⁶

5. Investigations into allegations of torture and ill-treatment / ISA detention facilities / prison doctors

Article 7

Suggested questions

ISA Inspector

According to Israel’s report to the Committee, between 2001 and 2007, the Inspector for Complaints within the ISA initiated 583 complaints alleging the use of unlawful investigation techniques and/or torture and that as a result, four cases resulted in disciplinary measures (0.6%), and several in “general remarks” to ISA interrogators; in no case was a criminal prosecution opened. Further, the Committee also notes with concern that the Inspector is an ISA agent and subordinate to the Head of the ISA, and therefore lacks independence and objectivity. Given these figures, and in view of the broad exemption provided within Section 18 of the Israel Security Agency Law – 2002 (e.g., the necessity defense), please provide information on whether there is any independent oversight for the investigation of complaints or challenge to its application under article 7 and other provisions. Please provide updated statistics from 2007 on the number of complaints made to the Inspector for Complaints within the ISA, the number of complaints turned down as unsubstantiated, the number turned down because the defense of necessity was applied, and the number upheld, and with what consequences for the perpetrators.

ISA Detention Facilities

According to information received by the Committee, representatives of the Public Defender’s Office and the Israeli Bar Association have on several occasions been denied permission to visit ISA detention cells, and have therefore never been able to conduct a visit to detainees held in such cells. However, these representatives do conduct visits to other cells in prisons and often issue

²⁰³ B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, *Guidelines for Israel’s Investigation into Operation Cast Lead: 27 December 2008 – 18 January 2009*, pp. 9-10. Available at: http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf.

²⁰⁴ Clancy Chassay, “Palestinian brothers: Israel used us as human shields in Gaza war,” *The Guardian*, 23 March 2009. Available at: <http://www.guardian.co.uk/world/2009/mar/23/gaza-human-shields-claim>.

²⁰⁵ Amira Hass, “Gazans: IDF used us as ‘human shields’ during offensive,” *Ha’aretz*, 20 February 2009. Available at: <http://haaretz.com/hasen/spages/1065594.html>.

²⁰⁶ See Al Mezan Center for Human Rights, “Hiding Behind Civilians: April 2009 Update Report on the Use of Palestinian Civilians as Human Shields by the Israeli Occupation Forces,” pp 12-14, available at <http://www.mezan.org/upload/8632.pdf>, accessed on 3 August 2009. The same case was also reported in a soldier’s testimony published in a report by Breaking the Silence in August 2009, available at: http://www.breakingthesilence.org.il/oferet/testimonies_e.asp?cat=2, accessed on 3 August 2009.

severely critical reports about prison conditions as a result. According to guidelines of the Israel Prison Service (IPS),²⁰⁷ the Minister of Internal Security has the discretion to authorize entry to certain areas of the prison, while restricting access to other areas. The State party is requested to explain why periodic visits by a local, independent body to ISA detention facilities where interrogations take place have not been approved?²⁰⁸

Prison Doctors

Prison doctors working in Israeli prisons are subordinate to the Israel Prison Service (IPS). This relationship may reduce their professional autonomy and expose them to situations of “dual loyalty” to their employer and to their prisoner patient. In 2007, the Public Committee Against Torture in Israel published a report, which included prisoners’ testimonies of torture and the collusion of prison doctors in torturous acts such as the lack of medical documentation.²⁰⁹ Did Israel investigate these allegations, and if so, please inform the Committee of the outcome of these investigations? Based on information before the Committee, the Ministry of Health rejected calls to publish guidelines for doctors and medical staff explaining the necessary procedures that should be undertaken in instances where they confront physical abuse and/or acts of torture against prisoners based on the claim that these instances occur so rarely and that such guidelines would, “seriously tarnish the country’s health care professions and security.”²¹⁰ Further, the ministry refused to extend “whistleblower” protection to doctors who report instances of torture.²¹¹ The State party is requested to detail measures taken to ensure compliance with the UN Principles of Medical Ethics in relation to suspected cases of torture and ill-treatment.

6. Restrictions on freedom of movement

Article 6, 7, 12

Suggested questions

The total closure of Gaza

Gaza is now entering the third year of closure; around 1.5 million people are being held indefinitely in what is in effect a prison. On 29 July 2009, Israel’s Prime Minister said that Israel will continue to keep the crossings to Gaza closed, except for humanitarian aid, until the release of kidnapped soldier Gilad Shalit.²¹² This statement appears to indicate that the closure constitutes collective

²⁰⁷ Guidelines No. 3.04.00, available in Hebrew at: <http://www.ips.gov.il/NR/rdonlyres/0DBB15A5-53C4-444D-9C51-148A8069D581/0/0>.

²⁰⁸ See Physicians for Human Rights-Israel (PHR-IL), “Oversight and Transparency in the Israeli Penal System,” July 2008, available at: http://www.phr.org.il/phr/files/articlefile_1248003531234.pdf.

²⁰⁹ See the Public Committee Against Torture in Israel (PCATI) “Ticking Bombs,” May 2007, available at: <http://www.stoptorture.org.il/en/node/69>.

²¹⁰ See Physicians for Human Rights-Israel, “Torture in Israel and Physicians’ Involvement in Torture,” position paper issued July 2009, available at: <http://www.phr.org.il/phr/article.asp?articleid=742&catid=57&pcat=46&lang=ENG>.

Position paper relied on UN Principles of Medical Ethics, available at: <http://www.un.org/documents/ga/res/38/a38r118.htm>.

²¹¹ In 2008, PHR-Israel requested the Director-General of Ministry of Health publish guidelines for doctors and medical staff to explain how they ought to react should they witness or hear of instances of torture or ill-treatment. It was further requested that the Ministry of Health pledge to extend “whistleblower” protection to doctors who report instances of torture. In 2009, the Director General of the ministry rejected PHR-Israel’s request, describing the evidence brought by PHR-Israel as negligible. The ministry further claimed that, even if there were any truth to PHR-Israel’s claims that torture takes place, such incidents occur rarely, and therefore it is not necessary on that basis to publish guidelines that would “seriously tarnish the country’s healthcare professions and security forces.”

²¹² See Herb Keinon, “Netanyahu: Crossings shut until Schalit freed,” 29 July 2009. Available at:

punishment. As Israel retains effective control of Gaza, how does it intend to fulfill its obligations under article 12 of the Covenant, as well as articles 6 and 7?

Background to the questions

Israel's closure of the population of Gaza, which was tightened in June 2006, has brought about a humanitarian crisis unprecedented in the 42 years of Israeli occupation, with poverty and unemployment reaching disastrous levels, and essential health, sanitation and education services deteriorating in an alarming manner.²¹³ Following Hamas' victory in the Palestinian parliamentary elections of April 2006, Israel allowed only basic humanitarian goods and supplies to enter Gaza, despite its total dependence on Israel.²¹⁴ This policy intensified following Hamas' takeover of Gaza in June 2007. Since then, Israel has kept the border crossings between Israel and Gaza closed, with minor exceptions. In September 2007, Israel officially declared Gaza a "hostile entity" and introduced a policy of collective punishment that included severe cuts to electricity and fuel supplies.

Denial of Access to Medical Care outside Gaza

According to information received by the Committee, at least 49 patients were denied exit from the Gaza Strip by Israeli authorities for the purpose of receiving medical care between January and June 2009, while a further 863 were delayed.²¹⁵ Patients who are delayed often miss their scheduled appointments with physicians at health facilities and must re-schedule these dates and submit a new request for an exit permit. Please provide data on the number of requests for exit permits that have been submitted by residents of Gaza for the purpose of receiving medical care outside Gaza from the period from June 2007 to the present, data on the number of requests that were accepted and denied, as well as the reasons for any denials. Please also provide data on the number of requests for exit permits submitted by residents of Gaza for the purpose of receiving medical care outside Gaza from the period from June 2007 to the present that were delayed, as well as the reasons for these delays.

Denying Essential Professional Medical Training

Several complaints have come to the Committee's attention that medical doctors have been prevented by Israel from exiting Gaza via the Erez Crossing for the purpose of attending professional medical training courses, all of which are unavailable in Gaza. Denying training opportunities to physicians in the fields of pediatric cardiology, ophthalmology, and cystic fibrosis treatment – in which medical doctors from Gaza were refused exit for training during 2009 – inevitably exacerbates the dangerously precarious state of health care in Gaza and increase the dependency of Gaza's health system on external health systems.²¹⁶ What is Israel's policy regarding the exit of Palestinian physicians from Gaza via the Erez Crossing for the purposes of receiving professional training in medical centers outside of Gaza? Please provide data on the number of requests for exit permits submitted doctors from Gaza seeking to receive medical training outside of Gaza from June 2007 to the present that were either denied or delayed, together with the reasons for these rejections or delays.

<http://www.jpost.com/servlet/Satellite?cid=1248277925059&pagename=JPost/JPArticle/ShowFull>.

²¹³ See updates and reports by the UN Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territories, available at www.ocha.org.

²¹⁴ For Israel's effective control over Gaza, see Gisha: *Disengaged Occupiers: The Legal Status of Gaza*, January 2007, available at: <http://www.gisha.org/UserFiles/File/Report%20for%20the%20website.pdf>.

²¹⁵ See Physicians for Human Rights-Israel, *The Closure of Gaza and Its Effects on the Right to Health*, submission to the UN Office of the High Commissioner for Human Rights (OHCHR), July 2009.

²¹⁶ *Ibid.*

7. Medical coercion of patients in Gaza

Articles 6, 7

Suggested questions

Information obtained by the Committee indicates that the ISA has the final authority in deciding whether or not a patient will be allowed to exit Gaza to access medical care. Many patients are denied exit, including those in serious medical condition, due to “security reasons.” According to data brought to the attention of the Committee, in at least 35 cases since July 2007, the ISA has called patients – many of them having been granted exit permits by Israel – to an interrogation at Erez Crossing, in the course of which they were asked to provide information about relatives and acquaintances, and/or required to collaborate and provide information on a regular basis, as a precondition for being allowed to exit Gaza.²¹⁷ These cases include several patients in life-threatening conditions. According patients’ testimonies, if they refused or could not provide the information, they were denied permission to exit Gaza for the purpose of receiving medical treatment. The ISA denies these claims.²¹⁸ Please detail the steps undertaken by Israel to investigate these very serious allegations of medical coercion and the withholding of medical treatment for non-medical reasons and permission to receive medical treatment outside Gaza.

The latest data points to an increase in the proportion of individuals subjected to such interrogations of the total number who submitted applications to the authorities at the Erez Crossing: from 1.45% in January 2008 to 5.65% in October 2008 to 17% in January 2009.²¹⁹ A petition submitted by PHR-Israel to the Israeli Supreme Court on this issue was rejected on the basis that the Court accepted a statement from the Commander of the IDF Southern Command and Southern Brigadier General, that “[...] no use is made of person’s illness in order to obtain information in the realm of security.”²²⁰ An additional reason given for not granting a remedy was that individual solutions were found for most of the patients in the petition.

8. Family visits to Palestinian prisoners held in Israel

Articles 7, 10, 12, 17

Suggested questions

According to information received by the Committee, approximately 750 Palestinian residents of the Gaza Strip are incarcerated in prisons in Israel in isolation from the outside world, and are not allowed to receive family visits.²²¹ Why is Israel not allowing Palestinians from Gaza to visit their relatives incarcerated in Israeli prisons and detention centers, subject to an individual security check?²²² How

²¹⁷ Physicians for Human Rights-Israel, *Holding Health to Ransom: GSS Interrogation and Extortion of Palestinian Patients at Erez Crossing*, August 2008, available at: http://www.phr.org.il/phr/files/articlefile_1217865604015.pdf.

²¹⁸ See the ISA’s response to Physicians for Human Rights-Israel’s report, *ibid.* pp.71-73, 75.

²¹⁹ See update by Physicians for Human Rights-Israel, May 2009, available at: <http://www.phr.org.il/phr/article.asp?articleid=715&catid=55&pcat=45&lang=ENG>.

²²⁰ Cited in footnote 37 of Physicians for Human Rights-Israel, *Holding Health to Ransom: GSS Interrogation and Extortion of Palestinian Patients at Erez Crossing*, August 2008.

²²¹ See, “New Data on Arabs Incarcerated in Israeli Prisons,” edited by Adalah Attorney Abeer Baker based on information received from the Israel Prison Service on 25 June 2009, in *Adalah’s Newsletter*, Volume 62, July 2009, available at: http://www.adalah.org/newsletter/eng/jul09/New_Prisoner_Data_july_2009.pdf.

²²² See, “Gaza: ICRC calls for immediate resumption of family visits to detainees in Israel,” ICRC News Release, 26 May 2008, available at: <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/israel-news-260508>. Adalah, Al Mezan and the Association for the Palestinian Prisoners are challenging the denial of family visits before the Israeli Supreme Court.

does Israel reconcile its policy of imposing a blanket ban since June 2007 on residents of Gaza from visiting their relatives held in Israel with its obligations under the Covenant?²²³

9. Administrative Detention

Articles 7, 9, 10 and 14

Suggested questions

The Committee notes its concern over Israel's ongoing use of the practice of administrative detention against Palestinians. Military order 1226,²²⁴ coupled with The Incarceration of Unlawful Combatants Law – 2002,²²⁵ operate to hold detained Palestinians, including children, in indefinite detention, in breach of articles 7, 9, 10 and 14 of the Covenant.²²⁶ Alarming, the military order and law do not require persons detained to be informed of any charges against them, to be brought promptly before a judge, or entitle them to a trial within a reasonable length of time. Administrative detention orders are often based on “secret evidence” to which neither the detainee nor the detainee's lawyer are given access.²²⁷

How does the State party reconcile the holding of foreign nationals for indefinite periods of time in administrative detention without charge or trial with its obligations under articles 7, 9, 10 and 14 of

See H.C. 5399/08, *Adalah et al. v. the Defense Minister et al.* (case pending); see also

<http://www.adalah.org/newsletter/eng/jun08/3.php>.

²²³ The Committee Against Torture has previously concluded in relation to Peruvian detention facilities that family visits to detainees once a month for only 30 minutes amounted to torture. See Manfred Nowak and Elizabeth McArthur, *The United Nations Convention Against Torture: A Commentary*, Oxford University Press, 2008, p. 408, para. 27.

²²⁴ Military Order 1226 – 1998 empowers Israeli military commanders to detain Palestinian West Bank residents, including children, without charge or trial, for up to six months if they have “reasonable grounds to presume that the security of the area or public security require the detention.” No definition of “security of the area or public security” is given and the initial six-month period can be extended by additional six-month periods indefinitely, amounting to indefinite arbitrary detention.

²²⁵ The Unlawful Combatants Law – 2002 provides for the indefinite administrative detention of “foreign nationals,” who are subsequently classified as “unlawful combatants”. It contains a vague definition of an “unlawful combatant” that includes not only persons who participate in hostilities against Israel, but also any members of forces that carry out such hostilities. The law effectively creates a third category of person, contrary to the distinction in international humanitarian law between combatants and civilians. The law allows a person suspected of being an “unlawful combatant” to be held for up to 21 days without access to a lawyer (Section 6) and for up to 14 days without judicial review (Section 5), and allows the use of secret evidence and evidence taken in the absence of the detainee. If the detention order is approved by a court, the law allows the administrative detention of individuals for indefinite periods of time, or until such a time that “hostilities against Israel have come to an end” and mandates judicial review of the detention only once every six months. The law denies basic rights to prisoners of war, including the right to be present during all hearings, the right to have hearings held in public, and the right to be informed of the evidentiary basis for the charges against them. **Special Rapporteur Martin Scheinin has recommended that the law “should be repealed, without replacement.”** See *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin*, A/HRC/6/17/Add.4, para.55. The Israeli Supreme Court has upheld the constitutionality of the law. See *Cr.A. 6659/06, Anon. v. The State of Israel* (decision delivered 11 June 2008). Available in English at:

http://elyon1.court.gov.il/files_eng/06/590/066/n04/06066590.n04.htm.

²²⁶ Operating in parallel to Military Order 1226 and The Unlawful Combatants Law, The Emergency Powers (Detentions) Law – 1979 grants the state the power to hold Israeli citizens and Palestinian residents of East Jerusalem in administrative detention for indefinitely extendable six-month periods.

²²⁷ Regarding the use of secret evidence in ordering administrative detentions, Special Rapporteur Martin Scheinin has recommended that. “The practice of military or other courts authorizing administrative detention on the basis of evidence available neither to the detainee nor counsel should be discontinued as incompatible with article 14 (1) of the International Covenant on Civil and Political Rights.” *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin*, para.57.

the Covenant? How does the State party justify the use of administrative detention as an exceptional measure when, according to information before the Committee, between 450 and 1,000 Palestinians have been held at any one time in administrative detention between 2003 and May 2009, including some minors?²²⁸ Please also comment on information before the Committee that Israel is continuing to detain Palestinians even after the completion their sentences using administrative detention orders or the Incarceration of Unlawful Combatants Law – 2002, in violation of articles 7, 9 and 14 of the Covenant. How many individuals are being held pursuant to this order and law after the completion of their sentence? What is the exact legal status of persons held as “unlawful combatants”? How many individuals have been held as “unlawful combatants” since 2003?

10. Incommunicado Detention

Articles 7, 9, 10, 14

Suggested questions

The Committee is aware of a group of laws containing provisions that allow for the incommunicado detention of security suspects, including minors, for prolonged periods of time.²²⁹ The cumulative effect of these laws is the de facto incommunicado detention of security suspects for up to 21 days. In these 21 days detainees are vulnerable to torture and ill-treatment, and indeed this isolation constitutes one means of exerting pressure on detainees in order to extract confessions. How does the State party reconcile the incommunicado detention provided for by these laws with its obligations under articles 7, 9, 10 and 14 of the Covenant? What safeguards are in place to ensure that “security” detainees are not subjected to torture or ill-treatment during periods of incommunicado detention in pre-trial detention? What purpose is served by holding detainees in prolonged incommunicado detention?

11. Solitary Confinement

Articles 7, 10

Suggested questions

Please comment on reports that solitary confinement is used widely within the Israeli prison system **as a means of discipline** against prisoners for infractions of prison rules. Please provide information on the number of Palestinian prisoners held in solitary confinement each year since 2003, for what length of time prisoners were held, and for what reason. According to information before the Committee, Article 56 of the 1971 Prison Ordinance – 1971 (new version) lists 41

²²⁸ B’Tselem statistics, available at: http://www.btselem.org/english/Administrative_Detention/Statistics.asp.

²²⁹ Under **The Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law – 2006**, security suspects may be detained for up to 96 hours before being brought before a judge, as opposed to 48 hours in other cases (Section 30 of the law). The law also provides for subsequent judicial remand hearing in the absence of the detainee for up to 20 days (Section 5). Under the law, suspects can also be held for up to 35 days before being issued an indictment, as opposed to 30 days in other cases (Section 17b). **The Incarceration of Unlawful Combatants Law – 2002** allows suspects to be held for up to 21 days without access to a lawyer (Section 6 of the law), and for up to 14 days without judicial review (Section 5). **The Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996** allows for suspects to be held for up to 21 days without access to a lawyer (Section 34), and for up to 30 days before being issued with an indictment (Section 17(b)). **The Criminal Procedure Regulations (Powers of Enforcement – Arrest) (Conditions of Arrest) – 1997** stipulates that suspects shall not receive visits prior to their indictment (Section 12). **Military Order 378** allows West Bank detainees, including children as young as 12 years, to be held for up to eight days before being brought before a military judge (Section 78(e1)(2)).

disciplinary offenses for which solitary confinement may be imposed on prisoners of all kinds.²³⁰ Please provide a list of these offenses and the maximum periods of solitary confinement that may be imposed for committing each offense.

According to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, 700 Palestinian minors were arrested in 2006, 25 of whom were held under administrative detention orders.²³¹ The Rapporteur also received reports of solitary confinement used by prison authorities as a means of encouraging **confessions from minors** or as a punishment for infractions of prison rules.²³² How does the State party reconcile these allegations with its obligations under the Covenant and with rule 67 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which prohibits disciplinary measures against children, including solitary confinement? Please comment on these reports, and provide information on the number of detainees aged 18 and under who have been held in solitary confinement since 2003, as well as the duration of the solitary confinement in each case. Please also respond to Special Rapporteur Martin Scheinin's recommendation that "solitary confinement never be used by prison authorities as a means of coercion or punishment of children."²³³

The Committee has received information on allegations that Palestinian "security detainees" are kept in solitary confinement **cells in interrogation facilities**, ranging from three to six square meters, with no windows or access to daylight or fresh air.²³⁴ Please describe in detail the conditions of solitary confinement (the dimensions of the cells, the quantity and quality of food provided, whether there are windows/ventilation in the cells, what hygiene facilities are made available to prisoners, whether prisoners are shackled during solitary confinement and in what circumstances, as well as the number of solitary confinement cells in each prison. Please also indicate whether prisoners are permitted to get leave their cells during periods of solitary confinement, and if so, for how long and with what frequency? Please explain whether and in what circumstances the Criminal Procedure Regulations, which establish certain minimum detention conditions, apply to security detainees. Please provide statistics and information on any complaints challenging such conditions, including their outcome(s).

12. State of emergency

Article 4

Suggested questions

The Committee wishes to reiterate its concern that the state of emergency, declared by the Knesset in 1948 and maintained continuously ever since, remains firmly in place. The Committee emphasizes that derogations under article 4 are only permitted in times of public emergency which

²³⁰ Physicians for Humans Rights-Israel and Addameer, "The Sounds of Silence: Isolation and Solitary Confinement of Palestinians Prisoners in Israeli Detention," August 2008, p. 6. Available at: <http://www.phr.org.il/phr/cat.asp?catid=58&parentid=46&pcat=46&lang=ENG>.

²³¹ *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin*, para.28.

²³² *Ibid.*

²³³ Special Rapporteur Martin Scheinin has recommended that the law "should be repealed, without replacement." *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin*, para.58.

²³⁴ United Against Torture (UAT) Coalition – Alternative Report for Consideration Regarding Israel's Fourth Periodic Report to the UN Committee Against Torture (CAT), September 2008, Annexure A - List of Evidence Available at: http://www2.ohchr.org/english/bodies/cat/docs/ngos/UAT_Israel42_Annex1.pdf.

threaten the life of the nation and to the extent strictly required by the exigencies of the situation. The Committee further wishes to reiterate its concern at the sweeping nature of measures declared under the state of emergency, that appear to extend beyond what would be permissible under those provisions of the Covenant which allow for the limitation of rights.²³⁵ In this regard, the Committee refers to its earlier concluding observations on Israel and to its general comment No. 29.

Please provide an update to the Committee regarding the “joint program to complete the needed legislative procedures required in order to end the state of emergency” referred to in the State party’s report [para. 159]. What measures referred to in the State’s report [para. 159] have been amended to de-link them from the state of emergency? How does the state party intend to ensure that the new laws are stripped of provisions derogate from rights protected by the Covenant, as required to end of the state of emergency, and in accordance with the Committee’s previous recommendation that “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 (art. 4).”²³⁶

13. The Israeli Supreme Court's 1999 torture decision

Articles 7, 10

Suggested questions

Notwithstanding the State party's declaration that under Israeli law acts of torture or cruel, inhuman or degrading treatment or punishment are designated as criminal offenses and that the perpetrators of such acts are tried and severely punished by the courts [para. 173], the Committee is concerned at evidence that torture and ill-treatment continue by the ISA and indeed have become widespread.²³⁷

Please comment on reports that, since the Supreme Court’s 1999 ruling²³⁸ – which outlawed torture but also created an exception in “ticking bomb” cases that is contrary to article 7 of the Covenant, as

²³⁵ The State of Israel has enacted dozens of laws and orders the applicability of which are anchored in the ongoing state of emergency, declared by the Knesset in 1948 and maintained continuously ever since. The permanent state of emergency has been used to derogate from basic rights that are protected under international human rights law. Some legislative examples dependent upon this continued state of emergency are: (i) **The Emergency Powers (Detentions) Law – 1979** grants the State the power to detain individuals in administrative detention for indefinitely extendable six-month periods; (ii) **The Prevention of Terrorism Ordinance – 1948** enumerates a number of criminal offences including “membership in a terrorist organization” and “supporting a terrorist organization.” The Ordinance contains a number of broad definitions of terrorism, and is often used against Palestinian political leaders who voice strong opposition to Israel’s occupation. Almost all of the Palestinian political parties in the OPT are designated by Israel as “terrorist organizations”; and (iii) **The Criminal Procedures (Powers of Enforcement – Detention) Law – 1996** permits the denial of access to counsel by detainees accused of “security offences” for a period of up to 21 days.

²³⁶ Concluding observations of the Human Rights Committee: Israel, 21 August 2003, CCPR/CO/78/ISR, para. 12.

²³⁷ According to evidence gathered by the Public Committee Against Torture in Israel (PCATI), the Association for Civil Rights in Israel (ACRI) and HaMoked – Center for the Defence of the Individual and presented to the Supreme Court in H.C. 5100/94, *Public Committee against Torture in Israel v. The State of Israel*. Ruling available at: http://www.stoptorture.org.il/files/High_Court_Judgment_Torture_eng_0.pdf. See also motion for contempt of court filed to the Supreme Court on 2 November 2008. The motion provides evidence of the granting of a-priori authorizations to interrogators to use torture in interrogation that fundamentally violates the Supreme Court’s 1999 decision. This evidence includes testimonies of GSS interrogators from court proceedings, which are attached as classified annexes of the motion, as well as testimonies from victims and public responses by the GSS and the Prime Minister’s Office. Available at: See <http://www.stoptorture.org.il/en/node/1332>. On 6 July 2009, the Supreme Court rejected the motion for contempt. The decision is available in Hebrew at:

<http://elyon1.court.gov.il/files/94/000/051/n15/94051000.n15.htm>

²³⁸ H.C. 5100/94, *Public Committee against Torture in Israel v. The State of Israel*.

well as the Convention against Torture – the use of torture and ill-treatment has become systemic and institutionalized through the misuse of the “ticking bomb” scenario, in contradiction of the Supreme Court’s decision itself.²³⁹

Please respond to concerns voiced by Special Rapporteur Martin Scheinin at admissions by the ISA officials that, “in principle, there was no distinction, in the use of the “ticking bomb” scenario, between a terrorist suspect and a person otherwise holding information about a terrorist incident,” and his conclusion that there are internal ISA guidelines that allow interrogators to seek approval under the “necessity defense” contained in article 34(11) of the Penal Law, from the Director of the ISA for the existence of the ticking bomb scenario that “appear to render the use of special interrogation techniques a matter of policy rather than a case-by-case ex post facto defense in respect of wrongful conduct.”²⁴⁰

What mechanisms exist to ensure that victims of torture or ill-treatment by interrogators are provided with an effective remedy? The Committee requests that the State party provide detailed information on the number of Palestinian suspects classified as “ticking bomb” cases who have been interrogated since 2003, as well as the outcome of these interrogations. Please indicate whether Israel intends to enact effective legislation fully incorporating the provisions of the Covenant into domestic law, including a provision that unambiguously prohibits all forms of torture and other cruel, inhuman or degrading treatment or punishment, without exception.

14. Education of Juvenile Prisoners

Articles 7, 10, 14, 24.

Suggested questions

The Committee is concerned at reports that no education is provided to Palestinian children detained and imprisoned in Huwarra, Etzion, Salem, Askelon, Jalama, Mascobiyya and Petah Tikva interrogation and detention centers, and that only limited education is provided at Telmond and Addamoun,²⁴¹ and that the Israeli prison authorities are neglecting the right of children to continue receiving education whilst in detention.²⁴²

Please explain in what circumstances education is not provided to detained minors, and, where it is provided, give details of the subjects of instruction offered, the language of instruction and the number of teaching hours offered per week. How does the State party ensure that the education and development of detained children classified as “security detainees” is not neglected, with potentially

²³⁹ Paragraphs 36, 37 and 38 of the Supreme Court’s ruling in H.C. 5100/94, *Public Committee against Torture in Israel v. The State of Israel*.

²⁴⁰ *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin, para. 21. The Special Rapporteur recommended, inter alia, that as a result of “the apparent lack of understanding by Israeli Security Agency officers of the parameters of the necessity defence... that all complaints of torture or cruel, inhuman or degrading treatment be referred to the Attorney General’s office for the immediate filing of criminal charges against the individual interrogator wherever such complaints point to conduct that, if proven, would amount to torture or cruel, inhuman or degrading treatment, and that only the courts may pronounce on the applicability and effect of the necessity defence.” Para. 56.

²⁴¹ Defence for Children International – Palestine Section, *Palestinian Child Prisoners: The Systematic and institutionalised ill-treatment and torture of Palestinian children by Israeli authorities*, June 2009, p. 18, and Defence for Children International – Palestine Section, *Palestinian Child Prisoners 2007 Report*, pp. 33-34.

²⁴² For more information, see Addameer, Palestinian Children as Political prisoners, *Early Adulthood-Stolen Childhood*, available at: <http://www.addameer.org/detention/children.html>.

serious repercussions for their future rehabilitation? What measures will the State party take to fulfill its obligations under articles 7, 10, 14 and 24 of the Covenant with regard to detained minors, as well as other relevant provisions of international law?²⁴³ Please respond to the recommendation made by Special Rapporteur Martin Scheinin that Israel should ensure that “all facilities in which children are detained provide educational care appropriate to the age of each child.”²⁴⁴

15. Recording of interrogations of security suspects

Articles 7, 9, 14, 26

Suggested questions

According to information before the Committee, an amendment (Amendment no. 4) made in 2008 to The Criminal Procedure (Interrogation of Suspects) Law – 2002 has extended the existing exemption of the ISA and the police from making audio and video recordings of security suspects in their interrogations for an additional four years. As the recording of investigations constitutes one of the basic means of ensuring a fair investigation and a fair trial, the exemption has serious implications for the reliability, authenticity and admissibility of evidence presented before the courts against suspects. The Committee is further concerned that the exemption creates conditions that may facilitate the torture or ill-treatment of individuals under arrest and interrogation,²⁴⁵ particularly in the case of security suspects, based on recently-published reports that indicate the continuing use of torture and illegitimate methods of investigation against Palestinians.²⁴⁶ The exemption is even more serious when viewed in conjunction with section 35(d) of the Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996, which enables the authorities to prohibit a person suspected of a security offense from meeting a lawyer for up to 21 days.

How does the State party reconcile this exemption with its obligation under the Covenant to ensure due process and that all persons are equal before the law and are entitled without discrimination to the equal protection of the law? What measures does Israel have in place to guard against torture and ill-treatment during interrogations, as well as the extraction of false confessions? Given the further extension of the law for a period of four years, does the State party intend to transform the law into a permanent law?

²⁴³ The **UN Standard Minimum Rules for the Treatment of Prisoners**,²⁴³ applicable to all imprisoned individuals, specifies the standards required for conditions of detention. Rule 77 states that provision shall be made for the further education of all prisoners capable of profiting thereby, and that, “The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.” The **UN Rules for the Protection of Juveniles Deprived of their Liberty**²⁴³ stipulates clear standards for the conditions of detention in which children may be held. Rule 12 states that juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity. Rule 13 specifies that the design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment.

²⁴⁴ *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin, para. 58.

²⁴⁵ In its Concluding Observations on Israel of 14 May 2009, the UN Committee against Torture recommended that, “as a matter of priority, the State party extend the legal requirement of video recording of interviews of detainees accused of security offenses as a further means to prevent torture and ill-treatment.” CAT/C/ISR/CO/4, para. 16.

²⁴⁶ The United Against Torture Coalition, *Alternative Report to UN Committee Against Torture*, September 2008; Physicians for Human Rights-Israel and Addameer, *The Sounds of Silence: Isolation and Solitary Confinement of Palestinians Prisoners in Israeli Detention*, August 2008; The Public Committee Against Torture in Israel, “*Ticking Bombs*”: *Testimonies of Torture Victims in Israel*, May 2007.