



Concluding Observations of the Committee against Torture Extracts for follow-up of CAT/C/ISR/CO/4: Israel

15 July 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 (PHR-Israel) – are pleased to submit this report to the UN Committee Against Torture to assist it in its review of follow-up information requested from the State of Israel in relation to the Committee's Concluding Observations of June 2009.¹ 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.

Basic Safeguards for Detainees

15. The Committee is concerned that while the Criminal Procedure Law and the Prisons Ordinance stipulate conditions under which detainees are entitled to meet promptly with a lawyer, these can be delayed, subject to written requests, if it puts the investigation at risk, prevents disclosure of evidence, or obstructs the arrest of additional suspects, and security-related offenses or terrorism charges permit further delays. Notwithstanding the safeguards provided by law and reaffirmed by the Supreme Court of Israel in its 2006 decision on the case Yisacharov v The Head Military Prosecutor et al., C.A. 5121/98 for ordinary cases, there are repeated claims of insufficient legal safeguards for security detainees. The Committee also notes with concern that the Criminal Procedure Law-2006 allows detention for up to 96 hours of persons suspected of security offenses before being brought before a judge -although the State Party claims a majority of cases are brought within 14 hours- and up to 21 days without access to a lawyer- despite the State Party's claim that more than 10 days is "seldom used".

The Committee calls upon Israel to examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer. The Committee also emphasizes that detainees should have prompt access to a lawyer, an independent doctor and family member are important means for the protection of suspects, offering added safeguards against torture and ill-treatment for detainees, and that these should be guaranteed to persons accused of security offenses.

¹ The UN Committee Against Torture, *Concluding Observations of the Committee against Torture (Extracts for follow-up of CAT/C/ISR/CO/4)*, Forty-second session, 27 April-15 May 2009.

a. 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 court ruling was delivered on an appeal submitted by the Israeli Public Defenders' Office in 2007. Adalah, the Association for Civil Rights in Israel (ACRI) and the Public Committee Against Torture in Israel (PCATI) also challenged additional unconstitutional provisions of the law that severely violate the due process rights of suspects by allowing for:

- Persons suspected of committing security offenses, in certain circumstances, to be detained for 96 hours without being brought before a judge (paragraph 3);
- The extension of their pre-trial detention up to 20 days (paragraph 4.1);
- A suspect to be detained for 35 days without indictment (paragraph 4.2).

The court did not rule on these matters because ultimately the three organizations withdrew the petition.² 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).

Thus, despite the cancellation of Article 5 of *The Criminal Procedure (Detainees Suspected of Security Offences) (Temporary Order) Law – 2006*, all of the above provisions remain binding law and security suspects can still be held in incommunicado detention, in the hands of Israel Security Agency (ISA) interrogators, for a period of up to 21 days, a situation that renders them vulnerable to torture and ill-treatment.

It should also be stressed that 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 378.³

² 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. The organizations argued that the court was setting a dangerous precedent that threatened future possibilities for judicial review of laws that violate human rights.

³ 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).

Case Study: The interrogation of Ameer Makhoul and Dr. Omar Saeed: Lack of safeguards against torture and cruel, inhuman or degrading treatment or punishment

The detention and interrogation of Ameer Makhoul, the Director of the Arab NGO network Ittijah, and Dr. Omar Saeed, a pharmacology researcher and political activist, were undertaken in gross violation of their fundamental due process rights and in the absence of safeguards to protect them against torture and ill-treatment.

Dr. Saeed was arrested by Israeli security forces on 24 April 2010 and Mr. Makoul on 6 May 2010. Total gag orders were placed on the two cases by the court that prevented media coverage until 10 May 2010. Thereafter partial gag orders remained, preventing the publication of any details about the case or the investigation. Prohibition orders were also imposed on meeting lawyers following their arrest, in the case of Dr. Saeed for 16 days and in the case of Mr. Makhoul for 12 days.⁴

During their incommunicado detention both men were interrogated for prolonged stretches of time and allowed a very limited amount of sleep. Mr. Makhoul stated that severe methods of interrogation were employed against him, which caused him physical and psychological harm. These methods include being shackled to a chair for hours on end in an excruciating stress position, and being threatened by his interrogators that he would be left permanently crippled from the interrogation.

For the first three weeks of his detention, until 26 May 2010, including the entire interrogation period, repeated requests submitted by PHR-Israel and Adalah for access to Mr. Makhoul's medical reports and for an independent doctor to be permitted to examine him were all denied. In response to one prisoner's petition filed on 25 May 2010, the Legal Adviser to the ISA (Northern District) stated, ***"Generally speaking, we object to the conduct of [medical] examinations by external doctors during an investigation."***⁵

The state filed indictments against the two men on 27 May 2010. Mr. Makhoul is accused of assistance to the enemy in time of war and aggravated espionage. Dr. Saeed is charged with contact with a foreign agent and delivering information to an enemy.⁶ Both vehemently deny the charges. Following the indictment of Mr. Makhoul on 27 May 2010, he has not been able to meet his legal representatives in conditions of confidentiality, as required by law. These meetings have either taken place in a room where prison guards were present, or else over a wiretapped telephone.⁷ Both remain in prison. Adalah, Al Mezan and PHR-Israel are gravely concerned over the severe infringements of their rights and the absence of safeguards against the torture and ill-treatment, in contradiction of the Convention Against Torture and Israeli law.

⁴ For detailed information about the two cases, see Adalah's Special Report on Ameer Makhoul and Dr. Omar Saeed, available at: <http://www.adalah.org/eng/political/political.html>

⁵ 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). Response dated 26 May 2010, on file with PHR-Israel (Hebrew and English).

⁶ Mr. Makhoul vehemently denies the charges. Dr. Saeed pled guilty to lesser offense and has been sentenced to seven months' imprisonment.

⁷ Adalah, *Illegal Wiretap on Ameer Makhoul's Discussions with his Legal Defense Team Lawyers Demand Prompt Criminal Investigation*, 1 July 2010, available at: http://www.adalah.org/eng/pressreleases/pr.php?file=01_07_10

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

The above legal provisions are all the more dangerous given the continuing lack of preventative mechanism or effective safeguards against torture and ill-treatment for security suspects during detention, as well as the ongoing blanket ban on family visits to detainees from Gaza.

- *No system of visits to ISA detention centers*

Israel lacks a system of visits by qualified, independent professionals, including lawyers and doctors to detention centers where ISA interrogations take place. While a partial visiting mechanism does exist, it is neither independent nor ad hoc. 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.⁸ Section 72 grants official visitor permission to the judiciary and Attorney General. According to Israel Prison Service (IPS) guidelines,⁹ the 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 Ministry of Justice are allowed to check conditions in ISA detention cells, and even then only without reporting on them to the public.¹⁰ In addition, Israel has entered a reservation to Article 20 of the Convention Against Torture, thereby denying the UN 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.¹¹

⁸ 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

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

¹⁰ 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 visits by representatives of the Public Defender's Office to 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,"* July 2010, p. 29 (English).

¹¹ 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>

- *Lack of access to independent doctors during detention*

Further, the IPS does not allow independent doctors 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-Israel-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.¹² 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."***

Visits by independent doctors are crucial due to the "dual loyalty" of doctors employed by the IPS. 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 Israeli Medical Association (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.

Case Study: Denial of access to an independent doctor and lawyer for security detainees

AA was arrested on 2 February 2007 and within a few days of his arrest he was transferred to the Kishon interrogation facility. About three weeks earlier, in December 2006, AA had undergone surgery on his spine. A week after AA's incarceration, PHR-Israel notified the IPS Chief Medical Officer and the attending physician at the Kishon interrogation facility of AA's medical condition, stressing that he was unable to sit on a chair or engage in any kind of physical activity that may put stress on his spine.

During the first month of his detention AA was denied access to a lawyer. Fearing that the interrogation may damage his health, PHR-Israel appealed to the Israeli Supreme Court on 15 February 2007 to demand that (i) the prohibition on meeting a lawyer be lifted, (ii) AA should be examined by an independent physician from PHR-Israel, and (iii) his detention conditions should be appropriate to his health condition.¹³

At the hearing on 20 February 2007, the ISA objected to the petitioners' demands and stated that since the IPS was notified of AA's medical condition he had been allowed to lie

¹² Prisoner's Petition Appeal 39911-05/10, *Makhoul v. IPS Chief Medical Officer*. See also the response of the Legal Adviser to the ISA (Northern District), on file with PHR-Israel (Hebrew and English).

¹³ HCJ 7813/06, *AA v. The Israel Prison Service and the Head of the Israel Security Agency*.

down and assume any position he found comfortable during interrogation. The court accepted the ISA's arguments, and decided that, as a compromise, he should be examined by a specialist at a public hospital. The demand that he should meet a lawyer was rejected.

On 3 March, after the prohibition to meet a lawyer was lifted, AA informed a lawyer from PHR-Israel that he had suffered from severe back pain during the interrogation, and had been made to sit on a chair for hours on end with his hands cuffed to the chair. Further, it was only on 18 February, and not 13 February as claimed by the ISA before the court, that he had been permitted to lie down during his interrogation, apparently the date on which the hearing was scheduled by the Supreme Court.

- *Supreme Court decision to uphold ongoing 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.¹⁴ 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, together with several other human rights organizations.¹⁵

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 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."¹⁶

¹⁴ HCJ 5399/08, *Adalah, et al. v. The Defense Minister, et al.* (decision delivered 9 December 2009).

¹⁵ 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>

¹⁶ 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>

- *Lack of public information about prohibitions on meetings with lawyers*

The Israeli Supreme Court recently 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 petition under the Freedom of Information Act to the Supreme Court¹⁷ 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);¹⁸
- b. The average duration of the prohibition; and
- c. The number of Palestinians interrogated by the ISA from 2004 to 2008.

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.

¹⁷ HCJ 2662/09, *The Movement for Freedom of Information, et al. v. The Prime Minister's Office, et al.* (pending).

¹⁸ 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 a judge of the Military Court of Appeals, in accordance with Military Order 378, Articles 78D (b)(2-4).

Allegations of Torture and Ill-Treatment by Israeli Interrogators

19. The Committee is concerned that there are numerous, ongoing and consistent allegations of the use of methods by Israeli security officials that were prohibited by the September 1999 ruling of the Israeli Supreme Court, and that are alleged to take place before, during and after interrogations. According to the State party, there were 67 investigations opened by the Inspector for Complaints against ISA interrogators in 2006, and 47 in 2007, but none resulted in criminal charges.

The State party should ensure that interrogation methods contrary to the Convention are not utilized under any circumstances. The State party should also ensure that all allegations of torture and ill-treatment are promptly and effectively investigated and perpetrators prosecuted and, if applicable, appropriate penalties are imposed. The Committee reiterates that, according to the Convention, “no exceptional circumstances” including security or a war or threat to security of the state justifies torture. The State party should intensify human rights education and training activities to security officials, including training on the prohibition of torture and ill-treatment.

Complaints of torture and ill-treatment in Israeli detention centers continue to be made on a regular basis.¹⁹ According to data published by PCATI in December 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.²⁰ 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.²¹ 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.

¹⁹ See, e.g., PCATI, *10 Years, Hundreds of Complaints, No Investigations*, December 2009 (English), available at: <http://www.stoptorture.org.il/en/node/1520>

²⁰ 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

²¹ The human rights organizations included PCATI, PHR-Israel, Adalah, ACRI, HaMoked, and Yesh Din.

House Demolitions

33. While recognizing the authority of the State party to demolish structures that may be considered legitimate military targets according to international humanitarian law, the Committee regrets the resumption by the State party of its policy of purely “punitive” house demolitions in East Jerusalem and the Gaza Strip despite its decision of 2005 to cease this practice.

The State party should desist from its policies of house demolitions where they violate article 16 of the Convention.

Adalah, Al Mezan and PHR-Israel believe that the circumstances surrounding the three patterns of house demolition conducted by Israel against Palestinian families and homeowners, as described below – whether in cases of punitive home demolitions, the disproportionate demolition of homes in the context of military operations without military necessity, or administrative home demolitions – constitute cruel, inhuman or degrading treatment, consistent with the Committee’s conclusions in *Dzemajil, et al. v. Yugoslavia* (CAT 161/00) [9/].

1. House demolitions in the West Bank, including East Jerusalem

◦ New Data: Administrative home demolitions

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.²² Taking East Jerusalem alone, in 2009, 80 homes were demolished, leaving 300 people homeless. Including 149 children²³ 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.²⁴ 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.²⁵

According to UN estimates, there are currently over 1,500 pending demolition orders in East Jerusalem alone, potentially affecting several thousand Palestinian residents.²⁶ 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

²² 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.

²³ The Association for Civil Rights in Israel, *Human Rights in East Jerusalem: Facts and figures*, May 2010.

²⁴ 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

²⁵ 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>

²⁶ OCHA, *Fact Sheet August 2009*, p. 4, available at:

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

Jewish settlements.²⁷ 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 in recent years Palestinians have received fewer than 200 building permits per year, after a wait of several years and after incurring sizeable costs.

The UN has estimated that, due to the difficulties Palestinians encounter trying to obtain building permits from the Israeli authorities and the lack of feasible alternatives, at least 28% of all Palestinian homes in East Jerusalem have been built in violation of Israeli planning requirements. This is equivalent to around 60,000 Palestinians in East Jerusalem at risk of home demolitions; this is a conservative estimate and the actual figures may be much higher.²⁸

On 15 November 2009, the Jerusalem Municipality issued an internal document in which it listed 41 Palestinian-owned structures slated for demolition in East Jerusalem. 16 of the structures had received judicial demolition orders, 14 administrative demolition orders, and another 11 had received judicial demolition orders according to the clause 212, an order that permits the demolition of a structure without convicting the owners of illegal building.²⁹

Of particular concern are recent events in the Palestinian neighborhoods of Sheikh Jarrah and Silwan 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 in Sheikh Jarrah, displacing 53 Palestinians, including 20 children.³⁰ 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. On 22 June 2010, the Municipality Jerusalem approved a plan to demolish 22 Palestinian homes in the el-Bustan area of Silwan and construct the "King's Garden tourist centre and archeological park" in their place. On 23 June, UN Secretary-General Ban Ki-moon issued a statement that the planned demolitions were "contrary to international law, and to the wishes of Palestinian residents [of Silwan]."³¹ On 13 July 2010, Israel demolished

²⁷ EUObserver, *EU heads of mission report on East Jerusalem*, 9 March 2009, available at:

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

²⁸ OCHA, *Special focus APRIL 2009*, p. 2, available at:

http://www.ochaopt.org/documents/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf

²⁹ Ir Amim, *Housing Demolition/Entry of Settlers into an additional house in Sheikh Jarrah/Ir Amim objection against Town Plan 11555 / Building Plan for the Slopes of West Gilo*, November 2009, available at:

<http://www.ir-amim.org.il/Eng/Uploads/dbsAttachedFiles/Novemberupdate.pdf>

³⁰ 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

³¹ UN News Center, *Ban voices deep concern at municipal plan to demolish homes in East Jerusalem*, 24 June 2010, available at: <http://www.un.org/apps/news/story.asp?NewsID=35124&Cr=Palestin&Cr1=>

a further six buildings in the Palestinian neighborhoods of Issawiyeh, Jabal al-Mukabbir and Beit Hanina in East Jerusalem, including at least three homes.³²

◦ *No compensation*

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 the humiliating step of demolishing their homes themselves.³³ Many families would be left homeless if they were not taken in by their relatives and if not for the assistance of charities.

2. House Demolitions in the Gaza Strip: Figures³⁴

◦ *New Data: Disproportionate and punitive house demolitions without military necessity*

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 06/06/2010	11,736	4,824	16,560
15/09/2005 (after disengagement) to 30/04/2010 (excluding Operation Cast Lead)	343 (in the buffer zone*)	311 (in the buffer zone)	654 (in the buffer zone)
27/12/2008 to 19/01/2009 (during Operation Cast Lead) ³⁵	8,522	2,632	11,154
End of 01/2009 to 06/06/2010	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

³² See, e.g., “East Jerusalem homes demolished,” *BBC Middle East*, 13 July 2010, available at: <http://www.bbc.co.uk/news/10619903>

³³ 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>

³⁴ Figures taken from Al Mezan’s database, unless otherwise noted.

³⁵ 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”).

population to maintain a distance of at least 300 meters from the border, or else risk being fired on.³⁶ 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.³⁷

◦ *Methods of demolition*

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).³⁸ Of those homes bombarded from the air, hundreds were deliberately targeted. Dozens of these homes belonged to or were inhabited by persons “wanted” by Israel. These demolitions are punitive in their nature; i.e. they are not 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.³⁹

◦ *Lack of accountability and compensation*

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.

Moreover, 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).⁴⁰ The law exempts Israel from compensating for

³⁶ 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

³⁷ 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

³⁸ Al Mezan’s database.

³⁹ 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. 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).

⁴⁰ 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>

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.”⁴¹

◦ *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) in January 2009. Most people displaced during the military attack are still living in inadequate and 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.⁴² The UN has introduced a cash-assistance program to provide cash to households whose homes were destroyed or largely damaged during OCL and compensation to households whose homes sustained minor damages.⁴³ 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

⁴¹ A 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

⁴² 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 June 2010, available at:

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>

⁴³ 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>

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.⁴⁴

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."⁴⁵

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."⁴⁶ 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."⁴⁷

⁴⁴ 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

⁴⁵ Al Mezan and Defense for Children International-Palestine, *Bearing the Brunt Again: Child Right Violations during Operation Cast Lead*, September 2009, p. 93.

⁴⁶ The Goldstone Report, para. 1240.

⁴⁷ Ibid. para. 1258.