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Report on the Status of Israelis Detained Incommunicado in the Gaza Strip¹
Alternative Report submitted to the Committee Against Torture as part of the
Periodic Review of the State of PA.

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Introduction

1. This report is respectfully submitted to the Committee Against Torture (herein after “**The CAT Committee**”) by the Clinic on International Human Rights at the Hebrew University of Jerusalem, on behalf of the family members of four missing persons – Avera Mengistu, Hisham al-Sayed, Oron Shaul and Hadar Goldin – who are generally presumed to be, or whose remains are generally presumed to be located in the Gaza Strip. The Committee has interpreted the term ‘victim’ to include affected immediate family².
2. Hadar Goldin and Oron Shaul, are IDF soldiers, presumed to be killed during operation “Protective Edge” in 2014, and since then their remains are being held by Hamas. Avra Mengistu and Hisham Al-Said, two young men with mental disabilities who crossed separately in 2014 and 2015 (respectively) the fence into the Gaza Strip and are forcibly held by Hamas, their fate and whereabouts are unknown.
3. This report's purpose is to reflect the Palestinian Authority's (**PA**) continuing violations of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**) regarding these events, and request the Committee's much needed intervention in order to put an end to these grave and severe violations and long suffering of the victims and their families. We underscore that this report is only submitted on behalf of our clients, and its preparation has not been coordinated in any way with the State of Israel, from which our Clinic enjoys total independence.
4. The report is structured as following: We first describe the factual background, distinguishing between Mengistu and Al Said, who are, to the best of our knowledge alive, and Goldin and Shaul, who are presumed to be dead. Next, we offer a legal analysis according to which the PA acts and omissions regarding the matter are in continuous violation of their obligations under the CAT. We than describe in brief the additional communications we have submitted to UN treaty bodies, and conclude with proposed recommendations.

² Committee Against Torture, General Comment 3, para. 3.



Factual Background

Arrest and Detention of Avera Mengistu

5. Avera Mengistu, a Jewish Israeli citizen of Ethiopian descent, was diagnosed with schizophrenia and was admitted twice for psychiatric hospitalization in 2013. His medical record states that he was admitted due to a psychotic condition combined with self-endangering behavior (see medical documents- **Annex 1**). According to his brother, Gashao, Mangsito's mental condition led him on several occasions to leave home and wander to different places in Israel. Mengistu was found "not medically fit for service" in the Israeli army by a medical committee and was exempted from the compulsory draft (**Annex 2** (from Human Rights Watch website)).
6. On September 7th, 2014, Mengistu left his home in the city of Ashkelon, Israel, at around 12:00 p.m. When he did not return home by the evening, his family searched for him, checked with his friends and informed the Police.
7. According to the details the family received from Israeli authorities, later that day, in the afternoon, Israeli soldiers noticed on a surveillance camera a person walking along the shoreline towards the Israel-Gaza border fence. Soldiers arrived at the scene and shouted at the man, calling him to stop, and shot in the air, but he did not react. The man managed to climb on the wire fence and entered the Gaza Strip. Israeli authorities later identified the person as Mengistu, since he left a school bag behind, on the Israeli side of the border, in which they found a book with the name Avera Mengistu.
8. On September 8th, Israeli authorities informed Mengistu's brother, Gashao, that Mengistu had crossed the border and entered the Gaza Strip, and that efforts are being made to return him. A week later, Israeli authorities updated the family that according to intelligence information they have, Mengistu is being held by Hamas. Hamas is a non-state actor that controls the territory of the Gaza Strip, which constitutes part of the Palestinian Territories/the State of PA.
9. A video that was given to Mengistu's family by the Israeli army (**Annex 3**- attached as a separate video file) shows Mengistu crossing a barbed wire fence at the border between Israel and the Gaza Strip, and entering into the Gaza Strip, as a civilian and on



his own, on September 7th, 2014. Mengistu has not been seen or heard from by any of his family members since earlier that day.

10. The Israeli authorities officially announced Mengistu's disappearance publicly in July 2015, after a gag order on the case has been lifted.³

Arrest and Detention of Hisham al-Sayed

11. Hisham al-Sayed, a Palestinian citizen of Israel of Bedouin descent, was diagnosed with “personality disorder” and “unspecified behavioral and emotional disorders” in 2009, “acute psychotic disorders” in 2010, “schizophrenia” and “mild mental retardation” in 2013 (**Annex 4**). Documents from 2013, from a mental health center, note that al-Sayed was admitted due to dangerous behavior exhibiting lack of judgment. They also mention that al-Sayed tried to cross the Gaza border in the past (**Annex 5**, in Hebrew). According to al-Sayed's father, Shaaban, al-Sayed spent significant stretches of time in several different psychiatric institutions, including by orders of courts (**Annex 5** refers, in Hebrew, to al-Sayed's hospitalizations in several mental health institutions). Due to his mental condition, Al-Sayed crossed several times before to Jordan, the West Bank, and the Gaza Strip.⁴ According to al-Sayed's father, he was caught by the authorities and was returned. After almost three months in the Israeli army in 2008, al-Sayed was found unfit for service and was released from service (**Annex 6** (from Human Rights Watch website)).

12. Al-Sayed left his home in the al-Sayed tribe (al-Hura) in the Negev region of Israel, on April 20th, 2015 in the morning hours. Al-Sayed's father said that when he did not return home until the afternoon, the family reported he was missing to the Israeli Police. The family searched for him for three months in places he had gone to before; they

³ Israeli Ministry of Foreign Affairs, President Rivlin & PM Netanyahu on Israeli Citizens Being Held in Gaza (July 9, 2015) [hereinafter: Israel's Announcement] *available at* <https://mfa.gov.il/MFA/PressRoom/2015/Pages/President-Rivlin-on-Israeli-citizens-being-held-in-Gaza-9-Jul-2015.aspx>; Shiry Seidler, Gili Cohen, Barak Ravid, Jack Houry & Jonathan Lis, *Two Israelis Missing After Disappearing Into Gaza, One Being Held by Hamas*, Haaretz (July 9, 2015) [hereinafter: Haaretz Report] *available at* <https://www.haaretz.com/two-israelis-missing-in-gaza-1.5374637>.

⁴ According to Human Rights Watch report, al-Sayed crossed into the Gaza Strip twice before, in 2010 and 2013. Human Rights Watch, *2 Israelis Who Entered Gaza Held Incommunicado: Disappeared Men Have History of Mental Health Conditions* (May 2, 2017) [hereinafter: HRW Report] *available at* <https://www.hrw.org/news/2017/05/03/2-israelis-who-entered-gaza-held-incommunicado>.



reported his disappearance to the local Police in Jordan and in the West Bank and looked for him in different locations in Israel.

13. According to Human Rights Watch report, Israeli official said that photos captured by Israeli authorities the day of his disappearance, show al-Sayed crossing by foot the Gaza Strip border from the east.⁵ Al-Sayed has not been seen or heard from by any of his family members since the morning of April 20th, 2015.
14. According to al-Sayed's father, the family heard the public announcement regarding Mengistu in July 2015, which indicated a second man is missing after disappearing into the Gaza Strip, without exposing his identity.⁶ At that point, the family and the Israeli authorities, who contacted the family, suspected that the second man is al-Sayed. The father, Shaaban, says that with time, more and more information led to a realization that the second man in the Gaza Strip is, indeed, al-Sayed. A video published by Hamas in April 2016, as detailed below, reaffirmed that al-Sayed is being held by Hamas in the Gaza Strip. Shaaban says that the family contacted the Israeli authorities who also confirmed it.

Circumstances Common to both Mengistu and al-Sayed

15. In April 2016, Hamas military wing, the Izz al-Din al-Qassam Brigades, published a video in which they indirectly acknowledged that they hold both Mengistu and al-Sayed.⁷ The video portrays Mengistu and al-Sayed in military uniforms, apparently by using photoshop software to manipulate pictures of Mengistu and al-Sayed which were published in the media, alongside two IDF (Israeli army) soldiers apparently killed during the 2014 Gaza conflict, whose remains are reported to be in Hamas's custody. In the video, Hamas military wing's spokesperson, Abu Ubeida, says (in translation to English): "Netanyahu is lying to his people and misleading them and deceiving the families of the prisoners. We say with certainty that there were no negotiations until now regarding the enemy's soldiers imprisoned. The enemy will not receive any

⁵ HRW report

⁶ Israel's Announcement, *supra* note 3; Haaretz Report, *supra* note 3.

⁷ Fateh Voice (April 1, 2016) available at <https://www.youtube.com/watch?v=7K5dVM3I-DQ>; HRW Report, *supra* note 4.



information about the four prisoners unless the enemy pays clear prices before and after negotiations”. In a screenshot photo, Hamas military wing’s spokesperson is seen next to the pictures of Mengistu and al-Sayed (in photoshopped uniforms) and the two IDF soldiers, with the caption below reads: “Abu Ubeida: there is no communication with the occupation regarding the detained soldiers” (**Annex 7**).

16. Mengistu and al-Sayed **were not soldiers in the Israeli army nor affiliated to the Israeli government** at the time in which they entered the Gaza Strip. As described above, they were both found unfit for service in the Israeli army (Mengistu was never drafted and al-Sayed volunteered to the Israeli army for a few months but was dismissed) (see **Annexes 2 and 6**). They entered the Gaza Strip as civilians due to their mental health condition, which led them to wander and expose themselves to danger.
17. According to Human Rights Watch, Hamas co-founder, Mahmoud al-Zahar, refused to acknowledge the detention of Mengistu and al-Sayed in a September 2016 meeting with the organization, but said that "there are no civilians in Israel" since all serve in the army, and that "Israelis who enter Gaza are spies." Hamas officials said to Human Rights Watch that they would divulge nothing about the missing Israelis until Israel releases the 54 Hamas members rearrested by Israel three years after their release as part of the Gilad Shalit prisoner exchange deal between the parties.⁸
18. According to media reports, in April 2017, Hamas leader, Khaled Mashaal, said in a speech that "any information about the Israeli captives would carry a price and would not be given for free" and that Hamas refuses to negotiate a prisoner exchange deal before Israel frees prisoners who were rearrested after their release in the Gilad Shalit deal.⁹
19. In spite of the indications that Mengistu and al-Sayed are held in the custody of Hamas, Hamas did not release to date any information on the following questions: on what legal basis are Mengistu and al-Sayed held by it; where they are or were being held; what is their physical and mental condition; and even whether they are still alive.

⁸ HRW Report, *supra* note 4.

⁹ Elior Levy, *Hamas: All Info on Israeli Prisoners Has a Price*, Ynet (April 15, 2017) available at <https://www.ynetnews.com/articles/0,7340,L-4949474,00.html>



20. To the best of our knowledge, the PA did not take any concrete measures to obtain information from Hamas regarding the fate of Mengistu and al-Sayed and to prevent their continued arbitrary detention and the violations of their rights, investigate these violations or provide any type of redress to them or to their families. Put differently, it failed to exercise due diligence with respect to the situation in Gaza. PA did not take the necessary measures despite being aware of infringements of human rights taking place in a territory for whose administration it is internationally responsible, despite the fact that the cases of Mengistu and al-Sayed were covered widely in worldwide media,¹⁰ addressed in reports and statements of human rights organizations, and dealt with in the UN and other forums, as detailed below.
21. Significantly, the plight of Mengistu and al-Sayed has been raised in a prominent manner on multiple occasions, which renders it impossible for PA not to be aware of their situation.
22. In its annual report from 2019 regarding events in 2018, Human Rights Watch organization stated that “Hamas authorities continue to disclose no information about two Israeli civilians with psychosocial disabilities, Avera Mengistu and Hisham al-Sayed, whom they have apparently held for several years, in violation of international law.”¹¹ The International Committee of the Red Cross (ICRC) issued a statement in 2017 entitled “Missing Israeli Nationals”, in which it urged Hamas to comply with its obligations under international humanitarian law with regard to the five Israeli nationals who went missing in Gaza and remain unaccounted for.¹²
23. In September 2015, then UN Secretary General, Ban Ki-moon, submitted his report on “Peaceful settlement of the question of PA” to the General Assembly. In his report, he

¹⁰ Ruth Eglash, *He Walked Along an Israeli Beach as Far as Gaza. Then He Vanished*, Washington Post (April 29, 2018) available at https://www.washingtonpost.com/world/middle-east/he-walked-along-an-israeli-beach-as-far-as-gaza-then-he-vanished/2018/04/29/4cc55c46-46fc-11e8-8082-105a446d19b8_story.html; AFP, *Families of Israelis Missing in Gaza Demand Their Return*, Arab News (September 6, 2018) available at <https://www.arabnews.com/node/1368006/middle-east>; Isabel Kershner, *Israel Says Hamas Is Holding Two Citizens in Gaza*, NY Times (July 9, 2015) available at <https://www.nytimes.com/2015/07/10/world/middleeast/mengistu-gaza-israel.html>.

¹¹ Human Rights Watch, *World Report 2019: Israel and PA- Events of 2018*, available at <https://www.hrw.org/world-report/2019/country-chapters/israel/PA>.

¹² International Committee of the Red Cross, *Missing Israeli Nationals: Hamas Must Abide by International Humanitarian Law* (June 8, 2017) available at <https://www.icrc.org/en/document/missing-Israeli-nationals>.



addressed the situation of Mengistu and al-Sayed and called "all relevant Palestinian actors in Gaza to provide information as to the possible whereabouts and conditions of the missing Israelis and to take prompt action to facilitate their safe return to their families."¹³ In November 2017, Mengistu's family held a press conference at the UN, calling for international pressure to be exerted on Hamas to release Mengistu.¹⁴ In September 2018, Israeli Prime Minister Netanyahu addressed the UN General Assembly. In his speech, he mentioned Mengistu and al-Sayed and that they are held by Hamas.¹⁵ PA is an observer State in the UN and its representatives were present in the General Assembly at the time in which PM Netanyahu gave his speech.¹⁶

24. In addition, in 2018, Israel submitted to the Inter-Parliamentary Union (IPU), a global organization of national parliaments in which PA is also a member,¹⁷ a request to include an emergency item in the IPU agenda on the topic of missing persons, accompanied by a draft resolution on the subject. The draft resolution mentioned specifically in one of its articles the two Israeli civilians- Mengistu and al-Sayed- who are held by Hamas in violation of international law. It was noted in the request that according to IPU rules, its secretariat shall communicate the request and accompanying documents to all the members.¹⁸ According to records of the 139th IPU assembly, the Israeli representative referred to Mengistu and al-Sayed in his remarks on missing persons.¹⁹ Official representatives of PA participated in the assembly.²⁰

¹³ UN, Monthly Bulletin on Action by UN System and Intergovernmental Organizations Relevant to the Question of PA (September 2015) available at <https://www.un.org/unispal/document/auto-insert-207437/>.

¹⁴ Itamar Eichner, *Mengistu Family Pleads with UN to Help Release Son from Hamas*, Ynet (November 20, 2017) available at <https://www.ynetnews.com/articles/0,7340,L-5045776,00.html>.

¹⁵ Israel Ministry of Foreign Affairs, PM Netanyahu addresses UN General Assembly (September 27, 2018) available at <https://mfa.gov.il/MFA/PressRoom/2018/Pages/PM-Netanyahu-addresses-UN-General-Assembly-27-September-2018.aspx>.

¹⁶ As shown in the video published by the UN (September 27, 2018): <https://www.youtube.com/watch?v=HTugN3Wtb28>.

¹⁷ Inter-Parliamentary Union – Members: <https://www.ipu.org/about-us/members>.

¹⁸ Inter-Parliamentary Union, Consideration of Request for the Inclusion of an Emergency Item in the Agenda of the 139th Assembly of the Inter-Parliamentary Union Submitted by the Delegation of Israel, A/139/2-P.8 (October 15, 2018) available at https://www.ipu.org/sites/default/files/documents/2-p.8-e_0.pdf.

¹⁹ Inter-Parliamentary Union, Summary Records of the Proceedings of the 139th IPU Assembly, 14 (October 2018) available at <https://www.ipu.org/sites/default/files/documents/final-summary-records139e.pdf>.

²⁰ *Id.* at 208.



25. According to media reports from May 2018, Germany mediated indirect negotiations between Israel and Hamas regarding a prisoner exchange deal that may include the return of Mengistu and al-Sayed. The reports also stated that, alongside German envoys meetings with Hamas officials, a German diplomatic delegation had been in contact both with Israel and with the Palestinian Authority.²¹
26. In addition, in August 2019, members of the Israeli Democratic Camp party met with PA's President Mahmoud Abbas in his office in Ramallah. Democratic Camp member Noa Rothman raised the issue of Mengistu at the meeting and asked President Abbas to take steps to free Mengistu. President Abbas expressed willingness to assist.²²
27. Moreover, according to Mengistu's brother, Gashao, in April 2018 Mengistu's family transferred a letter to PA's President Abbas, which contained a detailed review of the entire situation, including the circumstances of his disappearance and his mental condition, and requested President Abbas to meet with them in order to assist in the matter. The letter was transferred through a former Israeli parliament member, Mr. Shlomo Mula, who later notified the family that he received confirmation that President Abbas received the letter and is willing to meet with the family.
28. On September 11, 2019, Mengistu's father and brother met with President Abbas in his office in Ramallah.²³ According to Mengistu's brother, in the meeting President Abbas was informed about Mengistu's situation and about him being held in the Gaza Strip. President Abbas promised the family that he would do everything to help and to bring to Mengistu's release. Since the meeting, Mengistu's family has contacted President Abbas' office several times through former MK, Mr. Shlomo Mula, and was replied that there was still no progress on the matter.

²¹ Elijor Levy, *Report: Germany Working to Promote Prisoner Exchange Deal*, Ynet (July 5, 2018) available at <https://www.ynetnews.com/articles/0.7340.L-5304366.00.html>.

²² Kifah Zboun, *Abbas Hopes for Dialogue with New Israeli Government*, Asharq al-Awsat (August 15, 2019) available at <https://aawsat.com/english/home/article/1857761/abbas-hopes-dialogue-new-israeli-government>.

²³ Adam Rasgon, *Abbas meets family of Israeli held in Gaza, offers to help*, The Times of Israel (September 12, 2019) available at <https://www.timesofisrael.com/abbas-meets-family-of-israeli-held-in-gaza-offers-to-help/>.



29. Both families of Mengistu and al-Sayed are not aware of any actions taken by the Palestinian authorities in order to promote the release of Mengistu and al-Sayed from their prolonged arbitrary detention and stop the ongoing violation of their rights.

Death and Holding of Remains Oron Shaul

30. During the fighting in Gaza on July 20, 2014, Hamas fired an anti-tank missile at an IDF armored personnel carrier carrying 9 soldiers, including Oron Shaul. Israeli forces were able to recover two wounded soldier and six bodies. Hamas subsequently claimed to have captured the remaining IDF soldier - Oron Shaul, backing up its claim with the soldier's photo ID and credentials. The IDF later confirmed that the body of Oron Shaul had not been identified among the dead and wounded recovered from the vehicle.

31. On July 25, Israel announced that investigation of the scene of the attack led it to conclude that Shaul is in all likelihood dead and that is body is held by Hamas.

Death and Holding of Remains of Hadar Goldin

32. On Friday, August 1, 2014, during a humanitarian ceasefire in the midst of Operation Protective Edge, a reconnaissance force of the Givati Brigade carried out operational activities in order to locate tunnels from Gaza into Israeli territory near the city of Rafah. During the operation, the force was attacked and Lieutenant Hadar Goldin was kidnapped. One day later, on August 2, on the basis of forensic findings found at the scene of the incident, the Chief Rabbi of the IDF declared the death of Lieutenant Hadar Goldin. His remains have not been returned to the family and the truth about the particular circumstances of his death have not been revealed.



Legal Analysis

A. The prolonged Arbitrary incommunicado Detention of Avra Mengistu and Hisham al-Sayed constitutes torture and as such in violation of CAT.

33. As detailed above, Mengistu and Al-Said have been held in incommunicado detention for 8 and 9 years respectively, while the PA failed to provide any information concerning their fate and whereabouts, nor any specific information of its efforts to obtain such information or to promote their safe return to their families.
34. A state of incommunicado detention as itself is considered ill treatment and could constitute – especially when prolonged in nature - torture under international law. This is confirmed by long standing case law issued by various international legal bodies. The main legal precedent in this regard is a case against Libya, in which The Human Rights Committee (**HRC**) qualified a period of three years of incommunicado detention as amounting to torture²⁴. It should be noted that the HRC found Much shorter term of incommunicado detention to constitute a violation of article 7 to the International Covenant on Civil and Political Rights (**ICCPR**)²⁵.
35. The CAT Committee itself has stated, when considering the fourth periodic review of Spain, that incommunicado detention up to a maximum of five days without any access to lawyer or doctor of the detainee's choice nor the ability to notify his family facilitates the commission of torture or ill treatment²⁶. In addition, the Commission on Human Rights has stated the prolonged incommunicado detention can constitutes a form of cruel inhuman degrading treatment, or even torture²⁷. Such a form of detention also falls within the scope of article 2 to the International Convention for the Protection of All Persons from Enforced Disappearance (**ICPED**), and considers a violation of the ICPED.

²⁴ El-Megreisi v. Libyan Arab Jamahiriya, Communication No. 440/1990, U.N. Doc. CCPR/C/50/D/440/1990 (1994)

²⁵ Nowak's CCPR Commentary: U.N. International Covenant on Civil and Political Rights 3rd ed, p.162.

²⁶ The United Nations Convention against Torture and its optional protocol: a commentary, Edited by Manfred Nowak, Moritz Birk, and Giuliana Monina, (OUP) (2020) p.. 552.

²⁷ Commission on Human Rights Resolution: 2004/41, article 8.



36. In light of the above, the case of prolonged incommunicado detention, without any legal justification, of Mengistu and Al-Said, is without any doubt a severe form of torture. Their unique circumstances as two individuals with serious mental disabilities add to the great concerns of their family members about their wellbeing and health cause by their detention. Therefore, only the act itself provides for the purpose of a violation of article 1 to CAT.
37. It is difficult to avoid the impression that they being kept as hostages, as means of pressure on the state of Israel, which further supports the conclusion that their detention cannot serve any legitimate purpose.

B. The Enforced Disappearances of Goldin and Shaul is a form of to Torture to them and their families.

38. The refusal to provide any information regarding the fate of Goldin and Shaul, nor to return their remains to their families for proper burial, constitutes a form of torture or ill-treatment, both to them and their family members.
39. The Committee recognizes the “right to truth”, and its views are that in order to satisfy its obligation under the Convention, a state party must make efforts to “search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims’ bodies in accordance with the expressed or presumed wish of the victims or affected families”²⁸ Similar views are held by other international human rights bodies, such as the Working Group of Enforced or Involuntary Disappearance (WEGID)²⁹. ICPED states that “Any act of enforced disappearance... constitutes a violation of the rules of international law guaranteeing... the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment”.³⁰ and that in a state of forced disappearance

²⁸ Committee Against Torture, General Comment 3, paragraph 16.

²⁹ General comment on the right to the truth in relation to enforced disappearance, stating principle 4 according to which “Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims’ fate.”

³⁰ Convention on the Protection of all Persons from Enforced Disappearance, Article 1(2).



"Every minute counts when a person is put outside the protection of the law. And when a person is disappeared, every anguished minute spent by his or her relatives without news of that person is a minute too long".³¹

40. Another International legal source is the Security Council Resolution 2474 (2019) that "Calls upon parties to armed conflict to take all appropriate measures, to actively search for persons reported missing, to enable the return of their remains, and to account for persons reported missing".³² Similarly, the Resolution adopted by the General Assembly on 17 December 2018, reaffirms the "right of families to know the fate of their relatives reported missing in connection with armed conflict".³³
41. As noted above, the remains of Shaul and Goldin are being held in Gaza Strip. Their families do not have a clear knowledge about their fate, and whether they were brought to proper burial. This causes severe mental distress to the families who are engaged day and night in endless efforts to bring their children to proper burial, and to receive much needed final confirmation about the circumstances of their death.

C. PA's obligations under the CAT in Gaza Strip

42. Article 2(1) holds that "Each state party shall take effective, legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". Articles 13 – 14, and 16 to CAT provide that state parties have an obligation that complaints of any individual will be impartially examined, that the victim receives fair compensations, and to prevent illegal acts from being performed within its territories.
43. We are unaware of any measures undertaken by the PA to investigate the complaints brought on behalf of the victims, to put an end to these acts of torture, protect the rights of the victims and compensate them. On the contrary, the PA consistently denies their legal responsibilities for these violations.

³¹ "Every minute counts" – UN experts raise alarm over short-term enforced disappearances International Day of the Victims of Enforced Disappearances - Tuesday 30 August 2016. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20416>. Accessed 28.5.22.

³² S/RES/2474 (2019) , p.3

³³ A/RES/73/178 (2019), p.3.



44. Even if the acts themselves are performed by the Hamas, which is an independent political entity controlling parts of the Palestinian territories, the PA should still fulfill its obligations under the CAT in the Gaza Strip. Article 5 which is considered to be "a cornerstone in the convention".³⁴ Supports this conclusion. Both subparagraph 1(a) according to which a party to the convention shall be obliged to establish its jurisdiction over offences of torture, "in any territory under its jurisdiction", and subparagraph 1(b) that specifies the obligation of the state party "When the alleged offender is a national of that State". Meaning that the fact that the act are committed by Hamas do not release the PA from accountability for failing to undertake due diligence positive measure in response to the said violations.³⁵
45. Moreover, the PA itself includes in its state report to the Committee for this very same session, information about the Gaza strip, referring to it as an "integral part of the territory of the state of PA".³⁶ This shows that the PA sees its obligation under the convention to include the Gaza Strip. Still, the PA fails to mention any information regarding the missing persons and their families in its report. Note that a substantive body of international case law suggests that the obligation of a state member are applicable to any territory within its jurisdiction. In the case of *Mozer v. the Republic of Moldova and Russia* in the European Court of Human Rights, it was determined that a State which does not take all measures at its disposal to ensure that its human rights obligations are fulfilled, including towards people in a territory that is not under their effective control, is in violation of human rights law.³⁷

³⁴ **The United Nations Convention Against Torture, A Handbook on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, edited by H. Danelius and Herman Burgers, (1988), p.131.

³⁵ *ibid* 132

³⁶ Initial report submitted by the State of Palestine under article 19 of the Convention, due in 2015, p 4.

³⁷ *Mozer v. the Republic of Moldova and Russia*, Application no. 11138/10, §11, Council of Europe: European Court of Human Rights, 23 February 2016. Available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%5B%22001-145069%22%5D%7D>
The case discussed the responsibility of Moldova and Russia regarding violations of human rights during the independence of the Pridnestrovian Moldavian Republic within the borders of Moldova and Russia following the fall of the USSR.



46. In *Mozer*, the European Court of Human Rights imposed an obligation on Moldova to use all legal and diplomatic means available to ensure the existence and maintenance of human rights, even in the areas of the country that are not under its “effective control”. This is because according to international law, the territory was Moldovan, and the Moldovan state was still obligated to fulfill human rights law, even though the state lost effective control over parts of its territory at the time.³⁸
47. According to this approach, the PA, which arguably does not have full effective control over the Gaza Strip, must still be required to take all reasonable measures at its disposal to ensure the application of human rights in Gaza, considering that its territory is a part of the PA. In addition, the PA has significant influence on the Gaza Strip, and this influence is the basis of Palestinian responsibility towards the Gaza Strip, in accordance with international law.³⁹ In the European Court of Human Rights decision of *Ilascu and Others v. Moldova and Russia*,⁴⁰ it was determined that to prove effective control over a certain entity, it is not required to indicate complete and comprehensive control over its’ actions, but rather proof of decisive influence is sufficient. Economic, or political support can serve as indications of influence amounting to effective control.⁴¹ In the same vein, in the *Chiragov and Others v. Armenia* judgment, the European Court of Human Rights found that decisive influence on the actions of a certain entity may indicate sufficient State control and result in responsibility for the actions of the entity as well.⁴²

³⁸ Ibid.

³⁹ *Chiragov and Others v. Armenia*, Application no. 13216/05, §186, Council of Europe: European Court of Human Rights, 16 June 2015. Available at: <https://www.refworld.org/cases,ECHR,5582d29d4.html>. Accessed 23.1.19.

⁴⁰ In *Ilascu*, the ECHR decided that Turkey was responsible for violations of human rights that occurred during the Turkish invasion of Cyprus, according to the “effective control” test. Ibid, §75.

⁴¹ Russia was found guilty of violating the right to a fair trial in Moldova, considering that it had effective control over the Moldovan territory at the time. Summarized in: *ibid*, §76-77.

⁴² In this case, Azeri nationals from the Nagorno-Karabkh region were not allowed to return to their homes following the Armenian invasion of Azerbaijan, which violated their human right to property and family life. Despite the Armenian defense that they did not have jurisdiction in the territory, the ECHR found that they had decisive control over the area, considering their political support, the prevalence of Armenian passports by the local population, and financial support, without which the Nagorno-Karabkh region would not be able to remain independent from Azerbaijan. See *Chiragov* (n 13), §186.



48. We believe that according to the circumstances of the case at hand, the PA should also be held responsible due to its significant influence over the Gaza Strip. Such influence is reflected in its control of the Palestinian border crossings into Gaza, its economic support of Gaza, and the fact that it remains the single largest employer in the territory.⁴³ We believe that such support of the PA indicates decisive influence amounting to effective control over and beyond the PA's jurisdictional title over the Gaza Strip.
49. Note that the complexity of the political state in Gaza strip does not absolve the PA from its responsibilities under the convention. Article 2(2) to CAT clearly states clearly in this regard that "no exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture".

Other Communications to UN Mandate Holders

50. The families of Mengistu, al-Sayed, Shaul and Goldin have requested through the CLEC the assistance of UN special procedures:
51. On January 28th 2019, the families of Mengistu, al-Sayed, Shaul and Goldin presented to the **Working Group on Enforced or Involuntary Disappearances** a request to intervene on behalf of four Israeli citizens who were subject to enforced disappearance in the Gaza Strip. On March 20th 2020, the Clinic received a reply from the Working Group according to which: "Indeed the cases were reviewed and the WGEID experts decided to transmit the cases to the alleged perpetrator identified as the Hamas. However, since the WGEID only recently decided to start documenting the cases tantamount to enforced disappearances perpetrated by Non-state actors we are working on operationalising this decision for these particular cases." The first transmission of the communications was sent the Hamas on April 30th 2020. To the best of our

⁴³ Hamas hands control of Gaza crossings to Palestinian Authority, <https://www.theguardian.com/world/2017/nov/01/hamas-hand-over-control-of-crossings-to-palestinian-authority>. Accessed 27.5.22.



knowledge the Hamas hasn't replied to the transmission. (The communication and the transmission are attached as **Annex 8**).

52. On September 12th 2019, the families of Mengistu and al-Sayed have submitted a communication to the **Committee on the Rights of Persons with Disabilities** for consideration under the Optional protocol to the Convention. On Sep. 20th 2019, the families were informed that their communication has been registered as communications 67/2019 and 68/2019. Additionally, it was informed that two urgent interim measures were issued, in which PA has been requested to take all diplomatic, judicial and all other measures that are necessary to prevent irreparable harm Mengistu and al-Sayed and in particular to ensure their immediate search; inform the Committee in case of their location, and enable them to contact their families; provide the Committee information as to the measures taken to implement each of these recommendations. In its response to the communication, the PA denied having any information proving that al-Sayed or Mengistu are held in Gaza against their will. To this day, the families have not received any further information from PA or the Committee regarding the communication. We now await the views of the committee on our communications. (the communication to the committee is attached as **annex 9**)
53. On April 28th 2020, the families of Mengistu and al-Sayed submitted a communication to the **Working Group on Arbitrary Detention**. On July 24th the Clinic received a reply according to which the Working Group has forwarded our communication to the Working Group on Enforced Disappearance. (The communication and the reply are attached as **annex 10**).
54. On December 20th 2020 the families of Mengistu and al-Sayed submitted a communication to Mr. Gerard Quinn, the UN Special Rapporteur on the Rights of Persons with Disabilities. No response to this communication has been received yet.
55. On January 13th 2021 the four families have sent a communication to The Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territories. No response to this communication has been received yet.



56. As explained above, in spite of the best efforts of the families of Mengistu, al-Sayed, Shaul and Goldin, no information regarding the fate and whereabouts of their relatives has been received, and no palpable progress has been made toward the safe return of Mengistu and al-Sayed and the remains of Shaul and Goldin to their families.

Concluding Recommendations

57. There are currently four missing persons in the Gaza Strip, the remains of the late Hadar Goldin and Oron Shaul, and the young Avera Mengistu and Hisham al-Said. As demonstrated in this report, this situation causes a great deal of suffering to the victims and their families which amounts to torture and cruel, inhuman or degrading treatment, thus violating the PA's obligations under the CAT.
58. The PA has a duty under CAT to take any means within its power to prevent such acts, investigate them, provide information of the fate and whereabouts of the victims, as well as the duty to prosecute perpetrators, and provide an effective remedy.
59. We hereby respectfully request the Committee to require the PA to address during the dialogue the concerns raised in our report, and to clarify before the Committee which specific measures it has taken to fulfil its obligations under CAT regarding the matter, to put an end to these continuing violations and remedy them.