



Alternative Report to Israel's Fifth Periodic Review by the Committee against Torture

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Introduction

The following Palestinian human rights organisations: Addameer, Al-Mezan, Al-Haq, Badil, Jerusalem Legal Aid and Human Rights Center, and the Palestinian Prisoners' Club, take this opportunity to submit the alternative report prior to Israel's fifth periodic review by the Committee against Torture (*hereinafter* the Committee). This submission demonstrates Israel's failure to implement Concluding Observations by the Committee between 2009 and 2016. It also reflects Israel's persistent non-compliance with its obligations under international law, particularly its obligation to protect Palestinians in the Occupied Palestinian Territory (OPT).

The prohibition on the use of torture and cruel, inhuman and degrading treatment is absolute. According to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), it is established that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” and that “[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”.¹

Israel has continuously refused to acknowledge the applicability of the Convention in relation to the OPT in its entirety, consisting of the Gaza Strip and the West Bank, including East Jerusalem. In a legal opinion on the illegality of the wall in the OPT, the International Court of Justice affirmed that the Israeli Occupying Power has a responsibility to uphold both international human rights law and international humanitarian law in the OPT.² Israel is a State Party to the CAT yet has not adopted a definition of torture in its legislation and allows for the use of force during interrogations “when necessary”.³

In violation of its obligations, and as information in this report indicates, the Israeli government and the Israeli Occupying Forces (IOF)⁴ encourage and use, respectively, torture and cruel, inhuman and degrading treatment against Palestinians in the OPT extensively and routinely through various means.

¹ Article 2, CAT.

² *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004

³ David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (SUNY Press, 2002) 141.

⁴ For the purpose of this report, the IOF consists of Israeli soldiers and police forces operating in the Occupied Palestinian Territory.

Article 1 and 4

- **Doctrine of Necessity**

The Israeli Supreme Court has failed to eradicate the practice of torture by Israeli officials. For example, following the GSS interrogation methods case, *Public Committee Against Torture in Israel v. Government of Israel* - September 1999, the Court ruled that the use of torture or other kinds of inhuman treatment during interrogations by the General Security Services was unlawful.⁵ The Court held that there was no law authorising the State to engage torture or inhuman treatment during interrogations. It also held that while *the doctrine of necessity might excuse a particular person for engaging in torture* at a subsequent criminal trial, this doctrine did not justify an Israeli policy authorising interrogations using this method.⁶

Significantly, the Court's decision perfected an administrative justification for the use of torture. In its decision, the Court held that Israel could create guidelines regarding circumstances in which investigators shall not stand trial, if they claim to have acted from 'necessity'. Necessity implies a 'ticking bomb' situation, where it is known that the detainee has information about an imminent attack that will end lives and torture is the only way to get information from the detainee. There are many compelling criticisms of the ticking bomb concept. For present purposes, however, it is sufficient to say that this open door has led to the continuation of torture and inhuman treatment against Palestinian detainees. Since 1999, the Public Committee Against Torture in Israel has filed over 900 complaints of torture against the GSS. No complaints have led to a criminal investigation, let alone a prosecution. Rather, each has been closed at the investigation stage either due to alleged lack of evidence or necessity.

In reviewing Israeli Supreme Court decisions, it is evident that the Court is not an avenue through which Palestinians can seek justice. Its jurisprudence legitimises the occupation, even as the human rights situation in the OPT deteriorates. This has important implications for Palestine's recent accession to the International Criminal Court, particularly in addressing unlawful Israeli policies that the Israeli Supreme Court is unwilling to refute. Essentially, Supreme Court judges have not fundamentally influenced the development of Israeli policy, other than to improve the authorities' sophistication in implementing an unlawful activity, including torture as a method of interrogation. Victories in the shadow of the Court must be weighed against the fact that engaging with the Court enables it to give a stamp of approval to the occupation.

The Israeli Supreme Court is subject to further scrutiny when considering the asymmetry in power between Israel as occupier and Palestinians as the population occupied. Both scholars and practitioners agree that the Court accepts claims by the authorities' as

⁵ HCJ 5100/94, *Public Committee Against Torture in Israel v Government of Israel* (Supreme Court of Israel, 6 September 1999).

⁶ David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (SUNY Press, 2002) 141.

concrete facts.⁷ Claims by petitioners, on the other hand, are treated as less reliable. This asymmetry is evident in the Court's language. For example, the Court has described 'the lofty interests of state security' and 'the army's effort to prevent terrorist attacks', in contrast to the 'petitioner's *contention* that ... checkpoints ... cause the local population to suffer' (emphasis added).⁸ Another example concerns a petition related to the expropriation of land for military purposes. In it, the Court rejected the petitioners' claims because 'we have no basis not to accept the [Israeli military's] position on the motive for taking this measure, and on its contribution to the security of the area'.⁹ In interviews, litigators at both Palestinian and Israeli human rights organisations described the Court's deference to the authorities' claims as the single greatest hurdle to achieving positive outcomes for Palestinians within the Israeli system.

From another perspective, the role of ethics for judges are different in severely unjust regimes. Rather than demanding complete impartiality, they require judges to defend the values of basic equality and liberty for the oppressed population so far as their position enables them to do so. Where the Court is called upon consistently to approve war crimes, judges must resign. Based on research, Israeli Supreme Court judges have not lived up to the ethics required of them. Essentially, this will mean that Supreme Court Judges must challenge an occupation that operates through policies such as torture.

- **Unlawful Methods of Interrogations**

Upon arriving to the interrogation or detention center, Palestinian detainees are routinely denied an explanation of their rights and are not provided with a reason for their detention. Often, they are denied access to an attorney, and are then kept for several days or months in detention facilities under interrogation where they are subjected to torture and ill-treatment.

Interrogation methods include: prolonged isolation; inhuman detention conditions; excessive use of blindfolds and handcuffs; slapping and kicking; sleep deprivation; denial of food and water for extended periods of time; denial of access to toilets; denial of access to showers or change of clothes for days or weeks; exposure to extreme cold or heat; position abuse; yelling and exposure to loud noises; insults and cursing; arresting family members or alleging that family members have been arrested; sexual abuse; kicks

⁷ David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (SUNY Press, 2002) 141; Interviews by the author with Neta Patrick, Executive Director, Yesh Din in Tel Aviv on 6 August 2015; Tamar Feldman, Director of the Human Rights in the Occupied Territories Department, Association for Civil Rights in Israel in Tel Aviv on 6 August 2015; Haitham Al-Khateeb, Head of the Legal Department, Society of St Yves in Jerusalem on 23 July 2015; Rami Saleh, Jerusalem Branch Director, Jerusalem Legal Aid and Human Rights Center in Jerusalem on 23 July 2015.

⁸ Nimer Sultany, 'The Perfect Crime: The Supreme Court, the Occupied Territories and al-Asqa Intifada' (2002) *Adalah's Review* 52 fnn 13-14.

⁹ Nimer Sultany, 'The Perfect Crime: The Supreme Court, the Occupied Territories and al-Asqa Intifada' (2002) *Adalah's Review* 52 fnn 15.

and blows; and violent shaking - all of which amount to severe physical and mental suffering.¹⁰

It is important to note that these methods are often used simultaneously, causing increased pain and distress. They are also inflicted intentionally as forms of “pressure” according to detailed instructions and regulations. This in return assists in fulfilling the purpose of obtaining information. In numerous cases, the State of Israel has declared, including in its submissions to the CAT Committee, that the aim of such interrogations is “data gathering, intended to foil and prevent terrorist acts aimed at Israel and its inhabitants.”¹¹ Further, Israel openly acknowledges that the aforementioned interrogation methods can be used, and agents of the Israel Security Agency apply these methods “in order to fulfil its purpose, the Agency performs, among other things, interrogations of suspects in terrorist activity, as is done in many countries across the world.”¹²

On 16 February 2012, 30-year-old H.S. was arrested at approximately 2:30 am from her home in Burqin village, near Jenin. The arrest was carried out by around 50 Israeli soldiers accompanied by an Intelligence officer who did not present an arrest warrant. H.S. was transferred to the Salem detention centre, where she was shackled, sexually assaulted and beaten.

Once at Salem detention centre, H.S. was put in a small room, still blindfolded, for two hours. After being taken to multiple rooms, H.S. was made to sit down on a chair and her blindfold was removed. A female soldier and other soldiers were in the room. A male soldier who was in military uniform claimed to be a nurse. After filling out the medical information form, the soldiers left the room except for the female soldier and the claimed nurse male soldier. He informed her that they wanted to search her. H.S. said that he should leave and the female soldier could search her. He told her that he would be the one to search her. H.S. protested this. He then attempted to unbutton her dress. H.S. stopped him and told him that this was not allowed and that he should remove his hands. He then opened the door and called five other male soldiers to come in. They entered, beat her up and kicked her all over her body and head. The female soldier held H.S. to the ground as they beat her.

One of the soldiers put H.S.'s head between his legs and pushed it downwards. H.S. screamed and cried as the soldiers continued to yell and beat her. They shackled her hands behind her back and shackled her legs using plastic ties. They picked her up then left the room except for the female and the claimed nurse-male soldiers. The male soldier then removed her veil and unbuttoned her dress, one at a time. Her dress fell to her wrists,

¹⁰ Information provided by Addameer

¹¹ 5th Periodic Report by the State of Israel before The Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Committee, November 2014, pg: 5

¹² Ibid, page 5.

where she was shackled. H.S. continued to scream, “You can't do this!” and each time she yelled, the soldier threatened to summon the five soldiers back into the room. The soldier then lifted her shirt and told the female soldier to hold it so it would not drop and cover her body.

He then stood behind her and started touching her back. He lifted her bra from the back, then stood in front of her again. He took her breasts out of the bra using his hands then grabbed them. He stared at her breasts and stomach. H.S. screamed, cried and tried to move as the two soldiers yelled at her to shut up. The male soldier then tried to take her pants off but could not unbutton them, so he told the female soldier to do so. The female soldier unbuttoned H.S.'s pants. The male soldier took off her pants and then took off her underwear. He then kneeled on one knee in front of her looking at her body. The soldier began to grope H.S.'s vagina and buttocks. He then said “That's it.”

The female soldier put H.S.'s pants back on without buttoning them and put her dress back on without buttoning it. H.S. asked to be unshackled to arrange her clothes. Another soldier came into the room and unshackled her hands and legs. She was then blindfolded again, taken to another room, and then put back in a military vehicle. She was shackled with plastic shackles and kept in the vehicle until noon.

It felt like I was suffocating. One wishes to die if this happens to her. It was the ugliest search I have ever been exposed to in my whole life, and I have been exposed to many strip searches before. This was the most humiliating, offensive and degrading. It was not acceptable in all customs of the world. (Affidavit taken by Addameer on 27 February 2012)

Sexual violence is often used against both female and male Palestinian prisoners in the form of physical or verbal sexual assaults. Forms of sexual torture in Israeli prisons include verbal sexual harassment, repeated strip searches, and severe forms of genital violence. Verbal sexual harassment, a widespread practice, includes threats of rape, sexual humiliation and other threats of sexual violence against family members. These types of sexual violence may amount to torture, in line with Article 1 of CAT which refers to physical and mental pain and suffering imposed by an official capacity for the purposes of coercion, intimidation, or punishment.

- **Psychological Torture and Ill-treatment**

Israel widely and systematically practices various forms of psychological torture against Palestinian prisoners. These include non-physical acts, such as prolonged mental harm or suffering caused by Israeli interrogators to Palestinian prisoners through verbal assault and threats against family members. This practice of psychological torture constitutes an

act of torture. Psychological torture may not leave visible wounds and scars but the suffering experienced is equally cruel and is traumatizing, especially for children. Although in its 2013 Periodic Report to the Committee on Torture, the Israeli government claimed that “the ISA does not use threats against family members as a method of interrogations”,¹³ the case of 16-year-old Abd Al-Rahim Iz Al-Din Barbar below proves the opposite:

I was arrested on the 10 March 2014 at about 5:00 am from my home in Jerusalem by the IOF. I was put in a civilian car and handcuffed. They then placed my hand over my neck and asked me to put my face down so I do not see where they were taking me. An officer slapped me on my neck and asked me why I throw stones. Whenever I denied throwing stones, he would hit me on my head. This happened about four times.

When we reached the interrogation centre in Al-Qishla. I was asked to take off my blouse. I was then blindfolded, had my hands tied to the back then asked to sit on my knees. The officer said that if I moved or changed my seating position in any way he will slap me. I was in that position for about an hour and a half feeling cold. The officer then changed the position of the handcuffs and asked me to put my clothes on. He removed the blindfold then photographed me.

Two hours later, he asked for my father’s phone number. He called him and informed him that he cannot attend my interrogation session. Immediately thereafter, he blindfolded me again and I was taken to the interrogation room. When I entered the interrogation room they removed the piece of cloth from my eye but my hands and legs were tied. During the interrogation, which went on for four hours, I was accused of inciting and encouraging people to go to Al-Aqsa and throw stones. I was also shown pictures that they claimed were of me. However, the pictures did not reveal the person's head. Half an hour later, another investigator interrogated me for an hour and a half. The officer, whose name is Tal’at repeatedly hit me on my head and kicked me on my hands and belly, causing me pain.

The officer then showed me pictures of my mother being arrested by the Intelligence. I later learnt that she was summoned for interrogation following my arrest to pressure me to confess. The interrogator told me that they extended her detention for another day because she confessed that the person in the picture is me. The truth is that the interrogation with my mother only took half an hour and they asked her about the same picture. Then he presented me with another group of photos to pressure me and said that another person had confessed on me. (Affidavit taken by Addameer on 13 March 2014)

¹³ 5th Periodic Report by the State of Israel before The Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Committee, November 2014, pg: 6

Article 2 and 11

- **Administrative Detention**

Between 2009 and 2016, Israel continued its policy of mass arrests and administrative detention – detention without charge or trial –against Palestinians. Since the beginning of October 2015, the IOF intensified human rights violations against Palestinians, including arrests and detention, leading to a significant rise in the number of Palestinian prisoners. In a span of three months, October to December 2015, approximately 2,831 Palestinians were arrested, including 486 children, the majority of whom were subjected to torture and ill-treatment at the hands of Israeli soldiers and interrogators – beginning at the time of their arrest. Addameer also documented 526 administrative detention orders issued against Palestinians, including 348 new orders and 178 renewal orders in the period of 1 October 2015 – 27 January 2016, underlining the systemic, widespread, and escalating use of administrative detention by Israeli forces in contravention with international law.

Israel's obligations under CAT prohibit unusual punishment¹⁴ and cruel, inhuman and degrading treatment¹⁵ against Palestinian prisoners and detainees in Israeli prisons. However, various abuses by Israeli forces fall within the scope of Article 16 of CAT whereby States are obligated to prevent “conditions that give rise to ill-treatment frequently and facilitate torture.”¹⁶ A culture of impunity, accompanied by lack of accountability, has created an environment ripe for prisoner abuse at the hands of IOF and Israeli interrogators. Prisoners frequently report denial of basic rights such as, health services, food and water, forced nudity, unsanitary confinement conditions, and use of racial and ethnic insults by interrogators. Palestinian prisoners are therefore dehumanized, subjected to cruel and degrading treatment, and ultimately, traumatized.

On 16 February 2016, an Israeli High Court decision rejected the demands of hunger-striking administrative detainee Mohammad Al-Qeiq of being released and transferred to a hospital in Ramallah. Mohammad Al-Qeiq was protesting against the Israeli policy of administrative detention. The High Court decision is especially troublesome given that Al-Qeiq was in dire and deteriorating health condition at the time of decision making. Al-Qeiq's health had worsened at that time over a period of two weeks. He had lost consciousness numerous times due to the continuation of his hunger strike, which had lasted for 86 days.

The High Court's decision not to release and transfer Al-Qeiq came at a time when he was being held without trial or charge, and his health condition negated the possibility that his release would pose any viable security threat. Mohammad Al-Qeiq, a 33-year-old

¹⁴ For more info on this, refer to the torture ruling (*Public Committee Against Torture in Israel Vs The State of Israel (1999)*), in which the Israeli High Court of Justice ruled to ban the use of torture during interrogations.

¹⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (December 10, 1984), General Assembly Resolution 39/46.

¹⁶ *Ibid*

Palestinian journalist from Ramallah, was arrested by the IOF from his home without an arrest warrant on the 21 November 2015 and had been held since then without charge or trial. Al-Qeiy began his hunger strike on the 25 November 2015, in protest of his administrative detention. As with all other administrative detainees, Al-Qeiy's detention is based on secret information to which he and his attorney do not have access. The military court judge had claimed that the secret file includes information indicating that Al-Qeiy encouraged incitement through his journalism.

Al-Qeiy, who was being given medical treatment against his will throughout his hunger strike, was hand-cuffed to the hospital bed despite his critical condition and was subjected to degrading and ill-treatment at the hands of Israeli prison guards and the Israeli Prison Service. Such practices violate the human dignity and personal autonomy of detainees, and may amount to torture. There were concerns at the time of Al-Qeiy's hunger strike that he may be forcibly-fed by the Israeli government, as it refuses his release. Israel's recent force-feeding law has been condemned by both the UN Special Rapporteur on Torture and the UN Special Rapportuer on the right to health.¹⁷

- **Isolation and Solitary Confinement**

As of March 2016, there are approximately 15 Palestinian prisoners and detainees in Isolation and Solitary Confinement in Israeli prison and detention centres. The Israeli Prison Service (IPS) has practiced the policy of isolation, solitary confinement, as well as detention in secret prisons against prisoners and detainees since 1967. It is claimed that the IPS exercises isolation, based on the Israeli Intelligence Service's recommendation, is used as a preventative measure. These decisions are based on secret information inaccessible to the detainee or the prisoners' attorneys, for periods of up to 6 months, which may be renewed indefinitely. However, in practice, besides disciplinary measures, both isolation and solitary confinement are used as punitive and coercive measures, sometimes in order to obtain confessions during the interrogation period. This practice is directly in line with the Article 1(1) of CAT.

Prisoners in isolation report anger, stress, boredom, losing a sense of reality, difficulty concentrating, sensitivity to stimuli and hallucinations. Based on mental health research, the rates of psychological and psychiatric problems are higher among those exposed to solitary confinement than among others.¹⁸ A 2008 study conducted by Addameer and Physicians for Human Rights–Israel found that Palestinian prisoners are placed in isolation under purported security measures or as a result of mental illness, and that solitary confinement is used as a disciplinary measure during interrogation and

¹⁷ OHCHR, UN experts urge Israel to halt legalization of force-feeding of hunger-strikers in detention (28 July 2015) - See more at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16269&LangID=E>

¹⁸ Peter S. Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, Crime and Justice Vol. 34, No. 1, 488 (2006).

imprisonment. The study also found that “isolation causes mental and physical damage, both among mentally healthy prisoners and among prisoners with a history of mental illness.”¹⁹ Some survivors of solitary confinement have lost decades of their life while others suffer permanent psychological harm due to these policies applied by Israel.

Nahar Ahmad Al Sa'adi was subject to interrogations for 10 days in February 2013. During that time, Nahar was threatened and put under psychological pressure. He was not allowed to pray and or attend to his physical needs. On the first day of interrogations, Nahar commenced a hunger strike protesting the inhumane interrogation conditions. Three months after the interrogations ended, the IPS placed Nahar in solitary confinement on the basis of a secret file, besides the accusation presented against him during interrogation (attempting to capture a soldier while in prison). Nahar's health deteriorated while in solitary confinement. A tumour that was suspected to be malignant was found in his neck. In addition, Nahar has suffered from bacteria in the stomach, colon diseases, and back pain due to a herniated back disks and a bend in the spine for over eight years. Nahar also suffers from severe pain in the hands, feet, and joints. The IPS deliberately neglected Nahar's medical needs and only provided him with painkillers.

In Ashkelon prison, Nahar was confined in a 3x3 meter room, where no natural ventilation or sun light was available. He was allowed out to the courtyard one hour every day and was strictly forbidden from communicating with other prisoners. In Ramon prison, to where Nahar was transferred and placed in isolation, he was put in a 3x2.5 meter cell, with a toilet, shower, a window overlooking a high wall, a TV, kettle, air conditioning, and better hygiene standards. There is a daily “fora” (an hour in a yard that is 5x15 meters) and he is allowed to shop from the canteen. (Affidavit taken by Addameer on 23 October 2014)

The use of isolation and solitary confinement has also been practiced against Palestinian children. DCI-Palestine has documented that, in 54 cases between 2012 and 2014, an individual child spent an average of 11 days in solitary confinement, with 29 days being the highest total number of days in the period. In 2014, at the end of the reporting period, a Palestinian child was held in isolation for 26 days in total.

- **Torture and Ill-treatment during Transfer of Detainees**

Palestinians are regularly arrested from their homes, at checkpoints, and off the street. Arrests from home usually involve raids where the IOF surrounds the house between midnight and dawn. Family members are forced to leave the house, regardless of age and weather conditions. Annually, hundreds of Palestinians are arrested from their homes in

¹⁹ The Sounds of Silence: Isolation and Solitary Confinement of Palestinians in Israeli Detention. July 2008, Addameer and Physicians for Human Rights – Israel. Available at <http://www.addameer.org/sites/default/files/publications/isolation-eng.pdf>

the OPT during military incursions.²⁰ The arrest process is often accompanied with torture, ill-treatment, violence and property damage. In most cases, the detainee is blindfolded with his/her hands tied tightly behind the back with plastic ties, after which he/she is taken into a military jeep.

Ghassan Zeidan Najjar, 24, from Burin, Nablus was arrested on 28 August 2014 at 2:30 am from his home and subjected to beating during his arrest:

The minute I stepped in the military jeep, the Israeli soldiers pulled me down on the ground as two soldiers started beating me, using their shoes and weapons, mostly on my lower back area. The beating continued until we reached the Huwara military camp. (Affidavit taken by Addameer on 13 November 2014)

In the majority of cases, once Palestinian detainees are blindfolded and their hands tied behind their backs, they are placed on the floor of a military jeep to be transferred to an interrogation and detention centre.²¹ Neither the detainees nor their families are given reasons for their detention nor of the location to which they will be taken. Addameer and the DCI-P have received several affidavits and reports of torture and ill-treatment of detainees during the transfer process by the IOF which consist of beatings, kicking, and threats. The transfer process varies between 30 minutes to several hours.

On 13 March 2013, the IOF raided 16-year-old Ali Yassin Shamlawi's house to arrest him. He was handcuffed with plastic cuffs, blindfolded and was then put inside an army jeep where he was thrown on the jeep's floor:

The soldiers kicked me and hit me on my head more than ten times. One of the soldiers pushed me into the knee of another soldier at least eight times. A soldier tried to sit on my head. In the meantime, the rest of the soldiers laughed and spoke in Hebrew. One of the soldiers hit my fingers using his gun, causing me a lot of pain and a mild wound in my left hand middle finger. One of the soldiers pushed my head to the back three or four times in order to hit a metal box that was placed on my legs. My mouth was hit from the left side of the jaw which caused a wound. They put cotton to stop the bleeding. My mouth got slightly swollen. (Affidavit taken by Addameer on 22 March 2013)

²⁰ For an expanded reading on the assaults by the special units against prisoners and detainees during incursions and their transportation, see the following study by Addameer:
http://www.addameer.org/sites/default/files/publications/special_units_of_the_ips.pdf

²¹ Detainees from the West Bank are usually taken to one of seven interrogation and detention centres following their arrest: Huwarra (near Nablus, West Bank), Etzion (near Bethlehem, West Bank), Salem (near Jenin, West Bank), Askalon (Israel), Jalama (Israel), Mascobiyya (Jerusalem) and Petah Tikva (Israel). East Jerusalemites are usually taken to Mascobiyya or to one of the West Bank detention centres, depending on where the alleged offence took place. Detainees from the Gaza Strip are currently being taken to 'Askalan (Askalon) or Beer Sabe' (Beer Sheba), Israel.

Such practice contravenes Article 2(1) of CAT, which states that “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

One account, documented by Addameer involving the arrest of Mahmoud Abd Al-Hadi Abu Sa'eed, a resident of Rafah, during the Israeli offensive on the Gaza Strip in July 2014, involves one of torture and ill treatment in compliance with the definition of CAT under Article 1.

Almost 30 people gathered at my uncle's house during the attack. My dad was shot in the chest and was injured with shrapnel while at the house. At around 2:30 am, soldiers entered our house and gathered us in one room. They prevented us from leaving despite my father's injury. They kept us locked in the house until 6:00 am when they ordered us to go to Rafah. As we were leaving, one of the soldiers called me and ordered everyone to go away. He tied my hands behind my back and put me back in the house. They made me sit in one room as soldiers surrounded me. They were shooting from windows and from around the house. I was hearing voices, but did not know what was happening outside the room. They were in constant motion. I was held on the ground with my hands tied to my back until almost 1:00 pm. At that time, three soldiers beat me on my head and face then punched and slapped me more than once. They repeatedly beat me. Later on, and as my hands were tied, they brought a dog with a muzzle into the room. They would bring the dog closer to me. It would try to bite me and jump over my body. In the afternoon, a group of soldiers came, covered my eyes with a piece of cloth, transferred me to a jeep or a military vehicle – I do not exactly know. They transferred me to Ashkelon detention centre. During the interrogation, I was beaten and punched several times on my head by the investigator. He was constantly asking me for information about tunnels, rockets, and different people, as well as people I know that work with Hamas. (Affidavit taken by Addameer on 1 September 2014)

Defense for Children International-Palestine (DCI-P) has documented several cases where children are systematically subjected to torture and ill treatment, including the case of Diyaa.²² On July 30, 2014, Diyaa, a 16-year-old from the northern West Bank village of Osarin, woke up to thunderous banging and shouting at the front door. It was 3:00 am and Diyaa's parents could only watch as their son was dragged to an Israeli army jeep. “I won't move until I say goodbye to my mother.” For speaking these words, Diyaa was knocked to the ground, kicked, and beaten by Israeli soldiers. After arriving in prison, the ill treatment and torture continued. According to Diyaa:

²² <http://stories.dci-palestine.org/diyaa/>

One of the jailers used to beat me. He would come to the cell with another jailer, tie my hands and feet, and kick me hard while I was on the floor, and punch me on my stomach and head without any mercy.

Another account, documented by DCI-P involves one of torture and ill treatment in the context of human shields and child recruitment, in accordance with CAT, which states that “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession” constitutes torture.²³

Ahmad Abu Raida, 16, was living in the southern Gaza town of Khuza’a during the 2014-Israeli offensive against the Gaza Strip. After spending two days hiding from artillery fire in their home, Ahmad’s family made an attempt to flee on foot with other civilians from the town. As they tried to leave, they were stopped by Israeli soldiers, who separated them into groups according to age and gender. Ahmad was singled out, detained with his hands tied behind his back, and kicked and insulted by a soldier.

In the days that followed, despite having no connection to Hamas, Ahmad was interrogated by Israeli soldiers about his political affiliation and the location of Hamas tunnels. Ahmad was used as a human shield for five days during Operation Protective Edge. Israeli soldiers also attempted to recruit him as an informant. He was forced at gunpoint to walk ahead of Israeli troops into houses, search for tunnels, and protect soldiers from potential attacks. Ahmad details an almost constant stream of abuse and threats during his detention, including kicks, punches, and on one occasion whips with a wire.

*The Captain and the soldiers were walking behind me, with their rifles pointed at me. ‘Get in and see if there are tunnels or not,’ [the Captain] ordered me. They made me search all the rooms for tunnels. I was crying and begging him to stop, but he did not show any mercy.*²⁴

- **Sexual Abuse**

Other forms of torture or ill-treatment by the IOF have been carried out through sexual abuse. Further to the case of H.S. mentioned above - on 13 November 2015, Bilal Omar Ghanem, 22, was arrested in Jerusalem. He was accused of carrying out an attack with his friend Baha Elyan who was shot dead by Israeli police at the scene that day.

²³ For more information, please visit: <http://stories.dci-palestine.org/ahmed/#1>

²⁴ For more information, please visit: <http://stories.dci-palestine.org/ahmed/#13>

The police handcuffed Bilal backwards and beat him using their rifles. A police officer stepped on his neck violently pressed it. While in this position, another police officer started interrogating Bilal. Bilal requested water when a police officer brought him a water bottle and pushed it violently into his mouth which made Bilal vomit. Bilal was later taken to hospital where he did not receive proper medical care despite his excruciating pain. In hospital, Bilal was subjected to physical and psychological abuse, including beating. At one point, the nurses left him with no urinary catheter and told him to piss on himself. The guards used to remove the breathing device and make noises whenever he fell asleep. Bilal was also subjected to sexual violence by the guards at hospital. They forced him to take his clothes off and took pictures of him naked on hospital bed. In one instance, one of the guards took his penis out and put it to Bilal's face in a provocative way. When Bilal was transferred in an ambulance to Al-Ramleh, he was subjected to verbal sexual assault by two of the nurses at the hospital. (Affidavit taken by Addameer on 28 January 2015)

Article 10

- **Excessive Use of Force**

During the reporting period, the IOF continued to use force and violence against Palestinian civilians in the OPT²⁵. Between 2009 and March 2016, 679²⁶ Palestinians, including at least 184 children, were killed by Israel in the OPT. This number excludes the 3,798 Palestinians, including at least 908 children, who were killed in the Israeli attacks against the Gaza Strip in 2008-2009, 2012 and 2014, during which thousands others have been injured.

During "Operation Protective Edge", Israel's unlawful policies killed at least 1,642 Palestinian civilians, including 554 children. Israel claimed that Palestinians become voluntary humanitarian shields if they do not leave their homes or neighbourhood following an IOF warning.²⁷ The use of the Hannibal Directive in Rafah between 1 - 3 August 2014 during a temporary ceasefire demonstrates how the IOF resorted to disproportionate and indiscriminate force, killing 225 Palestinians and destroying 2,579 houses in Rafah.²⁸ The Hannibal Directive was also employed by the IOF on 29 February 2016 in Qalandia refugee camp, Jerusalem, in order to evacuate two Israeli soldiers who had mistakenly entered the camp. The IOF massively raided the camp, used live fire, excessively and disproportionately, killing 22-year-old Iyad Abu Sajdiya who standing in a building watching the street.

²⁵ The OPT includes: the Gaza Strip, the West Bank, including East Jerusalem.

²⁶ Al-Haq, number excludes at least 13 Palestinians who were killed between October 2015 and March 2016 whose files remain open.

²⁷ Al-Haq, Dr. Susan Power and Nada Kiswanson van Hooydonk, "Divide and Conquer - A Legal Analysis of Israel's 2014 offensive against the Gaza Strip". 2015. Available at <http://www.alhaq.org/publications/publications-index/item/divide-and-conquer>. p. 31

²⁸ Ibid, 33-34.

Further, since October 2015, Israel increased its practice of collective punishment, movement restrictions, house demolitions (including punitive demolitions), extrajudicial killings, disregarding Palestinians' right to life through a shoot-to-kill policy and that has killed 194²⁹ Palestinians in the span of five months.

In September, the Israeli Cabinet unanimously approved Prime Minister Benjamin Netanyahu's proposal to lower the threshold for use of live ammunition, to a standard that violates international law. This was a part of the Prime Minister's war against rock-throwing in Jerusalem.³⁰ Previously, Israeli police were allowed to use live ammunition only when facing a life-threatening situation. Now, however, Israeli police have permission to fire on individuals whenever there is an "immediate and concrete danger to police or civilians."³¹ The Cabinet also approved the use of "ruger sniper rifles," which can cause serious bodily harm and death - these rifles were used by untrained snipers against Palestinians protesting in East Jerusalem.³² Only after their use did the police decide to employ a training programme for use of these rifles by snipers, a clear indication that the police intend to continue to use these rifles against protesters in the future.³³

These policies sit at odds with the international law on extrajudicial and arbitrary killings. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials make clear that deadly firearms should only be used when nonviolent methods have failed and where there is a real, imminent danger to human life, either the life of the official or the life of a civilian.³⁴ Responding to stone-throwing does not meet this standard.

Furthermore, state practice and policy in this regard does not consider stone-throwing to rise to the level of gravity which will allow for the use of lethal force. For example, the United States Custom and Border Protection Unit explicitly prohibits officers/agents "...from using deadly force against subjects throwing objects not capable of causing serious physical injury or death to them," and further recommends the use of "specialized less lethal weapons with regard to rock throwing incidents"³⁵.

²⁹ Information provided by Al-Haq as of 28 March 2016; number excludes 13 Palestinians who were killed between in the same period whose files remain open.

³⁰ Israeli Ministry of Foreign Affairs, available at: <http://mfa.gov.il/MFA/PressRoom/2015/Pages/Security-Cabinetstatement-24-Sep-2015.aspx>

³¹ *Id.*

³² See, Jack Khoury and Yaniv Kubovich, Israel Police Suspend Sniper Use After East Jerusalem Riots, Haaretz (22 September 2015), available at: <http://www.haaretz.com/israel-news/.premium-1.677095>.

³³ See: *Ibid.*

³⁴ Basic Principles on the Use of Force and and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, (Havana, Cuba, 1990).

³⁵ U.S. Customs and Border Protection, Use of Force Review: Cases and Policies, February 2013, available at: <https://www.cbp.gov/sites/default/files/documents/PERFReport.pdf>

Beyond stone-throwing, the change in Israeli open-fire regulation has also resulted in the killing of at least 114 Palestinians as of 18 March 2016 in the context of alleged stabbings or car ramming attacks or attempted attacks since October 2015.

In most cases it appears that many of the suspects involved could have been controlled without resort to the use of live fire - and more importantly without execution. In several of these killings, ample video footage has emerged calling into question the actions of the Israeli forces involved. In fact, footage as well as eyewitness accounts in several cases confirmed that Israeli military or police used lethal force against Palestinians who did not pose a threat or no longer posed a threat.

The recurrence of these incidents and the circumstances surrounding the killings suggest an unofficial shoot-to-kill policy. Lethal force is being used against Palestinians allegedly involved in attacks as the first and only course of action and not as a last resort. International law allows for the use of force to wound following warnings so as to apprehend the suspect and not use lethal force to kill. Lethal force may only be used after all measures have been exhausted. In many of the cases we have looked at, Israeli forces appear to have acted by resorting to the use of lethal force as an alternative to attempting to apprehend suspects and even without issuing warnings. In some cases, alleged attackers were already injured on the ground when Israeli soldiers shot at them once or more again.

In an incident last October, Israeli soldiers shot and killed Mahdi Al-Muhtaseb as he ran away from them at (checkpoint 160) in Hebron after allegedly stabbing an Israeli soldier. Video footage indicates that after Mahdi fell to the ground, an Israeli soldier opened fire on him once again and then approached him once more and shot him one final time.³⁶

In another incident on 19 February 2016, 20-year-old Muhammad Zeyad Abu Khalaf was shot with dozens of live ammunition and killed by the IOF in East Jerusalem. The IOF claimed that Muhammad stabbed two of their soldiers at the time. According to Al-Haq witnesses, who were standing approximately two metres away from the scene, Muhammad and some soldiers at Damascus Gate scuffled. Both witnesses did not see a knife with Muhammad even after he was shot and fell to the ground. According to witnesses, Muhammad was shot with one or two bullets initially and then he fell to the ground on his face. Instead of providing medical aid after Muhammad had been succumbed, around six soldiers surrounded Muhammad and heavily opened fire at him for about 15 seconds from a close distance.³⁷ It is evident that by the time Muhammad was on the ground, he did not pose any threat to the soldiers. Therefore, there was an intent to kill him rather than just self-defence.

³⁶ <https://electronicintifada.net/content/israelis-execute-injured-palestinian-video-and-eyewitness/14966>

³⁷ Please refer to video footage captured at the time of the incident, Al-Jazeera, 19 February 2016, available at: <https://www.youtube.com/watch?v=W22rtPibQQ&feature=youtu.be>

Beyond the West Bank, Israel's continued closure and isolation of the Gaza Strip is enforced by, *inter alia*, use of live-fire, arbitrary arrests as well as practices of torture and cruel, inhuman and degrading treatment in Gaza's buffer zone, also called the "access restricted areas" (ARA).

The IOF's use of excessive and intentional force without justification against Palestinian civilians in the ARA, including against farmers, journalists, medical crews and peaceful protestors, runs blatantly counter to the principles of human rights and international law enforcement standards cited in the List of Issues and laid out in the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms. Cases of the deliberate fatal shooting of individuals who posed no imminent danger to life amounts to an appalling pattern of apparent systematic unlawful killings.

During the reporting period, 136 Palestinians in Gaza were killed by Israeli live fire in the ARA, including 20 children.³⁸ An additional 1,775 people were injured, including 282 children, by live fire.

The arbitrary and illegally imposed restrictions in the ARA also facilitate Israel's practices of torture and ill treatment of individuals who are arrested while reportedly attempting to cross the border into Israel in search of employment. In the reporting period, 298 Palestinians of Gaza were arrested attempting to cross the separation fence, including 118 children.

At approximately 5 pm on Monday 22 February 2016, the IOF opened fire at Izz Al-Din Hekmat Al-Basous, 26, when he approached the eastern separation fence between the Gaza Strip and Israel. As a result, Al-Basous sustained shrapnel injuries in his legs. The IOF arrested him and took him to an Israeli military site. At approximately 11 pm the same day, the IOF released Al-Basous at Erez crossing to go back into Gaza. He was referred to a hospital in Jabaliya for medical treatment. According to Al-Mezan's field investigations, Al-Basous, who suffers from intellectual disability, was subject to torture and abuse during his arrest and interrogation. He was severely beaten and a dog was set on him by Israeli authority actors, to attack him, resulting in bites on different parts of his body. Al-Basous was referred for intensive medical treatment, including for a form of poisoning.

On 24 September 2015 at approximately 3:30 pm, the IOF arrested two Palestinian minors as they crossed the border area between the Gaza Strip and Israel. The two minors, Hani Abdel Malik Al-Sharatha, 17, and Yousef Jom'a Al-Tarabin, 16, are residents of the Sha'sha'a neighbourhood, east of Jabaliya refugee camp. One of them was

³⁸ Numbers provided by Al-Mezan

exposed to abuse as they were both taken into Israeli custody. Yousef stated that he and Hani went to the border area because they wanted to sneak into Israel to find work.

After they crossed the border fence, an Israeli force in military vehicles appeared and surrounded them. A soldier ordered them to remove all of their clothes. A soldier stepped out of a vehicle with a dog that had a muzzle on. When the soldier and the dog came closer to the two children, they raised their hands in the air. The soldier removed the muzzle and set the attack dog on the boys. The attack dog bit Yousef in his right arm. Yousef screamed and asked for help, but the soldiers laughed loudly. When he tried to release himself from the dog, the dog bit his left hand. After a couple of minutes of wrestling with the dog, a soldier approached them and pulled the dog away.

Soldiers instructed Yousef to put his clothes on and Hani helped him. They were both blindfolded with green cloth and put in a military vehicle, which drove for some time. The vehicle stopped and Yousef was moved to another vehicle that took him to an Israeli military installation, where the blindfold was removed and he was checked by a doctor. He received first aid and was given medication by an injection in his hand.

Yousef was then made to sign a document in Hebrew, which he cannot read, and then was held in a room for about four hours without being offered food or water. He stated that a soldier beat him on his shanks. He was blindfolded again and driven in a vehicle for about two hours. At around 11:00pm the same day, 24 September 2015, he was released at Erez crossing. When he reached the Palestinian side of the crossing, he was taken to Kamal Udwan Hospital in the town of Beit Lahiya. Doctors informed him that he had inflammation because of the dog bites. He was released from the hospital the next day, and was informed that his friend, Hani, was still detained and to be taken to court the next day, 25 September 2015.

The severity of treatment that Yousef underwent during arrest and detention may amount to torture and degrading treatment.

Articles 12 and 13

- **Settler Violence**

Incidents of settler violence against Palestinians have escalated in the OPT, sometimes in the presence of Israeli soldiers. Settlers enjoy impunity granted by the Israeli government which continues to deprive Palestinians of their right to self-determination, including the principle of sovereignty over land and natural resources. Settler attacks targeting Palestinians, including children, and their property in the occupied West Bank have increased and intensified over the past five years. The United Nations International Fact-Finding Mission on Settlements issued a report in 2013 in which it highlighted the

"institutionalised discrimination against Palestinian people when it comes to addressing violence" and Israel's failure to enforce law by investigating acts of settler violence and ensure accountability.

The nature of attacks vary and include stone throwing, damaging private property, attacking places of worship, uprooting olive trees, hit-and-run attacks, as well as shooting. The majority of settler attacks take place in contact areas, especially in Hebron and East Jerusalem. Acts of settler violence are intended and organised, aiming to transfer Palestinians off their land in order to allow for further settlement expansion. Some acts of settler violence are organised by extremists who publicly advocate for the use of physical violence against Palestinians in response to restrictions on settlement expansion imposed by the Israeli government - known as 'Price Tag' attacks. Israel's legislative and administrative regime in the West Bank along with unwillingness to prosecute settlers has created a climate of impunity.

The two most striking settler attacks took place in July of 2014 and 2015 when 16-year-old Muhammad Abu Khdeir was kidnapped and burnt alive in Jerusalem and the Dawabsha family home was burnt, killing the parents and an infant in Duma, Nablus.

On Saturday 5 September at approximately 4:00 pm, Ayman Rohi Fakhouri and his friend Sari Abu Hammad, both 23, were walking on Al-Shuhada Street in Hebron when they were stopped at the Israeli military checkpoint there. The soldier asked them for their IDs and to wait aside. In the meantime, the soldier randomly started to verbally assault Ayman, calling him "filth, donkey, not a human". Approximately 20 minutes later, the soldier gave Sari back his ID and asked him to leave. Ayman, however, was seated on a plastic chair facing the wall opposite the military cabin while the soldier continued to verbally abuse him.

Meanwhile, five young Israeli settlers were present near the cabin. The soldier was speaking to the settlers in Hebrew, but Ayman did not understand. About five minutes later, the soldier pulled Ayman from the chair and ordered him to stand on the side of the cabin where the settlers were. Once near the cabin, the settlers started shouting at Ayman. The settlers left the premises, and came back minutes later.

Two of them had wrapped shirts on their faces and were carrying a broom stick and pepper spray. Another unmasked settler was carrying a knife. The soldier shouted at Ayman ordering him to take off his clothes which he did not do. The soldier then held Ayman as four settlers attacked and beat him. In response, Ayman tried to push the settlers away and attempted to escape. As he was escaping, one of the settlers used pepper spray as seen in the footage captured. He was able to enter a nearby house and lost consciousness. Ayman later woke up in the Hebron Governmental Hospital where he remained for a few hours. (Al-Haq Affidavit No. 10982/2015 taken on 6 September 2015)

Article 16

- **Holding Bodies of Deceased Palestinians**

In October 2015, Israel approved a proposal to reinstate its policy of holding the bodies of Palestinians who allegedly carried out attacks against Israel.³⁹ Between October and December 2015, 104 bodies were held for various periods by Israel as a mean of collective punishment. As of 28 March 2016, there remain 15 Palestinians bodies held in Israeli custody, the longest have been held for more than five months.

The practice of retaining the bodies of Palestinians killed violates Israel's obligations under international law. First, Israel's practice of retaining bodies may amount to cruel, inhuman, or degrading treatment or punishment. Comparably, the Committee Against Torture previously found that Israel's policy of punitive home demolitions may be in violation of Article 16. As with punitive home demolitions, holding the bodies of the deceased only targets innocent family members and is "purely punitive".⁴⁰

Such practice also comes in violation of the Israeli High Court decision of 2002 which held that the burial of the deceased must be performed with respect, in a timely manner, and according to religious custom, and if possible, the remains must be returned to the families of the deceased.

Since October, many of the bodies of Palestinians killed by the IOF were released on various conditions dictated by Israel, ranging from specifying the place of burial to prohibiting autopsies.

For example, the body of 36-year-old Mus'ab Al-Ghazali was returned to his family on 29 February 2016 after being held for 66 days. Initially, the Israeli authorities set the following conditions upon Mus'ab's family to release his body: the body would be returned near the entrance of Al-Asbat Grave with the presence of only 30 people; the family would post a bond of 30,000 shekels (approximately USD 7,500) should they breach agreement; that the body would be returned after its removal from the freezer, with sufficient time prior, to allow for the burial of a body that is not frozen. However, Musa'b's body was returned frozen, and the cell phones of all those present at the burial were confiscated.⁴¹

³⁹ "Israel could stop returning bodies of Palestinian attackers killed by Security Forces to their Families", 14 October 2015. Available at <http://www.independent.co.uk/news/world/middle-east/israel-could-stop-returning-bodies-of-palestinian-attackers-killed-by-security-forces-to-their-a6693966.html>

⁴⁰ CAT/C/ISR/CO/4, Concluding Observations of the Committee Against Torture, Israel (May 2009) para. 33.

⁴¹ Addameer and Adalah. 01 March 2016, "Israeli Occupation forces continue to withhold the bodies of deceased Palestinians, and renege on conditions of release" Available at: <http://www.addameer.org/news/israeli-occupation-forces-continue-withhold-bodies-deceased-palestinians-and-renege-conditions>

- **Denial of Medical Aid Leading to Unlawful Killings**

The IOF denies Palestinian access to medical aid which is listed under Article 16 of CAT as cruel, inhumane and degrading treatment. Such practice has been recently evident in the killings of Palestinians carried out by the IOF since October 2015.

On 5 February 2016, Israeli soldiers shot and killed 14-year-old Haitham Ismail Sa'dah after they claimed he and a friend were about to throw stones at cars near Road 60 in Halhul, Hebron. The Israeli soldiers saw the two boys and before the boys had even noticed, they were surrounded by the soldiers and were shot at five times from behind in broad daylight. Consequently, Haitham was hit by two of the bullets, one hit his upper back exiting from his mouth and the second hit his right elbow. Haitham was for two hours without being provided with any medical and hence died. Haitham's friend was apprehended after narrowly escaping death himself.

In another incident on 22 September 2015, 19-year-old Hadeel Al-Hashlamoun was shot at the entrance of Al-Shuhada Street at "Checkpoint 56" in Hebron. Prior to shooting, two Israeli soldiers at the checkpoint had pointed their guns at Hadeel and shouted at her in Hebrew to move back but she remained in her position. A witness at the scene, Fawwaz Abu 'Eshe, told Hadeel to move backwards as a soldier shot a bullet near her foot resulting in her retreat backwards. Fawwaz moved a plastic divider, separating the entrance and exit lane, so that Hadeel could move to the exit lane and away from the soldiers. As Hadeel moved to the exit lane, a soldier pointed a gun to her head. The soldier ordered Hadeel to put her hands up in the air and turn towards the wall, then lowered his gun and shot another bullet at the street near Hadeel. In the meantime, four more soldiers arrived at the scene. The soldiers shouted at Hadeel and ordered her once again to put her hands up and turn to the wall while pointing their guns at her and Fawwaz. Fawwaz asked Hadeel to drop her bag and put her hands up but Hadeel did not respond and remained in her position without moving.

One of the soldiers then aimed at and shot Hadeel in her left foot. Hadeel fell to the ground and dropped a knife from her hand. She had hid the knife under her niqab. The same soldier then approached Hadeel and shot her again in the right foot. At this point, the soldier further approached Hadeel and shot her several times at a distance of about a meter. Hadeel was shot in her upper and lower body. About 30 seconds later, he shot a bullet at the upper part of her body again.⁴² Hadeel was left to bleed to death at the scene without being provided any medical assistance as soldiers and settlers stood around her dead body as she bled.⁴³

⁴² Further information of Al-Haq's investigation is available in Arabic at: http://www.alhaq.org/arabic/index.php?option=com_content&view=article&id=750:2015-09-29-06-11-03&catid=91:2012-07-14-11-00-24&Itemid=231

⁴³ Please refer to video issued by Pal Media Centre, 21 September 2015, available at: https://www.youtube.com/watch?v=yZ5ItBO_dlw

- **Movement Restriction and Access to Medical Services**

For decades, Israel has engaged in a policy of consolidating its territorial, administrative and legal control over the OPT by setting up checkpoints, roadblocks and the Annexation Wall, in order to nurture and expand its settlement enterprise. Israel continues to find new ways and measures to deepen its practice of fragmenting Palestine and isolate communities from one another. Movement restrictions imposed on Palestinians not only violates their right to freedom of movement but also hampers other rights such as access to health and medical facilities. Through the various Israeli checkpoints set up separating cities and towns within the West Bank, as well as the closure imposed on the Gaza Strip, millions of Palestinians are not only prevented from reaching schools, homes, medical care, etc but are also subjected to ill-treatment and abuse by IOF.

Between 2009 and 2016, Al-Haq has documented various cases of Palestinians who were arrested at the Erez crossing by the Israeli Intelligence Agency while leaving the Gaza Strip for medical purposes. Since the 2007 closure of the Gaza Strip, the Israeli authorities have prevented Palestinians therein with urgent medical needs from receiving medical treatment in the West Bank and Israel, for alleged security reasons. The Israeli authorities often impose onerous conditions on Palestinians who seek permits to access medical treatment, such as delays or demands that alternative travel companions accompany patients, which hinders their access to hospitals outside the Gaza Strip. The Erez border crossing regime prevents Palestinians in Gaza from leaving the territory, despite having obtained permits from the Israeli Authorities to enter Israel or the West Bank for medical purposes. At the Erez crossing, Israeli forces often interrogate, beat, arrest, and deny entry to Palestinians for no evident reason.

On 8 September 2015, Israeli forces arrested Fawzi Abd Al-'Al, 23, at the Erez Crossing while on his way to receive medical treatment in Jerusalem after being given a permit by the Israeli authorities. The permit came after several attempts and interventions by various local and international human rights organisations, as Israel had initially denied issuance of the permit. This is despite the fact that Fawzi was in dire need of medical attention, that he could not secure in Gaza, after having sustained serious injuries following an accident in March 2015. (Al-Haq affidavit no. 10992/2015 taken on 12 September 2015)

- **Checkpoints, Roadblocks, and the Annexation Wall**

During the reporting period, Al-Haq documented numerous incidents where Palestinian civilians - including children, journalists, students, workers, women, etc. - were arbitrarily searched, in a degrading manner, held at checkpoints for prolonged times, and sometimes were not allowed to pass. Since October 2015, any suspected Palestinian has become a target for the IOF's arbitrary and indecent searches.

Anas Bassam Sharbati, 24, is a resident of Al-Shuhada Street in Hebron and in order to reach his house, he needs to cross two checkpoints on foot. On 7 July 2015, as Anas was passing one of the checkpoints on his way to work, the soldier asked for his identification card (ID) and kept Anas waiting:

"In Hebrew, the soldier accused me of causing trouble. About 20 minutes later, I asked the soldier if I will be there for much longer as I did not want to be delayed for work. The soldier said that I should call my work place as I will be late. I called one of my neighbours and told him to inform my family that I am detained at the checkpoint. The soldier then told me to stand facing the wall. The soldier then tried to beat my head to the wall but I pushed him away. The soldier tried to handcuff me but I resisted so he and other soldiers present attacked me and tried to handcuff me but I continued to resist. Within minutes, seven additional soldiers arrived from the nearby checkpoint. They attacked me, held me to the ground and tied my hands with a plastic rod. Then they kicked me all over my body. Ten minutes later, they made me stand up and I managed to break the plastic so they attacked me again.

Anas was then taken to the Israeli military camp in Tal Rumeida nearby. On the way, the soldiers continued to beat him with their rifles on his back and head until he lost consciousness twice. Anas was released to a Palestine Red Crescent ambulance near the military camp and transferred to hospital. (Al-Haq affidavit no. 10876/2015 taken on 8 July 2015)

On 4 December 2013 a group of journalists went on a media tour around the northern Jordan Valley. Upon their return, their bus was stopped at Huwwara checkpoint. A soldier boarded the bus and ordered all the men to hand over their ID cards and then leave the bus. As they handed over their ID cards, the group told the soldiers that they were journalists on an official field visit but the soldiers took no notice. When the men disembarked from the bus, the soldiers ordered them to stand in a line with their backs to them. Then the soldiers started yelling at the group, using Arabic curse words. A soldier got on the bus and ordered the women to draw the curtains across the windows. By that time, the temperature had dropped and it had started to rain.

The Israeli soldiers began searching the men outside of the bus one by one and demanded that some of them take off their shirts. They then began inspecting the men in a very degrading manner and touched them in private body areas. The soldiers also twisted the men's arms, pushed their heads to the ground and ordered them to keep their legs separated, which was both painful and humiliating.

The group was held for approximately one hour and fifty minutes in the rain. While the men were being allowed to board the bus again, a soldier claimed that one of the girls on the bus had sworn at him and he demanded that she get off the bus and apologise to him. The group refused to let the girl get off the bus, which caused the soldiers to order the

men off the bus once again. They were forced to stand in the same position as before until the girl apologised. The group was later released (Al-Haq Affidavit No. 9180/2013 taken on 5 December 2015)

- **Collective Punishment and Closure of the Gaza Strip**

International humanitarian law prohibits collective punishment⁴⁴ notably against civilians in occupied territories.⁴⁵ As concluded by the Committee as a subject of concern in 2001, “Israeli policies on closure may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment as per Article 16 of the Convention”.⁴⁶ The application of broad punitive policies against Palestinian civilians in Gaza by Israel results in severe suffering which reaches the level of unjustified and prohibited collective punishment as it restricts access to medical care, basic housing, family life, as well as pushes the population into severe poverty.

Israel’s almost nine-year, ongoing closure of the Gaza Strip maintains a protracted humanitarian crisis and prevents access to fundamental rights and freedoms of the population of almost two million Palestinians. The entire population of Gaza suffers from the closure in its denial of basic services and needs, including goods, food, medicine, infrastructure, and access to education, healthcare and family unification. These restrictions affect the life and wellbeing of the whole population, while placing particular groups of society at a higher risk of vulnerability such as children, women, older people, and people with disability. As reported by the International Committee for the Red Cross (ICRC) in 2010⁴⁷ and reiterated in the report of the UN Commission of Inquiry on the 2014 Gaza Conflict,⁴⁸ such restrictions, inflicted on an indiscriminate number of persons, amount to a form of collective punishment of a civilian population in violation of the absolute prohibition included in Article 33 of the Fourth Geneva Convention.

The punitive nature of increased restrictions has been clearly documented within Israel’s official statements. On 21 March 2013, the Israeli military and COGAT ordered a tightening of restrictions on Palestinian fishing waters in Gaza’s sea in response to the firing of rockets from Gaza towards Israel. A Palestinian armed group had claimed responsibility for the rockets, yet the Israeli authorities placed punitive restrictions on the fishing community, which makes up one of Gaza’s most vulnerable populations, at the height of the crucial sardine season. These tightened restrictions form part of the ongoing punitive measures imposed on the civilian population of Gaza in the context of the closure/blockade, in clear violation of the prohibition on collective penalties under IHL.

⁴⁴ 1907 Hague Regulations, Article 50; Fourth Geneva Convention 1949, Article 33

⁴⁵ Fourth Geneva Convention 1949, Article 33(1)

⁴⁶ Conclusions and Recommendations of the Committee against Torture, Israel, U.N. Doc. CAT/C/XXVII/Concl.5 (2001), para. 52(i)

⁴⁷ ICRC, Gaza closure: not another year, News Release 10/103, 14 June 2010,

<http://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm> (accessed on 14 July 2012).

⁴⁸ Report of the UN Commission of Inquiry on the 2014 Gaza Conflict, 2015. A/HRC/29/CRP.4 para. 54

In 2009, the Committee observed that the 'blockade' imposed on the Gaza Strip [...] has obstructed the distribution of humanitarian aid before, during and after the recent [2009] conflict, and has limited other human rights of the inhabitants, particularly the right to freedom of movement, of both juveniles and adults.” Within the Concluding Observations, the Committee urged Israel to “reinforce its efforts to ensure that humanitarian aid is accessible to ease the suffering of Gaza inhabitants as a result of the restrictions imposed.”⁴⁹

Since 2009, the closure of the Gaza Strip has become further institutionalized while Israel has strengthened its mechanisms of control over the population via, inter alia, the Gaza Reconstruction Mechanism (GRM). The GRM was set up as a temporary agreement between the Palestinian Authority and the Israeli government. Brokered by the United Nations in September 2014, the Mechanism’s primary purpose is to enable reconstruction after the 2014 bombardment⁵⁰ that saw the full and partial destruction of at least 31,974 housing structures by Israeli forces, which added to tens of thousands of structures that had been destroyed in previous Israeli attacks on, and incursions into, the Gaza Strip. A year and a half since the end of the Israeli attacks in 2014, due to Israel’s severe restrictions on the passage of humanitarian aid, including through the GRM, not more than a handful of houses that were fully destroyed during the bombardment have been rebuilt.

The closure policy results in serious harm to people's dignity and causes severe physical and psychological pain. According to the laws of occupation, Israel, as the Occupying Power, must end the imposed blockade and closure of the Gaza Strip, and ensure that the basic needs of the civilian population are met. Impeding access in a situation of conflict cannot be interpreted in such a way as to condone a blanket prohibition on movement. The policy can only be tolerated when it is targeted and justified by expedient military necessity. In Gaza, the implementation of the Israeli policy is done conversely to such parameters. The blockade of Gaza must be lifted completely, especially as Israeli control on movement and access allows for full inspection of persons and goods, and Israel has the capability to impose restrictions on the few who might represent a threat to its security.

⁴⁹ Paragraph 30, Committee Concluding Observations 2009

⁵⁰ On 7 July 2014, Israel launched a full-scale military offensive it codenamed 'Operation Protective Edge'. The 51-day offensive was comprised of an intense campaign of military attacks by land, air, and sea against the Gaza Strip and resulted in the killing of 2,219 people in Gaza, over seventy percent of whom were civilians; including 556 children, 293 women and hundreds of elderly and disabled people. According to documentation by four Palestinian human rights NGOs, Israeli forces either partially or fully destroyed at least 31,974 housing structures, many of which hosted multiple housing units. Israeli forces destroyed and damaged civilian and public infrastructure en masse, including medical, sanitation, water, education, and electricity facilities.

- **Forcible Transfer of Bedouin Communities**

This section will focus on the issue of Israel’s forcible transfer of Palestinian Bedouin communities in the occupied West Bank, particularly in Area C, as raised by the Committee, by providing an update on such transfers and highlight their status as acts worthy of consideration under Article 16.

Israel has implemented a legal framework in Area C through which Palestinian land is appropriated and designated as: ‘state’ lands; closed military zones; areas under the jurisdiction of Israeli settlements; areas of existing and planned road networks and land reserved for the route of the Annexation Wall – all of which prohibits Palestinian construction on 70 per cent of the land there.

The remaining 30 per cent of land in Area C where Palestinian construction is theoretically permitted, the applicable planning law is established by the Jordanian *Towns, Villages, and Building Planning Law No. 79 of 1966*, which requires the existence of a detailed and dedicated planning scheme before construction can take place. Shortly after Israel’s occupation of the West Bank in 1967, the Israeli *Military Order Concerning Towns, Villages and Buildings Planning Law (Judea & Samaria) No. 418 of 1971* was introduced, removing all Palestinian representation from the planning process by way of annulment of Local Planning Committees. Instead, this responsibility was transferred to the Israeli Civil Administration’s Local Planning and Licensing Sub-Committee.

According to the Secretary General, “[t]his impossibility of building safely creates enormous pressure on communities, particularly those targeted for relocation, as they know that within the current system there is no long-term protection from demolition and destruction of their property, creating a coercive environment that effectively drives communities off the land they have inhabited for decades.”⁵¹ Similarly, UNRWA has recently observed that “[d]emolishing residential structures exacerbate an already coercive environment, driving Bedouin communities off the land they have inhabited for decades.”

Similarly, the responsibility for the issuing of building permits lies with the Secondary Planning Committee, which is also part of the Civil Administration. Through a broad interpretation of Jordanian law, the types of structures for which a building permit is required is extensive, including both permanent and non-permanent structures, and also covering repairs of those structures already in place. Furthermore, the application process

⁵¹ UN Secretary-General, 20/01/2016. A/HRC/31/43 Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan. Report of the Secretary General. Para.46

for a permit is both cost-prohibitive and has an extremely low success rate. For instance, between 2008 and 2012, 97.7 per cent of Palestinian-submitted building permit applications in Area C were rejected by Israeli authorities.⁵² Palestinians therefore have little option but to build ‘illegally’ under Israeli law, and the vast number of Palestinian Bedouin structures have demolition orders pending against them.

Forcible transfer, i.e. forced removal of protected persons from a given area by an occupying power, is a crime that is inextricably linked to a multitude of severe deprivations of fundamental human rights, including the right to life; health; self-determination; equality; adequate housing; sustenance; freedom of movement, and freedom from discrimination. Further, it constitutes a grave breach of the Fourth Geneva Convention, and is classed as both a war crime and crime against humanity under the Rome Statute. Accordingly, given its cruel, inhuman and/or degrading nature, forcible transfer would appear to fall comfortably within consideration under Article 16(1) of the Convention.

Israeli efforts to forcibly transfer Palestinian Bedouin communities residing in Area C continue, with 7,000 Palestinians currently at risk.⁵³ These plans follow a clear pattern of behaviour, and three previous waves of forcible transfer of Palestinian Bedouin were enacted by Israel between 1997 and 2007, resulting in forced evictions of over 150 families and their relocation to Al-Jabal; a site adjacent to the Abu Dis garbage dump with many associated health risks.⁵⁴ The size of this fourth potential wave eclipses those that have gone before it, and would result in incalculable human suffering.

As part of Israel’s ‘Nuweima Plan’, all remaining Palestinian Bedouin communities in the central West Bank will be evicted and transferred to three urban townships: the first at the existing Al-Jabal site, and the two largest - Nuweima North and Armonot Hashmonaim, intended to allow for a future combined capacity of 12,500 individuals – to be built near Jericho in the Jordan Valley. Such attempts, despite being conducted entirely against the will of those being displaced, are framed by the Israeli authorities as being for the benefit of Bedouin communities and relieve them from poverty.⁵⁵ On the contrary, this relocation of traditionally nomadic and pastoral Bedouin communities to cramped townships would represent a devastating blow to the cultural practices of these

⁵² Civil Administration’s response to B’Tselem. Quoted in B’Tselem, 2013, Acting the Land Lord: Israel's Policy in Area C, the West Bank. Available at http://www.btselem.org/download/201306_area_c_report_eng.pdf

⁵³ OCHA. September 2014. Bedouin Communities at risk of forcible transfer. Available at: https://www.ochaopt.org/documents/ocha_opt_communities_jerusalem_factsheet_september_2014_english.pdf

⁵⁴ Hale, 20/03/13. Experts probe reach of toxins from West Bank landfill. Ma’an News Agency. Available at: <http://www.maannews.net/eng/ViewDetails.aspx?ID=573286>

⁵⁵ Greenwood, May 2012. Bedouin land and culture *threatened by Israel’s plans for resettlement*. Available at: <http://www.theguardian.com/global-development/2012/may/09/bedouin-land-culture-israel-resettlement>

populations, severing links to “fundamental elements in their economic, commercial and social universe”.⁵⁶

A primary vehicle used by Israel to pursue such displacement and dispossession is the zoning and planning policy; a system considered “one of the most influential mechanisms affecting the map of the West Bank”.⁵⁷ The UN Secretary-General has previously noted the Israeli zoning and planning policy in the West Bank, which regulates the construction of housing and structures in Area C, is restrictive, discriminatory and incompatible with requirements under international law⁵⁸. As noted in a January 2016 report from the Secretary General, “[t]he planning system favours Israeli settlement interests over the needs of the protected population and makes it practically impossible for the 300,000 Palestinians living in Area C to obtain building permits. Severe restrictions on Palestinian planning in Area C further prevent the development of communities, which are effectively denied basic services and infrastructure under the current policy.”

It is therefore clear that Israel's forcible transfer of Palestinian communities falls within a broader context that goes beyond formal 'relocation' plans to establish a coercive environment which leaves protective persons with no genuine choice but to leave their homes and communities.

Such an approach would be fully-aligned with that of the Secretary General, who has noted that “[d]isplacement and relocation to alternative residential areas, as a result of demolition orders, and a coercive environment could amount to individual and mass forcible transfer and forced evictions, contrary to the obligations of Israel under international humanitarian and human rights law.”⁵⁹ Indeed, in the same report the Secretary General highlights the following, non-exhaustive, list of factors which have contributed to a coercive environment: Israeli zoning and planning policy (including demolitions),⁶⁰ long-standing access restrictions to basic services and grazing land,⁶¹ and systematic intimidation by Israeli settlers.⁶²

⁵⁶ Chatty, 1986. *From Camel to Truck: The Bedouin in the Modern World*. Vantage Press New York, p.30

⁵⁷ Lein, May 2002. *Land Grab: Israel's Settlement Policy in the West Bank. Jerusalem*. B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, pg.70. Available at: http://www.btselem.org/download/200205_land_grab_eng.pdf

⁵⁸ Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, Human Rights Council, Twenty fifth Session, Agenda Item 7, 12 February 2014, available at: http://webcache.googleusercontent.com/search?q=cache:rKRLNSj3VmcJ:www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Sessi on25/Documents/A_HRC_25_38_ENG.DOC+&cd=1&hl=ar&ct=clnk&gl=ps

⁵⁹ UN Secretary-General, 20/01/2016. A/HRC/31/43 Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan. Report of the Secretary General. Para.68

⁶⁰ Ibid. Para.60

⁶¹ Ibid. Para.54

⁶² Ibid. Para.54

Focusing upon just one of these coercive triggers of displacement, demolitions and the demolition orders which precede them, is particularly instructive. According the United Nations, between 1988 and 2014, Israeli authorities issued more than 14,000 demolition orders against Palestinian-owned structures, including homes, in Area C of the occupied West Bank.⁶³ Presently, the vast majority of Palestinian Bedouin structures inside Area C have demolition orders pending against them, and large numbers of demolitions have followed.

The table below provides the number of Palestinian owned structures demolished in Area C between 2013-2015:⁶⁴

Year	Palestinian structures demolished in Area C	Palestinians displaced (including children)
2013	241	646, inc. 337 children
2014	269	729, inc. 402 children
2015	274	657, inc. 359 children

According to OCHA, between 1 January and 15 February 2016, Israeli forces destroyed, dismantled or confiscated 283 homes and other structures, displacing 404 Palestinians, including 219 children, and affecting another 1,150 Palestinians, who lost structures related to their source of income. Over 100 of the demolished structures were already provided as humanitarian assistance to families in need, often in the wake of an earlier demolition. These incidents occurred in 41 Palestinian locations, many in Palestinian Bedouin or herder communities in Area C.⁶⁵ The demolition or removal of donor-funded structures is also becoming increasingly common, rising by 54 per cent in 2013 compared to 2012.⁶⁶ In 2013, more than 20% of the 565 structures demolished by Israel in Area C were donor-funded.⁶⁷ In 2016, Israel has so far destroyed almost as many European-funded structures in 2016 (104) as it did in the whole of 2015 (108).

For example, On 6 January 2016, five homes in Abu Nuwar were demolished, leaving 26 refugees, including 17 children, displaced and without a home. Further, on 20 February

⁶³ OCHA. Under Threat: Demolition orders in Area C of the West Bank. Available at: http://www.ochaopt.org/documents/demolition_area_c_3-9-2015.pdf

⁶⁴ Information provided by Al-Haq

⁶⁵ Humanitarian Coordinator. 17/02/2016. http://www.ochaopt.org/documents/hc_statement_demolitions_feb16_final.pdf

⁶⁶ OCHA (oPt), 2014. *Fragmented Lives: Humanitarian Overview 2013*, pg.73. Available at: <http://unispal.un.org/UNISPAL.NSF/0/43B4D427B63C369B85257CB300585957>

⁶⁷ Ibid.

2016, four prefabricated structures, consisting of homes and classrooms, were seized from the same location by Israeli forces.⁶⁸

These demolitions encompass tents, huts, pens, herd enclosures, roads, water pipes, storage facilities, among others. Additionally, demolitions are performed systematically and at the behest of high-level Israeli officials. Performed by large numbers of personnel from the Israeli military and/or border police, using heavy machinery and often occurring in the early morning with no specific prior notice. Physical assaults of residents and observers by Israeli personnel are not uncommon, but the detrimental effects of demolitions stretch much further.

Such effects are compounded not only by Israel's refusal to provide subsequent humanitarian assistance to those affected, but by Israel's prohibition of provision of such assistance by third parties. This prohibition is in direct contravention of IHL which demands that, in circumstances where a primary duty bearer is unable or unwilling to abide by its obligations towards a protected population, full access by humanitarian organizations must be permitted. Such access cannot be refused on arbitrary or unlawful grounds.

Not only has Israel clearly and comprehensively failed to comply with these obligations, but the provision of emergency structures by humanitarian organizations has also been met with official complaints from the Israeli government, issued to those organizations' parent states through diplomatic channels.⁶⁹ Moreover, there have been calls from members of the Knesset to entirely prohibit those humanitarian organizations who fail to comply with the terms set out by Israel's discriminatory building permit regime from working within the West Bank generally.⁷⁰

Given the acute human suffering that accompanies Israel's demolitions of Palestinian structures, it may therefore be concluded that such demolitions, even in cases not deemed to meet the threshold of forcible transfer, if conducted beyond the boundaries of lawful sanctions, may be considered, as a minimum, as falling within consideration of Article 16 (1) of the Convention.

As well as the prevalence of demolition orders, just half of these communities have been connected to the public water network, whilst none have been connected to the public

⁶⁸ Haaretz. 21/02/16. Israel Dismantles Palestinian Prefab Classrooms Near Jerusalem. Available at: <http://www.haaretz.com/israel-news/.premium-1.704567>

⁶⁹ Mordechai Yogev (Chairman of Judea and Samaria Region Subcommittee of the Foreign Affairs and Defense Committee). *Minutes of the meeting of the Judea and Samaria Region Subcommittee of the Foreign Affairs and Defense Committee*, 27.04.14

⁷⁰ MK Orit Struck. *Minutes of the meeting of the Judea and Samaria Region Subcommittee of the Foreign Affairs and Defense Committee*, 27.04.14

electricity network. Access to crucial grazing land is made increasingly problematic by the route of the Annexation Wall and the expanding boundaries of settlements/colonies,⁷¹ and this expansion also brings with it harassment and threats of violence from settlers. The cumulative result is an often desperate living environment, and a clear breach of the right to adequate housing, enshrined within the International Covenant on Economic, Social and Cultural Rights (to which Israel is a signatory).

As such, Palestinian Bedouin communities in the central West Bank are confronted with an impossible decision: a choice between succumbing to transfer, or awaiting forced eviction from their homes in what has become an almost impossible living environment of Israel's making. It is crucial to note that the repeatedly-stated desire - and inalienable legal right - of affected Palestinian Bedouin communities is to return to the land of the Naqab desert from which they were displaced during and since the violence of the Israeli-perpetrated Nakba in 1948. Until this is realized, however, these communities wish to remain in the villages in which they currently reside, and to enjoy the human rights to which they are entitled under international law.

This desperate position of the affected communities is also compounded by a conspicuous absence of procedural safeguards. For instance, their access to appropriate and effective legal mechanisms is limited by cost considerations, the cases being heard in courts inside Israel - to which these communities must seek special permission in order to gain physical access - and with proceedings being conducted in Hebrew. Despite these difficulties, some Bedouin communities have challenged the legality of the relocation process in the Israeli courts. Yet this has achieved only a temporary reprieve in the form of existing demolition orders being stayed in anticipation of the creation of the resettlement sites. According to the Coordinating Office of Government Activities in the Territories (COGAT) - an organ of the Israeli military - once the resettlement plans are finalized and building plots allocated, all unrecognized construction "will be dealt with in accordance with the [Israeli] law".⁷²

This reveals an inherent bias of the law conceived and applied by Israel within Area C. It is a bias which favours the occupying power and its citizens, and is reflected in the multiple petitions filed with Israeli courts by the settler movement, demanding that existing demolition orders against Bedouin structures be executed without delay. This creates a scenario whereby individuals whose very presence in the occupied West Bank constitutes a war crime are able to utilize the existing legal system to further their own interests at the expense of the protected occupied population.

⁷¹ OCHA (oPt), 2014. *Area C Vulnerability Profile*. Available at: http://www.ochaopt.org/documents/ocha_opt_fact_sheet_5_3_2014_en_.pdf

⁷² Haaretz, 16/09/14. *Israeli government plans to forcibly relocate 12,500 Bedouin*. Available at: <http://www.haaretz.com/news/national/.premium-1.615986>

Another key protective legal concept which has been entirely disregarded by the relocation process is that of rationality; that is, the objective consideration of alternative options by the authority in question. In early 2014, the Israeli NGO, BIMKOM, following an extensive consultation process with all 23 Jahalin communities, submitted principled plans which would allow Palestinian Bedouin communities to enjoy services in their current location without compromising their pastoralist lifestyle or Bedouin culture. These plans have received support from the Palestinian Authority, and would avoid forcible transfer. However, these plans have so far been ignored by Israeli authorities. This *de facto* rejection, absent of any clear and lucid explanation, removes a crucial procedural safeguard and encourages the arbitrary exercise of power.

There can, therefore, be little dispute as to the systematic, State-led nature of this forcible transfer. Complete control of the inherently discriminatory planning and construction process - from the conception of policy to its realization and enforcement on the ground - is retained by the Occupying Power; a situation in direct contravention of Article 43 of the Hague Regulations⁷³ and Article 64⁷⁴ of the Fourth Geneva Convention.⁷⁵ This inherently unlawful scenario was further entrenched in June 2015 by Israel's Supreme Court's rejection of a petition brought by the village council of Ad-Dirat-Al-Rfai'ya, and supported by a coalition of NGOs, which sought the restoration of planning authority to Palestinian villages in Area C.⁷⁶ Ultimately, it is a system geared towards the forced removal of the legally-present Palestinian civilian populace through the intentional and thorough application of a coercive environment.

All such instance of unlawful forced displacement would, in light of the devastating and foreseeable effects of such displacement upon those affected, appear to bring such conduct within the remit of Article 16 of the Convention.

Yet, Israel's forcible transfer of Palestinians represents only the first stage in a wider process of spatial domination, and is often followed by the implantation of its own citizens into the occupied Palestinian territory. In the case of E1, this intended population transfer is starkly laid out in plan 420/4; the 'E1 master plan' which received approval in 1999. This master plan is split into separate detailed plans. Of these, three (a water

⁷³ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

⁷⁴ Though some scholars consider the application of Art 64 limited to penal legislation only, this is an argument compellingly refuted by Sassoli, and does not represent the view of the ICRC under the ICRC Commentary

⁷⁵ Art. 64, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

⁷⁶ Rabbis for Human Rights. 10/06/15. *Israeli High Court Dismisses Petition to Restore Planning Rights to Area C Villages*. Available at: <http://rhr.org.il/eng/2015/06/israeli-high-court-dismisses-petition-to-restore-planning-rights-to-palestinian-villages-in-area-c/>

reservoir,⁷⁷ industrial zone⁷⁸ and police station⁷⁹) have already been deposited for public review and subsequently approved by the planning committee, with the police station already constructed. Three other detailed plans – 420/4/3, 4204/7 and 420/4/10 - pertain to a total of almost 3700 housing units, and over 2000 hotel rooms.

Prime Minister Benjamin Netanyahu has responded to international criticism to the E1 plans by declaring that construction here represented an Israeli “vital interest”,⁸⁰ referring to the merging of Ma’ale Adummin and Jerusalem, resulting in the latter becoming surrounded by a bank of Israeli Jewish settlements. This would effectively sever the West Bank in two and thus end any remaining hope of a geographically contiguous Palestinian state based on 1967 borders.

- **House Demolitions**

According to CAT, “Israeli policies on house demolitions may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment”⁸¹. Palestinians continue to be subject to the constant and imminent threat of house demolitions as well as forcible transfer and eviction due to Israel's discriminatory building policies in East Jerusalem and Area C. As Israel continues to carry out demolitions targeting Palestinian homes and infrastructure, in particular in East Jerusalem and Area C of the West Bank, Palestinians are also rarely granted building permits. This has become a way to transfer and expel Palestinian families and whole communities from these areas, severely restricting access to education and health facilities among others.

Administrative House Demolitions

The table below shows the number of house demolitions for lack of licenses and Palestinians displaced as a result in the West Bank between 2009 and February 2016 as documented by Al-Haq:

Year	Houses demolished	Palestinians displaced, including children
2009	77	408, incl. 233
2010	132	373, incl. 192

⁷⁷ Plan 420/4/1

⁷⁸ Plan 420/4/2

⁷⁹ Plan 420/4/9

⁸⁰ BBC, December 2012. *Israeli Settlements: Netanyahu defies outcry over E1*. Available at: <http://www.bbc.com/news/world-middle-east-20585706>

⁸¹ UN GAOR Supp. A/57/44 (2002))

2011	303	816, incl. 427
2012	377	878, incl. 462
2013	326	949, incl. 508
2014	331	908, incl. 498
2015	318	689, incl. 379

Clearly, Israel continues to ignore its obligations set forth under international humanitarian law which prohibit the destruction of property unless for absolute military necessity and the forcible transfer of the protected population. Both constitute grave breaches of the Geneva Conventions and war crimes under the Rome Statute of the International Criminal Court. The displacement and forcible transfer of Palestinians also impacts numerous human rights, including the denial of the right to an adequate standard of living, housing, and access and sovereignty over natural resources, amongst other rights.

On 27 January 2016, Israeli authorities demolished two Palestinian-owned houses in Occupied Jerusalem claiming that they lack building licenses. That morning, members of the Israeli Special Unit entered Shu'fat with bulldozers and surrounded the residence of Kifaya Muhammad Al-Risheq wherein 18 people reside, including 12 children. The municipality had issued a demolition order for the house in December 2015. The IOF then broke into the house and forcibly and violently evacuated its residents. The house had first received a demolition order in 2001. The family appointed a lawyer in an attempt to issue a license for the house. Since 2001, the family had paid 75,000 shekels (approximately USD 18,900) in fines, excluding the lawyer's cost.

The Israeli municipality claimed that the house was built on "Green Land" and accordingly construction is prohibited. For two years now, and in the same area, the Israeli authorities have been constructing a road to connect settlers in the French Hill to the settlement of Atarot. This has also threatened seven additional houses in the vicinity that have already received demolition orders from the ICA.

Punitive House Demolitions

➤ The West Bank:

Israel has broadened its policy of collective punishment through the reimplementation of punitive house demolitions and sealing off houses of Palestinians in the West Bank. These punitive house demolitions are administratively approved outside of court proceedings and force the eviction of innocent persons from their homes and the

destruction of their private property as collective punishment for the alleged ‘crimes’ of others.

Israel has punitively demolished Palestinian protected private property on the basis of a dubious application of Regulation 119 of the Defence Regulations (1945). The provisions, which were ‘inherited’ from the British administration of Mandatory Palestine, contain a sweeping permission to forfeit, seal off and destroy property of inhabitants whom the military commander suspects of committing violence, regardless of whether they are the property owners or not. In 2005, the Israeli High Court of Justice (HCJ) ruled that demolitions are no longer subject to hearing and judicial review, effectively rubber-stamping the unlawful extrajudicial decisions of the military commander.⁸² Furthermore, the legality of this measure was affirmed by the Israeli High Court of Justice in the case of Hisham Abu Dheim as a form of a deterrent and not a form of punishment.⁸³ As it is believed that the objective of such policy is deterrence, based on the assumption that harming the relatives of Palestinians who carried out attacks against Israeli settlers and soldiers would deter others from carrying out such attacks.

The policy of punitive home demolitions ended in 1998 but was reinstated in 2000 after the outbreak of the second Palestinian Intifada. The IOF stopped using this measure in 2005 after a military committee found little evidence in the effectiveness of the policy. The policy was however resumed in 2009, 2014, 2015 and 2016. The table below provides numbers for punitive house demolitions between 2009 and 2015, as well as the number of Palestinians displaced as a result, in the West Bank:

Year	Houses Punitively Demolished	Palestinians Displaced
2009	8	10
2010	12	21
2012	1	6
2013	0	0
2014	11	30
2015	16	55

On 19 November 2014, Israel demolished the home of Abd Al-Rahman Al-Shaludi in Al-Bustan neighborhood of Silwan in Occupied East Jerusalem. Al-Shaludi drove his car into a tram station in October of that year, resulting in the killing of two Israelis. He was shot and killed immediately by IOF at the incident.

⁸² HCJ No. 6696/02, *Amar et al v. IDF Commander of the West Bank* (2002).

⁸³ In 2008, an attack against the Jewish Yeshiva was held by Hisham abu Dheim. Consequently, Israel sealed parts of the house owned by Abu Dheim family in Jabel Al Mukabber neighborhood in East Jerusalem, to punish them for the actions of their son. Two floors that were sealed were residential floors, on which the perpetrator, his parents and one of his brothers lived, in addition to the basement floor which has apartments for rent. For further information about the court decision please look: (Re.Ad.H. 181/09 Hisam Abu-Dhim et. al. v. The Chief of the Home front Command (6 Jan. 2009)

Abd Al-Rahman's family, including his parents, two brothers and three sisters, live in an apartment in a five-storey building. His extended family lives in the rest of the apartments in the building. At around 1:00 am on 19 November 2014, the family was asleep when the IOF broke into the apartment. The Israeli soldiers wore masks and pointed their guns at the family. Abd Al-Rahman's two sisters, Nibras, 12, and Raneem, 7, were terrified and started crying. The soldiers asked the members of the family to each carry his/her blanket and evacuate the apartment. Abd Al-Rahman's house was already emptied of furniture, as the family had received a demolition order a few days before.

All families living in the apartment complex were evacuated. The families waited for nearly three hours outside. About three hours later, the apartment was destroyed with explosives. Two apartments in the same building and a car parked nearby were damaged by the explosion. Abd Al-Rahman's parents and siblings are now living with relatives. Israel has barred them from returning to and rebuilding their home. (Al-Haq Affidavit 10167/2014 taken on 20 November 2014).

As of 28 March 2016, five homes were punitively demolished and permanently sealed by Israel, displacing 35 Palestinians. In January 2016 alone, the IOF demolished the house of Baha' Elayan's family in Jabel Al-Mukabber in East Jerusalem. Baha' was killed in October 2015 for carrying out an attack in the Armon Hanatziv settlement in Jerusalem. The demolition left eight of his family members, including his parents and siblings, with no shelter. The IOF also sealed off the house of Alaa' Abu Jamal's family by concrete cement. Alaa' was also killed at the scene after carrying out an attack in Jerusalem. Additionally, the IOF demolished the house of Muhannad Halabi's family in Surda, Ramallah. Muhannad was killed in Jerusalem after carrying out an attack in East Jerusalem. The demolition resulted in leaving his parents and four children without shelter.

➤ **The Gaza Strip:**

In the 2009 Concluding Observations, the Committee regretted "the resumption by the State party of its policy of purely 'punitive' house demolitions in [...] the Gaza Strip despite its decision of 2005 to cease this practice"⁸⁴. Further, Planned home demolitions in the OPT have been condemned by the International Confederation of the Red Cross as collective punishment.⁸⁵

In 2016, Israel continues to implement, unabated, a policy of punitive home demolition and forcible displacement of people in the Gaza Strip through the systematic targeting of residential houses. These punitive home demolitions, which force families to evacuate

⁸⁴ Paragraph 33 Concluding Observations 2009

⁸⁵ "Israel and the Occupied Palestinian Territory: Planned House Demolitions Are Illegal." *International Committee of the Red Cross*. N.p., 17 Oct. 2015. Access 03 Mar. 2016, available here: <https://www.icrc.org/en/document/israel-and-occupied-palestinian-territory-planned-house-demolitions-are-illegal>

and render them homeless, are carried out mainly through aerial bombardment and use of artillery shells and land-surface missiles. Home demolitions are carried out for a variety of reasons, including the collective punishment of the families of members of resistance factions. Causing severe suffering and harm to individuals, including children, punitive home demolitions amount to cruel, inhuman and degrading treatment. As such, punitive home demolitions are prohibited by Article 16 of the Convention against Torture.

Gaza has seen extensive destruction of houses and its civilian infrastructure. During the peak of such destruction, it became difficult to identify all of the cases of punitive home demolitions. Much of the destruction was arbitrary and seemed to aim at inflicting extensive damage to civilian property, rather than respond to specific military threats. According to the Commission of Inquiry and in reflection of Article 23 of the 1907 Hague Regulations and Article 53 of the Fourth Geneva Convention 1949, which prohibit the destruction of property unless such destruction is required by imperative military necessity,

*“[t]he extensive destruction carried out by the IDF in [certain] localities [...] indicates that the IDF carried out destructions that may not have been strictly required by military necessity. Article 147 of the Geneva Convention IV qualifies the extensive destruction of property “not justified by military necessity and carried out unlawfully and wantonly” as a grave breach of the Geneva Conventions.”*⁸⁶

There is reason to suspect that the 4,852⁸⁷ house destructions implemented by Israel since mid-2009 – mostly in targeted airstrikes and with some form of warning⁸⁸ - at the very least contain punitive elements. Such destruction includes that of the houses of Palestinian individuals suspected of being fighters. Al-Mezan's documentation and investigations could not establish a reason, other than punitive, as to why these houses were targeted, as it was evident that they did not harbour any weapons or persons who were taking a direct part in hostilities at the time of the bombardment, or relate to military advantage.

In a smaller number of cases, there is strong evidence of the punitive nature of the house destructions. According to Al-Mezan, in at least three cases of house destruction in Gaza, the evidence indicates reasons of punishment. These houses belong to families of persons who were killed in Israeli attacks some months, or even years, prior to the destruction of the house. No other members from their families were actively engaged with armed

⁸⁶ Report of the UN Commission of Inquiry on the 2014 Gaza Conflict, 2015. A/HRC/29/CRP.4 para. 419

⁸⁷ This number represents the complete destruction of 1,699 houses and the partial destruction of 3,153.

⁸⁸ This statement is without prejudice as to the lawfulness or adequateness of the so-called warnings, many of which were roof-knock missile attacks or ineffective in warning the inhabitants.

groups or taking part in any form of hostilities. The investigations ascertained that these houses did not harbour any weapons or persons suspected of being fighters, or relate to military advantage. The remaining possible reason for the destruction of these houses is that they belonged to families of whom a member had previously, allegedly taken part in hostilities against Israel.

- ❖ On 11 July 2014, the house of R.A.T. was completely destroyed. The owner of the house is the brother of two people who were killed by an Israeli airstrike on a group of Al-Quds Brigades' militants in December 2008 during Operation Cast Lead.
- ❖ On 24 August 2014, the house of I.A.L. was completely destroyed. The owner of the house is the father of a member of Al Qassam Brigades, who was killed by Israeli forces earlier that day.
- ❖ On 24 August 2014, the house of M.A.S was completely destroyed. The owner of the house is the father of an individual who participated in a raid on an Israeli garrison in 2008, where he was subsequently killed.

The practice of punitive house demolitions constitutes cruel, inhuman, degrading treatment and punishment. The 2009 Concluding Observations of the Committee against Torture to Israel found that a policy of purely punitive demolitions amounted to a violation of Article 16 of the Convention Against Torture. Accordingly, Israel has a conventional obligation to ensure a prompt and impartial investigation of punitive house demolitions and ensure the right of individual complaint by those affected to a competent authority.

Further, the protection of private property of the occupied population shall be protected during belligerent occupation as stated in Article 53 of the Fourth Geneva Convention, which prohibits the destruction of property of the occupied population "except where such destruction is rendered absolutely necessary by military operations". Demolishing houses of innocent persons based on the suspicions of the military commander or in the aftermath of a court ruling against one of its inhabitant's amounts to collective punishment of the occupied population. Collective penalties are prohibited by Article 50 of the Hague Regulations (1907), Article 33 of the Fourth Geneva Convention (1949), Article 75 of Additional Protocol 1 (1977), and area crime under customary international law.

List of Questions

- 1) Please indicate why Israeli legislation does not fully incorporate the provisions of CAT into its domestic law, including a provision that unambiguously prohibits all forms of torture and other cruel, inhuman or degrading treatment or punishment, without exception.
- 2) Please clarify why Israel has thus far failed to implement previous recommendations of the Committee, and to enact specific legislation criminalising torture? Please indicate what constitutes “moderate physical pressure”.
- 3) Please comment on cases where psychological pressure was exerted on Palestinian detainees during interrogation, including making threats against family members.
- 4) Please explain the increase in administrative detention over the past six months. Further, please clarify why Israel continues to adopt administrative detention as matter of policy and not exception.
- 5) Please provide information on how Israel intends to eradicate the use of solitary confinement and isolation against Palestinian detainees, including children.
- 6) Please list punitive measures taken up against Israeli forces involved in the torture or ill-treatment of Palestinian detainees upon apprehension and throughout detention.
- 7) Please indicate how the Israeli government plans to reverse the change in its open-fire regulations following the Ministerial Cabinet decision of September 2015 to lower the threshold for the use of live ammunition. Does Israel plan to cooperate with the International Criminal Court in cases where Israeli officials allowed and/or committed extrajudicial executions?
- 8) How does Israel plan to end settler impunity and ensure effective remedy for victims of settler violence?
- 9) The Israeli Security Cabinet decided on 14 October 2015 to holding bodies of alleged attackers under the claim that it will deter further attacks as well as prevent alleged tensions during funerals of Palestinians killed by Israeli forces. However, the policy of holding bodies and not returning them to their families is a form of inhumane collective punishment as well as means to prevent an impartial investigation into the circumstances of the killing and determine its legality. The holding of the bodies of deceased Palestinians has contributed to further frustration among Palestinians in the OPT. Please clarify why Israel has not returned the bodies of 15 Palestinians who were extra-judicially executed since October 2015?
- 10) Please explain why Israel delays the provision of medical aid to Palestinians who have been shot at, particularly in recent months? Please further clarify measures

- taken by Israel to ensure access to healthcare across the OPT and to ease restrictions on the movement of Palestinians within the OPT.
- 11) Israel's punitive house demolitions and recent acts to legalise residency revocation as collective punishment is on the rise. How does Israel plan to ensure that such punitive measures are not adopted so as to conform with its obligation to protect the occupied population under CAT.
 - 12) Please explain why has Israel failed to end the closure of the Gaza Strip despite its illegality as informed by numerous UN resolutions and reports.
 - 13) Why has Israel failed to end its unlawful practice and policy of land confiscation while continuing to deny licensing permits for Palestinian structures and homes? How does Israel explain administrative house demolitions leading to forcible transfer, especially in Area C?

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