



Briefing Note: Palestinian Prisoners' Rights March 2011

This briefing note is being presented by Adalah, Physicians for Human Rights-Israel and Al Mezan Center for Human Rights (Gaza) to the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, which is holding its meeting on 7-8 March 2011 in Vienna on the plight of Palestinian political prisoners in Israeli prisons and detention facilities. It is also being presented to the EU Parliament Sub-Committee on Human Rights in advance of its meeting on 15 March 2011 in Brussels on the question of Palestinian prisoners in Israeli prisons, and in particular Palestinian children.

The note provides a general overview of recent statistics and conditions of confinement of Palestinian prisoners in Israel; reviews six new Israeli Supreme Court decisions; notes a new harsh criminal procedure law for "security suspects" and a series of proposed bills known as the "Shalit laws"; and recent concluding observations and concerns of three UN human rights treaty bodies as well as the conclusions of the UN Fact-Finding Mission on the Gaza Conflict ("the Goldstone Report").

1. Palestinian Political Prisoners – General Overview

As of January 2011, 5640 Palestinian political prisoners, classified as "security prisoners" by Israel, were imprisoned in Israel, of which, 37 were women,¹ 3 were detained under the Incarceration of Illegal Combatants Law,² and 187 were being held in administrative detention.³ 213 Palestinian political prisoners were minors, including 30 between the ages of 12 and 15.⁴

Palestinian political prisoners and detainees incarcerated by Israel are subject to far harsher pre-trial detention laws (e.g., the lengthy prohibition on meeting with lawyers), interrogations and conditions of confinement than other prisoners and detainees. Regarding Israel Security Agency (ISA) facilities, testimonies taken by several human

¹ See relevant statistics on the website of the Women's Organization for Political Prisoners:
<http://www.wofpp.org/hebrew/january11.html>

² A fourth case of detention under the Incarceration of Illegal Combatants Law was documented by the Al Mezan Centre for Human Rights in February 2011. It is not included in the statistics above, which covers the period to January 2011.

³ See B'Tselem's statistical reports based on official data from the Israel Prison Service (IPS):
http://www.btselem.org/english/Administrative_Detention/Statistics.asp;
http://www.btselem.org/english/Statistics/Minors_in_Custody.asp;
http://www.btselem.org/english/statistics/detainees_and_prisoners.asp

⁴ See Defence for Children International (DCI) – Palestine Division's latest statistics (from December 2010): <http://www.dci-pal.org/english/Display.cfm?DocId=902&CategoryId=11>

P.O. Box 8921 Haifa 31090 Israel Tel: (972)-4-950-1610 Fax: (972)-4-950-3140

חיפה 31090, סב 8921 תלפון 04-9501610 פקס 04-9503140
חיפה 31090, ת.ד. 8921 טלפון 04-9501610 פקס 04-9503140

Email: adalah@adalah.org <http://www.adalah.org>

rights organizations in past years indicate clear patterns of torture and/or cruel, inhuman and degrading treatment of Palestinian detainees.⁵ These conditions violate their dignity and right to personal freedom, as well as their protected rights both as suspects and as human beings.

The harsh restrictions and conditions continue even after the interrogations end. Palestinian detainees and prisoners are subject to severe restrictions in their conditions of confinement due to their administrative classification as “security prisoners”. They are denied the right to phone calls, conjugal visits, furloughs, and visits from friends and relatives, other than those from first degree. “Security prisoners” also do not benefit from early release which is often granted to other prisoners. The same approach is not applied to Israeli Jewish prisoners categorized as “security prisoners”. These prisoners are treated based on their characteristics as individuals, and not necessarily on their security classification within the prison.⁶ By classifying all Palestinian prisoners as “security prisoners” Israel reaffirms the racist and discriminatory notion that all Palestinians constitute a threat as such.

2. New Israeli Supreme Court Decisions

This section discusses six recent Israeli Supreme Court decisions. Despite some positive developments, taken together, they constitute a further deterioration in the protection of Palestinian prisoners and detainees’ rights.

(a) Supreme Court decision rejecting petition to disclose ISA data on the number of occasions on which detainees were prevented from meeting lawyers in security cases

On 4 January 2011, the Supreme Court rejected a petition filed jointly by rights groups Yesh Din and the Movement for Freedom of Information, which asked the court to order the Israel Security Agency (ISA) to release data on the extent to which it prevents Palestinians suspected of security offenses from meeting with their lawyers.⁷ Such information is not currently published. The petitioners argued that keeping the requested data confidential stifled public debate on the rights of “security detainees”. In its ruling, however, the Supreme Court accepted the state’s argument that the release of the data stood to harm the security of the State. By classifying data on the number of detainees prohibited from meeting their lawyers as confidential information, the Supreme Court is precluding criticism of the ISA’s arbitrary policy of denying Palestinian detainees prompt access to legal counsel. The court is thereby increasing the lack of transparency in the ISA’s operation, encouraging a lack of accountability, and stifling public debate.⁸

⁵ See, e.g., Adalah and the Public Committee Against Torture report: *Exposed: The Treatment of Palestinian Detainees During Operation Cast Lead*, July 2010; Hamoked – Center for the Defence of the Individual and B’Tselem, *Kept in the Dark: Treatment of Palestinian Detainees in the Petach Tikva Interrogation Facility of the Israel Security Agency*, October 2010; B’Tselem and HaMoked, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, May 2007.

⁶ See Abeer Baker, “The Definition of Palestinian Prisoners in Israeli Prisons as “Security Prisoners” – Security Semantics for Camouflaging Political Practice,” *Adalah Review*, vol. 5, 2008.

⁷ HCJ 2662/09, *The Movement for Freedom of Information, et al. v. The Prime Minister’s Office, et al.* (decision delivered 4 January 2011).

⁸ See the Public Committee Against Torture in Israel, *When Exception Becomes the Rule: Incommunicado Holding of Palestinian Detainees*, December 2010.

(b) Supreme Court decision upholding ban on second-degree family visits for Palestinian political prisoners

On 7 October 2010, the Supreme Court upheld the sweeping ban imposed on family visits to Palestinian political prisoners by second-degree relatives.⁹ In 2009, three prisoners petitioned the court demanding the cancellation of Israel Prison Service (IPS) regulations that ban them from receiving visits from their nieces, nephews and cousins. The Supreme Court ruled that the general ban was reasonable and did not violate the prisoners' constitutional right to dignity or their right to a family life in prison. The court further found this denial of contact with the outside world to be reasonable, and therefore that there was no justification to interfere with the IPS's discretion not to allow these visits. However, the court ordered the IPS to reconsider its decision regarding the three appellants and to examine whether they could be allowed visits by second-degree relatives on an individual and exceptional basis, providing the visits did not constitute a threat to the state security. While the appeal was officially accepted and the IPS was compelled to revise its decision regarding the specific petitioners in this case, the court essentially legitimized the sweeping, general ban, and accordingly, such visits will only be allowed in exceptional cases.

(c) Supreme Court decision rejecting petition against secret prison facility 1391

Secret Prison Facility 1391, a military intelligence detention facility, operates in total secrecy and has been used over the years by Israel mainly for the holding and interrogation of foreign nationals. Rights group HaMoked petitioned the Supreme Court in 2003 to demand that it shut down the facility.¹⁰ HaMoked argued that both Israeli and international law included a series of explicit provisions that forbid the operation of secret prisons. During the litigation, the State Attorney's Office announced that an arrangement had been formulated that would greatly reduce the use of the facility for the purpose of incarceration. The court accepted the suggested arrangement and appended it to the judgment as a classified annex. On 20 January 2011, the court ruled that the use of the detention facility, in its current form, while noting the restrictive arrangements undertaken by the state, did not contravene the provisions of Israeli and international law.¹¹ As noted, the arrangement suggested by the state and affirmed by the court was appended to the court's judgment as a classified annex that forms a classified part of the court judgment. While the court often reviews classified material and substantiates its judgment on this basis, creating a "classified annex" is an extremely irregular and extraordinary step. It thus appears that the Supreme Court actually made a secret law.

(d) Supreme Court upholds ban on family visits from Gaza

As of the end of February 2011, there were approximately 695 individuals from Gaza incarcerated in Israeli prisons.¹² In December 2009, the Supreme Court ruled that family

⁹ Request for Appeal 6956/09, *Maher Younis, et al. v. The Israel Prison Service* (decision delivered 7 October 2010).

¹⁰ HCJ 9733/03, *HaMoked: Center for the Defence of the Individual v. State of Israel, et al.* (decision delivered 20 January 2011). Petition for Order Nisi and for Temporary Injunction. See: <http://www.hamoked.org/Document.aspx?dID=3610>

¹¹ See HaMoked's Court Watch commentary on the judgment: <http://www.hamoked.org/Document.aspx?dID=Updates1071>

¹² Figures collected by the Al Mezan Centre for Human Rights, Gaza.

members from Gaza have no right to visit their relatives incarcerated in Israeli prisons.¹³ The ruling came in response to a petition submitted to the court by Adalah, Al Mezan, and the Association for Palestinian Prisoners in June 2008 demanding family visits from Gaza following a total ban imposed by Israel in June 2007.¹⁴ During the litigation, the state argued that it was not obliged to allow residents of Gaza to enter its borders as Gaza was considered an “enemy entity”. In its ruling, the court reasoned that family visits were not a basic humanitarian need; that there were no rights of “aliens” (Palestinians from Gaza) to enter Israel; that the government’s decision stemmed from security reasons that the court was reluctant to interfere in; and that the policy of no entry was not set forth to target prisoners directly. The state argued that prisoners could still buy basic provisions in prison, since their families could transfer money to them. However, in November 2009 Israel banned the transfer of money to Palestinian prisoners unless the family member appears in person in the bank. As a result, families from Gaza, who are banned from entering Israel, are unable to transfer money to prisoners. According to the International Committee of the Red Cross (ICRC), “Palestinian families must be allowed to visit their next of kin in Israeli prisons. This is a humanitarian issue of utmost importance.”¹⁵

(e) Supreme Court decision reaffirming legality of detaining Palestinian prisoners from the OPT in Israel

Human rights organizations Yesh Din, the Association for Civil Rights in Israel (ACRI) and HaMoked filed a petition to the Israeli Supreme Court in March 2009 against the Commander of the Israeli Army in the West Bank, demanding that he be ordered to refrain from holding Palestinian detainees and prisoners from the OPT in prisons in Israel and to halt holding detention proceedings in Israel.¹⁶ The petitioners argued that the current policy violated the Fourth Geneva Convention, in particular articles 76, 66, and 49, which forbid an occupying power from transferring and holding prisoners from an occupied territory in the occupying state. In addition, the petitioners claimed that the policy violated international law and the prisoner’s rights to counsel, due process, and to contact with their families. In the *Sajadiya* case¹⁷ which dealt with the same issue, the Supreme Court ruled that Israel’s incarceration policy was legal, relying on emergency regulations from 1967 for the West Bank and Gaza Strip.¹⁸ In the present case, the court ruled on 25 March 2010 that the *Sajadiya* decision was still valid, and declared that there had been no change in the legal status of the Fourth Geneva Convention or its application in Israel.¹⁹ The court also ruled that holding military court hearings in Israel was legal.²⁰

¹³ See Adalah’s Press Release: http://www.adalah.org/eng/pressreleases/pr.php?file=09_12_10 and Supreme Court Decision (English translation):

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

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

¹⁵ ICRC, *Families should be allowed to resume visits to relatives detained in Israel*, 10 June 2009:

<http://www.icrc.org/web/eng/siteeng0.nsf/html/gaza-news-100609>

¹⁶ HCJ 2690/09, *Yesh Din, et al. v. The Commander of the IDF Forces in the West Bank, et al.* (decision delivered 25 March 2010). See Hamoked’s Press Release and Petition (English):

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

¹⁷ HCJ 253/88, *Sajadiya v. The Minister of Defense*, PD 42(3)801 (decision delivered 8 November 1988).

¹⁸ Article 6(b) the Emergency Regulations (Judea and the Gaza Strip – Adjudication of Offences and Legal Aid) –1967.

¹⁹ Supreme Court decision (Hebrew):

<http://elyon2.court.gov.il/files/09/900/026/N05/09026900.N05.htm>

²⁰ Here the court relied on the *Wajia* decision. HCJ 6504/95, *Wajia Muhammad, et al. v. The State of Israel*.

(f) Supreme Court decision permitting children under eight to have physical contact with their incarcerated parents

In March 2010, the Supreme Court ruled that children under the age of eight years-old were allowed to have physical contact (“hug their parent”) with their incarcerated parents, at least once every two months.²¹ The ruling came in response to a petition filed to the court in 2004 by Adalah in which it demanded that Palestinian prisoners classified as security prisoners be permitted to have physical contact with their young children during family visits. The visits are conducted with a glass wall separating the prisoners from their visitors. Until 2002, the IPS permitted children under the age of ten to hug their parents during the final 15 minutes of a visit. During the litigation, the IPS stated that physical contact was banned on the basis of security threats and the practical difficulties involved. In the various hearings the court sought to establish the acceptable age criterion for children to hug their detained parent. After delays by the IPS, the parties agreed to the court’s recommendation to limit physical contact to children under eight. In its decision the court noted, however, that a prisoner’s individual circumstances needed to be taken in consideration, which in certain cases may prohibit visits.

3. New law severely restricting security detainees’ due process rights & the proposed “Shalit laws”

In December 2010, the Israeli Knesset enacted a new law, the *Criminal Procedure Law (Suspects of Security Offenses) (Temporary Order) (Amendment No. 2) – 2010*, which extends the validity of special detention procedures that apply only to detainees suspected of security offenses and anchors in law further new harsh procedures against them. These special procedures allow the law enforcement authorities to delay bringing a “security detainee” before a judge for up to 96 hours after the arrest (instead of a maximum of 48 hours for any other detainee). It also allows the courts to extend the detention of a security suspect for up to 20 days each time (instead of 15 days for other detainees) and to hold extension of detention hearings in the absence of the detainee.²²

The new law bypasses a Supreme Court decision from February 2010, that struck down article 5 of the Criminal Procedures (Detainees Suspected of Security Offences) (Temporary Order) Law – 2006, which stipulated that “security suspects” could have their pre-trial detention extended in their absence and thus without their knowledge and without the opportunity to defend themselves.²³ The ruling was issued on an appeal submitted by the Israeli Public Defenders’ Office in 2007 on behalf of a detainee following a decision by the lower courts to extend his detention in his absence.

²¹ HCJ 7585/04, *Hakeem Kana’ni, et al. v. The Israel Prison Service* (decision delivered 28 March 2010). See the Supreme Court’s decision (Hebrew):

<http://elyon2.court.gov.il/files/04/850/075/R32/04075850.R32.htm>

²² See Adalah’s position regarding the new law:

http://www.old-adalah.org/eng/pressreleases/pr.php?file=21_10_10

²³ Adalah, ACRI and PCATI also submitted a petition to the Supreme Court demanding that the court annul the law. However, in a rare step, the organizations withdrew the case in 3/09 following an illegal and unprecedented decision by the court to hear ISA secret evidence in this constitutional law case. Since the petition was withdrawn in protest, the constitutionality of additional provisions of the law challenged in the petition was not subject to judicial review. See Adalah’s press release:

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

In addition to the new law governing detention procedures, several proposed bills, collectively known as the “Shalit laws” are currently pending before the Knesset, which seek to impose further severe restrictions on Palestinian prisoners held in Israeli prisons. All of these bills have passed a preliminary vote and enjoy strong, broad-based support among MKs. The purpose of these restrictions is to bring pressure to bear on Hamas to release captured Israeli soldier Gilad Shalit. This is an illegitimate political purpose that cannot be used to justify the denial of prisoners’ basic rights. If approved by the Knesset, these bills would render Palestinian prisoners vulnerable to being used as hostages or bargaining chips in negotiations for prisoner exchanges.²⁴

- The Preventing Visits Bill – 2009 seeks to impose a blanket ban on prisoners who belong to an organization designated as a terror organization from receiving visits in prison.²⁵
- The Restriction of Visitation for a Security Prisoner Bill – 2010²⁶ proposes that any prisoner who belongs to an organization designated as a terror organization that holds an Israeli captive should be denied visits in prison and the right to meeting a lawyer.
- The Release of Captives and Kidnapped Persons Bill – 2009²⁷ states that if an organization designated as a terror organization holds an Israeli captive and demands the release of a specific prisoner held in an Israeli jail, then this prisoner should be placed in “absolute isolation and be prevented from contact with another human being.”
- The Imprisonment of Requested Prisoners – 2009²⁸ states that any prisoner whose release is conditioned on the release of an Israeli held captive by an organization designated as a terror organization should be denied any right that could be restricted on security reasoning, held in isolation indefinitely and not be entitled to early release or parole. Once such prisoners have served their sentence, they should be declared a detainee and continue to be held.

4. UN Human Rights Treaty Bodies

(a) UN Committee Against Torture’s (CAT) Concluding Observations on Israel, June 2009²⁹

The Concluding Observations issued by CAT raise many major concerns regarding the rights of Palestinian prisoners and detainees in Israeli detention facilities and their vulnerability to torture and ill-treatment, including those raised by Palestinian and Israeli human rights organizations,³⁰ as follows:

²⁴ See e.g., Al Mezan Press Release:

http://www.mezan.org/en/details.php?id=10170&ddname=detention&id_dept=9&id2=9&p=center and Adalah, “New Discriminatory Laws and Bills,” November 2010: www.adalah.org

²⁵ In accordance with this bill, such prisoners would only be entitled to visits by the International Committee of the Red Cross (ICRC), and these would be limited to once every three months.

²⁶ Bill no. P/18/2396, passed by the Knesset by a 51-10 majority.

²⁷ Bill no. P/18/829, passed by the Knesset by a 53-9 majority.

²⁸ Bill no. P/18/758, passed by the Knesset by a 54-10 majority, with 1 abstention.

²⁹ See <http://daccess-ods.un.org/TMP/8428522.html>

³⁰ See United Against Torture (UAT) Coalition, *Alternative Report for Consideration Regarding Israel’s Fourth Periodic Report to the UN Committee Against Torture (CAT)*, September 2008 and *Supplementary Reports for Consideration Regarding Israel’s Fourth Periodic Report to the UN Committee Against Torture (CAT)*, April 2009: <http://www2.ohchr.org/english/bodies/cat/cats42.htm>

- *Safeguards against torture and ill-treatment*
 - “The Committee calls upon Israel to examine its legislation and policies in order to ensure that all detainees, without exception, are promptly brought before a judge and have prompt access to a lawyer.” (para. 15)³¹
 - “The Committee recommends that, as a matter of priority, the State party extend the legal requirement of video recording of interviews of detainees accused of security offences as a further means to prevent torture and ill-treatment.” (para. 16).³²
 - “The State party should prohibit by law that any statement which is established to have been made as a result of torture cannot be invoked as evidence [...]” (para. 25)
- *Administrative detention and solitary confinement*
 - “While the State party explains that this practice [of administrative detention] is used only exceptionally [...] the Committee regrets that the number of persons held in administrative detention has risen significantly since its last periodic report.” (para. 17)
 - “The State party should amend current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration.” (para. 18)
- *Israel's secret detention facility 1391*
 - “The State party should ensure that no one is detained in any secret detention facility under its control in the future, as a secret detention center is *per se* a breach of the Convention.” (para. 26)
- *Juvenile Detainees*
 - “[Israeli] Military Order 132 [applicable to West Bank child detainees] should be amended to ensure that the definition of minor is set at the age of 18, in line with international standards.” (para. 27)
 - “[The Committee] expresses deep concern at reports [...] that Palestinian minors are detained and interrogated in the absence of a lawyer or family member and allegedly subjected to acts in breach of the convention in order to obtain confessions.” (para. 27)
 - “The State party should ensure that juvenile detainees are afforded basic safeguards [...] from the outset of their detention.” (para. 28)

(b) UN Human Rights Committee's Concluding Observations on Israel, July 2010³³

In its Concluding Observations, the Human Rights Committee (which monitors the ICCPR) found a large number of violations of Israel's obligations under the ICCPR.³⁴ It

³¹ In May 2010 ACRI and other human rights groups in Israel petitioned the Supreme Court to demand that the initial arrest period for Palestinians, during which they can be held without judicial supervision, must be shortened to an amount of time comparable to that to which Israeli citizens living in the West Bank are subject. In response to the petition, the State Attorney's Office announced on 9 January 2011 that it intended to revise the related military legislation, effectively shortening the length of time that a Palestinian resident of the OPT can be detained without judicial oversight. At a hearing held on 11 January 2011, the Supreme Court ordered the state to consider further shortening the detention periods – particularly the initial period of detention before judicial review – beyond the changes already proposed. See: <http://www.yesh-din.org/postview.asp?postid=148>

³² In December 2010, Adalah and other human rights groups petitioned the Supreme Court of Israel to compel the Israeli police and the ISA to make audio and video recordings of their interrogations of “security suspects”. HCJ 9416, *Adalah v. The Ministry of Public Security* (pending). See Adalah's news update at http://www.old-adalah.org/eng/pressreleases/pr.php?file=21_12_10_1

³³ See <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.ISR.CO.3.doc>

³⁴ See NGO report submitted by Adalah, Al Mezan and Physicians for Human Rights-Israel: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/AdalahAlMezanPHR_Israel97.doc

voiced concerns about Israeli laws, policies and practices that constitute violations of the rights of Palestinians, including torture and ill-treatment, including the following:

- *Torture and ill-treatment (paras. 11-12)*
 - Israel should incorporate into its legislation the crime of torture and completely remove “necessity” as a possible justification for the crime of torture.
 - The Committee is concerned at consistent allegations of the use of torture against Palestinian detainees suspected of security-related offences, and at allegations of complicity or acquiescence of medical personnel with the interrogators. Only a few cases result in criminal investigations and sentences.
 - The Committee is concerned that the Inspector for complaints against Israel Security Agency (ISA) interrogators is a staff member of the ISA and that no complaint has been criminally investigated in the reporting period.
 - The Committee notes with concern that allegations against members of the Israel Defense Forces are being investigated by the Investigative Military Police, a unit subordinate to the Head of General Staff of the armed forces.
 - Israel should ensure that all alleged cases of torture and disproportionate use of force by law enforcement officials are thoroughly and promptly investigated by an authority independent of any of these organs, that those found guilty are punished with sentences that are commensurate with the gravity of the offence, and that compensation is provided to the victims.

- *Administrative detention (para. 7)*
 - Israel should refrain from using administrative detention, in particular for children, and ensure that detainees’ rights to fair trial are upheld at all times.
 - Israel should grant administrative detainees prompt access to counsel of their own choosing, inform them immediately, in a language which they can understand, of the charges against them, provide them with information to prepare their defense, bring them promptly before a judge and try them in their presence.

- *Anti-terrorism legislation (para. 13)*
 - Israel should ensure that definitions of terrorism and security suspects are precise and limited to countering of terrorism and the maintenance of national security and are in full conformity with the Covenant.
 - All legislation, regulations and military orders should comply with the requirements of the principle of legality with regard to accessibility, equality, precision and non-retroactivity.
 - Any person arrested or detained on a criminal charge, including persons suspected of security-related offences, should have immediate access to a lawyer.
 - A decision of postponement in accessing a lawyer or a judge should be able to be challenged before a court.
 - Israel should repeal the Detention of Unlawful Combatants Law.

- *Ban on contact between prisoners and their families (para. 21)*
 - Israel should reinstate the family visit program supported by the International Committee of the Red Cross for prisoners from the Gaza Strip and enhance the right of prisoners suspected of security-related to maintain contact with their families, including by telephone. The Committee expressed its concern that the Israeli Supreme Court upheld the ban on family visits to Palestinian prisoners in Israel and that detainees suspected of security-related offences are not allowed to maintain telephone contact with their families.

- *The blockade on Gaza* (para. 8)
 - The Committee is concerned at the effects of the blockade on the civilian population in the Gaza Strip, including restrictions to their freedom of movement, some of which led to deaths of patients in need of urgent medical care, as well as restrictions on the access to sufficient drinking water and adequate sanitation. Israel should lift its military blockade of the Gaza Strip, insofar as it adversely affects the civilian population.

- *“Operation Cast Lead”* (para. 9)
 - Israel’s armed forces have opened few investigations into incidents involving alleged violations of international humanitarian law and human rights law during its military offensive in the Gaza Strip, which led to one conviction and two indictments.
 - The Committee notes with concern that the majority of the investigations was carried out on the basis of confidential operational debriefings.
 - Israel has not yet conducted independent and credible investigations into the serious violations of international human rights law, such as direct targeting of civilians and civilian objects, including infrastructure such as waste water plants and sewage facilities, use of civilians as “human shields”, refusal of evacuation of wounded, firing live bullets during demonstrations against the military operation and detention in degrading conditions.
 - Israel should launch credible, independent investigations into the serious violations of international human rights law.
 - All decision makers, be they military and civilian officials, should be investigated and where relevant prosecuted and sanctioned.

- *Extra-judicial executions* (para. 10)
 - The Committee reiterates its concern that, since 2003, Israel’s armed forces have targeted and extra-judicially executed 184 individuals in the Gaza Strip, resulting in the collateral unintended death of 155 additional individuals. Israel should end its practice of extra-judicial executions of individuals suspected of involvement in terrorist activities.
 - It should further ensure that utmost care is used to protect every civilian’s right to life, including civilians in the Gaza Strip.
 - Israel should establish an independent body to promptly and thoroughly investigate complaints about disproportionate use of force.

- *Home demolitions and unjust housing policies* (para. 17)
 - The Committee is concerned at frequent administrative demolition of property, homes, as well as schools in the West Bank and East Jerusalem, and at discriminatory municipal planning systems, in particular in “area C” of the West Bank, as well as East Jerusalem, disproportionately favoring the Jewish population of these areas.
 - The Committee reiterates that Israel should cease its practice of collective punitive home and property demolitions.
 - Israel should review its housing policy and issuance of construction permits with a view to implementing the principle of non-discrimination regarding minorities, in particular Palestinians and to increasing construction on a legal basis for minorities of the West Bank and East Jerusalem.

(c) Committee on the Rights of the Child's (CRC) Concluding Observations on Israel's Implementation of the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, January 2010³⁵

The Concluding Observations raise a number of key concerns about Palestinian child prisoners and detainees in Israeli detention facilities, including the following:³⁶

- *Military courts*
 - “The Committee furthermore notes with concern information regarding attempts to incorporate juvenile justice standards within military courts.” (para. 33)
 - “The Committee urges the State party to never hold criminal proceedings against children in military courts and not subject children to administrative detention.” (para. 35)

- *Administrative detention*
 - “The Committee is disturbed over information indicating that children have been subjected to administrative detention orders for renewable periods of up to six months.” (para. 34)

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

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

³⁵ See <http://www2.ohchr.org/english/bodies/crc/docs/CRC-C-OPAC-ISR-CO-1.pdf>

³⁶ See Defence for Children International-Palestine Section, *Joint NGO report on child recruitment practices in Israel-OPT*: <http://www.dci-pal.org/english/display.cfm?DocId=1403&CategoryId=2>

(d) UN Committee on the Elimination of Discrimination against Women's (CEDAW) Concluding Observations on Israel, February 2011³⁷

The CEDAW Committee's recent Concluding Observations included the following on female Palestinian prisoners:

- *Palestinian female prisoners*
 - "The Committee is seriously concerned at the situation of Palestinian women in detention. In this respect, the Committee expresses its concern with respect to the harsh detention conditions of Palestinian female prisoners as well as their treatment during detention." (para. 40)
 - "The Committee notes with concern that the detention of Palestinian female prisoners outside the Occupied Territories obstructs regular family visits." (para. 40)
 - "The Committee urges the State Party to ensure humane detention conditions and treatment of Palestinian women during their arrest, interrogation and detention." (para. 41).

(e) UN Human Rights Council Report of the United Nations Fact Finding Mission on the Gaza Conflict (the Goldstone Report), September 2009³⁸

The Missions' Concluding Observations and Recommendations raise a number of important issues regarding the detention and imprisonment of Palestinians by Israel.

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

³⁷ <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ISR-CO-5.pdf>

³⁸ <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

- “The Mission recommends that Israel should forthwith cease interference with national political processes in the Occupied Palestinian Territory, and as a first step release all members of the Palestinian Legislative Council currently in detention and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning.” (para. 1972f)

-- END ---



**THIS PROJECT IS FUNDED BY THE EUROPEAN UNION
JOINT PROJECT OF ADALAH, AL MEZAN (GAZA) AND PHYSICIANS FOR HUMAN RIGHTS-ISRAEL**

The contents of this paper are the sole responsibility of Adalah, Al Mezan (Gaza) and Physicians for Human Rights-Israel and can in no way be taken to reflect the views of the European Union