



Al Mezan Center for Human Rights

Documentation Report on:

Torture and other Forms of Cruel, Inhumane and Degrading Treatment against the Palestinian Population in Gaza Strip by IOF



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Executive Summary

This field report, covering a two-year period from 1 May 2009 to 30 April 2010, documents the use of torture and cruel, inhuman and degrading treatment by Israel against Palestinians in the Gaza Strip.

Both torture and cruel, inhuman and degrading treatment (T/CIDT) are in violation of the Convention Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR) both of which were ratified by Israel in 1991. The use of T/CIDT is also in violation of the Fourth Geneva Convention (Art. 33 and Art. 147), which is applicable in the occupied Palestinian territory (oPt).

In Israel, a culture of impunity for those who practice torture against Palestinians has developed and policies exist and are used by the Israeli military, intelligence, police and prison service which maintain the systematic use of torture.

As this report shows, Israel continues to arrest and detain Palestinians from Gaza, including children, patients, fishermen and rubble collectors close to the border fence, and exercises T/CIDT against them. Palestinian prisoners are denied the protections owed to them under international law and are subject to T/CIDT because they are Palestinians. Prisoners are tortured while under interrogation, are placed in cells which are unfit for humans to live in and many have been left in solitary confinement for extended periods of time. In addition, Israel continues to use administrative detention against an excessively high number of Palestinians and for prolonged periods of time. Moreover, Israel labels many Palestinians from the Gaza Strip as 'unlawful combatants' which denies them further protections and allows Israel to place them in prolonged detention.

Also recorded are the policies and practices implemented by Israel to maintain the policy of closure and siege (also referred to as "the blockade") of Gaza, which result in T/CIDT. Israel still maintains effective control over the Gaza Strip which involves controlling the borders and sea. The blockade restricts the movement of people and goods into and out of the Gaza Strip. This results in the denial of patients' access to medical treatment outside the Gaza Strip and their frequent coercion into providing information to the Israeli intelligence agency under the threat that they will not be granted permission to leave Gaza via Erez to obtain the medical treatment they require. The Israeli military has also carried out thousands of house demolitions since the beginning of the occupation in 1967 which has forcibly displaced tens of thousands of Palestinians. The ban on the entry of building materials due to the blockade has meant many of those whose homes have been demolished are still homeless because they cannot rebuild.

This report also highlights and explores policies and incidents which, while they may not clearly fall under the classic definition of T/CIDT, still cause severe pain and suffering to civilians and therefore merit further exploration and legal research. These policies include the denial of humanitarian access (occurring in addition to the denial of healthcare to patients) and the ill-treatment of civilians, including farmers, herders, civilians collecting rubble and scrap, and those protesting the buffer zone and forced displacement, near the border fence (in the buffer zone) who have been arrested and/or shot at for nothing more than being present in this area.

This report records cases of T/CIDT which have been documented by Al Mezan over the period of two years, between 1 May 2009 and 30 April 2011. Along with describing the Israeli policies and practices, affidavits are provided from victims who have suffered due to these policies and practices.

Main findings documented by Al Mezan over the 2 year period covered by this report:

- Since 2009, at least 15 Palestinian Gaza residents have been detained as unlawful combatants, six of whom are still in detention.

- 85 documented cases of Palestinian detainees who were subjected to torture in Israeli prisons.
- Around 50 Palestinian prisoners are being held in solitary confinement in Israeli prisons for various reasons, mostly for punitive or security reasons.
- 1,500 out of 80,000 cases in the West Bank were denied entry for family visits to prisons inside Israel.
- There were 75 attacks against fishermen.
 - As a result of these attacks, 2 fishermen were killed and 8 were injured.
- At least 65 fishermen were arrested, four of whom were minors, most subjected to ill treatment and/or torture.
- The Israeli Security Authority (ISA) rejected 856 applications for permits from patients seeking to cross Erez for medical treatment. 1,902 other requests for permits were delayed. 553 patients were asked to appear at Erez for an interview and interrogation by the ISA.
- Six patients died while waiting for their permits to be issued, including three children and one woman.
- There were 12 cases of patients or their escorting relatives being arrested at Erez crossing.
- There were 252 shooting incidents in the buffer zone.
 - 26 people, including 6 children and 2 women, were killed as a result
 - 142 people sustained injuries, including 39 children and 2 women.
- There were 38 military attacks against areas near the borders, in which 17 homes sustained either total or partial damage, causing the forced displacement of 158 residents.
- 38 rubble and scrap collectors, 4 of whom were children, were arrested by the IOF during limited IOF incursions into the Gaza Strip and most were subjected to ill treatment and/or torture.

The above incidents are clear violations of the absolute prohibition on torture and cruel, inhuman and degrading treatment as outlined in international law.

In addition to these violations, the Israeli-imposed blockade has increased food insecurity, poverty and unemployment levels, decreased the quality of healthcare and left families homeless, all of which has caused untold suffering for the entire population. The essence of the policy of blockade is cruel, inhuman, and degrading treatment of the population at large, a *prima facie* violation of the terms of the CAT. The Committee Against Torture has recognized the effects of the blockade in this regard in its recent concluding observations on Israel's adherence to its obligations under the CAT. This suggests that the blockade on Gaza and the collective punishment resulting from it fall within the scope of the CAT.

Recommendations:

To the international community:

- Act upon obligations and exert pressure on Israel to abolish T/CIDT, end the siege of Gaza, and comply with legal obligations to investigate and punish violations of international law, especially T/CIDT, committed by its security authorities.

To the United Nations General Assembly:

- Refer the report of the UN fact-finding mission on the Gaza conflict to the Security Council with a recommendation to secure justice and accountability, as long as Israel remains unwilling to act on its obligation to investigate and punish the gross violations of human rights, including the ongoing T/CIDT.

To the European Union:

- Make a clear reference to the importance of abolishing T/CIDT in its political, technical, and trade relations with Israel, especially in the new Human Rights Country Strategy as well as the review of the Neighborhood Policy, in which T/CIDT needs to be highlighted further.

Introduction

“The International Day in Support of Victims of Torture is an occasion to underscore the internationally recognized right of all men and women to live free from torture. It is an opportunity to reaffirm our collective commitment to prohibit torture and all cruel, inhuman and degrading treatment or punishment.” - United Nations Secretary-General Ban Ki-moon, Message for the International Day in Support of Victims of Torture 2010.¹

Al Mezan Center for Human Rights' (hereinafter Al Mezan) documentation of human rights violations in the Gaza Strip indicates that the Israeli Occupation Forces (IOF) have used torture and other forms of cruel, inhuman, and degrading treatment against the Palestinians of Gaza during the period covered by this report. In Israel, a deeply-entrenched reality of impunity is prevalent, which hinders justice but also sanctions torture and other forms of cruel, inhuman and degrading treatment (T/CIDT) of Palestinians. These actions are in complete violation of international human rights law (IHRL) and international humanitarian law (IHL), both of which are applicable in the occupied Palestinian territory (oPt).

In April 2009, Al Mezan began a joint project with the Adalah: The Legal Center for Arab Minority Rights in Israel and Physicians for Human Rights-Israel (PHR-I) and funded by the European Commission with the aim to combat T/CIDT by Israel against the Palestinians. Al Mezan is responsible for monitoring and documenting Israeli violations related to torture and ill-treatment against the Palestinian population of the oPt with a focus on the Gaza Strip. This report presents Al Mezan's findings of its documentation under this project. The identification of incidents and/or practices that fall under torture and CIDT is mainly guided by the jurisprudence of the Committee Against Torture (CAT) and the Human Rights Committee (HRC). There is also an attempt to provide new trends, which may not fall under the strict definition of T/CIDT; however, certain components of these practices might constitute ill treatment. These practices are mentioned in a separate section.

Bearing in mind the special situation of the oPt, particularly the Gaza Strip where Israel has continued to exercise a high level of effective control over the territory, there exists a combination of practices and policies that violate the absolute prohibition of T/CIDT which exists in international law. This includes detaining Palestinians, including patients and fishermen, and exercising torture and ill-treatment against them. Israel lifts basic legal protections owed to Palestinians to detainees. Many of those are treated as ‘unlawful combatants’. Israeli law allows for prolonged detention of Palestinians without proper judicial oversight or meeting with a legal counsel. In Gaza, the IOF restricts patients’ access to medical treatment outside the Gaza Strip. Moreover, during incursions into the Gaza Strip, the IOF uses civilians as human shields and destroys homes for many reasons, including as punishment. Restrictions on the movement of civilians’ from and into Gaza, frequently when access is needed to meet humanitarian needs, also causes severe suffering.

This report provides information documented by Al Mezan on these types of practices that occurred in the Gaza Strip during the first and second project years, i.e. the period from 1 May 2009 to 30 April 2011 inclusive. The first section of the report presents information about the employment of T/CIDT against Palestinians who are detained by the IOF, including children, fishermen and patients.

The second section covers practices that are linked to Israel’s closure and blockade of the Gaza Strip, which produces violations that constitute T/CIDT. This includes denial of patients’ access to healthcare outside the Gaza Strip, but also the treatment of patients when they come in contact with the Israeli security forces, particularly at Erez crossing. The report notices that patients are frequently coerced, that is, asked to provide information to the Israeli intelligence agency (the *Shabak*) under the threat that they will not be granted permission to access healthcare if they refuse to comply. This section also provides information about home demolitions and forced displacement in Gaza.

¹ See <http://www.un.org/apps/sg/sgstats.asp?nid=4635>

In the third section, new trends in human rights violations are raised, which, while they may not clearly fall under the definition of T/CIDT, frequently cause severe pain and suffering for civilians and, therefore, merit investigation to consider if they contain components which amount to T/CIDT. This includes prohibition of humanitarian access and the treatment of civilians near the borderline between the Gaza Strip and Israel, including civilians and farmers who protest forced displacement and civilians who have been impoverished by the closure and blockade and now survive by collecting gravel and other materials.

The report ends with a brief legal analysis and recommendations to international community.

Torture and Ill-treatment of Palestinians in Detention

1. Torture and Ill-treatment of Palestinians in Detention

1.1. Torture and ill treatment of Palestinian detainees and prisoners

On 6 September 1999, the Israeli Supreme Court laid out a set of interrogation methods used for interrogating detainees (mostly Palestinians) detained for security reasons by the Israeli Security Agency (ISA) which it deemed illegal. These methods include violent shaking, holding and tying the detainee in painful positions, sleep deprivation, covering the detainee's head with a sack, and playing loud music. The decision came in response to seven petitions filed by human rights organizations on behalf of Palestinian detainees who were subject to torture by these methods.² However, the same decision allows the interrogators to resort to what is called 'the necessity defence'³ to protect themselves (the interrogators) if they use methods prohibited by the law or the Court ruling. According to this 'necessity defence' principle, the ISA interrogators can torture detainees if they consider them to be 'ticking bombs', that is, if the ISA believes they constitute an immediate threat to public safety. Thus, in practice, the Court left a loophole for practicing torture with impunity if the ISA interrogator receives approval from his/her supervisors.⁴

Israel's justice system also allows for regulations and policies that violate the minimum standards of fair trial, under which most torture and ill treatment-related practices occur. Those include administrative detention, that is, detention without appropriate trial or charge, of Palestinians from the West Bank. Administrative detainees are stripped of the ability to challenge the evidence on which basis they are detained because the evidence is considered classified and therefore cannot be revealed to the detainee, his/her lawyers, or to a regular trial.⁵ Administrative detention continues to be used by Israel arbitrarily in the current context of cruel and degrading treatment even though CAT has demanded that Israel review its regulations related to the administrative detention. CAT deemed this type of detention as contravening Article 16 of the Convention (Against Torture) "because, among other reasons, it is used for 'inordinately lengthy periods,'" and noted that it deprives detainees of basic safeguards, including the right to challenge the evidence that is the basis for the detention.⁶ As of April 2011, there were approximately 192 Palestinian administrative detainees held in Israeli prisons and detention centres.⁷

With regard to detainees from the Gaza Strip since the implementation of Israel's unilateral disengagement plan in September 2005,⁸ Israel has started to detain Gazans as "unlawful combatants", under the Unlawful Combatants Law No. 5762-2002 and its amendment of 2008. According to this law, the IOF can "detain Palestinians falling into the category of "unlawful combatants", who are described as 'combatants who are **believed to have taken part in hostile activity** against Israel, **directly or indirectly**' for a period of up to 14 days without any judicial,"⁹ noting that "[D]etention orders under this law can be renewed indefinitely; evidence is neither made available to the detainee nor to his lawyer and, although the detainees have the right to petition to the Supreme Court, the charges against them are also reportedly kept secret".¹⁰ Review for prolonged periods of time on the basis of confidential evidence and keep them in isolation. The IOF can also strip them of a large body of the legal protections owed to

² Israeli Supreme Court decision 94/51000, the Public Committee against Torture in Israel v. the State of Israel. See Torture and Abuse Under Interrogation by the Israeli General Security Service, B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, http://www.btselem.org/torture/torture_by_gss

³ Israeli Supreme Court Decision, report on the Implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Israel" http://www.stoptorture.org.il/files/Report%20CAT%20Israel_EN_for%20web.pdf

⁴ Interview with attorney Lea Tsemel, who represented the Public Committee Against Torture in Israel in the torture cases at the Israeli Supreme Court, Adalah's newsletter volume 61, <http://www.adalah.org/newsletter/eng/jun09/13.php>

⁵ The explanations of the State of Israel in its report submitted to the CAT see Para. 17, CAT Concluding Observations on Israel, 42nd session (27 April-15 May 2009), available online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/431/65/PDF/G0943165.pdf?OpenElement>.

⁶ See Ibid, Para. 17 of the Concluding Observations of CAT.

⁷ An interview with Mr. Abdel Nasser Ferwana, an expert on Palestinians prisoners' affairs, on 11 July 2011.

⁸ According to this plan, Israel removed all the Jewish settlements from the Gaza Strip and redeployed its forces around it, but with maintaining full control over Gaza's borders, space and sea.

⁹ See supra, CAT Concluding Observation, Para 17.

¹⁰ Ibid.

persons deprived of their freedom. Since 2009, at least 15 Palestinian Gaza residents have been detained as unlawful combatants, six of whom are still in detention.¹¹

IOF arrests of Palestinian children and depriving them from basic guarantees provided for by Israeli law have also continued, contrary to the prohibition on similar treatment of their Israeli counterparts. ISA interrogators are obliged to inform minors' families about interrogating their children as suspects or give them the opportunity to attend the interrogation.¹² Moreover, Israeli orders, applicable in the West Bank, determine adulthood as 16 years and above, while it is 18 for Israelis.¹³ Thus, Palestinian minors are treated as adults. Moreover, Israel continues to detain Palestinian minors in prisons inside Israel, in violation of IHL (except for one prison facility – the Ofer prison close to Ramallah), which prevents them from having family visits because many Palestinians from the West Bank are denied entry to Israel for security reasons and the long distances may make visits even where the relatives have the correct permits unfeasible. Israel informed the CAT that 1,500 out of 80,000 cases were denied entry for family visits to prisons inside Israel.¹⁴

Moreover, Israeli law allows ISA officers to decide not to allow Palestinian detainees to meet with their lawyer for a period up to 21 days. It also allows for detention up to 96 hours without presenting the detainee before a judge. Dozens of Palestinian prisoners are held in solitary confinement for long periods of time.¹⁵

According to information collected by Al Mezan from the victims of torture in the Gaza Strip and the West Bank during the two-year reporting period, Israeli interrogators systematically employ certain methods of torture during interrogating Palestinian detainees. These methods include:

- The '*shabah position*'; i.e. binding detainees to a chair in the interrogation room, with their hands cuffed behind them in a position that victims say is initially uncomfortable, but, as time passes, causes severe pain. Sometimes, interrogators bind the cuffs to the back of the chair which makes the detainee's back curved in an arch-shape, causing them even more pain. The interrogators may also tightly bind detainees' legs to the chair, causing them pain and swelling.
- Sleep deprivation by means of continuous, or nearly continuous, interrogation causing pain and distress, which leads the victim to a state of confusion where he/she is far more likely to confess to whatever the interrogators want them to confess to.
- Isolation from the outside world, including preventing detainees from meeting with a lawyer during the interrogation, which increases their vulnerability and pressures them to comply with interrogators' demands for information. In periods between interrogation sessions, the interrogated persons are usually detained in narrow cells with an area ranging from three to six square meters. The cells are without windows, natural light does not enter them and electric lights are on all the



Hany Abu Yousef; tortured and beaten by Israeli police in May 2010 (Photo: Al Mezan)

¹¹ According to information obtained by Al Mezan from its lawyers who represented several cases of alleged 'unlawful combatants' as well as information from the Palestinian Ministry of Prisoners Affairs in May 2011. For more information on the issue of 'unlawful combatants' in Gaza, please consult Al Mezan's report "[Unlawful Combatants: The Violation of Gazan Detainees' Rights in Israeli Prisons](http://www.mezan.org/en/details.php?id=8596&ddname=detention&id_dept=9&id2=9&p=center)" and Al Mezan's press release on the issue at http://www.mezan.org/en/details.php?id=8596&ddname=detention&id_dept=9&id2=9&p=center.

¹² See Article 9 of the Israeli Juvenile Law.

¹³ See *ibid*, Para. 27, CAT Concluding Observations.

¹⁴ See *ibid*, Para. 28, CAT Concluding Observations on Israel.

¹⁵ *Ibid*.

time. There is often a very bad smell coming from a toilet inside the small cell. In many cases, victims reported that cells were infested with insects.

- Interrogators use verbal abuse against detainees in a way that disrespects their honour and dignity causing them emotional torment.
- Interrogators frequently slap detainees on the face and cause physical and emotional pain to them. This is in addition to the beating detainees receive during arrest and transport to interrogation centres.¹⁶

Affidavit of Nahedh Mohammed Ali Abed-Rabbo

Nahedh Mohammed Ali Abed-Rabbo, 49, was detained by the IOF in 2008. He complained to Al Mezan after being released in July 2010 about being subjected to torture and ill-treatment by IOF.

In the midday hours of Sunday 2 March 2008, Nadedh was detained by the IOF while he was in his home in Ezbet Abed-Rabbo in the town of Jabalia, in the north east of the Gaza Strip.

Photo of Nadedh Ali Abed-Rabbo (Al Mezan)



He was arrested during an Israeli incursion in the area and was subject to ill treatment and torture from the moment he was arrested. He was beaten by IOF soldiers after they asked him if he had weapons. He told them he had no weapons, but two soldiers started to kick him with their feet. "The interrogation lasted for about 40 minutes during which time they were asking me about weapons and beating me", he said.

The soldiers then took him handcuffed with plastic cuffs and blindfolded to an Israeli military site. They put him in a small cell still with his hands cuffed and his eyes blindfolded for one day, after which they transferred him to Ashkelon prison. He was put in a cell that he described as 1.5m wide and 2m long, which was dirty and had toilet inside it. He was then referred to an interrogation room where he was seated on a chair and his hands bound to the back of the chair in a way that made his back arch. His legs were bound to the front legs of the chair. He stayed at the interrogation room for about 42 days, during which he was not allowed to meet a lawyer and was bound to the chair for the entire time. Nahedh stated that four interrogators were alternately interrogating him. He slept for short intervals only, an hour or two at a time, when the interrogators left the room. He had to sleep while bound to the chair. There was a young female interrogator who would splash water on him when she saw him sleeping to wake him up. Nahedh said that the interrogation was about the same accusation. He said he felt severe pain in his shoulders and hands and had continuous headache during the interrogation. He complained to the interrogators and they told him "confess and you will rest." Sometimes they gave him painkillers (paracetamol).

Nahedh said that he passed out four times due to extreme exhausted. When he woke up he found himself laid on the ground in the interrogation room and there was medical solution being injected in his arm by doctors standing around him. He was left for one or two days lying on a mattress on the ground in the same room without being interrogated, with the solution in his arm. Doctors would come to the room and give him medication, but when he complained to them about the interrogation conditions he saw them taking notes on paper.

After he recovered each time, he would be bound to the chair again and exposed to the same torture and abuse. He said interrogators frequently spat on his face and cursed him and his faith. They splashed water on his face during interrogation and played very loud music for about five minutes at a time. This happened for four times during which Nahedh felt pain in his ears. The interrogation room was dark during the interrogation.

¹⁶ These methods of torture were reported in affidavits of Palestinian detainees to Al Mezan. They are also asserted in reports based on analyzing complaints and affidavits for non-governmental organizations in Israel top of them the Public Committee Against Torture in Israel, HaMoked: Center for the Defense of Individual and B'Tselem. See implementation of UN Convention Against Torture. Ibid.

Nahedh also stated that after the interrogation was over he kept suffering from headaches and severe pain in the legs and arms. He found he had lost about 12 kilograms. He was sentenced to 30 months imprisonment based on evidence extracted from him under torture. He served his sentence at three different prisons. He asked the prison doctor to give him medicine, but all he got was daily paracetamol pills and yellow pills that made him sleep for about four hours when he took them. Nahedh was referred to the Ramle Hospital, to which detainees are referred in Israel, about six times. He was allowed to go to the hospital once every three months. However, these visits did not make him feel better. When he was released, on 21 July 2010, Nahedh continued to get medical care at the Shifa Hospital in Gaza City, where doctors informed him that he suffered from nerve spasms in his hand. He could not hear in his left ear and he needs an ear implant. Doctors could not diagnose the reason behind the ongoing headache.

During the reporting period Al Mezan documented **85 cases** of Palestinian detainees who were subjected to torture in Israeli prisons. In their affidavits, **54% of them stated that they were subject to torture** when they were arrested, **74% stated that they were subject to the above-mentioned *shabah* position** at the interrogation chair, **47% stated that they were subject to sleep deprivation** during interrogation, **71% reported that they were not allowed to meet a lawyer**, 84% stated that they were detained in a cell, 68% stated that there were insects in the cell, 72% stated that the cell had a bad smelling toilet in the cell, and **20% stated that they were beaten during interrogation**.

There are currently around 50 Palestinian prisoners held in solitary confinement in Israeli prisons for various reasons, mostly for punitive or security reasons.¹⁷

1.2 Treatment of Palestinian Fishermen

The IOF imposes severe restrictions on Palestinian fishermen's movement in the sea off Gaza's coast. The IOF often enforces the restricted fishing zone by force, including opening fire on fishermen and preventing them from fishing, even when they are within the 3-nautical-mile permitted fishing zone. As a result, fishermen have become among the most vulnerable, neediest and poorest population groups in the Gaza Strip. There are about 4,400 fishermen in Gaza, of whom 3,700 are registered with the Palestinian Fishermen's Syndicate. 65,000 people rely on fishing to live.¹⁸ During the past decade, starting in 2002, the IOF reduced the fishing zone from 20 nautical miles, as stipulated by the agreements with the Palestine Liberation Organization, first to 12 nautical miles. In October 2006 this zone was further reduced to six nautical miles¹⁹ and in January 2009, following Israel's latest assault on the Gaza Strip (Operation Cast Lead), the IOF announced another restriction, this time limiting the permitted fishing zone to three nautical miles.²⁰ These restrictions mean Palestinian fishermen can only catch small fish in the shallow waters near the beach or risk crossing the Egyptian-Gaza marine borders to buy fish from Egyptian fishermen.

Moreover, the IOF chases and opens fire on fishermen on almost a daily basis, forcing them to leave the sea. According to Al Mezan's documentation, many of such incidents occur inside the permitted fishing zone. On many occasions, the IOF also arrests fishermen, subjects them to ill treatment, and/or confiscates their fishing equipment and boats. During this reporting period, Al Mezan documented 75 attacks against fishermen. As a result of these attacks, two fishermen



Awad As Sa'idi; Fisherman shot by IOF with a bullet in the back by Anfalab, PIR, and Al Mezan, June 2011. (Photo: Al Mezan)

¹⁷ Fact sheet on Solitary Confinement of Prisoners and Detainees in Israeli Prisons, Al Mezan, June 2011. Ibid

¹⁸ See "*Between a fence and a Hard Place*" Report pages 10 and 11 by the Office of the Coordination of Humanitarian Affairs (OCHA) http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf.

¹⁹ The Oslo Accords between the Palestinian Liberation Organization and Israel granted Palestinian fishermen the right to fish within a zone of 29 nautical miles in the sea of the coast of Gaza.

²⁰ See supra, OCHA report, Note 19.

were killed and eight fishermen were injured. In these cases fishermen are highly vulnerable to violation as they are at the receiving end of a desperate situation in the sea.

Affidavit of Yaser Naser Baker

At approximately 11:15am on Wednesday 16 March 2011, an Israeli naval vessel opened fire on around 20 Palestinian fishing boats. As a result, Yaser Naser Baker was injured by a bullet to the right side of his torso and fell into the sea. Yaser, his father, and his brother Allam were on board a hasaka (small fishing boat) which was opposite the coastal town of Beat Lahyia, about 2.5 nautical miles west to the demarcation line in North Gaza district when the Israeli gunboat opened fire at them. Yaser's father managed to put him on another hasaka owned by his cousin, Khader Hasan Baker, who then took him to the Shifa Hospital in Gaza City. He underwent surgery to extract the bullet. Yaser doesn't know why the IOF opened fire at him while he was fishing in the permitted fishing zone. Yaser now cannot move easily, work, or go to his university.

During the same reporting period, the IOF arrested at least 65 fishermen, four of whom were minors. According to Al Mezan's documentation, the IOF followed a pattern of procedures which appear to form a specific security protocol for arresting fishermen because most of fishermen received similar ill treatment when they came into contact with the IOF. In all of the cases, the Israeli soldiers ordered the fishermen to stop fishing and to turn off the engines of their *hasakas*. The IOF then ordered fishermen to take off their clothes and swim towards the Israeli boats where they were handcuffed, arrested and carried by boat into Israel. Fishermen have received the same treatment during the cold winter season, which has caused illness to many of them. In their affidavits to Al Mezan, fishermen stated that the IOF kept them without clothes for several hours, also in the winter. They also stated that IOF soldiers kept their hands cuffed with plastic ties and their eyes blindfolded for long hours. During the detention period, which mostly took place at the port of Ashdod in Israel, Palestinian fishermen were forced to wait with their hands cuffed and their eyes blindfolded without being offered food for many hours. In all of the cases the IOF always interrogated and put pressure on the detained fishermen to extract information from them. In most of the cases the IOF released the detained fishermen on the same day, but some were kept in detention for longer periods of time.

Despite having radios, Gazan Fishermen have never been warned by the Israeli navy before they were attacked. On the contrary, fishermen reported that the Israeli navy interfered with their radio communications hundreds of times, a clear violation of international maritime law. The Israeli navy possesses advanced communications technology which enables it to safely warn Palestinian fishermen and instruct them instead of using violent and degrading methods to enforce restrictions.

Affidavit of Hijazi Al Laham

At approximately 11:00am on Saturday, 19 February 2011, fisherman Hijazi Al Laham, 26, his uncle Mustafa Al Laham, 42, and Mahmoud Al Laham, 29 were sailing opposite the harbour in Rafah in the south of the Gaza Strip. They were about two nautical miles from the separation fence between Gaza and Egypt and about 3 nautical miles from the Gaza shore when an Israeli gunboat moved towards them from the west. The fishermen took their fishing nets out of the water and sailed to the north. At that point, the Israeli gunboat got closer to them and spoke to them in Arabic, using a megaphone. It said 'stop or I will shoot you'.

They switched the engine off then the same voice ordered them to raise their hands in the air, which they did. The Israeli gunboat continued to circle around the hasaka, then stopped about 60 meters from them. Israeli soldiers ordered them to take off their clothes and to keep only their underwear on. They then ordered them to jump into the water one after the other and to swim towards the gunboat. The

three fishermen complied and swam towards the gunboat.

Hijazi said that he felt very cold as it was winter and the water was icy cold. He swam for 60 meters until he reached the gunboat where an Israeli soldier handcuffed his hands behind his back with plastic ties and blindfolded his eyes. The soldiers left him undressed in the cold weather. 20 minutes later, Hijazi sensed that the gunboat was sailing fast northwards. Hijazi was shivering and could not speak because he was so cold. One soldier then untied the hand cuffs and undid the blindfold.

At that point, Hijazi saw an Israeli soldier giving him a light shirt and a pair of trousers, which were green. Hijazi put them on and was then led, along with Mustafa and Mahmoud, by Israeli soldiers off the gunboat to the harbour. Hijazi believes that the harbour was the Israeli port of Ashdod. After that, an Israeli soldier handcuffed and blindfolded Hijazi again. Hijazi was told to walk then ordered to sit down on the ground. Hijazi was still feeling cold.

About half an hour later two persons made Hijazi stand and made him walk for about 30 metres. They then sat him on a chair and undid the blindfold and the handcuffs. Hijazi saw a man dressed in civilian clothes sitting behind a desk and there was a man also dressed in civilian clothes standing beside him who introduced himself as a doctor. The doctor made a quick examination of Hijazi and asked him if he suffered from any illnesses. The man who was sitting behind the desk spoke and said that he was an Israeli officer without mentioning where he worked. The officer asked Hijazi why he was out at sea, to which Hijazi replied that he was a fisherman.

An Israeli soldier then gave Hijazi a cell phone and asked him to talk to the person who was on it. Hijazi took the phone and talked with a man who introduced himself as an officer at the ISA and asked Hijazi “what were you doing there? You came here to commit a suicide bombing?” Hijazi told him that they were fishing. The ISA officer then said “I will come and see you in half an hour”. Hijazi then was handcuffed, blindfolded and taken back to the place where he sat before with Mustafa and Mahmoud.

About thirty minutes later, Hijazi was led once again to the same room, where he was questioned by a person who introduced himself as an ISA officer. The officer ordered Hijazi to take off his clothes and searched him. The officer showed Hijazi a map of the area where Hijazi lives on a computer screen. The officer asked him about his neighbours' houses, some of whom were members of security forces in the port of Khan Younis. After interrogation, Hijazi was taken to the same place where his colleagues were sitting. He was still feeling cold and by now was very hungry as the soldiers had not provided them with proper food, just a small piece of bread each. At approximately 9:00pm that same day, soldiers led Hijazi and his colleagues to another location. They were cuffed with metal handcuffs and were ordered to get into a car that drove them to Erez crossing, in the north of the Gaza Strip. The soldiers released the three fishermen at Erez crossing.

Hijazi felt a severe headache and was shivering, so he went to Nasser Hospital in Khan Younis where doctors told him he was ill due to being exposed to very cold temperatures and gave him medication. The hasaka was confiscated by the IOF and was never returned to Hijazi. Hijazi is now unemployed.

1.3 Arrest and ill treatment of Palestinian patients²¹

Evidence indicates that the IOF exploits Gaza patients' need to access medical treatment outside the Gaza Strip to obtain intelligence information from them. In this context, many patients and/or relatives escorting patients to hospitals are arrested and interrogated by the IOF as they arrive at Erez Crossing. There is a procedure that patients have to follow in order to apply for permission to leave Gaza Strip via Erez. The procedure, which is part of the security check applicable to Gazans who need to cross Erez, requires some patients to go to Erez crossing for an interview with the ISA. Yet, all patients, regardless of whether they have an interview, have to enter Erez in order to reach hospitals outside the Gaza Strip.

Al Mezan's documentation shows that patients, and their relatives who accompany them, are frequently interrogated and coerced to provide information about friends, relatives, and/or neighbours to the ISA when they are at Erez. Patients who refuse to provide information run the risk of being denied permission to cross Erez and therefore, are unable to access the needed treatment, which is in most cases life-saving treatment. Documentation also shows that many patients and/or their escorting relatives were also

²¹ This part covers only detaining and interrogating patient. It does not cover the denial of access to medical treatment outside the Gaza Strip as it will be covered in a separate section below.

arrested and taken to prison where they are interrogated and frequently of tortured and exposed to cruel, inhuman and degrading treatment.²² During the reporting period, Al Mezan documented 12 cases of patients or their escorting relatives being arrested at Erez crossing.²³

Many patients were subjected to torture without consideration of their health condition during their detention. When in detention, patients are treated the same as other detainees. Al Mezan investigations indicate that patients who were arrested and interrogated were in most cases subjected to the same torture methods mentioned above in this report. They were also subjected to medical negligence, exacerbated by the poor medical services in prison, including rare referrals to hospitals with specialized medical equipment or services.



Palestinian old patient returning to Gaza via Erez Crossing, April 2010 (Photo: Al Mezan)

Affidavit of patient A.N.

In his affidavit to Al Mezan, patient A. N., who was arrested on Tuesday 27 April 2010 at Erez crossing after being interviewed and interrogated by ISA, stated the following:

"I found myself in a cell about 2.5 x 2 meters. There were two mattresses and blankets in the cell. There was a bathroom in the cell. The toilet was a tile with a small pit [squat toilet] in the middle. Only a one metre high wall separated the toilet from the rest of the cell. There was also a small sink in the room. The cell walls were painted the colour of lead and were rough. There was a white light that was on all the time. There was an air conditioner that was switched on cold all the time. There were no windows.

In the cell, a man spoke to me. I asked him where I was and he told me that we were in Ashkelon prison. I fell asleep and woke up to the sound of the door being opened. I saw a young man dressed in a dark blue uniform. He handcuffed my hands and legs with iron cuffs and blindfolded me. He then led me from the cell to a car. When I was inside the car, he undid the blindfold.

The car drove for about one hour and then stopped. Two hours later, the man in the blue uniform took me out of the car and made me enter a hall. There I met a young man who told me that he was my lawyer and that the government had assigned him. He told me that he was from the Al 'Atawna family and that I was at the Be'er Sheva district court.

A security guard took me into the courtroom. I saw one judge there. I told the judge that I had gone to Erez crossing to obtain a permit to receive medical treatment and that had I known I was going to face a problem, I would not have gone. Then I heard the judge speaking in Hebrew to a young woman who was sitting next to him and working on a computer. When the judge finished speaking to her, the lawyer informed me that the court had extended my detention for nine days.

The same man in dark blue uniform led me to the car and then back to the prison. He led me to an interrogation room where he tied me to a chair. I was subjected to interrogation for nine consecutive hours. The interrogation was about the same questions. The interrogator accused me of being an arms

²² See "Gaza Patients Access to Medical Treatment Abroad" Fact Sheet, Al Mezan, <http://www.mezan.org/upload/11211.pdf>. For more information about the conditions under which Gaza patients apply for permits to cross Erez, see the joint position paper "Who Gets to Go?", <http://www.mezan.org/upload/10401.pdf>.

²³ See Joint Press Release 'Human rights organizations: 'The ISA (Shabak) summons sick patients to the Erez Crossing and detains them, preventing them from receiving medical treatment', 1 March 2010, available at http://www.mezan.org/en/details.php?id=9776&ddname=torture&id_dept=31&id2=9&p=center. See also Al Mezan's press release on the same issue at http://www.mezan.org/en/details.php?id=10768&ddname=detention,%20treatment%20abroad&id_dept=9&p=center.

dealer, having relationships with what he described as 'saboteurs' and of participating in armed activities against Israel.

When the interrogation session was over, a man dressed in a dark blue uniform took me back to the cell. The next day, I was transferred to the interrogation room once again. After three hours in the interrogation room, a young man, also dressed in a dark blue uniform, handcuffed my hands and legs and blindfolded me and took me out of the room to somewhere else. Then he untied the cuffs and undid the blindfold.

I found myself in a room with a young man who said that he was a lawyer. He told me his name, but I can only remember his family name which was Manasra. The lawyer told me that he was assigned by a human rights organization in Gaza to defend me. He talked to me for about ten minutes, during which he asked me about the detention conditions and my health situation.

When the meeting with the lawyer was over, the young man who brought me led me to the interrogation room. I stayed inside the interrogation room with my hands cuffed and my legs bound to the back of a chair. Two hours later, I felt severe pain in my chest and I could hardly breathe. I told the interrogator "I'm tired. I have pain in my chest and I'm suffocating. I am going to die". He made a phone call. Then a police officer came to the interrogation room and took me, with my hands and legs cuffed, to a clinic. I met a doctor there who gave me an asthma inhaler, like the one I usually use. He did not give me any medical check-up.

A police officer took me back to a cell. There was a bed in the cell which he told me to sleep on. I lay on the bed and he tied my hands to the back of the bed above my head and my feet to the end of the bed then he closed the cell's door. I stayed there for three consecutive days during which I was bound to the bed the entire time. I was untied three times every day when they brought food for me. During the three days I felt bored and had pain in my back. I saw insects and cockroaches crawling over my body but I could not get rid of them.

On the morning of the fourth day a doctor, accompanied by a police officer, came into the cell. The doctor took blood and urine samples from me. The police officer untied me. I noticed that there were cameras inside the cell. The police officer took me from the cell to an interrogation room. He tied me to the chair like the previous time. I asked the interrogator, "Why are you tying me?" To which he replied, "because you want to die and I want to keep you alive." He continued the interrogation with me about the same issues. I was interrogated for more than 12 hours every day for six consecutive days.

On the ninth day since the extension of my detention at the court in Be'er Sheva I was taken to the court once again. I did not meet the lawyer there. The judge told me, through a translator, that I was prohibited from meeting my lawyer. My detention was extended for another 12 days and they took me back to the interrogation room in Ashkelon prison. I spent three days in interrogation with the same conditions. The interrogator used a lie-detector machine with me for six hours. After these three days the interrogator told me that the interrogations with me had finished. I signed the minutes at the police office. I saw a police officer with a brush painting a hard surface on a table. He ordered me to put my fingers and hands on it and to put them on a transparent board to take my fingerprints, which I did.

Then they took me to Be'er Sheva prison. I stayed there for six days in a department with other detainees. Two police officers took me back to the interrogation room in Ashkelon prison. I was interrogated there for another two days. On the third day, I was taken to Be'er Sheva court where I met the lawyer from the Al 'Atawna family who told me that he was asked by my other lawyer to defend me. He then told me that the court has extended my detention for another six days.

Then I was taken back to interrogation at the Ashkelon prison. I stayed there for six days. When the six days passed I was taken to the court and met the same lawyer there. When the court session was over, he told me that my detention was extended for another five days. I spent the five days in interrogation. During these days the interrogation hours increased to about 20 hours a day. I felt exhausted during the entire interrogation period. I was bound to a chair and felt continuous pain in my back.

On the morning of the fifth day, a police officer came to the cell where I was. He asked me to put my fingerprints on a piece of paper and told me that I would be released that day. At around 7:00 pm that day, I was released. I was transported to Erez crossing and arrived in Gaza city on the same day, 25 May 2010.

1.4 Ill-treatment of rubble and scrap collectors

On 11 June 2007, the IOF tightened the closure imposed on the Gaza Strip. Later, on 19 September 2007, the Israeli government announced a series of collective punishment measures against the population of Gaza, commonly referred to as ‘the blockade’. Using the ground crossing points between Gaza and Israel, the latter imposed severe restrictions on the movement of people and goods. The IOF started a reduction in the quantities of consumer goods, basic commodities, and fuel allowed into Gaza. In addition, the entry of construction materials, such as iron, cement, gravel, aluminium, wood, and water and waste water pipes, were completely banned.

As the policy of closure and siege continues, the rates of poverty and unemployment have increased dramatically and the need for construction materials to rebuild destroyed houses and meet the demand of natural population growth also has increased. The need for construction materials became more visible after Operation Cast Lead, during which the IOF completely destroyed 2,652 houses and caused damage to tens of thousands of homes and the civilian infrastructure in Gaza.²⁴ To meet this demand, underground tunnels started to bring in limited amounts of cement and iron. However, gravel has continued to be lacking and the small amount which is available is very expensive. As poverty and unemployment are commonplace, collecting rubble and scrap to extract gravel and iron from destroyed structures near the northern and eastern border fence between the Gaza Strip and Israel, where a large number of structures were destroyed by the IOF, has flourished, becoming a significant source of income for many families. Many of these workers come close to, and sometimes even enter, the IOF-imposed security buffer zone, which the IOF had announced extends 300 metres from the original border fence.

The IOF opens direct fire at these collectors to intimidate them and deter them from reaching these places.²⁵ During the reporting period, the IOF carried out several limited incursions into the Gaza Strip, in which it arrested 38 rubble and scrap collectors, four of whom were children. During detention, many of those were subjected to ill treatment by the IOF. They were handcuffed with plastic ties, verbally abused, and interrogated to give security information under pressure.

Affidavit of Shadi Ma'rouf

In his affidavit to Al Mezan, Shadi Ma'rouf, 19, who was arrested on Wednesday 24 March 2010 while he was collecting rubble north of Beit Lahiya town, north of the Gaza Strip, stated that:

At approximately 7:00am I saw a group of Israeli soldiers dressed in military uniforms and carrying guns. They were east of where I was searching for gravel north of Beit Lahya, in North Gaza district. I was about 400 metres from the northern border fence between Gaza and Israel. When I saw them coming, I ran for about 200 metres to the west where I saw another group of Israeli soldiers. I tried to escape in another direction but I heard the sound of shooting and one of the soldiers said “Stop or I will shoot you.” I froze on the spot.

Two soldiers approached me and started to beat and kick me. One soldier then handcuffed my hands from behind my back with a plastic tie. They took me to the north towards the border fence. I passed an iron gate. At that point, a soldier untied my cuffs and ordered me to take off my jacket, which I did. After I took off the jacket he slapped me on the face, handcuffed me with a plastic tie, and blindfolded me. I felt someone cover my head with a cloth. They then made me walk for about 200 metres.

As I walked, I was being kicked and punched. I could hear them saying bad things and cursing me. A soldier then made me lie on the ground. Five minutes later, two soldiers took me from this place and I was made to walk for about ten metres. One of the soldiers ordered me to kneel, and I did. I heard the voice of Mohammed Ma'rouf, one of my relatives who was also arrested, and another man, Mustafa Ghanem, about 40. After 15 minutes, two soldiers made me walk for about 20 metres. They put me on

²⁴ For more details see “*Cast Lead Offensive in Numbers*” Report, Al Mezan, http://www.mezan.org/en/details.php?id=8944&ddname=Gaza%20destruction&id_dept=14&p=center

²⁵ According to Al Mezan’s documentation, during the reporting period, the IOF carried 133 attacks against rubble and scrap collectors. As a result of these attacks, two persons were killed, 68 persons were injured including 15 children.

the ground and I started to feel kicks and punches all over me.

I could hear one of them saying "are you Hamas?" "No. I'm not Hamas," I answered. One of them then asked me "Have you ever had any surgery?" I told him "no", and the kicks and punches increased all over my body. I felt severe pain. I felt a foot push against my head, which was on the ground. The beating continued for about an hour. Then they took me somewhere else.

In the new place, I could hear the voice of Mohammed Ma'rouf so I knew that they took me back to where I was before. They ordered me to kneel, and I did so. After about an hour, I heard a person ordering me to stand up. I did so, and he untied my handcuffs, removed the sack that was on my head, and undid the blindfold. I saw a young man dressed in civilian clothes. I found myself in a room with metal walls. It looked like a container. The man ordered me to take off my clothes which I did. He passed an electric device over my body. He then ordered me to get dressed so I did. He handcuffed me again with a plastic tie behind my back and blindfolded me. He made me walk for about ten metres where he made me sit on a chair and undid the blindfold.

I found myself in a room that looked like a metal container. There was a desk in the room. I saw a man dressed in civilian clothes sitting opposite to my chair. He said that he was an intelligence officer. He asked me my name, my address and the names of my brothers. He asked, "did the soldiers beat you?" I said "yes, they did". "They will not beat you now," he said. Then the young man who brought me to the room came in, blindfolded me and took me back to the room where I was before. I knew when I heard the voice of Mohammed Ma'rouf. Three hours later two soldiers took me out of the room and made me ride a military jeep and taken to prison. During my detention I felt severe pain in my legs. I could not sleep because of the pain. Even after I was released on Monday 12 April 2010, I could not sleep well. I went to the Shifa Hospital where Dr Ayman Awadallah examined my legs and he told me I suffered from muscle shrinkage as a result of the severe beating.

Other forms of cruel and inhuman Treatment in Gaza Strip

2. Other forms of cruel and inhuman Treatment in Gaza Strip

In addition to being subjected to T/CIDT by the IOF during detention, the population of the Gaza Strip has had to endure much suffering due to the policies related to the Israeli blockade closure and siege during the several past years. These policies have caused violations that fall under CIDT as they produce severe physical and psychological pain and injure human dignity. These policies include the denial of patients' access to medical treatment outside the Gaza Strip, including in cases where such treatment is life-saving. Moreover, Palestinians who live near the border fence between the Gaza Strip and Israel are subject to daily attacks and limited incursions by the IOF that endanger their lives, but also destroy their houses and forcibly displace them. Israel's ban on the entry of construction materials exacerbates the situation for the victims of home demolitions as it prevents them from rebuilding their destroyed houses.

This section focuses on common aspects of cruel and inhuman treatment, which are mostly the result of the Israeli blockade of Gaza, especially since September 2007 when Israel stepped up the closure policy into a full blockade that brought about practices and consequences that violate the International Convention Against Torture and the T/CIDT articles in the International Covenant on Civil and Political Rights (ICCPR). These violations have seriously exacerbated the already critical human rights situation in Gaza.

The Israeli blockade seriously restricts the flow of goods and the movement of people into and out of the Gaza Strip via the land crossing points between Israel and Gaza. Moreover, in the sea, Israel imposes a three-nautical-mile permitted fishing zone off the coast of Gaza and has declared a no-go area (buffer zone) inside the Gaza Strip since Operation Cast Lead. This zone was declared to be with 300 metres from the border fence by Al Mezan's documentation indicates that IOF attacks that are related to enforcing this zone have occurred up to 1,500 metres inside Gaza.

This section introduces statistics and information about IOF attacks which, or at least significant components of which, may amount to torture and/or CIDT and which occur because of these policies. The violations covered by this section were noted by the HRC and CAT, who considered Israel's regular reporting to them during 2009 and 2010.

2.1 Palestinian patients: Denial of medical access and degrading treatment

As mentioned above, there is a lack of trained staff and advanced, specialized medical equipment that is needed for certain complex conditions in Gaza, including heart, nerve and eye related conditions. Gaza's hospitals lack these skills and equipment partly due to the years of closure and siege. For example, medical professionals have had to deal with serious restrictions on their movement and, in most cases, cannot leave Gaza to receive training, including to other parts of the oPt. In addition, important medical equipment is not allowed into Gaza as a matter of policy. This includes X-ray machines and other essential equipment. As a result, the Palestinian health authorities have had to refer more than a thousand patients to hospitals outside the Gaza Strip every month. Patients are mainly referred to hospitals in the West Bank (including East Jerusalem) and Israel. Others are referred to Egypt and Jordan. Patients who are referred to hospitals in the West Bank, Israel or Jordan have to pass through Erez crossing to reach the hospitals, in which case they need permits from the ISA which has the authority and discretion to grant permits or not. It is the only body that can effectively allow or prevent patients from their right to access to medical health abroad.

In response to the lack of certain medical services in the Gaza Strip, the Palestinian Ministry of Health (MoH) established the Department of Referrals Abroad (DRA) and entrusted it with processing patients' referrals to receive medical treatment in hospitals outside the Gaza Strip. Patients who need referrals are examined by a medical committee at the MoH, which decides whether the required treatment can or cannot be given in a hospital in Gaza. In case it is not, this committee issues a referral and the DRA

processes it and communicates with the Health Coordination Office (HCO), which is in daily contact with the Israeli authorities to coordinate the processing of patients requests for permits.

During the reporting period the MoH referred 18,078 patients from Gaza to hospitals outside the Gaza Strip in 2010.²⁶ In 2009, the MoH referred 12,049 patients for treatment outside Gaza, of whom 4,306 were to hospitals in the West Bank (including East Jerusalem), 786 to Jordan, and 1,446 to hospitals in Israel.²⁷ These 6,538 patients, who, out of the 12,049 have to cross Erez, as mentioned above needed permits from the ISA in order to cross Erez and reach the hospitals. Once the patient receives the MoH referral, he/she must receive a written reservation form from the hospital to which to which he/she was referred. The HCO verifies their medical reports, referral forms, and the reservation forms and passes them to the Israeli authorities with requests for permits. The above information describes the mechanism that was established by the ISA for the referral and movement of patients through Erez crossing. The mechanism is complicated and lengthy; patients normally need one month to process their applications, unless there are delays on the Israeli side, which happens in a substantial number of the cases and patients are subjected to various types of violations, as will be described below.

2.2 Denial of patients' access to medical treatment

In dealing with patients requests for permits to cross Erez, the IOF applies policies that frequently violate the prohibition of cruel, inhuman and degrading treatment. As mentioned previously, in the course of the security check on individual patients, the ISA asks many patients to appear at Erez crossing for an interview. On many occasions, the ISA has arrested patients when they have appeared for this interview, but also after they have been granted a permit and have gone to Erez to cross and reach the hospital. Moreover, the ISA processing of patients' requests for permits is far too lengthy, which causes patients to miss the reservation and have to go through the referral mechanism again and again. The Israeli authorities do not provide any detail regarding the reasons behind the long delays, only vague 'security' reasons. Bearing in mind that most of the referred cases require life-saving treatment, many patients have died while waiting for an answer to their requests for permits. In May 2011, a 3-year-old girl who suffered from meningitis died while waiting for her permit. During the reporting period, Al Mezan documented six cases of patients who died waiting for their permits to be issued, including three children and one woman.²⁸

Moreover, Israel has adopted a categorical distinction between life-threatening and non-life-threatening, or 'quality of life', medical treatment. Distinguishing between a life-threatening medical state and one that hinders quality of life is used as the main criterion in determining whether the patient is granted travel permits through the Erez Crossing.²⁹

Basel Sadeq

Basel Sadeq, 24, suffered from kidney failure. He used to have dialysis three times a week. He also suffered from severe narrowness in his arteries and therefore required special care. A thin plastic arterial link had to be implanted in his body in order for the dialysis to be possible. However, the surgery to implant this link cannot be done in Gaza, so he was referred several times to have surgeries outside the Gaza Strip. He has to have this surgery every year or two years because the implant link can become blocked. Below is a summary of his journey to receive appropriate medical treatment.

Basel Sadeq managed to travel outside the Gaza Strip several times in the past. The last time he travelled via Erez crossing was in December 2009, using a permit issued by the ISA for him and to his father, who escorted him. He went to Al Makassed Hospital in Jerusalem, which means that he had

²⁶ See the World Health Organization report **Referral of Patients from Gaza, Data and Commentary for 2010**", available online at http://issuu.com/who-opt/docs/who_referral_abroad_report_gaza.

²⁷ See the Palestinian Ministry of Health, '**Health Annual Report, Palestine 2009**', page 134, available online at <http://www.moh.ps/attach/19.pdf>.

²⁸ According to the documentation by Al Mezan.

²⁹ For greater details on this distinction, its impacts on patients' life and wellbeing see "**Who Gets to Go?**" a joint position paper by Adalah, PHR-I and Al Mezan, available online at <http://www.mezan.org/upload/10401.pdf>.

passed through the ISA security check. On 3 October 2010, Basel was referred for medical treatment at the Al Mezan Hospital in the West Bank after the link needed for dialysis became blocked and it became impossible for him to receive treatment in Gaza.

Basel obtained a reservation at the Al Mezan Hospital between 13 and 23 October 2010 and on 14 October 2010, he applied for a permit from the ISA to cross Erez via the Health Coordination Office at the Palestinian MoH for him and his father. They provided documentation that they needed to be at the hospital during the reservation time. However, the reservation period passed without Basel receiving his permit. The ISA said that his application was still in process. Therefore, he could not travel and reach the hospital in time for his appointment.

As an urgent, temporary solution, doctors in Gaza continued to perform dialysis for Basel through temporary arteries until he received the new transplants.

Basel obtained another reservation at the Al Mezan Hospital for the period between 31 October and 9 November 2010. On 2 November 2010, Basel applied for a permit to travel via Erez crossing for the second time. Basel's second reservation at the hospital expired again without receiving the permit from the Israeli authorities. Basel's family managed to obtain a third reservation for him, which was between 14 and 24 November 2010. They also submitted the reservation form at the Health Coordination Office in Gaza. Meanwhile, doctors in Gaza continued to provide treatment for Basel but with great difficulty.

By 21 November 2010, Basel's health condition had seriously deteriorated and he was admitted to the intensive care unit at the Shifa Hospital in Gaza city. On 22 November 2010, the Israeli authorities agreed to grant Basel a permit to travel via Erez crossing, however by this time he was in the intensive care unit and his doctors in Gaza decided that his condition was too severe and did not allow him to leave it and travel for fear he would die in the way, especially with the stress of crossing Erez. At approximately 4:30pm the same day, Basel died.

During the reporting period, the ISA rejected 856 applications for permits to cross Erez for patients. 1,902 other requests for permits were delayed. 553 were asked to appear at Erez for an interview and interrogation by ISA.³⁰ In many cases, these practices violated the patients' right to life, as mentioned above. Al Mezan documented 242 cases for patients that the ISA delayed or prevented their access to hospitals outside Gaza. Al Mezan jointly intervened with its partner PHR-I to help 103 patients to travel and reach hospitals. However, the rest of the cases, 139 patients out of the 242, were rejected.

2.3 Summoning patients to security interviews at Erez

As mentioned above, the IOF often summons patients who have applied for permits to reach hospitals in the West Bank, Israel, or Jordan for interview by ISA at Erez crossing. During the reporting period, the IOF summoned 553 patients for interview. According to Al Mezan's documentation, patients who go to Erez for interviews are subjected to ill treatment. They are forced to walk for about a kilometre before they reach the main gate at the crossing. Then they are subject to complicated search procedures which are very exhausting and difficult for many of them, particularly those who are disabled. All patients are also strip searched. They are then kept waiting for many hours in a hall inside the crossing before they enter for the interview and/or interrogation. They are not provided with food or water, or even allowed to buy it.

Excerpts from Affidavit of Farouq Ahmed Jaheer

In his affidavit to Al Mezan, patient Farouq Ahmed Jaheer, 27, stated that he had his left leg amputated and suffered from crumbling bone marrow in his right leg due to a work injury. On Wednesday 24 March 2010, the ISA summoned him for interrogation. He gave Al Mezan the following affidavit:

“At around 8:00am on Wednesday 24 March 2010, my brother Fu’ad and I arrived at the Palestinian checkpoint [locally known as checkpoint No. 44] at the Palestinian side of Erez crossing, north of Gaza

³⁰ According to information obtained by the Coordination Office at the Ministry of Health which is responsible for coordinating with the Israelis to facilitate the patients' access to hospitals outside the Gaza Strip.

Strip. An hour later, an employee at the Palestinian liaison office pointed to us to walk towards the crossing gate into Erez. My brother Fu'ad helped me to reach the gate. He had me sit on a wheelchair and pushed me along a long corridor for about 1 kilometre until we reached another gate. We waited there for about two minutes then the gate opened and we passed through it.

I saw a man dressed in civilian clothes and we knew he was one of the Palestinian workers who work at Erez crossing. He took the wheelchair and I sat on a chair near the gate. The worker also took my belt, our cell phones, and medical documents and put them through a metal detector machine. The worker then asked us to enter a small room made of glass. The room is large enough for one person only and Fu'ad and another traveller helped me to reach the room. I had to push my hands against the glass walls in the room, at the level of the middle of my body in order to be able to push myself and stand up there by myself. Doing so, I felt severe pain in my right leg. I heard a voice via a loudspeaker ordering me to raise my hands up. I did with great difficulty. I pushed my hands up on the wall. I then saw that the door of the room opened. Fu'ad came in and helped me to leave the room. I had to lean on his shoulder to be able to walk.

We then passed through another three gates. We walked for about 30 meters and I leaned on Fu'ad the entire time. When we passed through the last gate, Fu'ad sat me on a chair. I was extremely exhausted and I felt severe pain in my right leg. I saw a glass wall in front of me and I could see a young man dressed in civilian clothes behind it. The young man talked to us via an intercom. He ordered me to take off my clothes, so Fu'ad helped me take them off, except for the underwear. Fu'ad then put the clothes in a box inside another metal detector machine.

Then the same young man came near me and I saw him holding a handheld metal detector which passed all over my body. The man then said "put on your clothes on and leave through this gate." My brother helped me to put my clothes on. I leaned on him again and we walked through the last gate. Fu'ad sat me on a wheelchair and pushed me towards a waiting hall.

After receiving the things that they had taken from us at the first gate, my brother gave our ID cards to one of the Israeli employees in the hall and we waited there. I was sitting on the wheelchair. By then it was about 10:30am. About three hours later three men came. They had a wheel chair with them. They asked me to sit on it and they pushed me to an adjacent room. My brother Fu'ad was told to stay in the waiting hall. Two of the men searched my clothes inside that room. They then pushed me on the wheelchair to another room and left me there alone.

There was a TV in that room and it was showing mosques with weapons inside them. I also saw individuals beating people. I thought that the footage was for members of security members. I also saw pictures for Israeli captured soldiers, including Gilad Shalit, who is being held in Gaza, in the room. There was a picture with a statement that read "10 million dollars for information on the soldiers." Thirty minutes later, the three young men came and led me on the wheel chair to an adjacent room"...³¹

2.4 Blackmailing Patients and Exploiting their Needs for Medication

The IOF exploits patients' need to access medical treatment to collect security information about alleged activities of their relatives, neighbours, or friends. Patients are often coerced in interviews at the Erez crossing.³² The IOF offer patients bargains where the patient is told he/she will be granted access to reach the hospital if he/she cooperates and provides information. Patients are also frequently asked if they would collaborate with the ISA in exchange for permits to pass through Erez crossing.³³ For the sake of example, in October 2008, a 38-year-old patient from Gaza died after his request for a permit was rejected by the ISA. He had informed Al Mezan that he was asked to collaborate but when he refused his permit request was turned down and he had to return to Gaza.

³¹ The rest of the affidavit is at Al Mezan. This excerpt is meant to provide first-hand description of the procedures patients have to go through inside Erez crossing.

³² See http://www.mezan.org/en/details.php?id=1544&ddname=treatment%20abroad&id_dept=9&p=center.

³³ See http://www.mezan.org/en/details.php?id=11524&ddname=torture&id_dept=31&p=center.

Affidavit of Nahedh Adeeb Kamal Dwema

In his affidavit to Al Mezan, patient Nahedh Adeeb Kamal Dwema, who was born with a urinary tract defect, stated that he needed an operation that could not be operated on in the Gaza Strip. On Sunday 24 January 2010, the IOF summoned him for an interview with the ISA at Erez crossing. The IOF blackmailed him to spy for them and told him that if he agreed, they would allow him to travel and reach the hospital to receive medical treatment. His application for permit was rejected. The following are excerpts from his affidavit to Al Mezan:

“... after waiting at the waiting hall, they led me to a room where there was a desk and a computer. There was a man dressed in civilian clothes sitting behind the desk. He told me that he was an officer with the Israeli intelligence and his name was Abu Al ‘Abed. He asked me about my name, address, my brothers and sisters, and their spouses. He also asked especially about one of my brothers and about my cousin. He told me that they were Hamas members. He showed me pictures of my house on the computer. He asked me about houses near my house. He then opened the room’s window and said “This is Gaza and Israel is close to it.”

He asked me “Where do you want to go?” I told him that I wanted to go to Israel to reach the hospital and receive medical treatment. He said “we want you to collect information about people that we care about then we will allow you to reach the hospital, you will receive medical treatment in Israel and your life will be better.” I refused his offer. At the end of the interview, he told me that I would receive a response about my permit later.

After that two intelligence officers took me from the room to the waiting hall. At around 3:30pm, I was given my ID card back and left the Israeli crossing. Three days later, I submitted a new request for a permit at the Health Coordination Office in Gaza. I waited for the Israeli response. On Tuesday 2 March 2010, I went to the Health Coordination Office and an employee there told me that the ISA had refused to grant me permission. He gave me a small piece of paper with my name and ID card number written in Hebrew on it, which indicated the refusal.”

2.5 Demolition of homes and displacement

Since Israel began its occupation in 1967, the IOF has demolished tens of thousands of homes and structures. Many of these homes are demolished as a matter of policy to punish Palestinian resistance members and their families or the residents of areas where acts of resistance emanate. For example, houses of Palestinians involved in armed attacks have been demolished, including by bombardment from the air. Other common pretexts for IOF policy of home demolitions are lack of building permits and for 'strategic' military reasons. In the Gaza Strip, home demolitions have taken place on a very large scale during the past ten years, including as a form of punishment for individuals, families or neighbourhoods. The IOF have frequently demolished homes near the border fence between the Gaza Strip and Israel, especially following Palestinian attacks from the border area. Notably, home demolitions have also taken place without such attacks in what appeared to be pre-emptive actions as part of a strategy to evacuate the border areas of all persons, which is a clear violation of international law.³⁴

During Operation Cast Lead alone, Al Mezan documented IOF destruction or damage of 11,149 homes, of which 2,652 homes were destroyed completely. These houses accommodated 107,330 people, including 35,117 children.³⁵

Whatever the reason behind such home demolitions, it is illegal under international law without apparent military necessity and with proper consideration of the principles of distinction and proportionality. The jurisprudence of CAT indicates that such home demolitions constitute T/CIDT. They further constitute collective punishment and cause severe suffering for their victims. After Operation Cast Lead, Al Mezan continued to monitor home demolitions. During the first five months of 2010, there were 72 incursions

³⁴ For example, an OCHA report indicates that 100% of Palestinian homes located within 300 meters from the border fence were demolished by the IOF. Another 70% of the homes and structure within the next 300 meters inside Gaza were also destroyed, causing a wide wave of displacement. See supra, OCHA, Note 16.

³⁵ For more details see “*Cast Lead Offensive in Numbers*” Report, Al Mezan, http://www.mezan.org/en/details.php?id=8944&ddname=Gaza%20destruction&id_dept=14&p=center

into the Gaza Strip, in which the IOF demolished 29 houses.³⁶ Most of these demolitions occurred in the border areas or ‘buffer zone.’

The IOF continues to attack Palestinian neighbourhoods near the border fence, which have caused most of the population to leave these areas, in an attempt to enforce a security buffer zone along the fence between the Gaza Strip and Israel. Moreover, IOF troops carried out military attacks on these areas. During this reporting period, Al Mezan documented 38 such attacks against areas near the borders, in which 17 homes were damaged.

The ban on construction materials under the siege of Gaza has left displaced persons and people in need of housing due to natural population growth in a very difficult situation.³⁷

After the IOF attack on the Freedom Flotilla at the end of May 2010, Israel announced an ease on the restrictions imposed on materials flow into Gaza. However, the ban on construction materials has continued, except for small amounts Israel allows for UNRWA and other international organizations' projects.³⁸



The house of Abu Shareb Family after IOF bombarded it (Photo: Al Mezan)

Affidavit of Hatem Eid Suliman Abu Shareb

In his affidavit to Al Mezan, Hatem Eid Suliman Abu Shareb, 36, whose house was destroyed by IOF, stated the following to Al Mezan:

Three families from the Abu Shareb family used to live in three adjacent houses in the east of Al Bureij refugee camp in Middle Gaza district. The houses were located about 600 meters from the border fence. They were home to 26 people, including 18 children and four women. At approximately 2:30pm on Saturday, 26 February 2011, one of the residents, Ahmed Abu Shareb, received a phone call from a man who introduced himself as ‘Abu Shafeeq’ from the Israeli army. ‘Abu Shafeeq’ informed him that the IOF would attack the houses and ordered Ahmed to evacuate the houses. ‘Abu Shafeeq’ told Ahmed that they had ten minutes to evacuate the houses. Ahmed begged him to give them more time to evacuate, but ‘Abu Shafeeq’ refused. They evacuated the children and women from the houses. While they were leaving, the IOF fired two missiles at the houses. As a result, two houses were completely destroyed and the third house sustained severe damage.

At the time of writing, one of the three families was living in a leased apartment and the other two families lived in three tin rooms on a piece of land owned by one of their relatives. The owners of the houses are married and have children. Hatem Abu Shareb, 36, is married and has five children. Ahmed Abu Shareb, 31, is married and has three children. Mohammed Abu Shareb, 50, is married and has six daughters and five sons.

³⁶ According to the documentation of Al Mezan. Database statistics on home demolitions in Gaza are available and can be provided upon request.

³⁷ For more details see “*On-going Displacement: Gaza’s Displaced Two Years after the War*”, Al Mezan, 27 December 2010, <http://www.mezan.org/upload/11208.pdf>.

³⁸ Ibid.

**Humanitarian Access and Imposing Access Restricted Areas
(Buffer Zone)**

3. Humanitarian Access and Imposing Access Restricted Areas (Buffer Zone)

This section presents a set of Israeli practices in the Gaza Strip which, while may not fit the conventional definition of T/CIDT, have components that might amount to cruel and inhuman treatment, due to the pain and suffering they cause to civilians. These practices include denial of humanitarian access for families or individuals in very particular situations, the excessive use of lethal force against civilians taking part in peaceful protests against the enforcement of the security buffer zone, and the forcible displacement of civilians who own houses or land near the border fence. These practices are linked to Israel's policy of control and closure it imposes on the Gaza Strip.

3.1 Humanitarian Access and the Ban of Family Visitations

According to Oslo Accords between the Palestine Liberation Organization and Israel, Israel undertook to create a safe passage between the Gaza Strip and the West Bank to enable Palestinians to travel without limitations between the two parts of the oPt. Israel also agreed to treat the Gaza Strip and West Bank as one geographical territory.³⁹ However in 2000, Israel started to tighten its policy of segregation between the Gaza Strip and West Bank, a policy of which the seeds were sown in the beginning of the last decade of the 20th century.

The segregation policy has split thousands of families apart. Israel also used its control over the Palestinian population registry to strengthen the segregation by freezing the ability of Palestinians to change address from Gaza to the West Bank. In 2009, the IOF issued a military order deeming persons residing in the West Bank but holding an ID card with an address in the Gaza Strip as 'infiltrators'.⁴⁰ Under these policies, many families found themselves trapped.

Israel also restricts family unification for bearers of Gaza ID cards in the West Bank to extremely exceptional cases, making such family unification near impossible. Family unifications are not granted even when they involve parents and their children, husbands and wives, or siblings. It is not granted in even severer cases.⁴¹ Family unification from the Gaza Strip to the West Bank is considered by Israel only when the applicant falls in one of the following three categories:

- An orphan who is under 16 and wishes to unite with his living parent who is residing in the West Bank;
- An elderly person who needs care from a first degree relative who resides in the West Bank; or
- A patient with chronic disease who needs care from a first degree relative who resides in the West Bank.

The IOF considers these conditions as threshold requirements for starting to consider an application.⁴² Temporary family visits between relatives from the Gaza Strip and the West Bank are also banned as a rule. The IOF limits such visits to strictly 'humanitarian' cases, 'humanitarian' being interpreted extremely narrowly. Therefore requests for permits for the purpose of family visits are not considered unless they fit the determined 'humanitarian' standard, which can be one of the following:

- The application should be for visiting a first degree relative who suffers a chronic disease that could result in death or requires continuous hospitalization; or
- The application should be submitted in order to attend a wedding or a funeral for a first degree relative.⁴³

³⁹ See articles 10 and 28 of the transitional agreement between Israel and PLO, 28 September 1995.

⁴⁰ See HaMoked, Order regarding Prevention of Infiltration, available at <http://www.hamoked.org/Document.aspx?dID=Documents1117>.

⁴¹ For more information, please consult Gisha and HaMoked position paper, 'New Procedure – Israel bars Palestinians in Gaza from moving to West Bank', available online at http://www.gisha.org/UserFiles/File/publications/_WB_Gaza_Procedure-PositionP-Eng.pdf.

⁴² Correspondence with Gisha concerning the government response to their petition concerning revealing the criteria upon which Palestinians' requests for permits to exit Gaza are approved or rejected, dated 18 May 2011.

⁴³ Ibid.

The Palestinian Civil Affairs Committee in the Gaza Strip referred 2,560 applications for temporary visits, all of which meet the threshold requirements, to the Israeli authorities. The IOF refused 914 applications, about 35.7% of the total, without giving any justification. Another 867 applications were delayed, 33.8% of the total, and 779 were approved, 30.4% of the total.

Affidavit of Nadia Mohammed Omar Abu Kweik

In an affidavit to Al Mezan given by Mrs. Nadia Mohammed Omar Abu Kweik, 39, she stated the following:

Nadia was raised in Ramallah, West Bank and in 1988 she married Ayman Abdel Kareem Abu Kweik, a resident of Gaza City. After her marriage, she moved to the Gaza Strip with her husband while her family stayed in Ramallah. Since her marriage, she was able to visit her family in Ramallah until Israel started to tighten the closure on the Gaza Strip. She has not been allowed to travel since 1999. Every year during the summer holidays she applied to obtain a permit from the Israeli authorities to visit her family, however her request was regularly rejected. On 21 December 2004, her husband died. She sent a copy of her husband's death certificate to her family and asked them to come to Gaza. Her brothers informed her that they applied for permits to attend the funeral, but the Israeli authorities refused them. She added that her father, 84, who suffers from several diseases in the bones and chest, has been asking her to visit him all the time. On 12 May 2010, she applied for a permit to visit her ill father and enclosed medical reports about his health condition. After four days the IOF response came with her request refused. Nadia is still waiting for the day that she can travel to visit her family and her father before he dies.

3.2 The Security Buffer Zone

In January 2009, the IOF dropped leaflets on various areas in the Gaza Strip, in which it declared that it would fire at Palestinians who come as close as 300 meters from the border fence between Gaza and Israel. Since that time, the IOF has carried out continuous attacks on farmers, students, schools, and other civilians who have economic activities or property in that area. The leaflet was the official birth certificate for what is commonly known in Gaza as the 'security buffer zone', which has been enforced with military force. However, documentation has revealed that IOF attacks that can be linked to the enforcement of this zone have occurred as deep as 1.5 kilometres from the eastern and northern border fence between Gaza and Israel.

This zone has caused grave consequences for Palestinian civilians who live near the border as well as farmers who have fields there. It has deprived dozens of Palestinian families of their source of living as the land, which accounts for approximately 17% of Gaza's total area and 35% of the area cultivated land, is too risky to farm. IOF attacks have killed and injured dozens of civilians and arrested many more in that area.⁴⁴

For the purpose of this documentation report the main concern in this area is focused on the resulted impacts which could be linked, in full or in part, to the definition of T/CIDT, including home demolition and ill treatment of civilians, including through forced displacement, deprivation of access to land causing deep poverty, deliberate killing and/or maiming of civilians, detention of those who approach the area including rubble and scrap collectors and farmers, and opening fire at peaceful demonstrations against the enforcement of the security buffer zone.

It might be of interest to human rights defenders and concerned parties to explore other aspects of the Israeli practices that are related to T/CIDT, particularly the impacts of such practices on creating extreme poverty among those who live in that area.

⁴⁴ See supra, OCHA report, Note 16. See also more details about land leveling in the buffer zone in Annex 1 below.

Conclusion:

The absolute prohibition on torture and other forms of cruel, inhuman, or degrading treatment has been widely codified in international law. During the modern era of international law it was initially enshrined in the Universal Declaration of Human Rights,⁴⁵ which is declarative of customary international law on human rights. It was subsequently provided for in binding treaty form by the International Covenant on Civil and Political Rights.⁴⁶ This legal edifice was further elaborated by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁴⁷ Israel has signed and ratified both treaties with no relevant reservations.⁴⁸ The CAT is applicable to all territory under the jurisdiction of States Parties, including territories under *de facto* control, as in situations of occupation.⁴⁹ The international legal prohibition of torture is *jus cogens* (“compelling law”), meaning it is absolutely inviolable. Derogation is not permitted in times of war, national emergency, or any other exigency.⁵⁰ In addition to this body of human rights law, international humanitarian law (IHL)—the *lex specialis* (“special law,” i.e. the body of law most specifically applicable) governing the oPt—uniformly forbids practices of collective punishment against the civilian population of occupied territories.⁵¹ IHL also absolutely prohibits “torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health,”⁵² lists it among the “the grave breaches of the present Convention,”⁵³

⁴⁵ Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948, *Official Records of the Third Session of the General Assembly*, Part I – Resolutions, 12 September–12 December 1948 (Paris: United Nations, 1948), pp. 71–7, Art. 5, at p. 73 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”).

⁴⁶ International Covenant on Civil and Political Rights, adopted 16 December 1966 as Annex to General Assembly Resolution 2200A (*General Assembly, Official Records: Twenty-First Session*, Supplement No. 16, UN doc. no. A/6316 (New York: United Nations, 1967), pp. 49, 52–8), *United Nations Treaty Series*, vol. 999 (1976) (New York: United Nations, 1983), treaty no. 14668, pp. 171–86 (henceforth cited as ICCPR), Art. 7, at p. 175 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”).

⁴⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984 as Annex to General Assembly Resolution 39/46 (*General Assembly, Official Records: Thirty-Ninth Session*, Supplement No. 51, UN doc. no. A/39/51 (New York: United Nations, 1985), pp. 197–201), *United Nations Treaty Series*, vol. 1465 (1987) (New York: United Nations, 1996), treaty no. 24841, pp. 85 and 113–22.

⁴⁸ Israel made one reservation under the ICCPR with respect to religious governance of personal status laws, and two reservations under the CAT, one withholding its consent for the Committee against Torture to initiate cooperative and confidential inquiries into allegations of systematic torture, the other withholding consent for the International Court of Justice to exercise jurisdiction over Israel in disputes related to the Convention. Israel also made a declaration, on ratification of the ICCPR, that it has remained in an official state of emergency since its formation in 1948, and therefore derogated from its obligations under Article 9 concerning detention and trial. No reservations or declarations were made, however, with respect to the practice of torture or any other form of cruel, inhuman, or degrading treatment. *United Nations Treaty Series*, vol. 999 (1976) (New York: United Nations, 1983), treaty no. 14668, p. 267 (ICCPR signature, left undated but signed on 19 December 1966); *United Nations Treaty Series*, vol. 1651 (1991) (New York: United Nations, 1998), treaty no. 14668, pp. 566–7 (ICCPR ratification of 3 October 1991 with accompanying declaration and reservation); *United Nations Treaty Series*, vol. 1465 (1987) (New York: United Nations, 1996), treaty no. 24841, p. 174 (CAT signature of 22 October 1986, signed by one Benjamin Netanyahu); *United Nations Treaty Series*, vol. 1651 (1991) (New York: United Nations, 1998), treaty no. 24841, p. 580 (CAT ratification of 3 October 1991 with accompanying reservations).

⁴⁹ Committee against Torture, General Comment No. 2, UN doc. no. CAT/C/GC/2, 24 January 2008 (available [online](#); PDF format), ¶¶ 7, 16, pp. 2–3, 5. See also the following provisions relating to territorial and jurisdictional application of CAT, *op. cit.*, Arts. 2.1, 5.1(a)–(b), 8.4, 11–13, 16, 22.1, at pp. 114, 115, 116, 120.

⁵⁰ *Ibid.*, Art. 2.2, at p. 114 (“No 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”). The ICCPR, though it allows for derogation from the great majority of its human rights obligations in the case of an officially declared “public emergency which threatens the life of the nation,” does not permit derogation from the obligation not to torture. ICCPR, *op. cit.*, Arts. 4.1, 4.2, at p. 174. See also CAT General Comment no. 2, *op. cit.*, ¶¶ 1, 5–6, pp. 1, 2.

⁵¹ The prohibition on collective punishments is established unambiguously in Article 33 of the Fourth Geneva Convention: “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.” Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, *United Nations Treaty Series*, vol. 75 (1950) (no publishing information printed), treaty no. 973, pp. 287–392, Art. 33, at p. 308. Israel is a ratified signatory to this treaty, with no relevant reservations tendered. *Ibid.*, pp. 397, 12 (signatures of August 12, 1949, for both the Convention itself and the Final Act of the Diplomatic Conference held in Geneva, 21 April–12 August 1949); *United Nations Treaty Series*, vol. 96 (1951) (no publishing information printed), treaty no. 973, p. 326 (ratification). Israel’s only stipulation on signing the Convention was that it would use the Red Shield of David as its international humanitarian symbol, in lieu of the Red Cross or Red Crescent. *United Nations Treaty Series*, vol. 75 (1950) (no publishing information printed), treaty no. 973, pp. 436–8.

⁵² Article 147 of the Fourth Geneva Convention Relative to the Protection of Civilians in Times of War, of 1949.

and established an obligation on the “High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed”.⁵⁴

As documented in this report, Israel practices systematic physical and psychological abuse of Palestinian detainees in its detention and interrogation policies. These actions are clear and flagrant violations of the relevant body of customary and codified international law just reviewed. In addition, Al Mezan advances the admittedly novel legal argument that Israel’s imposition of a siege (also referred to as a blockade) with deleterious effects on the civilian population constitutes not only a violation of the prohibition on collective punishment under IHL, but a continuous violation of central provisions of the CAT. The effects of the blockade, although not torture under the conventional understanding—which turns on situations of direct interpersonal abuse—amount to the imposition of severe physical as well as mental suffering. The Convention defines infliction of “severe pain *or suffering*, whether physical *or mental*,” as forms of torture.⁵⁵ Israel’s blockade has been described as the cause of a “protracted human dignity crisis” characterized particularly by “degradation in the living conditions of the population.”⁵⁶ The blockade has increased food insecurity and decreased the quantity and quality of food consumed, denied civilians the possibility of adequate healthcare, created unsanitary and health-threatening living conditions, and left many families homeless and exposed to the elements.⁵⁷ Were these often life-threatening deprivations imposed on individual prisoners, they would surely be regarded as cruel, inhuman, and degrading treatment, if not outright torture. Such practices are only the more deplorable when practiced collectively against innocent civilians. As such, the essence of the policy of blockade is cruel, inhuman, and degrading treatment of the population at large, a *prima facie* violation of the terms of the Convention.⁵⁸ Al Mezan notes in this connection that the Committee against Torture, the independent UN body charged with monitoring of the CAT’s implementation, took cognizance of the blockade in its most recent Concluding Observations on Israel’s adherence to its treaty obligations.⁵⁹ This suggests that the Committee regards collective punishments of the sort embodied by the blockade on Gaza as falling within the purview of the Convention against Torture.

Therefore, Al Mezan Centre for Human Rights calls on:

- The international community to act upon its obligations and exert pressure on Israel to abolish T/CIDT, end the siege of Gaza, and comply with its legal obligations to investigate and punish violations of international law; especially T/CIDT, committed by its security authorities.
- The United Nations General Assembly to refer the report of UN fact-finding mission on the Gaza conflict to the Security Council with a recommendation to secure justice and accountability, as long as Israel remains unwilling to act on its obligation to investigate and punish the gross violations of human rights; including the ongoing T/CIDT.
- The European Union to make a clear reference to the importance of abolishing T/CIDT in its political, technical, and trade relations with Israel, especially in its new Human Rights Country Strategy as well as its review of the Neighborhood Policy; in which T/CIDT need to be highlighted further.

⁵³ Ibid, Article 164.

⁵⁴ Ibid.

⁵⁵ CAT, *op. cit.*, Art. 1 at pp. 113–4.

⁵⁶ United Nations, Office for the Coordination of Humanitarian Affairs – occupied Palestinian territory, *Easing the Blockade: Assessing the Humanitarian Impact on the Population of the Gaza Strip*, March 2011 (available [online](#); PDF format), p. 22.

⁵⁷ *Ibid.*, *passim*, esp. pp. 10 (food insecurity), 19 (healthcare), 13–6, 17–8 (sanitary conditions and housing).

⁵⁸ CAT, *op. cit.*, Art. 16.1, at p. 116 (forbidding “acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture”).

⁵⁹ Consideration of Reports Submitted by States Parties under Article 19 of the Convention: Concluding Observations of the Committee against Torture – Israel, Committee Against Torture, 42nd session (27 April–15 May 2009), 23 June 2009, U.N. doc. no. CAT/C/ISR/CO/4 (available [online](#); PDF format), ¶ 30, p. 9. On the scope of the Convention, see also CAT General Comment no. 2, *op. cit.*, ¶ 3, pp. 1–2 (“The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “ill-treatment”) under article 16, paragraph 1, are indivisible, interdependent and interrelated. . . . In practice, the definitional threshold between ill-treatment and torture is often not clear. . . . Accordingly, the Committee has considered the prohibition of ill-treatment to be likewise nonderogable under the Convention. . . .”).

Annex 1:**Statistical data on the Security Buffer Zone in the Gaza Strip****Table 1: IOF attacks in the security buffer zone during the reporting period**

Type of Attacks	Shooting incidents	# of injured	Of whom children	Of whom women	# of persons killed	Of whom children	Of whom women
Attacks on rubble and scrap collectors	133	68	15	0	2	0	0
Attacks on farmers	41	13	2	0	6	3	0
Attacks on peaceful protestors	17	8	1	2	1	0	0
Attacks on civilians near the borders	23	33	11	0	12	2	0
Attacks on residents of that area	38	20	10	0	5	1	2
Total	252	142	39	2	26	6	2

Table 2: Number of houses destroyed by IOF in the Buffer Zone during the reporting period

Type of damage	# of houses	# of residents	Of whom children	Of whom women
Total damage	9	55	28	27
Partial damage	8	103	31	47
Total	17	158	74	59

Table 3: Area of agricultural land leveled by IOF in the buffer zone during the reporting period

# of fields	# of beneficiaries	area
44	451	178.5 dunams⁶⁰

⁶⁰ One dunam equals 1,000 square meters.