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ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORIES (OPT)

BRIEFING TO THE COMMITTEE AGAINST TORTURE

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BRIEFING TO THE COMMITTEE AGAINST TORTURE

INTRODUCTION

This briefing is submitted to the Committee against Torture (or the Committee) in view of its consideration of Israel's fourth periodic report on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). The briefing focuses on Amnesty International's concerns about Israel's failure to implement the Convention against Torture particularly in the Occupied Palestinian Territories (OPT), and the intensification of measures amounting to cruel, inhuman or degrading treatment or punishment against Palestinians through indefinite administrative detention without trial, prolonged incommunicado detention, demolitions of homes, gross restrictions on freedom of movement, and denial of necessary medical care. The briefing also addresses the forcible return of asylum-seekers and other migrants to countries where they may be exposed to torture.

With respect to Israel's report to the Committee against Torture, Amnesty International is concerned that once again Israel has produced a state party report to a UN treaty body which denies the applicability of UN treaties in the OPT.[1] Israel's position that its international human rights treaty obligations do not apply in the OPT has been rejected by all the UN treaty bodies and by the International Court of Justice. As a result of their failure to accept the opinions of the treaty bodies, the Israeli authorities continue to deny the people of the OPT the human rights enshrined in the treaties Israel has ratified.

[1] *Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment, Fourth periodic reports of States parties due in 2004, Addendum, Israel*, CAT/C/ISR/4, 2 November 2006, 6 December 2007, para 90.

The Israeli government's current report responds with comments to the Committee against Torture's 2001 recommendations[2] but at least 10 of the Committee's 11 recommendations – namely those contained in lines 7(a) to 7(g) and 7(i) to 7(k) of the document – have not been implemented. On the contrary, the Israeli authorities have intensified actions criticised by the Committee. The 11th recommendation, contained in line 7(h), urged Israel to "intensify human rights education and training activities, in particular concerning the Convention, for the ISA,[3] the Israel Defence Forces, police and medical doctors". Amnesty International does not have the details the human rights education and training activities which have been organized since that recommendation was issued. However, the fact that torture and other ill-treatment continue to be carried out so widely suggests that the recommendation was not satisfactorily implemented.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has requested an invitation to visit Israel since 2002, but has stated that he has received no response to this request.[4]

B. BACKGROUND

The areas of the West Bank (including East Jerusalem) and the Gaza Strip, which form the OPT, were occupied by Israel after hostilities broke out in June 1967 between Israel and Egypt, Jordan and Syria. Part of the West Bank, including the Old City of Jerusalem and other areas of East Jerusalem, was unilaterally annexed by Israel in 1967 and incorporated into the Jerusalem Municipality. Palestinians from East Jerusalem have ID cards which allow them a special status, with greater freedom of movement than Palestinians in other parts of the West Bank, but also suffer from many of the human rights violations described in this briefing.

Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War prohibits the transfer of the population of the occupying power into occupied territory. However, Israel has settled more than 450,000 Israelis in the occupied West Bank, including some 200,000 in East Jerusalem. Some 140 settlements have been established for Israelis on confiscated Palestinian land. The settlements form part of a discriminatory government policy which enables settlers to receive generous housing allowances and tax incentives from the government and to be protected by the Israeli army. Israel's seizure of Palestinian land and natural resources for the expansion of settlements and related infrastructure has resulted in violations of Article 16 of the Convention against Torture described below, including by severe restrictions on movement, and destruction of homes and lands.

The Israeli government has legitimate and serious security concerns. Over the past 15 years hundreds of Israeli civilians have died and thousands have suffered injuries in attacks by

[2] *Conclusions and Recommendations of the Committee against Torture: Israel*, CAT/C/XXVII/Concl.5, 23 November 2001.

[3] Israeli Security Agency; see note 6 below.

[4] *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, to the Human Rights Council*, A/HRC/7/3, 15 January 2008

armed groups which are indiscriminate or deliberately targeted at civilians. However, the need to protect residents against such attacks does not justify violations of the human rights the government has committed itself and is bound under international treaty and customary law to respect.

C. SUMMARY OF VIOLATIONS OF THE CONVENTION AGAINST TORTURE

Amnesty International is concerned that torture is carried out by the General Security Service (GSS), in particular on Palestinian detainees believed to be involved in or planning armed attacks. Detainees held by the GSS are subjected to a range of measures during interrogation, including being forced to remain for prolonged periods in painful stress positions and intensive interrogation accompanied by sleep deprivation. Detainees from the OPT are frequently held in prolonged incommunicado detention, spending up to three months without access to a lawyer or the outside world. Detainees from Israel may spend up to 15 days in incommunicado detention. Palestinians are also frequently subjected to beatings and other ill-treatment by members of Israeli security forces on arrest and at checkpoints. Israeli settlers attack Palestinians with virtual impunity.

Administrative detention of Palestinians from the OPT, by orders which can be renewed indefinitely, has increased from 20 in 2002 to some 700 in 2008. The 2002 Unlawful Combatants Law also permits those detained and classified as so-called "unlawful combatants" to be held in indefinite detention without trial.

Amnesty International notes with concern that the practices which the Committee considered in 2001 to have breached the prohibition against cruel, inhuman or degrading treatment or punishment under Article 16, continue and have actually intensified. In particular, the demolition of homes without Israeli permits and by using the excuse of military necessity continues as, do extra-judicial executions mentioned as a concern in the Committee against Torture's 2001 Concluding Observations.[5] Severe restrictions on freedom of movement, including as a result of a system of permits, checkpoints and barriers, the building of the fence/wall inside the West Bank and the blockade of Gaza, have harmed all aspects of daily life of Palestinians living in the OPT.

In addition, Amnesty International believes that the present Israeli army practice of denying critically ill individuals permission to leave Gaza through the border with Israel (at the Erez checkpoint) for the purpose of accessing necessary medical treatment that is not available in Gaza constitutes a violation of the absolute prohibition of torture and other ill-treatment enshrined in the Convention against Torture and the International Covenant on Civil and Political Rights (ICCPR).

[5] *Conclusions and Recommendations of the Committee against Torture: Israel*, CAT/C/XXVII/Concl.5, 23 November 2001

Furthermore, Amnesty International is concerned that the new policy of so-called "hot returns" violates Article 3 of the Convention. The "hot return" introduces a summary process carried out by the Israeli army along their border with Egypt through which asylum-seekers and other migrants, mostly Eritreans and Sudanese, who cross the border are refouled to Egypt in a few hours without the opportunity to appeal. In Egypt they are in danger of suffering human rights violations or of being refouled to their countries of origin where there is a substantial risk that the individuals concerned may be subjected to torture or other ill-treatment.

Amnesty International believes that these violations of the Convention continue to flourish because they are accepted and even encouraged by the Israeli government and because of the near complete impunity afforded to those who commit them. Torture and other forms of ill-treatment, as well as other human rights violations, are condoned, not only by the security services and the Israeli government, but also by the judiciary, including by the Supreme Court which regularly accepts the arguments of the security services and allows torture and other ill-treatment, in violation of its 1999 ruling (see section F below) to continue.

Paragraphs 13 and 14 of Israel's report, which describe training the GSS in the Convention and training the Israeli armed forces in the "prohibition on the use of torture and other cruel, inhuman or degrading treatment or punishment, in particular" ring hollow, in view of the accounts received by Amnesty International from alleged victims of torture and ill-treatment at the hands of members of the GSS and IDF. The reality of the treatment of Palestinians held by the GSS and the Israeli army shows disregard for any such training.

D. TORTURE UNDER INTERROGATION: ARTICLES 1 AND 2 OF THE CONVENTION

In its report to the Committee against Torture, the Israeli government has not provided information on its implementation of Articles 1 and 2 of the Convention.

The report details laws governing arrest and detention under Israeli law but does not detail the laws which govern the arrest and detention of Palestinians from the OPT. These are regulated under Military Order No. 378 of 1970 as amended. This order allows the arrest without warrant and prolonged incommunicado detention of Palestinians from the OPT for a maximum of 90 days without access to family or lawyers. For the first 15 days the decision is solely in the hands of the interrogating team. The head of the interrogations division of the General Security Service (GSS), also known as the Israeli Security Agency (ISA),[6] may extend this period for a further 15 days, and it may then be extended for further periods by military judges.

Israel's report to the Committee against Torture makes much of the judgment by the Supreme Court that ruled that a confession obtained from an Israeli detainee was not admissible as the defendant had not been advised of his right to legal counsel (C.A. 5121/98, *Prv. Yisascharov v. The Head Military Prosecutor et al*.), describing it as a "landmark decision". However,

[6] The organization's name in English was changed from "Israel Security Agency" to "General Security Service", but its name in Hebrew continues to be "General Security Service".

Amnesty International's research indicates that such a ruling is far removed from the experience of Palestinians from the OPT, who, if arrested and detained, spend days or weeks in custody, under interrogation without access to lawyers, sometimes suffering torture or other ill-treatment. In relation to these Palestinians, lawyers' appeals to the High Court of Justice for access to their clients are consistently refused.[7]

Israeli lawyers and both Israeli and international human rights organizations, including Amnesty International, have documented a number of cases in which the GSS or the Israeli police have subjected Palestinians from the OPT whom they believe have information about future attacks to prolonged periods of interrogation accompanied by torture. These are sometimes described to victims as "military interrogations" or "necessity interrogations".[8] Methods of torture described by Palestinians who have been subjected to such interrogations include prolonged beatings and sharp painful blows to the head or stomach and having handcuffs tightened to the extent that the detainees have said that they fear losing their hands or arms. In addition, according to information available to Amnesty International there are three particularly painful forms of stress positions in use by the GSS; all positions are often with tightened handcuffs or shackles and accompanied by blows.

- the "banana" position, in which the detainee is placed sidewise on a chair with their back unsupported; interrogators press their torso back over the edge of the chair while fixing their feet on the other side causing stretching of the abdominal muscles and hyperextension of the spine and consequently severe pain in the back and stomach; this treatment is often accompanied by heavy pressure applied to the chest;
- the "frog" position, in which the detainee is forced to squat on their heels for up to 45 minutes;
- a position involving the detainee being made to stand on tiptoes for prolonged periods.

The report *Ticking Bombs: Testimonies of Torture Victims in Israel,* published by the Israeli organization, the Public Committee against Torture in Israel (PCATI), in May 2007, includes a number of testimonies of victims of torture who are mostly still in detention.[9] The testimonies show clearly the role played by doctors in the context of interrogations and interrogation methods that have involved torture and other ill-treatment. Amnesty International had raised concern about the role of doctors in a report issued in August 1996 entitled "*Under constant medical supervision": Torture, ill-treatment and the health professions in Israel and the Occupied Territories* (Index: MDE 15/37/96). The report concluded that:

[7] In 2005 the Public Committee Against Torture in Israel (PCATI) filed 97 petitions against orders prohibiting lawyers' visits, 49 of which came to a hearing; all were dismissed.
[8] PCATI, *Ticking Bombs: Testimonies of Torture Victims in Israel*, May 2007. One detainee, Hassan Lebadiya, said that in the Moskobiya Detention Centre in Jerusalem a GSS interrogator "told me to confess, or else they'd start a military interrogation since torture is allowed in them and there are no limits." (PCATI, *Ticking Bombs*, p78)
[9] See also HaMoked and B'Tselem, *Absolute Prohibition: the Torture and Ill-treatment of Palestinian Detainees*, May 2007, which gives statistics on the proportions of detainees suffering different types of torture or other ill-treatment.

> *"A bureaucratic system has been developed in which doctors and paramedics who preserve the health and sometimes the life of detainees under interrogation form an indispensable part."*

From PCATI's report, it appears that today, as before, those who are about to suffer torture under interrogation are examined by a doctor attached to the GSS who certifies that the individual is healthy enough to withstand methods of interrogation which amount to torture or other ill-treatment. Doctors also examine detainees from time to time throughout their detention. There is no evidence to suggest that doctors participate or watch sessions when torture is used, but detainees' testimonies show that doctors examine patients after they have been subjected to torture or other ill-treatment and while they still have marks from such treatment on their bodies. Many detainees complain that doctors who have examined them have failed to examine and treat parts of the body which they allege have been exposed to torture or other ill-treatment, such as their limbs, but only checked and reported on their general physical condition. Medical records often fail to note either prisoners' complaints or physical signs of ill-treatment, even in cases where independent medical evaluations later confirm the prisoners' allegations. However, medical reports sometimes support detainees' allegations of torture. The initial medical report made of a detainee who is healthy at the time of arrival in the detention centre may be followed, after interrogation, by reports of medical examinations which note the detainee's complaints of pains in areas of the body such as the head, back, stomach, arms and legs and may recommend further treatment.

E. USE OF TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OUTSIDE INTERROGATION: ARTICLES 1, 2, 12, 13, 14 AND 16 OF THE CONVENTION

ILL-TREATMENT BY ISRAELI SECURITY SERVICES

Amnesty International is concerned that Palestinians in the OPT are also subjected to torture and other ill-treatment outside places of detention by individuals from all Israeli security services: the army, the border police, the police and the GSS. Such ill-treatment may take place upon arrest; during military operations, including raids on houses and search operations; and at checkpoints. Amnesty International has documented innumerable reports of beatings and humiliation carried out against Palestinians who come into contact with Israeli soldiers at checkpoints and during house searches. Most frequently such torture or other ill-treatment takes the form of beatings: many detainees have described being beaten with gun butts immediately after arrest and then thrown on the floor of a jeep, where they lie during the journey under the boots of soldiers. It may also involve the use of dogs in an aggressive manner, painful shackling (if related to an arrest) or humiliating or degrading treatment.

SETTLER VIOLENCE

Amnesty International is concerned that settlers frequently attack Palestinians. Israeli officials fail to intervene to protect Palestinians or human rights defenders accompanying them from

beatings and other violence carried out by settlers, even when such actions are committed in their presence. At times, when officials have intervened, their intervention has been limited to ordering the victims of the attack to leave the area, or to arresting the victims.

There have been many unpunished attacks by settlers against Palestinians and others in the South Hebron Hills over the past years. On 29 September 2004, members of international organizations who were accompanying Palestinian children to school near Tuwani village in the South Hebron Hills were attacked by masked Israeli settlers who beat them with clubs and chains. One international accompanier sustained a broken arm and knee and bruising to her face, while another was left with a punctured lung and multiple bruises. Ten days later, on 9 October, settlers attacked five representatives from international organizations, including two Amnesty International delegates, assaulting three of them with wooden clubs. An Amnesty International delegate sustained multiple bruises on her back, arm and leg and an Operation Dove member collapsed and had to be taken to hospital by ambulance. On both occasions, the attackers came from the nearby Israeli settlement of Havat Ma'on and returned there after the attacks. Afterwards, the Israeli army made no attempt to take action against those who carried out the attack but informed the Palestinian villagers that no army patrol would accompany the children if representatives of international organizations were present. A few days later, on 12 October, the children were again chased by Israeli settlers from the Havat Ma'on settlement while on their way to school. The Israeli army patrol which was present did not intervene. Such attacks have continued over the past four years with impunity.

The Israeli organization Yesh Din, Volunteers for Human Rights, which has monitored police action after settler violence, has calculated that 90 per cent of police investigations into crimes by settlers against Palestinians end without indictments.[10] Many crimes which have not reached the public domain are not investigated at all. In addition, many Palestinians do not report torture or other ill-treatment by settlers or security forces, assuming that such crimes will not be properly investigated. According to their account of the 2007 olive harvest:

> "*In practice, the response to the harassment incidents that occurred during the harvest was inappropriate, especially as far as violent incidents. IDF soldiers were present in four cases of assault documented by the Yesh Din situation room. In all of the cases they refrained from responding to attacks on Palestinian harvesters by Israeli civilians. In at least one case the violence of Israeli civilians against the Palestinians began after a military force arrived in the area and in plain view of the soldiers. In at least three cases direct involvement of soldiers in assaulting harvesters was reported. In two cases soldiers ordered harvesters to leave the area because of a threat by Israeli civilians, instead of providing protection to the harvesters. As far as Yesh Din knows, in no case in which soldiers were present while harvesters were attacked was even one Israeli civilian arrested, in contrast with the army's orders."*[11]

[10] Yesh Din, *Law enforcement upon Israeli civilians in the OPT: Yesh Din's monitoring,* July 2008, http://www.yesh-din.org/sys/images/File/LESVDataSheetJuly2008Eng%5b1%5d.pdf,.
[11] Yesh Din, *Ahead of 2007 olive harvest Yesh Din demands from the security forces,* http://www.yesh-din.org/site/images/YDreportEngOct.pdf,.

F. FAILURE TO PROHIBIT TORTURE: ARTICLE 4 OF THE CONVENTION

In its report to the Committee, Israel also failed to give information under Article 4. The incorporation of the prohibition of torture into Israel's domestic law has been a longstanding recommendation of the Committee against Torture. The Israeli Penal Law forbids the use of violence or threats to extract confessions (Article 277) and provides for punishments of up to three years' imprisonment for physical assault if actual bodily harm is caused (Articles 378-382). However, Israel's existing legislation does not contain an absolute prohibition of torture. In particular, the Basic Law: Human Dignity and Liberty, which includes the right of all persons to protection of their life, body and dignity, allows for this right to be restricted when a state of emergency exists; a state of emergency has existed in Israel since 1948.

The September 1999 High Court of Justice judgment in the case of *Public Committee Against Torture in Israel v. the State of Israel* (HCJ 5100/94) banned *certain* methods of torture used by the GSS including: shaking; prolonged squatting on haunches; painful handcuffing; *shabeh* (position abuse); hooding; and the playing of loud music. Immediately after this judgment it appeared that these methods of torture were being used less systematically. However, as the Committee against Torture pointed out in its Concluding Observations of 2001,[12] the judgment allowed sleep deprivation when incidental to the interrogation; it did not prohibit torture; and it opened the way for a defence of necessity in extreme circumstances ("ticking bomb cases") so that those who used torture might not be criminally liable.

G. CONTINUING IMPUNITY: ARTICLES 6, 13 AND 14 OF THE CONVENTION

The Israeli authorities continue to allow acts which amount to torture or other cruel, inhuman or degrading treatment or punishment to go unredressed. Although a number of detainees have alleged that they were tortured during interrogation, and in many case there is medical evidence which supports these allegations, no criminal proceedings have been taken since 2002 against any member of the GSS for torture of Palestinians under interrogation.

The GSS reported to the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, that, since 2000, the GSS "inspector has initiated more than 550 examinations [of torture allegations], but only four have resulted in disciplinary measures and not a single one in prosecution".[13]

One reason for this impunity appears to be the statement in the 1999 ruling of the High Court of Justice suggesting that there might be a defence of "necessity" for torture. This statement, which contradicts the absolute prohibition of torture in the Convention against Torture, has

[12] *Conclusions and Recommendations of the Committee against Torture: Israel*, CAT/C/XXVII/Concl.5, para6, 23 November 2001.
[13] Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Addendum: Mission to Israel Including Visit to Occupied Palestinian Territory*, A/HRC/6/17/Add.4, 16 November 2007, para19

effectively been interpreted by inspectors of the GSS and police to suggest that "necessity" (a "ticking bomb") may permit torture, even though this assumption has never been tested in a court of law. The report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism indicates that the authorities' reliance on the "necessity" defence has allowed impunity for interrogators who may use torture or other ill-treatment. The Special Rapporteur states that he:

> "*received assurances that all instances of the use of moderate physical pressure fell within the bounds of the necessity defence, and that no individual interrogator has been the subject of criminal charges since the 1999 Supreme Court decision, despite the existence of mechanisms facilitating the reporting of abuse by persons under interrogation.*"[14]

Another reason for the failure to prosecute those who may carry out torture or other ill-treatment is that, in the name of "facilitating the reporting of abuse", allegations of torture or other ill-treatment carried out by the GSS are investigated by the GSS Inspector, a former GSS officer, who reports to the State Attorney. Amnesty International considers that investigations carried out by former members of the very force which is accused of torture or other ill-treatment lack the requisite independence required by the Convention.

Furthermore, according to PCATI's report in 2007, each time the affidavit of the detainee and the case file, including the doctors' reports, are presented as the basis of a complaint, the GSS Inspector has rejected it in identical language:

> *"Every one of the complainant's claims was examined. The examination revealed that [name] was arrested for interrogation due to a grave suspicion against him that was based on reliable information, according to which he was allegedly involved in or assisted in carrying out serious terrorist activities that were liable to have been carried out in the very near future, and which could have injured or endangered human life."*[15]

Amnesty International notes with great concern that such statements of the GSS Inspector as quoted above do not deny that the alleged ill-treatment took place. Instead, they focus on the alleged reason for the arrest.

A third factor which facilitates impunity is the fact that the cases of Palestinians from the OPT who are charged with offences are brought before military courts, and are almost invariably settled by plea bargaining. Amnesty International's research indicates that when a detainee has raised an allegation that he has been subjected to torture or other ill-treatment in a military court, frequently no examination of this complaint is ordered by the court. The court consistently accepts the GSS report that the treatment was carried out in accordance with regulations. As a result Palestinians, who allege that they have been subjected to torture or other ill-treatment during their detention, normally do not press their allegations, nor demand

[14] Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Addendum: Mission to Israel Including Visit to Occupied Palestinian Territory*, A/HRC/6/17/Add.4, 16 November 2007, para19.
[15] PCATI, *Ticking Bombs: Testimonies of Torture Victims in Israel*, May 2007, pp18, 28, 37, 55, 82

the redress and compensation which is their right, as they are convinced that they have no chance of success. Many with whom Amnesty International has spoken with indicate that Palestinians in the OPT consider the "good" lawyer to be not the one who challenges the evidence but rather the one who obtains a reasonably low sentence in out-of-court bargaining with the prosecutor. Thus the military courts are not typically an avenue of redress for allegations of ill-treatment by Palestinians from the OPT.

Amnesty International considers that, as is to be accepted, the Israeli authorities' acceptance of a defence for torture leads to an ever-widening circle of those who may be subjected to torture. The low sentences of some of those who testified that they were tortured during interrogation suggest that many of those who have been tortured were not in fact the "ticking bombs" that the authorities claimed they were. The case of Lawaii Ashqar illustrates this trend. Lawaii Ashqar was left with a fractured spinal cord after having allegedly been subjected to torture while in detention. The military court judge sentencing him on 23 April 2006 commented that his offence "did not involve grave crimes" and, after a plea bargain, sentenced him to serve a term of imprisonment of 26 months. Lawaii Ashqar had allegedly been tortured by being regularly pushed into the "banana" position over four days, leading him to lose consciousness from the pain; standing on tiptoes with his hands shackled; and being deprived of sleep.[16]

In rare cases members of the Israeli security forces have been charged and brought to trial in relation to allegations that they are responsible for torture or other ill-treatment of Palestinians. These cases invariably relate to allegations of torture or other ill-treatment outside the context of interrogation. Amnesty International is concerned that frequently neither the charges brought nor the sentences imposed reflect the gravity of the offence. For example, the shooting in Ni'lin on 7 July 2008 of a handcuffed Palestinian in the foot by a soldier was recorded on a video camera. After this film was widely publicized, the soldier who shot the Palestinian and the officer who commanded him to do so have been charged with "conduct unbecoming to a soldier". Israeli human rights organizations have petitioned the High Court of Justice for a more serious charge, commensurate with the acts, to be laid.

H. ADMINISTRATIVE DETENTION, AND INDEFINITE DETENTION UNDER THE UNLAWFUL COMBATANTS LAW: ARTICLE 16 OF THE CONVENTION

In 2001, the Committee against Torture concluded that administrative detention did not conform to the prohibition of cruel, inhuman or degrading treatment or punishment under Article 16 of the Convention.[17] The Unlawful Combatants Law, passed in 2002, which allows indefinite detention without trial of anyone considered to be an enemy combatant, is also

[16] PCATI, *Ticking Bombs: Testimonies of Torture Victims in Israel*, May 2007, p32-37

[17] *Concluding observations of the Committee against Torture: Israel* A/52/44, 9 May 1997, paras253-260, and *Conclusions and Recommendations of the Committee against Torture: Israel*, CAT/C/XXVII/Concl.5, 23 November 2001, paras.47-53

inconsistent with the prohibition of cruel, inhuman or degrading treatment and punishment under Article 16.

ADMINISTRATIVE DETENTION

Administrative detention is a procedure under which the authorities hold detainees without any intention of bringing them to trial. In Israel and East Jerusalem, administrative detention orders are issued by the Minister of Defence; in the OPT (except for East Jerusalem) they are issued by military commanders. The detention order sets out a specific term of detention. On or before the expiry of this term, the detention order is frequently renewed. The renewal of administrative detention orders may occur repeatedly.

Administrative detention as applied in Israel and the OPT is based on Articles 108 and 111 of the 1945 Defence (Emergency) Regulations issued under the British Mandate and Military Order 378 of 1970. These orders were modified in 1979 (for Israel) and 1980 (for the OPT) to introduce certain safeguards. Detainees are able to appeal to a military review panel and ultimately may petition the Supreme Court sitting as the High Court of Justice. However, the decisions from all such appeals are based on secret evidence, and the Supreme Court invariably accepts the security assessment of the army. Amnesty International considers that such appeals are inconsistent with fundamental standards of fairness, as administrative detainees are never informed of the precise charges and the basis of such charges against them. Thus, Amnesty International considers that administrative detainees are not able to effectively challenge the orders.

In 2001, Amnesty International commented that, although the numbers of administrative detainees had fallen (at the time there were around 20), the basic elements of this form of detention remained unchanged. Since May 2002 the number of administrative detainees has fluctuated between 500 and 1,100; at the end of July 2008 there were 691 administrative detainees held by the Israeli Prisons Service.[18]

Administrative detention orders may be and in fact are also imposed at the end of custodial sentences, in order to continue the deprivation of liberty of Palestinians.

For example, **Saed Yassin**, aged 36, with three children, described by colleagues as a committed defender of human rights, worked in Nablus as the Director of the northern West Bank branch of Ansar al-Sajeen (Prisoners' Friends Association), a non-governmental organization providing assistance to Palestinian prisoners. First arrested on 6 March 2006, he was sentenced to eight months' imprisonment on the charge of "channelling funds in an illegal manner", reportedly in connection with his work at Ansar al-Sajeen in collecting funds to give to Palestinian prisoners' families. On 15 October 2006, three days before his scheduled release at the end of his prison term, Saed Yassin was issued with a six-month administrative detention order by the Israeli military commander of the West Bank. The order has subsequently been renewed on six consecutive occasions. The seventh and most recent order was issued on 26 August 2008, for a further term of four months. Since the initial

[18] B'Tselem, "Administrative Detention: Statistics on administrative detention", http://www.btselem.org/English/Administrative_Detention/Statistics.asp.

administrative detention order was served in October 2006, he has never been given the opportunity to see or challenge the evidence against him.

Obeida Assida was aged 17 at the time of his arrest in May 2007. After two months' interrogation he was brought before a military court on a criminal charge and the judge ordered him to be released on bail. After an appeal by the prosecution, an appeal court confirmed that he should be released on bail. However, the same day, the Israeli army commander issued him with a six-month administrative detention order, meaning that he remained deprived of his liberty anyway. Thereafter he entered into a plea bargain on the criminal charge against him, and was sentenced to a term of seven months' imprisonment. On 1 December 2007, the day before he was scheduled to be released from his prison term, he was issued with another six-month administrative detention order. The term of the administrative detention order was subsequently reduced to four months on judicial review. However, his administrative detention order has now been renewed until November 2008.

In another case, **Mahmud Azzam,** now aged 56, was arrested on 29 October 1997 at his house in the village of Silet al-Harithiya, near Jenin in the West Bank. In 1998, he accepted deportation from Israel instead of indefinite detention, but no country has yet agreed to receive him. Mahmud Azzam is being held under Article 13c of the Entry into Israel Law (1952), which states that where an order of deportation has been issued in respect of any person, a frontier control officer or police officer may arrest him and detain him in such a place and manner as the Minister of the Interior may prescribe, until his departure or deportation from Israel. He has now been deprived of his liberty for nearly 11 years without charge or trial.

Many of those in administrative detention, like other Palestinian prisoners serving custodial sentences in Israel,[19] are denied family visits, as families are refused permits to enter Israel for "security" reasons. Since June 2007, Israel has imposed a total ban on family visits for some 900 detainees, mostly serving custodial sentences, from the Gaza Strip.[20] Over the past two years, while Saed Yassin has been held in administrative detention, his wife has been allowed to visit him only three times, and his mother (but not his father) has been allowed to visit him once. Amnesty International believes that prolonged deprivation of family visits may also constitute cruel, inhuman or degrading treatment under Article 16 of the Convention.

INDEFINITE DETENTION UNDER THE UNLAWFUL COMBATANTS LAW

The Unlawful Combatants Law was introduced in 2000 and passed by the Knesset in 2002. At the time of its introduction its primary purpose was to allow the indefinite detention without charge and trial of two Lebanese nationals, Mustafa al-Dirani and Shaikh Abd al–Karim 'Ubayd, who were being held under renewable administrative detention orders as "bargaining chips" to be exchanged for Israeli soldiers missing in Lebanon. The introduction of the Unlawful Combatants Law was triggered by a judgment of the Israeli Supreme Court in 2000 that detainees could not be held as "bargaining chips" unless they posed a security threat. As a result of the court's ruling, 13 other Lebanese, who had been held as hostages for up to 12

[19] In breach of Article 76 of the Fourth Geneva Convention, which stipulates that protected persons should be detained within the occupied territories.

[20] See Amnesty International, *Israel and the Occupied Palestinian Territories: Punitive restrictions: Families of Palestinian detainees denied visits*, (Index: MDE 15/006/2008), February 2008.

years without charge or trial, were released. However, Mustafa al-Dirani and Shaikh Abd al-Karim 'Ubayd remained in detention under administrative detention orders, and later as "unlawful combatants", until they were released as part of a prisoner exchange in 2004.

The Unlawful Combatants Law creates a new category of detainees described as "combatants who are not entitled to prisoner of war status". It allows the Chief of Staff of the Israeli army to detain anyone who is believed to have "taken part in hostile activity against Israel, directly or indirectly" or to "belong to a force engaged in hostile activity against the State of Israel". All detainees held under the law are automatically assumed to be a security threat and can be held without charge or trial as long as hostilities against Israel continue. Judicial reviews of detention orders under the Law are held *in camera* and are based on secret evidence which is not made available to the detainee (who may not even be present) or his lawyer. The detainees may petition to the Supreme Court, but, as even the offence they are alleged to have committed, as well as the evidence against them, are kept secret, it is impossible for them or their lawyers to mount an effective defence.

Recently the Unlawful Combatants Law has been applied to individuals from the Gaza Strip who had previously been held under administrative detention. According to information available to Amnesty International, there are currently five Palestinians from the Gaza Strip believed to be deprived of their liberty under the Law. They include **Riyad Sadi 'Abd al-Hamid 'Ayyad**, aged 34, who was detained by undercover Israeli soldiers in the Gaza Strip on 1 January 2002, while on his way to work at a slaughterhouse in Gaza City. He was transferred to Shikma Prison in Ashkelon, inside Israel, where he was interrogated by the GSS for more than 70 days. He was reportedly subjected to torture and other ill-treatment during this time. During one 20-day period he was reportedly permitted to sleep for only 22 hours. He was deprived of access to lawyers for the first 50 days of his interrogation, which reportedly did not focus on any particular accusations. He is said not to have confessed to any particular offence. His first administrative detention order, of six months, was issued on 17 March 2002. The administrative detention order was renewed eight times. Before the last order was due to expire, on 12 January 2006, the Israeli authorities changed his legal status and detained him under the Unlawful Combatants Law. He remains detained under the Law.

Hassan Mass'oud Hussein 'Ayyad, born in 1934, a cousin of Riyad 'Ayyad, used to be a member of Force 17, a special security force of President Yasser Arafat. He was arrested at 3am on 24 January 2003 by Israeli soldiers, who destroyed his family house in Gaza City and arrested other members of the family, who were later released. He was also placed under an administrative detention order. His administrative detention order was renewed until his legal status was changed from administrative detention to detention under the Unlawful Combatant Law. He remains detained under this law.

In 2008 the Unlawful Combatant Law was amended, removing even more of the detainees' rights. The new amendment makes it possible for the Israeli authorities to detain large numbers of people without due process until the end of any hostilities between Israel and its enemies. In addition the Law is not limited to foreigners but may also be applied to Israeli citizens.

I. DEMOLITIONS OF PALESTINIAN HOMES: ARTICLE 16 OF THE CONVENTION

In its submission to the Committee against Torture in 2001, Amnesty International stated that the demolition of Palestinian homes formed a discriminatory policy directed against Palestinians which constituted cruel, inhuman or degrading treatment contrary to Article 16 of the Convention.[21] The Committee's Concluding Observations in 2002 called on Israel to "desist from its policy of closures and house demolitions where they offend Article 16 of the Convention".[22]

The Israeli authorities continue to destroy Palestinian homes and other structures in the OPT citing as grounds "lack of building permit" or "military necessity". Since 2002 more than 1,200 homes in the West Bank, including East Jerusalem, have been demolished on grounds of lack of a permit. More than 2,500 homes in Gaza and the West Bank have been demolished on grounds of alleged "military necessity". Many of these were large-scale demolitions. Meanwhile, between 2002 and 2007, 7,365 housing units were completed in Israeli settlements, which are illegal under international humanitarian law. Although they are situated in the OPT, Palestinians are prohibited from entering a settlement without a permit. In early 2008 there was a large increase of construction in settlements with 1,190 housing units built during the first three months alone, more than twice as many as during the same period in 2007.[23]

"Punitive" demolitions of the family homes of Palestinians involved in armed attacks against Israelis were halted in February 2005. From October 2001 until then, 668 homes were demolished.[24] In June 2008 Israeli Prime Minister Ehud Olmert ordered that the policy be resumed; no "punitive" demolitions had been carried out by September 2008.

Large areas of agricultural land and orchards have also been destroyed, depriving some Palestinian communities of their main source of livelihood.

HOUSE DESTRUCTION IN JENIN AND NABLUS DURING OPERATION DEFENSIVE SHIELD

In April 2002, during Operation Defensive Shield, the Israeli army surrounded Palestinian towns and refugee camps in the West Bank, and entered them in force, systematically demolishing homes in many areas. The Israeli army started its offensive by entering Ramallah on 29 March, Bethlehem, Tulkarem and Qalqiliya on 1 April, and Jenin and Nablus on the nights of 3 and 4 April. The army declared the towns "closed military areas", and imposed strict 24-hour curfews barring access to the outside world. In most areas the army also cut water and electricity.

[21] See Amnesty International, *Israel and the Occupied Territories: Briefing to the Committee against Torture, May 2002,* AI Index: MDE 15/075/2002, May 2002.
[22] *Conclusions and Recommendations of the Committee against Torture: Israel*, CAT/C/XXVII/Concl.5, 23 November 2001, para7(g)
[23] Foundation for Middle East Peace, "Settlement Construction", http://www.fmep.org/settlement_info/settlement-info-and-tables/stats-data/settlement-construction.
[24] B'Tselem, "Statistics", http://www.btselem.org/English/Statistics/Index.asp.

The Hawashin area of **Jenin** refugee camp, an area of 400 by 500 metres where some 900 families lived was systematically levelled by bulldozers. Major-General Giora Eiland, head of the IDF Plans and Policy Directorate, told Amnesty International that the houses in Jenin camp were destroyed because it was the only way to deal with the house-to-house fighting in the camp. However, as aerial photos of the refugee camp show,[25] the bulldozing of houses in the Hawashin area was undertaken between 11 and 13 April. This was *after* the fighting within the camp had ended following the negotiated surrender of Palestinian militants on 11 April, but while the Israeli army were still in control of the camp's perimeter and blocking entry even to ambulances (the first ambulances were allowed to enter only on 15 April).

Also in April 2002, in **Nablus**, 67 buildings, not all of them residential, were destroyed by the Israeli army during Operation Defensive Shield. Some of the residents whose houses were destroyed were given a 10-minute warning by the Israeli army, enabling some of them to gather some of their belongings and leave before the demolition. However, Amnesty International's research revealed that some of the residents whose houses were destroyed did not receive prior warning and were killed or injured as a result. In one case, a home was bulldozed by the Israeli army at night on 6 April 2002 with 10 members of a single family inside. Eight members of the al-Shu'bi family were killed, including three children, their pregnant mother and their 85-year-old grandfather. According to local residents no warnings were given before the house was bulldozed and the Israeli army failed to ensure that there were no people in the house before demolishing it. It was not until 12 April 2002, when the strict 24-hour curfew imposed on Nablus was lifted for two hours, that relatives and neighbours found the bodies; they did so by digging through the rubble at night, in rainy conditions, while ignoring Israeli army warning shots. At the same time, they also rescued two members of the family, Abdallah al-Shu'bi, aged 68, and his wife Shamsa, 67, who were still alive six days after they had first been trapped in the rubble.[26]

DESTRUCTION OF HOUSES IN THE GAZA STRIP

The Israeli army has destroyed thousands of houses in the Gaza Strip in recent years. According to the United Nations Relief and Works Agency (UNRWA), between October 2000 and October 2003, more than 2,150 homes were destroyed and more than 16,000 damaged. By the end of December 2004 UNRWA's statistics showed that "2,991 shelters, home to over 28,483 people had been demolished or damaged beyond repair in the Gaza Strip since the start of the strife [October 2000]". Almost all of these homes were destroyed for alleged "military purposes". The destruction of hundreds of houses in **Rafah** between 2000 and 2004 was particularly brutal. The houses in the refugee camp were situated near the border with Egypt and had been built in close proximity to one another. Between 2000 and 2004 the army cleared a 300-metre swathe beside the border, reducing the area to rubble. The work of destruction took place in bursts throughout 2000-2004. In one night on 10 January 2002, 100 families were made homeless; in a three-day operation which started on 10 October 2003, the Israeli army destroyed some 130 houses and damaged scores of others in Rafah refugee camp and nearby areas, making more than 1,200 Palestinians homeless, most of them

[25] See Annex 1.

[26] Amnesty International, *Israel and the Occupied Territories: Shielded from scrutiny: IDF violations in Jenin and Nablus* (Index: MDE 15/143/2002), November 2002

children; in May 2004 during prolonged Israeli attacks on Rafah, 298 residential buildings in Rafah housing 710 families were demolished, according to UNRWA. Crops, green-houses, water irrigation systems and farm equipment were also destroyed.

The Israeli army described the destruction of such homes and agricultural areas as a "military necessity". Israeli army spokespersons have given different military reasons: that the houses were used by gunmen; that they had tunnels under them which were used to smuggle weapons into Gaza; or, on occasion, that they were targeted "in response to the terrorist attack that killed an IDF officer and three soldiers".[27] Amnesty International considered such demolitions breaches of international humanitarian and human rights law and constitute cruel, inhuman or degrading treatment or punishment prohibited by the Convention against Torture.

The following testimony, given to Amnesty International by 70-year-old Fadhiya Suleiman Ibrahim Barhoum, dates from 2003 and is typical of many victims of demolitions. Fadhiya lived in a house with her two sons, their wives and their 12 children. She told Amnesty International:

> *"They destroyed the house with all our things; I worked all my life and now I have nothing left, and my sons have nothing left and they have children; one has eight and the other has four. The house was three homes, one for me and two for my sons; there were six rooms and two bathrooms, one for each of them. We worked so much to build our house. God help us, I don't sleep at night any more. And they keep destroying more houses, every day more houses; maybe tomorrow they'll destroy this one too (her relatives' house where she is staying). God help us; why this on top of everything else? The army also destroyed my land, over there, near the house* [she pointed to the rubble of her house nearby]*; all my olive trees, you can still see them, there; they uprooted all of them, didn't leave even one; they uprooted them from here, from my heart; even if I plant other olive trees, I won't live to see the olives; I'm too old, and I have no more land and no home, nothing."*[28]

DEMOLITIONS IN AREA C OF THE WEST BANK

In Area C of the West Bank, the more than 60 per cent of the West Bank which remains under the civil and military control of Israel, the Israeli army has led a campaign against Palestinian herders and small farmers, the most vulnerable members of the population.

In July 2005, the army destroyed the whole village of **Tana** near Nablus. The people who lived there came from Beit Furik; they would spend the hottest months of July and August in Beit Furik and farm in Tana the rest of the year. The Israeli army took advantage of their absence from Tana in July 2005 to demolish some 35 stone and metal structures or shacks in the village. Some of the structures demolished were villagers' dwellings, the rest were animal pens. A school, which had been built in 2001, was also demolished, along with two water

[27] Israel Defense Forces, http://www.idf.il/english/announcements/2002/january/10.stm and http://www.idf.il/english/announcements/2002/january/11.stm,.

[28] Amnesty International, *Israel and the Occupied Territories: Under the rubble: House demolition and destruction of land and property* (Index: MDE 15/033/2004), May 2004

reservoirs. The reason given for the destruction was that the structures had been built without a permit.

Much of the **Jordan Valley** has been declared a closed military area and for a long time the Israeli army has pursued a policy of expulsion against Palestinian residents of the valley and the Jordan hills above the valley. The army has demolished homes of villagers and even the tents of the Bedouin who have grazed their animals on the hills for centuries, saying that they were constructed without permission or that they are in closed military areas. One of the targeted villages is Hadidiya, in the Jordan hills, which was previously demolished in 1997 and then rebuilt. Since the 1980s five families from Hadidiya have been appealing against the demolition of their homes to the Israeli High Court of Justice, but in 2006 the High Court of Justice rejected their appeal. In April 2007, the army put demolition orders on all the homes in Hadidiya and the residents were forced to move a kilometre away to Humsa. In Humsa, they are still pursued by the army, which issued them with a military order calling for all residents to leave both Humsa and Hadidiya "with immediate effect". In 2007 and 2008, structures housing over 70 people, most of them children, have been destroyed. Meanwhile, a few kilometres away, are situated the Israeli settlements of Ro'i, Beqa'ot and Hemdat, which were constructed over the past 30 years, in breach of international law.

Within Israel the authorities also pursue a discriminatory policy with regard to housing for Arab Israelis, who make up 18 per cent of Israel's population. In some areas there is pressure to expel Arabs from their land: this is especially true in the **Negev**, in the south of Israel. Here there are more than 70,000 Bedouin who have lived in the area for generations, but their 45 villages have not been recognized by the Israeli authorities and therefore are not provided with basic services, such as running water, electricity, sewage, schools, health facilities and paved roads. As the people in these villages are not granted permission to build houses nor to farm the land, they live in poor makeshift shacks roofed with corrugated iron, which are hot in summer and cold in winter, and suffer from health problems and high child mortality rates. They live in constant fear of demolition of their villages and there is pressure on them to move. One unrecognized Bedouin village in the Negev, Twail Abu Jarwal, has been demolished 20 times over the past three years, most recently at the end of August 2008, just before the Muslim month of Ramadan. Yet the residents remain unwilling to leave and to move to live in the townships built by Israelis to house people in their situation, concerned that they would be cut off from their homes, lands and way of life and would be exposed to the high rates of unemployment prevalent in them. The treatment of the Bedouin contrasts with the government's treatment of Jewish newcomers to the region, who live in new government-sponsored villages and family farms. Outside the Negev there are some 40 unrecognized Israeli Arab villages, mostly in the northern Galilee region, facing the same lack of services and pressure on the population to leave.

J. RESTRICTIONS ON FREEDOM OF MOVEMENT: ARTICLE 16 OF THE CONVENTION

Amnesty International considers that restrictions on movement imposed by the Israeli authorities, including the building of the fence/wall on Palestinian land and the current

blockade on the Gaza Strip, constitute cruel, inhuman or degrading treatment or punishment under Article 16 of the Convention.

RESTRICTIONS ON FREEDOM OF MOVEMENT IN THE WEST BANK

The restrictions on freedom of movement of Palestinians in the West Bank are far wider and more invasive than they were in 2002, when the Committee said that closures experienced by Palestinians in the West Bank at the time "may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment" under Article 16 of the Convention. The current restrictions on movement are detrimental to the daily life of almost every Palestinian living in the West Bank. In its update in July 2008, the UN Office for the Coordination of Humanitarian Affairs (OCHA) identified 609 barriers to freedom of movement in the West Bank, 88 of them manned and 521 of them unmanned, including earth mounds, trenches, gates, and roadblocks.[29] These are not, as the Israeli authorities claim, to stop "terrorists" from entering Israel, as most of them are set up within the West Bank, not between the West Bank and Israel. In Amnesty International's view, their real aim is to keep Palestinians off roads leading to the Israeli settlements or roads used by settlers. A dual road system is growing up in the West Bank with the support of the Israeli state: on the one hand, fast and well paved roads for settlers, on which cars with Palestinian number plates are not allowed, and, on the other hand, roads for Palestinians, which are usually poorly maintained. For instance, Road 443, originally built on confiscated Palestinian land to provide access from Ramallah to the Palestinian villages southwest of the city, is now banned to Palestinians. After a petition by the Association for Civil Rights in Israel (ACRI), the High Court of Justice, rather than allow Palestinians to travel along this road, in March 2008 ordered the army to build a separate road for the villages which are now cut off.

The 600 barriers in the West Bank delay and sometimes prevent Palestinians from reaching other towns and villages in the OPT. Even when it is possible to pass from one West Bank town to another a journey will often take three or four times as long and require the traveller to hire several taxis from one checkpoint to another. The road barriers are combined with a system of permits, closures and curfews. West Bank Palestinians are also barred from visiting East Jerusalem in the OPT, unless they have special permits.

Nablus, once the main economic centre of the West Bank, is surrounded by checkpoints only passable by Palestinians with permits and practically cut off from the rest of the West Bank. A student at al-Najah University in Nablus who lives at Bethlehem 100 kilometres away has to pass through five checkpoints when he or she travels to university. Farmers in the West Bank are no longer allowed to bring in agricultural produce to the town and have to sell it in Beita, a village outside Nablus which has now effectively become the town's market.

The **Jordan Valley** north of Jericho is barred to Palestinians from elsewhere in the West Bank by means of a strict permit system. The Palestinian residents of the valley mostly belong to the same families as those living in the hills above and often share surnames with them. Traditionally, many of them lived in the warmer valley during the winter and in the cooler hills during the summer. Some lived permanently in the valley to work the land. However, in a

[29] *UN Report No. 69 on the Implementation of the Agreement on Movement and Access and Update on Gaza Crossings* (25 June – 08 July 2008)

measure which has divided close families, since May 2005, anyone whose ID does not have a village in the northern Jordan Valley marked on it as the place of residence is not allowed to live or visit the area. Palestinians not from the Jordan Valley are not even allowed to travel along Road 90, the main north-south road through the valley.

The restrictions on movement affect every area of life, including the standard of living, agriculture, trade, industry, education, health and family relations. Economic activity is suffocated and unemployment has risen. Access to education has become even more restricted as teachers and students have difficulty in getting to school and university, and consequently standards have fallen. Relatives have difficulty in visiting each other and maintaining crucial family ties. Sick people travelling to hospitals are kept waiting at checkpoints, and some have died following delays or denials of permission to pass through the checkpoint.

THE FENCE/WALL

The fence/wall which is being built harms the lives of the many Palestinians who live near its route. Israeli authorities started construction in 2002, describing it as a defensive barrier to provide security for Israel. However, it does not adhere to the 315 kilometre-long Green Line, the official boundary between the West Bank and Israel, with more than 80 per cent of it being built on Palestinian land in the West Bank. It surrounds some 80 Israeli settlements and engulfs vast areas of the most fertile Palestinian lands, effectively annexing them to Israel. When complete, the wall will be some 720 kilometres long and 35,000 Palestinians will be confined to enclaves on the Israeli side of the wall, forbidden to enter Israel, restricted in access to the rest of the West Bank, and needing permits to remain on their own land. Palestinians are allowed to petition against the route of the fence/wall to the High Court of Justice, but most such petitions lodged by Palestinians have been rejected. Even in the few instances when the High Court of Justice has ordered that the route be changed (for instance in the case of Beit Surik in 2004) the rulings have not been implemented by the Israeli army.[30]

Several Palestinian villages have lost most of their farming land behind the fence/wall and villagers who are without access to their land have lost their livelihoods. In the first year after the fence/wall was built, gates to farmland behind tended to be open and most people had permits. Now gates are normally closed for all but a short time twice a day and the Israeli army increasingly denies farmers permits to cross to their land. Farmers are informed that they are not allowed through the gates for a variety of reasons: because they do not have the right papers, because their surnames are different from those on the old ownership documents, or because they are considered to be a "security" risk. Elderly people who are not physically able to work may receive a permit, while their children, grandchildren, nephews and nieces, who could actually work the land, do not.

[30] In the Beit Surik Case (HCJ 2056/04) of 30 June 2004, the High Court of Justice ordered that the state alter the route of the fence/wall over 30 kilometres to bring it closer to the Green Line. Four years later, not only has the route not been altered, but since 1 July 2008, coinciding with the peach, grape and fig harvest, the Israeli authorities have reduced openings of gates near Beit Surik from five to three days a week. OCHA, *The Humanitarian Monitor,*
occupied Palestinian territory , Number 28 August 2008.

Imad Khalid, a farmer in Jayyus, a village near Qalqiliya cut off from 90 per cent of its most fertile land by the fence/wall, is not allowed through the gate to farm his land because he has been told he is a "security" risk. He was detained for more than three years from 1991 to 1994 during the first Intifada[31]. From 1995 to 2000 he was apparently not considered to be a security risk because he was allowed to work in Israel. However, the time he spent in detention 14 years ago has blighted not only his own life and livelihood but also that of the whole family. In an interview he gave to Amnesty International in April 2006, he said:

> *"My father is 68, he had a permit till April 2006, it took him one year to get it. When it expired they didn't want to renew it. I have 10 brothers who are not given a permit because of my time in prison. No other brother was in prison, but if one does something the whole family is punished. We have sold the green-houses, we could not harvest the guavas in October. Now I work as a guard in a cement factory for $300 a month, just enough to feed the family with... I was born in this land, I lived in this land all my life, I was working here and looking after it, and now for three years I cannot see it, it is very sad and hard for me to be in this situation..."*

In August 2008 no member of the family yet had a permit to access their land.

THE BLOCKADE OF GAZA

Israel has been operating a partial blockade of the **Gaza Strip** for years. After June 2007 when the Hamas administration took over security services in the Gaza Strip, the Israeli authorities imposed an even stricter blockade on it. In Amnesty International's view, the blockade constitutes collective punishment of Gaza's entire population, totalling some 1.5 million Palestinians, and amounts to cruel, inhuman or degrading treatment or punishment under Article 16 of the Convention.

The Israeli authorities have used the argument that the blockade is in response to activities of Palestinian armed groups operating in Gaza. Over recent years these groups have fired thousands of missiles and rockets indiscriminately towards civilian areas in Israel, particularly towards the towns of Sderot and Ashkelon. In June 2006, members of such groups carried out an armed attack on a military post inside Israel, near the border with Gaza, killing two Israeli soldiers and capturing a third, Corporal Gilad Shalit, who remains detained in Gaza, held in the expectation of obtaining a prisoner exchange. Three letters have been delivered to his family but he has had no access to the International Committee of the Red Cross.

The Israeli government maintains that since it removed its settlements and military bases from Gaza in 2005 it no longer has any responsibilities towards the population of Gaza. However, the Israeli army sends military operations into different parts of the Gaza Strip at will. The Israeli army controls the land crossing routes into Gaza and monitors and controls all individuals who enter. Even as regards the land border with Egypt at Rafah, Israeli officials have repeatedly made it clear that this border can only be reopened within the framework of a joint agreement. Israel also maintains sole control of Gaza's airspace and territorial waters.[32]

[31] The Palestinian uprising against Israeli occupation which lasted from 1987 to 1993.

[32] In August 2008, for the first time, two boats containing individuals concerned about the blockade of Gaza travelled from Cyprus to Gaza. After first announcing that they would be turned back, the Israeli authorities

The Israeli authorities have banned all exports from Gaza and have severely restricted the entry of goods into Gaza. What is allowed to enter is mostly humanitarian aid, food, and medical supplies. They have severely restricted the import of fuel to Gaza and as a result many Gazans can no longer reach their workplaces. Most goods are in short supply. Now 80 per cent of the population of Gaza are dependent on humanitarian aid to stay alive and a growing number of people are suffering from malnutrition.

In the first six months of 2008 more than 380 Palestinians, including more than 50 children, were killed by Israeli forces in the Gaza Strip. At least half of them were unarmed civilians. In the same period, 26 Israelis, including 17 civilians, were killed in attacks by Palestinian armed groups.[33] In June 2008, a truce was brokered between Israel and the Hamas de-facto administration in Gaza, whereby Gaza groups would cease to fire rockets into Israel and Israeli troops would stop conducting raids into the Gaza Strip. Since the truce the Israeli authorities have only partially increased the amount of goods entering Gaza, refusing to allow greater movement of goods into the Gaza Strip and closing the borders for the passage of goods whenever a missile is fired. Israel states that it will continue the damaging blockade on Gaza until Gilad Shalit is released.

K. DENIAL OF ACCESS TO MEDICAL CARE: ARTICLE 16 OF THE CONVENTION

Amnesty International believes that the denial of medical treatment for patients in Gaza constitutes cruel, inhuman or degrading treatment or punishment under Article 16 of the Convention.

Medical facilities in Gaza lack the specialized staff and equipment to treat a range of conditions, such as some forms of cancer and cardiovascular illnesses. Largely as a result of the blockade, hospitals and medical facilities are also increasingly short of drugs, disposable supplies and functioning medical equipment.

As the occupying power, Israel has a duty under international human rights and humanitarian law to ensure the right to health of the population of Gaza without discrimination and to ensure provision, to the fullest extent of the means available to it, of medical supplies to the population of Gaza. One aspect of the blockade imposed on Gaza since June 2007 has been the refusal of the Israeli authorities to allow permits for some critically ill patients to leave the Gaza Strip.

decided not to stop the boats' arrival and departure. They departed Gaza with seven Palestinians aboard considered "humanitarian cases" (five members of a family stranded in Gaza and a 10-year-old boy needing a prosthetic limb). However, the Israeli authorities claimed that the boats had arrived illegally. They only allowed one Israeli national who had been aboard one of the boats to leave Gaza through the Erez Border Crossing, where he was immediately arrested, held overnight and charged with entering Gaza illegally. Seven people from other countries who had been aboard the boats from Cyprus and remained in Gaza had not been allowed to leave through the Erez or Rafah Border Crossings a month after their arrival.

[33] This figure includes Israelis killed in Jerusalem and the West Bank.

According to OCHA, while an average of 90 per cent of applications submitted by Palestinians for Israeli permits to travel out of Gaza to receive medical treatment were approved in the first half of 2007, since the beginning of 2008 only 58 per cent of such applications have been approved. In July 2008, about two-thirds of the individuals seeking permission to travel out of Gaza for medical treatment received permits, 2.5 per cent of such individuals were expressly refused and 300 people, nearly a third of the total, received no response. Normally the reason the GSS gives for not granting a permit is that the individual who is seeking to leave Gaza for medical treatment poses a "security risk". The reasons for characterizing the patient as a "security risk" are not disclosed, so the individual can not effectively challenge the decision. The Israeli authorities claim that patients may carry bombs; however, all Palestinians undergo stringent security checks as they pass through the Erez Border Crossing to enter Israel Since 2007 many individuals requesting permits to leave Gaza in search of medical treatment are called for an interview with the GSS at Erez. During this interview they say they are asked to give information useful to Israel, and are often bluntly informed that their permit to obtain treatment outside Gaza depends on this cooperation.

In June 2007, the Israeli government told the High Court that the risk of losing a limb is an issue of "quality of life" for patients but not a danger to their life, and as a result it would not necessarily warrant a permit for patients to leave Gaza for medical treatment elsewhere. The Israeli High Court accepted the government's position and rejected the appeal by the Israeli organization Physicians for Human Rights for patients to be granted passage out of Gaza.

- Bassam al-Oehidi (m), aged 28, suffers from retinal detachment, but since November 2007 he has not been able to travel to St John's eye hospital in East Jerusalem in the OPT. He told Amnesty International that though he obtained a permit from the Israeli authorities to leave Gaza, he was called to Erez for an interview with the GSS and then denied passage at the border following his refusal to become an informant.
- Nufuz Husni (f), aged 44, a housewife with six children, has suffered from a malignant anal tumour since 2005. She had entered Israel four times between 2005 and 2007 for treatment. However, since February 2008 the GSS has refused her a permit to travel to the Ichilov Hospital in Tel Aviv for treatment that is unavailable in Gaza. On 30 August 2008, when the Egyptian authorities opened Rafah for two days, she was in hospital in Gaza and considered by her doctors too ill to travel to Egypt.
- Muhammad al-Hurani (m), aged 33, was diagnosed in February 2008 with a malignant brain tumour which affects his vision. In April 2008 he began to suffer from fits and seizures. He applied for a permit to leave Gaza via Israel to seek treatment. He has already had one interview with the GSS and now has decided that his only future is to leave to Egypt.
- Karima Abu Dalal (f), aged 34, suffers from Hodgkin's lymphoma, which is curable in 95 per cent of cases if the appropriate treatment is given in good time. She had previously received a bone marrow transplant, chemotherapy and radiotherapy in Egypt and was due to go to Nablus, in the West Bank, for more chemotherapy, which is unavailable in Gaza. She applied to the Israeli authorities for permission to travel to the West Bank in November 2007 but was denied a permit to leave for undisclosed security reasons. In January 2008, the Israeli High Court of Justice stated that it saw "no grounds to intervene" to lift the travel ban. Eventually, in April 2008 she was able

to cross the border between Gaza and Egypt, as a result of an exceptional arrangement.

More than 50 individuals who applied to travel outside Gaza in search of medical treatment not available in the Gaza Strip have died since 2007, including at least 32 who died between October 2007 and March 2008.[34]

L. FORCIBLE RETURNS: ARTICLE 3 OF THE CONVENTION

Amnesty International is concerned that Israel continues to send asylum-seekers and migrants to countries where they either face a real risk of human rights violations including torture or other ill-treatment, or are in danger of being sent to countries where they may be subjected to such abuse.

Israel has accepted hundreds of asylum-seekers, in particular Eritreans and Sudanese, who have managed to cross the border from Egypt. Over the past two years, Israel has tried to put into effect a policy of so-called "hot returns", whereby asylum-seekers and migrants who cross the Egypt-Israel border are sent back to Egypt after only summary questioning by soldiers without being given the opportunity to challenge the decision to expel them or to appeal against expulsion before a judicial body. The returns are coordinated with the Egyptian authorities.

In response to a petition to the Israeli Supreme Court for an injunction against "hot returns", an Israeli commander stated in an affidavit presented on 1 September 2008 that 91 people had been forcibly returned in a "coordinated return" with Egypt between 23 and 29 August 2008. According to the procedure followed, soldiers document the answers of those crossing the border and deport them within three or, if they form part of a group, at most six hours. If in doubt the case is referred to a superior officer. However, the government response admitted that even these procedures, which in Amnesty International's view do not give sufficient protection to asylum-seekers, were not always followed.

Egypt is well known not to be a safe country to which to return asylum-seekers. The Egyptian authorities have frequently returned asylum-seekers to countries where they may be at risk of torture. On 1 June 2008 some 1,200 asylum-seekers were returned from Egypt to Eritrea, ignoring a UNHCR directive which says that no asylum-seeker should be forcibly returned to Eritrea because of the danger that they would be subjected to torture or other cruel, inhuman or degrading treatment.

Furthermore, many of those returned to Egypt from Israel have been placed in incommunicado detention without trial. More than 1,300 asylum-seekers returned from Israel have been summarily tried by Egyptian military courts since mid-2007 and received prison sentences for "attempting to exit unlawfully the Egyptian eastern border". On 18 August 2007, 48 asylum-seekers, mostly Sudanese, were summarily deported from Israel to Egypt. On their arrival in Egypt, they were subjected to enforced disappearance for several months. Twenty individuals

[34] World Health Organization, *Access to Health Services for Palestinian people*, April 2008.

of Sudanese origin, were then returned to Sudan, allegedly after having agreed to do so, without being granted access to the UNHCR. There is no information as to the fate or whereabouts of the other 28 individuals, who Amnesty International fears may remain in secret detention in Egypt. None have been given the opportunity to have a meeting with the UNHCR to challenge their detention or return.

Appendix: Amnesty International documents for further reference[35]

Surviving under siege: The impact of movement restrictions on the right to work (MDE 15/001/2003)

Israel must end its policy of assassinations (MDE 15/056/2003)

The place of the fence/wall in international law (MDE 15/016/2004)

Under the rubble – house demolition and destruction of land and property (MDE 15/033/2004)

Torn apart – families split by discriminatory policies (MDE 15/063/2004)

Israeli settlers wage campaign of intimidation on Palestinians and internationals alike (MDE 15/099/2004)

Briefing to the Committee on the Elimination of Racial Discrimination (MDE 15/002/2006)

Israel and the Occupied Territories: Road to nowhere (MDE 15/093/2006)

Update to Comments on Israel's compliance with its obligations under the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) (MDE 15/007/2007)

Enduring occupation: Palestinians under siege in the West Bank (MDE 15/033/2007)

Punitive restrictions: Families of Palestinian detainees denied visits (MDE 15/006/2008)

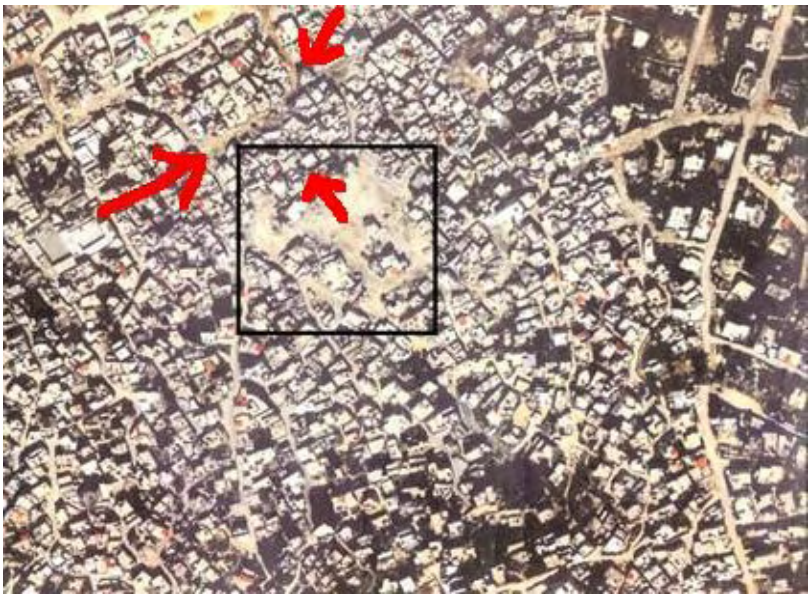
Gaza Blockade: Collective Punishment (MDE 15/021/2008)

[35] All of these documents are available on Amnesty International's website: http://www.amnesty.org/en/region/israel-occupied-palestinian-territories

ANNEX 1: EXCERPT FROM *ISRAEL AND THE OCCUPIED TERRITORIES: SHIELDED FROM SCRUTINY: IDF VIOLATIONS IN JENIN AND NABLUS* (NOVEMBER 2002),

AI Index : MDE 15/143/2002

[**showing the demolitions of homes in Hawashin quarter of Jenin between 11 and 13 2002. See page 15**]



Jenin refugee camp – 13 April 2002

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