

ISRAEL

FAILING ITS HUMAN RIGHTS COMMITMENTS

*Amnesty International
Submission to the UN Universal
Periodic Review, July 2012*

**AMNESTY
INTERNATIONAL**



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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review (UPR) of Israel in January-February 2013, Amnesty International comments on Israel's implementation of the recommendations it supported during its previous UPR in 2008, as regards compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, conscientious objectors and discrimination against minorities.

With regard to the normative and institutional framework in Israel, Amnesty International is concerned that Israel has rejected the International Court of Justice's opinion on the wall, withdrawn its cooperation with the Human Rights Council, and continues to deny the applicability of international human rights law and the Fourth Geneva Convention in the Occupied Palestinian Territories. Amnesty International also draws attention to the Knesset's adoption of the Prevention of Infiltration Law in violation of international standards, and the failure of Israeli authorities to credibly and thoroughly investigate war crimes and possible crimes against humanity.

With respect to the human rights situation on the ground, Amnesty International expresses its concerns about the continued practice of detention without charge or trial, forced evictions of Palestinians and arbitrary restrictions on their right to freedom of movement.

FOLLOW UP TO THE PREVIOUS REVIEW

Amnesty International regrets that Israel did not comment on the vast majority of the 133 recommendations made by other states at Israel's UPR in December 2008 and adopted by the Human Rights Council in March 2009.¹ Issues reflected in many of those recommendations are addressed in the sections below. This submission highlights three recommendations which, though accepted by Israel, have not been implemented and continue to be relevant.

CONTINUED VIOLATIONS OF THE CONVENTION AGAINST TORTURE

Israel voluntarily committed to acting in accordance with CAT and in particular to conducting prompt and impartial investigations,² as recommended by four states during the review.³ Amnesty International is concerned, however, that torture and other ill-treatment continue to be used out during arrest and interrogation and that prompt, thorough and impartial investigations are extremely rare. Methods include painful shackling and binding, immobilization in stress positions, sleep deprivation, threats against family members, and verbal abuse. Recently, detainees on prolonged hunger strikes have also reported suffering torture and other ill-treatment as punishment for their hunger strikes. Children have also been subjected to torture and other ill-treatment during interrogation. Islam Dar Ayyoub, a 14-year-old boy from al-Nabi Saleh in the West Bank, was arrested in the night on 23 January 2011, then deprived of sleep, threatened with violence and interrogated without the presence of a lawyer or family member. Amnesty International is concerned that statements obtained through torture and other ill-treatment are deemed admissible in court. Torture and other ill-treatment are sometimes inflicted with the complicity of doctors.

Israel's current legislation does not contain an absolute prohibition on torture. The Supreme Court ruled on 9 September 2009 that psychological pressure exerted by making threats against detainees' family members was forbidden, and the Attorney General modified the guidelines issued to the Israel Security Agency (ISA) interrogators to reflect this. The Supreme Court ruling of 1999 permits interrogators using "physical interrogation methods" in "ticking time-bomb" situations to escape criminal liability under the "defence of necessity".⁴ This justification for torture has resulted in total impunity for ISA officers. Despite the filing of more than 700 complaints, no criminal investigation has ever been opened.⁵

Israel has not established procedures to ensure that complaints of torture and other ill-treatment at the hands of the ISA are properly and impartially investigated. The person in charge of investigating complaints, the Interrogee Complaints Comptroller, is himself an employee of the ISA. In November 2010, the Attorney General announced that the Comptroller would become an employee of the Ministry of Justice; however, neither this transfer, nor any other changes to increase accountability have so far been implemented.⁶

CONTINUED IMPRISONMENT OF CONSCIENTIOUS OBJECTORS

Israel voluntarily committed to granting the rights of conscientious objectors to serve in a civilian body,⁷ as recommended to it during the review.⁸ Amnesty International is concerned that Israel has not followed through on this commitment and that individuals continue to be penalized for refusing military service on grounds of conscience. On 11 June 2012, Yaniv Mazor, a 31-year-old Israeli man, was sentenced to 20 days in prison for refusing to carry out military duty, without being offered the option of alternative civilian service. Similarly, Noam Gur, an 18-year-old Israeli woman, was arrested on 17 April 2012 and served a ten-day sentence.

CONTINUED DISCRIMINATION AGAINST MEMBERS OF MINORITIES WITHIN ISRAEL

Israel decided to support the recommendation to ensure that the rights of minorities are fully protected.⁹ Amnesty International is concerned, however, that the housing rights of the Bedouin minority are not respected. Palestinian Bedouin who are citizens of Israel have suffered the repeated demolition of their homes as a corollary of discriminatory policies that do not recognize the legality of some 35 villages in the Negev/Naqab region. For example, since 2010 the authorities have repeatedly demolished all the homes in the village of al-'Araqib, subjecting some 250 people to forced evictions that have rendered them homeless.¹⁰ In September 2011, the Israeli cabinet approved plans to "regulate" Bedouin construction in the Negev/Naqab; if implemented, these could lead to the forced eviction of thousands of members of this minority.¹¹

In January 2012, the Supreme Court rejected a petition to annul the Citizenship and Entry into Israel Law, passed by the Israeli parliament on 31 July 2003 and renewed every six months since then, which bars family unification for Israelis who are married to Palestinians from the OPT.¹² The law explicitly discriminates against Palestinians from the OPT and also implicitly discriminates against Palestinian residents and citizens in Israel who constitute 20 percent of the Israeli population and often marry Palestinians from the OPT. As such, the law formally institutionalizes a form of racial discrimination based on ethnicity or nationality.¹³

NORMATIVE AND INSTITUTIONAL FRAMEWORK IN ISRAEL

Amnesty International is concerned that certain Israeli policies, laws and practices contribute to systematic human rights violations; these are exacerbated by the government's stance towards human rights bodies.

APPLICATION OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW TO THE OCCUPIED PALESTINIAN TERRITORIES

Israel continues to deny that international human rights law and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War are applicable in the OPT, and did not respond to recommendations regarding this during the first UPR.¹⁴ In this respect, Israel is at odds with the international community, including the International Court of Justice (ICJ), which considers all UN conventions and treaties ratified by Israel to be applicable to the OPT. Additionally, the establishment

of Israeli settlements violates the Fourth Geneva Convention, which prohibits an occupying power from settling its civilian population in the territory it occupies. Israel has established more than 150 settlements in the West Bank.

THE INTERNATIONAL COURT OF JUSTICE'S OPINION ON THE WALL

Israel has rejected the ICJ advisory opinion of July 2004 that found the route of the Israeli military fence/wall where it crosses into the OPT to be illegal.¹⁵ The fence/wall, which continues to be built, creates an arbitrary restriction on the right of Palestinians to freedom of movement which has led to violations of other rights, including to an adequate standard of living and to health. Farmers who are cut off from their lands by the fence/wall have lost their source of livelihood, notably in Jayyus near Qalqiliya.¹⁶ Protests against the fence/wall have been met by the Israeli army with excessive force, resulting in the death or severe injury of at least eight people. Some protesters have been detained solely for the peaceful exercise of their right to freedom of assembly or expression.¹⁷

COOPERATION WITH THE UN HUMAN RIGHTS COUNCIL

After the Human Rights Council had decided to dispatch the Fact Finding Mission to Investigate the Impact of Israeli Settlements on 22 March 2012, the Israeli government declared the withdrawal of its cooperation with the Council.¹⁸ The government stated that it will selectively cooperate with UN fact-finding missions which it judges not to be biased.¹⁹

INVESTIGATIONS OF ALLEGED WAR CRIMES AND POSSIBLE CRIMES AGAINST HUMANITY

In 2009 Israel refused to cooperate with the UN Fact Finding Mission on the Gaza Conflict, headed by Justice Richard Goldstone, in the aftermath of Operation "Cast Lead" of December 2008 and January 2009. In September 2009, the Mission published its report identifying war crimes and possible crimes against humanity, which Israel rejected. Since then, Israel's Military Advocate General has indicted four soldiers on criminal charges in three different incidents relating to the 2008-2009 Gaza conflict. However, the scale and gravity of the violations necessitate a more thorough treatment, and Amnesty International concludes that years after the conflict, the Israeli authorities have failed to conduct investigations that are credible, independent and in conformity with international law, and failed to prosecute suspected war criminals.²⁰ This in turn has reinforced the atmosphere of impunity in which ongoing violations are committed.²¹

THE PREVENTION OF INFILTRATION LAW

On 10 January 2012, the Israeli parliament passed the Prevention of Infiltration Law, which mandates the automatic detention of anyone, including asylum-seekers, who enters Israel without permission. Automatic and prolonged detention without charge or trial for three or more years under the new law violates international standards, which demand that state authorities demonstrate that immigration detention is "necessary and proportionate" and based on detailed individual assessments. Since 2005, approximately 45,000 people have entered Israel via the Egyptian border to seek asylum. The majority of them are Eritrean and Sudanese. For the past few years, Israel has barred Eritrean and Sudanese asylum-seekers outright from having their refugee claims heard, in contravention of the 1951 Refugee Convention.²²

THE DEATH PENALTY

Amnesty International classifies Israel as abolitionist for ordinary crimes.²³ The death penalty is retained for treason in wartime, crimes against the Jewish people, crimes against humanity, war crimes and genocide. Under military orders applicable in the OPT, the death penalty is retained for certain crimes. Amnesty International continues to urge Israel to abolish the death penalty completely.²⁴

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

In addition to the problems listed in the two preceding sections, Amnesty International is compelled to reiterate concerns raised in the previous submission to the UPR in 2008 that have not been addressed, including the following patterns of human rights violations.

DETENTION WITHOUT TRIAL AND DETENTION CONDITIONS

In May 2012, over 4,000 Palestinians were detained or serving sentences in Israeli prisons. More than 300 of these are held under administrative detention orders, with no intention to try them.

Detention without charge or trial, practiced by Israel in the form of administrative detention or detention under the Incarceration of Unlawful Combatants Law, violates the right of Palestinians to a fair trial as stipulated in the International Covenant on Civil and Political Rights to which Israel is party. Administrative detention orders are renewable indefinitely and therefore detainees do not know when they will be released. When prolonged or repeated, such detention can amount to cruel, inhuman or degrading treatment or punishment. Other violations to which administrative detainees – as well as other Palestinian prisoners held by Israel – are routinely subjected include the use of torture and other ill-treatment; poor prison conditions, including inadequate medical care; detention in prisons inside Israel rather than in the OPT; and prohibitions on family visits.

People held as administrative detainees spend months and sometimes years in prison without even knowing the details of the allegations against them. Because most or all of the material justifying the detention order is withheld from detainees and their lawyers, it is not possible for detainees to defend themselves in a meaningful way. In one such case, Ali 'Awad al-Jamal spent over six consecutive years in administrative detention, and in another case, Saleh al-'Arouri received 20 administrative detention orders and two prison sentences over two decades. He spent more than nine years in detention without charge or trial before he was forced into exile in March 2010.²⁵

FORCED EVICTIONS

Israel has carried out forced evictions of Palestinians in East Jerusalem and in areas designated as "Area C" under the Oslo Accords. These communities suffer from discriminatory policies that favour the expansion of Israeli-only settlements. To the east of Jerusalem in Khan al-Ahmar and Wadi Abu Hindi, two primary schools that serve some 200 children are slated for demolition. If carried out, some of the children will not have access to education.²⁶ In the northern West Bank, in al-'Aqaba, Khirbet Tana, Humsa and Hadidiya, whole villages are threatened with demolition.²⁷ In the southern West Bank, the Israeli army has demolished homes, water cisterns and animal pens in Umm al-Kheir, Tuwani and other villages.²⁸ Nearby settlers harass the marginalized communities and attack their property with virtual impunity. Altogether, Israeli military controls planning, zoning and security in more than 60 percent of the occupied West Bank.

ARBITRARY RESTRICTIONS ON THE RIGHT TO FREEDOM OF MOVEMENT

Over 500 checkpoints and roadblocks in the West Bank limit movement and access between Palestinian towns and villages, in particular closing off East Jerusalem, parts of Hebron, and the Jordan Valley to Palestinian access. Palestinians need a permit issued by Israel, while Israelis, including settlers, enjoy free movement in the same areas. These arbitrary and discriminatory restrictions expose Palestinian residents to harassment and other abuse by soldiers at checkpoints and impede their access to medical care and water.

In the Gaza Strip, the blockade imposed by Israel has resulted in the near-collapse of basic infrastructure, including medical facilities and sanitation. Israel bans exports from Gaza, stifling the

economy, and severe restrictions on imports fuel shortages and high prices. Israel controls the Gaza population registry and forbids the movement of people, including for travel to the West Bank, barring exceptional cases. Patients in Gaza who are referred for treatment in Israel and the West Bank are sometimes refused entry, delayed, or exposed to the risk of arrest at the checkpoint between Gaza and Israel. Amnesty International believes that the blockade amounts to the collective punishment of the population of Gaza.²⁹

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Israel:

Violations of the Convention against Torture:

- To ensure that all allegations of torture or other ill-treatment are investigated promptly, thoroughly and impartially by an independent body, that alleged perpetrators are brought to justice, and reparations are provided to victims, as agreed by Israel in the previous UPR;
- To legislate an absolute ban on torture by annulling the “defence of necessity” in “ticking-bomb scenarios”;
- To declare evidence obtained under duress as inadmissible in court.

Imprisonment of conscientious objectors to military service:

- To immediately and unconditionally release anyone deprived of their liberty for conscientious objection;
- To introduce non-punitive civilian alternatives to military service which respect the right to freedom of conscience.

Protecting the rights of minorities within Israel, in principle adopted by Israel in the previous UPR:

- To end all forms of discrimination against minorities, including Palestinian citizens of Israel;
- To legally recognize excluded Bedouin villages in the Negev/Naqab and to halt demolitions and forced evictions in these villages until zoning and planning laws comply with the international prohibition on discrimination;
- To annul the law that prevents the family unification of Israeli citizens with spouses from the OPT.

International human rights law and humanitarian law in the Occupied Palestinian Territories:

- To accept the applicability of human rights treaties and the Fourth Geneva Convention in the OPT;
- To remove Israeli settlements from the OPT, which were established in violation of the Fourth Geneva Convention whereby an occupying power shall not settle its civilian population in the territory it occupies.

The International Court of Justice’s opinion on the wall:

- To dismantle the fence/wall where its route encroaches on the OPT and compensate Palestinians for losses due to the fence/wall’s construction.

Investigations of alleged war crimes and possible crimes against humanity:

- To ensure that all allegations of war crimes and possible crimes against humanity committed during Operation “Cast Lead” are thoroughly and impartially investigated, and that anyone found responsible for crimes is brought to justice;
- To cooperate with international mechanisms for accountability by giving access to UN missions.

The Prevention of Infiltration Law:

- To ensure that the treatment of refugees and asylum-seekers conforms to the 1951 Refugee Convention.

The death penalty:

- To abolish the death penalty for all crimes.

Detention without trial and detention conditions:

- To release immediately and unconditionally all individuals held solely for the non-violent exercise of their rights to freedom of expression, association and assembly;
- To end the practice of administrative detention and to release all administrative detainees unless they are promptly charged with recognizably criminal offences and tried in accordance with international fair trial standards.
- End the practice of forcible exile or transfer of Palestinians from the OPT or from the West Bank to Gaza;
- To ensure that no prisoner or detainee is punished in any way for non-violent protests such as hunger strikes;
- To ensure that all Palestinians from the OPT in Israeli custody are held in prisons and detention centres inside the OPT, in conditions which fully meet international standards, including in relation to access to families, lawyers and, when necessary, independent doctors.

Forced evictions:

- To stop house demolitions and forced evictions in the OPT and transfer planning responsibilities to Palestinian communities;
- To ensure victims of forced evictions have access to effective remedies and full reparations;
- Remove Israeli settlements from the OPT;
- To ensure that Israeli settlers who commit acts of violence against Palestinians are prosecuted, and that victims are granted compensation.

Arbitrary restrictions on the right to freedom of movement:

- To completely lift the blockade on the Gaza Strip;
- To ensure that the rights to health, education, an adequate standard of living, and other rights dependent on the right to be free from arbitrary restrictions on freedom of movement, are respected.

ENDNOTES

- ¹ Human Rights Council, *Report of the Working Group on Universal Periodic Review of Israel*, A/HRC/10/76, 8 January 2009 (A/HRC/10/76).
- ² Human Rights Council 10th Session Report, para. 461 (f).
- ³ UPR Working Group Report, para. 100.13 (Canada, France, Syria, Yemen).
- ⁴ HCJ 5100/94 *Public Committee against Torture in Israel v. the State of Israel*, 6 September 1999.
- ⁵ Amnesty International, *Letter to UN Committee against Torture regarding adoption of list of issues by the Committee* (Index MDE 15/029/2012), 7 March 2012.
- ⁶ Amnesty International, *Letter to UN Committee against Torture regarding adoption of list of issues by the Committee* (Index MDE 15/029/2012), 7 March 2012.
- ⁷ A/HRC/10/29, para. 461(h).
- ⁸ A/HRC/10/76, para. 100.22 (Slovenia).
- ⁹ A/HRC/10/76, para. 100.28 (United Kingdom); A/HRC/10/29, para. 460.
- ¹⁰ Amnesty International, *Israel sues Bedouin villagers for cost of repeated evictions*, 29 July 2011, available at <http://www.amnesty.org/en/news-and-updates/israel-sues-bedouin-villagers-cost-repeated-evictions-2011-07-29>
- ¹¹ Amnesty International, *Annual Report 2012: Israel*, p. 187 (Index: POL 10/001/2012).
- ¹² Section 5763 – 2003 of the Citizenship and Entry into Israel Law (Temporary Order).
- ¹³ Amnesty International, *Torn Apart: Families split by discriminatory policies* (Index: MDE 15/063/2004).
- ¹⁴ A/HRC/10/76, para. 100.32 (Switzerland, Canada, Chile).
- ¹⁵ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004.
- ¹⁶ AI Letter to UN Committee against Torture.
- ¹⁷ Amnesty International, *Palestinian activist Jamal Juma' freed*, 13 January 2010, available at <http://www.amnesty.org/en/news-and-updates/news/palestinian-activist-jamal-juma%27-freed-20100113>
- ¹⁸ Human Rights Council, *Resolution on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, A/HRC/19/17, 10 April 2012.
- ¹⁹ Danny Ayalon, *Theatre of the Absurd*, Foreign Policy, 30 March 2012, available at http://www.foreignpolicy.com/articles/2012/03/30/theater_of_the_absurd
- ²⁰ Amnesty International, *Amnesty International's updated assessment of Israeli and Palestinian investigations into the Gaza conflict* (Index: MDE 15/018/2011).
- ²¹ Amnesty International, *Gaza's lost children*, Blog, 22 June 2012, available at <http://livewire.amnesty.org/2012/06/22/gaza%E2%80%99s-lost-children/>
- ²² Amnesty International, *Knesset should reject draft law imposing prolonged detention on asylum-seekers*, (Index: MDE 15/043/2011).
- ²³ As noted by Israel in its statement at the previous UPR, Nazi war criminal Adolf Eichmann was the only person put to death in the history of Israel. Human Rights Council 10th Session Report, para. 464.
- ²⁴ Amnesty International, *Eichmann Supreme Court Judgment, 50 years on: Its Significance Today* (Index: IOR 53/013/2012).
- ²⁵ Amnesty International, *Starved of Justice: Palestinians detained without trial by Israel* (Index: MDE 15/026/2012).
- ²⁶ Amnesty International, *Stop the transfer: Israel about to expel Bedouin to expand settlements* (Index: MDE 15/001/2012).

²⁷ Amnesty International, *As safe as Houses? Israel's demolition of Palestinian homes* (Index: MDE 15/006/2010).

²⁸ Amnesty International, *Troubled waters - Palestinians denied fair access to water* (Index: MDE 15/027/2009).

²⁹ Amnesty International, *Suffocating: The Gaza Strip under Israeli Blockade* (Index: MDE 15/002/2010).

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS ON ISRAEL FOR FURTHER REFERENCE¹

Palestinian activist jailed for West Bank protest must be freed, 7 November 2012

Detainee ends hunger strike pending release (Index: MDE 15/060/2012).

Rachel Corrie verdict highlights impunity for Israeli military, 29 August 2012

Government urged to allow all from Syria seeking refuge to enter Golan Heights (Index: MDE 15/043/2012).

International pressure mounts over Gaza blockade (Index: MDE 15/033/2012).

Starved of Justice: Palestinians detained without trial by Israel (Report; Index: MDE 15/026/2012).

Israeli government should reverse decision to deport South Sudanese (Index: MDE 15/020/2012).

Amnesty International's response to the ICC Office of the Prosecutor's statement that it cannot investigate crimes committed during the Gaza conflict (Index MDE 15/018/2012)

Letter to UN Committee against Torture regarding adoption of list of issues by the Committee (Index MDE 15/029/2012)

Stop the transfer: Israel about to expel Bedouin to expand settlements (Report; Index: MDE 15/001/2012).

New detention law violates rights of asylum-seekers, 10 January 2012

Suffocating: The Gaza Strip under Israeli Blockade (Index MDE 15/002/2010).

¹ All of these documents are available on Amnesty International's website:

<http://www.amnesty.org/en/region/israel-occupied-palestinian-territories>