

ISRAEL

SUBMISSION TO THE
UNITED NATIONS
COMMITTEE AGAINST
TORTURE

57TH SESSION, 18 APRIL-13 MAY 2016

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2016 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2016

Index: MDE 15/3688/2016
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Amnesty International is a global movement of more than 7 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**AMNESTY
INTERNATIONAL**



CONTENTS

1. Introduction	7
2. Continuing impunity (Articles 12, 13, 14, Question 37 of the List of issues)	7
2.2 Operation Pillar of Defence.....	8
2.3 Operation Protective Edge	9
3. Excessive use of force against demonstrators and others (Article 16)	10
4. Unlawful killings post-October 2015 (Articles 12, 13 and 14)	13
5. Impunity for torture and other ill-treatment (Articles 1, 11, 15 and 16)	14
5.1 Detention and interrogation of children	15
5.2 Interrogation of children.....	16
5.3. Children in administrative detention	17
6. Administrative detention and use of 'Unlawful Combatants law' (Article 16 and 2).....	18
7. Punishment and ill-treatment of hunger strikers (Articles 16 and 2).....	21
8. Forcible returns (Article 3) and detention of asylum-seekers and irregular migrants (Article 16).....	24
9. Demolitions of Palestinian homes and forced evictions (Article 16).....	26
10. Recommendations	28
Continuing impunity	28
Excessive use of force against demonstrators and other individuals.....	28
Unlawful killings post-October 2015	29
Impunity for torture or other ill-treatment.....	29
Administrative detention and use of 'Unlawful Combatants Law'	29
Punishment and ill-treatment of hunger strikers	29
Forcible returns and detention of asylum-seekers and irregular migrants	30
Demolitions of Palestinian homes and forced evictions.....	30

1. INTRODUCTION

This submission is submitted to the United Nations (UN) Committee against Torture (the Committee) in view of its consideration of Israel's fifth periodic report on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). The briefing focuses on Amnesty International's concerns about Israel's failure to implement the Convention, particularly in the Occupied Palestinian Territories (OPT). Amnesty International's submission is not an exhaustive account of violations committed by Israel in the OPT but have rather focused upon where the organization has conducted specific research. This is in no way intended to detract from the seriousness and importance of the many other violations in the territory subject to Israel's jurisdiction or effective control.

The submission deals with the intensification of measures amounting to torture and other cruel, inhuman or degrading treatment or punishment against Palestinians through indefinite administrative detention without trial; torture and other ill-treatment of detainees; demolitions of homes and forced evictions; persistent impunity for serious human rights violations, amounting in some cases to war crimes, committed during three major conflicts in the Gaza Strip between 2008 and 2014, as well as a failure in accountability for incidents of excessive and even lethal force against Palestinians by Israeli forces in the OPT. In connection with this, it covers grave concerns about Israeli forces' response, since October 2015, to attacks by individual Palestinians¹ on Israeli civilians, soldiers and police officers, including unlawful killings and apparent extrajudicial executions. Finally, it raises concerns about the forcible return of asylum-seekers and other migrants from Israel to countries where they would be at real risk of torture.

2. CONTINUING IMPUNITY (ARTICLES 12, 13, 14, QUESTION 37 OF THE LIST OF ISSUES)

Amnesty International is gravely concerned that Israel's system of military investigations for alleged violations by its forces in the Occupied Palestinian Territories (OPT) fails to meet international standards and often functions to entrench impunity rather than to hold those responsible for violations to account. The inadequacy of the system is fundamental to the persistence of serious human rights violations. Israel's investigations were widely criticized internationally, including by Amnesty International,² and by Palestinians for their lack of

¹ See for example, Amnesty International, *No justification for deliberate attacks on civilians, unlawful killings by Israeli forces, or collective punishment of Palestinians*, (Index: MDE 15/2633/2015), 9 October 2015, <https://www.amnesty.org/en/documents/mde15/2633/2015/en/>.

² See Amnesty International's *Assessment of Israeli and Palestinian investigations into Gaza conflict*, (Index: MDE 15/022/2010), 27 September 2010,

independence and impartiality, and for their failure to ensure those responsible for serious violations, including torture, are brought to justice.

The failure of accountability following “Cast Lead”, repeated itself in two further major conflicts in the Gaza Strip – Operations Pillar of Defence (November 2012) and Protective Edge (July and August 2014). There is ample evidence that during both conflicts Israeli forces and Palestinian armed groups again committed serious violations of international humanitarian law, including war crimes. Again, the Israeli military investigated itself: key decisions in its system of military investigations, including whether to open a criminal investigation and whether to file charges, rest with Israel’s Military Advocate General (MAG), who is also responsible for legal advice during military operations. To date no one has been held accountable for violations during the conflicts, although the MAG reportedly plans to indict several soldiers for incidents of looting during the 2014 conflict.

2.2 OPERATION PILLAR OF DEFENCE

During the conflict, over 165 Palestinians were killed, including more than 30 children and some 70 other civilians and four civilians in Israel; around 1,500 people in the Gaza Strip and 200 in Israel were injured, while civilian homes and infrastructure were destroyed or damaged in both areas. Amnesty International documented some 18 missile strikes in which civilians who were not directly participating in hostilities were killed, as well as other types of indiscriminate and disproportionate attacks, including attacks on media offices. According to our assessment, at least some of the civilian deaths in the Gaza Strip were the result of apparent war crimes committed by Israeli military forces, while some of Israel’s attacks on civilian property and infrastructure also appear to have been war crimes.³

After the conflict ended, the Chief of Staff appointed Major General Noam Tibon to head a military commission examining alleged violations during the hostilities. The commission sent its findings on more than 80 cases to the MAG for a decision on whether to open a criminal investigation. The only MAG update on cases relating to Operation Pillar of Defense, issued in April 2013, reported that in 65 cases examined by the MAG, no justification was found for launching a criminal investigation, and that for approximately 15 other incidents, the commission’s findings were still awaiting review.⁴ Cases closed by the MAG that Amnesty International had documented and believes should have been independently investigated as possible war crimes include: the bombing of the al-Dalu family home, which killed 10 family members and two neighbours; the missile strike on the al-Shawwa family apartment, which killed four civilians and injured others; and an attack without warning on the Jordanian field

<https://www.amnesty.org/en/documents/mde15/022/2010/en/>; and Amnesty International, *Operation "Cast Lead": 22 days of death and destruction*, (Index: MDE 15/015/2009), 2 July 2009, <https://www.amnesty.org/en/documents/mde15/018/2011/en/>; and Amnesty International’s *Updated assessment of Israeli and Palestinian investigations into Gaza conflict*, (Index: MDE 15/018/2011), 18 March 2011, <https://www.amnesty.org/en/documents/mde15/018/2011/en/>

³ Amnesty International, *Israel’s military investigations into Gaza conflict violations strengthen impunity*; Amnesty International, *A year on from deadly Israel/Gaza conflict, the nightmare continues*, 14 November 2013, <https://www.amnesty.org/en/latest/news/2013/11/year-deadly-israelgaza-conflict-nightmare-continues/>.

⁴ IDF Military Advocate General, “The Examination of Alleged Misconduct During Operation ‘Pillar of Defence’: An Update”, 11 April 2013, http://www.law.idf.il/SIP_STORAGE/files/1/1381.pdf (last accessed 17 July 2015).

hospital in Gaza City.⁵ The MAG has issued no further updates relating to cases from Operation Pillar of Defense, and nearly four years since the conflict, no criminal investigations have been opened.⁶

2.3 OPERATION PROTECTIVE EDGE

During this conflict, Israeli forces committed war crimes, including disproportionate and indiscriminate attacks on Gaza's densely populated civilian areas as well as targeted attacks on schools sheltering civilians and other civilian buildings that the Israeli forces claimed were used by Hamas as command centres or to store or fire rockets. Amnesty International issued three reports concerned with Israeli attacks which raise serious and long-standing concerns that subsequent investigations have not been genuine, effective, independent, or impartial.⁷ Again, all allegations of violations, including war crimes, are subject to investigations within the military system, and the MAG remains the key decision maker at all stages of the process, despite the fact that he also had ultimate responsibility for overseeing the legal advice provided to Israeli forces operating during the conflict. Leading Israeli human rights organizations, among others, have heavily criticized this as a fundamental conflict of interest inherent in Israel's system of military investigations.⁸

The history of failures by the Israeli military authorities to conduct credible and effective investigations into allegations of serious violations of international law during previous hostilities in the Gaza Strip, the limited implementation of the Turkel Commission's⁹ recommendations, and clear gaps and flaws in the current military investigations raise serious concerns about the genuineness of these efforts. Accordingly, Amnesty International agrees

⁵ Amnesty International, *Israel's military investigations into Gaza conflict violations strengthen impunity*, 17 April 2013, <http://www.amnestyusa.org/news/news-item/israel-s-military-investigations-into-gaza-conflict-violations-strengthen-impunity>

⁶ Amnesty International, "Amnesty International's written statement to the 28th session of the UN Human Rights Council: Accountability is the only way to prevent further war crimes in Israel and the Occupied Palestinian Territories", (Index: MDE 15/1044/2015), 17 February 2015, <https://www.amnesty.org/en/documents/mde15/1044/2015/en/> (last accessed 17 July 2015).

⁷ See AI reports on Operation Protective Edge: <https://blackfriday.amnesty.org/report.php>; and <https://www.amnesty.org/en/documents/MDE15/032/2014/en/>; and <https://www.amnesty.org/en/documents/mde15/0029/2014/en/>.

⁸ B'Tselem and Yesh Din, "Israeli human rights organizations B'Tselem and Yesh Din: Israel is unwilling to investigate harm caused to Palestinians", 4 September 2014, http://www.btselem.org/press_releases/20140905_failure_to_investigate (last accessed 17 July 2015) (B'Tselem and Yesh Din, "Israel is unwilling to investigate").

⁹ See The Public Commission to Examine the Maritime Incident of 31 May 2010 (The Turkel Commission), Second Report, *Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law*, February 2013 (available at <http://www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf>); and Turkel Commission, *Second Report*, p. 49. See pp. 424-431 for a summary of the report's conclusions and recommendations and B'Tselem, "Israeli authorities have proven they cannot investigate suspected violations in the Gaza Strip"; B'Tselem, *Promoting Accountability: The Turkel Commission Report on Israel's Addressing Alleged Violations of International Humanitarian Law*, August 2013, http://www.btselem.org/sites/default/files2/position_paper_on_turkel_report_eng.pdf; and Adalah, *Briefing Paper on the Turkel Report – Part II*, May 2013, <http://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/Articles/2013/Briefing-Paper-Turkel-II-El-Ajou.pdf>

with the conclusion of the Israeli human rights organization B'Tselem that “there is currently no official body in Israel capable of conducting independent investigations of suspected violations of international humanitarian law”.¹⁰

3. EXCESSIVE USE OF FORCE AGAINST DEMONSTRATORS AND OTHERS (ARTICLE 16)

Amnesty International documented its concerns about the use of excessive or lethal force against Palestinian protestors in the West Bank between 2011 and 2013 in a report, *Trigger-happy: Israel's use of excessive force in the West Bank*¹¹, published in February 2014. The report documented the killings of 22 Palestinian civilians in the West Bank during 2013, at least 14 of which were in the context of protests and when not posing a direct or immediate threat to life. Most were young adults under 25 years, including at least four children. Between 2011 and 2013 at least 261 Palestinians, including 67 children, were seriously injured by live ammunition fired by Israeli forces in the West Bank. Peaceful protesters, civilian bystanders, human rights activists and journalists are among those who have been killed or injured. According to B'Tselem, 182 Palestinians were killed by Israeli security forces between 19 January 2009 and 31 October 2015, including 39 children.¹²

The report concluded – among other things – that the frequency and persistence of arbitrary and abusive force against peaceful protesters in the West Bank by Israeli soldiers and police officers – and the impunity enjoyed by perpetrators – suggests that it is carried out as a matter of policy; and that the Israeli system of investigation is not independent, impartial or transparent. As the report found, a pattern has emerged whereby groups of Palestinians, often mainly children and youths, protesting Israeli occupation and its associated policies and practises, would resort to low-level violence such as stone-throwing at Israeli forces, without posing a serious risk, were met by force including less-lethal means such as various chemical irritants (commonly called tear gas), pepper spray, stun grenades (sound bombs), maloderants (foul-smelling “skunk water”) and hand-held batons. Frequently, Israeli forces fired rubber-coated metal bullets and live firearms ammunition at protesters, causing deaths and injuries. In some cases, they killed or injured demonstrators by firing tear gas directly at them from close range or by using tear gas in enclosed spaces causing asphyxiation. Often, the force used by Israeli forces against protesters seems to be unnecessary, arbitrary and abusive.

In reference to the Committee's question 50 in the List of Issues, requesting updated information on the investigation into the death of **Mustafa Tamimi** who died of his wounds on

¹⁰ B'Tselem, “Israeli authorities have proven they cannot investigate suspected violations in the Gaza Strip”.

¹¹ See Amnesty International, *Trigger-Happy: Israel's use of excessive force in the West Bank*, (Index: MDE 15/002/2014), 27 February 2015, <https://www.amnesty.org/en/documents/MDE15/002/2014/en/>

¹² See <http://www.btselem.org/statistics/fatalities/after-cast-lead/by-date-of-event>

10 December 2011 after being shot in the face at close range with a tear gas canister, we note that a Military Police investigation was opened into the incident in the same month. On 6 February 2013, the MAG Corps informed B'Tselem, who had made a complaint about the case, that it had been returned to the Military Police to complete investigation in relation to specific additional matters. On 5 December that year, the MAG Corps informed B'Tselem that the case had been closed because the gunfire that killed Mustafa Tamimi "was carried out in accordance with the relevant rules and regulations, and did not involve any wrongdoing." It said the Military Police Criminal Investigation Division (MPCID) investigation collected testimonies from soldiers, examined photographs and video documentation of the incident, and received an "expert opinion" to reach the conclusion that "[t]he shooting of the canister was done in accordance with the relevant rules and regulations, and did not involve any offence. As a result, the MAG decided to close the case without any disciplinary or criminal consequences to the IDF personnel involved." The MAG Corps said that "violent riots, which included throwing stones at MPCID investigators, repeatedly impeded the ability to perform a reconstruction at the scene of the incident."

Amnesty International condemns the decision made in this case, having documented the event and concluded that Mustafa Tamimi's action – throwing stones at an armoured military vehicle which was moving out of Nabi Saleh village following the weekly protest there - did not pose an imminent threat to the lives of any soldiers or of others. The soldier who fired a 40mm tear gas canister from a launcher through the open door in the rear of the army vehicle hit Mustafa Tamimi from just a few metres away and directly in his face. The incident was captured by a sequence of photographs that show the moment of the shooting.¹³ Amnesty International concluded that the killing was unlawful; the military investigations that followed exemplify the extent to which members of the Israeli forces are allowed to commit crimes with absolute impunity. The investigation did not seek testimonies from Palestinians, including witnesses. The lack of acknowledgement from the MAG Corps of any wrongdoing in the killing of Mustafa Tamimi sends a clear message to all Israeli forces who participate in policing demonstrations in the West Bank that they are free to misuse weapons causing deaths and injuries without being held to account.

Amnesty International has reiterated over many years, its concerns about investigations into killings by its security forces of Palestinian protestors and others in the OPT. The investigations are inherently flawed and do not protect Palestinians from the use of excessive and even lethal force which, in many cases, is not necessary or justifiable. For years, the IDF routinely opened criminal investigations whenever it received a notice or complaint that a Palestinian civilian had been killed by its forces in the OPT. But soon after the second Intifada of 2000 began, the MAG, arguing that the IDF was engaged in an "armed conflict short of war" in the OPT, changed the IDF policy on investigations. Criminal investigations into offenses allegedly committed during operational actions, with the exception of offenses such as looting or abuse, were made conditional on the results of a preliminary "inquiry" conducted by the MAG Corps based primarily on the operational debriefing.¹⁴ So, when a Palestinian civilian in the OPT was killed or injured by the Israeli military, a criminal investigation would only be initiated if the results of the IDF's internal operational debriefing indicated that the soldiers involved may have committed criminal conduct.

However, in April 2011, in response to a petition filed by two Israeli human rights organizations to Israel's High Court of Justice (HCJ) in October 2003, the MAG announced

¹³ B'Tselem, *Soldier kills Palestinian demonstrator Mustafa Tamimi, 28, by shooting tear-gas canister at him*, 11 December 2011 (http://www.btselem.org/firearms/20111209_killing_of_mustafa_tamimi).

¹⁴ B'Tselem, *Void of Responsibility*, p. 13-15; Yesh Din, *Alleged Investigation*, p. 9, 23-24.

that the MPCID would initiate criminal investigations for all cases in which Palestinian civilians were killed by the IDF in the West Bank, except for those in which there were “clear elements of combat”.¹⁵ This was not applicable to cases of Palestinian civilians killed by Israeli forces in the Gaza Strip, nor did it alter the IDF’s general characterization of the situation in the OPT as one of armed conflict.¹⁶

There are major problems with operational debriefings system as the primary basis for assessing potential criminal responsibility. First, the commanders conducting the operational debriefings lack the training and expertise to conduct investigations into violations of international law; they are internal, usually performed by commanders within the chain of command of the unit involved in the incident, and only take statements from military personnel. The information is not made public, and nothing from the debriefing can be used in any subsequent prosecution. Finally, soldiers involved in the incident are able to coordinate their statements to commanders, or destroy or conceal physical or other evidence, in an effort to ensure that a criminal investigation will not be initiated.

Completed operational debriefings go to the MAG Corps which decides whether to open a criminal investigation. This is known as an “inquiry” process on which there are no time limits: it regularly takes more than a year.¹⁷ When the MAG Corps decides not to open a criminal investigation, it provides virtually no information on the basis for its decision to the families of victims or human rights organizations who submitted the original complaint.

According to Israeli human rights organization Yesh Din since the beginning of the second Intifada in September 2000, indictments have only been filed against Israeli soldiers for offenses relating to the deaths of Palestinian civilians killed by Israeli forces in the OPT in a tiny percentage of cases. The very small percentage of the cases where the IDF was notified of potential violations by its forces in which indictments are eventually filed means that, between 2000 and 2014, a time period in which thousands of Palestinian civilians were killed in the OPT (including in the Gaza Strip),¹⁸ Israeli soldiers have only been prosecuted for the deaths or serious injuries of Palestinian civilians in exceptional cases.¹⁹ Yesh Din report that between 2002 and 2009, the MPCID opened 173 investigations into cases where Palestinian civilians may have been unlawfully killed by Israeli soldiers, following which 14 investigations led to indictments of 19 defendants. By April 2011, legal proceedings against 18 of the 19 defendants were completed. One of them was ultimately acquitted, while charges against another were dropped and 16 were convicted of various offenses.²⁰

¹⁵ B’Tselem and the Association for Civil Rights in Israel (ACRI), “Change in military investigation policy welcome, but it must not be contingent on the security situation”, issued on 6 April 2011 (<http://www.btselem.org/press-release/6-april-11-change-military-investigation-policy-welcome-it-must-not-be-contingent-secu>)

¹⁶ See: B’Tselem, “Military Police investigations regarding the deaths of Palestinians”, updated on 16 August 2012 (http://www.btselem.org/accountability/investigation_of_complaints).

¹⁷ Yesh Din, *Alleged Investigation*, p. 36-38. Also see p. 32-36 for more information on the issues with basing the “inquiry” process on operational debriefings, as well as B’Tselem, *Void of Responsibility*, p. 42-45.

¹⁸ <http://www.btselem.org/statistics>

¹⁹ See Yesh Din, *Alleged Investigation: The alleged failure of investigations into offenses committed by IDF soldiers against Palestinians*, August 2011, <http://yesh-din.org/userfiles/file/Reports-English/Alleged%20Investigation%20%5BEnglish%5D.pdf> and B’Tselem, *Void of responsibility: Israel Military Policy Not to Investigate Killings of Palestinians by Soldiers*, October 2010, http://www.btselem.org/download/201009_void_of_responsibility_eng.pdf

²⁰ Op. Cit. pp 29 – 30.

Samir Awad, aged 16 years, was killed after being shot in the back by Israeli soldiers on 15 January 2013 as he fled from the place where a number of Israeli soldiers ambushed a group of Palestinian children who were protesting against the construction of Israel's fence/wall, which cuts across the village of Bodrus, near Ramallah in the OPT, where they lived. A Military Police investigation was opened on the day he died. After a lengthy legal battle, the Central District Attorney's Office filed an indictment against two soldiers of the 71st Armored Corps Battalion who shot Samir Awad, on 30 December 2015. They were charged with the minor offence of reckless and negligent use of a firearm. The alleged perpetrators face at most three years' imprisonment. Amnesty International believes that there is substantial evidence to say that Samir Awad was in fact killed unlawfully and that his killing may even constitute an extrajudicial execution and war crime of wilful killing, a grave breach of the Fourth Geneva Convention, by which Israel must abide as the occupying power. At the very least, such a serious incident must be independently, impartially and thoroughly investigated in accordance with international standards, and the findings should be promptly disclosed.²¹

The Israeli army has also used excessive force against Palestinians protesting against or responding to violence by Israeli settlers, such as in Qusra, Burin, Silwad and other villages. At times, Israeli soldiers have stood by and allowed settlers to attack Palestinians and/or their property or have added to the violence by using excessive force against Palestinians who responded to such settler attacks. As a result of this and the complete lack of effective investigations into settler violence against Palestinians, many settlers appear to believe they can attack Palestinians and their property without fearing that the Israeli authorities will stop them or that they will face justice for the crimes they commit. In practice, settlers who commit such attacks do so with near total impunity.²²

4. UNLAWFUL KILLINGS POST-OCTOBER 2015 (ARTICLES 12, 13 AND 14)

Since October 2015, there has been a massive increase in violence in the OPT and Israel, and an increase in protests against the Israeli occupation in the OPT. The period is characterized by use of violence, mainly by individual Palestinians carrying out stabbings, shootings, car-ramming and other attacks against Jewish Israelis. Israeli forces responded to attacks and protests with lethal force, in many cases unlawfully killing or injuring Palestinians. Some appear to have been extrajudicial executions. In some cases, Israeli forces shot dead Palestinians as they lay wounded, or failed to provide timely medical assistance to injured Palestinians.

²¹ See B'Tselem, http://www.btselem.org/accountability/20151109_hci_ruling_in_samir_awad_killing and http://www.btselem.org/accountability/20151231_soldiers_who_killed_youth_indicted_for_reckless_negligent_act and http://www.btselem.org/accountability/military_police_investigations_followup.

²² See Amnesty International, *Trigger-Happy: Israel's use of excessive force in the West Bank*, (Index: MDE 15/002/2014), 27 February 2014, <https://www.amnesty.org/en/documents/MDE15/002/2014/en/>

Hadeel al-Hashlamoun,²³ aged 18, was shot dead by Israeli soldiers at Checkpoint 56 (also known as Shoter) in Hebron's Old City on 22 September 2015 in what appears to have been an extrajudicial execution. Evidence, including photographs and accounts from two eyewitnesses interviewed by Amnesty International suggest that she was not posing an imminent threat to the soldiers when she was killed. After being shot by one soldier in the leg, she fell to the ground dropping her bag and a knife she had been holding under her niqab. Soldiers then fired several shots at close range to her upper body while she was lying motionless on the ground. It is very likely that the soldiers, protected with body armour and equipped with advanced weapons, could have controlled the situation and arrested her without threatening her life. There was apparently no attempt to arrest al-Hashlamoun, or use non-lethal alternatives. Media reports said that Israeli forces denied Palestinian medics access to al-Hashlamoun and did not put her into an ambulance until 30 or 40 minutes after they had shot her. The Israeli military opened an investigation into the killing, according to media reports.

On 29 October **Mahdi al-Muhtasib**,²⁴ 23, was shot by Israeli forces after reportedly lightly wounding an Israeli soldier in a stabbing attack in Hebron. Video of the aftermath of the incident shows Mahdi al-Muhtasib writhing in pain on the ground before an Israeli soldier, standing a distance of some metres away, shoots him again. The video shows that Mahdi al-Muhtasib was plainly wounded, and posed no threat whatsoever to the soldier. Deliberately killing a wounded, injured, captured, or otherwise *hors de combat* person, constitutes wilful killing, a grave breach of the Fourth Geneva Convention.

5. IMPUNITY FOR TORTURE AND OTHER ILL-TREATMENT (ARTICLES 1, 11, 15 AND 16)

At the beginning of 2016, Israel was holding 6,072 Palestinian security prisoners and detainees in Israel Prison Service (IPS) and IDF facilities, of which 3,497 were sentenced. By contrast, there were 4,768 by the end of 2013 while at the end of 2009 there were 6,831 of whom 5,073 were sentenced.²⁵

Israeli military and police forces, as well as ISA personnel, tortured and otherwise ill-treated Palestinian detainees, including children, particularly during arrest and interrogation.²⁶ Reports of torture increased amid the mass arrests of Palestinians that began in October 2015. Methods included beating with batons, slapping, throttling, prolonged shackling, stress positions, sleep deprivation and threats to arrest family members for example. Jewish Israeli suspects detained in connection with attacks on Palestinians also alleged that they were tortured. Security forces continued to enjoy impunity for torture. The authorities had received almost 1,000 complaints of torture at the hands of ISA since 2001 but have yet to open any criminal investigations.

²³ See Amnesty International, *Evidence indicates West Bank killing was extrajudicial execution*, (Index MDE 15/2529/2015), 25 September 2015, <https://www.amnesty.org/en/documents/mde15/2529/2015/en/>

²⁴ Op Cit.

²⁵ See B'Tselem, http://www.btselem.org/statistics/detainees_and_prisoners

²⁶ See for example, B'Tselem, <http://www.btselem.org/topic/torture>

The state sought increasingly to legislate for increased detention and to undermine safeguards in sentencing and conditions on arrest and in detention. In July 2015, the Israel Knesset extended legislation exempting the police and ISA from recording interrogations of Palestinian “security suspects”, with government endorsement, contravening a 2013 recommendation of the Turkel Commission.²⁷

Khader Adnan, 33-years-old, was arrested on 17 December 2011. He said that masked soldiers broke into his house, cuffed his hands behind his back, threw him onto the floor of their jeep and kicked and slapped him while they took him to the settlement of Mevo Dotan. He was then transferred to Kishon detention centre in Israel for interrogation by ISA officials. According to the ISA briefing that his lawyers received, Khader Adnan was interrogated almost every day from 18 until 29 December 2011; on some days he was interrogated twice. There were seven regular interrogators; other security officials were also present at some points. During interrogations, he was shackled to a crooked chair with his hands tied behind his back in a stress position that caused him back pain. He said that interrogators threatened him constantly and verbally abused him and his family. He was given a four month administrative detention order on 10 January 2012. He had begun a hunger strike on 18 December 2011 in protest at his treatment and detention, which he ended on 21 February 2012 after a deal was reached between the Israeli authorities and his lawyer from the Palestinian Prisoners Club.²⁸ The deal allowed for his release on 17 April 2012 if he ended his hunger strike immediately, unless “significant new intelligence information” was presented. Khader Adnan was released as scheduled on 17 April.²⁹ Khader Adnan was also subjected to administrative detention between 2014 and 2015.³⁰

5.1 DETENTION AND INTERROGATION OF CHILDREN

According to Defence for Children International-Palestine (DCIP), 422 Palestinian children aged between 12 and 17 years were held in Israeli military detention as of December 2015. They estimate that 500 – 700 children are detained and prosecuted by Israeli military courts, most commonly on charges of stone throwing.³¹ Punitive measures apparently aimed at curtailing the rights of the Palestinian population in the West Bank, including children, include the November 2015 temporary Amendment 120³² to the Israeli Penal Code allowing judges to sentence individuals to between two and four years’ imprisonment for stone throwing or similar acts. It appears to target Palestinians in the OPT, including East Jerusalem. The law removes the judge’s ability to exercise discretion based on particular circumstances of the individual case in sentencing, or to take into consideration the need for measures to allow rehabilitation. Further, a November 2015 amendment to the Youth Law,³³ allows for the fining of parents of children convicted of crimes under the Israeli Penal Code, again, apparently aimed at Palestinian minors and their relatives.

²⁷ See Hamoked, <http://www.hamoked.org/Document.aspx?dID=Updates1534>

²⁸ See Amnesty International, *Israeli decision to release Palestinian detainee in April ‘insufficient’*, 21 February 2012, <http://www.amnesty.org/en/for-media/press-releases/israeli-decision-release-palestinian-detainee-april-insufficient-2012-02-21>

²⁹ See Amnesty International, *Palestinian detainee freed: Khader Adnan*, Index: MDE 15/021/2012, 18 April 2012, <http://www.amnesty.org/en/library/info/MDE15/021/2012/en>

³⁰ See Aljazeera, <http://www.aljazeera.com/news/2015/07/israel-releases-palestinian-prisoner-hunger-strike-150712014702904.html>

³¹ See DCIP, http://www.dci-palestine.org/military_detention_stats

³² See Adalah, <http://www.imemc.org/article/75164> and http://www.adalah.org/uploads/New-Israeli-Discriminatory-Laws-March-2016.pdf?mc_cid=ab2dc6b28c&mc_eid=

³³ Op. Cit.

5.2 INTERROGATION OF CHILDREN

The case of the “Hares Boys” exemplifies the violation of children’s rights in military detention, where basic rights like access to legal counsel are flouted. **Mohammad Klaib, Ali Shamlawi, Mohammad Suleiman, Tamer Sof and Ammar Sof**, all 16 years-old when arrested in March 2013 in connection with a stone throwing incident which caused a road accident during which three-year-old Adele Biton, an Israeli girl, was seriously injured, when a truck near the Ariel settlement crashed after being hit by rocks. Adele Biton died nearly two years later in February 2015 from pneumonia-related complications. According to testimonies taken by DCIP,³⁴ Ali Shamlawi confessed to throwing stones under duress when he was beaten, intimidated and kept in solitary confinement; Mohammad Klaib said he was isolated and denied food and that guards told him he would be fed only if he confessed. Tamer Sof said that an Israeli soldier pushed his face so hard against a wall that his mouth and nose bled. Mohammad Suleiman said Israeli soldiers physically assaulted him, beating him repeatedly on arrest and strip-searching him. During interrogation he was not informed of his right to be represented by a lawyer or have a family member present. Interrogators pulled his hair and threatened him with the torture of his mother if he did not confess, in front of the other boys, and until he confessed. All five confessed during interrogation while held in solitary confinement. DCIP note that solitary confinement – used in 66 cases between 2012 and 2015 documented by them – of children in military detention, does not seem to be used after children have been convicted, suggesting that it is used to coerce confessions.

The boys were each charged with 20 counts of attempted murder, among other charges. A military court sentenced them to 15 years’ imprisonment in a plea bargain, despite the circumstances of their “confessions”.

Amnesty International would like to bring the Committee’s attention to the ill-treatment of children through interrogation with the purpose of incriminating Palestinian activists. For example, human rights defender **Abdallah Abu Rahma** was convicted in 2010 by a military court of charges including “incitement” and “organizing and participating in an illegal demonstration”³⁵, when a military judge accepted the prosecution’s argument that he encouraged demonstrators in the village of Bil’in³⁶ in the West Bank to throw stones at Israeli soldiers. The judge’s decision was based on the statements of three children, who later retracted them in court, stating that they had been coerced and that the court noted the shortcomings in the children’s interrogation process.³⁷ The three had been arrested overnight on allegations of stone throwing and were denied the right to legal counsel. They did not understand Hebrew, the language in which their statements were written. Abdallah Abu Rahma was sentenced to 16 months in prison in addition to a six-month suspended sentence.

In another example, **Islam Dar Ayyoub**, aged 14, was arrested at his home in the West Bank

³⁴ See DCIP, http://www.dci-palestine.org/haris_boys_sentenced_to_15_years_despite_fair_trial_violations

³⁵ See Amnesty International, *Military court rejects activist’s appeal: Abdallah Abu Rahma* (Index: MDE 15/2907/2015), 19 November 2015, <https://www.amnesty.org/en/documents/mde15/2907/2015/en/>.

³⁶ The village of Bil’in holds weekly protests against the Israeli fence/wall, which is built mainly upon Palestinian land and divides villages, separating many Palestinians from their land. Since 2005, the the Bil’in villagers, together with Palestinian, Israeli and international supporters, have held weekly demonstrations in protest against the fence/wall and the Israeli authorities’ confiscation of their land for its construction.

³⁷ See B’Tselem, http://www.btselem.org/press_releases/20101010.

village of al-Nabi Saleh at around 2am on 23 January 2011. Blindfolded and handcuffed, he was transferred by military jeep via the nearby settlement of Halamish to the police station in the settlement of Ma'ale Adumim, where he was interrogated for hours without a lawyer; he was not allowed to rest, eat, or go to the toilet. Information obtained from him during interrogation was used to incriminate al-Nabi Saleh protest organizer Bassem Tamimi, a long-standing activist and peaceful critic of Israeli policies who was arrested in March that year and later charged with organizing protests in the village of al-Nabi Saleh. He was a prisoner of conscience.

5.3. CHILDREN IN ADMINISTRATIVE DETENTION

The resumption in the use of administrative detention against children since October 2015 is particularly concerning. Detention of children must only be used as a measure of last resort and for the shortest appropriate time, in line with international human rights law. Appropriate alternatives to detention must be made available. Child administrative detainees, though, are denied their right to challenge their detention before a court "or other competent, independent and impartial authority" and "the right to a prompt decision on any challenge" in line with the Children's Convention. While dozens of children were administratively detained between 2004 and 2008, numbers declined steadily until December 2011, when there was only one. In October 2015, three 17-year-old Jerusalem ID holders, became the first children to be administratively detained in almost four years.³⁸ (See also section below headed "Administrative detention and use of Unlawful Combatants law").

Between October 2015 and 18 March 2016, nine children have been held in administrative detention. As of 18 March, one of them had been charged with an offence on expiry of his detention order, while five were released on expiry of their orders and four remained in administrative detention.

Their rights to adequate protection as children have been flouted including by being held alongside adults. According to DCI-Palestine,³⁹ 17-year-old **Basir Mohammad Al-Atrash**, from Hebron, was interrogated on 30 October 2015 and denied access to an attorney, accused of stone throwing and incitement on social media, which he denied. He was placed in a metal cage outside along with five adult detainees. He was given a three month administrative detention order though two days before its expiry on 28 January 2016, the Israeli military prosecutor filed charges against him in connection with making and throwing Molotov cocktails at an Israeli military checkpoint. According to the family of 17-year-old administrative detainee **Mohammed Ghaith**, he and another boy **Fadi Abbasi** both from East Jerusalem, who spent three months in administrative detention and were released in January 2016, were held in a wing with four adults as well as other children. They were arrested while they slept in the early hours of 19 October. A third 17-year-old administrative detainees, **Kathem Sbeih**, also released in January 2016, was, according to his father, arrested at 3am by ISA officers as he slept, and taken to the main police interrogation centre in Jerusalem, known as the Russian Compound. He was taken from there to Megiddo prison. His family were not able to visit him for over two weeks.

Others have been subjected to prolonged interrogation without access to lawyers or while held in solitary confinement. **Mohammad al-Hashlamoun**, 17-years-old, was arrested in the early

³⁸ See Amnesty International, *Children administratively detained*, (Index: MDE 15/2792/2015), 3 November 2015, <https://www.amnesty.org/en/documents/mde15/2792/2015/en/>

³⁹ See DCIP, See DCIP, http://www.dci-palestine.org/israel_increasing_use_of_administrative_detention_against_palestinian_children.

hours of 3 December 2015 at his home in Ras al-Amud in East Jerusalem by around 40 border police officers and ISA members who raided the building where he lives, which contains three apartments. They took him to the ISA interrogation centre in Jerusalem, within the Russian Compound detention centre. He was held there for 18 days and then transferred to Ashkelon prison in southern Israel for four days. He was asked repeatedly about planning attacks in Jerusalem, which he denied. He was held in solitary confinement for 22 days, denied access to a lawyer, and repeatedly interrogated for prolonged periods. He was brought before the Jerusalem Magistrates Court twice and, after the second hearing on 20 January, the court ordered him to be transferred to house arrest for one week and pay a fine of around US\$1,260. Instead of transferring him, however, the Israeli Minister of Defence handed him a six-month administrative detention order the next day.⁴⁰

6. ADMINISTRATIVE DETENTION AND USE OF ‘UNLAWFUL COMBATANTS LAW’ (ARTICLE 16 AND 2)

Administrative detention orders allow the authorities to hold people without charge, are renewable indefinitely, and do not require the state authorities to divulge their evidence, leaving detainees unable to defend themselves or challenge their detention. Administrative detainees spend months or years in detention without being tried or knowing what they are accused of. Since administrative detention orders are renewable an unlimited number of times, administrative detainees do not know when or if they will be released.

With reference to the Committee’s question 8 of the List of Issues, seeking clarification on the increased use of administrative detention based on secret information withheld from such detainees and their lawyers, Amnesty International notes a marked increase in its use, particularly since 1 October 2015. While by the end of 2013, there were 150 administrative detainees, in December 2014, the figure increased to 463 and at the end of 2015, 584 were held under orders. Though in September 2015 there were only 315, the number rose to 429 in October and 527 in November. At the end of January 2016, 568 Palestinians were held under administrative detention orders, including two minors, and two women, while one individual was held under the Unlawful Combatants Law.⁴¹ While, historically, administrative detention has rarely been used against Israeli Jews, several were subjected to the practice in 2015. In February 2016, Israeli Jew Meir Ettinger’s administrative detention was renewed for four months. He had been arrested in August 2015 in connection with his membership of an extremist Jewish organization.

Amnesty International believes that in order to fully comply with the Convention, the system of administrative detention in Israel and the OPT should be abolished altogether. The state’s justification for its continuing use does not appear to reflect the reality of its use. Israel

⁴⁰ See Amnesty International, *Israelis detain teenage boy without charge*, (Index: MDE 15/3399/2015), 5 February 2016, <https://www.amnesty.org/en/documents/mde15/3399/2016/en/>.

⁴¹ See B’Tselem, http://www.btselem.org/administrative_detention/statistics

argues it is a necessary preventative measure and used “as the exception,” when evidence against an individual “engaged in illegal acts that endanger the security of the area and the lives of civilians” cannot be presented in ordinary criminal proceedings “for reasons of confidentiality and protection of intelligence sources.”⁴² The Israeli authorities stress that it is not a punitive measure, and the HCJ has ruled that it may not be used as punishment for past actions or as a general deterrent, but only as a preventative measure against a person who poses an individual threat.⁴³ The HCJ has also ruled that administrative detention is subject to the principle of proportionality, and may only be used if it is “not reasonably possible” to prevent the danger posed by an individual through criminal proceedings or a less severe administrative measure.⁴⁴ While Amnesty International notes the HCJ ruling, the widespread and systematic use of administrative detention brings this premise into question. Further, Amnesty International’s research shows that administrative detention is used regularly as a form of political detention, enabling the authorities to arbitrarily detain political prisoners, including prisoners of conscience. The practice is used to punish them for their views and suspected political affiliations when they have not committed any crime.

Palestinian parliamentarian, **Khalida Jarrar**, a vice-chair of the Board of the Addameer Association, a legal aid organization in the OPT, has been subjected to decades of harassment and intimidation by the Israeli authorities, who have repeatedly declared her a security risk. She was given a six month administrative detention order following her arrest on 2 April 2015. On 8 April 2015 when a review of her administrative detention was adjourned until 15 April, the military prosecution told the judge it had not charged her since it would make her eligible for bail. On 15 April the review of her administrative detention order was again adjourned until 8 May. But at the same time, the military prosecution brought 12 charges against her including membership of an illegal organization (the PFLP), participation in protests and incitement to kidnap Israeli soldiers. The military judge granted her bail on the grounds that she was not a security risk if released during the trial proceedings, but this decision was reversed after the prosecution appealed using secret evidence against her. Amnesty International is concerned that the military prosecution placed her under administrative detention as a way of ensuring she could be held at least until the end of any trial proceedings. Khalida Jarrar finally agreed to a plea bargain, believing she would not be given a fair trial before the Israeli military court and her detention would never end and was sentenced on 6 December to 15 months’ imprisonment, an additional 10-month prison term suspended for five years, and a fine of US\$2,600 for incitement to kidnap Israeli soldiers and membership of a banned organization, the PFLP, while 10 other charges were dropped. According to her lawyers, the prosecution have never provided evidence that Khalida Jarrar is guilty of incitement.⁴⁵

Palestinian academic **Ahmad Qatamesh**,⁴⁶ a left-wing commentator on Palestinian political and cultural affairs, was held under repeated administrative detention orders without charge between April 2011 and December 2014. Amnesty International considered him to be a prisoner of conscience, detained solely for the

⁴² See Amnesty International, *Starved of justice: Palestinians detained without trial by Israel* (Index: MDE 15/026/2013), 6 June 2012, <https://www.amnesty.org/en/documents/MDE15/026/2012/en/>

⁴³ See, for example, HCJ 814/88, *Nasrallah v. Commander of Military Forces in the West Bank, Piskei Din* 43 (2) 271; HCJ 7015/02, *Ajuri v. Commander of Military Forces in the West Bank, Piskei Din* 56 (6) 352, par. 24.

⁴⁴ HCJ 253/88, *Sajadiya v. Minister of Defense, Piskei Din* 42 (3) 801, 821.

⁴⁵ See Amnesty International, *Khalida Jarrar’s trial begins, raises questions*, (Index: MDE 15/2350), 28 August 2015, <https://www.amnesty.org/en/documents/mde15/2350/2015/en/>; and *Palestinian parliamentarian sentenced* (Index: MDE 15/3031/2015), 8 December 2015, <https://www.amnesty.org/en/documents/mde15/3031/2015/en/>;

⁴⁶ See Amnesty International, *Starved of justice*, (MDE 15/026/2012), 6 June 2012, <https://www.amnesty.org/en/documents/MDE15/026/2012/en/>

peaceful expression of his non-violent political beliefs, and apparently to deter political activities of other Palestinian left-wing political activists. He was held – at least in part – for activities with the PFLP – while he maintained that he had not been a member of any Palestinian political party.

There remains no real remedy for administrative detainees. The Israeli state argues that Palestinians in the OPT can appeal decisions following judicial review of orders or appeals against the review decision by the military courts, including on administrative detention, by petitioning the Israeli Supreme Court. The Supreme Court has issued some key rulings emphasizing the importance of judicial review,⁴⁷ and that administrative detention may only be used as a preventative measure against an individual posing a danger to security which no other means will prevent.⁴⁸ However, it has not set clear substantive standards for reviewing administrative detention, has rarely examined whether military judges' decisions conform to its own rulings, and has been very reluctant to intervene in specific cases or question the privileged intelligence information on which detention orders are based.⁴⁹

Moreover, the Supreme Court virtually always accepts the arguments of the state attorney and the classified evidence presented (once again, in a separate closed session without the detainee or his or her lawyer) by the ISA and denies the appeal. In fact, there is only one recorded case in which the Supreme Court ordered the release of an administrative detainee from the OPT held under a military order.⁵⁰ A comprehensive review of the 322 administrative detention cases heard by the Supreme Court between January 2000 and December 2010 – the vast majority of which were petitions to the HCJ by detainees from the OPT held under military orders – found that not a single case resulted in a judicial decision for the detainee's release.⁵¹

The Incarceration of Unlawful Combatants Law, passed in 2002 and amended in 2008, allows for indefinite detention without charge based on secret information⁵² but targets Palestinians from the Gaza strip and, in the past, Lebanese nationals. Amnesty International notes the Committee's request from the state party as to the extent of its application; and steps taken towards its abolition. Israel has responded saying that the Supreme Court upheld the law in 2008. However, Amnesty International notes that this ruling⁵³ found that detention under this law is a form of administrative detention, and therefore restrictions that apply to the use of administrative detention under Military Order 1651 or the Emergency Powers (Detention) Law also apply to internment under this law. The Court held that the status of "unlawful combatant" does not exist in international humanitarian law, that such persons are civilians entitled to the protections of the Fourth Geneva Convention, and that the state must prove that the individual poses a danger or a threat. Nevertheless, the justices did not

⁴⁷ For a good summary of these rulings, see Shiri Krebs, "Lifting the Veil of Secrecy: Judicial Review of Administrative Detentions in the Israeli Supreme Court", *Vanderbilt Journal of Transnational Law*, Vol. 45, No. 3, p. 668-669 (Krebs, "Lifting the Veil of Secrecy").

⁴⁸ See, for example: HCJ 814/88, *Nasrallah v. Commander of Military Forces in the West Bank, Piskei Din* 43 (2) 271; HCJ 7015/02, *Ajuri v. Commander of Military Forces in the West Bank, Piskei Din* 56 (6) 352, par. 24; HCJ 253/88, *Sajadiya v. Minister of Defense, Piskei Din* 42 (3) 801, 821

⁴⁹ David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, 2002, SUNY Press, p. 132-135.

⁵⁰ Krebs, "Lifting the Veil of Secrecy", p. 670. The case was HCJ 907/90, *Zayad v. Military Commander in the W. Bank* (1990),

⁵¹ Krebs, "Lifting the Veil of Secrecy", p. 672.

⁵² See B'Tselem and Hamoked, *Without Trial: Administrative Detention of Palestinians by Israel and the Internment of Unlawful Combatants Law*, October 2009, http://www.hamoked.org/items/111942_eng.pdf

⁵³ CrimA 6659/06, CrimA 1757/07, CrimA 8228/07, CrimA 3261/08, A. and B. v. State of Israel.

discuss the presumptions specified in the law. In effect, the law enables the state to hold detainees indefinitely under presumptions of guilt that render the judicial review almost meaningless.

The last Lebanese detainees held under the law were released in 2008 and no foreign nationals are known to be held currently. More recently, the law has been used to detain Palestinians from the Gaza Strip. At least 39 people from Gaza were interned, 34 of them during or after Operation “Cast Lead” in 2008/2009. There is reportedly only one individual held under this law as of March 2015.⁵⁴

Mahmoud al-Sarsak from Rafah refugee camp in the Gaza Strip was arrested on 22 July 2009 at the Erez crossing between Israel and the Gaza Strip when he went there to receive a permit to travel to the West Bank to play professional football for the Balata Football club in Nablus. The ISA interrogated Mahmoud al-Sarsak for 40 days after which he was handed a military order issued under the Internment of Unlawful Combatants Law for his indefinite detention without charge or trial which was renewed every six months; he spent nearly three years detained without charge. He appealed his case, without success, at least four times to the Israeli Supreme Court. According to his lawyer, during his interrogation, he was tied to a chair and kept sitting for long hours at a time in a stress position with his arms tied behind his back and to a pole in the floor – a practice known as *shabeh*. He says he was hung from the ceiling by handcuffs and made to sit on a stool for hours with his hands and feet shackled together behind him. He was deprived of sleep and if it seemed he was about to sleep, ISA interrogators would hit him. On one occasion they broke his two front teeth. He also reported being left in a room with loud music blasting for up to 12 hours a day, tied to a chair in a refrigerated interrogation cell where he sometimes lost consciousness from the cold, or locked in a dark room, or in a room with light so bright it was impossible to sleep. His interrogators accused him of being “jihadi” and being with Hamas and yet at the same time of having affiliations with opposing political party, Fatah, and knowing the whereabouts of Gilad Shalit. For three years, he says he was moved between prisons, sometimes held in a metal container in the desert, in a tent or a cell.⁵⁵ Mahmoud al-Sarsak ended a 92-day hunger strike in protest at his continuing detention without charge or trial only after his lawyer reached an agreement with the IPS to secure his release. He returned home to his family in Gaza on 10 July 2012.

7. PUNISHMENT AND ILL-TREATMENT OF HUNGER STRIKERS (ARTICLES 16 AND 2)

Hunger strikes are a legitimate form of protest and, in recent years, some Palestinian administrative detainees engaged in prolonged strikes, seeing them as the only way to demand their rights under international law. Consequently, some have been punished by being placed in solitary confinement, fined, and prevented from receiving family visits. A mass hunger strike involving some 2,000 Palestinian prisoners and detainees protesting poor prison conditions, including solitary confinement, denial of family visits and detention

⁵⁴ See B’Tselem, http://www.btselem.org/statistics/gaza_detainees_and_prisoners

⁵⁵ See Amnesty International, <https://www.amnesty.org.uk/blogs/press-release-me-let-me-go/football-falafel-palestinian-footballer-mahmoud-sarsak-prison>

without charge came to an end on 14 May 2012 following an Egyptian-brokered deal with the Israeli authorities. The deal included an agreement by the authorities to end the solitary confinement of 19 prisoners and lift a ban on family visits for prisoners from the Gaza Strip. Only a limited number of family visits for Gaza prisoners are known to have taken place thus far, and detainees were still placed in solitary confinement. An increase in administrative detention in late 2015 coincided with increasing hunger strikes. The Israeli authorities consistently respond with punitive measures to pressure them to break their hunger strikes, in some cases in violation of the prohibition of torture and other ill-treatment.

Hunger strikers whose health has deteriorated as a result of their hunger strike have not been provided with adequate medical care and have been prevented from seeing independent doctors and medical professionals and denied transfer to properly-equipped civilian hospitals, even when their lives were at risk, apparently to further pressure them to end their strikes. Some have reported physical assaults and verbal abuse by IPS staff,⁵⁶ while others have said that IPS personnel forcibly administered treatment, such as injections, against their will. In 2012, the IPS limited hunger-striking detainees' access to independent lawyers of their choice. Detainees whose health deteriorates substantially due to hunger strike are usually transferred eventually to the IPS Medical Centre in Ramleh. Detainees have described ill-treatment by staff there, all of whom are IPS staff with medical training. Independent doctors have told Amnesty International that this facility is unfit for hunger strikers as their deteriorating health often means they need specialist medical care, only available in civilian hospitals. Some hunger-strikers say they have been subjected to ill-treatment such as shackling to their bed.⁵⁷

On 30 July 2015, the Knesset approved legislation allowing the authorities to force feed hunger striking detainees and prisoners, despite opposition from human rights groups and the UN. The legislation allows for force-feeding in extreme circumstances if authorized by a district court judge and subject to a medical report proving the individual is in a grave condition, even if the individual has not consented. Health care for prisoners should comply with international law and standards on the right to health and with medical ethics, including principles of confidentiality, autonomy, and informed consent (including the right to refuse treatment including feeding). Any decision whether to carry out non-consensual feeding of a hunger striker should be made only by qualified health professionals, and only for reasons of medical necessity; it must take account of the individual's mental competence and wishes, as ascertained by health professionals in confidential consultations with the hunger striker. Medical ethics essentially preclude health professionals from compulsorily feeding mentally competent hunger strikers. Health professionals in prisons have responsibilities towards prison authorities as well as towards inmates, in particular those who are their patients, but the authorities must never require them to act in any way contrary to their professional judgment or medical ethics.

Hana Shalabi, was held under administrative detention for four months in 2012 after she was arrested from her home in Bruqin village, near Jenin, on 16 February 2012. She was interrogated until 23 February. She said that she was ill-treated by Israeli security forces during her arrest and went on hunger strike in protest at her treatment and arrest on 16 February and her lawyer claimed that the authorities punished her for this by

⁵⁶ See Amnesty International, *Hunger strikers ill-treated by prison guards*, (Index: MDE 15/047/2012), 10 August 2012, <https://www.amnesty.org/en/documents/document/?indexNumber=MDE15%2F047%2F2012&language=en>.

⁵⁷ <https://www.amnesty.org/en/documents/MDE15/026/2012/en/>

placing her in solitary confinement between 23 and 27 February 2012. She ended her hunger strike on 28 March after a deal was reached between the Israeli authorities and one of her lawyers from the Palestinian Prisoners' Club which led to her transfer three days later to the Gaza Strip; Amnesty International believes that the transfer is very likely to have amounted to a forcible transfer, a breach of international humanitarian law. She was not allowed family visits during her detention and her father was prevented from attending her military court hearing on 7 March 2012.

Administrative detainee **Muhammed al-Qiq**,⁵⁸ a Palestinian journalist aged 33, began his hunger strike on 25 November 2015, four days after he was arrested from his Ramallah home by Israeli military. He was protesting the torture or other ill-treatment in Israeli custody, and to demand his release from detention he believed was motivated by his work as a journalist. For 93 days he apparently refused all nourishment apart from water. According to Addameer, and his lawyer, al-Qiq was tortured during his two weeks of interrogation by the ISA, and denied access to his lawyer. He was apparently forced into a stress position commonly known as the "banana", which involves being tied in a contorted position to a chair; he was tied to the chair for up to 15 hours at a time and threatened with sexual violence by his interrogators, who told him that he would not see his family for a long time unless he "confessed" to the allegations against him. After his interrogation, he was transferred to Ramleh prison clinic as his health deteriorated because of his hunger strike. He was transferred to HaEmek Hospital in Afula, also inside Israel, on 30 December 2015, and has remained there since.

Amnesty International is also concerned that al-Qiq was forcibly treated during his hunger-strike. On 10 January 2016, Israeli prison guards shackled both of his hands to his bed and held him down, despite his extremely fragile physical state, while blood was taken from his right arm for a blood test and an intravenous drip was inserted into his left arm. Physicians for Human Rights - Israel (PHR-Israel), a human rights organization, believes that this drip was used to administer vitamins and minerals although throughout his strike - al-Qiq was refusing all nourishment, and agreeing to take water only. The treatment was administered in direct contravention of his wishes. He was not allowed to leave his bed for four days after which he was allowed a bathroom visit at which point the intravenous drip was removed. On 15 January, al-Qiq was transferred to the hospital's intensive care unit after collapsing. While unconscious he again had an intravenous drip inserted into his arm, and was attached to a number of medical monitoring devices. He regained consciousness the same day but the drip and the monitoring devices were not removed, despite his requests, until 16 January. During the period of his forced treatment, both his hands were restrained. After a request from PHR-Israel to the IPS, one of his legs was unshackled, though he was too weak to flee or pose a danger. On 18 January PHR-Israel filed a petition in Israel's Northern District Court seeking the removal of his restraints. The court gave the IPS until the end of 21 January to respond. Carrying out a medical procedure against the patient's wishes is a breach of medical ethics, and the way al-Qiq was treated in hospital violated the prohibition of cruel, inhuman or degrading treatment or punishment.

⁵⁸ See Amnesty International, *Detained Palestinian hunger striker on verge of death must be transferred to hospital of his choice* (Index: MDE 15/3457/2016), 17 February 2016, <https://www.amnesty.org/en/documents/mde15/3457/2016/en/> and *Palestinian hunger-striking detainee close to death*, 8 February 2016, <https://www.amnesty.org/en/documents/mde15/3410/2016/en/> and *Israel must end ill-treatment of hunger-striking Palestinian detainee* (Index: MDE 15/3299/2016), 22 January 2016, <https://www.amnesty.org/en/documents/mde15/3299/2016/en/>.

8. FORCIBLE RETURNS (ARTICLE 3) AND DETENTION OF ASYLUM- SEEKERS AND IRREGULAR MIGRANTS (ARTICLE 16)

Amnesty International is increasingly concerned about the Israeli government's policy to deport asylum-seekers, in violation of Article 3, to either countries of origin where they would face a real risk of human rights violations, including torture and other ill-treatment, or to third countries where they would not be protected from refoulement to their country of origin. Further, the Israeli authorities have created an environment in which such individuals may "choose" to return to their country of origin because of the obstacles and hardships placed in their way in trying to secure protection in Israel. The state appears to have striven over the last six years to make the right to ask for and enjoy protection more and more difficult, including by subjecting refugees and asylum-seekers to prolonged and arbitrary detention without charge.

In January 2012, the Israeli parliament passed the "Prevention of Infiltration Law", allowing for automatic and prolonged detention of anyone, including asylum-seekers, who enters Israel without permission for a period of at least three years without charge or trial. The law also allowed indefinite detention of people from countries considered "hostile" to Israel, including asylum-seekers from Darfur in Sudan. Children travelling with parents could also be subjected to the same prolonged detention.

Amnesty International opposes the Prevention of Infiltration Law on grounds that automatic and prolonged detention contravenes international law and that detention should never be used as a punitive or deterrent measure against refugees and asylum-seekers.

On 2 June 2013, in a HCJ hearing of a petition challenging the legality of the Law, the State Prosecutor's Office provided information indicating its plans to deport Eritrean asylum-seekers to an unspecified third country. The state representative said the government had reached an agreement with a country to receive Eritrean nationals, and possibly nationals of other countries, currently detained under the Law. The State Prosecutor's representative also told the HCJ that additional agreements for two other countries to receive Eritrean nationals had almost been completed but that as the information was sensitive, she could not disclose which countries were involved, though this was later denied by the Ministry of Foreign Affairs. The HCJ ordered the state to submit an affidavit within a week providing information on these agreements. During the same hearing, the State Prosecutor's representative also noted that in recent days the Minister of Interior had rejected the asylum claims of three Eritrean nationals and indicated that Israel was likely to reject almost all the remaining asylum applications by Eritreans. These decisions were apparently based on the state's assumption that Eritreans fleeing forced conscription would not suffer persecution or other serious human rights violations upon return to Eritrea and thus would not qualify for refugee status. Amnesty International opposes all returns of Eritrean nationals to Eritrea, or to third countries where they would not be protected against such return.

The State Prosecutor's Office briefing to the HCJ also revealed that 534 Sudanese nationals detained under the Law had been deported from Israel to Sudan via a third country in the year since the law took effect. Although these individuals signed forms consenting to deportation, Amnesty International believes that these deportations cannot be considered voluntary. As Sudanese nationals, the individuals in question could be detained indefinitely under the Prevention of Infiltration Law, since Israel considers Sudan an "enemy state". During 2013, Amnesty International received numerous reports that Sudanese and Eritrean detainees were pressured to sign such forms and told by Israeli officials that "consenting" to deportation was their only way out of indefinite detention. At the same time reports emerged of Population and Immigration Authority officials pressuring detainees to sign forms consenting to "voluntary" deportation.

The State Prosecutor's Office brief also confirmed that more than 1,500 other Sudanese nationals who were not in detention were deported to Sudan via a third country between 2012 and 2013, after signing forms authorizing their deportation. Amnesty International has serious concerns that their consent may not have been free and informed, given their lack of access to fair and effective asylum procedures in Israel, the myriad punitive measures against "infiltrators" either passed or pending in the Knesset, racist and xenophobic statements by public officials against asylum-seekers, and the growing number of attacks on individual asylum-seekers and their communities.

In September 2014 the HCJ ruled to delete provisions for the automatic detention of all newly arrived asylum-seekers for one year, on the basis that it infringed the right to human dignity and ordered the authorities to close Holot detention facility or establish an alternative legislative arrangement within 90 days. However, in December 2014 the Knesset passed new amendments to the Prevention of Infiltration Law that allow the authorities to continue automatic detention of asylum-seekers for 20 months.

In August 2015, the HCJ ruled that provisions of the provisions of the amendment were disproportionate, and ordered the government to revise the law and release those who had been held at the facility for more than a year. Around 1,200 out of approximately 1,800 asylum-seekers were subsequently released from Holot, but they were arbitrarily banned from the cities of Tel Aviv and Eilat. Thousands of others were summoned to Holot under expanded detention criteria, and the numbers detained at the facility reached an all-time high. In February 2016, a further amendment to the Prevention of Infiltration Law was passed by the Knesset allowing for the detention in Holot of any asylum-seeker entering Israel illegally for a maximum period of 12 months. In November 2015, the government introduced a new draft amendment under which asylum-seekers would be detained at Holot for a year, extendable by an additional six months.

Also in November 2015 a district court upheld the government's decision to forcibly deport some of the 45,000 asylum-seekers still in the country to Rwanda and Uganda or detain them indefinitely at Saharonim prison. The government refused to release details on reported agreements with Rwanda and Uganda, or any guarantees that those deported, "voluntarily" or otherwise, would not subsequently be transferred to their home countries, violating the prohibition of refoulement. Also in November the Beer Sheva District Court dismissed an appeal by two Eritreans against the policy of deportation to third countries. That ruling is now pending appeal before the HCJ.

Meanwhile, the authorities pressured many to leave Israel "voluntarily". At the end of November 2015, over 2,900 asylum seekers accepted "voluntary return" after being detained in Holot. At the end of 2015, over 4,200 were detained at Holot detention facility and Saharonim prison in the Negev/Naqab desert.

Over 90% of asylum seekers are from Eritrea and Sudan, countries where they could face risk of torture and other serious human rights violations if returned. In 2015 alone, just a handful of thousands of Eritrean and Sudanese nationals were granted refugee status.

9. DEMOLITIONS OF PALESTINIAN HOMES AND FORCED EVICTIONS (ARTICLE 16)

Amnesty International is concerned at the demolition of Palestinian homes which results from discriminatory policy directed against Palestinians and which amounts to cruel, inhuman or degrading treatment contrary to Article 16 of the Convention. The Committee's List of Issues, 2012 sought at point 51, an update on measures taken to desist from the policy of home demolitions.

The Israeli authorities continue to destroy Palestinian homes and other structures in the OPT citing as grounds "lack of building permit" or "military necessity". Between 2006 and 31 August 2015, at least 927 Palestinian residential structures in the West Bank (not including East Jerusalem), were demolished making 4,319 people homeless.⁵⁹ In East Jerusalem 350 housing units were demolished between 2008 and 31 August 2015, leaving 1,482 homeless.⁶⁰ In 2014 there was a resumption on home demolitions as a form of punishment carried out against families of Palestinians involved in armed attacks against Israelis. Between 2014 and 2015 nine houses were demolished leaving 46 people homeless.⁶¹ Large areas of agricultural land and orchards have also been destroyed, depriving some Palestinian communities of their main source of livelihood.

The increasing rate of confiscations, seizures and appropriations of land for settlements, bypass roads, the fence/wall and related infrastructure have resulted in the forced eviction of thousands of Palestinians. These measures have an inevitable effect on the Palestinian population's access to health care, education, work and family not to mention the drastic reduction in their income while land and resources lost to settlements no longer generate income. For example, in September 2014, Israel confiscated almost 1,000 acres of Palestinian land, the largest land-grab by Israel in 30 years, according to Peace Now.⁶² The Israeli government presented the move as a reaction to the abduction and murder in June 2014 of three Israeli teenagers, suggesting that it was carried out as a form of collective punishment.

In Area C of the West Bank, planning and zoning remain under full Israeli control. The Israeli authorities have denied Palestinians meaningful participation in planning processes for

⁵⁹ See B'tselem, http://www.btselem.org/planning_and_building/statistics

⁶⁰ See B'tselem, http://www.btselem.org/planning_and_building/east_jerusalem_statistics

⁶¹ See B'tselem, http://www.btselem.org/punitive_demolitions/statistics

⁶² See Haaretz, <http://www.haaretz.com/israel-news/.premium-1.613319>.

decades, and have made it nearly impossible for Palestinians to obtain permits to build legally. Israel's Civil Administration, a military body, has enforced sanctions against construction without permits in the West Bank in a discriminatory manner, demolishing thousands of Palestinian homes and other structures, while only enforcing demolition orders against a fraction of the structures without permits in Israeli settlements. Limited planning initiatives in certain Palestinian communities by the Civil Administration over the years have resulted in confining Palestinian development to existing built-up areas in these communities.

A point in case is the June 2015 HCJ ruling which denied a petition by al-Dirat al-Rifa'iyya Village Council in the Hebron district, and several local NGOs⁶³ to give Palestinian communities in Area C of the West Bank, planning rights. The petition of July 2011 called for the Israeli military commander in the West Bank to rescind Articles 2(2) and 2(4) (of the Military Order 418 of 1971) concerning the Towns, Villages and Buildings Planning Law (Military Order 418). The order abolished the district and local planning committees that had served villages in the West Bank when the territory was under Jordanian rule prior to 1967. The petitioners also requested that the justices issue an urgent interim injunction to delay the implementation of demolition orders for all structures built without permits in Area C for the duration of the legal proceedings, or at the very least for structures located in or near built-up areas and objects essential for survival, such as wells and cisterns. The justices refused to issue an interim injunction, and the Israeli authorities demolished over 1,875 structures in Area C since the petition was filed in 2011 and up to April 2015.

The court ruled that the current mechanisms available to the villages established under Military Order 418 of 1971 whereby local and district planning committees in the occupied West Bank established under Jordanian Planning Law Number 79 of 1966 were abolished, effectively precluded any meaningful Palestinian participation in Israeli-controlled planning processes. The petition sought the transference of planning powers to the Area C, by reinstating the local and district planning committees abolished by Military Order 418. Amnesty International believes that such a step would enable the development of plans through genuine consultations with the affected communities, as required by international law – an obligation the Israeli authorities have failed to uphold since Israel occupied the West Bank in 1967. In September 2014, the Head of the ICA issued an internal procedure, which essentially solicited input from the relevant villages prior to the deposition of spatial plans for public objections, but does not conform with Israel's international obligations and cannot substitute for the full transfer of planning powers to the local Palestinian population. This formal denial of participation in planning for an entire population, coupled with the establishment of a parallel planning system for Israeli settlements that explicitly discriminates in favour of another population whose very presence living in the territory in question violates international law, is unique globally, to Amnesty International's knowledge, and fails to conform to widely accepted and practiced planning standards. For Palestinians in the OPT, it has led to decades of human rights violations, including house demolitions, forced evictions, and confiscation and seizure of land, and severely harmed their rights to adequate housing, water, health, family life, work, and education.

Amnesty International has urged the Israeli authorities to transfer responsibility for planning and building policies and regulations in the OPT to the local Palestinian communities for

⁶³ See HCJ 5667/11, al-Dirat al-Rifa'iyya Village Council et al v. Minister of Defense et al

many years.⁶⁴

Articles 7 and 47 of the Fourth Geneva Convention stipulate that “protected persons” – in this case Palestinians living under Israeli occupation – “shall not be deprived... in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power”. The 1995 Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip in fact stipulated that planning and zoning powers in Area C would be “transferred gradually to Palestinian jurisdiction” in a process that was supposed to be completed within 18 months of the establishment of the Palestinian Legislative Council.⁶⁵ The facts that this agreement allowed Israel to retain planning and zoning powers in Area C temporarily, and that many of its provisions have not been implemented to date, do not negate Israel’s continuing obligations as the occupying power under international law. Nor did the 1995 Interim Agreement or any subsequent agreements confer legality to unlawful Israeli policies and practices in the OPT. In particular, Israel’s obligations under Article 43 of the Hague Regulations to respect “unless absolutely prevented, the laws in force in the country” prior to the occupation, and to ensure public order and life, were not altered by the 1995 Interim Agreement.⁶⁶

10. RECOMMENDATIONS

Amnesty International calls on the Israeli authorities to:

CONTINUING IMPUNITY

- Reform the domestic investigations system for allegations of international humanitarian law violations to ensure that it is independent, effective, prompt and transparent;
- Provide all victims of violations of international humanitarian law committed by Israeli military forces with full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

EXCESSIVE USE OF FORCE AGAINST DEMONSTRATORS AND OTHER INDIVIDUALS

- Conduct independent, impartial and prompt investigations into all reports of Palestinian civilians killed or injured by the actions of Israeli forces in the OPT. Where sufficient admissible evidence exists, prosecute Israeli personnel responsible for unlawful killings or injuries according to fair trial standards; and provide all victims with full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;

⁶⁵ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, Annex III: Protocol Concerning Civil Affairs, Art. 27, Planning and Zoning.

⁶⁶ See Amnesty International, *Israeli authorities must transfer planning powers to Palestinians in Area C of the occupied West Bank*, (Index: MDE 15/1430/2015), 10 April, 2015, <https://www.amnesty.org/en/documents/mde15/1430/2015/en/>

- Ensure that Israeli forces protect Palestinian civilians and their property against violence by Israeli settlers including by ensuring that perpetrators of such attacks are brought to justice in proceedings that conform to international fair trial standards;
- Respect the right to freedom of peaceful assembly;
- Ensure that security forces policing demonstrations adhere to international standards which require that they shall not use firearms except in self-defence or defence of others against the imminent threat of death or serious injury; and that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

UNLAWFUL KILLINGS POST-OCTOBER 2015

- Ensure independent, impartial and effective investigations into all deaths caused by security forces and take immediate measures to ensure that Israeli forces allow anyone injured to be given all necessary access to medical attention.

IMPUNITY FOR TORTURE OR OTHER ILL-TREATMENT

- Ensure prompt, effective investigation by an independent and impartial body into complaints and reports that detainees and prisoners have been tortured or otherwise ill-treated, including into alleged violations by Israel Prison Service and Israel Security Agency staff against prisoners and detainees; and prosecute, wherever there is sufficient admissible evidence, those responsible for torture or other ill-treatment in fair trials;
- Ensure that statements that have been coerced through use of torture and other ill-treatment are excluded from all proceedings.
- detention and interrogation of Children Promptly take all measures to ensure that detention of children is used as a measure of last resort and implemented for the shortest appropriate time and that appropriate alternatives to detention are always available;
- Take all measures to ensure that children in detention enjoy rights to humane treatment, prompt access to family members with whom they must be allowed to maintain contact through correspondence and visits, and legal counsel; that they are held separately from adults at all times unless this is counter to their best interests in line with international law on the rights of the child;
- Ensure that children are not subjected to torture and other ill-treatment at any time, ensuring in particular, that their rights are safeguarded during interrogations.

ADMINISTRATIVE DETENTION AND USE OF 'UNLAWFUL COMBATANTS LAW'

- End the practice of administrative detention and repeal the Internment of Unlawful Combatants Law and rescind paragraphs 284 to 294 of Military Order 1651, which provide for administrative detention.

PUNISHMENT AND ILL-TREATMENT OF HUNGER STRIKERS

- Ensure that hunger strikers are treated humanely at all times. Provide them with adequate medical care, including in civilian hospitals with specialized facilities if necessary, and by granting them access to independent doctors of their choice;
- Ensure that no detainee or prisoner is punished for being on hunger strike. Any artificial feeding may only be done for medical reasons, under medical supervision by suitably trained personnel, and must never be done in a manner that amounts to cruel, inhuman or degrading

treatment or punishment.

FORCIBLE RETURNS AND DETENTION OF ASYLUM-SEEKERS AND IRREGULAR MIGRANTS

- Release anyone detained under the Prevention of Infiltration Law and amend this law so that any restriction on the right to liberty of refugees, asylum-seekers and migrants are exceptional measures, prescribed by law, necessary in the specific circumstances of the individual concerned and proportionate to the legitimate aim pursued;
- Desist from pressuring asylum-seekers to “voluntarily” return to their country of origin where they may be at risk of imprisonment, torture and other ill-treatment, in violation of the principle of *non-refoulement*.

DEMOLITIONS OF PALESTINIAN HOMES AND FORCED EVICTIONS

- End all punitive house demolitions as they constitute collective punishment and violate the Fourth Geneva Convention;
- End all forced evictions and institute a moratorium on the demolition of homes in the West Bank and East Jerusalem built without planning permission until the law is amended to comply with international standards;
- Transfer responsibility for planning and building policies and regulations in the OPT to the local Palestinian communities;
- Immediately stop the construction or expansion of Israeli settlements and related infrastructure in the OPT as a first step towards removing Israeli civilians living in such settlements.

AMNESTY
INTERNATIONAL



www.amnesty.org