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## INTRODUCTION

This briefing is submitted to the Human Rights Committee in view of its consideration of Israel's third periodic report on its implementation of the International Covenant on Civil and Political Rights (hereafter referred as ICCPR or the Covenant). The briefing responds to the list of issues outlined by the Committee on 17 November 2009 and focuses on Amnesty International's concerns about Israel's failure to implement the Covenant particularly in the Occupied Palestinian Territories (hereafter OPT), encompassing the constitutional and legal framework within which the Covenant is implemented; violations of the right to equality and non-discrimination; violations of human rights in the context of states of emergency; violations of the rights: to life, to be free from torture and other ill-treatment, to liberty and security of person, to freedom of movement, to freedom of conscience, to protection of the family, of the child, and the right to take part in public affairs, to vote and to run for office.

Amnesty International does not aim to comprehensively review the situation of civil and political rights in Israel and the OPT in this briefing but rather to highlight some of the most egregious violations of this Covenant since Israel's last periodic review.

## CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (ARTICLE 2)

**In reference to question 1 on the Committee's list of issues, regarding the responsibility of Israel under international law to apply the Covenant in the OPT:**

With respect to Israel's report to the Human Rights Committee, Amnesty International is concerned that once again Israel has produced a state party report to a UN treaty body which denies the applicability of UN treaties in the OPT. Israel's position that its international human rights treaty obligations do not apply in the OPT has been rejected by the Human Rights Committee,<sup>1</sup> the Committee on Economic, Social and Cultural Rights,<sup>2</sup> the Committee on the Elimination of Racial Discrimination,<sup>3</sup> the Committee on the Elimination of Discrimination Against Women,<sup>4</sup> the Committee Against Torture,<sup>5</sup> the Committee on the Rights of the Child,<sup>6</sup> and the International Court of Justice.<sup>7</sup> As a result of their failure to

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<sup>1</sup> CCPR/CO/78/ISR, para 11 and CCPR/C/79/Add.93, para 10.

<sup>2</sup> E/C.12/1/Add.90, paras 15 and 31.

<sup>3</sup> CERD/C/ISR/CO/13, para 32.

<sup>4</sup> CEDAW/C/ISR/CO/3, para 23.

<sup>5</sup> CAT/C/ISR/CO/4.

<sup>6</sup> CRC/C/OPAC/MNG/CO/1, para 4.

accept the opinions of the treaty bodies, the Israeli authorities continue to deny the people of the OPT the human rights enshrined in the treaties Israel has ratified.

## RIGHT TO EQUALITY AND NON-DISCRIMINATION (ARTICLE 26)

**In reference to question 4 on the Committee's list of issues, regarding home demolitions:**

**Israel's demolition of Palestinian homes and other structures in "Area C" and East Jerusalem**  
According to the UN, 270 structures were demolished in the West Bank, including East Jerusalem, in 2009 alone, under order from the Israeli authorities.<sup>8</sup> These demolitions displaced over 600 Palestinians, more than half of them children and the UN estimates that thousands more demolition orders are pending against Palestinians in the OPT.<sup>9</sup> Last year's demolitions reinforce an established pattern of forced evictions, demolitions of homes and other civilian structures, and land expropriations carried out by the Israeli authorities against the Palestinian population of the OPT.

In 1971, shortly after beginning its occupation of the **West Bank** in 1967, Israel began using military orders to revise an existing Jordanian law.<sup>10</sup> Military Order No. 418 abolished local and district planning committees, and concentrated planning power in the hands of the Higher Planning Committee, a body staffed exclusively by Israelis.<sup>11</sup> While denying representation to Palestinian villagers under Israeli occupation representation, Military Order No. 418 created a distinct planning framework for illegal Israeli settlements in the West Bank. As such, Israeli military law has de facto created separate planning systems within the OPT, for Israeli settlers on the one hand and Palestinians on the other.<sup>12</sup>

Today, Palestinians living in Area C – which makes up more than 60 per cent of the West

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<sup>7</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ reports 2004, paras 111,112, and 113.

<sup>8</sup> This number includes both demolitions carried out directly by the Israeli authorities as well as self-demolitions carried out by Palestinians on order from the Israeli authorities to avoid additional fines for demolition costs.

<sup>9</sup> OCHA, the Humanitarian Monitor, January 2010.

<sup>10</sup> Towns, Villages, and Buildings Planning Law (Temporary Law), Law No. 79 of 1966.

<sup>11</sup> Order Concerning Towns, Villages, and Building Planning Law (Judea and Samaria) (No. 418), 1971. The order has been amended numerous times since 1971; these comments refer to its current version.

<sup>12</sup> For more detail on this situation, see the report by Bimkom, Planners for Planning Rights, *The Prohibited Zone: Israeli planning policy in the Palestinian villages in Area C*, June 2008. Available at: [http://eng.bimkom.org/\\_Uploads/23ProhibitedZone.pdf](http://eng.bimkom.org/_Uploads/23ProhibitedZone.pdf).

Bank – continue to be subject to Israeli control in planning and construction.<sup>13</sup> While Palestinians are able to apply for permits to the Israeli military authority in the West Bank (referred to by the Israeli authorities as the “Civil Administration”) and appeal against their decisions, such requests and appeals are routinely rejected. Between January 2000 and September 2007, only 5.6 per cent of applications submitted by Palestinians to planning institutions within the Israeli “Civil Administration” were approved.<sup>14</sup>

The estimated 150,000 Palestinians who live in Area C not only face severe restrictions on building but also on their freedom of movement. Thousands of hectares (18 per cent of the West Bank), particularly in the Jordan Valley and the southern Hebron hills, have been declared “closed military zones” in which Palestinian construction is prohibited and Palestinian movement is limited. Other actions by the military authority in the West Bank – expropriation of land for “military needs” and declarations of “state land” – have further reduced the amount of Area C accessible to Palestinians, and pressured Palestinians to move from their communities in Area C to Areas A and B where the Palestinian Authority is responsible for planning and building.

**Khirbet Tana** is a rural village just west of the Jordan Valley whose small community is largely made up of farmers and shepherds. In the early 1970s, the Israeli army declared the area a “closed military zone”. While local Palestinians were denied permission to build, the nearby Israeli settlements of Mekhora and Itamar were established. In July 2005, the Israeli authorities demolished Khirbet Tana’s school, as well as a number of homes, animal sheds and water cisterns belonging to the residents. The villagers rebuilt their community. On 10 January 2010, Israeli forces again entered Khirbet Tana and demolished the homes of 100 Palestinians, including 34 children. They also demolished the village school.

In July 2009 the Israeli authorities issued a demolition order against electricity pylons in the village of **Tuwani** in the southern Hebron hills, which was implemented on 25 November 2009. The army also issued “stop the work” orders against seven new homes for the residents and a water cistern.

Unlike the rest of the West Bank, East Jerusalem and an area around it (totalling some 70km<sup>2</sup>), was unilaterally annexed by Israel in 1967. Palestinians with East Jerusalem identity cards (distinct from both the identity cards carried by Palestinians in the rest of the West Bank and from those held by Israeli citizens) are subject to Israeli civil law and under the jurisdiction of the Jerusalem Municipality – an Israeli body. While East Jerusalem and the West Bank are subject to different legal systems, the impact of Israeli control of Palestinian planning and building in East Jerusalem and Area C of the West Bank has similar effects.

Only 13 per cent of occupied **East Jerusalem** is designated by the Jerusalem Municipality as available for Palestinian building. This area of just 9.18km<sup>2</sup> is already heavily built up and home to at least 250,000 Palestinians. By contrast, the Israeli authorities enable settlements, built illegally on occupied land for the exclusive use of Israelis, to be established and to expand. Some 35 per cent of the land in East Jerusalem has been

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<sup>13</sup> Under the Oslo Accords, the Israeli authorities have both civil and military control in Area C.

<sup>14</sup> Bimkom, *The Prohibited Zone*.

expropriated by illegal settlements in which 195,000 Israelis now live. Demolition orders are regularly served against Palestinian families in the Old City of Jerusalem and neighbourhoods such as Jabal al-Mukabbir.

## STATES OF EMERGENCY (ARTICLE 4)

**Please see Amnesty International's comments in reference to question 16 on the Committee's list of issues, regarding the frequent use of administrative detention, in particular of Palestinians in the OPT (see pages 14-16 of this document).**

## RIGHT TO LIFE (ARTICLE 6)

**In reference to question 10 on the Committee's list of issues, in particular regarding the status of investigations and prosecutions initiated by Israel on alleged violations of international law resulting from the conduct of Israeli military forces during the Israeli military operation in the Gaza Strip between 27 December 2008 and 18 January 2009:**

Israel's continuing failure to conduct credible, independent investigations into alleged war crimes and other serious violations of international humanitarian and international human rights law by their forces during the Israeli military operation in Gaza in December 2008 and January 2009 (see below) is of concern to Amnesty International. The continued failure to conduct adequate investigations further encourages an atmosphere of impunity.

On 5 November 2009 the UN General Assembly endorsed the recommendations of the United Nations Fact Finding Mission on the Gaza Conflict. The resolution also called on the Government of Israel, within a period of three months, to undertake investigations that are "independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact Finding Mission, towards ensuring accountability and justice".<sup>15</sup> On 29 January 2010 the Permanent Mission of Israel submitted a document to the United Nations on behalf of the State of Israel entitled *Gaza Operation Investigations: An Update* (hereafter the Update) which exposes serious shortcomings in the investigations undertaken by Israel. The Update states that the army has opened investigations into 150 incidents involving alleged violations of the laws of war by its forces during its 22-day military offensive in Gaza.

Amnesty International is concerned that the independence and impartiality of these inquiries is severely compromised by the fact that all these inquiries have been carried out by army commanders or by the military police. In addition, these processes are overseen by the

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<sup>15</sup> General Assembly Resolution A/Res/64/10 of 5 November 2009.

Military Advocate General, whose office cannot be considered a disinterested party as it provided legal advice to Israeli forces on their choice of targets and tactics during the operation.

The Update states that only 36 incidents are under criminal investigation by the military police. The others are being considered in operational debriefings (referred to as “command investigations” by the Update). The army commanders conducting these debriefings do not have the necessary professional training for conducting investigations into violations of international law, and cannot be considered independent. These debriefings do not meet the appropriate standards of transparency: the debriefings are confidential and, if they are referred to a criminal investigation, self-incriminatory evidence given by soldiers in the debriefing is not admissible in court. If, on the other hand, debriefings are closed without being referred to a criminal investigation it is not possible to examine the proceedings or the evidence behind the decision not to open a criminal investigation.

According to the Update only one of these cases had resulted in a conviction (of a soldier who stole a credit card). After the submission of the Update to the UN, a further case went to trial on 11 March 2010, when the Israeli Military Prosecution indicted two Israeli staff sergeants from the Givati Brigade reserves unit for engaging in unauthorized conduct during the operation. In this second case, the two Israeli soldiers were charged with overstepping authority and conduct unbecoming for allegedly forcing a nine-year-old Palestinian boy to open bags that they suspected of being booby-trapped in the Tel al-Hawa neighbourhood in the Gaza Strip. These charges and their maximum penalties are light and are not commensurate with the act alleged. On 22 June 2010 a hearing will take place in which a soldier (identified only as First Sergeant S) is expected to be charged with opening fire on a Raya Abu Hajjaj and her 35-year-old daughter Majda in disregard of the Israeli military's rules of engagement. The killing of Raya and Majda Abu Hajjaj represent just one of a number of cases reported by Amnesty International and other organizations in which civilians waving white flags were fired on by Israeli forces.<sup>16</sup>

The Update states that a number of military inquiries have concluded that there is no basis for criminal investigations; some of these relate to serious incidents which Amnesty International maintains warrant effective, independent investigation. These include Israeli attacks on UN facilities, civilian property and infrastructure, attacks on medical facilities and personnel, and incidents in which large numbers of civilians were killed by Israeli forces raising questions about proportionality and whether the military respected the principle of distinction.

Despite enduring concerns by Amnesty International over Israel's extensive use of white phosphorus in Gaza, the Update contends that there are “no grounds to take disciplinary or other measures for the IDF's use of weapons containing phosphorous”. Between 27 December 2008 and 18 January 2009 Israeli forces often launched artillery shells

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<sup>16</sup> Amnesty International, *Israel/Gaza: Operation "Cast Lead": 22 Days of Death and Destruction*, Index Number: MDE 15/015/2009, 2 July 2009. See also, Human Rights Watch, *White Flag Deaths: Killings of Palestinian Civilians during Operation Cast Lead*, 2009; and B'Tselem, *Testimony of Nuha a-Najar*, January 2009.

containing white phosphorus into densely populated residential areas in the Gaza Strip, causing death and injuries to civilians. The Update dismisses as “operational errors” other Israeli attacks which resulted in civilian injuries and deaths while acknowledging “some instances” in which Israeli soldiers and officers “violated the rules of engagement”.

The military investigations also preclude the possibility of examining decisions taken by civilian officials, who are also alleged to be responsible for serious violations.

**In reference to question 11 on the Committee’s list of issues, regarding the measures taken to ensure the distinction between civilian and military objects and person during the Israeli military operation in the Gaza Strip in December 2008 and January 2009:**

Amnesty International is gravely concerned by the killing of civilians by Israeli forces during Israel’s military operation in Gaza between 27 December 2008 and 18 January 2009. As detailed in Amnesty International’s report of July 2009,<sup>17</sup> the scale and intensity of the Israeli military attacks on Gaza during this military operation were unprecedented. More than 300 children and hundreds of other unarmed civilians who took no part in the conflict were among the approximately 1,400 Palestinians killed by Israeli forces.<sup>18</sup> Many were killed with high-precision weapons, relying on surveillance drones which have exceptionally good optics, allowing those observing to see their targets in detail. Others were killed with imprecise weapons, including artillery shells carrying white phosphorus which should never be used in densely populated areas. Amnesty International found that the victims of the attacks it investigated were not caught in the crossfire during battles between Palestinian militants and Israeli forces. Paramedics and ambulances were repeatedly attacked while attempting to rescue the wounded or recover the bodies of the dead.

It is of further concern to Amnesty International that this military operation, code-named Operation “Cast Lead”, continued a sustained pattern visible in a series of Israeli military operations (including Operation “Summer Rains” (28 June-September 2006); Operation “Autumn Clouds” (1-7 November 2006); and Operation “Warm Winter” (27 February-2 March 2008)) that demonstrated direct attacks on civilians and civilian objects, as well as the use of indiscriminate or disproportionate attacks.

Research by Amnesty International into the Israeli military operation in Gaza in December 2008 and January 2009 showed elements of reckless conduct, disregard for civilian lives and property and a consistent failure on the part of Israeli forces to distinguish between military targets and civilians and civilian objects. Israeli forces continued to employ tactics and weapons that resulted in growing numbers of civilian casualties for the entire duration of the military offensive. This was despite Israeli officials knowing from the first days of the

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<sup>17</sup> Amnesty International, *Operation “Cast Lead”: 22 Days of Death and Destruction 2009*.

<sup>18</sup> Detailed figures of fatalities during the Israeli military operation in Gaza available from B’Tselem at: [http://www.btselem.org/English/Statistics/Casualties.asp?sD=27&sM=12&sY=2008&eD=18&eM=01&eY=2009&filterby=event&oferet\\_stat=during](http://www.btselem.org/English/Statistics/Casualties.asp?sD=27&sM=12&sY=2008&eD=18&eM=01&eY=2009&filterby=event&oferet_stat=during).

military offensive that civilians were being killed and wounded in significant numbers.<sup>19</sup>

**In reference to question 11(b) on the Committee's list of issues, regarding the use of Palestinian civilians by the Israeli military forces as human shields:**

During Israel's military operation in December 2008 and January 2009, Israeli forces repeatedly entered Palestinian homes in the Gaza Strip forcing families to stay in a ground floor room while they used the rest of their house as a military base and sniper position – using the families, both adults and children, as human shields and putting them at increased risk.

In several cases Israeli forces also forced unarmed Palestinian civilian males (mostly adults but in a couple of cases also children) to serve as human shields, including to walk in front of armed soldiers; to go into buildings to check for booby-traps or gunmen; or to inspect suspicious objects for explosives.

**Yousef Abu 'Ida (Abu 'Abdallah) and his wife Leila and their nine children**, five daughters and four sons aged between 4 and 22 years of age, were in their home in the Hay al-Salam to the east of Jabalia in the Gaza Strip. Israeli soldiers forcibly took over their house and held the family as human shields for two days while they used the house as a military position, then they forced the family out and later destroyed the house.

According to Abu 'Abdallah: "At about 10.30 am on 5 January a group of soldiers entered our home, and locked all of us in the basement and they went upstairs. They took our mobile phone and did not allow us to move. They took all the blankets and mattresses. We had no food and no water. The children were scared, cold, hungry and thirsty but we had nothing. We were kept like that for two days. We heard the soldiers laughing and shooting upstairs. We were scared. After a day the younger children were desperate for water and I took the bit of water which remained in the cistern of the toilet to give to them; there was no other alternative. After two days, on the morning of 7 January the soldiers threw us out of the house. I asked to go upstairs to fetch some clothes and shoes but they did not allow us. We had to leave barefoot and with only what we were wearing when the soldiers first came into the house two days earlier".

**In reference to question 11(c) on the Committee's list of issues, regarding the refusal of Israeli forces to allow the evacuation of the wounded and permit access to ambulances:**

As the occupying power, Israel has a duty under international human rights and humanitarian law to ensure the right to health of the population of Gaza without discrimination and to ensure provision, to the fullest extent of the means available to it, of medical supplies to the population of Gaza. In a situation of an armed conflict, the parties must allow and facilitate

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<sup>19</sup> Amnesty International, *Operation "Cast Lead": 22 Days of Death and Destruction 2009*.

rapid and unimpeded passage of impartial humanitarian relief (Additional Protocol II, Article 18).<sup>20</sup> They must respect and protect medical personnel and their means of transport (Additional Protocol I, Articles 15 and 21).<sup>21</sup>

During the Israeli military operation in Gaza in December 2008 and January 2009, notably after Israeli ground forces took positions inside Gaza on 3 January 2009, many of the wounded died needlessly because they were denied access to medical care. The journey to the hospital only takes about 10 to 15 minutes, but Israeli forces did not allow ambulances or other vehicles to reach the wounded. In some cases ambulances were not allowed to reach the wounded for several days and as a result numerous wounded Palestinians died who could have been saved.

**Mohammed Shurrab and his two sons, Ibrahim, 18, and Kassab, 28,** were injured at about 2.30 pm in the afternoon of 16 January as they were returning from the family farm in the east of Khan Yunis to their home in Khan Yunis. Their vehicle came under fire from Israeli forces stationed in a building along the road. They were fired upon during the daily three-hour ceasefire (known as the “humanitarian corridor” announced by the Israeli authorities on 7 January). Kassab was seriously injured in the chest, Ibrahim in the leg and their father sustained light shrapnel injury in his hand.

The father immediately telephoned the emergency ambulance services and called to the soldiers in the nearby building for help. No ambulance was allowed to reach the vehicle with the three wounded men and they were not allowed to move from the vehicle. Kassab died shortly after. At 7:30 pm Physicians for Human Rights – Israel (PHR-Israel) contacted the army but was told that the rescue could not go ahead. At about 1:15 am PHR-Israel contacted the father who reported that his second son, Ibrahim, had died shortly before after losing a large quantity of blood.

Having been forced to watch his two sons bleed to death, and himself injured, Mohammed had to spend the rest of the night and the following morning in his car, forbidden to move and unable to receive any help. An ambulance was eventually allowed to rescue him and collect the bodies of his two sons at 12:00 noon the following day – some 22 hours after they had been shot.

On 7 January, three PRCS ambulances escorted by an ICRC vehicle were finally allowed to evacuate 14 wounded civilians, most of them children, members of the **al-Sammouni family**, in the Zaytoun area, south of Gaza city. They had been trapped in the house, after it had been shelled by Israeli forces in the morning of 5 January. Injured children and elderly people had been trapped in the house with no food or water. The children were next to the bodies of their dead mother and relatives. Israeli forces did not allow the ambulances to approach the house and the paramedics had to walk for 1.5 km and to carry the wounded

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<sup>20</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

<sup>21</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

and three bodies on a donkey cart from the house to the ambulances.

**In further reference to the right to life, regarding Israel's use of excessive force against Palestinian civilian demonstrators:**

Amnesty International is concerned by the use of excessive force by Israeli forces against Palestinian demonstrators. This has been particularly visible in demonstrations against the Israeli fence/wall built on occupied Palestinian land in the West Bank.

On 17 April 2009, **Bassem Abu Rahmeh** was hit by a high-velocity Israeli tear gas canister, causing fatal internal injuries. He was taking part in the weekly protest in Bil'in village against the security fence/wall that cuts off Bil'in from much of its agricultural land. Video footage showed that Bassem Abu Rahmeh was unarmed and posing no threat.<sup>22</sup>

In a recent example, two Palestinian teenagers **Muhammed Qadus** and **Usaid Qadus** died after being severely injured by Israeli forces while participating in a demonstration in the West Bank village of Iraq Burin on 20 March 2010. The village of Iraq Burin is located near two Israeli settlements – Bracha and Yitzhar. Weekly demonstrations take place at the village as its residents protest against the taking of village land by the Israeli settlers. Muhammed Qadus was shot in the chest and died before reaching the hospital. Usaid Qadus was shot in the head at the same demonstration and died several hours later in hospital. The Israeli military stated that their forces had been authorised to use rubber bullets against the Palestinians, but medical staff in Nablus who had examined the bodies insisted that live ammunition had been used. An X-ray appeared to show a conventional bullet lodged in the skull of Usaid Qadus. The Israeli army has said it “could not verify the autopsy and could therefore not confirm that the rioters were in fact hit by live rounds,” and that a Military Police investigation into the deaths was “ongoing”.

## **PROHIBITION OF TORTURE (ARTICLE 7)**

Despite legislative changes banning torture and declarations of public figures opposing the use of torture or other forms of ill-treatment in Israel, the Israel authorities continue to engage in practices which are incompatible with Article 7 of the ICCPR.

In relation to this article of the Covenant, Amnesty International is particularly concerned by the treatment of Palestinian detainees during the recent Israeli military offensive into Gaza (27 December 2008–18 January 2009) and the denial of medical treatment to wounded Palestinians during the same military operation detailed above in relation to the right to life (Article 6). In the view of Amnesty International the use of Palestinian civilians as human shield (as, for example, in the case of Yousef Abu 'Ida (Abu 'Abdallah) and his wife Leila and

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<sup>22</sup> Clip available at: [http://www.youtube.com/watch?v=XIbzuZ\\_50mU&feature=player\\_embedded](http://www.youtube.com/watch?v=XIbzuZ_50mU&feature=player_embedded).

their nine children on page 12 of this document) violates the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

According to Article 28 of the Fourth Geneva Convention, “The presence of a protected person may not be used to render certain points or areas immune from military operations.” Israel has ratified the Convention, which is also recognized as reflecting customary international law and therefore binding on Israel, Hamas and other Palestinian armed groups. The prohibition against the use of human shields is further clarified in Article 51(7) of the Additional Protocol 1. It states, “Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.” The Supreme Court of Israel has also prohibited this practice. In its ruling of 6 October 2005, the Israeli Supreme Court concluded that the so-called “Early Warning” Procedure contradicts international law.

It is also the view of Amnesty International that the denial of medical treatment for sick and wounded in Gaza (as, for example, in the case of Mohammed Shurrab and his two sons, Ibrahim, 18, and Kassab, 28 on page 11 of this document) also constitutes a violation of the prohibition of torture and other cruel, inhuman and degrading treatment or punishment under Article 7.

## **RIGHT TO LIBERTY AND SECURITY OF THE PERSON (ARTICLES 9)**

**In reference to question 16 on the Committee’s list of issues regarding the frequent use of administrative detention, in particular of Palestinians in the OPT:**

Amnesty International continues to be concerned by the long-standing practice of the Israeli authorities to detain Palestinians from the OPT without charge or trial under “administrative detention” orders for several months and even years. Israel’s persistent and extensive use of administrative detention violates the right not to be imprisoned without trial (Article 9) and the right to be tried “without undue delay” (Article 14c).

According to figures provided to the Israeli NGO B’Tselem by the Israeli Prison Service (IPS), as of April 2010, Israel is holding more than 222 Palestinians in administrative detention in facilities run by the IPS.<sup>23</sup> According to the most recent data available to Amnesty International at the time of submission, this number includes at least two children.<sup>24</sup>

Administrative detention orders are issued for terms of up to six months, by Israeli army officers ranging in seniority from district commander up to the most senior, and are

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<sup>23</sup> [http://www.btselem.org/english/Administrative\\_Detention/Statistics.asp](http://www.btselem.org/english/Administrative_Detention/Statistics.asp).

<sup>24</sup> One of these detainees is Moatasem Nazzal, see page 15.

frequently renewed shortly before they expire. This process is often repeated over several years. The military alleges that detainees are a “security risk” but do not provide evidence supporting this allegation to either the detainees or their lawyers, denying them an effective opportunity to contest the allegations. Palestinians in administrative detention may be interrogated for sustained periods of time, as well as ill-treated or threatened.

In response to appeals on cases of administrative detention, the Israeli authorities refer to the legality of its use under international law. Though legal under the Geneva Conventions, the measure should only be used “for imperative reasons of security” in preventing danger to public (or state) security, in times of war or emergency. According to the UN Human Rights Committee a state of emergency is “of an exceptional and temporary nature.” However, Israel has been in a continuous state of emergency since 1948. The use of internment allowed under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War is intended to be only an exceptional temporary restrictive measure. The International Committee of the Red Cross’s (ICRC) Commentary on Article 78 of the Fourth Geneva Convention states: “In occupied territories the internment of protected persons should be even more exceptional than it is inside the territory of the Parties to the conflict.” The Commentary also states that those detained administratively “can therefore only be interned, or placed in assigned residence, within the frontiers of the occupied country itself.” The overwhelming majority of Palestinian administrative detainees in detention centres in Israel are held in breach of the terms of Article 78 of the Convention.

The Israeli authorities use administrative detention routinely when they have insufficient evidence to put a detainee on trial. In some cases administrative detention is used to hold people who have completed sentences imposed by the courts, seemingly as a way of inflicting further punishment without going through the court system. Administrative detention is imposed without any court proceedings: there are no charges, and the “evidence” used to justify each detention order is secret. This means that neither detainees nor their lawyers can mount an effective challenge to administrative detention orders. Detainees are not allowed a fair trial. Amnesty International believes the right to a fair trial must be respected even in times of emergency.

**Moatasem Nazzal**, a 16-year old student from Qalandiya refugee camp, near the city of Ramallah in the Israeli-occupied West Bank was arrested at his family home at 3:00am, on 20 March 2010; at no time during this process of arrest was Moatasem Nazzal told why he was being arrested. Israeli Military Order No. 1591 empowers military commanders to detain Palestinians, including children as young as 12, for up to six months if they have ‘reasonable grounds to presume that the security of the area or public security require the detention.’ As with other administrative detainees no formal charge has been made against Moatasem Nazzal. The only indication of the basis of his detention by the authorities is through what was asked of him during his interrogation. Moatasem Nazzal told the NGO Defence of Children International that: ‘I sat in the chair in the interrogation room while my hands and feet were still shackled. Then, the interrogator started asking me about the plot without explaining what the plot was. “I don’t know what you’re talking about,” I said to him and he asked me about the riot, bullets and weapons without giving any further explanation. I denied knowledge because I really didn’t know what he was talking about and I really had nothing to do with those things. Then, he asked me about the internet and a guy named Mohammad from Gaza I chat with. I told him I didn’t know Mohammad that well. I met him in some chat

room and we talk about school and tests and so on. "Liar," the interrogator said to me and kept focusing on asking me about this guy.<sup>25</sup> Moatasem Nazzal continues to be held in Ofer Prison. His current administrative detention order is due to end on 26 June 2010, although as with other detainees it may be renewed at a military court hearing in Ofer.

**Khaled Jaradat**, a father of six children who worked as an English teacher in the Jenin governorate in the West Bank until his arrest, has been held by the Israeli authorities for more than two years without charge or trial. Khaled Jaradat was arrested on 3 March 2008. On 5 April, after being held in custody for a month he was served with an administrative detention order for a period of six months. This was renewed for another six months on 5 October 2008, and then repeatedly since then for periods of six or three months. At the time of this submission, Khaled Jaradat continues to be held in Ketziot Prison, inside Israel. The Israeli General Security Service (GSS) claim that Khaled Jaradat is a member of a Palestinian militant organization, Islamic Jihad, which has committed acts of violence against Israeli civilians and is banned in Israel. The GSS have offered no evidence to support this allegation, and so Khaled Jaradat and his lawyer have no way to challenge his detention in court.

## FREEDOM OF MOVEMENT (ARTICLE 12)

**In reference to question 19 on the Committee's list of issues regarding the ability of persons with a Gaza identity card to move to the West Bank and East Jerusalem and vice versa and the movement of persons in and out of Gaza:**

Since **Israel's military blockade of Gaza** was brought into force in June 2007, the five Israeli-controlled crossings between Gaza and Israel have not been open in a regular or consistent way. The one other land crossing at Rafah, on the border between Gaza and Egypt, is controlled by the Egyptian authorities and following June 2007 was generally closed with only intermittent openings.<sup>26</sup> The blockade prohibits exports and restricts the entry of basic goods, including food and fuel. Much of the available food is provided by the UN and other aid agencies, or smuggled in through tunnels running under the Egypt-Gaza border and then sold on at exorbitantly high prices to Gaza's beleaguered residents. The blockade also often prevents people from receiving necessary, urgent medical care, and from pursuing their livelihoods. The closures prevent the movement of Palestinians into and out of Gaza in all but a handful of exceptional humanitarian cases. As a result around 1.5 million Palestinian men, women, and children are trapped in the Gaza Strip. Their daily lives – in an area of land just 40 kilometres long and 9.5 kilometres wide – are marked by power shortages, little or no

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<sup>25</sup> Further details about Moataem Nazzal's case are available at:

<http://www.dci-pal.org/english/display.cfm?docID=1437&categoryid=16>.

<sup>26</sup> Following Israel's military action on 31 May 2010 against the aid flotilla in international waters outside Gaza, the Egyptian authorities announced they were opening the Rafah crossing point 'indefinitely'. However, Egypt has yet to permit fully free passage of Palestinians into its territory, allowing entry only to Palestinians with specially obtained permits.

running water or water of poor quality and deteriorating health care. Mass unemployment, extreme poverty, and food insecurity are exacerbated by the Israeli blockade.

The WHO has pointed out the risks arising from delays to those in urgent need of medical treatment, and has indicated that 28 patients died while waiting for their permits in 2009, 14 of whom were waiting to pass through the Erez Crossing into Israel.

In addition to the restrictions on movement imposed by the blockade of Gaza, Amnesty International is concerned that a recently introduced Israeli military order could facilitate the **expulsion of Palestinians** from the occupied West Bank.<sup>27</sup> **Military Order No. 1650**, which came into force in the West Bank on 13 April 2010, broadens the definition of the term “infiltrator” to include anyone present in the West Bank without a permit issued by the Israeli authorities. Those considered “infiltrators” can be deported to other states or forcibly transferred to the Gaza Strip, and face criminal charges.

In general, Amnesty International is concerned that Order 1650, which sets out the conditions under which a person may be deported by the Israeli authorities from the occupied West Bank (referred to in the Order as Judea and Samaria) may be applied in such a way that would violate international humanitarian law and international human rights law conventions to which Israel is a state party, in particular Article 12 of the ICCPR. The specific concerns of Amnesty International are set out below.

#### 1. Deportation of “infiltrators”

Order 1650 broadens the definition of the term “infiltrator” to include any person present in the West Bank without an “Israeli-issued permit”. Under Order 1650, those considered “infiltrators” can be deported and face criminal charges. As such, Order 1650 could enable extensive transfer and deportation of protected persons from the West Bank, in violation of Article 49 of the Fourth Geneva Convention, which states: “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.” The prohibition of transfer and deportation of protected persons from occupied territories is absolute and not subject to limitations or qualifications.

#### 2. Forcible transfer of protected persons to Gaza

The changes introduced by Order 1650 are of particular concern since they could facilitate the expansion of the Israeli authorities’ current practice of expelling individuals from the West Bank to the Gaza Strip; that is from one part of the Occupied Palestinian Territories (OPT) to another. In Amnesty International’s view, this contradicts the principle, accepted by the international community, that the West Bank, including East Jerusalem, and the Gaza Strip are one territorial unit and violates the occupying power’s duty to ensure the welfare of the occupied population, as stipulated under Article 27 and 47 of the Fourth Geneva Convention. Article 27 entitles protected persons to respect for their family rights and to humane treatment. Article 47 states that

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<sup>27</sup> Order regarding Prevention of Infiltration (Amendment No. 2) (Judea and Samaria) (No. 1650) 5769-2009

protected persons in occupied territory should not be deprived of the benefits of the Convention by any change introduced as the result of the occupation of a territory.

The forcible transfer of Palestinians from the West Bank to the Gaza Strip would also violate the freedom of movement of those it forcibly relocates, if once in Gaza the Israeli authorities do not allow their return to the West Bank. Article 12 of the ICCPR requires Israel to respect the right of Palestinians in the OPT to move about freely in those territories. Freedom of movement is also a prerequisite for the exercise of other rights, including those set forth in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Among these are the right to work (Article 6), the right to protection of family life (Article 10), the right to an adequate standard of living (Article 11), the right to health (Article 12), and the right to education (Article 13). While there are a large number of examples of Israel's longstanding practice of expelling Palestinians from the West Bank to Gaza, a single example will be highlighted here.

On 28 October 2009, Israeli forces in the West Bank detained **Berlanty Azzam**, a 21-year-old Palestinian student, who was weeks away from graduating from Bethlehem University. She was handcuffed, blindfolded and forcibly transferred to Gaza.

On 9 December 2009, the Israeli High Court of Justice decided not to allow Berlanty to return to Bethlehem University to complete her studies. Israel's argument centred on the Gaza address registered on her identity card and its claim that the permit she acquired to travel to the West Bank from Gaza in 2005 was insufficient.

### 3. Forcible transfer and deportation of foreign spouses

Amnesty International is concerned that the broadened category of "infiltrator" may also be applied to individuals who entered the West Bank many years ago and have filed applications with the Israeli authorities for family unification. To the best of the organization's knowledge, thousands of such applications remain outstanding.

Amnesty International is concerned that forcible expulsions from the West Bank of the foreign spouses of Palestinians through Order 1650, in addition to raising the concerns outlined above, would violate Article 23 of the ICCPR, which calls for the protection of the family: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State". Amnesty International would further consider such expulsions to violate Article 10 of the ICESCR, which requires states parties to recognize that: "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society".

### **In reference to question 18 on the Committee's list of issues, regarding all restrictions of movement within the OPT, in particular those arising from checkpoints, the imposition of travel permits for movement in, out and within the "Seam Zone" and the whole of the OPT:**

The Israeli authorities have continued to impose a range of restrictions on movement of Palestinians in the West Bank. In its update of June 2010, the UN Office for the Coordination of Humanitarian Affairs (OCHA) identified 505 obstacles blocking internal

Palestinian movement and access in the West Bank, 65 of them permanently manned, 22 manned on an ad-hoc basis and 418 unmanned obstacles, including roadblocks, earthmounds, earth walls, road gates, road barriers, and trenches.<sup>28</sup>

These obstacles which restrict freedom of movement within the West Bank cannot be justified as a means of preventing Palestinian armed groups from entering Israel to carry out attacks. In Amnesty International's view, the purpose of the obstacles is to keep Palestinians off roads leading to the Israeli settlements or roads used by settlers. This perspective is affirmed by UN OCHA: "Israeli settlements and their continuous expansion have the largest single impact on the configuration of the system of access restrictions applied to the Palestinian population."<sup>29</sup>

While not representative of conditions through out this reporting period, a series of recent measures taken by the Israeli authorities have marked a relative improvement in Palestinian freedom of movement between most urban centres (particularly in the northern West Bank). However even in these areas Palestinian freedom of movement has continued to be restricted by the hundreds of remaining obstacles and other restrictions. Such restrictions cause delays that result in longer travel times, increased transportation costs and poor access to services, market and places of work.

Furthermore, it is important to note that there has been no significant improvement in Palestinian access to areas behind the Israeli fence/wall, including to East Jerusalem, and to land and rural communities in the Jordan Valley.

In 2002 Israel began construction of a **700-kilometre fence/wall through the West Bank**, from north to south and through parts of Jerusalem. The fence/wall continues to cause massive long-term damage to Palestinian life and as well as undermining the ability of those living in dozens of villages and communities to realise a wide range of their human rights. According to the Israeli authorities, the fence/wall is "a defensive measure, designed to block the passage of terrorists, weapons and explosives into the State of Israel." However, most of the fence/wall does not lie along the "Green Line" (the 1949 armistice line which separates the State of Israel from the occupied West Bank). Instead, some 80 per cent of it is on Palestinian land inside the occupied West Bank, appropriating large swathes of farmland in order to effectively annex and incorporate unlawful Israeli settlements, and land for their expansion, to Israel. In July 2004 the International Court of Justice gave its advisory opinion that the route of the wall was unlawful.

As much of the fence/wall runs so far inside the West Bank, large areas of fertile farmland and whole Palestinian villages have become caged between the fence/wall and the Green Line, in enclaves usually referred to as "seam zones." Palestinians living in the "seam zones" or wanting to enter these areas are required to obtain a permit from the Israeli authorities. Even afterwards, if they are able to obtain such permits, farmers east of the fence/wall with land in the "seam zone" can only have access to their land through a gate which opens only a few times a day, and

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<sup>28</sup> UN OCHA, *West Bank Movement and Access Update*, June 2010.

<sup>29</sup> UN OCHA, *West Bank Movement and Access Update*, June 2010.

is often far from their village, creating a further obstacle.

The bureaucratic procedures that Palestinians must follow to obtain a permit to cross a gate are difficult, expensive and time-consuming and lack transparency.

One of many West Bank villages that suffer the effects of the fence/wall cutting deep into Palestinian land is the agricultural community of **Jayyus** whose 3500 inhabitants all rely directly or indirectly on farming for their livelihoods. With the construction of the fence/wall some two-thirds of Jayyus's agricultural land (approximately 1,270 hectares), including scores of greenhouses and the village's six main agricultural wells, were cut off from the village by the fence/wall and thus inaccessible to its Palestinian owners unless they obtain a permit from the Israeli army. According to the estimates of the municipality of Jayyus and the UN OCHA, only some 18-20 per cent of Jayyus farmers have permits to access their land.

The residents of Jayyus, together with other Palestinian farmers affected by the "seam zone" permit regime, went to the Israeli Supreme Court in 2005 to challenge the army's construction of the fence/wall. The Israeli Supreme Court ruled that the fence/wall must not impede the farmers' access to their lands. As in many other places, the army did not heed the ruling in Jayyus. In June 2008, the Israeli Ministry of Defence informed the Israeli Supreme Court of its plans to move the wall in the Jayyus region. Instead of cutting in close to the village as it does now, it is slated to be rebuilt closer to the settlement of Tsufim which lies to the west of Jayyus. This new route proposed to return a mere sixth of Jayyus's land to the eastern side of the wall, still leaving one half of the village's lands out of bounds. Combined with the stricter permits regime, this does not signify an improvement of the farmers' situation. Jayyus residents appealed the Ministry's decision, demanding that the wall be removed from the villages' lands altogether in order to ensure that the farmers have access. The Israeli Supreme Court ruled on 9 September 2009 that a small section of the fence/wall to the north of Jayyus should be rerouted because the current route does not fulfil any security needs of Israel, but rather provides for the expansion of the neighbouring settlement to the west.

However, the land area that is to be "returned" to the Palestinian side of the fence/wall is only a fraction of what has been isolated on the other side. There is no evidence that the army is moving the fence/wall in the section indicated in the Supreme Court ruling.

The court did not find the current permits system to be at fault, though it denies access to their lands to many farmers and their helpers, and severely restricts access for even the few farmers who do obtain permits. Rather, it leaves the issue of the gates' location and their opening hours in the hands of the Israeli military commander in the West Bank.

Even if they can obtain a permit, Jayyus farmers' access to the land is restricted. While farmers could once go to their farms whenever they wanted, preferring to work in the early morning and evening when the sun is not so hot, they are now only permitted to go to and from the farms according to gate opening hours set by the Israeli military. The gate is supposed to be open at 7.30am, 12.30pm and 5.30pm, but most of the time this schedule is disregarded. Farmers often end up travelling for hours and waiting for hours for the Israeli army to let them through.

Among those without permits are Sharif Omar and Imad Khaled, whose cases exemplify some of hurdles faced by farmers in pursuit of their work. The farmers and their families rely on their crops for their income, and denying them access to their farmland, on the other side of the fence/wall, has severe economic consequences for these villagers.

Sharif Omar's three sons have been consistently denied permits to access the family's land since the completion of the fence/wall in Jayyus in July 2003. This has left only the elderly **Sharif Omar** and his wife to work all day to tend their 3,600 olive, citrus, apricot and guava trees. Since November 2007 the Israeli army has refused to renew Sharif Omar's permit, making his wife the only family member allowed regular access to the land on which the family relies and so has sole responsibility for sustaining the family's livelihood.

**Imad Khaled** was detained for more than three years, from 1991 to 1994, during the First Intifada, and again when he demonstrated against the fence/wall in 2002. These arrests have been noted in his security file, but did not prevent him from entering Israel to work until 2000. Now, neither he nor his brothers are allowed to access the land on the other side of the fence/wall: the permits are refused on the basis of Imad Khaled's security file. Only their elderly father was given a permit but even that was not renewed after April 2006. "No other brother was in prison, but if one does something the whole family is punished. We have sold the greenhouses; we could not harvest the guavas in October. Now I work as a guard in a cement factory for \$300 a month, just enough to feed the family."

While in the first years of the permits regime the standard reason for denying farmers a permit was "security," it has now changed to "insufficient proof of relationship to the land." This especially concerns younger farm workers, sons and grandsons of the owners in whose name the land is registered. Often the family name might not be the same (due to Arabic use of four names but the use of only three on Israeli permits), or, as students and workers who help out on the family land on weekends and holidays, they are deemed not professional farmers and their attachment to the land is contested by the Israeli army.

This judgment regarding whether or not a farm labourer is sufficiently attached to the land disregards the work practice whereby the regular upkeep of the land is done by the professional farmer or landowner, who eventually passes the land on to the sons, while seasonal hard work involves extended family and additional farm hands. Were there no fence/wall, farmers would not have to bring extraordinary proof and justification to a military permit officer for what is, after all, their regular farming practice on their own land.

Amnesty International fears that the army's increasing tendency to deny access to the land is part of Israel's ongoing efforts to appropriate as much as possible of the Palestinian land which has been cut off from the rest of the West Bank by the fence/wall.

Meanwhile Israeli citizens are allowed free access to occupied land in the "seam zones."

Though the Israeli Supreme Court called on the Israeli Army to ensure the farmers' access to their land in 2005, Amnesty International's position is that as long as the routing of the fence/wall does not conform to international law (as set out in the International Court of Justice's Advisory Opinion of July 2004), access is not guaranteed. The agricultural gates and the permit regime were provided by the Israeli army as a response to the Supreme Court's

ruling so the Palestinian farmers would have access. As has been documented since 2003, the permit regime and the agricultural gates system do not function in a way that ensures access. This suggests that the Israeli authorities' long-term aim is appropriating Palestinian land for Israeli use. It is therefore doubly important that Israel does not build the fence/wall through the West Bank, as it does near Jayyus: only removing it from Palestinian land altogether will ensure the Palestinian inhabitants have access to their land, and prevent Israeli land appropriation.

In January 2009, the "seam zone" was expanded from the northern parts of the West Bank (where it has been in force since 2003) to central and southern areas. At the same time changes to the checkpoints and the route of the fence/wall in some northern areas meant some Palestinians were "released" from the "seam zone" although it continues to include approximately 7,800 people. In addition, the officially approved route of the Israeli fence/wall in the western Bethlehem governorate threatens to place a further 21,000 Palestinians and large areas of fertile land within the "seam zone" regime.

Palestinians have continued to face severe restrictions on their freedom of movement in reference to **East Jerusalem**. As has been the situation since 1993, Palestinians holding West Bank identity cards have not been able to access East Jerusalem unless they obtain an entry permit which is issued by the Israeli authorities. This restriction also applies to medical patients and hospital staff (excluding doctors) who require treatment in or who are employed by the six specialist Palestinian hospital in Jerusalem.

The construction of the Israeli fence/wall around East Jerusalem and the "general closures" imposed on the West Bank (frequently due to Israeli holidays and occasionally due to "security alerts") further limit freedom of movement for West Bank ID holders, even those who are able to obtain an Israeli permit.

The **Jordan Valley** north of Jericho is barred to the vast majority of Palestinians from elsewhere in the West Bank by means of a strict permit system and four permanently manned Israeli military checkpoints. These restrictions have been justified in reference to the security needs of Israeli settlers living in the area or travelling on Road 90 (the main north-south road through the valley). The Palestinian residents of the valley mostly belong to the same families as those living in the hills above and often share surnames with them. Traditionally, many of them lived in the warmer valley during the winter and in the cooler hills during the summer. Some lived permanently in the valley to work the land. However, in a measure which has divided communities based on kinship, since May 2005, anyone whose ID does not have a village in the northern Jordan Valley marked on it as the place of residence is not allowed to live or visit the area. These restrictions on movement affect every area of life, including the standard of living, agriculture, trade, industry, education, health, and family relations.

**In further reference to freedom of movement, in particular Article 12.2 of the ICCPR, "Everyone shall be free to leave any country, including his own" and the restrictions on movement placed on Israeli citizens wishing to leave Israel:**

**Mordechai Vanunu** is a former technician at Israel's nuclear plant near the southern town of Dimona. He spent 18 years in prison for revealing details of the country's nuclear arsenal to the British newspaper *The Sunday Times* in 1986. He was abducted by Israeli secret service (Mossad) agents in Italy on 30 September 1986 and secretly taken to Israel. He was tried and sentenced to 18 years' imprisonment: he spent the first 11 years in solitary confinement.

When he was released in April 2004 the Israeli authorities considered placing him under administrative detention, but the option was rejected as illegal by the Attorney General. Instead they imposed restrictions on him, which violate his right to freedom of expression, association and movement. He is forbidden from communicating with foreigners, including journalists; is forbidden from leaving the country; he cannot go near foreign embassies and must inform the police if he wishes to change his habitual place of residence.

He has thus been subject to police supervision since his release from prison, and the order limiting his freedom of movement and freedom of association has been renewed every six months and remains in force. It was most recently renewed in April 2010. These restrictions, which violate Article 12 of this Covenant cannot be considered parole restrictions as, unlike most Israeli prisoners, he did not benefit from early release on parole but had to serve his full 18-year term. On 23 May 2010, Mordechai Vanunu was sent to jail for a further three months in prison. His latest jail sentence was handed down for breaching the unlawful and arbitrary restriction that prohibits him from speaking to foreigners. At the time of submission he was being held in solitary confinement in Ayalon Prison in central Israel.

While the ICCPR allows that freedom of expression may be subject to certain restrictions, for the protection of national security, these should 'only be such as are provided by law and are necessary'. Mordechai Vanunu has repeatedly stated that he revealed all he knew about Israel's nuclear arsenal in 1986 and that he has no further information. Moreover, the information he had at the time of his imprisonment more than 20 years ago has now long been in the public domain and is out of date.

**Please also see Amnesty International's comments on question 24 on the Committee's list of issues, regarding restrictions imposed by Israel on travel of human rights defenders to or from Israel and the OPT (see pages 24-26 of this document).**

## **FREEDOM OF CONSCIENCE, EXPRESSION AND PEACEFUL ASSEMBLY (ARTICLE 18, 19 AND 21)**

**In reference to question 23 on the Committee's list of issues, regarding Israeli conscientious objectors:**

The State of Israel has routinely imprisoned conscientious objectors for refusing to serve in the Israeli military because they opposed the military occupation of the Palestinian Territories or the actions of the army in the OPT.

The Human Rights Committee in its General Comment 22 has noted that: 'The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief'.

Amnesty International considers that those who refuse conscription into the armed forces should be given the opportunity to perform alternative service which is of purely civilian character and under civilian control, and which is not of punitive length.

On 29 October 2009, **Or Ben David** was given her first prison sentence of 20 days after she refused to serve in the army. She was back in prison at the end of the year after receiving two further sentences. A public letter by Or Ben David, explaining her conscientious objections, stated: 'To refuse means to say no! No to the military rule in the West Bank, no to the use of violence as a means of defence, no to patriarchy, no to violence against innocent people, no to abuse against soldiers, no to war and no to a society that claims to be democratic, but forces youths to carry weapons, kill and be killed'. Describing her reason to oppose alternative service she stated: 'why wouldn't I join the army as a school teacher in uniform? ...An educational figure with a military appearance only serves to further instil all that into the minds of the young, to further entrench the notion that living in such a militarist society with all those militarist and violent values is a necessity'.<sup>30</sup>

At least five other Israelis who refused to serve in the military for reasons of conscience were imprisoned during 2009.

**In 2010, Shir Regev**, aged 20, from the village of Tuval in northern Israel, served his first sentence after he did not present himself for enlistment at the Induction Base. Consequently he was arrested and sentenced to 20 days in prison on 2 March. He began a second prison term of 10 days on 24 March. In a statement made before going to prison, Shir Regev said: 'I believe it is my personal duty to refuse and defect from an army whose main purpose is to serve as an occupation police for maintaining "Israeli order" and imposing it on defenceless Palestinians who are denied citizenship. And what is this "Israeli order"? It is an ongoing process, in effect over 42 years, comprising a military regime over the Palestinians ... in the dilemma between doing such service and obeying my conscience, I have no doubt about my decision'.<sup>31</sup>

**In reference to question 24 on the Committee's list of issues, regarding restrictions imposed by Israel on travel of human rights defenders to or from Israel and the OPT:**

Restrictions on movement are a serious impediment placed by the Israeli authorities on the work of Palestinian human rights defenders. The system of identity cards and permits to cross Israeli checkpoints depends on processes of the Israeli military and secret services which are unaccountable, follow no rules known to those applying, and are nearly impossible to challenge. The army claim to have "security reasons" when they issue travel bans, but

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<sup>30</sup> <http://www.newprofile.org/english/?cat=41>.

<sup>31</sup> <http://www.newprofile.org/english/?p=277>.

offer no evidence to justify this.

This violates Israel's obligations under the Article 12 of the ICCPR, which guarantees that "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence," and that "Everyone shall be free to leave any country, including his own."

Under international law, the state may restrict an individual's freedom of movement only to protect national security, public order, public health or morals and the rights and freedoms of others. The restrictions must be proportionate to the danger posed by the individual's movement, and the state must give reasons for applying the restrictions, in an expeditious process.

Israel did not meet these conditions when it imposed travel restrictions on **Shawan Jabarin**. Shawan Jabarin is the director of internationally recognized Palestinian human rights NGO Al-Haq, based in Ramallah in the West Bank. The Israeli army has prohibited him from travelling outside the West Bank since March 2006. This restriction impedes his human rights advocacy work, as he is unable to represent his organization at conferences and meetings abroad.

On three separate occasions, Shawan Jabarin petitioned the Israeli Supreme Court regarding his travel ban. Each time, on the basis of secret evidence presented to the judges by the Israeli army's lawyers to the effect that Mr Jabarin poses a threat to the security of the State of Israel, the Court ruled against lifting Shawan Jabarin's travel ban. All members of the public, as well as Mr Jabarin's lawyer, were required to leave the courtroom so the army's claims could be examined.

The authorities' refusal to reveal why they think Shawan Jabarin poses a "security threat" makes it impossible for him effectively to challenge the prohibition and thus violates his right to due process, as well as his right to freedom of movement.

In 28 March 2010 Israeli border officials prevented Shawan Jabarin from leaving the West Bank for Jordan in order to travel to a meeting of the Cairo Centre for Human Rights, on whose advisory board he sits. In Amnesty International's opinion, travelling to human rights meetings abroad poses no danger to national security or public health and morals, and therefore the travel ban should be lifted immediately. International law (General Comment No. 27: Freedom of movement (Art.12), 2 November 1999) specifies that any state's laws "may not confer unfettered discretion" on those charged with the application of restrictions on movement.

The Israeli authorities allowed Shawan Jabarin to leave the West Bank between 1999 and February 2006 when Mr. Jabarin travelled abroad on eight separate occasions. When Mr Jabarin applied to travel to a conference in Morocco, his request was answered in the following terms by the Israeli Defence Forces: "according to the inspection we have conducted ... we have no comments concerning permitting the above to exit ... according to accepted procedures." His circumstances did not change between February and March 2006 when he was prevented from crossing from the West Bank into Jordan, yet the Israeli army's position on his right to travel evidently did change.

During the 1980s and 1990s, Shawan Jabarin was repeatedly placed under administrative detention for his alleged membership of the Popular Front for the Liberation of Palestine (PFLP), an organization banned in Israel. Shawan rejected the allegation that he was a member of the PFLP and the Israeli authorities produced no evidence to substantiate their allegations. In December 1985 he was charged and convicted of providing a service to the PFLP by facilitating the travel of two PFLP members to training abroad, for which he served a sentence of nine months (with 15 months suspended imprisonment). There were indications that Shawan Jabarin's confession on which the judgement was based was extracted under duress. After this Shawan Jabarin was held in administrative detention without charge and without evidence of criminal activity on several occasions until his final release in early 1998. In November 1994 the UN Working Group on Arbitrary Detention declared his detention to be arbitrary. Amnesty International adopted him as a prisoner of conscience in August 1990 on the basis of information relating to his detention at that time.

At the time of submission, the Israeli authorities continued to hold the passport of **Jamal Juma'** the coordinator of the 'Stop the Wall' campaign and a prominent human rights activist. Jamal Juma' was arrested by the Israeli authorities on 16 December 2009 and held for four weeks in detention before being released without charge on 12 January 2010. During his time in Israeli detention, information relating to his arrest was not been shared with his lawyer, and Jamal Juma''s passport along with other personal items was also confiscated by the Israeli authorities. For the next five months, the continued retention of his passport by the Israeli authorities prevented Jamal Juma' from travelling abroad to conduct international advocacy work on behalf of Palestinians who have been negatively affected by Israel's fence/wall in the occupied West Bank. Jamal Juma' finally retrieved his passport on 13 June 2010.

**In further reference to question 24 on the Committee's list of issues, in particular regarding the use of excessive and lethal force against Palestinian civilian demonstrators please see Amnesty International's comment on the right to life (see page 12 of this document).**

## **PROTECTION OF THE FAMILY (ARTICLE 23)**

**In reference to question 27 on the Committee's list of issues, regarding family visits for Palestinian prisoners from Gaza:**

At the time of submission of this document to the Committee, around 750 Palestinian prisoners continued to be denied family visits, some for a third year, because Palestinians in Gaza have not been allowed to travel into Israel since the blockade was imposed.

**Please also see Amnesty International comments in reference to question 19 on the Committee's list of issues, in particular regarding the forcible transfer and deportation of foreign spouses (see page 18 of this document).**

## RIGHTS OF THE CHILD (ARTICLE 24)

**In reference to question 29 on the Committee's list of issues, in particular regarding restrictions on school development:**

**Al-Khan al-Ahmar Mixed Primary School** was built in 2009 by the local Palestinian community and an Italian NGO to meet the needs of children from the Jahalin tribe in the surrounding area; at the time of submission the school was under threat of demolition from the Israeli authorities.

The Bedouin **Jahalin** tribe was forcibly transferred from the Tel Arad area in the Negev to the West Bank in the 1950s by the Israeli authorities. Following Israel's occupation of the West Bank, the Israeli military restricted the tribe's seasonal movement, rendering their traditional way of life impossible. As a result, the Jahalin established permanent homes in small encampments, prompting persistent harassment by Israeli settlers and the military authorities, who claim their tents and basic buildings are "illegal".

The Abu Dahouk clan, made up of some 30 families, live near the community of Arab al-Jahalin by the side of the Jerusalem to Jericho road around 10km from the Palestinian village of Anata and just south of the Israeli settlement of Kfar Adumin. Until 2009, the children had to travel to Anata, or even further to the refugee camp of Iqbet Jaber, to go to school. At around 200 shekels (US\$53) a month for each child, these travelling costs were prohibitive for many.

In mid-2009, the Abu Dahouk clan, with the help of the Italian NGO Vento di Terra, began to build a local school. The basic buildings, on a 300-square-metre plot of land, were made of used tyres filled with soil, joined together with mud and made waterproof with old cooking oil. Roofs of wooden beams and corrugated iron allow air to circulate in stifling temperatures. Anxious to complete the buildings in time for the new school year, residents worked for up to 12 hours a day and employed 15 local workers.

Then, on 24 June, the Israeli military authorities ordered the work to stop. The community ignored the order and 75 local Jahalin children began classes at the primary school at the end of August 2009. In February 2010, the Jahalin tribe petitioned the Israeli Supreme Court to provide legal permission for the school to continue. On 3 March, the Supreme Court ruled that the school could remain open until the end of the school year on 1 June 2010, but rejected the residents' appeal to "legalize" its presence through a permit. As such, a demolition order remains pending against the school.

## **RIGHT TO TAKE PART IN PUBLIC AFFAIRS, TO VOTE AND TO RUN FOR OFFICE (ARTICLE 25)**

The Abu Basma Regional Council was formed in 2003 after a long struggle by Arab Bedouin residents in the Naqab (Negev) for the recognition of their villages. Ten villages, with a total population of around 30,000 people, are within the jurisdiction of the regional council. It also provides education, social welfare and environmental services for some 40,000 additional people who live in neighbouring unrecognized Arab Bedouin villages.

The former Regional Councils Law stipulated that initial elections in a new regional council should be held within four years of its establishment. In exceptional cases, the law allowed the Interior Minister to postpone elections for no longer than two years. In the case of Abu Basma Regional Council, the elections were repeatedly postponed by Israel's Ministry of the Interior. Then in November 2009, an amendment was enacted that enables the Interior Minister to postpone indefinitely the elections of a regional council.<sup>32</sup> Currently, this amendment applies only to Abu Basma Council, denying the residents there an opportunity to vote enjoyed by other Israeli citizens under the jurisdiction of regional councils.

On 27 April 2010 the NGOs Adalah and the Association for Civil Rights in Israel (ACRI) petitioned the Supreme Court of Israel to demand the cancellation of an amendment to The Regional Councils' Law (Date for General Elections) 2009.<sup>33</sup>

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<sup>32</sup> The Regional Councils' Law (Date for General Elections) 2009

<sup>33</sup> HCJ 3183/10, Hussein Rafeea, et. al v. The Minister of the Interior, et al. (case pending).

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