

# **Shadow Report to the United Nations Human Rights Committee (HRC) Regarding the Report of Israel Concerning the Covenant on Civil and Political Rights<sup>1</sup>**

## **Summary**

(note: For all citations and notes please consult the full Shadow Report text)

### **Introduction: Applicability of the ICCPR to the West Bank and the Gaza Strip**

Israel argues that it has no obligation to ensure compliance with the ICCPR in the OPTs. First, Israel argues that the majority of the Palestinians living in the OPTs reside in the "A Areas," which under the Oslo process have ostensibly been transferred to the security control of the Palestinian Authority (PA). Secondly, Israel also argues that human rights law generally does not apply in the OPTs and that only international humanitarian law applies.

The Oslo Peace Accords divided the Occupied Territories into three areas with varying degrees of administrative control apportioned to the Palestinian Authority and Israel in each. Israel, however, has reestablished full military control throughout the occupied territories. While it has not established full civilian control over areas A and B it has made it effectively impossible for the Palestinian Authority to do so. Israel has destroyed many of the civilian institutions in areas under the primary control of the Palestinian Authority, and Israel military Regulations apply in all areas regardless of their status under Oslo. Throughout the Occupied Territories, Israel detains Palestinian citizens, and otherwise restricts movement, thereby devastating economic, political, social and cultural life. The Oslo divisions are therefore now fiction.

Moreover, while it is true that international humanitarian law is binding in situations of military occupation, it is supplementary to international human rights law. Individuals do not lose their human rights as a result of military occupation. Rather, they are afforded the extra protection of humanitarian law.

We therefore urge the Committee to reaffirm Israel's obligation to apply the International Covenant for Civil and Political Rights (ICCPR) in the Occupied Territories, and request that the Committee consider several recommendations in its Concluding Observations on Israel (please see the text of the report pages 5-9 for the list of recommendations).

---

<sup>1</sup> This report was prepared by 13 NGOs in the West Bank and the Gaza Strip: Addameer Prisoners Support and Human Rights Association, Agricultural Development Association (PARC), Resource Center for Palestinian Residency and Refugee Rights (Badil), Defence for Children International/Palestine section (DCI), Democracy and Workers' Rights Center (DWRC), Gaza Community Mental Health Programme (GCMHP), Mandela Institute for Human Rights, National Society for Rehabilitation in Gaza Strip, The Palestinian Initiative for the Promotion of Global Dialogue and Democracy (MIFTAH), The Palestine Red Crescent Society (PRCS), Solidarity International for Human Rights, Treatment and Rehabilitation Center for Victims of Torture (TRC), and Women's Center for Legal Aid and Counseling (WCLAC). The report was coordinated and edited by the Palestinian Independent Commission for Citizens' Rights (PICCR), the National Human Rights Institution of Palestine.

## **Article 1- Self Determination**

- a) Since the beginning of the Intifada (29 September 2000), the Palestinian population has not been able to freely dispose of its natural wealth and resources. The Israeli military has bulldozed agricultural land; destroyed fruit-bearing and woodland trees; developed discriminatory policies on access to water; prevented farmers from accessing their land; and confiscated other private and public properties. Israel justifies all of these actions under the catch-all phrase of “military necessity”, although in many cases the purpose is to establish Israeli Jewish settlements or roads to access them.
- b) Israeli construction of a separation fence in some parts far to the east of the 1967 Green line is exacerbating these problems. Much of the land confiscated from Palestinians in the North is in a region where fertile agricultural land is at a premium. Individuals will be unable to access lands split by the wall, and villages will be disconnected from cities where they access markets and production materials.
- c) Israel draws more than 870 million metric meters (81%) of Palestinian ground water per year, but allows Palestinians to use only 130 million metric meters in the West Bank and even less in the Gaza strip. Israeli settlers consume more than 274 liters of water per day, while Palestinians consume about 65 liters. In addition, in the West Bank alone, 200,000 people who depend on water supplied by tanker were left without adequate supplies due to closures and curfews. Settlers and the Israeli army have repeatedly attacked Palestinian water sources. Curfews and closures make repair a practical nightmare.

## **Article 2- Effective Remedies**

A Remedy must be effective in practice as well as in law. No effective remedy exists for the vast majority of Palestinians whose properties in Israel were confiscated by Israeli authorities during the 1950s-60s (also see article 26), thus it is no surprise that no effective remedies exist for Palestinians in the occupied territories whose properties are being confiscated for construction of the separation wall and other purposes (see also article 1).

There are no effective remedies for the various and forms of collective punishment—from house demolitions and arbitrary detentions, to curfews and closures—imposed by the Israeli authorities on Palestinians in the occupied territories.

There are no effective remedies for Palestinians who have mistreated at checkpoints and in detention, or for families of individuals who died because Israeli policies prevented access to health care.

There are no effective remedies available to the non-Jewish citizens of Israel who have been excluded from the land allocation and building process over the past decades. Investigations into Israeli crimes committed against Palestinians, both by settlers and by soldiers, are so superficial and ineffective that it can be said no remedies for such crimes exist.

Indeed, there are no effective remedies to any of the violations listed in the full shadow report.

## **Article 6- Right to Life**

In the first two years of the Intifada (September 2000-September 2002), 1888 Palestinians were killed in the occupied territories, 401 of whom were under 18 years old, and 36 of whom were disabled. 57% percent of children killed were not involved in any type of demonstration, but even for those that were it is clearly disproportionate to shoot a child, or anyone else, throwing a rock.

In that same period, the Israeli Defense Forces (IDF) killed 146 persons in extra-judicial assassinations. In 2001 alone, 12 of those killed in such incidents were children. According to the Palestine Red Crescent Society, by the end of 2002, over 20,000 Palestinians have been injured since the beginning of the current Intifada on 29 September 2000, with at least a third of these children under the age of 18.

The IDF uses explosive bullets, heavy military weapons, artillery and rockets, and shoots from war planes and war boats. Live bullets are used to disperse demonstrations including internationally banned “Dum-Dum” bullets that explode within the body. In addition, the “rubber ammunition” permitted by IDF Rule of Engagement for crowd dispersal includes rubber-coated steel bullets. In deaths involving children—including in incidents involving rubber coated steel bullets—research shows a high percentage of injuries to the upper body.

In addition, Israeli security personnel have prevented ambulances and medical teams from reaching wounded or sick Palestinians, resulting in numerous deaths or unnecessary physical deterioration. It is estimated that at least 67 Palestinians have lost their lives from Sept. 2000-Sept. 2002 because conditions imposed by the Israeli military authorities prevented access to medical facilities.

Israeli authorities violate their positive obligations under article 6 by failing to conduct investigations into the killings of Palestinians by the army or Israeli settlers, thereby encouraging a climate of impunity.

## **Article 7- Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment**

- a) The Israeli Intelligence services, the Israeli military, and the Israeli police have all been involved in Torture or Cruel, Inhuman or Degrading Treatment (CIDT) or Punishment of Palestinian detainees. Israeli medical personnel working in prison clinics have also participated in such practices by issuing medical reports regarding prisoners’ “physical fitness” (to withstand torture).

In addition, the IDF regularly subject Palestinian civilians to such treatment at military checkpoints. Because such treatment is so routine, it is difficult to quantify (also article 12).

Evidence suggests the continued use of the four methods of torture specifically outlawed by the Israeli High Court in 1999. In addition, that ruling left a loophole permitting the use of “moderate pressure” in “ticking bomb” cases. These definitions have not been further refined by the Court, and torture or CIPT appear to remain rampant.

The methods of physical brutality used to coerce confessions are outlined in the full report. In addition to physical torture, detainees are often threatened with the arrest, deportation or demolition of homes of family members. Juvenile detainees are not exempt from such treatment. Reports of beatings, threats, solitary confinement, and other forms of CIPT are routine. In addition, juveniles are frequently forced to sign confessions printed in Hebrew which they do not understand (see also article 24).

Each individual act may not constitute a discrete act of torture, but the vast majority of detainees are subject to a series of acts, which together constitute torture or CIPT.

- b) The United Nations Committee against Torture and CIPT in its last report on Israel found that demolition of homes/ property could in certain circumstances constitute Torture/CIPT. The Palestinian Ministry of Housing estimates that between September 2000-April 2002, 1600 homes were demolished, and 14,300 damaged affecting close to 100,000 people. Some of these homes were demolished by shelling but in a two year period (January 2001-January 2003) 182 homes were specifically demolished for being built without building permits, although it is worth noting that Israeli settler homes built without such permits are never subject to demolition orders (see article 26). A further 653 homes were specifically targeted for destruction for “security reasons.” Together 21,500 persons were left homeless during this period. Homes are increasingly being demolished under the “security” category making judicial review all the more unlikely.

#### **Article 9-Liberty and Security of Person**

The number of Palestinians under administrative detention between 31 December 1999 and 31 December 2002 ranged from 14 (lowest number) to 1007 (highest number). Administrative detentions means that persons are held without charge on the basis of secret information. Administrative detention orders range from one to six months and are renewable without limit. In 1999, military orders were amended giving the power to issue administrative detention orders to military officers below the rank of commander. As the law now stands, a detainee can be held for 22 days without any judicial review whatsoever. Secret evidence used against the detainee can be withheld both from the detainee and the detainee’s counsel.

During the reporting period, the IDF have arrested, interrogated, and incarcerated numerous Palestinian children. Israeli Authorities have lowered the age for trial before military courts from 14 to 12 years. Punishment for juveniles accused of throwing stones has increased from one to four months in detention. Over 350 Palestinian juveniles were in detention at the beginning of 2001. Over 2000 juveniles were arrested during 2001-2003. The length of sentences meted out to Palestinian juveniles has been increasing (see article 24). They are most of the time arbitrarily arrested, at checkpoints, in the streets or even inside their homes.

Most interrogations and detentions involve forms of aggravated mistreatment (see article 7).

#### **Article 10-Treatment of persons deprived of their liberty**

Palestinians detainees do not benefit from adequate standards of detention. Administrative detainees are held together with convicted prisoners and political prisoners are not separated from common criminals. Physical conditions in prisons are below standard (lack of adequate sanitation facilities and clothing, no adequate protection against climate etc.) and food and water

insufficient. Family visits are denied, medical treatment is inadequate, and visits by lawyers are severely restricted.

During arrest and interrogation, the vast majority of Palestinian detainees (adults and juveniles) are exposed to violent physical and psychological mistreatment including: beating, isolation, sleep deprivation, threats, position abuse (shabeh), exposure to humiliation and degrading situations, food and drink deprivation, being prevented from using the bathroom, being doused with cold and hot water, Shaking, deprivation of family and attorney visits, pressure to collaborate with the Israeli security services, forced signing of confessions, and collective interrogation.

Children are often placed for long periods of time in small isolation cells, with little ventilation and an open toilet. Children are also repeatedly threatened with long prison terms, imprisonment of family members, demolition of family home, and/or rape of female members of the family. The conditions for child detainees are far below standard. Palestinian juveniles are mixed in with adults at the age of 16 (also article 24).

### **Article 12- Freedom of Movement**

Since the beginning of the second Intifada (28 september 2000) Israel imposes often a tightened, comprehensive version of external closure in the OPTs. During such closures, Israel cancels all travel permits and prevents Palestinians-even those with valid work permits-from entering Israel or Jerusalem. Israel imposed 210 days of total external closure and 155 days of partial external closure during the year 2001, compared with 88 days of closure in 2000 and 15 days in 1999.

The Israeli Government can also prohibit most travel between cities, towns, and villages within the West Bank--an "internal closure"--impeding the movement of goods and persons. The internal closures may be severe, prohibiting Palestinians from using primary roads and closing off many secondary roads with physical barricades, or limited, allowing access to Palestinians on most secondary roads, but only some main roads, with roadblocks and checkpoints dispersed along those roads that are open. The Government of Israel imposed approximately 87 days of limited internal closure and 278 days of severe internal closure in the West Bank during the year 2001, compared with 81 days of internal closure in 2000 and no days in 1999. During the year 2001, the Israeli Government imposed roughly 361 days of limited internal closure and 4 days of severe internal closure in Gaza.

The Israeli policies of closure and curfew have a catastrophic impact on economic, social, cultural and political conditions and institutions. Closures prevent Palestinians from moving from town to town or from the occupied territories into Israel. Curfews prevent all movement for 24 hours at a time within particular municipalities meaning that children cannot go to school and parents cannot go to work, often for weeks at a time. Closures and curfews destroy the economy and social structures often splitting up families. In addition, both closures and curfews increase difficulties in accessing adequate health care exponentially. IDF forces monitoring checkpoints and curfews routinely abuse the civilian population who are the principle victims of curfews and closures (see also article 7).

There are currently 70-80 permanent checkpoints manned by IDF troops in the West Bank, and a permit system effectively prevents most Palestinians from moving on most roads. Israel recently

issued a policy refusing travel permits to Palestinian males under the age of 35 wishing to travel between West Bank towns.

The occasional movement of goods within the West Bank is further restricted by a system requiring Palestinians to off-load non-local trucks at designated places and reload onto local trucks. These restrictions on movement do not affect Israeli merchants. Therefore, Israeli goods appear on Palestinian store shelves replacing Palestinian goods that can no longer move from manufacturer to seller (see also article 26).

Curfews are even more disruptive, and represent an even more egregious type of collective punishment. It is worth stressing that curfews are imposed full time for weeks at a time, and only lifted for several hours from time to time to allow Palestinians to go shopping. They are not a nighttime phenomena. Curfews are routinely imposed on areas under Palestinian control according to the Oslo Peace Accords, making a mockery of the Agreement. It is especially worth noting, that policies of curfew and closure do not apply to Israeli settlers. In Hebron, for instance, where violence instigated by settlers is often the trigger for the imposition of curfews, the curfews only affect Palestinians and not Israelis living in the same town. Hebron has been under curfew for most of the past two years (also article 26).

Palestinian residency requirements in Jerusalem are structured to give residents an incentive to leave Jerusalem for the occupied territories if they want to live together with their spouse and children who do not have residency status. Palestinian families who wish to remain united must often choose between illegal residence in Jerusalem with the risk of heavy fines, prison or expulsion, and residing outside Jerusalem with the risk of losing all right to residency within the municipality (see also article 26).

Since the beginning of the Intifada, and until the end of 2002, 65 Palestinians have lost their lives after they were prevented from accessing life saving medical treatment or shot by the IDF at checkpoints (see article 6).

The IDF has also resorted to deporting Palestinians—not only those accused of illegal activities, but families of the accused—from West Bank towns to the Gaza strip. No trials precede these deportations. Israeli officials claim they cannot disclose the evidence in such cases for security reasons (see also article 14).

#### **Article 14- Right to a Fair Trial, Judicial Independence**

Israelis—including settlers living in the occupied territories-- are subject to a civilian legal system that offers significantly more stringent safeguards than the system of military law to which Palestinians in the Occupied Territories are subject. Indeed, many Judges serving in Israeli military courts are career military intelligence officers with no legal training or background. In an article in a leading newspaper, military judges complained that they were “simply serving as ‘rubber stamps’ in these legal proceedings” (see also article 26).

Israelis conduct effective investigations into crimes committed by Palestinians against Israelis but rarely conduct investigations into the killings of Palestinians by the army or Israeli settlers. Thus they not only breach the principle of equality before courts and tribunals, but their positive obligations to protect civilians under their control under article 6 (see also articles 2 and 26).

The various legal systems result in major disparities in punishment based on ethnic origin. For instance, a female Palestinian juvenile was sentenced to six and a half years in jail for stabbing an Israeli settler, while a middle-aged Israeli settler was sentenced to six months of community service for beating to death an 11-year-old Palestinian boy (see also article 26).

As noted under article 9, numerous Palestinians are held in administrative detention without charge. Legal representation of any Palestinian detainee is a problem as lawyers must have permission from Israeli military authorities to leave the West Bank and Gaza, and such permissions are difficult to obtain, and unnecessary delay is the rule. In addition, there has been an almost complete ban on family visits to Palestinian detainees since September 2000 making the role of the lawyer all the more important.

Deportation, house demolition, and administrative detention are all used as punitive measures against Palestinians without any form of judicial inquiry.

#### **Article 16- Recognition as a person before the law**

See article 14

#### **Article 17- Freedom from Arbitrary Interference with Privacy, Family, Home**

- a) Israel has defended its policy of home demolition both as a means of collective punishment and deterrence (also articles 7 and 14).
- b) During the March – April 2002 invasion of West Bank localities by the Israeli military forces, Israeli soldiers engaged in arbitrary attacks against the homes and property of Palestinian citizens. During searches of shops and commercial shops, Israeli soldiers and officers stole valuables, expensive electrical and electronic devices, in addition to destroying furniture and belongings. More than 200 cases of theft carried out by the Israeli forces from houses and shops in Ramallah, Nablus and Jenin, as well as 168 cases of destruction of property and personal belongings were documented.

#### **Article 19 Freedom of Opinion and Expression**

Several human rights organizations have noted Israeli interference with their work. The lawyer for one such organization said that in pursuing the confiscation of his group's promotional materials, the Israeli officer in charge told him that the materials were being confiscated because they blackened the reputation of Israel abroad and that Israel was working hard to improve its image abroad.

Under the guise of security, numerous human rights workers and journalists are harassed both when entering and leaving Israel. Computers are confiscated, papers, agendas and address books are rifled through.

#### **Article 24 –Protection of Children**

Because Israeli children are subject to civilian law, and Palestinian children to military law, there is a significant discrepancy between Israeli children of settlers and Palestinian children. Civilian law considers children under the age of 18 as minors. There are no juvenile courts in the West Bank and Gaza, and military courts try all juveniles as adults. Under civilian law, imprisonment

is not an option for minors aged 14 or under, and even for minors above the age of 14, imprisonment is expected to be an exceptional form of punishment (see also articles 7, 9 and 10).

Palestinian juveniles are almost always imprisoned while awaiting trial, and there is no record of any Palestinian child over the age of 14 receiving any sentence other than prison in the past ten years (over 1000 cases). The minimum age for prosecution before a military tribunal was changed from 14 to 12 (see article 9).

#### **Article 26- Equality before the Law**

- a) The fact that Israelis, including settlers in the occupied territories, are subject to Israeli civilian law, while Palestinians are subject to military law, results in vast disparities in the legal system, from detention to procedure and sentencing (see also articles 9, 10 and 14).
- b) Discriminatory residency requirements for Jerusalem negatively impact the unity of Palestinian families (see also article 12).
- c) Palestinian homes in the occupied territories are regularly demolished for being built without permits, although Israel has set up an administrative structure making it practically impossible to obtain such permits. Homes belonging to Israeli settlers built without permission are never destroyed. On the contrary, building permits are issued retroactively (see also articles 7, 14 and 17).
- d) There is serious discrimination in access to water in the occupied territories, with Israeli settlers receiving almost four times the quantity of water per capita than Palestinians (see article 1).
- e) The separation fence increases the discrimination between Palestinians and Israeli settlers in the West Bank.
- f) The Israeli policy of curfews and closures, which only applies to Palestinian residents of the OPT and not to illegal Israeli settlers, does not comply with the principles of non-discrimination stipulated in this article of the ICCPR.
- g) The vast majority of Palestinian properties in Israel were seized by the Israeli government using a crafty framework of discriminatory legislation during the 1950s-1960s. In addition, approximately half the land mass of the occupied territories has been confiscated by Israeli authorities. Legally these seizures are temporary, but in practice they are permanent. It was recently discovered that properties belonging to European Jews who died in the holocaust were confiscated in the same or similar processes. A restitution process has been established for Jews who lost such properties, but no such process exists for Palestinians who lost their properties (see also article 2).