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ICJ Submission to the Universal Periodic Review of Israel**

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Introduction

The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Human Rights Council's Universal Periodic Review of Israel, which is of key importance given the persistent violations of Israel's obligations as the Occupying Power under international law as well as the persistent discrimination against the Israeli Arab minority.

It is important that the Human Rights Council's working group on the UPR (Working Group) and the Human Rights Council (Council) emphasize the gravity of the conflict situation, condemn grave breaches of international humanitarian law and gross violations of human rights and call for urgent measures to re-establish the rule of law, and ensure the full enjoyment of human rights, in particular of civilians that suffer from the long-term occupation.

The gross human rights violations and breaches of international humanitarian law committed by the Israeli Government in the Occupied Palestinian Territories (OPTs) have dramatically increased since 2007. These include the siege imposed by the Israeli Government over the Gaza Strip; the indiscriminate and disproportionate use of force by the Israeli Defence Forces (IDF) impacting on Palestinian civilians; the continuing growth in the establishment of illegal settlements and settlers in the OPTs, including East Jerusalem; the continuing construction of the wall of separation, and the continuing practice of unlawful administrative detention, all of which violate Israel's obligations under international law.

In addition, the ICJ wishes to draw the attention of the Council to the increasing perception of the Israeli Arab citizens as a security threat and to their stigmatization. The Israeli Government has exacerbated this stigmatisation by adopting a new controversial citizenship law and by maintaining a blatant 'racial profiling' policy against Arabs at the airports.

I. Israel's obligations under international law

Obligations stipulated by the international human rights law and international humanitarian law are concurrently applicable to the Gaza Strip, the West Bank and

East Jerusalem, which have been under Israeli military occupation since 1967. The Israeli Government has argued that since the September 2005 disengagement from Gaza, the military government that previously existed in that territory was dissolved by the disengagement decision of the Israeli Government, and therefore, under these circumstances, the State of Israel cannot be any longer considered an occupying power and bear no general obligation to ensure protection and the appropriate living conditions to the civilians of the Gaza Strip. However, the Israeli Government is still exercising an effective control over the Gaza Strip and is therefore still responsible for the conditions of Gaza civilians under its occupation, in accordance with the international law.

Gaza's civilians have been denied by Israel of their basic economic, social and cultural rights, including access to food, healthcare, education and adequate housing. Thus, Israel has violated its human rights obligations towards people under its occupation. They have also been deprived of other essential means of subsistence, such as fuel and electricity. By preventing civilians from having access to these essential items, Israel is in violation of its obligation under international humanitarian law to protect civilians in occupied areas.

Sanction measures provided by the September 2007 Cabinet Decision,¹ which declared Gaza a hostile territory and called for punitive measures, including restrictions on the supply of fuel and electricity and the passage of goods to Gaza, punish indiscriminately civilian population and constitute a collective punishment prohibited by the international humanitarian law, in particular by Art. 33 of the 4th Geneva Convention relative to the Protection of Civilian Persons in Time of War (4th Geneva Convention), which states, *"no person may be punished for an offence he or she has not personally committed. Collective punishments and likewise all measures of intimidation or of terrorism are prohibited."*

During the last months IDF's incursions in Gaza, prior to the ceasefire between the Hamas and Israel effective since June 2008, civilians were killed, residential structures unlawfully demolished and non-military objectives targeted. In many cases, the IDF's use of force was disproportionate to the direct military advantage to be gained. Other IDF's attacks deliberately targeted civilians and objects indispensable to the survival of the civilian population without any legitimate military advantage at all. Such attacks against civilians and civilian infrastructure are contrary to the principles of distinction and proportionality, which are cornerstones of the international humanitarian law. The ICJ remains concerned at the attempts to dilute the protection of civilians through the reinterpretation of the international law in this regard. Such practices are impermissible and must be condemned.

These IDF's attacks were provided for by the same 2007 Decision, to respond to attacks by Qassam rockets at civilians in southern Israel. Indeed, the indiscriminate rocket attacks by Palestinian armed groups constitute a grave breach of the

¹ Security Cabinet declared the Gaza Strip hostile territory on 19 September 2007. <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm>.

international humanitarian law. However, these attacks cannot justify Israel's disproportionate and indiscriminate use of force.

Such Israeli policy has failed to stop the rocket attacks or to achieve any direct military advantage. Israel maintains that in responding to an existential threat, the military advantage is to be measured against the military operation as a whole. This interpretation has been construed to weaken the enemy by targeting its civilian population and undermining the civilians' right to be protected. As it denies the limits to methods and means of warfare, it may constitute a grave breach of the international humanitarian law.

The ICJ therefore calls on the Working Group and the Council to urge the Government of Israel to:

- i) End the siege of Gaza and facilitate the access to food, medicines, fuel and electricity by Gaza civilian population;**
- ii) Put an immediate end to the indiscriminate and disproportionate use of force impacting civilians in the OPTs, and take concrete and effective measures to prevent such attacks;**
- iii) Refrain from attempts to dilute the protection of civilians from the indiscriminate and disproportionate use of force through the reinterpretation of the international law;**
- iv) Hold criminally responsible individuals carrying out such attacks, and afford to victims and members of their families effective remedies, including reparation.**

Settlements, Wall of Separation and Human Rights under Occupation

Through the establishment of settlements in the West Bank and East Jerusalem, in which hundreds of thousands of Israeli civilians now live, Israel continues to seize Palestinian land, isolate communities from one another and destroy livelihoods.

According to the Israeli Central Bureau of Statistic, the number of settlers in the West Bank as of 30 June 2007² is 267,500, which means an annual growth of 5.8%. In June 2008, the Israeli Housing Ministry approved construction of 763 units in Pisgat Zeev, plus 121 units in Har Homa/Jabal Abu Ghneim settlements. The Jerusalem District Planning and Construction Committee preliminarily approved in the first week of July 920 new housing units to be established in Har Homa/Jabal Abu Ghneim.

It is illegal under international law to build settlements anywhere in the occupied Palestinian territories, including East Jerusalem. By continuing its policy of settlement construction, Israel violates its obligations under international law, in particular Article 49 of the 4th Geneva Convention, which states, "*The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.*"

The continuing construction of the wall of separation in the West Bank and Jerusalem

² http://www.cbs.gov.il/population/new_2008/table1.pdf

cuts through the Palestinian territory, allowing for the seizure of large areas of Palestinian land. The wall of separation has immediate impact on human rights of the Palestinian people as it violates their right to freedom of movement, which in turn impacts other fundamental rights, including the rights to work, food, health, and education. Furthermore, the wall completely encircles the city of Qalqilya, separates Palestinian villages from Jerusalem, and, in Abu Dis, cuts through Palestinian communities, separating neighbours and families.

In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice stated that "*Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto.*"³

Together with the settlements, the rigid Israeli permit system enforced by an increasing number of checkpoints and roadblocks, and the construction of Israeli-only bypass roads, the wall prevents the emergence of a viable, democratic and independent Palestinian State.

The ICJ therefore calls on the Working Group and the Council to urge the Government of Israel to:

- i) Immediately seize the construction of and dismantle the wall of separation in the OPTs, including in East-Jerusalem and comply with the International Court of Justice advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*;**
- ii) Immediately stop the illegal settlement policy in the OPTs, including East Jerusalem, by dismantling the existing settlements, freezing all settlement growth and expansion, and preventing any new installation of settlers.**

Treatment of detainees, administrative detention and detainees` conditions

While international humanitarian law (IHL) requires the persons accused of offences from an occupied territory to be detained in the occupied country, and if convicted, to serve their sentences therein, ⁴ the ICJ notes that some 11,000 Palestinian convicted prisoners, pre-trial detainees and administrative detainees are held in Israeli jails.

The IHL also stipulates conditions for security measures, including for internment of protected persons. Article 78 of the 4th Geneva Convention requires that the internment, i.e. administrative detention, should be an exceptional measure to be applied particularly when other less restrictive measures of control are inadequate and can only

³ "*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*" International Court of Justice, judgment available at

<http://www.icj.org/docket/index.php?p1=3&p2=4&code=mwp&case=131&k=5a>

⁴ See Article 76 of the 4th Geneva Convention

be applied “for imperative reasons of security.” Under Articles 43 and 78 of the 4th Geneva Convention, the interned person should be granted the right of appeal to a court or administrative board. The internment of civilians must be also reviewed at least every six months and the review proceedings comply with the rules of procedural fairness. Even where armed hostilities may occur over a prolonged period, this factor alone cannot justify the extended detention or internment of civilians, “their detention is only justified as long as security concerns strictly require it.”⁵

The Israeli Government policy of the administrative detention violates these principles of IHL. Arrests and detentions are often based on secret evidence, to which neither the detainees nor their counsels may have access.⁶ In addition, the Israeli administrative detention orders do not often specify any maximum cumulative period of administrative detention, and the detaining authority can repeatedly extend the initial period without necessary evidence justifying lengthy detention.

The ICJ also maintains that the legitimate security concerns by the Israeli Government must not be abused to construe the application of the international humanitarian law in order to circumvent the application of legal regime imposed by the international human rights law, which prohibits arbitrary detention.

Moreover, during its last two high level missions to Israel and the Occupied Palestinian territories,⁷ the ICJ was told that persons detained on grounds of security threat were often ill-treated and sometimes even tortured during their interrogation and detention, and in many cases were held in isolation in remote detention centres, which makes regular contact with their lawyers and families difficult.

The Israeli Supreme Court declared an absolute ban on torture in 1999, though the ruling allowed methods of creating pressure or discomfort, so long as such methods were not meant to break morale. However, in cases defined as “ticking bombs,” where interrogation might prevent an imminent terrorist attack, the court ruled that interrogators would not face criminal neither disciplinary sanctions for using physical pressure in extreme circumstances, despite the fact that it amounts to torture.

The ICJ was told that the Shin Bet Security Forces are still continuing to use “irregular” interrogation techniques involving physical measures and torture against Palestinian prisoners. These include beating, painful binding, back bending, body stretching, keeping prisoners in excruciatingly uncomfortable positions, covering their heads with filthy and malodorous sacks and depriving them of sleep.

In addition, Israeli NGO reports challenged the “ticking bomb” circumstances and reported cases illustrating the fact that any Palestinian detainee might find himself tortured during interrogation under the pretext that he is a “ticking bomb”.⁸

⁵ Inter-American Commission of Human Rights, *Report on Terrorism and Human Rights*, OAS Doc. OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. 22 October 2002, para. 143.

⁶ See Article 72 of the 4th Geneva Convention.

⁷ http://www.icj.org/news.php3?id_article=4265&lang=en.

⁸ Public Committee against torture in Israel: “*Ticking Bombs - testimonies of torture victims in Israel*”, 30 May 2007, <http://www.stoptorture.org.il/en/node/69>.

This seriously violates Israel's obligations under both the international human rights law and international humanitarian law.

The ICJ therefore calls on the Working Group and the Council to urge the Government of Israel to take measures to:

- i) Abide by international humanitarian law and end the abusive use of the administrative detention practice;**
- ii) Ensure that the process leading to criminal prosecution of those arrested and detained on criminal charges must meet the international standards of the transparency of investigation, fairness of procedures in prosecution and fundamental standards of fair trial, including the access to a legal counsel or other representatives;**
- iii) Refrain from "irregular" interrogation techniques involving physical measures and torture against prisoners;**
- iv) Investigate in a prompt, transparent and independent manner the allegations of torture and ill-treatment of convicted prisoners, detainees and administrative detainees; accept independent monitoring of the detention facilities and allow independent observers immediate access to these detainees and prisoners.**

Human rights defenders

Palestinian human rights defenders committed to the promotion of the rule of law and human rights in the OPTs have been subject to blatant arbitrary travel restrictions. Over the past years, Israeli security officials have refused on several occasions to allow them to leave Gaza and the West Bank. This violates Israel obligations under the International Covenant on Civil and Political Rights (ICCPR), which Israel has ratified and is obliged to uphold, and which specifically stipulates in its Article 12 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"*.

As an occupying power, Israel is required by international law to ensure the protection of fundamental human rights of the population under its authority. Although the ICCPR permits, under limited circumstances, restrictions on freedom of movement for security and other related reasons, the restrictions must have a clear legal basis, legitimate purpose, be limited to what is necessary, be proportionate to the threat and consistent with other Covenant's rights.

The ICJ therefore calls on the Working Group and the Council to urge the Government of Israel to:

- i) Refrain from imposing restrictions on travel of human rights defenders to or from Israel and the Occupied Palestinian Territories;**
- ii) Ensure that human rights defenders can carry out their legitimate work without intimidation or harassment.**

2. Israeli Arab citizens' rights

Discrimination against Israeli Arab citizens has increased over the past years. The Israeli Government has exacerbated their discrimination by adopting a new controversial citizenship law and by maintaining a racial profiling policy at the airports.

The new citizenship law, enacted in March 2007, imposes a blanket ban on granting residency or citizenship status to Palestinians who are married to Israeli citizens. Not only this law prevents family unification between Israeli Arab citizens and Palestinian residents of the OPTs, but also impacts foreign spouses who are residents or citizens of Iran, Iraq, Syria or Lebanon, defined in the law as "*enemy states*", as well as "*anyone living in an area in which operations that constitute a threat to the State of Israel are being carried out*".

This law is directed against Arab citizens of Israel. As a result, the law violates the right of Arab citizens in Israel to equality and the prohibition of discrimination. By imposing a blatant discrimination against a particular group of people based on their ethnicity or race, the Israeli Government is in clear violation of its obligations under the International Covenant on Civil and Political Rights (ICCPR). The ICJ draws attention to Article 2 of the ICCPR, which specifically stipulates, that "*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*" In addition, Article 26 of the ICCPR stipulates the substantive right to equality before the law, to the equal protection of the law and prohibits discrimination on any grounds, such as race, colour or other status. The given practice may also give rise to violations of Article 23 of the Covenant, which stipulates "*the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*"

The Israeli Government failed to respect its obligations under international law and to protect the right of its Arab citizens to equality and dignity.

Israeli Arab citizens are also facing a blatant racial profiling policy at the airports. The only basis for the strict airport checks is ethnic origin and national affiliation. Israeli Jews and Arabs receive dramatically different treatment when boarding Israeli planes. Arab passengers' luggage and passports are marked with especially colour-coded labels, and then with numbers, for different ethnic groups. Israeli Arab citizens are being routinely subjected to lengthy, humiliating interrogations, bag checks and invasive body searches at Israeli airports and land crossings.

Local NGOs reported in 2006 that the General Security Services (the Shabak) issued directives barring Arab citizens of Israel from travelling on internal flights operated by the Israeli airline "Tamir Flights", allegedly due to the unavailability of machinery for scanning travellers' luggage. In June 2006, the airline stated that Arab citizens had been allowed back on its flights after the machinery had been repaired.⁹

⁹ Adalah's NGO Report, Additional Information to the UN Committee against Racial Discrimination Submitted in Response to the List of Issues Presented to Israel, 1 February 2007. <http://www.adalah.org/eng/cerd.php>

Israeli security officials argued that these security measures are taken to assure the safety of millions of passengers. However, the security concerns could not justify under any circumstances the adoption and application of a general policy based on race and ethnicity, detriment to the Arab citizens of Israel.

The ICJ therefore calls on the Working Group and the Human Rights Council to urge the Government of Israel to:

- i) Ensure that prohibition of racial and ethnic discrimination and the right to equality are respected as general norms in the domestic law;**
- ii) Repeal or render ineffective the Citizenship and Entry into Israel Law, and reconsider its policy with a view to facilitating family reunification on a non-discriminatory basis;**
- iii) End immediately the policy of racial or ethnic profiling applied against Arab citizens of Israel at the Israeli airports;**
- iv) Afford to the victims of the racial or ethnic profiling policy effective remedies, including reparation.**