

**The International Federation for Human Rights**

**List of issues on the situation of human rights in Israel**

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**The International Federation for Human Rights (FIDH)**

**The Public committee Against Torture in Israel (PCATI)**

**The Palestinian Center for Human Rights (PCHR)**

FIDH and its member organizations in Israel and in the occupied Palestinian territory (oPt) follow the human rights context in Israel and the oPt through close monitoring, fact-finding, advocacy and political activities.

It is unacceptable that since Israel’s previous periodic examination, conducted in 2003, massive violations of international human rights and humanitarian law have overshadowed any progress the state of Israel has made. Israel’s serious violations of international human rights and humanitarian law are dramatically illustrated by the strict closure of the Gaza Strip, an illegal measure of collective punishment continuously imposed since June 2007, and Operation Cast Lead (Dec 08- Jan 09), the recent devastating assault upon the civilian population and properties of Gaza..

This report presents a broad illustration of the human rights situation as it currently stands in Israel and the oPt; an area which has remained under Israel’s jurisdiction as an Occupying Power since 1967.

It is noted that Israel repeatedly disregards concluding observations and comments made by various treaty bodies: Israel acts with impunity. This report concludes that this long term non-compliance and impunity are the primary negative factors contributing to an already dire human rights situation. Impunity only serves to encourage increased violations of international law.

**Article 1: Right to self determination**

***1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.***

***2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own******means of subsistence.***

***3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.***

**Article 6: Right to life**

***1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.***

 There remains little to be said regarding the scale of destruction, and the extent of serious violations of international law, associated with Operation Cast Lead: at least 1,400 Palestinians lost their lives, the vast majority of whom were civilians; 3,500 homes were completely destroyed, and a further 2,000 rendered uninhabitable; immeasurable physical and psychological harm was inflicted on the entire population, many of whom are still undergoing treatment in hospitals scattered throughout the region.

The assault was a brutal denial of the Palestinian right of self determination. Having already been strangulated into dependency by the siege imposed since June 2007, Cast Lead plunged the autonomy of the Occupied Population into darker depths: from denying entry of humanitarian provisions to ransacking public and private property, the behavior of Israel as an Occupying Power was characterized by a disregard for the well-being of Palestinian civilians. Countless examples – such as the documented plight of the Abu Halima family, who had six members of their family killed, and a further eight injured, in a single day of attacks by Israeli forces, which included bombardment by white phosphorous and the murder of Mohammed Abu Halima (19) and Matar Abu Hamila (27) at a checkpoint – illustrate the extent to which Israel violated the fundamental principles of international law. In this single case, Israeli forces violated, *inter alia*, the prohibition on willful killing (i.e. murder of protected persons), the prohibition on indiscriminate attack, the principle of distinction, and the precautions required in launching an attack.

The unchecked growth of illegal settlements in the West Bank (121 currently excluding those in East Jerusalem) is first and foremost a desecration of the right of the Palestinian people to self-determination, notwithstanding the implications on other rights: freedom of movement, right to equality, and so on. For the first time, there are now over 300,000 settlers officially living in the West Bank.

The State of Israel consistently turns a blind eye to the applicability of the International Covenant for Civil and Political Rights in the OPT (noted in CCPR/C/79/Add93 of 18 August 1998 and reiterated in CCPR/CO/78/Isr in 2003 and in CAT/C/ISR/CO/4 in 2009). For over a decade, Israel has ignored the legal status of the oPt, a status confirmed by the United Nations on numerous occasions. Illustratively, the second periodic report of the state of Israel (CCPR/C/ISR/2001/2) does not include the words "Occupied Territories". It is worth noting in turn that, regrettably, the 2003 concluding observations by the HRC on Israel, while broaching several pertinent issues, did not include a condemnation of the unabated growth of illegal settlements on the Occupied Territories. The Committee should consider the pressing issues pertaining to the illegal growth of the settlements, in violation of article 49 of the Geneva conventions (which prohibits the occupying Power from transferring “parts of its own civilian population into the territory it occupies”) as put forth in the report of the Special Rapporteur on the HR situation in the OPT of August 2008.

Further information regarding the grave violations of international law, and the extent of war crimes associated with Operation Cast Lead, is available in particular in the March 2009 report of the Special Rapporteur on the human rights situation in the oPt, as well as in the report of the United Nations High Commissioner for Human Rights to the Human Rights Council in August 2009 about the human rights situation in Palestine and other occupied Arab territories[[1]](#footnote-2).

**Article 7: *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment***

The Israel Security Agency/General Security Service (henceforth: GSS/ISA) continues to employ torture in the interrogation of dozens if not hundreds of Palestinian detainees and used cruel, inhuman or degrading treatment (henceforth: other ill-treatment) in the interrogation of many more. The use of techniques of torture, officially referred to as “special measures”, is officially sanctioned and justified by the claim of “necessity”. Complaints of torture victims are invariably closed by the State Attorney’s Office or the Attorney General without taking any criminal steps against the interrogators or their superiors thus institutionalizing impunity for perpetrators of torture and ill treatment. Violence and humiliation constituting ill-treatment, and at time torture, is inflicted by soldiers and other security forces during the arrest and initial detention of Palestinians in the Occupied Territories, in defiance of orders but with little preventative, investigative, prosecutorial or punitive action from the authorities.

Following the Supreme Court judgment of September 1999 (in HCJ 5100/94 *Public Committee against Torture in Israel v. the State of Israel*), torture in certain circumstances (referred to as “ticking time-bomb” situations) is justified as a “lesser evil” through making available to torturers, *ex post facto*, the “defence of necessity” as provided in Israel’s Penal Law.[[2]](#footnote-3) The “defence of necessity” thus provides justification, and consequently exemption from criminal liability, to torturers.

Consistent allegations made by Palestinian detainees in detailed affidavits to the Public Committee Against Torture in Israel and to other NGOs, have described the use of methods which clearly constitute torture under the Convention Against Torture and the jurisprudence of international tribunals and human rights monitoring bodies. In several cases these allegations have been substantiated by internal GSS/ISA memoranda, by testimony of GSS/ISA interrogators in court and by medical evidence[[3]](#footnote-4). **Physicians** in infirmaries of prisons where GSS/ISA interrogations are conducted are clearly aware of the torture and other ill-treatment that take place there: they examine exhausted, pained, bruised and traumatized detainees, and are aware that their diagnosis may determine whether or not the detainee they are treating will return to the GSS/ISA wing to be tortured further. As, more often than not, they knowingly send detainees back to their interrogators; such doctors must be considered at least passive participants in GSS/ISA torture, in violation both of the Convention and medical ethics[[4]](#footnote-5).

GSS/ISA impunity: Complaints concerning the conduct of GSS/ISA personnel during interrogations are referred to the GSS/ISA’s “Inspector of Interrogees’ Complaints”. This position is held by a salaried, high-ranking employee of the GSS/ISA with previous experience serving in the GSS/ISA. Thus complaints of torture by GSS/ISA agents are investigated in-house, by a GSS/ISA agent, who can be neither independent nor impartial. His report is then "studied" by the State Attorney’s Office. All complaints of torture are then either denied factually or else justified as “ticking bomb” cases, and torturers are exempted from criminal liability by the Attorney-General under the “defence of necessity”. In both these cases the files are invariably closed. Not a single case has been criminally investigated, let alone prosecuted[[5]](#footnote-6).Setting aside very limited disciplinary measures in a handful of cases (which have never included fines, dismissal or demotion),there is total impunity for such torturers. In addition, the General Security Service Law, 2000, grants GSS/ISA personnel *de jure* immunity for acts in the course of service as long as they acted "reasonably and in good faith"[[6]](#footnote-7). The Law also imposes a state of secrecy on all activities concerning the GSS/ISA

Complaints against soldiers: IDF regulations require that a criminal investigation be opened for any complaint of violence or cruelty to a person in custody[[7]](#footnote-8) However, even when timely complaints of torture or other ill-treatment by soldiers are submitted, they are seldom seriously investigated. Such investigations often commence late, are inefficient and rarely end in prosecutions[[8]](#footnote-9).

**Article 9 *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.***

**Article 14**

***1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.***

***3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;***

***(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;***

***(c) To be tried without undue delay;***

 The Israeli prison service has informed NGOs of 548 administrative detainees held in custody at the end of 2008.[[9]](#footnote-10) As a result of the long-standing practice of administrative detention, thousands of Palestinians are effectively discriminated against: deprived of due legal process and basic rights. Some administrative detainees are held for over two years, while others are-detained immediately after release. Israel's use of administrative detention as a punitive, disciplinarian and terrorizing means of controlling the population of the oPt is an explicit violation of international human rights law.

**Art 12: on freedom of movement**

***1. 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.***

***2. Everyone shall be free to leave any country, including his own.***

***3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.***

***4. No one shall be arbitrarily deprived of the right to enter his own country.***

 The systematic movement restrictions imposed on Palestinians – which includes both movement within the oPt, and between the oPt and Israel – constitutes a serious violation of Palestinians’ fundamental human rights, as defined in article 12 of the ICCPR. Movement restrictions are enforced via Israel’s complete control of all border crossings, and through a system of checkpoints, roadblocks, restricted roads, and temporary ‘flying’ checkpoints. The number of physical obstructions have increased steadily over the last number of years; in 2008, there were 537 physical obstructions, up from 459 the previous year. In addition to violating the right to freedom of movement, the difficulties associated with movement restrictions (i.e. the difficulties associated with traveling to work, to hospital, or to visit family) negatively impacts on a number of other fundamental human rights, including the right to self determination.

Freedom of movement is seriously hampered in the oPt. The multiplication of checkpoints within the West Bank prevented the Palestinians from accessing basic services. The activities of Israeli, Palestinian and international human rights defenders were deliberately frustrated by the Israeli authorities who restricted access to the West Bank, in particular to areas where Palestinians were subjected to attacks by settlers and to land expropriation.

Travel to and from the Gaza Strip was also seriously hindered as a result of movement restrictions imposed at Beit Hanoun (Erez) crossing: travel for Palestinians is virtually impossible. The Israeli authorities have introduced a new permit system, which places severe restrictions on the movement of international human rights and humanitarian workers.

 The Palestinian right to self determination is not only violated on a structural and governmental level, it also effects each individual, whose autonomy to travel outside the country for personal and professional reasons is entirely curtailed by Israeli policies. The illegal closure of the Gaza Strip is the most illustrative example of the strangulation imposed by Israel via its control of the border crossings. Human rights advocates and humanitarian workers fnd it difficult and at times impossible to pass inside the strip, and residents cannot see family members in the West Bank or abroad. For example, Mr. Shawan Jabarin, Director of the Palestinian NGO Al Haq, has been systematically prevented from leaving the territory. His request that the ban be lifted was rejected by the Supreme Court of Israel in July 2008 on the ground that “secret evidence” showed that Mr Jabarin was an active member of a terrorist organization.

**Article 20: *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, shall be prohibited by law.***

As pointed out in the HRC observations of 2003, public pronouncements made by prominent Israeli figures may constitute advocacy of religious and racial hatred, in violation of the ICCPR Art. 20, paragraph 2, as well as the International Covenant for the Elimination of all forms of Racial Discrimination[[10]](#footnote-11).

Prime Minister Benjamin Netenyahu's assertion in June 2009 that " it is clear to all that the demand to settle the Palestinian refugees inside of Israel, contradicts the continued existence of the State of Israel as the state of the Jewish People", and similar statements made by Foreign Minister Avigdor Lieberman implying that Palestinian presence in Israel is the "recipe for destruction" are xenophobic statements. Such pronouncements not only constitute racist remarks, they may also be legitimate grounds for an enactment of Art. 11 and Art 22 of ICERD (Israel declared it would not be bound to the latter upon ratification). Such statements are also potentially detrimental with respect to the ongoing tension between the two parties, thereby aggravating an already critical human rights situation.

In plain violation of Article 20. para. 1 of the Covenant, former Minister of National Infrastructure, Avigdor Lieberman, made clear propaganda for war in his statement, "if it were up to me I would notify the Palestinian Authority that tomorrow at ten in the morning we would bomb all their places of business in Ramallah, for example". Far from being held accountable for such hostile remarks, Mr. Lieberman has now become the State of Israel’s international spokesman, as current minister of foreign affairs.

 Israel's violations of ICERD and ICCPR Art 20 is not limited to rhetorical discourse, but is exemplified in its practical measures and policies, detailed below.

**Articles 2, 12 and 26**

**Article 2: *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, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.***

**Article 12: *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.***

**Article 26: *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.***

**On Construction, Demolition, and Movement: Property Rights and Discrimination**

 The State of Israel implements a number of discriminatory policies. For example, the National Priority Areas Plan provides land discounts exclusively to Jewish Israelis, while the Jerusalem Planning Committee is currently implementing an Eastern Ring Road project, which will expropriate a significant number of Palestinian homes in order to build a highway linking illegal settlements in occupied East Jerusalem and the West Bank, to West Jerusalem. The violations of land and property rights associated with the construction of the ring road form part of a larger system of restrictions imposed on the occupied population, which includes restricted access to services, health care, education, and family reunification. This system of segregation and discrimination is graphically illustrated by the construction of the illegal Annexation Wall which annexes 60 illegal settlements – in violation of, *inter alia*, article 12 of the ICCPR, and article 40 of the Fourth Geneva Convention – widespread house demolitions – violating articles 7,17 and 26 – and the creation of a seam zone, condemned in CCPR/CO/78/ISR. The economic damage resulting from the isolation of East Jerusalem, which represents 35% of the Palestinian economy, also violates ICESCR[[11]](#footnote-12), article 5 of the ICERD, and art. 12 of the ICCPR.

 Thus, the right to equality is not safeguarded in Israel, even amongst its own citizens. The State of Israel discriminates according to ethnic origin. While the government takes pride in having taken in Jews from neighboring states when they were discriminated against, it has fostered institutionalized discrimination against Jews of Middle Eastern and North African Origins. Although this is no longer apparent today, no effort has been made to treat the effect of historical discrimination against this element of society, which left in its wake great socio-economic disparities.[[12]](#footnote-13) Ethnic discrimination remains institutionalized in legislation and official rhetoric discriminating against Palestinian citizens of Israel.

 Discriminatory legislation and the lack of protective laws, coupled with the xenophobic attitude demonstrated by the Israeli authorities, has effectively deprived Palestinian citizens of Israel of a multitude of rights: social and economic, religious, civil and political. For instance, Israel's Supreme Court, which is described by the state party as competent to uphold the principles of the ICCPR, despite the lack of coherence in the Basic Law and constitution, refused in March 2009 to define any Muslim site as a "holy site" in contravention of the tenets of the Protection of Holy Sites Law – 1967. The reasoning provided by the National Authority for Religious Services that such a move would be too "sensitive" was apparently sufficient for Israel's highest judicial authority. [[13]](#footnote-14)

 Branches of the Executive authorities are also implicated in discriminatory policies. To cite but one of plethora multitude of examples, the Ministry of Transport and the Israel Railway Company recently adopted military service as a condition for the employment of railways guards. Since there are currently over 130 Palestinian workers, none of whom are eligible for military service by virtue of being Palestinian, this agreement would cause them to lose their jobs. The absurdity of such a move went unnoticed by the Israeli ministries, as did the grave violation of civil rights and freedom of occupation this entails.

 Over half of the property owned by Palestinians has been expropriated by the Israeli state since its inception. While Israeli officials have repeatedly acknowledged the need to account for "natural population growth" of the Jewish population,[[14]](#footnote-15) this principle has never been extended to Palestinian communities.[[15]](#footnote-16)

Furthermore, on 26 May 2009, the State and the Jewish National Fund (JNF) signed the “Principles of the Agreement between the State and the JNF” on the subject of land swaps ( “the agreement”). According to the agreement, which was signed by Mr. Yaron Bibi, the director-general of the Israel Land Administration (ILA), and Mr. Menachem Leibowitz, the vice chairman of the JNF’s board of directors, the JNF will transfer its land assets it has allocated to third parties for housing and employment, to state ownership. In exchange for this transfer of ownership, the state will transfer to the JNF (or to the “Himanuta” company) ownership of available and unplanned land of the same amount in the Negev (Naqab) and in the Galilee.

In this context, most of the land to be transferred to the JNF’s ownership under the agreement is state land in the Negev region (about 90% of the land), and the rest (about 10%) is state land in the Galilee. The location of this land intensifies the anticipated harm to the Palestinian population, as this population lives primarily in the Negev and in the Galilee, and has a pressing need for development, suitable planning and land resources. At the same time that the State of Israel is committing itself in the framework of the agreement to act in accordance with principles that ensure the allocation and development of land resources for the benefit of the Jewish public only, it continues to refuse to develop and/or recognize dozens of Palestinian villages, most of which were in existence prior to 1948 and where more than 80,000 Palestinian citizens of Israel reside.

Administration of lands in accordance with the principles of the JNF stands in complete contradiction to the state’s obligation to act with equality, including equality on a basis of nationality, in administering any land under its authority[[16]](#footnote-17).

The Citizenship and entry into Israel Law of 2003 has caused much debate, with its recent amendments violating articles 2, 12 and 26 of ICCPR. This law bans family unification between Palestinian citizens of Israel and Palestinians in the West Bank and Gaza Strip. Israel has promulgated a law that denies basic rights to its citizens of Palestinian origin or who reside in the Occupied Territory making it a racist Occupying Power that contravenes even its own Basic Laws.

That Israel is taking such long-lasting construction measures aimed at restricting Palestinian freedom of movement would seem to contradict the argument that this is an "armed conflict" to be governed solely by the Geneva Conventions: rather it would imply that this is a longstanding act of colonization that Israel seeks to consolidate.

The International Court of Justice[[17]](#footnote-18) and Israeli Military Order No. 3, confirmed the status of the oPt as Occupied Territory: the massive confiscation and demolition of Palestinian property amounts to war crimes, and violates Israel’s Basic Law.

1. Distr. General A/HRC/12/37, 10 August 2009 [↑](#footnote-ref-2)
2. “GSS Investigations and the Necessity Defence – Framework for Exercising the Attorney General’s Discretion (Following the High Court Ruling),” issued by then Attorney General Elyakim Rubinstein, 28 October 1999, setting criteria for refraining from prosecution of GSS/ISA interrogators under the defence of necessity. This framework was adopted pursuant to the Supreme Court judgment of September 1999 in HCJ 5100/94*.* There the Court ruled (at para. 38): “An investigator who insists on employing these methods [“physical means”], or does so routinely, is exceeding his authority. His responsibility shall be fixed according to law. His potential criminal liability shall be examined in the context of the “necessity” defence, and according to our assumptions… the investigator may find refuge under the “necessity” defence’s wings (so to speak), provided this defence’s conditions are met by the circumstances of the case.” [↑](#footnote-ref-3)
3. The Public Committee Against Torture in Israel, can provide documentation of the various physical and psychological methods of torture and ill treatment found to be used by Israel. [↑](#footnote-ref-4)
4. Almost all the torture victims documented by PCATI were returned to a continuation of the interrogation after receiving medical assistance, and only in one case (at 81) did the physician report the patient’s complaints and instruct that he be allowed to rest. [↑](#footnote-ref-5)
5. Response of the Justice Minister to Parliamentary query of 13 December 2006 and response of the Justice Ministry to Freedom of Information request by PCATI from 18 February 2007: the Inspector of Complaints examined 131 complaints in 2005-6, but no criminal investigation was initiated and only in two cases was disciplinary action initiated (both in 2005). According to information provided to the UN Special Rapporteur on human rights and counter-terrorism during his visit to Israel in July 2007, some 550 complaints were examined by the Inspector of Complaints since 2000, yet in not a single case was a prosecution initiated and in only 4 cases was disciplinary action taken. See UN Doc. A/HRC/6/17/Add.4, 16 November 2007, para. 19 [↑](#footnote-ref-6)
6. Sec. 18 of the General Security Service Law, 2000. [↑](#footnote-ref-7)
7. Public Committee Against Torture in Israel, *No Defense – Abuse of Palestinian Detainees by Soldiers* (Jerusalem: PCATI, written by Noam Hoffstadter, June 2008), at 29. This is in contrast to cases of causing injury or death during military operations, in which the opening of a military police investigation is discretionary [↑](#footnote-ref-8)
8. *Ibid.*, pp. 31-2; *Absolute Prohibition*, *supra* n. 12, pp. 82–3. [↑](#footnote-ref-9)
9. B'Tselem 2008 annual report. [↑](#footnote-ref-10)
10. Both ratified by the State of Israel, respectively on October 3, 1991 and January 3, 1979. [↑](#footnote-ref-11)
11. Ratified by the State of Israel on October 3, 1991. [↑](#footnote-ref-12)
12. ACRI 2008 report situation of human rights [↑](#footnote-ref-13)
13. Adalah, March 2009 newsletter [↑](#footnote-ref-14)
14. cite Netenyahu speech [↑](#footnote-ref-15)
15. ACRI report 2008 [↑](#footnote-ref-16)
16. Adalah, July 2009, http://www.adalah.org/eng/index.php [↑](#footnote-ref-17)
17. The *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion on the Wall) issued by the International Court of Justice on 9 July 2004 as well as an examination of the concluding observations of various UN Treaty bodies, confirms this view. [↑](#footnote-ref-18)