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INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF ISRAEL

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P.O. Box, 91, Rue des Bains, 33, 1211 Geneva 8, Switzerland
Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 – Website: http://www.icj.org - E-mail: info@icj.org

ICJ submission to the Universal Periodic Review of Israel

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's Universal Periodic Review (UPR) of Israel. In this submission, the ICJ calls the attention of the Human Rights Council (Council) and the Council's Working Group on the UPR (Working Group) to Israel's responsibility for persistent breaches of international law and serious human rights violations in East Jerusalem, the West Bank, and Gaza. As the occupying power of the occupied Palestinian territory (oPt), Israel has failed to comply with its obligations under international humanitarian law (IHL) and international human rights law (IHRL), including the requirement to: end the siege imposed on Gaza; provide effective remedies and reparation to victims of human rights and international humanitarian law violations in Gaza, including in the context of Operation Cast Lead; hold those responsible for these violations to account; end the policy of continued establishment and expansion of illegal settlements in the oPt, including East Jerusalem; and bring an end to the policy of use of indefinite administrative detention of Palestinian prisoners. Most of the breaches and human rights violations have continued unabated since the last UPR.

ISRAEL'S OBLIGATIONS UNDER IHL AND IHRL

2. As an occupying power, Israel's obligations under IHL and IHRL concurrently extend to all of the oPt and the Syrian Golan. Although Israel withdrew from Gaza in 2005 and argues that it no longer carries responsibility in respect of the administration of the territory, Israel in fact exercises effective control over access to Gaza by land, air and sea. Accordingly, Israel retains the responsibilities of an occupying power in Gaza. Since the last UPR and following the extensive military operation "Cast Lead" carried out by Israel into Gaza from December 2008 to January 2009, the UN Fact-Finding Mission (FFM) that investigated human rights violations and violations of IHL committed during the operation, concluded that actions amounting to war crimes and crimes against humanity took place.[1] The FFM report recommended that the Council should consider review of progress as part of its UPR.

3. To date, those allegedly responsible for these crimes continue to enjoy impunity. The few cases investigated were either dismissed or resulted in disciplinary measures not proportionate to the gravity of the crimes. The investigations by Israel were conducted under the supervision of the Military Advocate General (MAG). The MAG was the same authority that provided legal advice to the Israeli Defense Forces (IDF) in respect of the planning and execution of the military operations in Gaza. Even when Israeli investigations revealed that the IDF had targeted civilian objects resulting in civilian deaths, the MAG failed, in most of the cases, to order criminal investigations. The MAG concluded that there was no basis for criminal investigations into the most serious allegations of breaches of IHL committed during Operation Cast Lead, including: direct attacks against civilians and civilian objects that involved, among others, strikes on UN and medical facilities, buildings, vehicles and crews; the use of weaponry containing phosphorous in densely-populated areas; and the use by the IDF of Palestinian civilians as human shields.

4. So far, a total of four indictments have been filed, resulting in three convictions. The first conviction was for looting, for which the defendant was sentenced to seven and a half months' imprisonment.[2] The other two indictments concerned the use of a Palestinian child as a human shield, for which the defendants were each demoted and given a three-month suspended sentence. Such sentences and disciplinary measures are not commensurate with the scale, magnitude and gravity of the crimes they were alleged to have committed during Operation Cast Lead.

5. The Panel of Independent Experts established by the Security Council concluded, in September 2010, that domestic investigations were "*incomplete in some cases or fall significantly short of meeting international standards in others*".[3] In particular, the Panel raised concerns about the lack of investigation into all allegations of serious violations of IHL and gross violations of IHRL, including into "*decisions made at the highest levels about the design and implementation of the Gaza operation*"; the delay in conducting investigations; the potential

conflict of interest and lack of perceived and/or actual impartiality of the MAG charged with overseeing the investigations, given that MAG legal advice provided to the IDF commanders regarding military operations underpinned many of the FFM's allegations; the limited results from MAG-led investigations into the FFM's allegations; and the undignified treatment of, and lack of information provided to, Palestinian victims and witnesses.[4]

6. Victims of Operation Cast Lead and their families have been systematically denied their rights to effective remedies and reparations. Civil claims for compensation filed in Israeli courts by Palestinian victims of human rights violations, committed during military operations, have been obstructed by orders that the plaintiffs make prohibitively expensive financial deposits.[5] Courts have ordered deposits of 20,000 NIS (approximately $5,100 USD) for each plaintiff as a guarantee. In the case of the Samouni family, where compensation has been claimed on behalf of 62 claimants, the guarantee has been set at 1,240,000NIS (approximately $315,650 USD). An appeal to the Israeli High Court of Justice by the plaintiffs resulted in the Court ordering the deposit of the guarantees in full. These high fees are impermissible under international law and standards, since they make justice inaccessible and unfairly discriminate against the plaintiffs based on their economic status. They also undermine the right of victims under international law to a prompt, thorough and effective investigation of alleged violations.

SETTLEMENTS AND THE WALL OF SEPARATION

7. Since the last UPR, Israel has continued the extension of its settlements policy in East Jerusalem and the West Bank. Despite the Council repeatedly urging Israel to reverse its settlement policy and prevent new installations of settlers, most recently in Resolution 19/17 (2012), Israeli authorities have established new settlements, expanded existing settlements and have continued the construction of the separation wall.[6] Maps recently disclosed by the Israeli Ministry of Defence's Civil Administration demonstrate that a further ten per cent of the territory of the West Bank has been earmarked for settlement expansion by Israel.[7] Furthermore, a July 2012 Government-commissioned report recommended that Israel legalise all "outposts", namely Israeli settlements in the oPt that have not been officially sanctioned by Israel.[8] This policy of *de facto* annexation of additional parts of the Palestinian territory violates Israel's obligation under IHL, in particular Article 49 of the Fourth Geneva Convention, which states in part that: "*the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies*".

8. The policy also establishes a discriminatory legal system between settlers and Palestinians, under which the most basic rights of Palestinians are undermined. The settlements policy has led to the restriction of Palestinians' movement, the destruction of the means to realize economic and social rights, including basic livelihoods, and isolation of families and communities. Moreover, human rights violations allegedly committed by settlers continue unabated. Credible allegations include: unlawful killings; physical and verbal abuse against Palestinians; the wilful destruction of crops, farmland and livestock; the theft of crops and livestock; and damage and destruction of property. These "price tag crimes", acts of violence against the Palestinian population in response to actions by Israeli authorities perceived as harming the settlement enterprise, often go unpunished. The UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that "*the number of settler attacks resulting in Palestinian casualties and property damage has increased by 32% in 2011 compared to 2010, and by over 144% compared to 2009*".[9] OCHA also reported that more than 90 per cent of complaints made regarding settler violence did not result in an indictment.[10]

9. In addition to settlements, Israel's continued construction of the separation wall, including on Palestinian territory, similarly facilitates the annexation of land and the separation and destruction of Palestinian communities. In its Advisory Opinion, the International Court of Justice found that "*the construction of the wall, and its associated regime, are contrary to international law*" and that "*Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned*."[11]

ADMINISTRATIVE AND ARBITRARY DETENTION OF PRISONERS AND THEIR UNLAWFUL TREATMENT

10. Several provisions of domestic law authorize the administrative detention of Palestinians. The Emergency Powers Law (Detentions) 1979 applies to residents of Israel, residents of the oPt and residents of other States and allows the Minister of Defence to order the detention of a person where the Minister "*has reasonable cause to believe that reasons of state security or public security require*" such detention.[12] Meanwhile, Military Order 1651 (2009), which has been in force since 2 May 2010, consolidated a number of earlier Military Orders and applies to the West Bank. Article 285 of Order 1651 empowers a military commander who "*has reasonable grounds to believe that a certain person must be held in detention for reasons to do with regional security or public security*" to order the detention of that person for up to six months. The Order does not define "regional security" and "public security"; interpretation is left to military commanders. Commanders are authorised to extend detentions for additional periods of up to six months. Since the Military Order does not define a maximum cumulative period of administrative detention, such detention can be extended indefinitely.

11. The policy of administrative detention was extended under the Internment of Unlawful Combatants Law 2002, which applies to "unlawful combatants", defined as individuals who "*took part in hostilities against the State of Israel, whether directly or indirectly, or who is a member of a force carrying out hostilities against the State of Israel"* and who do not have prisoner-of-war status. Around 300 Palestinians are currently being held in administrative detention by Israel without charge or trial.[13] Many have been detained for several years.

12. Under IHL, administrative detention can be used only as an exceptional and temporary measure under exceptional circumstances. Specifically, Article 78 of the Fourth Geneva Convention allows an occupying power to hold a civilian in administrative detention only "*for imperative reasons of security*". Even where armed hostilities may occur over a prolonged period, "*their detention is only justified as long as security concerns strictly require it"*.[14] Further, under both Articles 43 and 78 of the Fourth Geneva Convention, interned persons must be granted a right of appeal and the review of their detention every six months. The ICRC has commented that administrative boards must offer *"the necessary guarantees of independence and impartiality"*.[15] However, in Israel, under Order 1651, the review is carried out by a "judge", defined as "*officers in the IDF with the rank of captain or higher, with at least five years of legal experience*", who therefore lacks the requisite independence.[16] Furthermore, much of the information concerning the reasons for administrative detention is classified and consequently not disclosed. Arrests and detentions are often based on secret evidence, available only to the military court confirming the detention, denying the detainees and their lawyers' access and the ability to contest the grounds of the detention or the evidence on which those grounds are based. Under the Unlawful Combatants Law, there is an effective presumption of guilt, since a court can only order the release of a detainee where the release will not harm state security, or where there are "special grounds" for release. No definition is provided for the term "special grounds".

13. The Israeli authorities have used administrative detention indiscriminately and on a regular basis as an alternative to ordinary criminal procedures. The Human Rights Committee has criticised this practice of administrative detention as incompatible with its obligations under Article 9 of the ICCPR. The Committee underscored the basis of Israel's unlawful derogation from Article 9 and its effect on "*endangering the protection against torture and other inhuman treatment*".[17]

14. The detention of Palestinians from the oPt also violates other Israeli obligations under IHL, in particular Articles 49 and 76 of the Fourth Geneva Convention, which prohibits detainees to be held in the territory of the occupying power. Further, the highly restrictive permit system severely hinders the ability of families to visit detainees.[18] In 2012, over 1,500 detainees conducted a hunger strike in protest against administrative detention, the use of solitary confinement, restrictions on family visits and other punitive measures taken against detainees. Israeli authorities unlawfully used a number of coercive measures to end the strike, including shackling, solitary confinement, daily fines, and forced medical treatment.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND MECHANISMS

15. Israel is a party to several of the core human right treaties, but it is yet to become a party to the: Optional Protocol (OP) to the ICESCR;[19] First and Second OPs to the ICCPR;[20] OP to the CEDAW;[21] OPCAT;[22] Third OP to the CRC;[23] CMW;[24] and CED.[25] Israel is yet to ratify the CRPD or become a party to the OP to the CRPD.[26]

16. Israel has failed to submit its initial periodic report to the Committee on the Rights of the Child under the OP to the CRC on the sale of children, child prostitution and child pornography, due on 23 August 2010. It is due to provide additional information requested by the Human Rights Committee on 29 July 2011.

17. Israel has failed to extend a standing invitation to the Special Procedures, and has five pending requests for visits by the Special Procedure mechanisms.[27]

RECOMMENDATIONS

18. The ICJ calls upon the Working Group and the Council to urge Israel to:

Concerning Israel's obligations under IHL and IHRL:

i). Investigate in a prompt, thorough, impartial and independent manner all allegations of serious breaches of international humanitarian law and gross human rights violations committed during Operation Cast Lead;
ii). Ensure that those responsible for such violations are held accountable through fair trials and, if convicted, ensure that their sentences are commensurate with the gravity of the crimes committed;
iii). Provide an effective remedy and full reparation, including compensation and rehabilitation, to all victims and, to this end, remove all obstacles that bar access to justice, including the imposition of prohibitively restrictive court fees;

Concerning settlements and the wall of separation:

iv). End the illegal settlement policy in the oPt, including in East Jerusalem, by halting all settlement growth and expansion, dismantling existing settlements and ensuring that no new installation of settlers takes place;
v). Take effective measures to prevent "price-tagging" and other crimes against Palestinians and Palestinian property, including by investigating and holding accountable those who are responsible for such crimes;
vi). Ensure that confiscated privately owned lands are returned to their owners and provide for adequate reparation;
vii). Immediately cease construction of the separation wall, dismantle segments already built on Palestinian territory, and provide reparation to individuals whose property has been damaged by its construction;

Concerning administrative and arbitrary detention of prisoners and their treatment:

viii). End the abusive use of administrative detention and ensure that any administrative detention is a time-limited exceptional measure that cannot be used, in any circumstances, as an alternative to criminal proceedings;
ix). Ensure that the internment of those subject to administrative detention is regularly reviewed by independent and impartial courts or administrative boards;
x). Guarantee the rights of detainees to have contact and to correspond with, and to be visited by, members of their families;
xi). Guarantee the rights of detainees to legal counsel of their choosing, to be informed of the basis for their detention and to have access to evidence on which the detention is based;
xii). Guarantee the right of Palestinian detainees to be incarcerated within the oPt;
xiii). Ensure detainees on hunger strike are granted access to independent medical care and are not subject to coercive or punitive treatment;

Concerning international instruments and mechanisms:

xiv). Become a party to the: OP to ICESCR, First and Second OPs to ICCPR, OP to CEDAW, OPCAT, Third OP to CRC, CMW, CRPD and its OP, and CED;

xv). Provide without delay its initial periodic report to the Committee on the Rights of the Child under the OP to the CRC on the sale of children, child prostitution and child pornography, and provide the additional information requested by the Human Rights Committee;

xvi). Accept at the earliest opportunity the requests to undertake official missions in Israel and the oPt by the Special Rapporteurs on torture, racism, violence against women and on extrajudicial, summary or arbitrary executions; and extend to them all reasonable cooperation and assistance to facilitate timely and effective country missions;

xvii). Issue a standing invitation to the Special Procedures;

xviii). Present to the Council, as soon as possible after adoption of the outcome document for the UPR of Israel, a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments; and

xix). Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.

ENDNOTES:

[1] Operation Cast Lead resulted in the death of 1,434 Palestinians (960 of whom were civilians), injuries to 5,303 Palestinians, and the death of 13 Israelis (3 of whom were civilians). It also resulted in extensive damage to properties and infrastructure in the Gaza Strip.
[2] He was also given a conditional sentence of seven and a half months, and demotion from sergeant to private.
[3] See: http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10357&LangID=E.
[4] A/HRC/15/50, paras 51-64; and A/HRC/12/48, para 1895.
[5] Under Israel's Civil Procedure Regulations 1984, the judge has broad discretion to order a deposit that is said to reflect the expenses incurred by the State of Israel in proceeding with investigations.
[6] A/HRC/Res/19/17 (2012), para 5(a) and (b). See also A/HRC/Res/16/31 (2011), para 5(a) and (b),
[7] Haaretz, 30 March 2012, *Israel Defense Ministry plan earmarks 10 percent of West Bank for settlement expansion*, at: http://www.haaretz.com/news/diplomacy-defense/israel-defense-ministry-plan-earmarks-10-percent-of-west-bank-for-settlement-expansion-1.421589.
[8] It also reportedly recommends the annulment of Israeli Supreme Court decisions, in order to pave the way for further settlement activity, see: http://www.aljazeera.com/news/middleeast/2012/07/201279152247338500.html.
[9] In 2011, three Palestinians were killed and 183 injured by Israeli settlers. One Palestinian was killed, and 125 injured, by Israeli soldiers during clashes between Israeli settlers and Palestinians: *Israeli Settler Violence in the West Bank*, November 2011, http://www.ochaopt.org/documents/ocha_opt_settler_violence_FactSheet_October_2011_english.pdf.
[10] HRC Resolution 19/17 (2012) calls on Israel "*to take and implement serious measures, including confiscation of arms and enforcement of criminal sanctions*" to prevent violence by Israeli settlers against Palestinians (para 6).
[11] HRC Resolution 19/17 (2012) also demanded that Israel "*comply fully with its legal obligations, as mentioned in the advisory opinion rendered on 9 July 2004 by the International Court of Justice*" (para 6).
[12] Section 2(a).
[13] The Israeli Prison Service put the figure at 302 and one detained under the Unlawful Combatants Law, as of 31 May 2012, see: http://www.btselem.org/administrative_detention/statistics.
[14] Inter-American Commission of Human Rights, Report on Terrorism and Human Rights, OAS Doc OEA/Ser.L/V/ll.116 Doc. 5 rev. 1 corr. 22 October 2002, para 143.
[15] *ICRC Commentary to IV Geneva Convention* (ed. by Jean Pictet, ICRC, Geneva 1960), p. 260.
[16] Order 1651, Section 11(A)(1).
[17] Concluding Observations of the Human Rights Committee: Israel, UN Doc CCPR/CO/78/ISR (2003), para 12, reiterated in September 2010, UN Doc CCPR/C/ISR/CO/3 (2010), para 7.
[18] Article 116 of the Fourth Geneva Convention.
[19] International Covenant on Economic, Social and Cultural Rights (ICESCR).
[20] International Covenant on Civil and Political Rights (ICCPR).
[21] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
[22] Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
[23] Third OP to the Convention on the Rights of the Child (CRC) on a communications procedure.
[24] International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).
[25] International Convention for the Protection of All Persons from Enforced Disappearance (CED).
[26] Convention on the Rights of Persons with Disabilities (CRPD).
[27] The Special Rapporteur on torture (2002); the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on racism; the Special Rapporteur on education; and the Special Rapporteur on violence against women.