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Society for the Protection
of Human Rights and the
Environment

The Public
Committee against
Torture
In Israel (PCATI)

The World
Organisation
Against Torture
(OMCT)

The Policy of Closure, House Demolitions and Destruction of Agricultural Land as violations of the Convention against Torture

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Table of Contents

1. Preliminary Observations.....	4
2. The Policy of Closure: Impact, Nature and Implementation	5
2.1 Forms of closure.....	7
2.1.1. <i>The comprehensive closure of the occupied territories</i>	7
2.1.2. <i>The internal closure</i>	8
2.1.3. <i>Curfews</i>	9
2.1.4. <i>The closure of international crossing points</i>	10
2.2 The Policy of Closure Cruel, inhuman and degrading treatment or punishment.....	10
2.2.1 <i>Humiliation and Ill-Treatments at Checkpoints</i>	11
2.2.3. <i>Denial of access to water</i>	14
2.2.3 <i>The impact of the closure on access to medical treatment</i>	15
3. House Demolitions and Destruction of Agricultural Land	18
4. Conclusions and Recommendations	20

“I live in the Palestinian village of Bir Zeit, where life has recently become hostage to the Israeli military checkpoint stationed to obstruct traffic on the main road connecting us to the rest of the West Bank. (...)

Like some 65,000 Palestinian citizens and dozens of other internationals living in Palestine, I travel this road on a nearly daily basis. When I am too frustrated to just pass the soldiers, I stop and talk to them. I ask what they think about making so many men, women and children deal with this daily torment. (...)

Again and again Israeli soldiers tell me that if Palestinians suffer enough they will give up the current uprising. If daily life becomes too unbearable, they say, then the Palestinians will become frustrated and put pressure on President Arafat to end the resistance and “stop the violence”.

The checkpoint is not a security measure designed to prevent terrorists from transporting bombs. It is a political tactic to make Palestinians suffer in order to break their wills.

As one soldier told me, Israel knows that at least 99% of all the people crossing this checkpoint want nothing more than to get to work or school. Nevertheless, the orders are to fill their path with obstacles.

The Israeli policy of deliberately tormenting a captive civilian population is not only morally abhorrent. It is also plain illogical. Does Israel really think that if it tortures Palestinians then Palestinians will oppose Mr. Arafat? Is it not obvious that when Israel tortures Palestinians, Palestinians rise up in opposition to Israel?”

Why the Checkpoint Ordeals? They Don't Open the Way to Peace, International Herald Tribune, 4 July 2001. Extract from the article by Wendy Pearlman, doctoral candidate in government at Harvard University.

1. Preliminary Observations

Methods of torture and other ill-treatment are routinely used by the General Security Services (GSS) both in interrogation rooms and when detainees are placed in cells.¹

In addition, the consequences of certain policies carried out by Israel, especially since the beginning of the Second Intifada, raise serious and well-founded questions under article 16 of the Convention against Torture (CAT) which provides that “Each State Party shall undertake to prevent, in any territory under its jurisdiction, other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1 (...).”

Since the military occupation of the West Bank including East Jerusalem and the Gaza Strip in 1967, there have been a number of Israeli policies and methods designed to deliberately cause unnecessary suffering to the mass Palestinian population living in the OPT. This is part of a wider plan to make life so unbearable in the OPT that Palestinians feel they have no choice other than to leave or **submit to** Israeli control. In fact, large numbers of Palestinians have continued to migrate since 1948, and since 1967².

These various policies and methods designed to cause unnecessary suffering have amounted to cruel, inhuman and degrading treatment or punishment, including:

- Unlawful and intensive military attacks of civilian population centers using a variety of methods to terrorize or instill fear in the population with the aim to uproot population centers, e.g. the use of heavy weaponry normally used against military objectives and combatants, patrols of helicopter gunships, F-16 warplanes and battleships over or near civilian areas; the placement of permanent or semi-permanent military weaponry, e.g. tanks, and outposts directed towards civilian areas.
- Mass arbitrary arrests and detentions including of children.
- Targeted and disproportionate number of attacks on vulnerable groups including refugee communities and children.
- Suppression of political movements by banning certain opposition parties and using arrests, administrative detention, torture and other ill-treatment as well as extrajudicial executions against political leaders and activists.
- Destruction of property, land and homes and methods to expropriate more land.
- Punitive controls on the economy and resources to ensure economic dependency and de-development policies as well as deliberate impoverishment and starvation policies.
- Refusals or revocation of work permits, building permits, residency permits.
- Discriminatory access to key resources including water supplies. **Inferior education, housing and living conditions.**

¹ See LAW, PCATI, OMCT, *Comments on the Third Periodic Report of the State of Israel Concerning the Implementation of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, October 2001.

² According to the Department of International Affairs of the Catholic Bishops' Conference of England and Wales, 40% of all Christians have left the country since 1967.

- Discriminatory taxes imposed in East Jerusalem and methods of control of the religious communities.
- Forced expulsions and deportations (including forced exile of political opponents).
- Repressive forms of restrictions on freedom of movement, including longer periods of curfew and total closures. Denial of access to crucial supplies including food, water, fuel, humanitarian aid and medical assistance, and to workplaces, schools, universities, hospitals and field-clinics. Palestinian communities are encircled and closed off by the increasingly militarized settlements and numbers of military posts from which the military attacks are launched.
- Separating communities into separate enclaves/ghettos/Bantustan-style areas (Areas A) in inferior areas that are fragmentary and cutting off communities from one another. Discriminatory justice systems, public services and separate characterization of racial groups through ID system.

The following are examples of policies designed to cause unnecessary suffering: the policies of closure, house demolitions and destruction of agricultural land. In describing the nature, implementation and implications of such policies, the report examines how these can constitute a form of cruel, inhuman or degrading treatment or punishment.

2. The Policy of Closure: Impact, Nature and Implementation

Since the beginning of the Palestinian resistance known as the Al Aqsa Intifada, Israel has enforced on the West Bank and the Gaza Strip a tight system of closures and curfews which effectively encircles the population and keeps it captive in closed enclaves – towns, villages and refugee camps. Severe restrictions of movement are depriving an entire civilian population of its liberty.

The closures materialize in permanent and mobile military checkpoints, unmanned roadblocks, dirt walls, concrete blocks, iron gates³, earth mounds and trenches dug around villages and towns. Besides restricting the freedom of movement, Israeli military checkpoints are places where abuse in the form of harassment, humiliation and ill-treatment or torture have occurred.

Internal and external closures have particularly affected the economy, health and education, leading to a profound humanitarian crisis in the OPT⁴. Closures do more than disrupt the daily lives of Palestinians: sick patients are prevented from receiving

³ See LAW, Press Release of 12 July 2001. Iron gates seal entrances to Palestinian towns.

⁴ Closures end up depriving individuals from their very means of subsistence and livelihood. In the *Selçuk and Asker* case, the ECHR found this element to be an essential factor to conclude the occurrence of ill-treatment. Moreover, while the restrictions are responsible for the deprivation, they also prevent the victims from seeking alternative means, leaving them without few, if any recourse. Again, in the *Selçuk and Asker* case, the ECHR viewed this absence of alternatives and the consequent destitution as a factor in concluding that ill-treatment had occurred. In this case it was because the defendants were aged persons, as a factor allowing to conclude that ill-treatment occurred. While the persons affected by the closure can be children, men, women, elderly, etc., they all face the same destitution and absence of recourse. European Court of Human Rights, *Case of Selçuk and Asker v. Turkey* (12/1997/796/998-999).

adequate and timely medical treatment sometimes resulting in death; workers are prevented from reaching their workplace; pupils, students and teachers from going to school; families from visiting relatives including those held in Israeli prisons; refuse is not being collected exposing the population to ever increasing health risks; whole villages are prevented from receiving necessary basic goods including water, food, fuel and medicines and cannot get their products to the markets.

The head of the ICRC delegation to Israel, Rene Kosirnik, has noted that “until now the traditional family solidarity and the Palestinian welfare services have prevented actual starvation. ‘But if the current situation persists, this could happen to the most destitute families’.”⁵

The Office of the United Nations Special Co-coordinator (UNSCO) estimates that total income losses to the Palestinian economy since October 2000 to February 2001 ranges between USD 1,860 to USD 2,459 million⁶. Loss of employment in Israel and restrictions of movement increased the average unemployment rate from 11% before September 2000 to 38% by the end of the year.⁷ Savings are depleted. According to the World Bank, the share of the population living below the poverty line rose to approximately 35 percent by the end of December 2000, while it represented 21.1 percent before the Intifada. Among those living in poverty by the end of 2000, around 400.000 were “new” poor created by the crisis.⁸ The Palestinian Central Bureau of Statistics (PCBS) has calculated that in the 10 months of Intifada, median monthly income dropped from NIS 3000 to NIS 1500 in the West Bank and from NIS 1900 to NIS 1000 in Gaza⁹.

The Israeli government justifies its closure policy with security reasons. However, as will be seen below, in reality the purpose of the closure policy is to cause a suffering to ordinary innocent Palestinians, which constitutes cruel, inhuman or degrading treatment or punishment. The nature of the restrictions, their timing and indiscriminate nature, as well as their destructive consequences indicate that they constitute a form of collective punishment, against the wider Palestinian population in the OPT.¹⁰ The destructive consequences, as well as the suffering and destitution arising from the implementation of such policies, raises serious concern in the light of article 16 of the Convention Against Torture.

⁵ Ha'aretz, 13 March 2001, *Starvation at the Palestinian Door. Prolonged closure is having a devastating effect on the territories charges the Red Cross*, Joseph Algazy reports.

⁶ UNSCO, *Impact on the Palestinian Economy of Confrontation, Border Closures and Mobility Restrictions*, 1 October 2000 to 30 June 2001, p. 7.

⁷ UNSCO, *The Impact on the Palestinian Economy of Confrontations, Mobility of Restrictions and Border Closures*, 1 October 2000 to 31 January 2001, p. 1.

⁸ UNSCO, *Impact on the Palestinian Economy of Confrontation, Border Closures and Mobility Restrictions*, 1 October 2000 to 30 June 2001.

⁹ Cited as in Ha'aretz, 24 July 2001. 65% of Palestinians live on less than NIS 1,642 a month. By Amira Hass.

¹⁰ OMCT, *Israel and the Palestinian Occupied Territories: Restrictions of Movement and Violations of Economic, Social and Cultural Rights*, April 2001, p. 20.

2.1 Forms of closure

The practice of closures consists in the imposition of severe restrictions on movement. Restrictions of movement have generally taken four different forms: a comprehensive closure of the occupied territories; internal closures imposed within the occupied territories cutting towns and villages off from each other; curfews; and the closure of international crossing points between the occupied territories and neighbouring countries (Jordan and Egypt).

The policy of internal and external closure does not apply to Jewish Israeli citizens residing in the Occupied Palestinian Territories (settlers), or to goods produced by the settlers in the Occupied Palestinian Territories. Such evidence highlights that the closure, which is *prima facie* a measure implemented over a given portion of land, does not draw a distinction between two territories, but rather between two different populations living on the same territory. In consequence, discrimination must be seen as an inherent part of Israel's closure policy in the Occupied Palestinian Territories, as restrictions of movement are not established *ratione loci* but *ratione personae*.

Since 1989 for the Gaza Strip and 1993 for the West Bank, Palestinians from the Occupied Palestinian Territories need to obtain permits, delivered by Israeli military authorities, to enter Israel or East Jerusalem. Permits are also required for those transiting between the West Bank and the Gaza Strip. Since the Gulf War in 1991, Israel has regularly imposed restrictions on the movement of the Palestinians living in the Occupied Palestinian Territories, seeking to justify these limitations on security grounds. The signing of the Oslo Accords in 1993 led to an intensification of the use of closures by Israel.

As of October 2000, the closure policy imposed by Israel constitutes the most severe and sustained set of restrictions on movement imposed on the Palestinian Occupied Territories since the beginning of the occupation in 1967.

2.1.1. *The comprehensive closure of the occupied territories*

The comprehensive or general closure of the occupied territories consists in the severe restriction of the movement of goods and persons between Israel and the Occupied Palestinian Territories (West Bank without East Jerusalem and the Gaza Strip). Although there have been exceptions, the general pattern in force since the beginning of October 2000 is one that prevents the whole of the Palestinian population living in the West Bank (except East Jerusalem) and the Gaza Strip from entering Jerusalem and Israel.

From 1 October 2000 to 30 June 2001, Erez crossing between the Gaza Strip and Israel was closed to Palestinians for 176 days, of which 122.5 were working days (61% of all working days during this period)¹¹. However, due to the reduced number of permits issued by Israeli authorities, on the days Erez crossing was open, the

¹¹ UNSCO, *Impact on the Palestinian Economy of Confrontation, Border Closures and Mobility Restrictions*, 1 October 2000 to 30 June 2001.

number of Palestinian workers entering Israel from Gaza was less than 20% of the figures before the Intifada.¹² Of the three commercial crossing points between Gaza and Israel, only Karni/Muntar was relatively open (11% of total days between 30 October 2000 and 30 June 2001). The two other commercial crossing points have been closed most of the time¹³.

Labour permits to enter Israel from the West Bank have also been considerably reduced, though the movement of goods has been somewhat easier than in Gaza. However, while it might be possible to move from Israel to the West Bank, tight internal closures within the West Bank render movement of persons and goods within the West Bank very difficult.

The comprehensive closure of the Palestinian Occupied Territories has also resulted in the blocking, since October 6th 2000, of the “safe passage” which used to connect the West Bank and the Gaza Strip, restricting the movement of goods and persons between the two areas.¹⁴ The Oslo Accords forbid the closure of the safe passage. Under Oslo, two routes were to be designated as safe passages. Under the terms of the Oslo Accords, Israel is enabled, for security reasons, to close one of them or to alter the terms of entrance, but must assure that one passage is always open.¹⁵ As only one safe passage has been constructed, and not two as foreseen by Oslo, this one should always remain open.

2.1.2. The internal closure

The internal closure of the Palestinian Occupied Territories consists in the restriction of movement within the Palestinian Occupied Territories themselves.

In contrast, Israeli settlers continue to circulate freely throughout the Occupied Palestinian Territories, using by-pass roads and highways on which Palestinians are forbidden to travel. The latest UNSCO report confirmed that most secondary roads but only some of the main roads have been accessible to Palestinians, often with restrictions, with “Palestinian traffic also generally diverted by authorities away from Israeli settlements.”¹⁶ This shows that with its closure policy, Israel is subjecting an entire population to measures which constitute cruel, inhuman and degrading treatment or punishment, for the sake of settlements established on lands confiscated from this very population and whose presence in the OPT is a violation of international law¹⁷.

Since October 8th 2000, main access roads and village entrances have been blocked through the erection of several military checkpoints, concrete blocks, dirt piles and trenches. According to UNSCO, from 1 October 2000 to 30 June 2001, severe internal

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Oslo II Accords, Appendix 1, par. (c) (4) X.

¹⁶ UNSCO, *Impact on the Palestinian Economy of Confrontation, Border Closures and Mobility Restrictions*, 1 October 2000 to 30 June 2001, p. 5.

¹⁷ Jewish settlements on the OPT are a violations of article 49 of the Fourth Geneva Convention.

restrictions were in place during 147 days (about 54% of the reporting period) in the West Bank, and 18 days (about 7% of the reporting period) in Gaza¹⁸.

As a consequence the West Bank appears now fragmented in a number of isolated enclaves, confining the Palestinian population within their villages or towns, effectively placing the people under siege into geographical prisons. Main Palestinian centres, on which villagers rely on for work, education, medical assistance and specific supplies, have been sealed off and encircled, cut off from all the surrounding villages and towns¹⁹.

In the Gaza Strip, since October 8th 2000, the main road connecting the northern part with the southern part – the Salah Adin road - has been repeatedly closed. Israeli military bulldozers have moved concrete blocks onto roads linking the northern and the southern parts of the Gaza Strip and onto access roads leading to Israeli settlements. Gazan fishing zones, a major sector of the Gaza economy, are also subject to the internal closure and Israeli authorities have reduced the size of the zone by half.²⁰

2.1.3. Curfews

In addition to the measures taken to implement the internal and comprehensive closure, the Israeli army has imposed curfews on villages and towns throughout the Occupied Palestinian Territories. Under curfews, people are not allowed to leave their houses. People who left their houses despite the curfew have been arrested and even in cases shot in sight.

Curfews – either 24-hours of defined periods of the day - have been enforced on about 40.000 Palestinians living in area H-2 of Hebron, under Israeli control, while the settlers, whose illegal presence has been repeatedly condemned by the international community, are allowed to move freely in and out. According to UNSCO estimates, from 1 October 2000 to 30 June 2001, curfews were in the H2 zone of Hebron for over 130 days²¹. Since March 10th 2001, the central market place has been blocked off and fenced off with barbed wire by the Israeli military, depriving hundreds of Palestinian families whose only source of income is the vegetable market.²² It is reported that the vegetable market was closed at the request of the settlers.²³

Other West Bank villages, which have been placed under curfew since the beginning of the Intifada are Silwad, Ramin, Kafin and Huwara.²⁴

¹⁸ *Ibid.*

¹⁹ Including Ramallah, Nablus, Jericho, Salfeet, Tulkareem, Qalqulia, Jenin, Hebron, Bethlehem, Gaza.

²⁰ LAW, *Closure: Occupation Authorities Continue Collective Punishment against Palestinians*, 10th October 2000; OMCT, *Israel and the Palestinian Occupied Territories: Restrictions of Movement and Violations of Economic, Social and Cultural Rights*, April 2001, p. 6.

²¹ UNSCO, *Impact on the Palestinian Economy of Confrontation, Border Closures and Mobility Restrictions*, 1 October 2000 to 30 June 2001, p. 5.

²² LAW, *LAW refutes Israeli claims of lightening the siege*, 15th March 2000.

²³ *Ibid.* LAW, *Weekly Roundup: 8-14 March 2001*, 16th March 2001.

²⁴ LAW, *Day 52: Twenty-Six Palestinian injured as Closure tighten around West Bank Towns*, 19 November 2000.

2.1.4. The closure of international crossing points

The international crossing points between the Occupied Palestinian Territories and neighbouring countries were also subject to heavy restrictions most days between 1 October 2001 and 30 June 2001.

During this period, UNSCO reported the Allenby/Karamah bridge connecting the West Bank with Jordan was either partially or completely closed to Palestinian passengers for 78 days (29% of all days). The Rafah border that connects the Gaza Strip with Egypt, has been closed, for the same period for 152 days (56% of all days), while the Gaza International Airport has been closed for 221 days (81% of all days)²⁵.

Regarding commercial traffic, the proportion rises to 181 days (66% of all days) for the Rafah border, and 194 days (78% of all days) for the Allenby/Karamah passenger border²⁶. As a consequence, there has been a considerable reduction in the volume of import from Egypt and Jordan.

2.2 The Policy of Closure Cruel, inhuman and degrading treatment or punishment

Israel justifies its closure policy with security. However, whatever means Israel chooses to achieve security, they must be within the limits of international human rights law. The suffering caused by closures does not fulfill this condition as it amounts to cruel, inhuman and degrading treatment or punishment as prohibited by the Convention against Torture. Irrespective of the fact that the purpose can never justify illegal measures, such as Israel's closure policy, LAW, PCATI and OMCT believe that rather than a genuine and valid measure to ensure Israel's security, as claimed by the Israeli government, the closure policy is a form of collective punishment, as prohibited by article 33 of the Fourth Geneva Convention²⁷.

In fact, the ICRC reportedly stated that Israel had used "restrictive, physical, administrative and systematic steps, and collective punishment which severely violates international humanitarian law, which requires that the occupying power ensure that the occupied population continue, to live, as far as possible, in a normal manner, as during peacetime."²⁸

²⁵ UNSCO, *Impact on the Palestinian Economy of Confrontation, Border Closures and Mobility Restrictions*, 1 October 2000 to 30 June 2001, p. 4.

²⁶ *Ibid.*

²⁷ The underlying principle to the prohibition established in article 33 of the Fourth Geneva Convention is that penal liability is personal in character. While the occupying power retains the right to punish protected persons who have committed hostile acts, responsibility must be established on an individual basis. Only the person who commits the offence may be punished, never persons or groups of persons who have themselves not committed the acts complained of. (See Commentary to the Fourth Geneva Convention by Pictet, ICRC, p. 224-229).

²⁸ As cited in Ha'aretz, 13 March 2001, *Starvation at the Palestinian Door. Prolonged closure is having a devastating effect on the territories charges the Red Cross, Joseph Algazy reports. In the same article, Rene Kosirnik, head of the ICRC delegation to Israel, expressed the view that "according to international law, as the occupying force, Israel may restrict the movement of the civilian population on condition that the restriction is required for military*

Moreover, Israel's closure policy, through the cumulative effect of its different aspects and implications, has created a system, which involves cruel, inhuman and degrading treatment or punishment for the wider Palestinian population. By way of example, this report will present humiliation and ill-treatment at checkpoints, denial of access to water and prevention of access to medical treatment as three different aspects of the closure policy which in itself and in conjunction are causing immense physical and psychological suffering to the wider Palestinian population.

2.2.1 Humiliation and Ill-Treatments at Checkpoints

I

Since the beginning of the Intifada numerous checkpoints have been established and removed, opened and closed in the West Bank without prior notification by the Israeli army. We acknowledge that not every single element and aspect of the system created by checkpoints and other barriers – uncertainties, onerous and exhaustive exercises, fear, arbitrariness, daily humiliations, harassment and instances of ill-treatment - if considered in isolation, will amount to ill-treatment. However, LAW, PCATI and OMCT believe that, through its cumulative effect, the suffering caused by the different elements of this network of manned and unmanned checkpoints, dirt piles and trenches constitutes cruel, inhuman or degrading treatment or punishment.

Uncertainties and difficulties in planning

Conversations in Palestinian towns now center on what the best way to get to a specific area is, which roads are blocked, how to bypass them, what the best day and time to travel might be, what the criteria of the soldiers for allowing someone to pass are and how long the trip will take.

There are always roads closed and it is always difficult to move from one place to another but there is no way of knowing which particular roads will be open or closed to Palestinian traffic on a specific day and time. Checkpoints are continuously being shifted, appear and disappear. Sometimes it is possible to leave but not to return; there is no guarantee that the road, which was open in the morning, will not be blocked a few hours later or in the afternoon. This makes it very difficult for drivers to plan their routes and estimate the time needed for a specific trip, and creates a feeling of insecurity and uncertainty.

Checkpoints have thus contributed to an “atmosphere of profound political uncertainty”²⁹ which also makes short-term and long-term planning in business very difficult and is further adversely affecting Palestinian economy. For example, UNSCO reported that merchants from Khan Younis had delayed shipment of goods to Gaza not because of a permanent closure of the road between the two cities but because of the “risk of its closing which would entail being delayed at a checkpoint with perishable goods or being turned back and hence losing money invested in transport.”³⁰

reasons for a very limited period, that it does not adversely affect the day-to-day lives of the civilian population and does not represent collective punishment.”

²⁹ UNSCO, *Impact on the Palestinian Economy of Confrontation, Border Closures and Mobility Restrictions*, 1 October 2000 to 30 June 2001, p. 6.

³⁰ *Ibid.*

Onerous and exhausting exercise

When service taxis are not allowed to cross the checkpoint, passengers have to get off the taxi, walk through the checkpoint and take then a different taxi in order to continue their trip. Gideon Levy reported about pedestrians crossing Qalandiya checkpoint:

“In a procession that can only arouse pity, are old people leaning on their sons’ shoulders, people who are ill and are making their way with their last remaining strength, the disabled, pregnant women and children who can’t understand why they have to drag themselves like this in the withering heat.”³¹

As most main roads in the West Bank are open to Jews only and whole Palestinian villages are cut off from district highways, an alternative road system for Palestinians has emerged, consisting of narrow and winding dirt paths, often across the fields. Under these circumstances traveling in the West Bank is a lengthy, onerous and exhausting exercise. Using improvised dirt roads is extremely time-consuming as the roads are longer and in bad state, sometimes unpaved; more expensive as the routes are longer; involves an increased risk of car accidents and is moreover dangerous.

Fear and arbitrariness

Passengers are scared and filled with fear, which sometimes includes fear for their lives: In the winter, when rain falls, they might get stuck in the mud with no help available; settlers might shoot or throw rocks; soldiers might block their way or harass, abuse them or even open fire. As a Palestinian teacher explained to Amira Hass,

“part and parcel of the extended trips (...) is fear. Fear of ‘the soldiers at the roadblocks, where you never know what caprice will motivate the troops. Will they signal with a casual gesture of the hand that the road is open, or will they hold up a kilometer of cars for more than an hour, or will they amuse themselves by firing into the air, or into tires? And there is fear of the Israel police, whose officers stop Palestinian cars as though their occupants are foreign invaders, who find a reason to fine the drivers, and of the Border Police (...). And nothing compares to the fear of settlers, who stand, armed, at the road junctions, sometimes shooting or hurling rocks, and all of it under army protection.”³²

Despite the risks and fears, Palestinians have no choice but to use dirt roads on a daily basis in order to go to work, to school, to get medical treatment and to transport basic goods.

While the Israeli army asserts to have issued regulations for the activities of soldiers at checkpoints, the reality on the ground is characterized by arbitrariness. At the checkpoint, soldiers make passengers feel that their fates are in their hands. Depending on their assessments and perceptions, subject to their whims and moods,

³¹ Ha’aretz, 19 August 2001, *A slice of roadblock reality*, by Gideon Levy.

³² *Ibid.*

soldiers decree who goes out and who comes in, and how long passengers have to wait. A driver told Amira Hass:

“We wait at a roadblock, see the soldier smoking a cigarette at his leisure, not doing anything, (...). Ten minutes pass, another 10 minutes, and no one tells us what’s happening. Then suddenly the soldier lets five cars pass, without checking any of them, and then again delays the others.”³³

In another instance, the Mayor of the Beit Dajan explained to Ha’aretz:

“The other thing is the soldiers’ mood. Their moods are fickle. Sometimes, they sit for an hour at the roadblock without signaling to even one car to pass. There are shifts where the soldier decides not to let any car pass through. The hardship just increases. If someone is transporting food products, the soldier can decide to unload everything. (...) The queue gets longer and longer. A car with young passengers can be detained for hours for no reason.”³⁴

The actual moment of crossing the checkpoint is an intimidating and humiliating experience. Well-equipped soldiers with machine-guns in hand, military jeeps, army bulldozers and even tanks in the middle of the road may await the passengers. As they approach the checkpoint tension rises. When crossing a checkpoint, there is always the fear of a violent incident, of verbal abuse and humiliation, of not being allowed to pass the checkpoint, of being arrested or any other unforeseen difficulties – it all depends on the soldiers manning the roadblock. In the reality of checkpoints there is no other law than what the soldier decides – which sometimes, e.g. in urgent medical cases, can be a decision over life and death.

Instances of ill-treatment

Beyond the daily arbitrariness and the fear it involves, private Palestinian drivers and taxi drivers are subject to daily harassment, humiliation, beatings and other forms of violence perpetrated by Israeli soldiers at checkpoints or on dirt roads. These include beatings (including with objects), kicking, punching, slapping; curses, insults and threats; forcing at gunpoint men to pair off and beat each other; forcing passengers to line up against a wall; forcing passengers to wait for hours in the heat with the windows of their cars rolled up and without air-conditioning; holding up passengers for hours at roadblocks with not reason; confiscating ID cards and car keys of drivers attempting to bypass checkpoints; asking for “passage fees” such as cigarettes or drinks; shooting at vehicles and pedestrians, sometimes resulting in injury or even death; and deliberately damaging vehicles. (See the Annex)

Impunity

Israeli officers confirmed to the Israeli newspaper Ha’aretz that “the incidents which have so far been exposed are the mere ‘mere tip of the iceberg’ in what is actually a much broader phenomenon”³⁵ and that despite strict orders by more senior officers “in practice it’s not difficult for a group of soldiers to abuse Palestinians.”³⁶

³³ *Ibid.*

³⁴ Ha’aretz, 14 September 2001, *No way out*, by Gideon Levy.

³⁵ Ha’aretz, 23 July 2001, *IDF concerned about soldiers’ abuse of Palestinian civilians at roadblocks*, by Amos Harel.

³⁶ *Ibid.*

Impunity from liability for such acts has resulted in a general atmosphere of permissiveness in the ranks of the Israeli security forces and has contributed to recurrent patterns of abuse at checkpoints although in rare cases soldiers have been punished for their behaviour. On 22 August 2001 the Israeli army pressed criminal charges against soldiers. On that day, four soldiers of the Shimshon Brigade in the press they are referred to as the Shimshon Brigade accused of beating, stoning, humiliating and vandalizing cars and were indicted in the military court of the Southern Command.³⁷

2.2.2 Denial of access to water

The detrimental impact on the populations of those villages that are not connected to the water network shows the punitive dimension of Israel's closure policy and illustrates to what extent this treatment and punishment is cruel, inhuman and degrading. In an article entitled "The long, dry summer" the Israeli journalist Gideon Levy wonders: "A village without running water, and that is cut off from the outside world by means of impassable roadblocks, is doomed to dry out. It is difficult to understand what the defense establishment expects the tens of thousands of villagers who have no direct access to water and no way to bring in water to do, when even during normal times they suffer from a serious water shortage. Does this have anything to do with security? Is it right that thousands of people should be condemned to be thirsty for water? Isn't this another form of violence?"³⁸

According to the Israeli human rights organisation B'Tselem, about 200.000 Palestinians living in 218 West Bank villages are not connected to the water network, and therefore depend on trucks to supply water in order to be able to meet their basic needs.³⁹ However, due to the restrictions of movement imposed since the beginning of the Intifada, water tankers have faced enormous difficulties and have thus not been able to provide water as needed. Moreover, many Palestinians have lost their jobs and are hardly able to pay for water deliveries. For this reason, villagers who are not hooked up to the water system are suffering a severe water crisis and facing health risks.

Case example of denial of access to water: The West Bank village of Beit Furik

In January 2001, Gideon Levy wrote that the 8'500 residents of Beit Furik, a besieged West Bank town located between the settlements of Itamar and Elon Moreh in the Nablus area, had started to use only rainwater to drink and to wash themselves.⁴⁰ As a consequence, many cases of intestinal illnesses caused by the poor quality of the water have been reported⁴¹. In August 2001, Beit Furiq was said to be completely cut off for two weeks, "with no one allowed to enter or to leave apart from some tankers delivering water – and that only under constraint and after much pleading, when the

³⁷ The incident occurred on 23 July 2001 near the village of Hirbat Karame in the Hebron area and was first reported by B'Tselem. See also Ha'aretz, 23 August 2001, *Soldiers indicted for abusing Arabs*, by Amos Harel.

³⁸ Ha'aretz, 24 June 2001, *The long, dry summer*, by Gideon Levy.

³⁹ B'Tselem, *Not even a drop. The Water Crisis in Palestinian Villages*, August 2001.

⁴⁰ Ha'aretz, 12 January 2001, *Women in Black*, by Gideon Levy.

⁴¹ Ha'aretz, 14 September 2001, *No way out*, by Gideon Levy.

situation had become utterly untenable.”⁴² Water was only allowed in after the villagers appealed to B’Tselem and the ICRC, and then only 40 tanks per day, while severe shortage of food and medicines continued. In a letter to Physicians for Human Rights, Dr Hamdan wrote: “The Israeli soldiers are totally preventing the passage of people and goods to Beit Furiq. Water is the only product they allow to be delivered. We urgently request assistance with basic foodstuffs such as rice, sugar, oil, baby food and medicines.”⁴³

Instances of ill-treatment against truck drivers transporting water

On the basis of information collected by B’Tselem, Gideon Levy also reports the ill-treatment suffered by truck drivers trying to bring water on dirt roads and by night to Beit Dajan, another West Bank village near Nablus that is without running water and under closure: “The water had run out, and two families with 20 children implored Mahmoud to bring them water. An IDF jeep containing four soldiers stopped him on a dirt trail. ‘Don’t you know that movement here is prohibited?’ Mahmoud says the soldiers asked him, and confiscated the keys of his truck and his ID card. Mahmoud says the soldiers then ordered him to wait in the truck, warning him. ‘If you move we’ll shoot you.’ The time was 8 a.m. Mahmoud says the soldiers returned at 5 p.m. and gave back his keys and the ID card, warning him that the next time they would shoot him.”⁴⁴

Three other drivers from the village who tried to bring water at night were also stopped, beaten and had the water emptied from the tanks: “At 8 p.m. on Friday, June 15, the driver Azaam Abu Jish, 47, father of six children, went out along with two other tankers to try and bring in water under cover of darkness. An IDF jeep stopped them on the dirt road on the Salem plateau. (...) Abu Jish told the B’Tselem fieldworker: ‘I said, I want to bring water for the residents and the goats. The soldiers told me: Let them die. You are not allowed to travel on that road. (...). Then they opened the tank and started spraying me with water. They hit me all over my body and made fun of me. They also hit the other two drivers and emptied the water from the tanks. It was not the first time. We cannot drive on the main road, not even for a short trip, and on the dirt roads the soldiers chase us and confiscate our keys and ID cards.’⁴⁵

2.2.3 The impact of the closure on access to medical treatment

Since the outbreak of the Intifada, restrictions of movement have severely obstructed access to medical treatment and health facilities for Palestinian civilians, in violation of international law⁴⁶. This has affected those injured in clashes and who need to be transported to hospital by ambulances, as well as cases unrelated to the current upheaval, such as persons with follow-up appointments, the chronically ill, expectant

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Ha’aretz, 24 June 2001, *The long, dry summer*, by Gideon Levy.

⁴⁵ *Ibid.*

⁴⁶ The Fourth Geneva Convention contains a series of articles designed to ensure access to medical treatment to any injured person, including evacuation if need be (Article 17); protection of civilian hospitals and their staff (Articles 18 to 20); medical transportation (Articles 21 and 22) and the consignment of medical supplies and equipment (Article 23). Moreover, the International Covenant on Economic, Social and Cultural Rights, applicable to the Palestinian Occupied Territories, guarantees the enjoyment of the right to health.

mothers and urgent medical cases. Moreover, the Israeli policy of closures has resulted in severe shortage of health personnel and medical supplies at a time when Palestinian hospitals and health centres are in great need.

Medical personnel are prevented from reaching their workplace, the consequence being shortage of staff at hospitals and medical centres. On the other hand, patients scheduled for clinic and surgery are often not able to reach hospitals, which makes it impossible to get patient referrals or schedule for diagnostic or surgical procedures.

In the Palestinian areas medicine is often only available in towns, and must be delivered to small villages. However, the closure has impeded the transportation of supplies to medical clinics in remote Palestinian villages, causing many of these locales to operate without essential medical supplies.

In the case of seriously injured patients or in urgent medical cases, where time is certainly a critical factor, restricting the movement of ambulances or vehicles can cause the patient's condition to significantly deteriorate. In several cases where ambulances or vehicles were delayed, by the time the patient reached the hospital or medical centre, it was too late and his life could not be saved. (See the Annex)

Regarding the effect of the closure on the movement of ambulances, the Palestine Red Crescent Society (PRCS) explains: "PRCS's ability to carry out their duties effectively is greatly hampered by the constant blockades, closures and checkpoints. Ambulances frequently suffer long delays, as they have to walk patients over earthen blockades, transfer them between different ambulances, travel on difficult back roads, and negotiate their way past hostile Israeli Army checkpoints. The response times of ambulance has been stretched to unacceptable and inhuman levels by Israeli practices of closure or excessive interrogation at checkpoints. For example a response time of 7 minutes has been increased to 30 minutes or more. In Gaza, the situation is even worse; for example a response to a cardiac case in South Gaza can take up to 1 hour to deliver to a hospital with appropriate medical equipment."⁴⁷

The PCRS further complains that "ambulance crews attempt many routes and back roads, at considerable risk to their own safety, often to be turned back by Israeli soldiers when only meters away from the sick and wounded."⁴⁸

The Israeli army claims that "there are orderly procedures whose goal is to guarantee checkpoint crossings in cases of medical emergency."⁴⁹ However, the number of cases documented by human rights organizations, where sick or injured were not able to cross barriers, shows that the implementation of these procedures is faulty.

Soldiers at checkpoints appear not to be informed about such procedures or not to be willing to abide by them. Whatever the reasons, these procedures are not being complied with on the ground.

⁴⁷ PRCS (www.palestinercs.org), Fact Sheet September 2001. Violations of International Humanitarian Law by Israeli Authorities.

⁴⁸ *Ibid.*

⁴⁹ Ha'aretz, 24 June 2001, *You can't show medical papers to concrete blocks an deep trenches*, by Aryeh Dayan.

Closures are implemented by three kinds of checkpoints, permanent ones, mobile checkpoints, which have a surprise effect, and an increasing number of unmanned roadblocks.

While at manned checkpoints it is still possible to negotiate a passage with soldiers, such possibility is removed when the restrictions are implemented through unmanned road blocks, dirt piles or trenches; at unmanned barriers there is no one to talk to, “there’s no depending on the kindness of strangers in army uniform: You can’t show medical papers to concrete blocks and deep trenches.”⁵⁰ In a letter to the Israeli Minister of Defence Ben-Eliezer dated 16 July 2001, the NGO Physicians for Human Rights (PHR-Israel) pointed out “that the regulations are not implemented and that the existence of physical, unmanned barriers on the roads of the West Bank in fact prevents their implementation, since they were intended for implementation at manned checkpoints.”⁵¹ The organization concluded that “in the absence of checkpoints manned by soldiers on the roads, selective passage of medical cases is impossible.”⁵²

Expectant mothers represent a particularly vulnerable group in need of medical care and require, therefore, special protection. Despite this fact, expectant mothers on their way to hospitals have been stopped at Israeli checkpoints. In some cases, women have miscarriages, in other cases expectant mothers have given birth at military roadblocks. According to the PRCS, “the EMS Department is reporting a significant increase in the number of births at home, ambulances, and checkpoints due to the delays being created by the checkpoints and roadblocks.”⁵³ (See the Annex)

Since 29 September 2000, many of those injured have had to be sent abroad for treatment. Under the pretext that “no previous arrangements” had been made, the Israeli security forces have blocked the way of at least five ambulances taking critically wounded people to Jordan. This has resulted in delays longer than two hours. According to an ambulance driver from Hebron, “previous arrangements” with the Israeli authorities are always made before transporting an injured person to Jordan. For this reason he could not see any justification for the delays caused by the Israeli authorities. In another instance, the press reported that Firas Rushdi Obeid (27), from the West Bank town of Qalqilya, was prevented by the Shin Bet from going to Austria for urgent medical treatment. Physicians for Human Rights subsequently appealed to the Israeli ministers of health and defence to let him getting treatment at an Israeli hospital free of charge.⁵⁴

Finally, arrests of injured patients have also taken place in circumstances where Israeli military have impeded access to medical assistance, and have used other forms of ill-treatment. For example, on 26 October 2000 at 3.30 p.m., Emad Hussein Abu Sneihneh was being transported to the hospital. He was suffering from asthma and

⁵⁰ Ha’aretz, 24 June 2001, *You can’t show medical papers to concrete blocks and deep trenches*, by Aryeh Dayan.

⁵¹ Physicians for Human Rights-Israel. Letter to Mr. Binyamin Ben-Eliezer, Minister of Defense, 16 July 2001. Subject: Passage of chronically ill patients through IDF checkpoints and barriers during closure and internal closure/blockade.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ See Ha’aretz, 3 August 2001, *Shin Bet denies Palestinian treatment, citing ‘security’*, by Joseph Algazy.

severe tear gas inhalation. About 30 soldiers who threatened the crew at gunpoint stopped the ambulance. The team tried to explain that the man in the ambulance was in urgent need of medical care but the soldiers removed Mr. Abu Sneihneh from the ambulance, beat him in the face and shoulder and carried him to a military vehicle.⁵⁵

3. House Demolitions and Destruction of Agricultural Land

Since its occupation of the West Bank including East Jerusalem and the Gaza Strip, Israel has demolished thousands of Palestinian homes. The practice of house demolitions continued throughout the period known as the Oslo Process, and has increased at an alarming rate since the beginning of the current Intifada on 29 September 2001.

According to the Israeli NGO B'Tselem, from 1987 until the end of 2000, Israel has demolished at least 2300 Palestinian houses that were built in the Occupied Palestinian Territories. LAW estimates that the number of Palestinian homes demolished in 2000 is 54, of which 35 were in East Jerusalem, 10 in the West Bank and 9 in the Gaza Strip. From January 2001 to 8 October 2001, LAW has recorded 38 house demolitions in East Jerusalem, 36 in the West Bank and 213 in the Gaza Strip.

As a consequence of the demolitions, the victims are left in destitute conditions as they have lost their property and belongings. The ICRC and UN agencies have had to provide tents to shelter those left homeless. Moreover, in an important number of cases, house demolitions have been accompanied by ill-treatment, humiliations and other forms of violence.⁵⁶

In the West Bank and East Jerusalem, most house demolitions are carried out because the homes are built without a permit and are therefore considered as “illegal”. Under the current Israeli policy of permits’ attribution, it remains virtually impossible for the Palestinians to obtain such as permit. The system is constructed in a way that the Palestinian will necessarily end up constructing houses without permits, facing risks of eviction and demolitions. In its 1998 Concluding Observations, the Human Rights Committee “deplores the demolition of Arab homes as a means of punishment. It also deplores the practice of demolitions, in part or in whole, of ‘illegally’ constructed Arab homes. The Committee notes with regret the difficulties imposed on Palestinian families to obtain legitimate construction permits”.⁵⁷

Indeed, in the Occupied Palestinian Territories, including East Jerusalem, planning and building systems as well as legislation are much more favourable to settlers than to Palestinians. The aim of this discriminatory policy is to limit Palestinian construction to a minimum in order to preserve maximum opportunity for land confiscation and Jewish settlement. As a consequence, Palestinians are left without the possibility of building with a permit and have no choice but to build houses and other structures without Israeli permits. Their houses are then considered “illegal” and therefore liable to be demolished by the Israeli authorities when deemed convenient.

⁵⁵ *Ibid.* See also PRCS, *An Urgent Press Release*, 1 November 2000.

⁵⁶ OMCT, *Human Rights in the Euro-Mediterranean Region and the Barcelona Process*, November 2000, p. 51. See also reports on house demolitions by the Palestinian Center for Human Rights (www.pchrgaza.org) and the Alternative Information Center (www.alternative.news.org).

⁵⁷ *Concluding Observations of the Human Rights Committee: Israel*, 18/08/98, CCPR/C/79/Add. 93.

The paradox of such a policy that reverses the question of illegality to the advantage of settlers and the detriment of Palestinians, keeping in mind that under international law the settlements are illegal, reveals its arbitrariness, intrinsic injustice and expansionist purpose.

In the Gaza Strip, Israel has argued, since the beginning of the Intifada, that the house demolitions were necessary for “security” reasons, in order to prevent Palestinian gunmen from shooting from specific houses. Moreover, houses demolitions have been carried out against Palestinians accused of security offences and their families, but also as a reprisal for the attacks of individuals against Israeli citizens, e.g. in the wake of suicide bombings. The missing link between individual responsibility and retaliatory measures, affecting not the person responsible for the attack but other individuals and families, show that in such cases the demolitions of houses represent a form of collective punishment or reprisal for the attacks of individuals.

Since the beginning of the Intifada, there has been extensive destruction of agricultural land by bulldozing as well as uprooting of trees by the Israeli authorities and settlers in the Occupied Palestinian Territories. The extensive destruction and confiscation of land, and uprooting of trees in the West Bank and the Gaza Strip follows a pattern of arbitrariness, justified by Israel with the security argument. From 29 September 2000 to 10 October 2001, LAW estimates that 10,689.5 dunams of agricultural land have been destroyed and that 3,162.5 dunams of agricultural land have been set on fire. In the same period, LAW has recorded the uprooting of 34,530 trees and the burning of 4,207 trees.

In the case *Selçuk and Asker v. Turkey*, the European Court for Human Rights (ECHR) ruled that the destruction of the defendants’ homes constitutes a form of ill-treatment, in breach of article 3 of the Convention which states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.”⁵⁸

In determining the occurrence of ill-treatment, the ECHR recalled that it must attain this a minimum level of severity, dependent upon the circumstances. In the *Selçuk and Asker* case, the ECHR judged that these circumstances allowed to qualify a home destruction, i.e. a violation of a right typically categorised as belonging to economic, social and cultural, as a form of inhuman and degrading treatment. The fact that the victims were old, left with nothing following the destruction of their house, as well as in a difficult position, given their age, to provide for themselves and find another shelter, were determinative factors in the decision of the ECHR.

On this basis, the reflection of the ECHR can be applied to other situations, which combine similar features of destitution and vulnerability resulting from the actions of the State or with its acquiescence. Under the CAT, such cases will fall within the scope of article 16.

Except for the question of duration, the houses demolitions and destruction of land present the same pattern: they leave the victims in serious destitution and deprive

⁵⁸ European Court for Human Rights, *Case of Selçuk and Asker v. Turkey* (12/1997/796/998-999), paras 79-80. See also, *Bilgin v Turkey*, 16 November 2000 para. 100-102; and *Dulas v Turkey*, 30 January 2001 para. 54-55.

them from their means of subsistence and livelihood, with no available recourses. Moreover, the way demolitions and destructions are carried out, in many cases without prior notification, in the presence of military jeeps and armed Israeli soldiers and involving, sometimes, ill-treatment and humiliations constitutes in itself an additional factor of stress and suffering.

These different elements highlight the degree of suffering, both physical and psychological brought by these policies. Consequently, given that the implementation of such measures results in situations of extreme suffering allows to conclude that they constitute a form of cruel, inhuman or degrading treatment or punishment, in violation of article 16 of the CAT.

4. Conclusions and Recommendations

In the light of the precedent developments, OMCT and LAW call upon the Committee:

- to conclude that the systematic policy of closure, destruction of houses and land and uprooting of trees perpetrated by Israel or by Israeli settlers with its acquiescence of Israel constitute a breach of Article 16;
- to conclude that the systematic policies of closure and destruction of homes and agricultural lands in the OPT have involved several specific cases of ill-treatment amounting to violations of Article 16.
- to call for an immediate halt to these policies.