



ORGANISATION MONDIALE CONTRE LA TORTURE

P.O. Box 21 – 8, rue du Vieux-Billard

CH 1211 Geneva 8, Switzerland

Tel. +41 22 809 49 39

Fax + 41 22 809 49 29

Email omct@omct.org

The Closure of the Palestinian Occupied Territories: Violations of Economic, Social and Cultural Rights, Torture and Other Cruel, Inhuman and Degrading Treatment

Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights by Israel

Report Prepared by the World Organisation Against Torture (OMCT) for the Committee on Economic, Social and Cultural Rights

Researched and written by Nathalie Mivelaz
For further information please contact OMCT at: omct@omct.org

Geneva, April 2001

Content

1. Preliminary Observations	3
2. General Observations on the Situation in the Occupied Territories	5
3. Justiciability of Economic, Social and Cultural Rights Before Israeli Courts	6
4. Closure	7
4.1. <i>The comprehensive closure of the occupied territories</i>	7
4.2. <i>The internal closure</i>	8
4.3. <i>Curfews</i>	10
4.4. <i>The closure of international crossing points</i>	11
5. Related Violations of Economic, Social and Cultural Rights	11
5.1. <i>The Right to Work</i>	12
5.2. <i>The right to health</i>	13
5.4. <i>The Right to an Adequate Standard of Living</i>	18
6. Freedom of Movement as an Implicit Dimension of Economic, Social and Cultural Rights	20
7. The CESCR's competence to monitor the policy of closure	20
8.1. <i>The discriminatory nature of the closure</i>	21
8.2. <i>Proportionality and necessity</i>	21
8.3. <i>Closure's implementation: a collective punishment</i>	22
9. The closure's enforcement: torture and other forms of cruel, inhuman or degrading treatment or punishment	23
10. Impact and related subject for concern	24
11. Compensation to victims of torture and enjoyment of economic, social and cultural rights	25
12. Conclusions and Recommendations	27

1. Preliminary Observations

In 1998, during its 19th session, the Committee on Economic, Social and Cultural Rights (CESCR) considered the initial report of Israel on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In its concluding observations, the CESCR requested Israel to provide additional information on :

- the realisation of economic, social and cultural rights in the occupied territories, in order to complete its initial report thus complying with its reporting obligations under the ICESCR¹;
- the progressive realisation of economic, social and cultural rights in East Jerusalem, keeping in mind the concerns raised by the CESCR in its concluding observations²;
- the Arab Israeli citizens, and notably updated information on the target dates for recognising unrecognised villages, and a plan for the delivery of basic services, including water, electricity, access roads, health care and primary education, to which the villagers are entitled as citizens of Israel³;

The CESCR asked Israel to submit this additional information for its 24th session held in November-December 2000. At this date, Israel had not provided the CESCR with the additional information required.

At its 24th session in November-December 2000, the CESCR requested Israel to submit its second periodic report to the CESCR no later than March 31st 2001, as well as additional information concerning the current situation in the occupied territories, and issues referred to and information requested by the CESCR in its concluding observations.

Finally, in light of the CESCR's concluding observations and the current crisis in Israel and the occupied territories, the CESCR has decided to consider the situation in the occupied territories in its 25th session.

Israel ratified the International Covenant on Economic, Social and Cultural Rights on October 3rd 1989. Israel is also a party to other international human rights instruments with related provisions on economic, social and cultural rights, torture and other cruel, inhuman or degrading treatment or punishment: the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of the Child and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

¹ *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, 04/12/98, E/C.12/1/Add.27, para 32

² *Ibid.* On the situation of East-Jerusalem, the Committee expressed its concern at the effect of the directive of the Ministry of the Interior (permanent residency law) on the enjoyment of economic, social and cultural rights

³ *Ibid.* The Committee underscored that the additional information also include an update of the Outline Plan of Ein Hod and on progress in the recognition of Arab El-Na'im, as well as an update on the Jahalin Bedouins who are presently camped in Abu Dis awaiting a court decision on their resettlement.

Whereas OMCT welcomes Israel's ratification of these international human rights instruments, it notes with concern that Israel contends that its obligations under these instruments, and notably the ICESCR, are limited to areas within its territory and jurisdiction, and therefore exclude the occupied territories.

According to United Nations treaty bodies' jurisprudence, the principle of "effective control" determines and limits the territorial applicability of United Nations human rights Covenants and Conventions. The United Nations Human Rights Committee (HRC), the CESCR, and the United Nations Committee on the Elimination of Racial Discrimination (CERD) concluded that both United Nations Covenants and the United Nations Convention against Racial Discrimination apply to the occupied territories.⁴ The same reasoning implies that other United Nations human rights conventions, such as the Convention against Torture, also apply to the occupied territories.

The HRC specified that Israel's long-standing presence in the occupied territories, as well as the exercise of effective jurisdiction by Israeli Security Forces in the occupied territories highlight Israel's effective and continuous control over them.⁵ Such effective control involves responsibilities under international law, notably in the realm of human rights and humanitarian law.

In its 1998 concluding observations, the CESCR noted with concern that the ICESCR benefits Israeli settlers established in the occupied territories, but that the Palestinian population residing in the same zone of jurisdiction (ie. the occupied territories) is excluded from both Israel's report and the protection of the ICESCR.⁶

According to the United Nations treaty bodies' jurisprudence, Israel's argument is invalid for areas B and C of the occupied territories over which Israel still maintains jurisdiction through long standing presence of its security forces. Given that Israel exercises effective control over areas B and C of the occupied territories, it is accountable for implementation of the ICESCR in these territories, including the reporting obligation. Evidence that the ICESCR benefits Israeli settlers in the occupied territories further undermines Israel's whole argument on the non-applicability of human rights' instruments to the occupied territories.

Regarding areas A under the control of the Palestinian Authority, Israel's effective control is not verified in this portion of the occupied territories. However, as this report will highlight, Israel's responsibility under human rights instruments can be triggered when violations in areas A occur as a direct result or consequence of Israel's policies.

Israel is also party to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War which prohibits the use of collective punishments against civilian populations in its article 33. Israel argues that the Fourth Geneva Convention does not apply to the occupied territories because, following the Oslo Accords, Israel is no longer an

⁴ *Concluding Observations of the Human Rights Committee: Israel*, 18/08/98, CCPR/C/79/Add. 93, para 10; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, 04/12/98, E/C.12/1/Add.27, para 8; *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel*, 30/03/98, CERD/C/304/Add. 45, para 12

⁵ *Concluding Observations of the Human Rights Committee: Israel*, 18/08/98, CCPR/C/79/Add. 93, para 10

⁶ *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, 04/12/98, E/C.12/1/Add.27, para 8

occupying power.⁷ According to Israel, it can no longer be seen as an occupying power with respect of the A areas, because it has ceded control over these territories to the Palestinian Authority.⁸ Israel also contends that, contrary to the first intifada, the nature of the current Palestinian uprising constitutes an armed conflict between Israel and the Palestinians who are led by the Palestinian National Authority.⁹

As mentioned, Israel still retains effective control over areas B and C of the occupied territories, including control over security matters, civil governance, and economic issues such as the collection of taxes, imports and exports. Israel's issuing of military orders in the occupied territories, as well as Resolution 1322 of the UN Security Council of October 7th 2000, which refers to Israel as "the Israeli occupying power", also show that areas B and C of the occupied territories remain under Israeli occupation and that consequently, the Fourth Geneva Convention is fully applicable in this portion of the occupied territories.

According to the human rights inquiry commission Israel cannot be relieved of its responsibilities as an occupying power, also with regard to areas A of the occupied territories as the Oslo Accords leave Israel with the ultimate legal control over the occupied territories, including areas A.¹⁰ The Conference of the High Contracting Parties to the Fourth Geneva Convention convened in Geneva on July 15th 1999 reaffirmed, in its concluding statement, the applicability of the Fourth Geneva Convention to the occupied territories including East Jerusalem.

2. General Observations on the Situation in the Occupied Territories

Since the beginning of the current crisis in September 28th 2000, there has been serious deterioration of the human rights situation in Israel and the occupied territories. While violations have been perpetrated by both sides involved in the clashes, the most persistent allegations brought to the attention of OMCT by its different member organisations –the Palestinian Society for the Protection of Human Rights and the Environment (LAW), the Palestinian Human Rights Monitoring Group (PHRMG), AL-HAQ, and the Public Committee Against Torture in Israel (PCATI) - were that Israel has failed to abide by its obligations under both international and national law.

Violations of the economic, social and cultural rights of the Palestinian population in the occupied territories, such as the right to work, the right to education, the right to health and the right to an adequate standard of living, have been reported to OMCT by its member organisations since October 2000. Such violations have been repeatedly denounced and documented by both OMCT and its member organisations.

Restrictions on the freedom of movement imposed on the Palestinian population of the occupied territories, attacks by settlers on Palestinian property, as well as destruction of Palestinian property by Israeli Defence Forces (IDF), constitute the principal factors leading to violations of the economic, social and cultural rights of the Palestinian population in the

⁷ LAW, March 17th 2001; Commission on Human Rights: 57th Session, *Report of the human rights inquiry commission established pursuant to Commission resolution S-5/1 of 19 October 2000*, Undoc. E/CN.4/2001/121, p. 15; Israel's intervention before the United Nations Commission on Human Rights, 57th Session, item 8

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*, p. 17

occupied territories. While the scale of violations has reached a higher threshold since the beginning of October 2000, restrictions on the freedom of movement, as well as attacks by settlers and IDF on Palestinian properties had been taking place regularly before the beginning of the current crisis.

This parallel report to the CESCR focuses on restrictions on the freedom of movement imposed on the Palestinian population of the occupied territories, restrictions which took the form of a comprehensive closure of the occupied territories, as well as limitations of movement within the occupied territories themselves. The report approaches both the causes lying behind such a policy, as well as the consequences of its implementation on the enjoyment of economic, social and cultural rights in the occupied territories, in light of Israel's obligations under the ICESCR. One of the main points OMCT advances in this parallel report is that the CESCR, according to its mandate to review the implementation of economic, social and cultural rights by state parties, has the competence to consider any obstacles or factors impeding the real and effective implementation of these rights. With regard to the closure and other limitations on the movement of the Palestinian population in the occupied territories, the CESCR shall consider their legality under international human rights law, in order to address the root causes of the violations of economic, social and cultural rights which have taken place since the beginning of October 2000. The consequences and implications of the policy of restrictions on movement, in term of human rights, are also analysed in this report.

Finally in the final part, OMCT also considers the impact that Israel's failure to compensate victims of torture and other forms of cruel, inhuman or degrading treatment or punishment can have on the victim's enjoyment of economic, social and cultural rights.

3. Justiciability of Economic, Social and Cultural Rights Before Israeli Courts

The ICESCR has not been incorporated into Israeli law and therefore cannot be directly invoked in Israeli Courts.

The non-incorporation of the ICESCR has strong consequences in terms of the justiciability of economic, social and cultural rights, as well as in terms of impunity together with violations of these rights.

Like civil and political rights, economic, social and cultural rights impose three different types of obligations on States : the obligations to respect, protect and fulfil. Failure to perform any of these three obligations constitutes a violation of these rights.¹¹ The obligation to fulfil requires States to take appropriate legislative measures towards the full realization of the rights. In its General Comment No. 9, the CESCR has stated that, "while the Covenant does not formally oblige States to incorporate its provisions in domestic law, such an approach is desirable."¹²

The consequent lack of access to effective judicial or other appropriate remedies at the national level, resulting in impunity for those responsible for violations, and denial of adequate reparation for the victims of violations – be it in the form of restitution, compensation, rehabilitation or guarantee of non-repetition – clearly represents a factor

¹¹ The Maastrich Guidelines on Violations of Economic, Social and Cultural Rights, para 6

¹² General Comment No. 9, UNdoc. CCPR/21/Rev.1/Add.9, para 9

impeding the full realization of economic, social and cultural rights in Israel and in the occupied territories.

4. Closure

Since 1989 for the Gaza Strip and 1993 for the West Bank, Palestinians from the occupied territories need permits, delivered by Israeli military authorities, to enter Israel or East Jerusalem. The need for permits also applies to 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 territories, justifying these limitations on security grounds. The signing of the Oslo Accords in 1993 led to an intensification of the use of closure by Israel.

Following the beginning of the current crisis, Israel has pursued the same policy, enforcing severe restrictions on the movement of Palestinians living in the occupied territories. Israel justifies this policy on security grounds.

Since October 2000, these limitations have generally taken four different forms: a comprehensive closure of the occupied territories; internal closures imposed on towns, villages or areas of the occupied territories; curfews; and the closure of international crossing points between the occupied territories and neighbouring countries (Jordan and Egypt).

4.1. The comprehensive closure of the occupied territories

The comprehensive or general closure of the occupied territories severely restricts the movement of goods and persons between Israel and the occupied territories (West Bank, the Gaza Strip and East-Jerusalem). As a result, Palestinians' entrance into Israel is completely forbidden for all purposes: work, medical care, family visits to relatives in prison, etc. Even if some exceptions have been observed, OMCT notes that the general pattern in force since the beginning of October 2000 is one that prevents the whole of the Palestinian population living in the occupied territories from entering Israel.¹³ From October 2000 to the end of the year, the comprehensive closure of the occupied territories was implemented during 72 days.¹⁴

The comprehensive closure of the occupied territories by Israel 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.¹⁵

The Oslo Accords forbid the closure of the safe passage. Under Oslo, two routes were to be designated as safe passages. Israel is entitled, for security reasons, to close one of them or to alter the terms of entrance, but must assure that one passage is always open.¹⁶ As only one safe passage has been constructed, and not two as foreseen by Oslo, this one should always remain open.

¹³ For more details on the closure, see reports issued by the Palestinian Society for the Protection of Human Rights and the Environment (LAW) and the Palestinian Human Rights Monitoring Group (PHRMG)

¹⁴ United Nations Office of the Special Co-ordinator in the Occupied Territories (UNSCO), *The Impact on the Palestinian Economy of Confrontations, Mobility Restrictions and Border Closures: 1 October 2000-31 January 2001*, at <http://www.arts.mcgill.ca/mepp/unsco/unfront.html>, as consulted 09/03/01

¹⁵ *Ibid.*

¹⁶ Oslo II Accords, Appendix 1, par (c) (4)X

4.2. The internal closure

The internal closure of the occupied territories restricts movement within the occupied territories themselves. Since October 8th 2000, several villages, towns or areas in the occupied territories have been cut from the outside, as main access roads and village entrances have been blocked following the erection of several IDF checkpoints, and of concrete blocks, piles, trenches, etc. Information received by LAW and Al-Haq, members of OMCT network, also documents the closure of several side roads used by Palestinians to go to and from work, reach essential services and visit their families.¹⁷ This policy has led to the fragmentation of the occupied territories in several enclaves, impairing an important proportion of the Palestinian population from moving freely within and throughout the occupied territories. Indeed, main Palestinian centres¹⁸ are being sealed off and encircled, with all the surrounding villages and towns which are dependent on these centres being cut off from them. The villagers are also often denied access to all neighbouring villages.

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. Throughout the period covered by the report, LAW, a member of OMCT network, has been extensively reporting the movement of concrete blocks by Israeli military bulldozers onto roads linking the northern and the southern parts of the Gaza Strip and on to 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.¹⁹ As a result, any North-South or West-East movements have been severely impaired throughout the reporting period.

In the West Bank, the main road linking the northern part with the central part has only been partially accessible for most of the reporting period, rendering movement nearly possible. Israeli checkpoints have been erected at the entrance and exit of all cities of the West Bank. As reported by LAW, Israeli military bulldozers have built outposts and barricades at the entrance to Jenin, Al Bireh, Hebron, Kufur Sur, Abush, Kufur Jael, Kufur Kur as well as on the hilltops surrounding the towns of Bethlehem, el Khader, Nablus, Jenin and Qalqilya.²⁰

OMCT observes with concern that the internal closure of the Gaza Strip and the West Bank results in creating isolated enclaves throughout the occupied territories, confining the whole Palestinian population within their villages or towns, effectively placing the people under siege into geographical prisons.

OMCT further notes that while the Palestinian population of the occupied territories is directly affected by the internal closure, Israeli military personnel as well as Israeli settlers continue to circulate freely throughout the occupied territories either on by-pass roads or on main roads through the Israeli checkpoints.

OMCT is particularly concerned about recent developments showing an intensification of the closure towards greater restrictions on movement within the occupied territories. OMCT is

¹⁷ See for example, LAW, *Day 51: Israeli Forces Continue Repression of Palestinians*, 18 November 2000

¹⁸ Including Ramallah, Nablus, Jericho, Salfeet, Tulkareem, Qalqilia, Jenin, Hebron, Bethlehem, Gaza.

¹⁹ LAW, *Closure: Occupation Authorities Continue Collective Punishment against Palestinians*, 10th October 2000

²⁰ See for example LAW, *Day 52: Siege Continues*, 19 November 2000, LAW, *Day 52: Twenty-six Palestinian injured as Closure tighten around West Bank Towns*, 19 November 2000

also very worried by the changing nature of the blockades: in the place of checkpoints, access roads are simply being cut off by deep trenches, piles and concrete blocks.

On March 7th 2001, following the investiture of Ariel Sharon's government, OMCT was informed by LAW and Al Haq, both members of OMCT network, that Israeli soldiers reinforced the closure of the Palestinian towns, villages and refugees camps by imposing a total ban on movement within the occupied territories.²¹ Israeli Defence Forces have deployed a large number of troops and armoured vehicles on the roads between Palestinian towns, blocking them with large concrete blocks and sand barriers.²² OMCT is deeply concerned about the following developments:

- Israeli soldiers dug a trench and installed a blockade, starting from Sorda village near Ramallah up to the town of Bir Zeit. The trench and blockade are 2 meters deep, and 150 meters wide. This total closure prevents any access to or from the affected areas. Approximately 25 Palestinian villages and their 65'000 residents have been affected by this action and in particular El Mizra'a el Qiblia, Abu Qash, Kobar, Abu Shkedim, Jericho, Jenin, Tulkarem, Bethlehem, Hebron, Qalqilya and Nablus. The Israeli soldiers, in the course of digging up the trenches and installing the blockade, also destroyed water pipes and telephone cables, leaving the population without any access to water or telephone.²³
- It is reported by LAW that Israeli Defence Forces have erected eleven new checkpoints, fourteen barricades, nineteen military watchtowers and eleven military outposts around Hebron. The measures have made movement for the population of nineteen villages in the Hebron district virtually impossible.²⁴
- According to information received from LAW, Israeli Defence forces have completely isolated the town of Tulkarem from neighbouring Palestinian towns such as Qalqilia and Jenin, as well as blocking the branch roads leading to the city.²⁵
- According to the information received by Al-Haq, the internal closure of the Gaza Strip has been intensified to prevent any travel between the North, South, East, West and Central regions.²⁶ This tightening of restrictions in Gaza confines approximately 1'000'000 Palestinians within a small portion of territory which is only 20 miles long and 5 to 8 miles wide.²⁷

OMCT is very concerned about the fact that Israeli authorities did not fully implement their declaration of March 15th 2001 asserting that the measures taken since March 7th 2001 have been eased.²⁸ Indeed, Israeli authorities have stated that since March 12th 2001 the internal closure of Hebron, Bethlehem, Tulkharem and Qalqilya has been reduced. However, according to the information received from LAW, the Israeli authorities have not fully

²¹ OMCT, Urgent Appeal "Economic, Social and Cultural Rights Concern", Case ISR 120301.ESCR-Isreal

²² Al-Haq, *Urgent Action Alert*, 12th March 2001

²³ OMCT, Urgent Appeal "Economic, Social and Cultural Rights Concern", Case ISR 120301.ESCR-Isreal, Al-Haq, *Urgent Action Alert*, 12th March 2001

²⁴ LAW, *Israeli Authorities tighten Siege on Palestinian Territories*, 12 March 2001

²⁵ *Ibid.*

²⁶ Al-Haq, *Urgent Action Alert*, 12th March 2001

²⁷ *Ibid.*

²⁸ LAW, *LAW refutes Israeli claims of lightening the siege*, 15th March 2000

implemented this declaration and have in fact blocked off more roads in the occupied territories.²⁹

4.3. Curfews

Since the beginning of the current crisis, in addition to the measures taken to implement the internal closure, Israeli Defence Forces have imposed several curfews on villages and towns throughout the occupied territories.

According to the information received by LAW, the 24-hour curfew on area H-2 of Hebron has been in force, with some exceptions, since the beginning of the current crisis.³⁰ This area is under Israeli military control. Since March 10th 2001, in conjunction with the tightening of the internal closure of the occupied territories, 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.³¹ It is reported that the vegetable market was closed at the request of the settlers living in the middle of Hebron.³²

OMCT notes with concern that curfews represent a particularly stringent form of restriction as they result in placing a whole population under “house arrest”. Under curfews, people are not allowed to leave their houses and if they do so, they risk being arrested.

Furthermore, OMCT is particularly concerned about the fact that Israeli security forces justify such measures, which affect the 40'000 Palestinian living in H-2 area, by the necessity to ensure the safety of the 400 Israeli settlers living in the middle of Hebron.³³ Allegations advancing that the curfew over area H-2 of Hebron was reinforced on January 31st 2001, to guarantee the security of the settlers following attacks by settlers and the Israeli military against the Palestinian population of Hebron.³⁴ According to the information received by LAW, the curfew over area H-2 of Hebron was strengthened just a few minutes after a group of armed settlers from Abraham Avino, under the protection of the Israeli army, opened fire on houses in Al Qazazin and Al Sahleh quarters, and attacked Palestinian civilians, stores and vegetable markets, destroying fruit and breaking windows.³⁵

While the Palestinians living in Hebron are confined to their houses, the settlers, whose illegal presence has been repeatedly condemned by the international community, are allowed to move freely in and out. OMCT reiterates its concern regarding the rationale behind the imposition of the curfew over area H-2 in Hebron, as well as by the way it has been implemented.

Recent developments in Hebron, and the increasing violence reported in the area, including the impact of such developments on restrictions of movement of the Palestinian population residing in area H-2 of the city, remain of utmost concern to OMCT.

²⁹ *Ibid.*

³⁰ LAW, *Day 51: Israeli Forces Continue Repression of Palestinians*, 18th November 2000; LAW, *Weekly Roundup*, 25 January-01 February, 2nd February 2001

³¹ LAW, *LAW refutes Israeli claims of lightening the siege*, 15th March 2000

³² *Ibid.*; LAW, *Weekly Roundup: 8-14 March 2001*, 16th March 2001

³³ See for example, LAW, *Day 51: Israeli Forces Continue Repression of Palestinians*, 18 November 2000; LAW, *Weekly Press Report*, 18 January 2001; LAW, *Weekly Roundup*, 25 January-01 February 2001

³⁴ LAW, *Weekly Roundup*, 25 January-01 February 2001

³⁵ *Ibid.*

Other Palestinian towns have been under curfew during the period of reporting, in particular Silwad, Ramin, Kafin and Huwara.³⁶

4.4. The closure of international crossing points

Throughout the period of reporting, the international crossing points between the occupied territories and neighbouring countries have also been repeatedly closed by the Israeli authorities. These international crossing points are the Allenby/Karamah bridge connecting the West Bank with Jordan, the Rafah border connecting the Gaza Strip with Egypt, and Gaza International Airport.

According to the Office of the United Nations Special Co-ordinator (hereafter UNSCO), for the period between October 2000 until January 2001, the proportion of days affected by the closure are 51.59% for the Gaza International Airport, 38.10% for the Rafah passenger border, and 21.43% for the Allenby/Karamah passenger border.³⁷ For the movement of goods, the proportion rises to 61.11% for the Rafah border, and 36.15 for the Allenby/Karamah passenger border.³⁸

OMCT underlines that these four different patterns of restrictions on the movement of the Palestinian population characterize the situation prevailing in the occupied territories since the beginning of October 2000.

OMCT further notes with a great concern that these restrictions place the Palestinian population of the occupied territories under siege, the intensity and consequences of which become greater according to the degree of restrictions faced. According to UNSCO, the closure imposed by Israel constitutes the most severe and sustained set of restrictions on movement imposed on the occupied territories since the beginning of the occupation in 1967.³⁹

5. Related Violations of Economic, Social and Cultural Rights

OMCT is concerned that the above mentioned restrictions, implemented by Israel since October 2000, have resulted and continue to result in serious and massive violations of economic, social and cultural rights of the Palestinian population, including the right to work, the right to health, the right to education, and the right to an adequate standard of living. These violations are taking place throughout the occupied territories, in areas A, B and C.

Evidence of these violations has been reported to OMCT on a daily basis by its member organisations, in particular by the Palestinian Society for the Protection of Human Rights and the Environment (LAW), the Palestinian Human Rights Monitoring Group (PHRMG) and AL-HAQ.

Data from UN agencies such as the United Nations Relief Work Agency (hereafter UNRWA) and UNSCO, as well as reports from the World Bank also acknowledge the serious

³⁶ LAW, *Day 52: Twenty-Six Palestinian injured as Closure tighten around West Bank Towns*, 19 November 2000

³⁷ *Supra* note 14

³⁸ *Ibid.*

³⁹ *Ibid.*

deterioration of both the economic situation in the occupied territories, and the living conditions of the Palestinian population since October 2000.

5.1. The Right to Work

According to UNRWA's statistics, the unemployment rate in the occupied territories has increased, since the beginning of October 2001, to 45-65 percent compared to around 11 percent before the current crisis.⁴⁰ This massive rise in overall unemployment of the Palestinian population living in the occupied territories, is a direct result of Israel's policy of closure which has been in force since the beginning of the current crisis.

Thirty years of occupation have left the occupied territories highly dependant on Israel. The Oslo peace process and its 1994 Protocol on Economic Relations, also called the Paris Protocol, did not lead to a greater equilibrium in the economic relationship between Israel and the occupied territories. Under the Paris Protocol, Israel has in particular retained control over the currency, the exchange of capital, goods, services and persons, as well as over the determination of the need and the amount of non-Israeli goods that Palestinians can import. The significant portion of income derived by Palestinian workers from their employment in Israel is part of this wider picture of the occupied territories' economic dependence on Israel.

In view of the pattern of the Palestinian workforce's dependence on the Israeli labour market, OMCT is very worried about the serious consequences that the above mentioned restrictions have had and continue to have in the occupied territories, both in terms of the rising unemployment rate and of the whole Palestinian economy.

Since October 2000, the comprehensive closure of the West Bank and the Gaza Strip has prevented tens of thousands of Palestinians living in the occupied territories and generally employed in Israel from reaching their workplace. According to UNSCO's statistics, daily Palestinian labour flow has dropped, since the beginning of October 2000, from 130'000 to an average of 30'000, accounting for Palestinians from Jerusalem who do not need permits to enter Israel for work, or for Palestinians from the West Bank who work in Israel without permits.⁴¹ Internal closure and curfew further prevent Palestinians from reaching their workplace, be it in Israel or within the occupied territories.

Inability to obtain inputs for production, or to sell goods or services due to the above mentioned restrictions on movement also creates additional amount of unemployment in the occupied territories. On the basis of UNSCO's data, about 82'000 additional persons lost their jobs due to restrictions on movement.⁴² For the reporting period, UNSCO estimates the average number of unemployed in the occupied territories at about 253'000, which represents approximately 40% of the labour force.⁴³ UNRWA estimates the unemployment in the occupied territories to range from 40% to 60%, compared to around 11% before the current crisis.⁴⁴ Alternatively, the Palestinian Ministry of Labour estimates that 325'000 workers are now unemployed in the occupied territories.⁴⁵

⁴⁰ UNRWA, *Emergency Appeal: November 2000*, at www.un.org/unrwa/emergency/index.htm as consulted 19/12/00

⁴¹ *Supra* note 14

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Supra* note 40

⁴⁵ UNRWA, *Emergency Appeal*, March-May 2001

Article 6 of the International Covenant on Economic, Social and Cultural Rights provides that States Parties “recognise the right to work which includes the right of everyone to the opportunity to earn his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

The ICESCR states in its article 2 that state parties undertake steps, to the maximum of their available resources, with a view to progressively achieving the full realization of the rights recognised in the ICESCR. However, all state parties to the Covenant have to take steps immediately towards the full realization of the rights contained in the Covenant.⁴⁶ According to the Limburg Principles on the Implementation of Economic, Social and Cultural Rights, a state party will be in violation of the Covenant if it fails to promptly remove obstacles to permit the immediate fulfilment of a right.⁴⁷ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights provide that a violation occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result.⁴⁸

By representing a unilateral measure implemented by Israel, with the effect of impeding Palestinian workers to physically reach their workplace in Israel, the above mentioned restrictions represent a prima facie violation of the right to work as guaranteed by the ICESCR.

5.2. The right to health

Since October 2000, OMCT has been informed by its member organisations LAW, Al Haq and the PHRMG of several incidents of ambulances and Palestinians being prevented, either directly by Israeli soldiers at checkpoints, or by roadblocks erected throughout the occupied territories, from reaching medical facilities.

When allowed to cross checkpoints, Palestinians face long delays which often put in danger the person in need of medical treatment. As an alternative to the checkpoints or roadblocks, many Palestinians take long and often unpaved alternative routes to reach medical facilities, which also involve long delays.

OMCT is very concern about the several instances involving denial of or deferred access to medical facilities as a consequence of the above mentioned restrictions, and in particular the following cases which have been reported by its member organisations:

- On the basis of information provided by LAW and B'Tselem, Ala Hamdan, a 10 year old girl, died on October 14th 2000 from a blockage of her colon and duodenum and lung infection, after several failed attempts to reach medical facilities. Ala Hamdan's town of el Sawyieh had been completely closed off by Israeli forces by October 12th 2000. Her father, Mr. Hamdan tried on several occasions, from 9 p.m. on October 13th 2000 to the early hours of October 14th 2000, to break through the closure, but each time he was turned back by Israeli soldiers and settlers who had blocked off every access road to the hospital from the town of el Sawyieh. Ala Hamdan saw a local doctor who confirmed that she required hospital treatment. Ala Hamdan died at about 8 a.m. on October 14th 2000. Her father lodged a complaint with the Ministry of Health in Nablus to report what occurred, and a report with the district authorities, but

⁴⁶ The Limburg Principles on the Implementation of Economic, Social and Cultural Rights, para 16

⁴⁷ *Ibid*, para 72

⁴⁸ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, para 11

to date no action has been taken against the individuals responsible for preventing Ala from receiving the necessary medical treatment.⁴⁹

- According to information received from LAW, on January 28th 2001, 66 year old Husun Suleiman Daraghmeh from Al Laban village near Nablus, died after Israeli soldiers at the checkpoint opposite the military liaison outpost in Huwara, south Nablus, prevented her and her family from crossing to the town's hospital. It was reported that Husun Suleiman Daraghmeh was suffering severe chest pains so her son attempted to drive her to the hospital in Nablus. On the way, Israeli soldiers stopped their car for more than 10 minutes before ordering them to turn back. Her son was then forced to take a very long and rocky road to reach the hospital, through the villages of Burin and Tal, but Husun Suleiman Daraghmeh died on the way. Medical sources at Rafidia Hospital confirmed that she had died just a few minutes before arriving.⁵⁰
- According to information received from LAW, at 4.30 p.m. on January 30th 2001, 67 year-old Falaah Ayyash from Rafat near Salfit died of a heart attack fifteen minutes after arriving at Rafidia Hospital in Nablus. It is reported that Falaah Ayyash had suffered the attack at 1.15 p.m. and that his son had attempted to take him to Rafidia hospital in a private car. They reached Azoun junction near Qalqilya at around 1.40 p.m. where they were kept waiting for 30 minutes before being turned back. They were then forced to take a long and unpaved alternative route around the checkpoint. At approximately 2.40 p.m., they reached the Deir Sharaf junction in Nablus, where they were kept waiting by Israeli soldiers for 40 minutes before being forced to turn back once again. They took another long mountainous dirt track and eventually reached the Rafidia hospital at around 4.15 p.m. Due to the long delay, doctors were unable to save Falaah's life. In normal circumstances, the journey from Rafat to Nablus takes only 20-25 minutes.⁵¹
- According to information received from LAW, on February 1st 2001, paramedics of the Red Crescent Society and the Ramallah hospital were facing serious difficulties in reaching Atif Al Nabulsi, 35 years old, injured after Israeli soldiers opened fire on his car at Rafat junction, west of Ramallah. It is reported that Israeli soldiers prevented the paramedics from reaching Atif Al Nabulsi for approximately 15 minutes. When the paramedics were finally able to put Atif Al Nabulsi in the ambulance, the soldiers delayed them for another 15 minutes before taking them to the Israeli outpost at Ofer near Beitunya. As a result of the delays, Atif Al Nabulsi died from his injuries.⁵²
- According to information received from LAW, on March 13th 2001, Na'eem Bani Jame, a 39 year old farmer from Aqraba in Nablus, died following a heart attack as he was prevented from crossing the military checkpoint at Huwara intersection in Nablus to reach the hospital.⁵³ It is reported that at 4:35 a.m. Na'eem's brothers Hassan and Ahmad attempted to take him to hospital in a private car driven by their cousin Muhammad. They reached the Israeli checkpoint at 4:50 a.m. and asked the Israeli

⁴⁹ Affidavits obtained by LAW and B'Tselem, October 2000; Testimony of Mr. Hamdan Hamdan delivered on March 26th in a Briefing Session organised by OMCT and LAW

⁵⁰ LAW, *Weekly Roundup*, 25 January-01 February 2001

⁵¹ *Ibid.*

⁵² LAW, *Weekly Roundup*, 8-14 February 2001

⁵³ LAW, *Man and women die at Israeli checkpoint*, 15th March 2001

soldiers to let them pass. The Israeli soldiers refused and detained the men at the checkpoint. After 20 minutes, the Israeli soldiers made them open the car doors for inspection. Another 20 minutes later, they were allowed to leave but not to cross the checkpoint, so they tried an alternate route along a long and unpaved track. They finally reached the hospital at around 6 a.m., but Na'eem was dead on arrival. Under normal circumstances, the road from Aqraba village to Nablus takes only 15 minutes.⁵⁴

- According to information received from LAW, on March 14th 2001, Amira Abu Seif, a 48 year old diabetic woman from Faqu'a village in Jenin, died after being held at Al Jalma checkpoint for around three and a half hours, as her parents tried to get her to Jenin government hospital due to an upsurge in her blood sugar level.⁵⁵ It is reported that Amira's family tried to take her to Jenin hospital in a private car. They reached the Israeli checkpoint but were not allowed to pass for three and a half hours. Even after an Israeli military doctor had checked her and confirmed that her condition was serious, the Israeli soldiers at the checkpoint still refused to allow the car through, forcing Amira Abu Seif's family members to carry her for 50 meters to the Palestinian ambulance stationed on the other side of the checkpoint. Fifteenth minutes later she was declared dead by doctors at Jenin hospital, due to a sudden increase in blood pressure and her diabetes.⁵⁶

OMCT would also like to express its deep concern about the impact of rising unemployment in the occupied territories and a deterioration of the economic situation on the Palestinian population's access and ability to afford basic medicine and medical treatment. According to UNRWA's statistics, the fact that approximately 50% of the population in the occupied territories does not have health insurance and that 40% is unemployed, will undoubtedly hinder the ability of people to purchase health and medical services.⁵⁷

Article 12 of the International Covenant on Economic, Social and Cultural Rights provides that all States Parties "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". According to article 12, States are bound to take steps necessary for the "creation of conditions which would assure to all medical service and medical attention in the event of sickness".⁵⁸

The ICESCR states in its article 2 that state parties undertake steps, to the maximum of their available resources, with a view to progressively achieving the full realization of the rights recognised in the ICESCR. However, all state parties to the Covenant have to take steps immediately towards the full realization of the rights contained in the Covenant.⁵⁹ According to the Limburg Principles on the Implementation of Economic, Social and Cultural Rights, a state party will be in violation of the Covenant if it fails to promptly remove obstacles to permit the immediate fulfilment of a right.⁶⁰ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights provide that a violation occurs when a State pursues, by

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Supra* note 40

⁵⁸ International Covenant on Economic, Social and Cultural Rights, article 12(d)

⁵⁹ The Limburg Principles on the Implementation of Economic, Social and Cultural Rights, para 16

⁶⁰ *Ibid.*, para 72

action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result.⁶¹

By representing a unilateral measure implemented by Israel, with the effect of impeding Palestinians in need of medical treatment to physically reach medical facilities, the above mentioned restrictions represent a prima facie violation of the right to health as guaranteed by the ICESCR.

5.3. The right to education

Since October 2000, the right of the Palestinian children and student to education has been seriously infringed by the restrictions of movement imposed throughout the occupied territories. Palestinian children and students have been prevented from attending schools and universities due to closures and curfews. OMCT also notes with concern that when students could reach their school or universities, they were often met with a hail of bullets fired from Israeli outposts.

According to Al-Haq, a member of OMCT network, 90 percent of teachers working in schools located in the occupied territories have been absent at some point due to their inability to reach their place of work because of restrictions on movement.⁶² Al-Haq reports that for the reporting period the following schools have been closed as a result of the internal closure of the occupied territories:

- Jenin District: the Sielit al-Tahir School, Ya'bad School and Um al-Riham School and Qarawah School and Mardah School;⁶³
- Nablus: Ma'zouz al Masri Girls School, Qadri Touqan Boys School, Bassam al-Shak'ah Boys School and Musa Ibn Nusair School;⁶⁴
- South of Hebron: Zeef School, al- Buwayab School, Khallit al- Mayyeh School, Um Lasfa School, al-Saray'ah School, al Ka'abneh School, al-Zuwaydiyyin School, al-Hathalin School, Imaniel School and Sema School;⁶⁵
- Ramallah and al-Bireh districts: Ein Qinya School, Bet Sira School, and Biddou School;⁶⁶
- Bethlehem: Taqou'School and al- Khadir School;⁶⁷
- Qalqilyah: Jet School;⁶⁸
- Al-Mawasi area (west of Rafah and Khan Younis): complete closure of the Jarrar al-Qudwah School which is the only school in the area having, in normal times, over 6000 students in elementary and preparatory levels.⁶⁹

⁶¹ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, para 11

⁶² Al-Haq, *Education Under Siege : A Future in Jeopardy*, March 2001

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

In Hebron, as a result of the 24 hour curfew, about 13'000 students were deprived of their right to education, as approximately 28 schools were closed.⁷⁰ More than 460 teachers also have not been able to reach their schools.⁷¹ During the last months, as a result of the curfew, many schools have closed for all but a few days. On the basis of information provided by Al-Haq, these schools are:

- Al-Zatari Boys School: 736 students and 24 teachers;⁷²
- Al-Nahdah Elementary School for Boys: 571 students and 23 teachers;⁷³
- Al-Muhammadeyyah Boys School: 395 students and 16 teachers;⁷⁴
- Rabi'ah Girls School: 471 students and 17 teachers.⁷⁵

Of particular concern to OMCT is the answer given by Israeli military to students and teachers trying, despite the curfew in place in Hebron, to reach their schools. According to information received from Al-Haq, on October 29th 2000, some of the principals of the schools located in the areas under curfew tried to break it to go to their schools.⁷⁶ The Israeli military forced them to leave the schools and threatened to punish them if they did not obey. Al-Haq also reported that on November 4th 2000, while the Israeli forces declared that they had lifted the curfew imposed over the old city of Hebron, they opened fire on students and their teachers when they attempt to enter the schools.⁷⁷

Of utmost concern to OMCT are also the Israeli Military Command's orders to close several Palestinian schools for extended periods. According to information provided by Al-Haq, Military Order No. 378, issued in November 2000, ordered the closure of four schools in the village of al-Khadir, near Bethlehem, from November 30th 2000 until December 15th 2000.⁷⁸ This same order was reissued on December 10th 2000, extending the closure until February 27th 2001, affecting the following schools:

- Al-Khadir Basic School for Boys: 386 students and 21 teachers;⁷⁹
- Al-Khadir Basic School for Girls: 559 students and 19 teachers;⁸⁰
- Al-Khadir Secondary School for Boys: 686 students and 22 teachers;⁸¹
- Al-Khadir Secondary School for Girls: 696 students and 30 teachers.⁸²

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

The issuing by Israeli authorities of orders closing Palestinian Schools constitutes a violation of the Oslo Peace Accords, which transferred authority over education to the Palestinian National Authority. Accordingly, Israel is not entitled to make decision regarding the closure of Palestinian schools, even if these schools are located in areas C controlled by Israel.

In this regard, OMCT would like to draw the attention of the CESCR to the inherent contradictions between Israel's arguments that it is no longer an occupying power and the facts on the ground, as revealed by the issuing of military orders to close Palestinian schools, which highlights the fact that Israel continues to be the occupying power.

Article 13 of the International Covenant on Economic, Social and Cultural Rights provides that all States Parties "recognize the right of everyone to education".⁸³

The ICESCR states in its article 2 that state parties undertake steps, to the maximum of their available resources, with a view of progressively achieving the full realization of the rights recognised in the ICESCR. However, all state parties to the Covenant have to take steps immediately towards the full realization of the rights contained in the Covenant.⁸⁴ According to the Limburg Principles on the Implementation of Economic, Social and Cultural Rights, a state party will be in violation of the Covenant if it fails to promptly remove obstacles to permit the immediate fulfilment of a right.⁸⁵ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights provide that a violation occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result.⁸⁶

By representing a unilateral measure implemented by Israel, with the effect of preventing the Palestinian students and teachers from physically reaching schools, the above mentioned restrictions represent a prima facie violation of the right to education as guaranteed by the ICESCR.

5.4. The Right to an Adequate Standard of Living

Article 11 of the International Covenant on Economic, Social and Cultural Rights guarantees "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

According to UNRWA's estimates, half of the population in Gaza and one-third of the population in the West Bank live below the poverty line as a direct result of the policy of closure implemented by Israel since October 2000.⁸⁷ This data is confirmed by a recent World Bank report which estimates that between October 2000 and December 2000 the poverty rate has risen by 50 percent, suggesting that about 1 million people now live below the poverty line, compared with an average of 654'000 in the first 9 month of 2000.⁸⁸

⁸² *Ibid.*

⁸³ International Covenant on Economic, Social and Cultural Rights, article 13

⁸⁴ The Limburg Principles on the Implementation of Economic, Social and Cultural Rights, para 16

⁸⁵ *Ibid.*, para 72

⁸⁶ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, para 11

⁸⁷ UNRWA, *Emergency Appeal*, March-May 2001

⁸⁸ WORLD BANK, *Poverty in the West Bank and Gaza*, Washington, January 2001, p. 74

The World Bank Report notes a strong correlation between availability of work in Israel and lower poverty rates in the occupied territories.⁸⁹ Indeed, as UNSCO observes, in addition to the direct loss of work of approximately 182'000 Palestinians, a total average of 910'000 people, or about 30 percent of the population, have been directly affected by the restrictions on movement.⁹⁰ Indeed, according to UNSCO's estimates, the average employed Palestinian supports at least 4 other people with his/her salary.⁹¹

The deteriorating living conditions in the occupied territories as a result of the above mentioned restrictions on movement have a direct consequence on the Palestinian population's enjoyment of the right to adequate housing, adequate food and adequate clothing. In an article by Joseph Algazy published in Ha'aretz on March 13th 2001, the International Red Cross has been quoted as stating that there is a risk of starvation for the most destitute Palestinian families as a result of the siege.⁹²

The long-term implications of the situation prevailing in the occupied territories with regard to the enjoyment of the right to an adequate standard of living, as well as the current humanitarian crisis in the area, remain of utmost concern to OMCT.

The ICESCR states in its article 2 that state parties undertake steps, to the maximum of their available resources, with a view to progressively achieving the full realization of the rights recognised in the ICESCR. However, all state parties to the Covenant have to take steps immediately towards the full realization of the rights contained in the Covenant.⁹³ According to the Limburg Principles on the Implementation of Economic, Social and Cultural Rights, a state party will be in violation of the Covenant if it fails to promptly remove obstacles to permit the immediate fulfilment of a right.⁹⁴ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights provide that a violation occurs when a State pursues, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the Covenant, or fails to achieve the required standard of conduct or result.⁹⁵

By representing a unilateral measure implemented by Israel, with a direct impact on the available food supply to the Palestinian population living in the occupied territories, the above mentioned restrictions represent a prima facie violation of the right to an adequate standard of living as guaranteed by the ICESCR.

Furthermore, OMCT would like to draw the attention of this Committee to the fact that the continuous and massive violations of the Palestinian population's right to an adequate standard of living also impacts on this population's enjoyment of other human rights be they economic, social and cultural as well as civil and political.

⁸⁹ *Ibid.*

⁹⁰ *Supra* note 14

⁹¹ *Ibid.*

⁹² ALGAZY, J., *Starvation at the Palestinian door : Prolonged closure is having a devastating effect on the territories, charges the Red Cross*, Ha'aretz, March 13th 2001

⁹³ The Limburg Principles on the Implementation of Economic, Social and Cultural Rights, para 16

⁹⁴ *Ibid.*, para 72

⁹⁵ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, para 11

6. Freedom of Movement as an Implicit Dimension of Economic, Social and Cultural Rights

The blanket restriction imposed by Israel on the movement of goods and persons from, to or within the occupied territories, raises the notion of effectiveness with regard to the enjoyment of economic, social and cultural rights. The current situation highlights that in order to make economic social and cultural rights effective in the occupied territories - as Israel is obliged to do under international law – freedom of movement shall be guaranteed. There is therefore an implicit dimension in the right to health, the right to education, the right to work, and the right to an adequate standard of living, which is the right to freedom of movement, guaranteed by article 12 of the International Covenant on Civil and Political Rights (ICCPR), to which Israel is a party and therefore bound, as mentioned above, to implement in the occupied territories.

7. The CESCR's competence to monitor the policy of closure

Whereas the full and effective enjoyment of economic, social and cultural rights implies the right to freedom of movement, it is in the CESCR's mandate and jurisdiction to review Israel's compliance with other international instruments guaranteeing the right to freedom of movement. As the effective enjoyment of economic, social and cultural rights requires the right to freedom of movement, directly covered by article 12 of the ICCPR, implementation by Israel of such provision falls within the CESCR's competence and can, therefore, be reviewed by the CESCR.

Article 12 of the ICCPR guarantees the right to freedom of movement. Paragraph 3 of the same article provides that this right "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant".

General Comment No. 27 of the HRC provides that the permissible limitations which may be imposed on the right covered by article 12 must not nullify the principle of liberty of movement. Moreover, General Comment No. 27 recalls several benchmarks limiting States' margin of manoeuvre in restricting the right to freedom of movement. Firstly, restrictive measures must be governed by the principle of necessity and by the need for consistency with the other rights recognized in the Covenant.⁹⁶ Secondly, in implementing the limitations, the relation between right and restriction, between norm and exception must not be reversed.⁹⁷ Thirdly, restrictive measures must conform to the principle of proportionality, and must be appropriate to achieve their protective function.⁹⁸ Fourthly, limitations must be the least intrusive instrument amongst those which might achieve the desired result.⁹⁹ Finally, General Comment No. 27 reminds that the application of the restrictions permissible under article 12 paragraph 3 need to be consistent with the fundamental principles of equality and non-discrimination which are non-derogable human rights principles.¹⁰⁰

⁹⁶ *General Comment No. 27*, The United Nations Human Rights Committee, CCPR/C/21/Rev.1/Add.9, para 2

⁹⁷ *Ibid.*, para 13

⁹⁸ *Ibid.*, para 14

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*, para 18

8. The violations of economic, social and cultural rights as a consequence of the policy of closure: a form of collective punishment

8.1. The discriminatory nature of the closure

The restrictions represent, *prima facie*, measures implemented over a given portion of land: the occupied territories. However, Israel's implementation of the restrictions reveals that its whole policy is in fact not established *ratione loci* but *ratione personae*.

Indeed, the restrictions do not apply to Jewish Israeli citizens, to settlers residing in the occupied territories, or to goods produced by the settlers in the occupied territories or coming from Israel and directed to the settlements. Similarly, settlers and goods produced in the settlements continue to circulate freely within the occupied territories through by-pass roads. Such evidence highlights that the closure does not draw a distinction between two territories, but rather between two different populations living in the same territory.

Such evidence highlights the fact that discrimination is an inherent part of Israel's policy of restrictions, whose implementation draws a clear distinction between the Palestinian population in the occupied territories and the settlers in the occupied territories, whose illegal presence in the occupied territories has been repeatedly condemned by the international community.

Article 12 of the ICCPR on freedom of movement, while providing for derogations, place severe restrictions in the way limitations shall be implemented. These requirements involve, as mentioned, the obligation that the limitations be consistent with the principle of non-discrimination. As a consequence, the above mentioned limitation, by infringing the principle of non-discrimination amount, *prima facie*, to a violation of article 12 of the ICCPR.

8.2. Proportionality and necessity

Israel justifies its policy of closure and its discriminatory implementation on security grounds. Such an argument implies that Israel's security requirements can only be fulfilled by a blanket restriction on the movement of the Palestinian population.

The implementation of above mentioned restrictions imply that only blanket limitation on the movement of the Palestinian population from the occupied territories can guarantee Israel's security. Regarding the principle of proportionality, the human rights approach requires it to be verified in each individual case. The policy of closure, as a blanket restriction on the movement of the Palestinian population from the occupied territories, falls short of considering this "micro level". Concrete cases and evidence reported by OMCT member organisations highlight the fact that, generally speaking, no assessment of the "perceived threat" is made on an individual basis.¹⁰¹ Such blanket restrictions on the movement of the whole Palestinian population from the occupied territories constitute, therefore a disproportionate measure with regard to Israel's security concerns.

The principle of necessity raises the question of alternative measures for guaranteeing Israel's security. As said before, the closure of the occupied territories has been implemented by Israel since the early 1990's. Since then, Israel has not developed alternative measures to ensure its own security. Such failure to do so responds neither to budgetary constraints, nor to the verification of the inefficiency of other means. Comprehensive closure of the occupied

¹⁰¹ See part 5.1.: Related violations of economic, social and cultural rights

territories mobilise both material and personnel on a large scale, and it seems unlikely that any other policy would require a larger amount of resources.

Another issue to consider under the principle of necessity is whether the blanket restrictions represent the sole mean for guaranteeing Israel's security. This approach, by relying on the assumption that the entire Palestinian population living in the occupied territories represents a potential threat for Israel, is clearly not matched by reality.

Derogations to article 12 of the ICCPR are limited by the principle of necessity and proportionality which are not respected by Israel when implementing the above mentioned restrictions.

8.3. Closure's implementation: a collective punishment

The discriminatory nature of the restrictions, as well as their failure to respect both principles of proportionality and necessity, highlights the illegal nature of the closure with regard to Israel's international human rights obligations, and more specifically article 12 of the ICCPR on freedom of movement.

Furthermore, evidence brought by OMCT member organisations, especially by the Palestinian Society for the Protection of Human Rights and the Environment (LAW), the Palestinian Human Rights Monitoring Group (PHRMG) and AL-HAQ, seriously puts into question the security argument for implementing the restrictions, and rather shows a strong political and/or retaliatory dimension in the way the closure is implemented.

Indeed, easing of restrictions is generally made as a "gesture" in the context of the political process or following developments on the political agenda. Moreover, restrictions are often imposed, or reinforced, following Palestinian attacks against Israeli soldiers or civilians. In such cases the policy of closure, as a response to attacks against Israeli soldiers, civilians or properties, is clearly not determined by the sole security question and rather constitutes a retaliatory or deterrent measure imposed on the whole Palestinian population.

The nature of the restrictions, their timing and indiscriminate nature, as well as their destructive consequences, raise serious and well-founded doubts about whether they are strictly required, as Israel pretends, by the security situation. It rather indicates that they constitute a form of collective punishment against the whole Palestinian population of the occupied territories, prohibited by article 33 of the Fourth Geneva Convention, applicable to the occupied territories.

According to information received from Al-Haq, the Israeli Prime Minister Ariel Sharon stated that if the Palestinians ended the intifada he would end the economic sanctions upon the Palestinian Territories. This is the first time that the Israeli Authorities have clearly stated that they have taken action not only to prevent violence, but also as punitive measures.¹⁰²

Accordingly, the above mentioned violations of economic, social and cultural rights are the result of Israel's policy of collective punishment against the Palestinian population of the occupied territories. OMCT would like to draw the attention of this committee to the fact that these violations - that occur in areas A, B, C - and for which Israel is fully responsible, will cease when Israel puts an end to its sweeping restrictions of movement on the entire civilian population. In this regard, OMCT urges the Committee to take a firm stand with regard to the

¹⁰² Al-Haq, Urgent Action Update, March 12th 2001

above mentioned restrictions and their dramatic impact on the enjoyment of economic, social and cultural rights.

9. The closure's enforcement: torture and other forms of cruel, inhuman or degrading treatment or punishment

The daily harassment, humiliation and violence exercised by Israeli soldiers at checkpoints against the civilian Population remains of utmost concern to OMCT. Given the scale of restrictions throughout the occupied territories, it has become common for Palestinians from the West Bank and the Gaza Strip to cross Israeli checkpoints several times a day.

Reports from OMCT member organisation highlight a recurrent pattern of ill-treatment by some Israeli soldiers in these instances. Such ill-treatments occur, in an important number of cases, when Palestinian civilians try to exercise their economic, social and cultural rights.

OMCT has been provided by the following information by its member organisations:

- On December 20th 2000, at 5:30 a.m., the Israeli Border Police checked Palestinian workers at the Erez checkpoint in an abusive and humiliating way. Some Palestinians were forced to undress completely and to wait for further instructions. When unrest erupted, Israeli soldiers fired at the Palestinian workers and injured four of them.¹⁰³
- It is reported that on February 11th 2001, Rabah Alkam, 26, a truck driver from Rafat, was travelling home with his cousin when Israeli soldiers stopped him at the checkpoint between Um Al Sharayit and Rafat and told him to go back. After checking whether he was from Rafat, one of the soldiers led Rabah behind an army jeep where he was badly beaten. The other soldiers joined in beating Rabah, kicking him until he almost fainted.¹⁰⁴
- It is reported that on March 11th 2001, Israeli forces stationed at a military checkpoint at the entrance to Ein Areek village near Ramallah, prevented 33 year old Mu'zeiz Al Deek from crossing it. Mu'zeiz Al Deek was carrying bread, milk and her 2 month-old son. The soldiers told her that they would only let her pass if she dropped the bread and the milk, and so she did.¹⁰⁵
- On March 12th 2001, taxi drivers Mahmoud Yusif (31) and Isa Zayid (37) from Ramallah were chased by Israeli soldiers as they approached military checkpoints in order to terrorise them.¹⁰⁶

¹⁰³ LAW, *Two Palestinian Killed, 35 Injured in the Gaza Strip*, December 20th 2000

¹⁰⁴ LAW, *Weekly Roundup: 8-14 February 2001*

¹⁰⁵ LAW, *Weekly Roundup: 8-14 March 2001*

¹⁰⁶ LAW, *Israeli Authorities Tighten Siege on Palestinian Territories*, March 12th 2001

10. Impact and related subject for concern

The above mentioned restrictions, serving as a policy of collective punishment, are a subject of utmost concern for OMCT, as the principles of individual responsibility and punishment only following due process of law are abandoned. OMCT remains very concerned by the negative impact that Israel's policy of collective punishment has on basic principles guaranteeing respect for human rights and the rule of law.

Under such circumstances, OMCT would like to draw the attention of this committee to the fact that the transition to harsher punishments can very easily take place, with a further detrimental impact on the enjoyment of all human rights in the occupied territories, including economic, social and cultural rights.

The emerging pattern of a return to the use of torture during interrogation, as was the case prior to the 1999 Israeli High Court decision outlawing such methods, highlights the daily deteriorating situation in Israel and the occupied territories.

In this regard, OMCT would like to draw the attention of this Committee to the worrying situation, since the beginning of this year, with regard to the use of torture during interrogation:

- It is reported by the Public Committee Against Torture in Israel (PCATI), a member of OMCT network, that GSS interrogators have allegedly tortured Mr Nasser Iyad during his detention in the interrogation units of the Ashkelon and the Petach Tikva detention centers. Mr Iyad, a 36 year old resident of Gaza, suspected of security offenses, was arrested in the vicinity of Nesarim on January 29th 2001. According to sworn affidavits received through Mr. Nasser Iyad's lawyer, illegal methods of interrogation had been employed against Iyad including: "Gambaz" sitting on a chair facing its back with his head hanging down to the floor for an extended period of time having been held down by one of the interrogators; choking; burns caused by a projector used for sleep prevention and to cause pain to the detainee's eyes; threats that the detainees' father would be killed and notification that he was killed; intentional deprivation of food and drink; deprivation of sleep for 7 consecutive days; stamping on the detainee's foot manacles; slapping; intentional tightening of hand and foot manacles; handcuffing to a chair and beatings.¹⁰⁷
- According to information received from LAW, a member of OMCT network, Ayman Al Ajluni, 28, and Yunis Al Atrash, 41, were subjected to shabih (bound and blindfolded), sleep deprivation, being drenched in cold water, death threats and abusive language by Israeli Shabak (the Israeli General Security Apparatus) interrogators.¹⁰⁸
- According to information provided by Defence for Children International/Palestine Section, over 300 Palestinian children under the age of 18 are being detained in potentially life-threatening conditions in Israeli prisons. The children are being detained in the Meggido, Telmond and Ramle (Neve Tertze) prisons, with the former under administrative control of the Israeli military, and the latter two under the control of the Israeli Prison Authority. The children have allegedly been subjected to torture

¹⁰⁷ OMCT Urgent Appeal, Case ISR 190301

¹⁰⁸ OMCT Urgent Appeal, Case ISR 230101

during arrest, interrogation and imprisonment by the Israeli authorities. It is reported that around 100 male children, aged 16 or more, are being detained as adults in Meggido prison. An estimated 80 male children, some of whom are as young as 14, are being held in Telmond prison. A further 20 children are being held in Israeli Detention Centres in the West Bank and Jerusalem. Two female Palestinian children are currently being held in Ramle prison. In Telmond prison, Palestinian children are allegedly being detained with adult Israeli criminal prisoners. There has been one documented case of three Israeli prisoners attempting to rape a Palestinian child detainee. There have been several recorded incidents of physical abuse by criminal detainees, including: five cases of children who have received injuries inflicted by razors; several cases of scalding with boiling water; and numerous beatings. Two recorded cases of the theft of personal belongings have also been recorded. In all of these cases, the Prison Administration has failed to take appropriate action and the Israeli authorities have so far ignored requests made by human rights organisations on behalf of the Palestinian children. The same source reported allegations of widespread use of torture against children during arrest, interrogation and imprisonment. The children are reportedly routinely beaten and forced to endure various forms of position abuse, such as being shackled to a chair or forced to squat for long periods of time, and this threatens both their physical and psychological integrity.¹⁰⁹

OMCT believes that the return to the use of torture during interrogations indicates the dangerous path towards greater violations of all human rights, including economic, social and cultural rights, as a form of collective punishment against the Palestinian population, justified on security grounds. As the protection against torture is a non-derogable right, OMCT thinks that a return to use of torture during interrogations augurs badly with regard to protection against violations of economic, social and cultural rights, whose enjoyment is submitted to several possible restrictions.

11. Compensation to victims of torture and enjoyment of economic, social and cultural rights

In September 1999, the Israeli High Court outlawed the use of torture and other forms of cruel, inhuman or degrading treatment during interrogation of Palestinian detainees by the Israeli General Security Services.¹¹⁰ Although OMCT recognises the importance of the decision as a major step against torture in Israel, the High Court did not address, among other loopholes of the ruling, either the compensation of torture victims, or the legal prosecution of torturers.

For example, according to information provided by LAW, on 15 January 2001, the Israeli Attorney General announced that an investigation into allegations of torture brought forward by Rami Iz'oul, an 18-year-old Palestinian detainee, would not be carried out, under the pretext that it was not a matter of "public interest". The Israeli Attorney's letter came in response to a complaint filed by LAW, through attorney Labib Habib, demanding an investigation into the methods used during Rami Iz'oul's interrogation. Rami Iz'oul was arrested by Israeli soldiers from his home in the West Bank village of Husan near Bethlehem on October 30th 2000, and has been in detention ever since. Rami Iz'oul claims that he was

¹⁰⁹ OMCT Urgent Appeal, Case ISR 050401.CC

¹¹⁰ See OMCT Press Release, September 14th 1999

beaten and had ice cold water poured over his head during interrogation. Due to the torture, Rami Iz'oul was hospitalised for one night in Jerusalem's Hadassa hospital. He also reported that after being discharged from the hospital he was beaten again and threatened into signing a false confession.

In its study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Theo van Boven recommended that international treaty bodies "should, in carrying out their work, pay systematic and due attention to the question of reparation for victims of violations of human rights."¹¹¹ The report adds that the treaty bodies "should raise this question in reviewing the performance of the States parties and include the issue of reparation in their general comments and recommendations and where appropriate in their judgements and views relating to particular cases."¹¹²

Under international law, the violation of any human right gives rise to a right of reparation for the victim or his/her family.¹¹³ Reparation for human rights violations has the purpose of relieving the victims' suffering and affording them justice by removing or redressing to the extent possible, the consequences of the wrongful acts by preventing and deterring violations.¹¹⁴ Reparation for human rights violations takes four different forms: restitution, compensation, rehabilitation as well as satisfaction and guarantees of non-repetition.¹¹⁵

Compensation shall be provided for any "economically assessable damage resulting from human rights violations such as physical and mental harm, pain, suffering and emotional distress, and reasonable medical and other expenses of rehabilitation".¹¹⁶ Rehabilitation shall be provided to include "legal, medical, psychological and other care and services, as well as measures to restore the dignity and reputation of victims."¹¹⁷

OMCT considers that one of the most detrimental effects of torture and other cruel, inhuman or degrading treatment is the social exclusion which often follows. Torture victims, in most instances, have health problems, and have lost their jobs and their ability to provide for their families. In the absence of compensation and rehabilitation, these aspects often have a disproportionate effect on torture victims and their families. This also affects their ability to participate in social life and also prevents their social re-integration.

OMCT strongly believes that the right to reparation for human rights violations, by the socio-economic dimension it involves, is closely related to the enjoyment of economic, social and cultural rights, including the right to work, the right to health and the right to an adequate standard of living. Consequently, the fulfilment or the non-fulfilment of the right to reparation (in its compensation and rehabilitation form) will directly impact on the enjoyment of economic, social and cultural rights of the victims and their families.

According to the above mentioned elements of the right to reparation, OMCT believes that Israel's failure to provide compensation and rehabilitation to the past and present victims of

¹¹¹ THEO VAN BOVEN, *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, E/CN.4/Sub.2/1993/8, para 136/7

¹¹² *Ibid.*

¹¹³ *Ibid.*, para 137/1, 137/6

¹¹⁴ *Ibid.*, para 137/3

¹¹⁵ *Ibid.*, para 137/8, 137/9, 137/10, 137/11

¹¹⁶ *Ibid.*, para 137/9

¹¹⁷ *Ibid.*, para 137/10

torture and other forms of cruel, inhuman or degrading treatment falls under articles 6, 11 and 12 of the ICESCR.

12. Conclusions and Recommendations

OMCT notes with that Israel contends that its obligations under the ICESCR and other international human rights instruments are limited to areas within its territory and jurisdiction, and therefore exclude the occupied territories. The United Nations Human Rights Committee (HRC), the CESCR, and the United Nations Committee on the Elimination of Racial Discrimination (CERD) made clear that both United Nations Covenants and the United Nations Convention against Racial Discrimination apply to the occupied territories.¹¹⁸ In this regard OMCT urges the Committee to strongly reiterate the applicability of the ICESCR in the occupied territories, which include the reporting obligation.

The non-incorporation of the ICESCR into Israeli law has strong consequences in terms of the justiciability of economic, social and cultural rights, as well as in terms of impunity together with violations of these rights. OMCT would therefore urge Israel to incorporate the ICESCR into Israeli law.

OMCT wishes to express its concern about the deteriorating human rights situation in Israel and the occupied territories, and the disastrous socio-economic consequences for the Palestinian population.

OMCT deplores the restrictions of movement imposed on the Palestinian population living in the occupied territories by Israel. The comprehensive and internal closure of the occupied territories, as well as the curfews, beyond placing the entire Palestinian population under siege in geographical prisons, have resulted and continue to result in prima facie violations of economic, social and cultural rights, such as the right to work, the right to health, the right to education and the right to an adequate standard of living. While Israel is directly responsible, under the ICESCR, for violations occurring in Areas B and C, OMCT believes that Israel's responsibility under the ICESCR is also triggered by violations of economic, social and cultural rights taking place in areas A.

OMCT urges this Committee to strongly condemn unnecessary, illegal and discriminatory restrictions on the freedom of movement, as these are directly responsible for the widespread and gross violations of economic, social and cultural rights of the Palestinian population in the occupied territories.

OMCT is also very worried by the short and long-term impact of the restrictions on the socio-economic situation of the Palestinian population in the occupied territories. OMCT would urge Israel to consider ways and means to offer proper compensation to the victims of violations of economic, social and cultural rights since October 2001.

The nature of the restrictions, their timing, their destructive consequences, as well as their discriminatory nature remain of utmost concern to OMCT. In this regard, OMCT would urge

¹¹⁸ *Concluding Observations of the Human Rights Committee: Israel*, 18/08/98, CCPR/C/79/Add. 93, para 10; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel*, 04/12/98, E/C.12/1/Add.27, para 8; *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel*, 30/03/98, CERD/C/304/Add. 45, para 12

Israel to put an immediate end to such policies of collective punishment and urgently authorise the passage of humanitarian assistance to the occupied.

The closure's enforcement, and particularly reports of torture and other forms of cruel, inhuman or degrading treatment or punishment faced by Palestinian when crossing Israeli checkpoints remain of utmost concern to OMCT. In this regard, OMCT would urge Israel to put an end to such practices, to guarantee an immediate investigation into the circumstances of these events, identify those responsible, bring them before a civil competent and impartial tribunal and apply the penal, civil and/or administrative sanctions provided by law.

OMCT is very concerned about the impact of Israel's policy of collective punishment on the whole human rights system, and particularly the induced erosion of basic human rights principles such as the right to due process of law. In this regard, OMCT would urge Israel to restore the processes guaranteeing the principles of individual responsibility and punishment following due process of law, in order to avoid further deterioration of the situation, as highlighted by a return to use of torture during interrogations.

OMCT remains concerned about Israel's failure to offer proper compensation to victims of torture and the related impact of these victim's enjoyment of economic, social and cultural rights. In September 1999, the Israeli High Court outlawed the use of torture and other forms of cruel, inhuman or degrading treatment during interrogation of Palestinian detainees by the Israeli General Security Services.¹¹⁹ Although OMCT recognises the importance of the decision as a major step against torture in Israel, the High Court did not address, among other loopholes of the ruling, either the compensation of torture victims, or the legal prosecution of torturers. OMCT would therefore urge Israel to consider proper and immediate ways to compensate victims of torture and other forms of cruel, inhuman or degrading treatment or punishment.

Finally, OMCT also urge this Committee to take a firm stand on the illegality of the settlements under international law, as it constitutes a direct cause for violations of the economic, social and cultural rights of the Palestinian population, be it in terms of resources' allocation or the rationale for the implementation of restrictions on movement. In this regard, OMCT would ask Israel to put an end to any further construction of settlements in the occupied territories and to dismantle the existing ones.

¹¹⁹ See OMCT Press Release, September 14th 1999