**General Allegation**

**135th Session (27 to 31 January 2025)**

**Israel**

The Working Group on Enforced or Involuntary Disappearances (hereafter, 'the Working Group') received information from the sources concerning obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, 'the Declaration') by Israel.

1. This general allegation focuses on the obstacles encountered in the application of the Declaration, in particular with respect to alleged enforced disappearances committed by Israeli armed forces in the Occupied Palestinian Territory, namely, Gaza and the West Bank, including East Jerusalem from 7 October 2023 until date.

2. According to the information received by the Working Group, following the attacks perpetrated by members of Hamas Izz ad-Din al-Qassam Brigades and other Palestinian armed groups on 7 October 2023, Israeli armed forces have been detaining Palestinians on a massive scale in Gaza and transferring them to military camps (including Ofer, Sde Teiman, Naftali and Anatot) and prisons (including Negev, Nafha, Ofer, Ashkelon, Ramlah, Mascobeya and Jalama) located in Israel and the Occupied West Bank, where the fate and whereabouts of many among them become unknown.

3. Reportedly, the situation is especially severe in northern Gaza, where, since October 2024, the implementation by Israel of the so-called Generals' Plan (also known as 'Eiland Plan', whose alleged contents and aims were published in September 2024 by the Forum of Commanders and Soldiers in the Reserves, i.e. a group of senior Israeli reservists) led to over 4,000 Palestinians, including women and children, killed or forcibly disappeared and 1,750 detained.

4. In this context, among others, the following patterns of enforced disappearance were registered: persons who were last seen near the security fences between Israel and the Gaza Strip on 7 October 2023; persons who were last seen while trying to cross from the north of Gaza to the south or vice-versa at the Netzarim checkpoint controlled by the Israeli Defence Forces (hereafter, 'IDF'); persons who were arrested by officers of the IDF during ground operations in refugee camps (e.g. al-Maghazi, al-Nuseirat, al-Bureji and Jabalia); and persons who were arrested from various residential neighbourhoods during the ground invasion by the IDF. The fate and whereabouts of many of those last seen in these circumstances remain unknown.

5. The Working Group was also informed that, oftentimes, the operations of the IDF target patients and medical staff from hospitals. An instance is that of the operation conducted on 28 December 2024 by members of the IDF at the Kamal Adwan Hospital in northern Gaza, where more than 240 patients and medical staff were arrested. According to the information received, the fate and whereabouts of many of those deprived of their liberty in these circumstances remain unknown.

*Legislation enabling enforced disappearance*

6. According to the information submitted to the Working Group, arrests and detentions by the IDF in Gaza are carried out pursuant to the Incarceration of Unlawful Combatants Law No. 5762-2002, enacted in 2002 and subsequently amended on multiple occasions. The law introduces the category of "unlawful combatants", who can be detained indefinitely without trial.

7. Art. 3(a) of the law defines an "unlawful combatant" as any person who takes part in hostile activity against the State of Israel, directly or indirectly, or belongs to a force engaged in hostile activity against the State of Israel, but does not meet the conditions granting the status of prisoner of war under international law, as detailed in article 4 of the Third Geneva Convention of 12 August 1949 regarding the treatment of prisoners of war.

8. Pursuant to this definition, it is not essential for someone to take part in hostilities against the State of Israel. The mere fact of being a member of a "force carrying out hostile acts" would be considered as sufficient to fall under this category. In a judgment delivered in 2008, the Supreme Court of Israel held that this would amount to a "sub-category of civilians under international law".

9. On 18 December 2023, Amendment No. 4 to the Incarceration of Unlawful Combatants Law and Temporary Provision – Iron Swords, was adopted. It was originally conceived as a temporary provision for a period of four months (i.e. until 17 May 2024), but it was extended (the latest extension – for other four months – having been approved on 29 July 2024). The Working Group recalls that this amendment raised concerns regarding its alignment with Israel's human rights obligations addressed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in OL ISR 12/2024. The Working Group regrets the lack of response from your Excellency's Government.

10. Pursuant to the further amendments in December 2023, the period of time within which a military commander is required to issue a detention order for a person designated as "unlawful combatant" is 45 days (prior to the amendment, it was 96 hours). Moreover, 75 days (instead of 14 days) may now pass before judicial review of such a detention order, and the judicial review will be undertaken by video conference, even when the person deprived of liberty is not represented by an attorney. Furthermore, the period of time during which an "unlawful combatant" may be denied a meeting with an attorney will be 75 days, with the approval of the official established in the law, and a cumulative period of 180 days with the approval of the court (instead of 10 and 21 days, respectively). These prolonged terms are seemingly at odds with international human rights law, including due process guarantees, and international humanitarian law and, in particular, if the fate and whereabouts of those deprived of liberty under these circumstances are not disclosed, this amounts to an enforced disappearance.

11. In this regard, the Working Group has received information according to which the implementation of this legislation allows for the indefinite incommunicado detention of persons and, in practice, it enables the enforced disappearance of the individuals concerned. According to the sources, those detained pursuant to the Incarceration of Unlawful Combatants Law, including women and children, are held in inhumane conditions, frequently

subjected to torture and other forms of ill-treatment – on occasions resulting in the death of the detainees – and without any contact with the outside world, not being allowed to communicate or being visited by their families or any other person of choice, nor by the International Committee of the Red Cross (hereafter, 'ICRC').

*Obstacles, intimidation and reprisals faced by lawyers of families and civil society organisations*

12. Reportedly, attempts made by families of those detained pursuant to the Incarceration of Unlawful Combatants Law to inquire before the Israeli Prison Service (hereafter, 'IPS') to determine the fate and whereabouts of their loved ones encounter major obstacles. In particular, lawyers representing families of persons detained under these circumstances have allegedly been repeatedly summoned and interrogated by Israeli security apparatus, including the Israeli General Security Service, and warned not to continue sending inquiries to the IPS. A complaint against one of the lawyers representing the families of Palestinian detained in Gaza under these circumstances was lodged by the IPS with the Israeli Bar Association and, in May 2024, the Central Court in Israel issued an urgent decision pursuant to a request from the IPS preventing the lawyer concerned from visiting detainees. As a result of these decisions and out of fear for his and his family's life, the lawyer quit his job. According to the information received by the Working Group, the lawyer who took over the docket of cases of these families was equally banned from visiting and inquiring about Palestinian detainees for a period of six months. Also this lawyer reportedly quitted the job out of fear.

13. The Working Group has been informed that, under the present circumstances, the work of civil society associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons and to assist victims of enforced disappearance in Gaza, would be jeopardised and rendered almost impossible, including because of the security risks for the staff and their families, who are frequently subjected to threats and intimidation.

14. The Working Group received information according to which the IPS responds only to a limited number of the formal requests for information on Palestinians from Gaza detained pursuant to the Incarceration of Unlawful Combatants Law whose fate and whereabouts are currently unknown. The criteria for deciding which requests receive a response and which are ignored are unknown.

*Systematic obstacles to visits to detainees*

15. Furthermore, the sources referred to the Working Group about the multiple obstacles encountered in the submission of requests, coordination, and conduction of visits by lawyers to detainees, which must be submitted either to the Military Command Centre for Prisons (hereafter, 'MCCP') for those held in Israeli military camps or, for those held in prisons run by the IPS, directly to the detention facility concerned.

16. First, many requests for visits are rejected because the detainees concerned are formally prohibited from receiving visits pursuant to the applicable legislation. There are also instances where authorities systematically fail to respond to visit requests, despite several follow-ups from the lawyers. Sources indicated that this is especially evident with Ramlah and Ashkelon Prisons.

17. Second, when a visit of the lawyer is eventually allowed – frequently after lulls and considerable delays in the provision of an answer and after repeated follow-ups – the prison administration reportedly restricts the number of detainees that can be met during a single visit or the number of visits that one lawyer can conduct per month. The practice is reportedly most prevalent at the Nafha Prison, where the maximum number of detainees allowed is limited to three per visit, and at the Negev Prison, where only five detainees were allegedly allowed to be visited.

18. Sources informed the Working Group that the last minute cancellation of visits previously granted is also frequent and that, in these cases, either no justification is provided, or generic "emergency situations" are invoked. The Working Group was also alerted about instances where detainees are suddenly transferred on the same day as the previously agreed visit, after which, their fate and whereabouts usually become again unknown. It must be recalled that an enforced disappearance may be initiated also by an initially legal arrest or detention and it may occur in the context of the transfer of a person deprived of liberty. That is to say, the protection of a person from enforced disappearance must be effective upon the act of deprivation of liberty and throughout his or her detention.

19. Third, pursuant to the information brought to the consideration of the Working Group, when visits eventually take place, further challenges emerge, and lawyers have to undergo several stringent security checks and are not allowed to carry any documents or personal items. Meetings of lawyers with detainees usually last between 30 and 45 minutes, and take place in temporary barracks, frequently lacking adequate air conditioning. The lawyer is usually separated from the detainee by a thick wire fence with narrow holes, and with no privacy, as soldiers stand behind the detainee, listening to the whole conversation, which is also videotaped. Instances where soldiers would intervene in the discussion between the lawyer and the detainee, especially at the Neftali Camp, have been reported. The Working Group was also informed that detainees are frequently physically abused and subjected to ill-treatment, including humiliating treatment, by soldiers and prison guards while they are being escorted to meet lawyers.

*Lack of effective, independent, impartial and thorough investigations and failure to identify and return the mortal remains of persons deprived of their liberty who die in custody*

20. According to the reports submitted to the Working Group, despite the numerous cases of enforced disappearances of Palestinians reported, Israeli authorities systematically fail to open *ex officio* investigations directed at both disclosing the fate and whereabouts of the disappeared persons and identifying perpetrators, prosecuting and, where appropriate, sanctioning them. Hence, relatives of disappeared persons are reportedly left without any effective remedy.

21. As mentioned above, persons detained pursuant to the Incarceration of Unlawful Combatants Law are frequently subjected to torture and other forms of ill-treatment and, in many cases, they died in custody. Sources indicated to the Working Group that allegations of torture and deaths in custody are equally not subjected to any thorough, impartial, independent and effective investigation.

22. Moreover, the Working Group has been informed that, when detainees allegedly die in custody, relatives are not informed of the circumstances and cause of death and the destination of the remains. Indeed, there allegedly are no instances where the mortal remains of those who allegedly died in custody were returned to the families and, reportedly Israeli authorities do not undertake any adequate measure to determine the cause of death, respect and identify the remains, thus also failing to adopt actions that would allow to establish the truth on forcibly disappeared persons.

23. The Working Group welcomes the entry into force of a ceasefire agreement on 19 January 2025, which it hopes will allow for a change in the policies and practices illustrated in the previous paragraphs.

24. With regard to the allegations contained in this document, the Working Group would like to bring to the Government's attention the following provisions of the Declaration:

*Article 2*

*1. No State shall practice, permit or tolerate enforced disappearances.*

*2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.*

*Article 7*

*No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.*

*Article 9*

*1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.*

*2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.*

*3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.*

*Article 10*

*1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.*

*2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.*

*3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.*

*Article 11*

*All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.*

*Article 12*

*1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.*

*2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.*

*Article 13*

*1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.*

*2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.*

*3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.*

*4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.*

*5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.*

*6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.*

*Article 20*

*1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin. […]*

*Article 21*

*The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions.*

25. The Working Group wishes to recall that the absolute prohibition of enforced disappearances and the corresponding obligation to investigate them and hold perpetrators accountable have attained the status of *jus cogens*.

26. Moreover, enforced disappearance is prohibited also pursuant to customary international humanitarian law (Rule 98). Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate (Rule 117). Furthermore, parties of a conflict also have obligations regarding the dead, including taking all possible measures to search for, collect and evacuate them, returning remains, respecting and maintaining graves, as well as record all available information before disposal and marking the location of graves (Rules 112-116). Rules 118 to 128 of customary international humanitarian law enshrine the guarantees to be ensured to persons deprived of their liberty, including the ICRC access (Rule 124) and the visits to persons deprived of their liberty (Rule 126).

27. The Working Group notes that the category of "unlawful combatants" does not exist in international humanitarian law, neither does any "sub-category" of civilians. Accordingly, the traditional categories of combatants, civilians and prisoners of war (hereafter, 'POWs') and the corresponding guarantees shall be applied.

28. In this regard, the third Geneva Convention provides standards of treatment for POWs and the fourth Geneva Convention affords protection to civilians, including in occupied territory. The first Additional Protocol to the Geneva Conventions contains additional protection measures, including dealing particularly with missing and dead persons (Articles 32-34). All those provisions provide valuable protection for detained persons, ensuring that their detention is recorded and the detained persons remain in contact with their families, thus preventing enforced disappearances.

29. Furthermore, the Working Group notes that, pursuant to Rules 25 and 28 of customary international humanitarian law, medical personnel and medical units exclusively assigned to medical duties must be respected and protected in all circumstances. According to Rule 35, directing an attack against a zone established to shelter the wounded and the sick from the effects of hostilities is prohibited. In addition, the Working Group recalls that, as emphasised in its study on enforced disappearance and economic, social and cultural rights, victims of enforced disappearances often include persons who were active in promoting the enjoyment of rights, and, in these cases, the disappearance of one person, may have a negative effect on the larger community.

30. Rules 134 and 135 of customary international humanitarian law afford special protection respectively to women and children. In this regard, the Working Group recalls its general comments on women affected by enforced disappearances and children and enforced disappearances.

31. Furthermore, the Working Group wishes to refer to its general comment on Article 10 of the Declaration, spelling out the guarantees due to persons deprived of their liberty, especially in pre-trial detention, as well as its joint statement on so-called "short-term enforced disappearances", which clarifies that, in order to constitute an enforced disappearance, the deprivation of liberty of a person must be followed by a refusal to acknowledge such deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law, regardless of the duration of the said deprivation of liberty or concealment.

32. The Working Group wishes to also recall the obligations of the State pursuant to the 2019 Guiding Principles for the Search for Disappeared Persons; the Working Group's General comment on the Right to the Truth in Relation to Enforced Disappearances (A/HRC/16/48, para. 39), which elaborates on the right to the truth as both a collective and an individual right; its report on standards and public policies for an effective investigation of enforced disappearances; as well as the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (hereafter, 'Minnesota Protocol'); and the Revised version of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter, 'Istanbul Protocol').

33. The Working Group would be grateful for your Excellency's Government cooperation and observations on the following questions:

    a) Please provide any additional information and any comment you may have on the above-mentioned allegations.

    b) Please provide information on how the Incarceration of Unlawful Combatants Law 2002 – as amended in December 2023 –complies with your Excellency's Government's obligations pursuant to international human rights and humanitarian law. In particular, please provide any information on how the category of "unlawful combatants" would align with your Excellency's Government's obligations under international humanitarian law.

    c) Please provide information on the measures taken to guarantee to any person with a legitimate interest, such as the relatives of the person deprived of liberty, their representatives or their counsel, access to information on whether a person is held in detention, where and on the state of health of such a person.

    d) Please provide information on the measures adopted by your Excellency's Government to ensure that medical personnel and medical units exclusively assigned to medical duties are respected and protected in all circumstances, especially by preventing their enforced disappearance. Moreover, please provide information on the

special measures adopted to prevent the enforced disappearance of women and children.

e) Please provide information on the measures taken by your Excellency's Government to ensure that any person deprived of liberty is authorized to communicate with, and be visited by, his or her family, counsel or any other person of his or her choice. In particular, kindly illustrate how the restrictions, de jure and de facto, posed on the visits to persons deprived of their liberty pursuant to the Incarceration of Unlawful Combatants Law would align to your Excellency's Government obligations pursuant to international humanitarian and human rights law.

f) Please provide information on the measures taken by your Excellency's Government to ensure that the ICRC has access and can visit persons deprived of their liberty in military camps and prisons in Israel and in the Occupied West Bank.

g) Please provide detailed information on the measures undertaken to ensure that all those involved in the investigation of alleged enforced disappearances and in the search for the disappeared persons, including the complainant, counsel, witnesses and relatives of the disappeared person are protected against ill-treatment, intimidation or reprisal and, any such instance is appropriately investigated and punished.

h) Please inform on the measures taken by your Excellency's Government to guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

i) Please provide detailed information on how your Excellency's Government ensures that any person having knowledge or legitimate interest, who alleges that a person has been subjected to enforce disappearance, is able to lodge a complaint to a competent and independent State authority. Furthermore, please provide information on how your Government ensures that enforced disappearances are promptly, thoroughly, independently and impartially investigated by the authorities, even if there has been no formal complaint.

j) Please provide detailed information on the measures taken by your Excellency's Government to investigate allegations of torture and deaths in custody of persons deprived of their liberty in military camps and prisons in Israel and in the Occupied West Bank, pursuant to international standards, including the Minnesota and Istanbul Protocols.

k) Please provide information on the measures taken to determine the cause of death of persons deprived of their liberty deceased in custody, respect and return their remains to their families.

34. The Working Group requests your Excellency's Government to provide a response to the above questions within 60 days. The text of the general allegation will be published along with the Working Group's post-sessional report and on its website, where also any response received by your Excellency's Government will be made public.