



United Against Torture (UAT) Coalition – Alternative Report for Consideration Regarding Israel’s Fourth Periodic Report to the UN Committee Against Torture (CAT)

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The United Against Torture Coalition (the UAT Coalition) members participating in this report consist of 14 Palestinian and Israeli human rights NGOs¹ dedicated to the progressive and substantial eradication of torture and ill-treatment in Israel and the Occupied Palestinian Territories (OPT). The UAT Coalition aims to achieve this goal through coordinated documentation, reporting and exposure of incidence of torture and other cruel, inhuman or degrading treatment or punishment in Israel and the OPT with the aim of holding duty bearers to account.

¹ Adalah – The Legal Center for Arab Minority Rights in Israel; Al-Haq – Law in the Service of Man; Al-Mezan Center for Human Rights; Al-Quds University Human Rights Clinic; An Najah University Centre for Democracy and Human Rights; Defence for Children International – Palestine Section (DCI/PS); Gaza Community Mental Health Program (GCMHP); Hurriyat – Centre for Defence of Liberties and Civil Rights; Italian Consortium of Solidarity (ICS); Nadi Al-Asir (Palestinian Prisoners Club); Nafha Society for Defence of Prisoners and Human Rights; Mandela Institute for Human Rights and Political Prisoners; Public Committee Against Torture in Israel (PCATI); and Treatment and Rehabilitation Centre for Victims of Torture (TRC). Also with the contribution of Addameer Prisoners Support and Human Rights Association; and Physicians for Human Rights - Israel.

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1. Introduction

- 1.1 The UAT Coalition welcomes this opportunity to submit information to the UN Committee Against Torture (the Committee) in advance of its review of Israel's fourth Periodic Report (CAT/C/ISR/4) (Israel's report) in May 2009.
- 1.2 This report represents a summary of issues the UAT Coalition wishes to bring to the attention of the Committee concerning Israel's compliance with the *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention) as well as suggested questions and recommendations for the State Party.
- 1.3 In light of the mandate of the organisations comprising the UAT Coalition, this report is confined to issues relating to the treatment by Israeli authorities of Palestinians from the West Bank including East Jerusalem and the Gaza Strip (the Occupied Palestinian Territories (OPT)) and Palestinian residents/citizens of Israel.
- 1.4 This report does not reflect the full range of our concerns but seeks to highlight some of the most important issues on which our coalition and its individual members work. The vast majority of the information it contains comes directly from the work we are engaged in, from client affidavits, information introduced in litigation and years of collective experience working in the field.
- 1.5 As indicated below, the UAT Coalition is deeply concerned that torture and other cruel, inhuman or degrading treatment or punishment (torture and ill-treatment) are still systematically used against Palestinians starting from the point of arrest, through interrogation and detention as well as in non-traditional circumstances of detention. Torture and ill-treatment are systematically used to obtain information and confessions, as well as to intimidate, humiliate and terrorise.
- 1.6 This report is intended to assist the Committee in developing its List of Issues, and in the review of Israel's report generally.

2. Overview

- 2.1 Before embarking upon an article by article analysis of Israel's compliance with the Convention in territories under its jurisdiction, the UAT Coalition considers it useful to give an overview of the widespread and systematic use of torture and ill-treatment that accompanies the mass arrest, interrogation, detention and trial by military court of Palestinians from the OPT every year by Israel, the Occupying Power. The UAT

Coalition also wishes to bring to the attention of the Committee the alarming situation that has developed in Gaza as a result of the Israeli imposed siege and the disturbing number of attacks on human rights defenders and their organisations in the OPT. However, by focusing on these issues in the overview, the UAT Coalition does not wish to suggest that these are the only areas of concern; additional concerns will be dealt with in the section analysing each individual article of the Convention.

Mass detention

- 2.2 Since 1967, approximately 700,000 Palestinian men, women and children have been detained under military orders issued by Israeli commanders in the OPT.² According to Israeli Prison Service (IPS) figures, there are currently between 8,472 – 8,992³ Palestinians in Israeli prisons, of which 62 - 70 are women⁴ and 324 children.⁵

Arrest and transfer

- 2.3 Palestinians are routinely arrested at checkpoints, off the street and most commonly, from their homes in the early hours of the morning. In the case of arrest from the family home, units from the Israeli army will typically surround the house between midnight and 4 am and force family members onto the street in their nightclothes, regardless of weather conditions. The arrest process is often accompanied by yelling, violence and property damage, ending with the detainee being blindfolded with his or her hands tied tightly behind the back with plastic ties that have a tendency to cut the flesh.⁶ Mass arrests from homes in entire neighbourhoods continue to take place in the OPT during military incursions.

² UN Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, John Dugard, Human Rights Situation in Palestine and Other Occupied Arab Territories, 21 January 2008, A/HRC/7/17, para. 45.

³ Both figures are provided by the IPS – the lower figure only includes detainees held in IPS facilities from the West Bank (excluding East Jerusalem) and Gaza. The higher figure also includes Palestinian detainees from East Jerusalem (300), Palestinian residents of Israel (140), Palestinians detained in Israeli army facilities (changes daily) and the Golan Heights (15).

⁴ Both figures are provided by the IPS – the lower figure only includes detainees held in IPS facilities from the West Bank (excluding East Jerusalem) and Gaza. The higher figure also includes Palestinian detainees from East Jerusalem, Palestinian residents of Israel, Palestinians detained in Israeli army facilities and the Golan Heights.

⁵ Defence for Children International-Palestine Section (DCI/PS) – The number of children in Israeli detention includes 313 in IPS detention and 11 in Israeli army detention from the West Bank, Gaza and East Jerusalem.

⁶ Public Committee Against Torture in Israel (PCATI) – No Defense: Soldier Violence against Palestinian Detainees – (June 2008), at p. 3 – (<http://www.stoptorture.org.il/en/node/1136>) - “In 30 of the 90 cases of ill treatment we examined, the detainees testified that they were subjected to painful shackling. The soldiers often leave the detainee shackled for a protracted period – frequently for many hours, which is painful and liable to cause permanent injury.”

- 2.4 Once bound and blindfolded, the detainee is usually placed on the floor of a military jeep,⁷ sometimes face down, for transfer to an interrogation and detention centre.⁸ Neither the detainee nor his or her family is told why they are being detained or where they are being taken. The UAT Coalition has received numerous reports of abuse of detainees during the transfer process by Israeli soldiers, consisting of beatings, kicking and threats. These journeys can take anywhere from 20 minutes up to many hours.

[Evidence: see Annexure A, pages 7–11]

Interrogation, confession and detention

- 2.5 On arrival at an interrogation and detention centre the detainee is either placed in a cell or taken straight for interrogation. The detainee is almost never told of his or her rights⁹ and is invariably denied access to a lawyer until the end of the interrogation process, and a confession has been obtained.¹⁰
- 2.6 The UAT Coalition receives numerous reports of the continued use of abusive techniques being employed against Palestinians during interrogation. These techniques include:
- excessive use of blindfolds and handcuffs;¹¹

⁷ PCATI - No Defense (June 2008), at p. 6 – “The soldiers seem to regard this as a norm and may not even give any thought to the matter. Apart from the inherent humiliation of being placed on the floor, this practice also constitutes fertile ground for further ill treatment. In many cases the soldiers place their feet on the detainee’s body or head. Friction against the bare floor of the vehicle, which is usually hot, leads to injuries and abrasions ... the soldiers travel in a group and a dynamic of humiliation and ill treatment often emerges; the commander usually travels alongside the driver and the soldiers are not subject to even cursory supervision ...”

⁸ Detainees from the West Bank are usually taken to one of seven interrogation and detention centres after arrest: Huwarra (nr. Nablus, West Bank), Etzion (nr. Bethlehem, West Bank), Salem (nr. Jenin, West Bank), Askelon (Israel), Jalama (Israel), Mascobiyya (Jerusalem) and Petah Tikva (Israel). East Jerusalemites are usually taken to Mascobiyya or to one of the West Bank detention centres, depending on where the offence allegedly took place. Detainees from Gaza, are presently being taken to Askelon or Beersheba inside Israel.

⁹ There is evidence to suggest that the ISA distributes a leaflet containing detainee rights and obligations to detainees, but the UAT cannot provide the Committee with precise data as to how common this practice is. However, in practice, Palestinian detainees are rarely afforded the rights as articulated in the leaflet.

¹⁰ B’Tselem – Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees (May 2007), at p. 39 – (http://www.btselem.org/English/Publications/Summaries/200705_Utterly_Forbidden.asp) - “Preventing the meeting is liable to grant the interrogators a substantial advantage over the interrogee, to the point of breaking the latter’s spirit and the delivery of a false confession, or one not made of the interrogee’s free will. This prevention deprives the suspect of the advice of his counsel – the only person with whom he can maintain contact during the course of the interrogation.” - The Vice-President of the Military Appeals Court in Judea and Samaria, Lt.-Col. Netanel Benisho.

¹¹ B’Tselem – Absolute Prohibition, p.35 – “The soldiers bound my hands behind my back with plastic handcuffs, fastening them extremely tightly, causing severe pain and swelling in my hands. The marks on my hands from the handcuffs remained for several months... I was taken to a trailer that seemed to be used as a clinic. They took off the blindfold but left my hands cuffed behind my back. They asked a few questions about my health... Then they blindfolded me again. The handcuffs were very painful, and I noticed that my hands were bleeding a little. I asked

- slapping and kicking;¹²
- sleep deprivation;¹³
- solitary confinement;¹⁴
- denial of food and water for extended periods of time;¹⁵
- denial of access to toilets;¹⁶
- denial of access to showers or change of clothes for days or weeks;¹⁷
- exposure to extreme cold or heat;¹⁸
- position abuse;¹⁹
- yelling and exposure to loud noises;²⁰
- insults and cursing;²¹
- arresting family members or alleging that family members have been arrested;²² and
- sexual abuse.²³

the soldiers to remove the handcuffs, but they did not reply. Then they put me in a vehicle... It drove to Etzion [Detention Centre]. I asked them again to remove the handcuffs, and again they didn't answer me."

¹² B'Tselem – Absolute Prohibition, at p. 33 – *"The soldiers ordered me to climb into the back of the jeep. I put my foot on the step so I could climb in, and suddenly one of the soldiers gave me a hard kick and pushed me inside. Four soldiers came into the jeep. I could see them through the piece of cloth over my eyes. They kicked me, slapped me, and punched me. They also banged my head against one of the iron corners of the jeep. All this time, my hands were bound and I was blindfolded."*

¹³ See affidavits of GA, MJ and SA – List of Evidence, pp. 40-43, 43-45, 45-49.

¹⁴ See affidavits of GA, MJ and SA – List of Evidence, pp. 40-43, 43-45, 45-49.

¹⁵ B'Tselem – Absolute Prohibition, at pp. 37-38.

¹⁶ Ibid.

¹⁷ See affidavits of Hussein R., GA and SA – List of Evidence, pp. 19-21, 40-43, 45-49.

¹⁸ See affidavit of Hussein R. – List of Evidence, pp. 19-21.

¹⁹ PCATI – Ticking Bombs – Testimonies of Torture Victims in Israel, (May 2007), at p. 14 ([http://www.stoptorture.org.il/files/140\[1\].pdf](http://www.stoptorture.org.il/files/140[1].pdf)) – *"[T]he first method was to handcuff me from behind, with my legs tied backwards under the chair. The interrogator would push me back so that I was sitting on the seat while leaning backwards, and at the same time they kept beating me on the stomach. This position was maintained for about fifteen minutes, and then the interrogator would forcefully yank me forward. And then it would begin all over again."*

²⁰ PCATI – Ticking Bombs, at p. 13 – *"When the interrogation was over, at approximately 4 in the morning, they took me down to the cell. And all the time there were noises in the cell – knocking at the door ... and I would even hear my own screams during the interrogation, which they have apparently taped."*

²¹ B'Tselem – Absolute Prohibition, at p. 36 – *"When I arrived at Qedumim [the Ephraim detention center], I wanted to sit on the ground because I was tired, but the soldiers shouted and swore at me and told me it was forbidden to sit down. They also threw grapes at me and mocked me. I remained standing, blindfolded and handcuffed, for about thirty minutes. Then a soldier came carrying a broom, which he ran over my head and back to humiliate me. When I tried to remove the broom from my head, he kicked my leg."*

²² PCATI – Family Matters – Using Family Members to Pressure Detainees Under GSS Interrogation (2008) at p. 18 (<http://www.stoptorture.org.il/files/Family%20Matters%20full%20report%20eng.pdf>) – *"The GSS threatened the detainee, Sa'id Diab, that if he did not cooperate, they would arrest his mother. The threat was carried out: the next day, they brought him to peer through a peephole to see his mother being interrogated aggressively and crying."*
 PCATI – *"In the course of the GSS (General Security Service) interrogation of Mahmoud Sueti, he was told by the interrogators that members of his family had been arrested and are undergoing severe interrogation. Sueti, who was detained by Israel on suspicion of involvement in terrorist activities was very alarmed, began a hunger strike and attempted to harm himself while he was in custody. Following the incident, the Attorney General and the GSS decided to change the procedures and to forbid telling detainees that their family members had been arrested when, in fact, they were not under arrest."*

In addition to the direct methods of abuse listed above, Palestinian detainees are routinely subjected to threats during interrogation.²⁴ These threats include:

- being beaten or having family members beaten;²⁵
- being imprisoned for an indefinite period of time or having family members imprisoned;²⁶
- having work or study permits revoked;
- being sexually abused;²⁷
- being attacked by a dog;
- being subjected to some form of physical abuse;²⁸ and
- having the family home demolished.²⁹

2.7 Of particular concern is the continued practice involving Palestinian detainees being made to sign confessions written in Hebrew, a language few detainees comprehend. Once obtained, it is these confessions that constitute the primary evidence against Palestinian detainees in the Israeli military courts.³⁰

²³ See affidavit of Mohammad I. – List of Evidence, p. 16.

²⁴ B'Tselem – Absolute Prohibition, at p. 54 – “Approximately two-thirds of the sample group (forty-seven) reported that the ISA interrogators threatened them in various ways during the interrogation... One of the commonest threats is the threat that the interrogee will be subjected to severe torture if he fails to cooperate with his interrogators.”

²⁵ PCATI – Family Matters pp. 70-71 - “It is clear that the GSS’s conscious, intentional objective is to use family members to cause the interrogee psychological pain that will break his spirit and lead him to confess to crimes or divulge information. The message of the GSS is clear: do as we command, or your relative will suffer. Such intentional stimulation of psychological suffering for the sake of extracting information or a confession and the use of family members as a tool for causing such suffering are forbidden and illegal. They constitute punishment or ill-treatment of both the interrogee and his relative, which is prohibited by international law whatever the circumstances.”

²⁶ PCATI – Family Matters at p. 1 - “The interrogator told me that my father was in detention (afterwards I discovered that he had lied), and threatened that they would also arrest my grandmother if I didn’t confess.” And at p. 24: “Maimon brought me a cup of tea and said to me: ‘Listen, Sa’id, I want to speak to you like a brother. Everything that we told you we would do to you, up to now we’ve done, and I’m telling you that if you don’t cooperate, we’re going to arrest your mother,’ and that the decision depended on me, that there was an army force waiting for a phone call, and if I cooperated, she wouldn’t be arrested. And they began telling me that it would be a shame to cause my mother to be arrested. I reiterated to them that I had nothing to add. And then Maimon told me that he was going home, and that they should take me to the isolation cell and that the next time I came up for interrogation, my mother would already be in detention.”

²⁷ See affidavit of Ibrahim S. - List of Evidence, pp. 12-16.

²⁸ See List of Evidence.

²⁹ See affidavit of Hussein R. - List of Evidence, pp. 19-21; see also PCATI – Ticking Bombs, at p. 16 – “When the visit to Qalqiliya was over, Yamen heard “Herzl” say: That he was going to take me back to the interrogation and ‘we’re going to destroy your house before your eyes.’ Then I lost all my strength, and when we arrived at the interrogation facility in Petach Tikvah, utterly exhausted, two interrogators grabbed me.”

³⁰ DCI/PS - Palestinian Child Prisoners (2007), at p. 19 – (<http://www.dci-pal.org/english/publ/research/2008/PCPReport.pdf>).

*Israeli military justice system*³¹

- 2.8 Once the interrogation phase is completed, Palestinian detainees from the West Bank are processed for sentencing and imprisonment in one of the two Israeli military courts currently in operation in the OPT.³² Palestinian detainees from Gaza are tried in Israeli domestic courts.³³ Israeli military courts systematically fail to meet the fundamental fair trial guarantees required by Israel's international human rights and humanitarian law obligations.
- 2.9 According to a recent report by the Israeli organisation, Yesh Din, between 1990 and 2006, the period for which figures are available, more than 150,000 Palestinians have appeared before Israeli military courts. This averages out at well over 9,000 per year.³⁴ In 1991 alone, some 45,000 indictments were filed in the military courts.³⁵
- 2.10 In approximately 95% of cases involving minors in the military courts, confessions are relied on to obtain a conviction.³⁶ Although the presumption of innocence is supposed to apply in these courts, just 0.29% of cases in 2006 resulted in a full acquittal, which strongly suggests a presumption of guilt.³⁷
- 2.11 According to Yesh Din, of the 9,123 cases concluded in the military courts in 2006, full evidentiary trials were conducted in only 130, or 1.42%, of cases.³⁸ The reason for this becomes clear on page 140 of the report: *"Attorneys representing suspects and defendants in the Military Courts believe that conducting a full evidentiary trial, including summoning witnesses and presenting testimony, generally results in a far harsher sentence, as a 'punishment' the Court imposes on the defense attorney for not securing a plea bargain."*
- 2.12 The entire system is designed to obtain mass convictions as quickly and efficiently as possible, in aid of the occupation. This issue deserves heightened attention by the

³¹ Note that Israeli military law confers jurisdiction on the Israeli military justice system to try West Bank Palestinians for a broad range of offences, including, traffic violations, hostile terrorist activity, disturbances of the peace, classic criminal offences and illegal presence in Israel.

³² The Military Court of Samaria – which operates in an Israeli military base near the village of Salem in the north of the West Bank, and the Military Court of Judea – which operates in the Israeli military base of Ofer, near Ramallah in the centre of the West Bank.

³³ Palestinian detainees from East Jerusalem are either tried in Israeli domestic courts, or in military courts in the West Bank, depending on where the offence took place.

³⁴ Yesh Din, Volunteers for Human Rights - Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories (Dec 2007), at p. 25 - (<http://www.yesh-din.org/site/index.php?page=militarycourts&lang=en>)

³⁵ Ibid, at p. 40.

³⁶ DCI/PS - Palestinian Child Prisoners (2007), at p. 19.

³⁷ Yesh Din - Backyard Proceedings, (Dec 2007), at p. 70.

³⁸ Yesh Din - Backyard Proceedings, (Dec 2007), at p. 136.

Committee given Yesh Din's disconcerting yet correct assertion that "*the [Israeli] military judicial system in the OPT has acted under a veil of almost complete darkness until now.*"³⁹

[Evidence: see Annexure A, pages 12-30]

Administrative detention

- 2.13 The UAT Coalition notes the comments of the Committee in paragraph 5 of its Conclusions and Recommendations dated 23 November 2001 in which it stated that: "... *the Committee continues to be concerned that administrative detention does not conform to article 16 of the Convention.*" The UAT Coalition regrets to inform the Committee that the practice of administrative detention continues unabated.
- 2.14 Administrative detention is only permitted under international law in strictly limited circumstances given the risks of abuse involved in detaining an individual without charge or trial. Administrative detention should never be used as a substitute for criminal prosecution where there is insufficient evidence to obtain a conviction. Israel has abused this form of internment permitted during times of emergency to justify the detention of thousands of Palestinians over the years, including political leaders⁴⁰ and human rights defenders.⁴¹
- 2.15 Military Order 1226 empowers Israeli military commanders to detain Palestinians, including children, without charge or trial, for up to six months if they have "*reasonable grounds to presume that the security of the area or public security require the detention.*" No definition of "*security of the area or public security*" is given and the initial six-month period can be extended by additional six-month periods indefinitely, amounting to indefinite arbitrary detention.
- 2.16 Administrative detention orders are issued either at the time of arrest or at some later date and are often based on "*secret evidence*" collected by the Israeli Security Agency (ISA). Neither the detainee, nor the detainee's lawyer are given access to the "*secret evidence.*"
- 2.17 The detainee is brought before a military court within eight days of his or her arrest, where a single military judge can uphold, shorten or cancel the administrative detention order. However, information concerning the reasons for the detention often remains classified. The detainee can appeal the decision to a military appeals court, but again, the

³⁹ Yesh Din - Backyard Proceedings, (Dec 2007), at p. 11.

⁴⁰ In 2007, 45 members (34%) of the Palestinian Legislative Council were detained by Israel, including four in administrative detention.

⁴¹ See paragraphs 2.25 – 2.26.8.

reasons for detention are often not disclosed. Thus, in contravention of Israel's obligations under international law, the detainee and his or her lawyer have no effective means of challenging the legality of the detention in the initial hearing, on appeal or at the periodical six month reviews.⁴² By way of contrast, under Israeli law a detainee must be brought before a judge within 48 hours and the order reviewed every three months.⁴³

- 2.18 In practice, Palestinians can be detained for months, if not years, under administrative detention orders, without ever being informed about the reasons or length of their detention, and detainees are routinely informed of the extension of their detention on the very day that the former order expires. In reality, Palestinians have no effective means to challenge administrative detention.⁴⁴
- 2.19 There are currently 691 Palestinians being detained in administrative detention, of which six are women and 13 are children, including two girls.⁴⁵

[Evidence: see Annexure A, pages 30-40]

Gaza siege

- 2.20 Israel's siege on the population of Gaza, imposed in June 2006, has brought about a humanitarian crisis unprecedented in the 41 years of Israeli occupation, with poverty and unemployment reaching disastrous levels, and essential health, sanitation and education services deteriorating in an alarming manner.⁴⁶
- 2.21 Following Hamas' victory in the Palestinian parliamentary elections of April 2006, Israel allowed only basic humanitarian goods and supplies to enter Gaza, despite its total dependence on Israel.⁴⁷ This policy intensified following Hamas' takeover of Gaza in June 2007. Since then, Israel has kept the border crossings between Israel and Gaza closed, with minor exceptions. In September 2007, Israel officially declared Gaza a

⁴² Article 78 of the *Fourth Geneva Convention* (1949) stipulates that the procedure must include a "right of appeal," which to be effective requires the right to be able to challenge the evidence.

⁴³ *Emergency Powers Law (Detention)* (1979).

⁴⁴ B'Tselem - Annual report 2007, at p. 37 – "The harm to the rights to liberty and a fair trial are indicated by the scope of judicial intervention in the decisions of the military commander: in 2006, of 2,934 administrative detention orders (including extension of existing orders), only 156 (some five percent) were found unjustified and nullified by the military court."

⁴⁵ Israeli Prison Service. Addameer estimates the true figure to be higher as the IPS figures do not include administrative detainees temporarily held in IDF facilities.

⁴⁶ See updates and reports by the UN Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territories, available at www.ocha.org.

⁴⁷ For Israel's effective control over the Gaza Strip, see Gisha: *Disengaged Occupiers: The Legal Status of Gaza*, January 2007, available at: <http://www.gisha.org/UserFiles/File/Report%20for%20the%20website.pdf>

“hostile entity” and introduced a policy of collective punishment that included severe cuts to electricity and fuel supplies.

- 2.22 Israel attempts to justify its siege on the Gaza Strip by the unlawful firing of Qassam rockets on Israeli population centres by Palestinian armed groups. Yet these security concerns⁴⁸ cannot justify the punitive measures imposed by the Israeli government on the 1.5 million residents of the Gaza Strip.
- 2.23 The Israeli Supreme Court⁴⁹ has approved the Executive’s punitive measures. In 2007 and 2008, the Court approved the closure of border crossings for humanitarian aid and vital commodities and goods;⁵⁰ denial of passage for seriously ill individuals in need of medical treatment not available in Gaza;⁵¹ and cutbacks in fuel and electricity supplies.⁵² In *Jaber Al-Basyouni Ahmed v. The Prime Minister* (decision of 30 January 2008) the Court declared that Israel is not in “effective control” of Gaza.⁵³ The Court then accepted the state’s assertion that Israel’s duties towards Gaza’s population are limited to the prevention of a humanitarian crisis, a position which has no basis in law, thereby denying the civilian population of the protection to which it is entitled under international humanitarian law.
- 2.24 Israel’s siege over the entire population of Gaza and their subjection to the risk of hunger, thirst, and death for an indefinite period of time until the fall of the political regime constitutes torture or ill-treatment.⁵⁴

Attacks on human rights defenders and their organisations

- 2.25 The work of the Committee, and that of other treaty bodies, is significantly enhanced by the assistance received from human rights defenders and organisations who aim to provide accurate and timely information from the field. In order to achieve our collective goal of eliminating all forms of torture and ill-treatment, wherever these practices may

⁴⁸ The security concerns include the unlawful firing of Qassam rockets on Israeli civilian population centres from the Gaza Strip by Palestinian armed groups.

⁴⁹ The Israeli Supreme Court also sits as the High Court of Justice. This report will refer to the Court throughout as the Israeli Supreme Court.

⁵⁰ H.C. 5523/07, *Adalah et al. v. The Prime Minister et al.* (petition withdrawn October 2007).

⁵¹ H.C. 5429/07, *Physicians for Human Rights, et al. v. The Defense Minister* (decision delivered 28 June 2007).

⁵² H.C. 9132/07, *Jaber Al-Basyouni Ahmed v. The Prime Minister* (decision delivered 30 January 2008).

⁵³ Ibid. The decision goes against the almost unanimous position of the international legal and political communities Indeed, as recently as 22 January 2008, at the 5824th meeting of the UN Security Council, Mr. Lynn Pascoe, UN Under-Secretary-General for Political Affairs, confirmed that the Gaza Strip is still occupied by Israel: “*I must state firmly that the Israeli occupation—including with respect to Gaza—carries clear obligations under international law.*”

⁵⁴ For detailed information on ill-treatment under the law of occupation and the law of armed conflict, see para 517, 521, and 523-524 of the ICTY judgment in *DELALIC et al.*, available at: <http://www.un.org/icty/celebici/trialc2/judgement/cel-tj981116e.pdf>.

be found, human rights defenders must be able to conduct their work without hindrance or attack.

2.26 The following list of attacks on human rights defenders is intended to be illustrative, and is not an exhaustive list of the obstacles placed in the way of these individuals and organisations who work in the OPT to bring credible evidence to the attention of the Committee:

2.26.1 On 29 July 2004, Abdul Latif Gheith,⁵⁵ a founding member of Addameer Prisoners' Support and Human Rights Association (Addameer), was arrested by Israeli authorities. Human Rights Watch (HRW) said at the time: *"No reasons have been given for his detention, and it appears that Mr. Gheith is being harassed and punished solely for engaging in legitimate and peaceful activities promoting and defending human rights."*⁵⁶ Amnesty International (AI) also campaigned on behalf of Mr. Gheith and demanded that the Israeli authorities: *"immediately and unconditionally release" Mr. Gheith, as well all other Palestinian administrative detainees "held on account of their non-violent political opinions or activities" or charge them "with recognizable criminal offenses and promptly [try them] in a proper court of law with internationally accepted standards for fair trial."*⁵⁷ Mr. Gheith was finally released on 27 January 2005 after spending six months in detention. Mr. Gheith was not charged with any offence.

2.26.2 On 23 May 2005, Ziyad Hmeidan, a fieldworker with Al-Haq⁵⁸ was detained by Israeli authorities without charge or trial in administrative detention for 20 months. The evidence against Mr. Hmeidan was *"secret."* Mr. Hmeidan was finally released on 18 March 2007 without knowing the reasons for his arrest.

2.26.3 On 11 January 2006, Hassan Mustafa Hassan Zaga, a field researcher with the Public Committee Against Torture in Israel (PCATI)⁵⁹ and staff member of

⁵⁵ Abdul Latif Gheith was, at the time of his arrest, chairman of the Board of Trustees of Addameer; a member of the Higher Palestinian National Committee on Political Prisoners; and Vice-Chairman of the Board of the Alternative Information Centre, a Palestinian-Israeli NGO that disseminates information, research and political analysis.

⁵⁶ Human Rights Watch News Release of 6 August 2004.

⁵⁷ Amnesty International Administrative Detention Appeal Cases Release of 7 August 2004, available at <http://web.amnesty.org/web/web.nsf/print/isr-action-detention>

⁵⁸ Al-Haq is a leading Palestinian human rights organisation based in Ramallah and a member of the UAT Coalition. Al-Haq is the West Bank affiliate of the International Commission of Jurists, Geneva, an NGO in Special Consultative Status with the United Nations Economic and Social Council, and a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), the Palestinian NGO Network (PNGO) and the UAT Coalition.

⁵⁹ PCATI is a leading Israeli human rights organisation and a member of the UAT Coalition. PCATI is submitting a separate Alternative Report in addition to endorsing the present report.

Ansar Al-Sajeen (The Prisoners' Friends Association) (Ansar),⁶⁰ was detained by Israeli authorities in administrative detention for eight months. He was not informed of the grounds for his detention, nor was he interrogated.

- 2.26.4 On 8 September 2006, Ansar was closed down by order of the Israeli Defence Minister, Amir Peretz. Ansar was closed "*in order to protect state security, public welfare, and the public order.*" No credible evidence has been presented to support the closure.
- 2.26.5 On 2 August 2007, the Israeli army arrested Mohammad Bsharat, the Executive Director of the Nafha Society for the Defence of Prisoners and Human Rights (Nafha),⁶¹ and placed him in administrative detention. Mr. Bsharat was released on 24 February 2008, after the launch of an international campaign.⁶²
- 2.26.6 On 8 July 2008, Nafha was closed by order of the Israeli military. The Israeli military commander ordered Nafha to close for two years because, he asserted, it was being used to "*finance terrorist organisations.*" No evidence was presented to support this assertion, which Nafha totally rejects.
- 2.26.7 On 16 July 2008, units of the Israeli army broke into the apartment of Fares Abu-El-Hasan, a lawyer and head of Nafha's legal department, and forced him to take them to his legal office located in another part of Nablus. The search resulted in the confiscation of legal files, documents and a computer.
- 2.26.8 Since October 2006, Israeli military authorities have imposed a travel ban on Al-Haq's General Director, Shawan Jabarin. The ban, preventing Mr. Jabarin from leaving the West Bank has been absolute in scope. No formal order has been issued and no explanation for the restrictions has been given. In June 2008, the Israeli Supreme Court upheld the ban on the basis of secret "evidence" which was examined *ex parte*.

⁶⁰ Ansar was an NGO legally registered in Israel. Since 1980 it has acted on behalf of Palestinian prisoners incarcerated in Israeli prisons and detention centres, providing them with legal representation in the military courts and in the Israeli civil judicial system, seeking to improve their conditions of confinement, and assisting and supporting prisoners' families in maintaining contact with relatives in prison.

⁶¹ Nafha is one of several NGOs representing Palestinian detainees in Israeli military courts and advocating on behalf of Palestinians in Israeli prisons and detention centres. Nafha is based in Nablus, and also provides psychological and social support to ex-detainees and their families. Nafha is also a member of the UAT Coalition.

⁶² The UAT Coalition, together with the Observatory on Human Rights Defenders, a joint project of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), launched an international campaign demanding that this human rights defender either be charged and tried in accordance with international fair trial standards or be immediately released.

3. Articles of the Convention

3.1 This report will now consider Israel's compliance with the Convention, article by article.

Article 2

4. Incorporation of the Convention into domestic law

4.1 In spite of being a party to a number of treaties which prohibit torture and ill-treatment including the *International Covenant on Civil and Political Rights* (ICCPR), the *Convention on the Rights of the Child* (CRC), the *Fourth Geneva Convention* (1949) and the Convention, Israel has yet to implement effective domestic legislation incorporating these prohibitions as urged by the Committee following Israel's third periodic report in November 2001.

The Supreme Court's torture ruling

4.2 In *Public Committee Against Torture in Israel v The State of Israel* (1999) (the torture ruling) the Israeli Supreme Court purported to rule that the practice of torture is prohibited, but in somewhat contradictory fashion, left open the possibility that an Israeli official charged with torture may escape criminal liability by virtue of the defence of necessity contained in section 34(1) of the Israeli *Penal Law*, 5373 – 1977 (the *Penal Law*). This aspect of the torture ruling is at odds with the total prohibition against torture contained in article 2.2 of the Convention.

4.3 The Israeli Supreme Court also reasoned that Israeli authorities would be permitted "to utilize physical means" if the requisite legislation was enacted by the Knesset.⁶³ In paragraphs 36 and 37 of the torture ruling, the Israeli Supreme Court stated that:

"The very fact that a particular act does not constitute a criminal act (due to the "necessity" defence) does not in itself authorize the administration to carry out this deed, and in doing so infringe upon human rights. The Rule of Law (both as a formal and substantive principle) requires that an infringement on a human right be prescribed by statute, authorizing the administration to this effect. The lifting of criminal responsibility does not imply authorization to infringe upon a human right.... In other words, general directives governing the use of physical means during interrogations must be rooted in an authorization prescribed by law and not from defences to criminal liability.... If the State wishes to enable GSS investigators to utilize physical means in

⁶³ *Public Committee Against Torture in Israel v The State of Israel* (1999) 53(4) PD 81 at paragraphs 36 and 37.

interrogations, they must seek the enactment of legislation for this purpose.” (Emphasis added).

Although at the time of writing this legislative step has not been taken, the fact that the prospect was entertained by the Israeli Supreme Court is extremely worrying and appears to ignore article 2.2 of the Convention.

- 4.4 The UAT Coalition is deeply concerned that Israeli authorities, including the Israeli Supreme Court, have yet to fully accept and adopt the principle that torture and ill-treatment are totally prohibited, without exception.

Defence of “Superior Orders”

- 4.5 The UAT Coalition notes the Committee’s concern in response to Israel’s initial report that the “*law pertaining to the defences of "superior orders" and "necessity" are in clear breach of that country's obligations under article 2 of the Convention.*”⁶⁴ The UAT Coalition regrets to inform the Committee that the defence of superior orders is still available under the Israeli Penal Law 5737-1977 (Second Edition), which states: “*No person shall bear criminal responsibility for an act which he committed under any of the following circumstances: he committed it under the order of a competent authority, which he lawfully was obliged to obey, unless the order is obviously unlawful.*”⁶⁵ This formulation of the superior orders defence is not unique among its counterparts in national or international criminal codes. However, the UAT Coalition submits that given the culture of impunity that exists in the Israeli military and security establishments, it is doubtful that an Israeli authority would categorise an order as “*obviously unlawful.*”

5. Effective measures taken to prevent all acts of torture

- 5.1 The UAT Coalition notes the comments and recommendations of the Committee in its Concluding Observations dated 23 November 2001 regarding Israel’s use of incommunicado detention and the lack of prompt access to a lawyer. The UAT Coalition shares the Committee’s concerns that these factors contribute significantly to the risk of torture and ill-treatment in detention.

Incommunicado detention

- 5.2 The UAT Coalition is concerned that under Israeli military law, as applicable to West Bank Palestinians, there are insufficient safeguards against what often amounts to

⁶⁴ Committee Against Torture, Concluding Observations of the Committee Against Torture: Israel, 12 June 1994, A/48/44, para.167.

⁶⁵ Chapter Five “A”: Restrictions on Criminal Liability; Title Two: Restrictions on Criminal Nature of Act; Article 34M(2).

lengthy incommunicado detention, regardless of whether the detainee is accused of a security offence or not:

- 5.2.1 Israeli Military Order 378 allows for a Palestinian detainee, including children as young as 12, to be held for up to eight days before being brought before a military judge. It is during this eight day period that detainees are normally interrogated. By way of contrast, a detainee in Israel must be brought before a judge within 48 hours.⁶⁶
- 5.2.2 Israeli Military Order 378 allows for a Palestinian detainee, including children as young as 12, to be held for up to 90 days without access to a lawyer.⁶⁷ By way of contrast, a detainee in Israel must be given access to a lawyer within 48 hours of arrest.⁶⁸
- 5.2.3 Israeli Military Order 378 allows for a Palestinian detainee, including children as young as 12, to be held for up to 188 days before being charged with an offence.⁶⁹ (Note: this does not include situations where an administrative detention order applies). By way of contrast, a detainee in Israel must be charged with an offence within 30 days or arrest.⁷⁰
- 5.2.4 Israeli Military Order 378 allows for a Palestinian detainee, including children as young as 12, to be held for a further two years after indictment before being brought to trial,⁷¹ as opposed to nine months under Israeli domestic legislation.⁷²

6. Legislative measures taken to regulate agents of the state

Israel Security Agency Law, 5762-2000 (ISA law)

- 6.1 In paragraph 16 of Israel's report, the authors state that "*the enactment of the Israel Security Agency Law, 5762-2000 is the most significant new development since the submission of Israel's third periodic report to this committee. This law addresses the major relevant issues concerning the mandate, operation, and scope of functioning of the ISA ...*"

⁶⁶Section 30 of the *Criminal Procedure (Powers of Enforcement – Arrest) Law – 1996*.

⁶⁷ Israeli Military Order 378, articles 78c and d.

⁶⁸ Section 34 of the *Criminal Procedure (Powers of Enforcement – Arrest) Law – 1996*.

⁶⁹ Israeli Military Order 378, article 78(D).

⁷⁰ Section 17(b) of the *Criminal Procedure (Powers of Enforcement – Arrest) Law – 1996*.

⁷¹ Israeli Military Order 378, article 78(D).

⁷²Section 61(a) of the *Criminal Procedure (Powers of Enforcement – Arrest) Law – 1996*. DCI/PS - Palestinian Child Prisoners (2007), p. 18 - <http://www.dci-pal.org/english/publ/research/2008/PCPReport.pdf>

6.2 The UAT Coalition has three major concerns regarding the ISA law:

- 6.2.1 No where in the legislation is there a prohibition against ISA officers using torture or ill-treatment in circumstances where there is no specific incorporation of the Convention into Israeli domestic law.
- 6.2.2 Section 13 of the legislation establishes the office of Service Comptroller, who is appointed by the Prime Minister, in consultation with the head of the ISA. The head of the ISA, with the approval of the Prime Minister, “*may also charge the Service Comptroller with the handling of complaints of Service employees and the handling of complaints against the Service, any Service employee or any person acting on its behalf...*” The effect of this section is that the ISA self-regulates all complaints of torture or ill-treatment.
- 6.2.3 Section 18 of the legislation provides that “*A Service employee or a person acting on behalf of the Service shall not bear criminal or civil responsibility for any act or omission performed in good faith and reasonably by him within the scope and in performance of his function; however, the provisions of this section shall not derogate from disciplinary responsibility under the provisions of any law.*” Section 18 would appear to provide a defence to a charge of torture or ill-treatment in certain circumstances.

Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law 2006

- 6.3 In 2005 Israel implemented its “*Disengagement Plan*” from Gaza. Israel now argues that it is no longer an Occupying Power and is not bound by international law relating to the duties and obligations of occupying powers. This argument has no merit and no international support.
- 6.4 Therefore, Israel could no longer apply its military orders to Gaza after “*disengagement*” and began to prosecute Palestinians from Gaza under Israeli domestic security legislation. In June 2006, the Knesset passed the *Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law*, which removes a number of essential procedural safeguards provided to other suspects, including:
 - 6.4.1 Security suspects can be detained for up to 96 hours before being brought before a judge, as opposed to 48 hours in other cases.⁷³

⁷³ Section 30 of the *Criminal Procedure (Powers of Enforcement - Arrests) Law* – 1996.

- 6.4.2 Security suspects can be detained for up to 35 days without being indicted, as opposed to 30 days in other cases.⁷⁴
- 6.4.3 Security suspects can concurrently be denied access to a lawyer for up to 21 days, as opposed to 48 hours in other cases.⁷⁵ At the same time, the law permits the detention of a suspect remanded by a court for a period of less than 20 days to be extended *in absentia* for the rest of the period of up to 20 days from his original detention if the original detention was ordered in his presence.
- 6.5 The law, which predominantly applies to Palestinians from Gaza,⁷⁶ thus provides for incommunicado detention for up to 21 days. It therefore fosters conditions in which detainees, held far from the purview of the courts, can be exposed to unlawful methods of interrogation, including torture, by the ISA.
- 6.6 Though it was originally passed by the Knesset as a “*temporary order*” for 18 months, the law was extended in January 2008 for a further three years, and it is apparent from Knesset discussions that the Ministry of Justice intends to turn it into a permanent law.

Criminal Procedure (Interrogating Suspects) Law 2008

- 6.7 *The Criminal Procedure (Interrogating Suspects) Law (Amendment No. 4) – 2008* exempts the ISA and the police from making audio and video documentation of their interrogations of suspects in security offences (section 7). When originally passed in 2002, the intention was for this exemption to be a temporary emergency order, but this latest extension for an additional four years, approved by the Knesset on 16 June 2008, turns it in effect into a permanent law.
- 6.8 The UAT Coalition considers this exemption to be very dangerous as it creates conditions that may facilitate the torture or ill-treatment of individuals under interrogation. The lack of audio and video documentation of interrogations also has serious implications for the reliability, authenticity and admissibility of evidence presented before the courts against suspects. The exemption is even more severe when viewed in conjunction with section 35(d) of the *Criminal Procedure (Powers of Enforcement – Arrests) Law 1996* which enables Israeli authorities to deny a person suspected of a security offence from seeing a lawyer for 21 days.

⁷⁴ Section 17(b) of the *Criminal Procedure (Powers of Enforcement - Arrests) Law – 1996*.

⁷⁵ Section 34 of the *Criminal Procedure (Powers of Enforcement - Arrests) Law – 1996*.

⁷⁶ This law applies to all detainees classified at “*security detainees*,” including, Palestinians from the Gaza Strip, West Bank including East Jerusalem and Palestinian citizens of Israel.

- 6.9 The UAT Coalition notes the comments of the Committee in paragraph 41 of the summary record of the 496th meeting: Israel (CAT/C/SR.496) dated 20 November 2001, in which a member of the Committee “*urged Israel to consider making audio-visual recordings or interrogations*” in order to establish whether or not detainees were being mistreated. The UAT is concerned that Israel adopted this recommendation with an exemption effectively nullifying this simple and practical safeguard.
- 6.10 The fact that the exemption applies only in the cases of individuals suspected of committing security offences – who are overwhelmingly Palestinians⁷⁷ – is particularly significant as this is the group most likely to be exposed to torture or ill-treatment by interrogators.

The Internment of Unlawful Combatants Law – 2002

- 6.11 In March 2002 the Knesset enacted *The Internment of Unlawful Combatants Law – 2002*. This law provides for the *indefinite administrative detention* of “foreign” nationals. The declared purpose of the law is to prevent detainees from returning to the field of combat. However, an examination of its provisions suggests that the goal behind the law is to allow Israel to hold suspects as hostages who can be used as bargaining chips in future negotiations.
- 6.12 The law contains a vague definition of an “*unlawful combatant*” that includes not only persons who participate in hostilities against Israel, but also any members of forces that carry out such hostilities. The law effectively creates a third category of person, contrary to the distinction in international humanitarian law between combatants and civilians: it affords suspects neither the protection of the *Third Geneva Convention* as combatants held as prisoners of war, nor the protection of the *Fourth Geneva Convention* as civilians. Neither of these statutes prevents the state from prosecuting suspects for crimes they allegedly committed either as combatants or civilians.
- 6.13 The law allows a person suspected of being an “*unlawful combatant*” to be held for up to 14 days without judicial review, and allows the use secret evidence and evidence taken in the absence of the detainee. If the detention order is approved by a court, the law allows the administrative detention of individuals for indefinite periods of time, or until such a time that “*hostilities against Israel have come to an end*” and mandates judicial review of the detention only once every six months.
- 6.14 The law contains a presumption that the suspect would pose a threat to the security of the state if released, which is the ground for detention under the law (section 7).

⁷⁷ Israel is currently holding approximately 9,000 security prisoners, of whom around 15 are non-Arabs.

Additionally, the Defense Minister's determination that a certain force is carrying out hostilities against Israel, or that such hostilities have or have not come to an end, will serve as evidence in any legal proceeding, unless the contrary is proven (section 8).

- 6.15 On 11 June 2008, the Israeli Supreme Court upheld the constitutionality of the law.⁷⁸ On 28 July 2008, the Knesset enacted an amendment to the law that makes the violation of detainees' basic human rights even more severe. Most notably, the amendment allows for the period during which the detainee is denied access to legal counsel to be extended from seven to 10 days, and up to 21 days with the approval of the Attorney General and a district court.
- 6.16 The holding of foreign nationals for indefinite periods of time in administrative detention without charge or trial under the aforementioned law is in clear violation of international law. Preventing them from meeting their attorneys and not allowing judicial review of detention orders for extended periods of time deprives detainees of two important means of protecting them against torture and ill-treatment.

Private security contractors operating inside the OPT

- 6.17 Since Israel's last report to the Committee, it has begun to make extensive use of private security contractors (PSCs) employing Israeli citizens to maintain the Wall and its associated regime and to provide security for settlements inside the OPT, including in annexed East Jerusalem.⁷⁹ Those PSCs stationed at checkpoints along the Wall's route are operating alongside Israeli soldiers, with some checkpoints now allegedly administered fully by PSCs.
- 6.18 West Bank checkpoints and settlements are *de facto* temporary places of detention. Allegations of ill-treatment at checkpoints by PSCs which may be regarded as amounting to cruel, inhuman or degrading treatment or punishment have been reported. Ill-treatment allegations against PSCs operating at Reihan checkpoint (along the Wall near the West Bank city of Jenin) are demonstrative of others that are beginning to surface. Such conduct includes:
- The use of an underground detention facility in which a Palestinian man was alleged to have fainted.⁸⁰
 - Humiliating searches in which men are put together in a room and asked to take off items of clothing.⁸¹

⁷⁸ See Crim. App. 6659/06, *A. v. State of Israel*, available in English at: http://elyon1.court.gov.il/files_eng/06/590/066/n04/06066590.n04.pdf.

⁷⁹ The Wall, settlements and the annexation of East Jerusalem are all illegal under international law.

⁸⁰ Program on Humanitarian Policy and Conflict Research, Harvard University, *Private Security Companies in the Occupied Palestinian Territory (OPT): An International Humanitarian Law Perspective*, March 2008, p. 5.

⁸¹ See Ha'aretz, *Outsourcing the checkpoints*, 2 October 2007, at: <http://www.haaretz.com>.

- Strip searches (including of women).⁸²
- Delays at checkpoints resulting in the death of critically ill patients.⁸³

- 6.19 Israeli and Palestinian human rights organisations and United Nations agencies on the ground have incomplete factual information on the scope of activities of PSCs and little clarity on the legal regime under Israeli law regulating them. PSCs operating at checkpoints along the Wall have allegedly been contracted by the Israeli Ministry of Defense and the Israeli Ministry of Public Security. The nature of the contractual relationship between these Ministries and PSCs is unknown. However, whatever the contractual relationship, according to unnamed Israeli government authorities in a media report last year, “*replacing soldiers with contractor’s employees...absolves the government for any responsibility for them.*”⁸⁴
- 6.20 While the UAT Coalition is thus far unaware of reports of ill-treatment by PSCs amounting to torture, the contention that Israel, the Occupying Power, bears no responsibility for the acts of PSCs is deeply disturbing. Irrespective of state responsibility which Israel incurs for the acts of the PSCs as agents of the Occupying Power, Israel has a responsibility to establish criminal jurisdiction over the individual acts of PSCs which may amount to torture under Article 5 of the Convention. Whether Israel has or intends to do so through the Israeli Military Justice Law, 5715 – 1955, the *Penal Law* or through some other legislative act is unclear.
- 6.21 Further, it is unclear if PSCs are operating inside the chain of command of the Israeli military or security apparatus. As such, no information is currently available as to Israel’s compliance with its obligations under Articles 10, 11, 12 and 13 of the Convention with respect to PSCs and allegations of torture or ill-treatment.

7. Effective measures taken to ensure that those responsible for torture and ill-treatment are brought to justice

[See comments under Article 12 below]

8. Effective measures to ensure that no exceptional circumstances are invoked justifying torture and ill-treatment

- 8.1 The UAT Coalition notes in paragraph 5 of the Committee’s Concluding Observations dated 23 November 2001 in which it stated that: “*The Committee is fully aware of the difficult situation of unrest faced by Israel, particularly in the Occupied Territories, and understands its security concerns. While recognizing the right of Israel to protect its*

⁸² See Ha’aretz, Outsourcing the checkpoints, 2 October 2007, at: <http://www.haaretz.com>.

⁸³ Program on Humanitarian Policy and Conflict Research, Harvard University, Private Security Companies in the Occupied Palestinian Territory (OPT): An International Humanitarian Law Perspective, March 2008, p. 4.

⁸⁴ See Ha’aretz, Outsourcing the checkpoints, 2 October 2007, at: <http://www.haaretz.com>.

citizens from violence, it reiterates that no exceptional circumstances may be invoked as justification of torture.”

State of emergency

- 8.2 The UAT Coalition is concerned that the reality of the situation on the ground is that Israel routinely relies on “*exceptional circumstances*” to justify what amounts to torture and ill-treatment. For example a state of emergency has existed in Israel since 5 May 1948. The UAT Coalition refers to paragraph 12 of the Concluding Observations of the Human Rights Committee in relation to Israel (CCPR/CO/78/ISR), dated 21 August 2003:

“While welcoming the State party's decision to review the need to maintain the declared state of emergency and to prolong it on a yearly rather than an indefinite basis, the Committee remains concerned about the sweeping nature of measures during the state of emergency, that appear to derogate from Covenant provisions ...the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and to the disclosure of full reasons of the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively than what in the Committee's view is permissible pursuant to article 4.”⁸⁵

Article 4

9. The enactment of specific legislation criminalising torture in terms consistent with the definition in article 1

- 9.1 The Committee has consistently expressed the view that the crime of torture is qualitatively distinguishable from the various forms of homicide and assault that exist in domestic legislation and therefore should be separately defined as a crime.⁸⁶
- 9.2 The UAT Coalition is concerned that despite the numerous pronouncements by the Committee of the necessity to enact specific legislation incorporating the provisions of the Convention into domestic law, Israel persists in declaring that: “*all acts of torture, as defined in article 1 of the Convention, are criminal acts under Israel's legislation. In*

⁸⁵ Human Rights Committee, Concluding Observations of the Human Rights Committee; Israel, 21 August 2003, CCPR/CO/78/ISR, para. 12.

⁸⁶ UN Secretary General, Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties, 21 May 2007, HRI/GEN/2/Rev.4, – at p. 71, para. 13.

addition, all forms of torture or other cruel, inhuman or degrading treatment or punishment are prohibited by Israel's Basic Law: Human Dignity and Liberty.”⁸⁷

Article 10

10. The obligation to train officials involved with custody, interrogation or treatment of persons under official control on matters related to the prohibition of torture and ill-treatment

- 10.1 Israel's report makes reference to various training programmes offered to the police,⁸⁸ army,⁸⁹ security⁹⁰ and the prison services⁹¹ but fails to provide sufficient specificity and in particular, fails to identify precisely what conduct the training classifies as prohibited and what conduct is permitted under the Convention.
- 10.2 For the purpose of obtaining further information on these issues, the UAT Coalition wrote to the Ministry of Justice, the author of Israel's report, on 14 August 2008 requesting this further information (**Annexure “C”**). At the time of writing the UAT Coalition has not received a response from the Israeli Ministry of Justice.

Article 11

11. Interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing torture and ill-treatment

- 11.1 The UAT Coalition is concerned that under Israeli military orders in force in the West Bank, detainees, including children as young as 12 years, can be denied access to a lawyer for up to 90 days.⁹² Further, detainees are not permitted to receive family visits within the first 60 days of detention⁹³ and regularly endure significantly longer periods of time without family visits.

Forced confessions in Hebrew

- 11.2 The UAT Coalition continues to receive reports of detainees being given confessions written in Hebrew to sign at the end of the interrogation process, which are then used as

⁸⁷ Israel's report, at para. 88.

⁸⁸ Israeli police – see paragraphs 135-137 of Israel's report.

⁸⁹ Israeli army – see paragraphs 140-143 of Israel's report.

⁹⁰ Israeli security – see paragraphs 138-139 of Israel's report.

⁹¹ Israeli prison service – see paragraph 144 of Israel's report.

⁹² Israeli Military Order 378, articles 78c and d.

⁹³ DCI/PS – Palestinian Child Prisoners, 2007, pp. 29-30.

the primary evidence to convict the detainee in the military courts. Few Palestinian detainees understand Hebrew sufficiently well for these confessions to be considered voluntary.

[Evidence: see Annexure A, pages 49-50]

Secret detention “Facility 1391”⁹⁴

- 11.3 The Israeli army, in conjunction with the ISA, have been operating a detention and interrogation facility, known as “*Facility 1391*” for decades in an unknown location inside Israel. Detainees are not told where they are being held. Legal counsel for specific clients may, upon request, learn of their client’s detention at the facility, but remain in the dark about its location.
- 11.4 Interrogations at this facility are alleged to employ extreme measures amounting to torture and ill-treatment. The conditions of detention are reported by former detainees of the facility to include sensory deprivation, including frequent and long periods of isolation and the denial of basic sanitary conditions.⁹⁵ The International Committee of the Red Cross has no access to this facility.
- 11.5 The Israeli human rights organisation, HaMoked – Center for the Defence of the Individual, revealed the existence of this Facility in 2002 as a result of two *habeas corpus* petitions filled with the Israeli Supreme Court on behalf of missing residents of the OPT whom the Israeli Prison Service, the police and the army were unable to trace. The State claimed the location of “*Facility 1391*” was classified not for the purpose of violating detainees’ rights but for security reasons.⁹⁶ Moreover, the State claimed that the fact that its location is classified does not impair the rights of the detainees held in the facility.⁹⁷
- 11.6 HaMoked’s 2003 petition asking the Israeli Supreme Court to examine the legality of the facility is still pending. The Court issued an Order Nisi regarding the secrecy of the location of the facility, but rejected HaMoked’s request for interim measures against the holding of detainees at the facility. The Court requested that the State inform it about any person held in the facility so that it can address the situation of these persons on a case by case basis.
- 11.7 In 2003, HaMoked requested an investigation by the Military Advocate General (MAG) and the ISA (formerly GSS) Ombudsman in charge of Detainees’ Complaints (via the

⁹⁴ See generally: Ha’aretz, Inside Israel’s Secret Prison, 22 August 2003; see HaMoked: <http://www.hamoked.org.il>

⁹⁵ HaMoked. Activity Report 2004: Detainee Rights, p. 45, available at: http://www.hamoked.org/items/12902_eng.pdf.

⁹⁶ Ibid.

⁹⁷ H.C. 9733/03, HaMoked et al v The State of Israel et al. (decision delivered 28 November 2003).

State Attorney's Office) into complaints by ten detainees concerning their physical conditions of detention and the means of interrogation. This was in response to the Israeli Supreme Court's directive that normal complaints procedures should first be exhausted. The Chief Military Prosecutor informed HaMoked one year after complaints were filed that the military had not investigated the complaints and had no intention to do so.⁹⁸ In 2005, the Court rejected HaMoked's petition on behalf of two former detainees whose cases had been raised with the MAG. The rejected these petitions, finding that the authorities had acted reasonably in not conducting investigations.⁹⁹

[Evidence: see Annexure A, pages 40-49]

Prosecution and detention of minors

- 11.8 The UAT Coalition notes the Committee's concerns in its last Concluding Observations regarding the definition of a child in Israel and the OPT. While under Israeli law majority is attained at the age of 18, Military Order 132 defines a minor as a person under the age of 16. The UAT Coalition regrets to inform the Committee that at the time of writing this discriminatory policy continues.
- 11.9 The UAT Coalition is extremely concerned that Palestinian child detainees are invariably interrogated in the absence of a lawyer or family member and that reports of abuse during interrogation are widespread. Like adults, a Palestinian child detainee can be denied access to a lawyer for up to 90 days (see paragraph 5.2.2 above). Given the circumstances surrounding the interrogation of children, it is of particular concern that 95% of cases in the Israeli military courts involving Palestinian children rely on confessions to obtain a conviction.¹⁰⁰
- 11.10 Once a Palestinian child is charged under the military orders, he or she is prosecuted in the same jurisdiction as Palestinian adults. There is no specialist branch within the military courts for dealing with children.¹⁰¹ Perhaps the one fact that best exemplifies the arbitrariness of the military court system is that a Palestinian child's sentence is decided on the basis of the child's age at the time of sentencing, not at the time when the alleged offence was committed.

⁹⁸HaMoked. Activity Report 2004: Detainee Rights, p. 45, available at: http://www.hamoked.org/items/12902_eng.pdf

⁹⁹Ibid. p. 49.

¹⁰⁰DCI/PS – Palestinian Child Prisoners, 2007, at pp. 18-19.

¹⁰¹ According to international guidelines, children in conflict with the law should be dealt with by a juvenile court according to child-specific procedures (see for example, article 40(3) of the *CRC* and rule 2.3 of *The Beijing Rules*). For example, there should be trained personnel to deal with the child and the child's legal guardians should be present during the child's interrogation, among numerous other child-specific procedures. While many of these procedures are enshrined in Israeli law and practiced in Israel's domestic legal system, none of these procedures is applied to cases of Palestinians child prisoners dealt with in the Israeli military court system.

- 11.11 Both before and after sentencing, Palestinian children are routinely detained with adults in contravention of Article 37(c) of the *Convention on the Rights of the Child*.
- 11.12 In contravention of international law,¹⁰² a limited education is only provided to Palestinian child detainees in two, out of the five prisons and seven interrogation and detention centres where they are detained.¹⁰³ In the two facilities where education is provided, children receive two hours per week in Telmond Prison, and nine hours per week in Addamoun prison.

[Evidence: see Annexure A, pages 50-58]

Article 12

12. Prompt and impartial investigation when there is reason to believe that an act of torture or ill-treatment has been committed in an area under the state's jurisdiction

- 12.1 Between January 2001 and October 2006 over 500 complaints were filed against ISA interrogators for alleged ill-treatment and torture. The Israeli Department for the Investigation of Police (DIP), the relevant authority charged with investigating these complaints, did not conduct a single criminal investigation.¹⁰⁴
- 12.2 The UAT Coalition notes that the Israeli report fails to provide standardised information for the police, army, intelligence service and the prison service regarding:
- 12.2.1 The number of complaints received since Israel's third periodic report;
 - 12.2.2 The number of investigations conducted since Israel's third periodic report;
 - 12.2.3 The number of investigations that led to disciplinary proceedings;
 - 12.2.4 The number of investigations that led to indictments being filed; and
 - 12.2.5 The number of indictments leading to convictions.

¹⁰² Article 94 of the *Fourth Geneva Convention* (1949) and Rule 38 of the *UN Rules for the Protection of Juveniles Deprived of their Liberty*.

¹⁰³ Children are detained in Huwarra (West Bank), Etzion (West Bank), Salem (West Bank), Askelon (Israel), Jalama (Israel), Mascobiyya (Jerusalem) and Petah Tikva (Israel) interrogation and detention centres and An Naqab (Israel), Ofer (West Bank), Telmond (Israel), Megiddo (Israel) and Addamoun (Israel) prisons.

¹⁰⁴ B'Tselem - Absolute Prohibition (May 2007), at p.79.

***Impunity for police officers and commanders responsible for the October 2000 killings
of 13 Palestinian citizens of Israel***

- 12.3 UAT wishes to express its grave concern at a decision made by the Attorney General on 27 January 2008 not to file any indictments against police officers or commanders responsible for the killings of 13 unarmed Palestinian citizens of Israel during the October 2000 protest demonstrations inside Israel, and the injury of thousands of others. His decision officially closes all the cases against the security forces.¹⁰⁵ In October 2000, Palestinian citizens of Israel held widespread protest demonstrations at the outbreak of the second Intifada. The brutal and disproportionate response of the Israeli security forces included the use of snipers, and the firing of live ammunition and rubber-coated steel bullets at unarmed demonstrators.
- 12.4 In November 2000, Israel established the official Or Commission of Inquiry to investigate the events, which found that the response of the security forces was unjustified and that the police commanders were responsible for using excessive force. Among the commission's recommendations was that the Police Investigations Department (Mahash or PID) conduct its own investigation into the events surrounding the killings.
- 12.5 In September 2005 the PID released its report on the investigation, in which it recommended that no indictments should be filed against police officers and commanders. It should be stressed that the PID's entire staff of investigators is composed of former police officers and is not an independent civilian body.¹⁰⁶ The Attorney General then decided to review the PID's report within the State Attorney's Office. However, the State Attorney's Office was headed at the time by the director of PID during October 2000, creating a conflict of interest and compromising the impartiality of the review. The Attorney General's decision in January 2008 fully endorsed the PID report.
- 12.6 The UAT Coalition wishes to draw the Committee's attention to Israel's report, which reveals that criminal proceedings were initiated in less than 4% of complaints received

¹⁰⁵ The Attorney General has filed indictments regarding the October 2000 events only against Arab citizens, including relatives of the deceased. For more information, see: <http://www.adalah.org/eng/october2000.php>. To view a summary of the Attorney General's decision, see: <http://www.justice.gov.il/NR/rdonlyres/5B88648A-D537-47E1-9CE8-EE9D586CFCFE/9728/english2.doc>. The UN Special Rapporteur on Extra-Judicial Executions discussed the failure to issue indictments in his report of 2 May 2008. Referring to his previous communication to Israel, he stated that, "[t]his outcome... would appear to fall short of the international standards."

¹⁰⁶ As noted by the Committee on the Elimination of Racial Discrimination in its Concluding Observations on Israel from June 2007, "[a] high number of complaints filed by Arab citizens against law enforcement officers are not properly and effectively investigated and that the Ministry of Justice's Police Investigations Unit (Mahash) lacks independence."

by the PID between 2002-2004 regarding the unlawful use of force by police officers (paragraphs 38 and 40).

- 12.7 The inability or unwillingness of Israel to properly investigate and prosecute security forces in cases involving the killing of Palestinian citizens further ingrains the existing culture of impunity within the Israeli security forces.
- 12.8 In recent lists of issues and concluding observations, the Committee has raised its concerns with State Parties to the Convention over incidents of excessive force employed by the police and other security forces and called for those responsible to be held to account.¹⁰⁷

Article 13

13. The right of any individual who alleges that he/she has been subjected to torture or ill-treatment to complain and have the case dealt with promptly and impartially

- 13.1 The UAT Coalition continues to receive numerous reports of Palestinian detainees being interrogated in circumstances where the individuals conducting the interrogation do not properly identify themselves, making it difficult for the detainee to lodge a meaningful complaint.
- 13.2 Palestinians are often reluctant to initiate complaint mechanisms as this often requires being interviewed by Israeli authorities. Palestinians are also reluctant to lodge a complaint through fear, real or perceived, of Israeli retaliatory measures such as the revocation of a work permit.

¹⁰⁷ With regard to the State Party, Italy, the Committee noted with concern continued allegations of excessive use of force and ill-treatment by law enforcement officials, in particular alleged excessive use of force and ill-treatment by law enforcement officials during the demonstrations in Naples (March 2001) in the context of the Third Global Forum, the G8 Summit in Genoa (July 2001) and in Val di Susa (December 2005). The Committee recommended that Italy, “[e]nsure that law enforcement officials only use force when strictly necessary and to the extent required for the performance of their duty.” See: conclusions and recommendations of the Committee against Torture, Italy, CAT/C/ITA/CO/4, 16 July 2007. The Committee has also expressed its concern over reports on the excessive use of force by law enforcement officials in the State Party, Poland, with particular reference to the incidents which occurred in Łódź in May 2004 that led to the deaths of two persons. It recommended that Poland, “[t]ry the alleged perpetrators of acts of abuse and, when convicted, impose appropriate sentences and adequately compensate the victims in order to eliminate the de facto impunity for law enforcement personnel who are responsible for violations prohibited by the Convention.” See: conclusions and recommendations of the Committee against Torture, Poland, CAT/C/POL/CO/4, 25 July 2007.

Article 14

14. Compensation and rehabilitation for victims of torture

Civil Damages (Liability of the State)(Amendment No.8) Bill 2008

- 14.1 In June 2008, the *Civil Damages (Liability of the State) (Amendment No.8) Bill 2008* passed its first reading in the Knesset and is likely to be passed into law, having the sponsorship of the government. The bill is designed to deny residents of the OPT the possibility of submitting tort claims against the Israeli security forces in Israeli courts, for any damages incurred, even as a result of acts performed other than through an “*act of war*.” The amendment represents an attempt to circumvent a prior Israeli Supreme Court decision that ruled a previous, similar amendment to the law unconstitutional.¹⁰⁸
- 14.2 Under the current law, Israel is exempt from paying compensation for damage resulting from an “*act of war*,” and from paying compensation for any damages caused by the security forces to nationals of “enemy states” and members and activists in “*terrorist organizations*,” even if the damage inflicted was not the result of an “*act of war*.”¹⁰⁹
- 14.3 The bill contains a number of additional provisions that are of concern to the UAT Coalition, including:
- 14.3.1 The expansion of the definition of an “*act of war*” under the current law to include actions for the purposes of preventing terror, hostile acts or insurrection that are not taken in situations that endanger life and limb. In practice, this provision would allow Israel to exempt itself from compensating victims of a wide range of actions taken in a variety of situations, many of which would bear little relation to warfare.
 - 14.3.2 The expansion of the existing exemption on compensating nationals of “*enemy states*” and members and activists in “*terrorist organisations*” for any damages caused by the Israel security forces to include residents of any area declared by Israel as an “*enemy area*.”
 - 14.3.3 The bill does contain an exception for individuals held in custody; however, this exception is conditioned on the individual not resuming his or her

¹⁰⁸ H.C. 8276/05, *Adalah v. The Minister of Defense* (decision delivered on 12 December 2006). For more information, see The Association for Civil Rights in Israel, *Adalah and HaMoked*, Position Paper on Memorandum of the Civil Torts Law (Liability of the State) (Amendment No. 8), 5767-2007, available at: <http://www.adalah.org/features/compensation/positionpaper-e.pdf>.

¹⁰⁹ The Israeli Supreme Court declined to rule on the issue of the constitutionality of these existing provisions in H.C. 8276/05, *Adalah v. The Minister of Defense*.

membership or activism in the “terrorist organisation.” Thus, for example, a victim of torture would not be liable for compensation if the Israeli security services determined that he or she was still a member of one of the Palestinian factions, regardless of the nature of his role or involvement.

- 14.4 If enacted into law, the bill would block one of the only remaining avenues for Palestinians in the OPT to hold Israel to account for deaths, injuries, damages and other forms of ill-treatment by its security forces.

Rehabilitation for victims of torture

- 14.5 The UAT Coalition is not aware of any rehabilitation services provided by Israel to Palestinian victims of torture or other ill-treatment. UAT member organizations in the OPT which have rehabilitative services, including the Treatment and Rehabilitation Centre for Torture Victims (TRC) in Ramallah and the Gaza Community Mental Health Program (GCMHP) in Gaza, have not received any monies from Israel for these services.

Article 15

15. Admissibility of illegally obtained confessions

- 15.1 Under section 12 of the *Evidence Ordinance [New Version]* 5731-1971, a confession must be given “*freely and willingly*” for it to be admissible. However, the Israeli Supreme Court made it clear in *Prv. Yisascharov v The Head Military Prosecutor et. al* (2006) (C.A. 5121/98) that this expression “*should not be given a literal interpretation ... but a technical-legal one, according to which a confession of an accused will be inadmissible ... only if improper ‘external pressure’ was exerted on him at the time of the interrogation to such an extent that it was capable of undermining his ability to choose freely between making a confession and not making one.*”¹¹⁰
- 15.2 Israeli courts have discretion whether or not to admit illegally obtained evidence based on whether the admission would substantially violate the right of the accused to a fair trial. Factors the court will take into consideration in exercising its discretion are:¹¹¹
- 15.2.1 The character and seriousness of the illegality that was involved in obtaining the evidence;
- 15.2.2 The seriousness of the offence;

¹¹⁰ *Prv. Yisascharov v The Head Military Prosecutor et. al* at p. 84.

¹¹¹ *Ibid* – para. 63 and following.

15.2.3 The degree to which the improper investigation method affected the evidence that was obtained; and

15.2.4 The social damage and social benefit involved in excluding the evidence.

15.3 The UAT Coalition is concerned that the discretion given to judges to exclude illegally obtained evidence under the legislative and case law framework in Israel, does not ensure that evidence obtained as a result of torture is rendered inadmissible in all proceedings, as is required under article 15 of the Convention. This concern would appear to be justified given the high rate of convictions secured in the military courts based on confessional evidence (see paragraph 2.10).

Article 16

16. Obligation to prohibit acts of cruel, inhuman or degrading treatment or punishment

Human shields

16.1 Since September 2000 and the start of the second Intifada, the Israeli military has routinely resorted to the use of Palestinian civilians as human shields, forcing them to carry out life-threatening military tasks to assist operations. Such tasks include the use of Palestinian civilians to enter buildings to check if they are booby-tapped, remove suspicious objects from roads, stand inside houses where soldiers have set up military positions so that Palestinian combatants will not fire at the soldiers, walk in front of the soldiers to shield them from gunfire and stone-throwing, and remain tied to military jeeps at which stones are being thrown by protestors.¹¹²

16.2 In 2005, the Israeli Supreme Court authoritatively ruled¹¹³ that the practice of using human shields runs counter to principles contained in the *Fourth Geneva Convention* and that: "*The civilian population is not to be used for the military needs of the occupying*

¹¹² The use of human shields contravenes Articles 28 and 51 of the *Fourth Geneva Convention*, which prohibit the use of civilians "to render certain points or areas immune from military operations" and coercing civilians into "taking part in military operations" respectively. Furthermore, in the case of minors, the practice infringes Article 38 of the *Convention on the Rights of the Child* (CRC), which imposes a duty on States Parties to ensure that no child under 15 takes part in hostilities. Israel is a State Party to both conventions. Under the *Rome Statute of the International Criminal Court*, which Israel has signed but not ratified, the use of human shields is a war crime. The use of human shields is also a violation of Articles 1 and 16 of Convention.

¹¹³ H.C., 3799/02, *Adalah, et al. v. The Military Commander of the West Bank, et al.* (decision delivered 6 October 2005), available in English at: www.adalah.org/features/humshields/decision061005.pdf.

army."¹¹⁴ Despite this, human rights organisations report ongoing use of human shields by Israeli soldiers in the occupied territory.¹¹⁵

- 16.3 These incidents and others in Gaza,¹¹⁶ demonstrate unwillingness on the part of Israeli military commanders to accept the Supreme Court's ruling. Further, the practice continues with apparent impunity and a lack of effective investigation.¹¹⁷ To the knowledge of the UAT Coalition, the Military Advocate General has ordered a military police investigation into only one of these documented cases. In this case an Israeli brigadier was chastised and had his promotion delayed for a minimum of nine months after soldiers under his command used Palestinian civilians as human shields.¹¹⁸ The UAT Coalition is concerned that the lack of investigations conveys a message of lenience and impunity to commanders and soldiers on the ground.

[Evidence: see Annexure A, pages 58-66]

House demolitions

- 16.4 The UAT Coalition notes the Committee's recommendation in its last Concluding Observations that Israel should desist from the practice of house demolition in the OPT where it offends Article 16 of the Convention. The UAT Coalition regrets to inform the Committee that the Israeli practice of house demolition has continued throughout the reporting period.
- 16.5 Palestinians in the OPT are subjected to both punitive and administrative house demolitions by Israel.

¹¹⁴ Ibid. at para. 24 per Aharon Barak, the then Chief Justice of the Israeli Supreme Court.

¹¹⁵ In February 2007, during an incursion in Nablus the Israeli army used two children as human shields. Jihan (11) was interrogated and threatened before being forced to walk in front of Israeli soldiers into an abandoned building which the soldiers believed was sheltering Palestinian combatants. Two days earlier, Ameer (15) had been forced at gun point to walk in front of soldiers and enter several houses while soldiers were shooting behind and around him. These and two other child cases were reported in the latest UN Secretary-General's report on children and armed conflict. B'Tselem also reported the case of a 14-year-old girl who was shot and severely injured by an Israeli soldier while being used as a human shield in July 2007 near al-Bureij refugee camp in Gaza. These violations were documented by DCI/PS, Al-Haq and B'Tselem.

¹¹⁶ See also Al-Mezan, The Occupation forces' use of Palestinian Civilians as Human Shields, June 2008, available at: http://www.mezan.org/document/Human_shields_ar.pdf (Arabic).

¹¹⁷ B'Tselem - Annual Report 2007, at p. 35, available at: www.btselem.org/Download/200712_Annual_Report_eng.pdf

¹¹⁸ See information on Adalah's letter on this issue to the Military Advocate General of 25 October 2007: http://www.adalah.org/eng/pressreleases/pr.php?file=07_10_28-1.

Punitive house demolition

- 16.6 House demolition as punishment has been a policy tool of the Israeli military since 1967.¹¹⁹ In the period since the Israel's last report, these demolitions have mainly been carried out at night, without prior warning, without giving the occupants demolition orders and giving them very little to no time to remove their belongings. The main victims of these attacks are family members, as in the vast majority of cases, the "wanted" individual no longer resides with the family.
- 16.7 Punitive house demolitions also occur in the context of so-called military operations. Under the guise of the international humanitarian law principle of necessity, Israeli military forces have cleared entire neighbourhoods near settlements, bypass roads and near Israeli military installations.
- 16.8 The civilian population of the Gaza Strip has been particularly devastated by punitive house demolitions during military operations. These demolitions have taken the form of unlawful reprisals and collective punishment ostensibly to locate weapons-smuggling tunnels and in response to the launching of Qassam rockets from the Gaza Strip into Israel.
- During "Operation Rainbow" (18-24 May 2004), 167 houses, inhabited by 2,066 individuals, were demolished in densely-populated areas of Rafah, and 43 persons were killed, including at least 17 children.
 - During "Operation Days of Penitence" (30 September-15 October 2004), 91 houses, inhabited by 675 Palestinians were demolished in northern Gaza, primarily in Beit Hanoun, Beit Lahia and the Jabalia refugee camp, and 107 persons, including at least 27 children, were killed.

During these operations the Israeli military perpetrated wilful killings and the extensive and wanton destruction of civilian property, which are classified as grave breaches under article 147 of the *Fourth Geneva Convention* and therefore considered war crimes. However, Israel has not opened criminal investigations into these events.¹²⁰

¹¹⁹ Despite the 17 February 2005 decision by Israeli Defense Minister Shaul Mofaz to end the policy of destroying homes of Palestinians suspected of carrying out attacks or assisting in the preparation or planning of attacks on Israel, the practice continues today.

¹²⁰ In April 2007, a petition was filed to the Israeli Supreme Court demanding the opening of criminal investigations into the killings and extensive home demolitions perpetrated during these two military operations. Despite many motions to hold an urgent hearing on the petition, to date it has not been heard. H.C. 3292/07, *Adalah, et al. v. The Attorney General, et al.*

- 16.9 The extensive documentation of the two military operations shows that the conduct of the Israeli military and the intentions behind the two military operations constitute criminal behaviour.¹²¹

Administrative house demolitions

- 16.10 Since the beginning of the occupation, Israel has pursued discriminatory policies in relation to planning, development and building permits issued to illegal Israeli settlers and Palestinians living in the OPT. Whilst illegal settlers enjoy the advantage of State sanctioned planning and development schemes, Palestinians in East Jerusalem and Area C¹²² are obliged to build on their land without permits resulting in the risk of being issued with a demolition order.
- 16.11 It is estimated that since 21 November 2001, 535¹²³ Palestinian homes have been (partially or completely) demolished for punitive reasons in the West Bank (including East Jerusalem) leaving 3,263 Palestinians displaced and 505¹²⁴ Palestinian homes have been demolished for administrative reasons in the West Bank (including East Jerusalem), leaving 561 Palestinians homeless. Since September 2000, there have been an estimated 7,675 houses demolished in the Gaza Strip for punitive or administrative reasons, displacing 72,533 Palestinians.¹²⁵
- 16.12 The UAT Coalition would like to emphasis that the suffering of Palestinian victims of the Israeli policy of house demolition, whether administrative or punitive, is consistent with the suffering the Committee observed among the residents of Bozova Glavica in the former Yugoslavia in *Dzemajl et al v Yugoslavia (CAT 161/00) [9/12]*. In the latter case, the Committee found that the severe suffering of the effected people as a result of the deliberate destruction of their homes and property and subsequent forced displacement constituted cruel, inhuman or degrading treatment or punishment contrary to Article 16. Aggravating factors in the *Dzemajl* case which run parallel to the general facts surrounding the Palestinian case include that some of the villagers were still in the village when the houses began to be destroyed and there was a high degree of racial motivation driving these attacks.

[Evidence: see Annexure A, pages 67-76]

¹²¹The international documentation includes reports written by the UN Relief and Works Agency (UNRWA), the UN Office for the Coordination of Humanitarian Affairs (OCHA), Prof. John Dugard, the UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied by Israel in 1967, Amnesty International, The International Federation for Human Rights (FIDH), and Human Rights Watch.

¹²² Area C – 59% of the OPT was designated as “Area C” under the 1993 Oslo Accords. This area, including all Israeli settlements, military bases and by-pass roads, is under full Israeli civil and security control.

¹²³Source of statistic: Al-Haq. This number includes both total and partial demolitions.

¹²⁴Source of statistic: Al-Haq. This number includes both total and partial demolitions.

¹²⁵ Source of statistic: Al-Mezan Center for Human Rights. This number includes both total and partial demolitions.

Detention of prisoners in Israel

- 16.13 All but one of the prisons where Israel detains Palestinian prisoners, are located inside Israel, in breach of Article 76 of the *Fourth Geneva Convention* (1949) which provides that an occupying power must detain residents of occupied territory in prisons inside the territory. The practical consequence of this is that some prisoners do not receive any family visits as their relatives are denied permits to enter Israel.

Family visits

- 16.14 In bringing the issue of denial of family visits to the attention of the Committee, the UAT Coalition recalls that the Committee has concluded in the past that family visits to detainees once a month for only 30 minutes amounted to torture.¹²⁶
- 16.15 Palestinian detainees from the West Bank, including children, do not receive family visits for at least the first 60 days of their detention. After 60 days, the detainee is, in theory, entitled to 24 family visits per year.¹²⁷ In order to visit a detainee from the West Bank, the family must apply to the Israeli authorities for a permit to enter Israel, which takes between one and three months to obtain and is only valid for three months.¹²⁸ In reality, due to the difficulties involved in obtaining permits, many Palestinians only manage to visit their relatives once every few months.¹²⁹ In 2005, 24% of all applications for permits from the West Bank to visit Palestinian detainees in Israel were rejected.¹³⁰ Further, strict limitations are placed on visits from family members between the ages of 16 and 35.¹³¹
- 16.16 In the case of family visits to West Bank detainees in Israel, families are separated from the detainee by a glass partition. Communication takes place through a telephone or

¹²⁶ Manfred Nowak and Elizabeth McArthur, *The United Nations Convention Against Torture – A Commentary*, Oxford University Press, 2008, at p. 408, para. 27.

¹²⁷ DCI/PS – Palestinian Child Prisoners, 2007, pp. 29-30.

¹²⁷ Ibid at pp. 30-31. See also B'Tselem – Barred from Contact (Sep. 2006) at p. 14 – In 2005, 24% of applications from the West Bank to visit prisons in Israel were rejected, whilst the figure for Gaza was 38%.

¹²⁸ East Jerusalemites do not require a permit to enter Israel as Israel has *de facto* annexed East Jerusalem.

¹²⁹ B'Tselem – Barred from Contact: Violation of the Right to Visit Palestinians Held in Israeli Prisons, (Sep. 2006) (http://www.btselem.org/Download/200609_Barred_from_Contact_Eng.pdf).

¹³⁰ B'Tselem – Barred from Contact (Sep. 2006) at p. 14 –Before the total ban on visits from Gaza was imposed, the level of rejection was 38%.

¹³¹ Ibid at p. 15: “As noted, family members who come within a certain age group, which changes from time to time, are subject to restrictions. Beginning in January 2006, persons sixteen to thirty-five years old were allowed to submit requests for permits, which were handled according to the special procedure. If approved by the GSS, the permit holder is allowed two visits a year if the visitor is a son of the prisoner, and once a year if a brother of the prisoner. Daughters and sisters are subject to the same conditions applying in the regular procedure, i.e., the permit is valid for three months, during which man “unlimited” number of visits are allowed.”

through holes in the glass. Only three family members are permitted to visit a detainee at a time.

- 16.17 The UAT Coalition wishes to draw the attention of the Committee to the fact that since June 2007, Israeli authorities have placed a total ban on visits by family members from Gaza to their relatives incarcerated in Israel.¹³² This affects approximately 1,000 prisoners and their families.¹³³ Preventing family visits has in practice led to the isolation of these prisoners from the outside world: due to the strict limitations or bans placed on all forms of contact and communication by “security” prisoners.
- 16.18 The timing of this decision to ban family visits, coincided with the capture of Israeli soldier Gilad Shalit, and appears to be a form of collective punishment intended to coerce Palestinian factions to respond to Israel’s demands. In so doing, Israel is transforming Palestinian prisoners into pawns to secure political gains unrelated to the official reasons for their imprisonment.

Prison conditions

- 16.19 The UAT Coalition continues to receive complaints from both adult and child detainees about the conditions in which they are being held in Israeli interrogation and detention centres and prisons.
- 16.20 The UAT Coalition wishes to draw the Committee’s attention to the severe discrimination in conditions of confinement of Palestinians classified as security detainees within the Israeli prison system. Pre-trial detainees alleged to have committed offences defined as security offences under section 35(b) of the *Criminal Procedure (Enforcement Detention) Law* – 1996 are confined in separate prisons under separate, harsher conditions than “criminal” detainees, under order 22 of the *(Powers of Enforcement – Detention) (Conditions of Holding in Detention)* – 1997. It should be stressed that none of these detainees have been convicted of any offence.

¹³² A petition challenging the ban filed by Adalah – The Legal Center for Arab Minority Rights in Israel, Al-Mezan Center for Human Rights and the Association for the Palestinian Prisoners remains pending before the Supreme Court. See: H.C. 5399/08, *Adalah et al. v. the Defense Minister et al.* It should be noted that visits by Palestinian families to their relatives incarcerated in Israeli prisons were harshly restricted prior to June 2006. Movement restrictions and the strict permit system imposed on Palestinians from the West Bank and Gaza meant that family visits could take place every few months at most.

¹³³ On 26 May 2008, the ICRC called in a news release (<http://www.icrc.org/Web/eng/siteeng0.nsf/html/israel-news-260508>) for the immediate resumption of the family visits, stating that: “This measure is depriving both detainees and their relatives of an essential life line...People continue to come to our office every day to sign up for family visits in the hope that the suspension will be lifted...The lack of direct contact with their detained relatives is becoming unbearable.” For more information on the issue of family visits to Palestinian prisoners, B’Tselem’s “Barred from Contact: Violation of the right to visit Palestinians held by Israel,” available at: http://www.btselem.org/english/Publications/Summaries/200609_Barred_from_Contact.asp.

- 16.21 Security detainees are not entitled to a daily walk in the open air or to use the telephone, even to call their attorney. Criminal detainees, by contrast, are permitted a daily hour-long walk and are allowed to make a daily telephone call to their attorneys, family and friends. Criminal detainees are provided with a bed, while security detainees are provided a thin mattress; criminal detainees, but not security detainees are provided newspapers, books, TVs, radios, a razor and mirror, an electric kettle, wall light, fan and heater. Some of the discriminatory conditions are hygiene-related: for example, the cells of security detainees do not contain a basin, and while criminal detainees' cells must be sanitized and disinfected annually and provided with detergents, this is not the case for security detainees.
- 16.22 These discriminatory conditions severely violate the fundamental rights of thousands of detainees, including their right to dignity, to personal freedom and to fair and minimal living conditions in detention centres, and may amount to cruel, inhuman or degrading treatment or punishment.
- 16.23 Israeli interrogation and detention centres are meant as temporary holding facilities. However, some detainees, including children, who are sentenced to less than three months imprisonment, end up serving their entire sentence at these facilities due to a lack of space in Israeli prisons. This results in poor conditions and overcrowding. Common complaints received by the UAT Coalition are:
- Foul smelling cells with poor ventilation;
 - Lack of natural light;
 - No toilet facilities in the cells and access to outside toilets restricted;
 - The only change of clothes being provided by the detainee's lawyer;
 - Limited supply of cleaning materials to clean the cells; and
 - Poor quality and limited supply of food.
- 16.24 As with the interrogation centres, the UAT Coalition continues to receive complaints about the conditions of detention in Israeli prisons, including:
- Overcrowding forcing some detainees to sleep on the floor;
 - Windows covered with metal plates to exclude light;
 - Poor quality food forcing the detainees to purchase their own food from the prison canteen;
 - Detainees housed in tents;
 - Denial of medical care for serious illnesses or injuries; and
 - Shackling pregnant women and seriously ill or injured prisoners whilst hospitalized.

16.25 Whilst in prison, detainees are subjected to the following forms of punishment;

- Solitary confinement;
- Denial of family visits;
- Fines;
- Deprivation of recreation time; and
- Denial of the use of a telephone.
- Excessive use of force.¹³⁴

[Evidence: see Annexure A, page 76]

Medical coercion: ISA interrogation of Gaza patients

16.26 The increasing restrictions imposed by Israel on entry and exit of money, goods, services and persons via Gaza crossings and the closure of Rafah Crossing into Egypt since June 2007, have led to a sharp decline in the ability of Gaza's healthcare system to provide services to patients.

16.27 The result has been a sharp increase in the number of patients referred to external medical centres (in Israel, the West Bank, including East Jerusalem, and Jordan) via Israeli-controlled Erez Crossing, and a much sharper increase in the proportion of patients denied exit permits: from 10% in the first half of 2007 to 56% in the first half of 2008.

16.28 Among the various Israeli authorities controlling the only exit from Gaza to the outside world, Erez Crossing, the Israeli Security Agency (ISA) has the final word in deciding whether or not a patient will be allowed to access care. Over the months it has increasingly denied patients, including those in serious medical condition, permission to exit Gaza for medical care, due to "security reasons."

16.29 Moreover, according to data collected by Physicians for Human Rights - Israel (PHR – Israel) from patients, in at least 30 cases since July 2007, the ISA has called patients – many of them having been granted exit permits by Israel – to an interrogation at Erez

¹³⁴ For example, as occurred on 22 October 2007, at Ketziot (Ansar III) Prison in the Negev after prisoners objected to an early morning search, whilst they were sleeping, by the IPS riot control unit. There was evidence to suggest that clubs, tear gas and possibly rubber bullets were used by the Massada Unit during the unrest, which resulted in the death of Mohammad Sati Mohammad Al-Ashkar, 29 years of age, the severe wounding of several other prisoners and slight injury to hundreds more. According to reports in Ha'aretz newspaper, wardens fired "non-lethal objects" at the crowd of prisoners. Major General Eli Gavison, Head of the Israeli Police Service (IPS) Southern District, refused to specify the nature of these "non-lethal objects," but did state that Al-Ashka, was hit in the head by a small bag filled with pellets.

Crossing, in the course of which they were asked to provide information about relatives and acquaintances, and/or required to collaborate and provide information on a regular basis, as a precondition for being allowed to exit Gaza. If they refused or could not provide the information, they were turned back into Gaza. These cases include several patients in life-threatening condition.

- 16.30 A petition submitted by PHR-Israel to the Israeli Supreme Court on this issue was rejected on the basis that the Court accepted a statement from the Commander of the IDF Southern Command and Southern Brigadier General, that “[...] *no use is made of person’s illness in order to obtain information in the realm of security.*”¹³⁵ An additional reason given for not granting a remedy was that individual solutions were found for most of the patients in the petition.¹³⁶
- 16.31 The UAT Coalition submits that purposely withholding medical treatment for non-medical reasons can amount to ill-treatment, and in sufficiently serious cases, torture.¹³⁷

[Evidence: see Annexure A, pages 77-81]

17. Concluding remarks

- 17.1 Since the Committee last reviewed Israel, the practice of torture and ill-treatment has continued unabated. The UAT Coalition wishes to inform the Committee that in its opinion, the use of torture and ill-treatment by Israeli authorities against Palestinians is both widespread and systematic. The State is either unwilling or unable to fulfil its obligations under the Convention.
- 17.2 The UAT Coalition has observed and recorded evidence of acts, omissions and complicity by agents of the State at all levels, including the army, the intelligence service, the police, the judiciary and other branches of government.
- 17.3 The UAT Coalition is of the view that until this culture of impunity is addressed the situation is unlikely to improve, and the Committee will find itself issuing similar conclusions and recommendations in four years time.

¹³⁵ Cited at footnote 37 in Physicians For Human Rights – Israel – Holding Health to Ransom: GSS Interrogation and Extortion of Palestinian Patients at Erez Crossing, August 2008.

¹³⁶ Physicians For Human Rights – Israel – Holding Health to Ransom, August 2008.

¹³⁷ See Physicians For Human Rights – Israel – Holding Health to Ransom: See also British Medical Association – Medicine Betrayed: The Participation of Doctors in Human Rights Abuses, second impression, at p. 138.

Suggested Questions and Recommendations

Overview

1. Administrative detention

- 1.1 Please explain how Israel's policy of administrative detention can be brought into conformity with Article 16 of the Convention.

2. Gaza siege

- 2.1 Please comment on claims that (1) measures taken by the State party drastically restricting the supplies of fuel, electricity and foodstuffs to the civilian population of Gaza; and (2) the long-term near-total closure of border crossings, including for the passage of individuals for the purposes of receiving medical treatment, have led to a humanitarian crisis and constitute collective punishment, and torture or cruel, inhuman or degrading treatment or punishment.

3. Attacks on human rights defenders

- 3.1 The UAT Coalition urgently requests the Committee to issue a recommendation to Israel in the strongest possible terms condemning attacks on human rights defenders and organisations and demanding that such attacks cease immediately.
- 3.2 The UAT Coalition requests that the Committee issue a recommendation regarding the importance of the role of human rights defenders and organisations and that their legitimate work must be allowed to proceed unhindered and free from all attacks.

Article 2

4. Incorporation of the Convention into domestic law

- 4.1 Please indicate whether Israel intends to enact effective legislation fully incorporating the provisions of Convention into domestic law, including a provision that unambiguously prohibits all forms of torture and other cruel, inhuman or degrading treatment or punishment, without exception.

4.2 Please indicate whether Israel intends to enact effective legislation that unambiguously removes all legal defences based on any justification, including necessity and superior orders, to a claim of torture.

4.3 Please indicate whether Israel accepts that legislation passed by the Knesset authorising the use of “physical means” will be a breach of its obligations under the Convention?

5. Effective measures taken to prevent all acts of torture

5.1 Israel should amend Military Order 378 to guarantee detainees the right to be brought before a military judge within 48 hours.

5.2 Israel should amend Military Order 378 to guarantee detainees the right to prompt access to a lawyer, including during interrogation, consistent with the rights of detainees inside Israel.

5.3 Israel should amend Military Order 378 to guarantee detainees the right to be charged with an offence within 30 days of arrest, or be released.

5.4 Israel should amend Military Order 378 to guarantee detainees the right to be brought to trial within 9 months of being indicted.

5.5 Has the Israeli government ever undertaken a review of Military Order 378 for its compliance with fair trial principles required by Israel’s obligation under international human rights and humanitarian law?

6. Legislative measures taken to regulate agents of state

ISA Law

6.1 Israel should enact legislation clearly and unambiguously stating that the ISA is prohibited from engaging in torture or other cruel, inhuman or degrading treatment or punishment in all circumstances.

6.2 Israel should explain how the current ISA investigation system meets the requirements of an independent and impartial investigation.

6.3 Israel should enact legislation establishing an independent and impartial investigative authority to monitor the activities of the ISA.

- 6.4 Is section 18 of the ISA law consistent with the total prohibition against torture contained in article 2 of the Convention?

Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law 2006

- 6.5 What safeguards are in place to ensure that detainees held under the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law – 2006, which allows for individuals to be held for up to 21 days without access to a lawyer and for the extension of their detention in absentia with minimal judicial review, are not exposed to torture and ill-treatment during pre-trial detention. What purpose is served by the denial of legal counsel to detainees for up to 21 days?

Criminal Procedure (Interrogation Suspects) Law 2008

- 6.6 In the absence of an obligation for the Israel Security Agency and the police to make audio and video documentations of their interrogations of suspects in security offences according to the Criminal Procedure (Interrogating Suspects) Law – 2008, and given the fact that confessions are written in Hebrew whilst the vast majority of security suspects speak Arabic, what measures does Israel have in place to guard against torture and ill-treatment during interrogations, as well as the extraction of false confessions?

The Internment of Unlawful Combatants Law – 2002

- 6.7 What is the exact legal status of persons held as “unlawful combatants” under the Unlawful Combatants Law, and what international instruments are applicable to them for the protection of their human rights?
- 6.8 What measures are in place to ensure that foreign nationals held under the Unlawful Combatants Law are not subjected to torture or cruel, inhuman or degrading treatment or punishment given the facts that they may be held for up to 14 days without judicial review, for up to 21 days without access to a lawyer, and that secret evidence and evidence taken in the absence of the detainee may be used as the basis of their detention.
- 6.9 In its Concluding Observations on Israel from 2001, the Committee noted its concern that administrative detention does not conform with article 16 of the Convention. Please explain how holding foreign nationals under the Unlawful Combatants Law in indefinite administrative detention does not constitute a violation of the Convention.

Private Security Contractors

- 6.10 How has Israel established criminal and/or disciplinary jurisdiction over Israeli PSCs operating inside the OPT?

6.11 How has Israel established criminal and/or disciplinary jurisdiction over Israeli PSCs operating inside East Jerusalem as opposed to other parts of the West Bank?¹³⁸

7. Effective measures to ensure that no exceptional circumstances are invoked justifying torture and ill-treatment

7.1 Does Israel accept that the absolute prohibition against torture contained in Article 2 cannot be derogated from with the passing of domestic legislation authorising the practice, as implied by the Israeli Supreme Court in 1999 torture ruling (See paragraph 4.3 above)?

7.2 How does the prolonged state of emergency effect Israel's obligations under Article 2 of the Convention?

Article 4

8. The enactment of specific legislation criminalizing torture in terms consistent with the definition in Article 1

8.1 Please clarify whether the Israeli government accepts that the crime of torture is qualitatively different from other crimes and if so, why has Israel so far failed to implement previous recommendations of the Committee to enact specific legislation criminalising torture?

Article 10

9. The obligation to train officials involved with custody, interrogation or treatment of persons under official control on matters related to the prohibition of torture and ill-treatment

9.1 Israel should provide further details of the extent and content of the human rights education provided to the police, security, army, prison service and PSCs including all instructions as to what is permissible and prohibited conduct under the Convention.

Article 11

¹³⁸ Note that Israel considers occupied East Jerusalem to be part of Israel since its *de facto* annexation of the territory in 1967. As such, the governmental ministry with which PSCs have a contractual relationship may be different depending on whether the PSC is operating inside East Jerusalem or in another part of the West Bank. The legal regime governing PSCs operating in East Jerusalem may also be different than the legal regime governing PSCs operating in other parts of the West Bank.

10. Interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing torture and ill-treatment

Forced confessions in Hebrew

- 10.1 Please explain how the systematic practice of obtaining confessions from Palestinian detainees in Hebrew does not compromise safeguards enforcing the prohibition on the use of evidence obtained through torture.

Secret detention “Facility 1391”

- 10.2 How is Israel’s use of a detention/interrogation centre, in an undisclosed location, which is not subject to independent external supervision, consistent with Israel’s obligations under the Convention.

Prosecution and detention of minors

- 10.3 Please explain why there are no special procedures for Palestinian minors in the Israeli military justice system which would provide safeguards against torture and ill-treatment?
- 10.4 Please clarify why there is a discrepancy between the age of criminal responsibility between Palestinian and Israeli minors? Please provide information on any review that has taken place with a view towards remedying this discrepancy. In no review has taken place, please explain why?
- 10.5 Please clarify why a Palestinian child’s sentence is decided on the basis of the child’s age at the time of sentencing, and not at the time when the alleged offence was committed?

Article 12

11. Prompt and impartial investigation when there is reason to believe that an act of torture or ill-treatment has been committed in an area under the state’s jurisdiction

- 11.1 Based on information received by the Committee, the investigations undertaken into the killings of 13 Palestinian citizens of Israel in October 2000 by the Police Investigations Department and the Attorney General lacked impartiality. Please comment on these claims, and on the fact the Attorney General's decision not to file any indictments against police officers and commanders for these deaths contradicts the recommendations made by the Or Commission of Inquiry to investigate, indict and prosecute police officers and commanders found responsible by the Commission.

- 11.2 The UN Special Rapporteur on Extra-Judicial Executions Philip Alston discussed the failure to issue indictments for the October 2000 killings of Palestinian citizens of Israel in his report of 2 May 2008. Referring to his previous communication to Israel, he stated that, “This outcome – and particularly the way in which the interplay of the commission inquiry and Police Investigations Department investigation have produced it – would appear to fall short of the international standards”. Please comment.
- 11.3 Please comment on concerns expressed by the Committee on the Elimination of Racial Discrimination in its Concluding Observations on Israel from June 2007 that, “A high number of complaints filed by Arab citizens against law enforcement officers are not properly and effectively investigated and that the Ministry of Justice’s Police Investigations Unit (Mahash) lacks independence.”
- 11.4 Please explain why not a single criminal investigation was conducted by the DIP into over 500 complaints alleging torture and ill-treatment by ISA interrogators between January 2001 and October 2006?
- 11.5 How many investigations, prosecutions and convictions for acts or torture have occurred under existing Israeli domestic criminal legislation since the Committee’s last review of Israel?
- 11.6 Please provide standardised information as per paragraph 12.2 above.

Article 13

12. The right of any individual who alleges that he/she has been subjected to torture or ill-treatment to complain and have the case dealt with promptly and impartially

- 12.1 Please explain how the various branches of the Israeli military and security apparatus ensure transparent procedures when alleged victims of torture and ill-treatment attempt to file complaints.
- 12.2 Please explain how the various branches of the Israeli military and security apparatus ensure that no intimidation exists when alleged victims of torture and ill-treatment attempt to file complaints.

Article 14

13. Compensation for victims of torture

- 13.1 What remedies are available to Palestinian detainees and civilians from the OPT with regard to acts of torture and other acts of cruel, inhuman and degrading treatment by the

Israeli security forces, and before what authority may they seek compensation? How many detainees and civilians have exercised this right over the last eight years? Has compensation been ordered by domestic courts and actually paid to victims of torture or cruel, inhuman or degrading treatment since the last periodic review by the Committee in 2001, to how many victims, and in what amounts?

- 13.2 How is pending legislation that exempts the State Party from all liability for damages incurred against Palestinians in the OPT by the Israeli security forces compatible with Israel's obligations under the Convention, in view of the fact that it limits the right of victims to complain and increases the possibility of impunity for perpetrators?
- 13.3 Please provide information on modalities of cooperation and support afforded to non-governmental organizations offering medical rehabilitation to victims of torture.
- 13.4 Please explain why no rehabilitation services are provided by Israel to Palestinian victims of Israeli torture?

Article 15

14. Admissibility of illegally obtained evidence

- 14.1 Israel should enact effective legislation that unambiguously prohibits the admission into evidence of all material obtained by means of torture as required under Article 15 of the Convention.
- 14.2 Israel should provide details of all cases in Israeli courts, both civil and military, since 2001 in which confessions by detainees have been held inadmissible on the grounds of having been obtained coercively. Please provide disaggregated information under the following categories:
 - (a) Israeli nationals;
 - (b) Arab Israeli citizens of Israel;
 - (c) West Bank Palestinians including East Jerusalemites; and
 - (d) Gazan Palestinians.
- 14.3 In what percentage of cases in the military courts is the primary evidence against the accused a confession, and what safeguards are in place to ensure that they have been obtained voluntarily?

- 14.4 Please explain how the discretion to admit illegally obtained evidence contained in the Israeli Supreme Court decision of *Prv. Yisascharov v The Head Military Prosecutor* is consistent with Article 15 of the Convention.

Article 16

15. Obligation to prohibit acts of cruel, inhuman or degrading treatment or punishment

Human shields

- 15.1 Based on information provided to the Committee, several incidences of the use of Palestinian civilians as human shields by the Israeli military have occurred since the Supreme Court's decision banning the practice on 6 October 2005. Please provide details of any investigations opened into alleged incidences of the use of civilians as human shields by the Israeli military since the Supreme Court's decision and their outcomes.
- 15.2 Please provide information to the Committee on directives given to the Israeli military and security forces on the ban on the use of human shields.
- 15.3 Please comment on the information available to the Committee on the continued use of human shields following the October 2005 Israeli Supreme Court decision banning the practice.

House demolitions

- 15.4 The Committee has received information that extensive documentation demonstrates that Israeli military forces perpetrated killings of civilians and the extensive and wanton destruction of civilian property including widespread home demolitions in Gaza in 2004. Has the State party opened military and/or criminal investigations into these claims, and if yes, what were the outcomes? If not, what measures have been taken in response to these events?
- 15.5 Please explain how house demolitions which are carried out systematically and on a discriminatory basis, whether for punitive or administrative reasons, do not derogate from Israel's obligations under Article 16 of the Convention.¹³⁹

¹³⁹ The UAT Coalition recalls that the Human Rights Committee in its 2003 Concluding Observations on Israel found the policy of punitive house demolition contrary to the prohibition on torture and cruel, inhuman or degrading treatment or punishment contained in Article 7 of the ICCPR (See Human Rights Committee, Concluding Observations of Human Rights Committee: Israel, 21 August 2003, CCPR/CO/78/ISR, at para. 16.

Detention of prisoners in Israel

- 15.6 Please explain why Israel is detaining Palestinians from the OPT in Israel?

Family visits

- 15.7 Please comment on claims that the current total ban on family visits to prisoners from Gaza being held in Israeli prisons and detention centres constitutes cruel, inhuman or degrading treatment or punishment. For how long does the State party anticipate that this ban will remain in place?

Prison conditions

- 15.8 The Committee has received information that security detainees are being confined in far inferior conditions to detainees suspected of criminal offences, including conditions relating to personal hygiene and basic provisions (such as the lack of a wash-basin, bed, heater, fan, etc.). On what basis does the State party justify these inferior conditions of confinement? Please comment on claims that these differences are arbitrary and amount to cruel, inhuman or degrading treatment or punishment.

Medical extortion: ISA Interrogation of Gaza patients

- 15.9 Please comment on information available to the Committee on coercion of Gazan medical patients by ISA agents at Gaza's Eretz crossing. Have the proper authorities investigated this matter? If so what were the findings?
- 15.10 Does Israel accept that the psychological pressure alone described in the information available to the Committee where individuals face the dilemma between the need to access medical care, and loyalty to family, relatives and the community, would amount to a breach of Israel's obligations under the Convention.