



United Against Torture (UAT) Coalition

Supplementary Report For Consideration Regarding Israel's Fourth Periodic Report to the UN Committee Against Torture (CAT)

Submitted April 2009

Contact:

Rifat Kassis
General Director
Defence for Children International - Palestine Section
Email: ria@dcj-pal.org;
Tel: 972-(0)2-242-7530 ext. 102

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.

Index

- 4 *Introduction*
- 4-5 *Articles 1 and 4*
- Issue 1 - Status of legislative prohibition of torture in Israel
- 5-11 *Article 2*
- Issue 2 – Defence of Necessity
 - Issue 3 – Incompatibility of MO 1591 and the Detention of Unlawful Combatants Law (2002) with CAT
 - Issue 4 – Incommunicado detention
 - Issue 5 – Incompatibility of periods of detention under Military Order 378 with CAT
 - Issue 6 – Extension of Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law – 2006 and incompatibility of stipulated periods of detention with CAT
 - Issue 7 – Secret detention “Facility 1391”
 - Issue 8 – Secret detention “Facility 1391”
 - Issue 9 – Investigation and prosecution of alleged torturers
 - Issue 10 – Torture by Palestinian authorities and “effective control” over the OPT
 - Issue 11 – Incompatibility of Israeli counter-terrorism measures with CAT
 - Issue 12 – Women in detention
- 11 *Articles 3 - 4*
- 11-16 *Article 5*
- Issue 18 – Israel’s jurisdictional obligations relating to the Gaza Strip
 - Issue 19 – Private security contractors: use, accountability and training
 - Issue 20 – Gaza Siege
- 16-17 *Article 11*

- Issue 21 – Video recording of interrogations
- Issue 22 – Children sentenced based on age at date of sentence
- Issue 23 – Judges trained in juvenile justice
- Issue 24 – Interrogation of minors in the absence of a lawyer or family member and the reliance on confessional evidence
- Issue 25 – Solitary confinement of minors

17-18

Article 12

- Issue 26 – Complaints, investigations and prosecutions
- Issue 27 – Prompt, impartial investigation of ill-treatment and torture
- Issue 28 – Impunity for death of 13 unarmed Palestinian citizens of Israel
- Issue 29 – Updated complaint statistics

18

Article 14

- Issue 30 – Incompatibility of Civil Damages (Liability of State) (Amendment No. 8) Bill 2008 with CAT

18

Article 15

- Issue 31 – Admissibility of illegally obtained confessions

18-23

Article 16

- Issue 32 – Conditions of detention of security detainees
- Issue 33 – Incompatibility of policy of house demolition with CAT
- Issue 34 – Human shields
- Issue 35 – Prohibition on family visits for security detainees
- Issue 36 – Conscientious objectors
- Issue 37 – Domestic violence
- Issue 38 – Incompatibility of the Israeli Wall with CAT

Introduction

On 1 September 2008, the UAT Coalition submitted an Alternative Report (the UAT Alternative Report) to the UN Committee Against Torture (the Committee) for consideration regarding Israel's Fourth Periodic Report which is scheduled for review by the Committee during its forty-second session between 4 and 5 May 2009.

This supplement to the UAT Alternative Report is intended to respond to specific questions raised by the Committee in its List of Issues dated 15 December 2008 (CAT/C/ISR/Q/4) (the List of Issues) and to update the Committee on developments since 1 September 2008. Throughout this supplementary report, the UAT Coalition has used the same numbering of issues as is contained in the Committee's List of Issues.

In addition to this supplement, the UAT Coalition has submitted a further report that deals specifically with relevant issues arising out of Israel's military offensive against the Gaza Strip, "Operation Cast Lead," (the Operation) between 27 December 2008 and 18 January 2009. The purpose of this supplement is to provide the Committee with a snapshot of some of the most severe manifestations of human rights violations that amount to cruel, inhuman or degrading treatment or punishment or torture (ill-treatment or torture) perpetrated by the Israeli military against Palestinian civilians in Gaza during the Operation.

Annexure A contains evidence supporting allegations of Israel's use of ill-treatment and torture.

Articles 1 and 4

Issue 1

1. Status of legislative prohibition of torture in Israel

- 1.1 See paragraph 4.2 of the UAT Alternative Report for information on the absence of the prohibition on torture in Israeli law.
- 1.2 As the Committee is aware, Israel has not explicitly incorporated the provisions of Article 2 of the Convention into its domestic law. The Israeli Penal Code does not contain an absolute prohibition of torture, and no new legislation has been adopted, nor have steps toward such legislation been taken that amount to an absolute prohibition on torture in Israel. Steps

towards amending the Penal Code so as to make torture a distinct, punishable offence have been abandoned.²

- 1.3 Although the *Basic Law: Human Dignity and Liberty – 1992* contains provisions that may be interpreted as including a prohibition of torture and ill-treatment in certain cases via the protection it provides for human dignity, it also contains a derogation clause. According to this clause (Article 8), “*There shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required.*”³ Thus, torturous practices may be deemed legal if they are interpreted as falling within the scope of the derogation clause.
- 1.4 The UAT Coalition would like to draw the Committee’s attention to the fact that the process of drafting a written constitution for Israel was initiated after the establishment of the State in 1948 and has been ongoing ever since. In 1950, the first Knesset came to what was called the “Harari Decision,” according to which the Knesset’s newly-instituted Constitution, Law, and Justice Committee was assigned the task of drafting a constitution one chapter at a time. Each chapter that has been drafted constitutes a separate basic law, and once all these chapters have been completed, they are to be compiled into a constitution. Today, Israel has a series of basic laws that fall far short of protecting individual rights. Furthermore, no deadline has been set for the completion of the process of completing the basic laws and merging them into a constitution. Therefore, any proposal before the Constitution Law and Justice Committee cannot be considered a practical or in any sense immediate solution to the lack of an absolute ban on torture in Israeli law, or as a means of deterring or punishing perpetrators, inciters or accessories to torture and other forms of ill-treatment.

Article 2

Issue 2

2. Defence of necessity

- 2.1 See paragraphs 4.2 – 4.4 of the UAT Alternative Report.

Issue 3

² A proposed bill was put forward by Member of Knesset Muhammad Barakeh in 2006 to amend the Penal Code to include a prohibition of torture; this bill was not enacted into law. The proposed bill is available in Hebrew at: <http://www.knesset.gov.il/privatelaw/data/17/158.rtf>.

³Basic Law: Human Dignity and Liberty – 1992.

Available in English at: http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm.

3. Incompatibly of Military Order 1591 and the Detention of Unlawful Combatants Law (2002) with CAT

- 3.1 See paragraphs 2.13 – 2.19 of the UAT Alternative Report for information on Military Order 1591⁴ and the policy of administrative detention. See paragraphs 6.11 – 6.16 for information on the Unlawful Combatants Law.

Issue 4

4. Incommunicado detention

- 4.1 See paragraph 5.2 of the UAT Alternative Report.

[Evidence: see Annexure A – Palestinian female detainees]

Issue 5

5. Incompatibility of periods of detention under Military Order 378 with CAT

- 5.1 See paragraph 5.2 of the UAT Alternative Report.

Issue 6

6. Extension of Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law – 2006 and incompatibility of stipulated periods of detention with CAT

- 6.1 See paragraphs 6.3 – 6.6 of the UAT Alternative Report for information on the Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law – 2006, which removes a number of procedural safeguards.⁵
- 6.2 In March 2009, a hearing was held on a petition challenging the constitutionality of the law before an expanded panel of nine justices of the Israeli Supreme Court.⁶ During the hearing the court decided to hear "secret evidence" provided by the state, in the absence of the petitioners. The state argued that the secret evidence was needed to justify the restrictions on rights in the law, and to demonstrate why some investigations require "continuity," which

⁴ Corrigendum: Israeli Military Order 1296 regulating administrative detention was replaced by Israeli Military Order 1591.

⁵ The UAT Coalition wishes to remind the Committee that not only does this legislation provide for 21 days of incommunicado detention and the possibility of extending this period in the absence of the detainee but also includes the withholding of information from the detainee as to whether the detention period has been extended or shortened.

⁶ H.C. 2028/08, *The Public Committee Against Torture in Israel (PCATI), et al., v. The Minister of Justice, et al.* (petition withdrawn on 24 March 2009). The petition was submitted by PCATI, the Association for Civil Rights in Israel (ACRI) and Adalah - The Legal Center for Arab Minority Rights in Israel.

would be disrupted by taking the detainee to court. The state argued that given the needs of the Israeli Security Agency's (ISA) investigations with some "security suspects" the provisions of the law are proportionate and therefore legal.

- 6.3 The petitioners objected to the State's submission of secret evidence and in response to the court's decision to hear it, withdrew the petition. The petitioners took this extraordinary step because of the unprecedented nature of the court's decision to conduct deliberations on the constitutionality of a law that violates human rights by examining information privy only to the ISA, the state attorney and the court, and withheld from the petitioners and the public. The petitioners argued that the court's decision has no legal basis and contradicts previous Supreme Court judgments. Furthermore, it sets a dangerous precedent that significantly harms future possibilities for the judicial review of laws that violate human rights.

Issue 7

7.1 Secret detention "Facility 1391"

- 7.1 See paragraphs 11.3 – 11.7 of the UAT Alternative Report.

Issue 8

8. Secret detention "Facility 1391"

- 8.1 See Issue 7 above.

Issue 9

9. Investigation and prosecution of alleged torturers

- 9.1 See paragraphs 12.1 – 12.8 of the UAT Alternative Report.

Issue 10

10. Torture by Palestinian authorities and 'effective control' over the OPT

- 10.1 The UAT Coalition would like to reiterate that Israel maintains "*effective control*," over the whole of the Occupied Palestinian Territory (OPT), including the Gaza Strip. The Committee will recall that "*effective control*" exists if the military forces of the adversary could, "*at any time they desired assume physical control of any part of the country.*"⁷ This test has been

⁷ *Hostages* case, United Nations War Crimes Commission, Law Reports of Trials of War Criminals, Volume VIII, 1949, p. 56.

reiterated by various courts, including the International Criminal Tribunal for the former Yugoslavia (ICTY) which ruled that one of the guidelines for determining occupation was whether “*the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt.*”⁸ As a result of Israel, the Occupying Power’s, regular military incursions into the OPT, the elements of “*effective control*” are clearly satisfied.

- 10.2 The UAT Coalition notes that the Occupying Power is required to ensure the effective administration of justice in the OPT. In discharging this duty, it must respect the laws in force in the occupied territory, including the penal laws, unless absolutely prevented from doing so, and must allow the courts of the occupied territory to continue functioning with respect to all offences covered by the laws of the occupied territory.⁹
- 10.3 The penal laws in force are the British Mandate Criminal Code Ordinance, 1936 and the Jordanian Penal Code No. 16 of 1960 in the Gaza Strip and the West Bank, respectively. As is the case with the Israeli Penal Law, 5737 -1977, neither of the two penal codes in force in the OPT specifically criminalises torture as required by CAT. At present there is a committee of Palestinian civil society organisations that is drafting a Palestinian Penal Code that does criminalise torture. Another civil society committee is drafting a separate and specific law prohibiting torture; both draft laws use the definition of torture contained in Article 1 of CAT. However, due to the June 2006 arbitrary arrest by the Occupying Power of 45 out of 132 members of the Palestinian Legislative Council (PLC)¹⁰, it has effectively been paralysed, preventing the adoption of any new legislation.
- 10.4 The UAT Coalition recommends that the Committee urge Israel to take measures that would restore the viability of the Palestinian Legislative Council and strengthen Palestinian rule of law institutions.

⁸ *Prosecutor v Naletilic and Martinovic*, in the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia, Case No. IT-98-34-T, para. 217.

⁹ See Article 43, Hague Convention IV Respecting the Laws and Customs of War on Land and Annexed Regulations, 1907 – “*The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country*”; and Article 64, Fourth Geneva Convention of 1949 – “*The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said law.*”

¹⁰ Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Addendum - Mission to Israel including Visit to the Occupied Palestinian Territory*, 16 Nov 2007, UN Doc: A/HRC/6/17/Add.4, p. 13, para. 27.

Issue 11

11. Incompatibility of Israeli counter-terrorism measures with CAT

11.1 The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, issued a report in 2007 (the Scheinin report)¹¹ in which he made several recommendations concerning Israel's security legislation and security-related measures in order to bring them into compliance with Israel's international human rights and humanitarian law obligations. To date, Israel has not implemented these recommendations, including the following:

- (i) that the *Incarceration of Unlawful Combatants Law* be repealed, without replacement (Scheinin report, para. 55) (see CAT Issue 3);
- (ii) that all complaints of ill-treatment and torture be referred to the Attorney General's office for the immediate filing of criminal charges where relevant, (Scheinin report, para. 56) (see CAT Issues 2, 27, and 29);
- (iii) that the *Criminal Procedure (Detainee Suspected of Security Offense) (Temporary Provision) Law – 2006* be amended to ensure that security suspects are provided with immediate and continued access to legal counsel and, where appropriate, family visits (Scheinin report, para. 57) (see CAT Issue 6);
- (iv) that Israel ensure that the detention or imprisonment of a child be used as a measure of last resort, that solitary confinement never be used as a means of coercion or punishment of children, and that detention and prison facilities provide education care appropriate to the age of each child (Scheinin report, para. 58) (see CAT Issue 25);
- (v) that Israel respect international humanitarian law, including the fundamental requirement of distinguishing between civilians and military objectives when resorting to the use of force. This must be the case irrespective of whether Israel is responding to an armed attack from Gaza, Lebanon or elsewhere and whether it classifies the attack as terrorism (Scheinin report, para. 60) (see UAT Supplementary Report, Israeli "Operation Cast Lead" – Gaza Strip, Section 5, paras. 5.1 – 5.8); and
- (vi) that Israel ensures that any home demolition or other destruction of private property conducted as a measure aimed at combating or preventing terrorism is resorted to in

¹¹*Ibid.*

strict compliance with international law and is accompanied by adequate reparation. (Scheinin report, para. 61) (See CAT Issue 33).

The UAT Coalition submits that the above laws and policies violate the Convention.

- 11.2 The Special Rapporteur also expressed concern about Israel's declared state of emergency and with the sweeping nature of measures declared under the state of emergency (Scheinin report, para. 10).¹² The State of Israel has enacted dozens of laws and orders the applicability of which are anchored in the ongoing state of emergency, declared by the Knesset in 1948 and maintained continuously ever since. The permanent state of emergency has been used to derogate from basic rights that are protected under international human rights law. Some legislative examples dependent upon this continued state of emergency are;
- (i) *The Emergency Powers (Detentions) Law – 1979* grants the State the power to detain individuals in administrative detention for indefinitely extendable six-month periods.
 - (ii) *The Prevention of Terrorism Ordinance – 1948* enumerates a number of criminal offences including “*membership in a terrorist organization*” and “*supporting a terrorist organization.*” The Ordinance contains a number of broad definitions of terrorism, and is often used against Palestinian political leaders who voice strong opposition to Israel's occupation. Almost all of the Palestinian political parties in the OPT are designated by Israel as “*terrorist organizations.*”
 - (iii) *The Criminal Procedures (Powers of Enforcement – Detention) Law – 1996* permits the denial of access to counsel by detainees accused of “security offences” for a period of up to 21 days.
- 11.3 Despite Israel's statement to the UN Human Rights Committee in 2001 that, “in recent years, the Government of Israel has been inclined to refrain from extending the state of emergency any further,”¹³ it remains firmly in place.
- 11.4 In 1999, the Association for Civil Rights in Israel (ACRI) petitioned the Israeli Supreme Court¹⁴ demanding that the state of emergency not be renewed; the petition remains pending,

¹² The power to declare a state of emergency is derived from the Law and Administration Ordinance – 1948. A state of emergency can be declared to exist in the state under Section 9 (Emergency regulations) subsection (a) of this ordinance, which also empowers any minister to make emergency regulations in the interests of state security. A state of emergency is declared to have expired under Section 9(d) of this ordinance.

¹³ Israeli Ministry of Justice and Ministry of Foreign Affairs, Second Periodic Report Concerning the Implementation of the International Covenant on Civil and Political Rights (ICCPR), para. 72.

¹⁴ See HCJ 3091/99, *The Association for Civil Rights in Israel v. The Knesset* (case pending).

ten years after it was filed.¹⁵ In September 2008, the Supreme Court issued an interim decision in the case in which it ruled that the State's progress in ensuring that legislation is not anchored to the declared state of emergency had not been satisfactory.¹⁶

Issue 12

12. Women in detention

- 12.1 As of 31 March 2009, there were 59 Palestinian female detainees in Israeli prisons, of which 11 were mothers with 49 children.¹⁷

[Evidence: see Annexure A – Palestinian female detainees]

Article 3

[no comment]

Article 4

[no comment]

Article 5

Issue 18

18. Israel's jurisdictional obligations relating to the Gaza Strip

- 18.1 See paragraph 2.23 of the UAT Alternative Report for a discussion of the Israeli Supreme Court's position in *Jaber Al Basyouni Ahmed v The Prime Minister* that Israel is not in "effective control" of the Gaza Strip.
- 18.2 The UAT Coalition submits that the question of "effective control" over the Gaza Strip has no bearing on Israel's obligation in cases of torture to establish jurisdiction over Israeli nationals per Article 5 of CAT.

¹⁵ According to information obtained from ACRI, in one of a series of responses submitted to the court by the State, on 28 March 2009 the Interior Ministry stated that it was examining the possibility of amending the provision pertaining to administrative detention, as part of a revision of anti-terror legislation. To date, however, there have been no developments in this regard.

¹⁶ The court's decision is available in Hebrew at: <http://elyon1.court.gov.il/files/99/910/030/T28/99030910.t28.htm>.

¹⁷ Three women are residents of the Gaza Strip, four are East Jerusalemites and another four are Palestinian citizens of Israel.

Issue 19**19. Private security contractors: use, accountability and training**

19.1 See paragraphs 6.17 – 6.21 of the UAT Alternative Report.

Issue 20**20. Gaza siege**

20.1 See paragraphs 2.20 – 2.24 of the UAT Alternative Report for information on Israel's siege of the Gaza Strip. Israel's punitive blockade of Gaza, first imposed in June 2007, continues as of April 2009.

20.2 During the Israeli military attacks on Gaza from 27 December 2008 – 18 January 2009, the Strip was completely closed and the tunnels along the Egyptian-Gazan border were attacked by Israeli forces, thereby further reducing the overall amount of goods entering Gaza.¹⁸ The following are some indicative statistics provided by the UN Office for the Coordination of Humanitarian Affairs (OCHA) on the siege. This data is being updated on a regular basis.¹⁹

Water

- (i) During the week 4-10 of March 2009, 50,000 people continued to have no running water, and an additional 100,000 received water only every 5-6 days.²⁰ Access to water for the affected population will remain difficult until spare parts and repair materials²¹ are allowed entry into Gaza.²²

¹⁸ UN Office for the Coordination of Humanitarian Affairs (OCHA), *Protection of Civilians Weekly Report*, 4-10 March 2009. Available at:

http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_2009_03_10_english.pdf

¹⁹ For data related to the siege on Gaza during the military assault, see the websites of Gaza-based human rights organizations Al Mezan Center for Human Rights (www.mezan.org) and the Palestinian Center for Human Rights (www.pchr.org).

²⁰ See *Supra* note 18.

²¹ During the week of 11-17 March 2009, nine truckloads carrying supplies for water projects were allowed into Gaza. However, due to restrictions on the entry of other essential materials, including water pipes, the benefit of these supplies is limited. (Source: UN Office for the Coordination of Humanitarian Affairs (OCHA), *Protection of Civilians Weekly Report*, 11-17 March 2009. Available at:

http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_2009_03_13_english.pdf.

²² See *Supra* note 18.

Electricity

- (i) In February 2009, the Gaza Power Plant (GPP) was only able to operate at about 80% of its full capacity (65MW out of 80MW).²³ Israel continues to prevent the import of adequate fuel supplies required to operate the GPP to full capacity.²⁴
- (ii) During the week of 4-10 March 2009, 90% of the Gaza population was experiencing intermittent power cuts.²⁵ The remaining 10% of Gaza's population has remained without electricity."²⁶

Fuel

- (i) During the week of 11-17 March 2009, nearly 50,000 litres of diesel and 30,000 litres of petrol entered Gaza daily via the Gaza-Egypt tunnels.²⁷ Though these supplies have eased the shortage, the amount of fuel still remains far below the needs of the population.

Humanitarian aid

- (i) The overall levels of aid allowed into Gaza remain below what is urgently required.²⁸ During the week of 11-17 March 2009, Israeli clearance procedures for access into Gaza by international humanitarian agency personnel continued to be very lengthy, greatly hindering their capacity to provide humanitarian aid and services.²⁹

Health

- (i) During February 2009, 324 permit applications were submitted by patients who required medical treatment abroad, of whom only 183 (56.5%) had their permits granted in a timely manner by the Israeli District Coordination Liaison (DCL) office; 109 (33.6%) had their applications delayed; 9 (2.8%) had their application denied and

²³ The UN Humanitarian Monitor: Occupied Palestinian Territory, No. 34, February 2009. Available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2009_02_01_english.pdf.

²⁴ *Ibid.*

²⁵ See *Supra* note 18.

²⁶ *Ibid.*

²⁷ See *Supra* note 21.

²⁸ OCHA, Field Update on Gaza from the Humanitarian Coordinator, 10-16 March 2009. Available at: http://www.ochaopt.org/documents/ocha_opt_gaza_humanitarian_situation_report_2009_03_16_english.pdf.

²⁹ See *Supra* note 21.

another 23 (7.1%) were interviewed by the ISA and are still awaiting an exit permit.³⁰ According to the Palestinian Liaison Officer at Erez Crossing, only 258 patients exited during February.³¹

- (ii) All Gaza patient referrals abroad have now been halted following the take over on 22 March 2009 by the Hamas authorities in Gaza of the PA Ministry of Health Referral Abroad Department. This is the main office which assesses and processes referral applications by Gaza patients for specialized hospital treatment outside Gaza. The PA Ministry of Health in Ramallah will not approve or fund applications as a result, and Israel and Egypt will not allow them to exit Gaza unless they have been approved by the PA.³²

Lack of repairs to basic infrastructure

- (i) Many critically needed items (spare parts, construction materials, etc.) remain restricted for entry, preventing reconstruction and recovery efforts, including spare parts for water and wastewater infrastructures.³³
- (ii) More than 100 procurement orders for spare parts and consumables needed to repair the Gaza Power Plant have been waiting for clearance to enter Gaza for months, preventing some repair works from taking place, impeding the functioning of the plant.³⁴

Import of basic goods

- (i) During February 2009, a daily average of 127 truckloads of goods entered the Gaza Strip. This compares with a daily average of 475 truckloads in May 2007.³⁵
- (iii) The import of goods from Israel, particularly by humanitarian agencies, remains subject to unclear and often inconsistent criteria at the Israeli-controlled crossings.³⁶

³⁰ See *Supra* note 23.

³¹ *Ibid.*

³² UN Office for the Coordination of Humanitarian Affairs (OCHA), *Field Update on Gaza from The Humanitarian Coordinator*, 24-30 March 2009. Available at:

http://www.ochaopt.org/documents/ocha_opt_gaza_humanitarian_situation_report_2009_03_30_english.pdf.

³³ See *Supra* note 18.

³⁴ See *Supra* note 23.

³⁵ *Ibid.*

³⁶ OCHA, *Protection of Civilians Weekly Report*, 18-24 March 2009. Available at:

http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_2009_03_24_english.pdf.

Restrictions on access to land and sea

- (i) Access by farmers to their land in the north and east of the Gaza Strip and east along the border with Israel remains limited.
- (ii) Up until June 2007, fisherman from Gaza were able to operate up to 20 nautical miles off the coast of Gaza. In June 2007, this was cut to six nautical miles and since “Operation Cast Lead” has been further reduced to three nautical miles.³⁷ Fishermen attempting to operate outside the designated zone are fired upon by Israeli naval forces.³⁸ These restrictions severely damage the livelihood of Gaza’s 3,000 fisherman and their families.³⁹

Movement of people in and out of Gaza

- (i) During February 2009, Erez Crossing was opened 23 days during February 2009, allowing only 1,978 people to exit Gaza, the majority of whom were diplomats and international humanitarian staff (730) and Palestinian patients and their accompaniers (505) with valid permits to cross Erez for medical treatment in Israel and the West Bank.⁴⁰
- (ii) During February 2009, Rafah Crossing was exceptionally opened for 15 days to allow mainly urgent medical cases to enter Egypt and cross back into Gaza. 2,662 Palestinians, including 590 patients, were allowed to enter Egypt and 1,855 others to return back to Gaza during February 2009, constituting 69% and 77%, decrease respectively, for the same period in 2007.

20.3 The UAT Coalition urges the Committee to find that Israel’s siege over Gaza gives rise to individual cases of ill-treatment, which may also amount to torture.

Medical coercion: ISA interrogation of patients exiting the Gaza Strip

- (i) See paragraphs 16.26 – 16.31 of the UAT Alternative Report for information on medical coercion of Gaza patients by the ISA. The UAT Coalition wishes to draw attention to further incidents of medical coercion of Gaza patients by the ISA at the Erez border crossing.

³⁷ See *Supra* note 18.

³⁸ *Ibid.*

³⁹ See *Supra* note 36.

⁴⁰ See *Supra* note 23.

- (ii) The UAT Coalition urges the Committee to find that purposely withholding medical treatment for non-medical reasons can amount to ill-treatment, and in serious cases, torture.⁴¹ The UAT Coalition also calls on the Committee to recommend that Israel cease this practice.

[Evidence: see Annexure A – medical coercion]

Article 11

Issue 21

21. Video recording of interrogations

21.1 See paragraphs 6.7 – 6.10 of the UAT Alternative Report.

Issue 22

22. Children sentenced based on age at date of sentence

22.1 See paragraph 11.10 of the UAT Alternative report.

22.2 The relevant date for calculating a child's age for the purpose of sentencing according to Military Order 132 is "upon the date of sentencing" rather than upon the date that the alleged offence was committed. Under Military Order 132 (5A) the Court is supposed to take into consideration the child's age at the time the alleged offence was committed, but in the experience of the UAT Coalition members who appear in the Military Courts, this does not occur in practice.

Issues 23

23. Judges trained in juvenile justice

23.1 See paragraph 11.10 of the UAT Alternative Report.

23.2 Since submitting the UAT Alternative Report to the Committee in September 2008, the UAT Coalition is aware that two judges have been assigned to Salem Military Court to handle juvenile justice cases. However, members of the UAT Coalition who practice in the military

⁴¹ See Physicians for Human Rights-Israel, *Holding Health to Ransom: GSS Interrogation and Extortion of Palestinian Patients at Erez Crossing*, August 2008, and British Medical Association, *Medicine Betrayed: The Participation of Doctors in Human Rights Abuses, second impression*, Zed Books Limited, 2002, p. 138.

courts have not discerned any appreciable difference in the treatment of juveniles being prosecuted in Salem Military Court. Further, no such provision has been made for proceedings conducted in Ofer Military Court.⁴²

Issue 24

24. Interrogation of minors in the absence of a lawyer or family member and the reliance on confessional evidence

- 24.1 See paragraph 11.9 of UAT Alternative Report.
- 24.2 Since submitting the UAT Alternative Report to the Committee in September 2008, there has been a sharp increase in the number of Palestinian minors being arrested, interrogated and detained by the Israeli army in the OPT. As at 28 February 2009, there were 423 Palestinian minors in Israeli detention, which represents a 37.8% increase for the same period in 2008.⁴³
- 24.3 The UAT Coalition regrets to inform the Committee that the practice of interrogating minors as young as 12 years in the absence of a lawyer and family member continues unchecked.

[Evidence: see Annexure A – Arrest, interrogation and detention of minors]

Issue 25

25. Solitary confinement of minors

- 25.1 See UAT Alternative Report, Annexure A – List of evidence, pages 39-40.

Article 12

Issue 26

26. Complaints, investigations and prosecutions

- 26.1 See paragraphs 12.1 to 12.8 of the UAT Alternative Report.

⁴² Information obtained through interviews with Defence for Children International – Palestine Section (DCI-Palestine) lawyers. DCI-Palestine employs five full-time Palestine lawyers, two of whom practice full-time in Salem and Ofer Military Courts.

⁴³These figures are obtained from the Israeli Prison Service and visits by lawyers for DCI-Palestine to the various interrogation and detention facilities in the West Bank.

Issues 27**27. Prompt, impartial investigations of ill-treatment and torture**

27.1 See the specific list of questions in paragraph 12.2 of the UAT Alternative Report.

Issue 28**28. Impunity for death of 13 unarmed Palestinian citizens of Israel**

28.1 See 12.3 – 12.8 of the UAT Alternative Report.

Issues 29**29. Updated complaint statistics**

29.1 See the specific list of questions in paragraph 12.2 of the UAT Alternative Report.

Article 14**Issue 30****30. Incompatibility of Civil Damages (Liability of State) (Amendment No. 8) Bill 2008 with CAT**

30.1 See 14.1 – 14.4 of the UAT Alternative Report.

Article 15**Issues 31****31. Admissibility of illegally obtained confessions**

31.1 See paragraphs 15.1 – 15.3 of the UAT Alternative Report.

Article 16**Issue 32****32. Conditions of detention of security detainees**

- 32.1 See paragraphs 16.19 – 16.25 of the UAT Alternative Report.
- 32.2 Regarding conditions of confinement for “security detainees”, the UAT Coalition wishes to call the Committee's attention to a new bill that was introduced in the Knesset on 23 March 2009. The bill specifically aims to create worsened conditions of confinement for prisoners convicted of terror offences or membership in an “organization that holds hostages.” If passed, the bill would deny the prisoners their existing, very limited, privileges, and would allow them to be held in solitary confinement for an unlimited period of time.
- 32.3 According to media reports, the bill is intended to increase Israel's bargaining power when it comes to hostage negotiations by giving it more options for pressuring organisations defined as “terrorist organizations” by the State of Israel into prisoner exchange deals.⁴⁴ The bill enjoys wide support among MKs and follows recommendations made on 19 March 2009 by a special ministerial committee⁴⁵ that the government should revoke some of the rights of Palestinian prisoners in order to increase pressure on Hamas to release captured Israeli soldier Gilad Shalit.
- 32.4 The UAT Coalition urges the Committee to find that the conditions of detention of “security detainees,” as described in the UAT Alternative Report, are incompatible with CAT. The UAT Coalition further wishes the Committee to take note of the deterioration of these conditions as described above and that this deterioration is set to be entrenched in legislation.

Issue 33

33. Incompatibility of policy of house demolition with CAT

- 33.1 See paragraphs 16.4 – 16.12 of the UAT Alternative Report.

⁴⁴ Shahar Ilan, “New bill seeks to worsen conditions of incarceration for terrorists,” *Ha'aretz*, 23 March 2009. Available at: <http://www.haaretz.com/hasen/spages/1073277.html>. The bill was submitted by MK Yariv Levin (Likud) and MK Yoel Hasson (Kadima).

⁴⁵ The ministerial committee convened for the first time on 18 March 2009, a day after Israel failed to reach an agreement with Hamas over a prisoner swap deal for the release of Gilad Shalit. It is headed by former Israeli Justice Minister Daniel Friedmann and includes the Attorney General. After the meeting, Minister Friedmann stated that Israel's conduct towards Palestinian prisoners had been “very humane,” adding that, “Israel took the most radical humane step, by granting exceptional rights to reprehensible murderers, to murderers of women and children, to those who sent suicide attackers, until today Israel behaved in this extremely humane way. It now needs to examine whether it is possible to continue in this way.”(Source: Barak Ravid, “Ministerial panel: Tighten Gaza borders, strip Palestinian prisoners' rights,” *Ha'aretz*, 18 March 2009. Available at: <http://www.haaretz.com/hasen/spages/1072042.html>).

33.2 Palestinians in the OPT continue to be subjected to punitive and administrative house demolitions by Israel. According to estimates by the Israeli Committee Against House Demolitions, some 24,130 Palestinian homes have been demolished in the OPT from 1967 to early 2009.⁴⁶

Punitive house demolition

- (i) In 2008, former Prime Minister Ehud Olmert and Defense Minister Ehud Barak called for punitive home demolitions following a series of fatal attacks by Palestinians from East Jerusalem. In these cases, all the alleged perpetrators were shot dead by the Israeli security forces at the sites of the attacks; the homes to be demolished belonged to their families. The occupants of houses include elderly people and children. On 6 August 2008, Defense Minister Ehud Barak issued an order for the demolition of the homes of the Abu Dheim family and the Duwiyat family, both in East Jerusalem.⁴⁷ The AG also announced that there was no legal impediment to demolishing the homes under Israeli law.⁴⁸
- (ii) On 5 January 2009, the Israeli Supreme Court dismissed a petition filed by HaMoked challenging the demolition of the Abu Dheim family's home. The court accepted the state's arguments and ruled that: "At the end of the day, before us is a hope for deterrence for saving human lives versus injury, although painful, in property." The court decided that there was no room to intervene in the state's change of policy towards punitive house demolitions, thereby paving the way for the state to resort to this measure in the future.⁴⁹ The court approved the sealing of the house despite the fact that the state did not argue that Alaa Abu Dheim's relatives had aided him or even been aware of his plans.⁵⁰ On 18 March 2009, the Supreme Court ruled that the house of Dweiyat's family can be demolished.⁵¹ Justice Edmund Levy wrote that house demolition is an effective and important deterrent against such acts.⁵²

⁴⁶ The Israeli Committee Against House Demolitions, *Statistics on House Demolitions (1967-2009)*, 13 February 2009. Available at: <http://www.icahd.org/eng/docs/ICAHD%20house%20demolition%20statistics.pdf>.

⁴⁷ For further information, see HCJ 9353/08, *Abu Dheim v. GOC Home Front Command*. The decision is available in English at: http://hamoked.org.il/items/110991_eng.pdf.

⁴⁸ Efrat Weiss, Mazoz: *No Legal Obstacle to Razing Terrorists Homes*, *YNET*, 7 March 2008. Available at: <http://www.ynet.co.il/english/articles/0.7340.L-3563794.00.html>.

⁴⁹ HCJ 9353/08, *Hisham Abu Dhem, et al. v. Head of the Home Front Command*, para. G of the ruling. The Supreme Court's decision is available in English at: http://www.hamoked.org.il/items/110991_eng.pdf.

⁵⁰ B'Tselem, *Sealing family home of person who committed terror attack at the Mercaz HaRav yeshiva is forbidden collective punishment*, 20 January 2009. Available at:

http://www.btselem.org/english/Punitive_Demolitions/20090120_Army_seals_house_in_Jabal_al_Mukabber_East_Jerusalem.asp.

⁵¹ HCJ 124/09, *Hisham Abu Dwayyat v. The Minister of the Interior, et al.* The Supreme Court's ruling is available in Hebrew at <http://elyon1.court.gov.il/files/09/240/001/o03/09001240.o03.htm>.

⁵² *Ibid.*, para. 6.

Punitive house demolitions in the context of military operations

- (i) The civilian population in the Gaza Strip has been particularly devastated by punitive house demolitions during military operations. Israel has argued that these demolitions have taken place to locate weapons-smuggling tunnels and in response to the launching of Qassam rockets from Gaza into Israel.
- (ii) Home demolitions carried out by Israeli military forces during “Operation Cast Lead” in December 2008 – January 2009 are staggering: According to estimates, as many as 4,247 houses were demolished by Israel in the Gaza Strip.”⁵³

Administrative house demolition

- (i) In 2008, 291 houses were demolished in East Jerusalem; between 1 January and 13 Feb. 2009, 35 houses were demolished for administrative reasons.⁵⁴

33.2 Whether or not an individual house demolition constitutes ill-treatment depends upon the circumstances of the individual case. The UAT Coalition urges the Committee to find, consistent with its conclusions in *Dzemajil, et al. v. Yugoslavia (CAT 161/00) [9/]*, that the circumstances surrounding the three patterns of house demolition described above constitute ill-treatment.

Issues 34

34. Human shields

- 34.1 See paragraphs 16.1 – 16.3 of the UAT Alternative Report.
- 34.2 The UAT Coalition wishes to update the Committee on Israel’s continuing use of human shields as follows:
 - (i) During the recent military operation in Gaza, soldiers ordered civilians to enter buildings to ensure that they were not booby-trapped or to bring people outside, as well as to remove suspicious objects from roads, and to stand in front of soldiers in order to prevent Palestinians from shooting at them.”⁵⁵

⁵³ See *Supra* note 57.

⁵⁴ *Ibid.*

⁵⁵ B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, *Guidelines for Israel’s Investigation into Operation Cast Lead: 27 December 2008 – 18 January 2009*, pp. 9-10. Available at: http://www.btselem.org/Download/200902_Operation_Cast_Lead_Position_paper_Eng.pdf.

- (ii) On 5 January 2009, three brothers from Gaza (14, 15 and 16 years old) were taken by Israeli soldiers at gunpoint from their home, and made to kneel in front of tanks in order to deter Hamas fighters from firing; they were also sent by Israeli soldiers into houses to clear them.⁵⁶
- (iii) Between 5 and 12 January 2009, the Israeli army made around 20 Palestinians carry out ‘escort and protection’ missions of various kinds in the I’zbet Abed Rabbo neighbourhood of Gaza.⁵⁷
- (iv) On 15 January 2009, at approximately 5:00 am, Israeli soldiers stormed the ground floor of a residential building in Tel al-Hawa, Gaza City, while firing live rounds. Approximately 40 men, women and children were sheltering inside. The soldiers separated the men from the women and children, and ordered the men to strip naked before leading them out of the house one by one. A soldier approached 9-year-old Majed, who was hiding behind his mother in fear, motioning him to step forward. The boy reported that the soldier then grabbed him by his shirt and pushed him against the wall. The soldier was shouting at him in Hebrew, a language he does not understand. The soldier motioned at the boy until he understood he was being ordered to open all the bags and suitcases in the room and empty their contents. The boy opened the bags one-by-one as the soldier trained his gun at him from 1.5 metres away. Shaking from fear, the boy struggled to open one suitcase which was locked. The soldier grabbed the boy by his hair, slapped him in the face, and slammed him against the wall. The soldier then fired at the suitcase to destroy the lock. He then grabbed the boy, and ordered him to go back to his mother.⁵⁸

[Evidence: see Annexure A – Human shields]

Issues 35

35. Prohibition on family visits for security detainees

35.1 See paragraphs 16.14 – 16.18 of the UAT Alternative Report.

⁵⁶ Clancy Chassay, “Palestinian brothers: Israel used us as human shields in Gaza war,” *The Guardian*, 23 March 2009. Available at: <http://www.guardian.co.uk/world/2009/mar/23/gaza-human-shields-claim>.

⁵⁷ Amira Hass, “Gazans: IDF used us as ‘human shields’ during offensive,” *Ha’aretz*, 20 February 2009. Available at: <http://haaretz.com/hasen/spages/1065594.html>.

⁵⁸ Summary from an affidavit collected by a DCI-Palestine Fieldworker. The UN Special Representative of the Secretary-General for Children and Armed Conflict also documented this case in a report to the Human Rights Council (See Supra note, 2 for the report).

- 35.2 The UAT Coalition wishes to update the Committee on Israel's continued restrictions on family visits to Palestinian detainees, and in particular in relation to detainees from Gaza. During the 27 December 2008 – 18 January 2009 Israeli military attacks on Gaza, prisoners from Gaza being held in Israel were not allowed to have any contact with their families, including a total prohibition on phone calls. As a result, prisoners were unable to check on the well-being of their families and loved ones in the wake of the Israeli attacks. Contact for these prisoners with their families was vital in view of the heavy casualties and great number of wounded in Gaza.⁵⁹ Only a few inmates have since had the opportunity to speak to their families.⁶⁰
- 35.3 The UAT Coalition wishes to further apprise the Committee that on 29 March 2009, the Israeli cabinet voted to impose further sanctions specifically on Hamas prisoners held in Israel, to include drastic limitations on family visits, as well as other restrictions. Before the meeting, former Minister Meir Sheerit said that, "*it is not conscionable that Shalit is living there without being able to see his parents, while Hamas prisoners live here almost like in a summer camp,*" explicitly linking the government's plans to further cut back on family visits to Palestinian prisoners efforts to pressure Hamas to release captured Israeli soldier Gilad Shalit.⁶¹

Issue 36

[no comment]

Issue 37

[no comment]

Issue 38

[no comment]

⁵⁹ On 31 December 2008, Adalah submitted a pre-petition to the Attorney General and the Director of the Israel Prisons Service demanding that the Palestinian detainees and political prisoners from the Gaza Strip be allowed the use of telephones in order to check on their families in the wake of continuous Israeli attacks on the Gaza Strip. No response to the pre-petition has been received to date.

⁶⁰ According to a telephone interview held with Attorney M. Jabareen, as of February 2009 the only prisoners who were being permitted to make a telephone call to their families were those for whom a death certificate could be produced to prove the death of a first-degree relative. Majd, PCATI's field attorney visited 11 detainees in Ashkelon and was told that some – probably two – were recently allowed to make one phone call to the family.

⁶¹ Barak Ravid, "Cabinet okays sanctions on Hamas prisoners," *Ha'aretz*, 29 March 2009. Available at: <http://www.haaretz.com/hasen/spages/1074675.html>.