

# Torture & Ill-Treatment

## In Israel & the occupied Palestinian territory

*An Analysis of Israel's compliance with the UN Convention Against Torture  
and Other Cruel, Inhuman or Degrading Treatment or Punishment*

**Annual Report**  
**2008**



# UNITED AGAINST TORTURE

## **A coalition of Palestinian, Israeli and international NGOs which aims to combat torture in Israel and the Occupied Palestinian Territory**

The United Against Torture Coalition (the UAT Coalition) members participating in this report consist of 14 Palestinian and Israeli human rights NGOs<sup>1</sup> dedicated to the progressive and substantial eradication of torture and ill-treatment in Israel and the Occupied Palestinian Territory (OPT). The UAT Coalition seeks to achieve this goal through coordinated documentation, reporting and exposure of incidences of torture and other cruel, inhuman or degrading treatment or punishment in Israel and the OPT, and holding duty bearers to account.

The UAT Coalition circulates a monthly newsletter, publishes an annual report and organises public events and trainings which aim at preventing and combating the occurrence of torture in Israel and OPT.

For information and subscription please visit: [www.unitedagainsttorture.org](http://www.unitedagainsttorture.org)

The United Against Torture project is financially supported by the European Commission and coordinated by the Italian Consortium of Solidarity (ICS) in partnership with the Public Committee against Torture (PCATI), the Treatment and Rehabilitation Center for Victims of Torture (TRC) and the Mandela Institute for Political Prisoners.

<sup>1</sup> Adalah – The Legal Center for Arab Minority Rights in Israel; Al-Haq – Law in the Service of Mankind; 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; The 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). Addameer Prisoners Support and Human Rights Association and Physicians for Human Rights – Israel also contributed to the preparation of this report.

## 6 A. Introduction

## 8 B. Overview

- 10 Mass detention
- 10 Arrest and transfer
- 12 Interrogation, confession and detention
- 17 Israeli military justice system
- 18 Administrative detention
- 20 Siege of the Gaza Strip
- 22 Attacks on human rights defenders and their organisations

## 24 C. Articles of the Convention

### 25 Article 2

- 25 Incorporation of the Convention into domestic law
- 25 • The Supreme Court's torture ruling
- 26 • Defence of "Superior Orders"
- 27 Effective measures taken to prevent all acts of torture
- 27 • Incommunicado detention
- 28 Legislative measures taken to regulate agents of the state
- 28 • *Israel Security Agency Law, 57622002- (ISA law)*
- 29 • *Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Provision) Law 2006*
- 30 • *Criminal Procedure (Interrogating Suspects) Law - 2008*
- 31 • *The Internment of Unlawful Combatants Law – 2002*
- 32 • Private security contractors operating inside the OPT
- 33 Effective measures taken to ensure that those responsible for torture and ill-treatment are brought to justice
- 33 Effective measures to ensure that no exceptional circumstances are invoked justifying torture and ill-treatment
- 34 • State of emergency

### 34 Article 4

- 35 The enactment of specific legislation criminalising torture in terms consistent with the definition in article 1

### 35 Article 11

- 35 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

- 36 • Forced confessions in Hebrew
- 36 • Secret detention “Facility 1391”
- 39 • Prosecution and detention of minors

#### **42 Article 12**

- 42 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
- 42 • Impunity for police officers and commanders responsible for the October 2000 killings of 13 Palestinian citizens of Israel

#### **44 Article 13**

- 44 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

#### **45 Article 14**

- 45 Compensation and rehabilitation for victims of torture
- 45 • *Civil Damages (Liability of the State)(Amendment No.8) Bill 2008*
- 46 • *Rehabilitation for victims of torture*

#### **46 Article 15**

- 46 Admissibility of illegally obtained confessions

#### **47 Article 16**

- 48 Obligation to prohibit acts of cruel, inhuman or degrading treatment or punishment
- 48 • Human shields
- 50 • House demolitions
- 55 • Detention of prisoners in Israel
- 55 • Family visits
- 56 • Prison conditions
- 58 • Medical coercion: ISA interrogation of patients exiting the Gaza Strip

## **62 D. Concluding remarks**

## **64 E. Key recommendations**

# A. Introduction

This report is based on the Alternative Report and materials submitted by the UAT Coalition to the UN Committee Against Torture (the Committee) in September 2008, in advance of the Committee's review of Israel's compliance with the *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*. The Alternative Report is intended to assist the Committee in developing its List of Issues that Israel will be expected to address in May 2009. A full text of the Alternative Report and materials can be found at: <http://www.unitedagainsttorture.org/more.asp?NewsID=90>.

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 OPT) and Palestinian citizens of Israel.

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.

As indicated in the following pages, 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 purposefully used to obtain information and confessions, as well as to intimidate, humiliate and terrorise the Palestinian population.

This report will review events that have occurred in Israel and the OPT since Israel was last reviewed by the Committee in 2001, and assess, article by article, whether the actions of the state conform to the obligations imposed on it by the Convention.<sup>2</sup>

<sup>2</sup> Israel ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in November 1991.

## B. Overview



*For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

#### **Convention Against Torture – Article 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 arrest, interrogation, detention and trial by military courts of a large number of Palestinians from the OPT every year by Israel, the Occupying Power. The UAT Coalition also wishes to highlight the alarming situation that has developed in the Gaza Strip 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.

*Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

#### **Convention Against Torture – Article 16**



## Mass detention

Since 1967, approximately 700,000 Palestinian men, women and children have been detained under military orders issued by Israeli commanders in the OPT.<sup>3</sup> According to Israeli Prison Service (IPS) figures, there are currently<sup>4</sup> between 8,472 – 8,992<sup>5</sup> Palestinians in Israeli prisons, of which 62 - 70 are women<sup>6</sup> and 324 children.<sup>7</sup>

## Arrest and transfer

### Case Study No. 1

**Name of victim:** Ahmad Z.

**Age at incident:** 17

**Affidavit collected by:** DCI/PS

I was arrested near the Wall at 3.00 pm while my father was at work. I was with two other boys, who are younger than me. While we were near the Wall we saw a group of Israeli soldiers running towards us and they started beating us. They accused us of throwing stones. I admitted throwing stones to one of the soldiers to stop him beating me. But instead, he started to beat me more. The soldiers arrested us. I was blindfolded and handcuffed and thrown onto the floor of a military jeep. I was then transferred to Shakeid Military Base. During the transfer I was being kicked.

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 their back with plastic ties that have a tendency

<sup>3</sup> UN Special Rapporteur on the situation of human rights in the Palestinian Territories occupied since 1967, Professor John Dugard, *Human Rights Situation in Palestine and Other Occupied Arab Territories*, 21 January 2008, A/HRC/7/17, para. 45.

<sup>4</sup> At the time of Publication.

<sup>5</sup> 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 the Gaza Strip. The higher figure also includes Palestinian detainees from East Jerusalem (300), Palestinian citizens of Israel (140), Palestinians detained in Israeli army facilities (changes daily) and the Golan Heights (15).

<sup>6</sup> 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 the Gaza Strip. The higher figure also includes Palestinian detainees from East Jerusalem, Palestinian citizens of Israel, Palestinians detained in Israeli army facilities and the Golan Heights.

<sup>7</sup> Defence for Children International-Palestine Section: The number of children in Israeli detention includes 313 in IPS detention and 11 in Israeli army detention from the West Bank, the Gaza Strip and East Jerusalem.

to cut the flesh.<sup>8</sup> Mass arrests from homes in entire neighbourhoods continue to take place in the OPT during military incursions.

## Case Study No. 2

**Name of victim:** Muss'ab R.  
**Age at incident:** 15  
**Affidavit collected by:** DCI/PS

I was arrested on 24 May 2007 near Al Aroub College by Israeli soldiers who alleged that I had been throwing stones and paint. This was the first time I had been arrested. During the arrest, the Israeli soldiers beat me by boxing me with their hands. They beat me around my waist and shoulders and afterwards they put me in their jeep.

During the transfer, they blindfolded and handcuffed me. They slapped me. The transfer lasted about half an hour until we reached Khirbit Sor and there the soldiers slapped me with their hands. One of the soldiers beat me in the middle of my back as he continuously asked me questions and when I didn't respond, he slapped me on my face. He continued to ask me questions for about half an hour.

2007

Once bound and blindfolded, the detainee is usually placed on the floor of a military jeep,<sup>9</sup> sometimes face down, for transfer to an interrogation and detention centre.<sup>10</sup> Neither the detainee nor his or her family is told why he or she is being detained or where he or she is 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 last anything between 20 minutes up to several hours.

<sup>8</sup> Public Committee Against Torture in Israel, *No Defense: Soldier Violence against Palestinian Detainees*, June 2008, 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."

<sup>9</sup> Public Committee Against Torture in Israel, *No Defense: Soldier Violence against Palestinian Detainees*, June 2008, 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 ..."

<sup>10</sup> Detainees from the West Bank are usually taken to one of seven interrogation and detention centres after arrest: Huwarra (near Nablus, West Bank), Etzion (near Bethlehem, West Bank), Salem (near Jenin, West Bank), Askelon (Israel), Jalama (Israel), Mascobiyya (Jerusalem) and Petah Tikva (Israel). Palestinians from East Jerusalem are usually taken to Mascobiyya or to one of the West Bank detention centres, depending on where the offence allegedly took place. Detainees from the Gaza Strip, are presently being taken to Askelon or Beersheba inside Israel.

### Case Study No. 3

**Name of victim:** Ma'ali M.  
**Age at incident:** Adult  
**Affidavit collected by:** Al-Haq

At dawn, the jeep moved. I was placed at the Israeli soldiers' feet. From the moment I was detained, my hands were shackled with plastic handcuffs and I was blindfolded. Soldiers verbally abused me; they insulted Islam and called me a terrorist. They also beat me with their hands, feet and rifles. My nose bled.

I remember that the plastic handcuffs were so tight. I asked the soldiers to loosen them, but a soldier tightened them instead. I believe that over ten soldiers were on board the Hummer jeep. Some soldiers sat on me while I was lying on the ground at their feet. When the jeep stopped, they dragged me out of the jeep. I thought I was being brought into a military camp. I was dragged to the ground and pulled along by my arms. They put me in a room. I heard women's giggling in Hebrew which I could understand reasonably well; they mocked me and laughed at the blood oozing from my nose.

**12 December 2007**

## Interrogation, confession and detention

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 rights<sup>11</sup> and is invariably denied access to a lawyer until the end of the interrogation process, once a confession has been obtained.<sup>12</sup>

<sup>11</sup> There is evidence to suggest that the ISA distributes a leaflet containing detainee rights and obligations, 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.

<sup>12</sup> B'Tselem and HaMoked, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, May 2007, p. 39, ([http://www.btselem.org/English/Publications/Summaries/200705\\_Utterly\\_Forbidden.asp](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, Lieutenant-Colonel Netanel Benisho.

## Case Study No. 4

**Name of victim:** Ibrahim S.  
**Age at incident:** 15  
**Affidavit collected by:** DCI/PS

Then Samir started asking me about stone-throwing. He said that on the night of 7 November 2007, I threw stones at the army when they invaded my village of Beit Omar. At first I denied this allegation. Around two hours later Samir said: *"If you don't confess, I will send you to somebody who will sexually abuse you. He has a huge penis."* When the interrogator threatened me in this way I confessed that I threw stones.

**14 June 2008**

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;<sup>13</sup>
- slapping and kicking;<sup>14</sup>
- sleep deprivation;<sup>15</sup>
- solitary confinement;<sup>16</sup>
- denial of food and water for extended periods of time;<sup>17</sup>
- denial of access to toilets;<sup>18</sup>
- denial of access to showers or change of clothes for days or weeks;<sup>19</sup>

<sup>13</sup> B'Tselem and HaMoked, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, May 2007, 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 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."

<sup>14</sup> Ibid 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."

<sup>15</sup> See affidavits of GA, MJ and SA, List of Evidence, pp. 40-43, 43-45, 45-49. <http://www.unitedagainsttorture.org/more.asp?NewsID=90>

<sup>16</sup> See affidavits of GA, MJ and SA, List of Evidence, pp 40-43, 43-45, 45-49. <http://www.unitedagainsttorture.org/more.asp?NewsID=90>

<sup>17</sup> B'Tselem and HaMoked, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, May 2007, pp. 37-38.

<sup>18</sup> Ibid.

<sup>19</sup> See affidavits of Hussein R., GA and SA: List of Evidence, pp. 19-21, 40-43, 45-49. <http://www.unitedagainsttorture.org/more.asp?NewsID=90>

- exposure to extreme cold or heat;<sup>20</sup>
- position abuse;<sup>21</sup>
- yelling and exposure to loud noises;<sup>22</sup>
- insults and cursing;<sup>23</sup>
- arresting family members or alleging that family members have been arrested;<sup>24</sup> and
- sexual abuse.<sup>25</sup>

<sup>20</sup> See affidavit of Hussein R. :List of Evidence, pp. 19-21. <http://www.unitedagainststorture.org/more.asp?NewsID=90>

<sup>21</sup> Public Committee against Torture, *Ticking Bombs: Testimonies of Torture Victims in Israel*, May 2007, 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."

<sup>22</sup> *Ibid* 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 has apparently taped."

<sup>23</sup> B'Tselem and HaMoked, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, May 2007, 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."

<sup>24</sup> Public Committee against Torture, *Family Matters. Using Family Members to Pressure Detainees Under GSS Interrogation*, April 2008: p. 18 : "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."

<sup>25</sup> See affidavit of Mohammad I.:List of Evidence, p. 16. <http://www.unitedagainststorture.org/more.asp?NewsID=90>

## Case Study No. 5

**Name of victim:** Lu'ay A.  
**Age at incident:** Adult  
**Affidavit collected by:** Al-Haq

After I sat down, interrogators tied my feet to the stool with iron chains and tied my hands behind my back. An interrogator brought a chair and sat in front of me, with the others sitting behind me. The interrogator in front of me put his hands on my chest and started pushing me backwards, until my head was close to the feet of the other interrogator behind me. The latter trod on my neck and face. I experienced such severe pain that I felt I was about to faint...

...

The interrogators repeated the aforementioned torture technique, called the *Mozah* (banana) method amongst Palestinian detainees. I was subjected to this type of torture 10 or 15 times an hour. Each time I fell unconscious. The inquisitors insisted that I possessed information. I was interrogated for four consecutive hours, during which time I urinated on myself because the inquisitors did not allow me to use the toilet.

Later, interrogators used a new torture method called the "squatting Shabeh." They forced me to stand on my toes and put an iron hook up my nostril. The hook was tied to a metal chain that hung from the ceiling, thereby depriving me from the ability to stand comfortably on my feet. If I wanted to rest the result would be damaging my nose as the hook would be inserted deep inside it. Moreover, I was bound from behind with a metal chain that was fixed to the ground. Therefore, I could not stand on my feet.

...

I was interrogated for about 100 consecutive hours.

...

I was in severe pain and I felt the bones fracture in the bottom of my back. I fainted. I woke up when water was poured on my face. I tried to sit upright but I was no longer able to control my body. When the interrogator removed his hand from my shoulder, I could not sit upright or sit still. I rocked forwards and backwards uncontrollably. At this stage, I felt my feet go cold and I gradually stopped feeling in them. I could not feel myself urinating. 'Ameed, the interrogator, untied me and told me to stand up. "I cannot," I replied, "I do not feel the lower part of my body." "This means that you are now paralysed," he stated, "this is what we want."

**16 June 2007**

\* It is worth to mention that also the Public Committee Against Torture in Israel (PCATI) collected an affidavit on this case.



In addition to the direct methods of abuse listed above, Palestinian detainees are routinely subjected to threats during interrogation.<sup>26</sup> These threats include:

- being beaten or having family members harmed;<sup>27</sup>
- being imprisoned for an indefinite period of time or having family members imprisoned;<sup>28</sup>
- having work or study permits revoked;
- being sexually abused;<sup>29</sup>
- being attacked by a dog;
- being subjected to some form of physical abuse;<sup>30</sup> and
- having the family home demolished.<sup>31</sup>

<sup>26</sup> B'Tselem and HaMoked, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, May 2007, 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."

<sup>27</sup> Public Committee against Torture, *Family Matters. Using Family Members to Pressure Detainees Under GSS Interrogation*, April 2008, 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."

<sup>28</sup> *Ibid* 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."

<sup>29</sup> See affidavit of Ibrahim S.: List of Evidence, pp. 12-16. <http://www.unitedagainststtorture.org/more.asp?NewsID=90>

<sup>30</sup> See List of Evidence. <http://www.unitedagainststtorture.org/more.asp?NewsID=90>

<sup>31</sup> See affidavit of Hussein R.: List of Evidence, pp. 19-21. <http://www.unitedagainststtorture.org/more.asp?NewsID=90>; see also. Public Committee against Torture, *Ticking Bombs: Testimonies of Torture Victims in Israel*, May 2007, 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."



## Case Study No. 6

**Name of victim:** Amjad F.  
**Age at incident:** Adult  
**Affidavit collected by:** Al-Haq

Israeli intelligence officers interrogated me on several occasions at the Salem Military Camp. If I did not confess, interrogators threatened to arrest my wife and children as well as demolish my house. On one instance inquisitors put me on board a military jeep, saying that they would take me to watch the Israeli army demolishing my house, which they did not do.

...

The torture methods I went through were the following: the threat of being placed under administrative detention (arrest without charge or trial) for a prolonged period of time; of being prevented from travelling a broad; being continuously prosecuted; and of there being constraints placed on my daily activities.

**22 July 2008**

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.<sup>32</sup>

## Israeli military justice system<sup>33</sup>

Once the interrogation phase is completed, Palestinian detainees from the West Bank are processed for trial, sentencing and imprisonment in one of the two Israeli military courts currently in operation in the OPT.<sup>34</sup> Palestinian detainees from the Gaza Strip are tried in Israeli domestic courts, since Israel's so-called disengagement from the Gaza Strip in 2005.<sup>35</sup> Israeli military courts systematically fail to meet the fundamental fair trial guarantees required by Israel's international human rights and humanitarian law obligations.

<sup>32</sup> Defence of the Children International- Palestinian Section, *Palestinian Child Prisoners 2007*, April 2008, p. 19: (<http://www.dci-pal.org/english/publ/research/2008/PCPReport.pdf>).

<sup>33</sup> 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.

<sup>34</sup> The Military Court of Samaria operates in an Israeli military base near the village of Salem in the north of the West Bank, and the Military Court of Judea operates in the Israeli military base of Ofer, near Ramallah in the centre of the West Bank.

<sup>35</sup> 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 allegedly took place.

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 been brought before Israeli military courts. This averages out at well over 9,000 per year.<sup>36</sup> In 1991 alone, some 45,000 indictments were filed in the military courts.<sup>37</sup>

In approximately 95% of cases involving minors in the military courts, confessions are relied on to obtain a conviction.<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup> The reason for this becomes clear on page 140 of Yesh Din's 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."*

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 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."*<sup>41</sup>

## Administrative detention

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 leaders<sup>42</sup> and human rights defenders.<sup>43</sup>

<sup>36</sup> Yesh Din, Volunteers for Human Rights, *Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories*, December 2007, p. 25: (<http://www.yesh-din.org/site/index.php?page=militarycourts&lang=en>)

<sup>37</sup> *Ibid.*, p. 40.

<sup>38</sup> Defence of the Children International- Palestinian Section, *Palestinian Child Prisoners 2007*, April 2008 p. 19.

<sup>39</sup> Yesh Din, Volunteers for Human Rights, *Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories*, December 2007, p. 70.

<sup>40</sup> *Ibid.*, p. 136.

<sup>41</sup> *Ibid.*, p. 11.

<sup>42</sup> In 2007, 45 members (34%) of the Palestinian Legislative Council were detained by Israel, including four in administrative detention.

<sup>43</sup> See section on human rights defenders, *infra* pp. 22-23.

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.

### Case Study No. 7

**Name of victim:** Suhaib H.  
**Age at incident:** 17  
**Affidavit collected by:** DCI/PS

At no time during my detention was I interrogated or told why I was being held. After eight days from the time of my arrest, the section representative showed me a bit of paper written in Hebrew and told me that I had been given an administrative detention order for four months. The section representative told me that the order was from the Military Commander and it said that *"it was necessary to arrest me."*

...

After six months in administrative detention I was released from Ofer prison on 23 January 2008. I still do not know why I was given an administrative detention order.

**6 March 2008**

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, is given access to the *"secret evidence."*

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 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.<sup>44</sup> By way of contrast, under Israeli civil law which applies to citizens and residents of the state, an administrative detainee must be brought before a judge within 48 hours and the order reviewed every three months.<sup>45</sup>

<sup>44</sup> 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.

<sup>45</sup> *Emergency Powers Law (Detention)* (1979).

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.<sup>46</sup>

There are currently 691 Palestinians being detained in administrative detention, of which six are women and 13 are children, including two girls.<sup>47</sup>

### Case Study No. 8

**Name of victim:** Obaidah A.  
**Age at incident:** 17  
**Report written by:** DCI/PS

On 29 July 2007 Obaidah appeared in court for a second time and was granted bail on the grounds of insufficient evidence. Before Obaidah could be released, the prosecutor appealed the decision and on 30 July, the Appeal Court also ordered Obaidah's release on bail due to insufficient evidence. However, before Obaidah could be released, he was issued with an administrative detention order by the Israeli military commander, which authorises detention without charge or trial for up to six months at a time for undisclosed "security reasons".

**18 August 2008**

## The siege of the Gaza Strip

Israel's siege on the population of the Gaza Strip 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.<sup>48</sup>

Following Hamas' victory in the Palestinian parliamentary elections of January 2006, Israel allowed only basic humanitarian goods and supplies to enter the Gaza

<sup>46</sup> B'Tselem, *Annual Report 2007*, 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."

<sup>47</sup> Israeli Prison Service (Date of Statistics: 31 July 2008). Statistics available at: [http://www.btselem.org/english/Administrative\\_Detention/Statistics.asp](http://www.btselem.org/english/Administrative_Detention/Statistics.asp). Addameer estimates the true figure to be higher as the IPS figures do not include administrative detainees temporarily held in Israeli Defence Force facilities.

<sup>48</sup> See updates and reports by the UN Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territories, available at [www.ocha.org](http://www.ocha.org).

Strip, despite its total dependence on Israel.<sup>49</sup> This policy intensified following Hamas' takeover of the Gaza Strip in June 2007. Since then, Israel has kept the border crossings between Israel and the Gaza Strip closed, with minor exceptions. In September 2007, Israel officially declared the Gaza Strip a "hostile entity" and introduced a policy of collective punishment that included severe cuts to electricity and fuel supplies.

Israel justifies its siege on the the Gaza Strip on the basis of the unlawful firing of Qassam rockets on Israeli population centres in the south by Palestinian armed groups. Yet these security concerns cannot justify the punitive measures imposed by the Israeli government on the 1.5 million residents of the the Gaza Strip.

The Israeli Supreme Court<sup>50</sup> has approved the government's punitive measures. In 2007 and 2008, the Court approved the closure of border crossings for humanitarian aid and vital commodities and goods;<sup>51</sup> the denial of passage for seriously ill individuals and even for those in life-threatening situations in need of urgent medical treatment not available in the Gaza Strip;<sup>52</sup> and cutbacks in fuel and electricity supplies.<sup>53</sup> 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 the Gaza Strip.<sup>54</sup> The Court then accepted the state's assertion that Israel's duties towards the Gaza Strip'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.

Israel's siege over the entire population of the Gaza Strip 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.<sup>55</sup>

<sup>49</sup> For Israel's effective control over the Gaza Strip: see Gisha, *Disengaged Occupiers: The Legal Status of The Gaza strip*, January 2007, available at: <http://www.gisha.org/UserFiles/File/Report%20for%20the%20website.pdf>

<sup>50</sup> The Israeli Supreme Court, when serving as the court of appeals, also sits as the High Court of Justice. This report will refer to the Court throughout as the Israeli Supreme Court.

<sup>51</sup> H.C. 5523/07, *Adalah et al. v. The Prime Minister et al.* (petition withdrawn October 2007).

<sup>52</sup> H.C. 5429/07, *Physicians for Human Rights, et al. v. The Defense Minister* (decision delivered 28 June 2007).

<sup>53</sup> H.C. 9132/07, *Jaber Al-Basyouni Ahmed v. The Prime Minister* (decision delivered 30 January 2008).

<sup>54</sup> *Ibid.* This decision goes against the almost unanimous position of the international legal and political communities. Indeed, as recently as 22 January 2008, at the 5824<sup>th</sup> 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 the Gaza Strip, carries clear obligations under international law."

<sup>55</sup> 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 International Criminal Tribunal for the former Yugoslavia judgment in *DELALIC et al.*, available at: <http://www.un.org/icty/celebici/trialc2/judgement/cel-tj981116e.pdf>.

## Attacks on human rights defenders and their organisations

The work of various UN and international institutions concerned with defending and promoting human rights is significantly enhanced by the assistance received from human rights defenders and organisations, who provide accurate and timely information from the field. In order to achieve the collective goal of eliminating all forms of torture and ill-treatment, wherever these practices may be found, human rights defenders must be able to conduct their work without hindrance or attack.

The following list of attacks on human rights defenders is intended to be illustrative. It 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 these institutions:

- (i) On 29 July 2004, Abdul Latif Gheith,<sup>56</sup> 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."*<sup>57</sup> 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 recognisable criminal offences and promptly [try them] in a proper court of law with internationally accepted standards for fair trial."*<sup>58</sup> Mr. Gheith was finally released on 27 January 2005 after spending six months in detention. Mr. Gheith was not charged with any offence.
- (ii) On 23 May 2005, Ziyad Hmeidan, a fieldworker with Al-Haq<sup>59</sup> 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.

<sup>56</sup> 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.

<sup>57</sup> Human Rights Watch, "Arrest of Palestinian Human Rights Defender", 6 August 2004.

<sup>58</sup> Amnesty International, "Administrative Detention Appeal Cases" 7 August 2004, available at <http://web.amnesty.org/web/web.nsf/print/isr-action-detention>.

<sup>59</sup> 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.



- (iii) On 11 January 2006, Hassan Mustafa Hassan Zaga, a field researcher with the PCATI<sup>60</sup> and staff member of Ansar Al-Sajeen (The Prisoners' Friends Association) (Ansar),<sup>61</sup> was detained by Israeli authorities in administrative detention for ten months. He was not informed of the grounds for his detention, nor was he interrogated.
- (iv) 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.<sup>62</sup>
- (v) 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),<sup>63</sup> and placed him in administrative detention. Mr. Bsharat was released on 24 February 2008, after the launch of an international campaign.<sup>64</sup>
- (vi) On 8 July 2008, Nafha was closed down 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.
- (vii) 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.
- (viii) 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 July 2008, the Israeli Supreme Court upheld the ban on the basis of secret "evidence" which was examined *ex parte*.<sup>65</sup>

<sup>60</sup> 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.

<sup>61</sup> 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.

<sup>62</sup> See Adalah News Update, "Adalah to Defense Minister: Rescind Order Declaring Ansar Al-Sajeen (The Prisoners' Friends Association) an Illegal Organization," 21 December 2006.

<sup>63</sup> 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.

<sup>64</sup> 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.

<sup>65</sup> See H.C. 5022/08, *Shawan Jabarin v. The Commander of the IDF Forces in the West Bank* (decision delivered 7 July 2008).

## C. Articles of the Convention



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

## Article 2

*Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction*

**CAT – Article 2**

### Incorporation of the Convention into domestic law

Despite the fact that Israel is a State 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 CAT, Israel has yet to enact domestic legislation incorporating these prohibitions, as urged by the Committee Against Torture following Israel's third periodic report in November 2001.

### The Supreme Court's torture ruling

In *Public Committee Against Torture in Israel v. The State of Israel* (1999) ("the torture ruling") the Israeli Supreme Court did not rule that the practice of torture is absolutely prohibited. Rather, the court left open the possibility that an Israeli official charged with torture may be exempt from criminal liability by virtue of the "defence of necessity" contained in section 34(11) of the Israeli *Penal Law*, 5373 – 1977 (the *Penal Law*). This aspect of the court's torture ruling is at odds with the total prohibition against torture contained in article 2.2 of the Convention.

The Israeli Supreme Court also reasoned that Israeli authorities would be permitted "to utilise physical means" if the requisite legislation was enacted by the Knesset.<sup>66</sup> 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 authorise 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, authorising the administration to this effect. The lifting of criminal responsibility does not imply authorisation to infringe upon a human right.... In other words, general directives governing the use of physical means during interrogations must be rooted in an authorisation prescribed by*

<sup>66</sup> *Public Committee Against Torture in Israel v. The State of Israel* (1999) 53(4) PD 817, paragraphs 36-37.

*law and not from defences to criminal liability.... **If the State wishes to enable General Security Service (GSS) investigators to utilise physical means in interrogations, they must seek the enactment of legislation for this purpose.*** (Emphasis added).

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

### Case Study No. 9

**Name of victim:** Mohammad I.  
**Age at incident:** 16  
**Affidavit collected by:** Nadi al-Aseer

I was arrested on 6 November 2007 and was sexually abused by Israeli interrogators at Etzion detention center. The soldiers hit me several times on all parts of my body, and they fired several shots above my head to threaten me, and they took me to the toilet, where one of them urinated on me, and they made me take off my clothes, and raped me several times. They put a metal item inside my bottom. This brutal torture continued for more than 24 hours. For many days I could not sit, or sleep or eat anything.

**12 November 2007**

The UAT Coalition believes that Israel is in violation of its obligations under CAT in that it has not fully accepted and adopted the principle that torture and ill-treatment are totally prohibited, without exception.

### Defence of "Superior Orders"

In 1994 the Committee raised concerns 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."*<sup>67</sup> The UAT Coalition can report 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."*<sup>68</sup> This formulation of the superior orders defence is not unique among its counterparts in national or international criminal

<sup>67</sup> Committee Against Torture, *Concluding Observations of the Committee Against Torture: Israel*, 12 June 1994, A/48/44, para.167.

<sup>68</sup> Chapter Five "A": Restrictions on Criminal Liability; Title Two: Restrictions on Criminal Nature of Act; Article 34M(2).

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*.”

## Effective measures taken to prevent all acts of torture

In 2001 the Committee noted Israel’s use of *incommunicado detention* and the lack of prompt access to lawyers. These factors continue to contribute significantly to the risk of torture and ill-treatment in detention.

### Case Study No. 10

**Name of victim:** ‘Asem B.  
**Age at incident:** Adult  
**Affidavit collected by:** Al-Haq

While questioning me, Ariel beat me on the face. I told him I had recently had an operation on my left eye. However, he ignored my statement and he deliberately continued to beat me severely on my face, and my left eye, for a lengthy period of time.

...

I entered the Israeli interrogation centre and detention camp with my eyesight fully intact. Due to interrogation and torture techniques, I completely lost sight in my left eye. My right eye was also affected.

**9 June 2007**

## Incommunicado detention

The UAT Coalition is concerned that under Israeli military law, as applicable to Palestinians in the West Bank, there are insufficient safeguards against what often amounts to lengthy incommunicado detention regardless of whether or not the detainee is accused of a security offence.

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.<sup>69</sup> It is during this eight day period that detainees are normally interrogated. By way of contrast, a detainee in Israel being held on ordinary criminal charges must be brought before a judge within 48 hours.<sup>70</sup>

<sup>69</sup> Military order 378 section 78(e1)(2);

<sup>70</sup> Section 30 of the *Criminal Procedure (Powers of Enforcement – Arrest) Law – 1996*.

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.<sup>71</sup> By way of contrast, a detainee in Israel being held on ordinary criminal charges must be given access to a lawyer within 48 hours of arrest<sup>72</sup> or following set court procedures, for a maximum of 21 days.

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.<sup>73</sup> (Note: this does not include situations where an administrative detention order applies). By way of contrast, a detainee in Israel being held on ordinary criminal charges must be charged with an offence within 30 days of arrest.<sup>74</sup>

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,<sup>75</sup> as opposed to nine months for detainees held on ordinary criminal charges under Israeli domestic legislation.<sup>76</sup>

## Legislative measures taken to regulate agents of the state

### Israel Security Agency Law, 5762 - 2002 (ISA law)

In 2002 the Knesset enacted the Israel Security Agency Law, 5762-2002 which addresses the mandate, operation, and scope of functioning of the ISA, also known as the GSS.<sup>77</sup> The UAT Coalition has three major concerns regarding the ISA law:

- (i) The legislation does not prohibit ISA officers from using torture or ill-treatment in circumstances. This is important as there is no specific incorporation of the Convention into Israeli domestic law.
- (ii) 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. There is no civilian or independent review mechanism legislated for ISA activities.

<sup>71</sup> Israeli Military Order 378, articles 78c and d.

<sup>72</sup> Section 34 of the *Criminal Procedure (Powers of Enforcement – Arrest) Law – 1996*.

<sup>73</sup> Israeli Military Order 378, article 78(D).

<sup>74</sup> Section 17(b) of the *Criminal Procedure (Powers of Enforcement – Arrest) Law – 1996*.

<sup>75</sup> Israeli Military Order 378, article 78(D).

<sup>76</sup> Section 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>

<sup>77</sup> The law is available in English at: <http://www.justice.gov.il/NR/rdonlyres/C7E5F996-458F-4910-B343-776C5A9495F8/0/GeneralSecurityServicesLawedited.doc>

- (iii) 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 exempts ISA officials, under certain circumstances, from criminal liability for torture or ill-treatment.

### Case Study No. 11

**Name of victim:**                      **Israa' A.**  
**Age at incident:**                      **Adult female**  
**Affidavit collected by:**              **Mandela Institute for Political Prisoners**

On 13 January 2008, the Israeli army came after midnight. They took me out and it was snowing and very cold. They made all the family members go out in the cold, and they searched the house. I asked to go to the toilet. They allowed me, but kept the door open and the soldiers were standing outside. The soldiers hit my father and when I screamed, they threatened to hurt him even more.

**20 March 2008**

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

In 2005, Israel implemented its *“Disengagement Plan”* from the Gaza Strip. Israel now argues that it is no longer an Occupying Power in the Gaza Strip and that it is not bound by international law relating to the duties and obligations of occupying powers.

In line with this logic, Israel could no longer apply its military orders to the Gaza Strip after *“disengagement”* and thus, it began to prosecute Palestinians from the Gaza Strip 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:

- (i) Security suspects can be detained for up to 96 hours before being brought before a judge, as opposed to 48 hours in other cases.<sup>78</sup>
- (ii) Security suspects can be detained for up to 35 days without being indicted, as opposed to 30 days in other cases.<sup>79</sup>

<sup>78</sup> Section 30 of the *Criminal Procedure (Powers of Enforcement - Arrests) Law – 1996*.

<sup>79</sup> Section 17(b) of the *Criminal Procedure (Powers of Enforcement - Arrests) Law – 1996*.

- (iii) Security suspects can concurrently be denied access to a lawyer for up to 21 days, as opposed to 48 hours in other cases.<sup>80</sup> 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.

The law, which is being predominantly applied to Palestinians from the Gaza Strip,<sup>81</sup> thus provides for the possibility of 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.

Although 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. A pending challenging the constitutionality of this law and demanding its nullification is currently pending before the Israeli Supreme Court.<sup>82</sup>

## **Criminal Procedure (Interrogating Suspects) Law 2008**

*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, this exemption was introduced as a temporary 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.

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.

In November 2001 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 and thus, effectively nullified this simple and practical safeguard.

<sup>80</sup> Section 34 of the *Criminal Procedure (Powers of Enforcement - Arrests) Law – 1996*.

<sup>81</sup> 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.

<sup>82</sup> H.C. 2028/08, *Public Committee Against Torture in Israel, et al. v. The Minister of Justice, et al.* (petition filed by PCATI, the Association for Civil Rights in Israel and Adalah; case pending).



The fact that the exemption applies only in the cases of individuals suspected of committing security offences – who are overwhelmingly Palestinians<sup>83</sup> – 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

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.

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 of that force. The law creates a third category of person – the “*unlawful combatant*” – 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 conventions prevents the state from prosecuting suspects for crimes they allegedly committed either as combatants or civilians.

The law allows a person suspected of being an “*unlawful combatant*” to be held for up to 14 days without judicial review, and also permits the use secret evidence and in-court evidence to be taken outside of the presence or 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.

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 3). 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). Thus, no legislation is necessary to determine which forces are carrying out hostilities against Israel; the decision is made by the executive.

On 11 June 2008, the Israeli Supreme Court upheld the constitutionality of the law.<sup>84</sup> On 28 July 2008, the Knesset enacted an amendment to the law that makes

<sup>83</sup> Israel is currently holding approximately 9,000 security prisoners, all of whom are Palestinian except for approximately 15 people.

<sup>84</sup> 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](http://elyon1.court.gov.il/files_eng/06/590/066/n04/06066590.n04.pdf).

the violation of detainees' basic human rights even more severe. Most notably, the new amendment allows for the period during which the detainee is denied access to legal counsel to be extended for up to 21 days with the approval of the Attorney General and a district court.

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**

Since 2001 Israel has begun to make extensive use of private security contractors (PSCs) by 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.<sup>85</sup> Those PSCs stationed at checkpoints along the Wall's route are operating alongside Israeli soldiers, with some checkpoints now allegedly administered fully by PSCs.

West Bank checkpoints and police stations inside 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 the 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.<sup>86</sup>
- Humiliating searches in which men are put together in a room and asked to take off items of clothing.<sup>87</sup>
- Strip searches (including of women).<sup>88</sup>
- Delays at checkpoints resulting in the death of critically ill patients.<sup>89</sup>

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

<sup>85</sup> The Wall, settlements and the annexation of East Jerusalem are all illegal under international law.

<sup>86</sup> Program on Humanitarian Policy and Conflict Research, *Private Security Companies in the Occupied Palestinian Territory (OPT): An International Humanitarian Law Perspective*, Harvard University Press, March 2008, p. 5.

<sup>87</sup> Ha'aretz, "Outsourcing the checkpoints," 2 October 2007, at: <http://www.haaretz.com>.

<sup>88</sup> Ha'aretz, "Outsourcing the checkpoints," 2 October 2007, at: <http://www.haaretz.com>.

<sup>89</sup> Program on Humanitarian Policy and Conflict Research, *Private Security Companies in the Occupied Palestinian Territory (OPT): An International Humanitarian Law Perspective*, Harvard University Press, March 2008, p. 4.



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."*<sup>90</sup>

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, 5716 – 1955, the *Penal Law* or through some other legislative act is unclear.

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.

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

[See comments under Article 12 below]

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

In 2001 the Committee stated that it: *"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 citizens from violence, it reiterates that no exceptional circumstances may be invoked as justification of torture."*

<sup>90</sup> See *Ha'aretz*, "Outsourcing the checkpoints," 2 October 2007, at: <http://www.haaretz.com>.

## State of emergency

*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*

**CAT – Article 2**

The UAT Coalition is concerned 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 May 1948. In August 2003, the Human Rights Committee stated in relation to Israel that:<sup>91</sup>

*“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.”<sup>92</sup>*

## Article 4

*Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.*

**CAT – Article 4**

<sup>91</sup> Human Rights Committee, *Concluding Observations of the Human Rights Committee; Israel*, 21 August 2003, CCPR/CO/78/ISR, para. 12.

<sup>92</sup> *Ibid.*

## The enactment of specific legislation criminalising torture in terms consistent with the definition in article 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.<sup>93</sup>

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 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."*<sup>94</sup>

## Article 11

*Each State Party shall keep under systematic review 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 in any territory under its jurisdiction, with a view to preventing any cases of torture.*

**CAT – Article 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

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.<sup>95</sup>

<sup>93</sup> 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.

<sup>94</sup> Israel's report, at para. 88.

<sup>95</sup> Israeli Military Order 378, articles 78c and d.

## Forced confessions in Hebrew

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 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.

### Case Study No. 12

**Name of victim:** Najee A.  
**Age at incident:** 14  
**Affidavit collected by:** DCI/PS

I was charged with stone throwing. The interrogator was speaking Arabic. He told me that there are other persons who had confessed against me. After that, I was put in a room. There was a soldier in the room and he slapped me. After that, I was returned to the interrogator. I signed a piece of paper which became my confession later in court. It was written in the Hebrew language.

## Secret detention “Facility 1391”<sup>96</sup>

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.

<sup>96</sup> See generally: *Ha'aretz*, “Inside Israel’s Secret Prison”, 22 August 2003; see HaMoked: <http://www.hamoked.org.il>.

## Case Study No. 13

**Name of victim:** G.A.  
**Age at incident:** Adult  
**Affidavit collected by:** HaMoked-Centre for the Defense of the Individual

When they transferred me from there, they covered my face with a hood and put dark glasses on me. They put me on the floor of a vehicle and covered me with a blanket, with my hands and feet bound and a chain linking them, as before. I do not know where they took me. Nobody told me where I was. I asked my interrogators what the name of the place was. Some of them said "the moon" and some told me it was an army interrogation facility, but they never told me its name.

...

For three weeks, they kept me in a cell by myself. I was alone for 3 12/ months, a month and a half of which I was in this facility "on the moon."

...

The cell was in terrible shape. The walls were painted black, and there was a sound coming from a fan, which gave me a headache. The cell had no windows.

...

During my stay in the secret army facility, I did not receive any visits from the Red Cross. When I was taken to Jalameh to extend my detention, I met a representative of the Red Cross and told her that I was being kept in a secret detention facility. She told me that they [Red Cross personnel] had asked to visit the facility, but had not yet received approval.

...

I felt as if nobody knew where I was or what had befallen me. I was there just before the war in Iraq, and there were rumours and fears that missiles would fall in this area. All this increased my fear. I was afraid for my life.

**8 July 2003**

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.<sup>97</sup> The International Committee of the Red Cross has no access to this facility.

<sup>97</sup> HaMoked. *Activity Report 2004: Detainee Rights*, p. 45, available at: [http://www.hamoked.org/items/12902\\_eng.pdf](http://www.hamoked.org/items/12902_eng.pdf).

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 filed 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.<sup>98</sup> The State claimed the location of “Facility 1391” was classified not for the purpose of violating detainees’ rights but for security reasons.<sup>99</sup> Moreover, the State claimed that the fact that its location is classified does not impair the rights of the detainees held in the facility.<sup>100</sup>

HaMoked filed a petition in 2003 asking the Israeli Supreme Court to examine the legality of the facility; the petition is still pending. The Court issued an *order nisi* (order to show cause) 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.

In 2003, HaMoked requested an investigation by the Military Advocate General (MAG) and the ISA/GSS Ombudsman in charge of Detainees’ Complaints (via the State Attorney’s Office) into complaints by ten detainees concerning their physical conditions of detention and the means of interrogation. This request was submitted in response to the Israeli Supreme Court’s directive that the normal complaints procedures should first be exhausted. The Chief Military Prosecutor informed HaMoked one year after the complaints were filed that the military had not investigated the complaints and had no intention of doing so.<sup>101</sup> In 2005, the Court rejected HaMoked’s petition on behalf of two former detainees whose cases had been raised with the MAG, finding that the authorities had acted reasonably in not conducting investigations.<sup>102</sup>

<sup>98</sup> All of the legal documents pertaining to the case can be found on HaMoked’s website at: [http://hamoked.net/site\\_search\\_en.asp?keyword=HCJ+9733%2F03](http://hamoked.net/site_search_en.asp?keyword=HCJ+9733%2F03)

<sup>99</sup> Op. cit.

<sup>100</sup> H.C. 9733/03, *HaMoked et al v. The State of Israel et al.* (decision delivered 1 December 2003).

<sup>101</sup> HaMoked. *Activity Report 2004: Detainee Rights*, p. 45, available at: [http://www.hamoked.org/items/12902\\_eng.pdf](http://www.hamoked.org/items/12902_eng.pdf)

<sup>102</sup> H.C. 9733/03, *HaMoked et al v The State of Israel et al.* (decision delivered 14 June 2005)

## Case Study No. 14

**Name of victim:** M.J.  
**Age at incident:** Adult  
**Affidavit collected by:** HaMoked-Centre for the Defense of the Individual

Then they took me to a secret place. The interrogators told me that “we are going to move you to a facility on the moon.” They kept me there in a solitary cell for about 67 days. During this period, they continued with the torture, but they used a different method. They did not let me sleep more than two hours a day. When I started to get drowsy, they woke me up by making noise or by throwing water on me.

**30 March 2003**

## Prosecution and detention of minors

Under Israeli law the age of majority is attained at 18. Military Order 132, however, 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.

The UAT Coalition is extremely concerned that Palestinian child detainees 16-years of age and under 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. 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.<sup>103</sup>

<sup>103</sup> Defence of the Children International- Palestinian Section, *Palestinian Child Prisoners 2007*, April 2008, pp. 18-19

## Case Study No. 15

**Name of victim:** Mohammad E.  
**Age at incident:** 14  
**Report written by:** DCI/PS

Mohammad was interrogated for around an hour by a sole interrogator without a lawyer or family member being present. The interrogator repeatedly accused him of throwing stones at the Wall, which Mohammad denied. The interrogator told Mohammad that if he did not confess he would be taken immediately to a military court for sentencing. At one point during the interrogation Mohammed told his interrogator that he had a headache, but he was not offered any medical assistance until the end of the interrogation.

After approximately one hour, Mohammad was handed a piece of paper written in Hebrew. The interrogator told Mohammad that if he signed the paper he would be released and that it was simply an acknowledgement that if he was caught throwing stones in the future he would be arrested and sentenced. Believing what he was told, Mohammad signed the piece of paper. He was immediately informed that he had just signed a confession and would be sent to prison. Mohammad was shocked when he realised how he had been misled.

**18 June 2008**

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.<sup>104</sup> 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.

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*.

<sup>104</sup> 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 *Convention of the Rights of the Child* 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 Palestinian child prisoners who are dealt with in the Israeli military court system.



In contravention of international law,<sup>105</sup> limited education is only provided to Palestinian child detainees in two of the five prisons and seven interrogation and detention centres in which they are detained.<sup>106</sup> Children receive two hours per week of educational instruction in Telmond Prison, and nine hours per week in Addamoun prison.

### Case Study No. 16

**Name of victim:** Ezzat  
**Age at incident:** 10  
**Affidavit collected by:** DCI/PS

The soldier with the black T-shirt took me to the bedroom and slapped me at the door. He then brought my older sister to search her and interrogate her while forcing me to stand by the kitchen door. They then moved me to another bedroom. While passing me, the soldier with the black T-shirt slapped me strongly on my face that I fell on the ground. He asked me to stay there in the room. He would go for five minutes and then come back to slap me on the face, and punch me several times in my stomach. I would shout and burst into tears. He would imitate me and make fun of me. He continued coming to the room around six times where he would hit me and slap me.

...

Afterwards, a soldier wearing black sunglasses came into the room where I was held and pointed his rifle at me. The rifle barrel was a few centimetres away from my face. I was so terrified that I started to shiver. He made fun of me and said, "Shivering? Tell me where the pistol is before I shoot you." I told him we had nothing. He kept pointing his rifle at me and said "For the last time, tell me where the pistol is before I shoot you." I replied by saying that we had nothing. He lowered his rifle and took out the bullets and one of them fell on the ground. He kept searching for it until he found it and then left the room.

**21 June 2008**

<sup>105</sup> Article 94 of the *Fourth Geneva Convention* (1949) and Rule 38 of the *UN Rules for the Protection of Juveniles Deprived of their Liberty*.

<sup>106</sup> 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.

## Article 12

*Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.*

**CAT – Article 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

Between January 2001 and October 2006, over 500 complaints were filed against ISA interrogators for alleged ill-treatment and torture. The Ministry of Justice' Police Investigation Department (PID), the relevant authority charged with investigating these complaints against ISA interrogators, did not conduct a single criminal investigation.<sup>107</sup> There is a separate division within the Ministry of Justice, the Police Investigation Department (PID or "Mahash"), that is charged with investigating complaints against the police. It too fails to investigate and bring to trial a large number of police officers and commanders responsible for brutality and misconduct.<sup>108</sup>

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

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 hundreds of others. His decision officially closes all the cases against the Israeli police and security forces.<sup>109</sup> 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

<sup>107</sup> B'Tselem and HaMoked, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, May 2007, p. 79.

<sup>108</sup> According to the Israeli State Comptroller's Report from 2005: "Not investigating such a high number of complaints and shelving them without further treatment by the police on the command level may cause for an institutional lack of awareness as to the magnitude of this phenomenon and be interpreted by police officers as a legitimating improper conduct, and by the general public – as taking lightly the graveness of these complaints of excessive use of force illegally." *The Report of the State Comptroller*, 56(A), 2005, p. 362 (Hebrew).

<sup>109</sup> The Attorney General has filed indictments regarding the October 2000 events only against Arab citizens of Israel 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>.

communication to Israel, he stated that, “[t]his outcome... would appear to fall short of the international standards.”<sup>110</sup>

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.

In November 2000, the Israeli government established an official Or Commission of Inquiry to investigate the events. In September 2003, the Or Commission issued its 800-page report in which found that in some instances that lethal force used by the security forces was unjustified. Among the commission's recommendations, after hearing almost 350 witnesses over the course of two years, was that the Police Investigations Department (“Mahash” or PID) open investigations into the killings.

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. The PID's entire staff of investigators is composed of former police officers and is not an independent civilian body. As noted by the Committee on the Elimination of Racial Discrimination (CERD) 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.”

After intense public pressure, the Attorney General then decided to review the PID's report within the State Attorney's Office. However, at the time, the State Attorney's Office was headed 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 and found a “lack of sufficient evidence” for prosecution.

The UAT Coalition notes that according to Israel's report to the Committee, criminal proceedings were initiated in less than 4% of complaints received by the PID between 2002 and 2004 regarding the excessive use of force by police officers. The inability or unwillingness of Israel to properly investigate and prosecute police in cases involving the killing of Palestinian citizens further ingrains the existing culture of impunity within the Israeli security forces.

<sup>110</sup> Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, to the Human Rights Council, A/HRC/8/3, 2 May 2008: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/8session/A-HRC-8-3.doc>

The Committee has recently raised its concerns with State Parties to CAT over similar incidents of excessive force employed by the police and other security forces and called for those responsible to be held to account.<sup>111</sup>

## Article 13

*Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.*

**CAT – Article 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

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.

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.

<sup>111</sup> 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

*Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.*

**CAT – Article 14**

## Compensation and rehabilitation for victims of torture

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

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.<sup>112</sup>

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 organisations,” even if the damage inflicted was not the result of an “act of war.”<sup>113</sup>

The bill contains a number of additional provisions that are of concern to the UAT Coalition, including:

- (i) The expansion of the definition of an “act of war” 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.

<sup>112</sup> H.C. 8276/05, *Adalah v. The Minister of Defense* (decision delivered on 12 December 2006). For more information on the new amendment, 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>.

<sup>113</sup> 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*.

- (ii) 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*.”
- (iii) The bill does contain an exception for individuals held in custody; however, this exception is conditioned on the individual not resuming his or her membership or activities in the “*terrorist organisation*.” Thus, for example, a victim of torture would not be eligible 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.
- (iv) 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

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 Strip Community Mental Health Program (GCMHP) in the Gaza Strip, have not received any funds from Israel for these services.

## Article 15

*Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.*

**CAT – Article 15**

## Admissibility of illegally obtained confessions

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 Chief 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.”<sup>114</sup>*

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:<sup>115</sup>

- (i) The character and seriousness of the illegality that was involved in obtaining the evidence;
- (ii) The seriousness of the offence;
- (iii) The degree to which the improper investigation method affected the evidence that was obtained; and
- (iv) The social damage and social benefit involved in excluding the evidence.

The UAT Coalition is concerned that the wide 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 CAT. This concern would appear to be justified given the high rate of convictions secured in the military courts based on confessions.

## Article 16

*Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

**CAT – Article 16**

<sup>114</sup> *Prv. Yisascharov v. The Chief Military Prosecutor et. al*, p. 84.

<sup>115</sup> *Ibid*, para. 63 and following.



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

### Human shields

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.

#### Case Study No. 17

**Name of victim:** Ameer E.

**Age at incident:** 15

**Affidavit collected by:** DCI/PS

One of the soldiers, wearing a khaki uniform and a helmet, and carrying a weapon, ordered me to lift up my shirt. I did so. He then asked me to approach him. When I approached him, he grabbed my hands and pushed me towards another soldier, who pushed me again towards another one and so on. There were about 12 soldiers who kept pushing me around. Their faces were painted. They did the same thing to Arafat and Ahmad. Then the soldiers gathered us on the main street, and forced us to walk ahead of them at gunpoint. They herded us to al-Qawsin's house, adjacent to our house on the west.

...

The soldiers then asked me to walk in front of them towards our house. This time I was terrified because the soldiers were shooting and forcing me to walk in front of them towards our house 20 metres away from as-Salam mosque. After searching our house, they brought me back to the al-Qawsin's house. Five minutes later, they called me again and asked me to go back to my uncle's house and open its windows. Four soldiers were walking behind me ready to shoot. When we reached the house, the four soldiers stood on the stairway and asked me to go inside and open the windows. I did the job, and then left the house and sat for a while on the stairway. One of the soldiers asked me if I had opened all the windows and I replied yes. We spent five minutes there and they brought me back to the confinement room of al-Qawsin's house. After a while, they called my cousin Sameh, who had followed us with his brother Muhammad minutes after we were forced to leave the house. He was gone for about 15 minutes.

**20 March 2007**



Such tasks include the use of Palestinian civilians to enter buildings to check if they are booby-trapped, 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.<sup>116</sup>

In 2005, the Israeli Supreme Court ruled<sup>117</sup> that the “early warning” procedure, whereby Israeli soldiers wishing to arrest a Palestinian suspect may be aided by a local Palestinian resident during the arrest, contradicts international law and that: “*The civilian population is not to be used for the military needs of the occupying army.*”<sup>118</sup> Despite this ruling, human rights organisations report the ongoing use of Palestinians as human shields by Israeli soldiers in the occupied territory.<sup>119</sup>

These incidents and others in the Gaza Strip<sup>120</sup> demonstrate that the Israeli military has ignored the Supreme Court’s ruling banning this practice. Further, the practice continues with apparent impunity and a lack of effective investigation.<sup>121</sup> 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.<sup>122</sup> The UAT Coalition is concerned that the lack of investigations conveys a message of lenience and impunity to commanders and soldiers on the ground.

<sup>116</sup> 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*, 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.

<sup>117</sup> 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](http://www.adalah.org/features/humshields/decision061005.pdf).

<sup>118</sup> *Ibid.* para. 24, per Aharon Barak, the-then Chief Justice of the Israeli Supreme Court.

<sup>119</sup> 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 the Gaza Strip. These violations were documented by DCI/PS, Al-Haq and B’Tselem.

<sup>120</sup> 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](http://www.mezan.org/document/Human_shields_ar.pdf) (Arabic).

<sup>121</sup> B’Tselem - Annual Report 2007, at p. 35, available at: [www.btselem.org/Download/200712\\_Annual\\_Report\\_eng.pdf](http://www.btselem.org/Download/200712_Annual_Report_eng.pdf)

<sup>122</sup> 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](http://www.adalah.org/eng/pressreleases/pr.php?file=07_10_28-1).

## Case Study No. 18

**Name of victim:** Ismail M.

**Age at incident:** 14

**Affidavit collected by:** DCI/PS

The soldiers told Oday and I to sit on the bonnet of the jeep, which we did. Some of the boys stopped throwing stones at the jeeps because they saw us. After about 15 minutes, the jeep captain asked us to "Go and tell those boys to stop throwing stones and then come back to us". While pretending to do so, we ran to another street and headed to our second shop, 300 metres south from where we were. We stayed there until the situation had calmed and then we went back to our houses.

**7 May 2007**

## House demolitions

Palestinians in the OPT are subjected to punitive and administrative house demolitions by Israel, both of which have been found by the Committee to infringe article 16 of CAT in certain circumstances.

### *Punitive house demolition*

House demolition as punishment has been a policy tool of the Israeli military since 1967.<sup>123</sup> In the period since the Israel's last report, these demolitions have mainly been carried out at night, without prior warning, and without giving the occupants demolition orders or sufficient time to remove their belongings. The main victims of these home demolitions are family members, as in the vast majority of cases, the "wanted" individual no longer resides with the family.

<sup>123</sup> 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.

## Case Study No. 19

**Name of victim:** Kamal Z.  
**Age at incident:** Adult  
**Affidavit collected by:** Al-Haq

At approximately 2:30 am on Tuesday, 27 September 2005, I was awoken by the noise of Israeli military vehicles moving in the vicinity of my home located in the Kmeil Quarter. When my family (my wife and 9 children) heard shooting, we all got up. The situation continued until 3:00 am, when we heard the military jeeps' megaphones say, "Abu-al-Kamel get out of the house, the Israeli Defense Army is encircling your home." I quickly went to open the door. There I saw a number of Israeli soldiers spread out in front of my house, in addition to a number of military jeeps.

...

At the same time, the soldiers began interrogating my son, Kamel, asking him about weapons in the house. "Where are the arms which you have inside your home?" Kamel answered, "There are no arms inside our house." The soldiers then assaulted him and beat him in front of me... The officer said, "Abu-Kamel you will regret this if we find any weapons inside your home." Then he asked if there was anybody else inside the house, and I answered no.

...

Our home, which provided shelter for my children, turned into piles of stones within seconds. My son Kamel was arrested and the Israeli army claimed that the suitcase which they had taken from our home contained bombs, weapons, and ammunition. Even if their claim was correct, why did the army demolish our home?

**1 October 2005**

Punitive house demolitions also occur in the context of so-called military operations. Under the guise of the international humanitarian law principle of "military necessity", Israeli military forces have cleared entire neighbourhoods near settlements, bypass roads and near Israeli military installations.<sup>124</sup>

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.

<sup>124</sup> See generally B'Tselem, Demolition for Alleged Military Purposes, available at: <http://www.btselem.org/english/Razing/Index.asp>

- 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 the northern Gaza Strip, 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. These operations have been extensively documented by international institutions and human rights organisations.<sup>125</sup> Israel has not opened criminal investigations into these events despite calls by international organisations to do so as well as the filing of a petition to the Israeli Supreme Court.<sup>126</sup>

### *Administrative house demolitions*

Since the beginning of the occupation, Israel has pursued discriminatory policies in relation to planning, development and building permits issued to Israeli Jewish 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 C<sup>127</sup> are obliged to build on their land without permits resulting in the risk of being issued with a demolition order.

The number of home demolitions and their effect on Palestinian families are staggering. It is estimated that since 21 November 2001, 535<sup>128</sup> Palestinian homes have been (partially or completely) demolished for punitive reasons in the West Bank (including East Jerusalem) leaving 3,263 Palestinians displaced. It is also estimated that a further 505<sup>129</sup> 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

<sup>125</sup> The international documentation includes reports written by the UN Relief and Works Agency (UNRWA), the UN Office for the Coordination of Humanitarian Affairs (OCHA), Professor 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.

<sup>126</sup> 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 military operations. Despite many motions to hold an urgent hearing on the petition, to date, it has not been heard. See H.C. 3292/07, *Adalah, et al. v. The Attorney General, et al.*

<sup>127</sup> 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.

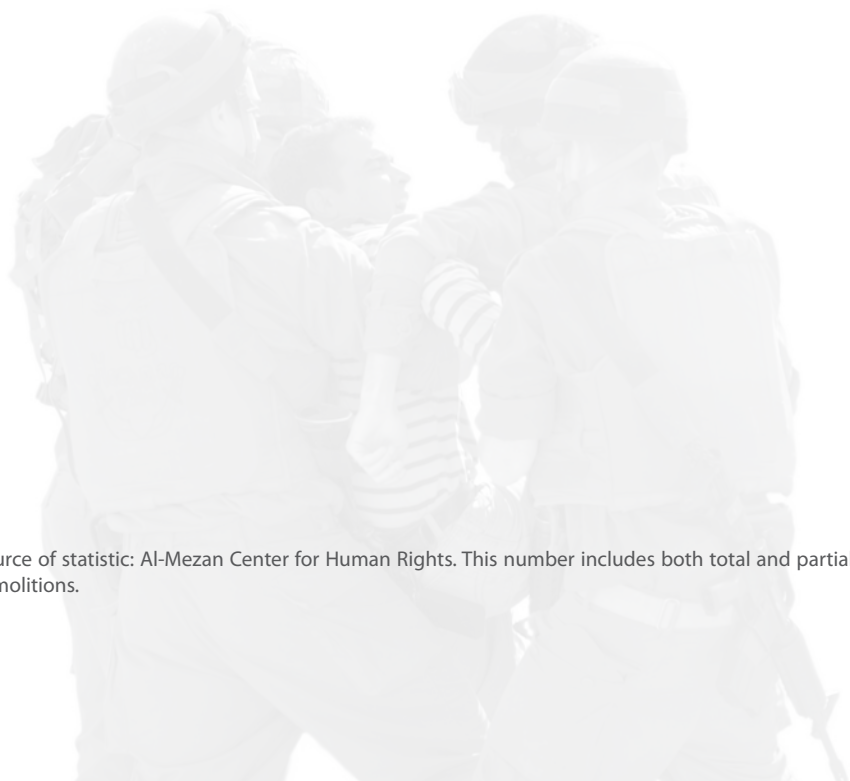
<sup>128</sup> Source of statistic: Al-Haq. This number includes both total and partial demolitions.

<sup>129</sup> Source of statistic: Al-Haq. This number includes both total and partial demolitions.

7,675 houses demolished in the Gaza Strip for punitive or administrative reasons, displacing 72,533 Palestinians.<sup>130</sup>

The UAT Coalition wishes to point out to the Committee 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.

<sup>130</sup> Source of statistic: Al-Mezan Center for Human Rights. This number includes both total and partial demolitions.



## Case Study No. 20

**Name of victim:** Muhammad Z.

**Age at incident:** Adult

**Affidavit collected by:** Al-Haq

I live with my family, which consists of eight members, in a small house located in Jabal al-Mukaber quarter east of Jerusalem...

...

In 1985, I applied to the Municipality of Jerusalem in order to obtain a license to build. The Jerusalem Municipality considers the land to be a green area although it is located in the middle of residential houses... During the construction phases, the Municipality did not come to the site. It was only in November 2005 that the Municipality employees came. They took photos of the house and issued a demolition order. I appealed to the Municipality, and then to Central Court and the Israeli High Court, but they all rejected the appeal and issued a ruling for demolishing the house.

On 21 August 2006, two days before the demolition was due to take place, we appealed for the second time. Here the court issued a ruling suspending the demolition order, provided that we seal all the windows of the house with blocks and pay 80,000 shekels to the Municipality Fund. We did that on 21 August 2006. On the morning of 23 August 2006, we were surprised to see the Municipality staff, a large number of policemen and Border Guards and the Israeli Special Police Force, along with bulldozers which started demolishing the house. The demolition process took two hours and the bulldozer inflicted damage and destruction on the adjacent lands and the wall of one of our neighbours.

**29 August 2006**

## Detention of prisoners in Israel

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). Article 76 provides that an occupying power must detain residents of occupied territory in prisons inside the territory. The practical consequence of this is that many prisoners do not receive any family visits as their relatives are denied permits to enter Israel.

### Family visits

The Committee has concluded in the past that family visits to detainees once a month for only 30 minutes amounted to torture.<sup>131</sup>

Palestinian detainees from the West Bank, including children, do not receive family visits for at least the first 60 days of their detention.<sup>132</sup> In fact, in order to visit a detainee from the West Bank, the family must apply to the Israeli authorities for a permit to enter Israel,<sup>133</sup> which takes between one and three months to obtain and is only valid for three months. Permits are forwarded to the family by the International Committee of the Red Cross (ICRC) and Palestinians from the OPT have to rely on ICRC transportation to realise their right to visit. After 60 days, the detainee is, in theory, entitled to 24 family visits per year. In reality, due to the difficulties involved in obtaining permits, many Palestinians only manage to visit their relatives once every few months.<sup>134</sup> In 2005, 24% of all applications for permits from the West Bank to visit Palestinian detainees in Israel were rejected.<sup>135</sup> Further, strict limitations are placed on visits from family members between the ages of 16 and 35.<sup>136</sup>

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

<sup>131</sup> Nowak, Manfred and McArthur, Elizabeth, *The United Nations Convention Against Torture: A Commentary*, Oxford University Press, 2008, p. 408, para. 27.

<sup>132</sup> of the Children International- Palestinian Section, *Palestinian Child Prisoners 2007*, April 2008, pp. 29-30. See also pp. 30-31 and B'Tselem, *Barred from Contact: Violation of the Right to Visit Palestinians Held in Israeli Prisons* September 2006, p. 12. In 2005, 24% of applications from the West Bank to visit prisons in Israel were rejected, whilst the figure for the Gaza Strip was 38%.

<sup>133</sup> East Jerusalemites do not require a permit to enter Israel as Israel has *de facto* annexed East Jerusalem.

<sup>134</sup> B'Tselem, ([http://www.btselem.org/Download/200609\\_Barred\\_from\\_Contact\\_Eng.pdf](http://www.btselem.org/Download/200609_Barred_from_Contact_Eng.pdf)).

<sup>135</sup> *Ibid* p. 12. Before the total ban on visits from The Gaza strip was imposed, the level of rejection was 38%.

<sup>136</sup> *Ibid*, p. 14: "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."



Since June 2007, Israeli authorities have placed a total ban on visits by family members from the Gaza Strip to their relatives incarcerated in Israel.<sup>137</sup> This ban affects approximately 1,000 prisoners and their families.<sup>138</sup> 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.

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.

## Prison conditions

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.

Severe discrimination exists in the 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. None of these detainees have been convicted of any offence.

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

<sup>137</sup> A petition challenging the ban was 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. It 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 also harshly restricted prior to June 2006. Movement restrictions and the strict permit system imposed on Palestinians from the West Bank and the Gaza Strip meant that family visits could take place every few months at most.

<sup>138</sup> On 26 May 2008, the International Committee of the Red Cross 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, see B’Tselem, *Barred from Contact: Violation of the Right to Visit Palestinians Held in Israeli Prisons*, September 2006: available at:



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.

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.

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.

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 hospitalised.

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.<sup>139</sup>

<sup>139</sup> For example, excessive force was used against prisoners by the IPS riot control unit on 22 October 2007, at Ketziot (Ansar III) Prison in the Negev after prisoners objected to an early morning search, whilst they were sleeping. There was evidence to suggest that clubs, tear gas and possibly rubber

## Case Study No. 21

**Name of victim:** Wael H.  
**Age at incident:** Adult  
**Affidavit collected by:** Addameer

Today, at 6:00 am, and during the counting period, a prisoner in room no. 3 at Nitsan Prison beat a policeman and tried to beat the counting officer. The policeman severely attacked and beat the prisoner and took him to an unknown place.

A prison [guard] unit entered the section, consisting of 10 rooms, with 10 detainees in each room. They took all the detainees out to the yard with their hands shackled with plastic cuffs. They dragged them outside and started to beat them with sticks. They sat them in the yard on the ground. They beat any detainee who raised his head or spoke. After that, they entered the rooms and removed all the electric appliances and the glass cups. They opened the closets and scattered the clothes on the ground. The rooms were a mess. They destroyed everything in the rooms. They mixed the sugar with the salt, the rice and flour.

**23 September 2007**

## Medical coercion: ISA interrogation of patients exiting the Gaza Strip

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

The result has also 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

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 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. See Adalah News Update, "Adalah and PCATI demand a criminal investigation into the extremely violent actions of prison guards that resulted in the death and injuries of Palestinian political prisoners," 29 November 2007.

proportion of patients denied exit permits: from 10% in the first half of 2007 to 35% in the first half of 2008.<sup>140</sup>

Among the various Israeli authorities controlling a crucial exit from the Gaza Strip to the outside world, Erez Crossing, the ISA has the final word in deciding whether or not a patient will be allowed to access care. Over the last year, it has increasingly denied patients, including those in serious and life-threatening medical conditions, permission to exit the Gaza Strip for medical care due to alleged security reasons.

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

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.*”<sup>141</sup> An additional reason given for not granting a remedy was that individual solutions were found for most of the patients in the petition.<sup>142</sup>

The UAT Coalition submits that purposely withholding medical treatment for non-medical reasons can amount to ill-treatment, and in serious cases, torture.<sup>143</sup>

<sup>140</sup> Physicians for Human Rights–Israel, *Holding Health to Ransom: GSS Interrogation and Extortion of Palestinian Patients at Erez Crossing*, August 2008, p. 6. <sup>141</sup> Physicians for Human Rights–Israel, *Holding Health to Ransom: GSS Interrogation and Extortion of Palestinian Patients at Erez Crossing*, August 2008. Footnote 37.

<sup>142</sup> *Ibid*

<sup>143</sup> *Ibid*. See also British Medical Association, *Medicine Betrayed: The Participation of Doctors in Human Rights Abuses, second impression*, Zed Books Limited, 2002, p. 138.

## Case Study No. 22

**Name of victim:** B.  
**Age at incident:** Adult  
**Affidavit collected by:** Physicians for Human Rights – Israel

On 27 August 2007, suffering badly from the retina of my right eye, I visited physicians in the Gaza Strip, who decided that my condition required urgent medical attention abroad, and that if I did not receive treatment within a short time period, the eye could not be operated on. Surgery cannot be performed in the Gaza Strip. On 12 September 2007, I had an appointment at St. John's Hospital, which was to be funded by a medical association abroad...

A man approached me and called me to another room for interrogation. He asked me to sit down, and presented himself as Moshe... He asked me about people and military figures in Hamas, then went on to other movements. I replied that I did not know them personally and had no information about them, except for the reports about them on broadcasts or in newspapers... After all my responses he said to me, "I want to talk to you openly when you return from Israel so that you will have an acceptable reputation on the Israeli side. I am giving you a cell phone number and when you come back, call me, and a man called Yossef or Moshe will answer. After you call and we're sure you returned safely, we'll make sure you are a freelance journalist. If you see or hear about terrorist activity against Israel, let me know immediately and leave the area." [I answered,] I am not interested in your dictating such things to me. Alongside the medical permit, you are asking me illegal things. He responded angrily and said, "I decide and set the rules, and you'll see that if you do as I say, I'll let you go to Ichilov Hospital even without a permit. We'll give you medical treatment and forget about Saint John's Hospital." He said, "It depends if you accept my demands."

**2007**

I asked that he allow me to enter today for surgery at St. John's, and said, when I got back I will coordinate a meeting with you. He said he would not approve it unless he got an affirmative response from me...

He mocked me, and said that it was the Israeli army that decided who enters and who exits, and ended the interrogation with the condition: either you make contact with me and agree to my demands, or you will not get any medical treatment, which will cause you to be blind and you will become a burden to your family and friends.

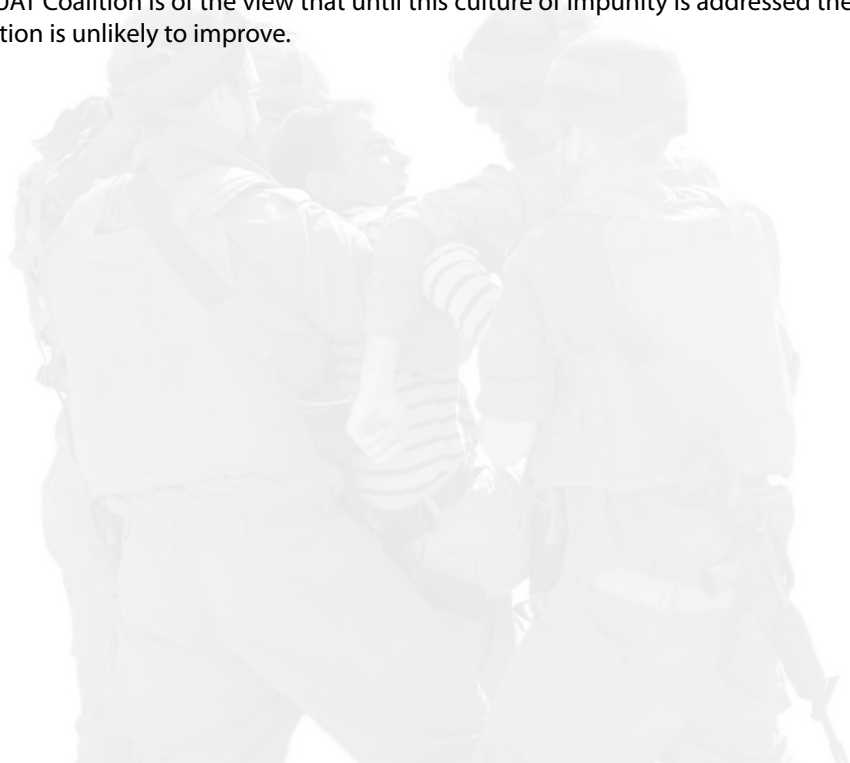


## D. Concluding remarks

Since the Committee last reviewed Israel in 2001, the practice of torture and ill-treatment has continued unabated. The UAT Coalition is of the opinion that 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.

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.

The UAT Coalition is of the view that until this culture of impunity is addressed the situation is unlikely to improve.



## E. Key recommendations



## Legislation

1. The State of Israel should immediately adopt legislation specifically prohibiting all acts of torture.
2. The State of Israel should immediately remove superior orders and necessity as defences to a charge of torture.

## Conduct of interrogations

3. Detainees should only be interrogated in the presence of a lawyer and in the case of persons under 18, should be able to request that their parent(s) be present during interrogation. Further, all written confessions and statements must be in Arabic.
4. All police, army and ISA interrogations should be audio and video-recorded.
5. Police officers, army and ISA officers should be fully instructed and trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies.

## Confessions used as evidence

6. All confessions suspected of being obtained under duress should be held inadmissible as evidence in proceedings in the Israeli military courts and the Israeli domestic courts.

## Investigation

7. The State of Israel should thoroughly investigate all allegations of torture and abuse of Palestinian detainees and should criminally prosecute those found responsible for such abuse.

## Administrative detention

8. All administrative detention orders should strictly conform to international legal standards and all children detained in administrative detention should be promptly charged with a recognisable offence or immediately released.

## Family visits

9. All detainees should be allowed regular family visits.

## Compensation

10. All victims of torture should be adequately compensated and offered rehabilitation and psychosocial services.

## UNITED AGAINST TORTURE

Coalition of Palestinian, Israeli and international NGOs to combat torture in Israel and the Occupied Palestinian Territory

**Adalah – The Legal Center for Arab Minority Rights in Israel**  
([www.adalah.org](http://www.adalah.org))

**Al-Haq – Law in the Service of Mankind**  
([www.alhaq.org](http://www.alhaq.org))

**Al Mezan Centre for Human Rights**  
([www.mezan.org](http://www.mezan.org))

**Al-Quds University Human Rights Clinic**  
([www.alquds.edu/centers\\_institutes/hrclinic](http://www.alquds.edu/centers_institutes/hrclinic))

**An Najah University Center for Democracy and Human Rights**  
([www.najah.edu](http://www.najah.edu))

**Defense for Children International – Palestine (DCI-PS)**  
([www.dci-pal.org](http://www.dci-pal.org))

**The Gaza strip Community Mental Health Program (GCMHP)**  
([www.gcmhp.net](http://www.gcmhp.net))

**Hurriyat – Center for Defense of Liberties & Civil Rights**

**Italian Consortium of Solidarity (ICS)**  
([www.icsitalia.org](http://www.icsitalia.org))

**Nadi Al Asir (Palestinian Prisoners Club)**  
([www.ppsmo.org](http://www.ppsmo.org))

**Nafha Society for Defence of Prisoners and Human Rights**  
([www.nafha.ps](http://www.nafha.ps))

**Mandela Institute for Human Rights and Political Prisoners**  
([www.mandela-palestine.org](http://www.mandela-palestine.org))

**Public Committee Against Torture in Israel (PCATI)**  
([www.stoptorture.org.il](http://www.stoptorture.org.il))

**Treatment and Rehabilitation Center for Victims of Torture (TRC)**  
([www.trc-pal.org](http://www.trc-pal.org))