



United Against Torture (UAT) Coalition

Israeli “Operation Cast Lead” - Gaza Strip

27 December 2008 – 18 January 2009

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

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

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

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1. Introduction

- 1.1 On 27 December 2008, Israeli forces launched a military offensive against the Gaza Strip which continued until 18 January 2009. During the three-week operation [Operation Cast Lead] (the Operation), at least 1,440 Palestinians were killed, including 431 children and 114 women.² A total of 5,303 Palestinians were injured, including 1,606 children and 828 women.³
- 1.2 The UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, has described the offensive as, “*a massive assault on a densely populated urbanized setting where the defining reality could not but subject the entire civilian population to an inhumane form of warfare that kills, maims, and inflicts mental harm that is likely to have long-term effects, especially on children that make up more than 50 percent of the Gazan population.*”⁴
- 1.3 During these attacks, Israel prohibited Palestinian civilians from exiting the crossings, thereby preventing them from becoming refugees and fleeing out of harms way. Commenting on this policy on 6 January 2009, the UN High Commissioner for Refugees described the attack as, “*the only conflict in the world in which people are not allowed to flee.*”⁵ According to Special Rapporteur Falk, “*Refugee denial under these circumstances of confined occupation is an instance of ‘inhumane acts’ during which the entire civilian population of Gaza was subjected to the extreme physical and psychological hazards of modern warfare within a very small overall territory.*”⁶
- 1.4 The purpose of this supplement is to provide the Committee with a snapshot of some of the most severe manifestations of human rights violations that amount to cruel, inhuman or degrading treatment or punishment or torture (ill-treatment or torture) perpetrated by the Israeli military against Palestinian civilians in Gaza during the Operation. Testimonies provided by both Palestinian victims and Israeli soldiers bear out a clear and intentional policy of terrorising and inflicting harsh and unnecessary suffering and pain on Palestinian civilians who were prevented from fleeing the war zone. Civilians were deliberately targeted by the Israeli army, access to medical care was denied, weapons were illegally used and detainees faced systematic ill-treatment.

2. Ill-treatment/torture of Gaza detainees

- 2.1 Information gathered by the UAT Coalition presents a picture of the cruel, inhuman and degrading conditions in which Palestinian prisoners from Gaza were held by Israeli soldiers

² Human Rights Council, *Combined Special Rapporteur Report, Human Rights Situation in Palestine and Other Occupied Arab Territories*, 20 March 2009, A/HRC/10/22, p. 5.

³ Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, *Human Rights Situation in Palestine and other Occupied Arab Territories*, 11 February 2009, A/HRC/10/20, p. 7.

⁴ *Ibid.*, p. 8.

⁵ *Ibid.*, p. 11.

⁶ *Ibid.*, p.16.

during their initial period of detention during the attacks. This information includes the following examples:

- (i) Detainees, including minors, were held in 2-3 metre deep pits for hours and sometimes days, exposed to extreme weather conditions, handcuffed and blindfolded. These pits contained no sanitary facilities, and food or blankets, to the extent they were available, were provided only in very limited quantities. It also appears that some of the pits were located near tanks and in areas in which fighting was underway, in flagrant violation of international humanitarian law, which prohibits the holding prisoners in areas exposed to danger.⁷ Each such pit held on average 70 people.
- (ii) After transfer, these detainees were isolated in cells or trailers without toilets or showers. In other cases, the UAT Coalition obtained information that dozens of handcuffed prisoners were held in a room in a house, sometimes also blindfolded, in the toilet or in the shower, and also for many hours, or even for days.⁸

2.2 The UAT Coalition further urges the Committee to find that the conditions of detention in these circumstances during the Operation amount to ill-treatment.

2.3 The UAT Coalition wishes to draw the Committee's attention to two complaints to the Israeli Military Advocate General and the Israeli Attorney General filed by Israeli human rights organisations relating to the treatment of detainees during the Operation. The first complaint, filed on 8 January 2009 by the Public Committee Against Torture in Israel (PCATI) and the Association for Civil Rights In Israel (ACRI), demanded the humane treatment of detainees and received an insufficient reply. The second complaint, filed on 28 January 2009 by PCATI, ACRI and HaMoked – Center for the Defense of the Individual (HaMoked), demanded an independent, impartial investigation and has received no reply.⁹ The UAT Coalition urges the Committee to seek further information from the State Party as to the status of these complaints.

[Evidence: see Annexure A – “Operation Cast Lead”]

3. Israel's illegal use of weaponry

3.1 During the attacks, the Israeli military made extensive use of weaponry in densely-populated civilian areas including Gaza City that caused horrific injuries. These weapons included white phosphorous, which causes deep and severe burns, flechette bombs, which disperse razor sharp darts, and DIME (Dense Inert Metal Explosives) bombs, which produce an intense explosion in a small area causing body parts to be blown apart.¹⁰ The manner in which these weapons were

⁷ For example, Article 49 of the Fourth Geneva Convention and Article 19 of the Third Geneva Convention.

⁸ As reported, for example, in a complaint submitted to the Military JAG and the Attorney General by the PCATI, ACRI, and HaMoked, on behalf of those organizations and on behalf of Physicians for Human Rights - Israel, B'Tselem, Yesh Din and Adalah on 28 January 2009.

⁹ The complaint is on file with PCATI and HaMoked. A translation in English of the complaint is available at http://www.stoptorture.org.il/files/28109_eng.pdf.

¹⁰ See *Supra* note 3, p. 16.

deployed is not only a violation of the norms of international humanitarian law,¹¹ but the unnecessary suffering and severe injuries that they caused constitute a clear violation of CAT.

The illegal use of white phosphorous

- 3.2 Israeli forces exploded numerous artillery shells containing white phosphorous over populated civilian areas in Gaza. This has been confirmed by Amnesty International which reported that fragments of artillery shells that contained white phosphorous and white-phosphorous impregnated felt wedges were found scattered throughout densely-populated residential areas in and around Gaza City, and from the north to the south of the Gaza Strip.¹² In some instances white phosphorous that fell to the ground continued to burn for many days and could not be put out, often leading to the outbreak of fires and causing further injuries.¹³
- 3.3 The Israeli military claimed that white phosphorus was used as a smoke-screen to protect Israeli forces, a use which is permitted under international humanitarian law. However, the UAT Coalition emphasises that Human Rights Watch (HRW) found that on many occasions the use of white phosphorus did not accompany the presence or advancement of military forces and did not function as a smoke screen.¹⁴ Far less dangerous obscurants are available as alternatives to white phosphorous, such as smoke munitions, which Israel did not use.¹⁵
- 3.4 The sustained and indiscriminate use of white phosphorus in populated areas suggests that its use was a deliberate act, rather than accidental or exceptional, and was in violation of CAT. The repeated and well publicised use of white phosphorus also suggests that it was not only authorised by military commanders but also by political leaders.
- 3.5 The injuries inflicted by white phosphorous when it comes into contact with the skin are particularly painful. The chemical causes intense and deep burns that are difficult to extinguish and can continue down to the bone. Wounds caused by white phosphorus sometimes begin to burn in hospital when the material is exposed to oxygen whilst the wound is being cleaned. As well as causing serious burns, white phosphorous can also penetrate the body and poison internal organs.¹⁶ According to a doctor at al-Shifa Hospital, “*For the first time, I’m seeing*

¹¹ While none of these weapons is banned outright under international humanitarian law, they must not be used indiscriminately in civilian population centres. The use of white phosphorous, for example, which acts as an obscurant, during a military offensive is not prohibited outright under international humanitarian law. However, it should not be used indiscriminately in civilian population centres, as it was by Israel when it repeatedly exploded white phosphorous shells in the air over Gaza. This indiscriminate use violates Israel’s obligation to take all feasible precautions to minimise harm to the civilian population during military operations and indicates the commission of war crimes.

¹² Amnesty International, *Weapons and their devastating effect on the people in Gaza*, 23 January 2009. Available at: <http://livewire.amnesty.org/2009/01/24/weapons-devastating-effect-people-gaza/#more-833>.

¹³ Amnesty International, *Gaza: Israel must disclose nature of weapons used in attacks*, 23 January 2009. Available at: http://www.amnesty.org.uk/news_details.asp?NewsID=18032.

¹⁴ Human Rights Watch, *Rain of Fire: Israel’s Unlawful Use of White Phosphorous in Gaza*, 25 March 2009, p. 1. Available at: <http://www.hrw.org/sites/default/files/reports/iopt0309web.pdf>.

¹⁵ *Ibid.*, p. 65.

¹⁶ *Ibid.*, p. 11.

*strange kinds of burns, very deep to the bone. And they cause a bacterial infection unlike anything else.*¹⁷

- 3.6 In a recent report, HRW included testimonies provided by health professionals in Gaza describing the types of burns caused by white phosphorus and their initial inability to identify and treat these burns properly. The HRW testimonies are corroborated by information received by a fact-finding mission called for by Physicians for Human Rights-Israel and the Palestinian Medical Relief Society. Medical personnel are quoted in the report as stating that, *“People with second degree burns had developed higher degree burns, when they came for treatment for the second time ... a feature of these burns was that wounds kept on bleeding, almost as if there was no adequate clotting. The white phosphorus was very sticky, mud-like and equally difficult to remove from walls (buildings) as well as from the skin of patients... there were many patients with relatively minor external injuries, but when they underwent surgery, severe internal damage was noted.”*¹⁸
- 3.7 A number of organisations have collected individual testimonies from victims of white phosphorous attacks. Below are a small number of these testimonies:
- (i) In testimony obtained by Amnesty International, 16-year-old Samia Salman Al-Manay’a, was asleep in her home in the Jabalia refugee camp, north of Gaza City, when a white phosphorous shell landed on the first floor of her house. Samia recalled that *“The pain is piercing. It’s as though a fire is burning in my body. It’s too much for me to bear. In spite of all the medicine they are giving me the pain is still so strong.”*¹⁹
 - (ii) On 10 January 2009, white phosphorous shells hit a family house in Jabalia which is located west of the (former) Civil Administration building. Two 16 year-old boys were seriously injured from burns. One boy is in Shifa Hospital and the other who is suffering from third degree burns has been transferred to a hospital in Egypt.²⁰
 - (iii) On 15 January 2009, the Israeli military exploded white phosphorous shells over the densely-populated neighbourhood of Tel al-Hawa in an attack that killed at least four civilians.²¹
 - (iv) 15 January 2009 the Israeli military attacked an UNRWA compound, and continued to fire white phosphorus despite repeated warnings by the UN personnel about the danger to the 700 civilians sheltering inside the compound.²²

¹⁷ *Ibid.* p. 6.

¹⁸ Dr. Nafez Abu Sha’aban, Head of Burns Department at Shifa Hospital, Gaza, on 29 January 2009 to Physicians for Human Rights – Israel commissioned fact-finding mission. *Independent fact finding mission into violations of human rights in Gaza Strip during the period 27 December 2008 – 18 January 2009*, April 2009, Chapter 6.. Available at: <http://www.phr.org.il/PHR/article.asp?articleid=708&catid=55&pcat=44&lang=ENG>.

¹⁹ See *Supra* note 13.

²⁰ See *Supra* note 2, pp. 39-40.

²¹ Human Rights Watch has investigated several incidents in which the Israeli military exploded white phosphorus over populated areas, including three cases where phosphorous shells were fired over densely-populated areas. See, *Supra* note 14, p. 35.

- (v) On 18 January 2009, the Israeli military fired several shells – some of which appeared to be white phosphorus – which landed in and around the United Nations Relief and Works Agency for Palestinian Refugees (UNRWA) Beit Lahia Elementary School. One shell struck a classroom, where displaced civilians were sheltered. The shell broke through the roof and exploded on the ground, spreading its shrapnel into classrooms. Two children (aged 5 and 7 years) were killed and their mother was injured; a total of 14 people were injured in this incident. Four of the injured indicated phosphorous burns (including one child).²³
- (v) In attacks the UN school in Beit Lahiya school on 17 January 2009, and an UNRWA compound in the Rimal neighbourhood of central Gaza City on 25 January 2009, HRW could find no military justification for the use of white phosphorus as an obscurant as Israeli forces were not on the ground in those areas at the time.²⁴ Video footage of phosphorous shells being used in the Beit Lahiya school was reported in *The Guardian*.²⁵

3.8 The UAT Coalition calls upon the Committee to find that the use of white phosphorous, as documented above, constitutes ill-treatment or torture.²⁶

4. The denial of access to medical care and targeting of medical professionals

4.1 The UAT Coalition submits that prolonging the severe physical and mental suffering of the wounded as a result of denying them access to medical treatment through act or omission, as well as the targeting of medical and emergency health professionals, constitutes ill-treatment and in some cases, may amount to torture.

Denial of access to medical care

4.2 The coordination procedures imposed by the Israeli military in order to allow the movement of ambulances played a major role in hampering rescue efforts. Before an ambulance was permitted to set out to treat and transport the wounded, the medical personnel were required to contact the “Civilian Coordination Committee” in the Gaza Strip, which in turn was required to contact the military’s “Humanitarian Coordination Office”; the latter then transferred the request to the commander of the military campaign.²⁷

²² *Ibid.*, p. 3.

²³ See *Supra* note 2, pp. 39-40.

²⁴ See *Supra* note 14, p. 53.

²⁵ See also, an audio visual presentation entitled “‘Phosphorous shells’ hit Gaza UN School”, *The Guardian*, 22 January 2009, in which John Ging, the head of the United Nations Relief and Works Agency (UNRWA) in Gaza, narrates photos taken during the shelling and describes the aftermath of the strike on the school.

²⁶ In a combined report issued on 20 March 2009, a group of UN Special Rapporteurs called for independent investigations to be carried out into the unlawful use by Israel of white phosphorous artillery shells. See *Supra* note 2, pp. 32-33.

²⁷ See petition submitted to the Israeli Supreme Court on 4 January 2009 by Adalah, PHR-Israel, PCATI, Gisha, Bimkom: Planners for Planning Rights, ACRI, HaMoked and Yesh Din, HCJ 102/09, *Physicians for Human Rights and Adalah, et al. v. The Prime Minister of Israel, et al.* The petitioners demanded that the Israeli army be banned from striking medical personnel and ambulances while carrying out their operations in the Gaza Strip, and that they

4.3 The UAT Coalition has evidence that the Israeli military prevented emergency vehicles and staff from reaching the wounded and sick. The actions of the Israeli military in preventing the evacuation of the wounded left people trapped for days on end in isolated pockets with no access to food, water or treatment. This evidence includes the following:

- (i) Efforts by various emergency services including the International Committee of the Red Cross (ICRC), to coordinate evacuations with the Israeli military frequently resulted in either straightforward denial of evacuation or in withholding the reply, sometimes for up to fifteen days.²⁸ According to Physicians for Human Rights-Israel (PHR-Israel) investigations, requests for coordination that did receive a reply took on average between two to ten hours.²⁹ In many cases, these delays caused severe and unnecessary suffering and frequently death to civilians.
- (ii) The referral of seriously ill patients to hospitals outside Gaza came to a virtual standstill from 27 December 2008 to 31 January 2009. During this period, only 48 patients exited through the Erez crossing to receive urgent medical care.”³⁰
- (iii) On 7 January 2009, the ICRC gained access to several houses in the Zaytun neighbourhood of Gaza City that had been shelled by Israeli forces. The ICRC had been requesting safe passage for its ambulances since 3 January 2009.³¹ In one house, the rescue team found four small children next to their dead mothers. The children, in addition to a surviving man, were too weak to stand. 12 corpses were found lying on mattresses. In another house, 15 other survivors were found, including several wounded. In a further house an additional three corpses were found. According to Pierre Wettach, the ICRC’s head of delegation for Israel and the OPT: *“Israeli soldiers posted at a military position some 80 meters away from this house ordered the rescue team to leave the area which they refused to do. There were several other positions of the IDF nearby as well as two tanks.”*³² *The Israeli military must have been aware of the situation but did not assist the wounded. Neither did they make it possible for us or the Palestine Red Crescent to assist the wounded.*”³³

be allowed to provide assistance to the dead and wounded and to transport them to hospital. The court dismissed the petition on 19 January 2009, ruling that, in light of the establishment by the state of humanitarian mechanisms, “We must hope that the humanitarian array of measures will operate as required and in accordance with its obligations” (paras. 23 and 27 of the ruling).

²⁸ See *Supra* note 28, p. 11.

²⁹ *Ibid.*

³⁰ The World Health Organization, *Gaza Strip Initial Health Needs Assessment*, 16 February 2009, p. 11. Available at: http://www.who.int/hac/crises/international/wbgs/gaza_early_health_assessment_16feb09.pdf.

³¹ ICRC, *Gaza: ICRC demands urgent access to wounded as Israeli army fails to assist wounded Palestinians*, 8 January 2009. Available at: <http://www.icrc.org/web/eng/siteeng0.nsf/html/palestine-news-080109?opendocument>.

³² *Ibid.*

³³ *Ibid.*

Targeting health professionals

4.4 There is sufficient evidence to suggest that the Israeli military either intentionally or recklessly targeted medical and emergency health professionals who reported a high number of losses during the assault. During the Operation:

- (i) 23 emergency workers were killed, 17 of whom were on duty at the time;
- (ii) 50 emergency workers were injured;³⁴
- (iii) 29 out of 148 ambulances were damaged or destroyed;³⁵ and
- (iv) 15 out of 27 hospitals were damaged.³⁶

[Evidence: see Annexure A - “Operation Cast Lead”]

5. The targeting of civilians

5.1 The UAT Coalition submits that in the particular circumstances of a given case the deliberate targeting of civilians during military operations may amount to torture or ill-treatment. The UAT Coalition further submits that, consistent with the Committee’s jurisprudence, the disproportionate use of force may also amount to ill-treatment.³⁷

5.2 In asserting the above, the UAT Coalition recalls that The International Criminal Tribunal for the former Yugoslavia (ICTY) has established a link between disproportionate attacks on civilians and intention to target civilians. In the *Galic* case, the trial chamber that “certain apparently disproportionate attacks may give rise to the inference that civilians were actually the object of attack. This is to be determined on a case-by-case basis in light of the available evidence.”³⁸

5.3 According to available estimates, 1,440 Palestinians were killed during the Operation including 431 children and 114 women.³⁹ While Israel estimates that the dead included at least 700 Hamas fighters, the Palestinian Center for Human Rights puts this figure at around 300. If the latter figure is accurate, this would mean that approximately 1,140 civilians were killed in the attacks, or 79%, strongly suggesting an intention to target civilians.⁴⁰

³⁴ For details of these incidents, see Al Mezan, *The Targeting of Medical Centers, Ambulance Teams and Civil Defense Teams during the Israeli Offensive “Operation Cast Lead” against the Gaza Strip, 27 December 2008-18 January 2009*, pp.5, 32-35.

³⁵ See *Supra* note 30, p. 12

³⁶ *Ibid.*, p. 12 For more information, see Physicians for Human Rights-Israel in a Report on Medical Ethics during the War on Gaza: *The Military has repeatedly violated Medical Ethic Codes during its Gaza Offensive*, 23 March 2009.

³⁷ Manfred Nowak and Elizabeth McArthur, *The United Nations Convention Against Torture – A Commentary*, 2008, p. 568, para. 63.

³⁸ See *Prosecutor v. Stanilav Galic* (Appeal Judgment). IT-98-29-A. (ICTY). 30 November 2006, para. 59-60.

³⁹ See *Supra* note 3, p. 5.

⁴⁰ See *Supra* note 2, p. 29.

5.4 The UAT Coalition further draws the Committee’s attention to the psychological repercussions of Israel’s disproportionate conduct. The extent of the mental suffering as a result of the Operation is apparent from a report by the World Health Organization which found that, “*Even with a conservative approach, it is reasonable to assume that 25,000 to 50,000 people will need some form of psychological intervention to address long-term effects.*”⁴¹ In this context it should be emphasised that the residents of Gaza were particularly vulnerable to physical and mental harm from such attacks as the society as a whole had been brought to the brink of collapse by an 18-month siege.⁴² Further evidence of the psychological effects of the Operation on the people of Gaza was found by the independent medical fact-finding mission called for by Physicians for Human Rights-Israel and the Palestinian Medical Relief Society.⁴³

Intention to target civilians

5.5 An intention to punish the entire Palestinian population was clear prior to the start of “Operation Cast Lead.” Since 2002, the State of Israel has taken a series of measures that indicate that it sweepingly views every Palestinian person as an enemy or potential terrorist.⁴⁴ In the context of a legal challenge to one such measure, former Supreme Court Deputy Chief Justice Cheshin explained the doctrine of “enemy aliens” as follows:

*“An armed conflict has been taking place between Israel and the Palestinians for many years. This conflict has reaped a heavy price on both sides, and we have seen the massive scale of the harm caused to Israel and its inhabitants. The Palestinian public plays an active part in the armed conflict. Among the Palestinian public there is enmity to Israel and Israelis. Large parts of the Palestinian public — including also persons who are members of the organs of the Palestinian Authority — support the armed struggle against Israel and actively participate in it ... It follows from this that the residents of the territories — Judaea, Samaria and the Gaza Strip — are enemy aliens.”*⁴⁵

5.6 In September 2007, the Israeli Security Cabinet approved a series of additional measures specifically targeting the population of the Gaza Strip. The Cabinet determined that, “ *Hamas is a terrorist organization that has taken control of the Gaza Strip and turned it into hostile territory.*”⁴⁶ Accordingly, the government has initiated and the Supreme

⁴¹ See *Supra* note 30, p. 14.

⁴² See *Supra* note 3, p. 7.

⁴³ The report found that, “*The underlying meaning of the attack on Gaza Strip or at least its final consequence appears to be one of creating terror without mercy to anyone... No one knew where or when the next bomb or explosion would occur. It appears that the wide range of attacks with sophisticated weaponry was predominantly focused on terrorizing the population.*” Source: *Final Report – Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.2008 – 18.01.2009*, April 2009, p. 77. Available at: <http://www.phr.org.il/phr/>.

⁴⁴ One of the most notable manifestations of this position was the enactment of the Citizenship Law (Entry to Israel) (Temporary Order) – 2003, which bans family unification between Palestinian citizens of Israel and residents of the OPT.

⁴⁵ H CJ 7052/03, *Adalah v. The Interior Minister* (decision delivered in 14 May 2006), para. 12 (emphasis added).

⁴⁶ Ministry of Foreign Affairs, “Israel’s Security Cabinet declares Gaza hostile territory,” 19 September 2009. Available at:

Court approved various forms of collective punishment against the population of Gaza, including: the closure of border crossings for humanitarian aid and vital commodities and goods;⁴⁷ denial of passage for seriously ill individuals in need of medical treatment that is not available in Gaza;⁴⁸ and cuts in fuel and electricity supplies.⁴⁹

- 5.7 The consequences of an assumption that every Palestinian in Gaza inherently poses a security threat, and that he or she is a potential terrorist, were borne out in the conduct of the Israeli military during “Operation Cast Lead.”
- 5.8 In a disturbing admission in the aftermath of the Operation, the then Prime Minister of Israel, Ehud Olmert, was quoted by *Reuters* as stating that, “*The Government’s position was from the outset that if there is shooting at the residents of the south, there will be a harsh Israeli response that will be disproportionate.*”⁵⁰
- 5.9 This policy of deliberate disproportionate use of force is confirmed by testimony of Israeli soldiers and officers which were published in *Briza*, the bulletin of a pre-military preparatory programme at Oranim Academic College and re-published in *Ha’aretz*.⁵¹ The testimonies reveal that Israeli soldiers killed Palestinians in Gaza under lax rules of engagement and that Palestinian civilians were deliberately and unnecessarily killed. Their testimonies contradict the Israeli army’s own claim that Israeli troops adhered to the army’s ethical code of “purity of arms.” The following are excerpts from some of the soldiers’ testimonies:

“Toward the end of the operation there was a plan to go into a very densely populated area inside Gaza City itself. In the briefings they started to talk to us about orders for opening fire inside the city, because as you know they used a huge amount of firepower and killed a huge number of people along the way, so that we wouldn’t get hurt and they wouldn’t fire on us... At first the specified action was to go into a house. We were supposed to go in with an armoured personnel carrier called an Achzarit [literally, Cruel] to burst through the lower door, to start shooting inside and then ... I call this murder ... in effect, we were supposed to go up floor by floor, and any person we identified – we were supposed to shoot... Even before we went in, the battalion commander made it clear to everyone that a very important lesson from the Second Lebanon War was the way the IDF goes in – with a lot of fire. The intention was to

<http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm>.

⁴⁷ HCJ 5523/07, *Adalah, et al. v. The Prime Minister, et al.* (petition withdrawn in October 2007).

⁴⁸ HCJ 5429/07, *Physicians for Human Rights-Israel, et al. v. The Minister of Defense* (decision delivered on 28 June 2007).

⁴⁹ HCJ 9132/07, *Jaber Al-Basyouni Ahmed v. The Prime Minister* (decision delivered 30 January 2008), available in English at: http://elyon1.court.gov.il/files_eng/07/320/091/n25/07091320.n25.htm.

⁵⁰ See <http://www.reuters.com/article/worldNews/idUSTE5100OY20090201>, quoted in Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, *Human Rights Situation in Palestine and other Occupied Arab Territories*, 11 February 2009, A/HRC/10/20.

⁵¹ Amos Harel, “Shooting and Crying,” *Ha’aretz*, 20 March 2009. Available at: <http://haaretz.com/hasen/spages/1072475.html>.

protect soldiers' lives by means of firepower. In the operation the IDF's losses really were light and the price was that a lot of Palestinians got killed."⁵²

Investigation of civilian casualties during "Operation Cast Lead"

- 5.10 The disproportionate character of Israel's conduct in relation to the stated goals, namely to stop the firing of rockets from Gaza into Israel was assessed by UN Special Rapporteur Falk, who stated before the UN Human Rights Council that *"The air, ground and sea attacks by Israel were grossly and intentionally disproportionate when measured against either the threat posed or harm done, as well as with respect to the disconnect between the high level of violence relied upon and the specific security goals being pursued."*⁵³
- 5.11 Israeli and Palestinian human rights organisations have requested a thorough, independent and impartial investigation of harm to civilians during the Operation in a letter sent on 20 January 2009 to the Israeli Attorney General.
- 5.12 In the Attorney General's reply, dated 24 February 2009, he stated that the Israeli military was carrying out an operational probe that would also examine various incidents in which civilians were harmed in the course of the hostilities. The investigations are being carried out by senior officers appointed by the Israeli army's Chief of Staff; these kind of internal investigations do not constitute an impartial investigation into events. *"The main purpose of an operational probe is to draw conclusions and lessons in order to prevent future failures and errors [...] There is, therefore, a substantial difference between an operational probe and a criminal investigation."*⁵⁴
- 5.13 The UAT Coalition calls on the Committee to find that Israel's targeting of civilians during "Operation Cast Lead" gives rise to individual cases of ill-treatment or torture. The UAT Coalition further requests that the Committee urge Israel to initiate an independent and impartial criminal investigation to this end.

[Evidence: see Annexure A – "Operation Cast Lead"]

⁵² According to media reports, on 30 March 2009, the Military Advocate General instructed the Military Police Investigation unit to close the inquiry into the soldiers' accounts of alleged misconduct and serious violations of the army's rules of engagement during "Operation Cast Lead." See Anshel Pfeffer and Amos Harel, "IDF ends Gaza probe, says misconduct claims are 'rumors'," *Ha'aretz*, 30 March 2009. Available at: <http://www.haaretz.com/hasen/spages/1074981.html>.

⁵³ See *Supra* note 3, p. 10.

⁵⁴ HCJ 2366/05, *Al-Nebari v. The Chief of Staff of the Israeli Army* (decision delivered on 29 June 2008), para. 6-10 of Justice Arbel's ruling.