



Physical Security

January 2018

info@makan.org.uk

**Makan is a
UK Registered Charity.
No. 1169254**

Photo by Mohamed Badarne
www.mbadarne.com





SUMMARY

Palestinians face threatening and unpredictable circumstances that affect their physical safety as a result of both the random and institutionalised violence that has been at the core of Israeli policy for decades. At any given time, Palestinians have no effective legal guarantees that their physical security will be respected by Israeli authorities, and are under constant threat of arrest or imprisonment, as well as coercive, degrading and violent treatment in prisons.

The right to liberty and security of person, enshrined in key instruments of human rights and international law, protects individuals from being arbitrarily arrested and imprisoned. This document shows how these rights of Palestinians have been infringed upon by the Israeli state, and how such conditions have been established and maintained. We focus on the practice of imprisonment, indefinite imprisonment without trial (also known as administrative detention), and the use of torture.

BACKGROUND

The right to liberty and physical security of Palestinians is enshrined in Article 9 of the International Covenant on Civil and Political Rights (ICCPR), a key human rights instrument that

protects the civil and political liberties of individuals.¹ As explained by the International Court of Justice's advisory opinion on Israel's Wall, both the ICCPR and the Convention on the Rights of the Child apply to Palestinians living in the occupied territories (the West Bank, East Jerusalem, and Gaza).² Furthermore, the third Geneva Conventions, which regulate situations of armed conflict, also apply to Palestinians under occupation in their protection of prisoners' rights.³

Arbitrary and institutionalised physical violence against Palestinians, which can erupt instantaneously or simmer indefinitely, underpins Israel's system of military occupation and allows the state to rule over Palestinians.

The right to liberty and physical security of Palestinians is perhaps one of the most visible rights that is violated by the Israeli state in a systematic and widespread manner. Other mechanisms of legal or political repression are far more subtle

and nuanced, though equally insidious and harmful to Palestinians. This arbitrary and institutionalised physical violence against Palestinians underpins Israel's system of military occupation and allows the state to rule over Palestinians by force.

Ethnically-charged violence towards Palestinians is seen on a broad level through the periodic invasions and military campaigns carried out by Israel's army and police force, as well

1. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

2. <https://www.asil.org/insights/volume/8/issue/17/world-court-rules-israels-west-bank-barrier-violates-international-law>

3. <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/7c4d08d9b287a42141256739003e63bb/6fe-f854a3517b75ac125641e004a9e68>



Since the beginning of the Israeli occupation in 1967, Israeli forces have arrested more than 800,000 Palestinians, constituting almost 20% of the total Palestinian population in the occupied Palestinian territories.

as through insidious and constant harassment, degradation, intimidation and mass imprisonment of Palestinians. Physical insecurity leads to human insecurity, which refers to a prevailing and persistent climate of fear and a perpetual threat of the violation of rights through physical force, demonstrating the inseparability of human rights and physical security.⁴ The absence of Palestinian physical security cannot be disentangled from the regime of rights restrictions and legal inequality that Palestinians face because of their ethnicity. We look at the way that the physical safety of Palestinians is systematically under threat through widespread imprisonment, focusing on the issues of political prisoners, the use of administrative detention and torture carried out by Israeli authorities.

IMPRISONMENT

The systematic and widespread Israeli policy of arresting Palestinians and holding them in prisons, often indefinitely, acts as a form of organised intimidation and a destabiliser of Palestinian political activity. Further, it threatens the breakdown of family relationships in Palestinian society, with prisoners often spending long and indefinite numbers of years in prison, and regularly denied family visits for prolonged periods of time.

Palestinians who are imprisoned fall under different categories of “prisoner” – political prisoners and administrative detainees. Where the term “security detainee” is used, this refers to those who are

4. Mient Jan Faber and Mary Kaldor, ‘The Deterioration of Human Security in Palestine’, in Mary Martin and Mary Kaldor (eds.), *The European Union and Human Security: External Interventions and Missions* (London; New York: Routledge, 2010), p. 97

being held for an initial 75-day interrogation period without having had an administrative detention order handed down.

POLITICAL PRISONERS

Since the beginning of the Israeli occupation in 1967, Israeli forces have arrested more than 800,000 Palestinians, constituting almost 20% of the total Palestinian population in the occupied Palestinian territories. With the majority of these detainees being men, this means that about 40% of male Palestinians in the occupied territories have been arrested by Israeli authorities.⁵ Currently, there are 6,500 Palestinian political prisoners held by Israel, according to Jerusalem-based prisoner rights group Addameer (which is an invaluable source on this issue).⁶

Arrests span the breadth of Palestinian society, including political figures, civil society activists, human rights advocates, academics and journalists, and even family members of prisoners, women and children. This scale of imprisonment shows that it is not arbitrary but an instrument of coercive political rule designed to restrain Palestinian civil society and restrict the bounds of feasible activity. This is seen in such signs as the prevention of journalists from exposure and coverage of occupational practices, and the premature normalisation of the imprisonment of children.⁷ Together with the fact that all Palestinian political parties are

5. http://www.addameer.org/israeli_military_judicial_system/administrative_detention

6. <http://www.aljazeera.com/news/2017/04/palestinian-prisoners-launch-mass-hunger-strike-170416173501861.html>

7. <http://www.addameer.org/news/joint-report-estimates-509-palestinians-arrested-march-2017>



deemed illegal organisations according to Israeli military orders, the effect of these practices is to undermine the ability, and indeed the right, of Palestinians to seek and secure their rights.⁸

Palestinian prisoners that are seen to continue engaging in political activity in prison – though simply demanding basic and internationally recognised prisoners’ rights – are reprimanded with “punitive measures” in an attempt to quell such activity, including the storming of hunger-striking sections of prisons...and forced transfers of hunger strikers.

CONDITIONS IN PRISON

While the majority of current-day Palestinian political prisoners are not held in administrative detention, their conditions of arrest and detention fail to meet internationally recognised

prisoners’ rights as set out by the third and fourth Geneva Conventions.⁹ A considerable proportion of prisoners are sick, with over 1,000 of the 6,500 current-day political prisoners requiring systematically denied medical treatment.¹⁰ Prominent prison activists call for international community recognition of the condition of Palestinian prisoners; the immediate protection for prisoners and detainees who have long been denied basic rights guaranteed by the third and fourth Geneva conventions; and the ending of impunity for Israeli administrators who have

tortured, forcibly transferred and detained Palestinians.¹¹

Serious threats to physical safety continue within prisons, with heavy-handed authority responses to prisoner protest. For example, Palestinian prisoner hunger strikes in 2017 called for an improvement to prison conditions that ought to have been met under international human rights law, but have instead been fought for through prisoners’ actions. Palestinian prisoners that are seen to continue engaging in political activity in prison – though simply demanding basic and internationally recognised prisoners’ rights – are reprimanded with “punitive measures” in an attempt to quell such activity, including the storming of hunger-striking sections of prisons by special units forces, confiscation of prisoner possessions and forced transfers of hunger strikers.¹² When hundreds of Palestinian political prisoners went on hunger strike in 2014, participants were branded as “terrorists” by the Israeli Minister of Public Security Gilad Erdan and threatened with the proposition of force feeding, while it was proposed to establish a field hospital to prevent civilians being treated in Israel civilian hospitals. Hunger strikes, along with other “protest activities”, are “illegal” and “dealt with firmly”.¹³ Despite this, the 2017 hunger strike by political prisoners was the largest to date, with over 1,500 prisoners on strike.¹⁴

8. <http://addameer.org/news/occasion-prisoners%E2%80%99-day-2017-and-50-years-military-courts-phroc-calls-international-protection>

9. <https://www.icrc.org/eng/war-and-law/protected-persons/prisoners-war/overview-detainees-protected-persons.htm>

10. <http://samidoun.net/2017/04/1500-palestinian-prisoners-launch-largest-collective-hunger-strike-in-years-take-action-in-support/>

11. <https://www.nytimes.com/2017/04/17/world/middleeast/marwan-barghouti-hunger-strike-israel.html>

12. <http://www.addameer.org/news/seventh-day-mass-hunger-strike-continues-despite-escalation>

13. <http://samidoun.net/2017/04/1500-palestinian-prisoners-launch-largest-collective-hunger-strike-in-years-take-action-in-support/>

14. <https://www.nytimes.com/2017/04/17/world/middleeast/marwan-barghouti-hunger-strike-israel.html>



ADMINISTRATIVE DETENTION

As of July 2017, there were at least 449 Palestinians being held without charge or trial, nine of whom are members of the Palestinian Legislative Council, effectively the Palestinian parliament, a fact that demonstrates Israel's willingness to carry out these measures against elected Palestinian politicians, despite their status of immunity.¹⁵ In many ways, at the core of this

topic is the Israeli military court system, created in 1967 as part of Israel's military administration which was established to govern Palestinians in the West Bank and the Gaza Strip.¹⁶ The military court system is an institution that

enables the legal "exceptionalisation" of the Palestinian people, criminalising and prosecuting them for a wide range of activities under the pretext of security.

Administrative detention is a procedure "outside" of the ordinary process of law and order that allows the Israeli military, upon order of an Israeli military commander, to hold prisoners indefinitely on secret information without charging them or allowing them to stand trial.¹⁷ "Secret evidence" is always the basis for administrative detention. Israeli officials and military

spokespeople justify their decisions "as necessary in light of the security situation in the occupied territories," where they claim "fighting crime and maintaining order are tantamount to counterinsurgency."¹⁸ In the vast majority of administrative detention cases, neither the detainee nor their lawyer are ever informed of the reasons for the detention or given access to this information.¹⁹ Only around 5% of Palestinian administrative detainees are charged after their detention – the remaining 95% are released without charge.²⁰

Although international human rights law and international humanitarian law permit limited use of such imprisonment only in emergency situations, the detaining authority is required to follow basic rules for detention.²¹ Administrative detention is one of the most extreme measures that international humanitarian law allows an occupying power to use against residents of the territory that such a power occupies. As such, states are not allowed to use it in a sweeping manner. To the contrary, administrative detention can be used against protected persons in occupied territory (in this case, the Palestinians) only for "imperative reasons of security", as stated in the Fourth Geneva Convention, Article 78, and as a final

The military court system is an institution that enables the legal "exceptionalisation" of the Palestinian people, criminalising and prosecuting them for a wide range of activities under the pretext of security.

15. http://www.addameer.org/israeli_military_judicial_system/administrative_detention

16. Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (Berkeley: University of California Press, 2005), p. 1

17. <http://www.militarycourtwatch.org/page.php?id=iz63ezSbG7a11412A1qkQJHcUuf>

18. Ibid, p. 110

19. [http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2012/491444/EXPO-AFET_SP\(2012\)491444_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2012/491444/EXPO-AFET_SP(2012)491444_EN.pdf)

20. <http://time.com/4252272/israel-palestinians-administrative-detention/>

21. Under Administrative Detention, there is no right to a fair hearing because the detained individual is not charged with any offence. But there is the right to have the detention "reconsidered" by an appropriate court or administrative body at least every 6 months. See Article 43 of the Fourth Geneva Convention. Under Israeli military law, administrative detention orders are reviewed at least every 6 months in accordance with this provision.



“The extent of Israel’s use of administrative detention on Palestinians has received criticism from both the UN Committee Against Torture and the UN Human Rights Committee, specifically because in many circumstances it has been shown to result in cruel, inhuman or degrading treatment or punishment...”

resort.²² The International Committee of the Red Cross describes administrative detention as the “Deprivation of liberty for security reasons...an exceptional measure of control that may be taken in armed conflict” against “persons believed to represent a threat to State security...”²³

The extent of Israel’s use of administrative detention on Palestinians has received criticism from both the UN Committee Against Torture and the UN Human Rights Committee, specifically because in many circumstances it has been shown to result in cruel, inhuman or degrading treatment or punishment,²⁴ and more broadly because the practice has become normalised under a decades-long, ongoing “state of emergency”, with no indication of an end-point.²⁵ In practice, Israel routinely uses administrative detention in violation of the strict parameters established by international law. The widespread use of detention, imprisonment and other forms of violence is an effective way for Israel to institutionalise control of the Palestinian population and contain it in a state of vulnerability.

Israel has claimed to be under a continuous state of emergency, sufficient to justify the use of administrative detention, since its inception in 1948.²⁶ In addition, administrative detention is

frequently used – in direct contravention to international law – for collective and criminal punishment rather than for the prevention of existing threats. For example, administrative detention orders are regularly issued against individuals suspected of committing an offense after an unsuccessful criminal investigation or a failure to obtain a confession in interrogation.²⁷

Israel’s administrative detention regime violates several other international standards.²⁸ Administrative detainees from the West Bank, for example, are deported from the occupied territory and interned inside Israel, in direct violation of the Fourth Geneva Convention, Articles 49 and 76.²⁹

Further, administrative detainees are often denied regular family visits in accordance with international law standards, and Israel consistently fails to separate administrative detainees from the regular prison population, as required by law. Moreover, in the case of child detainees, Israel regularly fails to take into account the best interests of the child, again as required under international law in the UN Convention on the Rights of the Child. It makes no special considerations for the physical or psychological impact its policies have on Palestinian child detainees.³⁰

22. <https://www.icrc.org/ihl/WebART/380-600085?OpenDocument>

23. <https://www.icrc.org/en/document/security-detention>

24. <http://www.militarycourtwatch.org/page.php?id=iz63ezSbG7a11412A1qkQJHcUuf>

25. <http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.ISR.CO.4.pdf>

26. http://www.addameer.org/israeli_military_judicial_system/administrative_detention

27. Lisa Hajjar, *Courting Conflict*, p. 242.

28. <https://www.icrc.org/ihl/WebART/380-600056>

29. Ibid, see also <https://www.icrc.org/ihl/WebART/380-600083?OpenDocument>

30. <http://www.un.org/depts/dpa/qpal/docs/2011%20Vienna/p2%20sahar%20francis%20e.pdf>



In June 2012, an independent report funded by the UK Foreign & Commonwealth Office and written by a delegation of British lawyers, including a former Attorney General and High Court judge, found that Israel's treatment of Palestinian minors held in military detention violated at least six articles under the UN Convention on the Rights of the Child (including articles regarding detention, prompt access to lawyers and use of shackles) and two articles under the Fourth Geneva Convention.³¹ This report was not specifically in reference to administrative detention, and yet still records evidence of cruel and degrading treatment of Palestinian children. Further to this, in March 2013 UNICEF published a report which concluded "that the ill-treatment of [Palestinian] children who come in contact with the military detention system appears to be widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing."³² According to B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories, at the end of August 2016, 319 Palestinian children were held in Israeli prisons as security detainees and prisoners, including 10 administrative detainees.³³

31. <http://www.childreninmilitarycustody.org.uk/>

32. https://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf

33. http://www.btselem.org/statistics/minors_in_custody

Between December 2011 and September 2015 no minors were held in administrative detention. In October 2015, Israeli military authorities re-commenced issuing administrative detention orders for children.³⁴

Palestinians have been subjected to administrative detention since the beginning of the Israeli occupation in 1967, and even before that time under the British Mandate. These policies are in fact a remnant of an arbitrary detention measure introduced by the British Mandate powers in Palestine in the Defence (Emergency) Regulations of 1945.³⁵ The frequency of the use of administrative detention has

"...in March 2013 UNICEF published a report which concluded "that the ill-treatment of [Palestinian] children who come in contact with the military detention system appears to be widespread, systematic and institutionalised..."

fluctuated since that time, but overall it has been steadily rising since the outbreak of the Second Intifada in September 2000.³⁶ Today, administrative detention is used almost exclusively against Palestinians from the occupied territories.³⁷

In the West Bank, the Israeli army is authorised to issue administrative detention orders against Palestinian civilians on the basis of article 285 of Military Order 1651. This article empowers military commanders to detain an individual for up to

34. <http://www.militarycourtwatch.org/page.php?id=iz63ezSbG7a11412A1qkQJHcUuf>

35. Sergio Catignani, *Israeli Counter-Insurgency and the Intifadas: Dilemmas of a Conventional Army* (London: Routledge, 2008), p. 77

36. <https://www.fidh.org/IMG/pdf/ps365a.pdf>

37. http://www.addameer.org/israeli_military_judicial_system/administrative_detention



In practice, Palestinians can be detained for months, if not years, under administrative detention, without ever being informed about the reasons or length of their detention.

six-month renewable periods if they have “reasonable grounds to presume that the security of the area or public security require the detention.”³⁸ No definition of “security of the area” or “public security” is given. On or just before the expiry date, the detention order is frequently renewed; there is no explicit limit to the maximum amount of time an individual may be administratively detained, leaving room for indefinite renewal of the detention.³⁹ In practice, Palestinians can be detained for months, if not years, under administrative detention, without ever being informed about the reasons or length of their detention, and have no effective means by which to challenge the measure.

In the Gaza Strip, Israel uses the Unlawful Combatants Law to hold Palestinians for an unlimited period of time, without effective judicial review. The law defines an “unlawful combatant” as a “person who has participated either directly or indirectly in hostile acts against the State of Israel, or is a member of a force perpetrating hostile acts against the State of Israel,” and who is not entitled to prisoner of war status under international humanitarian law.⁴⁰ Crucially, in the Gaza Strip an administrative detention order is not actually required to indefinitely detain any individual, as they are considered “enemy combatants” from a hostile territory.

The Unlawful Combatants Law therefore allows for the sweeping

38. <http://www.addameer.org/Campaign/stop-administrative-detention>

39. <http://www.militarycourtwatch.org/page.php?id=iz63ezSbG7a11412A1qkQJHcUuf>

40. http://www.addameer.org/israeli_military_judicial_system/administrative_detention

and swift detention without trial of Palestinians from the Gaza Strip. To date, the law has been used to detain 54 individuals, including 39 Gazans (and 15 Lebanese), most of whom were detained during Israel’s 2008-2009 military action against Gaza, and have since been released. As of April 2012, Israel was holding 1 Palestinian from Gaza under this law.⁴¹ In practice, the Unlawful Combatants Law contains even fewer protections for detainees than those that are granted under administrative detention orders in the West Bank.⁴²

The detention and imprisonment mechanisms at the hands of Israeli authorities are the function of a highly securitised and militarised form of political rule where an entire population are deemed to be a permanent “threat”, enabling imprisonment to become widespread and even more drastic measures to become normalised.

TORTURE AND ILL-TREATMENT

In 1977, the London Sunday Times published a detailed inquiry on Israel’s use of torture. The inquiry reported that:

Torture of Arab prisoners is so widespread and systematic that it cannot be dismissed as ‘rogue cops’ exceeding orders. It appears to be sanctioned as deliberate policy. Some of the ill-treatment is merely primitive...But more refined techniques are

41. http://www.btselem.org/publications/summaries/200910_without_trial

42. Ibid



In May 2016, the UN Committee against Torture published a report expressing concern over an increase and intensification of abusive practices carried out by Israel towards Palestinian detainees (and even non-detainees), including coerced confessions from children, force-feeding and even complicity of medical personnel in abusing prisoners.

also used...This sort of apparatus, allied to the degree of organisation evident in its application, removes Israel's practice from the lesser realms of brutality and places it firmly in the category of torture.⁴³

There is a long historical record to the issue of Israel's use of torture – record of its widespread and systematic occurrence but also of its presence as a notable topic of discussion and reportage. This record has remained unchanged. Significantly, in 1987, the Israeli government adopted the recommendations made by a preceding commission to authorise the use of “moderate physical pressure,” making Israel the first state in the world to publicly and officially sanction interrogation techniques that constituted torture under international law.⁴⁴

Accordingly, Israel effectively challenged the core principle underlying the international legal prohibition against torture: that the individual's right not to be tortured cannot be derogated from.⁴⁵ The right to freedom from torture is clearly enshrined in international law, with the Convention against Torture created by the UN in 1984 in order to protect this particular right and give it singular importance.⁴⁶ According to the Public Committee against Torture in Israel (PCATI), more than 1,000 complaints were filed against the Israeli Securities Authority (ISA) with the Israeli Attorney General by torture victims between 2001 and 2015, with

43. 'Israel Tortures Arab Prisoners: Special Investigation by Insight', *Sunday Times (London)*, Jun. 19th 1977

44. Lisa Hajjar, *Courting Conflict*, p. 72

45. Ibid

46. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

no criminal investigations launched in response.⁴⁷ In May 2016, the UN Committee against Torture published a report expressing concern over an increase and intensification of abusive practices carried out by Israel towards Palestinian detainees (and even non-detainees), including coerced confessions from children, force-feeding and even complicity of medical personnel in abusing prisoners.⁴⁸

The methods of ill-treatment most frequently alleged to be used during interrogation include: sleep deprivation; threats of sexual assault and killing; use of stress positions for prolonged periods of time; strangulation and suffocation; and long periods of solitary confinement.⁴⁹

In most cases, the purpose of these coercive techniques is the extraction of confessions that are then used as primary evidence against the detainees in their trial before the military courts, regardless of whether or not they actually committed the offence they are being accused of. In addition, Palestinian detainees held for interrogation are routinely made to sign confessions written in Hebrew, a language many cannot read, and which further restricts their right to a fair trial.⁵⁰

47. <http://stoptorture.org.il/frequently-asked-questions/frequently-asked-questions/?lang=en>

48. <http://www.justice.gov.il/Units/InternationalAgreements/IA/Reports/ReportsUnCommittees/CAT-ConcludingObservations2016.pdf>

49. http://www.btselem.org/publications/summaries/200705_utterly_forbidden

50. Ibid