



## Physical Security

February, 2017

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## SUMMARY

Palestinians face hazardous and unpredictable circumstances affecting the security of their own persons, 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. This document shows how these conditions have been established and maintained, focusing on the practice of indefinite imprisonment (also known as administrative detention) and the use of torture.

## INTRODUCTION

The routinely coercive character of Israeli rule over Palestinians, particularly in the occupied territories, does not just manifest itself in legal mechanisms or political repression. Arbitrary and institutionalised physical violence against Palestinians, which can erupt instantaneously or simmer indefinitely, underpins Israel's system of military occupation

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and allows the state to rule over Palestinians. This is seen through the periodical invasions and military campaigns carried out by Israel's army and police force, as well as in the constant and insidious harassment, intimidation and mass imprisonment of

Palestinians. Physical insecurity leads to human insecurity, where there is a constant climate of fear and a perpetual threat of the violation of rights through physical force.<sup>1</sup> The absence of physical security cannot be disentangled from the regime of rights restrictions and legal inequality that Palestinians face. We look at two key ways in which this physical violence is carried out: administrative detention and the prevalence of torture.

## IMPRISONMENT / ADMINISTRATIVE DETENTION

The issue of imprisonment of Palestinians is one that goes beyond administrative detention alone. Since the start of Israel's military occupation in 1967, over 800,000 Palestinians from the West Bank and Gaza have been held as political prisoners. Today, this represents one in every four Palestinians from the occupied territories.<sup>2</sup> This document looks specifically at administrative detainees, and covers the question of political prisoners elsewhere.

In 2015 and 2016, Palestinians who were imprisoned indefinitely represented between 6-11% of the total number of Palestinians held as "security detainees." 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.<sup>3</sup> The military court system is an institution which 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 judicial process 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.<sup>4</sup> “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.”<sup>5</sup> 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.<sup>6</sup> Only around 5% of Palestinian security detainees are charged after their detention - the remaining 95% are released without charge.<sup>7</sup>

Although international human rights law and international humanitarian law permit limited use of such imprisonment in emergency situations, the detaining authority is required to follow basic rules for detention.<sup>8</sup> 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

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persons in occupied territory (in this case, the Palestinians) only for “imperative reasons of security”, as stated in the Fourth Geneva Convention, Article 78.<sup>9</sup>

The extent of Israel’s use of administrative detention has warranted 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, and more broadly because the practice has become normalised under a decades-long, ongoing “state of emergency”, with no indication of an ending.<sup>10</sup> In practice, Israel routinely uses administrative detention in violation of the strict parameters established by international law. The widespread use of detention, as well as the standardisation of the broader use of imprisonment and other forms of violence, are a means by which Israel can 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. 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.<sup>11</sup>

Israel's administrative detention regime violates several other international standards. 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.<sup>12</sup> 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. It makes no special considerations for the physical or psychological impact its policies have on Palestinian child detainees.<sup>13</sup>

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 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.<sup>14</sup> 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 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."<sup>15</sup> 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.<sup>16</sup> Between December 2011 and September 2015 no minors were held in administrative detention, however in October 2015 Israeli military authorities recommenced issuing administrative detention orders for children.<sup>17</sup> Israel utilises three separate laws to hold individuals without trial, and uses the procedure of administrative detention almost exclusively with Palestinians:

- Article 285 of Military Order 1651, which is part of the military legislation that applies in the West Bank.<sup>18</sup>
- Internment of Unlawful Combatants Law (or the Unlawful Combatants Law), which has been used against residents of the Gaza Strip since 2005.<sup>19</sup>
- Emergency Powers (Detentions) Law, which applies to Israeli citizens.<sup>20</sup>



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 actually a remnant of an arbitrary detention measure introduced by the British Mandate powers in Palestine in the Defence (Emergency) Regulations of 1945.<sup>21</sup> The frequency of the use of administrative detention has fluctuated since that time, but overall it has been steadily rising since the outbreak of the Second Intifada in September 2000.<sup>22</sup> Today, administrative detention is used almost exclusively against Palestinians from the occupied territories, though there have been instances where citizens inside Israel have also been subjected to the practice.<sup>23</sup>

On the eve of the Second Intifada in 2000, Israel held 12 Palestinians in administrative detention. Only two years later, in late 2002 to early 2003, there were over 1,000 Palestinians in administrative detention. Between 2005 and 2007, the average monthly number of Palestinian administrative detainees held by Israel remained stable at approximately 765. Since then, the number of administrative detainees has generally decreased every year. As of 1st September 2012, there were at least 212 Palestinians from the West Bank and East Jerusalem being detained in administrative detention, of which 7 were members of the Palestinian Legislative Council (which

is effectively the Palestinian parliament. This demonstrates Israel's willingness to carry out these measures against elected Palestinian politicians).<sup>24</sup> Compared to this, over the year only nine Israeli settlers have been placed in administrative detention.<sup>25</sup>

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 (see above). This article empowers military commanders to detain an individual for up to six-month renewable periods if they have "reasonable grounds to presume that the security of the area or public security require the detention."<sup>26</sup> 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.<sup>27</sup>

A Palestinian detainee subjected to an administrative detention order must be brought before a military court in a closed hearing within eight days of his or her arrest, where a single military judge can uphold, shorten or cancel the detention order. In most cases, however,

administrative detention orders are confirmed for the same periods as those requested by the military commander. While the detainee can appeal the decision at the judicial review,

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in practice, the vast majority of appeals are rejected. By comparison, administrative detention under Israeli domestic law requires a detainee to be brought before a judge within 48 hours, and orders can be given only up to three-month periods.<sup>28</sup>

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. Detainees are routinely informed of the extension of their detention on the day that the existing order expires. Under the existing administrative detention procedures, Palestinians have no effective means by which to challenge their administrative detention.

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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.<sup>29</sup>

The law was approved by the Israeli Knesset in 2002 specifically in order to enable the state to continue holding Lebanese “bargaining chip” detainees, essentially held as hostages in order to force an eventual quid pro quo from Lebanon. Although all Lebanese detainees were released in 2004, the law was not revoked. Instead, starting in 2005, after Israel’s unilateral “disengagement” from the Gaza Strip and the accompanying end of the application of Israeli military orders there, it began to be used to detain residents of the territory.<sup>30</sup> Effectively, therefore, Israel makes use of a practice in the Gaza Strip which its own judiciary ruled illegal, again under the pretext of security and a hostile situation.

The Unlawful Combatants Law allows for the sweeping and swift detention without trial of large numbers of foreign citizens and Palestinian residents of the Gaza Strip. To date, the law has been used to detain 54 individuals, including 15 Lebanese nationals and 39 Gazans, 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 Gazan under this law.<sup>31</sup>

Detainees under the law may be held for 96 hours before the issuance of a permanent detention order, or up to seven days if the government declares the “existence of wide-scale hostilities.” In practice, the Unlawful Combatants Law contains fewer protections for detainees than even the few that are granted under administrative detention orders in the West Bank. For



example, judicial review is conducted less often; the legality of the detention does not require the existence of a state of emergency; and the detention “is carried out pursuant to an order issued by the chief of staff or by an officer holding the rank of major general.”<sup>32</sup> In addition, the law establishes two troubling presumptions that shift the burden of proof on to the detainee: first, the release of an individual identified as an “unlawful combatant” will harm national security unless proven otherwise; second, the organisation to which the detainee belongs carries out hostilities, if the Israeli Minister of Defence has made such a determination, unless proven otherwise. This practice violates the accused’s right to a presumption of innocence in any criminal proceeding, and results in a system of indefinite detention justified by mere speculation and stacked heavily against the detainee.<sup>33</sup>

## 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 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.”<sup>34</sup>

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.<sup>35</sup> Accordingly, Israel effectively challenged the core principle underlying the international legal prohibition against torture: that the individual’s right not to be tortured is non-derogable (i.e. no derogation is permitted).<sup>36</sup> According to the Public Committee against Torture in Israel (PCATI), approximately 950 complaints were filed against the Israeli Securities Authority (ISA) with the Israeli Attorney General by torture victims between 2001 and 2015, with no criminal investigations launched in response.<sup>37</sup> 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.<sup>38</sup>

Israel’s ill-treatment and abuse of Palestinian detainees typically starts from the moment of arrest. Most detainees, including children, report being beaten, kicked, threatened, having their property illegally searched and confiscated and their family home destroyed. Some also report the Israeli army’s use of police





dogs and “sound bombs” at arrest. On occasion, relatives and neighbours of detainees report being used as human shields. Israeli soldiers routinely fail to present arrest orders.<sup>39</sup>

Once bound and blindfolded, detainees typically are not informed of the reason for their arrest and neither they nor their families are informed of where they will be taken. Detainees may be kept waiting, standing or kneeling for long periods of time before being thrown on the floor of a military jeep, sometimes face down, for transfer to an interrogation centre. During the transfer, which can take up to several hours, the abuse continues and usually takes the form of beatings, insults, threats and deliberate humiliation.<sup>40</sup>

On arrival to an interrogation and detention centre, the detainee is either placed in a cell (sometimes even in solitary confinement) or taken straight for interrogation. During the interrogation period, he/she is typically subjected to some form of either physical or psychological inhuman or degrading treatment. The methods of ill-treatment most frequently alleged to be used during interrogation include:

- Routine methods: sleep deprivation by means of continuous and prolonged interrogation sessions; excessive use of handcuffs for extensive periods and their tightening to cut off circulation; beatings; slapping; kicking; verbal abuse and intentional humiliation; and the use of threats directed at the detainee or a

family member, including threats of arrest of a family member, threats of sexual assault against the detainee or his/her family member, threats of house demolitions, and threats of killing.

- Special methods also referred to as “military interrogation techniques” used in “ticking bomb” cases and justified under the banner of “necessity defence”: the use of painful stress positions, where the detainee is bent backwards over the seat of a chair causing back pain, or forced to stand for prolonged periods against a wall with bent knees; pressure on different parts of the body; strong shaking of the detainee; strangulation and other means of suffocation.

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- Inside the cells: long periods of solitary confinement in small, windowless, and often cold cells; sleep deprivation; deprivation

of the right to basic hygiene products.<sup>41</sup> These actions have been deemed by the European Court of Human Rights to amount to torture or inhumane treatment.





Harsh detention conditions in interrogation centres, including the use of solitary confinement, are often used as a means of exerting psychological pressure on the detainee, coercing him/her into giving confessions, sometimes about crimes he/she has not committed. The often windowless, individual cells fall short of acceptable hygiene standards. During the interrogation period, detainees are prevented from communicating with their family and from access to books or the media. At times, detainees are prevented from changing clothes or showering for prolonged periods of time.<sup>42</sup>

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.<sup>43</sup>

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The Israeli Prison Service (IPS) imposes harsh penalties on prisoners in response to strikes, protests or disobedience such as prisoners' failure to show up for morning or evening counts or their refusal to allow searches. Punishments include:

- Preventing detainees from buying goods from the canteen and from receiving financial allowance for a period of six months.
- Imposing solitary confinement for long periods as a 'disciplinary penalty'.
- Imposing collective punishment as a punishment for an individual prisoner's violation.
- Confiscating personal belongings.
- Preventing detainees from pursuing their education.
- Depriving prisoners from their recreation time for prolonged periods.
- Cutting off water and electricity.
- Breaking into rooms and opening fire in the air.
- Conducting late night searches.
- Imposing fines on detainees.
- Preventing detainees from performing the Friday prayer in a group.
- Denying family visits for prolonged periods.



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