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Agenda item 7

**Human rights situation in Palestine and
other occupied Arab territories****Arbitrary deprivation of liberty in the occupied Palestinian
territory: the Palestinian experience behind and beyond bars****Report of the Special Rapporteur on the situation of human rights in
the Palestinian territories occupied since 1967, Francesca Albanese****Summary*

In the present report, submitted pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, finds that arbitrary and deliberate ill-treatment is inflicted upon Palestinians not only through unlawful practices in detention but also as a carceral continuum comprised of techniques of large-scale confinement – physical, bureaucratic and digital – beyond detention. These violations may amount to international crimes prosecutable under the Rome Statute of the International Criminal Court and universal jurisdiction. The occupation by Israel has been a tool of settler colonial conquest also through intensified methods of confinement against an entire people who – as any people would – continuously rebel against their prison wardens.

* The present report was submitted after the deadline so as to include the most recent information.



I. Introduction

1. In the present report, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, presents concerns related to the widespread and systematic arbitrary deprivation of liberty in the occupied Palestinian territory.

2. Despite being invited by the State of Palestine, the Special Rapporteur was unable to visit the occupied Palestinian territory before submitting the present report, owing to the continued refusal by Israel to facilitate her entry. She conducted a remote investigation over six months, including a visit to Jordan, and virtual meetings and tours in the occupied Palestinian territory.¹ The report is informed by these consultations, testimonies, stakeholders' contributions and a comprehensive review of primary and public sources.

3. It is not possible to capture the scale and extent of the arbitrary deprivation of liberty in the occupied Palestinian territory within the word limits of the present report. Nor can the report convey the suffering of millions of Palestinians who have, directly or indirectly, been affected. The report provides a bird's-eye view of arbitrary deprivation of liberty as a key instrument of the domination and oppression by Israel, addressing primarily structural issues and the scale of the phenomenon.² Violations of international law by Palestinian authorities are assessed to the extent that they contribute to tightening the grip of the regime imposed by the occupation.

4. The Special Rapporteur clarifies circumstances, norms and processes that lead to arbitrary deprivation of Palestinians' liberty. The reality captured is of an entire occupied population framed as a security threat, often presumed guilty, and punished with incarceration even when trying to exercise fundamental freedoms. This system presents features of persecution, which often involves ill-treatment behind bars and surveillance out of prison. While in-prison confinement is the most acute form of deprivation of liberty imposed on Palestinians, physical, bureaucratic and digital "architectures" further restrict them spatially and psychologically. This wider carcerality, comprising an array of laws, procedures and techniques of coercive confinement, transforms the occupied Palestinian territory into a constantly surveilled open-air panopticon.

5. An examination of this carceral continuum – a system of control composed of multiple and interrelated levels of confinement – underscores the urgency of ending it, as required by international law, and ensuring both accountability for the architects of its most serious violations and reparations for the victims.

II. Rationale of investigating the arbitrariness of deprivation of liberty

A. Magnitude

6. Deprivation of liberty has been a central element of the occupation by Israel since its inception. Between 1967 and 2006, Israel incarcerated over 800,000 Palestinians in the occupied territory.³ Although spiking during Palestinian uprisings, incarceration has become a daily reality.⁴ Over 100,000 Palestinians were detained during the first intifada (1987–

¹ See also the statement of the Special Rapporteur on her "non-visit" to the occupied Palestinian territory, 14 February 2023. Available at <https://www.ohchr.org/sites/default/files/documents/countries/palestine/sr-selfdetermination/2023-02-27-Non-Visit-TPs.pdf>.

² Instances where criminalization and detention are not qualifiable as arbitrary, such as in the context of crimes that are covered under the penal laws of all countries or offences against civilians, regardless of who committed the offence, are not discussed in the present report.

³ Smadar Ben-Natan, "The boundaries of the carceral state: accounting for the role of military incarceration", *Theoretical Criminology* (April 2023), p. 11. This figure may be a conservative estimate; it has been cited for several years.

⁴ Esmail Nashif, *Palestinian Political Prisoners: Identity and Community* (Routledge, 2008).

1993),⁵ 70,000 during the second intifada (2000–2006),⁶ and over 3,100 in one month (May) during the “Unity Intifada” (2021).⁷ Approximately 7,000 Palestinians, including 882 children, were arrested in 2022.⁸ Currently, almost 5,000 Palestinians, including 155 children, are detained by Israel, 1,014 of them without charge or trial.⁹

B. Gravity

7. Serious abuses against Palestinians in Israeli custody have occurred throughout the Israeli occupation. Confinement in filthy and crowded cells, sleep and food deprivation, medical negligence, severe and prolonged beatings and other forms of ill-treatment have been extensively documented.¹⁰

8. The use of torture and ill-treatment against Palestinian detainees and prisoners has been reported.¹¹ Invoking the “ticking bomb” and “moderate physical pressure” doctrines, the Israeli executive branch has litigated in court the “necessity” of using techniques that may amount to torture to allegedly deter attacks against Israeli civilians.¹² Torture remains available as a method to intimidate, and obtain confessions or information from, primarily, although not exclusively, “security suspects”.¹³

9. The Working Group on Arbitrary Detention, which has addressed cases concerning Palestinians since 1992, has repeatedly affirmed that widespread and systematic arbitrary deprivation of liberty may amount to a crime against humanity.¹⁴

10. United Nations special procedure mandate holders and leading human rights organizations have identified the widespread and systematic use by Israel of arbitrary arrests, administrative detention, lack of due process, ill-treatment and torture as foundational elements of the apartheid regime imposed upon the Palestinians.¹⁵

C. Layers of repression

11. Since the signing of the Oslo Accords, limited Palestinian self-rule has added a layer of repression to Palestinian life under occupation. Arbitrary arrests and detention carried out by the Palestinian Authority in the West Bank and the de facto authorities in the Gaza Strip have contributed to stifling Palestinians’ rights and freedoms.¹⁶

12. The security coordination between the Palestinian Authority and Israel has pioneered a direct connection between Palestinian and Israeli detention apparatuses. This connection is illustrated by what the victims refer to as the “revolving door policy”: a nefarious cycle

⁵ Human Rights Watch, *Torture and Ill-Treatment: Israel’s Interrogation of Palestinians from the Occupied Territories* (1994), p. 3.

⁶ Palestinian Central Bureau of Statistics, “Special statistical bulletin”, May 2011, p. 4.

⁷ See <https://addameer.org/ar/media/4408> (in Arabic).

⁸ Addameer, “2022 in review”, 1 January 2023.

⁹ See <https://www.addameer.org/statistics> (accessed on 23 May 2023).

¹⁰ See, for example, Al-Haq, *A Nation under Siege* (1990); B’Tselem, *The Interrogation of Palestinians during the Intifada: Ill-treatment, “Moderate Physical Pressure” or Torture?* (1991); and Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (2021), pp. 79–90.

¹¹ Human Rights Watch, *Torture and Ill-Treatment*, CAT/C/ISR/CO/4 and CAT/C/ISR/CO/5.

¹² Israel, Landau Commission report (1987); Supreme Court of Israel, *Public Committee Against Torture v. Israel*, case No. HJC 5100/94, Judgment, 6 September 1999; and High Court of Justice, *Abu Gosh v. Attorney General*, case No. 5722/12, Judgment, 12 December 2017.

¹³ Ardi Imseis, “Moderate torture on trial: critical reflections on the Israeli Supreme Court Judgement concerning the legality of General Security Service interrogation methods”, *Berkeley Journal of International Law*, vol. 19, No. 2 (2001).

¹⁴ See, for example, opinion No. 61/2021, para. 57.

¹⁵ A/HRC/49/87, para. 50 (a); and Amnesty International, *Israel’s Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity* (2022), pp. 240–248.

¹⁶ Human Rights Watch, *Two Authorities, One Way, Zero Dissent: Arbitrary Arrest and Torture Under the Palestinian Authority and Hamas* (2018), pp. 2 and 23.

whereby Palestinians are first arrested, interrogated, detained and often subjected to ill-treatment by the Palestinian Authority and then, upon release, by the occupation forces,¹⁷ or vice versa.

D. Confinement behind and beyond bars

13. The incarceration of Palestinians is only one element of a larger carceral landscape, extending beyond prison as a paradigm of governance of the occupied territory and confinement of its population.¹⁸ This phenomenon has intensified alongside growing Israeli (military and civilian) presence in occupied territory. The presence of illegal colonies exacerbates both discrimination and violence against Palestinians, and their criminalization and imprisonment.¹⁹ In turn, stifling Palestinian movement and freedoms, while furthering fragmentation, surveillance and segregation of their living space, facilitates the expansion of the colonies.²⁰ This creates a suffocating environment that obliterates rights and, by rendering the occupied population arbitrarily punishable, erodes their status of protected civilians.²¹

III. Relevant international law framework

14. The protection of individuals from the “arbitrary exercise of power” is one of the greatest achievements of the post-1945 international order.²² Any authority exercising effective control over a population must respect the prohibition against arbitrary deprivation of liberty. In the occupied Palestinian territory, the unlawfulness of the Israeli occupation negates any legitimate title to exercise authority with respect to Gaza or the West Bank, including East Jerusalem.²³ However, when de facto control is exercised, it must comply with the applicable normative framework.

15. The applicable international legal framework comprises both treaty and customary international law, including international human rights conventions, whose protection “does not cease in case of armed conflict”²⁴ and applies extraterritorially,²⁵ as well as international criminal law. Read together, these bodies of law establish that detention is considered arbitrary when: it is not grounded in any valid legal basis; it violates fundamental guarantees afforded by international law including to a fair trial; and it is used discriminatorily.²⁶

A. International humanitarian law

16. Deprivation of liberty in situations of belligerent occupation is governed by the Regulations respecting the Laws and Customs of War on Land (the Hague Regulations), the Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention), the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts

¹⁷ B’Tselem and HaMoked, *Backed by the System: Abuse and Torture at the Shikma Interrogation Facility* (2015), pp. 44 and 45.

¹⁸ Rashid I. Khalidi, “Israel: a carceral State”, *Journal of Palestine Studies*, vol. 43, No. 4 (Summer 2014), p. 7.

¹⁹ Eyal Weizman, *Hollow Land: Israel's Architecture of Occupation*, 2nd ed., (Verso, 2012).

²⁰ Alina Korn, “The ghettoization of the Palestinians”, in *Thinking Palestine*, Ronit Lentin, ed., (Zed Books, 2008).

²¹ Neve Gordon and Nicola Perugini, *Human Shields: A History of People in the Line of Fire* (University of California Press, 2020), pp. 81–84.

²² Antonio Cassese, *International Criminal Law* (Oxford University Press, 2003), p. 1.

²³ Ralph Wilde, “Is the Israeli occupation of the Palestinian West Bank (including East Jerusalem) and Gaza ‘legal’ or ‘illegal’ in international law?”, 29 November 2022, para. 111.

²⁴ International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 106; see also paras. 102–105.

²⁵ *Ibid.*, paras. 109–113.

²⁶ Human Rights Committee, general comment No. 35 (2014).

(Protocol I) and customary international humanitarian law. The control exerted by Israel over the West Bank, including East Jerusalem and Gaza, meets the tests for the existence of a military occupation.²⁷ The presence of Palestinian authorities does not alter the framework's applicability nor does it absolve Israel of its obligations as the occupying Power.

17. The Third and Fourth Geneva Conventions, integrated and supplemented by customary rules, respectively provide guarantees and procedures for captured combatants and protection for civilians arrested or detained in occupied territory. The internment of protected persons is permitted only if "absolutely necessary" for the security of the occupying Power²⁸ or for "imperative reasons of security", and it must comply with relevant provisions of the Fourth Convention.²⁹ Protected persons can only be deprived of liberty after a fair and impartial trial or appropriate administrative proceedings that respect the presumption of innocence and their right to legal defence. Once detained, they must not be subjected to corporal punishment and must have access to medical care, nutrition and hygiene facilities.³⁰ Customary international humanitarian law strengthens these minimum guarantees, imposing respect for penal safeguards and prohibiting discrimination, torture, cruel treatment and forced labour.³¹ The deliberate violation of these obligations, both through acts and omissions, can amount to a grave breach of the third and fourth Geneva Conventions.³²

B. International human rights law

18. International human rights law establishes the most comprehensive protection against arbitrary deprivation of liberty. The International Covenant on Civil and Political Rights protects individuals from arbitrary arrest and detention, ill-treatment and torture, and guarantees the rights to humane treatment, fair trial (through an independent and impartial tribunal), effective legal defence, privacy and reputation.³³ Derogations from civil and political rights in time of war or public emergency, where permitted, must be limited to the extent strictly required by the exigencies of the situation, non-discriminatory and consistent with other international legal obligations.³⁴

19. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits the use of torture (infliction of severe physical or mental suffering to extract information, confession or inflict punishment) in all circumstances, including during war or states of emergency. States must ensure accountability for alleged incidents of torture.³⁵

20. The Convention on the Rights of the Child prohibits deprivation of liberty for children unless as a last resort, for the shortest period necessary, and establishes safeguards specifically applicable to children.³⁶ These include a State obligation to provide access to physical, psychological and social assistance for children to recover from abuse, neglect or situations of armed conflict.³⁷

21. The prohibition against arbitrary deprivation of liberty is a peremptory norm of international law that cannot be derogated from, together with the prohibitions of torture,

²⁷ A/HRC/29/CRP.4, para. 30.

²⁸ Fourth Geneva Convention, art. 42.

²⁹ *Ibid.*, part III, sects. III (in particular art. 78) and IV.

³⁰ *Ibid.*, arts. 71–73 and 89–92; and Protocol I Additional to the Geneva Conventions of 1949, art. 75.

³¹ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law database, rules 87–91, 99–103 and 118–138.

³² Third Geneva Convention, art. 130; and Fourth Geneva Convention, art. 147.

³³ International Covenant on Civil and Political Rights, arts. 7, 9, 14 and 17; see also Human Rights Committee, general comment No. 32 (2007).

³⁴ International Covenant on Civil and Political Rights, art. 4 (1).

³⁵ Arts. 1 (1), 2 (2), 4, 9 and 10.

³⁶ Arts. 37 (b) and 40.

³⁷ Art. 39.

racial discrimination and apartheid.³⁸ Procedural rights instrumental to the lawfulness of detention and fair trial must also be respected in all circumstances.³⁹

C. International criminal law

22. Unlawful deprivation of liberty and the denial of the right to a fair trial may amount to crimes against humanity and war crimes under certain circumstances.

23. Under the Rome Statute of the International Criminal Court, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law constitutes a crime against humanity when committed as part of a widespread or systematic attack against the civilian population.⁴⁰ To establish liability for this crime, the unlawful deprivation of liberty must be part of an attack against a civilian population, defined as a “course of conduct involving the multiple commission of the acts referred to in article 7, paragraph 1, of the Statute”.⁴¹ These acts must also be carried out “pursuant to or in furtherance of a State or organizational policy to commit such attack”.⁴²

24. When this attack targets an identified group or its members, the Rome Statute qualifies the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity as persecution, and a crime against humanity.⁴³

25. International criminal law establishes individual criminal responsibility for grave breaches of the Geneva Conventions as war crimes when committed as part of a plan or policy or as part of a large-scale commission of such crimes”.⁴⁴ Such breaches include wilfully depriving protected persons of the rights of fair and regular trial,⁴⁵ that is, depriving “one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and fourth Geneva Conventions”.⁴⁶

IV. Mass incarceration governance

26. Israel has denied the applicability of international law in the occupied Palestinian territory since the outset. By maintaining that the territory is disputed, rather than occupied,⁴⁷ Israel has rejected the sole international legal basis for establishing such a system.⁴⁸ This has led to violations of fundamental principles governing situations of occupation, including the non-acquisition of sovereignty, duties to administer the occupied territory for the benefit of the protected population and temporariness.⁴⁹ By alleging that international human rights law does not apply to the occupied territory, Israel derogates from its international obligations to ensure access to a fair trial, to uphold the jus cogens prohibition against torture or cruel, inhuman or degrading treatment or punishment, and to ensure predictable criminal sanction.

³⁸ A/77/10, p. 16.

³⁹ A/HRC/43/35, para. 14.

⁴⁰ Art. 7 (1) (e).

⁴¹ International Criminal Court, *Elements of Crimes* (2013), p. 3.

⁴² *Ibid.*

⁴³ Rome Statute, art. 7 (2) (g).

⁴⁴ *Ibid.*, arts. 8 (1) and 25.

⁴⁵ *Ibid.*, art. 8 (2) (a) (vi); and Fourth Geneva Convention, art. 147.

⁴⁶ International Criminal Court, *Elements of Crimes*, p. 11.

⁴⁷ See, for example, Yehuda Z. Blum, “The missing reversioner: reflections on the status of Judea and Samaria”, *Israel Law Review*, vol. 3, No. 2 (April 1968), pp. 283 and 293.

⁴⁸ Orna Ben-Naftali, Michael Sfard and Hedi Viterbo, *The ABC of the OPT: A Legal Lexicon of Israeli Control over the Occupied Palestinian Territory* (Cambridge University Press, 2018), pp. 147–149 and 524.

⁴⁹ A/72/556, paras. 45–63.

A. Jurisdictional fragmentation

27. The rules underpinning the detention of Palestinians in the occupied territory are rooted in remnants of Ottoman, British Mandate, Jordanian and Egyptian laws. This system includes British emergency and counter-insurgency legislation,⁵⁰ Palestinian-enacted laws (in areas where Palestinian authorities operate),⁵¹ and Israeli-enacted laws applied to non-citizens.⁵²

28. Concerning the Palestinian authorities, the Palestinian Basic Law protects fundamental rights and freedoms, yet the outdated Penal Code of 1960 and the Decree-Law on Cybercrime of 2018 define some crimes broadly. For example, defamation, as criminalized by the Penal Code, may include insulting or slandering a public official or a higher authority, libel or inciting sectarian conflict.⁵³ The Penal Procedure Law of 2001 applies to both the West Bank and Gaza, where the Penal Code of 1936 – a British ordinance – is also in force.

29. Concerning the Israeli occupying forces (hereinafter “Israeli forces”), the adoption of British emergency regulations entrenched colonial methods in post-1967 military legislation.⁵⁴ Since 1967 the occupying forces have passed some 2,500 orders controlling the minutiae of Palestinians’ life, including public order and security, natural resource management, education, transportation, administration of justice, fiscal administration, taxation, and planning and zoning.⁵⁵ Remnants of British emergency regulations still apply in occupied East Jerusalem, which was illegally annexed by Israel in 1980, and partly in Gaza where, since 2007, military orders have enforced the illegal blockade.⁵⁶

30. This jurisdictional fragmentation subjects Palestinians to various modes of oppression across different parts of the occupied territory. Israeli forces enforce this system by patrolling Palestinian villages, roads, and movement through Israeli checkpoints in the West Bank, including East Jerusalem and monitoring the Gaza fence and Gaza land, sea waters and airspace. By gathering intelligence and directing undercover operations, the Israel Security Agency (Shin Bet), forms an integral part of the Israeli security establishment.⁵⁷ Palestinian authorities’ security apparatuses operate in the West Bank (mostly Palestinian cities in Area A under the Oslo Accords) and Gaza. Consequently, in the West Bank, Palestinians can be arrested by Israeli forces or the Palestinian Authority; in East Jerusalem, they can only be arrested by Israel; in Gaza, they can be arrested by the de facto authorities and by Israel in the border area and in Gaza sea waters.⁵⁸ Hence, the fate of Palestinians is determined by their location, who apprehends them and for whom their actions are considered a “threat”.

31. For Palestinians in the occupied territory, and them only, legislative, executive and judicial functions are concentrated in the hands of the Israeli forces, with the military promulgating, reviewing and enforcing the laws on deprivation of liberty.⁵⁹ In a structure of institutionalized discrimination, military courts enforce military laws against Palestinians while Israeli courts apply domestic civil law to Israelis, including settlers, who thus become vectors of annexation.⁶⁰ The Israeli military law enforcement system, based on this inherent racial dualism, constitutes a pillar of the settler-colonial apartheid regime, targeting

⁵⁰ Defence (Emergency) Regulations of 1945.

⁵¹ Penal Code of 1960 (Jordan); and the Palestinian Basic Law of 2002.

⁵² Incarceration of Unlawful Combatants Law of 2002, applicable to Palestinians from Gaza; and Counter-Terrorism Law of 2016.

⁵³ Penal Code of 1960, arts. 150, 189, 191 and 195.

⁵⁴ Yael Berda, *Colonial Bureaucracy and Contemporary Citizenship* (Cambridge University Press, 2022), pp. 162–167.

⁵⁵ See <http://orders.arij.org/>.

⁵⁶ Eyal Benvenisti, *The International Law of Occupation*, 2nd ed. (Oxford University Press, 2012), chap. 8.

⁵⁷ Breaking the Silence, *Military Rule: Testimonies of Soldiers from the Civil Administration, Gaza DCL and COGAT, 2011–2021* (2022), pp. 7, 16 and 24.

⁵⁸ Palestinian Centre for Human Rights, *Annual Report 2021* (2022), p. 45.

⁵⁹ Luigi Daniele, “Enforcing illegality: Israel’s military justice in the West Bank”, *Questions of International Law*, vol. 44 (2017), pp. 25–29.

⁶⁰ Ben-Naftali, Sfar and Viterbo, *The ABC of the OPT*, pp. 371–372 and 377.

Palestinian people only, depriving them of fundamental rights, including equality before the law.⁶¹

B. Offences under military laws: criminalizing fundamental freedoms

32. The practice by Israel of legislating through military orders beyond the limits of an occupying Power under international law⁶² has resulted in the enforcement of thousands of unlawful restrictions on Palestinians. Deprivation of liberty is regulated by emergency regulations and, inter alia, Israel Defense Forces Order No. 101 of 1967 (on incitement and hostile propaganda), and Order No. 1651 of 2009 (on security). These orders set out offences under two main categories: security offences, deemed as threatening the Israeli military presence in occupied territory; and public order offences, including unauthorized demonstrations and traffic disturbances. Both types of offence carry severe sentences.

33. Intentionally vague definitions result in distinctively authoritarian orders, which are enforceable at the discretion of Israeli soldiers, military prosecutors and judges.⁶³ This system has allowed punishment of Palestinians for merely expressing their opinions or dissent, or peacefully opposing the occupation. For example:

(a) Forms of exercising freedom of assembly are criminalized with 10 years' imprisonment.⁶⁴ The punishment concerns any person organizing holding, or even encouraging the holding of, a "procession, assembly or vigil without a permit".⁶⁵ An assembly is defined as gatherings of 10 or more persons "in which a speech is being made on a political subject, or which may be construed as political";⁶⁶

(b) Forms of civic and political participation, including "flying a flag, displaying a symbol ... voicing a slogan, or any similar explicit action clearly expressing sympathy" for one of the innumerable "hostile organizations" (see para. 33 (f), below) are subject to 10 years' imprisonment;⁶⁷

(c) Membership in any group in which other members commit specific offences, such as holding a weapon without a permit is punishable by life imprisonment.⁶⁸ Palestinians thus endure the harshest form of deprivation of liberty solely based on affiliation, without consideration of their actions, knowledge, or ability to anticipate the actions of others. This violates the fundamental principle that criminal liability should be based on individual responsibility;

(d) Any "act or omission which entails harm, damage ... or danger" to the "security of the region", or simply its "disturbance", is punishable with life imprisonment;⁶⁹

(e) Certain contacts and solidarity among Palestinians are criminalized, and duties of denouncing someone based on mere suspicion are imposed.⁷⁰ Military orders set out punishment for anyone who provides, inter alia, information, shelter, supplies or means of transport in any manner to "any person" when "there is a reasonable basis to suspect" that the person is or was "engaged in any action aimed at harming" public order.⁷¹ Imprisonment is also the punishment for whoever "does not immediately" denounce to the occupying forces

⁶¹ Amnesty International, *Israel's Apartheid*, p. 31.

⁶² Théo Boutruche and Marco Sassòli, "Expert Opinion on the Occupier's legislative power over an occupied territory under IHL in light of Israel's on-going occupation", 14 July 2017.

⁶³ Daniele, "Enforcing illegality", pp. 36 and 37; and David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (State University of New York Press, 2002).

⁶⁴ Military Order No. 101, art. 10.

⁶⁵ *Ibid.*, article 10 (a).

⁶⁶ *Ibid.*, art. 1.

⁶⁷ Military Order No. 1651, art. 251 (B) (4).

⁶⁸ *Ibid.*, art. 231.

⁶⁹ *Ibid.*, art. 222.

⁷⁰ *Ibid.*, art. 261.

⁷¹ *Ibid.*, art. 245.

any other person when there might be “reasonable grounds to suspect” that the other person is “planning to commit an offense”;⁷²

(f) The vagueness of the criminalization of incitement, defined as any attempt “to influence public opinion ... in a manner which may harm public peace or public order”,⁷³ crushes any form of political speech and expression. This reaches the absurdity of a 10-year prison sentence for even the “intention of ... facilitating the execution of an attempt to influence public opinion”.⁷⁴ This may include expressing opinions (including on social media),⁷⁵ attending peaceful demonstrations, displaying flags or emblems of any political significance, possessing banned books or any publication deemed adverse by the occupying forces, and expressing sympathy for the activities or purposes of any “hostile organization”;⁷⁶

(g) Expressing sentiments against the occupation constitutes an offence, imposing on Palestinians deferential obeisance to Israeli occupation and reverence for Israeli symbols. “Offending” in any way a soldier’s “honour”,⁷⁷ or behaving in an “insulting manner” towards the Israeli army or “one of its symbols” is punishable with one year of imprisonment.⁷⁸ The occupied population is indirectly subjected to a paradoxical and unlawful duty of allegiance to the occupation itself;⁷⁹

(h) Throwing any object, including a stone, is punishable with, in certain circumstances, 10 years’ imprisonment.⁸⁰ Throwing objects “at a moving vehicle with the intent to harm it” is punished with 20 years’ imprisonment,⁸¹ even where there is no intent to harm the driver, and where the target is an armoured military vehicle;

(i) Entering “restricted areas” in the West Bank (i.e. closed military zones), including East Jerusalem, is subject to heavy penalties. Breaking such regulations is punishable by seven years’ imprisonment; persons in the region unlawfully can be punished with 10 years’ imprisonment.⁸² This arbitrarily and severely restricts Palestinians’ movement within the occupied territory, including across their own communities. A case in point is the designation of Masafer Yatta as “Firing Zone 918”, a restricted military area for exclusive use of Israeli soldiers. As a result, around 1,200 Palestinians, half of them children, risk unlawful forcible transfer;

(j) Membership in, having “contacts” with, or possessing materials “related to” a “hostile organization”, is punishable with 10 years’ imprisonment.⁸³ Since 2020, leadership of such groups can be imprisoned for 25 years or for life.⁸⁴ The definition of hostile organizations includes persons or any group of persons “whose aim it is to harm ... the public order in Israel or in a held region”.⁸⁵ The category explicitly encompasses unlawful associations as defined under article 84 of the Defence (Emergency) Regulations, namely: “any body of persons, whether incorporated or unincorporated and by whatsoever name (if any) it may from time to time be known, which (a) by its constitution or propaganda or otherwise advocates, incites or encourages” a number of acts considered unlawful, including “the exciting of disaffection” against the occupying forces. Built around colonial premises, the category of “hostile organization” has been deployed ubiquitously, criminalizing any organization that may oppose the occupation by Israel; close to 400 organizations are

⁷² Ibid., art. 261.

⁷³ Ibid., art. 251 (B) (1).

⁷⁴ Ibid., art. 251 (B). See also Military Order No. 101, art. 7; and Daniele, “Enforcing illegality”, p. 34.

⁷⁵ Bill on preventing incitement on social media.

⁷⁶ Human Rights Watch, *Born Without Civil Rights: Israel’s Use of Draconian Military Orders to Repress Palestinians in the West Bank* (2019).

⁷⁷ Military Order No. 1651, art. 215.

⁷⁸ Ibid., art. 219.

⁷⁹ Hague Regulations, art. 45.

⁸⁰ Military Order No. 1651, art. 212 (1) and (2).

⁸¹ Ibid., art. 212.

⁸² Ibid., arts. 242 (A) and 299–301.

⁸³ Defence (Emergency) Regulations of 1945, art. 85, in particular art. 85 (1) (a), (f) and (j).

⁸⁴ Military Order No. 1651, art. 237 A (article added by Military Order No. 1827 of 2020).

⁸⁵ Military Order No. 1651, art. 238.

criminalized, including all major Palestinian political parties, civil society groups and charities.⁸⁶

34. Through the Counter-Terrorism Law of 2016, Israel further expanded the broad grounds to designate Palestinian groups as terrorist organizations,⁸⁷ on the basis of vaguely defined conduct, or mere intentions, labelled as “terrorist acts”.⁸⁸ Identifying with, being a member of, or directing such an organization can carry a sentence of 3, 5 to 7 and 25 years’ imprisonment, respectively.⁸⁹ In 2021, this law was invoked to outlaw six Palestinian human rights organizations, revealing its repressive functions against civil society.⁹⁰

35. This coercive environment has significantly affected Palestinian students and the academic community. Across Palestinian universities, traditional hubs of national-political activities and cultural development,⁹¹ student groups have been outlawed.⁹² The Palestinian Authority in the West Bank has mirrored this pattern, albeit to a lesser extent, detaining students and others for dissenting political opinions, including those shared on social media.⁹³

C. Purpose of the military laws: suppressing the right to self determination

36. Definitions of criminal offences and sentences must adhere to the principle of legality and its inviolable human rights corollaries, and not compromise the safety and dignity of the occupied population. While a Palestinian might actually threaten safety and public order in the occupied territory, the all-encompassing criminalization by Israel shows that the military legislation, rather than safeguarding security, renders every single Palestinian potentially subject to imprisonment for ordinary acts of life.

37. Palestinians in the occupied territory constantly risk being imprisoned. This risk extends to farmers working their land, children going to school across closed military areas, political leaders exercising their mandates, and civil society advocating for human rights. Criminalization and incarceration strip Palestinians of their rights to move freely, work, gather peacefully, express their identity, culture and opinions, pursue their education and live their economic, social and political life. The Palestinian people’s right to self-determination that these restrictions ultimately target appears to be the ultimate “threat” to be suppressed.

V. Mass incarceration procedures

38. Within this authoritarian regime, the evidence of abuse that Palestinians endure throughout the process of deprivation of liberty reveals multiple unlawful patterns. The following sections shed light on the “lawless law” that governs Palestinian life. This coercive environment, accompanied by unwarranted violence, places Palestinians in a permanent state of vulnerability and subjugation that ultimately facilitates their dispossession and displacement.

⁸⁶ See <https://nbctf.mod.gov.il/he/MinisterSanctions/Announcements/Pages/nbctfDownloads.aspx> (in Hebrew, accessed in April 2023).

⁸⁷ Adalah – Legal Center for Arab Minority Rights in Israel, “Israel’s 2016 Counter-Terrorism Law and 1945 Emergency Regulations regarding the outlawing of six Palestinian human rights and civil society groups” (23 November 2021), p. 14. Available at https://www.adalah.org/uploads/uploads/Adalah_Expert_Opinion_Palestinian6_Nov2021.pdf.

⁸⁸ E.g., the “intention of promoting” a threat to commit a political act posing an “actual risk of serious harm to property (Counter-Terrorism Law, chap. 1, art. 2).

⁸⁹ Counter-Terrorism Law, sects. 20–24.

⁹⁰ [A/77/356](#), para. 60.

⁹¹ Law for Palestine, “Israel’s arrest policy against Palestinian university students (in the West Bank and Israel)”, 2023, p. 23.

⁹² See <https://nbctf.mod.gov.il/he/MinisterSanctions/Announcements/Pages/nbctfDownloads.aspx> (in Hebrew, accessed in April 2023); and Defence (Emergency) Regulations of 1945, arts. 84 and 85.

⁹³ Human Rights Watch, *Two Authorities*, p. 23.

A. Administrative detention

39. In addition to arresting and detaining Palestinians on the basis of all-encompassing criminal offences, Israeli forces often detain individuals without charge or trial.⁹⁴ Approximately 500 Palestinians have been detained “administratively” every year since 1989,⁹⁵ including children, human rights defenders, students and political leaders.⁹⁶

40. Administrative detention is permissible only when “absolutely necessary”, for “imperative reasons of security”,⁹⁷ and must be in line with the protection afforded under international law.⁹⁸

41. Instead, in the occupied Palestinian territory, Israeli military commanders order administrative detention whenever they have “reasonable grounds” to presume that a person must be held in detention for reasons concerning the security of the area or public security.⁹⁹ The pervasive control over, and unlawful alteration of, the area that is internationally recognized as occupied territory undermines the security claims of Israel and the “necessity” to arrest Palestinians.

42. The widespread administrative detention of Palestinians presents other grounds of illegitimacy. First, the vagueness of the concept of “security” provides military commanders with substantial discretionary powers in imposing administrative detention that can be renewed indefinitely.¹⁰⁰ Second, administrative detention fails to uphold international law protections related to arrest, judicial review and custodial conditions.¹⁰¹ Interrogation following the arrest frequently involves coercive methods to extract information, possibly amounting to ill-treatment under international law and, sometimes, torture.¹⁰² The detainee is not informed of the reasons for detention. Orders are in Hebrew and not translated into Arabic.¹⁰³ Lawyers rarely have access to the “secret” evidence, thus cannot challenge it, or cross-examine witnesses.¹⁰⁴ Hearings are typically not open to the public.¹⁰⁵ Judicial review is ineffective owing to both the impossibility of appealing against secret evidence¹⁰⁶ and the lack of separation of powers within the military judicial system. Ultimately, the classification of a “security threat” leading to administrative detention appears to be a pretext to persecute specific individuals who may challenge the occupation.¹⁰⁷

43. While a case-by-case determination is warranted, the violations associated with Israeli forces’ widespread use of administrative detention may amount to a grave breach of the Fourth Geneva Convention and the war crimes of unlawful confinement of a protected person and wilful deprivation of their right to a fair trial.¹⁰⁸ The uncertainty faced by those arrested for an unforeseeable period in the absence of a charge, known evidence or trial, may amount

⁹⁴ In the West Bank, this is regulated by Military Order No. 1651, article 285 (A); in Gaza, by the Incarceration of Unlawful Combatants Law of 2002; and in East Jerusalem, by the Emergency Powers (Detention) Law of 1979.

⁹⁵ Average calculated based on statistics from B’Tselem, available at https://www.btselem.org/administrative_detention/statistics.

⁹⁶ Addameer, *Annual Violations Report* (2018), pp. 38–39.

⁹⁷ Fourth Geneva Convention, arts. 42 and 78.

⁹⁸ See section III above.

⁹⁹ Military Order No. 1651, art. 285 (A).

¹⁰⁰ Peter Langford and Triestino Mariniello, *Israel’s Administrative Detention in the Occupied Palestinian Territories* (2019), pp. 17 and 18.

¹⁰¹ *Ibid.*, p. 13.

¹⁰² CCPR/C/ISR/CO/3, para. 11.

¹⁰³ *El-Arah et al. v. Central Commander of the Israeli Army and another*, HCJ 2775/11 (2013).

¹⁰⁴ Addameer, “Administrative detention in the Occupied Palestinian Territory: a legal analysis report”, 4th ed. (2016), pp. 33 and 34.

¹⁰⁵ Military Order No. 1651, art. 291 (A).

¹⁰⁶ Between 2000 and 2012, only one appeal was accepted by a court, yet it was suspended and no detainee was released. (Shiri Krebs, “Lifting the veil of secrecy: judicial review of administrative detentions in the Israeli Supreme Court”, *Vanderbilt Journal of Transnational Law*, vol. 45, No. 3 (2012))

¹⁰⁷ Amnesty International, *Israel’s Apartheid*, p. 241.

¹⁰⁸ Rome Statute, art. 8 (2) (a) (vi) and (vii).

to ill-treatment.¹⁰⁹ Administrative detention may also constitute a form of persecution, since the procedure discriminates against Palestinians, who are presumed guilty and punished as a collectivity.¹¹⁰ Illustrative is the case of Salah Hammouri, a French-Palestinian human rights defender from Jerusalem. Arbitrarily arrested and placed under administrative detention multiple times since 2000,¹¹¹ he was eventually forcibly deported to France for alleged “breach of allegiance”.

B. Arrest

44. Arrest starts when Israeli forces apprehend Palestinians as part of their military or civilian system of control. Palestinians can be arrested during “law enforcement operations” but also at checkpoints, on the street, on their way to school, while farming their land or in the quiet of their homes. Lacking arrest warrants and charges, the Israeli forces generally fail to inform Palestinians of the reasons for their arrest. Beating, verbal abuse and humiliation are recurrent practices during arrest,¹¹² in addition to the increasing number of killings during “search-and-arrest operations”.¹¹³

45. Proximity to colonies increases the chance for arrest.¹¹⁴ Crossing “red-line” zones – that is, settler-engineered demarcations, which are not always visible – may lead to Palestinians (often while farming their land) being arrested by soldiers upon settlers’ notification.¹¹⁵

46. Mass arrest campaigns are common, particularly during military raids and incursions, often targeting specific groups, including activists and students.¹¹⁶ In 2022 alone, Israeli forces conducted over 9,000 operations in the West Bank, including East Jerusalem, over 700 of which occurred in or around refugee camps, at an average rate of 15 per week.

47. Night raids have become a common tactic used to arrest or simply harass and terrify Palestinians.¹¹⁷ Dozens of armed soldiers raid villages, enter homes by breaking doors, ransack, seize property and arrest individuals, including children, without a warrant,¹¹⁸ disrupting the intimacy of Palestinian households and terrifying the residents. According to soldiers’ testimonies, they were to conduct village patrols “to make [their] presence felt”.¹¹⁹ These practices may amount to cruel, inhuman or degrading treatment.

48. Less than 1 per cent of the complaints concerning these raids are investigated and prosecuted.¹²⁰ Similarly, Israel does not provide compensation to individuals who have been arbitrarily arrested or for the extensive property destruction that occurs during raids.¹²¹

¹⁰⁹ A/HRC/37/42, para 17.

¹¹⁰ Langford and Mariniello, *Israel’s Administrative Detention*, p. 165.

¹¹¹ See <https://www.ohchr.org/en/press-releases/2022/12/israeli-deportation-order-against-french-palestinian-activist-salah-hammouri>.

¹¹² Yesh Din, Physicians for Human Rights – Israel and Breaking the Silence, *A Life Exposed: Military Invasions of Palestinian Homes in the West Bank* (2020), p. 31.

¹¹³ See Office for the Coordination of Humanitarian Affairs, protection of civilians reports issued in 2022 and 2023. Available at <https://www.ochaopt.org/publications/protection-of-civilians>.

¹¹⁴ Military Court Watch, *Annual Report 2021/22* (October 2022), p. 30.

¹¹⁵ Breaking the Silence, “We were told: you have to listen to them” (2014). Available at <https://www.breakingthesilence.org.il/testimonies/database/411355>.

¹¹⁶ Law for Palestine, “Israel’s arrest policy”, p. 21; and Amnesty International, *Israel’s Apartheid*, p. 17.

¹¹⁷ Yesh Din, Physicians for Human Rights – Israel and Breaking the Silence, *A Life Exposed*, pp. 7 and 10.

¹¹⁸ In accordance with Military Order 1651, art. 31.

¹¹⁹ See <https://www.breakingthesilence.org.il/testimonies/database/715794>.

¹²⁰ Between 2017 and 2021, only 0.87 per cent; see <https://www.yesh-din.org/en/law-enforcement-against-israeli-soldiers-suspected-of-harming-palestinians-and-their-property-summary-of-figures-for-2017-2021/#:~:text=According%20to%20the%20military's%20figures,known%20cases%20in%20those%200years>.

¹²¹ Yesh Din, Physicians for Human Rights – Israel and Breaking the Silence, *A Life Exposed*, p. 57.

49. There have also been incidents of Palestinian authorities arbitrarily arresting political opponents, including for non-violent speech.¹²² Arbitrary deprivation of liberty may result from, among others, monitoring critical comments on social media.

C. Interrogations

50. Once arrested by the occupying forces, Palestinians may be taken to Ofer prison (the only Israeli prison located inside the occupied territory) or to prisons and interrogation centres in Israel. About 80 per cent of Palestinian detainees are transferred to Israel, violating the international prohibition on detaining protected persons outside the occupied territory.¹²³ This may amount to the war crime of deportation.¹²⁴

51. During interrogations, Palestinians are rarely informed of their rights, including the right to remain silent. A typical interrogation involves practices that may amount to ill-treatment, and even torture, especially if security charges are involved.¹²⁵ Israeli forces physically and psychologically abuse the detainee, through methods such as beatings, insults, threats¹²⁶ and invasive body searches. They isolate the detainee, prohibiting contact with relatives, attorneys or International Committee of the Red Cross representatives.¹²⁷ They may confine the detainee through solitary confinement as a form of psychological pressure.¹²⁸ They physically weaken detainees by depriving them of physical activity, adequate nutrition and sleep.¹²⁹

52. Forced confessions, inadmissible under international law, are ordinarily used in Israeli proceedings against Palestinian alleged “security” or “terror” suspects¹³⁰. Close to 100 per cent of Shin Bet interrogations result in confessions, and the number of those indicted is much higher than among those investigated by the police.¹³¹

D. Pretrial detention

53. Under international law, persons awaiting trial should not be detained, unless detention is reasonable and necessary, taking into account individual risk factors, such as the possibility of flight or interference with evidence.¹³² Instead, Palestinians are detained without regard to individual circumstances or whether they will be charged. Pretrial detention is commonly imposed until the end of proceedings, which can last for years.¹³³

54. Pretrial detention for interrogations (with no charges) can last up to 90 days, renewable for periods of up to 30 days upon request.¹³⁴ Remand hearings lack substantive

¹²² Human Rights Watch, *Two Authorities*, pp. 1–5.

¹²³ Fourth Geneva Convention, arts. 49 and 66.

¹²⁴ Rome Statute, art. 7 (1) (d).

¹²⁵ Michael Sfar, *The Wall and the Gate: Israel, Palestine, and the Legal Battle for Human Rights* (Metropolitan Books, 2018), pp. 254–256.

¹²⁶ See https://www.fidh.org/IMG/pdf/fidh-pcati_art__15_communication_palestine_crimes_isa.pdf, para. 78.

¹²⁷ *Ibid.*, paras. 29 and 95.

¹²⁸ Addameer, “I’ve been there: a study of torture and inhumane treatment in Al-Moscobiyeh interrogation center” (2018).

¹²⁹ Public Committee against Torture in Israel and International Federation for Human Rights, “Situation in the State of Palestine”, paras. 83–86.

¹³⁰ *Ibid.*, paras. 34 and 36.

¹³¹ Nery Ramati and Karin Hibler, “The cooperation between the police and the Israeli Security Agency in investigating security offenses”, November 2021 (in Hebrew).

¹³² See Human Rights Committee, general comment No. 35 (2014).

¹³³ Yesh Din, *Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories* (2007).

¹³⁴ Military Order No. 1651, arts. 37 and 38.

examinations and last approximately three minutes. These processes predominantly occur in the absence of legal counsel.¹³⁵

55. This form of pretrial detention violates both the presumption of innocence and the right to be free from arbitrary and prolonged detention.

E. Semblances of trial

56. Palestinian detentions are reviewed by Israeli military courts. Their personnel, including judges and prosecutors, are members of the same army and often of the same units enforcing the occupation and involved in “hostilities” with the Palestinian people. Even the military court of appeal operates under the supervision of the Military Advocate General. These courts can be neither independent nor impartial.¹³⁶ In fact, military courts are considered unsuitable to try civilians.¹³⁷

57. The exclusive jurisdiction of military courts over Palestinians, who are arrested under military orders that apply solely to them and take precedence over Israeli civil and international law, solidifies the discriminatory legal dualism inherent in apartheid.¹³⁸

58. The trials in military courts lack transparency and limit public access, and proceedings are carried out in Hebrew, usually without interpretation. Lawyers from the occupied territory cannot attend court sessions in Israel owing to the lack of an entry permit.

59. The existence of judges, prosecutors, an appeal court (since 1989) and juvenile military courts (since 2009) create a façade of rule of law that conceals the oppressive nature of the occupation.¹³⁹ High conviction rates (99 per cent of those charged) and the high reliance on plea bargains in military courts¹⁴⁰ (97 per cent of convictions)¹⁴¹ seem to corroborate the failure to uphold the presumption of innocence, among other apparent violations of due process and related guarantees.

F. Custodial conditions

60. Israeli forces commonly detain Palestinians inside Israel. This unlawful deportation triggers a domino effect of violations, ranging from restrictions on family visits to denial of access to legal counsel. The security classification assigned to many Palestinians leads to harsher treatment and is another manifestation of the discriminatory regime applied to them.¹⁴²

61. Within the prison walls, Palestinian prisoners endure relentless abuse. Removed from contact with the outside world, in overcrowded and unsanitary conditions, they typically face deprivation (they are often forced to purchase their own food), medical negligence,¹⁴³ and limited opportunity for education¹⁴⁴ and physical exercise. Documented instances of torture and cruel, inhumane or degrading treatment include sexual assaults; being hooded and blindfolded, forced to stand for long hours, tied to a chair in painful positions, deprived of

¹³⁵ Detainees are to be granted access to legal counsel after 15 days (ibid., arts. 57 and 58). Yet legal counsel is rarely admitted before a detainee’s first court appearance. See also Public Committee against Torture in Israel and International Federation for Human Rights, “Situation in the State of Palestine”, para. 137.

¹³⁶ Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (University of California Press, 2005).

¹³⁷ Human Rights Committee, general comment No. 32 (2007), para. 22.

¹³⁸ Amnesty International, *Israel’s Apartheid*, p. 18.

¹³⁹ B’Tselem, *Presumed Guilty: Remand in Custody by Military Courts in the West Bank* (2015), p. 61.

¹⁴⁰ Addameer, “Military courts in the Occupied Palestinian Territory”, 2018.

¹⁴¹ Hajjar, *Courting Conflict*, p. 3.

¹⁴² Law for Palestine, “Israel’s arrest policy”.

¹⁴³ Addameer, “Deterioration in detention conditions: suffocating prisoners”, 29 October 2019; see also https://www.addameer.org/key_issues/medical_negligence.

¹⁴⁴ Addameer, *Opened Books on Cuffed Hands: The Cultural and Educational Life of Palestinian Political Prisoners in Israeli Prisons and Detention Centers* (2020).

sleep and food, or exposed to loud music for long hours; and being punished with solitary confinement.¹⁴⁵ Such practices may go unreported due to lack of access to legal representation¹⁴⁶ or fear of retaliation.¹⁴⁷

62. Palestinian prisoners often use hunger strikes to protest arbitrary detention policies and practices.¹⁴⁸ This is exemplified by Khader Adnan's fifth hunger strike to protest the arbitrary detention of Palestinians by Israel, which eventually led to his death in prison on 2 May 2023. Mr. Adnan had been detained an astounding 12 times in eight years, mostly without trial or charge.

63. This oppressive picture is exacerbated by custodial conditions in prisons managed by the Palestinian authorities in the West Bank and Gaza, where human rights groups have documented abusive practices, taunts, solitary confinement and beatings, often to elicit confessions from, punish and intimidate activists.¹⁴⁹ Palestinians suspected of collaborating with Israel face even more severe treatment; in Gaza they can be sentenced to death.¹⁵⁰

G. Minors and other vulnerable groups

64. The gravity of abuses against Palestinians in Israeli custody is an alarming reality. Particularly vulnerable groups warrant specific attention.

Children

65. Israel treats Palestinian children with the same lawlessness as adults.¹⁵¹ Annually, approximately 500 to 700 children, aged 12 to 17, are detained and/or prosecuted in the Israeli military system.¹⁵² Since 2000, approximately 13,000 Palestinian children have experienced institutionalized ill-treatment during arrest, prosecution and sentencing,¹⁵³ and they and their families have been affected by the consequent trauma.

66. Children are commonly arrested, often at night, for stone-throwing or for the authorities to gather information about other Palestinian "wrongdoers". Arrests involve transferring children to interrogation facilities like dangerous criminals: blindfolded and hands tied, in military jeeps. In 2013, the United Nations Children's Fund (UNICEF) began documenting the terror of Palestinian children taken violently from their homes, particularly at bedtime.¹⁵⁴

67. During interrogation, Palestinian children endure severe ill-treatment: they are strip-searched, kept blindfolded and tightly bound for long hours, insulted and ridiculed, physically abused and denied basic needs, including access to toilets and medical care, despite injuries

¹⁴⁵ Public Committee against Torture in Israel and International Federation for Human Rights, "Situation in the State of Palestine", pp. 7, 23, 42 and 46.

¹⁴⁶ Addameer, "In the case of the Palestinian People vs. Military Courts" (2021).

¹⁴⁷ Public Committee against Torture in Israel and World Organisation against Torture, "Israel – briefing to the UN Committee against Torture" (2009). Available at https://www2.ohchr.org/english/bodies/cat/docs/ngos/PCATI_OMCT_Israel42.pdf.

¹⁴⁸ Addameer, "Administrative detention fact sheet", 20 January 2022.

¹⁴⁹ Joint submission by Human Rights Watch and Lawyers for Justice to the Committee Against Torture on Palestine, 2022.

¹⁵⁰ Palestinian Centre for Human Rights, *Annual Report 2021*, pp. 67–69.

¹⁵¹ B'Tselem, *No Minor Matter: Violations of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone Throwing* (2011).

¹⁵² See [https://www.dci-palestine.org/children_in_israeli_detention#:~:text=Number%20of%20Palestinian%20Children%20\(12,the%20Israeli%20military%20court%20system](https://www.dci-palestine.org/children_in_israeli_detention#:~:text=Number%20of%20Palestinian%20Children%20(12,the%20Israeli%20military%20court%20system) and <http://www.mofa.pna.ps/en-us/mediaoffice/ministrynews/detention-of-palestinian-children>.

¹⁵³ See https://www.dci-palestine.org/military_detention.

¹⁵⁴ UNICEF, "Children in Israeli military detention: observations and recommendations", Bulletin No. 2 (February 2015).

they may have sustained during arrest.¹⁵⁵ A study of 100 testimonies from children detained in the West Bank in 2021 showed that no child was accompanied by a parent or guardian throughout their interrogation, and 76 per cent were denied access to a lawyer prior to interrogation.¹⁵⁶ Parents are rarely informed of their children's whereabouts upon arrest, which may amount to enforced disappearance.¹⁵⁷ Nearly half of the children detained for interrogation between 2021 and 2022 were subjected to solitary confinement for an average of 12.5 days, in windowless cells that were constantly illuminated, causing immense physical and psychological distress.¹⁵⁸ Self-harm and suicide attempts among Palestinian children in Israeli custody are not rare.¹⁵⁹

68. After abusive arrest and interrogation, children appear before military courts in prison uniforms, chains and shackles. The trial lasts three minutes on average. This is when they may see their family and lawyer for the first time.¹⁶⁰

69. Detained Palestinian children are often coerced into becoming informants or collaborators.¹⁶¹ This practice can have long-lasting negative effects on them, leading to feelings of shame and guilt, tarnishing their future. The widespread nature of this practice also creates mistrust towards children who have been detained, compromising their rehabilitation and development.¹⁶²

70. The juvenile justice procedures introduced in 2009 did not alter the system's abusiveness: the term "juvenile military court" is an oxymoron.

71. These unlawful practices deeply traumatize child detainees, their families and communities.¹⁶³ Children report anxiety, depression and other disorders after being detained.¹⁶⁴ The haunting case of Ahmad Manasra exemplifies these harrowing practices. Sentenced to imprisonment as a 14-year-old for allegedly participating in attempted murder of Israeli citizens, Mr. Manasra has been imprisoned since 2016. Despite having developed schizophrenia following violent arrest and detention, he has been held in solitary confinement,¹⁶⁵ most recently since November 2021, where his mental state continues to deteriorate.

72. The mistreatment of Palestinian children, epitomized by these cruel practices, contributes to the subjugation of the Palestinian people, severing the prospects for healthy development of future generations.¹⁶⁶

Gender and sexual orientation

73. Similarly to their male counterparts, Palestinian women and girls are also detained by Israel without trial, exposed to discrimination, harassment and degrading treatment. This includes invasive strip searches, threats¹⁶⁷ and physical abuse, as well as inhumane custodial

¹⁵⁵ Military Court Watch, *Annual Report 2021/22*, p. 14; [CRC/C/15/Add.195](#), para. 36; and Save the Children, "Defenceless: the impact of the Israeli military detention system on Palestinian children" (2020), pp. 15–18.

¹⁵⁶ Military Court Watch, *Annual Report 2021/22*, pp. 15 and 16.

¹⁵⁷ International Convention for the Protection of All Persons from Enforced Disappearance, art. 2.

¹⁵⁸ Military Court Watch, *Annual Report 2021/22*, p. 18.

¹⁵⁹ *Ibid.*, p. 19.

¹⁶⁰ B'Tselem, *No Minor Matter*, p. 50.

¹⁶¹ See https://www.dci-palestine.org/child_recruitment.

¹⁶² Hedi Viterbo, *Problematizing Law, Rights, and Childhood in Israel/Palestine* (Cambridge University Press, 2021).

¹⁶³ Gwyn Daniel, "'The strong do what they can and the weak suffer what they must': Palestinian families under occupation", *Context*, vol. 164 (August 2019).

¹⁶⁴ Save the Children, "Isolated: the impact of family separation on Palestinian children in military detention" (2022), pp. 12 and 13.

¹⁶⁵ See <https://www.ohchr.org/en/press-releases/2022/07/un-experts-urge-israel-free-ahmad-manasra>.

¹⁶⁶ Nadera Shalhoub-Kevorkian, *Incarcerated Childhood and the Politics of Unchilding* (Cambridge University Press, 2019).

¹⁶⁷ Public Committee against Torture in Israel and World Organisation against Torture, "Violence against Palestinian women", 2005.

conditions, even during pregnancy.¹⁶⁸ Some women are arrested, threatened, and mistreated just to obtain information or exert pressure on their husbands.

74. Allegations of the use of coercion on gay Palestinian men by Israeli forces, including threats of exposing their sexual orientation, are also of serious concern.¹⁶⁹ These forms of coercion would place these men at serious risk of physical and psychological harm, and violate their fundamental human rights.

Detaining the deceased

75. The deprivation of liberty haunts Palestinians beyond their life. Israeli forces often withhold the bodies of Palestinians deceased in custody or killed for alleged “security reasons”.¹⁷⁰ This practice, which the Israeli High Court of Justice has condoned,¹⁷¹ applies to the bodies of both adults and children.¹⁷² By May 2023, Israeli forces reportedly withheld 125 Palestinian bodies, including 13 deceased detainees. Similarly, the de facto authorities in Gaza are withholding the bodies of two deceased Israeli soldiers.

76. For decades, the bodies of Palestinians who were not returned to their families were buried in graves near military zones known as “cemeteries of numbers” (as each body was assigned a number).¹⁷³ In recent years, Israeli forces have withheld bodies in fridges, impeded identification by relatives, and imposed restrictions on burial upon returning the bodies.¹⁷⁴ Reports suggest that the bodies are often kept in “poor and inhumane conditions”.¹⁷⁵

77. The denial of the opportunity to perform funerary rituals for loved ones is yet another trauma families are forced to experience. This is heightened when the loved one’s body is returned severely disfigured.

78. International law protects burial rituals and gravesites in accordance with the deceased’s religious and cultural customs, and requires the facilitation of the return of mortal remains.¹⁷⁶ Concealing the detention, whereabouts and fate of a person, living or deceased, may amount to enforced disappearance.¹⁷⁷

VI. Open-air prison: a multilayered architecture of confinement

79. Carcerality, conceived as a large-scale system of deprivation of liberty that forces into a condition of captivity entire populations, who are also dispossessed of their lands, is an essential feature of settler-colonialism.¹⁷⁸ Through its practices of collective confinement in

¹⁶⁸ CEDAW/C/ISR/CO/5, para. 40.

¹⁶⁹ Walaa Alqaisiya, *Decolonial Queering in Palestine* (Routledge, 2023).

¹⁷⁰ Al-Haq, Law in the Service of Man, “Field report on human rights violations in 2020”, 2021; and Budour Hassan, *The Warmth of Our Sons: Necropolitics, Memory and the Palestinian Quest for Closure* (Jerusalem Legal Aid and Human Rights Center), p. 28, available at <https://www.jlac.ps/en/Article/888/The-Warmth-of-our-Sons>.

¹⁷¹ E.g., Supreme Court of Israel, *Additional Hearing 10190/17, Israeli military commander of Judea & Samaria (West Bank) v. Muhammad Eliyan*, Decision, 19 February 2018 (in Hebrew).

¹⁷² See https://www.dci-palestine.org/no_closure_for_palestinian_families_waiting_for_their_childs_remains.

¹⁷³ Hassan, *The Warmth of Our Sons*, p. 47.

¹⁷⁴ Noura Erakat and Rabea Eghbariah, “The jurisprudence of death: Palestinian corpses & the Israeli legal process”, *Jadaliyya*, 8 February 2023.

¹⁷⁵ See <https://www.ohchr.org/en/statements/2016/05/end-mission-statement-un-special-committee-investigate-israeli-practices>.

¹⁷⁶ Fourth Geneva Convention, art. 130; and Protocol I Additional to the Geneva Conventions of 1949, art. 34.

¹⁷⁷ International Convention for the Protection of All Persons from Enforced Disappearance, art. 1; see also communication ISR 2/2019, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24312>.

¹⁷⁸ Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Palgrave Macmillan, 2010); and Amy Nethery, “Incarceration, classification and control: administrative detention in settler colonial Australia”, *Political Geography*, vol. 89 (August 2021), pp. 3 and 4.

the occupied Palestinian territory, Israel reproduces this pattern.¹⁷⁹ Over time, Israel has expanded its multifaceted hold over the Palestinians as a people, through physical, bureaucratic and digital mechanisms. Behind-bars imprisonment dovetails with confinement techniques that envelop the entire occupied Palestinian territory, accompanying and enabling arbitrary seizure of land and Palestinians' forcible displacement.

80. This has turned Palestinian life into a "carceral continuum",¹⁸⁰ where different levels of captivity co-exist: from the micro level of individual deprivation of liberty, through mass incarceration, to population entrapment in strictly controlled enclaves in which the occupied population is confined as a collective security threat, and any form of resistance to the occupation's territorial expansion and dispossession is repressed.

A. Physical carcerality

81. Physical segregation has historically been used as a settler colonial tool to control and manage native populations, acquire their lands and displace them.¹⁸¹ In the fragmented occupied Palestinian territory, Israel has entrapped the Palestinians within a physical architecture that resembles a prison, but on a much larger territorial and societal scale.

82. The illegal blockade of Gaza is the most well-known example of this physical entrapment, with over 2 million Palestinians subjected to collective punishment since 2007. The heavily militarized fence surrounding Gaza and its "no-go zone" further shrink the enclave by 17 per cent and the agricultural area by 35 per cent, while access to the maritime area is reduced by 85 per cent as a result of the heavily patrolled sea blockade.¹⁸²

83. In the West Bank – 60 per cent of which is under full Israeli military and civil control – the carceral architecture comprises: 270 colonies and military bases encircling Palestinian cities, town and villages, preventing their expansion; closed military zones,¹⁸³ constituting 18 per cent of the West Bank; a wall over 700 kilometres long, largely built inside the West Bank, including in and around East Jerusalem, annexing an additional 10 per cent of Palestinian territory; approximately 65 checkpoints and 75 partial checkpoints, thousands of flying checkpoints and around 70 roadblocks; 17 segregated roads, for a total of around 400 kilometres, for Israelis only; and Israeli-controlled points of entry to and exit from the occupied Palestinian territory.

84. Within this maze, the city of Hebron has reportedly served as a "model" to advance colonization through harsh occupation strategies.¹⁸⁴ To "make space" for around 700 settlers living in heavily fortified areas of the city, Israel has put in place a system of approximately 20 checkpoints with hundreds of soldiers,¹⁸⁵ prohibiting Palestinians from accessing their city's main streets and markets. The system is being replicated in neighbourhoods in Jerusalem targeted for settlement expansion (e.g. the Old City and Silwan).¹⁸⁶

85. More than a spatial by-product of the colonies, walls or checkpoints, the physical architecture of the occupation is instrumental in shrinking Palestinian physical space and erasing their civic and political space.

¹⁷⁹ Nashif, *Palestinian Political Prisoners*.

¹⁸⁰ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Alan Sheridan, translator (Vintage Books, 1995), p. 297.

¹⁸¹ Thalia Anthony and Harry Blagg, "Hyperincarceration and indigeneity". Available at <https://opus.lib.uts.edu.au/bitstream/10453/152391/3/Hyperincarceration%20and%20Indigeneity.pdf>.

¹⁸² Amnesty International, *Israel's Apartheid*, p. 28.

¹⁸³ See https://www.ochaopt.org/sites/default/files/ocha_opt_firing_zone_map_august_2012_english.pdf.

¹⁸⁴ Idit Avrahami and Noam Sheizaf, directors *H2: The Occupation Lab* (2023).

¹⁸⁵ B'Tselem, "Hebron city center", 26 May 2019. Available at <https://www.btselem.org/hebron>.

¹⁸⁶ Al-Haq, *Occupying Jerusalem's Old City: Israeli Policies of Isolation, Intimidation and Transformation* (2019).

B. Bureaucratic carcerality

86. Within the physical boundaries of their confinement, Palestinians must also navigate a maze of bureaucratic barriers made of requirements, permissions and restrictions in the form of Israeli-issued “permits” and “bans”. Dictating much of Palestinian existence, permits and bans transform basic freedoms into privileges arbitrarily granted or denied by the occupying Power.¹⁸⁷

87. Over 100 permits regulate essential activities such as leaving the West Bank and Gaza, building and even residing in certain areas, working, visiting family, receiving medical treatment, worshiping, and entering East Jerusalem, let alone Israel.¹⁸⁸ While the Israeli Civil Administration issues the permits, the ultimate decision rests with Shin Bet, which determines the security classification of every Palestinian.

88. Conversely, bans restrict the ability of Palestinians to receive a permit. Bans can be issued by Shin Bet on “security suspicions”, by the police for suspected criminal activity; or by the Israeli Civil Administration, often indiscriminately.¹⁸⁹

89. The permit system is not only arbitrary; it also lacks transparency, resulting in frequent denials and no meaningful avenues for appeal.¹⁹⁰ The lack of a permit confines Palestinians and even their relatives, preventing them from working, receiving life-saving medical treatment, travelling, studying abroad or visiting family. Lack of a permit can also lead to arrest; this affects, for example, Palestinians working in Israel or colonies, or Palestinians from Gaza living in the West Bank. This deepens the collective captivity of Palestinians, rendering them vulnerable and exploitable.¹⁹¹

90. In 2022, new regulations further restricted entry to and residency in the West Bank, including East Jerusalem, for foreign nationals, including Palestinians from the diaspora.¹⁹² These regulations introduce quotas for foreign students and academics, impose limitations on family unification, and allow the Israeli Civil Administration to assess even the sincerity of intimate relationships. These appear to be attempts to further isolate and disconnect Palestinians in the occupied Palestinian territory from the outside world.

C. Digital carcerality

91. Under international law, interference with the right to privacy, such as the use of surveillance technologies, must be prescribed by law, imposed only when strictly necessary, proportionate to achieve a legitimate aim, and non-discriminatory, and must respect fundamental rights.¹⁹³ Instead, digital surveillance pervasively entrenches control by Israeli forces over the spaces and lives of the occupied population. Palestinians are constantly monitored through closed-circuit television and other devices at checkpoints, in public places, social gatherings and protests. Their private spaces are often intruded upon without their knowledge, through monitoring of social media, calls and online conversations considered “threatening”,¹⁹⁴ and the tracking of the location and connections of mobile phones to identify networks and potential associations, or even through access to their medical records.

¹⁸⁷ Berda, *Colonial Bureaucracy*.

¹⁸⁸ Breaking the Silence, *Military Rule*, p. 15.

¹⁸⁹ *Ibid.*, pp. 22, 29 and 30.

¹⁹⁰ Human Rights Watch, *A Threshold Crossed*, p. 174.

¹⁹¹ Breaking the Silence, *Military Rule*, p. 23.

¹⁹² Coordination of Government Activities in the Territories, “Procedure for entry and residence of foreigners in the Judea and Samaria area”, 2022. Available at <https://www.gov.il/en/departments/policies/judeaentry2022>.

¹⁹³ International Covenant on Civil and Political Rights, art. 17; Human Rights Committee, general comment No. 16 (1988); and A/HRC/39/29, para. 10.

¹⁹⁴ Madalena Santos, “Settler colonial surveillance and the criminalization of social media: contradictory implications for Palestinian resistance”, in *Protests in the Information Age: Social Movements, Digital Practices and Surveillance*, Lucas Melgaço and Jeffrey Monaghan, eds. (Routledge, 2018).

92. Digital surveillance and automated policing intensify near Israeli colonies and military infrastructure. Colonies are equipped with technologies that enhance identification, arrest, and detention of Palestinians engaging in protests or resisting the expansion of colonies.¹⁹⁵ Digital surveillance ultimately serves to facilitate colonization.

93. In addition to extensive control, the occupation has advanced development by Israel of powerful surveillance technologies, including facial recognition, drones, and social media monitoring¹⁹⁶. Examples of these programmes include Blue Wolf, an app connected to the Wolf Pack, an Israeli database containing imagery, personal information and security ratings of Palestinians in the West Bank; and Red Wolf, a system of cameras equipped with facial recognition that identify Palestinians at checkpoints and interact with and feed information into the main database. This has created a “gamified surveillance” whereby Israeli military units photograph Palestinians without their consent, and even engage in disturbing competitions. In Hebron, the so-called “smart city” initiative has led to audiovisual surveillance of Palestinians across town.¹⁹⁷ Similar forms of control are being deployed in East Jerusalem neighbourhoods (e.g. Silwan and Sheikh Jarrah), enhancing restrictions and ultimately widespread carcerality.

VII. Conclusions

94. **Under Israeli occupation, generations of Palestinians have endured widespread and systematic arbitrary deprivation of liberty, often for the simplest acts of life. Since 1967, over 800,000 Palestinians, including children, have been detained on the basis of an array of authoritarian rules enacted, enforced and adjudicated by the Israeli military. Palestinians are often presumed guilty without evidence, arrested without warrants, and detained without charge or trial. Physical and psychological abuse are distressingly common. Without condoning crimes that Palestinians have committed during decades of illegal occupation, most criminal convictions of Palestinians have been the result of a litany of violations of international law, including due process violations, that taint the legitimacy of the administration of justice by the occupying Power. Many such convictions concern legitimate expressions of civil and political rights, and the right to resist an illegal foreign occupier.**

95. **By depriving Palestinians of the protections afforded by international law, the occupation reduces them to a “de-civilianized” population, stripped of their status of protected persons and fundamental rights. Treating the Palestinians as a collective, incarcerable threat erodes their protection as civilians under international law, deprives them of their fundamental freedoms, and expropriates their agency and ability to unite, self-govern and develop as a polity. Any Palestinian opposing this regime, from peaceful protesters to farmers trying to cultivate their lands, is perceived as a menace and considered detainable. This forces Palestinians into a permanent state of vulnerability.**

96. **Mass incarceration reinforces the power imbalance between the Palestinians and Israeli institutions and settlers, facilitating settler-colonial encroachment. By shifting from the security of the occupying Power to the security of the occupation itself, Israel has disguised as “security” the permanent control over the territory it occupies and tries to annex. Law enforcement has served as a tool to ensure the imposition of the occupation and racial domination by Israel and the furtherance of its settler-colonial project. This has entrenched segregation, subjugation, fragmentation and, ultimately, the dispossession of Palestinian lands and forced displacement of Palestinians. Intended primarily to secure the establishment and expansion of colonies, this system suffocates Palestinian life and undermines the collective existence of Palestinians.**

¹⁹⁵ Amnesty International, *Automated Apartheid: How Facial Recognition Fragments, Segregates and Controls Palestinians in the OPT* (2023), p. 75.

¹⁹⁶ See <https://7amleh.org/2022/04/21/legal-analysis-for-the-bill-for-preventing-incitement-on-social-media-2021>.

¹⁹⁷ Amnesty International, *Automated Apartheid*, pp. 40–45 and 69.

97. Through an array of physical, bureaucratic and digital mechanisms, the Israeli regime has turned the occupied territory into a panopticon, where Palestinians are constantly surveilled and disciplined. Within this system, typical of settler-colonial regimes, widespread and systematic arbitrary deprivation of liberty and cruel and degrading treatment on a large scale appear to form part of the State policy pursued by Israel of domination of the Palestinians as a people, which is enforced also through beyond-prison confinement.

98. The widespread and systematic arbitrariness of the occupation's carceral regime is yet another manifestation of the inherently illegal occupation and strengthens the need to hold Israel accountable, while bringing the occupation to an end. It is critical that the international community recognize that the unlawfulness of the occupation cannot be remedied, or humanized, by reforming some of its most brutal consequences. Under the Charter of the United Nations and international law, particularly concerning State responsibility, third States have a duty not to contribute or condone the settler-colonial apartheid imposed by Israel, which criminalizes Palestinians for (re)claiming or refusing to forsake their collective right to exist as a people, and act to realize all conditions that would allow the Palestinian people to realize their rights, including their inalienable right to self-determination.

VIII. Recommendations

99. The Special Rapporteur recommends that the Israeli system of arbitrarily depriving Palestinians of their liberty in the occupied Palestinian territory, emanating from an irredeemably unlawful occupation, be abolished tout court, because of its inherent incompatibility with international law.

100. To achieve this goal, third States should:

(a) Use diplomatic, political and economic measures afforded by the Charter of the United Nations without discrimination;

(b) Not recognize as lawful, aid or assist the occupation by Israel, given its commission of internationally wrongful acts and possible international crimes, and call for the cessation of those acts and for reparations;

(c) Prosecute the commission of international crimes alleged in the present report under universal jurisdiction.

101. The State of Israel, as a first step towards long-term remedies for decades of arbitrary deprivation of liberty of the Palestinian people, should take the following measures:

(a) Declare a moratorium on the detention of minors;

(b) Release all Palestinian detainees, especially children, detained for acts devoid of offensiveness under international law;

(c) Release all withheld bodies of deceased Palestinians and guarantee dignified burials.

102. The Palestinian authorities should fully comply with international norms on the deprivation of liberty. This includes:

(a) Ceasing any form of arbitrary detention, as well as torture and ill-treatment of detainees, ensuring both accountability and reparations to the victims. This also includes the release of the bodies of deceased Israelis withheld in Gaza;

(b) Interrupting security arrangements that may lead to violating fundamental rights and freedoms under international law;

(c) Ensuring effective oversight and accountability measures, including by strategically engaging local human rights organizations.

103. **Independent and thorough investigations into the possible commission of international crimes arising from the systematic arbitrary detention of Palestinians should be opened, including through universal jurisdiction. In particular, the Prosecutor of the International Criminal Court should examine, as part of the investigation into the situation in Palestine, the possible commission of the international crimes of:**

- (a) **Wilful deprivation of protected persons' right to fair and regular trial;**
- (b) **Widespread and institutionalized use of torture and cruel, inhuman or degrading treatment or punishment;**
- (c) **Unlawful deportation or transfer or unlawful confinement;**
- (d) **Imprisonment or severe arbitrary deprivation of liberty in violation of fundamental rules of international law;**
- (e) **Persecution against an identifiable group or collectivity by reason of its identity;**
- (f) **Apartheid.**

104. **The likelihood of the above offences being cumulatively committed as part of a policy of “de-Palestinization” of the occupied territory and of a plan to incrementally annex it must be urgently investigated; such a plan would threaten the right of an entire people to exist as a national group, challenging the very foundations of the international legal order.**
