



**Addameer Prisoner's Support and Human Rights Association**

**Submission to the United Nations Universal Periodic Review of Israel**

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**ADDAMEER** (*Arabic for conscience*) **Prisoners Support and Human Rights Association** is a Palestinian non-governmental, civil institution which focuses on human rights issues. Established in 1992 by a group of activists interested in human rights, the center's activities focus on offering support for Palestinian prisoners, advocating the rights of political prisoners, and working to end torture through monitoring, legal procedures and solidarity campaigns.

**Addameer Prisoner's Support and Human Rights Association**  
**Submission to the UN 3<sup>rd</sup> cycle of Universal Periodic Review of Israel**

In this submission, Addameer addresses the concerns arising from Israeli arrest and detention policies since Israel's last UPR in 2013. The report aims to highlight the unlawful treatment of Palestinian political prisoners held in Israeli prisons and detention centers.

**Key Words:** Fair Trial, Administrative Detention, Torture, Mass Hunger Strike, Military Courts.

**I. Introduction & Background**

- 1) The year 2017 marks 50 years of Israel's continued colonization and occupation of the oPt, which is reliant on its ability to suppress the indigenous Palestinian population. While over the decades Israel has used various strategies in this suppression, one constant has been the mass detention and imprisonment of hundreds of thousands of Palestinians in an attempt to 'criminalize' any perceived resistance to this colonization and occupation. Given its scale, detention and imprisonment has served as an effective tool in the suppression of the Palestinian population. Since the Israeli occupation of Palestinian territory in 1967, an estimated 800,000 Palestinians have been arrested by the Israeli Occupation Forces (IOF). This constitutes approximately 20 percent of the total Palestinian population in the OPT, and as much as 40 percent of the total male Palestinian population.
- 2) As of May 2017, there were approximately 6200 Palestinian political prisoners held in Israeli prisons and detention centers, including 490 administrative detainees, 300 children, 54 female prisoners, and 12 Palestinian Legislative Council Members.
- 3) Palestinian political prisoners are held across 17 prisons, four interrogation centers and four detention centers. Only one of the prisons, Ofer prison, is located inside the occupied territory. The other prisons are located inside Israeli territory, in direct contravention of Article 76 of the Fourth Geneva Convention, which states that an Occupying Power must detain residents of occupied territory in prisons inside the occupied territory. In addition to illegality under international law, the practical consequence of this system is that many prisoners have difficulty meeting with Palestinian defense counsel, and do not receive family visits as their attorneys and relatives are denied permits to enter Israel on "security grounds".

**Topic I: Military Courts**

- 4) As an Occupying Power, Israel has the right under international humanitarian law to establish military courts in the oPt, but applicable international human rights and humanitarian law restrict the jurisdiction of such courts to violations of criminal security legislation. The jurisdiction of Israeli military courts, however, is far broader and includes offenses unrelated to such legislation. The crimes include a wide range of offenses divided into five categories: "Hostile Terrorist Activity"; disturbance of public order; "classic" criminal offenses; illegal presence in Israel; and traffic offenses committed in the oPt. The practical implication of these broadly-defined offenses is the criminalization of many aspects of Palestinian civic life and ultimately undermine self-determination. For example, the political parties that comprise the Palestine Liberation Organization (PLO) are still considered "illegal organizations" even though Israel has been engaged in peace negotiations with the PLO since 1993.
- 5) Furthermore, in contravention with the terms of territorial jurisdiction of the occupying power set forth by Article 42 of the 1907 Hague Regulations, which states that "the occupation extends only to the territory where such authority has been established and can be exercised," the military court extends its jurisdiction to crimes in Rule of Criminal Responsibility Order (1968) even to alleged crimes not completely committed in the territory.<sup>1</sup>
- 6) Moreover, it is questionable whether the use of military courts to try civilians can ever satisfy the requirements under international human rights law that trials take place before independent and impartial tribunals. International law also guarantees certain fundamental fair trial rights, but these are regularly

<sup>1</sup> Sharon Weill, "The judicial arm of the occupation: the Israeli military courts in the occupied territories". International Review of the Red Cross. Volume 89, no. 866. June 2007, pages 404.

flouted by Israeli military courts. The right to trial without undue delay for Palestinians in the Israeli military court system is hindered by both legal and practical impediments. The maximum periods of detention for Palestinians detained by the Israeli occupying power from the initial detention until conclusion of a trial by military court are significantly longer at each stage<sup>2</sup> of proceedings as compared to those prescribed for the detention of Israelis under the civil court system.<sup>3</sup>

- 7) Once the interrogation period is over, Palestinian detainees from the West Bank are processed for trial, sentencing and imprisonment in one of two Israeli military courts currently operational in the oPt. Not all Palestinians who are arrested are prosecuted in the military courts; some are released while others are administratively detained without trial. Of those who are charged, approximately 99 percent are convicted,<sup>4</sup> and of these convictions, the vast majority is the result of plea bargains.<sup>5</sup> As per Israeli military orders, a Palestinian can be held without charge by order of a military judge for up to 75 days.
- 8) In recent years, Military Order 101 has been used to arrest tens of Palestinians for their social media posts<sup>6</sup>. Cases include 19-year-old Dunya Musleh, from Deheisheh refugee camp in Bethlehem who was arrested on 15 November 2015 for incitement related to Facebook posts, which included pictures of extrajudicially executed Palestinians with captions that were deemed incitement by occupation authorities. The court claimed that Dunya's posts incited violence and were praised by many people and received many "likes" – indicators of outreach often used by prosecution in these alleged incitement cases.
- 9) Incitement charges are also used against Palestinians living inside Israeli territory under the civil code, for example, Daren Tatour<sup>7</sup> who was arrested on 11 October 2015 in relation to a poem she posted on facebook.
- 10) Defence for Children International – Palestine (DCIP) has found that of 429 children in the West Bank arrested between 2012 and 2015, three-quarters were subjected to physical violence, 41.7% were arrested from their homes in the middle of the night, in 88.1% of the cases, parents were not notified of the reason for arrest or where the children were being detained, and in 97% of the cases, children were interrogated without access to legal counsel or the presence of their parents.<sup>8</sup>

## Topic II: Administrative Detention

- 11) As of May 2017, there were approximately 490 Palestinian administrative detainees held in the Israeli prisons, all are detained without any charges or any trial procedures.
- 12) Current cases of administrative detention include Ahmad Qatamesh, a 67-year old Palestinian academic and political scientist who was arrested in a pre-dawn raid by Israeli occupation forces on 14 May 2017, and who subsequently received a three-month administrative detention order (renewable indefinitely). Amnesty International has called Qatamesh a prisoner of conscience and has called for his release.<sup>9</sup> Further, Ms. Sabah Faroun was arrested on 16 September 2016 at approximately 3:00 AM, when Israeli forces raided her home in occupied Jerusalem. The mother of four was handcuffed and blindfolded, and then illegally transferred to the HaSharon and Damon prisons, in contravention with the Fourth Geneva Convention which prohibits transfers from occupied territory into territory of the occupying power. She has since been held under administrative detention without charge or trial. Ahmad Hamid, a 17-year-old Palestinian minor, was arrested from Silwad village on 7 April 2017 at approximately 4:00 AM when an estimated 40 soldiers raided his home, and he has since been held in Ofer prison without charge or trial.

<sup>2</sup> The "stages" referred to include: detention before being brought before a judge, period of detention authorized by a judge, detention from end of investigation until indictment, detention from filing indictment until arraignment, detention from arraignment until end of proceedings, and extension of detention issued by a judge if proceedings have not concluded.

<sup>3</sup> For more information about the dual law system and relevant regulations, see Btselem, "Dual system of law," 01 January 2011. Available at [http://www.btselem.org/settler\\_violence/dual\\_legal\\_system](http://www.btselem.org/settler_violence/dual_legal_system)

<sup>4</sup> Official Report of the Work of the Military Courts in the West Bank, 2010 (Hebrew) (Military Courts Report 2010)

<sup>5</sup> See *infra*. Of the 8,516 cases concluded in the military courts in 2010, full evidentiary trials (in which witnesses were questioned, evidence was examined and closing statements were delivered) were conducted in only 82 – or 0.96 percent – of them.

<sup>6</sup> See Addameer, "Daring to Post: Arrests of Palestinians for Alleged Incitement". 24 August 2016. Available at <http://www.addameer.org/publications/daring-post-arrests-palestinians-alleged-incitement>.

<sup>7</sup> For more information about the case of Daren Tatour, see Addameer, "Incriminating Poetry: The Case of Daren Tatour". 11 October 2016. Available at <http://www.addameer.org/news/incriminating-poetry-case-daren-tatour>

<sup>8</sup> Defence for Children International – Palestine, "No Way to Treat a Child, Palestinian children in the Israeli military detention system". April 2016. Available at [http://www.dci-palestine.org/palestinian\\_children\\_in\\_the\\_israeli\\_military\\_detention\\_system](http://www.dci-palestine.org/palestinian_children_in_the_israeli_military_detention_system).

<sup>9</sup> <https://www.amnesty.org/en/latest/news/2017/05/israel-release-palestinian-prisoner-of-conscience-detained-without-charge-or-trial/>

- 13) Administrative detention has been a significant concern for different UN official bodies including the **Committee Against Torture** and Special Rapporteurs on the situation of human rights in the Palestinian Territories, Michael Lynk, and his predecessor Makarim Wibisono. The Committee Against Torture in its last concluding observations on Israel on 13 May 2016, called on the Israeli government to “[t]ake the measures necessary to end the practice of administrative detention and ensure that all persons who are currently held in administrative detention are afforded all basic legal safeguards.”
- 14) Administrative detention in the OPT is ordered by a military commander and grounded on “security reasons.” The security reasons are broad enough to include non-violent political subversion and virtually any act of resistance against the Occupation.<sup>10</sup>
- 15) Once an administrative detention order has been issued by the military commander, the detainee must be brought before a military judge within eight days. At the hearing before the military judge, a summary of the secret evidence is submitted by the Military Prosecutor; neither the detainee nor his or her lawyer is permitted to see the secret evidence. This is in breach of Israel’s obligations under both International Human Rights and Humanitarian Law.<sup>11</sup> The hearing is not open to the public, which also contravenes Israel’s obligations under International Human Rights Law.<sup>12</sup> The military judge may approve, shorten or reject the order. In practice, the order is usually approved without change.
- 16) There is no limitation on the number of times the initial detention period can be renewed. Palestinian detainees have spent up to 8 years in prison without being tried under administrative detention orders. Thus, Administrative detention may be considered a form of psychological torture as the detainee is subjected to detention without fair trial guarantees, as well as the indefinite nature of the detention, where orders can be renewed indefinitely. Statistics provided by Ofer Military Court indicate that in 2016, there were 668 new administrative detention orders issued there, as well as 1180 renewal orders, totaling 1848 administrative detention orders throughout the year.<sup>13</sup>
- 17) Administrative detention has also been used against Palestinian children in the West Bank in October 2015, for the first time in 4 years, as reported by Defence for Children International – Palestine (DCIP), which has documented 22 cases of children placed under administrative detention between October 2015 and May 2017.<sup>14</sup>

### **Topic III: Torture and ill-treatment:**

- 18) Palestinian prisoners are often subjected to both psychological and physical torture during interrogation. Interrogation can last for up to 75 days and where lawyer visits can be denied for the first 60 days. The forms of torture and ill-treatment employed against Palestinian prisoners include: prolonged isolation from the outside world; inhuman detention conditions; excessive use of blindfolds and handcuffs; slapping and kicking; sleep deprivation; denial of food and water for extended periods of time; denial of access to toilets; denial of access to showers or change of clothes for days or weeks; exposure to extreme cold or heat; position abuse; yelling and exposure to loud noises; insults and cursing; arresting family members or alleging that family members have been arrested; sexual abuse; slaps, kicks and blows; and violent shaking.
- 19) Confessions extracted through these illegal practices are then admissible in court. These policies are in direct contravention of international law, including Article 2(1) of the United Nations Convention against Torture (CAT), ratified by Israel on 3 October 1991, which requires any State Party to prevent the use of torture and associated practices. Addameer has documented 73 deaths as a result of torture since 1967. On 22 February 2013, Arafat Jaradat, died seven days after his arrest and subsequent interrogation. An autopsy conducted by the Palestinian Medical Society in conjunction with several Israeli doctors found that he suffered from deep bruising, broken ribs and internal bleeding shortly before his death. Commissioned Forensic Pathology expert Dr. Sebnem Korur Fincanci, found that “Arafat Jaradat was severely beaten while in detention, resulting in Acute Respiratory

<sup>10</sup> See annex for administrative detention cases.

<sup>11</sup> Article 14 of the International Covenant on Civil and Political Rights.

<sup>12</sup> Ibid.

<sup>13</sup> Ofer Military Court, via Addameer attorney. Addameer Documentation and Research Unit, 2017.

<sup>14</sup> Defence for Children International – Palestine. “Administrative detention used on 22 Palestinian teens in past 20 months”. 19 May 2017. Available at [http://www.dci-palestine.org/22\\_palestinian\\_teens\\_held\\_in\\_admin\\_detention\\_in\\_20\\_months](http://www.dci-palestine.org/22_palestinian_teens_held_in_admin_detention_in_20_months)

Distress Syndrome, which caused his death in Israeli custody on 23 February 2013.”<sup>15</sup> Despite this, up to date, no Israeli official has been charged for Jaradat’s death.

- 20) On 6 September 1999, the Israeli High Court of Justice ruled to ban the use of torture during interrogation. A seemingly considerable victory for human rights defenders has proved in practice not to be applicable to Palestinian “security” detainees. Indeed, the ruling failed to explicitly forbid the use of torture but rather allowed that interrogation methods such as “moderate physical pressure”—widely deemed as torture—be used in situations where a detainee is considered a “ticking bomb”. Furthermore, the ruling, namely the “necessity of defense” stipulation, continued to allow this defense post-factum in cases of “ticking bombs”, thereby effectively allowing for impunity in cases of torture.

#### **Topic IV: Mass Hunger Strike:**

- 21) Since 2013, several Palestinian prisoners and detainees embarked on individual hunger strikes in protest, some of whom protested being placed under administrative detention without charge or trial. These individual hunger strikes included Mohammad Al-Qeeq (2016), Khader Adnan (2015), Hana Shalabi (2012), and Malek Al-Qadi (2016). A mass hunger strike in solidarity with administrative detainee Bilal Kayed (2016).
- 22) On 17 April 2017, Palestinian Prisoners’ Day, an estimated 1500 Palestinian political prisoners and detainees held in Israeli prisons and detention centers declared the beginning of an open hunger strike. The call for a hunger strike came as a result of Israeli’s policies and practices towards political prisoners. The prisoners have a range of demands, mostly highlighting basic needs and human rights, including an end to the denial of family visits, the right to proper health care and medical treatment, the right to pursue distance higher education and an end to solitary confinement and administrative detention, imprisonment without charge or trial.
- 23) The prisoners involved in the mass hunger strike faced harsh punishments by the IPS, including being transferred to isolation sections or other prisons, fines, denial of access to salt and daily raids and attacks on their sections. In further attempt to isolate the prisoners from the outside world and from each other, the IPS prevented hunger strikers from meeting with their lawyers. On 26 May 2017, an agreement was reached between the IPS and the prisoners which resulted in ending the strike after 41 days.
- 24) In 2012, Israeli Minister of Public Security Gilad Erdan initiated a proposal in response to a mass hunger strike aimed at ending that strike, and despite international condemnation. The force-feeding bill was approved by the Israeli Knesset on 30 July 2015. According to the legislation, the court may decide on cases on the basis of secret evidence – not accessible to the detainee or his or her attorney. Additionally, these court hearings may be held in closed door hearing sessions.
- 25) The force-feeding legislation **complements the systematic torture and cruel, degrading and inhumane treatment** taken against Palestinian prisoners and detainees in Israeli prisons, violations of International Law.

#### **Topics V: Solitary confinement and other forms of isolation and punishment**

- 26) During a mass hunger strike that began on 17 April 2017 by Palestinian prisoners and detainees inside Israeli detention, hunger strikers were placed under solitary confinement and isolation.<sup>16</sup> Currently an estimated 15 Palestinian prisoners and detainees are being held in solitary confinement and isolation cells, between Eshel, Nitzan, Rimon, Megiddo, and Nafha prisons. These prisoners include Nahar Al Saadi, who has been held in isolation sections for over two years,<sup>17</sup> as well as Ahmad Mughrabi, and Bages Nakhleh.
- 27) These measures against the detainees, who were conducting a hunger strike, an internationally recognized form of peaceful protest, may amount to torture, in light of the definition of Torture in the Convention Against Torture involving public officials taking part in “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as ... punishing him for an act he or a third person has

<sup>15</sup> The Public Committee Against Torture and Al-Haq, 04 April 2014. “Leading International Forensic Pathologist: Palestinian Detainee Arafat Jaradat Was Tortured, Which Led To His Death In Israeli Custody”. Available at <http://www.alhaq.org/advocacy/topics/right-to-life-and-body-integrity/794-joint-press-statement-the-public-committee-against-torture-in-israel-and-al-haq>

<sup>16</sup> See “38th day of hunger strike: striking prisoners remain steadfast despite deteriorating health” 24 May 2017. Available at <http://www.addameer.org/news/38th-day-hunger-strike-striking-prisoners-remain-steadfast-despite-deteriorating-health>; “Addameer visits hunger-striking political leader Ahed Abu Ghoulmeh”. 22 May 2017. Available at <http://www.addameer.org/news/addameer-visits-hunger-striking-political-leader-ahed-abu-ghoulmeh>; “23 days of hunger strike: Israeli occupation continues to impose restrictions on attorney visits”. 09 May 2017. Available at <http://www.addameer.org/news/23-days-hunger-strike-israeli-occupation-continues-impose-restrictions-attorney-visits>

<sup>17</sup> Physicians for Human Rights - Israel. 15 December 2014. “Nahar Al-Saadi held in solitary confinement for over 570 days” Available at <http://www.phr.org.il/en/nahar-al-saadi-held-solitary-confinement-570-day/>

committed ... or intimidating or coercing him or a third person” (article 1).<sup>18</sup> Further, the UN CAT issued a concluding observation in May 2016 (para. 26, 27) that Israel should guarantee that hunger strikers "are never subjected to ill-treatment or punished for engaging in a hunger strike, and are provided with necessary medical care in accordance with their wishes."

#### **Topic VI: Final recommendations:**

- 28) The Human Rights Council should urge Israel to halt all use of torture and cruel, inhuman or degrading treatment or punishment of Palestinian prisoners and detainees as it is unequivocally required under peremptory norms of international law. Additionally, the Human Rights Council should declare the policy of prolonged administrative detention as amounting to a form of psychological torture due to its non-compliance with Article 16 of the CAT as recommended by the CAT Committee.
- 29) Stop applying the jurisdiction of the military courts in the oPt to civilians in such a broad manner and instead apply it in accordance with the provisions of international law.
- 30) Immediately release all PLC members currently detained and cease its policy of targeting Palestinian elected representatives.
- 31) Bring an end to its institutionalized policy on torture and ill-treatment, and ensure that these abusive practices cease to be used against prisoners in its care and that any such abuse is properly investigated and punished.
- 32) Guarantee that minimum standards of detention are respected, particularly with regard hygiene, nutrition, and access to health care.
- 33) Allow visits of family members according to the principles of international law, including by immediately resuming family visits to all prisoners, extending visitation rights to non-family members and allowing “open visits” and physical contact to all detainees.
- 34) Immediately end isolation, both short and long-term, as a means of punishment.

<sup>18</sup> UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.refworld.org/docid/3ae6b3a94.html> [accessed 4 June 2017]