The Israeli Military Judicial System as a Tool of Oppression and Control: A Review of Military Order No. 1827

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Since the Israeli occupation of the West Bank and the Gaza Strip in 1967, the occupation authorities have been devising a military judiciary system and military orders as an enforcement tool to extend hegemony and control over the Palestinian people. To that end, they have been legitimising and pretexting repression with legal language that may seem legal or even attempts to adopt the legal standards of the occupying power. Over 53 years, an apartheid, discriminatory judicial apparatus has been built to preserve and act in the best interest and security of the occupying power at the expense of the Palestinian people. This *de facto* reality persists in the face of the obligations and responsibilities of the occupying power according to International Humanitarian Law (IHL) with regards to the legislative and judicial systems.

Article 43 of the Hague Convention 1907, as well as articles 64 and 66 of the Fourth Geneva Convention, allows the Occupying Power to issue and implement legislation on the occupied territory, provided the latter complies with the laws and the judiciary system already in force in the occupied territory. Notwithstanding, the Occupying Power may subject the population of the occupied territory to new provisions of law, where such laws are essential to enable the Occupying Power to fulfil its obligations towards the civilian population and is in their best interest according to IHL. The military tribunals, therefore, shall be apolitical and with exclusive competence to decide on the grave violations committed by the occupying power forces.

Over decades, the State of Israel, as an Occupying Power, has been continuously violating various IHL rules and principles. Through enacting over 1800 military orders, Israel intervenes in many aspects of the daily life of Palestinians. Moreover, it has criminalised all forms of political and unionist activities and any other acts that might be considered opposing the occupation and the policies thereof. In addition, the Israeli military courts have extended their territorial jurisdiction beyond the borders of the occupied territory. Thus, any person, whose acts might threaten the security of the Israeli occupation or the Israeli Occupation Forces (IOF) in the occupied territory, even if the activity is in another continent, shall be tried before Israeli military courts. It also retains territorial jurisdiction over the area controlled by the Palestinian Authority (PA), i.e., Area (A) as per the Oslo Accords. Such practices manifest the intent of the occupying power that it has never dealt with the occupation as a temporary situation.

This paper cannot provide an in-depth reading of all aspects of the military judicial system and the nature of military orders. However, based on the daily struggle in defense of Palestinian political prisoners/detainees in Israeli prisons, it is evident that every development in Israeli military trial procedures or any amendment to military orders serves the interest of the Israeli occupation, and not the best interest of the occupied people. Even if such changes seem to be harmonious with the evolution of any society, which warrant parallel development of its judicial apparatus and legislation, they are not at the core. This conclusion is further buttressed considering that most of the amendments are based on the Israeli Penal Law and the Criminal Procedure Law, which are

discriminatory in nature. In other words, such addenda further the oppression and repression and avoids the interest of the Palestinian civilians.

Amendment No. 67 to the Military Order No. 1651 (Order Regarding Security Provisions, Consolidated Version – Judea and Samaria, 2009) under No. 1827 adds to the original military order regarding trial procedures and crime definitions the provisions of the Counter-Terrorism Law of 2016, particularly, the definitions of 'harmful substance', 'weapon', 'chemical, biological or radioactive weapon', among others.

Notably, the amendment provided a general definition of 'property', the 'property connected to an offence' and 'terrorist property', in which the definition included moveable and immovable property, the rights thereof, and any other property emerged or derived from that property or the profit generated therefrom. Moreover, 'property transaction' was broadly defined to cover the granting and/or receipt of investment, possession, transfer, etc.

As for the definition of 'terrorist property', it appears to cover all possible aspects, mainly targeting the properties of any "unlawful association" as defined broadly by the British Defence (Emergency) Regulations of 1945, particularly article 84 thereof. Accordingly, the term property extends beyond what the association owns, possesses, controls or is in custody thereof to property that is transferred to others or in partnership with others.

As for the other part of the definition of 'terrorist property', it applies to each and every purpose pertaining to the commission of a violation under the Military Order 1651 (251) concerning the incitement or support of a hostile association, or any of the offences mentioned in the first addendum to the Military Order 1651. This list includes actions that the IOF have criminalised, including political activism and accession to Palestinian political parties, right up to throwing stones; all these actions were crowded under the umbrella term of 'terrorism'.

The replacement of article 60 of the Military Order No. 1651, which tackled the seizure of any goods, objects, certificates, or animals that were used in a violation of this order, or was granted in reward therefor or to facilitate the violation committed. Article 60 of the amendment to article 6 of Order No. 1827 added to the aforementioned any property belonging to an unlawful association. In addition, the article allows the confiscation of any goods with a value equal to the value of the confiscated goods shall be seized as well. If the property seized is money/funds, thus any money/fund owned, possessed, or controlled, or deposited at a bank account of individuals or associations may be seized as well.

Furthermore, Order No. 1827 introduces new articles pertaining to the penalties that shall be enforced against any person or association that uses the property to commit a violation or provide a reward for the commission of a violation. As the new articles stand, such persons and associations shall be liable to ten-year imprisonment and a fine. This shall apply to the cases even if the receipt of the reward was not the person who committed the terrorist offence or the person who intended to execute it. The order also imposes a prison sentence of seven years for anyone who did not intend to use the property for the purpose of carrying out an offence but was aware that there was a possibility that the offence might be carried out. The punishment shall be seven years

imprisonment if the person undertakes any transaction in a property of an unlawful association or transfers property to an unlawful association.

In a similar vein, a five-year prison sentence has been added to any person who prepares to facilitate the execution of an offence that has a ten-year prison sentence. If the offence is punishable by life imprisonment, the person shall be punished with fifteen-year imprisonment. If the person contributes to rehabilitating a suitable place to carry out the offence, falsifies papers, prepares tools or collects information, with the intent to carry out the offence, or helps provide an escape means such as preparing a road or tunnel.

The cause of concern in such actions is the message addressed to banks operating in the occupied Palestinian territory (OPT) regarding the accounts of detainees, prisoners, and martyrs, warning of confiscating the funds available in these accounts under the clause that they are given as a 'reward' for committing a crime. What is graver is the seizure of property of an 'unlawful' association based on these broad definitions, and the use of the British Emergency Regulations. Such a step, which had already been nullified, provides a more expansive space for the military commander to declare any organisation, union, party, student union, sports club, or any other entity as an 'unlawful' association. Of note, the Palestine Liberation Organization, the majority of political parties, and student movements, were previously declared as 'unlawful' associations under the Israeli military orders and the aforementioned emergency regulations.

Over and above, amendment 67 includes an increase in the punishment of a person chairing or leading a directing role at an 'unlawful' association to 25-year imprisonment. If such an association stands for premeditated murder, the penalty is life imprisonment, and whoever holds a position in this association shall be punished with ten-year imprisonment.

This amendment cannot be read in isolation from all of the military orders that regulate the work of military courts, the judicial procedures, the powers granted to the military commander and any soldier in the occupying forces. In particular, the authority vested in the military commander to declare any party as 'unlawful' based on 'confidential' pretexts. Such a decision cannot be appealed before a military court; it needs to be brought to an ad-hoc military committee. The arbitrary use of 'secret' pretexts is especially highlighted in the files of administrative detention. The various United Nations committees, such as the United Nations Working Group on the Issue of Arbitrary Detention and the Committee Against Torture have confirmed that the IOF's administrative detention practices crowd under arbitrary detention. What is more, it may fall under psychological torture, both of which are considered a war crime, and possibly a crime against humanity per International Law.

In addition to the lack of fair trial guarantees before military courts, most of these recent amendments require the suspect to prove that she or he is not a member of an unlawful association, or that the property that was seized does not belong to an unlawful association, or has not been used to commit the violation. That is, the military order transferred the burden of proof to the accused, in apparent contravention of a well-established legal principle (i.e. onus of proof lies with the plaintiff). The vast majority of confidential files end with a deal after most of the evidence in the files is based on confessions taken from the detainee through torture, pressure, and

intimidation. Notably, the military judicial system, as well as the Israeli law, do not consider these statements null and void even if they are gleaned through the commission of the crime of torture. Meaning, there is no absolute prohibition of the crime of torture in the judicial system of the occupying power or its military courts.

The fundamental and grave violations of the military orders, the amendments thereto, and the military judicial apparatus, against all international standards related to the rights of detainees to a fair trial, is a complicated reality to be explained. However, it shall be underlined that failure to provide fair trial per IHL and the Rome Statute is a war crime for which the occupying power shall be held accountable. Bearing in mind, the hundreds of thousands of cases that have been tried before these courts during the long decades of occupation, it is safe to say that the international community cannot take the decisions issued by these courts as valid facts. Otherwise, it would be complicit with the occupying power in committing war crimes and crimes against humanity against Palestinian detainees.