



Illegal and Arbitrary: The Deprivation of Liberty of Palestinians in Occupied Territories

Submission to the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territory Occupied Since 1967

10 November 2022

Addameer Prisoner Support and Human Rights Association respectfully submits this report in response to the Special Rapporteur’s call for submissions for the upcoming thematic report to the Human Rights Council 52nd session on the deprivation of liberty in the occupied Palestinian territory (oPt). This submission focuses on Israel’s use of arbitrary detention policies and practices, including administrative detention, to repress the Palestinian people’s struggle for self-determination and liberty across the oPt. The submission concludes that the increased systematic practice of arbitrary detention undertaken by the Israeli occupation forces is upheld by the Israeli settler-colonialism and apartheid regime. Violence is imbued at each stage of arrest: upon arrest and transfer to detention centers, and during detention and trial. These methods of deprivation of liberty are central to the practices of the Israeli occupation, yet they are differentially applied geographically across the oPt in violation of international law.

I. Israeli System of Military Rule Designed to Arbitrarily Deprive Palestinians of their Right to Liberty in Violation of International Law

- Legal Framework and Practices of Military Detention

Following the Six Day War of 1967, Israel occupied the West Bank, Gaza, and East Jerusalem, and imposed a system of military rule over the occupied territories, declaring all authority of government, legislation, appointment, and administration of the area or its residents to be under the exclusive control of the Israeli occupation forces.¹ Henceforth, Israeli military commanders have used their legislative powers extensively, issuing over 2,500 military orders in the West Bank and Gaza, which cover security matters, fiscal administration, taxation, transportation, land

¹ See Beirzeit University Institute of Law, “Legal Status in Palestine: Palestinian Judicial System – Historical Evolution of the Palestinian Legal System,” <http://lawcenter.birzeit.edu/lawcenter/en/homepage/legal-status-in-palestine>; Database of Israeli Military Orders in the Occupied Palestinian Territory, Applied Research Institute in Jerusalem (ARIJ), <http://orders.arij.org/index.php>.

planning and zoning, management of natural resources, education, administration of justice, and more.² In 1980, Israel unilaterally annexed East Jerusalem, thus imposing its own legal regime on the city.³ Israeli citizenship has not been extended to the Palestinian residents of East Jerusalem, but nonetheless, Israeli law applies to them as residents and they remain excluded from voting in national Israeli elections or otherwise meaningfully participating in the system that rules over them.⁴ In 2005, Israel announced a unilateral “disengagement” with the Gaza Strip, but has since maintained its military and economic control over Gaza and imposed an air, sea, and land closure and blockade, cutting Palestinians in Gaza off from the outside world and the rest of the occupied territories.⁵

In the West Bank, Israel has made extensive use of military orders since 1967 to serve the sole purpose of maintaining control over the Palestinian people. Israeli military orders define broad categories of “security offenses,” ranging from disturbance of the public order and “terrorism” offenses to regular activities, participation in non-violent protests, illegal presence in Israel, and even traffic violations, which are subject to prosecution in Israeli military courts.⁶ As a result, thousands of Palestinians in the West Bank are prosecuted in Israeli military courts each year for allegations that include “entering a closed military zone,” which can be a designation attached on the spot to an area of protest, or “membership and activity in an unlawful association” (note that the Israeli military commander has assumed power to declare as “unlawful association[s]” groups that advocate for “bringing into hatred or contempt, or the exciting of disaffection against” Israeli occupation authorities).⁷

Similarly, there are military orders that criminalize gatherings of more than ten people that “could be construed as political,” if they take place without a permit; publishing material “having a political significance;” and displaying “flags or political symbols” without prior military approval.⁸ Peaceful expression of opposition to the occupation may run counter to military orders that criminalize anyone who “attempts, orally or otherwise, to influence public opinion in the area [the West Bank] in a manner which may harm public peace or public order,” “publishes words of praise, sympathy or support for a hostile organization, its actions or objectives,” or commits an “act or omission which entails harm, damage, disturbance to the security of the area or of the Israeli

² Id.

³ Al-Haq, “The Occupation and Annexation of Jerusalem through Israeli Bills and Laws,” March 2018, <https://www.alhaq.org/advocacy/6263.html>.

⁴ See Norwegian Refugee Council, “The Legal Status of East Jerusalem,” December 2013, at 24, <https://www.nrc.no/globalassets/pdf/reports/the-legal-status-of-east-jerusalem.pdf>.

⁵ See Al-Mezan, “The Gaza Bantustan – Israeli Apartheid in the Gaza Strip,” 29 November 2021, <https://www.mezan.org/en/post/24084/The+Gaza+Bantustan—Israeli+Apartheid+in+the+Gaza+Strip>; Amnesty International, “Israel’s Occupation: 50 Years of Dispossession,” 2017, <https://www.amnesty.org/en/latest/campaigns/2017/06/israel-occupation-50-years-of-dispossession/>

⁶ The Israeli Military Court System, *Addameer*, July 2017, https://www.addameer.org/israeli_military_judicial_system/military_courts.

⁷ Human Rights Watch, “Born Without Civil Rights,” December 2019, <https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress#>.

⁸ Id.

Defense Forces.”⁹ These categories are deliberately capacious and provide tools for targeting Palestinian civil society, political expression, human rights advocacy, and peaceful opposition to Israeli occupation policies.¹⁰

While norms and procedural guarantees of an independent judiciary and fair trial are well substantiated in both international law and Israeli Basic Law, military courts fall short on nearly every dimension of due process rights.¹¹ Palestinians are deprived of the right to be tried before an independent and impartial tribunal.¹² First, the Israeli military commander in the West Bank holds executive, legislative, and judicial functions. This lack of separation of powers makes military judges susceptible to “political interference by the executive branch and legislature.”¹³ This lack of separation is a large part of why military tribunals are *never* supposed to be used to try civilians.¹⁴ The prosecutors, administrative officers, and, most importantly, judges in the military courts are all Israeli military officers.¹⁵

⁹ *Id.*

¹⁰ In 2010, Military Order No. 1651 (2009) came into effect, consolidating a number of previously issued orders into what is called now “the Criminal Code,” which governs the procedures of the arrest, detention, and prosecution of Palestinians in the West Bank. The Order has been amended several times since then; the up-to-date Hebrew version is available at https://www.nevo.co.il/law_html/law65/666_027.htm.

¹¹ *See, e.g.*, Addameer, “In the case of The Palestinian People vs. Military Courts,” March 2021, <https://www.addameer.org/node/4318>; B’Tselem, “Presumed Guilty: Remand in Custody by Military Courts in the West Bank,” June 2015, https://www.btselem.org/download/201506_presumed_guilty_eng.pdf; Yesh Din-Volunteer for Human Rights, “Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories,” 2007, p.47, <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/מִשְׁפָּטִים+בְּחֶזֶר+הָאֶחָדִים/BackyardProceedingsfullreportEng+full+report.pdf>.

¹² Under the ICCPR, judicial independence has two aspects: First, judges must be *actually* independent, as in they “must not allow their judgment to be influenced by personal bias or prejudice, nor harbor preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other.” Second, the tribunal must “also appear to a reasonable observer to be impartial.” In the military court system of the occupied Palestinian Territories, the military serves as the legislator, the police, the prosecutor, judge, and jury. *See* General Comment no. 32 (2007) on article 14 of the International Covenant on Civil and Political Rights, on the right to life, CCPR/C/GC/32, <https://ccprcentre.org/ccpr-general-comments>. Further, the UN Working Group on Arbitrary Detention has stated that “military courts should not have jurisdiction to try civilians, whatever the charges they face. They can no[t] be considered as independent and impartial tribunals for civilians.” United Nations Working Group on Arbitrary Detention, Opinion No. 27/2008 (Egypt), A/HRC/13/30/Add.1, 4 March 2010, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/13/30/Add.1&Lang=E>.

¹³ Human Rights Committee, General Comment 32, Article 14, CCPR/C/GC/32 (2007).

¹⁴ Human Rights Committee, General Comment 32, Article 14, CCPR/C/GC/32 (2007) at 9, referring to the ICCPR and customary international law; Decision of the UN Working Group on Arbitrary Detention, Opinion No. 15/2016 concerning Khalida Jarrar (Israel), at 4-5.

¹⁵ In a typical trial, a panel of three judges or a single judge presides over the case; a single judge can pronounce a sentence of up to ten years of imprisonment, while a three-judge panel may impose a sentence of any length. Until 2004, there was no requirement for these officials to have legal training or possess judicial expertise (Order no. 550 of 2004, amending article 4 of the Security Provisions Order, No. 378 of 1970); *see also* Yesh Din, “Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories,” 2007, p.47, <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/מִשְׁפָּטִים+בְּחֶזֶר+הָאֶחָדִים/BackyardProceedingsfullreportEng+full+report.pdf>.

Palestinian detainees can be arrested and held without charge for the purpose of interrogation for a period of 75 days.¹⁶ Upon request of the regional Israeli military advisor, an appellate military judge may extend the detention period “from time to time,” for an additional period of up to 90 days.¹⁷ Palestinians who are not suspected of a particular crime but are considered by the Israeli military to pose a “security concern” may be placed in administrative detention *indefinitely*, without charges or trial, if a military judge finds that the prolonged detention is “justified.”¹⁸ Additionally, a Palestinian detainee in the military court system can be held for up to 60 days without access to a lawyer.¹⁹ No search or arrest warrant is required for the Israeli military to raid Palestinian homes in the West Bank.²⁰

Military court proceedings are conducted entirely in Hebrew, the official language of the Israeli state, that most Palestinians in the West Bank do not understand.²¹ Military courts consistently fail to provide professionally trained interpreters, impeding the ability of the defendant to understand the proceedings and legal documents attached to the cases.²² Addameer’s on-the-ground experience shows that lawyers representing Palestinian detainees are regularly subject to movement restrictions and denied permission to meet with their clients.²³ Palestinian detainees and their lawyers are routinely denied access by the courts to key case documents, including evidence used against the detainee, on account of “confidentiality” concerns.²⁴ The lack of access to such information denies detainees and their legal counsel the ability to prepare an adequate defense and

¹⁶ Order Regarding Security Directives [Consolidated Version] (Judea and Samaria) (No. 1651), art. 37, <http://www.militarycourtwatch.org/files/server/MO%201651%20.pdf>.

¹⁷ *Id.*, art. 38.

¹⁸ The Order Regarding Security Provisions states, “If a trial does not begin within 60 days, the detainee must be brought before a Military Court of Appeals judge who will order his or her release unless the judge believes that the circumstances which justified the original detention persist. In the case of a defendant charged with security offenses, if the trial does not end within 18 months, or one year if the defendant is a minor, or if the case involves a non-security related offense, the suspect will be brought before a Military Court of Appeals judge, who will order his or her release unless the judge believes continued detention is justified. In this case, the judge may extend the detention by six months (or three months in the case of a minor). The judge may continue to extend the detention in subsequent hearings.”

¹⁹ Order Regarding Security Directives [Consolidated Version] (Judea and Samaria) (No. 1651), arts. 58-59, https://www.nevo.co.il/law_html/law65/666_027.htm.

²⁰ On September 1, 2021, the Israeli Supreme Court handed down a decision confirming that only Palestinian homes can be raided by the Israeli military without a warrant (Military Court Watch, “Israeli High Court confirms only Palestinian homes can be entered without a warrant,” 6 October 2021, <http://www.militarycourtwatch.org/page.php?id=316TyVgssCa1576758AcoFf14Rge5>). The decision is available in Hebrew at <https://s3.eu-west-1.amazonaws.com/files.yesh-din.org/FHE+petition+March+2020/בגדו+בגדו+בגדו+בגדו.pdf>.

²¹ Addameer, “In the case of The Palestinian People vs. Military Courts,” March 2021, <https://www.addameer.org/node/4318>.

²² *Id.*

²³ Addameer, “In the case of The Palestinian People vs. Military Courts,” March 2021, <https://www.addameer.org/node/4318>.

²⁴ *Id.*; B’Tselem, “Presumed Guilty: Remand in Custody by Military Courts in the West Bank,” June 2015, https://www.btselem.org/download/201506_presumed_guilty_eng.pdf; *see also* Human Rights Watch, “Born Without Civil Rights,” December 2019, <https://www.hrw.org/report/2019/12/17/born-without-civil-rights/israels-use-draconian-military-orders-repress#>.

often conceals actions by Israeli military interrogators, including torture and ill-treatment.²⁵ Notably, Palestinians tried in Israeli military courts have historically faced a conviction rate of about 99%.²⁶

The denial of Palestinians' rights to due process and the absence of fair trial guarantees stand in stark violation of international humanitarian and human rights law, including fundamental guarantees under Protocol I to the Geneva Conventions, widely considered to constitute customary international law.²⁷ They further contravene Israel's obligations under Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which require that individuals be informed of the reasons for their arrest, mandate a fair hearing by an independent, impartial, and competent court established by law, and guarantees various due process rights, such as the right to presumed innocence, adequate time and facilities to prepare for a defense, and the right to translation.²⁸

- **Systematic and Widespread Use of Administrative Detention**

Israel appropriated a British colonial practice to put in place a system of arbitrary arrests under "administrative detention."²⁹ Administrative detention is defined as the indefinite detention of individuals without a trial or charge, on the grounds that they may pose a "security threat" in the

²⁵ Addameer, "In the case of The Palestinian People vs. Military Courts," March 2021, <https://www.addameer.org/node/4318>. See also, Addameer, "Cell No. 26: A Study on the Use of Torture against Palestinian Prisoners in Israeli Interrogation Centers," 13 August 2022, <https://www.addameer.org/media/4821>

²⁶ Defence for Children International, Khaled Quzmar, "Israel's Detention of Palestinian Children is an Outrage to Humanity," 29 September 2021, <https://defenceforchildren.org/israels-detention-of-palestinian-children-is-an-outrage-to-humanity/>; B'Tselem, "Minors in Jeopardy: Violation of the Rights of Palestinian Minors by Israeli Military Courts, March 2018, https://www.btselem.org/sites/default/files/publications/201803_minors_in_jeopardy_eng.pdf; Haaretz, Chaim Levinson, "Nearly 100% of All Military Court Cases in West Bank End in Conviction, Haaretz Learns," 29 November 2011, <https://www.haaretz.com/1.5214377>.

²⁷ Jonathan Cuénoud, "40th Anniversary of the Additional Protocols of the 1977 of the Geneva Conventions of 1949," EJIL:TALK! (Jun. 8, 2017), <https://www.ejiltalk.org/40th-anniversary-of-the-additional-protocols-of-1977-of-the-geneva-conventions-of-1949/>.

²⁸ UN General Assembly, ICCPR, 16 December 1966, arts. 9, 14 (hereinafter "ICCPR"); see also Human Rights Committee, General Comment 32, CCPR/C/GC/32 §30, 32-33, 38, 40.

²⁹ The use of administrative detention in Israel-Palestine dates to the time of the British Mandate following World War I. In 1945, the British authorities published a collection of laws under the heading of Defense (Emergency) Regulations, 1945. These regulations essentially established a "police state" and permitted the Mandatory government to detain individuals long-term without trial. For three years from 1982 until 1985, Israel ceased its practice of administrative detention in the Occupied Palestinian Territory. It is notable, however, that during this three-year period, Israel did not repeal the military order authorizing administrative detention and Israeli authorities used administrative *control* orders to confine Palestinians to their towns or villages (see Amnesty International, "Starved of Justice: Palestinians Detained Without Trial by Israel," 2012, at 11, https://www.amnesty.nl/content/uploads/2016/12/1206_rapportisrael1.pdf?x32866). Later in 1985, for the purpose of "clamp[ing] down on terrorism and incitement, the Israeli military commander reintroduced the system of administrative detention, which remains in force until today (see Emma Playfair, "Administrative Detention in the Occupied West Bank," 1986, at 1, https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Administrative_Detention_in_the_Occupied_West_Bank.pdf).

future.³⁰ As of October 2022, Israeli occupation authorities hold nearly 800 Palestinians in administrative detention including six children, two women, and three Palestinian Legislative Council members.³¹

Administrative detention in the occupied West Bank is authorized under Military Order 1651, which empowers the Israeli military commander to detain an individual, without charge, for up to six months if the commander “has reasonable grounds” to believe that “regional or public security” requires such detention.³² The Order does not define the term “security,” nor does it require disclosing specific charges or reasons for the arrest.³³ It does not limit the number of renewal orders issued against an individual, thus providing the possibility of *indefinite* arbitrary detention without charges or trial.³⁴ Military Order 1651 requires that an administrative detainee be brought before a “judicial review” within eight days of arrest, to approve or cancel the order, or reduce the period of detention.³⁵ However, this judicial review operates within a military court system that lacks separation of power and due process guarantees,³⁶ and military judges generally defer to the military prosecutor, routinely affirming and/or extending administrative detention orders.³⁷

Administrative detainees are not charged with specific offenses and cannot access the information used against them, which is often deemed “secret information”— a military judge can rely upon when confirming the order but detainees and their attorney are barred from viewing.³⁸ A judge’s

³⁰ Addameer, “Administrative Detention in the Occupied Palestinian Territory: A Legal Analysis Report,” Fourth Edition, 2016, at 5,

https://www.addameer.org/sites/default/files/publications/administrative_detention_analysis_report_2016.pdf; Human Rights Watch, “Submission to the Universal Periodic Review of Israel,” 2022, <https://www.hrw.org/news/2022/10/11/submission-universal-periodic-review-israel>; B’Tselem, Administrative Detention, https://www.btselem.org/administrative_detention.

³¹ Addameer, Statistics, 10 Oct. 2022, <https://www.addameer.org/statistics>; Human Rights Watch, “Submission to the Universal Periodic Review of Israel,” October 2022, <https://www.hrw.org/news/2022/10/11/submission-universal-periodic-review-israel>; see also HaMoked: Center for Defence of the Individual, “4,623 “Security” Inmates are Held in Prisons inside Israel,” <https://hamoked.org/prisoners-charts.php>.

³² Order Regarding Security Directives [Consolidated Version] (Judea and Samaria) (No. 1651), art. 285(A), https://www.nevo.co.il/law_html/law65/666_027.htm.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*, art. 287(A).

³⁶ See Sharon Weill, “The Judicial Arm of the Occupation: The Israeli Military Courts in the Occupied Territories,” 89 INT’L REV. RED CROSS 395, 400 (Jun. 2007); see also U.N. Human Rights Council, *Summary of the Discussions Held During the Expert Consultation on the Administration of Justice Through Military Tribunals and the Role of the Integral Judicial System in Combating Human Rights Violations*, U.N. Doc. A/HRC/28/32 at para. 25-27 (noting that members of the U.N. Working Group on Arbitrary Detention have found military tribunals, when used to try civilians, constitute a violation of the ICCPR and that, more specifically, a military judge “who is neither professionally nor culturally independent was likely to produce an effect contrary to that afforded by guarantees of a fair trial.”); Addameer, “The Israeli Military Court System,” July 2017, https://www.addameer.org/israeli_military_judicial_system/military_courts.

³⁷ For instance, according to numbers from Addameer’s Legal and Documentation unit, from June 2022 to September 2022, the number of renewed detention orders only increases from 95, 126, 129, 143 respectively. See, e.g., case of Thabet Nassar, <https://www.addameer.org/sites/default/files/campaigns/Thabet.pdf>.

³⁸ See, e.g., Decision of the U.N. Working Group, Opinion No. 60/2021 concerning Amal Nakhleh (Israel), ¶ 45 (“Finally, although Mr. Nakhleh appeared before a court upon arrest and was subsequently administratively detained on 25 January 2021 by a decision of a military court that he was able to appeal, the Working Group notes that Mr.

examination of this privileged information takes place *ex parte* (without the detainees or their attorney present) and often features an explanation of the information by security personnel from Israel's intelligence apparatus.³⁹ Because article 186 of Military Order 1651 permits the use of "secret evidence," judges in most cases decide a case "only by familiarizing [themselves] with a summary of the secret information," and "without examining the information's authenticity."⁴⁰ The lack of specific charges and inability to access evidence or basis for detention such information hampers individuals' ability to challenge their arbitrary detention or mount an effective defense.⁴¹

While administrative detention orders may be challenged before the Israeli Supreme Court, the Court regularly shows great deference to the security determinations of the Israeli military forces.⁴² As of 2021, the Supreme Court has reviewed hundreds of administrative detention orders, but *only one* case has resulted in an order's revocation.⁴³ In the first decade of this century, the Supreme Court did not order any detainee released in any of the over three hundred cases it reviewed, 95% of which were based on secret information.⁴⁴ In this context, the judicial system does not serve as a check on executive action by the Israeli occupation forces, but rather as an enabling mechanism to deprive Palestinians of their rights.

Palestinian residents of East Jerusalem are also subject to administrative detention under the Israeli Emergency Powers Law (Detention) (1979).⁴⁵ The law states that the Minister of "Defense" can order an indefinitely renewable six-month detention should he have "reasonable cause to believe that reasons of state security or public security require [it.]"⁴⁶ The Law requires judicial review to

Nakhleh was never provided with the charges against him, as established above. This means that his right to challenge the legality of his detention . . . was also violated."); David Kretzmer and Yael Ronen, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Palestinian Territories*, (2021) at 329-336.

³⁹ See, e.g., Shiri Krebs, *Lifting the Veil of Secrecy: Judicial Review of Administrative Detentions in the Israeli Supreme Court*, 45 VAND. J. TRANSNAT'L L. 642, 683 (May 2012).

⁴⁰ Addameer, "On Administrative Detention," July 2017, https://www.addameer.org/israeli_military_judicial_system/administrative_detention.

⁴¹ Addameer, "In the case of The Palestinian People vs. Military Courts," March 2021, <https://www.addameer.org/node/4318>.

⁴² See Shiri Krebs, "Lifting the Veil of Secrecy: Judicial Review of Administrative Detentions in the Israeli Supreme Court," 45 VAND. J. TRANSNAT'L L. 639, 675 (May 2012). The Israeli Supreme Court maintains discretion to accept or reject any petition, with a limited standard of review in comparison to the "regular" appeal process, thus preventing many petitions from reaching review. For a comprehensive discussion of the Israeli Supreme Court's procedures and jurisprudence in relation to the Occupied Palestinian Territories (see Kretzmer, David and Ronen, Yael, *The Occupation of Justice*, (2021)).

⁴³ David Kretzmer and Yael Ronen, *The Occupation of Justice* (2021) at 333. In the first decade of the twenty-first century, the Supreme Court did not order a *single detainee* released in any of the over three hundred cases it reviewed, 95% of which were based on secret evidence (Shiri Krebs, "Lifting the Veil of Secrecy: Judicial Review of Administrative Detentions in the Israeli Supreme Court," 45 VAND. J. TRANSNAT'L L. 642, 683 (May 2012), at 672).

⁴⁴ Shiri Krebs, "Lifting the Veil of Secrecy: Judicial Review of Administrative Detentions in the Israeli Supreme Court," 45 VAND. J. TRANSNAT'L L. 642, 683 (May 2012).

⁴⁵ While the law states that it "shall only apply in a period in which a state of emergency exists," Emergency Powers (Detention) Law, 5739-1979; Israel's extension of its emergency state "is repeated yearly." Haaretz, "Knesset Panel Votes to Extend Israel's State of Emergency," 12 July 2018, <https://www.haaretz.com/israel-news/2018-07-12/ty-article/premium/70-years-later-state-of-emergency-bill-extended-yet-again/0000017f-e18e-df7c-a5ff-e3fea5a20000>.

⁴⁶ Emergency Powers (Detention) Law, 5739-1979, art. 2.

confirm detention orders within 48 hours of arrest, and periodical review after three months of detention.⁴⁷ As of October 2022, 400 Palestinians from East Jerusalem are held in Israeli prisons, and around 14 are held under administrative detention.⁴⁸

Similarly, Gaza residents are subject to detention without trial under Israel's Internment of Unlawful Combatants Law.⁴⁹ The law allows the chief of staff of the Israeli military to detain any foreign national believed to be participating in "hostile acts against the state of Israel" or belonging to "a force perpetrating hostile acts against the State of Israel."⁵⁰ It provides very little protection to internees and internment under this law is not limited in time and ends only when the chief of staff believes one of the conditions for internment ceases to exist.⁵¹

Importantly, while international humanitarian law permits detaining individuals in occupied territories through administrative detention, the Fourth Geneva Convention and the ICRC commentary thereto emphasize that administrative detention is an *exceptional* measure, whereas Israel's widespread use of administrative detention since 1967 cannot be credibly characterized as exceptional. The Fourth Geneva Convention and Protocol I further require Israel, as the occupying power, to provide various procedural safeguards over administrative detention, including a court or board to which detainees can appeal their detentions, as well as periodic review of the administrative detention orders.⁵² While Israeli military orders *technically* provide for review procedures,⁵³ in practice and as discussed above, the framework of partial military courts and secrecy of evidence render these safeguards to be inadequate and ineffective in protecting Palestinian detainees' most basic rights.

The Israeli military's systematic departures from basic due process rights in its practice of administrative detention of Palestinians have led the UN Working Group on Arbitrary Detention to find that many cases of administrative detention in the occupied West Bank constitute arbitrary detention.⁵⁴ In addition to the shortcomings enumerated above, the Working Group has also found

⁴⁷ *Id.*, arts. 4-5.

⁴⁸ Addameer, Statistics, 10 October 2022, <https://www.addameer.org/statistics>.

⁴⁹ Human Rights Watch, "Gaza: 'Unlawful Combatants Law' Violates Rights," 2017, <https://www.hrw.org/news/2017/03/01/gaza-unlawful-combatants-law-violates-rights>. See also B'Tselem and HaMoked, "Without Trial: Administrative detention of Palestinians by Israel and the Incarceration of Unlawful Combatants Law," 2009, https://www.btselem.org/sites/default/files/sites/default/files2/publication/200910_without_trial_eng.pdf.

⁵⁰ Internment of Unlawful Combatants Law, 5762-2002, section 2.

⁵¹ B'Tselem and HaMoked, "Without Trial: Administrative detention of Palestinians by Israel and the Incarceration of Unlawful Combatants Law," 2009, at 50-51, https://www.btselem.org/sites/default/files/sites/default/files2/publication/200910_without_trial_eng.pdf.

⁵² See Fourth Geneva Convention, art. 43.

⁵³ See Fourth Geneva Convention, art. 81.

⁵⁴ See, e.g., Decision of the U.N. Working Group, Opinion No. 60/2021 concerning Amal Nakhleh, 2021, p. 11. The Working Group on Arbitrary Detention further explains that administrative detention amounts to arbitrary detention when one of five circumstances is present: (1) Where there is no legal basis for the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence); (2) When the deprivation of liberty results from the exercise of certain civil and political rights, such as freedom of opinion, expression, or assembly; (3) When the total or partial non-observance of the international norms relating to the right of a fair trial is of such gravity as

it relevant that administrative detention is often used to elongate a person's incarceration after that person has completed a criminal sentence, or in lieu of a criminal trial when there is insufficient evidence to warrant a conviction.⁵⁵ It has also noted that, because of the length of many administrative detentions, the detainees should be afforded full trial rights.⁹³

II. Systematic Practice of Torture and Ill-Treatment, Inhumane Detention Conditions, and Illegal Prison Transfers

Palestinian prisoners and detainees are interrogated and held in military-run detention centers and prisons, where human rights organizations have documented prevalent practices of torture and ill-treatment, including deliberate medical neglect, harsh detention conditions, and brutal prison raids.⁵⁶ Upon arrest and throughout the period of transfer, Israeli Occupation Forces perpetrate various forms of torture and ill-treatment against Palestinians, including physical assault, invasive body searches,⁵⁷ sexual and gender-based violence (SGBV), and positional torture, that carry on and escalate throughout to also include psychological torture,⁵⁸ and threats of family arrest and harassment.⁵⁹

to give the deprivation of liberty an arbitrary character; (4) When asylum seekers, immigrants, or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy; or (5) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, or any other status that aims towards or can result in ignoring the equality of human beings. UN Working Group on Arbitrary Detention, Revised methods of work of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/36/38, 13 July 2017, ¶ 8,

https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session33/Documents/A_HRC_33_66_E.docx.

⁵⁵ Addameer, "Cell No. 26: A Study on the Use of Torture against Palestinian Prisoners in Israeli Interrogation Centers," 13 August 2022, <https://www.addameer.org/media/4821>. See also, Decision of the U.N. Working Group, Opinion No. 60/2021 concerning Amal Nakhleh, 2021, p. 11. See also, case of Bashir Khairy, <https://www.addameer.org/news/4611>

⁵⁶ Addameer, "Annual Violations Report 2019," 2020,

https://www.addameer.org/sites/default/files/publications/v2020_online.pdf; Addameer, "Torture and Ill-Treatment Beyond Interrogation," March 2021,

[https://www.addameer.org/sites/default/files/publications/Torture%20and%20Ill-](https://www.addameer.org/sites/default/files/publications/Torture%20and%20Ill-Treatment%20Beyond%20Interrogation_0.pdf)

[Treatment%20Beyond%20Interrogation_0.pdf](https://www.addameer.org/sites/default/files/publications/Torture%20and%20Ill-Treatment%20Beyond%20Interrogation_0.pdf); Addameer, "The Systematic Use of Torture and Ill-treatment at Israeli Interrogation Centers ... Cases of Torture Committed at Al-Mascobiyya Interrogation Center," 23 January 2020, <http://www.addameer.org/publications/systematic-use-torture-and-ill-treatment-israeli-interrogation-centers-cases-torture>; Al-Haq, "Urgent Appeal for the Immediate Release of Human Rights Defender, Ms. Shatha Odeh Abu Fannouneh," 23 July 2021, https://www.alhaq.org/cached_uploads/download/2021/07/24/23-july-2021-ms-odeh-urgent-appeal-1627128914.pdf.

⁵⁷ Breiner Josh, "It Started With a Palestinian Woman's Arrest. It Ended With Israeli Officers Investigated for Rape," *Haaretz*, 21 April 2021. <https://www.haaretz.com/israel-news/.premium.HIGHLIGHT.MAGAZINE-it-started-with-palestinian-s-arrest-it-ended-with-israeli-officers-probed-for-rape-1.9737766>

⁵⁸ Addameer Prisoner Support and Human Rights Association, "I've Been There: A Study of Torture and Inhumane Treatment in Al-Moscobiyeh Interrogation Center," March 2018.

https://www.addameer.org/sites/default/files/publications/al_moscobiyeh_report_0.pdf

⁵⁹ Yara Hawari, Al Shabaka, "The Systematic Torture of Palestinians in Israeli Detention" *Al-Shabaka*, 28 November, 2019, <https://al-shabaka.org/briefs/the-systematic-torture-of-palestinians-in-israeli-detention/>;

Addameer, "Torture and Ill-Treatment Beyond Interrogation," March 2021,

[https://www.addameer.org/sites/default/files/publications/Torture%20and%20Ill-](https://www.addameer.org/sites/default/files/publications/Torture%20and%20Ill-Treatment%20Beyond%20Interrogation_0.pdf)

[Treatment%20Beyond%20Interrogation_0.pdf](https://www.addameer.org/sites/default/files/publications/Torture%20and%20Ill-Treatment%20Beyond%20Interrogation_0.pdf); B'Tselem, "Routine Torture: painful binding, isolation from the

Practical challenges to accountability—specifically the culture of impunity at the heart of the Israeli occupation, domestic legislation, and judicial rulings derogating prohibitions of torture—form the bulk of all challenges to accountability.⁶⁰ Between 2019-2021, Addameer documented 238 cases of torture among Palestinian prisoners, filing over 25 complaints against the perpetrators to the specialized Israeli bodies (*MAVTAN*). None of the complaints were opened for investigation, clearly demonstrating the overt entanglement of the Israeli accountability mechanisms, including the judicial system, with the Israeli Security Agency (*ISA/Shin Bet*).

Palestinian prisoners face overcrowding, lack of basic amenities, including shelter from extreme weather, and cramped living conditions.⁶¹ Earlier this year, it was reported that Palestinian detainees were suffering through cold conditions due to lack of proper heating in prisons and insufficient winter blankets.⁶² Palestinian prisoners are often held punitively in isolation and are subject to medical negligence, with multiple reports of failure by Israeli Prison Services to provide proper medical care.⁶³ Moreover, Israeli authorities deny Palestinian prisoners the right to continue their education.⁶⁴ Israel's inadequate prison conditions and the systematic use of torture and ill-treatment violate its obligations under international humanitarian law, including under Articles 31, 32, 81, 85, and 94 of the Fourth Geneva Convention.⁶⁵

outside world and deprivation of food, drink, and toilet access: This is what the ISA's "interrogation system" looks like," 23 May 2022,

https://www.btselem.org/torture/20230523_painful_binding_isolation_and_deprivation_of_food_drink_and_toilet_access_in_isa_interrogation_system; See also Save the Children, "Defenseless: The impact of the Israeli military detention system on Palestinian children," 2020, https://www.savethechildren.org.uk/content/dam/gb/reports/defenceless_impact_of_detention_on_palestinian_children.pdf.

⁶⁰ UN OHCHR, "Special Rapporteurs Call on Israel to End Impunity for Torture and Ill-treatment – Press Release," 8 February 2021, <https://www.un.org/unispal/document/special-rapporteurs-call-on-israel-to-end-impunity-for-torture-and-ill-treatment-un-experts/>

⁶¹ "Joint Written Statement Submitted by Al-Haq, Law in the Service of Man, Al-Mezan Centre for Human Rights, Cairo Institute for Human Rights Studies, Palestinian Centre for Human Rights," U.N. Doc. A/HRC/46/NGO/90 at page 2; see Shatha Hammad, Middle East Eye, "Slow Death': Health of Cancer-Stricken Palestinian Deteriorates in Israeli Custody," 8 January 2022, <https://www.middleeasteye.net/news/palestinian-prisoner-health-cancer-slow-death-israeli-custody>; Addameer, "Deterioration in Detention Conditions: Suffocating Prisoners." 29 October 2018, <https://www.addameer.org/publications/deterioration-detention-conditions-suffocating-prisoners>.

⁶² See "Israel Bars Entry of Warm Clothes into Unheated Cells of Palestinian Detainees," *Middle East Eye*, 27 January 2022, <https://www.middleeastmonitor.com/20220127-israel-bars-entry-of-warm-clothes-into-unheated-cells-of-palestinian-detainees/>.

⁶³ "Joint Written Statement Submitted by Al-Haq, Law in the Service of Man, Al Mezan Centre for Human Rights, Cairo Institute for Human Rights Studies, Palestinian Centre for Human Rights," U.N. Doc. A/HRC/46/NGO/90 at page 2; see also Shatha Hammad, "Slow Death': Health of Cancer-Stricken Palestinian Deteriorates in Israeli Custody," *Middle East Eye*, 8 January 2022, <https://www.middleeasteye.net/news/palestinian-prisoner-health-cancer-slow-death-israeli-custody>.

⁶⁴ See Addameer, "Opened-Books on Cuffed-Hands: The Cultural and Education Life of Palestinian Political Prisoners in Israeli Prisons and Detention Centers," 29 October 2020, <https://www.addameer.org/publications/opened-books-cuffed-hands-cultural-and-educational-life-palestinian-political-prisoners>

⁶⁵ Fourth Geneva Convention, arts. 31, 32, 81, 85.

Israel systematically forcibly transfers Palestinian prisoners and detainees out of the occupied West Bank to prisons and detention centers located inside the Green Line. Out of 17 Israeli occupation prisons, only one is located inside the designated oPt.⁶⁶ The illegal forcible transfer of protected persons from occupied territory into the occupying state constitutes unlawful deportation as per Article 49 of the Fourth Geneva Convention.⁶⁷ These illegal forcible transfers also severely restrict prisoners' families' ability to visit the prisoners because the Israeli occupation authorities consistently refuse to issue visitation permits to the families, violating Article 116 of the Fourth Geneva Convention.⁶⁸ Permits are regularly denied on "security" grounds, only immediate family members are ever even considered, and even when visits are granted, they only occur every two weeks for 45 minutes yet require families to spend massive amounts of time and face innumerable obstacles to travel short distances.⁶⁹ Furthermore, Israeli occupation forces often engage in other harsh, collective punishment measures such as demolishing the homes of prisoners,⁷⁰ arresting family members,⁷¹ or even detaining family members as hostages.⁷²

III. Criminalization of Fundamental Palestinian Collective and Individual Rights Guaranteed under International Law

According to data provided by the Israeli military court system in 2017, most charges Palestinians face relate to "security" violations, public disturbance, and entry to Israel/transit infractions. Of the 10,445 Palestinians indicted that year alone, nearly 20% were charged for "security" violations, 10% for public disturbances, and 67% for transit-related offenses.⁷³ Contrary to the Israeli characterization as "security" violations, the most common cases Addameer has documented against Palestinians in the West Bank in recent years pertain directly to affiliation with

⁶⁶ Addameer Prisoner Support and Human Rights Association, "Deportation As Policy: Palestinian Prisoners & Detainees in Israeli Detention," 18 April 2016, <https://www.addameer.org/publications/deportation-policy-palestinian-prisoners-detainees-israeli-detention>

⁶⁷ Amnesty International, "Israel's Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity," 2022, https://www.amnestyusa.org/endapartheid/?gclid=Cj0KCQjwsdiTBhD5ARIsAIPW8CJ4I6mGgpEC3qEXhaXBaskcs5E3YcR2C37o5V-lpCgvOq5gHp27ilYaAoY4EALw_wcB&gclsrc=aw.ds.

⁶⁸ Fourth Geneva Convention, art 116.

⁶⁹ Addameer, "Family Visits," (July 2017), https://www.addameer.org/key_issues/family_visit.

⁷⁰ Addameer, "Annual Violations Report 2020," 10 February 2022, at 90, <https://www.addameer.org/sites/default/files/publications/Annual%20Violation%20Report%20of%20Palestinian%20Prisoners%20and%20Detainees%27%20Rights%20in%20Israeli%20Occupation%20Prisons%202020.pdf>.

⁷¹ Addameer, "Annual Report 2019," 1 January 2021, https://www.addameer.org/sites/default/files/publications/v2020_online.pdf; Addameer, "Defenders Suppressed: The Price of Defending Human Rights," 27 February 2019, <https://www.addameer.org/publications/defenders-suppressed-price-defending-human-rights>.

⁷² Addameer, "Annual Violations Report 2018," 22 September 2019, at 66, https://www.addameer.org/sites/default/files/publications/for_webtqrry_r_lnthkt_lnhyy_lnjlyzy.pdf.

⁷³ Addameer, "Annual Report 2017," 17 April 2018, at 71, https://www.addameer.org/sites/default/files/publications/web_eng_book.pdf.

organizations deemed “unlawful” by Israeli military orders, incitement on social media, and entering Israel without a permit.⁷⁴

Detention for Affiliation with an “Unlawful Association”

Israeli occupation authorities utilize military orders to criminalize and suppress Palestinian civil society organizations, political parties, and even university student groups. For example, Military Order 101 of 1967 includes language prohibiting “support to a hostile organization,” to ban all activity that demonstrates sympathy for an organization Israel deems illegal.⁷⁵ The Order deems criminal a massive umbrella of civic activities in relation to unlawful groups, such as organizing and participating in protests, taking part in assemblies, waving flags and other political symbols, and distributing materials. This is particularly significant considering that since 1967, the Israeli occupation authorities have classified 411 Palestinian organizations as “unlawful,” or “terrorist” associations.⁷⁶ Members of these organizations can be criminally charged for their membership in and activities with the groups. Among the classified organizations are all major Palestinian political parties and charitable organizations. Notably, on 19 October 2021, the Israeli Minister of “Defense” designated six Palestinian NGOs as “terrorist organizations” under its broad and vague 2016 Counter-Terrorism Law. This was later extended into the oPt, declaring the organizations to be “unlawful” under military orders published on 3 November 2021. Such arbitrary and unlawful attacks place the organizations at imminent risk of arrest and prosecution. As such, these Israeli military orders directly target and silence Palestinian human rights defenders and activists.⁷⁷

Notably, On August 2020, the Israeli military commander designated a Birzeit University leftist student group called the Democratic Progressive Student Pole (DPSP) as an “unlawful association.”⁷⁸ In the 2019-2020 academic year at Birzeit alone, Israeli occupation forces detained

⁷⁴ Since 1967, Israel’s “Defense” Ministry has classified 411 Palestinian organizations as “hostile,” “unlawful,” or “terrorist” associations. Human Rights Watch, “Born Without Civil Rights: Israel’s Use of Draconian Military Orders to Repress Palestinians in the West Bank,” 2019, at 37-8,

https://www.hrw.org/sites/default/files/report_pdf/palestine1219_web_0.pdf; See also Addameer, “Israeli Military Orders Relevant to the Arrest, Detention and Prosecution of Palestinians,” July 2017, https://www.addameer.org/israeli_military_judicial_system/military_orders; Addameer, “Annual Report 2019,” 1 January 2021, at 77-84, https://www.addameer.org/sites/default/files/publications/v2020_online.pdf; Addameer, “Defenders Suppressed: The Price of Defending Human Rights,” 27 February 2019, <https://www.addameer.org/publications/defenders-suppressed-price-defending-human-rights>.

⁷⁵ Addameer, “Israeli Military Orders Relevant to the Arrest, Detention and Prosecution of Palestinians,” July 2017, https://www.addameer.org/israeli_military_judicial_system/military_orders.

⁷⁶ Human Rights Watch, “Born Without Civil Rights: Israel’s Use of Draconian Military Orders to Repress Palestinians in the West Bank,” 2019, at 37-8, https://www.hrw.org/sites/default/files/report_pdf/palestine1219_web_0.pdf.

⁷⁷ See Addameer, “Annual Report 2019,” 1 January 2021, at 77-84 https://www.addameer.org/sites/default/files/publications/v2020_online.pdf; Addameer, “Defenders Suppressed: The Price of Defending Human Rights,” 27 February 2019, <https://www.addameer.org/publications/defenders-suppressed-price-defending-human-rights>.

⁷⁸ Addameer, “Israel’s Designation of the Democratic Progressive Student Pole an “Unlawful Association” is Another Manifestation of its Apartheid Regime,” 8 December 2020, <https://www.addameer.org/news/4259>.

at least 74 students for involvement with designated university groups such as DPSP.⁷⁹ Even prior to the DPSP designation, within a single month, military forces arrested female Birzeit students Layan Kayad, Elyaa Abu Hijla, and Ruba Asi, who have served from 11 months to 21 months in Damon prison, for affiliation with “unlawful” groups.⁸⁰ Similarly, politicians and human rights defenders working with designated organizations are consistently arrested under these orders, such as Mahmoud Nawaja, General Coordinator of BDS in Palestine, Addameer attorney Salah Hammouri,⁸¹ as well as representatives on the Palestinian Legislative Council.⁸²

Detention for “Incitement on Social Media”

Israeli occupation authorities charge dozens of Palestinians, including students, human rights defenders, politicians, and journalists, each year for “incitement” against the occupation on social media.⁸³ Under Article 251 of Military Order 1651, incitement is broadly defined to include “a call to commit an act of violence or terror, or praise, words of approval, encouragement, support or identification with an act of violence or terror,”⁸⁴ thus enabling the targeting of Palestinians simply for expressing political views on social media.⁸⁵ Examples of the systematic targeting of Palestinian political expression include the detention of Raghad Shamroukh for sharing a picture of a Palestinian martyr on his personal account with a Quranic verse; of Birzeit student Qussai Masalmeh for sharing pictures and quotes in support of a political party; and of Mahmoud Najim Awais for sharing pictures of Palestinian martyrs, politicians, and student groups when he was a child.⁸⁶

Israel’s detention system weaponizes the occupation’s legal system in a manner that uniquely harms Palestinians’ rights to freedom of expression and peaceful assembly. Israeli occupation

⁷⁹ Birzeit University, “Statement about the Israeli occupation’s arrest of Birzeit University students, faculty members” (23 January 2020), <https://www.birzeit.edu/en/news/statement-about-israeli-occupations-arrest-birzeit-university-students-faculty-members>.

⁸⁰ Addameer, “LPHR and Addameer Submit a Joint Complaint to the UN WGAD on the Ongoing Israeli Military Detention of Three Palestinian Female Birzeit University Students,” 7 October 2020, <https://www.addameer.org/news/lphr-and-addameer-submit-joint-complaint-un-wgad-ongoing-israeli-military-detention-three>.

⁸¹ Addameer, “Annual Violations Report 2020,” 10 February 2022, at 82, <https://www.addameer.org/sites/default/files/publications/Annual%20Violation%20Report%20of%20Palestinian%20Prisoners%20and%20Detainees%27%20Rights%20in%20Israeli%20Occupation%20Prisons%202020.pdf>.

⁸² Addameer, “Arrest of Legislative Council Members,” November 2018, https://www.addameer.org/the_prisoners/plc_member.

⁸³ Addameer, “Annual Report 2019,” 1 January 2021, at 59-61, https://www.addameer.org/sites/default/files/publications/v2020_online.pdf

⁸⁴ Order Regarding Security Directives [Consolidated Version] (Judea and Samaria) (No. 1651), art. 251(A), https://www.nevo.co.il/law_html/law65/666_027.htm.

⁸⁵ See Addameer, “Arrests on Charges of ‘Incitement’ on Social Media Platforms and Israeli Government Policy: A Facebook Case Study,” 7 January 2019, <https://www.addameer.org/publications/arrests-charges-“incitement”-social-media-platforms-and-israeli-government-policy>.

⁸⁶ Addameer, “Annual Report 2019,” 1 January 2021, at 59-61, https://www.addameer.org/sites/default/files/publications/v2020_online.pdf; Addameer, “Defenders Suppressed: The Price of Defending Human Rights,” 27 February 2019, <https://www.addameer.org/publications/defenders-suppressed-price-defending-human-rights>.

forces routinely arrest and detain Palestinian political leaders and activists, on charges that range from critical online speech to participation in political protests and membership in terrorist organizations, often without clear basis or evidence,⁸⁷ in clear violation of the protections enshrined in Articles 19 and 21 of the ICCPR, as affirmed by the Human Rights Committee and multiple UN experts.⁸⁸

IV. Israeli Occupation Forces' Arbitrary Arrest Process

Israeli occupation forces undertake daily arrests and raids targeting individuals and communities as a form of collective punishment against Palestinians struggling for their rights and freedoms. For example, during the Palestinian Unity Uprising in May 2021, arrests reached a high of 3,100 a month across the West Bank and Gaza, with approximately 2,000 more in the territories occupied since 1948.⁸⁹ In 2021, the city with the highest rate of Palestinian political arrests was Jerusalem and its suburbs, with nearly double that of the rest of the country at 2,784, including 750 children and 120 women.⁹⁰ West Bank cities such as Hebron and Jenin also experienced significant rises in arrests during 2021. Significantly, the occupation authorities specifically escalated their practices of targeted arrests in Palestinian towns and refugee camps near illegal Israeli settlements in the occupied West Bank.⁹¹

Notably, most occupation forces' raids and arrests occur in the early hours of the morning. Israeli occupying soldiers routinely break into Palestinian homes and raid residents and arrest them while they are asleep and defenseless, in addition to carrying out raids and mass arrests at places of worship, during solidarity demonstrations, and even hospitals.⁹² Among those targeted are former prisoners often held without charge or trial under administrative detention, students and

⁸⁷ See, e.g., Report of the United Nations High Commissioner for Human Rights on the Human rights situation in the Occupied Palestinian Territory Including East Jerusalem, A/HRC/37/42, 21 February 2018, <https://www.ohchr.org/EN/countries/MENARegion/Pages/PSSGHReports.aspx>.

⁸⁸ See Human Rights Committee, General Comment 37, CCPR/C/GC/37 §24-25, 27, 30, 37, 42, 51, 55, 71, 72, 74, <https://digitallibrary.un.org/record/3884725?ln=en>; Human Rights Committee, General Comment 34, CCPR/C/GC/34 §20, 23, 27-29, 30, 34, 35, 36, 45-47, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and>; Report of the United Nations High Commissioner for Human Rights on the Human rights situation in the Occupied Palestinian Territory Including East Jerusalem, A/HRC/37/42, 21 February 2018, <https://www.ohchr.org/EN/countries/MENARegion/Pages/PSSGHReports.aspx>.

⁸⁹ Addameer, "Prisoners' Institutions, مؤسسات الأسرى: الاحتلال اعتقل نحو (8000) فلسطيني/ة من الأراضي الفلسطينية خلال العام, 1 January 2022, <https://www.addameer.org/ar/media/4644>.

⁹⁰ *Id.*

⁹¹ For example, in September and October 2021, Israeli occupation forces targeted the village of Beita with closures of the entrance and exit routes to Beita, multiple early morning raids on the village, and mass arrests of residents, including 55 on October 14th alone. Further, the Israeli military punitively revoked work permits of residents working inside the Green Line and altered routes used protests, thus risking the safety of Beita residents (Al-Haq, "Joint Urgent Appeal to United Nations Special Procedures on Israeli Suppression of Palestinian Resistance at Jabal Sbeih Against Settlement Expansion," 6 November 2021, https://www.alhaq.org/cached_uploads/download/2021/11/06/urgent-appeal-beita-1636217746.pdf).

⁹² Addameer, "Mass Arrests and Detention Amidst the Escalation of Israeli Aggression against the Palestinian People," 20 May 2021, <https://www.addameer.org/media/4393>.

teachers/professors, politicians specifically during election periods, journalists, human rights defenders who are often targeted for re-arrest, and even children.⁹³

Israel's extensive and widespread use of administrative detention and mass arrests that target Palestinian freedom of expression, association, and resistance to the occupation undeniably illustrate the protracted and systematic perpetration of collective punishment as a tool of repression, control, and domination against the Palestinian people, in contravention of international humanitarian law, including Articles 33, 42, and 78 of the Fourth Geneva Convention.⁹⁴

V. Two-Tier Legal System in Violation of the International Prohibition of Racial Discrimination and Apartheid

The limited fair trial rights and due process guarantees available to Palestinians in military courts—particularly in cases of administrative detention—stand in sharp contrast to the constitutional guarantees that the Israeli juridical system affords to Jewish Israeli settlers who illegally reside in the West Bank.⁹⁵ This raises grave concerns about violations of the ICCPR, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Apartheid Convention, as a form of discrimination on the basis of national, ethnic, or social origin as a Palestinian.⁹⁶ As the Working Group on Arbitrary Detention has noted, “in practice, administrative detention on the basis of [Military Order 1651] is *particularly directed against Palestinians*.”⁹⁷ Throughout Israel's 55-year occupation of the West Bank, only a small number of Jewish Israeli settlers have ever been held in administrative detention.⁹⁸ In 2016, for example, there was a “high” of *three* Jewish Israelis being held in administrative detention, as compared, at the time, to approximately 700 Palestinians.⁹⁹

⁹³ A few of the many examples include Ayman Nasser (arrested in his home at 2:00am on 9 September 2018), Nader Al-Qaisi (arrested in his home at 2:00am on 30 October 2019), AL (a child arrested at their home in Awarta at 3:30am on 23 July 2017), brothers Ahmad and Mohammad Qasem (arrested in a raid of the Jenin refugee camp at 6:00am on 5 September 2020), and Raed al-Salhi (murdered during a raid/arrest in his home at 3:45am on 3 September 2017).

⁹⁴ Fourth Geneva Convention, arts.33, 42, 78. *See also* International Committee of the Red Cross, *Convention (IV) relative to the Protection of Civilian Persons in Time of War, Commentary of 1958* (12 August 1949), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=D794403E436F0823C12563CD0042CF9A>.

⁹⁵ *See, e.g.*, International Human Rights Clinic at Harvard Law School and Addameer, “Apartheid in the Occupied West Bank: A Legal Analysis of Israel's Actions,” 28 February 2022, <http://hrp.law.harvard.edu/wp-content/uploads/2022/03/IHRC-Addameer-Submission-to-HRC-COI-Apartheid-in-WB.pdf>.

⁹⁶ *See*, Decision of the UN Working Group, Opinion No. 34/2018 concerning Salah Hammouri (Israel), ¶ 43-44.

⁹⁷ Decision of the UN Working Group, Opinion No. 31/2017 concerning Omar Nazzal (Israel), ¶ 35 (emphasis added).

⁹⁸ Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (27 Apr. 2021), <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>.

⁹⁹ Yonah Jeremy Bob, *ANALYSIS: Administrative Detention is Not the Same for Jewish and Palestinian Terrorists*, Jerusalem Post (May 19 2016), <https://www.jpost.com/arab-israeli-conflict/analysis-administrative-detention-is-not-the-same-for-jewish-and-palestinian-terrorists-454360>.

The Human Rights Committee has also expressed concern over the “continuing practice of administrative detention of Palestinians,”¹⁰⁰ and over the “equal treatment for all persons within [Israel’s] territory and subject to its jurisdiction, regardless of their national or ethnic origin.”¹⁰¹ Furthermore, the CERD has “urge[d] the State party [Israel] to end its current practice of administrative detention, which is *discriminatory and constitutes arbitrary detention under international human rights law*.”¹⁰² The CERD has also expressed concern about the “existence in the OPT of two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand.”¹⁰³ Indeed, Israel’s use of administrative detention forms a key part of the “entirely separate legal systems and sets of institutions”¹⁰⁴ that are applied to Palestinians. This double standard is well-documented¹⁰⁵ and has led numerous international law experts and organizations to conclude that Israel’s practices and policies of arbitrary arrests in the occupied West Bank—including crimes of persecution and denial of fair trial guarantees—constitute a violation of the international prohibition of apartheid and amount to the crime of apartheid.¹⁰⁶

¹⁰⁰ CCPR, Concluding observations on the fourth periodic report of Israel, U.N. Doc. CCPR/C/ISR/CO/4, ¶ 10.

¹⁰¹ *Id.* ¶ 10.

¹⁰² Committee on the Elimination of Racial Discrimination, Concluding Observations on the Combined Fourteenth to Sixteenth Reports of Israel, CERD/C/ISR/CO/14-16, §27 (emphasis added), <https://undocs.org/Home/Mobile?FinalSymbol=CERD%2FC%2FISR%2FCO%2F14-16&Language=E&DeviceType=Desktop>.

¹⁰³ Committee on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel, CERD/C/ISR/CO/17-19, §22 <https://www.ohchr.org/en/documents/concluding-observations/cerdcisrco17-19-committee-elimination-racial-discrimination>.

¹⁰⁴ *Id.*

¹⁰⁵ See Association for Civil Rights in Israel, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank* 5 (Oct. 2014) (noting that since 1967, Israeli military rule has “created two separate legal systems, on an ethno-national basis”).

¹⁰⁶ See, e.g., Amnesty International, “Israel’s Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity,” 1 February 2022, <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>; Human Rights Watch, “A Threshold Crossed: Israeli Authorities and the Crime of Apartheid and Persecution,” 27 April 2021, <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>; B’Tselem, “A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid,” 12 January 2021, https://www.btselem.org/publications/fulltext/202101_this_is_apartheid; Sfard, Michael, “The Israeli Occupation of the West Bank and the Crime of Apartheid: A Legal Opinion,” Yesh Din, June 2020, <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Apartheid+2020/Apartheid+ENG.pdf>; International Human Rights Clinic at Harvard Law School and Addameer, “Apartheid in the Occupied West Bank: A Legal Analysis of Israel’s Actions,” 28 February 2022, <http://hrp.law.harvard.edu/wp-content/uploads/2022/03/IHRC-Addameer-Submission-to-HRC-COI-Apartheid-in-WB.pdf>.