



“Non-Visit” to the occupied Palestinian territory

30 November – 6 December 2022, Amman, Jordan
14 December 2022 – 14 February 2023, remotely

1. Introduction

1. In view of the preparation of her first report to the Human Rights Council, focusing on the deprivation of liberty in the occupied Palestinian territory, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (SR-oPt), Ms Francesca Albanese, planned to undertake her first country visit to the occupied Palestinian territory (oPt) from 25 November to 3 December 2022. As Israel, the occupying Power, did not honor its commitment to grant her the permit necessary to access the oPt in a timely manner, she proceeded to conduct her first “non-country-visit” over an extended period of two months and a half. This included a visit to Amman, Jordan, from 30 November to 6 December 2022, and then remote individual meetings, town hall meetings and virtual tours in West Bank, East Jerusalem and Gaza, from 14 December 2022 to 14 February 2023.
2. During her visit to Amman, the Special Rapporteur met with UN officials, and representatives of the Palestinian Authority, including from the Palestinian Prisoners’ Society, the Commission of Detainees and Ex-Detainees Affairs, the Ministry of Interior, the Ministry of Foreign Affairs, the Palestinian Independent Commission for Human Rights; EU and US Ambassadors to Jordan; Palestinian academics; and about 20 Palestinian and Israeli civil society actors who had travelled from the oPt and Israel respectively. The majority of people the Special Rapporteur had planned to meet during her country visit, including people from Gaza, asked her to hold remote meetings owing to the challenges of travelling to Jordan.
3. Over the course of two following months, the Special Rapporteur held over 50 meetings with: Palestinian officials, former Israeli officials, UN officials and a variety of professionals from the oPt and Israel, including lawyers, medics, humanitarian actors, academics, journalists, human rights defenders, activists and former Israeli soldiers. She had virtual tours and town hall meetings with a variety of communities affected by policies and practices of deprivation of liberty in the West Bank, East Jerusalem and Gaza, including refugees, communities encircled by colonies, the wall and their associated regime, university students, women, former detainees, including child detainees, and parents whose beloved bodies’ have been withheld by Israel.
4. The Special Rapporteur is grateful to the Hashemite Kingdom of Jordan for allowing her to carry out part of her visit from Amman, to the State of Palestine for State officials who travelled to Amman, and to the Palestinians and Israelis who travelled from the West Bank, East Jerusalem and Israel, at their own expense and risk, to meet her. She expresses sincere thanks and great appreciation to the individuals and organisations who engaged with her in

constructive and open dialogue, both in Amman and remotely, especially the minors and their families. She feels indebted to everyone who helped her gain a better understanding of the complexity, depth and intricacies of what deprivation of liberty means and implies socially, as an experience that seems to be foundational and unavoidable for any Palestinian, over and above, before and after, the experience of being behind bars itself.

5. This end of “non-visit” statement aims to capture the most important issues that informed the Special Rapporteur’s experience. The draft statement was shared with the Permanent Mission of Israel and the Permanent Observer Mission of the State of Palestine in Geneva for their review, prior to the publication. Neither Israel nor the State of Palestine provided comments.

2. Clarification: How did the planned visit turn into a “non-visit”

6. Prior to 2008, Special Rapporteurs did not require a formal invitation or a visa granted by the Israeli authorities to carry out an official visit to the oPt. However, when the then SR-oPt, Professor Richard Falk, sought to transit Israel in order to carry out his visit to the oPt in 2008, he was arrested and detained at Ben Gurion Airport and denied entry to the oPt. It appears that Israel had unilaterally imposed entry restrictions on the Special Rapporteurs of this mandate, despite its obligations to cooperate with the Special Rapporteurs and facilitate their UN-mandated work. Since 2008, the Government of Israel has never answered any of the requests for visa that the UN has submitted on behalf of the SR-oPt.
7. The Code of Conduct of Special Procedures Mandate-Holders sets forth that a country visit must be conducted “with the consent, or at the invitation, of the State concerned” (article 11(b)). This condition was met as the Special Rapporteur had already received several formal letters of invitation by the State of Palestine. As long as Israel is the occupying Power, the Special Rapporteur stands ready to prepare her visit in cooperation with the Permanent Mission of Israel (in line with art 11(c) of the Code of Conduct). As the occupying Power and a UN Member State, Israel has the responsibility to facilitate entry for such a visit.
8. Ahead of her planned visit, the Special Rapporteur sent several letters informing the Government of Israel of her plans to visit the oPt from 25 November to 3 December, and inquiring whether she would need to submit any information to help Israeli authorities facilitate her entry. To these official communications, she received no response. As the date of the planned visit approached, the Special Rapporteur sent another letter stating that she understood that no further information was needed from her side, and that she would have thus proceeded with her visit. On 21 November, the Israeli Ministry of Foreign Affairs communicated that the Special Rapporteur’s request had been submitted to the Israeli Embassy in Bern which would process it. The Special Rapporteur started the permit application process as required and thanked the Israeli officials for their cooperation. Since then and for more than two months, the Special Rapporteur has been awaiting an official response from the Israeli authorities regarding her entry into the oPt. The Special Rapporteur takes the opportunity to remind the Government of Israel that Israel cannot exercise sovereign authority over the Palestinian territory it occupies. As long as it remains the occupying Power, Israel has administrative and regulatory responsibilities that cannot be interpreted arbitrarily. The international community should not tolerate and condone Israel’s erratic deliberations upon entry or exit of diplomatic, humanitarian and senior UN officials, as this sits outside Israel’s prerogatives as the occupying Power.
9. Country visits are a critical part of any Special Procedure Mandate-holders’ functions and the Special Rapporteur intends to use it to the fullest during her tenure.

2. Preliminary assessment of policies and practices of deprivation of liberty in the occupied Palestinian territory

10. Over two months and a half of consultations with civil society, human rights groups, informed persons and victims of deprivation of liberty in the oPt, it has emerged that the systematic recourse to arrest, detention, and various forms of preventive deprivation of liberty appears a strategic tool in the hands of the occupying Power to segregate, control and ultimately dominate the occupied population and impede their exercise of fundamental civil and political rights. This raises serious concerns over the compatibility of the detention practices in use in the oPt with both international human rights law (IHRL) and international humanitarian law (IHL) standards, as well as with the very realization of Palestinian self-determination.
11. Large-scale and systemic use of arrest and detention of Palestinians seems firstly linked to the heavy, destabilising, escalatory and ultimately illegal presence of settlers; 90% of arrests in the West Bank occur within 1km from colonies as well as in refugee camps, which are also the prime targets of collective punishment measures, including frequent military incursions (in 2022, more than 800 military incursions were conducted in refugee camps across the West Bank and East Jerusalem out of 2000 in the whole area). According to Israeli sources, frequent incursions and home searches, often at night (families in one village last year registered 16 incursions over 30 days) are a way for soldiers “to make their presence felt” and “to ensure that Palestinians keep their heads down” (cit.).
12. The enforcement of draconian rules that severely limit Palestinians’ mobility, access to essential services such as hospitals and schools, as well as justice, is maintained in the name of Israel’s security concerns and safety interests. The system, in the form of about 2,500 military orders passed over 55 years, implemented by the army and reviewed by the army (when and if Palestinians succeed to challenge it), is designed and implemented in and through full discrimination: only the Palestinians in the oPt are subject to it while Jewish Israeli settlers live across the oPt wrapped in bubbles of Israeli law’s extraterritoriality. The limited fair trial rights and due process guarantees available to Palestinians in military courts 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.
13. The widespread and systematic practices of deprivation of liberty in the oPt present different layers of problematicity. The Special Rapporteur was informed that:
 - a. A conservative estimate - as it has last been updated in 2017 - shows that more than 800,000 Palestinians have been imprisoned and detained by Israel since 1967. In 2022, the number of arrests increased significantly, with an average of 500 per month and a total of 7,000 Palestinians arrested and **2,409 administrative detention orders issued across the year** (“administrative detention” is for an indeterminate period, without arrest warrant, charge or trial, and it is largely based on secret evidence). Currently, there are 4,780 Palestinians, including 160 minors, in Israeli prisons alone and 915, including 5 children, in administrative detention.
 - b. Soldiers, often at the direction and determination of settler security coordinators (the latter are among those on the payroll of the Ministry of Defense), arrest and detain Palestinians with a high degree of discretion including on the duration of interrogation, detention and custodial treatment of Palestinian prisoners while no effective remedies are available to them. There is evidence of settlers in the West Bank determining ‘red-line’ zones, namely areas around the settlements where Palestinians should not be allowed to pass, cross and enter. Palestinians have no way to know where these lines

are, but come to realize it when the soldiers, alerted by the settlers, cross one of these invisible lines and, reached by the army, either accept to 'clear the area' or can get arrested.

- c. Most of the conduct punished as criminal or security offences by the military laws of the occupying Power, the respective sentencing frameworks, the procedure of trials before the military courts and the rules on custodial practices appear vague, indeterminate, draconian and subject to degrees of interpretative discretion (full analysis to be provided in the report). The dense web of military orders criminalises a vast array of peaceful activities, repressing most of the positive rights and fundamental freedoms enshrined in human rights law, including political and cultural expressions, expressions of national identity, manifestations of dissent, freedom of movement, and freedom of assembly. For example Military Order 101 of 1967 criminalises any private and public assembly (gathering of 10 or more Palestinians) which could be interpreted as 'political', if the permit is not sought. Such an all-encompassing framework for deprivation of freedom makes it very likely for a Palestinian to be arrested and detained.
- d. In the military court system of the oPt, the military serves as the legislator, the police, the prosecutor, judge, and jury. Judges and prosecutors are military officers either on regular or reserve services. 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." The prosecutors, administrative officers, and, most importantly, judges in the military courts are all Israeli military officers. In international human rights law, the trial of civilians in military tribunals is not considered compatible with the fair trial guarantees, therefore human rights mechanisms strongly discourage their use to try civilians.
- e. Palestinians who are arrested face prosecution in military courts with a near-100% conviction rate, while settlers in the West Bank are treated as Israeli citizens and processed through civil courts. From beginning to end, the arrest and detention of Palestinians is fraught with both physical and psychological violence, and significant threats to physical and mental health.
- f. Approximately 97% of the convictions in military courts are the result of plea bargains, which is often "the sole way to get out of Israeli prisons" (cit., Israeli lawyer). That Palestinians plead guilty in order to be set free implies that military court judges are rarely prompted to consider evidence.
- g. Children as young as 12 are subject to the same sentencing framework and carceral system as adults under the military judicial system; juvenile justice under the Israeli occupation does not meet the guarantees enshrined in the Convention of the Rights of the Child. There is no child section for Palestinians in Israeli jails and children are detained with adults (often a senior Palestinian inmate takes on the responsibility to look after the children in his section). There is no possibility to continue education system and long period in jail means school drop out.
- h. Children are repeatedly subject to long periods of solitary confinement for the purpose of extracting information: The Special Rapporteur recalls that international human rights law strictly prohibits the solitary confinement of children, and even for adults, when allowed under very exceptional circumstances, solitary confinement should not cross a 15-day threshold.
- i. Also, legal safeguards applied to Palestinians, including children, are far below the threshold applied to Jewish-Israelis under the Israeli judicial system. For example, a survey carried out by an international NGO in the oPt between 2020-2022, revealed

- that only 1% of Palestinian children are sentenced to house arrest, while an astonishing 99% are convicted.
- j. Israeli detention centres and prisons are located, except for four, outside the occupied territory which is a serious breach of the Geneva Conventions and a war crime (this includes 7 out of 10 Palestinian children detainees). This has further repercussions on family visits rights, which are often denied as Palestinians from the West Bank need a permit from the Israeli authorities to exit the Palestinian territory. For Gaza residents, this is virtually impossible.
 - k. Guarantees of fair trial are absent from legal proceedings in military courts: hearings and statements are in Hebrew, which most Palestinians do not speak and do not understand.
 - l. Legal defence provided by Palestinian and Israeli civil society organisations is often hampered. Lawyers of Palestinians held by Israeli authorities cannot see nor talk to their clients except during Israeli Court proceedings: during interrogations, before and after the trials there is no exchange between the detainee and their lawyer. Palestinian lawyers from the West Bank encounter an additional hurdle to visit their clients as they need an Israeli permit to travel to the premises located outside of the West Bank. In case of administrative detention the detainees do not have access to legal counsel at all.
 - m. The Palestinian Authority (PA) in the West Bank carries out arrests against vocal opponents in a violent way and the Special Rapporteur laments the alleged mistreatment of detainees during interrogation and detention (she appreciates PA's offer for her to visit PA-run detention centers and she regrets the impossibility to take this opportunity because of Israel's delay in approving her visit). Allegations have been made of a close cooperation between Israeli forces and the PA in regard to prisoners, which the Special Rapporteur is investigating. Similarly, the de facto authorities in the Gaza Strip also deny fair trial guarantees and ill-treatment is reportedly high in Gaza detention centres as well.

3. Preliminary Conclusions

14. There is abundant literature backing testimonies and evidence gathered. Linking the dots between research, submissions, and individual and collective experiences, two preliminary conclusions can be drawn on the widespread and systemic forms of deprivation of liberty in the oPt. First, the overall design of the military and security legislation of the occupying Power, posing the bases for mass arrests, detention, and deprivation of liberty of Palestinians (including a number of *praeter delictum* tools devised to allegedly prevent the commission of a crime) appears structurally aimed at impeding the enjoyment of all the fundamental human rights delineating the individual sphere, and by necessary implication, of the collective right to self-determination. This appears to create a climate of stifling control, threatening with detention peaceful activities of civil opposition and political dissent against the occupation. Second, deprivation of liberty of the Palestinians is aimed at establishing control over the population over an increasing fragmented territory as well as to make such domination felt by the subjugated people. The violent modalities Israel uses to carry out carceral policies are geared to affect the Palestinian population emotionally and psychologically in order to push them to give up their wish and desire for freedom and self-determination.
15. The testimonies, interviews, consultations, submissions and reviewed literature paint the whole occupation of the Palestinian territory as a machinery to erect an open-air prison, epitomised by the 16-year old blockade of the Gaza Strip. The restriction on fundamental freedoms, including freedom of movement, assembly and the denial of self-determination

manifest not only through a 4-wall cell in detention centres but also through the spatial confinement technologies and bureaucracies established to keep the Palestinian people under the gauge. This architecture spans from the presence of the colonies, conceived as a net of ganglions 'strangling' Palestinian villages, towns and lands; checkpoints, the separation Wall, as well as a draconian permit system curtailing Palestinians' ability to move, build, reside, access services and opportunities, reunite with family; surveillance system that brings the Israeli eye within every corner of Palestinians' private sphere. These elements bear testament to the fact that the occupation is as intentional as pervasive and is meant to be expanded in perpetuity.

16. The imprisonment experience for the Palestinians trespasses even life: the Special Rapporteur was struck to learn that it is an established practice of the Israeli authorities to withhold the bodies of Palestinians once they die in prison or during a confrontation. According to reports, 125 Palestinian bodies are currently withheld by the Israeli authorities, including 13 bodies of deceased detainees, allegedly as they need to terminate the execution of the sentence. She was even more astonished to hear that some of the bodies that had been withheld were lost while under Israeli custody and others were returned to the relatives with visible damage. The Special Rapporteur takes note in this regard that Hamas also withholds bodies of two deceased Israelis and currently holds two other Israelis in detention.
17. While violence carried out by Palestinians should not be downplayed or disregarded, the consultations yielded that such violence comes in reaction to the inhuman, suffocating grip of the Israeli occupation. This bears testimony to the necessity to dismantle the occupation in order to restore respect for international law and Palestinians' fundamental rights and freedom, leading to greater stability, for both Israelis and Palestinians.
18. All these issues will be further developed in the report that the Special Rapporteur is currently writing.