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Human Rights situation in Palestine and other occupied Arab territories**Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese****Summary*

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

* The present report was submitted after the deadline in order to reflect the most recent developments.

I. Introduction

1. In this report, Francesca Albanese, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, presents concerns related to the widespread and systematic arbitrary deprivation of liberty in the occupied Palestinian territory.
2. Despite being invited by the State of Palestine, the Special Rapporteur was unable to visit the occupied Palestinian territory before submitting this report due to Israel's continued refusal to facilitate her entry. She conducted a remote investigation over six months, including a visit to Jordan, and virtual meetings and tours in the occupied Palestinian territory.¹ The report draws upon these consultations, testimonies, stakeholders' contributions, and a comprehensive review of primary and public sources.
3. A 10,700-word report cannot capture the scale and extent of the arbitrary deprivation of liberty in the occupied Palestinian territory. Nor can it convey the suffering of millions of Palestinians who have, directly or indirectly, been affected. The report provides a bird's-eye view of arbitrary deprivation of liberty as a key instrument of Israel's domination and oppression, addressing primarily structural issues and scale of the phenomenon.² International law violations by Palestinian authorities are assessed to the extent they contribute to tightening the grip of the regime imposed by the occupation.
4. The report clarifies circumstances, norms and processes that lead to arbitrary deprivation of Palestinians' liberty. The reality captured is of an entire occupied population framed as a security threat, often presumed guilty, and punished with incarceration even when trying to exercise fundamental freedoms. This system presents features of persecution, which often involves ill-treatment behind bars and surveillance out of prison. While in-prison confinement is the most acute form of deprivation of liberty imposed on Palestinians, physical, bureaucratic and digital 'architectures' further restrict them spatially and psychologically. This wider carcerality, made of an array of laws, procedures and techniques of coercive confinement, transforms the occupied Palestinian territory into a constantly surveilled open-air panopticon.
5. An examination of this carceral continuum - a system of control composed of multiple and interrelated levels of confinement - underscores the urgency to end it, as required by international law, and ensure both accountability for the architects of its most serious violations and reparations for the victims.

II. The rationale of investigating the arbitrariness of deprivation of liberty

A. Magnitude

6. Deprivation of liberty has been a central element of Israel's occupation since its inception. Between 1967-2006 Israel has incarcerated over 800,000 Palestinians in the occupied territory.³ Although spiking during Palestinian uprisings, incarceration has become a quotidian reality.⁴ Over 100,000 Palestinians were detained during the First Intifada (1987-1993),⁵ 70,000 during the Second Intifada (2000-2006),⁶ and over 6,000 during the 'Unity

¹ [End of "Non-Visit" statement](#) (14 February 2023)

² Instances where criminalization and detention are not qualifiable as arbitrary, such as crimes under penal laws of all countries or offenses against civilians, by whoever committed, are not discussed in this report.

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

⁴ Nashif, Esmail. *Palestinian political prisoners: Identity and community*. Routledge, 2008.

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

⁶ PCBS, [Special Statistical Bulletin](#) (May 2011), p. 4.

Intifada' (2021).⁷ Approximately 7,000 Palestinians, including 882 children, were arrested in 2022.⁸ Currently, almost 5,000 Palestinians, including 155 children, are detained by Israel, 1,014 of them without charge or trial.⁹

B. Gravity documented

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

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

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

10. UN independent experts and leading human rights organizations have identified Israel's widespread and systematic use of arbitrary arrests, administrative detention, lack of due process, ill-treatment and torture, as foundational elements of the apartheid regime imposed upon the Palestinians.¹⁵

C. Layers of repression

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

12. The security coordination between the Palestinian Authority and Israel has pioneered a direct connection between Palestinian and Israeli detention apparatuses. This connection is illustrated by what the victims refer to as the 'revolving door policy': a nefarious cycle whereby Palestinians are first arrested, interrogated, detained and often subjected to ill-treatment by the Palestinian Authority and then, upon release, by the occupation forces,¹⁷ or vice versa.

⁷ Addameer, "Prisoner's Institution: the Occupation Arrested about 8000 Palestinians from the Palestinian territories this year" (1 January 2022).

⁸ Addameer, 2022 in Review, (1 January 2023).

⁹ Addameer, Administrative Statistics (23 May 2023).

¹⁰ Al-Haq, *A Nation under Siege* (1990); B'Tselem, *The Interrogation of Palestinians during the Intifada, Ill-treatment, "Moderate Physical Pressure" or Torture?* (1991); HRW, *A Threshold Crossed - Israeli Authorities and the Crimes of Apartheid and Persecution* (2021), pp. 79-90.

¹¹ fnX(HRW1994); CAT/C/ISR/CO/4 (2009); CAT/C/ISR/CO/5 (2016).

¹² Israel, Landau Commission Report (1987); *The Public Committee Against Torture v. Israel* (1999); *Abu Gosh v. Attorney General* (2017).

¹³ Imseis, Ardi. "Moderate Torture on Trial: Critical Reflections on the Israeli Supreme Court Judgement concerning the Legality of General Security Service Interrogation Methods." *Berkeley J. Int'l L.* 19 (2001), pp. 336-338, 342-349.

¹⁴ A/HRC/WGAD/2021/61, para. 57.

¹⁵ A/HRC/49/87 (2022), para 50(a); Amnesty International, *Israel's Apartheid Against the Palestinians* (2022), p. 240-248.

¹⁶ HRW, *Two Authorities, One Way, Zero Dissent: Arbitrary Arrest and Torture Under the PA and Hamas* (2018), pp. 2, 23.

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

D. Confinement behind and beyond bars

13. The incarceration of Palestinians is only one element of a larger carceral landscape, extending beyond prison as a paradigm of governance of the occupied territory and confinement of its population.¹⁸ This phenomenon has intensified alongside growing Israeli (military and civilian) presence in occupied territory.¹⁹ The presence of illegal colonies exacerbates both discrimination and violence against Palestinians, and their criminalization and imprisonment.²⁰ In turn, stifling Palestinian movement and freedoms, while furthering fragmentation, surveillance and segregation of their living space, facilitates the expansion of the colonies.²¹ This creates a suffocating environment that obliterates rights and, by rendering the occupied population arbitrarily punishable, erodes their status of protected civilians.²²

III. Relevant International Law Framework

14. The protection of individuals from the “arbitrary exercise of power” is one of the greatest achievements of the post-1945 international order.²³ Any authority exercising effective control over a population must respect the prohibition against arbitrary deprivation of liberty. In the occupied Palestinian territory, the unlawfulness of the Israeli occupation negates any legitimate title to exercise authority with respect to Gaza or the West Bank, including east Jerusalem.²⁴ However, when de facto control is exercised, it must comply with the applicable normative framework.

15. The applicable international legal framework comprises both treaty and customary international law, including international human rights law, whose protections “do not cease(...) in case of armed conflict”²⁵ and apply extraterritorially,²⁶ as well as international criminal law. Read together, these bodies of laws establish that detention is considered arbitrary when it is not grounded in any valid legal basis; it violates fundamental guarantees afforded by international law including to a fair trial; and it is used discriminatorily.²⁷

A. International Humanitarian Law

16. Deprivation of liberty in situations of belligerent occupation is governed by the Hague Regulations, the Third and Fourth Geneva Conventions, Additional Protocol I, and customary international humanitarian law. Israel’s control over the West Bank, including east Jerusalem and the Gaza Strip, meets the tests for the existence of a military occupation.²⁸ The presence of Palestinian authorities does not alter the framework’s applicability nor does it absolve Israel of its obligations as the occupying power.

17. The Third and Fourth Geneva Conventions, integrated and supplemented by customary rules, respectively provide guarantees and procedures for captured combatants and protection for civilians arrested or detained in occupied territory. The internment of protected persons is permitted only if “absolutely necessary” for the security of the occupying power²⁹

¹⁸ Khalidi, Rashid I. "From the Editor: Israel: A Carceral State." *Journal of Palestine Studies* 43.4 (2014), p.7.

¹⁹ FnXAI(2022), p.265.

²⁰ Weizman, Eyal. *Hollow land: Israel's architecture of occupation*. Verso books, 2012, pp.162-168.

²¹ Korn, Alina. "The ghettoization of the Palestinians." in *Thinking Palestine*, ed. Lentin, Ronit. London, Zed Books: 2008, p.6.

²² Gordon, Neve, and Nicola Perugini. *Human shields: A history of people in the line of fire*. Univ of California Press, 2020, pp.81-84.

²³ Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, p.1.

²⁴ Ralph Wilde, “Is the Israeli occupation of the Palestinian West Bank (including east Jerusalem) and Gaza ‘legal’ or ‘illegal’ in international law?” (2022), para 111.

²⁵ ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion (2004), paras 102-106.

²⁶ ICJ (2004), paras 109 -113.

²⁷ Human Rights Committee, General comment No. 35 (2014).

²⁸ [A/HRC/29/CRP.4](#) (2015), para 30.

²⁹ Fourth Geneva Convention, article 42.

or for “imperative reasons of security,” and it must comply with relevant provisions of the Convention.³⁰ Protected persons can only be deprived of liberty after fair and impartial trial or appropriate administrative proceedings that respect the presumption of innocence and their right to legal defense. Once detained, they must not be subjected to corporal punishment and must have access to medical care, nutrition and hygiene.³¹ Customary international humanitarian law strengthens these minimum guarantees, imposing respect for penal safeguards and prohibiting discrimination, torture, cruel treatment, and forced labour.³² The deliberate violation of these obligations, both through acts and omissions, can amount to a ‘grave breach’ of the Geneva Conventions.³³

B. International Human Rights Law

18. International human rights law establishes the most comprehensive protection against arbitrary deprivation of liberty. The International Covenant on Civil and Political Rights protects individuals from arbitrary arrest, detention, ill-treatment, torture, and guarantees the rights to humane treatment, fair trial (including through an independent and impartial tribunal), effective legal defense, privacy and reputation.³⁴ Derogations from civil and political rights in time of war or public emergency, where permitted, must be limited to “the extent strictly required by the exigencies of the situation”, be non-discriminatory, and consistent with other international legal obligations.³⁵

19. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits the use of torture (infliction of severe physical or mental suffering to extract information, confession or inflict punishment) in all circumstances, including during war or states of emergency.³⁶ States must ensure accountability for alleged incidents of torture.³⁷

20. The Convention on the Rights of the Child prohibits deprivation of liberty for children unless as a last resort, for the shortest period necessary, and it establishes greater safeguards than for adults.³⁸ These include access to physical, psychological and social assistance to recover from abuses, neglect or situations of armed conflict.³⁹

21. The prohibition against arbitrary deprivation of liberty is a peremptory norm of international law, that cannot be derogated from, together with the prohibitions of torture, racial discrimination and apartheid.⁴⁰ Procedural rights instrumental to the lawfulness of detention and fair trial “must also be respected in all circumstances”.⁴¹

C. International Criminal Law

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

23. Under the Rome Statute of the International Criminal Court, “imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law” constitutes a crime against humanity when committed as part of a widespread or systematic attack against the civilian population.⁴² To establish liability for this crime, the unlawful deprivation of liberty must be part of an attack against a civilian population, defined as a

³⁰ Ibid, article 78 and Part III, sections III-IV.

³¹ Ibid, articles 31-33, 71-73, 89-92; AP I, article 75

³² ICRC Customary IHL study, Rules n. 87-91, 99-103, 118-137.

³³ GC III, article 130; GC IV, article 147.

³⁴ ICCPR, article 7, 9, 14, 17; HRC, General Comment No. 32 (2007).

³⁵ ICCPR, article 4(1).

³⁶ CAT, article 2(2).

³⁷ Ibid., articles 4, 9-10.

³⁸ CRC, article 37(b), 40.

³⁹ Ibid., article 39.

⁴⁰ A/CN.4/L.960/Add.1 (2022), Annex (e) and (g).

⁴¹ FnX(HRC/43/35), para 14.

⁴² Rome Statute (1998), article 7(1)(e).

“course of conduct involving the multiple commission of [prohibited] acts”.⁴³ These acts must also be carried out “pursuant to or in furtherance of a State or organizational policy to commit such attack”.⁴⁴

24. When this attack targets an identified group or its members, the Rome Statute qualifies the “intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity” as persecution, which is a crime against humanity.⁴⁵

25. International criminal law establishes individual criminal responsibility for “grave breaches” of the Geneva Conventions as war crimes, when “committed as part of a plan or policy or as part of a large-scale commission.”⁴⁶ Such breaches include willfully depriving protected persons of the “rights of fair and regular trial.”⁴⁷ This war crime punishes the deprivation of “one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the Third and Fourth Geneva Conventions.”⁴⁸

IV. Mass Incarceration Governance

26. Israel has denied the applicability of international law in the occupied Palestinian territory since the outset. By maintaining that the territory is *disputed*, rather than occupied,⁴⁹ Israel has rejected the sole international legal basis for establishing such a system.⁵⁰ This has led to violations of fundamental principles governing situations of occupation, including the non-acquisition of sovereignty, duties to administer the occupied territory for the benefit of the protected population, and temporariness.⁵¹ By alleging that international human rights law does not apply to the occupied territory, Israel derogates from its international obligations to ensure access to a fair trial, to uphold the *jus cogens* prohibition against torture or cruel, inhuman or degrading treatment or punishment and predictable criminal sanction.

A. Jurisdictional fragmentation

27. The rules underpinning the detention of Palestinians in the occupied territory are rooted in remnants of Ottoman, British Mandate, Jordanian and Egyptian laws. This system includes British emergency and counter-insurgency legislation,⁵² Palestinian-enacted laws (in areas where Palestinian authorities operate),⁵³ and Israeli-enacted laws applied to non-citizens.⁵⁴

28. Concerning the Palestinian authorities, the Palestinian Basic Law (amended in 2003) protects fundamental rights and freedoms, yet the outdated Penal Code of 1960 and the Decree-Law on Cybercrime of 2018 define some crimes broadly. For example, defamation, as criminalized by the Penal Code, may include insulting or slandering a public official or a higher authority, libel in print, or establishing “sectarian strife.”⁵⁵ The Penal Procedure Law

⁴³ ICC, Elements of Crimes, articles 7, para 3 and 7(1)(e), para 3

⁴⁴ *Ibid.*, paras 4-5.

⁴⁵ Rome Statute (1998), article 7(2)(g)

⁴⁶ *Ibid.*, article 8(2)(a).

⁴⁷ GC IV, article 147; *Ibid.*, article 8(2)(a)(vi).

⁴⁸ ICC, Elements of Crimes, article 8(2)(a)(vi).

⁴⁹ Blum, Yehuda Z. “The missing reversioner: reflections on the status of Judea and Samaria.” *Israel Law Review* 3, no. 2 (1968): 279-301, pp. 283, 293.

⁵⁰ Ben-Naftali, Orna, Michael Sfard, and Hedi Viterbo. *The ABC of the OPT: A legal lexicon of Israeli control over the Occupied Palestinian Territory*. Cambridge University Press, 2018, pp. 147-149, 524.

⁵¹ A/72/556 (2017), paras 45-63.

⁵² British Defence (Emergency) Regulations (1945).

⁵³ Jordanian Penal Code and Palestinian Basic Law (2002).

⁵⁴ Internment Unlawful Combatant Law (2002), applicable to Palestinians from the Gaza Strip, and the Counter-terrorism Law (2016).

⁵⁵ Penal Code (1960), articles 144, 150, 189, 191, 195.

of 2001 applies to both the West Bank and the Gaza Strip, where the Penal Code of 1936 British Ordinance is also in force.

29. Concerning the Israeli occupying forces (hereinafter “Israeli forces”), the adoption of British emergency regulations entrenched colonial methods into post-1967 military legislation.⁵⁶ Since 1967 the occupying forces have passed 2,500 orders controlling every minutia of Palestinians’ life, including public order and security, natural resource management, education, transportation, administration of justice, fiscal administration, taxation, and planning and zoning.⁵⁷ Military orders have been discontinued in occupied east Jerusalem, where remnants of British emergency regulations (still enforced in Israel) apply throughout Israel’s annexation of the city, and partly in the Gaza Strip where, since 2005, military orders enforce the illegal blockade.⁵⁸

30. This jurisdictional fragmentation subjects Palestinians to various modes of oppression across different parts of the occupied territory. Israeli forces enforce this system by patrolling Palestinian villages, roads, and movement through Israeli checkpoints in the West Bank, including east Jerusalem and monitoring Gaza’s fence, land, sea waters, and airspace. By gathering intelligence and directing undercover operations, the Israeli General Security Service (Shin Bet), forms an integral part of the Israeli security establishment.⁵⁹ Palestinian authorities’ security apparatuses operate in the West Bank (mostly Palestinian cities in ‘Area A’ under the Oslo Accords) and the Gaza Strip. Consequently, in the West Bank, Palestinians can be arrested by Israeli forces or the Palestinian Authority; in east Jerusalem, they can only be arrested by Israel; in the Gaza Strip, they can be arrested by the *de facto* authorities and by Israel in the border area and at Gaza sea.⁶⁰ Hence, the fate of Palestinians is determined by their location, who apprehends them, and for whom their actions are considered a ‘threat’.

31. For Palestinians in the occupied territory, and them only, the Israeli forces concentrate in their hands legislative, executive, and judicial functions, with the military promulgating, reviewing, and enforcing the laws on deprivation of liberty.⁶¹ In a structure of institutionalized discrimination, military courts enforce military laws against Palestinians while Israeli courts apply domestic civil law to Israelis, including settlers, who thus become vectors of annexation.⁶² The Israeli military law enforcement system, based on this inherent racial dualism, constitutes the pillar of Israel’s settler-colonial apartheid regime, targeting Palestinian people only, depriving them of fundamental rights, including equality before the law.⁶³

B. Offenses under military laws: criminalizing fundamental freedoms

32. Israel’s practice of legislating through military orders beyond the limits of an occupying power under international law⁶⁴ has resulted in the enforcement of thousands of unlawful restrictions on Palestinians. Deprivation of liberty is regulated by emergency regulations and, *inter alia*, Military Order 101 of 1967 (incitement and hostile propaganda), and Military Order 1651 of 2009 (security). These orders create two main offense categories: security offenses, ‘threatening’ Israel’s military presence in occupied territory, and public order offenses, disrupting public order from unauthorized demonstrations to traffic disturbances. Both carry severe sentences.

⁵⁶ Berda, Yael. *Colonial Bureaucracy and Contemporary Citizenship*. Cambridge University Press, 2022, pp. 162-167.

⁵⁷ ARIJ, Database of Israeli Military Orders in the Occupied Palestinian Territory.

⁵⁸ Benvenisti, Eyal. *The international law of occupation*. Oxford University Press, 2012, pp. 363-365, 373.

⁵⁹ Breaking the Silence [BtS], *Military Rule* (2021), pp. 7, 16, 24.

⁶⁰ PCHR, *Annual Report* (2021), p.45.

⁶¹ Daniele, Luigi. “Enforcing illegality: Israel’s military justice in the West Bank.” *Questions of International Law* 44 (2017), pp.25-29.

⁶² Ben-Naftali et al., 2018, pp. 371-372, 377.

⁶³ FnXAI(2022), p. 31.

⁶⁴ Boutruche, Theo and Sassoli, Marco “Expert Opinion on the Occupier’s Legislative Power over an Occupied Territory Under IHL in Light of Israel’s On-going Occupation”, 2017.

33. Intentionally vague definitions result in distinctively authoritarian offenses, which are enforceable at the discretion of Israeli soldiers, military prosecutors and judges.⁶⁵ This system has allowed punishment of Palestinians for merely expressing their opinions or dissent, or peacefully opposing the occupation. For example:

a. Exercising freedom of assembly is criminalized with ten years' imprisonment.⁶⁶ This offense targets gatherings of ten or more persons "in which a speech is being made on a political subject, or which may be construed as political."⁶⁷ This punishment concerns any person organizing or even just encouraging holding a "procession, assembly or vigil without a permit".⁶⁸

b. Forms of civic and political participation including "flying a flag, displaying a symbol [...] voicing a slogan, or any similar explicit action clearly expressing sympathy" for one of the innumerable "hostile organizations" (*infra*, para 33.f) are subject to ten years' imprisonment.⁶⁹

c. Membership in any group in which other members commit specific offenses (such as holding a weapon without a permit) is punishable by life imprisonment.⁷⁰ Palestinians thus endure the harshest form of deprivation of liberty solely based on affiliation, without consideration of their actions, knowledge, or ability to anticipate the actions of others. This violates the fundamental principle that criminal liability should be based on individual responsibility.

d. Any "act or omission which entails harm, damage, danger" to the "security of the region", or simply its "disturbance" is punishable with life imprisonment.⁷¹

e. Contacts and solidarity among Palestinians are criminalized, and duties of denouncing someone based on mere suspicion are imposed.⁷² Military orders punish whoever provides "information, shelter, [...] supplies, means of transport" in any manner to "any person" when "there is a reasonable basis to suspect" that this person might be "engaged in any action aimed at harming" public order.⁷³ Imprisonment also threatens whoever "does not immediately" denounce to the occupying forces any other person when there might be "reasonable grounds to suspect" that this other person "is planning to commit an offense."⁷⁴

f. Criminalizing incitements vaguely defined as "any attempt to influence public opinion in a manner which may harm public peace or public order", results in crushing any form of political speech and expression. This reaches the paradox of sentencing to ten years' imprisonment for even the "intention of facilitating the execution of an attempt to influence public opinion."⁷⁵ This may include expressing opinions (including on social media),⁷⁶ attending peaceful demonstrations, displaying flags or emblems of any political significance, possessing banned books or any publication deemed adverse by the occupying forces, and expressing sympathy for the activities or purposes of any "hostile organization."⁷⁷

g. Expressing sentiments against the occupation constitutes an offense, imposing on Palestinians deferential obedience to Israeli occupation and reverence for their symbols. "Offending" in any way a soldier's "honour",⁷⁸ or behaving in an "insulting manner" towards

⁶⁵ FnXDaniele (2017), pp. 36-37. Kretzmer, David. *The Occupation of Justice: the Supreme Court of Israel and the Occupied Territories*, SUNY: 2002.

⁶⁶ Military Order 101 (1967) [as amended by following orders], article 10.

⁶⁷ *Ibid*, article 1.

⁶⁸ MO 101 (1967), article 10(a).

⁶⁹ MO (2009), article 251 (B)(4).

⁷⁰ *Ibid*, article 231.

⁷¹ MO 1651 (2009), article 222.

⁷² *Ibid*, article 261.

⁷³ *Ibid*, article 245.

⁷⁴ *Ibid*, article 261.

⁷⁵ Originally MO 101 (1967) art. 7; penalty at MO 1651 (2009), art. 251(b)(2); see Daniele (2017), p. 34.

⁷⁶ Facebook Bill (2019).

⁷⁷ HRW, *Born Without Civil Rights: Israel's Use of Draconian Military Orders to Repress Palestinians in the West Bank* (2018), p.37.

⁷⁸ MO (2009), article 215.

the Israeli army or “one of its symbols” is punishable with one-year imprisonment.⁷⁹ The occupied population is indirectly subjected to a paradoxical and unlawful duty of allegiance to the occupation itself.⁸⁰

h. Throwing any “object,” including a “stone,”⁸¹ is subject to ten years’ imprisonment. Throwing objects “at a moving vehicle with the intent to harm it” (even without any intent to harm the driver, and even against armored military vehicles) is punished with twenty years’ imprisonment.⁸²

i. Entering “restricted areas” in the West Bank⁸³ (i.e. ‘closed military zones’)⁸⁴ including east Jerusalem, is subject to heavy constraints. Breaking such regulations leads to seven to ten-years’ imprisonment. This arbitrarily and severely restricts Palestinians’ movement within the occupied territory, including across their own communities. A case in point is the designation of Masafer Yatta as “Firing Zone 918”, a restricted military area for exclusive use of Israeli soldiers. As a result, around 1,200 Palestinians, half of them children, risk unlawful forcible transfer.

j. Membership in, having “contacts” with, or possessing materials “related to” a “hostile organization”, is punishable with ten-years’ imprisonment.⁸⁵ Since 2020, leadership of such groups can be punished with twenty-five years, or life imprisonment.⁸⁶ Hostile organizations are referred to as “any group of persons whose aim it is to harm [...] the public order in Israel or in a held region”.⁸⁷ The category explicitly encompasses “unlawful associations” under the 1945 Defence (Emergency) Regulations, defined as “any body of persons, whether incorporated or unincorporated and by whatsoever name (if any) it may from time to time be known, which (a) by its constitution or propaganda or otherwise advocates, incites or encourages” a number of acts considered unlawful, including “the exciting of disaffection” against the occupying forces.⁸⁸ Built around colonial premises, the category of ‘hostile organization’ has been deployed ubiquitously, criminalizing any organizations that may oppose Israel’s occupation. 411 organizations are criminalized, including all major Palestinian political parties, civil society groups and charities.⁸⁹

34. Israel’s *Counter-Terrorism Law* of 2016 further expanded the broad grounds to designate Palestinian groups as ‘terrorist organizations’,⁹⁰ on the basis of vaguely defined conduct, or mere intentions, labeled as ‘terrorist acts’.⁹¹ Identifying with, being a member of, and directing such an organization can be sentenced to three, five to seven and 25 years’ imprisonment respectively.⁹² In 2021, this law was invoked to outlaw six Palestinian human rights organizations, revealing its repressive functions against civil society.⁹³

35. This coercive environment has significantly impacted Palestinian students and the academic community. Across Palestinian universities, traditional hubs of national-political activities and cultural development,⁹⁴ student groups have been outlawed.⁹⁵ The Palestinian

⁷⁹ Ibid, article 219.

⁸⁰ FnXHagueReg, article 45.

⁸¹ MO (2009), article 212(1-2).

⁸² Ibid, article 212(3).

⁸³ Ibid, articles 299-301.

⁸⁴ Ibid, article 242(A).

⁸⁵ Defense (Emergency) Regulations 1945, arts. 84 (1)(a), (f), and (j).

⁸⁶ MO 1827 (2020), art. 237(a).

⁸⁷ MO 1651 (2009), Art. 238.

⁸⁸ Defense (Emergency) Regulations 1945, art. 84.

⁸⁹ Israel’s Ministry of Defense, Unlawful associations and terrorist organizations [Accessed April 2023].

⁹⁰ Adalah, “Israel’s 2016 Counter-Terrorism Law and 1945 Emergency Regulations Regarding the Outlawing of Six Palestinian Human Rights and Civil Society Groups” (November 2021), p. 14.

⁹¹ E.g. the “intention of promoting” a “threat” to commit a “political act” posing an “actual risk” of “serious harm to property”. Counter-terrorism Law (2016), Chapter 1, article 2.

⁹² Counter-terrorism Law (2016); sections 20-24.

⁹³ A/77/356 (2022), para 60.

⁹⁴ Law for Palestine, [Israel’s Arrest Policy Against Palestinian University Students](#) (2023), p. 23.

⁹⁵ Israel’s Ministry of Defense fn90; Defence Emergency Regulations (1945), articles 84-85.

Authority in the West Bank has mirrored this pattern, albeit to a lesser extent, detaining students and others for dissenting political opinions, including those shared on social media.⁹⁶

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

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

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

V. Mass Incarceration Procedures

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

A. Administrative Detention

39. In addition to arresting and detaining Palestinians based on all-encompassing criminal offenses, Israeli forces often detain individuals without charge or trial.⁹⁷ Approximately 500 Palestinians have been detained 'administratively' every year since 1989,⁹⁸ including children, human rights defenders, students, and political leaders.⁹⁹

40. Administrative detention is permissible only when "absolutely necessary," for "imperative reasons of security,"¹⁰⁰ and must be in line with the protection afforded under international law.¹⁰¹

41. Instead, in the occupied Palestinian territory, Israeli military commanders order administrative detention whenever they have "reasonable grounds to presume that the security of the area or public security require detention."¹⁰² The pervasive control over (and unlawful alteration of) the area that is internationally recognised as occupied territory, undermines Israel's security claims and the 'necessity' to arrest Palestinians.

42. The widespread administrative detention of Palestinians presents other grounds of illegitimacy. First, the vagueness of the concept of 'security' provides military commanders with substantial discretionary powers in imposing administrative detention that can be

⁹⁶ HRW (2018), p. 23.

⁹⁷ In the West Bank, this is regulated by Military Order 1651 (2009), article 285(A); in the Gaza Strip by the Internment Unlawful Combatant Law (2002); in east Jerusalem Emergency Powers (Arrests) Law (1979).

⁹⁸ Average calculated based on B'Tselem ([Administrative Detention Statistics](#)) (last updated: 2023).

⁹⁹ Addameer, *Violations of Palestinian Prisoners Rights in Israeli Prisons 2017* (2018), pp. 23, 30, 38

¹⁰⁰ GC IV, articles 42, 78.

¹⁰¹ *Supra* section 3.

¹⁰² Military Order 1651, article 285(A) (emphasis added).

renewed indefinitely.¹⁰³ Second, administrative detention quashes international law protections related to arrest, judicial review and custodial conditions (*infra* section 5.6).¹⁰⁴ Once arrested, interrogation frequently involves coercive methods to extract information, possibly amounting to ill-treatment under international law and sometimes, torture.¹⁰⁵ The detainee is not informed of the reasons for detention. Orders are in Hebrew and not translated into Arabic.¹⁰⁶ Lawyers rarely access the “secret” evidence, thus cannot challenge it, or cross-examine witnesses.¹⁰⁷ Hearings are typically not open to the public.¹⁰⁸ Judicial review is ineffective both for the impossibility of appealing against secret evidence¹⁰⁹ and the lack of separation of powers within the military judicial system (*infra* section 5.5). Ultimately, the classification of ‘security threat’ leading to administrative detention appears to be a pretext to persecute specific individuals who may challenge the occupation.¹¹⁰

43. While a case-by-case determination is warranted, the violations associated with Israeli forces’ widespread use of administrative detention may amount to a grave breach of the Fourth Geneva Convention and the war crimes of unlawful confinement of a protected person and willful deprivation of their right to a fair trial.¹¹¹ The uncertainty faced by the arrested for an unforeseeable period in the absence of charge, known evidence or trial, may amount to ill-treatment.¹¹² Administrative detention may also constitute a form of persecution since this procedure discriminates against Palestinians who are presumed guilty and punished as a collectivity.¹¹³ Illustrative is the case of Salah Hammouri, French-Palestinian human rights defender from Jerusalem: arbitrarily arrested and placed under administrative detention multiple times since 2000, he was eventually forcibly deported to France for alleged ‘breach of allegiance’.¹¹⁴

B. Arrest

44. Arrest starts when Israeli forces apprehend Palestinians, as part of their (military or civilian) system of control. Palestinians can be arrested during ‘law enforcement operations’ but also at checkpoints, on the street, on their way to school, while farming their land or in the quiet of their homes. Lacking arrest warrants and charges, the Israeli forces generally fail to inform Palestinians of the reasons for their arrest. Beating, verbal abuse, humiliation are recurrent practices during arrest,¹¹⁵ in addition to the increasing number of killings during ‘search-and-arrest operations’.¹¹⁶

45. Proximity to colonies increases the chance for arrest.¹¹⁷ Crossing ‘red-line’ zones -i.e. (not always visible) settler-engineered demarcations- may lead to Palestinians (often while farming their land) being arrested by soldiers upon settlers’ notification.¹¹⁸

¹⁰³ Langford, Peter and Triestino Mariniello. *Israel’s Administrative Detention in the Occupied Palestinian Territories: an Assessment of the Applicable Norms of International Law and Possibilities for Enforcement* (2019), pp. 17-18.

¹⁰⁴ Langford and Mariniello, (2019), p. 13.

¹⁰⁵ CCPR/C/ISR/CO/3, para 11.

¹⁰⁶ *Khaled El Araj et al. v. The Military Commander in the West Bank*, HCI 2775/11 (2013).

¹⁰⁷ Addameer, *Administrative Detention in the Occupied Palestinian Territory A Legal Analysis Report* (2016), pp. 33-34.

¹⁰⁸ MO 1651, article 291(A).

¹⁰⁹ Between 2000 and 2012, only one appeal was accepted by a court, yet it was suspended and no detainee was released. Krebs, Shiri. “Lifting the veil of secrecy: Judicial review of administrative detentions in the Israeli Supreme Court.” *Vand. J. Transnat’l L.* 45 (2012): 639, p. 673.

¹¹⁰ FnX(AI Apartheid), p. 241.

¹¹¹ Rome Statute, article 8(2)(a)(vii).

¹¹² A/HRC/37/42 (2018), para 17.

¹¹³ Langford and Mariniello. (2019), p. 165.

¹¹⁴ UN experts, “[Israeli deportation of Salah Hammouri could constitute war crime](#)”, 2 December 2022.

¹¹⁵ BtS, Physicians for Human Rights - Israel, and Yesh Din. *A Life Exposed: Military Invasions of Palestinian Homes in the West Bank* (2020), p. 31.

¹¹⁶ OCHA, *Protection of Civilian Reports, 2022-2023*.

¹¹⁷ Military Court Watch [MCW], [Annual Report 2021/2022](#), p. 8.

¹¹⁸ BtS, “We were told: you have to listen to them” (2014).

46. Mass arrest campaigns are common occurrences, particularly during military raids and incursions, often targeting specific groups, including activists and students.¹¹⁹ In 2022 alone, Israeli forces conducted over 9,000 operations in the West Bank, including east Jerusalem, over 700 of which occurred in or around refugee camps at an average rate of 15 per week.¹²⁰

47. Night raids have become a common tactic to arrest or simply harass and terrify Palestinians.¹²¹ Dozens of armed soldiers raid villages, enter homes breaking doors, ransack, seize property and arrest individuals, including children, without a warrant.¹²² According to soldiers' testimonies, disrupting the intimacy of Palestinian households, terrifying the residents, is to "make [their] presence felt".¹²³ These practices may amount to cruel, inhuman or degrading treatment.

48. Less than one per cent of the complaints against these raids get investigated and prosecuted.¹²⁴ Similarly, Israel does not provide compensation to individuals who have been arbitrarily arrested or for the extensive property destruction that occurs during raids.¹²⁵

49. There have also been incidents of Palestinian authorities arbitrarily arresting political opponents, including for non-violent speech.¹²⁶ Arbitrary deprivation of liberty may result, among others, from monitoring critical comments on social media.¹²⁷

C. Interrogations

50. Once arrested by the occupying forces, Palestinians may be taken to Ofer Prison (the only Israeli prison located inside the occupied territory) or to prisons and interrogation centers inside Israel. Eighty percent of Palestinian detainees are transferred to Israel, violating the international prohibition to detain protected persons outside the occupied territory.¹²⁸ This may amount to the war crime of deportation.¹²⁹

51. During interrogations, Palestinians are rarely informed of their rights, including the right to remain silent. A typical interrogation involves practices that may amount to ill-treatment, and even torture, especially if security charges are involved.¹³⁰ Israeli forces physically and psychologically abuse the detainee, through methods like invasive body searches, beatings, insults and threats.¹³¹ They isolate the detainee, prohibiting contact with relatives, attorneys, or ICRC representatives.¹³² They may confine the detainee through solitary confinement as a form of psychological pressure.¹³³ They physically weaken the detainee by preventing physical activity, adequate nutrition and sleep.¹³⁴

¹¹⁹ FnX L4P(2023), p. 21 ; FnXAmnesty International(2022), p. 17.

¹²⁰ OCHA, Protection of Civilians Report, 10 January - 15 May 2023.

¹²¹ FnX(A life exposed), pp.7, 10.

¹²² FnXMO(2009),article 31.

¹²³ BtS, "To create a sense of the IDF's presence in the villages" (2017).

¹²⁴ Only 0,87%; see Yesh Din, [Law enforcement against Israeli soldiers suspected of harming Palestinians](#) (2022).

¹²⁵ FnX(A life exposed), p. 57.

¹²⁶ FnX(HRW2018), pp. 1-5.

¹²⁷ Joint Submission by HRW and Lawyers for Justice to [CAT], 30 June 2022.

¹²⁸ FnX, (GCIV)article 49, 66.

¹²⁹ FnX(RomeStatute), article 7(1)(d).

¹³⁰ Sfar, Michael. *The wall and the gate: Israel, Palestine, and the legal battle for human rights*. Metropolitan Books, 2018, pp. 254-256.

¹³¹ PCATI and FIDH, *Communication to the Office of the Prosecutor of the [ICC], Situation in the State of Palestine*, "War Crimes in the Interrogation Chambers - The Israeli Systematic Policy of Torture, Inhuman and Degrading Treatment, Unlawful Deportation, and Denial of Fair Trial of Palestinian Detainees" (June 2022), p.35.

¹³² Ibid, pp.18, 42.

¹³³ Addameer, "I've Been There: A Study of Torture and Inhumane Treatment in Al-Moscobiyeh Interrogation Center," (March 2018).

¹³⁴ FnX(PCATIFIDH), pp.38-39.

52. Forced confessions, inadmissible under international law, are ordinarily used in Israeli proceedings against Palestinian alleged 'security' or 'terror' suspects¹³⁵ (*supra* section 4.2). The percentage of confessions in Shin Bet interrogations is close to 100 percent, and the number of those indicted is much higher than among those investigated by the police.¹³⁶

D. Pretrial detention

53. International law requires that unless defendants represent a threat to public safety or risk obstructing the proceedings, they must not be detained.¹³⁷ Instead Palestinians are detained regardless of whether the "public safety or risk" threshold is met or whether they will be charged. Pre-trial detention is common until the end of proceedings, which can last for years.¹³⁸

54. Pre-trial detention for interrogations (without charge) can last up to 90 days,¹³⁹ renewable every 30 days upon request.¹⁴⁰ Remand hearings lack substantive examinations and last approximately three minutes. These processes predominantly occur in the absence of legal counsel.¹⁴¹

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

E. (Semblances of) Trial

56. Palestinian detentions are reviewed by Israeli military courts. Their personnel, including judges and prosecutors, are members of the same army and often of the same units enforcing the occupation and involved in "hostilities" with the Palestinian people. Even the military court of appeal operates under the supervision of the Military Advocate General. These courts can neither be independent nor impartial.¹⁴² In fact, military courts are considered unsuitable to try civilians.¹⁴³

57. The exclusive jurisdiction of military courts over Palestinians, who are arrested under military orders that solely apply to them and take precedence over Israeli civil and international law, solidifies the discriminatory legal dualism inherent in apartheid.¹⁴⁴

58. Trials in military courts lack transparency, limit public access and afford proceedings in Hebrew, usually without interpretation. Lawyers from the occupied territory cannot attend court sessions in Israel as they lack entry permit.

59. The existence of judges, prosecutors, an appeal court (since 1989) and juvenile military courts (since 2009) create a façade of rule of law that conceals the oppressive nature of the occupation.¹⁴⁵ High conviction rates (99 percent)¹⁴⁶ and the high reliance on plea bargains in military courts (95 percent)¹⁴⁷ seem to corroborate the failure to uphold the

¹³⁵ FnX(PCATI and FIDH), pp.20, 27.

¹³⁶ Ramati, Nery & Karin Hibler. "The Cooperation between the Police and the Israeli Security Agency in Investigating Security Offenses" [in Hebrew], November 2021.

¹³⁷ HRC, General Comment No. 32 (2007), para 30.

¹³⁸ Yesh Din, *Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories* (2007).

¹³⁹ MO 1651 (2009), article 37.

¹⁴⁰ *Ibid.*, article 38.

¹⁴¹ *Ibid.*, articles 57-58, grant detainees access to legal counsel after 15 days. Yet legal counsel is rarely admitted before detainee's first court appearance. See PCATI & FIDH (2022), p. 54.

¹⁴² Hajjar, Lisa. *Courting conflict: The Israeli military court system in the West Bank and Gaza*. University of California Press, 2005.

¹⁴³ HRC, General Comment No. 32 (2007), para 22.

¹⁴⁴ FnX(AI2022), p. 18.

¹⁴⁵ B'Tselem, *Presumed Guilty: Remand in Custody by Military Courts in the West Bank* (2015), p.61.

¹⁴⁶ Addameer, *Military Courts in the Occupied Palestinian Territory* (2018), [Accessed May 2023].

¹⁴⁷ *Ibid.*; FnX(Hajjar), p. 3.

presumption of innocence, among other apparent violations of due process and related guarantees (*supra* section 3).

F. Custodial Conditions

60. Israeli forces commonly detain Palestinians inside Israel. This ‘unlawful deportation’ triggers a domino effect of violations ranging from restrictions on family visits to denial of access to legal counsel. The security classification assigned to many Palestinians leads to harsher treatment and is another manifestation of the discriminatory regime applied to them.¹⁴⁸

61. Within the prison walls, Palestinian prisoners endure relentless abuse. Removed from contact with the outside world, in overcrowded and unsanitary realms, they typically face deprivation (they are often forced to purchase their own sustenance), medical negligence,¹⁴⁹ limited opportunity for education and physical exercise alike.¹⁵⁰ Documented instances of torture, cruel, inhumane or degrading treatment include sexual assaults; being hooded and blindfolded, forced to stand for long hours, tied to a chair in painful positions, deprived of sleep and food, or exposed to loud music for long hours; and being punished with solitary confinement.¹⁵¹ Such practices may go unreported due to lack of access to legal representation or fear of retaliation.¹⁵²

62. Palestinian prisoners often use hunger-strikes to protest Israel’s arbitrary detention policies and practices.¹⁵³ This is exemplified by Khader Adnan’s fifth hunger-strike to protest Israel’s arbitrary detention of Palestinians, which eventually led to his death in prison on 2 May 2023. Adnan had been detained an astounding 12 times within eight years, mostly without trial or charge.

63. This oppressive picture is exacerbated by custodial conditions in prisons managed by the Palestinian authorities in the West Bank and Gaza, where human rights groups have documented abusive practices, taunts, solitary confinement, and beatings often to elicit confessions, punish, and intimidate activists.¹⁵⁴ Palestinians suspected of collaborating with Israel face even more severe treatment, and, in the Gaza Strip they can be punished with the death sentence.¹⁵⁵

G. ‘No Minor Matters’

64. The gravity of abuses against Palestinians in Israeli custody is an alarming reality. Certain groups face even greater vulnerability which warrant particular attention.

Children

65. Israel treats Palestinian children with the same lawlessness as adults.¹⁵⁶ Over a span of 20 years, approximately 500-700 children yearly, aged 12 to 17, have been subjected to the Israeli detention system.¹⁵⁷ Approximately 10,000 Palestinian children have experienced

¹⁴⁸ Law for Palestine, [Israel’s Arrest Policy against Palestinian University Students](#) (2023).

¹⁴⁹ Addameer, [Deterioration in Detention Conditions: Suffocating Prisoners](#) (2018); [Medical Negligence](#) (2016).

¹⁵⁰ Addameer, [Opened - Books on Cuffed - Hands. The Cultural and Educational Life of Palestinian Political Prisoners in Israeli Prisons and Detention Centers](#). (2020).

¹⁵¹ FnX(PCATI and FIDH,(2022)), p. 6

¹⁵² Addameer, [In the case of The Palestinian People vs. Military Courts](#) (2021).

¹⁵³ Addameer, [Administrative Detention](#) (2022).

¹⁵⁴ [Submission by HRW and Lawyers for Justice to the Committee Against Torture](#) (30 June 2022).

¹⁵⁵ FnX(PCHR AnnualReport), pp. 67-69.

¹⁵⁶ B’Tselem, [No Minor Matter: Violations of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone Throwing](#) (2011).

¹⁵⁷ DCI-P, [Number of Palestinian Children \(12-17\) in Israeli Military Detention](#) (updated on 14 April 2023).

institutionalized ill-treatment during arrests, prosecutions and sentencing and the consequent traumas on themselves and their families.¹⁵⁸

66. Children are commonly arrested (often at night) for stone-throwing or to gather information about other Palestinian ‘wrongdoers’. Arrests involve transferring children to interrogation facilities like dangerous criminals: blindfolded and hand-tied in military jeeps. In 2013, UNICEF had already begun documenting the terror of Palestinian children violently taken from their homes, particularly during bedtime.¹⁵⁹

67. During interrogation, Palestinian children endure severe ill-treatment: they are strip-searched, kept blindfolded and tightly bound for long hours, insulted and ridiculed, physically abused and denied basic needs including access to toilets and medical care, despite injuries they may have sustained during arrest.¹⁶⁰ A recent study reported eighty-two percent of Palestinian children are interrogated without a parent or legal representation.¹⁶¹ Parents are rarely informed of their children’s whereabouts upon arrest, which may amount to enforced disappearance.¹⁶² Nearly half of the children detained for interrogation between 2021-2022, were subjected to solitary confinement for an average of 12.5 days, in windowless cells, constantly illuminated, causing immense physical and psychological distress.¹⁶³ Self-harm and suicide attempts among Palestinian children in Israeli custody are not rare.¹⁶⁴

68. After abusive arrest and interrogation, children appear before military courts in prison uniforms, chains and shackles. The trial lasts three minutes on average. This is when they may see their family and lawyer for the first time.¹⁶⁵

69. Detained Palestinian children are often coerced into becoming informants or collaborators.¹⁶⁶ This practice can have long-lasting negative effects on them, leading to feelings of shame and guilt, tarnishing their future. The widespread nature of this practice also creates mistrust towards children who have been detained, compromising their rehabilitation and development.¹⁶⁷

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

71. These unlawful practices deeply traumatize child detainees, their families and communities.¹⁶⁸ Children report anxiety, depression and other disorders after being detained.¹⁶⁹ The haunting case of Ahmad Manasra exemplifies these harrowing practices. Sentenced to imprisonment as a 14-year-old for allegedly participating in attempted murder of Israeli citizens, Manasra has been imprisoned since 2016: despite having developed schizophrenia following violent arrest and detention, he has been held in solitary confinement since November 2021, where his mental state continues to deteriorate.¹⁷⁰

72. The mistreatment of Palestinian children, epitomized by these cruel practices, contributes to subjugating the Palestinian people, severing the prospects for healthy development of future generations.¹⁷¹

¹⁵⁸ DCI-P, [Military Detention](#) [Consulted May 2023].

¹⁵⁹ UNICEF, *Children in Israeli Military Detention: Observations and Recommendations* (2013), p. 10.

¹⁶⁰ FnX(MCW,AnnualReport(2021/2022)), p. 14; CRC/C/15/Add.195 (2002), para 35; Save the Children, *Defenceless: Impact of the Israeli military detention system on children* (2020), p 15-18.

¹⁶¹ FnX(MCW,AnnualReport(2021/2022)), pp. 15-16.

¹⁶² Convention on Enforced Disappearance (2010), article 2.

¹⁶³ FnX((MCW,AnnualReport(2021/2022)), p. 18.

¹⁶⁴ Ibid., p. 19.

¹⁶⁵ FnX B’Tselem (2011), p. 50.

¹⁶⁶ DCI-Palestine, [Recruitment and Use of Palestinian Children in Armed Conflict](#) (2012).

¹⁶⁷ Viterbo, Hedi. *Problematizing Law, Rights, and Childhood in Israel/Palestine*. Cambridge University Press, 2021.

¹⁶⁸ Gwyn, Daniel. “‘The strong do what they can and the weak suffer what they must’: Palestinian families under occupation”, *Context* 164, 2019, p. 49.

¹⁶⁹ Save the Children, *Isolated* (2022), pp. 12-13.

¹⁷⁰ [UN experts urge Israel to free Ahmad Manasra](#), 14 July 2022.

¹⁷¹ Shalhoub-Kevorkian, Nadera. *Incarcerated childhood and the politics of unchilding*. Cambridge University Press, 2019, pp.16-17.

Gender and sexual orientation

73. Similarly to their male counterparts, Palestinian women and girls are also detained by Israel without trial, exposed to discrimination, harassment, and degrading treatment. This includes invasive strip searches, sexual abuse and threats,¹⁷² as well as inhumane custodial conditions even during pregnancy.¹⁷³ Some women are arrested, threatened, and mistreated *just* to obtain information or exert pressure on their husbands.

74. Allegations of coercion on gay Palestinian men by Israeli forces, including threats of exposing their sexual orientation, are also of serious concern.¹⁷⁴ These forms of coercion would place these men at serious risk of physical and psychological harm, and violate their fundamental human rights.

Detaining the deceased

75. The deprivation of liberty haunts Palestinians beyond their life. Israeli forces often withhold the bodies of Palestinians deceased in custody or killed for alleged 'security reasons'.¹⁷⁵ This practice, which the Israeli High Court of Justice has condoned,¹⁷⁶ applies to the bodies of adults and children alike.¹⁷⁷ By May 2023, Israeli forces reportedly withheld 125 Palestinian bodies, including 13 deceased detainees. Similarly, the de facto authorities in Gaza reportedly withhold the bodies of two deceased Israelis.

76. For decades, the bodies of Palestinians who were not returned to their families were buried in graves near military zones known as "cemeteries of numbers" (as each body was assigned a number).¹⁷⁸ In recent years, Israeli forces have withheld bodies in fridges, impeded identification by relatives, and imposed restrictions on their burial upon returning the bodies.¹⁷⁹ Reports suggest that the bodies are often maintained in "poor and inhumane conditions".¹⁸⁰

77. The denial to perform funerary rituals for the beloved ones is yet another trauma families are forced to experience. This is heightened when one's body is returned severely damaged.

78. International law protects burial rituals and gravesites in line with the deceased's religious and cultural customs and requires restitution of mortal remains.¹⁸¹ Concealing the detention, whereabouts, and fate of a person or body may amount to enforced disappearance; this applies to living and deceased persons alike.¹⁸²

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

79. Carcerality, conceived as a large-scale system of deprivation of liberty that forces into a condition of captivity entire populations, who are also dispossessed of their lands, is an essential feature of settler-colonialism.¹⁸³ Israel's practices of collective confinement in the

¹⁷² OMCT and PCATI, *Violence Against Palestinian Women* (2005), pp 26-30.

¹⁷³ CEDAW/C/ISR/CO/5 (2011), para 40.

¹⁷⁴ Alqaisiya, Walaa. *Decolonial Queering in Palestine*, Routledge: London, 2023, pp. 30, 31.

¹⁷⁵ Al-Haq, *Field Report on Human Rights Violations* (2020); Jerusalem Legal Aid and Human Rights Centre (JLAC), *The Warmth of Our Sons: Necropolitics, Memory and the Palestinian Quest for Closure*, (2019), p.28.

¹⁷⁶ E.g. Supreme Court in Additional Hearing 10190/17, Israeli military commander of Judea & Samaria (West Bank) v. Muhammad Eliyan (2018).

¹⁷⁷ DCI-P, *Withheld Bodies: No Closure for Palestinian Families Waiting for Their Child's Remains* (2020).

¹⁷⁸ FnX(JLAC,2019), p.47.

¹⁷⁹ Earakat, Noura and Rabea Eghbariah, "[The Jurisprudence of Death: Palestinian Corpses & the Israeli Legal Process](#)", *Jadaliyya* (8 February 2023).

¹⁸⁰ UNSCIP, [End of Mission Statement](#) (6 May 2016).

¹⁸¹ GC IV, article 130; AP I, article 34.

¹⁸² FnX(EnforcedDisappearanceConv), article 1; UN WGEID, UA ISR 2/2019 (2019).

¹⁸³ Veracini, Lorenzo. *Settler colonialism: a theoretical overview*, Houndmills, UK: Palgrave Macmillan, 2010, p. 46. Nethery, Amy. "Incarceration, classification and control: Administrative detention in settler colonial Australia", *Political Geography* (2021), pp.3-4

occupied Palestinian territory reproduce this pattern.¹⁸⁴ Over time, Israel has expanded its multifaceted hold over the Palestinians as-a-people through physical, bureaucratic and digital mechanisms. Behind-bars imprisonment dovetails with confinement techniques that envelop the entire occupied Palestinian territory, accompanying and enabling arbitrary seizure of land and Palestinians' forcible displacement.

80. This has turned Palestinian life into a *carceral continuum*,¹⁸⁵ where different levels of captivity co-exist: from the micro-level of individual deprivation of liberty described so far, through mass incarceration, to population entrapment in strictly controlled enclaves in which the occupied population is confined as a collective security threat, and any form of resistance to the occupation's territorial expansion and dispossession is repressed.

A. Physical carcerality

81. Physical segregation has historically been used as a settler colonial tool to control and manage native populations, acquire their lands, and displace them.¹⁸⁶ Within the fragmented occupied Palestinian territory, Israel has entrapped the Palestinians within a physical architecture that resembles a prison, but on a much larger territorial and societal scale.

82. The illegal blockade of the Gaza Strip is the most well-known example of this physical entrapment, with over two million Palestinians subjected to collective punishment since 2007. The heavily militarized fence surrounding the Gaza Strip and its 'no-go zone' further shrink the enclave by 17 percent and the agricultural area by 35 percent, while access to the maritime area is reduced by 85 percent as a result of the heavily-patrolled sea blockade.¹⁸⁷

83. In the West Bank - 60 percent of which is under full Israeli military and civil control - the carceral architecture comprises: 270 colonies and military bases encircling Palestinian cities, town and villages, preventing their expansion; closed military zones, constituting 18 percent of the West Bank;¹⁸⁸ a 700 kilometer-long Wall largely built *inside* the West Bank, including in and around east Jerusalem, annexing an additional 10 percent of Palestinian territory; approximately 64 checkpoints, 76 partial checkpoints, thousands of flying checkpoints, 72 roadblocks; 17 segregated roads, for a total of 400 kilometers, for Israelis only; and Israeli-controlled exit and entry points of the occupied Palestinian territory.

84. Within this maze, the city of Hebron has reportedly served as a 'model' to advance colonization via harsh occupation strategies.¹⁸⁹ To 'make space' for 600 settlers living in heavily fortified areas of the city, Israel has put in place a system of 20 checkpoints with thousands of soldiers, prohibiting Palestinians from accessing their city's main streets and markets.¹⁹⁰ The system is being replicated in Jerusalem's neighborhoods targeted for settlement expansion (e.g. the Old City and Silwan).¹⁹¹

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

B. Bureaucratic carcerality

86. Within the physical boundaries of their confinement, Palestinians must also navigate a maze of bureaucratic barriers made of requirements, permissions and restrictions in the form of Israeli-issued "permits" and "bans". Dictating much of Palestinian existence, permits

¹⁸⁴ FnX(Nashif).

¹⁸⁵ Foucault, Michel. *Discipline and Punish. The Birth of the Prison*. Vintage books, 1995, p. 297.

¹⁸⁶ Anthony, Thalia, and Harry Blagg. "Hyperincarceration and indigeneity." *Oxford Research Encyclopedias criminology and criminal justice* (2021).

¹⁸⁷ FnX(AI,2022), pp. 28.

¹⁸⁸ OCHA oPt, [West Bank Firing Zones](#) (2012).

¹⁸⁹ *H2: The Occupation Lab* (2023), Documentary by Idit Avrahami and Noam Sheizaf.

¹⁹⁰ B'Tselem, [Hebron City Center](#) (updated May 2019).

¹⁹¹ Al-Haq, *Occupying Jerusalem's Old City: Israeli Policies of Isolation, Intimidation and Transformation* (2019), pp.7-12, 15.

and bans transform basic freedoms into privileges arbitrarily granted or denied by the occupying power.¹⁹²

87. Over a hundred permits regulate essential activities such as leaving the West Bank and Gaza, building and even residing in certain areas, working, visiting family, receiving medical treatment, worshiping, entering east Jerusalem, let alone Israel.¹⁹³ While the Israeli Civil Administration issues the permits, the ultimate decision rests with Israel's Shin Bet, which determines the security classification of every Palestinian.

88. Conversely, bans restrict Palestinians' ability to receive a permit. Bans can be issued by the Shin Bet on "security suspicions", by the police for suspected criminal activity; or by the Israeli Civil Administration, often indiscriminately.¹⁹⁴

89. The permit system is not only arbitrary, but also lacks transparency, resulting in frequent denials and no meaningful avenues for appeal.¹⁹⁵ The lack of permit confines Palestinians and even their relatives, preventing them from working, receiving life-saving medical treatment, traveling, studying abroad or visiting family. Lack of permit can also lead to arrest; this affects for example Palestinians working inside Israel or colonies, or Palestinians from Gaza living in the West Bank. This deepens the collective captivity of Palestinians, rendering them vulnerable and exploitable.¹⁹⁶

90. In 2022, new regulations further restricted entry to and residency in the West Bank, including east Jerusalem, to foreign nationals, including Palestinians from the diaspora.¹⁹⁷ These regulations introduce quotas for foreign students and academics, impose limitations on family unification, and allow the Israeli Civil Administration to assess even the sincerity of intimate relationships. These appear as attempts to further isolate and disconnect Palestinians in the occupied Palestinian territory from the outside world.

C. Digital carcerality

91. Under international law, interference with the right to privacy, such as the use of surveillance technologies, must be prescribed by law, only when strictly necessary, proportionate to achieve a legitimate, non-discriminatory, and respect fundamental rights.¹⁹⁸ Instead, digital surveillance pervasively entrenches Israeli forces' control over the spaces and life of the occupied population.¹⁹⁹ Palestinians are constantly monitored through CCTV and other devices at checkpoints, in public places, social gatherings and protests. Their private spaces are often intruded without their knowledge, through monitoring of online platforms like Facebook, calls, and online conversations considered "threatening,"²⁰⁰ and tracking the location and connections of mobile phones to establish networks and potential associations, or even through their medical records.

92. Digital surveillance and automated policing intensify near Israeli colonies and military infrastructure. Colonies are equipped with technologies that enhance identification, arrest, and detention of Palestinians engaging in protests or resisting the expansion of colonies.²⁰¹ Digital surveillance ultimately serves to facilitate colonization.

¹⁹² BerdaFnX, p.162.

¹⁹³ FnXBtS(2022), p. 15.

¹⁹⁴ Ibid., p. 22 and Testimony 4.

¹⁹⁵ HRW, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (2021), p. 174.

¹⁹⁶ FnXBtS(2022), p.23.

¹⁹⁷ COGAT, "Procedure for Entry and Residence of Foreigners in the Judea and Samaria Area", 21 December 2022.

¹⁹⁸ ICCPR, article 17; HRC General comment No. 16; A/HRC/39/29, para. 10.

¹⁹⁹ Yuval Noval Harari [statement](#), World Economic Forum (2018).

²⁰⁰ Santos, Madalena. "Settler colonial surveillance and the criminalization of social media: contradictory implications for Palestinian resistance." In *Protests in the Information Age*, Routledge, 2018, p. 102.

²⁰¹ Amnesty International, *Automated Apartheid* (2023), p. 75.

93. In addition to extensive control, the occupation has advanced Israel's development of powerful surveillance technologies, including facial recognition, drones, and social media monitoring.²⁰² Examples of these programs include the 'Blue Wolf,' an app connected to the Wolf Pack, an Israeli database containing imagery, personal information and security ratings of Palestinians in the West Bank; and the 'Red Wolf', a system of cameras equipped with facial recognition that identify Palestinians at checkpoints, interact with and feed information into Blue Wolf and Wolf Pack. This has created a "gamified surveillance" whereby Israeli military units photograph Palestinians without consent, and even engage in disturbing competitions. In Hebron, the so-called "Smart City Initiative" has led to audio-visual surveillance of Palestinians across town.²⁰³ Similar forms of control are being deployed in east Jerusalem neighborhoods (e.g. Silwan and Sheikh Jarrah), enhancing restrictions and ultimately widespread carcerality.

VII. Conclusions

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

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

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

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

²⁰² 7amleh, "[What is the Facebook Bill?](#)" (2022).

²⁰³ FnX(Automated Apartheid), pp.40-45, 69 .

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

VIII. Recommendations

The Special Rapporteur recommends that:

99. Israel's system of arbitrarily depriving Palestinians of their liberty in the occupied Palestinian territory, emanating from an irredeemably unlawful occupation, be abolished tout court, because of its inherent incompatibility with international law.

100. To achieve this goal, Third States:

- (a) Use diplomatic, political and economic measures afforded by the Charter of the United Nations without discrimination.
- (b) Not recognize as lawful, aid or assist Israel's occupation given its commission of internationally wrongful acts and possible international crimes, and call for their cessation and reparations.
- (c) Prosecute the commission of international crimes alleged in this report under universal jurisdiction.

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

- (a) Declare a moratorium on the detention of minors.
- (b) Release all Palestinian detainees, especially children, detained for acts devoid of offensiveness under international law.
- (c) Release all withheld bodies of deceased Palestinians and guarantee dignified burials.

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

- (a) Ceasing any form of arbitrary detention, as well as torture and ill-treatment of detainees, ensuring both accountability and reparations to the victims. This includes the release of the bodies of deceased Israeli withheld in Gaza.
- (b) Interrupting security arrangements that may lead to violating fundamental rights and freedoms under international law.
- (c) Ensuring effective oversight and accountability measures including by strategically engaging local human rights organisations.

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

- (a) willful deprivation of protected persons' right to fair and regular trial,
- (b) widespread and institutionalized use of torture and cruel, inhuman or degrading treatment or punishment,
- (c) unlawful deportation or transfer or unlawful confinement,

(d) imprisonment or severe arbitrary deprivation of liberty in violation of fundamental rules of international law,

(e) persecution against an identifiable group or collectivity by reason of its identity,

(f) apartheid.

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

Advance unedited version