



The Condition of Palestinian Women and Children in Israeli Jails

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Jails

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OVERVIEW

- The treatment of Palestinian detainees in Israeli prisons does not comply with international human rights or with international humanitarian law standards. This report examines how these international law violations are accentuated in the cases of detained women and children.
- Due to the fact that women and children are vulnerable subjects, they are often at risk of violence, abuse and denial of their rights at every stage of the criminal justice process.¹ The risks faced by Palestinian children in detention are having a damaging impact on their development and violate established principles of juvenile justice. In the same way, there is a complete disregard of gender sensitive health care and hygiene standards for Palestinian female detainees, sometimes resulting in pregnant women being shackled on their way to hospitals to give birth.²
- This report distinguishes between two types of violations: *those occurring during the trial proceedings, including denial of fair trial and administrative detention, and those occurring during detention and in prisons, sometimes amounting to torture.*
- Before addressing these substantive issues, the report reconsiders Israel's obligations under international law, since an understanding of the latter has a bearing on the categorisation of the former.

PART 1: ISRAEL'S OBLIGATIONS UNDER INTERNATIONAL LAW

I. International humanitarian law and international human rights law

Before discussing Israel's obligation to ensure protection of women and children in criminal proceedings and prisons, the different types of applicable international law applicable must be clarified.

a) The difference between international humanitarian law and international human rights law

International humanitarian law and international human rights law are complementary, since both strive to protect the lives, health and dignity of individuals, albeit from different angles. Humanitarian law applies in situations of armed conflict, whereas human rights protect the individual at all times, in war and peace alike.³ International humanitarian law places duties on all parties to a conflict and human rights, being tailored primarily for peacetime, apply to everyone.

The duty to implement international humanitarian law and international human rights lies first and foremost with States. States are also required to ensure that other States comply with international humanitarian law. Articles 146 and 147 of Geneva Convention IV on the Protection of Civilians in Time of War require the parties *"to enact any necessary legislation to provide effective penal sanctions for persons committing grave breaches of the present Convention"*. The same provision imposes *"an obligation to search for persons alleged to have*

committed such grave breaches, and shall bring such persons, regardless of nationality, before its own courts".⁴

b) International human rights law provisions as protectors of women and children

For the purposes of this report, it is very important to note that the Fourth Geneva Convention (one of the main provisions of international humanitarian law) does not include special instructions on the subject of the rights of minors or women put on trial by an Occupying Power. International human rights law, on the other hand, sets clear guidelines regarding their treatment in criminal proceedings, and the requirement to take their vulnerability into account at all times.⁵ These applicable provisions will be explained in the following two sections.

II. International legal standards protecting female detainees in occupied territory

a) Palestinian women and the criminal justice system in the Occupied Palestinian Territories

Over half a million women and girls are held in penal institutions around the world. Women are usually imprisoned for petty and non-violent crimes.⁶ In Palestine women became visibly active during the second intifada and did not escape the mass arrest campaigns. On occasions Palestinian women were imprisoned as a means of placing pressure on their husbands.⁷

As will be studied in part III of this report, Palestinian women suffer from physical, vocational and social psychological needs in prison and often face problems with maintaining contact with family and the outside world, as well as accessing education, training and work

programmes, and healthcare whilst in prison.

b) *International legal standards for women in prisons*

The rights guaranteed in international human rights treaties apply equally to men and women. However, the *Convention on the Elimination of All Forms of Discrimination against Women*⁸ additionally obliges state parties to eliminate all forms of discrimination against women, including refraining from engaging in any act or practice of discrimination and taking measures to modify or abolish existing laws, regulations, customs and practices which discriminate against women.

There are also specific standards and provisions that recognize the special needs and circumstances of female prisoners. The *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*⁹ recognises the need for specific measures to protect the rights and special status of women, especially pregnant women and nursing mothers.

Rule No. 23 and 53 of the *Standard minimum Rules for the Treatment of Offenders* state that “*female prisoners should be separated from male prisoners and supervised by female officers*”. They also requires the provision of special accommodation for all necessary pre-natal care and treatment.

The State of Israel is also obliged to respect, protect and fulfil the rights included in the *International Covenant on Civil and Political Rights* (ICCPR),¹⁰ the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT),¹¹ including the optional protocol as Israel is a State party to these treaties. Other international instruments which protect both prisoners and civilians, including women in times of conflict are: *The Declaration on the Protection of Women and Children in Emergency and Armed Conflict* (1974), the *United Nations*

Standard Minimum Rules for the Treatment of Prisoners (1955), and the *Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women* (1999).

III. International legal standards protecting children detainees in occupied territory

a) Palestinian children and the criminal justice system

Today there are more than one million children in detention worldwide, most of whom have committed only minor offences.¹² The majority of children in conflict with the law come from deprived and marginalized communities and their exposure to crime often reflects the failure of the state to protect or provide for them. Children generally come into conflict with the law through activities for survival, including theft, vagrancy and begging. In Palestine, children are normally arrested from military checkpoints or at home in the middle of the night with tens of soldiers surrounding the house and then raiding it (soldiers usually do not have a warrant for arrest or searches). In 2008 the most common offence Palestinian children were charged with under Israeli military law, was stone throwing. Under Israeli Military Order this charge carries a maximum penalty of 20 years imprisonment and in 91% of cases bail was denied.¹³

b) International legal standards for children in prisons

As has been mentioned above, the 4th Geneva Convention does not include special instructions on the subject of the rights of minors put on trial by the occupying power whereas international human rights law does. Article 14 (d) of the *International Covenant on Civil and Political Rights* requires the adjustment of legal



procedures in the courtroom to the minor's age: *"in the case of juvenile persons, the procedure shall be such, as will take account of their age and the desirability of promoting their rehabilitation."*

The main treaty for the protection of children is the *UN Convention on the Rights of the Child*, (ratified by Israel in 1991¹⁴), and requires that *"the best interests of this child shall be a primary consideration"*. Article 40 of this Convention relating to children *"alleged as, accused of, or recognized as having infringed the penal law"*, sets forth a detailed list of the rights of such children. These rights are identical to the basic protections required by international human rights law vis-à-vis adult defendants, while paying special attention to the fact that the accused is a minor,

considering his/her age and condition, involving the minor's parents (if possible) in the proceedings, and respecting the child's privacy entirely, at all stages.¹⁵

Another central tenet of the requirements of international law regarding criminal procedures for minors is separating them from adults, mainly during detention.¹⁶The *UN Convention on the Rights of the Child* states that “every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so”. Israel has often chosen to sidestep both its own regulations and those of the UN Convention by charging and sentencing children as young as 12 years old. As is the case with adult prisoners, child detainees are transferred to prisons located within Israel (contrary to international humanitarian law and law of occupation, which requires military prisons to be inside the occupied territory)¹⁷. The primary prisons in which Palestinian child male detainees are held are Hasharon (Telmond), near Netanya, and Megiddo, near Haifa. Girl child prisoners are transferred to Neve Tertza Prison (Ramleh). The interrogation of child detainees takes place at Beit El and Huwarra Interrogation Centers, and occasionally other interrogation centers, and Palestinian child administrative detainees are held with adult administrative detainees at both Ofer and Negev Military Prison Camps.

Furthermore, in paragraphs 36-38 of the United Nations Committee on the Rights of the Child's *General Comment 10: Children's Rights in Juvenile Justice*, the Committee calls signatory state parties to the Convention on the Rights of the Child to define the threshold for legal majority as 18 and no lower. Contrary to this provision, children under the age of 16 in the Occupied Palestinian Territories can be arrested, tried and treated in the same manner as adults. Between the ages of 12-14, children can be sentenced for offences for a period of up to 6

months. After the age of 14, Palestinian children are tried as adults. There are no juvenile courts and this results in children being detained in centres together with adults. Over the last eight years an estimated 6,700 Palestinian children were arrested and detained in Israeli prison facilities and treated in the same manner as adults.¹⁸

Other international standards concerning children in conflict with the law include the *UN Standards Minimum Rules for the Administration of Juvenile Justice*,¹⁹ the *UN Rules for the Protection of Juveniles Deprived of their Liberty*,²⁰ the *UN Guidelines for the Prevention of Juvenile Delinquency* (the Riyadh Guidelines)²¹ and the *UN Guidelines for Action on Children in the Criminal Justice System*.²²

PART 2: DENIAL OF FAIR TRIAL AND DUE PROCESS RIGHTS

Since Israel's occupation of the West Bank (including Jerusalem) and the Gaza Strip in 1967, Palestinians have been charged with offences under Israeli military law and tried in military courts.

I. The Israeli Military Court System

a) Overview of the Israeli military court system

Since the Israeli occupation of Palestinian territory in 1967, Palestinians have been charged with offences under Israeli military law and tried in Israeli military courts. It is estimated that during the last 42 years of occupation, approximately 700,000 Palestinian men, women and children have been detained under Israeli military orders in the Occupied Palestinian Territories.²³ According to a recent report, between 1990 and 2006, more than 150,000 Palestinians were brought before the Israeli military courts.

The Israeli military court system has operated in the Occupied Palestinian Territories for 42 years in a manner almost completely devoid of international scrutiny. Although Israel, as an Occupying Power, has the right under international humanitarian law to establish military courts in the Occupied Palestinian Territories, applicable international human rights and humanitarian law restricts the jurisdiction of such courts, and guarantees certain fundamental fair trial rights.

b) The military court apparatus

There are two Israeli military courts operating in the Occupied Palestinian Territories:

- Salem Military Court, situated near Jenin
- Ofer Military Court, situated near the city of Ramallah, in the central region of the West Bank

Both military courts are situated inside Israeli military bases in the Occupied Palestinian Territories and access is strictly limited. Appeals from the military courts are heard by the Military Court of Appeals which is situated in two locations, one inside Ofer military base and the other inside Ketziot Prison, in Israel. As has been mentioned above, international law requires that these courts should be situated in the Occupied Palestinian Territories and not inside Israel.

It is important to note that the Military Courts are presided over by judges who are military officers who are awaiting promotion.²⁴ As was stated in the case of *Madani v Algeria* by the Human Rights Committee, it is questionable whether the use of military courts to try civilians could ever satisfy the requirements under international human rights law to a trial before an independent and impartial tribunal, as the judges are all serving officers subject to military discipline and dependent on superiors for promotion.²⁵ This violates the democratic principle of separation of powers and puts at risk the judiciary's independence.

II. The trial of civilians in military courts

a) Should civilians be tried in military courts at all?

Having established how the judiciary in the military courts may be a threat to due process, it is important to discuss whether it is permissible in international law to try

civilians in military courts at all. The trial of a civilian by a military court is problematic due to the “perception” that the conduct of such trials will be biased and subject to abuse by the executive and conducted in a manner which is considered to be “*unfair*” (i.e.: not compliant with the conditions set out in Article 14).

The serious legal concerns regarding the prosecution of civilians in military courts are only heightened in the case of women and children. These arguments are more compelling when faced with prosecution before a military tribunal where fewer fair trial protections exist, and juvenile justice standards appear almost inexistent.

While international human rights law does not preclude the trial of civilians by military courts, the UN Human Rights Committee has stated that:

- a state of emergency may never be invoked as a justification for deviating from fundamental principles of fair trial
- resort to military tribunals should be *exceptional* and limited to cases where regular civilian courts are unable to undertake trials with regard to the specific class of individuals and offences
- Military tribunals should afford the full guarantees stipulated in Article 14 of the *International Covenant on Civil and Political Rights (1966) (ICCPR)*

b) *The case of Madani v Algeria*

The issue of military trials of civilians arose before the Human Rights Committee in the case of *Madani v Algeria*. Divisions appeared within the Committee when assessing the allegation that the trial of Madani by the Blida military court was a violation of Article 14 which protects the right

to a fair trial. The majority of the Committee held that the trial of Madani, a civilian, by a military court was *per se* a violation of Article 14 of the ICCPR. This approach was justified on the basis of the Committee's General Comment No. 13 which states that: "*while the Covenant does not prohibit such (military and special) courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulates in article 14*".²⁶

From this case it is clear that the burden is on Israel to rebut the presumption that the military trial of a civilian is *per se* a violation of Article 14. Israel should prove that:

1. The trial of the civilian by a military court is "unavoidable"
2. The military courts afford the full protection of the rights of the accused according to Article 14.

Both these conditions must be satisfied for a military trial of a civilian to be considered Article 14-compliant.

The trial of civilians by military courts or tribunals is undesirable for a number of reasons. First, there is an "impression" that military courts will not be independent or impartial in their administration of justice. Second, it is believed that military courts are used so that the procedures that adhere to fair trial principles used by ordinary civilian courts can be circumvented. Finally, the use of military rather than civilian courts is an abuse of the principle of equality before the courts. A State that wishes to use military courts to try civilians must address each of these concerns. There is therefore a requirement that Israel demonstrates the necessity of a military trial and how such trials fulfil the requirements of a fair trial as set out in Article 14, as set out by the Human Rights

Committee in *Madani*.

III. Administrative Detention and Article 9 of the ICCPR

a) Administrative Detention and International Law

Administrative detention is detention without charge or trial, authorized by administrative order rather than by judicial decree. It is allowed under international law, but because of the serious injury to due process rights inherent in this measure and the obvious danger of abuse, international law has placed rigid restrictions on its application, so administrative detention is only allowed if “*the security of the state...makes it absolutely necessary*”, and only in accordance with “*regular procedures*”.²⁷ Administrative detention should therefore never be used as a substitute for criminal prosecution where there is insufficient evidence to obtain a conviction

In conclusion, administrative detention is intended to prevent the danger posed to state security by a particular individual. Nonetheless, Israel has never defined the criteria of what constitutes “*state security*”.

b) The legal basis for administrative detention according to Israeli law

Under Military Order 1591, Israeli military commanders in the West Bank can issue an administrative detention order for renewable periods of up to six months if “*they have reasonable grounds to presume that the security of the area or public security require the detention*”. The initial six month period can be extended by additional six-month periods indefinitely. This procedure denies the detainee the right to a fair trial and the ability to adequately challenge the basis of his or her detention.

The Order directs that the detainee be brought before a judge within 8 days. Administrative detention of individuals located inside Israel is made pursuant to the *Israeli Emergency Powers Law (Detentions) 1979*, which allows the Minister of Defence to order detention for six-month periods which the minister can extend indefinitely. Israeli law requires that the detainee be brought before a judge within 48 hours and the periodic review every 3 months by the president of a District Court.

Administrative detention orders are issued either at the time of arrest or at some later date and are often based on “secret evidence” collected by the Israeli Security Agency. Neither the detainee, nor the detainee’s lawyer are given access to the secret evidence and therefore have no effective means of challenging the detention, as is required by international law.²⁸

It is not uncommon for children and women to receive multiple administrative detention orders which are often renewed within days of their expected release date. On average approximately 20-30 children are held in administrative detention each year. Most of these children are 16 years or older and many remain in administrative detention after their 18th birthday after which they are no longer included in the official Israeli Prison service statistics. Israel should end the practice of detaining persons under the age of 18 in administrative detention and promptly charge all child detainees with a recognisable offence or immediately release them. The state should also amend Military Order 1591 to exclude the detaining of persons under the age of 18 in administrative detention.

In practice, Palestinians under administrative detention orders can be detained for months, if not years, without ever being informed about the reasons or length of their detention and detainees are routinely informed of the

extension of their detention on the day that the former order expires. Contrary to Article 78 of the Fourth Geneva Convention, in reality, Palestinians have no effective means to challenge administrative detentions. This is particularly worrying when vulnerable subjects such as women, children or the mentally ill are detained. In 2007, Israel held a monthly average of 830 administrative detainees, which was one hundred higher than in 2006.²⁹ According to the Israeli Prison Service Figures, there are currently at least 428 Palestinians being held in administrative detention, of which 3 are women and 1 is a child.³⁰

Table 1: Number of Palestinian children detained at the end of each month- 2008³¹

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2008	327	307	325	327	337	323	324	293	304	297	327	342

On 14 August 2009, Hamdi al-Ta'mari was issued with his fourth administrative detention order by the Israeli military commander in the West Bank. This latest order was issued for a duration of four months. The order was reviewed by an Israeli military court on 20 August 2009, which confirmed the order. On the same day, Hamdi turned 17. This administrative detention order is now set to expire on 14 December 2009. Al-Tamari has been held without charge or trial since 18 December 2008.³²

It is the author's contention that the Israeli government immediately releases all administrative detainees or brings them to trial for any criminal offences they are suspected of having committed. Military orders should also be amended so that they conform to international legal standards (namely, to Article 9 of the ICCPR,³³ which guarantees the "*right to be informed, at the time of*

arrest, of the reasons for his arrest and shall be promptly informed of charges against them.”)

IV .The Right to a fair trial and other violations of Article 14 of the ICCPR

Article 14 of the ICCPR recognizes the right in all proceedings to a “fair trial and a public hearing by a competent, independent and impartial tribunal established by law”. As has been seen from above, the trial of civilians in military courts and administrative detention pose severe threats to Article 14. The following is a brief outline of other violations of Article 14 which specifically risk violating due process rights of women and children.

a) Legal proceedings should be translated into Arabic

Israel should ensure that a list of charges written in Arabic be given promptly to all Palestinians accused of offences in the military courts. Under military order 378³⁴, the substance of the charge must be given to the accused before his trial. There is no requirement that the charge be given promptly or be written in Arabic, both of which are required under international law. In practice, indictments written in Hebrew containing the charges are given to the defendant’s lawyer on the day.³⁵

Of particular concern is the continued practice involving Palestinian children being made to sign confessions written in Hebrew, a language few children understand. Once obtained, these confessions constitute the primary evidence against Palestinian children in the military courts (see children’s case study 3 below).

b) The right to be brought promptly before a judge

Israel should ensure that all Palestinian detainees be brought before a judge within 48 hours of their Detention, in line with the Israel's domestic legislation and international law. Under Military Order 378, a Palestinian detainee, including children as young as 12, can be detained for up to eight days before a military judge. In contrast, Israeli citizens must be brought before a judge within 48 hours.

Table 2: Military Order 1951 vs Israeli Domestic Law

Administrative Detention	Brought before a judge	Duration of Order
Military Order 1951	8 days	6 months
Israeli Domestic Law	48 hours	3 months

Israel should also ensure that Palestinian lawyers have regular and reasonably unimpeded access to their clients in detention in Israel and the Occupied Palestinian Territories. In 2008 lawyers for DCI Palestine represented 265 children in the Israeli military courts. Bail was only granted in 9% of cases before the Israeli military courts, and the children were kept in pre-trial detention. This contravenes well established and legally binding principles of juvenile justice whereby incarceration should be a measure of last resort.³⁶

c) Presumption of innocence or presumption of guilt?

According to Military Order 378, the Israeli Evidence Ordinance applies to proceedings in the military courts and provides for the presumption of innocence. In the

*“Backyard Proceedings”*³⁷ Yesh Din stated that in 2006 full acquittals were obtained in just 0.29 percent of cases in the military courts, suggesting a presumption of guilt instead. As has been mentioned above, proceedings in the military courts disregard many basic fair trial rights and general principles of juvenile justice are not applied. In most cases, the primary evidence against the children is the confession extracted during coercive interrogation. 95% of cases end in the children pleading guilty, whether the offence was committed or not.

d) The establishment of a youth court

For the past 42 years, Palestinian children have been tried in the same military courts as adults, even though the UN Convention on the Rights of the Child promotes the establishment of specialised juvenile courts. As was mentioned in Part I, general principles of juvenile justice also require that Israel establishes a youth court with appropriately trained staff for Palestinian children charged with offences under the military orders.

On 29 July 2009, Gadi Shamni (the Israeli military commander in the West Bank) acknowledged the requirement for a child specific jurisdiction with the issuance of Military Order 1644 relating to juveniles.³⁸ DCI-Palestine is of the view that the changes proposed lack in substance³⁹, since Palestinian children are still being interrogated in the absence of a lawyer, children as young as 12 can still be tried in the military courts, and much of the language of Military Order 1644 is discretionary in nature and therefore not mandatory (the ‘juvenile military court’ must convene in separate rooms ‘*as much as possible*’ and children must not be brought to the court, or detained with adults, ‘*as much as possible*’). DCI-Palestine called upon the Israeli authorities to ensure

that no child is interrogated in the absence of a lawyer; that all interrogations of children are video recorded; and that all evidence suspected of being obtained through ill-treatment or torture be rejected by the military courts.⁴⁰

PART 3: PRISON AND DETENTION CONDITIONS

I. Palestinian Women Prisoners

a) Background information

Prior to the Al-Aqsa Intifada, there were only 5 Palestinian women imprisoned in Israeli jails. Since then, the number of Palestinian female prisoners has risen dramatically, reaching its highest figure of over 120 in 2004 and more than 700 over 4 years.⁴¹

Since the second intifada there have been around 100 Palestinian women held as political prisoners.⁴² According to Ahrar-Pal this figure has risen to 140 in August 2009.⁴³ A July 2008 report⁴⁴ stated that there were 74 women detained, imprisoned and held under administrative detention in Israeli jails, among them 2 mothers, who were allowed to keep their babies with them but whose children suffered harsh treatment. Palestinian women are generally held in 3 different prisons, namely Telmond (in Hasharon), Neve Tirza (in Ramleh) and Al-Jamelah (in Kishon), all of which are administered by the Israeli Prison Services. While detention conditions vary from prison to prison, in no case are they acceptable, nor do they meet women needs. Female prisoners suffer from overcrowding, poor quality of food, lack of fresh air and natural sunlight amongst other things.

b) The prisons

Of the three above mentioned prisons, only one of them is a specialized women's prison: Neve Tirza. The other prisons contain facilities which have been designed for



men and by men and rarely meet women's needs.⁴⁵

The July 2008 Report⁴⁶ (which was sponsored by the United Nations Development Fund for Women) described in detail the cell conditions of these women. According to Article 10 of the *Standard Minimum Rules for the Treatment of Prisoners 1955*: “all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation”. According to Article 19 of those same Minimum Rules, “Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness”.

Contrary to these provisions, Palestinian women suffer

from overcrowding in Israeli prisons. As stated in the July 2008 Addameer Report⁴⁷, female prisoners in Damoun prison are divided into 3 cells, with each one housing respectively 10, 13 and 14 women. Each one of the cells contains only 12 beds, which suggests that women have to take turns sleeping on the floor, as at least 2 cells do not have enough beds for all of them. The cells in Damoun prison do not include showers and women are forced to use common bathrooms located outside the cells and which are open only at certain times set by the administration. Iron bed frames cause prisoners back problems and blankets are not provided by the IPS, forcing women to depend on their families' supplies or on other women in jails. Furthermore, during winter, only thin blankets are permitted, and thick ones are prohibited.

c) *Lack of sensitive health care and hygiene standards*

Hygiene standards in all 3 prisons are very poor. Due to insufficient and poor quality nutrition⁴⁸ women suffer from loss of weight and hair, general weakness, anaemia and iron deficiency. Their diet does not change or improve when they fall ill, are pregnant or breast-feeding.

As Palestinian female prisoners are mostly detained in centres which lack a gender-sensitive approach and where jailers are men, their personal health and hygiene needs are not being addressed by the administration. Every woman gets 2 rolls of toilet paper and a set number of 10 sanitary towels per month, with no consideration to her needs.⁴⁹

Female prisoners are not only physically vulnerable but also psychologically vulnerable and this is why they are interrogated by male Israeli soldiers only. In traditional Palestinian society specifically, females are very closely connected with their families and Israeli soldiers often

“Male Israeli forces are specially trained to search women in the cells... they raid the cells in an unexpected and surprising manner and search the female prisoners individually”.

prevent family visits or they use their family as a means of both threatening and punishing female prisoners. Most Palestinian female prisoners also cover their hair and body in the presence of men not from the immediate family, according to the Islamic values. This becomes very hard for female prisoners who are constantly surrounded by male soldiers. Typical individual punishments of women include unannounced late night searches of cells, which are often conducted by mail jailers. Such actions violate women’s right to privacy and cause them severe stress and trauma. Fuad al-Khuffash⁵⁰ interviewed female prisoner Ahlam Tamimi (arrested on 14th September 2001 and sentenced to sixteen life terms⁵¹, or 320 years) on the 22nd of August 2009. The prisoner stated that *“Male Israeli forces are specially trained to search women in the cells...they raid the cells in an unexpected and surprising manner and search the female prisoners individually”*.

Sumoud Factsheet states that during these raids Israeli prison guards sometimes cut the electricity, shoot tear gas and shut the windows and attack the prisoners. On March 16, 2002 prison guards entered the women’s cells while they were sleeping and took 13 to isolation. They put two in each cell and told them to undress. The women refused, and the prison guards handcuffed them and took off all their clothes. They left the cell doors open as male wardens stood outside.⁵²

On 13 September 2001, prison guards stormed the cells of the three girl prisoners in Ramle and demanded their belongings for no reason. They took all of the prisoners except adult female prisoner Amne Muna from the room. According to Amne's affidavit, she heard the other girls screaming as they were subject to severe beating. Amne herself was placed in an isolation cell and beaten so severely that the prison nurse described her situation as very dangerous and requiring immediate treatment. Her face was also sprayed with tear gas.⁵³

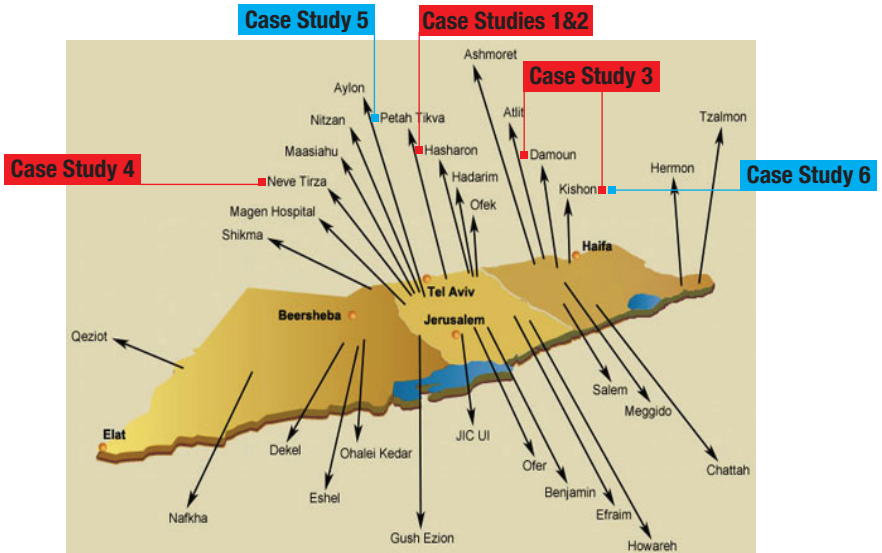
d) Barred from Contact

Israel holds Palestinian prisoners and detainees outside the Occupied Territories and this constitutes a flagrant breach of international law as has been mentioned above. According to international humanitarian law, the transfer of civilians, including detainees and prisoners, from the Occupied Territories to the territory of the occupying state is prohibited.⁵⁴

Due to the fact that there are lots of obstacles in obtaining a permit to enter Israel, many Palestinians are *de facto* unable to visit their imprisoned relatives. It is very difficult to obtain a permit to enter Israel for family visits and there are restrictions on minor children visiting their mothers and communicating with them. There is a prohibition from physical contact from the age of 16 and above that are visiting their parents and siblings⁵⁵.

e) Case studies- women

The following are some case studies which analyse the situation in more detail:



Israeli Prisons and Interrogation Centres⁵⁶

Prisons, Detention Centres

Case study 1

Hasharon prison (Tel Mond) is the Israeli jail with the highest number of female political prisoners. According to the Women's Organisation for Political Prisoner's, the sewage system in the cells is not adequate, in some cells there is sewage flooding and the cells are infested with vermin.⁵⁷

Fatmah elZuq, from Gaza, mother of 9 children, was arrested on 20 May 2007. Her baby Yousef, 19 months old, has stayed with her in prison since he was born. For over two months, the prison authorities have prohibited her to take her baby to meetings with lawyers. Since the baby is vulnerable and cannot be left alone, this means that Fatmah is *de facto* denied the right to meet with her lawyers



Neve Tirza Prison (Ramle)⁶¹

It is of paramount importance that Fatmah is allowed to fulfill her right of meeting with lawyers and to appeal to the judicial authorities in case of need. Furthermore, Fatmah is from the Gaza Strip, which means that her family is prohibited from visiting her, and she does not have any contact with persons outside of prison.

Following some legal representation the prison authorities have allowed Fatmah to take her baby to meetings with lawyers, but they still refuse to allow toys for baby Yousef and to provide special food suitable for his age.

Case study 2

Rajaa El-Ghul is an administrative detainee, 39 years old, from Jenin Refugee Camp. She was arrested on the 31st of March 2009 and suffers from heart disease. She does not receive adequate care in prison. This is contrary to the *UN Standard Minimum Rules for Treatment of Prisoners* which recommend measures to safeguard prisoners' health with regard to accommodation, personal hygiene,

“Palestinian women often give birth inside the prisons, shackled by chains and under appalling circumstances”.

clothing and bedding, food, medical services, discipline and punishment, word and education and recreation.

Case Study 3

Damoon prison is located in Carmel Mountain, close to Haifa. It is extremely hot, the prison authorities prevent the prisoners from buying more fans and the cells are infested with vermin.⁵⁸

Najua Abed El-Ghani is 33 years old, from Sida, Tul Karem district, was arrested on 21 July 2009 and has recently been transferred to Damoon Prison (August 2009). She had previously been in Kishon Detention Center (Jalameh) where she endured interrogations and was held in very harsh conditions. The cell was very narrow and dirty without any windows, the light was on 24 hours a day making Najua suffer from sleep deprivation⁵⁹, and the food she received was not edible. In August, she was transferred to Damoon Prison.

The Palestinian Prisoners' Society⁶⁰ has stated that female prisoner Najua Abed El-Ghani disclosed serious violations committed by Israeli occupation forces (IOF) during her detention. Abed El-Ghani revealed that the IOF troops stormed her home on the 21st of July 2009 in Saida and forced her family out in a barbaric way before kidnapping her along with her brother. She was then taken to Al-Sharon prison and locked her up with Israeli convicts in one cell for two days before transferring her to Jalama

Nasreen Abu Zina, 25 years old, a former prisoner, from Tul Karem, was arrested on 18 August 2009, brought to Hasharon prison and, on 19 August, was transferred to Kishon Detention Center (Jalameh). She has endured interrogations and is at the moment held in isolation in very harsh conditions: the cell is very dirty, without any windows, it is very cold in the cell because of the air-conditioner, the light is on 24 hours a day. She does not have her own clothes because the prison authorities took them away, and she wears prison clothes only.

prison for 14 days. She said that in Jalama prison, she was subjected to intensive interrogation amid curses and yells by different Israeli officers and everyday passed was worse than the previous one which made her eventually ill and emaciated from lack of eating and sleeping hours.

Case Study 4

Palestinian women often give birth inside the prisons often shackled by chains and under appalling circumstances, In *Neve Tirza* Women's prison, 20-year old Mirvat Taha from Ramle gave birth to a son, Wael, in the Spring of 2009. Mirvat was initially sentenced to 2 1/2 years imprisonment,



although this was reduced to 20 months after an appeal. Wael is suffering from allergies and sensitivities in prison because he did not receive his vaccinations on time.

Case Study 5

Petah Tikva is a detention centre where most interrogations are conducted. Leila Taha, 24 years old, from Kafr Kana, Galilee, was arrested on 17 August 2009. Taha is a Member of the National Democratic Youth Union and studies Political Science and Arabic at Haifa University. Her father is the head of the National

Democratic Assembly in Kufur Kanna and has described the attempt as a provocative act and an attempt to intimidate his politically and socially active daughter.⁶² Taha is not allowed to meet any lawyers.⁶³

The Public Committee for Defending Freedoms, part of the Higher Arab Follow-up committee, considered the arrest as another attempt by the Israeli security apparatus to intimidate politically active Arab youth. The Committee has demanded the immediate and unconditional release of Laila, adding that such violations will only make Arab youth more determined to counter provocative Israeli acts against the Arab population in Israel.

Case Study 6

Nasreen Abu Zina, 25 years old, a former prisoner, from Tul Karem, was arrested on 18 August 2009, brought to Hasharon prison and, on 19 August, was transferred to *Kishon Detention Center* (Jalameh). She has endured interrogations and is at the moment held in isolation in very harsh conditions: the cell is very dirty, without any windows, it is very cold in the cell because of the air-conditioner, the light is on 24 hours a day. She does not have her own clothes because the prison authorities took them away, and she wears prison clothes only.

II. Palestinian Child Prisoners

a) Background Information

Each year an average of 9,000 Palestinians are prosecuted in two Israeli military courts operating in the West Bank, including 700 children. From the moment of arrest, Palestinian children encounter ill-treatment and in some cases torture, at the hands of Israeli soldiers,

“Israeli soldiers are specifically trained to distress the children from the very beginning”

policemen and interrogators.

Once sentenced, the overwhelming majority of Palestinian children are detained inside Israel, in clear contravention of the Fourth Geneva Convention. Many children receive no family visits whilst in prison and limited education is only provided in two out of five of the prisons used to detain Palestinian children.

As will be seen below, all the treatment of Palestinian children clearly violates the following provision: *“In all actions concerning children...the best interests of the child shall be a primary consideration”*⁶⁴

b) Process of arrest, transfer and interrogation

Palestinian children are routinely arrested at checkpoints, off the street and most commonly, from their homes in the early hours of the morning. The Israeli army normally surrounds the house between midnight and 4am and forces family members onto the street in their nightclothes, regardless of weather conditions. Eran Afrati was a former commander in Israel’s army and he served in the Occupied West Bank. He describes these night-time arrests as “brutal” and amounting to torture.⁶⁵ Efati vividly describes how the Israeli soldiers blindfold the children, brutally handcuff and use tear gas against the Palestinian children at the Bilin protests.

When the child arrives to a detention/interrogation



centre the child is placed in a cell or taken straight for interrogation after a brief medical check. According to research undertaken by Fuad Al-Khuffash⁶⁶, during the medical checks the children are asked to take their clothes off in front of male soldiers, who sometimes asked the children to pose in a certain manner for their pleasure.

All of this takes place under severe shouts and threats of soldiers. The children are left too traumatised to talk about all of their experiences in prison. Contrary to international and domestic law provisions, the child is denied access to a lawyer for days or weeks until the end of the interrogation process. Al-Khuffash explains how during the interrogation process vulgar methods of interrogation are used and the Israeli soldiers are specifically trained to distress the children from the very beginning.

c) Conditions of Detention

Living conditions for Palestinian child prisoners are generally described as extremely difficult. As is the case with women, children suffer from overcrowding, poor ventilation and access to natural light, poor quality and inadequate amounts of food, harsh treatment by prison officials and boredom.

The food received by the young prisoners is not adequate for a child who is of growing age. During the month of Ramadan, family visits are not allowed and the food is inedible⁶⁷. Dates are not always provided during the evening meal and when they are, the Center for Prisoners' Studies in Palestine has revealed that they are unfit for consumption.

Palestinian children in Israeli detention only receive limited education in two out of the five prisons and no education whatsoever in any of the interrogation and detention centres. In the two prisons where education is provided, it is limited to a few hours per week. The ultimate aim is to destroy the child's education and development, thereby making him a burden to society when released.

As mentioned before, there is a problem with the fact that all but one of the prisons where Israel detains Palestinian



children are located inside Israel, in breach of Article 76 of the Fourth Geneva Convention. It is also against Article 49 that the Occupying Power transfers part of its own civilian population into the occupied territories. The practical consequence of this is that this violation against prisoners may mean that the children may not receive any family visits as their relatives are denied permits to enter Israel. The Center for Prisoners Studies wrote in its most recent report that Palestinian prisoners can spend lifetimes not knowing their children or parents due to a lack of family visits.⁶⁸

Another common practice is to put all young offenders together, irrespective of the alleged committed offence. This is done deliberately, so as to ensure that prisoners sentenced for a non political crime (drugs etc) have a bad influence over the prisoners. The Israeli soldiers often force the children to become collaborators and spies. If the child refuses there is a threat of punishment or even rape.⁶⁹

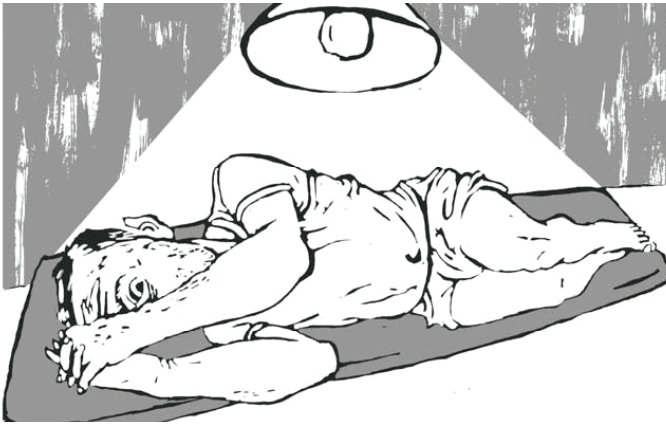


Sharp twisting of the head

“Utterly Forbidden: The Torture and Ill-Treatment of Palestinian Detainees” ,
http://www.btselem.org/download/200705_Utterly_Forbidden_eng.doc

d) Ill treatment and torture

The prohibition against torture is universal and absolute



Interrogates suffer from sleep deprivation during the interrogation period. The light in the cell was left on at all times and this significantly impaired their ability to sleep

"Utterly Forbidden: The Torture and Ill-Treatment of Palestinian Detainees", http://www.btselem.org/download/200705_Utterly_Forbidden_eng.doc

and can be found in customary international law as well as international humanitarian law⁷⁰. The ICCPR, the UN Convention on the Rights of the Child (1989) and the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment also prohibit and condemn torture. Israel has ratified and is bound by these treaties.

In June 2009 two Israeli officers testified that troops in the West Bank "beat, bound and blindfolded" Palestinian civilians as young as 14.⁷¹ These disclosures by two sergeants of the Kfir Brigade include descriptions of abuses they say they witnessed during a search-and-detain operation involving hundreds of troops in Hares village.

The soldiers confessed that about 150 Palestinians, some as young as 14, were bound, blindfolded and detained

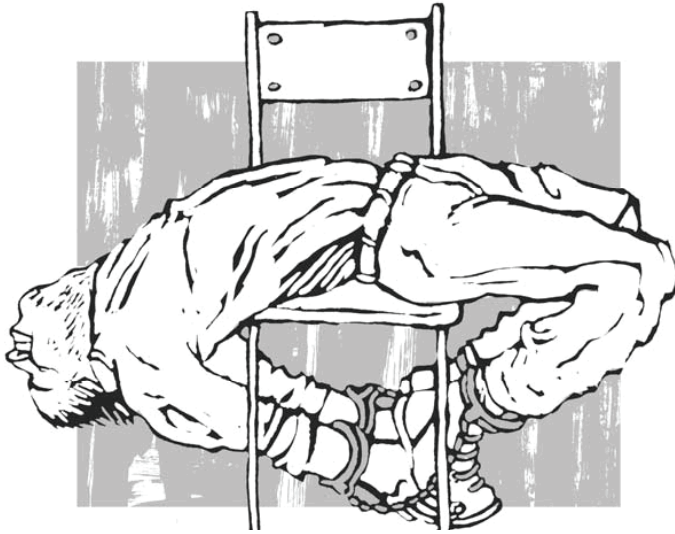


Crouching in the frog position

“Utterly Forbidden: The Torture and Ill-Treatment of Palestinian Detainees”,
http://www.btselem.org/download/200705_Utterly_Forbidden_eng.doc

at the village schools during the operation, which lasted from 3am to 3pm. The army spokesman’s office said an investigation had been opened but it is doubtful to what extent this investigation is being conducted.

The most controversial issue with regards to torture



Bending back: the banana position

“Utterly Forbidden: The Torture and Ill-Treatment of Palestinian Detainees”,
http://www.btselem.org/download/200705_Utterly_Forbidden_eng.doc

remains Israel’s reported use of physical and psychological pressure during interrogations of prisoners. According to human rights groups, these include beating, leaving prisoners in uncomfortable postures, interrogation sessions which last 24-48 hours, depriving prisoners of sleep, depriving them of their human dignity and making threats against the lives and property of their relatives.

In May 2007 B’Tselem and Hamoked published a report with very graphic images on these methods of torture:⁷²

e) Case Studies- children

The following are some case studies to analyse the



ISRAELI MILITARY DETENTION OF CHILDREN

Military Courts

- [A] Ofer Military Court
- [B] Salem Military Court

Interrogation and Detention Centres

1. Ofer
2. Salem
3. Al Jalame (Israel)
4. Huwwara
5. Ma'ale Adumim (police station)
6. Etzion
7. Kiryat Arba (police station)
8. Al Mascobiyya (Jerusalem)

Prisons

1. Ofer
9. Telmond Compound (Israel)¹
10. Megiddo (Israel)
11. Ketziot (Israel)
12. Damoun (Israel)

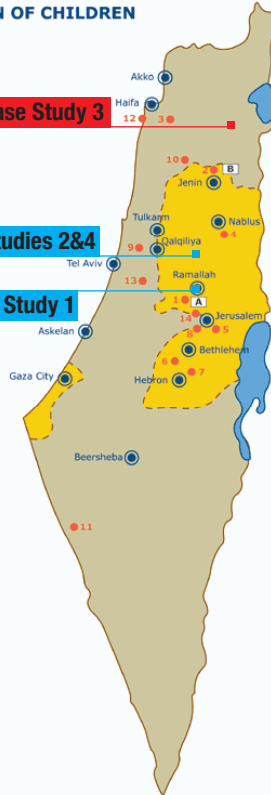
Hospitals

13. Ramle Prison Hospital
14. Hadasa Ein Karem Hospital

Case Study 3

Case Studies 2&4

Case Study 1



Israeli Prisons and Interrogation Centres⁷³, Prisons, Interrogation and Detention Centres

situation of Palestinian children prisoners in more detail

Case Study 1

On the 14th of August 2008, 17 year old Hamdi (from Dheisheh Refugee Camp near Bethlehem, situated near a number of illegal settlements and the Wall) was walking home when he was shot twice in the legs by a sniper.

Around 2:00 am Hamdi and his family were returning back home after his cousin's wedding. Before reaching the house, he asked his mother to let him go and buy some bread from the bakery. On his way to the bakery he ran into a group of children who were hiding behind metal barrels and throwing stones. Hamdi did not hide behind the metal barrels and approached the children when a sniper fired on him. He was shot twice in his right and left legs and fell to the ground bleeding.

Whilst he was on the ground, four Israeli soldiers approached him and started beating him. One of the soldiers hit him with the barrel of his assault rifle and made him bleed heavily from his nose and mouth. Another soldier kicked him in the back Hamdi was dragged on the sidewalk for 50 metres and was taken to a military ambulance, where his clothes were torn off (except his underwear). Before being taken to hospital, the soldiers pulled him out of the military ambulance and began taking pictures of him using their mobile phones and a camera.

Hamdi was accused of throwing a Molotov cocktail and spent nine months in detention in *Ramle Prison*. Hamdi was released on 1 May 2009.

Case Study 2

Abdullah was arrested in his family home at 3am on the 20th of April 2009 in the West Bank city of Qalqiliya (situated near the wall).

During the interrogation process, men in civilian clothes interrogated him for 2 hours. One of the soldiers slapped



him on his face during the interrogation. He then placed a blade on his neck and asked him to confess. Because of this he was forced to confess to throwing Molotov cocktails and stones at the soldiers.

Abdullah was sentenced by a military court to 16 months imprisonment after entering into a plea bargain. He served the majority of his sentence in *Telmond Prison* and was due to be released on 5 September 2009.

Case Study 3

DCI-Palestine has received disturbing reports from children taken to *Al Jamale Interrogation Centre* and being kept in solitary confinement in “**Cell No. 36**”.⁷⁴ This is a small cell without any windows, little ventilation and a dim yellow light that is kept on 24 hours a day. Children kept in this cell report developing pain in their eyes. The following case illustrates how children are sometimes kept in solitary confinement in Cell No.36:

Around 2:00 am on 12 August 2008, 16 year old Abdullah from Balata Refugee Camp was arrested by Israeli soldiers and transferred to Al Jalame Interrogation and Detention centre inside Israel. Abdullah was taken to Cell No. 36, where he was kept for two days until he was taken to the interrogation room.

Once in the interrogation room, he was seated on a small chair. His feet and left hand were tied to the chair and he was kept in this position for a long time without being interrogated. During the interrogation, the soldiers were aggressive and threatened not to change the bandages in his right hand. After every interrogation, Abdullah was sent back to the cell and kept there for several days without being asked any questions or given any explanations.

Abdullah confesses that the situation got so difficult that at one point he “*confessed to many things that he does not recall in detail*”. Abdullah was charged with membership of a banned organisation, conspiracy to purchase a weapon and the manufacture of Molotov cocktails. He was sentenced by a military court to 18 months imprisonment and will be released from detention on 12 April 2010.

Case Study 4

There are also a number of child detainees in *Telmond Prison*. They are increasing in number and are usually imprisoned in Telmond Prison, inside Israel, with adult prisoners and receive no formal education.

16 year old Ataf B. was arrested for allegedly having contact with a wanted person and the intention to carry out a suicide bombing. After the interrogations took place, Ataf had to sign a paper written in Hebrew. She was told that the paper had been sent by her interrogator and that she had confessed to doing many things, including

intending to carry out a suicide bombing. Ataf refused to sign this paper. After 10 days of interrogation Ataf was put in a room with another detainee. Ataf was suffering from stomach ache and the other detainee handed her a white pill, which turned out later to be a narcotic pill. Ataf fainted for some time and when she woke up, she had confessed to all the charges.

CONCLUDING REMARKS AND RECOMMENDATIONS

- The ill-treatment and torture of Palestinian women and children by Israeli authorities is widespread, systematic and institutionalised. The system operates within a general culture of brutality and impunity and the trial proceedings are a mockery of international law and violate due process principles.
- It should be noted that wilfully depriving a person of their rights to a fair trial constitutes a grave breach of Article 147 of the Fourth Geneva Convention, for which personal criminal responsibility applies.
- Between 2001 and 2008, over 600 complaints were filed against the Israeli Security Agency (ISA) interrogators for alleged ill-treatment and torture. To this date, there has not been a single criminal investigation.
- There has to be some level of accountability for what amounts to serious breaches of the Fourth Geneva Convention, the UN Convention Against Torture and the UN Convention on the Rights of the Child, both at the domestic and international level. Failing this, both the ill-treatment and torture of Palestinian children at the hands of Israeli authorities will continue unchecked.

ENDNOTES

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3. ‘International humanitarian Law: Answers to your questions’, International Committee of the Red Cross Publication, <http://www.icrc.org/web/eng/siteeng0.nsf/html/5KZMUY>
4. <http://www.icrc.org/ihl.nsf/COM/380-600169?OpenDocument>
- 5 ‘*Backyard Proceedings: The implementation of due process rights in the military courts in the occupied territories*’, p. 154, Yesh Din, Volunteers for Human Rights, December 2007
6. <http://www.penalreform.org/women-in-prison.html>
7. “Palestinian Women Political Prisoners”, Addameer (Prisoners’ Support and Human Rights Association) <http://www.addameer.org/detention/women.html>
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12. “*Children in conflict with the law*” (UNICEF 2006), Child Protection information sheet, http://www.unicef.org/protection/files/Conflict_with_the_Law.pdf
- 13 “*Palestinian Child Prisoners: The systematic and institutionalized ill-treatment and torture of Palestinian Children by Israeli Authorities*”,p.9, Defence for Children International-Palestine Section, June 2009, <http://www.dci-pal.org/english/publ/research/CPReport.pdf>

14. "Palestinian Children's Rights and the 18th Anniversary of the Adoption of the United Nations Convention on the Rights of the Child", DCI-Palestine, November 20, 2007, <http://www.dci-pal.org/english/display.cfm?CategoryId=1&DocId=625>

15. Ibid 5

16. Article 37(b) of the Convention on the Rights of the Child

17 Article 66 of the 4th Geneva Convention states that: "...the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied territory"

18. <http://www.palestinemonitor.org/spip/spip.php?article11>

19. <http://www2.ohchr.org/english/law/beijingrules.htm>

20. <http://www.un.org/documents/ga/res/45/a45r113.htm>

21. <http://www.un.org/documents/ga/res/45/a45r112.htm>

22. <http://www2.ohchr.org/english/law/system.htm>

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24. "The judicial arm of the occupation: the Israeli military courts in the occupied territories", Sharon Weill, *International Review of the Red Cross*, Volume 89, Number 866, June 2007, pages 399 to 400

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26. Human Rights Committee, General Comment No. 13: Article 14 (Twenty-first session, 1984) *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 13 April 1984, HRI/GEN/1/Rev.1 at 14 (1994); 1-2 IHRR 12 (1994)

27. Article 42 of the Fourth Geneva Convention and Article 4 on the International Covenant on Civil and Political Rights

28 Article 78 of the Geneva Convention allows the Occupying Power to take safety measures for imperative reasons and to

subject protected persons to assigned residence or internment, but that residence or internment shall be made “*in accordance with the provisions of the present Convention, including the right of appeal for the parties concerned...*”

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30. Israeli Prison Service figures 30 June 2009

31. The figures in this table were obtained through the Israeli Prison Service and visits by DCI-Palestine lawyers to interrogation centres and prisons.

32. <http://www.dci-pal.org/english/display.cfm?DocId=1225&CategoryId=1>

33. <http://www2.ohchr.org/english/law/ccpr/htm>

34. Military order 378 (article 78 D)

35. Ibid 5, page25.

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40. Ibid 39

41. “*Palestinian Women in Israeli Prisons*”, Addameer, Prisoners’ Support and Human Rights Association

42. “*Palestinian Women Prisoners*”, Fact Sheet No. 5, Sumoud, <http://somoud.tao.ca/>

43. This data is taken from <http://ahrar-pal.info/arabic> (Ramallah) and was given to the author by Dr. Fuad al-Khuffash

44. Fact Sheet Series: “*Behind the Bars: Palestinian Women in Israeli Prisons*”, a 2008 report by Addameer, the Palestinian COundelling Center and the Mandela Institute for Human Rights

45. Ibid 37

46. Ibid 38

47. Ibid 44

48. Even though the Standard Minimum Rules for the Treatment of Prisoners state that *“every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served”*.

49. Addameer Prisoner’s Rights and Support Association interview with former female prisoners, 10 July 2008, Jenin

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51. <http://www.nytimes.com/2007/06/27/arts/television/27genz.html>

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53. DCI/PS Prisoner Briefing no.3, 22 September 2001, <http://www.dci-pal.org/english/home.cfm>

54. Article 49 of Geneva Convention IV

55. B’Tselem September 2006 Information Sheet

56. <http://addameer.info/?p=558> edited by the author

57. <http://www.wofpp.org/english/home.html>

58. Ibid 51

59. See page 43 below for graphic images on sleep deprivation and other methods of torture

60. <http://ppsmo.org/pps/>

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62. <http://palestinianprisoners.blogspot.com/2009/08/daughter-of-former-member-of-israeli.html>

63. Ibid 51

64. Article 3, UN Convention on the Rights of the Child

65. *“Israeli troops ‘ill-treat kids’”* http://news.bbc.co.uk/2/hi.middle_east/8186905.stm

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family visits are banned and food is inedible" <http://uruknet.com/?p=m57498&hd=&size=1&l=e> , Palestine News Network, August 31, 2009

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70. Fourth Geneva Convention, Common Article 3

71. "*Bound, blindfolded and beaten- by Israeli troops*" Ben Lynfield, The Independent, 9 June 2009, <http://www.theindependent.co.uk/news/world/middle-east/bound-blindfolded-and-beaten-ndash-by-israeli-troops-1700194.html>

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