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Advancing Arab-British Relations

**P a l e s t i n i a n  
d e t a i n e e s :  
no security in injustice**

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All facts and statistics were accurate and checked at the time of publication.



Advancing Arab-British Relations

Since its establishment in 1967, Caabu has taken on a strong political, educational and media role. A cross-party organisation, with Chairs from all the main political parties, Caabu works to advance Arab-British relations through its support for international law, human rights and democracy. Caabu has over 90 British Parliamentary members and provides Secretariat services for the Britain-Palestine All-Party Parliamentary Group, as well as the Jordan and Qatar APPGs. Caabu has organised over forty five delegations to the Middle East since 1997.

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# I N T R O D U C T I O N



The clanking of leg irons on a 13-year-old Palestinian boy as he entered the courtroom is a sound I will never forget. It was Kafkaesque; as if this boy could endanger anyone in the middle of an Israeli military base. What a Caabu delegation of British politicians witnessed in the ‘courtroom’ at Ofer was a mockery of law and process worthy of the term ‘kangaroo’. The children had so little faith in the proceedings that all they wanted to do was to see their parents and hear their news for the first time in weeks.

These scenes are not unusual. What this report outlines is the way in which entire generations of Palestinians have had to experience the humiliation and degradation of the Israeli military justice system, one of the most oppressive tools of the 45-year-old Israeli occupation. The unfairness of this system gained greater prominence in 2012 following hunger strikes by Palestinians in Israeli detention centres. For these reasons, Caabu has chosen to highlight this issue by taking seven delegations of Parliamentarians to visit military courts and detainees’ families since November 2010. But Palestinians also suffer at the hands of their own fledgling justice system. The weakness of due process and the ill-treatment highlighted in this report illustrate the need for more detailed monitoring and analysis in this area.

It is much easier to justify extreme measures – including violence – against people whom we do not see as human. This applies especially to the

Israel-Palestine conflict: why should a Palestinian suicide bomber have any qualms about walking into a pizza parlour and blowing up Israeli men, women and children if he believes Jews are “the brothers of apes and pigs”?<sup>1</sup> Similarly, why should an Israeli soldier feel any guilt over the bloodletting of Operation Cast Lead if he believes Palestinians are “cockroaches”?<sup>2</sup>

Caabu believes that it is vital for Israelis and Palestinians to discover their common humanity if there is to be an end to conflict. While the release of Israeli Sergeant Gilad Shalit in October 2011 garnered international attention, little regard was given to the more than one thousand Palestinians freed in the exchange, or the almost 4,500 more who remain imprisoned, many of them without charge. Shalit’s plight gained so much sympathy because, as the BBC put it, he was “the kid next door”<sup>3</sup> – identifiable and recognisable in his innocence and humanity.

The aim of this report therefore is to give an identity to the thousands of faceless Palestinian prisoners, in the hope that humanising them will make it harder to justify their unnecessary suffering. Ultimately this must be part of a broader resolution of the conflict.

**CHRIS DOYLE**  
Director

*“I do not believe this process of humiliation represents justice. I believe that the way in which these young people are treated is in itself an obstacle to the achievement by Israel of a peaceful relationship with the Palestinian people.”*

**Lord Alf Dubs**, speaking about the trial of children in Ofer military court, which he visited as part of a Caabu delegation in April 2011.



**Map. I**  
**Prisons and Detention Centres in Israel and the Occupied Palestinian Territory**

Source: base-map acquired from Addameer - Prisoner Support and Human Rights Association



“Few Palestinian families have never had a member in [an Israeli] jail.”  
BBC 2011

Since 1967 Israel has maintained a military occupation of the West Bank and Gaza. Detention and imprisonment have formed a large part of that regime: the Palestinian Centre for Human Rights (PCHR) estimates that, since the start of the occupation in 1967, over 760,000 Palestinians have been detained.<sup>4</sup> The United Nations offer a more conservative estimate of around 726,000.<sup>5</sup> The sheer scale of the Palestinian prisoner issue is therefore striking.

At the end of April 2012, there were 4,424 Palestinians held in Israeli jails, 308 of whom were held in administrative detention – imprisonment without charge or trial. It is worth noting that the total figure is relatively low, in particular because of the release of over 1000 prisoners in late 2011. Of those in administrative detention in April 2012, 24 were members of the democratically elected Palestinian Legislative Council (PLC). An additional three members of the PLC were in prison, serving sentences.

The prisoners' plight is characterised by a lack of due process and abuse of international law. Human rights groups report violations of the rights to liberty, dignity and freedom from torture and abuse, as enshrined in the International Covenant on Civil and Political Rights, to which Israel is a State Party. Israel's treatment of prisoners also contravenes multiple articles of the Fourth Geneva Convention, such as those prohibiting transfer across borders. The Association for Civil Rights in Israel (ACRI) states that “in the Occupied Territories, the violation of the rights of suspects, arrestees, and prisoners occurs on a massive scale, at every stage of the criminal process.”<sup>6</sup>

In addition, the treatment of prisoners in Palestinian Authority (PA) and Hamas jails is a major cause for concern. Human rights organisations have documented severe abuses in both the West Bank and Gaza. The inter-factional violence of June 2007 and the subsequent split between Hamas-controlled Gaza and the Fatah-dominated West Bank have contributed to the situation's deterioration and led to a rise in politically-motivated arrests in both parts of the Occupied Territory.

## Two judicial processes for two peoples

In the West Bank an Israeli settler who is arrested will face a civilian court and is afforded the rights enshrined in Israeli law. A Palestinian faces a military court with military judges.

Martial law is a far harsher legal system. The period that an individual spends in detention prior to his/her trial differs significantly depending on the system. While an Israeli settler must be brought before a judge within 24 hours of arrest, a Palestinian can be held for up to eight days before a court appearance. ACRI notes that, “The security legislation operative in the territories establishes a period of arrest that is excessive and inconsistent with the obligation to respect the individual's right – including a suspect's right – to freedom from incarceration. The extended periods of arrest imposed on Palestinian residents harm their most basic rights: the right to liberty, to due process, to human dignity, and to equality.”<sup>7</sup>

Sentencing under Israeli military law is far more severe than under Israeli civil law. Amnesty International records that, on 21 January 2001, Israeli settler Nahum Korman was sentenced to six months of community service and issued with a \$17,000 fine for beating to death an 11-year-old Palestinian child, Hilmi Shawasheh. The same day Suad Ghazal, a 17-year-old Palestinian girl, was sentenced to six and a half years for stabbing and injuring an Israeli settler. She was 15 at the time of her arrest and suffering from psychological problems. Amnesty notes that, “The sentence handed down to Nahum Korman sends out a powerful message – that Israelis can kill Palestinians with impunity.”<sup>8</sup>

Moreover, to observe that the dual judicial system is unfair on Palestinians is to assume that both systems are applied equally in all cases. While the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) recorded a 32% increase in the number of Israeli settler attacks on Palestinians from 2010 to 2011, and a 144% increase from 2009 to 2011, it also notes that over 90% of monitored Palestinian complaints to Israeli police of violence by settlers have been closed without indictment.<sup>9</sup>

## CASE STUDY: ISLAM JABER

Age: 13  
Date: 22 July 2011  
Location: Ras al-Amud, East Jerusalem

While playing football on the street with friends, a civilian car approached Jaber carrying plain-clothed Israeli security forces wearing balaclavas. With the road blocked off by a border police jeep, Jaber was forced into the car (pictured) and taken to an interrogation centre.

Accused of throwing stones, Jaber's interrogation took place without the presence of his parents or a defence lawyer. Jaber alleges that, after he refused to sign a document written in Hebrew, he was beaten and hit with a club.<sup>10</sup> All of these actions breach Israel's Youth Law.

## East Jerusalem

Although East Jerusalem is part of the Occupied Palestinian Territory, Israel de facto annexed the city and land around it in 1967 (repeatedly condemned by the UN Security Council – see Resolutions 252, 267, 271, 298, 465, 476 and 478) and Palestinians with Jerusalem residency permits fall under Israeli civil law. However, while this may seem equitable in principle, the application of the law again reveals massive inequality in how Palestinians are treated compared to Israelis. For instance, Israel's Youth Law should give Palestinian children all the protection that Israeli children receive, but it is often ignored. Furthermore, one of the fundamental principles of the law of occupation is that the legal system of the occupier has no jurisdiction in the occupied territory; to say otherwise is to suggest that the occupier has sovereign rights in occupied territory.

## Gaza

Israel arrests Palestinians throughout the entirety of the West Bank, including Area A where the PA has security control. In Gaza, the Hamas-lead authority has sole control over the judicial process. The Gazans who are in Israeli jails have therefore been arrested in either the West Bank or Israel.





# ADMINISTRATIVE DETENTION

Administrative detention is the imprisonment of an individual without charge, ordered by the executive branch (in the case of the West Bank, the IDF military commander), rather than the judiciary.<sup>11</sup> Under international law, administrative detention is permissible in exceptional circumstances, for “imperative reasons of security”,<sup>12</sup> for example when a nation’s security or public order is threatened.

In the Occupied Territory, an Israeli administrative detention order can mean up to six months’ imprisonment without charge or trial and the possibility of the order’s renewal at the end of the term. Palestinian administrative detainees can in theory be held indefinitely, without ever facing trial or, in many cases, learning the reasons for their detention. Of the 308 Palestinians in administrative detention in April 2012, one had been imprisoned without charge for over five years.<sup>13</sup> Seventeen others had been incarcerated for between two and four years.<sup>14</sup>

The high number of Palestinians imprisoned without charge or trial implies that administrative detention is used by Israel as a quick and easy alternative to criminal proceedings – in cases where the authorities have insufficient evidence to secure a conviction, or where they do not wish to reveal the evidence they have. This use of administrative detention renders it a punitive rather than preventive measure, in contravention of the way it is provided for under international law.

Israeli officials often argue that all administrative detainees have the right to appeal, even to the Supreme Court of Israel. From 2000 to 2010, only 282 appeals against administrative detention orders reached the Supreme Court. However, all of the appeals were rejected, while 70% of the cases heard by the court “resulted in very short (one to six lines) and laconic judgements.”<sup>15</sup>

According to Shiri Krebs of Stanford Law School, the use of secret evidence and *ex parte* proceedings (that is, in the absence of the defendant and the defence counsel) makes success highly unlikely:

“First, the Court relies on one-sided information, and it is almost impossible for the detainee to disprove the state’s allegations against him (or her); second, the secret evidence creates a dynamic of trust between the court and the state representatives, which makes it harder to the Court to reject the secret evidence or disagree with the state representatives on their significance.”<sup>16</sup>

Krebs concludes that the Court “systematically avoids issuing release orders, and demonstrates minimal intervention with regard to the assessment of the secret evidence.”<sup>17</sup>

Both the UN Committee Against Torture and the UN Human Rights Committee have criticised the way Israel uses administrative detention orders and called on it to review its use.<sup>18</sup>

“Administrative detention without effective judicial review might cause mistakes of facts or of discretion, which means infringement upon individual liberty without justification.”  
*Justices of the Israeli Supreme Court*



## CASE STUDY

### **KHADER ADNAN**

In December 2011, Khader Adnan, a Palestinian under administrative detention, began a hunger strike. It was the 33-year-old's ninth period of detention. He was given a four month administrative detention order on 8 January 2012, after being hospitalised on 30 December. Adnan's appeal against his detention without trial was rejected on 13 February by the Israeli authorities on the grounds that the initial penalty – based on secret evidence – was “balanced.” On 21 February, after 66 days of refusing food, the Israeli justice ministry announced that Adnan would end his hunger strike, after an agreement was reached to release him at the end of his administrative detention order in April.

Khader Adnan's case highlights the misuse of administrative detention by Israel. International law is unequivocal: administrative detention is permissible only in exceptional circumstances, in cases where national security is threatened. The agreement to release Khader Adnan, but only after he serves out his order, is a clear admission by the Israeli authorities that he posed no threat to their national security. His detention was arbitrary: if he truly was a security risk the Israeli authorities would not have agreed to release him. This case shows how administrative detention is used to punish Palestinians for political reasons, rather than to prevent crimes. The fact that a deal was reached that required Adnan to remain in prison until his order expires shows that Israel was not willing to set a precedent of releasing administrative detainees.

This is further evidenced in the Krebs study of appeals against administrative detention in the Supreme Court. Noting the high withdrawal rate before and after the hearings (55% from 2000-2010), Krebs explains that this occurs due to the “bargaining in the shadow of the Court”, where settlements are made to release a detainee after his or her order is served. A defence lawyer told Krebs that if a settlement is agreed:

“To issue only one more detention order, or even to release him at the end of the current detention order, it means that the case is weak, and therefore the detainee should have been released immediately.”



## CASE STUDY

### **HANA SHALABI**

On 16 February 2012, at the age of 29, Hana Shalabi was taken into administrative detention by the Israeli authorities. Only four months earlier she had been released as part of the 2011 prisoner exchange, following 25 months held without charge. Once in custody, Shalabi immediately began a hunger strike, inspired by Khader Adnan, which she said would not end until she was freed.

On 7 March, an Israeli judge postponed making a decision on Shalabi's detention, during a court hearing in which members of her legal team were asked to leave the courtroom and her father was refused permission to see her, even from a distance.

Shalabi's time in prison was brought to an end after 43 days of hunger strike when a deal was brokered, under which she was transferred to Gaza. Although no longer confined to a cell, this agreement means that Shalabi must stay in Gaza for three years before she may be allowed to return to her home in the West Bank.



## Administrative detention of Palestinian Legislative Council members

Of the 308 Palestinians in administrative detention in April 2012, 24 were members of the Palestinian Legislative Council (PLC). An additional three members of the PLC were in Israeli custody, but not in administrative detention. That is to say, 18% of the PLC's 132 members were in detention in April 2012; in Britain, this would be the equivalent of 130 MPs. At points in 2009, nearly one third of all members of the PLC were in Israeli custody,<sup>19</sup> rendering it impossible for the PLC to convene.

The targeting of PLC members implies that Israel's motivations for detention are political, aimed at preventing Palestinian political institutions from functioning. On 26 September 2005, in the run-up to the January 2006 elections, 450 members of Hamas were detained, most of whom were involved in campaigning for the elections or were candidates.<sup>20</sup> Some were released on the day of the election and others just before or after. In response to the capture of Gilad Shalit in Gaza in June 2006, eight ministers and 26 members of the PLC were detained in the West Bank and kept in custody for one to two months.

### Legal issues surrounding administrative detention

There are numerous issues surrounding Israel's application of administrative detention, beyond its apparent political motivations and how commonplace recourse to it has become:

- Evidence against Palestinian administrative detainees is almost always classified, meaning that they are unable to make an effective appeal against their detention.
- Prisoners are rarely informed, in their own language, of the reason for their detention. This is a source of psychological stress for the detainees, and also prevents them from making an effective appeal against their detention.
- Administrative prisoners are regularly held in Israel, even though the transfer of detainees out of occupied territory is forbidden under articles 49 and 76 of the Fourth Geneva Convention.

### Hunger strikes

Inspired by Khader Adnan and Hana Shalabi, over 1500 Palestinians in Israeli jails began a mass hunger strike on 17 April 2012. They were protesting Israel's use of solitary confinement, the denial of family visits and the widespread use of administrative detention.<sup>22</sup>

Egyptian-brokered talks between the hunger strikers and the Israeli authorities reached a deal on 14 May



### CASE STUDY:

**BASIM  
AHMED  
MUSA  
ZA'RIR**

Occupation: Member of the Palestinian Legislative Council, Independent

Date of arrest: 1 January 2009

Number of administrative detention order renewals: Three

Date of release: 30 December 2010

Za'rir was arrested at his home in the early hours of 1 January 2009.<sup>21</sup> During the arrest his eldest son was beaten and other members of his family were interrogated. After being taken to Etzion detention centre, Za'rir was transferred to Ofer, where he was placed under an administrative detention order and kept for two months. He was then transferred to Ketziot prison in Israel, in violation of article 76 of the Fourth Geneva Convention. When his six month administrative detention order came to an end in July 2009, it was renewed and Za'rir remained in prison until December 2010.

Since 1993, Za'rir has been arrested and detained five times. On four occasions he was never charged; on one he was charged with membership of an illegal party but was acquitted.

2012, which saw an end to solitary confinement for 19 prisoners (in one case, after 13 years) and an end to a ban on family visits from Gaza (brought in following Shalit's capture in June 2006). Israel also undertook either to release prisoners currently in administrative detention at the end of their order, or charge them. However, evidence against administrative detainees will remain secret.

## TORTURE & ILL-TREATMENT

### Article I of the United Nations Convention against Torture:

“...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

The difference between torture and “cruel, inhuman or degrading treatment or punishment” (ill-treatment) lies in the severity of pain and in the intent behind the act. ‘Ill-treatment’ is used by the International Committee of the Red Cross to refer to significant suffering or pain that is inflicted without any specific purpose. Human rights groups have been reporting Israeli use of torture and ill-treatment since the start of the occupation. Both torture and ill-treatment are absolutely prohibited under international law.

Israeli human rights organisations, B’Tselem and HaMoked interviewed 121 West Bank Palestinians who had been arrested and interrogated over alleged security offences at the Shin Bet interrogation facility in Petah Tikva, Israel, in 2009.<sup>23</sup> The testimonies were gathered from interviews with detainees and help to build a picture of the sorts of techniques and conditions prevalent at the facility. It is this data that is used in this section.

### Arrest and transport to the facility

Many of the detainees reported that they were arrested in the early hours of the morning, while they were asleep. When arrest occurs late at night, “most subjects experience intense feelings of shock, insecurity, and psychological stress and for the most part have great difficulty adjusting to the situation.”<sup>24</sup> Night-time arrests disorientate the detainees, making them psychologically vulnerable even before they reach the interrogation facility.

30% of the 121 detainees interviewed reported being subjected to physical violence during their arrest. 22% reported that their house was damaged during the arrest. Not a single detainee was told to bring clothes, a toothbrush, or other items that they would need during their detention. The eighteen children interviewed by B’Tselem and HaMoked experienced the same treatment as those over the age of 18.

All the detainees were handcuffed and blindfolded when they were taken from their homes, with 27 (22%) of them reporting loss of sensation, severe pain, swelling, wounds and scarring as a result of the handcuffs.



## CASE STUDY: MARWAN BARGHOUTI

### Conditions in the interrogation facility

When detainees reached the Petah Tikva detention facility, they were transferred to cells which, although varying in size depending on the number of occupants, were only large enough to accommodate a mattress for each occupant and a squat toilet. Detainees estimated the size of the smallest cells to be 1.5x2m. The cells had no windows and were lit 24 hours a day by a bright, artificial light. The walls were too rough to lean against, so movement was very restricted. Not a single detainee was taken to an exercise yard at any point during the detention. 78% of those interviewed were held in total isolation for part of their detention. Solitary confinement and stimuli deprivation such as this make a detainee vulnerable by increasing his stress and anxiety and making the presence of another person – even an interrogator – a welcome relief, increasing the chances of compliance.

Hygiene conditions in the cells were consistently described as poor, with many detainees stating that they were not provided with such basic items as toilet roll, soap or a toothbrush. 29% of those interviewed said that they were denied access to showers for part of their detention. Two-thirds of the detainees recorded that food was poor to the point of being unidentifiable. When they were later transferred to other detention facilities they received better quality food, implying that a conscious decision has been made not to provide inmates at interrogation facilities with adequate food.

### Interrogation

Whilst in the interrogation room detainees were forced to sit, some with their legs shackled and the majority with their hands cuffed, on a metal chair for the duration of the questioning (which could last from as little as 15 minutes to over 24 hours). Their movement was thus greatly restricted, frequently causing numbness and pain.

Sixty eight (56%) of the detainees interviewed by B'Tselem and HaMoked were threatened by their interrogators with solitary confinement, beatings, sexual assault, indefinite administrative detention and

As a prominent and popular Fatah leader from the West Bank, Marwan Barghouti is seen as a possible successor to Mahmoud Abbas as President of the Palestinian Authority. However, he has been imprisoned in Israel (in violation of the Fourth Geneva Convention) since 2002. Barghouti is currently serving five life sentences in relation to a bombing that killed four Israelis and a Greek monk. His lawyers insisted that he was merely a political leader.

Barghouti's trial in 2004 followed two years of solitary confinement. In October 2011, UN Special Rapporteur on Torture, Juan Méndez, called on members of the UN to ban solitary confinement in all but the most exceptional of circumstances, saying that the severe mental distress it causes means it could amount to torture.

After calling for a new wave of Palestinian peaceful resistance and the severing of all ties with Israel in March 2012, Barghouti was placed in solitary confinement for a week and denied visitors for two months, as well as access to the prisoners' canteen for one month. According to his wife, Barghouti has been in solitary confinement 21 times, including one period of four consecutive years. Solitary confinement has been used in Barghouti's case as a political punishment, because of his call for popular resistance.

'military interrogation' (understood to mean torture). Two detainees were threatened with electric shocks. 36% reported receiving threats against family members. Many detainees were deprived of sleep, including 13 (11%) who were denied sleep for over 24 hours. The report uncovered three violent interrogation techniques that were experienced by 9% of detainees: beatings, sharp twisting of the head and sudden pulling of the body.

## CASE STUDY : AYMAN HAMIDA

In December 2011, a Palestinian detainee was acquitted after a military court in the West Bank found that his Shin Bet interrogators had used physical and psychological abuse and threats against his family to obtain a confession. Ayman Hamida was accused of 17 offences, including a shooting in 2009 (for which he was convicted based on the evidence of a co-conspirator). The other charges rested on a confession obtained during Hamida's 40-day interrogation.

During his trial, Hamida asked to retract this confession. In testimony to the court, he claimed that during his 40-day interrogation his brother was brought in for questioning to increase the pressure on him, that his interrogators threatened to bring in his sister and that he was threatened with administrative detention. He also claimed that he was beaten, choked, spat on, and deprived of food and clothing. One of the judges in the case wrote, "The testimony of the Shin Bet investigators led me to conclude that the investigation - its pace, the things said, the direct contact with the defendant's family, the veiled threat of administrative detention in the future - deprived the defendant of free will."<sup>25</sup>

The Israeli newspaper Haaretz noted, "Acquittal in such circumstances is rare; Israeli military courts usually accept the testimony of Shin Bet security service agents, even in cases where no one disputes that confessions were obtained after the suspects were beaten."<sup>26</sup> The 2010 Annual Report of Israel's Military Courts showed that 99.74% of all cases in the military courts end in conviction.<sup>27</sup>

## Conclusion

The findings of the B'Tselem and HaMoked report indicate that a number of techniques were used systematically by Shin Bet operatives at the Petah Tikva interrogation facility. These were designed to disorientate the detainees and cause anxiety through sensory deprivation; to weaken the detainees through depriving them of adequate sleep and food, severely restricting their movement; and to coerce the detainees through violence or the threat of violence. Such techniques constitute ill-treatment and abuse. Although they may not necessarily be representative of the treatment of all Palestinians in Israeli facilities, their use in the cases outlined above is of great concern.

In 1999, the Israeli Supreme Court outlawed many – but not all – of the interrogation techniques that had been prevalent up to that point. The Public Committee Against Torture in Israel estimates that, prior to the 1999 ruling, "almost all interrogatees... were the victims of at least one form of torture during their interrogation."<sup>28</sup> Although some of these interrogation techniques are no longer in use, B'Tselem and HaMoked's report indicates that physical coercion is still employed, meaning that Palestinian detainees are still subjected to ill-treatment and, in some cases, torture.



# CHILD DETAINEES

Plastic  
handcuffs  
used to  
detain  
Palestinians  
across the  
West Bank  
Source:  
B'Tselem  
Checkpoints  
Monitors Team



Approximately 500-700 Palestinian children are prosecuted every year in Israeli military courts after being arrested, detained and interrogated by Israeli forces. Since 2000, more than 7,000 children have been held and prosecuted.<sup>29</sup>

At the end of April 2012, there were 218 Palestinian children in Israeli custody, of whom 33 were under the age of 16.<sup>30</sup> This figure is lower than it has been in recent years – for example, in April 2009 there were 380 Palestinian children in Israeli custody. However, since the prisoner swap in December 2011, in which 55 children were released, there has been a 63% increase in the number of children in detention (as of April 2012).

In September 2011, the Israeli military commander in the West Bank issued Military Order 1676, which purported to raise the age of majority for Palestinians from 16 to 18. This means under-18s must be tried in juvenile courts. This finally brought Israeli law in the Occupied Territory partially in line with the international standard. However, the order does not apply to sentencing and so 16 and 17-year-old Palestinians are still sentenced as adults. Military Order 1676 also requires that a police officer inform the child's parents of his detention. However, since it is the Israeli army that conducts arrests in the West Bank, and many Palestinian children go for hours, sometimes days, before being handed to the police, this provision has had little impact.

*Caabu is grateful to Defence for Children International – Palestine Section for the case studies used here.*

## Arrest, transfer and interrogation

Children are taken to military detention centres for interrogation, often outside of the Occupied Palestinian Territory, in contravention of articles 49 and 76 of the Fourth Geneva Convention. The family is rarely informed of the child's location and may only find this out once the child appears in court or via contact with the International Committee of the Red Cross. Once in detention children are held for up to eight days without being brought before a judge. Some are held in solitary confinement.

Interviews take the form of military-style interrogations and – despite UN demands to end the practice – without video recording. Lawyers and family members are not present and it is common for the child only to see his/her legal representative for the first time inside the military court itself. The forms of abuse most commonly reported during detention include sleep deprivation, beatings, slapping and kicking and denial of food and water; prolonged periods in uncomfortable positions, exposure to extreme heat or cold and denial of access to toilets and washing facilities

The Public Committee Against Torture in Israel, Adalah and DCI-Palestine report that abuse is widespread. Out of a sample of 311 sworn affidavits collected by DCI lawyers from children between 2008 and 2012, 90% of the children reported being blindfolded during their arrest and transport to a military centre, 75% reported being subjected to physical violence, 57% reported being threatened, 29% were forced to sign confessions or shown documents written in Hebrew, a language few understand, and 12% were held in solitary confinement.<sup>31</sup>

Between 2001 and 2010, over 645 complaints were filed against Israeli Security Agency interrogators for alleged ill-treatment and torture, mostly of adults. To date, there have been no criminal investigations.<sup>32</sup>



CASE STUDY:  
**KARAM**

Name: Karam D.  
Date of incident: 22 September 2010  
Age: 13  
Location: Hebron,  
occupied West Bank  
Accusation: Throwing stones

“My house is only 100 metres away from the settlement of Kirya Arba, and settlers walk by our house every day,” says Karam. On 22 September 2010, at around midday, Karam was walking home from school. “Suddenly, two Israeli soldiers grabbed me.” Karam was dragged 60 metres by the soldiers and was then punched and slapped. “I was scared and crying. I didn’t know what they would do to me.” The soldiers accused Karam of throwing stones at a settler car, which he denies, and they continued to beat him for about five minutes.

Shortly afterwards, Karam’s hands were tied in front of him with plastic ties and he was blindfolded. He was then made to sit on the ground against a wall for two hours. A short time later Karam arrived at a police station for interrogation. “I was made to sit on a wooden seat in front of the table. He [the interrogator] sat behind the table. ‘Why do you throw stones?’ he asked. ‘I didn’t,’ I said. ‘Yes you did, you threw stones at a settler’s car,’ he said. ‘No I didn’t,’ I said once again. He then started shouting at me: ‘Liar,’ he shouted. ‘I’m not a liar,’ I said.”

Over the course of the next week, Karam was taken to Ofer Military Court on three separate occasions before being released on a surety of 2,000 shekels (US \$500) on 28 September 2010. Karam’s father says the court also imposed an additional condition of “putting Karam under home arrest at his uncle’s house. Karam is not allowed to go to school during the home arrest.”



CASE STUDY:  
**AHMAD**

Name: Ahmad F.  
Date of incident: 6 July 2011  
Age: 15  
Location: 'Iraq Burin village,  
occupied West Bank  
Accusation: Throwing stones

At around 2am, 15-year-old Ahmad was up late socialising with family members when the Israeli army came to arrest him.

Ahmad was transported to Huwwara interrogation centre on the outskirts of Nablus. He was left outside from about 5am until 3pm the following day. He was not brought any food. Whilst waiting outside, Ahmad reports being verbally abused and told: “We want you to die out here.” Whenever Ahmad tried to sleep a soldier would start shouting and kicking him to keep him awake.

Whilst Ahmad was waiting outside some soldiers brought a dog and Ahmad was pushed to the ground. “They brought the dog’s food and put it on my head. I think it was a piece of bread, and the dog had to eat it off my head. His saliva started drooling all over my head. I was so scared my body started shaking because I thought he was going to bite me. They saw me shaking and started laughing and making fun of me. Then they put another piece of bread on my trousers near my genitals, so I tried to move away but he started barking. I was terrified.”

Later that day Ahmad was taken to the police station in Ari’el settlement and interrogated. “The interrogator removed my blindfold but kept me tied,” recalls Ahmad. “The interrogator accused me of throwing stones, but I denied it.” The following day Ahmad was placed inside another vehicle and transferred to Megiddo prison inside Israel, in violation of Article 76 of the Fourth Geneva Convention.

Table.1

Common complaints and areas of concern, based on 311 sworn affidavits collected by DCI between January 2008 and January 2012

#	Common complaints and areas of concern	Number of cases	Percentage of children
1	Hand ties	296	95%
2	Blindfolds	281	90%
3	Physical violence	234	75%
4	Detention inside Israel in violation of Article 76	196	63%
5	Arrested between midnight and 5:00 am	188	60%
6	Confession during interrogation	180	58%
7	Threats	178	57%
8	Verbal abuse and/or humiliation	169	54%
9	Strip searched	102	33%
10	Transferred on floor of vehicle	98	32%
11	Signed/shown documents written in Hebrew	91	29%
12	Solitary confinement	38	12%

Source: DCI-Palestine's April 2012 report, *Bound, Blindfolded and Convicted: Children held in military detention*

## Sentencing

While stone-throwing is the most common charge against Palestinian children, they are regularly arrested indiscriminately and remanded in detention with little or no evidence. The military court often relies on soldiers' testimonies and children's confessions – frequently signed in Hebrew, a language few understand, and commonly extracted by coercion – to convict them. Confessions serve as the primary evidence against the children when they are prosecuted before the court. With no fair trial guarantees and the prospects of harsh sentences,<sup>33</sup> at least 90% of children plead guilty, regardless of whether or not they actually committed the offence.<sup>34</sup> The system seems to be designed to encourage this. Children are swiftly sentenced to between two weeks and ten months' imprisonment on average for throwing stones, if they plead guilty. If they plead not guilty, however, they are generally held on remand for extended periods before their trial will be heard, at which point they are likely still to be convicted and sentenced to an even harsher sentence. The granting of bail and trials that end in an acquittal are very rare.

## Comparison of Israeli and Palestinian children's treatment

When considering Israel's treatment of Palestinian child detainees, it is useful to compare the process they go through with the equivalent process for an Israeli child. For example, if two children, one Israeli, one Palestinian, both residing in the West Bank, were involved in a fight with each other, their experience of the Israeli legal system would differ dramatically. One would go through the Israeli civilian juvenile justice system, while the other would go through the military court system (see overleaf).

Israel's actions in relation to the treatment of minors – cuffing, shackling, physical abuse, denial of access to legal representation, the widespread use of custodial sentences and detention inside Israel – represent serious breaches of the Fourth Geneva Convention, the UN Convention Against Torture and the UN Convention on the Rights of the Child – all of which have been ratified by Israel.



Two 12 year-old children, one a Jewish settler and one a West Bank Palestinian get into a fight. Both are arrested by the Israeli police...

## but what happens next?



Israeli Child

VS.



Palestinian Child



How long can they be detained before seeing a judge?



Civilian judge



12 hours



4 days



Military judge



How long can they be detained before seeing a lawyer?



2 days



90 days



How long can they be held without charge?



40 days



188 days



How long can they be held before coming to trial?



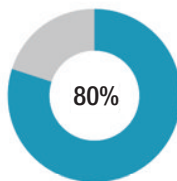
6 months



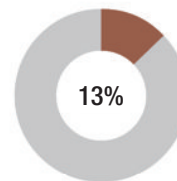
2 years



Chances of bail before trial?



80%



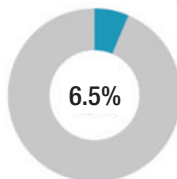
13%



Prison?

No

No custodial sentencing for children under 14 in Israeli civilian law

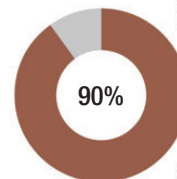


6.5%

Prison terms are handed down to 6.5% of minors over 14 years old.

Yes

Palestinians as young as 12 can be incarcerated under Israeli military law



90%

90% of Palestinian minors over 12 years old will face prison.

And if they were 14 years old...



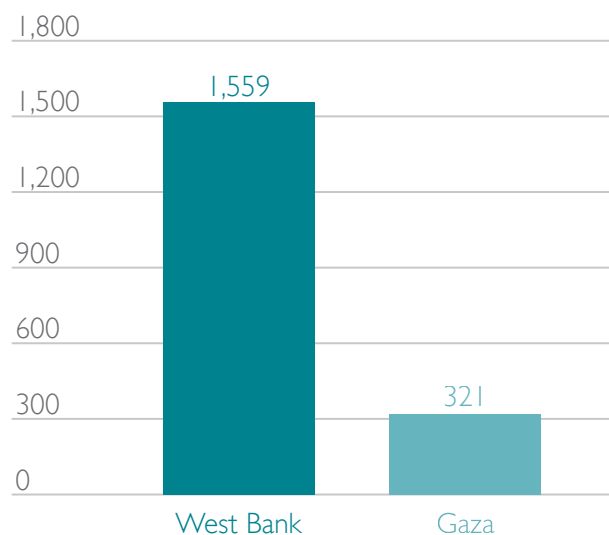
## PALESTINIAN JAILS

Human rights organisations have documented severe abuses in Palestinian Authority (PA) and Hamas jails, in both Area A of the West Bank (the approximately 18% of the West Bank over which the PA has full security control) and Gaza, with Hamas and Fatah often targeting each other's members and activists. In both areas, there have been documented cases of detainees dying, apparently as a result of torture – eight in the West Bank between June 2007 and October 2010.<sup>35</sup> In December 2011 alone, there were eight complaints of torture or ill-treatment in the West Bank and ten in Gaza, according to the Independent Commission for Human Rights (ICHR), the official observer for human rights abuses committed by the Palestinian authorities.<sup>36</sup> For the same month there were 31 complaints against the West Bank security services on the grounds of arbitrary detention or politically motivated arrest. The equivalent figure for Gaza was 22.<sup>37</sup>

### Lack of due process

One of the key problems with the treatment of prisoners in Area A of the West Bank and Gaza is a lack of due process. Human rights organisations operating in the West Bank have noted that arrests frequently take place without a warrant (501 reported incidents in 2010)<sup>38</sup> and without providing the family of the detainee with any details of where their relative is being taken. In 2010, the ICHR received 1,559 complaints of arbitrary arrests. There have also been documented cases in which those conducting the arrest were masked and refused to identify themselves or provide any reason for the arrest. This occurred primarily in the months after Hamas' takeover of the Gaza Strip in June 2007, when the Palestinian Authority was cracking down on suspected Hamas members in the West Bank.<sup>39</sup> There are widespread accusations that Hamas and Fatah have arrested each other's supporters for political purposes.

Detainees in the West Bank are frequently denied access to a lawyer and are not brought before a prosecutor within 24 hours, as Palestinian law requires. Human rights organisations have also documented incidents in which a judge has reviewed a detainee's case and ordered that he or she be released, only for the security forces to refuse to comply.<sup>40</sup>



Complaints against Palestinian authorities for arbitrary detention | 2010

In Gaza, there were 321 reported incidents of arbitrary detention in 2010, 244 of which occurred without a warrant.<sup>41</sup>

### Torture and ill-treatment

The ICHR logged 161 complaints of torture and ill-treatment in the West Bank in 2010.<sup>42</sup> Most torture took the form of forcing detainees to hold stress positions for prolonged periods. This can cause excruciating pain and internal injury, but leaves no physical mark. Other methods of torture include kicking, punching, mock executions, sleep deprivation and beatings using sticks, plastic pipes and rubber hoses.<sup>43</sup>

In Gaza, the ICHR received 220 complaints of torture in 2010. The most common forms of torture were forcing detainees to hold stress positions, flogging, beatings with batons, kicking, punching, suspending detainees from the ceiling by their hands (tied behind their back), blindfolding detainees for extended periods, electric shocks and threats.<sup>44</sup>

Human Rights Watch has documented several instances of Palestinians dying in custody, in both the West Bank and Gaza.<sup>45</sup>



## CASE STUDY:

### HAITHAM AMR

Haitham Amr was a nurse at a hospital in Hebron, in the southern West Bank. He was arrested by Palestinian security services in June 2009 on suspicion of membership of Hamas, and taken to the General Intelligence Service headquarters in Hebron. He died four days later; his body was covered with bruises, including around the kidneys. He was the fourth person to die in Palestinian custody in the West Bank that year.<sup>46</sup>

In July 2010, five security officers were acquitted over Amr's death; the Palestinian military court that tried them cited lack of evidence. This was in spite of an official autopsy report saying that Amr had died as a result of torture and the testimony of three detainees who had witnessed his death.<sup>47</sup>

## The death penalty and summary execution

Palestinian law requires presidential approval before the death penalty can be imposed. Whilst in the West Bank there have been no executions since January 2005, when Mahmoud Abbas was elected, in the Gaza Strip the case is different. Because Abbas' tenure was due to end in January 2009, the Ministry of the Interior in Gaza declared that Abbas no longer had the authority either to approve or to stop the application of the death penalty. Consequently, five death sentences were carried out in Gaza in 2010, whilst a further 15 were imposed. Of these 15, nine were imposed by military courts. Although the death penalty is not illegal under international human rights law, most human rights groups see it as a gross violation of the right to life, and Article 6 of the International Covenant on Civil and Political Rights stipulates that it be used "only for the most serious crimes".<sup>48</sup> The large number of offences for which the death penalty is prescribed (17 in the West Bank, 15 in Gaza and 42 according to the Palestine Liberation Organisation's Revolutionary Penal Code, which is applied by a system of military courts)<sup>49</sup> suggests that its use is not restricted to the most grievous crimes.

There is a gap in research on prisoners in Palestinian jails, which makes it difficult to assess accurately the situation. More monitoring is needed to ascertain exact numbers and details for analysis.

# C O N C L U S I O N S

## Prisoners and the peace process

In autumn 2011, after five years of negotiations, Hamas and Israel concluded a swap deal in Egypt that led to the release of over 1,000 prisoners. On 17 October, Sergeant Gilad Shalit crossed from southern Gaza into Egypt, released by Hamas after five years of captivity. In return, 1,027 Palestinians in Israeli jails were freed in a two-phased release.

Most of the international attention focused on the fate of Shalit, who had been captured in a cross-border raid in the summer of 2006 by fighters from Hamas. He had been held in Gaza, igniting a global campaign for his release backed by numerous Western governments. In June 2011, the British Embassy in Tel Aviv incorporated an image of the captured soldier into its Facebook logo, whilst Foreign Office Minister Alistair Burt MP, recorded a personal appeal for his release (right).

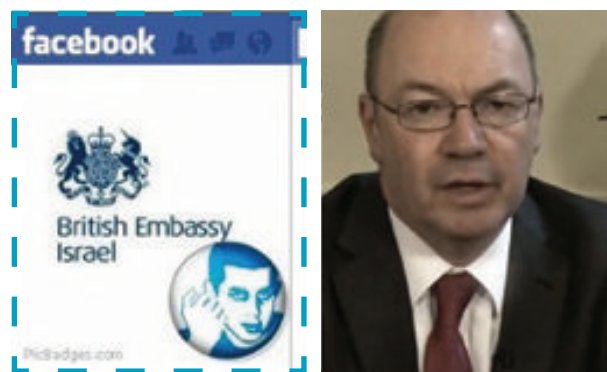
By contrast, throughout the process little attention was paid to the thousands of anonymous Palestinian men, women and children held in Israeli jails, many of whom are detained without charge and – like Shalit – held in solitary confinement, denied visits from their families and subjected to ill-treatment, in contravention of the Fourth Geneva Convention.

The prisoner issue has such resonance amongst Palestinians because so many families have been personally affected by it: it has become a rallying point for thousands of Palestinians, particularly in the midst of the hunger strikes. A major release of prisoners and detainees would be a key confidence-building measure for Palestinians and would be an essential part of any sustainable peace process.

## Israeli treatment of detainees

This report has highlighted major areas of concern, covering all aspects of the Palestinian detainee's experience, both in Israeli detention and in Palestinian Authority and Hamas jails.

Israel is the occupying power and therefore has the overall legal responsibility for the situation in the West Bank and Gaza Strip. As human rights agencies



have consistently reported for decades, Israel's treatment of Palestinians violates international law, including the Fourth Geneva Convention. Palestinians, including children, do not get the right to a fair trial, face indiscriminate arrests, torture, abuse and collective punishment. The scale of these abuses means that nearly every family in the Occupied Palestinian Territory has been affected.

Arrests are often indiscriminate, with Palestinians taken to unknown locations and denied access to lawyers. Before detention, Palestinians face a judicial process that is stacked against them. Whilst in detention they may be subject to coercive methods – including torture – in order to obtain a confession. Other detainees may not even be charged with a crime, and are held in custody, potentially indefinitely, without ever hearing of the reasons for their detention. Finally, after leaving custody, there are major concerns about the enduring psychological damage of the prison experience, on both an individual and societal level.

## Before prison: a judicial process stacked against Palestinians

The judicial process that any Palestinian goes through varies dramatically from the equivalent process an Israeli experiences for the same crime.

ACRI, the Association for Civil Rights in Israel notes that:

“two people living next to one another are differentiated and treated entirely differently, and all for one reason – their national ethnicity.

The fact that **two separate judicial systems exist in the territories, one for Jews and one for Palestinians**, violates International Law, the fundamental principles of modern law, common sense, and good conscience. It is wrong, violating both human dignity and basic human rights."<sup>50</sup> [ACRI's emphasis]

Israeli law in the Occupied Palestinian Territory discriminates between Arabs and Jews. Palestinians are ill-treated, denied their right to a fair trial and presumed guilty until proven innocent. Meanwhile settler violence against Palestinians continues with impunity.

### Whilst in custody: interrogation and detention without trial

Israel continues to use and excuse torture in interrogation. Apart from the physical and psychological damage it causes, torture also violates the principle of presumption of innocence and, as noted by the Israeli military judge in the rare acquittal case outlined above, deprives the detainee of free will. Interrogations typically take place without being recorded and without the presence of legal counsel and, in the case of children, family members.

Many Palestinian detainees are never given the right to a trial, let alone a fair one. At the end of April 2012, there were 308 Palestinians in administrative detention, held without charge or trial for as long as Israel sees fit. One administrative detainee, Khader Adnan, was released in April after refusing food for 66 days. By granting Khader's release yet keeping him behind bars for a further two months, the Israeli authorities tacitly admitted that they had no evidence against him and that his detention was therefore arbitrary – another breach of international law.

### Life after release: freedom or just a different sort of prison?

Approximately 726,000-760,000 Palestinians have been imprisoned by Israel since the occupation began in 1967. This huge figure means that most families have been directly affected by the prisoner

issue, giving many Palestinians a personal grievance against the occupier, thus perpetuating the conflict.

There is also the issue of the psychological damage of the detention experience, particularly to children. Mental health professionals in DCI-Palestine's 2012 report on child detainees noted that the experience of imprisonment and the feelings of helplessness that this triggers, "is embedded in the collective and personal experience of life under occupation and military threat. It is very difficult to estimate the psychological and social repercussions for those maltreated and humiliated children and adolescents after their return home."<sup>51</sup> A society in which most families have been directly affected by military occupation has been profoundly brutalised, entrenching distrust and resentment for the occupier and rendering the prospect of a peaceful solution more remote than ever.

The ongoing occupation of the West Bank and Gaza also means that Palestinian freedom, even outside prison, is severely limited. Gaza has been described by British Prime Minister David Cameron as a prison camp,<sup>52</sup> while the barrier in the West Bank carves up communities and checkpoints restrict movement. For many Palestinians in the West Bank and Gaza unable to travel internally, let alone abroad, the occupation is also a prison.

### Palestinian Authority (PA) and Hamas

There are over 3000 detainees in PA and Hamas jails.<sup>53</sup> Human rights groups have highlighted abuses in numerous cases. Violations include torture and abuse, with reports that 8 Palestinians died in detention between 2007 and 2010. There are also concerns about the use of capital punishment, particularly in Gaza, and an overreliance on the use of military courts. On occasions, courts have given orders for prisoners to be released and these have not been implemented.

Many believe that Fatah and Hamas have arrested each other's supporters for political purposes. This risks exacerbating divisions in Palestinian politics. Furthermore, the PA is also accused of arresting Palestinians at Israel's request. An Israeli officer



recently told the Economist: “We give them the names and they arrest them.”<sup>54</sup>

However, more research and investigation into these human rights abuses is necessary to provide a clearer picture. There are very few reports into the human rights situation in areas under PA and Hamas control.

Progress towards implementing the unity deal and a newly-elected PA exercising judicial authority over all the Occupied Palestinian Territory, would mean that there was one political address to push for improved human rights standards.

## International responsibility

The international community in general – and particularly the High Contracting Parties to the Fourth Geneva Convention, which include the US and the UK – has a direct responsibility to ensure that international law is not violated. Numerous articles of the Convention have been breached by the Israeli authorities on a daily basis for decades, but as yet, no genuine pressure has been applied.

As major donors to the PA, the European Union (including the UK) and the US also have a responsibility to ensure that the PA conforms to international human rights standards. The US, EU and UK have helped to train Palestinian security services and therefore have a specific responsibility in this regard. These security services should adhere to international norms and should not become proxies for the Israeli army. Given that the EU has no dealings with Hamas, its ability to pressure Hamas to improve human rights standards is limited.

## Conclusion

The failure to ensure compliance by all parties has led to a profound disregard for the rule of law and the further suffering of innocent civilians, who are entitled to legal protection. International law and adherence to human rights norms are essential components of a viable peace process. However, adhering to human rights standards is also vital in

the absence of a peace process. The longer these violations continue, the harder future reconciliation will be. Any attempt at a peaceful resolution to this conflict will require far greater respect for human rights than has been the case hitherto. The international community must insist on this and be prepared to take action against any parties that violate international law.



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