

# Prisoners until Further Notice November 2009

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If between 1948 and 1967, the question of Palestinian prisoners didn't arise, this changed following the '6 day war' (June 1967) and the invasion of the Golan, the West Bank and the Gaza Strip.

The Occupied Territories are subjected to different jurisdictions. The Golan and East Jerusalem are annexed by 2 unilateral acts of the State of Israel, which have never been recognized by the International Community. The West Bank and the Gaza Strip stay under military administration.

Israelis recall that the successive Israeli governments decided on the creation of colonies which divide out these territories and are increasing constantly.

Unlike Palestinians who remained in Israel in 1948, who are given Israeli nationality and the habitants of the Golan who had Israeli nationality imposed on them after their annexation from Syria, Palestinians from the West Bank and Gaza have conserved the status they had before the war of 1967.

Since the beginning of the second Intifada (uprising) in September 2000 until 2008, 65,000 Palestinians have been incarcerated in prisons or prison camps. The number of Palestinians in Israeli prisons rose to 11,600 in 2008. There are 4970 prisoners sentenced, with 710 prisoners sentenced for life one or more times, 5630 arrested whilst committing a crime, 1000 prisoners in custody imprisoned without sentence. Israel does not recognize these prisoners and give them the status of prisoners of war. In practice, the Israeli military orders govern the conditions of detention and notably, the system of custody which allows the detention of a person for up to 6 months which is renewable without the permission of a judge. The conditions of these prisoners is very worrying, a prisoner can be kept for 32 days without seeing a lawyer, and only Israeli lawyers can plead in front of a military court and their meetings with the prisoners are not confidential.

The arbitrary conditions of detention, vaguely regulated by a decree in 1971, are reinforced by the existence of 3 parallel penitentiary systems. Conditions of detention have gravely deteriorated since the 1<sup>st</sup> Intifada in 1987; bad quality food, overpopulation of the camps, no change of clothes, and a deficient medical service. Furthermore, prisoners cannot be visited by their family, visit authorizations are sometimes impossible to obtain for certain family members. Women, often members of politically active families, are also detained in extremely difficult conditions. Arrests take place most often at check points, during Israeli incursions into villages in the Occupied Territories, at border controls or by kidnapping.

## **A- Legal Situation**

Since the occupation of the West Bank and Gaza, the Israeli authorities have adopted a legal stance which has undergone several evolutions but which in effect always falls short of a total application of the Geneva Conventions relative to the occupied population.

The State of Israel has considered the question of the territories as not relevant to its authority; the Geneva Conventions were found not to be applicable. The authorities have considered it convenient to continue to apply, particularly in matters of suppression; the special legislation issued by the British Mandate which had been used until 1948 and to an extent is still in practice in the Occupied Territories. Since the 2<sup>nd</sup> Intifada, the Israeli authorities maintain that a state of war exists which justifies their actions.

Despite the fact that a state of war has been proclaimed, the Israeli army still does not recognize Palestinian prisoners as prisoners of war, and in fact, judges and condemns them.

## **B – Military Authority**

In practice, the Israeli authorities are enacting the rules which come from a number of Military Orders ratified by the British before 1948. Military authority is free to enact the orders it wishes but normally, all decisions on grievances are made the subject of a precise order; destroy a house and enact a new set of rules which can be made the subject of a military order and then deferred to the Supreme Court. Normally, these orders are told to the people concerned, whether they are public or individual, in an official journal of the Occupied Palestinian Territories.

Since the Court considered verbal military orders validity they have stated that:

- Military orders are published too late in the official journal.
- The numbers of military orders, especially those which consider the destruction of houses or culture, stay purely verbal and those which are written are more and more often without signatures.

Submitted to military justice, Palestinians can be arrested in conditions set out in Military Order 378, enacted in 1978. This Order states that to proceed with an arrest, there must exist 'a reasonable suspicion' that a person has committed a criminal act. Any person arrested can be detained in secret, without access to a lawyer, for 8 days maximum. On the 5<sup>th</sup> April 2002, at the same time that the Israeli army was invading various refugee camps and villages in the West Bank, Military Order 1500 authorized the arrests on the basis of a written authorization by an officer and duration of secret detention of 18 days. This was shortened to 12 days by Military Order 1518.

In effect, an arrested person can;

- remain without contact to a lawyer for 32 days (2 days after arrest, then 2 periods of 15 days renewable by an Officer).
- can be submitted to a period of detention of 6 months and 12 days in order to conduct an investigation (12 days initially after arrest, plus a period of 3 months which is renewable 1 time by a military judge). It is only after this period that the Military Court will initiate the trial.

Alternatively, military authority can place an arrested person under a custody regime governed by Military Order 1226. This period of custody can last for 6 months and is indefinitely renewable by a military judge. Under these conditions, there is no obligation to take the prisoner to trial and some of these types of custody have lasted for 6 years or more.

## **C – The Situation in the Gaza Strip**

### **i. the plan for unilateral disengagement**

The plan for disengagement was adopted on the 6<sup>th</sup> of June 2004 and entered into effect on the 15<sup>th</sup> of August 2005. According to the plan:

- The Israeli Army will continue its surveillance of the border between Egypt and Gaza and will destroy any buildings in this area in order to establish a buffer zone. (Article 6)
- Israel will continue to control the borders around the Gaza Strip, the coast line, the airspace and reserves the right to start military operations in the territory. (Article 3.1)
- Gaza remains dependent on Israel's water supply, means of communication, provision of electricity and the network of sewage disposal. (Article 8)
- Commercial exchanges and imports won't be taxed, exports will. Israel will tax any foreign products which are imported to Gaza. The Shekel will continue to be used. (Article 10)

The disengagement plan had the intention of creating a situation in which '*there would be no Israeli military or civilian presence*' in the evacuated zones and there would no longer '*be a basis for viewing Gaza as an occupied territory.*'

The reference to the legal status of Gaza as an 'occupied territory' leads us to assume the end of any Israeli responsibility for the population of Gaza.

And yet, since Israel has never officially recognized the Gaza Strip as being occupied, this state did exist, leaving the project to definitively declare (without ambiguity); '*the achievement of this plan permits the dissipation of affirmations concerning the responsibility of Israel towards Palestinians in the Gaza Strip.*'

Whether Israel has the intention to free itself from all responsibility towards Palestinians in the Gaza Strip is indisputable; Ariel Sharon has declared on multiple occasions, in particular underlining the necessity of international recognition of the end of occupation.

After the evacuation of the Jewish Colonies in Gaza, Israeli soldiers finally left the area on the 12<sup>th</sup> September 2005. Before leaving by the checkpoint at Kusufim (to the East of Gaza), the head of the Israeli mission in the Gaza Strip, General Aviv Kochavi, remarked that '*the responsibility of all who stay here is given to the Authority [Palestinian].*'

### **ii. The Gaza Strip: An 'enemy entity'**

The Gaza Strip has been declared an 'enemy entity' by the Israeli authorities and consequently since 2005, prisoners from Gaza are considered to be 'enemy combatants'.

‘An enemy combatant’ is an individual who presents a threat to the national security of the country, and therefore can be detained without judgment for an indeterminate period.

In legal terms, it’s a law outside a law. In effect, international law does not recognize this category of prisoners. Moreover, it’s a concept which is divergent from the Geneva Conventions and International Law. The United States have been the pioneers of these types of laws, which have been used in the setting of the ‘war against terror.’

## **Conclusion**

At first sight, one might think that only Article 3, 5 and 9 of the Universal Declaration of Human Rights are violated in the Occupied Territories. But in reality, all fundamental human rights are violated without question or shock by the international community. The first of these rights is the right to life which is regularly violated by Israel through, by example, targeted assassinations which take place with complete impunity. It is necessary also to mention the right to food and water which are also violated by Israel. It is also imperative to add the Israeli practices which prevent Palestinians from accessing medical care, constantly raised by the eyewitnesses we have interviewed.

The arrests made by the forces of the occupation are a war without noise. However, this form of repression is no less cruel than a conventional military war. The arrests of Palestinians are not reported by the media or the international community, also the mistreatment, torture and arbitrary arrest which affect the whole population go unreported.

Concerning the fate of the prisoners, our research has found some important points:

- negligence towards injuries
- inhumane conditions
- the savagery of interrogators
- the dreadful quality of food and the lack of quantity
- refusal by the administration to look after prisoners

The situation in the Occupied Territories raises certain questions about the economic relationship between Israel and the European Union.

In effect, the persistence of these violations of human rights in the Occupied Palestinian Territories is a violation of Article 2 of the association accord signed by the European Union and Israel. Why hasn’t the European Union suspended this agreement since the rights are not being respected, in the tradition of the European Parliament resolution of April 2002?

Additionally, the European Union has financed a number of infrastructures in the Palestinian Territory which have been destroyed by the Israeli Army. Why has the EU not tried to get reparation for these projects, financed by the EU and destroyed by Israel?

It is clear that if the EU cannot act on the concrete elements of the conflict, then it cannot have any role in the future peace of the region.

Reports of NGO's and of the Independent Commissions of the United Nations, like the case of the Goldstone Report which was treated with hostility by the Americans and half heartedness by Europe which limits the importance of the report. One is always met on the publication of a report that condemns the Israelis for inhumane treatment with the same cry: this is the work of anti-Semites! Europe focuses all its energy on the question: Can we criticize Israel? Failing to regard the true reality, one cannot hope to positively change the politics of Israel to advance the peace process. In effect, all criticism of this situation, even those which tentatively treat the Middle-East conflict according to universal standards, are assimilated into a desire to destroy Israel and as being anti-Semitic. Europe and the United States, tend to disqualify all arguments which aim to treat the conflict more equally and which give Palestinians the right to make claims.

It is clear then in this context that the reports of NGO's have little impact as they are not supported by governments who desire to establish a just and durable peace.

### **- The Ways in Which Victims are Tortured**

There are many ways that were followed in torturing Palestinian detainees by the various security forces. All of them can be categorized under two kinds:

The first: Physical torture, such as direct beating and continuous Shabeh, cigarette burning, and other ways to be illustrated further in the report

The second: this is more common, and it is the mental torture, such as solitary confinement for long periods of time, releasing disturbing noises and chaos in nearby rooms, and many others.

The following section is a clear and detailed description of the various methods used while torturing victims.

#### **1- Physical Torture**

Shabeh: forcing the detainee to sit or stand in painful physical positions that cause severe pain to the joints and the spinal column, and might sometimes cause paralysis of the limbs. Usually Shabeh is performed by tying the hands to the back of the head, blindfolding the eyes, or placing a stinking bag over the head. Shabeh can be performed on a detainee inside the cell, the interrogation room, in corridors, and sometimes in a toilet. The length of Shabeh time is between 2 hours and two weeks continuously, and sometimes more.

Following are some Shabeh Positions:

Shabeh by using a pulley: among the documented cases, there were three cases of this kind of Shabeh. The hands are tied to the back, and the legs are tied. The detainee is pulled upside down from his legs by a pulley. The detainee is then beaten with a baton or a solid

wicker cane. This might last to half an hour straight, until he faints. He is then taken down for a break, and then pulled back up, and the beating starts all over.



Common Shabeh: a detainee is usually placed on a small chair, with his hands tied to the back. Sometimes a detainee is placed against the wall, with his hands tied and eyes blindfolded, one of his legs in the air and both hands lifted. Sometimes, his legs are forced wide open, and he is forced to carry a relatively heavy object, such as a chair, or two water bottles (2 liters in each) in both or one hand. This happened to detainee A.S. from the south of the West Bank:



Shabeh Using a Chair Placed Upside down: the detainee is placed on the floor with his body between the legs of the chair. His hands are tied to the back, hugging the chair seat, and his back is placed against the base. This lasts for a period between 4 to 12 hours, and is repeated again and again. This causes severe pain and pressure to the spinal column, especially the neck vertebra, and might cause paralysis.

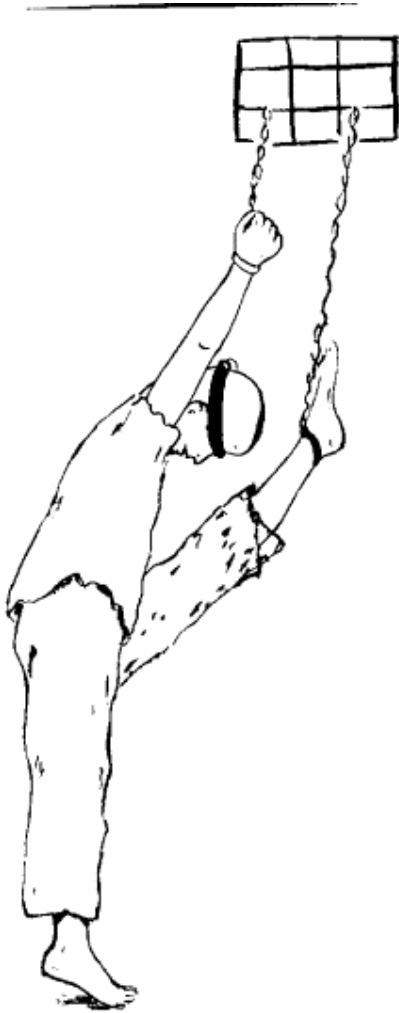


Shabeh Using a Glass: the detainee is forced to stand on glasses with his hands up from minutes to an hour continuous. This is done several times. Detainee M.N., 31 years old, from Tulkarm, was arrested by the PSS on the charge of possessing weapons, drugs, and collaboration. He was placed in that Shabeh position. Also detainee M.G., 23 years old, from one of the villages north of the West Bank, was arrested by the police on the charge of possessing weapons and stealing. Another case was A.H., 42 years old, from north of the West Bank, who was arrested for collaboration. These three people suffered from this kind of Shabeh.



Shabeh from a high window: this resembles Shabeh from a pipe which was used by Israelis. Instead of tying a detainee to a pipe, he is tied to a high window, usually in a toilet, whereby his hands are tied upwards to the back. The body is lifted where the toes barely touch the ground, and the body is bent to the front. Pressure is placed on the spinal column and toes.

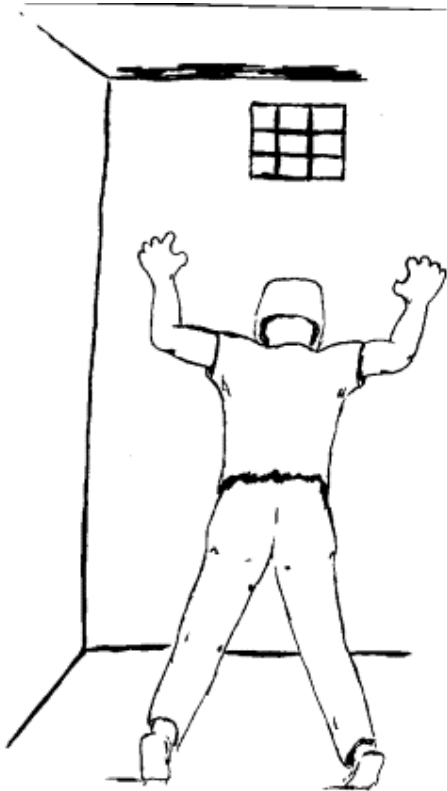




Pressure Shabeh: forcing the detainee to positions similar to exercises. However, these exercises are above the human force and ability. There is bending, and placing pressure on the toes. The detainee is forced to sit like a frog, placing all pressure on the toes with his arms spread straight for a long time.



Pressure on the Fingers: forcing the detainee to place all his body pressure on his fingers while standing against the wall for a long period of time. Sometimes, this occurs with placing pressure on fingers on one hand. This causes paralysis in the fingers.



Pressure on the chest: Laying face to the floor, and doing push ups. This is done for a long time until the detainee loses all strength. If he stops, interrogators beat him up.



Shabeh in the Banana position: This is rarely used. The detainee's hands and legs are handcuffed together to the back. Then a third cuff pulls the hand cuffs and the leg cuffs together where the body becomes bent like a banana. This places a lot of pressure on the spinal column.



Most detainees were victims of the GI and the PSS. Injuries varied and reached 25 kinds. Some of them were very dangerous, and others were moderate. From our study, we discovered that 16 cases were taken to hospitals and clinics. Three cases had to undergo surgery after leaving prison, one of them was in the brain. In three other cases recorded victims suffered from partial or complete paralysis.

Beating:

Beating by most security forces is widespread. The most common method of beating is known as the split. The detainee is beaten on the bottom of his feet after he is on the floor with his legs up. Sometimes an interrogator would sit on his legs, or entering the legs of the detainee between the columns of the back of a chair, which are very narrow. The number of beatings that a detainee receives is over 100 at times, continuously.

Showers and Air Currents (hot and cold): a number of detainees testified that they were exposed to continuous cold and hot showers. Sometimes the pressure from the water current derived from the hoses is placed directly on them. Other detainees testified that they were exposed to hot air currents, especially when the weather temperature was very high in summer, and exposed to cold currents in winter. Other cases, suffered from freezing water poured on their faces, and were sometimes placed in tubs. Most detainees who were exposed to such torture suffered from severe colds and Influenza.

Choking: This method is rarely used. Only three cases were reported to have suffered choking. Interrogators tried to choke one detainee by forcing a piece of cloth into his mouth so that he will not make any noise while he is being beaten. They also wrapped one detainee's arms around his neck violently and for a long time. Another detainee suffered from large amounts of water forced down his throat.

Threats: Threatening a detainee is very common. Some detainees were threatened with being kept in jail for longer periods. Some were threatened with being killed. This occurred by pointing a gun towards their head, and the interrogators would tell them that they would announce it was a suicide, that the detainee stole the pistol from the guard and killed himself. Another way of threatening a detainee was by threatening to be bring his sister and dishonoring her.

Deprivation from Sleep, Food, and Drink: A number of detainees said that they were deprived their sleep because they were being interrogated for a period of time between two days and two weeks continuously. Some of them said that they were thirsty and hungry for one to seven days straight.

Other Ways: The strangest thing happened to citizen A.A.S., 34 years old, from a city in the center of the West Bank. He was arrested by the criminal police on the charge of organizing the killing of Palestinian figures. On a very hot summer day, interrogators covered his whole body with jam, and left him for a very long time under the sun. some interrogators forced canes and bottle tops up a prisoner's anus. Two cases were reported. One interrogator forced his foot down a detainee's throat, another stepped and jumped on his fingers and toes, and another forced a detainee's head down the toilet.

## 2- Mental Torture

The methods of mental torture utilized by interrogators can be summarized as follows:

- a. Most physical pressure mentioned in the previous section, especially solitary confinement, and Shabeh for long periods of time, have a mental effect on the detainee. Some of them end up with a problem in the nerves, while others suffer from paralysis of some sort. Some detainees tried to run away from prisons, as was the case with reporter Abbas al-Momani from Ramallah, and 'Ala Yehya De'eiss from Jerusalem. Some detainees even tried committing suicide, as was the case with Fathi Sidqi Moussa from al-Maghir.
- b. Solitary confinement is locking the detainee in an interrogation room or in a completely closed up cell that is 1-2 meters wide and 2-3 meters long. Sometimes a detainee is placed in a cement closet with dimensions of approximately 60 centimeters wide and 80 centimeters long, and not more than 1 meter in height. A detainee is placed in solitary confinement for a period of time ranging from a few days and four months straight. This makes the detainee feel that he is isolated from the outside world, and his destiny unknown, and this places both physical and mental pressure on him. This happened to citizen Khalid Jamil Moussa Abed from Surif. He was arrested by the GI on the charge of tax evasion and forging VAT invoices. Abed later suffered from a nervous breakdown. When 86% of prisoners testify that they have been exposed to such pressure and torture, this means that torturing and pressuring detainees by security forces is widespread. Security forces are using mental torture most of the time because it does not leave any physical evidence on the detainee.
- c. Preventing the detainee from visiting his family and parents, and his lawyer for a long time. This also causes mental pressure on the detainee. He begins to feel that he is alone in the world. In some cases, some detainees did not receive any visitors for three months.

- d. Sometimes interrogators use machines that make loud and disturbing noises from a room nearby. Sometimes, the sounds that a detainee hears are not just a recording. It happens that another detainee is screaming in the other room because he is being tortured.
- e. Bringing a close family member into the cell, as was the case with Khalid Jamil Moussa Abed whose five year old son was brought into his cell.