

The legal architecture of apartheid: Israel's carceral policies and the erosion of Palestinian rights

Layan Kateb¹ and Rania Al-Faqih¹

¹ Addameer (Prisoner Support and Human Rights Association)¹

Key points of interest

- Since 7 Oct 2023, Israeli laws, military orders, and court practices have expanded arrest/detention powers and curtailed due-process (longer pre-indictment detention, delayed review, restricted counsel, administrative detention including children), entrenching a discriminatory dual legal regime for Palestinians versus settlers
- This hardened carceral system conflicts with IHL/IHRL and may engage Rome Statute crimes; in light of the ICJ's 19 July 2024 advisory conclusions, the paper urges ending discriminatory measures, restoring safeguards and transparency, and advancing third-state non-recognition and accountability

Abstract

Introduction: This study examines how Israeli domestic legislation, military orders, and judicial practices governing the arrest and detention of Palestinians—intensified after 7 October 2023—operate as a system of discriminatory control across the occupied Palestinian territory and within Israel. It situates recent amendments within international humanitarian and human rights law and the International Court of Justice's 19 July 2024 advisory conclusions on the unlawfulness of Israel's continued presence and the breach of Palestinian self-determination. **Materials and methods:** A qualitative legal analysis was conducted of military orders, Knesset legislation (including the Unlawful Combatants Law), emergency regulations, and court decisions, complemented by official statements, OHCHR materials, and NGO documentation. Where available, lawyer interviews and detainee testimonies informed case studies of Gaza residents, children, and activists. **Results:** Post-October measures expanded arrest powers, lengthened pre-indictment detention, delayed judicial review, restricted access to counsel, designated new detention facilities (e.g., Sde Teiman), and broadened online “incitement” enforcement. “Iron Swords” orders extended timelines under MO 1651; emergency amendments to the Unlawful Combatants Law enabled prolonged detention without prompt review; and civil criminal laws applied to Gaza detainees increased interrogation periods and bans on meeting counsel. Administrative detention surged—including unprecedented numbers of children—amid limited oversight and secrecy regarding detainee identity, status, and conditions. A dual legal regime persists: Palestinians face military courts under military law, while settlers in the same territory fall under Israeli civil law. **Discussion:** The cumulative effect is a hardening carceral architecture inconsistent with fair-trial guarantees and protections in IHL and IHRL and engaging relevant crimes under the Rome Statute. Considering the ICJ's findings and UN practice, the paper calls for ending discriminatory measures, restoring legal safeguards, ensuring transparency, and advancing third-state non-recognition and accountability.

Keywords: Gaza, Palestinians, International humanitarian law (IHL)

¹ To protect the authors from potential retaliation, this article is published under fictitious names. Their legal identities and affiliations are securely held by the editorial office, which has verified authorship and disclosures. The use of pseudonyms does not affect the integrity, provenance, or accountability of the research and the peer-review process.

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Introduction

Successive Israeli governments have systematically implemented an apartheid system in the occupied Palestinian territory, a policy that has intensified following the far-right shift in Israel's government in early 2023. The new administration swiftly enacted a series of laws and amendments directly targeting Palestinian prisoners and their families, imposing increasingly punitive measures. These include financial penalties, revocation of Jerusalem residency, deportation of family members, and denial of medical treatment funding for Palestinian prisoners from East Jerusalem. In total, more than 30 new laws or amendments have been introduced.

These legislative changes do not account for how the events of October 7 were leveraged to impose a new legal reality on both sides of the Green Line, reinforcing a regime of racial discrimination. The application of these measures varies between the occupied Palestinian territory and historic Palestine (the 1948 occupied areas), particularly in terms of duration and procedural implementation. The Israeli government's declaration of a special state of emergency on October 8th has served as the legal foundation for many of these policies and practices.

Since 1967, Israeli authorities have employed a combination of legislative tools and military orders to exert control over the Palestinian population. The aftermath of October 7th, 2023, has seen an unprecedented expansion of these mechanisms, particularly through a surge in legal amendments and administrative procedures aimed at Palestinian detainees.

This paper examines how Israeli domestic legislation, military orders, and judicial practices collectively function to entrench and sustain an apartheid regime. Special attention is given to the instruments of arrest, detention, and legal disenfranchisement. The study explores how these legal frameworks have evolved in the post-October 7th context and analyses their implications under international humanitarian law, international human rights law, and the Rome Statute. By focusing on legal amendments, detention policies, and the use of military courts, the paper argues that the Israeli legal system operates as a tool of systemic repression, racial discrimination, and apartheid against Palestinians.

Methods

This research is based on a qualitative analysis of Israeli military orders, civil legislation, and court decisions relevant to Palestinian detainees, primarily following the Israeli aggression on Gaza that started on October 7th, 2023. It draws on primary legal texts, including amendments to Military Orders, as well as the Unlawful Combatant Law. In addition, the study incor-

porates official statements and policies issued by Israeli authorities, along with reports and publications from human rights organisations such as Addameer and the Office of the United Nations High Commissioner for Human Rights (OHCHR). Where available, it also includes testimonies of former detainees, as documented in Addameer's reports on the visits lawyers conducted with the prisoners.

The research employs a legal-analytical framework to assess these policies within the context of international humanitarian law, including the Fourth Geneva Convention, the Rome Statute, and the Convention Against Torture. A case study approach is used to examine the effects of these legal frameworks on specific groups of detainees, focusing particularly on residents of Gaza, children, and activists.

Results

Legal amendments in the West Bank and Gaza after October 7th

On October 7th, the Israeli mini-ministerial council for national security affairs (the "Security-Political Cabinet") convened and declared a state of war², which was followed by a military campaign against Gaza. In parallel, Israeli authorities began mobilising all state mechanisms, including the Knesset, ministers, and military commanders, to enact legal amendments and propose new laws. These changes function as executive instruments enabling Israeli forces to expand arrests in both the West Bank and the 1948 territories. As a result, the conditions and locations of detention were modified to accommodate the growing number of Palestinian detainees, even at the expense of fundamental human rights.

Under Military Order No. 1651, §31(c) requires release if no arrest order is issued within 96 hours; §32 allows a police arrest order of up to eight days; and §33(b) ('combat arrest') allows up to eight days' detention during operational activity, while §33(d)³ permits denying access to counsel for 48 hours. For administrative detention, §39 originally allowed a 72-hour extension while an order is considered, and §§275/287 required judicial review within 96 hours and eight days, respectively. Following 7 October 2023, temporary 'Iron Swords' orders extended these deadlines: §39's cap to six full days (144 hours) and judicial review to 12 full days (288 hours). Amendment No. 80 also clarified that the eight-day limit equals 192 hours.

2 On October 8, 2023, the Israeli cabinet confirmed a state of war effective 6:00 a.m. on October 7, 2023.

3 Israel Defense Forces (2009): *Order Regarding Security Directives [Consolidated Version] (Judea and Samaria) (No. 1651)*. Retrieved from <https://www.militarycourtwatch.org/files/server/MO%201651%20.pdf>

Additional amendments affected the issuance and judicial review of administrative detention orders. “Emergency instructions” extended the initial detention period before an administrative order can be issued from 72 to 144 hours (six days)⁴. Even when a judge orders release during investigation or before indictment, the military prosecution can request an additional 144-hour detention to consider imposing administrative detention. Once issued, the judicial review of such orders must occur within 12 days, up from the previous 8⁵. These arbitrary extensions starkly contrast with Israeli civil law, which mandates that detainees be brought before a judge within 24 hours (extendable to 96 hours in exceptional cases⁶). Such dual legal systems reflect deeply discriminatory practices, with Palestinians subjected to harsher military law.

Since its withdrawal from Gaza in 2005, Israel has subjected detainees from the Strip to civil laws, including the 1996 Criminal Procedure Law, the 2002 Unlawful Combatant Law, and the 2016 Prevention of Terrorism Law, which permit trial in civil courts. Conversely, West Bank detainees continue to face military courts. These legal frameworks were further

amended post-October 7th to increase interrogation periods, restrict legal access, and expand arrest powers, thereby lightening the risk of coercion and abuse.

Following the latest aggression on Gaza, multiple orders were issued, including one by Defence Minister Yoav Gallant on October 8th, designating Sde Teiman Camp as a detention facility for individuals labelled as “unlawful combatants” for a 10-week period⁷. From that time until the end of 2023, the Israeli authorities barred the International Committee of the Red Cross (ICRC)⁸ and lawyers from accessing detainees held there. The number of detainees, their legal status, and detention conditions remain undisclosed.

The Unlawful Combatant Law of 2002⁹, which resembles administrative detention in its use of secret evidence and indefinite incarceration without charge, was also amended¹⁰. On October 26th, 2023, “Emergency Orders” authorized not only senior officers but also appointed lieutenant-colonels (sganaloof) to issue arrest warrants¹¹. The period for issuing an arrest warrant was extended from 7 to 30 days, and judicial review could be delayed for up to 45 days, meaning an individual could be held for 75 days without judicial oversight or legal access. The ban on meeting with a lawyer may be extended to 105 days (45 initial, plus 60 additional¹²).

This policy amounts to a de facto legalised form of enforced disappearance. Further amendments were issued on December 18th, raising the warrant issuance deadline to 45 days and ju-

4 Israel Defense Forces. (2023, October 17). *Order Regarding Security Provisions (Amendment No. 80) (Judea and Samaria) (No. 2146)* [Hebrew]; Israel Defense Forces. (2023, October 20). *Order Regarding Extension of Deadlines for Administrative Detention ('Iron Swords') (Temporary Order) (Judea and Samaria) (No. 2148)* [Hebrew]. Overview page: <https://www.gov.il/he/pages/extension-deadlines-detention>; Association for Civil Rights in Israel (ACRI). (2024, November 5): *Sweeping use of 'Combat Detention' in the West Bank*. <https://www.english.acri.org.il/post/sweeping-use-of-combat-detention-in-the-west-bank>; Wikisource (Hebrew). (n.d.). *Security Provisions Order (Judea and Samaria) – consolidated and updates, including temporary orders (20 Oct 2023–30 Sep 2025)*.

5 Israel Defense Forces (2009): *Military Order No. 1651 (Order Regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009)*, HaMoked – Center for the Defence of the Individual. (2009). *Order Regarding Security Provisions (Judea and Samaria) (No. 1651), 5770-2009 [consolidated page]*. <https://hamoked.org/document.php?dID=Documents1055>, Article 31 authorizes detention for up to 96 hours before bringing a detainee before a judge, while Article 33 allows extension to eight consecutive days under security-related justifications. Subsequent “emergency instructions” further extended detention to 144 hours before issuing administrative detention orders, with judicial review postponed up to 12 days. This dual legal framework stands in sharp contrast with Israeli civil law, which generally requires judicial review within 24 to 96 hours.

6 US Department of State (2023): *Country Reports on Human Rights Practices: Israel, West Bank and Gaza*. <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/israel-west-bank-and-gaza/>

7 Israel Defense Forces (2023): *Detention of Unlawful Combatants (Determining Places of Detention) Order (Temporary Instructions)*. A brief summary in English can be found here: Library of Congress (2024): *Israel: Parliament Adopts Law Expanding Authority to Detain Unlawful Combatants During Wartime or Significant Military Action*: <https://www.loc.gov/item/global-legal-monitor/2024-01-24>

8 International Committee of the Red Cross (2025, January 4): *Israel and the occupied territories: Addressing misconceptions and false information*.

9 State of Israel. (2002). *Incarceration of Unlawful Combatants Law, 5762-2002*. (English translation). <https://www.jewishvirtuallibrary.org/jsource/Politics/IncarcerationLaw.pdf>

10 The Unlawful Combatants Law defines an ‘unlawful combatant’ (Section 2) as a person who is involved in hostile operations against the State of Israel, directly or indirectly, or is part of a force that conducts hostile operations against the State of Israel and who does not meet the conditions of a prisoner of war, as detailed in Article 4 of the Third Geneva Convention.

11 Israel Defense Forces (2023): *Emergency Orders (Times for Dealing with Unlawful Combatants in Time of War or Military Operations) (Amendment)*, effective until 9 January 2024

12 Wafa News Agency (2025, July 25): *Israeli Knesset approves extension of law allowing detention of Gazans without charges or legal representation*. <https://english.wafa.ps/Pages/Details/159538>

dicial review to 75 days¹³. Detainees may now be denied legal counsel for up to 75 days without court approval, and this can be extended to 180 days¹⁴. These changes supersede previous amendments and remain in effect for several months from publication¹⁵.

On February 22nd, 2024, the most recent amendment, titled “Order to Imprison Unlawful Combatants” (Amendment No.2)¹⁶, defined specific military camps (Sde Teiman, Anaton, Ofer) as detention centres. This order’s validity was until May 9th, 2024.

Gazan detainees transferred to interrogation centres are held under the 1996 Arrests Law¹⁷ and the 2016 Prevention of Terrorism Law¹⁸. These laws allow for 35 days of interrogation before an indictment is filed, extendable by an additional 20 days by a judge¹⁹. However, on November 7th, 2023, the Israeli government extended this to 45 days, renewable for another 45²⁰. The 1996 Arrests Law was also amended to permit the denial of legal counsel for up to 90 days. These procedures

recall older military orders permitting isolation for up to three months without meaningful judicial review.

Such practices, including arbitrary detention, torture, and enforced disappearance, constitute war crimes under international humanitarian and criminal law²¹. Despite these grave violations, Israeli courts have consistently rejected petitions from human rights organizations demanding information on Gaza detainees²². The Israeli authorities have refused to reveal names, numbers, or conditions of detainees, perpetuating a systematic policy of disappearance and impunity²³.

Discriminatory legislation and measures - Military courts (in the context of Israeli occupation)

In the context of the apartheid system imposed on Palestinians, the jurisdiction of Israeli military courts extends to both the occupied Palestinian territories²⁴, without regard to the identity of

13 Law Library of Congress (2024, January 25): *Israel: Parliament Adopts Law Expanding Authority to Detain Unlawful Combatants During Wartime or Significant Military Action*.

14 Gisha (2025, April 25): *Habeas Corpus*. <https://gisha.org/en/habeas-corpus/#:~:text=The%20amendment%20also%20extended%20the%20time%20permitted,be%20denied%20from%2021%20to%20180%20days>.

15 Israel Defense Forces (2023): *Emergency Orders (Times for Dealing with Unlawful Combatants in Time of War or Military Operations) (Amendment)*. Valid since 18 December 2023 and for four months from the effective date.

16 An assessment by the Public Committee Against Torture in Israel (PCATI) is available here (2024, July): *Incarceration of Unlawful Combatants Law (Amendment no. 4 and Temporary Provision – Iron Swords) (Amendment no. 2)*. https://stoptorture.org.il/wp-content/uploads/2024/09/Incarceration-of-Unlawful-Combatants-Law_July-2024.pdf

17 Israel. (1996). *Criminal Procedure Law (Enforcement Powers – Detention) Law*, 5756. State of Israel. https://www.adalah.org/uploads/oldfiles/Public/files/English/Legal_Advocacy/Criminal-Procedure-Law-1996.pdf

18 Israel. (2016): *Prevention of Terrorism Law*, article 47. State of Israel. https://www.gov.il/BlobFolder/dynamiccollectorresultitem/counter-terrorism-law-2016-english/he/legal-docs_counter_terrorism_law_2016_english.pdf

19 United Nations (2015): *Country Reports on Human Rights Practices: Israel*. <https://www.un.org/unispal/document/auto-insert-201992/#:~:text=The%20most%20significant%20human%20rights,particular%20in%20access%20to%20equal>

20 Israel Defense Forces (2023): *Emergency Orders (Swords of Iron) (Extension of Detention for Suspects of Security Offenses)*. Knesset News (2024, January 16): *Approved in final readings: Extension of validity of regulations allowing deferral of meeting by war detainees with an attorney*. <https://main.knesset.gov.il/en/news/pressreleases/pages/press16124q.aspx>

21 United Nations High Commissioner (1949): *Geneva Convention on the Protection of Civilian Persons in Time of War*, article 147, <https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-protection-civilian-persons-time-war>. International Criminal Court (1998): *Rome Statute of the International Criminal Court*, article 8. <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>

22 Gisha (2025, April 25): *Habeas Corpus*. cited. Hamoked: *Alwahidi v. Israel Security Forces* (2023, October 31), HCJ 7439/23, https://hamoked.org/files/2023/1666391_eng.pdf. See also United Nations, Office of the High Commissioner, Occupied Palestinian Territory, United Nations: (2024, July 31): *Thematic Report: Detention in the context of the escalation of hostilities in Gaza*, HCJ 9021/23, par. 56. <https://www.ohchr.org/sites/default/files/documents/countries/opt/20240731-Thematic-report-Detention-context-Gaza-hostilities.pdf>

23 United Nations High Commissioner (1992): *Preamble of the Declaration on the Protection of all Persons from Enforced Disappearance and Article 2 of the ICPED*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-protection-all-persons-enforced-disappearance>. See also Several United Nations Special Rapporteurs (2024, March 20), AL ISR 2/2024: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28794>

24 Israel declared martial law in the OPT on 7 June 1967. The Israeli Military Commander issued three proclamations asserting the Israeli military’s executive, security, public order and judicial authority over the Palestinian territory (Proclamation No. 1 Regarding Regulation of Administration and Law (West Bank Area), 7 June 1967; Proclamation No. 2 Regarding Administrative and Judiciary Procedures (West Bank Area) 5727-1967; and Proclamation No. 3 Regarding Entry into Force of the Order Concerning Security Provisions (West Bank Area) (No. 3) 5727-196). The third Proclamation provided for military courts and stated, in Article 35, that the court would follow the provisions of GCIV. Article 35 was quickly repealed. The initial Proclamations were later amended into Military Order 378, which from then

the alleged offender. However, in practice, Palestinians in the West Bank are prosecuted under military law in military courts, whereas Israeli settlers in the same territory are subject to Israeli civil law and civilian courts²⁵. This dual legal framework institutionalises discrimination and reinforces an apartheid regime.

The advisory opinion rendered by the International Court of Justice²⁶ and the resolution of the United Nations General Assembly²⁷ confirmed that Israel, as an occupying power, violates international law by imposing Israeli laws and military orders, breaching the Palestinian people's right to self-determination. The Court further found that separation between the Palestinian population and Israeli settlers in the Occupied Palestinian Territory breaches Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination—which prohibits racial segregation and apartheid²⁸. The ICJ Advisory Opinion underscores that Israel's unlawful occupation delegitimises the arrests and detentions carried out under its military orders²⁹. Consequently, such practices must be recognised as arbitrary deprivations of liberty lacking legal validity under international law.

For 30 years, Addameer has emphasised the illegitimacy of Israeli military courts in trying Palestinians. It has consistently highlighted the arbitrary policy of the occupation in detaining Palestinians under a system of unlawful practices. It has called

on international bodies to recognise the illegality of the occupation and its enforcement mechanisms.

From a legal standpoint, while Israeli settlers are subject to Israeli legislation and military orders, they are simultaneously governed by Israeli civil law and enjoy a separate trial policy. Israeli settlers who commit offences in the West Bank are tried under Israeli law in courts within the '48 borders, whereas Palestinians are prosecuted under military law in military courts. Even when Israeli settlers kill Palestinians in the occupied territory, they are not tried in military courts (Francis, 2023).

In an explicit rejection of the principle of territoriality in the application of criminal law, and as part of a dual system of justice, the Israeli Knesset enacted legislation granting Israeli court's jurisdiction to try, according to Israeli law, any person who is present in Israel and who committed an act in the territories under Palestinian Authority if those acts would have constituted offenses had they occurred within Israeli jurisdiction. However, this regulation excludes residents of the occupied territories who are not Israeli citizens (Daniele, 2017). This dual justice policy establishes a framework of legal and judicial discrimination based on nationality, whereby military courts apply military law to Palestinians. In contrast, Israeli civil courts apply Israeli domestic law to settlers, regardless of where the offences were committed (Daniele, 2017).

Following how the legislative framework shapes up as apartheid:

- According to Military Order No. 1651 (Order Regarding Security Provisions [Judea and Samaria] (2009)), §§186–200 regulate interrogation and detention without charge, allowing Palestinians to be held up to 90 days before indictment³⁰, whereas Israeli citizens are subject to the Criminal Procedure Law (Detainee Suspects Interrogation) 1996, §§29–30, which caps pre-indictment detention at 64 days in security cases³¹.
- Similarly, §212 of MO 1651 sets the maximum period for completing trial proceedings in military courts at 18 months, extendable in six-month increments (B'Tselem, 2017), while Israeli Criminal Procedure Law 1982, §61 limits the period in civilian courts to 9 months³².
- Sentencing provisions also reflect systemic disparity. Under MO 1651 §268, manslaughter carries a maximum of life imprisonment for Palestinians, whereas under the Israeli Penal

on provided for the military courts, and set out their jurisdiction and the criminal penal code which they would enforce. More information on this subject can be found here: Bar Human Rights Committee of England & Wales (2024): *The Israeli Military Courts in the West Bank of the Occupied Palestinian Territories*. <https://barhumanrights.org.uk/wp-content/uploads/2020/09/BHRC-Military-Courts-Observation-Report.pdf>

25 Israel (1967): *Law to Extend the Emergency Regulations (Judea and Samaria—Jurisdiction and Legal Aid 5727-1967)*. State of Israel, and subsequent amendments allow Israeli citizens in the West Bank to be tried under Israeli law in civilian courts, even for acts committed outside Israel's sovereign borders. Colonel, L (2022, June 7): *The Judea and Samaria Regulations Law: An Explainer*, The Israel Democracy Institute, <https://en.idi.org.il/articles/39012>

26 International Court of Justice (2024, July 19): *Advisory Opinion*, Document Number 186-20240719-ADV-01-00-EN, par. 265. <https://www.un.org/unispal/wp-content/uploads/2024/07/186-20240719-adv-01-00-en.pdf>

27 United Nations General Assembly (2024, September 19): *Resolution adopted by the General Assembly on 18 September 2024*, A/RES/ES-10/24. <https://www.un.org/unispal/document/ga-10th-ess-resolution-18sep24/>

28 International Court of Justice (2024, July 19): *Advisory Opinion*, cited. Paras. 223-229.

29 International Court of Justice (2024, July 19): *Advisory Opinion*, cited. Parag

30 Israel Defense Forces (2009): *Military Order 1651: Order regarding security provisions (consolidated text)*, §§186–200. Cited.

31 Israel. (1996). *Criminal Procedure Law (Detainee Suspects Interrogation)*. State of Israel. Sections 17, 29, 30 and 59–62. <https://www.wipo.int/wipolex/en/legislation/details/15339>

32 Israel. (1996). *Criminal Procedure Law (Detainee Suspects Interrogation)*. Cited.

Code 1977³³, §298, the maximum penalty is 20 years. Early release is governed by Israeli Penal Law §49 (eligibility after serving one-half), but MO 1651 §287 requires Palestinians to serve at least two-thirds, with early release rarely granted.

- Regarding minors, MO 1651 §136 establishes the age of criminal majority at 16 for Palestinians, in contrast to the Israeli Youth (Trial, Punishment and Modes of Treatment) Law 1971³⁴, §1, which sets it at 18. Regulations under the Youth Law require trained officers to interrogate Israeli minors, while Palestinians are interrogated under MO 1651 provisions lacking equivalent safeguards
- Finally, MO 1651 §237 requires that detainee confessions be recorded, but in practice, these are frequently written in Hebrew, violating the detainee's right to be questioned in their native Arabic language³⁵. This practice has been widely documented by Addameer and B'Tselem.

In this context, the International Court of Justice noted that the broad spectrum of laws and measures adopted by Israel in its capacity as an occupying power subjects Palestinians to systemic discrimination³⁶. Such treatment cannot be justified, as it is based on race or religion, and it violates Articles 2(1) and 26 of the International Covenant on Civil and Political Rights, Article 2(2) of the International Covenant on Economic, Social and Cultural Rights, and Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination. The Court further concluded that Israeli legislation and practices serve to maintain a near-complete separation between settlers and Palestinians in the West Bank and East Jerusalem³⁷. As such, they constitute a breach of Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination³⁸.

Similarly, Francesca Albanese, the UN Special Rapporteur on the situation of human rights in the oPt, confirmed in her report on arbitrary deprivation of liberty that the exclusive jurisdiction of military courts over Palestinians—who are arrested under military orders that apply solely to them and override both Israeli civil and international law—reinforces the discriminatory legal dualism at the heart of the apartheid system³⁹.

The Israeli military orders under which Palestinians are tried significantly restricting both collective and individual rights. Trials before the military judiciary are fundamentally flawed and violate nearly all fair trial guarantees enshrined in international law.

Over time, the occupation authorities have introduced amendments and issued new military orders designed to limit Palestinian rights further. These actions reinforce the apartheid system by subjecting Palestinians to politically motivated trials under military laws imposed upon them. This directly violates the Fourth Geneva Convention, which requires that the occupying power respect and preserve the local laws of the occupied territory and prosecute the local population according to those laws⁴⁰.

Regarding the Israeli laws and military orders imposed on the Palestinians, which affect every aspect of Palestinian life, the ICJ's Advisory Opinion affirmed, in accordance with Article 43 of the Hague-Regulations, that the occupying power must respect the laws in force in the occupied territory prior to the occupation⁴¹. It also stressed that the law of occupation does not allow the occupying power to strip local civil institutions of their regulatory authority. Any regulatory authority ex-

33 Israel. (1977). *Penal Law*, 5737–1977. State of Israel. https://main.knesset.gov.il/EN/about/history/documents/kns8_penallaw_eng.pdf

34 Israel. (1971). *Youth (Trial, Punishment and Modes of Treatment) Law*, 5731–1971. State of Israel.

35 Israel. (2002). *Criminal Procedure Law (Detainee Suspects Interrogation)*. Cited, par. 2

36 International Court of Justice (2024, July 19): *Advisory Opinion*, cited, par. 223.

37 International Court of Justice (2024, July 19): *Advisory Opinion*, cited, par. 266.

38 Article 3 of CERD: “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit, and eradicate all practices of this nature in territories under their jurisdiction”. United Nations (1965): *International Convention on the Elimination of All Forms of Racial Discrimination*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

39 Special Rapporteur on the situation of human rights in the occupied Palestinian territory, Francesca Albanese (2023, August 28): *Arbitrary deprivation of liberty in the occupied Palestinian territory: the Palestinian experience behind and beyond bars*, A/HRC/53/59” <https://documents.un.org/doc/undoc/gen/g23/116/61/pdf/g2311661.pdf>

40 Diplomatic Conference of Geneva (1949): *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, art. 117. https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf, art. 117.

41 Article 43 of the International Peace Conference (1907): *Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex*: <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907>: “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”. International Court of Justice (2024, July 19): *Advisory Opinion*, cited, par. 212.

exercised by the occupying power must be exceptional and based on specific justifications⁴².

Since the beginning of the occupation, Israel has issued nearly 2,000 military orders regulating virtually all aspects of Palestinian life—political, civil, economic, cultural, and social. There is no single public, official repository in English that consolidates all Israeli military orders issued since 1967. Nonetheless, several authoritative collections allow researchers to locate most of the key instruments: (1) the Israeli Military Orders Database maintained by the Applied Research Institute–Jerusalem (ARIJ)⁴³, which is searchable by order number, legal topic, district, locality and date; (2) HaMoked's legal document bank⁴⁴, which hosts key orders and consolidated versions—most notably Order No. 1651 in Hebrew and an English translation; (3) Military Court Watch⁴⁵, which provides an English PDF of the consolidated Security Provisions Order (MO 1651); (4) NEVO, Israel's official legal database (Hebrew)⁴⁶, which contains the military legislation; and (5) archival collections such as Akevot Institute's digital repositories⁴⁷. Historical surveys by UN bodies⁴⁸ and researchers (Hajjar, 1988; Berger, 2024) indicate that Israel had already issued roughly two thousand orders by the late 1980s, with the corpus expanding thereafter. Through these military orders, the occupying power has criminalised fundamental rights that are central to democratic societies, including freedom of expression and opinion, political participation, and the formation of political parties. These restrictions are also in violation of Article 64 of the Fourth Geneva Convention.⁴⁹

Administrative detention

Since the beginning of the Israeli occupation of the Palestinian territories, the Israeli authorities have implemented a policy of arbitrary administrative detention against Palestinians⁵⁰. Over the years, thousands of Palestinians have been held under administrative detention (B'Tselem, 2025). Administrative detention allows the incarceration of Palestinians without charge or trial, based on undisclosed evidence contained in so-called “secret files” that are inaccessible to both the detainees and their legal representatives.

Administrative detention in the West Bank is codified under Military Order No. 1651 (Order Regarding Security Provisions⁵¹), particularly §§284–294, which empower the military commander to issue six-month renewable detention orders based on secret evidence. The Unlawful Combatants Law of 2002⁵² similarly applies to Gaza detainees. In practice, these provisions enable indefinite detention without charge or trial. Authoritative reports by Addameer (2016) and B'Tselem (2017) confirm that tens of thousands of Palestinians have been held under administrative detention since 1967, affecting all sectors of society. Both organisations emphasise that the six-month orders can be renewed endlessly, despite judicial pledges not to renew, turning administrative detention into a system of prolonged arbitrary imprisonment.

The use of administrative detention tends to spike during periods of popular uprisings and mass protests in the occupied territories. During such times, the Israeli authorities intensify their use of this policy as a means of suppression, control, and intimidation. Not only are new detention orders issued for individuals arrested during protests, but existing orders are frequently renewed, effectively prolonging imprisonment without

42 International Court of Justice (2024, July 19): *Advisory Opinion*, cited, par. 134.

43 Applied Research Institute–Jerusalem (ARIJ). (n.d.). *Israeli Military Orders Database*. <https://orders.arij.org/searchMONo.php>

44 Israel Defense Forces (2009): *Order Regarding Security Provisions (Judea and Samaria) (No. 1651)*, 5770–2009, cited.

45 Israel Defense Forces (2009): *Order Regarding Security Provisions (Judea and Samaria) (No. 1651)*, 5770–2009, cited.

46 NEVO, Israel's official legal database <https://nidp.tau.ac.il/nidp/saml2/sso?id=10&sid=0&option=credential&sid=0>

47 Akevot Institute for Israeli–Palestinian Conflict Research. (2023, May 1). *Our first digital document collection is now on air!* <https://www.akevot.org.il/en/news-item/collections/>

48 United Nations Economic and Social Commission for Western Asia (ESCWA). (2019, March 11). *Israeli practices towards the Palestinian people and the question of apartheid* (E/ESCWA/ECRI/2019/1). <https://www.un.org/unispal/document/auto-insert-176206/>

49 Article 64 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War: “The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where

they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws. The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.”

50 Israel Defense Forces (2009): *Order regarding Security Provisions (Judea and Samaria) (No. 1651)*, 5770–2009, paras. 271–283, cited.

51 Israel Defense Forces. (2009). *Order Regarding Security Provisions (Judea and Samaria) (No. 1651)*, §§284–294, cited.

52 State of Israel. (2002). *Incarceration of Unlawful Combatants Law*, 5762–2002. Cited.

new charges. This also applies to detainees who have received a “substantial” court decision, a pledge not to renew their detention and to release them upon completion of their term (Amnesty International, 2012). In practice, Israeli authorities often disregard these rulings, especially during times of mass protests, treating them as exceptions rather than binding decisions (B’Tselem, 2025).

Further legal amendments have expanded the scope of administrative detention following the declaration of a state of emergency by the Israeli government, ostensibly to increase the number of individuals held as a precaution⁵³. These changes apply to all detainees, including women and children, as well as those held in administrative detention prior to October 7th. Such amendments reinforce a policy of collective punishment implemented by the occupying state against the Palestinians and entrench the use of arbitrary detention as a systematic tool within the Israeli occupation framework.

According to Addameer (2024), between October 7 and December 31, 2023, Israeli forces arrested over 5,500 Palestinians in the West Bank and East Jerusalem, placing approximately 80 percent under administrative detention. By year’s end, the number of administrative detainees reached 3,291—double the figure before October 7. Particularly alarming is the unprecedented rise in children subjected to administrative detention: while the annual average over the previous 16 years was 3–4 children, the number rose to 46 by late 2023, the highest recorded since 1967⁵⁴. This trend has been documented by Addameer, the Palestinian Centre for Human Rights (2024), and Defense for Children International–Palestine (2024).

Following the start of the Israeli military campaign against the Gaza Strip on October 7th, mass arrests escalated dramatically across the West Bank and East Jerusalem. Prisoner rights organisations recorded approximately 5,500 arrests only between October 7th and the end of 2023, with 80% of those detained placed under administrative detention. The number of administrative detainees rose to 3,291 by the year’s end, doubling the number recorded prior to October 7th (B’Tselem, 2025). Particularly concerning is the sharp rise in the number of Palestinian children subjected to administrative detention,

reaching unprecedented levels. This practice constitutes a grave breach of international law, which mandates special protections for children and prohibits arbitrary detention. According to the Palestinian Association for Human Rights, the average number of children held in administrative detention annually over the 16 years prior to October 7th was 3.6. Since the start of the genocide, the number has surged to 46, the highest number of children administrative detainees since 1967⁵⁵.

By the end of 2023, 49 Palestinian children were held in administrative detention at Ofer, Damon, and Megiddo prisons—the highest number in a decade. Beyond Amnesty International⁵⁶, organisations such as Addameer (2023), DCIP (2023), B’Tselem (2025), and Human Rights Watch (2023) have documented the abusive practices accompanying these detentions, including night raids, violent home invasions, physical assaults, blindfolding, denial of legal counsel, and prolonged solitary confinement. These findings demonstrate that administrative detention is systematically used as a punitive measure against children.

The formal authority for administrative detention is found in Military Order No. 1651⁵⁷, §§285–289, which require that an administrative detention order issued by the military commander be reviewed by a military court judge within eight days, and renewable for successive six-month periods. In practice, as shown in reports by HaMoked (2021), military judges nearly always approve such orders, even when based on secret evidence or after criminal charges fail in court. This judicial practice ensures the continuation of arbitrary detention and sustains the broader policy of suppressing Palestinian resistance.

Incitement

The occupation forces not only pursue Palestinians on the ground but also control their lives and prosecute them based on their actions in the virtual world and on social media. Each year, hundreds of Palestinians are arrested for expressing opinions on social media, acts that the occupying state classifies as “incitement” under its legal frameworks⁵⁸. For residents of East

53 Human Rights Council (2024, February 27): *Written statement submitted by Al-Haq, Law in the Service of Man, a non-governmental organization in special consultative status, A/HRC/55/NGO/82*, <https://docs.un.org/en/A/HRC/55/NGO/82>

54 United Nations Office for the Coordination of Humanitarian Affairs (OCHA). (2024, February). Humanitarian update: Impact of detention policies in the oPt. <https://www.ochaopt.org>

55 Military Court Watch (2024, January 31), *Detention Update*, <https://www.militarycourtwatch.org/page.php?id=WkH4ZosDqga1868715AAtP0dyZqiz>

56 Amnesty International (2023): *Horrifying cases of torture and degrading treatment of Palestinian detainees amid spike in arbitrary arrests*. Amnesty International. <https://www.amnesty.org/en/latest/news/2023/11/israel-opt-horrifying-cases-of-torture-and-degrading-treatment-of-palestinian-detainees-amid-spike-in-arbitrary-arrests/>

57 Israel Defense Forces. (2009). *Order Regarding Security Provisions (Judea and Samaria) (No. 1651)*, §§285–289. Cited.

58 Middle East Monitor (5.01.2023): *Israel arrested 410*

Jerusalem and the territories occupied in 1948, such prosecutions are based on Articles 144(B) and 144(D) of the 1977 Penal Code⁵⁹, which addresses incitement to violence or terrorism. For Palestinians in the West Bank, military prosecutions rely on Articles 251 and 199(C) of Military Order No.1651 of 2009, concerning Security Instructions⁶⁰.

Since October 7th, 2023, most indictments have included a preamble detailing the events of that day, framing it as justification for a wave of unprecedented arrests and administrative detentions⁶¹. This context underscores the political nature of these detentions, reflecting a policy of collective punishment that targets Palestinians indiscriminately, regardless of age, profession, or actual involvement in any violence.

The Israeli authorities have long practised systemic racism and violence against Palestinians. However, the recent escalation has revealed an even deeper level of repression. In the 1948 occupied territories, Palestinians are presumed guilty of “supporting terrorism” unless they can prove otherwise, not the other way around, as required by law. Simply exercising basic constitutional rights, like freedom of expression, has become grounds for arrest and prosecution. Peaceful demonstrations in support of Palestine are frequently criminalised under Israel’s 2016 Anti-Terrorism Law (Adalah Center, 2023).

On October 16, 2023, Palestinian artist and academic Dalal Abu Amneh was arrested for posting the phrase ‘There is no victory but Allah’ on Facebook⁶², which Israeli authorities deemed incitement. After three days, the Nazareth Magistrate Court released her under restrictive conditions, including house arrest, a fine, and a 45-day ban on online activity⁶³. Me-

dia outlets such as Haaretz and Middle East Monitor documented the arrest and trial proceedings. Following her release, Abu Amneh was targeted by a campaign of incitement that included racist protests outside her home, death threats, and institutional pressure from right-wing groups demanding her dismissal from the Technion. These events were documented by Al Jazeera⁶⁴, the Committee to Protect Journalists⁶⁵, and Adalah (2023).

Israeli authorities have also considered amending police regulations to permit the use of live fire against demonstrators under the pretext of “threats to public order”. Palestinians are now routinely accused of incitement not only for what they post on social media, but also for merely “liking” or engaging with content online. Even the presence of certain apps on a Palestinian’s phone – particularly Telegram, which had gained popularity since Meta began heavily censoring Palestinian content – can serve as grounds for arrest⁶⁶.

At checkpoints in the West Bank, occupation forces inspect Palestinian phones for posts or images, especially on Telegram, that show support for Hamas or express sympathy for Gaza. Possession of such content often leads to arrest, beatings, or phone destruction. Even private messages are subjected to scrutiny, with security forces searching for any sign of support for resistance, even subtle hints.

These invasive tactics have led to the arrest of dozens of Palestinian women, especially journalists, students, activists, and human rights defenders across the West Bank and 1948 territories. Some of them, like lawyer Asala Abu Khdaib and actress Maysaa Abdel Hadi⁶⁷, were photographed handcuffed, and the

Palestinians for social media activity in 2022, <https://www.middleeastmonitor.com/20230105-israel-arrested-410-palestinians-for-social-media-activity-in-2022-report-says/>; Addameer (24.08.2016): *Daring to Post: Arrests of Palestinians for Alleged Incitement*, <https://www.addameer.org/publications/daring-post-arrests-palestinians-alleged-incitement>

59 Israel. (1977). *Penal Law*, 5737–1977. State of Israel.

60 Israel Defense Forces (2009): *Order Regarding Security Directives [Consolidated Version] (Judea and Samaria)* (No. 1651). <https://www.militarycourtwatch.org/files/server/MO%201651%20.pdf>

61 Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan (2024, August 23): *Global threats to freedom of expression arising from the conflict in Gaza*, A/79/319. <https://docs.un.org/en/A/79/319>

62 Middle East Monitor. (2023, October 19). *Israel arrests Palestinian artist Dalal Abu Amneh over Facebook post*. Middle East Monitor <https://www.middleeastmonitor.com/20231019-israel-arrests-palestinian-artist-dalal-abu-amneh-over-facebook-post>

63 Rochelson, M. (2023, October 19). *Palestinian singer Dalal Abu Amneh released to house arrest after incitement charge*. Haaretz.

<https://www.haaretz.com/israel-news/2023-10-19/ty-article/.premium/palestinian-singer-dalal-abu-amneh-released-to-house-arrest-after-incitement-charge/0000018b-3e3d-d6e2-a3bf-7f7dcd9f0000>

64 Al Jazeera. (2023, October 20). *Palestinian artist Dalal Abu Amneh targeted by incitement campaign in Israel*. <https://www.aljazeera.com/news/2023/10/20/palestinian-artist-dalal-abu-amneh-targeted-by-incitement-campaign-in-israel>

65 Committee to Protect Journalists (CPJ). (2023, October 22). *Palestinian artist Dalal Abu Amneh harassed following release*. <https://cpj.org/2023/10/palestinian-artist-dalal-abu-amneh-harassed-following-release>

66 The campaign to criminalise the use of this app is evident in articles such as this one: The Times of Israel (2024, September 16): *What you need to know about Telegram, the app Hamas uses to spread its message*. The Times of Israel <https://www.timesofisrael.com/what-you-need-to-know-about-telegram-the-app-hamas-uses-to-spread-its-message/>

67 Haarezt (2023, October 30): *Arab Israeli Actress Charged with Incitement Over Oct. 7 Posts*. Haarezt <https://www.haaretz.com/israel-news/2023-10-30/ty-article/.premium/arab-israeli-actress-charged-with-incitement-over-october-7-posts/0000018b-7d00->

images were circulated on social media, constituting a violation of their privacy and right to a fair trial.

Enforced disappearance

Following the launch of Israel's ground offensive in Gaza after October 7, 2023, photos and videos circulated widely across international media and social platforms showing Palestinian civilians stripped to their underwear, blindfolded, and crowded into Israeli military vehicles before being taken to undisclosed locations. Reports by the Associated Press⁶⁸, Reuters⁶⁹, and Al Jazeera⁷⁰ verified these images, while the Office of the UN High Commissioner for Human Rights (2023)⁷¹ expressed grave concern, noting that such treatment may amount to torture or enforced disappearance.

On December 16th, 2023, the Office of the United Nations High Commissioner for Human Rights (OHCHR) announced it had received deeply troubling reports from northern Gaza of mass detentions, ill-treatment, and the enforced disappearance by Israeli occupation forces of potentially thousands of Palestinians, including children⁷². Many were reportedly detained while attempting to flee south or during raids on homes, schools, and shelters. Alarming, detainees were subjected to severe abuse, some of which may amount to torture, including being stripped to their underwear, blindfolded, handcuffed, and photographed in deliberately degrading positions before being taken to undisclosed detention locations.

The OHCHR also reported a growing number of cases in which civilians were killed, sometimes in apparent extrajudicial executions in designated refugee camps, particularly schools.

Such acts could constitute war crimes and warrant immediate and thorough investigation.

The Israeli occupation forces conducted arrest operations throughout various areas of the Gaza Strip. On December 14th, 2023, the Associated Press published a report documenting mass arrest campaigns in the Deir al-Balah area, in northern Gaza. Families were separated, and hundreds of men were forced to strip to their underwear before being loaded onto trucks and transported to a makeshift detention camp on the beach, where they were exposed to hunger and cold, in some cases for days⁷³.

These testimonies were documented by Addameer in its December 2023 urgent update on mass detentions in Gaza⁷⁴. The report includes first-hand accounts from detainees such as Ibrahim Lubbad and Nader Zindah, who described being stripped, assaulted, and subjected to conditions amounting to inhuman and degrading treatment, including denial of food and water. Such findings underscore the systematic use of ill-treatment in the context of mass arrests.

Israeli officials publicly justified and incited mass arrests⁷⁵. Government spokesperson Eylon Levy declared that Israel would 'determine who needs to be arrested, detained, and brought to justice as a Hamas terrorist and who does not'⁷⁶. Former national security advisor Yaakov Amidror described the campaign of arrests as a key step in the 'next phase of the war'⁷⁷. Even more extreme, Jerusalem deputy mayor Aryeh King posted on X calling on the army to 'bury alive' Palestinian detainees, referring to them as 'Nazis' and 'ants'; his remarks were documented by Middle East Eye⁷⁸ and Al Jazeera⁷⁹.

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68 Associated Press. (2023, December 14). *Israel detains scores of Palestinians in Gaza, images show men stripped and blindfolded*. AP News. <https://apnews.com>

69 Reuters. (2023, December 15). *Images of detained Palestinians in Gaza raise concerns*. Reuters. <https://www.reuters.com>

70 Al Jazeera. (2023, December 15). *Images of Palestinians stripped and detained in Gaza spark outrage*. Al Jazeera. <https://www.aljazeera.com>

71 Office of the United Nations High Commissioner for Human Rights (OHCHR). (2023, December 16). *Press briefing note on Gaza detentions*. [Press release], Geneva: OHCHR. <https://www.ohchr.org>

72 UN Human Rights Office – OPT (2023, December 16): *Disturbing reports from the north of Gaza of mass detentions, ill-treatment and enforced disappearances of possibly thousands of Palestinians*, <https://reliefweb.int/report/occupied-palestinian-territory/un-human-rights-office-opt-disturbing-reports-north-gaza-mass-detentions-ill-treatment-and-enforced-disappearances-possibly-thousands-palestinians>

73 Associated Press (2023, December 14): *Hungry, thirsty and humiliated: Israel's mass arrest campaign sows fear in northern Gaza*. <https://apnews.com/article/palestinians-detained-israel-hamas-gaza-war-0ecbc338e4024add059b87b38022086d>

74 Addameer Prisoner Support and Human Rights Association. (2023, December). *Urgent update on mass detentions and abuses in Gaza*. Ramallah: Addameer. <https://www.addameer.org/publications>

75 Holmes, O. (2023, December 15). *Israel defends mass detentions in Gaza amid outcry over images*. The Guardian. <https://www.theguardian.com/world/2023/dec/15/israel-defends-mass-detentions-gaza-outcry-images>

76 Haaretz. (2023, December 15). *Israel's government spokesperson Eylon Levy on mass arrests*. Haaretz. <https://www.haaretz.com>

77 Times of Israel. (2023, December 14). *Amidror: Mass arrests key to next stage of Gaza war*. The Times of Israel. <https://www.timesofisrael.com>

78 Middle East Eye. (2023, December 15). *Israeli deputy mayor calls to 'bury alive' Palestinian detainees*. Middle East Eye. <https://www.middleeasteye.net>

79 Al Jazeera. (2023, December 15). *Israeli official calls Palestinians 'Nazis' and urges they be 'buried alive'*. Al Jazeera. <https://www.aljazeera.com>

Levy further claimed that all men seen in circulated photos were “suspected terrorists” and justified the mass detention of all individuals remaining in areas under evacuation orders, particularly in northern Gaza and parts of the south, with the excuse of “determining who the terrorists are”⁸⁰.

Under the Incarceration of Unlawful Combatants Law, 5762–2002, §3(a)⁸¹ authorises the Chief of General Staff to issue an incarceration order whenever there is reasonable cause to believe that a person is an ‘unlawful combatant’ and that their release would harm state security. The law provides for judicial review before a district court within 14 days and six-monthly periodic reviews (§5), governs access to legal counsel (§6), and creates a rebuttable presumption that a member of, or participant in, a force perpetrating hostile acts poses a security danger (§7). Following October 7, temporary amendments (Dec. 2023, renewed Apr. and Jul. 2024) expanded these timelines⁸², allowing up to 45 days to issue an incarceration order and up to 75 days to hold the first judicial review, and authorising extended denial of access to counsel (up to 75–90 days).

Many detainees from Gaza were transferred to the Israeli army–run Sde Teiman camp near Beersheba. Released detainees described torture, starvation, prolonged blindfolding and handcuffing, and being forced to kneel for hours⁸³. Sick and

wounded detainees were subjected to particularly degrading conditions. A field hospital established at the site reportedly treated patients while shackled to their beds, identified only by five-digit military numbers. Investigations by Haaretz (2024) and Physicians for Human Rights–Israel (2024) corroborate these testimonies, while the Israeli Medical Association’s Medical Ethics Committee⁸⁴ raised concerns after an official visit⁸⁵.

Under Article 2 of the International Convention for the Protection of All Prisoners from Enforced Disappearance, “enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”⁸⁶.

Article 1 of the same Convention declares that no one shall be subjected to enforced disappearance and explicitly prohibits the use of “exceptional circumstances”, such as war or internal conflict, to justify such acts. Article 24 defines victims as both the disappeared and those directly harmed as a result. Victims have the right to reparation and prompt, fair, and adequate compensation⁸⁷.

The International Committee of the Red Cross further prohibits enforced disappearance under international humanitarian law. Rule 98 of its 2005 compilation applies this prohibition to both international and non-international armed conflicts⁸⁸.

Furthermore, under Article 7(1)(i) of the Rome Statute of the International Criminal Court, the systematic practice of enforced disappearance qualifies as a crime against humanity. Article 7(2) defines this as the arrest, detention, or abduction of individuals with the support or acquiescence of a state or

aljazeera.com

80 The Guardian (2023, December 8): *Footage Shows IDF Parading Scores of Palestinian Men Around in Underwear*. The Guardian, <https://www.theguardian.com/world>

81 State of Israel. (2002). *Incarceration of Unlawful Combatants Law, 5762–2002*. cited.

82 Law Library of Congress. (2024, January 24). *Israel: Parliament adopts law expanding authority to detain unlawful combatants during wartime or significant military action*. <https://www.loc.gov/item/global-legal-monitor/2024-01-24/israel-parliament-adopts-law-expanding-authority-to-detain-unlawful-combatants-during-wartime-or-significant-military-action/>; Public Committee Against Torture in Israel (PCATI). (2024, February). *Incarceration of Unlawful Combatants Law – Amendments and implications*. https://stoptorture.org.il/wp-content/uploads/2024/02/Incarceration-of-Unlawful-Combatants-Law_February-2024.pdf; Diakonia IHL Centre. (2024, August 30). *Unlawful incarceration? The legality of Israel’s military detention regime in Gaza*. <https://www.diakonia.se/ihl/news/unlawful-incarceration-legality-military-detention-regime-gaza/>; Saul, B. (2025, April 8). *Gaza amendments to Israel’s “Unlawful Combatants Law” are inconsistent with international law*. *Opinio Juris*. <https://opiniojuris.org/2025/04/08/gaza-amendments-to-israels-unlawful-combatants-law-are-inconsistent-with-international-law/>

83 Harel, A., & Shpigel, N. (2024, January 22). *Torture, starvation, and shackling: What goes on at Israel’s Sde Teiman camp*. Haaretz. <https://www.haaretz.com/israel-news/2024-01-22/ty-article/.premium/torture-starvation-and-shackling-what->

[goes-on-at-israels-sde-teiman-camp/0000018c-3e2d-dc4b-a7ad-7ffdf3f60000](https://www.haaretz.com/israel-news/2024-01-22/ty-article/.premium/torture-starvation-and-shackling-what-goes-on-at-israels-sde-teiman-camp/0000018c-3e2d-dc4b-a7ad-7ffdf3f60000)

84 Israeli Medical Association – Medical Ethics Bureau. (2024, March). *Statement following visit to Sde Teiman field hospital*. Jerusalem: IMA.

85 Office of the United Nations High Commissioner for Human Rights (OHCHR). (2023, December). *Press release on reports of mass detentions and abuse in Gaza and Israel*. [Press release], Geneva: OHCHR. <https://www.ohchr.org>

86 United Nations (2006): *International Convention for the Protection of All Persons from Enforced Disappearance*, article (1). <https://www.ohchr.org/sites/default/files/disappearance-convention.pdf>

87 International Convention for the Protection of All Persons from Enforced Disappearance, article (24), cited.

88 International Committee of the Red Cross: *Rule 98. Enforced Disappearance*. International Humanitarian Law Database. <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule98>

political organisation, followed by a refusal to acknowledge the deprivation of liberty or provide information on the fate or whereabouts of those persons, with the intent of removing them from the protection of the law for a prolonged period of time⁸⁹.

The core elements of this crime, according to the Rome Statute, are:

- The perpetrator arrested, detained, or abducted one or more persons;
- The perpetrator knew or intended that this act would be followed by a refusal to acknowledge the deprivation of liberty or disclose the fate or whereabouts of the person(s);
- The aim was to remove the individual(s) from legal protection for a prolonged period
- The perpetrator was aware that these actions were part of, or intended them to be part of, a widespread or systematic attack against a civilian population⁹⁰.

Discussion

Francesca Albanese, the current Special Rapporteur on the situation of human rights in the oPt, has pointed out that that 'the widespread and systematic arbitrariness of the occupation's carceral regime is yet another manifestation of Israel's inherently illegal occupation, and that third States have a duty not to contribute or condone Israel's settler-colonial apartheid, which criminalizes Palestinians for reclaiming or refusing to forsake their collective right to exist as a people, and act to realize all conditions that would allow the Palestinian people to realize their rights, including their inalienable right to self-determination.'⁹¹

In her recommendations, Ms. Albanese added that Israel's system of arbitrarily depriving Palestinians of their liberty in the occupied Palestinian territory, emanating from an irredeemably unlawful occupation, be abolished tout court, because of its inherent incompatibility with international law. She also stressed that the State of Israel, as a first step towards long-

term remedies for decades of arbitrary deprivation of liberty of the Palestinian people, must release all Palestinian detainees, especially children, detained for acts devoid of offensiveness under international law. According to Ms. Albanese, third States should not recognise as lawful, aid or assist Israel's occupation given its commission of internationally wrongful acts⁹².

As for the competent authorities at the local and international levels, they must acknowledge the illegality of arresting Palestinians in the oPt and trying them before military courts under military orders and discriminatory laws, according to the following:

- States: States are responsible for respecting and implementing the ICJ's advisory opinion after it was adopted by a majority of the United Nations General Assembly. The Court confirmed this in its ruling. The Court concluded that all States are under an obligation not to recognise as legal the situation arising from Israel's unlawful presence in the oPt and not to render aid or assistance in maintaining the situation created by Israel's continued presence in the oPt. Furthermore, the Court stressed that it is the responsibility of all States to bring an end to any obstacle arising from Israel's unlawful presence in the oPt to the exercise of the Palestinian people's right to self-determination. In addition, all States Parties to the Fourth Geneva Convention are under an obligation to ensure Israel's compliance with international humanitarian law, as stipulated in that Convention.

Among the States' obligations in this regard are recognising the illegality of the arrest and trial of Palestinians, while demanding the occupying State dismantle its military judicial system, suspend all military orders imposed against the Palestinian people for years, treat Palestinian detainees and prisoners as arbitrarily and illegally detained, and immediately release all Palestinian male and female prisoners.

- The United Nations and international organisations: The advisory opinion of the International Court of Justice affirmed that international organisations and the United Nations should not recognise the situation resulting from Israel's illegal presence in the occupied Palestinian territories. In this context, international organisations and the United Nations, particularly the Working Group on Arbitrary Detention and the Special Rapporteur on the Independence of Judges and Lawyers, must treat Palestinian prisoners and detainees as arbitrarily detained and unlawfully held. They should demand their release from the illegal occupation prisons and pressure the occupying state to dismantle the illegitimate military judicial system.

89 International Criminal Court (1998): *Rome Statute of the International Criminal Court*, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>

90 Assembly of States Parties to the Rome Statute of the International Criminal Court (2002): *International Criminal Court. Elements of Crime*. <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>

91 Special Rapporteur on the situation of human rights in the occupied Palestinian territory, Arbitrary deprivation of liberty in the occupied Palestinian territory, Michael Lynk (2021): *Situation of human rights in the Palestinian territory occupied since 1967*, <https://documents.un.org/doc/undoc/gen/n21/299/63/pdf/n2129963.pdf>

92 *Ibid.*

- The Palestinian people of all forms, and lawyers defending prisoners and detainees:

In light of the important advisory opinion of the International Court of Justice and the adoption of a General Assembly resolution declaring the Israeli occupation illegal with the majority of countries voting in favour, it is essential for the Palestinian people in all their forms, as well as for the prisoners and detainees, institutions working in the field of prisoners' rights, and lawyers defending them, to open a broad Palestinian discussion on the necessary mechanisms for dealing with the occupying courts as illegal tribunals. This includes exploring the possibility of ceasing to appear before these courts in order to avoid legitimising them, ultimately aiming for the complete dismantling of the military judicial system.

Conclusions

The International Court of Justice (ICJ) has issued its advisory opinion on the legality of the Israeli occupation, in light of the occupying state committing genocide against the Palestinian people⁹³. This opinion comes amid an intensification of arrest campaigns across the occupied territories and a marked increase in crimes perpetrated by the occupation forces and settlers against the Palestinian people.

While the ICJ's opinion is significant in affirming the illegality of the Israeli occupation and declaring that the occupying state is obligated to end its unlawful occupation of Palestinian territory as swiftly as possible, it does not directly address the legality of the arrest and trial of Palestinians by the occupying state or the use of its military courts. This raises the question: In light of the ICJ's advisory opinion, how are the arrest and prosecution of Palestinians under Israeli military orders or domestic criminal laws to be considered illegal?

Since the onset of the Israeli military occupation of Palestine in 1967, the occupation authorities have issued a wide array of military orders that impact every aspect of Palestinian life. A military judicial system was established to exert control and domination over the Palestinian population, functioning alongside the legislative authority of the Israeli military commander. Through these military orders, fundamental rights have been criminalised. This military legal regime constitutes

a form of apartheid, systematically using its powers to suppress and deter the Palestinian people, entrench the occupation, and deprive Palestinians of their right to self-determination.

Arrest and detention have long been used by the Israeli authorities as a tool to violate the Palestinians' right to self-determination. Since 1967, according to documentation collected by Palestinian prisoners' organisations, the Israeli occupation forces have arrested over one million Palestinians⁹⁴, many for exercising fundamental rights, most notably the right to self-determination and resistance against occupation. Under Israeli military orders, all Palestinian political organisations are deemed unlawful, and affiliation with them is criminalised, often resulting in months or years of imprisonment. Arrests continue on the basis of political affiliation, expression of opinion, participation in union and student activities, and resistance within the framework of internationally recognised rights.

The ICJ's advisory opinion explicitly states that the unlawful policies and practices of the Israeli occupation have exacerbated the violation of the Palestinian people's right to self-determination⁹⁵. These policies, sustained over decades, have systematically deprived Palestinians of this right and threaten its future realisation. The Court concluded that such illegal practices breach the occupying state's obligations to respect this fundamental right, emphasising that the right to self-determination is inalienable and cannot be constrained by the occupying power. The Court further asserted that violations of this right directly undermine the legitimacy of Israel's presence in the occupied Palestinian territory⁹⁶.

The ICJ affirmed that Israel's continued presence in the Occupied Territories is unlawful, constituting an ongoing internationally wrongful act that incurs state responsibility⁹⁷. As such, Israel must repeal all laws and measures that sustain this illegal situation, including those that discriminate against Palestinians in the West Bank and Gaza.

Consequently, the legal obligation is in Israel to bring an end to its presence in the Occupied Territories as expeditiously as possible, and to provide full reparation for the harm caused by its internationally wrongful acts. The Court underscored Israel's ongoing duty to uphold the right of the Palestinian peo-

93 Report of the UN Secretary-General (2024, December 19): *Advisory opinion of the International Court of Justice on the legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of the continued presence of Israel in the Occupied Palestinian Territory*, A/79/588. <https://docs.un.org/en/A/79/588>

94 Middle East Monitor (2017, April 17): *One million Palestinians detained by Israel since 1948*. Middle East Monitor, <https://www.middleeastmonitor.com/20170416-1-million-palestinians-detained-by-israel-since-1948/>

95 International Court of Justice (2024, July 19): *Advisory Opinion*, cited, par. 243.

96 *Ibid.*

97 International Court of Justice (2024, July 19): *Advisory Opinion*, cited, page. 6.

ple to self-determination and to comply with its obligations under international humanitarian and human rights law.

At the tenth emergency special session of the United Nations General Assembly on Palestine, on December 11th, 2024, the Assembly adopted a resolution, supported by 124 state members, calling on Israel to end its illegal presence in the Occupied Palestinian Territories within 12 months. The resolution also urged Israel, as the occupying power, to comply immediately with its international obligations, as articulated in the ICJ's Advisory Opinion, including refraining from impeding the Palestinian people's exercise of their right to self-determination, particularly their right to an independent and sovereign state over the entirety of the occupied Palestinian territory⁹⁸.

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98 United Nations (2024, September 18): *General Assembly adopts resolution demanding an end to the Israeli occupation of Palestine*, <https://news.un.org/ar/story/2024/09/1134616>