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Thematic Report

Detention in the context of the escalation of hostilities in Gaza (October 2023-June 2024)

31 July 2024



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Occupied Palestinian Territory

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A: Summary of the report

1. The present report focuses on detention in the context of the escalation of hostilities in Gaza. It covers the situation from 7 October 2023 until 30 June 2024.
2. On 7 and 8 October 2023, Palestinian armed groups took over 250 persons into captivity in Gaza from Israel. As of 25 June, 116 of them, abducted civilians and captured military personnel, as well as four others taken in 2014, remain in Gaza, held as hostages in dire conditions. According to the Israeli Government, 44 of them are dead. Palestinian armed groups have prevented the International Committee of the Red Cross (ICRC) from visiting the hostages.
3. Since early November 2023, the Israeli Defense Forces (IDF) have taken into custody thousands of Palestinians in Gaza, mostly men and boys, but some women and girls as well. They have generally been held in military facilities and further transferred to detention facilities and prisons inside Israel and the occupied West Bank. During raids on hospitals and schools serving as shelters for internally displaced persons (IDPs), the IDF has taken into their custody large numbers, in the thousands, including at least 310 medical staff, as well as patients, companions and IDPs.
4. More than 10,000 workers and patients from Gaza, who were legally present in Israel on 7 October, were also taken into custody in Israel in the days after. It is estimated that 3,200 of them were released and transferred into Gaza in November 2023, 6,441 were transferred to the occupied West Bank, while around 1,000 of them remain unaccounted for.
5. The legal basis for the detention of the Palestinians taken into custody in Gaza has not always been clear, although, on 6 May 2024, Israeli authorities asserted that all Palestinians taken into custody in Gaza were either held by “virtue of the Incarceration of Unlawful Combatants Law ... or by virtue of criminal arrest warrants”.¹
6. Those taken into custody in Gaza, as well as in Israel, have been generally held in prolonged secret and *incommunicado* detention, with no information provided to their families on their fate or whereabouts, in many cases for weeks or months, raising serious concerns of enforced disappearance.²
7. In parallel, also in the aftermath of 7 October, Israeli security forces (ISF) initiated daily mass, apparently arbitrary, arrests of Palestinians in the occupied West Bank, including East Jerusalem, affecting all sectors of Palestinian society.
8. Israel continues to take large numbers of Palestinians into custody in Gaza, and to arrest many from the West Bank as of June 2024.
9. The large number of Palestinians – men, women, children, doctors, journalists, human rights defenders – detained since 7 October, most of them without charges or trial and in conditions that raise concerns of the abuse of administrative detention, along with reports of torture and other ill-treatment and violation of due process, raises serious concerns regarding the arbitrariness and punitive nature of such arrests and detention. Many of those detained and

¹ State response (on file) in case HCJ regarding suspension of ICRC visits, 1537/24.

² See also A/HRC/51/29, para. 48.

subsequently released have reported being subject to forms of torture or other ill-treatment, including severe beatings, electrocution, being forced to remain in stress positions for prolonged periods, or waterboarding. At least 53 detainees from Gaza and the West Bank have died in Israeli detention since 7 October.

10. Since 7 October, Israel has suspended the ICRC's access to all Palestinian detainees in its custody, whether from Gaza or the West Bank. According to Palestinian prisoners' organizations, Israeli authorities also denied them access to all Palestinian detainees from Gaza. While Israel's security cabinet on 25 April 2024 decided to allow foreign observers to visit prisons and detention facilities where alleged Hamas operatives have been detained since October 7, the mechanism for such visits has not yet been established.³
11. This report is based on monitoring conducted by the OHCHR office in the Occupied Palestinian Territory. It relies primarily on information gathered by OHCHR staff through interviews with Palestinian released detainees and other victims and witnesses of violations, as well as on information from human rights organizations and other civil society organizations, governmental entities both Palestinian and Israeli, and other UN agencies, as well as information available through media and social media. This report was shared with the Governments of Israel and the State of Palestine, for factual comment.

B: Detention by Israeli security forces

Palestinians taken into custody in Gaza

12. The Office of the High Commissioner for Human Rights (OHCHR) has gathered consistent and credible reports of large numbers of Palestinians taken into custody by the IDF in Gaza since early November 2023.⁴ While the exact number of those held is difficult to ascertain, OHCHR estimates that the IDF has taken thousands of Palestinians into custody. Many were taken into custody while sheltering in schools, hospitals and residential buildings, or at checkpoints during the forced displacement of large numbers of Palestinians from north to south Gaza. At least 40 staff members of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) have also been taken into custody in Gaza and detained. In most cases, men and adolescent boys were detained, although women, including a woman over 80 years of age and with Alzheimer's disease, and girls without any apparent link to armed groups, have also been detained.
13. Doctors, nurses and other medical personnel, alongside patients, their companions, and IDPs, have been arrested or detained during raids on hospitals and medical facilities. According to the Gaza Ministry of Health, in total 310 medical staff had been arrested from all medical facilities

³ State response to the petition by human rights organisations to Israel's High Court of Justice, demanding to resume ICRC visits HCJ 1537/24 submitted to court on 6 May. On file.

⁴ OHCHR has collected information through interviews with released individuals; family members, employers, and lawyers; other human rights organizations; prisoners' organizations; and open-source information, including media. OHCHR wrote to the Israeli Permanent Mission in Geneva on 20 May 2024 to request more information on the treatment of Palestinian individuals in Israeli custody, but has not received a response at the time of writing.

across Gaza as of 31 May 2024.⁵ Between 12 and 16 December 2023, the IDF reportedly took hundreds of Palestinians into custody while raiding Kamal Adwan Hospital in North Gaza.

14. Hundreds others were taken into custody while moving after being displaced from the north of Wadi Gaza to Middle Gaza and Rafah. Many of those taken into custody have testified that all their belongings, including jewels in some cases, were taken by IDF personnel at checkpoints between Northern Wadi Gaza and Middle Gaza.
15. OHCHR has gathered reports of men held in Gaza by the IDF, including UNRWA staff members, who were for military purposes by the IDF in Gaza, including by being forced by IDF soldiers to enter tunnels and buildings in Gaza ahead of soldiers.
16. After initial detention within Gaza, extending between a few hours and a day or two, the IDF reportedly take all detainees from Gaza who have not been released to detention facilities in Israel and the occupied West Bank.⁶ These have included *ad hoc* detention facilities inside military barracks in Israel or the occupied West Bank, including Anatot in Naqab (Negev) desert, Sde Teiman, and Zikim. Others were reportedly taken to Ofer and Damon prisons. Some released detainees told OHCHR that, in early December 2023, they were detained in Az Zaitoun neighborhood in Gaza City, along with members of their families and many others from their neighborhood, then taken to Negev Desert Prison (Ketziot) in Israel. On 27 May, Israeli authorities stated that the State had issued more than 4,000 temporary incarceration orders under the Incarceration of Unlawful Combatants Law,⁷ released more than 1,500 detainees back to Gaza, and issued more than 2,000 (permanent) incarceration orders.⁸ In many cases, those released, after weeks or months (more than five months in some cases) in Israeli custody, reported that they were neither advised of reasons for their detention nor given an order of incarceration setting out the asserted legal grounds for their detention.⁹ Most of those released were denied access to a lawyer and were not brought before a court. In one case, Dr. Mohamed Abu Selmia, the Director of Al Shifa Hospital, who was detained on 22 November while escorting a UN-led evacuation of patients from the hospital, and was released on 1 July, reported that he was brought to court three times, but was never allowed to see a lawyer nor charged.¹⁰
17. The IDF does not usually explain the basis for taking Palestinians into custody in Gaza, although it has in some cases alleged affiliation with Palestinian armed groups or their political wings. For example, the IDF claimed that 500 Palestinians were affiliated with Hamas or Palestinian Islamic

⁵ Gaza Ministry of Health, Health Sector Emergency Report for the Day (238) of Aggression, 31 May 2024, available at <https://t.me/MOHMediaGaza/5482>

⁶ See para. 14 of the State response of 20 May 2024 to the petition by human rights organisations demanding to strike down the amendment to the Incarceration of Unlawful Combatants Law (Amendment 4) - 2024. HCJ 1414/24 – State response on file.

⁷ See further on the Incarceration of Unlawful Combatants Law in paras.59-65 below.

⁸ HCJ 1414/24 – State response on file; <https://www.haaretz.co.il/news/politics/2024-05-27/ty-article/.premium/0000018f-ba6b-dfb0-a7af-fb7b4c150000>. Of note, some of this number appear to have been captured in Israel on 7 and 8 October.

⁹ Although under the Incarceration of Unlawful Combatants Law an incarceration order may be issued *in absentia*, a person subjected to an incarceration order must, in accordance with section 3 (c) of the Act, be promptly advised of the order and brought before an authorized officer for an assessment of the grounds of their detention, and must subsequently be brought before a court for a review of the legality of the detention.

¹⁰ See <https://www.independent.co.uk/news/world/middle-east/israel-gaza-shifa-hospital-doctor-b2572377.html>; and <https://www.cbsnews.com/news/israel-hamas-war-director-gaza-al-shifa-hospital-freed-alleges-torture/>

Jihad (PIJ) at Al Shifa Medical Complex in 2024.¹¹ In many cases, it appears that Palestinians are detained *en masse* for screening purposes, as well as intelligence collection. Some released detainees have reported that they were informed that they were detained for remaining in areas from which the IDF had ordered evacuation. Many of the released detainees, who all claim and appear to be civilians, said they were interrogated without legal representation, about locations of tunnels and/or hostages.

18. Women and children in IDP camps have testified that their husbands, fathers, brothers or siblings were taken away by the IDF from various parts of Gaza. They have not heard anything about their fate or wellbeing since then. They do not know if those detained are alive or dead.
19. OHCHR is concerned that Israel has failed to respect basic principles of international human rights law in relation to Palestinians taken into custody in Gaza, for example by holding most of them in secret and *incommunicado* detention for prolonged periods (in many cases extending into months), without providing them with information on the grounds and basis of their detention. Furthermore, no information or access has been to family members or lawyers, and access to courts appears to have been limited. Equally, no information has been provided to the public confirming those who are being held, their whereabouts or their fate.

Palestinians from Gaza taken into custody in Israel

20. There is almost no information available on the fate of Palestinians detained during the attacks inside Israel on 7 and 8 October, in particular captured members of Palestinian armed groups, raising concerns regarding Israel's protection of due process guarantees and, for those suspected of crimes, of their rights to a fair trial, as well as protections against torture or other ill-treatment.
21. In the aftermath of the 7 October attack, Israel detained *en masse* Palestinian workers and patients from Gaza legally present in Israel. Israeli authorities revoked their permits and detained them without legal basis.¹² Reportedly, these workers and patients were also taken to *ad hoc* detention facilities in Sde Teiman and Anatot military barracks or to Ofer Prison.¹³ While Israel has not provided information on the number or location of those detained, OHCHR estimates that, out of the 10,300 Palestinian workers and patients from Gaza who were present in Israel on 7 October 2023,¹⁴ 3,200 were released and transferred into Gaza in November 2023, and 6,441 workers were transferred to the occupied West Bank, while around 1,000 of them remain¹⁵ missing.

¹¹ <https://t.me/idfofficial/7293>

¹² <https://hamoked.org/document.php?dID=Updates2383>

¹³ <https://www.addameer.org/news/5335>

¹⁴ Report on crisis-related ILO work in the Occupied Palestinian Territory, GB.350/POL/4(Rev.1), para. 12; see also <https://addameer.org/news/5335>

¹⁵ <https://www.addameer.org/news/5335>; <https://www.hrw.org/news/2024/01/03/israel-gaza-workers-held-incommunicado-weeks>

Mass arrests in the occupied West Bank, including East Jerusalem, and routine use of administrative detention

22. At the end of June 2024, the Israel Prison Service (IPS) held 9,440 detainees qualified as "security detainees"¹⁶ by Israel, almost double the 5,088 held at the end of September 2023. Of the 9,440 "security detainees", 3,377 were administrative detainees (increased from 1,264 at the end of September 2023), 2,561 others were remand detainees, 2,087 were sentenced prisoners and 1,415 "unlawful combatants".¹⁷
23. Since 7 October, ISF have conducted repeated incursions into towns and cities in the occupied West Bank, including East Jerusalem. Occurring on an almost daily basis, the incursions have resulted in mass arrests of Palestinians, including family members of "wanted persons". The latter were apparently detained in order to compel wanted family members to hand themselves over to ISF.
24. According to Palestinian prisoners' organizations, from 7 October 2023 to 28 May 2024, the ISF arrested 8,910 Palestinians in the occupied West Bank, among them 295 women and 630 children – including those temporarily arrested and released without charges. According to OHCHR monitoring, a majority of these arrests appeared arbitrary due to lack of legal grounds for detention and/or violation of due process guarantees, with evidence of arrests based on exercise of fundamental human rights, such as protected freedom of expression.¹⁸
25. Since 7 October, Israel has escalated the routine use of administrative detention, being the deprivation of liberty outside the context of criminal proceedings, to undertake mass arrests in the occupied West Bank. Prisoners held under administrative detention accounted for over a third of all Palestinian "security detainees" by end of June 2024.
26. Israeli authorities seem to have targeted for arrest and detention Palestinian activists, political figures, journalists, human rights defenders, including women human rights defenders. On 18 December, ISF arrested activist Munther Amira from his home in Ayda refugee camp, Bethlehem, held him under administrative detention and subjected him to beatings and harsh detention conditions until 29 February 2024. On 26 December 2023, ISF arrested, at her home, Khalida Jarrar, former member of the Palestinian Legislative Council and prominent women's rights defender. ISF continue to hold Ms. Jarrar under administrative detention at the time of

¹⁶ According to IPS ordinance no. 04.05.00, "security detainees" are all individuals who have been detained or imprisoned in relation to a "security offense" - that is an offense that in its nature or circumstances is considered a security offense and/or has been defined as a clear security offense in the law, or a security offense which the motive behind it is nationalistic. See [04.05.00 - תהליך הגדרת אסיר בטחוני \(www.gov.il\)](http://www.gov.il)). However, in practice, the term is applied to all Palestinians detained either in relation to a security offence or under administrative detention.

¹⁷ IPS 2nd Quarter detainees report.

https://www.gov.il/BlobFolder/generalpage/hofesh_meida/he/%D7%93%D7%95%D7%97%D7%9B%D7%9C%D7%95%D7%90%D7%99%D7%9D%D7%A8%D7%91%D7%A2%D7%95%D7%9F%D7%A9%D7%A0%D7%99%D7%A9%D7%A0%D7%AA%202024.xlsx According to this report, at the end of June 2024, IPS held 1,395 men, three women and 17 boys as "unlawful combatants" (not a legal category under international humanitarian law); 2,411 men, 36 women, 113 boys and one girl detainees (remand before conviction); 3,282 men, 20 women and 75 boys as administrative detainees; and 2,058 men, nine women and 20 boys prisoners (after conviction). To note, that these figures do not include detainees from the Gaza Strip held by the Israeli military.

¹⁸ <https://www.ohchr.org/sites/default/files/documents/countries/palestine/2023-12-27-Flash-Report.pdf>

reporting, and on 26 June renewed her administrative detention order for another six months. She has limited access to lawyers and the outside world, according to her lawyer. On 17 January 2024, ISF arrested, at a checkpoint northeast of Bethlehem, Diala Ayesh, an outspoken lawyer with the NGO, Lawyers for Justice. On 23 May, the Israeli Military Court extended her administrative detention for a further four months, stating that her detention was based on “secret evidence”.

Arrests to suppress freedom of expression, opinion, association and assembly

27. Many of the arrests carried out by ISF since 7 October relate to apparent restrictions on Palestinians’ freedom of expression, opinion, association and assembly in the occupied West Bank, including East Jerusalem, as well as in Israel. OHCHR has documented the arrest and ill-treatment of Palestinians of all genders for social media posts in relation to the 7 October attacks and the subsequent escalation of hostilities in Gaza. Those arrested include former prisoners, activists, human rights defenders and journalists, some who were arrested while carrying out their work.
28. In response to a freedom of information request submitted by Adalah - The Legal Center for Arab Minority Rights in Israel, Israeli authorities stated that from 7 October 2023 until 27 March 2024, the Israeli police had arrested 401 individuals in the occupied East Jerusalem and Israel on suspicion of speech-related offenses under Article 24 of Israel’s Counter-Terrorism Law. The police filed complaints against 667 individuals suspected of the same offenses, of whom the overwhelmingly majority are Palestinians (590 Palestinians as compared to 13 Jewish Israelis and 64 with unknown background).
29. From 7 October 2023 to 26 May 2024, according to Palestinian prisoners’ organizations, ISF arrested 76 Palestinian journalists, of whom 49, including six women, are still detained. On 4 January 2024, ISF detained for 18 hours and physically assaulted a male Palestinian photojournalist working for the Wafa News Agency after his coverage of an ISF raid in Tulkarem. In another case, Mervat Al Azzeh, a Palestinian female journalist from the occupied East Jerusalem and producer for NCB news, was arrested by the Israeli police on 15 November 2023 and detained until 28 November 2023, when she was released as part of the prisoner exchange deal between Israel and Hamas. The journalist was reportedly accused of incitement and “belonging to Hamas” due to Facebook posts perceived as mocking or diminishing the gravity of the attacks by Palestinian armed groups in Israel on 7 October. She reported being subject to harsh detention conditions and humiliating treatment while in custody. From 18 to 19 April 2024, the Israeli police detained a Palestinian scholar at the Hebrew University from her house in Jerusalem’s Old City, over allegations of incitement. After being released pursuant to a court order, she reported ill-treatment while in detention.
30. After 7 October, demonstrations and protests were effectively banned in Israel.¹⁹ The police have consistently refused to approve permits for demonstrations, especially when requested by

¹⁹ <https://www.english.acri.org.il/post/incitement-remarks-by-the-commissioner-of-police-yaakov-shabtai-against-the-arab-community>

Palestinian citizens of Israel. Protestors have been violently arrested and detained at peaceful protests for chants expressing solidarity with the dead in Gaza, against Israeli operations in Gaza, against the continuation of the war or calling for a ceasefire. Some protesters arrested during protests were indicted on charges of incitement and held in remand for many months. While human rights organizations have petitioned against bans on Palestinian protests, most have been rejected.²⁰

31. In one case, an Israeli activist was arrested on suspicion of “revealing intent to betray the country.” He was jailed for four days in solitary confinement for two Facebook posts in which he shared a photo of Palestinian children who were killed in an Israeli airstrike. In the posts, he pleaded to “stop this madness,” and warned about rising bloodshed in the West Bank.²¹
32. There have been reported public expressions of support in the occupied West Bank for the 7 October attacks and alleged incitement to violence or hatred. However, these broad arrests and criminal prosecutions have further unduly constrained the exercise of freedom of expression and opinion, as well as peaceful assembly and association, by Palestinians in the West Bank, including East Jerusalem, and Palestinian and Jewish Israeli citizens of Israel.

C: Torture and other ill-treatment, including sexual and gender based violence, and inhumane detention conditions

33. While the detention conditions for Palestinians in Israeli custody were already of serious concern prior to 7 October 2023²², the situation worsened dramatically thereafter. The Israeli authorities further restricted access to food, water, sanitation and electricity, medical treatment, media and information, family visits and consultation with legal representatives.²³ According to the OHCHR monitoring, there have been regular, at times daily, raids of prison cells, removal of personal items, and limited access to personal hygiene items, including menstrual hygiene. Israel’s Minister of National Security has stated that Palestinian “terrorists” were deliberately subjected to harsh treatment, stating that, *“I visited today, together with the IPS Commissioner, the wings where the Nazi Nokha prisoners are kept. In accordance with our instructions, the terrorists receive the most stringent conditions: eight handcuffed terrorists in a dark cell, iron beds, toilets in a hole in the floor and the anthem of hope constantly playing in the background. I hope that my request to hold a cabinet discussion about the death penalty law for terrorists that we have already passed in preliminary reading will be answered, that the law will be promoted and we can apply it to these*

²⁰ <https://www.adalah.org/en/content/view/10952>

²¹ See <https://www.theguardian.com/world/2024/jan/13/it-is-a-time-of-witch-hunts-in-israel-teacher-held-in-solitary-confinement-for-posting-concern-about-gaza-deaths>

²² A/78/502, para. 36.

²³ A/HRC/55/28, para. 78; See also

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28609>.

vile murderers."²⁴ These measures, among others, appear to constitute a collectively punitive measure against Palestinians.

34. OHCHR interviews with Palestinians released from Israeli places of detention²⁵, consistent with information from other UN entities,²⁶ human rights organizations²⁷ and media²⁸, indicated that Israel subjected Palestinians to ill-treatment, including consistently harsh conditions of detention. The conditions include overcrowding, with some 13-20 male inmates for cells designed to accommodate five, and 10 female inmates in cells designed to accommodate six, forcing prisoners to sleep on the floor; severe food restrictions causing hunger and malnutrition; poor living, hygiene and health conditions, with reports of water running only one hour per day over several weeks; exposure to cold temperatures due to the confiscation of blankets and removal of windows panes in cold weather; and restrictions on recreational and outdoor activities. Detainees' belongings - radios, books and other personal items - were reportedly confiscated and they were provided only three to four articles of clothing for the entire period of detention. Collective and public prayers were prohibited and all prisoners were subjected to punishment if rules were broken, as well as systematic beatings, humiliation and threats. Prisoners were denied access to legal counsel and medical care as well as family visits, leaving them cut off from the outside world.
35. The lack of food, the violence and ill-treatment and the denial of access to medical care, have contributed to the deterioration of health and, in some instances, the death of Palestinian detainees (see para. 46 et seq., below). Male Palestinians interviewed by OHCHR believed they lost between 25kg to 55kg of body weight while in custody, in part as a result of denial of access to adequate food. A doctor appointed by the family to observe the autopsy of a 21-year-old, Muhammad Elsbar, affected by Hirschsprung's disease since childhood, indicated in his report that he died because he was not provided the diet he required.²⁹ In addition, prisoners have

²⁴ Itamar Ben Gvir on X (in Hebrew): <https://x.com/itamarbengvir/status/1724522158683013549> - See also Itamar Ben Gvir on X (in Hebrew): "Our policy is being implemented. For a whole year I have been talking about the fact that (summer) camps in prisons must be stopped, and they must be treated the same way terrorists are supposed to be treated. There were those who underestimated, today I hope everyone thinks like me." <https://x.com/itamarbengvir/status/1722687269688029535>. See also <https://www.instagram.com/eye.on.palestine/reel/C80EQBlqv0x/>. See also <https://www.ynet.co.il/news/article/h1pjlortt> "The Prison Commissioner presented a 'revolution according to Minister Ben Gvir's policy': 'Deteriorating conditions for terrorists - target number 1' (in Hebrew)

²⁵ For example, the analysis of the treatment of Palestinians arrested in the West Bank, including East Jerusalem, is based on interviews carried out by OHCHR with 40 Palestinians who were arrested by ISF there and later released since 7 October, of whom 14 (one girl, three women and 10 men) were held in Israeli custody for periods of detention ranging from a week to two years imprisonment.

²⁶ For example, according to UNRWA more than 40 UNRWA staff members have been taken into custody and detained by the Israeli authorities from Gaza and those released have recounted torture and other ill-treatment as well as being interrogated regarding intricate details relating to the work and operations of the United Nations. See also https://www.unrwa.org/sites/default/files/content/resources/summary_on_detention_and_alleged_ill-treatmentupdated.pdf

²⁷ See <https://www.addameer.org/sites/default/files/publications/Full%20Report%20on%20the%20situation%20after%20October%207th.pdf>; and https://www.omct.org/site-resources/files/Submission_SR_Torture_final-15.2.24.pdf

²⁸ In many cases reflecting accounts from released prisoners, see for example <https://apnews.com/article/israel-hamas-gaza-latest-07-01-2024-7fc588a515f5fd2afea952ee9907506d> and <https://www.independent.co.uk/news/world/middle-east/israel-gaza-shifa-hospital-doctor-b2572377.html> which reflect the account of ill treatment and torture by Mohammed Abu Selmia, the Director of Al Shifa Hospital, or from whistleblowers, see footnote 35 below.

²⁹ <https://www.phr.org.il/wp-content/uploads/2024/03/Death-in-Israeli-Prisons-28.03.24-Ver.pdf>

reported violence against them and other “security prisoners” leading to serious injuries which remained untreated.³⁰

36. Former prisoners at Ketziot prison, in the Negev, reported to OHCHR that, from mid-October to 18 November, the Keter unit (riot control) guards frequently beat up prisoners - forced to stand against a wall - during daily head counts. This reportedly led to the death of one prisoner, after which the practice reportedly ended. In another case documented by OHCHR, a Palestinian man detained in Ketziot described how he was frequently beaten in front of his son, who was also detained, and was given pure alcohol when he asked for water to take his medicine - *“they wanted to humiliate me and cause us more psychological pain”*, he said.
37. On 6 February, the Israeli Public Defender’s Office issued a Special Report raising alarm about the worsening detention conditions for all prisoners, including Palestinians. The report stated that the overcrowding in prison service facilities violated a prior High Court ruling according to which the State must provide detainees and prisoners with a minimum living space.³¹ It called for immediate action to improve prison conditions in Israel.³² Instead of improving conditions of detention, on 29 May, the Knesset extended the validity of the state of emergency in detention, which allows prison authorities to detain “security detainees” on the floor in overcrowded conditions until 31 December 2024.³³
38. Conditions in military-run detention facilities appear to be worse, with widespread ill-treatment, and detention in the open air with no protection from harsh weather. Palestinians released from Israeli custody told OHCHR that ISF subjected detainees to violence and humiliation in a systematic manner, including through repeated serious physical assaults, setting dogs on the detainees, in some cases resulting in attacks and bites, and widespread threats and insults. One interviewee shared with OHCHR the following account: *“[m]y hands were tied with handcuffs and I was kept blindfolded all the 55 days I stayed in this detention, you could imagine how difficult it will be to eat sleep or even move, the amount of pain I felt in my hands and back was unbearable... throughout this period I had no shower”*. Israeli medical personnel and whistleblowers have reported that injured detainees from Gaza were held at a field hospital established in the Sde Teiman compound, where they were blindfolded at all times, their arms and legs shackled to their beds, and they were fed through a straw.³⁴ In early April 2024, an Israeli doctor reported that two Palestinian detainees from Gaza had had their legs amputated there in what he called “a routine

³⁰ [A/HRC75/28](#), para. 78.

³¹ HCJ 1892/14 ACRI et al. V. The Minister of Public Security, 13 June 2017, [בג בתיק דין-פסק 1892/14 \(court.gov.il\)](#)

[Overcrowding in Prisons and Detention Centers in Israel | Association for Civil Rights in Israel \(acri.org.il\)](#)

³² <https://www.gov.il/BlobFolder/news/conditions-of-incarceration/he/Conditions-of-incarceration-in-prison-service-facilities.pdf>

³³ <https://main.knesset.gov.il/activity/legislation/laws/pages/lawbill.aspx?t=lawreshumot&lawitemid=2218092>

³⁴ <https://www.theguardian.com/world/article/2024/may/23/whistleblowers-allege-widespread-abuses-at-israeli-detention-camp-sde-teiman>; <https://edition.cnn.com/2024/05/10/middleeast/israel-sde-teiman-detention-whistleblowers-intl-cmd/index.html>. Former detainees at *ad hoc* military detention facilities at Anatot in Naqav (Negev) desert and Zikim reported similar treatment.

event”, due to injuries caused by harsh shackling by the IDF.³⁵ Children have reportedly been arrested and detained at military detention facilities jointly with adults.³⁶

39. In April 2024, Israeli human rights organizations demanded the Military Advocate General to immediately close the detention facility at the Sde Teiman military base, due to its inhumane conditions.³⁷ On 28 May, the IDF Chief of Staff appointed an advisory committee to examine the detention conditions of those held in IDF detention facilities, in Sde Teiman, Anatot and Ofer.³⁸ Israeli authorities reportedly decided to turn Sde Teiman into a short-term holding facility and to transfer detainees out of the facility.³⁹ They reportedly started implementing measures towards this end, mainly the transfer of most of detainees and the release of some.⁴⁰ On 23 June, the High Court ordered the authorities to provide details of the updated conditions under which Gazan detainees were being held and the implementation of the Incarceration of Unlawful Combatants Law and its Regulations.⁴¹
40. Detainees, including women and children, were also subjected to physical assaults and beatings in military-run detention facilities. Detainees have been subjected to prolonged blindfolding, the prolonged deprivation of food, sleep deprivation, water and medical attention, prolonged exposure to the cold, being forced to kneel on gravel, deliberate humiliation, blackmailing, electric shocks, being burnt with cigarettes, and given hallucinogenic pills. One interviewee shared with OHCHR that *“[e]very so frequently, I was moved into a solitary confinement, where loud music was played for several hours, depriving me of sleep, and then moved into a room which was cold. I recall cold air blasting at me for long periods of time, following which I was moved to an interrogation room.”* Detainees have reported being held in cage-like facilities, forced to be naked for prolonged periods, wearing only diapers, and denied access to the toilet. Other alleged practices of torture or ill-treatment included waterboarding and being left suspended for hours with hands tied to the ceiling.
41. Allegedly, ISF committed acts of sexual and gender-based violence⁴² against detained men and women from both Gaza and the West Bank, including East Jerusalem, descriptions of which included the forced nudity of both men and women; beatings while naked, including on the genitals; electrocution of the genitals and anus; being forced to undergo repeated humiliating

³⁵ <https://www.middleeastmonitor.com/20240405-limbs-of-palestinians-detained-by-israel-amputated-because-of-injuries-caused-by-shackles-doctor-says/>. See also https://www.phr.org.il/wp-content/uploads/2024/04/5954_medical_ethics_Report_Eng.pdf

³⁶ https://www.unrwa.org/sites/default/files/content/resources/summary_on_detention_and_alleged_ill-treatmentupdated.pdf; <https://www.savethechildren.net/gaza-missing-children>

³⁷ <https://www.english.acri.org.il/post/close-the-detention-facility-at-the-sde-teiman-military-base>

³⁸ State response of 5 June to human rights organisations’ petition to the Israel High Court demanding to shut down the Sde Teiman detention facility. HCJ 4268/24. Response is on file.

³⁹ Ibid.

⁴⁰ State response of 11 June to human rights organisations’ petition to the Israel High Court demanding to shut down the Sde Teiman detention facility. HCJ 4268/24. Response is on file.

⁴¹ 4268/24 פ"ק (court.gov.il)

⁴² Released detainees from the occupied West Bank, including East Jerusalem, interviewed by OHCHR, have reported SGBV in detention facilities including the Hasharon and Al Damun prisons for women and girls, and Ofer, Naqab/Negev detention facilities where men and boys are held, all managed by the IPS (details omitted to protect privacy). SGBV has also been reported in military camps. In addition, SGBV has been reported during the process of arrest, inside military vehicles and other vehicles used to transport detainees, and in homes.

strip searches; widespread sexual slurs and threats of rape; and the inappropriate touching of women by both male and female soldiers. There are testimonies of victims as well as video material, that some almost naked, blindfolded and tightly handcuffed male detainees were filmed and photographed in deliberately humiliating positions. In one instance at least, there is video evidence of blindfolded and handcuffed male Palestinian detainees being transported entirely naked. OHCHR has also received consistent reports of ISF personnel inserting objects into detainees' anuses.⁴³

42. On 14 November 2023, ISF arrested a group of female Palestinian university students and brought them to a police station, where some were reportedly sexually assaulted. In another case, a prominent Palestinian woman, who was detained by ISF in the aftermath of 7 October events, reported that she was threatened with mass rape during interrogation. In her words, *"[h]e resumed, saying that there were 20 soldiers on standby in the room, they would rape me one by one"*. In another case, a pregnant Palestinian woman detained after 7 October on accusation of incitement, told OHCHR that she was threatened in detention with rape by Israeli soldiers.
43. A Palestinian man told OHCHR that he, along with other detainees in Ofer prison, was forced to remove his clothes, and to jump and raise his legs alternatively while completely naked and his hands tied. In other cases, former detainees reported to OHCHR that Israel Prison Service guards grabbed and severely squeezed their genitals, causing one of them to lose consciousness, while in other instances officers recorded naked detainees being subjected to humiliating treatment.
44. In another particularly egregious case of reported sexual violence, a Palestinian man released from an Israeli prison described to OHCHR that, on one occasion in October 2023, Israeli guards dragged him and his cellmates to the kitchen while handcuffed behind their backs, forced them to strip naked and piled them atop each other. While naked, a guard put a piece of vegetable in the interviewee's anus while other soldiers were filming with their phones. *"I felt like I was broken from the inside as they took us back to our cell. We were in the room in a state of shock, tears falling from our eyes without a sound. No one was talking to each other. None of us wanted to look at each other."*
45. Apart from information and testimonies gathered by OHCHR, other UN entities, NGOs, and the media, footage released on social media of released detainees from Gaza shows former detainees with visible signs of ill-treatment, possibly amounting to torture, including injuries from excessive shackling.⁴⁴

⁴³ In addition to testimony from released detainees, see <https://mezan.org/uploads/files/2024/4/1712323548Torture%20report-AI-Mezan.pdf>; https://www.omct.org/site-resources/files/Submission_SR_Torture_final-15.2.24.pdf, p 7; https://www.unrwa.org/sites/default/files/content/resources/summary_on_detention_and_alleged_ill-treatmentupdated.pdf

⁴⁴ <https://www.facebook.com/reel/394917080228472>; <https://www.facebook.com/61558836955713/videos/366282302795421>; <https://t.me/wattannews/73948>; <https://t.me/ShehabTelegram2/49719>

E: Deaths in custody

46. With Israeli authorities declining to provide information regarding the fate or whereabouts of Palestinian detainees from Gaza, it remains impossible to accurately identify the number of Palestinians who died in detention at military bases and IPS custody, amidst reports of torture, other ill-treatment and the denial of health care. However, media sources have reported the death of tens of Palestinian detainees from Gaza in Israeli military detention,⁴⁵ and the Israeli army has reportedly confirmed that “some detainees have died, some with pre-detention diseases and some with wounds which happened due to fighting”.⁴⁶ The Military Advocate reportedly stated on 26 May that the Military Police was investigating the deaths of 35 detainees from Gaza, and that military police investigations were opened into all of the incidents, but that no soldiers had been arrested in any of the cases.⁴⁷
47. Announcements by IPS and prisoners organisations indicate that 17 Palestinians have died in the custody of the IPS between 7 October and 15 May, including nine from the West Bank, six from Gaza and two Palestinian citizens of Israel.⁴⁸ According to Palestinian prisoners’ organizations, Israeli authorities are withholding the bodies of 15 Palestinian detainees. Withholding bodies punishes the families of the deceased and thus could amount to collective punishment, which is strictly prohibited in Article 50 of the Hague Regulations and Article 33 of the Fourth Geneva Convention. It could also violate the prohibition of torture and ill-treatment and the obligations of Israel, as an Occupying Power, pursuant to article 27 of the Fourth Geneva Convention.⁴⁹
48. In one of the cases followed by OHCHR, Dr. Adnan Ahmad Ateya Al Bursh, a 50-year-old Head of the Orthopedic Department at Al Shifa Medical Complex in Gaza City, reportedly died on 19 April in Ofer Prison, an Israeli detention facility run by IPS and located in the West Bank. ISF detained him on 18 December 2023 at Al Awda Hospital, North Gaza, along with several other doctors and personnel of the hospital. According to a witness detained with Dr. Al Bursh interviewed by OHCHR, Dr. Al Bursh was in good health before being detained, despite a minor injury sustained a few days before, and was performing his normal duties at the hospital. The testimony of Palestinians detained with him raise serious concerns that he died following torture or mistreatment at the hand of Israeli authorities.⁵⁰ Following an application to the Jerusalem Magistrate's Court to appoint a judge to investigate the circumstances of his death, Israeli media

⁴⁵ See for example <https://www.haaretz.com/israel-news/2024-03-07/ty-article/.premium/27-gaza-detainees-died-in-custody-at-israeli-army-facilities-since-the-start-of-the-war/0000018e-1322-d950-a18e-f3bbaa370000>

⁴⁶ See as quoted in <https://www.phr.org.il/wp-content/uploads/2024/03/Death-at-Israeli-Prisons.pdf>

⁴⁷ <https://www.haaretz.com/israel-news/2024-05-27/ty-article/.premium/top-idf-lawyer-investigating-about-70-possible-violations-during-gaza-war/0000018f-b9cb-df13-a3af-bddf0d610000>. On 3 June it was reported that the total number of investigations was 36. <https://www.haaretz.co.il/news/politics/2024-06-03/ty-article/.premium/0000018f-dab1-db0d-a98f-def9186a0000>

⁴⁸ According to OHCHR monitoring.

⁴⁹ A/HRC/49/83, para. 18.

⁵⁰ <https://news.un.org/en/story/2024/05/1149856>

reported on 23 May that the authorities would conduct an autopsy.⁵¹ OHCHR has no confirmation if this autopsy was conducted or, if it was, any indication as to its findings.

49. The organization 'Physicians for Human Rights Israel' (PHRI) reported that its doctors observed the autopsies of five Palestinian men who had died in IPS detention as of 20 March 2024. In two of the five cases, PHRI reported visible signs of physical violence including fractured ribs, and in a third case assessed that the specific cause of death was medical neglect.⁵² In a separate case, 38-year-old Thair Abu Assab died in Ketziot prison on 18 November 2023, according to a former cellmate who was interviewed by media, due to a severe beating by the Keter unit of the IPS following which he was left without medical assistance for two hours.⁵³ This information was corroborated by interviews with four Palestinians released from Ketziot prison. They said that Keter officers used extreme violence during periodic prisoner counts, including severe and repeated beatings that often caused detainees to lose consciousness or sustain serious injuries. Israeli media reported, that since December, one month after Abu Assab's death, 19 guards were placed under investigation.⁵⁴ There is no information available to OHCHR as to further outcomes.

F: Hostages held by Palestinian Armed Groups

50. Many abducted civilians and captured military personnel taken from Israel by Palestinian armed groups on 7 October remain held as hostages in Gaza in dire conditions.⁵⁵ As of 25 June 2024, 109 civilian hostages, including 34 children, had been released further to negotiated arrangements, and one IDF soldier and six civilian hostages had been rescued by the IDF.⁵⁶ According to the Government of Israel, 116 hostages taken on 7 October, including two children, remained in Gaza as of 25 June, including 42 believed to have died.
51. Accounts from released hostages, accessible through open sources, describe violence and extremely harsh conditions of captivity. Some described being beaten while being taken into Gaza, or seeing other hostages being beaten while in captivity. For example, 77-year-old Argentinian-Israeli Ofelia Roitman who was kidnapped from her home and taken away on a tractor on 7 October said, "[t]hey sat me on the floor of the tractor and made a big wound in my hand with a rifle".⁵⁷ Some released hostages described receiving surgery or stitching without anesthetic. One released hostage publicly reported that she was sexually assaulted in captivity. She described to

⁵¹<https://www.haaretz.com/israel-news/2024-05-23/ty-article/.premium/israel-agrees-to-perform-autopsy-on-gazan-doctor-who-died-in-israeli-custody/0000018f-a494-dca3-a7cf-a5b542f40000>

⁵² <https://www.phr.org.il/wp-content/uploads/2024/03/Death-in-Israeli-Prisons-28.03.24-Ver.pdf>

⁵³ <https://www.youtube.com/watch?v=X3XIsTKVPI0>

⁵⁴ <https://www.haaretz.com/israel-news/2023-12-21/ty-article/.premium/19-israeli-prison-guards-suspected-of-attacking-security-prisoner-who-died/0000018c-8943-da81-a1bc-cff737700000>

⁵⁵ Since 7 October, four different Palestinian armed groups have claimed to be holding hostages: Al Qassam Brigades, Al Quds Brigades, Abu Ali Brigades, and Al-Nasser Salah Al Deen Brigades. The groups have mentioned the hostages on their channels on Telegram or posted videos of the hostages.

⁵⁶ During a temporary ceasefire between 24 and 30 November, 105 hostages were released from Gaza, mainly women and children. In total, 33 Israeli children, four Israeli men and 44 Israeli women were released. In addition, 22 Thai men, one Thai woman, one Filipino man were released in accordance with a deal between their respective Government and Hamas. Four additional hostages (three women and one girl) were released prior to the temporary ceasefire.

⁵⁷ <https://www.haaretz.com/israel-news/2023-12-09/ty-article/.premium/it-reminded-me-of-the-holocaust-freed-hostages-recount-time-in-captivity/0000018c-4fd1-df4b-a78e-dfd3e0cf0000>

media being held chained in a child's room and said that one day as she was allowed to shower, her captor *"came towards [her] and shoved the gun at [her] forehead. [...] Then he, with the gun pointed at [her], forced [her] to commit a sexual act on him"*.⁵⁸ Others reported witnessing the sexual abuse of other hostages - both male and female. Physicians who have tended to released hostages have reported signs of sexual abuse. Some released hostages also expressed that they had feared sexual violence while in captivity.

52. Released hostages further reported distressing conditions in which they were held, including a lack of food, water and poor sanitary conditions, as well as the specific situation of captivity, notably extremely limited movement and a lack of fresh air and sunlight. Many reported being kept in smaller groups, either in private residential buildings with Palestinian families, which were exposed to Israeli airstrikes, or in underground tunnels where air quality was poor and with no or limited access to sunlight. One hostage recovered by the IDF in February said in a media interview about his 129 days as a hostage *"Everybody goes through it differently. I can tell you that being there – it's hell. The lack of freedom, the inability to make your own decisions. The very fact of being in captivity. Experiencing those moments – it's very hard. Everybody reacts according to their individual nature. So, I can't answer for someone else, only say what I felt."*⁵⁹
53. At least 36 children were taken into Gaza as hostages, including eight children under 6-year-old and seven children between 6 and 11-year-old. Two children remained in Gaza as of 25 June 2024. Physicians who had treated released children have reported that they had lost over 10 per cent of their body weight. The information shared by their family members and a few released children suggested that children were generally kept with their mothers in captivity, although at least one released hostage alleged that her niece was taken from her. The accounts available suggested that children were required to remain quiet, and at times they were threatened with weapons, with some children reportedly speaking only in whispers upon their release. A 15-year-old girl who was held with her 8-year-old sister said, *"I was afraid to go to sleep... I didn't know what would happen in the morning... [T]here's a chance that I'm going to sleep and won't wake up, or that I'll wake up but [my sister] won't, or the other way around."*⁶⁰

G: Detention by the Palestinian Authority

54. The Palestinian Authority (PA) continued to carry out arbitrary detention and torture or other ill-treatment in the West Bank, reportedly principally to suppress criticism and political opposition. After 7 October, Palestinian Security Forces (PSF) arrested perceived political opponents and persons participating in demonstrations in solidarity with Gaza. In one case documented by OHCHR, on 30 April 2024, the Palestinian General Intelligence Service (GIS) arrested five Palestinian men, four of whom were accused of being " Hamas-affiliated", allegedly for hanging posters in the streets of Hebron featuring greetings by Al Qassam Brigade on Eid al-Fiter. The GIS

⁵⁸ <https://www.haaretz.com/israel-news/2024-03-26/ty-article/freed-israeli-hostage-recounts-sexual-abuse-in-hamas-captivity-to-nyt/0000018e-7bd7-d8a5-addf-7bf7afb90000>

⁵⁹ <https://www.haaretz.com/israel-news/2024-06-09/ty-article/.premium/rescued-israeli-hostage-our-greatest-fear-was-israeli-planes/0000018f-fcce-db9d-addf-fdce7ea20000>

⁶⁰ [Released hostage, 15, says she acted as mother to her younger sister in captivity | The Times of Israel](#)

kept them in detention even after a court ordered their release on 6 May 2024. On 1 May 2024, Palestinian authorities arrested a “wanted Palestinian man” and four male relatives, all allegedly “ Hamas-affiliated”, from their house in Hebron. They were assaulted by kicking, punching and hitting with batons, and were kept in detention even after a court ordered their release on 16 May 2024. A former prisoner, arrested by PSF while participating in a peaceful demonstration in solidarity with Gaza on 8 December in Hebron, and released on bail on a subsequent date, told OHCHR that, during his detention in the GIS Hebron, he was interrogated over his participation in the demonstration and “affiliation with Hamas”, was slapped and punched repeatedly, and was kept in solitary confinement and deprived of the use of toilet for more than seven hours.

55. OHCHR detention monitoring of PA detention facilities identified overcrowding, lack of ventilation and sunlight due to underground detention conditions, limited bedding, and detainees forced to sleep on the floor. Men as well as boys detained by the PA on criminal charges along with adults, were reportedly subjected to beatings (with objects and hands or legs), prolonged stress positions, threats, pressure to confess charges and solitary confinement. OHCHR gathered information that three male prisoners had been detained by PSF since October allegedly for their own “protection” from Israeli authorities, which they had not requested and indeed refuted, raising concerns of arbitrary detention. In some cases, remedial actions were taken following intervention by OHCHR.

H: Legal analysis

Enforced Disappearances of Palestinians from Gaza

56. Due to Israeli authorities’ refusal to provide information on the fate or whereabouts of the reportedly thousands of Palestinians from Gaza held in Israel or the West Bank, Israeli human rights organizations submitted petitions to the Israeli High Court requesting information on hundreds of detainees. However, as the Court ruled, in contradiction with international law,⁶¹ that the authorities are not obliged to provide such information,⁶² most detainees from Gaza continued to be denied access to their families, effective legal representation and the protection of the courts, and their families denied information on their fate and whereabouts. In addition to OHCHR monitoring, at least two organizations informed OHCHR that, despite multiple efforts to obtain information from Israel, they had not been able to identify the fate or whereabouts of members of their staff detained by IDF, months after their arrest. It was only after litigation by Israeli human rights NGOs that the State provided to the High Court of Justice, on 2 May, an email address for lawyers to write to request a meeting with their clients, which could be denied for up to 90 days after the issuance of an incarceration order.⁶³ This provides almost no practical remedy to Palestinians in Gaza who have no knowledge of the fate or whereabouts of their missing relatives.

⁶¹ GCIV, articles 106-107, see also A/HRC/16/48

⁶² *Alwahidi v. Israel Security Forces* HCJ 7439/23, 31 October 2023 https://hamoked.org/files/2023/1666391_eng.pdf. See also HCJ 9021/23 https://hamoked.org/files/2024/1666394_eng.pdf, and HCJ 9021/23 https://hamoked.org/files/2024/1666394_eng.pdf

⁶³ https://hamoked.org/files/2024/1666523_eng.pdf

57. 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, amounts to an enforced disappearance.⁶⁴

Administrative Detention

58. Detained Palestinians, who have not been arrested or charged, are subjected to administrative detention (or internment) under two legal regimes applied by Israel in the Occupied Palestinian Territory, which are Military Order 1651 (in force since 2 May 2010) and the Incarceration of Unlawful Combatants Law of 2002 (as amended in 2023).⁶⁵ Before the escalation in hostilities, all administrative detainees were from the West Bank and they were held under Military Order 1651. Since 7 October, it appears that most Palestinians from Gaza have been held under the provisions of the Incarceration of Unlawful Combatants Law.
59. The Incarceration of Unlawful Combatants Law allows the Chief of the General Staff of the IDF, or his delegate, to order administrative detention of any person he considers an unlawful combatant for as “long as the hostile acts ... against the State of Israel have not yet ceased”, which in the context of an occupation and armed hostilities that has already continued for decades, can readily amount in effect to indefinite administrative detention.⁶⁶ Further, in December 2023, the Knesset amended the Incarceration of Unlawful Combatants Law,⁶⁷ which was already not in compliance with international human rights standards,⁶⁸ to increase the periods during which detainees could be held in Israel without an incarceration order from 96 hours to 45 days; without judicial review from 14 days to 75 days; and without the ability to see a lawyer from 21 days to 180 days,⁶⁹ which was subsequently reduced to a total of 90 days from the day of incarceration.⁷⁰
60. Israel’s Military Order 1651⁷¹ empowers military commanders to detain a person for a period of time not exceeding six months, if they have reasonable grounds to believe that detention is required for reasons related to regional or public security. Detention orders may be extended for additional periods of up to six months, with no legal limit on the number of renewals, hence

⁶⁴ Preamble of the Declaration on the Protection of all Persons from Enforced Disappearance and Article 2 of the ICPED. See also <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28794>.

⁶⁵ Internment refers to administrative detention during conflict. Article 78 of the Fourth Geneva Convention, applicable to the internment of persons in occupied territory, requires that decisions regarding internment “shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention.” In Israel, this procedure is set out by Military Order 1651 and the Incarceration of Unlawful Combatants Law.

⁶⁶ Human Rights Committee General Comment No. 35 (2014), para. 15. See also <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention>; and <https://www.idi.org.il/media/22093/04-emergency-regulations-detention-of-illegal-combatants.pdf>

⁶⁷ The Incarceration of Unlawful Combatants Law (Amendment No. 4 and Temporary Order – Iron Swords), 5774-2023, הצעת חוק (knesset.gov.il)

⁶⁸ See, for examples, CAT/C/ISR/CO/4, para. 17; CAT/C/ISR/CO/5, paras. 22–23. See also <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29119>

⁶⁹ https://fs.knesset.gov.il/25/law/25_lsr_3757142.pdf

⁷⁰ https://fs.knesset.gov.il/25/law/25_lsr_4302687.pdf

⁷¹ <https://www.militarycourtwatch.org/files/server/MO%201651%20.pdf>, articles 285 – 294.

allowing for the indefinite detention of a person⁷². Almost half of all Palestinians detained from the West Bank are held under such administrative orders (see para. 22, above).

61. Although both the Incarceration of Unlawful Combatants Law and Military Order 1651 provide for judicial review, the opportunity to challenge detention is usually undermined by the fact that, in the vast majority of cases, evidence remains classified on grounds of State security.⁷³ Hence, neither the detainee nor the lawyer is informed of the allegations and detention grounds, undermining any effective right to challenge the detention. According to international human rights law, the detainee should at least have access to the essence of the evidence on which substantive decisions are taken.⁷⁴
62. Moreover, according to international human rights law, detention should not last longer than absolutely necessary and the overall length of possible detention should be limited.⁷⁵ Grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.⁷⁶ The vague and undefined reasons provided by Israeli laws to justify administrative detention effectively allow the Israeli authorities to use administrative detention as an alternative to criminal proceedings.
63. The prohibition of arbitrary detention is a fundamental human right, applicable to all forms of detention.⁷⁷ Under international humanitarian law, internment, a form of administrative detention, is permitted only in exceptional circumstances and subject to stringent safeguards to prevent arbitrariness. International humanitarian law and international human rights law establish protections applicable to administrative detention, including the provision of initial⁷⁸ and periodic review of detention. Internment must be ordered on an individual basis, based on an individualized assessment of whether that individual poses a serious threat to the Occupying Power that would meet the high standard of “imperative reasons of security” imposed under international humanitarian law. The UN Human Rights Committee has stated that the burden of proof lies on the State to show that the individual poses such a threat and that it cannot be addressed by alternative measures.⁷⁹ OHCHR and human rights mechanisms have repeatedly expressed concerns at the practice of administrative detention by Israel as perpetuating arbitrary detention in the Occupied Palestinian Territory.⁸⁰ In 1998, the Human Rights Committee called on Israel to ensure that administrative detention be brought within the strict requirements of the

⁷²A/HRC/37/42, para 20.

⁷³ See Military Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651). Available from <http://nolegalfrontiers.org/en/military-orders/mil01/67-security-provisionschapter9-271-315> (English translation), sects. 290–291.

⁷⁴ See Human Rights Committee General Comment No. 35, para. 15.

⁷⁵ Ibid.

⁷⁶ Ibid, para. 22.

⁷⁷ International Covenant on Civil and Political Rights (ICCPR), Art. 9.

⁷⁸ In *Hassan v. the United Kingdom* 29750/09 the European Court of Human Rights noted that, “the first review should take place shortly after the person is taken into detention ... to ensure that any person who does not fall into one of the categories subject to internment under international humanitarian law is released without undue delay.”

⁷⁹ GCIV art. 78, ICRC Customary IHL Study Rule 99,; HRC GC 35, paras. 4 and 15, ICCPR Art. 9. See also ICRC, *Interment in Armed Conflict: Basic Rules and Challenges, Opinion Paper, November 2014*, p. 9.

⁸⁰ A/HRC/37/42, paras. 17–19; A/76/333 para. 31; A/71/355, para. 20; A/71/364, paras. 34–35; A/69/347, paras. 28–29 A/HRC/37/42

International Covenant on Civil and Political Rights.⁸¹ In 2014, the Committee called on Israel to end the practice of administrative detention.⁸² The Committee against Torture has also repeatedly concluded that the use by Israel of administrative detention, including under Military Order 1651 and the Incarceration of Unlawful Combatants Law, particularly for inordinately lengthy periods, violates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and called upon Israel to urgently end this practice.⁸³

64. In addition, the prolonged detention of apparent civilians taken into custody in Gaza, whether for screening or intelligence gathering, the secret and *incommunicado* nature of their detention, the apparent failures to follow procedures set out in domestic legislation, as well as the extensive application of the Incarceration of Unlawful Combatants Law, raise further concerns of arbitrary detention.

65. In Gaza, the West Bank, including East Jerusalem, and Israel, Palestinians have been routinely taken into custody, arrested or detained in a manner that also raises concerns of arbitrariness. The routine use of administrative detention by Israel, disproportionately against Palestinians,⁸⁴ including under the Incarceration of Unlawful Combatants Law, may violate protections against arbitrary detention. The detention of large numbers of civilians and their prolonged detention on basis of real or perceived group characteristics rather than individually justified grounds may amount to acts of collective punishment,⁸⁵ which, in context of armed conflict, constitute a serious violation of international humanitarian law and may amount to a war crime.⁸⁶ Arbitrary detention in armed conflict may also amount to the war crimes of unlawful confinement of a protected person and willful deprivation of their right to a fair trial.⁸⁷ The unlawful confinement of a protected person, such as medical personnel, is a grave breach of international humanitarian law.⁸⁸

Inhumane treatment, including sexual and gender based violence

66. International humanitarian law protects all persons who are in the hands of a party to the conflict or an Occupying Power,⁸⁹ requiring parties to treat humanely all detainees and to protect them against all acts or threats of violence and insults.⁹⁰ Moreover, international human rights law requires the detaining power to treat all persons deprived of their liberty with humanity and dignity,⁹¹ and strictly prohibits torture or other ill-treatment,⁹² including rape and any other forms

⁸¹ See CCPR/C/79/Add.93, para. 21.

⁸² See CCPR/C/ISR/CO/4, para. 10 (b).

⁸³ A/HRC/37/42; CAT/C/ISR/CO/4, para. 17; CAT/C/ISR/CO/5, paras. 22–23.

⁸⁴ A/78/502, para. 37.

⁸⁵ See <https://www.ohchr.org/sites/default/files/documents/countries/palestine/2023-12-27-Flash-Report.pdf> para 2.

⁸⁶ GCIV, Art. 33; HR, Art. 50; ICRC Study, Rule 103, ICRC Study pp. 374, 586-7, 599 & 602-3; Rule 156.

⁸⁷ Rome Statute, art. 8 (2) (a) (vi) and (vii).

⁸⁸ GCIV, Art. 147.

⁸⁹ GCIV, Art. 4.

⁹⁰ GCIV, Art. 27; Common Article 3 of the 4 Geneva Conventions.

⁹¹ ICCPR, Art. 10.

⁹² ICCPR, Art. 7; CAT Arts. 1 and 16.

of sexual violence. Secret, prolonged *incommunicado* detention may also per se amount to torture or other ill-treatment.

67. Sexual violence, including rape, is an exercise of power over another person and constitutes gender based violence, whether committed against men, boys, women or girls. Sexual violence may amount to torture,⁹³ while rape and other forms of sexual violence also constituting a grave breach of the Geneva Conventions are prohibited and amount to a war crime.⁹⁴

Hostage taking

68. Taking hostages is prohibited under international humanitarian law and amounts to a war crime.⁹⁵ Under international human rights law, hostage taking constitutes a violation or abuse of the right to liberty and security of person, and poses serious risks to a wide range of other rights.⁹⁶ The holding of hostages for over nine months under the current conditions in Gaza, which are deteriorating as each day passes, including holding them underground for months, may also amount to torture or other ill-treatment, which is a war crime.⁹⁷ Rape and other forms of sexual violence against protected persons constituting a grave breach of the Geneva Conventions are prohibited, and amount to war crimes.⁹⁸ These acts may also constitute torture or other ill-treatment.

Conclusion

69. This report indicates reasonable grounds to believe that all duty bearers, and especially Israel and Palestinian armed groups as parties to the conflict in Gaza, have committed gross violations and abuses in the context of detentions on and since 7 October 2023 of the rights to life, liberty and freedom from torture and other ill-treatment as well as rape and other forms of sexual violence, all of which may also amount to war crimes.

Recommendations

70. The High Commissioner calls on all parties to the conflict to implement a ceasefire, to ensure full respect for international law, including international humanitarian law and international human rights law, and to ensure accountability for violations and abuses. All parties to the conflict must immediately end all forms of arbitrary detention, including the holding of hostages, as well as torture or other ill-treatment, rape and other forms of gender-based violence, and ensure accountability for serious violations and abuses.
71. **In particular, OHCHR calls on the Government of Israel to:**

⁹³ A/HRC/47/26 paras. 20- 36.

⁹⁴ Rome Statute, article 8(2)(b)(xxii) and Article 8(2) (e)(vi), Common Article 3, ICRC Customary IHL Study Rule 93.

⁹⁵ Common Article 3; ICRC Customary IHL Study Rule 96; Rome Statute, Art. 8(2)(c)(iii).

⁹⁶ Working Group on Arbitrary Detention,

<https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/CompilationWGADDeliberation.pdf>, pp. 2-10.

⁹⁷ Rome Statute, Art. 8(2)(a)(ii), (c)(i).

⁹⁸ Rome Statute, article 8(2)(b)(xxii) and Article 8(2) (e)(vi), Common Article 3, ICRC Customary IHL Study Rule 93.

- i. Immediately release all Palestinians who have been arbitrarily detained and ensure due process and fair trial guarantees and procedural safeguards for all Palestinians in detention, whatever the domestic legal basis invoked, consistent with international standards.
- ii. Reform all legislation, policies and practices, including especially the Incarceration of Unlawful Combatants Law and Military Order 1651, to bring these fully into compliance with Israel's obligations under international law, including by prohibiting *incommunicado* detention and ensuring access to families and legal representation and to periodic judicial review of detention.
- iii. Take all measures to prevent and investigate allegations of enforced disappearances, and ensure that detention conditions strictly conform with international norms and standards, end all practices that may amount to torture or other ill-treatment, including all forms of sexual and gender-based violence.
- iv. Ensure that all allegations of violations are promptly, impartially, thoroughly and independently investigated, and that perpetrators are held to account.
- v. Ensure families are promptly informed about the fate and whereabouts of their detained family members, including through coordination with the ICRC.
- vi. Immediately allow the ICRC full and independent access to all detainees held by Israel, and ensure access by other independent prison monitors, as well as OHCHR.
- vii. Ensure full enjoyment of protected freedom of expression, opinion, peaceful assembly and association, without discrimination, and end arbitrary arrests and detention, including of journalists and human rights defenders, in the OPT as well as in Israel.
- viii. Ensure access by victims of gross violations of international human rights law and serious violations of international humanitarian law, including arbitrary detention and torture or other ill-treatment, and all forms of sexual and gender based violence, to adequate, effective and prompt reparation including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. This includes providing remedies and support to released hostages to facilitate their recovery from violations suffered while held hostage.
- ix. Repress and punish all serious crimes under international law; ensure prompt, thorough, independent, impartial and effective investigations into all incidents by the ISF that have led to serious violations of international law; ensure that perpetrators are held accountable and that all victims and their families are provided with their right to truth, remedy and reparations. Ensure cooperation with international mechanisms for accountability, including the International Criminal Court.
- x. Allow international fact-finding missions, as well as OHCHR, into Israel and the Occupied Palestinian Territory, including Gaza.

72. In particular, OHCHR calls on the Government of the State of Palestine to:

- i. End all practices amounting to arbitrary detention and fully guarantee fair trial rights; immediately end all practices that may amount to torture or ill-treatment; ensure that all

violations are promptly, impartially and independently investigated; hold perpetrators accountable, and guarantee that victims have access to their right to remedy and reparations.

73. In particular, OHCHR calls on Palestinian armed groups to:

- i. Immediately and unconditionally release all hostages in a safe and secure manner, and, pending such release, allow the ICRC full and unhindered access to them.
- ii. Ensure access by independent monitors, including the ICRC and OHCHR, to all persons detained and held by Palestinian armed groups in Gaza.
- iii. Ensure all hostages and other persons deprived of their liberty by Palestinian armed groups are treated with humanity and with respect for the inherent dignity of the human person, and to end all acts of torture and cruel, inhuman, or degrading treatment, including sexual and gender based violence.
- iv. Repress and punish all serious violations of international law committed by their members, and ensure cooperation with international mechanisms for accountability, including the International Criminal Court.
- v. Pending the release of hostages, facilitate the regular provision and receipt of news on the fate and well being of hostages to and from their families.

74. The High Commissioner calls on all States and international organizations to exert their maximum influence to stop human rights violations and abuses and violations of international humanitarian law by all parties to the conflict and to prevent their further commission.