



Prisoner Support and Human Rights Association

COURAGEOUS VOICES FRAGILE FREEDOMS



**Israel's Arrest and Detention of Palestinian Human
Rights Defenders against the Annexation Wall**



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Addameer Prisoner Support and Human Rights Association
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This report will examine Israel's increasing use of arrest and detention of Palestinian human rights activists taking part in protests and other peaceful acts of resistance against the illegal Annexation Wall and settlements in the West Bank. Although the popular resistance that arose in response to the continuing construction of the Annexation Wall has been facing acts of repression and violence from Israeli forces since regular demonstrations and international advocacy initiatives gained momentum in 2005, this report will show that beginning in 2009 there was a shift in tactics by the Israeli forces that should be viewed in the context of increasing recognition of the legitimacy of the actions by the Palestinian human rights activists. Now in 2013, over ten years since the original construction of the Annexation Wall began, Addameer's findings in this report suggest that it is precisely because of this international recognition of, and support for, the actions of the Palestinian activists that Israel has responded with the increasing use of military regulations, which allows it to continue its campaign of repression behind the veneer of legal authorization. This report is part of Addameer's ongoing efforts to support Palestinian human rights defenders, whose imprisonment is a deliberate violation of their fundamental freedoms and special protections provided under international law.

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INTRODUCTION

This report will examine the increasing use of arrest and detention by the Israeli Occupying Forces (IOF) of Palestinian human rights activists taking part in protests and other peaceful acts of resistance against the illegal Annexation Wall⁽¹⁾ and settlements in the West Bank since 2009. Although the popular resistance that arose in response to the continuing construction of the Annexation Wall has been facing acts of repression and often violence from Israeli forces since regular demonstrations and international advocacy initiatives gained momentum in 2005, this report will show that in 2009 there was a shift in tactics by the IOF that should be viewed in the context of increasing recognition of the legitimacy of the actions by the Palestinian human rights activists. In 2009, demands by Palestinian civil society to end the regime of occupation through actions such as Boycott, Divestment and Sanctions (BDS) and to take part in regular demonstrations and other acts of civil disobedience against the Wall and settlements were gaining considerable ground both internationally and locally. These acts of resistance will be examined further in Section 1 of this report.

Also since 2009, a number of Palestinian activists have been recognized as human rights defenders by the United Nations and the European Union⁽²⁾. The EU Guidelines on Human Rights Defenders, adopted in 2004, were built on the 1999 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, most commonly referred to as the UN Declaration on Human Rights Defenders. The Declaration defines human rights defenders as individuals who play an important role in furthering the cause of human rights through activities

(1) The Annexation Wall refers to the Wall in the West Bank being constructed by Israel. Other terminologies used for this Wall include Separation Barrier or Apartheid Wall. For the purposes of this report, the term ‘Annexation Wall’ or simply ‘the Wall’ will be used throughout.

(2) For example, Mohammed Othman by the UN Special Rapporteur on Independence of Judges and lawyers (<http://unispal.un.org/UNISPAL.NSF/0/57D00BE6597450FF8525774D0064F621>) and Abdallah Abu Rahma by the EU High Representative of Foreign Affairs and Security Policy (http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/116232.pdf).

such as the documentation of violations, providing support and assistance to victims seeking remedies, combating cultures of impunity and mainstreaming human rights culture and information on an international and domestic level.

The EU Guidelines calls on EU member states to take appropriate action in relation to violations against human rights defenders, including those that occur in third party states. This includes raising individual cases of concern in political dialogues between the EU and third party states, and facilitating the use of UN Special Procedures aimed at holding to account those responsible for violations against human rights defenders.

Addameer’s findings in this report suggest that it is precisely because of this international recognition of, and support for, the actions of the Palestinian activists that Israel has responded with the increasing use of military regulations, which allows it to continue its campaign of repression behind the veneer of legal authorization. Since 2009, this has resulted in the arrest of at least four prominent human rights defenders on charges related to incitement, organizing illegal demonstrations, and other more excessive and unjustifiable charges aimed at criminalizing the legitimate activities of these activists. All four of these human rights defenders—two from the village of Bil’in and two from Nabi Saleh—have been convicted and sentenced to a year or more in prison as punishment for their acts of peaceful resistance. Other protest organizers have also been arrested but have either been released without charge or trial, had the charges against them eventually dropped, or have been acquitted of all charges. All these cases will be discussed more fully in the ensuing chapters.



Legal Framework

Israel frequently argues that human rights law does not apply to its actions in the occupied territory.⁽³⁾ However, this position enjoys almost no support among non-Israeli jurists or among other states.⁽⁴⁾ Rather, the consensus is that international human rights law (IHRL) is applicable in conjunction with international humanitarian law (IHL), the laws that are applied in a situation of armed conflict or occupation.

Declarations, reports and resolutions by various UN bodies, including the Security Council and the General Assembly, have all affirmed that fundamental human rights, as accepted in international law and laid down in international instruments, can be invoked to both support and give full credence to instruments applicable to conditions of armed conflict⁽⁵⁾. Equally, the International Court of Justice (ICJ) has repeatedly stated that an Occupying Power remains responsible for fulfilling its obligations stemming from human rights conventions in occupied territory⁽⁶⁾. Finally,

(3) For example, this claim was raised in a letter dated 3 September 2009 from Col. Liron Liebman, head of the Israeli army's International Law Department, to the attorney general. Israel also expresses this opinion in every report it submits to any of the UN committees responsible for the implementation of human rights conventions. For example, see: Implementation of the International Covenant on Economic, Social and Cultural Rights: Second Periodic Reports Submitted by States Parties under Articles 16 and 17 of the Covenant, Addendum: Israel, Economic and Social Council E/1990/6/Add.32 16 October 2001, paragraph 5; and Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Second Periodic Report, Addendum: Israel, Human Rights Committee CCPR/C/ISR/2001/2, 4 December 2001, paragraph 8.

(4) This position has been roundly rejected by the UN Committee on Economic, Social and Cultural Rights: Concluding Observations of the Committee on Economic, Social and Cultural Rights - Israel. 23/05/2003, Economic and Social Council, E/C.12/1/Add.90, 23.5.03., paragraph 15

(5) For instance, see UNGA, Official Records, 25th Session, Respect for Human Rights in Armed Conflict: Report of the Secretary General, 18 September 1970, UN Doc A/8052, Annex 1: 'General Norms Concerning Respect for Human Rights in their Applicability to Armed Conflicts'; UN Human Rights Committee, General Comment 31 [80] Nature of the General Obligations Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (26/5/2004)

(6) In particular, paragraphs 106-112, Legal Consequences of the Construction of a Wall in

the International Committee of the Red Cross (ICRC) has confirmed that the two branches of law are complementary.

In this schema, human rights law applies in all situations, though on occasion it is overruled by concrete provisions of humanitarian law in situations of active combat. Accordingly, in the absence of any concrete provision in humanitarian law permitting infringement of the rights granted to civilians in accordance with human rights law, the latter must be observed.⁽⁷⁾

If one considers the application of these two bodies of law in the case of Palestinians who protest against the Wall, settlements, and more generally the regime of occupation, human rights law—in particular the International Covenant on Civil and Political Rights—takes center stage.

Freedom of assembly is enshrined in Article 21 of the International Covenant on Civil and Political Rights, which also permits the balancing of this liberty against other interests. The article states:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.⁽⁸⁾

Freedom of expression and freedom of assembly are not among absolute rights and therefore may be restricted under certain

the Occupied Territory, Advisory Opinion 2004, ICJ Reports (9 July 2004)

(7) C. Droège, "Elective Affinities? Human Rights and Humanitarian Law," International Review of the Red Cross 90, 871 (2008), pp. 501-548.

(8) International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Israel. Convention on the Rights of the Child (CRC), U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Israel. Article 15 of the CRC provides similar protection with respect to the right of children to assemble.



circumstances. Due to the importance of these freedoms, however, it may only be restricted (i.e. not derogated from) and only in exceptional cases. The Commentary on the UN Declaration on Human Rights Defenders also recognizes that the right to protest lies in the recognition of the set of rights and freedoms related to assembly, association, expression and opinion. Like these other rights, it can be restricted in the interests of national security and public order; however the Commentary recognizes that these restrictive measures—such as bans on demonstrations and arrest of protesters amounting to arbitrary detention – are often excessive and fail to comply with human rights law. It also notes that human rights defenders who attempt to challenge ‘security legislation’ through exercising their right to protest have faced harassment, intimidation, violence, arrest and arbitrary detention, and some have been killed⁽⁹⁾.

Methodology

This report includes documentary and primary research on the use of arrests by the IOF against protesters, conducted by staff and volunteers from Addameer primarily from 2009 to 2011. The research also considered the use of arrests by the IOF since the demonstrations began in 2003. Addameer developed one questionnaire on individuals’ experience of violence, detention and court proceedings, and another for protest organizers to document detention trends. In 2009 Addameer researchers met with and interviewed 48 Palestinian ex-detainees and human rights activists from 16 villages near the Annexation Wall, in five West Bank districts, including: Aboud (Ramallah), Al-Khader

(9) UN Special Rapporteur on the Situation of Human Rights Defenders, ‘Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’, July 2011 at 70-74.

(Bethlehem), Al-Mydia (Ramallah), Artass (Bethlehem), Azzun (Qalqilya), Al-Ma’sara (Bethlehem), Beit Suriq (Ramallah), Biddu (Ramallah), Bil’in (Ramallah), Budrus (Ramallah), Idhna (Hebron), Jayyus (Qalqilya), Ni’lin (Ramallah), Ras-a-Tiya (Qalqilya), Toura (Jenin). Researchers also gathered what information they could on the numbers and background of those arrested in these villages. While some villages, such as Jayyus, Ni’lin, Bil’in, Budrus, Nabi Saleh and Al-Ma’sara, have been documenting arrests and human rights violations against protestors on a regular basis by compiling statistics and lists of detainees, others have not; the information gathered in these villages was often either incomplete or anecdotal. Through all the testimonies gathered, however, Addameer was able to gain insight into the extent to which arrests and detention had been used against the villages in question since demonstrations began in said villages. In 2011 Addameer also visited the village of Nabi Saleh outside Ramallah and interviewed three residents there, in recognition of the growing number of arrests targeting the relatively fledgling popular resistance, which had been established in 2010.

Addameer also interviewed, discussed with or obtained written contributions from other stakeholders, including two Palestinian detainee rehabilitation projects, seven lawyers (both private and legal aid), five Israeli activists, seven foreign activists and two journalists. The report benefited from the advice and input of Addameer’s own lawyers and legal and advocacy teams, as well as from the valuable contributions of its interpreters. An Addameer researcher attended four different demonstrations in two villages, Bil’in and Al-Ma’sara, to gain a better insight into the issues of concern and of the protests, connect with activists on the ground and discuss the use of detention candidly with community members. Addameer staff and volunteers also attended military



court proceedings at Ofer military base to observe the court cases of a 14-year-old boy who was arrested in a night raid in Bil'in, a 14-year-old boy arrested in a night raid in Nabi Saleh and a 44-year-old protest organizer, also from Nabi Saleh. The families of these defendants were also interviewed to discuss these experiences. Finally, in terms of literature, Addameer reviewed electronic media and reports on the topic of arrests and protests against the Wall, researched and verified trends collected through the interviews and consulted internal and external reports on the legal status of the actions undertaken by the IOF and the courts against the Palestinian people. Addameer's secondary research benefited from the information published online by human rights activists, namely from the Popular Committees, and from Palestine solidarity organizations like Stop the Wall Campaign, and from a previous piece of collaborative research on the subject of Wall-related arrests, *Repression Allowed, Resistance Denied*, written by Addameer and Stop the Wall Campaign, and published in July 2009.

As there is no centralized legal aid referral mechanism in the occupied Palestinian territory (oPt), there are likely to be many additional cases of arrest and detention due to Wall-related activities that have not been covered in this report. Further, local Palestinian human rights organizations lack a coherent strategy in defining "Wall-related" arrests, and it has not always been clear whether arrests occurred during a demonstration, or whether they targeted a participant in the demonstration or simply a resident of the village. Despite these constraints, the testimonies gathered from different sources testify to the extensive use of arrests and detention of human rights activists and villagers living near the Wall, and reveal a means through which the IOF attempt to repress the peaceful resistance movement.

Chapter 1 of this report will analyze how the Palestinian popular

resistance movement has attempted in recent years to mobilize both a local and international response to Israel's continuing curtailment of the basic human rights of the Palestinian population. Section 1.1 of the chapter will highlight how actions such as weekly demonstrations against the Wall and settlements, legal challenges against the Annexation Wall and international advocacy such as the Boycott, Divestment and Sanctions campaign provide concrete examples of how Palestinians have been using legitimate methods of resistance to protect their human rights. Section 1.2 of this chapter will also examine the response to these actions from the IOF: increasing violence, night raids, restrictions on movement and arrests. Section 1.3 will give a brief overview of the military court system and how it is used to great effect to ensure that any Palestinian arrested has little hope of being afforded a fair trial.

Chapter 2 of this report aims to highlight how Israel has in recent years taken on a new strategy in order to silence entire villages whose residents are active in demonstrations against the Wall and settlements. Section 2.1 will show how Israel is increasingly using its military regulations, particularly Military Order 101, to indict Palestinian human rights defenders. The trials of key protest organizers from the villages of Bil'in and Nabi Saleh will be highlighted in Section 2.2 of this chapter to demonstrate that the entire Israeli regime, including its military courts, appears to be working towards a common goal—to keep these activists in prison on trumped-up charges and longer sentences. Section 2.3 will touch on the increasing arrest of children and youth from the villages as a means of exerting pressure on the entire village and in order to use the children as incriminators for the protest organizers.



Chapter 3 will summarize the findings of the report and posit conclusions and recommendations to the EU, UN and the wider international community.

CHAPTER 1: THE WALL AND ITS AFTERMATH - A HISTORY OF PEACEFUL RESISTANCE AND VIOLENT REPRESSION

Palestinians in the occupied West Bank are geographically controlled and contained through a complex system of permits, checkpoints, security, checks and surveillance which exist to serve the infrastructure of the illegal Wall and settlements. Furthermore, the villages and communities near the Wall, which are predominantly located in “Area C”, as defined by the Oslo Agreements, are effectively under Israeli control and administration and therefore affected most by these restrictions. Palestinians are also subjected to different threats and conditions by the IOF who can, and do, arbitrarily arrest and detain them.

Ever since construction of the Wall began in 2002, Palestinians living in the affected villages, along with international and Israeli activists, have sought to challenge this clear affront to their basic rights and freedoms. Strategies of resistance have also been a clear response to the findings of the 2004 ICJ Advisory Opinion on the Legal Consequences of Construction of a Wall in the Occupied Palestinian Territory. The Opinion both highlighted the illegality of building the Wall on Palestinian land inside the Green Line and the human rights violations against the Palestinian population that this entailed, and recommended that construction cease and parts of the Wall already built inside the Green Line be dismantled⁽¹⁰⁾.

(10) Conclusions of the Opinion are contained in paragraphs 143-163, Legal Consequences of the Construction of a Wall in the Occupied Territory, Advisory Opinion 2004, ICJ Reports (9 July 2004).

Israel’s rejection of the findings, and the insufficient response from UN member states to fulfill their own obligations in ensuring these recommendations were implemented, formed the basis of a long-term resistance strategy which recognized that it was in the hands of the Palestinians to attempt to dismantle the Wall, through both civil resistance and legal challenges.

Palestinians in Wall-affected villages have adopted three key strategies to oppose the construction of the Wall and Israeli land annexation: first, Popular Committees against the Wall⁽¹¹⁾ formed to mobilize an international solidarity movement through peaceful resistance and weekly demonstrations, often involving children and youths; second, they sought to challenge the path of the Wall by filing petitions to the Israeli High Court; and third, human rights activists increased international advocacy efforts by participating in international speaking tours, utilizing UN instruments and institutions to submit complaints and testimonies—for instance, through the UN special procedures and the UN Fact Finding Mission on the Gaza Conflict and the International Fact Finding Mission on Israeli Settlements – and advocating the Boycott, Sanctions and Divestment Movement as one of the possible ways to achieve accountability.

These strategies all demonstrate an important phase in Palestinian resistance, aimed at realizing the right to self-determination through peaceful and legal means, which has had the effect of increased repressive measures taken by the Israeli forces to further curtail this and other rights, as will be discussed further in the report. The following section will present a brief overview of these strategies.

(11) Also known as the Popular Resistance, or Popular Struggle Committees. This report will use ‘popular committees’ and ‘popular resistance’ interchangeably.



1.1: METHODS OF PEACEFUL RESISTANCE

1.1.1 Popular Resistance: Forming a Peaceful Social Movement against the Wall

The first demonstrations and protests against the Wall were spontaneous and started in 2002 from the moment Israel began its construction works in the northern West Bank. Since then, and in the wake of the 2004 ICJ Advisory Opinion, local residents have formed Popular Committees in villages across the West Bank, including Bil'in, Ni'lin, Al-Ma'sara, Al-Walaja and Nabi Saleh, and have taken on a campaign of mass popular resistance, engaging in weekly, and even daily, demonstrations protesting against the Wall and the broader illegal regime of settlement expansion. Through such resistance, Palestinians are defending their human rights, including the rights to self-determination, protection against invasion of privacy in the home and family, the right to work and to an adequate standard of living, health and education, as well as the rights to freedom of movement, association, assembly and expression. As a strategy, Popular Committees have continuously adhered to principles of peaceful resistance, their members repeatedly expressing these principles during demonstrations and also at court hearings⁽¹²⁾. Although protests and demonstrations sometimes involve stone-throwing by Palestinian youths at the Wall and other targets, the majority of the violence stemming from the demonstrations comes from increasingly harmful tactics utilized by Israeli forces against unarmed, peaceful protestors, as will be discussed further in Section 2. Indeed, the UN Special Rapporteur on the situation of Human Rights Defenders has recognized in the commentary to the UN Declaration on Human Rights Defenders that although the State has an obligation to act accordingly to situations of violence that

(12) Adeb Abu Rahma from Bil'in and Bassem Tamimi from Nabi Saleh have both used their military court hearings as a platform to re-affirm their support for non-violent resistance. In both cases, they were unable to read out their full statement in court but they are available in the Military Judge's protocol.

arise from protests and other forms of assembly, "it is frequently the excessive and disproportionate use of force by the police or army during peaceful demonstrations that has provoked violent reactions from an otherwise peaceful assembly, these reactions are in turn answered by more violence from the police or army and again led to deaths and severe injuries"⁽¹³⁾.

1.1.2 Challenging the Construction through Legal Means

Since the beginning of the construction of the Annexation Wall, neither the Palestinian Authority nor other Palestinian institutions have been able to develop a clear, joint strategy to challenge the legality of the Wall and its associated regime in Israeli courts. However, since 2003 dozens of petitions were submitted to the Israeli High Court of Justice against the Wall⁽¹⁴⁾. These petitions were submitted either by human rights organizations such as, most notably, the Association for Civil Rights in Israel (ACRI) and the Jerusalem Legal Aid and Human Rights Center (JLAC), or local village councils themselves. While the initial petitions were filed by Palestinian residents against various sections of the Wall, the petitioners, supported by human rights organizations, subsequently started to challenge the legality of the entire project⁽¹⁵⁾.

(13) UN Special Rapporteur on the Situation of Human Rights Defenders, 'Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms', July 2011 at 25.

(14) In an article published in the Al-Majdal Magazine, Usama Halabi argues that as of 22 February 2007, there were at least 64 petitions submitted to the Israeli High Court challenging the legality and/or the route of the Wall. Of the 64 petitions, 47 were dismissed, six were settled between the parties and eight were still pending. Only three were reviewed in favor of the petitioners. Usama Halabi, The Israeli High Court Approves the Legality of the Wall and its associated regime, Al Majdal Magazine, available at: <http://www.badil.org/en/al-majdal/item/444-the-israeli-high-court-approves-the-legality-of-the-wall-and-its-associated-regime>.

(15) Nasrat Dakwar, The Separation Wall International Law, Position Paper, 17 June 2008,



Of the total number of petitions, exceeding 64, only three petitions were ruled in favor of the petitioners. The first such case concerned Beit Surik, a West Bank village located 12 km northwest of Jerusalem, where the local village council submitted a petition to the Israeli High Court against the government of Israel and the Israeli military commander in the West Bank. On 30 June 2004, in a move apparently aimed at pre-empting the ICJ Advisory Opinion that was released on 9 July, the High Court held in its decision *Beit Surik Village Council v. the Government of Israel* that the specific route of the Wall causes excessive harm to its residents, violates the principle of proportionality and is therefore illegal according to both international and Israeli standards. It further instructed the government of Israel to propose an alternative route for the Wall. However, the ruling failed to determine the illegality of the Wall itself. Instead, the judges claimed that due to its temporary nature the Wall is legal even if built inside the Green Line and its construction can be justified by security considerations and the principle of “military necessity”.

Subsequently, a new route around Beit Surik and the surrounding villages was proposed, which the Cabinet of Ministers approved in February 2005. However, most of the amended route continued to run through the West Bank as opposed to following the Green Line.

In 2004, the Association for Civil Rights in Israel submitted a petition to the Israeli High Court of Justice on behalf of six residents from two of the so-called Alfei Menashe enclaves, located to the south of the West Bank city of Qalqilya. The petitioners relied upon the arguments included in the ICJ Ruling on the Wall and the Beit Surik Ruling claiming that the path of the Wall is both illegal and does not satisfy the proportionality principle, causing great harm to Palestinian residents of the enclave. In its ruling, dated 15 September

available at: <http://www.acri.org.il/eng/story.aspx?id=496>.

2005, the Israeli High Court ordered the state to “reconsider, within a reasonable timeframe, alternatives to the route of the Barrier at Alfei Menashe”⁽¹⁶⁾ that would not encircle the villages. However, the ruling failed again to determine the illegality of the Wall itself.

The third ruling related to the case of Bil’in village in Ramallah district and a 1.7 km section of the Wall, built on the village’s land. In its ruling of 4 September 2007, the Israeli High Court of Justice decided that the Wall built around Bil’in had to not only be re-routed, but to have some of its sections dismantled. The judges remained skeptical of the security arguments in this specific case and found that the route of the Wall had been designed in order to allow for the expansion of the Mod’in Illit settlement. They further held that, “In light of the provisional nature of the fence as a security measure, it is improper to plan the route according to considerations related to invalid building plans or to plans that are not expected to be implemented in the near future”. Most importantly, the judges ordered the state to examine an alternative route, which would cause less harm to Bil’in residents and would not be designed according to future development plans of “additional neighborhoods⁽¹⁷⁾”. In June 2011, almost four years on from the High Court ruling, the route of the Wall was moved westwards by the Israeli army, returning to the village 745 dunams⁽¹⁸⁾ of farmland that had been confiscated by the original route of the Wall but still isolating 1,300 dunams of village land on the other side of the Wall, within the borders of Mod’in Illit settlement.

(16) B’Tselem, *The Judgment on the Fence Surrounding Alfei Menashe – HCJ 7957/04*, available at: http://www.btselem.org/english/Special/20050916_Ruling_on_Alfei_Menashe_Enclave.asp.

(17) High Court Accepts Petition Against Separation Barrier Built on Bil’in Village Land, 6 September 2007, available at: http://www.btselem.org/english/Separation_Barrier/20070906_Bilin_Ruling.asp.

(18) One dunam is equivalent to approximately 1,000 square meters.



A judgment by the Israeli High Court following a petition by the local village council concerned the re-commencement of construction of the Wall around the village of Al-Walaja, which straddles the Green Line and is located both within Bethlehem Governorate and the boundaries of Jerusalem. In August 2011, the Israeli High Court rejected all arguments put forward by the village council, including its claims that the route of the Wall would cut villagers off from hundreds of dunams of farmland, a cemetery and a water source. The High Court cited security considerations as a major factor in its decision. The decision followed the installation of two gates along the route of the Wall by the Israeli army, through which the villagers would be allowed to pass to access their land, and claims by Israel that the Wall would be re-routed northwards such that villagers would have access to the nearby spring. By the end of 2010, before the Court's deliberations had been completed, a patrol road and a nine-meter-high concrete wall had already been erected in parts of the village. Upon its completion, the residents of Al-Walaja will be completely surrounded by the Wall and only able to access surrounding areas through a series of tunnels. The villagers continue to protest the Wall's construction, its confiscation of Palestinian land and the impact it will have on sustaining their crops, given the well-known restricted permit system that operates at the gates through the Wall. As with the continuing protests in other villages affected by the Wall, these actions regularly lead to arrests, beatings and other violent responses by the Israeli forces⁽¹⁹⁾.

Another petition currently underway concerns the village of Nabi Saleh, 20 km from Ramallah, which is under threat from the expansion of the nearby settlement of Halamish. Since 2008, settlers have been trying to appropriate the Al-Qaws spring and

(19) For example, see http://english.pnn.ps/index.php?option=com_content&task=view&id=10649&Itemid=60.

start renovating the area around it, causing damage to trees and other property of the Palestinian residents of the village. In February 2010 the Al-Qaws spring was officially declared an archaeological site by the Israeli authorities and Palestinians were denied access to it. On 28 July 2011, Israeli human rights organization Yesh Din filed a petition to the High Court of Justice on behalf of landowners and representatives from Nabi Saleh and another village affected by the confiscation of the spring, Deir Nidham, demanding that the structures and the facilities built on the site be demolished. According to Yesh Din in September 2012, 'the court issued an interim order forbidding the settlement of Halamish to perform any construction around the spring'⁽²⁰⁾, although since then construction has continued.

1.1.3 International Advocacy

In recent years the main thrust of international advocacy undertaken by the popular resistance and village committees has been promoting the Boycott, Divestment and Sanctions (BDS) Campaign. This followed an international call made by Palestinian civil society groups on 9 July 2005, one year after the ICJ Advisory Opinion, to resist the occupation by boycotting and divesting from Israel. The call was endorsed by Palestinian political parties, trade unions and non-governmental organizations, many of which are represented in the popular committees in the areas affected by the Wall. As with initiatives taken by the popular committees to challenge the construction of the Wall through civil action and legal means, advocates of the BDS call have been subjected to arrest and movement restrictions, particularly at border crossings when traveling abroad to mobilize the international community behind the campaign.

(20) Yesh Din <http://www.yesh-din.org/infoitem.asp?infocatid=212>



Between 2008 and 2009, BDS actions by Palestinian activists as well as solidarity groups in Europe were followed by a number of divestments from companies implicated in Israel's settlement construction and annexation policies⁽²¹⁾. This included the Norwegian Pension Fund's divestment from the Israeli security and defense firm Elbit Systems in September 2009, and a series of decisions in 2008/9 by several councils and transport companies in Europe and Australia to exclude from their contracts Veolia, a large French multinational company involved in constructing the light railway system and bus routes connecting illegal Israeli settlements to Jerusalem and parts of Israel.

At the same time, the village council of Bil'in had launched its own international legal proceedings against two Canadian companies, Green Park International and Green Mount International. The case was heard before the Supreme Court of Quebec on 22, 23 and 25 June 2009. These companies were involved in the construction, marketing and selling of residential units in the illegal Jewish-Israeli settlement of Mod'in Illit, on Bil'in's land.⁽²²⁾ The claim, filed by Mark Arnold, Bil'in's lawyer in Canada, sought to demonstrate that "in so doing, the defendants are aiding, abetting, assisting and conspiring with Israel, the Occupying Power in the West Bank, in carrying out an illegal act."⁽²³⁾ The main justification given behind this complaint was the insufficient legal redress provided to Palestinians who petition the Israeli courts regarding Israel's land confiscation policies. On 18 September 2009, the Quebec Superior Court Judge dismissed the civil action suit, and in August 2010 the Quebec Court of Appeal

(21) See <http://electronicintifada.net/content/divestment-campaign-gains-momentum-europe/8151>.

(22) "Bil'in village vs. Green Park", Al Haq, <http://www.alhaq.org/etemplate.php?id=440>.

(23) Ibid. Further information on the case is available at <http://www.alhaq.org/pdfs/From%20Palestinian%20Olive%20Groves%20to%20Canadian%20Courtrooms.pdf>.

also dismissed the case on the grounds that "the authorities of another country [Israel] are in a better position to judge the claim."⁽²⁴⁾ This case is worth noting as it highlights the multi-level nature of Bil'in's peaceful resistance and helps to understand why the Israeli authorities are so keen to stifle it.

Furthermore, the Bil'in resistance movement has gained important international notoriety and is regularly praised for its peaceful actions. A visit by the Elders⁽²⁵⁾ to Bil'in in August 2009 gave testimony to this, as have numbers of diplomatic and journalist delegations that made the trip to meet the village and its Popular Committee members. The oppression Bil'in faces is therefore more visible because of its successful media campaign, though other villages that have thus far garnered less international attention have used their own original and peaceful tactics.

In this same period, a number of Palestinian activists began to engage with the UN system as a venue for obtaining international accountability through cooperating with the UN Fact Finding Mission on the Gaza Conflict concerning Israel's violent response to demonstrations against the occupation, at that time specifically related to the protests against the 2008/2009 Israeli assault on Gaza that were taking place throughout the West Bank. Mohammed Srour from the Popular Resistance in Bil'in testified before the Mission in Geneva. In its final report to the Human Rights Council, the UN Fact Finding Mission on the Gaza Conflict noted that the UN Declaration on Human Rights Defenders is relevant in relation to Palestinian demonstrators who protested Israel's assault on the Gaza Strip at

(24) For further information see <http://www.alhaq.org/etemplate.php?id=539>.

(25) The Elders describe themselves as "an independent group of eminent global leaders, brought together by Nelson Mandela, who offer their collective influence and experience to support peace building, help address major causes of human suffering and promote the shared interests of humanity." More information is available on the Elders' website <http://www.theelders.org/>.



weekly demonstrations, which usually take place in the villages most affected by the Annexation Wall, such as Ni’lin, Bil’in, Al-Ma’sara and Jayyus. The Mission noted in paragraph 1421 that Article 5 of the Declaration, “affirms the right of everyone ‘to meet or assemble peacefully’ for the purpose of promoting and protecting human rights and fundamental freedoms” is particularly relevant.

Conclusion

Recent years have witnessed a change in strategy among Palestinians seeking to resist Israel’s illegal policies and practices. The continuing construction of the Annexation Wall—in defiance of the International Court of Justice Advisory Opinion and international law—has forced Palestinians to identify new avenues to challenge the new ‘facts on the ground’ being created by Israel. At the same time, a sea change in public opinion towards Israel, especially in light of its military assaults on Gaza, has led to a growing international movement of human rights actors and activists who support the actions of the Palestinian popular resistance. Its successes can be witnessed not only in the achievements of the BDS campaign, but also in the growing number of international activists participating in the weekly demonstrations, and in recognition of some of the popular resistance activists as human rights defenders by international bodies.

However, Israel’s response has been to escalate its campaign of arrest and detention of human rights defenders, along with other repressive and violent measures. It is often the very same Palestinian activists who take part in these new resistance strategies who become targets of these actions, as will be seen in the following section.

1.2: AN EVIDENT RECORD IN IOF REPRESSION OF HUMAN RIGHTS DEFENDERS

1.2.1 Violence

Palestinians and other activists who support them in peaceful actions against the Wall regularly experience violence, physical pressure, harassment, curfews, blockades and shooting, leading to deaths or serious injury. The use of tear gas, rubber coated bullets and live ammunition—including, since 2009, the use of .22 caliber Ruger rifles and snipers – has resulted in the serious injury and at times death of several demonstrators⁽²⁶⁾. This includes four demonstrators from the village of Ni’lin, among whom were a 10 year old boy who was killed by live fire during a demonstration on 29 July 2008, and ‘Aqal Sarur who in 2009 was shot and killed by a .22 caliber bullet. Even those watching from the sidelines have been victims, including Jawaher Abu Rahmah, who on New Year’s Eve 2010 was observing a 1,000 person strong demonstration against the Wall in her village of Bil’in when a rain of tear gas choked her, eventually leading to her death from cardiac arrest. Her brother Bassem Abu Rahmah had been killed by a tear gas canister shot directly at him on 17 April 2009. In Nabi Saleh, Mustafa Tamimi was also killed in December 2011 when hit by a tear gas canister in his face shot at close range. The firing of teargas and sound bombs by the IOF has become a regular feature in the weekly demonstrations throughout the villages, often leading to hospitalization, particularly when demonstrators are hit by tear gas canisters or burned by sound bombs. Witnesses from the villages have also reported new forms of weaponry being used by the Israeli forces, such as skunk water and detonating devices.⁽²⁷⁾

(26) For a report of the violence and other forms of repression experienced by activists since the protests against the Wall started, please refer to Addameer and Stop the Wall’s joint report *Repression Allowed, Resistance Denied*, July 2009, available online at http://addameer.info/wp-content/images/repression-allowed-resistance-denied-july_09.pdf.

(27) For more information on the different and new violent methods used against the vil-



1.2.2 Movement Restrictions

Confiscation or denial of permits to access land on the other side of the Wall, harassment at checkpoints and even inside homes, are also commonplace. Villages such as Azzoun Atme, which find themselves cut off from other villages because of the Wall or checkpoints, are particularly vulnerable to Israel's control mechanisms. Israel's harsh repression of peaceful forms of resistance and their tight control explain why human rights activism may be lower in these areas. Villages in Qalqiliya and Bethlehem are also hugely affected by the ongoing construction of the Wall, isolation or fragmentation of their land and restrictions on crossing the Wall and accessing their crops. Any resistance in these areas has also been met with further forms of collective punishment from the IOF, ranging from added road closures to a denial of permits to access agricultural lands, to further destruction and confiscation of land and water resources.

Israeli forces also regularly enforce closed military zones around the villages, particularly on Fridays when the demonstrations take place. The villages of Bil'in, Ni'lin and Nabi Saleh have all been subjected to this measure on a weekly basis, clearly due to the high number of protesters who descend on these villages each Friday.

1.2.3 Night Raids

Night raids are used to target entire families, and as such often take place at their homes, involving destruction and confiscation of property as well as harassment and arrest of family members. For instance, the house of Abdallah Abu Rahma, a coordinator for the Popular Committee in Bil'in, was raided by Israeli forces on 16 September 2009, but he was not at home so escaped capture. The IOF then surrounded his brother, Khaled Abu Rahma's, home and

lagers, see Stop the Wall Campaign, People vs. Oppression, July 2010.

raided his house. According to a report of the event:

The invading forces said that until they find Abdallah, the entire neighborhood was theirs. They searched every room and trashed one room downstairs next to the store. They stole Palestinian flags, banners and posters used during demonstrations, and then left the house.⁽²⁸⁾

Night raids are now occurring on a weekly basis in Nabi Saleh, a village of only 550 residents that is threatened with confiscation and appropriation of land to be used for the expansion of the nearby Halamish settlement. Typically, Israeli forces enter the village in the middle of the night, and force their way into the residents' houses to conduct 'mapping exercises', in what many believe is a campaign to continue identifying new targets for arrest.

These raids, in practice, involve a disproportionate use of force and intimidation, and cause excessive harm to unarmed civilians. They are also not justified in their objectives. Those arrested during the night raids are in the majority of cases accused of minor offenses, such as participating in protests or throwing stones at the Wall, with sparse and questionable evidence, as can be seen in the following sections. Article 33 of the Fourth Geneva Convention prohibits reprisals against protected persons and their property.⁽²⁹⁾ Such arrests and use of force against entire families and their property constitute forms of collective punishment and consist of disproportionate and unwarranted harm.

(28) For further information about this incident visit: http://www.bilin-ffj.org/index.php?option=com_content&task=view&id=190&Itemid=1.

(29) Article 33, Part III, Convention IV relative to the Protection of Civilian Persons in Time of War, Geneva, 12th August 1949: <http://www.icrc.org/IHL.nsf/WebART/380-600038?OpenDocument>.

1.2.4 Arrests of Human Rights Defenders

Arbitrary, or targeted, detention and arrests are regular and consistent facets of all these measures against the activists, and are also used against others attending the demonstrations, such as local cameramen and photographers. Leading Palestinian human rights activists, prominent figures, such as mayors and teachers, and members of the Popular Committees, who are instrumental in coordinating weekly protests and advocacy efforts including legal cases, are often personally targeted and arrested in an attempt to sideline them from organizing the protests, or to discredit them and their efforts. Youths and children as young as twelve are often the first victims of mass arrest campaigns, either during demonstrations, immediately after them or during night raids.

Addameer has collected reports related to incidents as far back as 2004 that demonstrate how from very early on in the popular resistance struggle, protest leaders were being targeted through arrests and detention.

Box 1

Between June and August 2009, Addameer carried out research in 16 villages affected by the path of the Wall Israel is constructing illegally in six different West Bank districts. The aim of the research was to document cases of arrest and detention of Palestinian, international and Israeli human rights defenders and demonstrators protesting the construction of the Wall. In these villages, Addameer documented at least 292 confirmed cases of Palestinian human rights defenders who were detained and arrested between 2003 and August 2009, including many children as young as twelve. Since then, the number has continued to increase. In 2010, at least 233

2004: A Year of Rising Activism and Arrests

In Budrus, one of the first villages to organize regular demonstrations against the Wall, four members of the popular committee, including Nasser Morar and his brother Ayed, were arrested during night raids in 2004, and said this was because of their involvement in the protest. During the trial, Nasser recalled:

“I stood up in court and admitted that I was in the protests and that it was my ‘right to resist’. This seemed to make the judge angry.”

While his brother Ayed was released after 10 days, Nasser was jailed for 5 months for allegedly being involved in “dangerous protests”, and being a “threat to the Israeli state”. Protest organizers in other villages were subjected to similar treatment.

Abu Munder, a leading activist in the anti-Wall movement in Biddu, was detained in 2004. Officers from the Israeli Security Agency, or “Shabak” threatened that they would make the whole village turn against him if he continued his activities. They said they would make villagers believe he was responsible for the killings carried out by the IOF. Abu Munder was brought from the military base in Qalandia to Nabi Yakub settlement, where an intelligence officer told him “Palestinians are like sleeping lions, you are too close. Therefore you are not allowed to protest.” The Shabak interrogated him for a total of 12 hours. He was given some water but no food, and said he was not physically harmed but subjected to very abusive language and threats. Amongst these, the Shabak threatened that he would be imprisoned for a long time if he did not stop his activism. They then finally let him go at 10pm at night. He was “thrown out” at Qalandia checkpoint, where he called his family. Subsequently, during that same year, when the village’s protests were most active, the IOF kept summoning him for interviews with the Shabak. When he would show up, the Shabak would photograph and videotape him and make general threats before sending him away.



arrests of activists were documented, 114 of whom were arrested in only the space of three months, from April to July. By the end of 2011, Addameer had documented at least 295 arrests for that year, approximately 58 of whom were under the age of 18, and at least 6 of whom were as young as 14. Among these are prominent protest leaders, including Bassem and Naji Tamimi from Nabi Saleh, who were arrested in March 2011; Majde Mahmoud Za'ariq from Beit Ummar, who was arrested on 20 August 2011; and Ashraf Abu Rahma from Bil'in, who was arrested in October 2011. All these leaders have since been charged and sentenced (see further details in the following section).

From 2009, a number of arrests reported to Addameer related to activists who had been returning from overseas advocacy trips, often leading to a travel ban following their release from detention. On 20 July 2009, Mohammed Srour, member of the popular committee in Ni'lin, was arrested while trying to cross into the West Bank from Jordan at the Allenby Border Crossing. He was returning to the oPt after giving testimony in Geneva to the UN Fact Finding Mission on Gaza—which later published their findings in the Goldstone report—on the shooting of two young Palestinian men during a demonstration in Ni'lin on 28 December 2008. Srour was fortunate to be released without charge after posting bail a few days following his arrest. In his testimony before the UN, Srour anticipated that his presence in Geneva would place him at risk of arrest, stating, “I know full well that I will pay the price for this testimony when I return at Israeli crossing points in my journey of return after this hearing.” Indeed, as Srour was not arrested when leaving the oPt on his way to Geneva, it is difficult to view the motivation behind Srour's arrest as anything other than a politically-motivated reprisal against Srour's activism and the UN Fact Finding Mission. Arrest and detention of UN witnesses penalizes Palestinians for cooperation with UN institutions and severely undermines the UN's capacity to

fulfill its mandate in the occupied Palestinian territory.

Indeed, using arrest as a punitive measure against an activist's advocacy missions overseas was once again highlighted that same year in 2008, when Mohammed Othman, youth coordinator of the Palestinian campaign group Stop the Wall, was arrested on 22 September at the Allenby Border Crossing. He was returning from an advocacy trip to Norway aimed at mobilizing further international support for BDS, and his trip followed the Norwegian Government's announcement that its Pension Fund had divested from Elbit Systems, an Israeli company that supplies surveillance systems for the Annexation Wall. Othman was interrogated for 61 days, subjected to sleep deprivation and other forms of ill-treatment, before being placed in administrative detention on 23 November. The use of administrative detention has been well-documented by Addameer as a form of arbitrary detention commonly used against Palestinians when there is insufficient evidence with which to charge them⁽³⁰⁾. Othman remained in prison without charge or trial until his release on 13 January 2010. Similarly, Jamal Juma', Coordinator of Stop the Wall Campaign and founder of several Palestinian civil society organizations, was arrested on 16 December 2009. He was held at Moskobbiyeh detention center in Jerusalem for 27 days, although his interrogation only lasted 8 days. He was released without charge on the same day as his colleague Mohammed Othman.

Whilst the arrest and detention of protest leaders and other prominent activists against the Wall and settlements is not a new response from the Israeli forces to the popular resistance movement, the year 2009 signaled a shift in this practice, as not only were an increasing number targeted but also increasingly charged and put

(30) For further information, see Addameer Prisoner Support and Human Rights Association, Administrative Detention in the Occupied Palestinian Territory, A Legal Analysis Report, July 2010 and Administrative Detention in the Occupied Palestinian Territory, Between Law and Practice, December 2010; both available at www.addameer.org.



on trial. This shift should be seen in the context of the increasing successes of international advocacy strategies harnessed by the popular resistance and other human rights activists, as highlighted above. The Bil'in Popular Committee itself noted a sharp rise in arrest of protest leaders and organizers following its petition at the Quebec Supreme Court, recording 41 arrests between 24 June 2009 and 7 May 2010, 14 of these were children under the age of 18⁽³¹⁾.

At the same time, the popular resistance against the Wall and settlements had gained widespread international attention and support, particularly in Bil'in and Ni'lin, where international activists, politicians and human rights advocates were taking part in the weekly protests⁽³²⁾. What is particularly worrying, however, is Israel's apparent effort from 2009 onwards to criminalize the advocacy efforts of these protest leaders through the sweeping use of Military Order 101, which will be discussed in chapter two. As a result, protest organizers in Bil'in and Nabi Saleh, among others, are the latest victims of Israel's abusive military court system, which is designed to criminalize all forms of basic freedoms—including freedom of expression and assembly—and falls far short of international fair trial standards.

(31) As cited in <http://www.bilin-village.org/english/activities-and-support/Support-Bilin-amidst-the-ongoing-Israeli-arrest-and-intimidation-campaign>.

(32) As cited in http://news.bbc.co.uk/2/hi/middle_east/7440743.stm.

1.3: PRESUMED GUILTY—AN INTRODUCTION TO THE MILITARY COURT SYSTEM

1.3.1 Inflated Charges against Palestinians and Unverified Evidence

“In court, a lawyer would argue that the content of the charge is questionable, while the prosecution would argue that each demonstration ends up in violence (they try to deny the right to protest in the first place, and assure that there is incitement to violence). Sometimes, there is no specific description for the accusation, this can simply involve a ‘threat to security’, ‘sharing in terrorist activities’, or ‘inciting violence.’” Sahar Francis, Human Rights lawyer and Addameer Director, on the nature of the charges against Palestinians arrested near the Wall

Charges against Palestinians are very often inflated and arbitrary. In the Israeli military courts, if a defendant is accused, for instance, of throwing a stone at a tank, or firing a gun a kilometer away from a soldier, he will be charged with “trying to kill.” It is up to the defendant to demonstrate that his act could not have harmed the soldier and therefore did not amount to “attempted murder.”⁽³³⁾ In cases of Palestinians arrested near the Wall, charges are regularly exaggerated and sometimes even fabricated.

At the trial stage, the military courts take the charges against Palestinians at face value, ignoring any legal requirement to demonstrate guilt or to define exactly how the charge is proportionate to the act committed. This makes it much more likely for Palestinians to be sentenced, even though the threshold of evidence is very low. Lawyer Limor Goldstein gave the following example to illustrate this:

(33) Addameer Prisoner Support and Human Rights Association, *Defending Palestinian Prisoners: A report on the status of defense lawyers in Israeli courts*, April 2009 at 26.

The evidence used against people is never verified, for instance, all the [Palestinians] who touched the microphone [at a protest in the village of Al-Ma'sara] were charged with incitement to violence—there was no mention of what they had said [and how this was incitement.] This is a very typical example.⁽³⁴⁾

Charges rely heavily, sometimes exclusively, on testimonies from the soldiers. An example is the case of Mohammed Nofal from Jayyus, a 16-year-old boy who was detained as part of a mass arrest campaign targeting youths from the village, which took place on 18 February 2009. Mohammed was accused of throwing a Molotov cocktail at the Wall. Whilst he admitted to the IOF that he did throw stones, he was nevertheless convicted of throwing the Molotov cocktail.

“In court, an officer called Jalal Maliki and three other soldiers were witnesses against me, saying that I had thrown a Molotov cocktail against them and the Wall. I had never seen them before. I was not allowed to negotiate or present my case to the Judge. The Judge said I was convicted to three months’ imprisonment and had to pay 1,000 shekels. My lawyer [...] advised me that if I tried to have a dialogue with the judge, this could double the amount of time that I would be held for. The only evidence against me was the soldiers’ words—no pictures or evidence that the Molotov cocktail had been made—and the Hebrew paper they had forced me to sign. One of my friends [...] wanted to testify in my favor, but he was not allowed. In the beginning, the judge wanted me to be jailed for 6 months. But thanks to my lawyer’s defense, this was reduced to 3 months. He could have asked the Judge for a postponement on the ruling, but said this could involve a longer sentence. The interpreter that was used asked me to say I was sorry and to promise the Judge I would never do this again and

(34) Addameer phone interview with Limor Goldstein, Lawyer who represented Mohammed Brijiah and his brother Hassan from Al Ma'sara, Tuesday 30 June 2009.

that I would behave. The lawyer agreed that I had to say that. The court told me that I would be watched for 3 years and could not participate in demonstration.” Mohammed Nofal, 16-year-old from Jayyus

Many soldiers also take photos of Palestinians during demonstrations and these photos are subsequently used in court. But often these photos simply show that an individual was at a demonstration; in other cases, they picture the individual walking in their village. In the village of Tura al-Gharbiye, where seven youths were arrested during a 20 January 2009 dawn raid, Ossaid, who at 12 was the youngest arrested that night, was shown pictures of himself by the soldiers as “proof” of him throwing stones at the Wall:

I think I was chosen by chance, but on the other hand, they had my name, and they had six photos of me. But the pictures just show me walking the street in the village. I am not sure who comes in and takes pictures of us. They are mobile pictures. Maybe people from villages elsewhere who come in their cars. Maybe from other friends’ phones.⁽³⁵⁾

(35) Addameer interview with Ossaid Jihad Jaber Qabaha.



1.3.2 Plea Bargains

“One cannot understand the importance of plea bargains—they are overwhelmingly used in courts. It is a unique thing, and I see their terrible effects. Those few cases that can follow up will do so. [...] But there are so many people confessing so most of the cases end in plea bargains. Some youngsters start by saying they have not been somewhere. But they start to break down. They are getting punished before they are even convicted.”⁽³⁶⁾ Roni Hammermann, a volunteer with MachsomWatch

Palestinians arrested are very likely to be sentenced and charged with at least one of the offenses brought against them, even when the evidence is scarce. Some Palestinians who are arrested may be released, or put in administrative detention without trial, but of those who are indicted, 99.7 percent will be convicted.⁽³⁷⁾ In 2010, out of a total of 8,516 indictments in the military courts, only 82 cases exhausted all legal proceedings, whilst the remainder was concluded through plea bargains. Twenty-five of these 82 were acquitted of all charges⁽³⁸⁾. Given the admission of confessions extracted from Palestinians under coercion, it is very difficult for a lawyer to prove their innocence, which is one main reason why the majority of cases end this way. The frequent use of coercive methods and torture to obtain confessions from detainees is contrary to international law, not least because torture is outlawed, but also because international law stipulates that those accused of a crime have protection against self-incrimination.⁽³⁹⁾ By routinely

(36) Addameer interview with Roni Hammermann, MachsomWatch.

(37) Israeli Military court 2010 annual report (in Hebrew – facts and figures extracted in English by Addameer).

(38) Ibid.

(39) Everyone has the right to silence: ICCPR, Art.14(3)(g). Article 14(3)(g) of the ICCPR recognizes the right protecting against self-incrimination. The Article provides that the accused is “not to be compelled to testify against himself or to confess guilt.” In international conflicts, «no one shall be compelled to testify against

using compulsion to obtain confessions, the Israeli authorities violate this principle, and Palestinians are coerced into admitting to charges and are then sentenced accordingly. The military courts fail to address these practices, granting the interrogators near immunity and ensuring that the use of torture and ill-treatment continues.

Moreover, many lawyers advise clients to accept a plea bargain rather than try to prove their innocence, as they will invariably be found guilty and will then find their sentence doubled. Khaled Quzmar, head of Defence for Children International-Palestine (DCI-Palestine) Sections’s Legal department, stated the reasons for this, in his experience:

One child faced charges of throwing stones, a Molotov cocktail, and being a member of a banned organization. From the documents I had available, I believed that the child was innocent, but there was “strong” [in military court terms] evidence against the child. The prosecution wanted to sentence him to 19 months. Because of the system, I tried to convince him and his family to enter into a plea bargain, and advised them of the risks of trying to pursue the case. They did not want to enter into a plea bargain and went to another lawyer to try and challenge the decision. They heard witnesses and interrogators. The court decided he was guilty anyhow. So the lawyer asked for the previous sentence of 19 months. But because they had challenged the initial decision, the judge said they would have to pay the price for this. At first, they got 27 months, and then the prosecution appealed and asked for a longer sentence. This then went up to 45 months.⁽⁴⁰⁾

The prevalence of plea bargains illustrates how military courts

himself or to confess guilt». Article 75(4)(f) of Additional Protocol I. «No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused». Article 99 of the Third Geneva Convention. In non-international conflicts, «no one shall be compelled to testify against himself or to confess guilt». Article 6(2)(f) of Additional Protocol II. (40) Interview with Khaled Quzmar, DCI lawyer.

lack the most fundamental fair trial guarantees and standards for detainee protection. The risks of challenging a sentence are further exacerbated by the demonstrated relentlessness of the prosecution to pursue cases and challenge acquittals, bail releases, or “light” sentences, despite not possessing the necessary evidence. The Military Judge regularly grants the prosecution more time to prepare its case, trump up charges or force the detainee to confess—also leaving the door open to put them in administrative detention.

1.3.3 The Difficulty of Obtaining an Acquittal—even when there is no evidence against a human rights activist

To strengthen their case or extend the detention of an activist against the Wall, the prosecution appears to use all means at its disposal.

The military prosecution may, for instance, “warm up” old charges. This happened with Mohammed Brijiah, a member of the popular committee in the village of Al-Ma’sara, whom the IOF had arrested in May 2009 while he was giving a speech to fellow protesters. His lawyer, Limor Goldstein, stated that the prosecution did everything it could to extend his detention, from randomly reintroducing old charges to delaying his trial hearing. Even while two judges ruled that he should be released, the prosecution managed to significantly extend his time in detention. Indeed, while the first judge ordered that five detainees from the village should be released, the prosecution appealed and all were kept in prison until the appeal was heard:

Four of them were meant to be released after the Judges’ hearing, and yet they were kept in prison until the charges were heard. They [the prosecution] would file for indictment, and then postpone the

hearing. At the court of appeal, the judge refused to hear the case as he said it should go to the court of first instance/indictment. They had to ask for a review, as they did not want Mohammed being released. The Judge then decided they had to make a new request as they had used the wrong appeal procedures.

The prosecution opened an old case against him, trying to extend his detention for as long as possible. They also tried to make out that a police administration error was actually an offense on his part:

Another ludicrous charge the prosecution made against Mohammed was to charge him for using a false Identification Document. The prosecution said that he gave his cousin’s ID to the police, when in fact he gave his own (his name is written down) but the police officer inserted the wrong ID number (as they have the same last name). The charges were ludicrous as it was very clear it was a police mistake, but they used this as a basis for extending the arrest. At the second court of appeal, we managed to get him released but there is an ongoing court case. He will be acquitted eventually.⁽⁴¹⁾

Mohammed Brijiah had been arrested and harassed before because of his engagement in the anti-Wall demonstrations. His prominent role as public speaker at the demonstrations, as well as his political status indicated his influence. He had been arrested twice before, and harassed at his home:

Three times during the night, they came and attacked my house, took out my brothers and nieces during the night, and my children, including my 1-year-old daughter. They made my family stand outside for 3-4 hours. They damaged the furniture, told me to get dressed and that they would take me to prison. I was arrested

(41) Phone conversation with Limor Goldstein.

twice in total (first in November 2007 and then in December 2008). They brought me to a court and then released me. [...] I stayed one week, but the arrest was because of the demonstration. They told me not to participate in the demonstration. [...] The accusation was that I beat a soldier, but the video clearly shows that I did nothing like this.⁽⁴²⁾

The charges against protesters, who are exercising their right to self-determination and right to freedom of expression and assembly, are not just inflated, but are sometimes fabricated and utilized to prevent an activist from participating in, and in these cases, from leading the demonstrations. The adaptability and creativity that the villages' popular committees have shown, in appointing new actors to lead the protests, as well as in the parallel campaigns they are running, demonstrates that this policy's objective has failed. That is not to deny, however, the unnecessary harm caused to those detained and their families.

CHAPTER 2: A SHIFT IN STRATEGY—MILITARY ORDER 101 AND THE INCREASING ARREST AND DETENTION OF HUMAN RIGHTS DEFENDERS AND CHILDREN

This section will examine primarily Israel's policy of arrest and detention of Palestinian activists against the Wall and its use of Military Order 101 to criminalize their actions, a policy that in recent years has increasingly led to activists being put on trial and sentenced. However, it is important to highlight that this has been one tool of repression of activists; ever since the popular resistance movement against the Wall and settlements began, Palestinians have been subjected to a number of measures aimed at stemming the protests, restricting movement, and collectively punishing villages

(42) Addameer interview with Mohammed Brijiah.

that are active in the popular resistance, as has been demonstrated in the previous section.

2.1: MILITARY ORDER 101—A TOOL OF APARTHEID

2.1.1 Overview of Military Order 101

A closer examination of Military Order 101 shows that it represents one crucial tool in Israel's wider apartheid regime imposed on the Palestinian people. As already described, Palestinians in the West Bank are subjected to numerous military regulations that restrict their movement and prohibit them from using particular roads or accessing certain areas, including their own farmland. The Wall itself is widely believed to represent a symbol of apartheid, due to the impact its construction has in terms of increasing territorial fragmentation and creating Bantustan-type ghettos, which completely cut Palestinian villages off from their livelihoods and their neighbors, as well as basic services such as education and healthcare. The repression and discrimination against one racial or ethnic group that is inherent in the act of apartheid can be witnessed also with the increasing use of military regulations, including Military Order 101, against the Palestinian people.

Since the Israeli occupation of Palestinian territory in 1967, an estimated 800,000 Palestinians have been detained under Israeli military orders, which constitutes approximately 20 percent of the total Palestinian population in the oPt, and as much as 40 percent of the total male Palestinian population.⁽⁴³⁾ Today, more than 1,650 wide-ranging military orders govern the West Bank that, along with the military courts that enforce them, criminalize political activities

(43) John Dugard, Human Rights Situation in Palestine and Other Occupied Arab Territories: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian territories occupied since 1967, A/HRC/7/17, 21 January 2008.



that form the very foundation of Palestinian civil society. Military Proclamation 2 of 1967 vests all legislative, executive and judicial authority for the West Bank to the military commander, who as such has full oversight of Military Order 1651, a consolidated version of a number of historical orders, essentially forming the penal code for security offenses in the West Bank.

The legality of demonstrations in the West Bank are regulated by the “Order Regarding Prohibition of Incitement and Hostile Propaganda Actions” (Order 101) from 1967. This order imposes extreme restrictions on the right of Palestinians to organize or attend demonstrations. The order prohibits any assembly, vigil, procession, or publication relating to “a political matter or one liable to be interpreted as political” yet does not define such content. This leaves an unjustifiably broad scope for interpretation that is clearly not compatible with freedom of expression.

According to the order, any assembly, vigil or procession of ten or more persons requires a permit from the commander of the military forces in the area, if the gathering is intended for the purpose of “a political matter or one liable to be interpreted as political, or to discuss such a matter,” or “for a political goal or for a matter liable to be interpreted as political.” Crucially, these provisions apply to any gathering—both in the public realm and in the private realm, including in a person’s home. The military commander may in fact order the closure of any place where a public gathering is taking place⁽⁴⁴⁾. This clause renders the order simultaneously draconian and absurd. It effectively conceptualizes all Palestinian gatherings as criminal; under this order a family may not express private views in their own home if they number ten people.

(44) B’Tselem, *The Right to Demonstrate in the Occupied Territories*, July 2010, at 8-9.

Worryingly, the order also permits the military commander to delegate his or her powers under the order to any member of the security forces. In this way any soldier serving in the oPt may be empowered to prohibit gatherings and publications and to close public places for such periods as he or she establishes. Granting such sweeping powers to juniors shows gross disrespect for the rights of Palestinians, and for the protection of their freedoms, particularly freedom of assembly and expression⁽⁴⁵⁾.

Under the category of “Incitement,” the order prohibits any person from attempting “to influence public opinion in the Area in a manner liable to impair public well-being or the public order.” The order also prohibits the intention to do so, or to facilitate the execution of such an action. The order further prohibits any activity in public that shows identification with, or support for, “hostile organizations or unlawful associations”, as these are defined in military law. Typically, human rights defenders detained by Israel have been charged with incitement⁽⁴⁶⁾, throwing stones⁽⁴⁷⁾, and participating in demonstrations without a permit⁽⁴⁸⁾.

The practical effect of the military orders and charges brought before the military courts is intimidation of Palestinian residents in the oPt against the enjoyment of fundamental human rights, in particular to

(45) Ibid.

(46) Article 7(A) of Military Order 101 defines the offense of incitement as “an attempt, whether verbally or otherwise, to influence public opinion... in a way that may disturb the public peace or public order”. The maximum penalty for incitement is ten years.

(47) Article A 212 (a) (1-3) Military Order 1651. The maximum sentence for this offense is ten years if thrown at a person or property, and twenty years if thrown at a moving vehicle.

(48) Article 3 of Military Order 101. Organization and involvement in gatherings of ten or more people – whether violent or not – is considered an offense under military law, the maximum sentence for which is 10 years.



freedom of expression and peaceful assembly. The constant threat engendered by the Israeli military justice system is reinforced by its sweeping regulations and restrictions, which are utilized by Israeli forces and continue even after human rights defenders are released from Israeli detention.

2.1.2 Treatment of Israeli and International Activists

In theory, anyone arrested in the occupied Palestinian territory can be arrested and tried under Israeli military orders. Under the military orders, individuals can be held for the purposes of interrogation without charge for periods of up to 90 days on the authority of a military court judge.⁽⁴⁹⁾

However, Israeli and international activists who attend the demonstrations against the Wall, and who often participate in such actions, are rarely, if ever, charged under military orders. Although such activists are frequently arrested alongside their Palestinian counterparts, they receive fundamentally different treatment almost immediately thereafter.

Israeli and international activists tend to be arrested on similar grounds as Palestinian protestors, with charges that can range from “breaching an order against entering a closed military zone,

(49) Prior to August 2012, according to Israeli military regulations, a person arrested in the Occupied Palestinian Territory could be held for up to 8 days before being brought before a judge, and a further 180 days (90 days by judicial order and another 90 days by request from the Chief Area Legal Advisor and order from the military appeals court judge) before being charged. As of August 2012, Military Order 1685, the 16th amendment to Military Order 1651, states that Palestinian detainees must be brought before a judge within four days of their arrest, which can be extended in certain circumstances, and that Palestinians can be held without charge for interrogation periods for a total of 90 days

to rioting, to obstructing a public worker or a police officer, or to carrying out an assault on a police officer”, or even “throwing stones.”⁽⁵⁰⁾

However, unlike Palestinians, it is common for Israeli and international protestors to be released within a few hours of their arrest; they may or may not face charges within the following weeks or months. They may have to pay a fine or money for bail, which can range from 1,000 to 10,000 shekels, provided that they agree not to return to the West Bank for a certain amount of time. This period of time can range from a few weeks to a few months, but rarely exceeds one month.⁽⁵¹⁾ The travel ban period is often left at the discretion of the judge. Israeli citizens in particular will often only be given a warning, or on rare occasions, be charged in the Israeli civil courts with being in a military zone, an offense that is usually punishable by fine or suspended sentence for a first offense.

In the rare cases where they are detained for longer periods, Israeli and international activists can be held in custody for only a maximum of 24 hours under Israeli domestic law before being brought before a judge.⁽⁵²⁾ Palestinians subject to military orders, by contrast, can be held for up to four days⁽⁵³⁾ before being brought before a judge;

(50) Their arrest can often also be very arbitrary, and the reasons they are given for them are also contentious. From the testimonies we received from Palestinians, Israelis and internationals, the latter two – as well as members of the popular committees – are never involved in stone throwing, yet this charge is often meted out at them after their arrest. More recently, protestors have been able to disprove these charges by bringing video evidence to trials, if and when they take place. The targeting of those with photo or video cameras, as well as the press, who are then told they were arrested for being in a closed military zone, seems to be used as a means of preventing them from accessing the protests themselves, and therefore preventing them from acting as a witness.

(51) The longest period Addameer is aware of is 6 months.

(52) Addameer Prisoner Support and Human Rights Association, *Defending Palestinian Prisoners: A report on the status of defense lawyers in Israeli courts*, April 2008.

(53) Between April and June 2002, during Israel’s mass arrest campaign in the oPt, this period of time was increased by the Israeli Military Order 1500 to 18 days.



during this period, they will likely not even be informed of the reason for their detention. Jonathan Pollak, an Israeli activist and spokesperson for the Popular Struggle Co-ordination Committee, describes the arrest procedures as follows:

I have been arrested dozens of times—I've lost count now. As an Israeli, the consequences are much less severe than for a Palestinian. In theory, I could also be prosecuted under military law, but in practice, I am always brought under the Israeli criminal system, whereas Palestinians who are arrested are always tried under the military courts. After arrest, I have always been brought under a magistrate court in 24 hours—as per the legal requirements. Palestinians, on the other hand, can be held for eight days without trial and then will be brought in front of a judge.⁽⁵⁴⁾

The IOF also appear reluctant to press charges against non-Palestinians, given that the latter can access much higher standards of justice through the civil courts. The civil system upholds that the onus to prove guilt lies with the prosecution and not the defense, and they must respect fair trial procedures, at least in contrast to the military system.⁽⁵⁵⁾ This will invariably cost the IOF more resources

(54) Addameer interview with Jonathan Pollak, June 14, 2009. Since the date of this interview, Jonathan Pollak was convicted in the Israeli civil courts of illegal assembly in connection with his participation in a mass bike ride against the siege on Gaza in January 2008. He was sentenced to three months imprisonment, beginning 31 January 2011. However he was released on 25 February. Since this interview the period of time that a Palestinian can be held before being brought before a judge has been reduced from eight days to four days.

(55) A recent report by the human rights organization Adalah, entitled Prohibited Protest, documents and analyzes the manner in which the Israeli law enforcement agencies responded to protests, within Israel, against the military invasion of Gaza in December 2008 and January 2009. The report evidences how the courts colluded with the police, the State Prosecutor's Office, the Shabak and other institutions to detain protesters and thus suppress demonstrations against the military operations, thus also violating demonstrators' rights. The full report in Hebrew and an executive summary in English are available on

and time. According to Neta Golan, an Israeli activist living in the West Bank:

In a civil court, where Israelis are tried, they have to prove guilt. They bring in witnesses, commanders, and police officers... I had a court case going on for 4 or 5 years! I was only convicted in November 2006. They really didn't want to pursue the case, and they kept trying to offer me alternatives if I just admitted I was guilty. This is the only time that charges were pressed against me, and they really didn't want to have to do it. It takes a lot of resources and time.⁽⁵⁶⁾

To date, there have been no reported cases of an Israeli or international activist against the Wall and settlements serving more than a week in prison,⁽⁵⁷⁾ or being placed in administrative detention.

Addameer finds that Israeli authorities choose not to prosecute non-Palestinians in the military court system under an awareness that its procedures would not bear up to close international scrutiny. Too much attention to these courts' military procedures would only reduce the IOF's power to arrest and detain West Bank Palestinians, given the protections foreigners and Israelis possess because of their extra-territoriality and respective governments.

Offenses under Military Order 101 can carry a maximum sentence of 10 years in prison. By way of comparison: the penalty for a prohibited Adalah's website <http://www.adalah.org/eng/>.

(56) Addameer interview with International Solidarity Movement (ISM) activist and advisor Neta Golan, 28 June 2009. In the case above, Neta Golan was eventually convicted of a minor offense relating to the disruption of public order, and was made to see a probation officer for a period.

(57) Eran Nissim served six days at Abu Kabir detention facility. Kobi Snitz, an activist with Anarchists Against the Wall, was sentenced to 20 days in prison in September 2009 but this was after he tried to prevent a Palestinian home from being demolished by the Israeli army in 2004, and was not connected with the Wall.

gathering in Israeli law is one year's imprisonment, without a fine.⁽⁵⁸⁾ Although Palestinians have in the past been accused of offenses such as those listed under Military Order 101, for instance during the First Intifada, from the Oslo Accords until 2009/10 there were very few such cases⁽⁵⁹⁾. An attempt to renew the use of Military Order 101 at the beginning of 2009, with the indictment of Ahmad Hassan Khalil 'Awad from Budrus, who at the time was in administrative detention and accused of organizing illegal demonstrations in his village, was dropped due to lack of sufficient evidence⁽⁶⁰⁾. However, this was not to be the only attempt in the coming months and years to use Military Order 101 to indict protest organizers, and later efforts by Israeli Occupying Forces would prove increasingly and worryingly successful.

2.2: HUMAN RIGHTS DEFENDERS ON TRIAL—CASE STUDIES OF THE USE OF MILITARY ORDER 101

The following provides examples of how the military court system has increasingly been used by the Israeli forces in their efforts to dismantle the popular resistance and ensure its leaders remain out of action. At the same time, the arrest and detention of children from the villages active against the Wall and settlements has increased, and as shall be demonstrated below, this is also part and parcel of this strategy to target human rights defenders in those villages. Whilst children may not be sentenced to long terms of imprisonment, the use of abusive interrogation methods and coerced confessions is a key tactic in allowing the Israeli forces to pursue the protest organizers. Furthermore, the targeting of those taking part in protests does not end with arrest and trial, with examples given below demonstrating how suspended sentences,

(58) See http://www.btselem.org/demonstrations/military_order_101

(59) B'tselem, *The Right to Demonstrate in the Occupied Territories*, July 2010, at 2

(60) Ibid.

restrictions on movement and inflated bail charges are also used to stem the activities of the popular resistance.

It is clear from the examples given above that the Israeli forces have been attempting to prosecute Palestinian activists for years, on trumped-up charges ranging from throwing stones to incitement and organizing illegal demonstrations. However, as recent cases in Bil'in and Nabi Saleh show, the IOF is successful in its efforts, as protest organizers are being systematically targeted and facing longer prison sentences, owed largely to a biased and politicized military court system which falls well below fair trial standards. The imprisonment of protest organizers has provoked wider international condemnation, with EU officials recognizing Abdallah Abu Rahma and Bassem Tamimi as human rights defenders and demanding their release⁽⁶¹⁾. The villages of Bil'in and Nabi Saleh, where these human rights defenders are from respectively, provide concrete examples of this systematic policy, and thus will be highlighted below.

2.2.1 Bil'in

The fact is that the Apartheid Wall and the settlements built on Palestinian land are illegal under international law, in the case of our village even the biased Israeli court declared the route illegal, yet Israel is prosecuting us as criminals because we struggle non-violently for our freedom, Abdullah Abu Rahma,

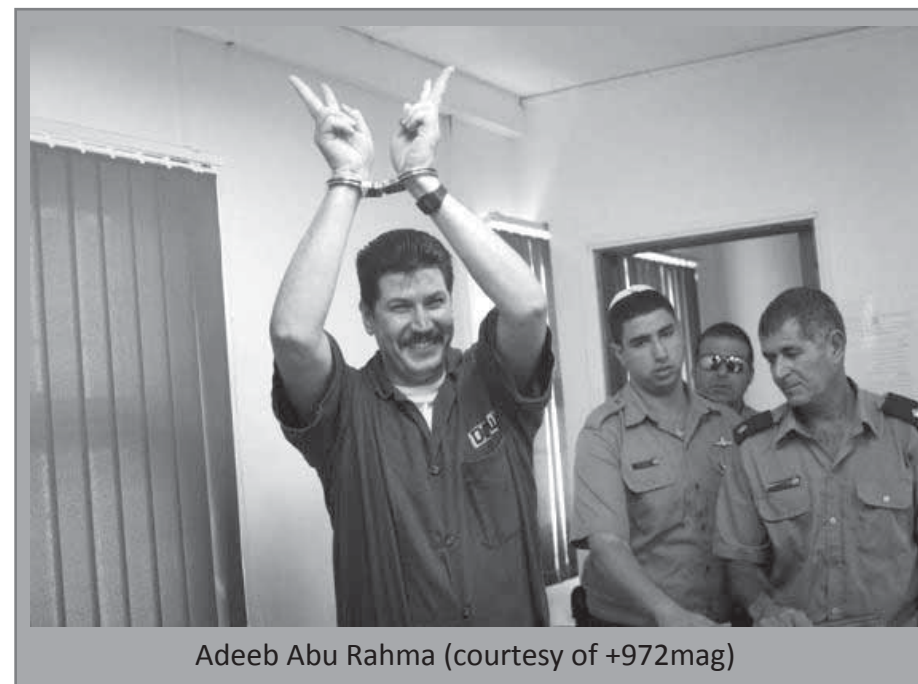
(61) Statement by the Spokesperson for the High Representative of the Union for Foreign Affairs and Security Policy on the conviction of human rights defender Abdallah Abu Rahma, 24 August 2010; available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/116232.pdf; Statement by the Permanent Representative of Hungary on behalf of the European Union to the 17th Session of the United Nations Human Rights Council, 30 May to 17 June 2011, in which the EU expressed its concern over the ongoing detention of human rights defender Bassem Tamimi. Available at: http://www.eeas.europa.eu/delegations/westbank/documents/news/20110614_hr-c17eu_statementitem7_en.pdf.

Coordinator of the Popular Committee against the Wall (62).

As mentioned in Chapter 1 of this report, in addition to launching weekly demonstrations, involving Israeli and international as well as Palestinian activists, the popular resistance of Bil'in was also engaged in boycott campaigns and legal challenges against the construction of the Wall. There was a lull in the arrest of protesters between 2007 and June 2009. However, arrests started to increase again in June 2009, at the same time as a major court case, Bil'in vs. Green Park, was getting underway in Canada, as discussed in more detail in Section 1 of the previous Chapter.

Twelve youths were arrested in a series of night raids from the 23 June to the 7 July, of which nine were under 18 years of age.⁽⁶²⁾ Following these arrests, at least three prominent human rights defenders from Bil'in—Adeeb Abu Rahma, Mohammed Khatib and Abdallah Abu Rahma—were arrested. Although this was not the first time for some of them to be detained, the charges brought against them signaled a shift in tactics, in which Israeli military regulations were pitted against the lawful and peaceful activities of the protest organizers, often leading to conviction and imprisonment.

(62) Names and details are available online at <http://www.bilin-village.org/english/activities-and-support/Support-Bilin-amidst-the-ongoing-Israeli-arrest-and-intimidation-campaign>.



Adeeb Abu Rahma (courtesy of +972mag)

Adeeb Abu Rahma, a prominent member of the Bil'in Popular Committee, was the first Palestinian to be sentenced on charges of incitement in accordance with Military Order 101. He was arrested on 10 July 2009 and charged with incitement, activity against public order and being present in a closed military zone. Further arrests of protest organizers in the village shortly followed, and should be seen in the context of Bil'in's activism and legal challenges against the Wall at the time. Not long after his return from testifying in a Canadian court following the petition made by Bil'in Village Council against the Canadian corporation Green Park International, Mohammed Khatib, co-coordinator of the Popular Struggle Co-ordination Committee, was arrested on the night of 3 August 2009, along with three youths and two American and Israeli

activists. Like Adeeb Abu Rahma, Mohammed Khatib was charged with incitement and calling on the youth to throw stones. He was also charged with throwing stones, and the prosecution presented a photo to support this allegation. However, this charge was proved false and later dropped, when his lawyer demonstrated that on the day the photo was supposedly shot, Mohammed had been in Canada, testifying in Court for the case Bil'in Village Council vs. Green Park International. The charges against all three activists were based on the forced confessions of minors who had been arrested in the night raids conducted between 23 June and 7 July 2009. Whilst Adeeb was sentenced to one year in prison on 30 June 2010—a sentence that was subsequently extended following an appeal by the Prosecution—Mohammed Khatib was acquitted of all remaining charges in January 2011. Nevertheless, in August 2010, Khatib was prevented from traveling to Spain for some speaking engagements when he tried to cross the border at Allenby. He was told by Israeli authorities at the crossing that he was not able to travel further due to “security reasons”. Adeeb was finally released on 12 December 2010 after serving an 18-month sentence.



Abdallah Abu Rahma, courtesy of frontlinedefenders.org

Abdallah Abu Rahma, Head of the Bil'in Popular Committee, was arrested from his home at 2:00 am on 10 December 2009 following weeks of harassment by the Israeli forces in which his home was raided and his family held in one room, and surveillance points and checkpoints were set up around the village. Abdallah was charged with incitement, throwing stones⁽⁶³⁾, possession of arms⁽⁶⁴⁾ and organizing and participating in demonstrations without a permit.

(63) The military prosecution alleged that between the “second half of 2008” and his arrest, Abdallah threw stones in the direction of a person or property with the intention of harming persons or property.

(64) Article 53(A)(2) of Military Order 378, which now appears in Article E, 230 (A) in Military Order 1651. The definition of “arms” includes a firearm, ammunition, grenade, or any object that might cause death or disability and any piece or part of those mentioned. “Arms” therefore include objects such as metal pipes or the lens of a pair of binoculars that could potentially be attached to a rifle. The burden of proof is on the accused to prove that the instrument could not cause death or disability. Whether the accused had any intention of causing such death or injury is irrelevant. The maximum sentence for possession of arms is life imprisonment.



Under the charge of incitement, Abdallah was accused of “attempting to influence public opinion” between 2005 and 2009 through his membership in the Bil’in Popular Committee, his instrumental role in organizing and leading Friday demonstrations against the Wall and his distribution of Palestinian flags (an act considered a security offense under military law). The charge sheet also listed allegations that he “incit[ed] the public to harm security personnel”, by telling demonstrators not to “allow them [Israeli soldiers] to shoot at you” and by directing demonstrators to throw stones “in the direction of security personnel” and cut the wires forming part of the Wall installed by security forces. Under the arms possession charge, Israeli authorities accused Abdallah of collecting empty M16 cartridges and empty sound bomb canisters and teargas grenades, which had been used by Israeli soldiers to disperse demonstrators, and exhibiting them in a Bil’in museum. On 18 January 2010, the Military Prosecution amended the indictment to an additional charge of organizing and participating in a procession without a permit, but in relation to alleged activities in Ni’lin, not in his home village of Bil’in.

On 21 July 2010, Abdallah’s first trial reached conclusion. He was then convicted of two charges of conducting “activities against the public order” and “obstructing a soldier in the line of duty”, both related to his legitimate activity of organizing and participating in popular activities against the Wall. On 24 August 2010, Abdallah was convicted of incitement and organizing illegal demonstrations after an eight month long military trial, during which he was kept behind bars. He was acquitted of the stone-throwing charge and arms-possession charge. On 11 October 2010, Abdallah was sentenced to 12 months imprisonment. He was expected to be released on 18 November; however, the military prosecution appealed against his release, demanding a harsher sentence. On 22 November, Israel’s Military Court of Appeal extended his detention period past the

term of his sentence pending a decision on the military prosecution’s appeal. The Military Court of Appeals heard the prosecution’s appeal on 8 December 2010 and on 11 January ruled to increase Abdallah’s sentence to 16 months’ imprisonment, in addition to a six-month suspended sentence for three years and a 5,000 shekel fine. Abdallah was finally released on 14 March 2011.

In 2011, the IOF made clear that it has not ended its targeting of protest leaders, with the arrest of Ashraf Abu Rahma on 21 October. He was charged with stone-throwing and participating in illegal demonstrations, and sentenced to six months imprisonment. Ashraf is the brother of Bassem Abu Rahma, who was killed by a tear gas canister shot directly at him during a peaceful protest in April 2009, and the sister of Jawaher Abu Rahma, who died from tear gas inhalation following a demonstration on 31 December 2010. Ashraf was released on 15 April 2012.

2.2.2 Nabi Saleh

The IOF’s policy of arrest and detention of key human rights activists is also currently being played out in the village of Nabi Saleh, whose popular resistance movement has only been active in regular demonstrations since January 2010. As of December 2011, at least 80 residents of Nabi Saleh had already been arrested by the IOF. Of those arrested, 30 were children under the age of 18, including 9 under the age of 16, and 6 were women. This includes the arrest of the 14-year-old boy, Islam Dar Ayyoub, and Nariman Tamimi, the wife of one of Nabi Saleh’s protest organizers, Bassem Tamimi. In addition to targeting leaders and making arrests during the weekly demonstrations, the IOF has also begun to take pictures of all the residents of the village during night raids of their homes, in what many believe is a campaign to continue identifying new targets for arrest.



Bassem Tamimi, courtesy of Tamimi Press

Bassem Tamimi, Coordinator of the Nabi Saleh Popular Resistance, was arrested on 24 March 2011 at 12:00 pm from his home in Nabi Saleh. Bassem's arrest came three weeks after the 6 March arrest of his cousin, Naji Tamimi, another leader of Nabi Saleh's popular resistance. Naji has since been sentenced to one year imprisonment, a two year suspended sentence and a fine of 10,000 shekels (\$2,914) after agreeing to a plea bargain that convicted him of incitement and support of a hostile organization, in reference to the Prosecution's claim that he organized violent demonstrations and instructed youths to throw stones, amounting to a disturbance of the public order. The same night that Naji was arrested, soldiers had come searching for Bassem in his home and destroyed much of its contents when they did not find him there. Bassem has since been charged with incitement, organizing unauthorized marches, solicitation to throw stones, failure to report for questioning, and an excessive obstruction of justice charge for allegedly advising youth on how to act when under Israeli police interrogation. A military judge further ordered Bassem to be kept in remand until the end of legal proceedings, and a motion by his lawyer to have him released whilst the trial was ongoing was rejected by the Court on 11 October 2011. The indictments against Bassem and Naji are largely based on coerced confessions of two minors, aged 14 and 15. The two youths were arrested in the middle of the night at gunpoint, beaten by soldiers, and denied legal rights during interrogation. In the case of the 14-year-old⁽⁶⁵⁾, his statement, which incriminated Bassem and Naji, was presented to him written in Hebrew, forcing him to sign a piece

(65) Islam Dar Ayyoub, whose case is highlighted in the following section.

of paper he could not read nor understand.

Bassem was released on bail on 24 April after over 13 months detention. On 20 May, he was acquitted of one central charge against him, incitement, but convicted of organizing and participating in illegal marches and soliciting stone-throwing. On 29 May, he was sentenced to 13 months imprisonment, which was already served. Upon receiving his sentence, Bassem reportedly said, "The military court, being an instrument of occupation, sent a clear message today that Palestinian political prisoners are better off confessing to what they have not done than go to trial. I was acquitted of the bulk of the indictment against me, but served more time than my friend who chose to plead guilty to all the charges in a plea-bargain. Had I confessed to what I was not convicted of, I could have returned to my family earlier." Bassem also received a 17-month suspended sentence, designed to further repress any political activity.

Bassem's wife Nariman Tamimi, along with two of her cousins Manal and Maha, were arrested on 22 January 2010, not long after the demonstrations against the Wall began in Nabi Saleh, when Manal refused the orders of the Israeli forces to take her children back into their tear gas-filled house. Soldiers ripped off their headscarves and beat them, and Manal and Nariman were denied food, water or sleep for over 30 hours whilst they were held in detention. Manal and Nariman were held for 9 days before being released on bail. The charges against Manal and Nariman changed four times during their trial, but they were ultimately convicted of "obstructing a soldier from fulfilling his duties". They were then sentenced to three and two months probation respectively with a three-year suspended sentence, prohibited from participating in demonstrations, and fined 5,000 shekels each.

2.2.3 Other Villages Targeted



Although Bil'in and Nabi Saleh provide clear and recent examples of what appears to be a new policy by the IOF to detain protest organizers according to Military Order 101, most members of the popular resistance in other villages have had similar experiences of repression in terms of arrest, detention and movement restrictions, as well as regular use of non-lethal weaponry in weekly demonstrations.

In January 2010, thirteen members of the Ni'lin Popular Resistance were arrested and charged with organizing and participating in unauthorized demonstrations, incitement and stone-throwing⁽⁶⁶⁾. Among them was 20-year-old Ibrahim Srour, who was imprisoned for nearly two years and whose release on 2 October 2011 was dependent on the payment of a 12,000 shekel (\$3,250) fine. Others included Ibrahim Amireh, Hassan Mousa and Zaydoun Srour, who were each sentenced to almost a year in prison and a 9,000 shekel (\$2,330) fine.

In 2011 and the beginning of 2012, other villages continued to be targeted. Alongside Nabi Saleh, the village of Beit Ummar near Hebron witnessed some of the highest number of detentions of activists in 2011, with at least 55 recorded arrests during night raids or following demonstrations⁽⁶⁷⁾. This includes the arrest of protest organizer Majde Za'ariq on 20 August following a peaceful march to the settlement of Karmi Tsur. Seven participants were arrested, some of them international and Israeli solidarity activists, but only Majde remained in detention. He was charged with stone-throwing and held for four months, in addition to a 5,500 shekel (\$1,500) bail charge.

Kufr Qaddum, a small Palestinian village near the illegal Israeli

(66) B'tselem notes that the charges were vague and included a series of alternative options i.e. 'Organized a procession, assembly or vigil without a permit or urged or incited or encouraged the holding thereof or in any matter took part therein (emphasis added by B'tselem); B'tselem, *The Right to Demonstrate in the Occupied Territories*, July 2010, at 9.

(67) Addameer documentation of arrests of human rights activists, 2011.

settlement of Kdumim in the northern West Bank, on 12 July 2012 marked the second anniversary of the village's first weekly demonstration protesting the settlement expansion and theft of their land by Israel. Violent incidents show an increasing crackdown on the village's peaceful resistance activities by the IOF. On 5 April 2012, 20 protesters were arrested during a night raid on the village. Around 12 houses were targeted, and those arrested ranged in ages 16-38.⁽⁶⁸⁾ Two weeks prior, on 16 March, Israeli soldiers released an attack dog on Ahmad Shtawi, an unarmed Palestinian protester in the village. He was subsequently arrested, although he was bleeding and in need of medical attention. When a member of the village's Popular Committee tried to convince the commanding officer to release the wounded man, he was thrown to the ground, pepper-sprayed and arrested.⁽⁶⁹⁾

2.3: THE ARRESTS OF CHILDREN AND YOUTH

"Israeli children will go to Europe and picnic for their summer holidays. Palestinian children will go to jail." Said Yaqin Toura from Biddu

Children aged 12 and above are amongst the main targets for the Israeli forces when it comes to arrests, and recently this trend has increased in villages that are active in demonstrations against the Wall and settlements. Military Order 1651 establishes the criminal age of responsibility for Palestinians as 12. Since the Second Intifada began in September 2000, at least 8,000 children have been arrested⁽⁷⁰⁾, and there are currently about 238 Palestinian children

(68) As cited in <http://popularstruggle.org/content/israeli-soldiers-pillage-home-and-arrest-20-pre-dawn-raid-kufer-qaddoum>, accessed on 27 September 2012.

(69) As cited in <http://popularstruggle.org/content/arrest-protester-bitten-army-dog-extended-military-court>, accessed on 27 September 2012.

(70) Defence for Children International, Palestine Section: Bound, Blindfolded and Convicted: Children held in military detention, May 2012; <http://www.dci-palestine.org/sites/>



held in Israeli Prisons.⁽⁷¹⁾ Children living in villages near the Wall, or in communities living near the settlements, are most vulnerable to this practice; they are easy targets for the Israeli Occupying Forces to exert pressure on the entire village and, in recent incidents, to force them to incriminate other children or protest leaders taking part in the weekly demonstrations. Although minors are not typically regarded by the international community as human rights defenders, in the oPt they often represent the highest numbers regularly participating in demonstrations. Children may be arrested for a variety of reasons, but the most common charge against them is of stone throwing⁽⁷²⁾, and the majority of arrests occur either near the Wall or near the settlements.⁽⁷³⁾

On 27 September 2011, the Israeli military commander of the West Bank issued Military Order 1676 to raise the age of majority of Palestinian children in the military court system from 16 to 18. Although this amendment brings the treatment of Palestinian child detainees on some equal footing with that of Israeli child detainees subject to the Israeli Youth Law, it still leaves room for continuing discrimination and denial of basic legal standards pertaining to the protection of juvenile detainees. Palestinian minors over the age of 16 can still be held in detention with adults, a provision that does not exist in Israeli criminal law. Furthermore, while Israeli children have the right to have a parent present during interrogation, and the interrogators must ensure there is an audio or a video recording of the interrogation, such safeguards are not provided to Palestinian child detainees. Although Military Order 1676 includes a requirement to immediately notify the child's parents upon his or her arrest and interrogation, it also gives the interrogators

[default/files/report_0.pdf](#).

(71) Addameer, June 2013; <http://www.addameer.org/etemplate.php?id=618>.

(72) DCI, June 2009; <http://www.dci-pal.org/english/publ/research/CPReport.pdf>

(73) Ibid.

many loopholes to avoid this requirement.⁽⁷⁴⁾ Furthermore, the amendment requires interrogators to inform minors of their right to an attorney, but states that they will only notify an attorney “whose particulars were provided by the minor.”

Whilst the number of child detainees appeared to be falling in 2011 compared with previous years, disturbingly, the number of young children between the ages of 12 and 15 in detention appears to be increasing⁽⁷⁵⁾, with fifteen year olds reportedly making up the highest percentage of minors tried at Ofer military court⁽⁷⁶⁾. Troublingly, the number of child detainees was back on the rise in 2012.

Evidence suggests that the purpose of their arrest and detention is threefold. First, targeting the youngest and most vulnerable is intended to exert pressure on their family and the entire community to put an end to all social mobilization. Second, Israeli Security Agency officers often arrest children for recruitment purposes. Addameer has collected testimonies suggesting that children from Wall-affected communities are routinely asked to

(74) Article 136 (B) (a) of the amendment states: an officer can decide to bring a minor for interrogation without informing his/her relatives, if: he believes it would threaten the mental or physical wellbeing of the minor or any other person; doing so would affect the interrogation procedures – for instance if the parents/relatives are also suspected of the same act for which the minor has been arrested; the minor is suspected of a security offense and thus represents a threat to security.

Article 136 (B) (b) states: If 8 hours has passed since the officer's interrogation order without the presence of the parents/relatives at the interrogation, then the parents/relatives should be informed immediately, provided the minor has given the parents'/relatives' details.

Article 136 (B) (c) states: If the reasons for not informing the parents/relatives no longer exists, then they should be informed immediately unless in accordance with Articles 54 and 55 of 1651.

(75) http://www.dci-palestine.org/sites/default/files/detention_bulletin_jul_2011.pdf.

(76) No Legal Frontiers, All Guilty! Observations in the Military Juvenile Court 2010-11, July 2011.



become informants and provide information on both prominent figures involved in advocacy efforts and other children participating in demonstrations. Lastly, arrest is also used as a strategy to deter children from participating in demonstrations and from throwing stones at the Wall or other targets. However, while stone-throwing is the most common charge used against them, children are regularly arrested indiscriminately and remanded in detention with little or no evidence, with the military court often relying only on soldiers' testimonies to convict. The Israeli organization No Legal Frontiers found that between April 2010 and March 2011, of the 71 cases involving minors that it observed at Ofer military court, 100% of cases resulted in a conviction; most of the offenses related to throwing of stones or Molotov cocktails, despite the fact that in most cases it was found that nothing was actually thrown, or otherwise they did not hit a target or cause any damage⁽⁷⁷⁾. During the process of arrest and detention, children are subjected to harsh interrogation techniques and treatment, which at times has amounted to torture⁽⁷⁸⁾, and are routinely coerced into signing confessions and revealing names of participants at the protests as well as other minors from their village.

Of concern for the purposes of this report is the arrest of minors who are subjected to lengthy interrogation, where they are denied basic legal safeguards afforded to juvenile detainees in both the Israeli Youth Law and UN Minimum Rules for the Administration of Juvenile Justice, leading to a forced confession, which at times has incriminated protest leaders in their village. In some cases, the confessions of minors form the key evidence against these protest leaders, as exemplified in the trials of Bassem and Naji Tamimi

(77) No Legal Frontiers, *All Guilty! Observations in the Military Juvenile Court 2010-11*, July 2011.

(78) For further details regarding torture and ill treatment of child detainees, refer to DCI Palestine Section, *Palestinian Child Prisoners: The systematic and institutionalised ill treatment and torture of Palestinian children by Israeli authorities* (December 2008).

from Nabi Saleh, whose indictments were based on the forced confessions of two minors from that village, Islam Dar Ayyoub and Mo'atasem Tamimi⁽⁷⁹⁾ —14 and 15 years old respectively at the time of arrest. Both were denied access to a family member during lengthy interrogations that took place after they had been arrested in the middle of the night and were tired and disorientated. After Naji Tamimi was sentenced (see previous section with case study on Nabi Saleh), the trial of Bassem Tamimi was rife with setbacks, mostly due to the Prosecution's failure to bring forward adequate witnesses. When it is not relying on the forced confessions of minors, the Prosecution often brings forward local military commanders as witnesses, despite the fact that on most occasions they were not present at the scene of where the alleged offense took place. Both Islam and Mo'atasem did eventually appear as witnesses in Bassem's trial, on the 28 and 29 November respectively. Both boys claimed their statements were given under extreme pressure from their interrogators (see box on Islam Dar Ayyoub below), with Mo'atasem claiming he was beaten up and told to incriminate Bassem. During the next hearing on 14 December, the lead interrogator of Islam and Mo'atasem admitted that child rights are regularly infringed upon during interrogation. In a hearing on 8 January 2012, one of the interrogators claims his intimidation was meant as only a "joke".⁽⁸⁰⁾ Furthermore, the Prosecution often fails to enforce subpoenas for witnesses who are minors, and given that the evidence called for relates to the minors' forced confessions, it is no surprise that the minors themselves would be reluctant to appear in Court.

The prosecution of Abdallah Abu Rahma, the Coordinator of the Popular Committee in Bil'in, relied heavily on evidence from minors

(79) Mo'atasem was sentenced to six months in prison following his arrest.

(80) MachsomWatch, record of court hearing at Ofer on 8 January 2012, available at: http://www.machsomwatch.org/en/ofere_sun_8112_morning, accessed on 27 September 2012.

extracted during interrogation. The apparent refusal of one such minor, Khalil Yasin, to appear in Court to testify on more than one occasion during Abdallah's trial lead to the Prosecutor stating during that trial that they would have to use force to bring him into custody⁽⁸¹⁾. Khalil, 16 years old, was arrested on 26 June 2009 during a series of night raids by Israeli forces, which the Bil'in popular committee attributed to the public attention being given to the case against Green Park International being heard in the Canadian courts at the time. He was released and arrested again on 29 December. The statements that resulted from these arrests and interrogations incriminated protest leaders Adeeb Abu Rahma and Abdallah Abu Rahma. Khalil did testify in the case of Adeeb Abu Rahma, and was eventually brought to court for Abdallah's trial, at which point he retracted his previous statements and claimed they had been given under pressure during his interrogation, when he was denied access to food or water and had been interrogated without the presence of a family member⁽⁸²⁾.

(81) MachsomWatch, record of court hearing at Ofer on 14 April 2010, available at: http://www.machsomwatch.org/en/ofere_wed_14410_morning, accessed on 23 November 2011.

(82) MachsomWatch, record of court hearing at Ofer on 21 April 2010, available at: <http://www.machsomwatch.org/en/taxonomy/term/363?page=7>, accessed on 23 November 2011.

THE ARREST AND DETENTION OF ISLAM DAR AYYOUB



Islam Dar Ayyoub was arrested in the early hours of 23 January 2011, when the Israeli forces entered his house at 2 a.m., asking for him. He had already been arrested earlier that month and held for several hours at Halamish settlement before being released. The family's house had also been targeted twice that month for 'mapping' by the Israeli forces: an operation in which soldiers enter the house in the middle of the night, wake up its inhabitants and take photographs and ID numbers of all the men and children living there. On this occasion, Islam had thought the army had come to arrest his older brother, Omar, but instead the Israeli army forced Islam onto the ground and applied plastic handcuffs, without giving an explanation for his arrest. When his family tried to stop the soldiers, they were all beaten. Islam was blindfolded and taken by military jeep to Halamish settlement. He was without shoes and thrown to the ground and left there for several hours, all the time not knowing where he was.

At approximately 9.30am he was driven to the police station at Ma'ale Adumim settlement for interrogation, but was not informed of where he was being taken.

Whilst under interrogation at the police station Islam was threatened with electric shock treatment or attacks by dogs. Video footage of his interrogation shows Islam tired and being threatened and shouted at by three officers, leading him to break down in tears at one point. His lawyer appeared at the police station but the Head of Interrogation of Judea and Samaria gave the order not to give him access as, according to him, Islam was beginning to admit to accusations and incriminate others, and the lawyer's presence may 'compromise the interrogation'. During his interrogation Islam was not informed of his right to remain silent or of his right to seek legal counsel. It was only after approximately five hours of interrogation that he was allowed to see his lawyer who was waiting outside. By this time, he had already signed a statement in Hebrew on the understanding that if he did so his family would come and collect him and take him home. The statement, which he did not understand, incriminated Bassem and Naji Tamimi, two of the key protest



organizers from Nabi Saleh. After signing the statement iron handcuffs were applied to him and he was taken by military car to Ofer detention center. After spending 3 days at Ofer, Islam was brought before a Military Judge. He was charged with stone-throwing. Islam then spent three months in detention at Rimonim before being released and placed under house arrest at his home in Nabi Saleh on a 5,000 shekel bail and a 5,000 shekel third party guarantee (equivalent to almost \$3,000). For the first few months under house arrest, he was not allowed to go to school or leave the house, but any further restrictions such as reporting periodically to the police or being available for phone calls from them were successfully challenged by Islam's lawyer. He was eventually permitted to attend school in September.

In the trial-within-a-trial procedure, Islam's lawyer challenged the admissibility of the evidence against Islam on the grounds of not being granted access to a lawyer or family member for 5 hours, during which time he was subjected to ill treatment. At Ofer Court on 16 May, expert opinions were submitted by former Special Rapporteur on Torture, Manfred Nowak related to the treatment of child detainees in accordance with the UN Convention on Torture, and by a child psychologist who detailed the effect of detention on minors. However, these were rejected by the Military Judge in concurrence with objections made by the Prosecution on the grounds that experts must appear in court in person to testify. As a result, both experts agreed to testify before the end of Islam's trial. On 4 July, the child psychologist's expert opinion was heard by the court, during which time the military judge also asked the psychologist to comment on the video recording of Islam's interrogation. Islam's lawyer also appeared as a witness, having passed his legal duties in Court to another lawyer, and testified about the denial of access to his client for 5 hours and the condition he found Islam in when they finally met. On 9 January 2012, the military judge denied the motion to rule his confession inadmissible, commenting that though he agreed his rights were violated, he did not believe the infringement on Islam's rights would endanger his right to a fair trial.

Islam remained under house arrest for many months during his trial. He has also appeared in court as a witness in the trial of Bassem Tamimi. On 28 November 2011, he was on the witness stand for almost five hours, during which he recanted the statement he signed when he was interrogated, saying he was forced to give the confession under extreme pressure. On the same day, the Military Prosecutor also used the protocol from Islam's own ongoing trial, despite not having shared this with the Defense beforehand.

As of September 2012, Islam's trial continues. However, recent trial proceedings show a lack of interest by the prosecution to continue with his case, further revealing that the primary objective was to use Islam and other minors to incriminate the protest leaders and an intent to disregard them now that Naji and Bassem's trials have been resolved.

Whilst youths are amongst the staunchest and most proactive demonstrators, they may be perceived by the IOF as more coercible or easier to intimidate. Indeed this assumption has borne some fruit in the IOF's pursuit of the protest organizers from the villages where youths are most commonly targeted. Children have had less experience dealing with interrogators and therefore may find it harder to discern whether threats made by ISA interrogators will be carried out, or to know their basic right to remain silent—a right which is provided for in the UN Minimum Rules for the Administration of Juvenile Justice.

In the first 2 months [of the demonstrations against the Wall], they targeted the leaders, they would attack their homes and arrest them. Then they realized that the leaders were not afraid, that they knew their rights. So they went after children and others, who did not know their rights in the same way. They would ask them to become informants. The youths they arrest are mostly between the ages of 16 to 22, and are all male.⁽⁸³⁾ Abdullah Abu Rahma, Bil'in Popular Committee

Furthermore, unlike the Israeli Youth Law that applies to child detainees in Israel, Palestinian children are not granted the right to have a parent in the room during their interrogation, nor to have the proceedings recorded on video camera⁽⁸⁴⁾.

Given that there are villagers who are coerced into providing information on others, or who unknowingly confide in detainee collaborators, children are targeted to provide information on other

(83) Addameer interview with Bil'in popular committee member Abdullah Abu Rahma, June 10, 2009.

(84) The Israeli Youth Law 2008 reflects the provisions of the International Convention on the Rights of the Child and Israel's own Basic Law, and is aimed at providing added safeguards to minors suspected of an offense, taking into account their underdeveloped capacities and the overriding principle of protecting the welfare of the child.



children as well as on leaders. Whether these children or adults are actually involved in prohibited activities (as defined by military order) or not, is a separate matter. Many may get onto a “wanted list” simply by having their name mentioned by another detainee.

Whilst the mass arrest of children by Israeli forces could be considered a strategy of deterrence—to set an example and stop other children from engaging in stone-throwing or demonstrations—testimonies collected by Addameer suggest that the opposite is true. The arrest of children, and indeed their parents, confirms to them that there are few avenues for resistance to the Occupation, and little hope of justice once they are arrested. This serves to harden children and minors on their release, making them more determined to continue in their resistance.

CHAPTER 3: CONCLUSIONS AND RECOMMENDATIONS

3.1 CONCLUSIONS

International law is clear and unequivocal on the importance of due process and fair trials. The International Court of Justice (ICJ) ruling found the Wall and ‘its associated regime’ to be illegal under international law, and the military court system is a key element sustaining this illegal regime. Military courts, which international law considers acceptable only as a ‘temporary’ judicial resort where absolutely necessary, has become a permanent facet of the Israeli occupation, and clearly serves the strategic interests of what is widely believed to be an apartheid regime. By law, Palestinians have a legitimate right to self-determination and the right to exercise their civil, political and cultural rights. The military courts consistently fail to challenge the military’s indiscriminate and punitive arrests of Palestinian protesters against the Wall. On the contrary, it provides

the occupying army with a façade of “legal” legitimacy, while denying Palestinians’ a fair and impartial trial, and expanding the types of charges that can be considered as criminal.

International law requires military courts in occupied territories to operate in a “non-political” manner.⁽⁸⁵⁾ Yet they enforce the military orders that govern the West Bank, criminalizing political activities that form the very foundation of Palestinian civil society in clear violation of international law.

In reaction to this, the Popular Committees, supported by activists and human rights groups, are finding innovative ways of proving their innocence in court, to the extent that, in some rare cases, Judges have ruled that their cases should have never been brought to trial at all.⁽⁸⁶⁾ Yet the ongoing trials of leading Palestinian human rights defenders, and their bail conditions, prevent or seriously reduce their ability to carry on with their human rights activities. Other activists, and notably children and youths in the villages near the Wall, are punished indiscriminately for their participation in the protests and at times forced to incriminate others during lengthy interrogation sessions that lack any legal safeguards.

It is testament to the increasing recognition of the Popular Committees and their peaceful actions aimed at ending the construction of the Wall and the wider regime of occupation that Israel now appears to be responding with increasingly draconian measures, particularly the use of Military Order 101. Although this order was used against Palestinians during the First Intifada, a new policy aimed at imprisoning members of the Popular Committees appears to have emerged since 2009, a landmark year for the Palestinian popular

(85) GCIV Art 66.

(86) In the case of Ayed Morar, the judge ruled that he should not have been brought to court and that he had a right to protest.



resistance against the Wall and settlements in terms of advocacy successes and increased international recognition. This recognition was cemented by the acknowledgement of both the EU and UN that some of those Palestinians arrested in accordance with Military Order 101 were human rights defenders and thus subject to added protection and safeguards.

The protection of human rights defenders is not only a moral obligation, but has been recognized by the United Nations as a social, individual and collective right and responsibility. It has also been an important element of the European Union's human rights external policy for many years, and it is essential that their rights be upheld and respected, and that Israel be condemned for its actions, and pressured to renounce its repression of human rights activists. Israel's long and sustained breaches of international humanitarian and human rights law must not be allowed to build up further, and there must be action from the international community. They must be addressed as a matter of urgency, along with the severe consequences they have had for the Palestinian communities affected.

3.2 RECOMMENDATIONS

In light of the findings and conclusions of this report, Addameer would like to make the following recommendations.

To State Parties to the 4th Geneva Convention:

1. Convene all State Parties to discuss all violations of the Fourth Geneva Convention arising from Israel's prolonged occupation. In particular, put pressure on Israel as an Occupying Power to reverse Military Order 101 due to its

criminalization of activities that go beyond the limited scope of permitted changes to the penal laws of the occupied territory provided for in Article 64 of said Convention.

To the United Nations:

2. In accordance with the UN Declaration on Human Rights Defenders, UN member states continuously monitor violations against human rights defenders, from abuses happening on the ground to arrest and trial.
3. The UN Special Rapporteur on Human Rights Defenders continuously monitor arrests and detention of Palestinian human rights defenders through field visits and submissions from human rights NGOs working in the field, and make recommendations to Israel in relation to its actions towards human rights defenders.
4. The UN Special Rapporteur on Human Rights Defenders follows up on previous visits made to Israel and the oPt and on comments and recommendations given with regards to violations against Palestinian human rights defenders
5. The UN Treaty Bodies continue to monitor Israeli violations with respect to the denial of basic fair trial standards of Palestinian detainees, including human rights defenders.
6. UN Treaty Bodies continue to remind Israel of the applicability of the International Covenant of Civil and Political Rights and other UN treaties to the oPt, and Israel's obligation as an Occupying Power to afford basic fair trial standards to Palestinians.



7. UN Treaty Bodies remind Israel as a State Party to the International Covenant of Civil and Political Rights that the use of forced confessions as evidence against Palestinian defendants constitutes a violation of Article 14 (3) (g) of the International Covenant of Civil and Political Rights and should therefore stop immediately.

To the European Union:

8. In accordance with the UN Declaration on Human Rights Defenders and EU Guidelines for Human Rights Defenders, offer greater protection to human rights defenders and demand that Israel stops the use of the disproportionate use of force and other repressive measures against them, including restrictions on freedom of movement.
9. EU representatives continue to attend the military court hearings of Palestinian human rights defenders, and extend their monitoring to Palestinian minors tried in the military courts.
10. The EU adopt a local strategy concerning human rights defenders, which sets out clearly whom is protected under this strategy and provides for a comprehensive and coordinated response to violations.
11. EU representatives regularly visit and consult with human rights defenders, in Missions and also at the HRDs' places of work, in line with part 10 of EU Guidelines. An EU liaison officer should be appointed for this purpose.
12. EU should raise violations against human rights defenders as a major concern in its negotiations with Israel, particularly through the EU-Israel Association Agreement that is based on mutual respect for human rights and democratic principles.
13. Recognize Israeli and international activists traveling to the West Bank to monitor repression of Palestinians as human rights defenders and push Israel to guarantee them all due protection, including freedom of movement allowing them to enter Israel and the oPt.

To human rights and Palestine solidarity activists and the wider international community:

14. Lobby European Parliamentarians and Government officials to ensure the EU respects and implements the EU Guidelines on Human Rights Defenders in relation to Palestinian activists, and takes up the recommendations listed above.
15. Attend court hearings of Palestinians tried in the Israeli military courts, including human rights defenders, and document and publicize the proceedings.

Addameer Prisoner Support and Human Rights Association

Addameer (Arabic for conscience) is a Palestinian non-governmental, civil institution that focuses on human rights issues. Established in late 1991 by a group of activists interested in human rights, the center offers support to Palestinian prisoners and detainees, advocates for the rights of political prisoners, and works to end torture through monitoring, legal procedures and solidarity campaigns.

Addameer is surrounded by a group of grassroots supporters and volunteers, Addameer, who share Addameer's beliefs and goals, actively participate in its activities, and endeavor to support Addameer both financially and morally.

Addameer is a member of the Palestinian NGO Network, the Palestinian Human Rights Organizations Council, the Palestinian Coalition for the Defense of Civil Rights and Liberties, and the Regional and International Coalition to Abolish the Death Penalty. Addameer is also a member of the International Network against Torture.

Addameer believes in the importance of building a free and democratic Palestinian society based on justice, equality, rule of law and respect for human rights within the larger framework of the right to self-determination.

Addameer strives to:

- End torture and other forms of cruel, inhumane or degrading treatment or punishment and abolish the death penalty.
- End arbitrary detention and guarantee fair, impartial, and public trials.
- Support political prisoners by providing them with the legal aid and social and moral assistance and undertaking advocacy on their behalf.
- Push for legislation that guarantees human rights and basic freedoms and ensure its implementation on the ground.
- Raise awareness of human rights and rule of law issues in the local community.
- Ensure respect for democratic values in the local community, based on political diversity and freedom of opinion and expression.
- Lobby for international support and solidarity for Palestinians' legitimate rights.

Addameer's programs:

- **Legal Aid:** Addameer provides free legal counseling and representation to Palestinian detainees and their families. Services include legal defense; regular visits to prisons, detention and interrogation centers; submission of petitions and complaints against cases of torture, ill-treatment and other violations.
- **Research and Documentation:** Addameer documents violations committed against Palestinian detainees, monitors their detention conditions through regular lawyers' visits, and collects statistics and lists of detainees, providing the basis for the publication of research papers and reports.
- **Advocacy and Lobbying:** Addameer publishes statements and urgent appeals on behalf of detainees, submits alternative reports and complaints to the United Nations and other international forums, and briefs international delegations as well as the media on the situation of Palestinian prisoners. The advocacy and lobbying unit also works towards building local, Arab and international solidarity campaigns to oppose torture and arbitrary detention while supporting the rights of Palestinian prisoners.
- **Training and Awareness:** Addameer raises local awareness regarding prisoners' rights on three levels: by training Palestinian lawyers on the laws and procedures used in Israeli military courts to improve their efficiency; by increasing the prisoners' own knowledge; and by reviving grassroots human rights activism and volunteerism and working closely with community activists to increase their knowledge of civil and political rights from an international humanitarian law and international human rights perspective.

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