

Joint Submission to the United Nations Special Rapporteur on the Situation of Human Rights Defenders, Ms Mary Lawlor, in Response to a Call for Input on Long-Term Detention of Human Rights Defenders

Submitted by:

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1. Introduction

1. For decades, Palestinians, including Human Rights Defenders (HRDs), have mobilized against Israel's occupation and settler colonialism, and struggled for the realization of their inalienable rights, including rights to self-determination of the Palestinian people and to return of Palestinian refugees and internally displaced persons. Over the years, there has been a growing recognition that Israel has established and maintained an apartheid regime over the Palestinian people as a whole, including Palestinians on both sides of the Green Line, and Palestinian refugees and exiles in the diaspora.¹ Israel's systematic use of arbitrary detention, torture, and other ill-treatment targets Palestinians, including HRDs, who mobilize to challenge Israel's policies, laws and practices of racial domination and oppression.
2. Article II(f) of the Apartheid Convention considers the “[p]ersecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid” as an element of the crime of apartheid. According to the Rome Statute,² the crime of apartheid also includes the intention of maintaining the regime. In order to maintain its apartheid regime over the Palestinian people as a whole, Israel silences opposition to its widespread and systematic human rights violations in order to create a climate of fear and intimidation.
3. Regarding Israel's legal obligations, as Occupying Power, the present submission, prepared by Addameer Prisoner Support and Human Rights Association, Al-Haq, Law in the Service of Man, Al Mezan Center for Human Rights, and Cairo Institute for Human Rights Studies (hereinafter the ‘organizations’) addresses Israel's practice of arbitrary arrest targeting those who seek justice for the Palestinian people and an end to Israel's human rights violations. This submission to the United Nations (UN) Special Rapporteur on the situation of human rights defenders, Ms Mary Lawlor, comes in response to a call for input ahead of her upcoming report on long-term detention of HRDs, which will be presented to the General Assembly in October 2021.³

2. Background

4. To maintain its apartheid regime, Israel has designed and implemented various laws, policies and practices, aiming to intimidate and silence opposition to its long-established unlawful policies and practices. Palestinian civil society organizations and human rights defenders have endured systematic intimidation, including death threats, arbitrary arrests, travel bans, residency revocation, and deportation, in an attempt to further restrict civic

¹See, for example, Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports, 10 November 2019, and OHCHR, “Israeli annexation of parts of the Palestinian West Bank would break international law – UN experts call on the international community to ensure accountability,” 16 June 2020, at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25960>.

² Rome Statute, Article 7(2)(h), Apartheid Convention, Article II.

³ OHCHR, “Call for input to a report on the long term detention of human rights defenders,” at: <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/longterm-detention-defenders.aspx>.

space, delegitimize, oppress, and dominate them. Israel's policy of prolonged detention and imprisonment of Palestinians also aims to tear the Palestinian social fabric and rupture family and community ties, which form an important part of solidarity movements.

5. Our organizations have documented cases of long-term detention as inhumane acts committed against Palestinian political figures such as Marwan Barghouti (arrested in 2002 and sentenced to five life sentences and an additional 40 years) and Ahmad Saadat (sentenced to 30 years in prison). Our organizations have also documented many cases of Israeli arbitrary detention and imprisonment targeting human rights defenders.
6. Israel uses administrative detention to hold Palestinians without charge or trial for indefinite periods of time on the grounds of "secret information" to which neither they nor their legal counsel have access. Administrative detention, one of the many features of Israel's discriminatory military judicial system targeting the Palestinian people, including HRDs, is a widespread tool of oppression and domination, forming part and parcel of Israel's institutionalized effort to silence Palestinians and to undermine any efforts seeking to challenge Israel's apartheid regime.
7. Administrative detention is a form of psychological torture as the detainee is subjected to detention without fair trial guarantees, as well as the indefinite nature of the detention, where orders can be renewed every six months, indefinitely.⁴ The detainee may develop severe depression, anxiety, paralyzed personality, and dysfunctional cognitive ability.⁵ This is principally due to the fact that the detainee is not informed of the reasons or time for his or her detention and is denied access to the secret evidence on which he or she is being held.⁶ HRDs also live in fear of harassment by Israeli authorities, consecutive instances of detention and arrest, with many having suffered intermittent arrests and periods of detention over time. Notably, the United Nations Committee against Torture, on 13 May 2016, called on Israel to "take the measures necessary to end the practice of administrative detention and ensure that all persons who are currently held in administrative detention are afforded all basic legal safeguards."

⁴ Addameer, "Induced Desperations: the Psychological Torture of Administrative Detention," 26 June 2016, available at: <https://www.addameer.org/publications/induced-desperation-psychological-torture-administrative-detention>.

⁵ Ibid.

⁶ Psychologist Murad Amro at the Palestinian Counseling Center (PCC) stated that, "Administrative detention can be characterized as psychological torture due to the detainee's dealing with dimensions of the unknown. For administrative detention you do not know why you're there, and you do not know when you will leave; time and space is out of the locus of control." Murad Amro further highlights the elements of loss of control over the future as is characteristic of administrative detainees, feelings of borderline, i.e. swinging between moments of looking forward to release and the realization or belief that detention will be extended further. Altogether, this experience causes anxiety, instability in thoughts, and being consumed with "the unknown." Mr. Amro further highlights the feelings of helplessness and lack of control associated with this experience, which causes psychological and mental torture of the detainee and his or her family. Addameer, "Induced Desperation: The Psychological Torture of Administrative Detention," 26 June 2016, at: <https://www.addameer.org/publications/induced-desperation-psychological-torture-administrative-detention>.

3. Long-term Detention of Human Rights Defenders

8. *Khalida Jarrar*, a Palestinian civil society leader, lawmaker, and human rights activist who calls for women's rights and for the realization of Palestinians' rights, notably the Palestinian right to return, was constantly and systematically harassed and targeted by the Israeli occupying authorities for her human rights work, especially in her leading role with regards to work related to the International Criminal Court (ICC).⁷ Khalida is currently held at Damon prison, serving a two-year sentence.⁸
9. From 1994 to 2006, Khalida served as the General Director of Addameer Prisoners' Support and Human Rights Association, a Palestinian non-governmental, civil society organization that works to support Palestinian political prisoners held in Israeli and Palestinian prisons. Since then, she became a member of the Board of Directors of Addameer, serving on the board until late 2017.
10. In 2006, Khalida was elected as a member of the Palestinian Legislative Council (PLC) and has been the head of the Prisoners Commission of the PLC since then. As a member of the Palestinian National Committee for the follow-up of the ICC, Khalida actively contributed to formulating Palestine's application to the ICC, as she was tasked with bringing cases regarding past and present possible war crimes by Israel, along with other human rights violations against Palestinians in the occupied Palestinian. Khalida is also the Palestinian representative on the Council of Europe, an international organization working towards advancing human rights, democracy and the rule of law.
11. Khalida was first detained by the Israeli occupying forces (IOF) on 8 March 1989, during a Women's Day demonstration.⁹ She was detained for a month without trial. Since 1998, Khalida has been banned from traveling internationally due to her activism. Since this decision, Khalida was only able to get an exception in 2010 when she was allowed to travel to Jordan for medical treatment.¹⁰
12. Israel not only detained Khalida, and enforced a travel ban on her, but the Occupying Power further issued a military order requiring Khalida's forcible transfer from Ramallah to Jericho.¹¹ On 20 August 2014, at approximately 1:30 am, the IOF surrounded Khalida's home in Ramallah and delivered the military order, which Khalida refused to sign. Stating that Khalida is 'dangerous to the general security of the area,' the order further provides that she must leave her place of residence in Ramallah to Jericho for a period of six months with immediate effect. In response, Khalida immediately set up a protest tent in front of

⁷ Journal of Palestine Studies, "Interview with Khalida Jarrar: The Israeli Occupation Must End," 1 May 2017, available at: <https://online.ucpress.edu/jps/article-abstract/46/3/43/54597/Interview-with-Khalida-Jarrar-The-Israeli?redirectedFrom=fulltext>.

⁸Addameer, "Continued Targeting of PLC Member Khalida Jarrar," 1 March 2021, at: <http://addameer.org/news/press-release/en/khalidajarra>.

⁹Middle East Eye, "Court in Israel sentences Palestinian politician Khalida Jarrar to two years in prison," 1 March 2021, at: <https://www.middleeasteye.net/news/israel-palestine-politician-khalida-jarrar-prison-sentenced-court>.

¹⁰Addameer, "Profile: Khalida Jarrar," at: <https://www.addameer.org/prisoner/khalida-jarrar>.

¹¹Al-Haq, "Re: Forcible Transfer of Palestinian Legislative Council Member Khalida Jarrar," 25 August 2014, available at: <https://www.alhaq.org/advocacy/6611.html>.

the PLC headquarters in Ramallah. On 16 September 2014, an Israeli military court reduced the aforementioned military order to one month.

13. On 2 April 2015, the IOF surrounded her house and she was taken away under yet another arbitrary order, this one mandating six months of administrative detention.¹² Following international pressure, the period of administrative detention was limited to one month and two days. That said, while still in prison, Khalida was charged with twelve additional charges. On 6 December 2015, the charge sheet of Khalida was modified from twelve charges to two charges: namely, membership in an illegal organization – Popular Front for the Liberation of Palestine (PFLP), and incitement. Her sentence was set to 15 months, with a fine of NIS 10,000 and a suspended sentence of 12 months within a five-year period. She was finally released in June 2016, having spent fifteen months in prison.
14. Khalida’s third detention took place on 2 July 2018, where she was taken from her home at around 4:00 am to a detention center in Ofer prison for interrogation. The interrogation lasted for only 30 minutes and then she was placed in a small cell with no windows for four hours. By 4:00 pm on the same day, she was deported to HaSharon prison in Israel inside the Green Line, in violation of Article 49 of the Fourth Geneva Convention. Denying her right to a fair trial, Khalida received a six-month administrative detention order. While she was initially to be released on 1 January 2018, her order was renewed on 27 December 2017 for an additional six-month period. Before the end of her second administrative detention order, the Israeli occupying authorities renewed her order for an additional four months. On 25 October 2018, the fourth and final renewal for four months was issued. On 28 February 2019, Khalida was released after almost 20 months of being detained without trial.
15. Spending only eight months with her family, Khalida was detained yet again on 31 October 2019, when 12 Israeli military vehicles surrounded her house in Al-Bireh, and around 20-armed IOF raided the house at approximately 3:00 am. On 1 March 2021, Ofer military court sentenced Khalida to 24 months in prison and a NIS 4,000 fine. During the hearing session, the military prosecutor amended Khalida’s indictment, limiting it to her political role and work with the Palestinian Authority. Further declaring that there are no charges against her relating to affiliation to any military, financial nor organizational activities.¹³
16. **Mohammad El Halabi** is a Palestinian HRD. On 15 June 2016, he was arrested by Israeli authorities at Erez crossing.¹⁴ At the time of his arrest, Mohammad was working as the manager of operations for the humanitarian organization World Vision in the Gaza Strip. On 4 August 2016—after 50 days of detention, during which he was not allowed to access

¹² Al-Haq, “17 April: Palestinian Prisoners Day, Marks Increase in Torture, Ill treatment and Administrative Detention,” 17 April 2015, at: <https://www.alhaq.org/advocacy/6538.html>.

¹³ Addameer, “Continued Targeting of PLC Member Khalida Jarrar,” 1 March 2021, at: <http://addameer.org/news/press-release/en/khalidajarra>.

¹⁴ World Vision, “Statement on the arrest of World Vision’s staff Mohammad El Halabi”, 21 June 2016, at: <https://www.wvi.org/jerusalem-west-bank-gaza/pressrelease/statement-arrest-world-vision%E2%80%99s-staff-mohammad-el-halabi>.

to a lawyer— Mohammad was charged with providing financial support to armed groups in the Gaza Strip, by allegedly channeling them millions of dollars of Australian aid.¹⁵

17. Mohammad pled not guilty to all charges against him.¹⁶ World Vision, in response to the charges against Mohammad, completed an externally conducted forensic audit that found no evidence of diversion of funds, nor material evidence that he was part of or working for armed groups in the Gaza Strip.¹⁷ Similarly, an Australian government probe found no evidence that Australian aid funds donated to World Vision had been diverted to armed groups in the Gaza Strip.
18. As of today, almost five years after his arrest, Israeli judicial authorities are yet to prove allegations against him, despite having held more than 140 court hearings concerning his case—some of which were closed-door. Mohammad also claims that he was tortured, including through the use of sleep-deprivation and hanging from the ceiling, during his detention. The facts and allegations show that Mohammad’s arrest, detention, and trial have been and are conducted in violation of a wide set of fundamental human rights, including the rights to a fair trial and freedom from arbitrary detention. Accordingly, in November 2020, four UN Special Rapporteurs issued a press release asking Israel to release Mohammad or immediately grant him a fair trial.¹⁸
19. The absence of the judicial guarantees afforded through a fair trial and due process has resulted in almost five years of administrative detention and no sentence. In light of the severity of this situation, the criterion set by the Special Rapporteur in her survey fully applies to the present case in that Mohammad is at serious risk of spending 10 or more years in Israeli custody—with or without a sentence being issued. At the same time, the fact that Mohammad is currently being indeterminably detained without a fair trial renders the criterion itself superfluous.

4. Conclusion and Recommendations

20. In the context of the upcoming report, we urge the Special Rapporteur to:
 - i. Recognize that administrative detention is a form of psychological torture inflicted on Palestinians, including HRDs, as detainees are subjected to detention without fair trial guarantees, as well as the indefinite nature of the detention, where orders can be renewed every six months, indefinitely;

¹⁵ World Vision, “Statement on World Vision’s Staff Arrest”, 4 August 2016, at: <https://www.wvi.org/jerusalem-west-bank-gaza/pressrelease/statement-world-visions-staff-arrest>.

¹⁶ World Vision, “Statement by World Vision International CEO; Gaza staff member pleads not guilty”, 2 February 2017, at: <https://www.wvi.org/jerusalem-west-bank-gaza/pressrelease/statement-world-vision-international-ceo-gaza-staff-member>.

¹⁷ World Vision, “Mohammad El Halabi Trial Overview”, at: <https://www.wvi.org/jerusalem-west-bank-gaza/mohammad-el-halabi-trial-overview>.

¹⁸ OHCHR, “Gaza Aid Worker Must be Given Fair Trial or Released, Say UN Experts”, 12 November 2020, at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26496&LangID=E>.

- ii. Condemn Israel's arbitrary detention policies targeting Palestinians, including HRDs, and call on Israel to end this policy; and
- iii. Recognize that in the context of the commission of the crime of Apartheid, Israel persecutes Palestinian "organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid" through harassment, arbitrary detention, torture, and other ill-treatment targeting Palestinians, including HRDs, who mobilize to challenge Israel's policies, laws and practices of racial domination and oppression.