POLICY BRIEF | CIVIL SOCIETY

The Systematic Torture of Palestinians in Israeli Detention

By: Yara Hawari · November, 2019

Overview

The recent case of Samer Arbeed highlighted once again the systematic use of torture against Palestinian detainees in Israeli prisons. Israeli soldiers arrested Arbeed at his home in Ramallah on September 25, 2019. They beat him severely before taking him to Al Moscobiyye detention center in Jerusalem for interrogation. Two days later, according to his lawyer, he was hospitalized as a result of severe torture, and lay in critical condition for several weeks. A judicial body had authorized the Israeli Secret Service, the Shin Bet, to use "exceptional methods" to extract information in this case without going through the courts. This led Amnesty International to condemn what happened to Arbeed as "legally-sanctioned torture."[12]

In August 2019, shortly prior to Arbeed's arrest, the Israeli occupation forces began a targeted campaign against Palestinian youth and arrested over 40 students from Birzeit University. The arrests increased after Arbeed's detention and, as many of the students have been denied access to lawyers, it is expected that many have also been subjected to torture.

The above actions are nothing new. Since the establishment of the state of Israel in 1948, the Israeli Security Agency (ISA) has been systematically torturing Palestinians using a variety of techniques. And though many countries have

incorporated the prohibition of torture into their domestic legislation (despite it remaining a widespread practice under the guise of state security), Israel has taken a different course: It has not passed domestic legislation prohibiting torture's use, and its courts have allowed for torture to be used in cases of "necessity." This has given the ISA free rein to use torture extensively against Palestinian political prisoners.

This policy brief focuses on the use of torture in Israeli detention (both upon arrest and in prisons), tracing its historical as well as most recent developments. Building on the work of various Palestinian organizations, the brief argues that the practice of torture, embedded in the Israeli prison system, is systematic and legitimized through domestic law. It outlines clear steps for the international community to hold Israel to account and bring an end to these violations.

Torture and the Law

The question of torture occupies an important place in discussions on ethics and morality. Many have argued that the practice of torture is reflective of a sick and corrupt society. Indeed, torture requires the total dehumanization of a person, and once that occurs the boundaries of the degradation are limitless. Moreover, whilst the common excuse offered by security apparatuses for the use of torture is that it can yield life-saving information, this has proven factually baseless. Many leading experts, and even CIA officials, argue that information obtained under torture is usually false. Detainees can be coerced into confessing anything in order to stop the pain they are enduring.

The international legal regime prohibits torture through customary international law as well as a variety of international and regional treaties. Article 5 of the Universal Declaration of Human Rights states: "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment." International humanitarian law, which governs the behavior of parties during conflict, also

includes the prohibition of torture. For example, the Third Geneva Convention prohibits the "violence of life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture" as well as "outrages upon personal dignity, in particular humiliating and degrading treatment." Further, the Fourth Convention states: "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."

So absolute is the prohibition on torture that it is considered *jus cogens* in international law, meaning that it is non-derogable and no other law can supersede it. Yet torture continues to be used by many countries around the world. Amnesty International defines it as a global crisis, stating that it has reported on violations of the prohibition on torture by a large majority of UN member states over the last five years.

The US-led "war on terror" following 9/11 particularly led to horrific cases of systematic torture, especially inflicted on Arab and Muslim prisoners. The Guantanamo Bay detention camp, established by the US in 2002 to hold "terrorists," has been and continues to be a site of torture. Images of prisoners blindfolded, shackled, and kneeling on the ground in orange jumpsuits were shared across the world.

Yet perhaps the most defining images of this era came from the Abu Ghraib US military prison in Iraq. Leaked photos and soldiers' reports revealed that the prison was the site of widescale torture, including the rape of men, women, and children. The US administration at the time condemned these acts and tried to suggest that they were isolated incidents. Human rights organizations, including Human Rights Watch, reported to the contrary.

Further, recent testimonies from Abu Ghraib reveal sinister links between US and Israeli interrogations. In a memoir, a former US interrogator in Iraq claimed that

the Israeli army trained US personnel in various interrogation and torture techniques, including what became known as the "Palestinian chair," in which a detainee is forced to lean over a chair in a crouched position with their hands tied to their feet. The excruciatingly painful practice was perfected on Palestinians – hence its name – and was adopted by the Americans in Iraq.

Despite these scandals, very little action has been taken to protect prisoners of war, and torture continues to be justified in the name of security. In Donald Trump's first interview after being sworn in as US president, he declared that, in the context of the "war on terror," "torture works." Works of popular culture, such as television programs like "24" and "Homeland," also normalizes the use of torture, particularly against Arabs and Muslims, and promotes the idea that it is justified in the context of the greater good. There has also been a recent rise in television series and films dramatizing the activities of the Mossad and Shin Bet, such as "Fauda," "The Spy," and "Dead Sea Diving Resort," all of which heroize the activities of the ISA whilst demonizing Palestinians as terrorists. These series and films present to the world an image of Israel that allows it to justify its violations of international law, including torture.

Whilst Israel ratified the Convention against Torture (CAT) in 1991, it has failed to incorporate it into its domestic legislation. Moreover, despite the UN committee's affirmation to the contrary, Israel claims that CAT does not apply to the Occupied Palestinian Territory.[3] This allows Israel to assert that there is no crime of torture in Israel, with it actually permitted in cases of "necessity," as was claimed in the Arbeed case. This "necessity" is also known as the "ticking bomb," a security doctrine used by many governments to justify torture and violence in situations considered time sensitive.

Israel has also passed several rulings around the issue of torture that have bolstered and condoned the activities of its security services. For instance, in 1987 two Palestinians hijacked an Israeli bus and were subsequently captured, beaten,

and executed by the Shin Bet. Although there was a gag order on the Israeli media, details of the torture and execution leaked and led to the establishment of a government commission. Whilst the commission concluded that "pressure [on detainees] must never reach the level of physical torture…a moderate measure of physical pressure cannot be avoided." The commission's recommendations were incompatible with international law due to their vague description of "a moderate measure of physical pressure," and essentially gave Shin Bet free reign to torture Palestinians.

Over a decade later, and as a result of petitioning from human rights organizations, the Israeli Court of Justice issued a 1999 ruling to the effect that ISA interrogators were no longer allowed to use physical means in interrogations, thus outlawing the use of torture. The court ruled that four common methods of "physical pressure" (violent shaking, shackling to a chair in a stress position, prolonged frog crouching, and sleep deprivation) were unlawful. Yet the court added a clause that provided a loophole for interrogators, namely that those who use physical pressure will not face criminal responsibility if they are found to have done so in a ticking bomb situation or out of necessity for the state's defense – in other words, if the detainee is found to be an immediate threat to public security.

Torture as a necessity in the name of security was reaffirmed in 2017 when the Israeli High Court of Justice ruled in favor of Shin Bet, who admitted to what they called "extreme forms of pressure" on Palestinian detainee Assad Abu Ghosh. The defense was that Abu Ghosh possessed information about an impending terrorist attack. The court considered it "enhanced interrogation" rather than torture, and declared that it was justified due to the ticking bomb doctrine. Such a ruling has been consistently repeated.

Though Palestinian human rights organizations regularly submit complaints to the Israeli authorities they rarely receive a reply, and when they do it is often to inform them that the case file has been closed due to a lack of evidence. In fact, 1,200

complaints have been leveled against the security services for torture since 2001, but no agent has ever been prosecuted.

The Israeli Prison System: Sites of Systematic Torture

Every year, the Israeli military prison system detains and incarcerates thousands of Palestinian political prisoners, mostly from the 1967 territories. Since the beginning of the occupation of the West Bank and Gaza Strip and the establishment of martial law over those areas, Israel has detained well over 800,000 Palestinians, amounting to 40% of the male population, or one-fifth of the population as a whole.

Israeli law also permits the military to hold a prisoner for up to six months without a charge under a procedure known as administrative detention. This period can be indefinitely extended, with the "charges" kept secret. Prisoners, and their lawyers, thus do not know what they are charged with or what evidence is being used against them. On the last day of the six-month period, those detained in this way are informed if they will be released or have their detention extended longer. Addameer-the Prisoner Support and Human Rights Association has defined this practice as itself a form of psychological torture.

It is during the period of initial detention, whether administrative or otherwise, when prisoners are often deprived of contact with lawyers or family members that they are subjected to the most severe forms of interrogations and torture. If they reach trial, they face judgement from Israeli military personnel and are often denied adequate legal representation. This system is illegal under international law, and Palestinian and international human rights groups have documented a vast array of human rights violations.

Children are not spared the ordeal of imprisonment and torture within the Israeli military system, and are nearly always denied the presence of parental

guardianship during interrogations. One such example was in 2010, when Israeli border police arrested 16-year-old Mohammed Halabiyeh in his hometown of Abu Dis. Upon arrest the police broke his leg and beat him, intentionally kicking his injured leg. He was interrogated for five consecutive days and faced death and sexual assault threats. He was then hospitalized, during which time Israeli agents continued to abuse him by pushing syringes into his body and punching his face. Halabiyeh was tried and prosecuted as an adult, as is the case with all Palestinian child detainees over the age of 16 in direct contravention of the Convention of the Rights of the Child.[4] Israel arrests, detains, and prosecutes between 500-700 Palestinian children each year.

At present there are 5,000 Palestinian political prisoners; these include 190 child prisoners, 43 female prisoners, and 425 prisoners held under administrative detention, most of whom have been subjected to some form of torture. According to Addameer, the most common methods used by Shin Bet and interrogators include the following:

- Positional torture: Detainees are placed in stress positions, often with their hands tied behind their backs and their feet shackled whilst they are made to lean forward. They are left in such positions for prolonged periods of time during the interrogation process.
- Beatings: Detainees often suffer beatings, either by hand or with objects, and are sometimes knocked unconscious.
- Solitary confinement: Detainees are placed in isolation or solitary confinement for long periods.
- Sleep deprivation: Detainees are prevented from resting or sleeping and are subjected to long interrogation sessions.
- Sexual torture: Palestinian men, women, and children are subjected to rape, physical harassment, and threats of sexual violence. Verbal sexual harassment is a particularly common practice in which detainees are

exposed to comments about themselves or their family members. This type of torture is often considered effective because the shame around sexual violations prevents detainees from revealing it.

- Threats on family members: Detainees hear threats of violence against family members to pressure them to cede information. There have been cases where family members have been arrested and interrogated in a nearby room so that the detainee can hear them being tortured.

The above methods of torture leave lasting damage. Whilst physical torture can leave serious bodily damage, including broken bones and chronic muscle and joint pain, especially as a result of stress positions or being confined to a small space, the psychological damage can be even worse, with such conditions as deep and lasting depression, hallucinations, anxiety, insomnia, and suicidal thoughts.

Many mechanisms of torture require the complicity of actors within the Israeli military court system, including medical personnel. This occurs despite the fact that the code of medical ethics as defined by the Declaration of Tokyo and Istanbul Protocol includes the stipulation that doctors must not cooperate with interrogators conducting torture, must not share medical information with torturers, and must actively oppose torture. In fact, Israeli doctors have long been complicit in the torture of Palestinian detainees and prisoners. Over the years journalists have uncovered documents that reveal doctors signing off on torture as well as writing false reasons for injuries sustained in interrogations.

Doctors are also complicit in force feeding – another, albeit less common, mechanism of torture used by the Israeli regime. Force feeding requires a detainee to be tied down as a thin tube is inserted through a nostril and pushed to the stomach. Liquid is then dripped through the tube in an effort to replenish the body. Medical personnel must place the tube, which can end up going through the mouth or the windpipe instead of the esophagus, in which case it has to be

retracted and replaced. Not only does this cause great pain, but can also lead to serious medical complications and even death.

In the 1970s and 1980s several Palestinian prisoners died from being force fed, resulting in a cessation order from Israel's High Court. However, a 2012 Knesset law reinstated force feeding's legality in an attempt to break Palestinian hunger strikes. In an address to the Israeli prime minister in June 2015, the World Medical Association stated that "force feeding is violent, often painful, and often [goes] against the principle of individual autonomy. It is a degrading treatment, inhumane, and may amount to torture."

Disrupting Israeli Torture

For Palestinians, torture is just one facet of the structural violence they face at the hands of the Israeli regime, which entraps them in an open-air prison and deprives them of their fundamental rights. It is also one that receives little attention from the international community, usually because the Israeli authorities use arguments of state security bolstered by the "war on terror" narrative. This was the case with Samer Arbeed, who the Israeli media portrayed as a terrorist, resulting in most states maintaining silence on his treatment despite being petitioned and lobbied by many Palestinian and international human rights organizations. As with all violations against the Palestinian people, Israeli torture calls into question the utility of the international legal regime.

On May 13, 2016, the UN Committee against Torture recommended more than 50 measures to Israel following a review of its compliance with the Convention against Torture, including that all interrogations should have audio and visual documentation, that detainees be allowed independent medical examinations, and that administrative detention be put to an end. These are, of course, important recommendations, and Israel should be made to comply with them. Yet in a time when third state actors are generally unwilling to hold Israel to account

for violating international law and Palestinian rights, they are not enough.

The following are some steps that those working for Palestinian rights in the international and domestic arenas can take with the aim of disrupting the systematic nature of Israeli torture:

- Organizations and groups should build cases of individual criminal liability outside of Israel and Palestine for those involved in the torture of Palestinians. Accountability can be extended not only to those who commit the torture but also those that aid, abet, and omit information about it. This includes interrogators, military judges, prison guards, and doctors. As torture is a *jus cogens* war crime, it is subject to universal jurisdiction, meaning that third parties are capable of submitting criminal complaints against individuals.[5] Whilst individual criminal liability does not necessarily address the systematic structure of torture against Palestinians, it puts pressure on involved Israeli individuals by limiting their movement and travel to other countries.
- As the only viable independent judicial body capable of ending impunity for violations of Palestinian rights, the International Criminal Court has a responsibility to hold Israel accountable. The Office of the Prosecutor, with all the information and detailed reports that have been presented to it, should launch a formal investigation into violations within the Israeli prison system.
- State signatories to the Geneva Conventions and international human rights organizations need to pressure the International Committee of the Red Cross to uphold its mandate to protect Palestinian detainees and open an investigation into all accusations of torture.[6]
- Palestinian civil society and institutions should continue to support those working to aid victims of torture. Such support can be enhanced by a dedicated and focused effort to expand these resources and make them

accessible in all areas of the West Bank and Gaza Strip. This should also include working to break the taboo of seeking therapeutic care and lifting the stigma around sexual assault. Sexual assault is usually not dealt with fully because victims are too ashamed to discuss their ordeal, and the lack of disclosure makes healing more difficult. Creating safer spaces for individual and collective testimonies is key to helping survivors recover.

With such concerted actions, Palestinians and their allies can work toward limiting the practice of torture so thoroughly embedded in the Israeli prison system and given cover by Israeli law, whilst also working toward helping those to heal who have suffered it.

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1. This policy brief was produced with the support of the Heinrich-Böll-Stiftung. The views expressed herein are those of the author and therefore do not necessarily reflect the opinion of the Heinrich-Böll-Stiftung.
2. *To read this piece in French or Spanish, please click here or here. Al-Shabaka is grateful for the efforts by human rights advocates to translate its pieces, but is not responsible for any change in meaning.*
3. According to B'tselem, "Israel argues it is not bound by international human rights law in the Occupied Territories, as they are not officially sovereign Israeli territory. While it is true that Israel is not the sovereign in the Occupied Territories, this fact does nothing to detract from its duty to uphold the international provisions regarding human rights. International jurists disagree with Israel's position on the matter, and it has also been repeatedly rejected by the International Court of Justice (ICJ) and all UN committees overseeing the implementation of the various human rights conventions. These international bodies have asserted time and time again

that states must uphold human rights provisions wherever they are in effective control."

4. In 2009 Israel established a juvenile military court to prosecute children under the age of 16 – the only country in the world to do so. According to UNICEF, it uses the same facilities and court staff as the adult military court.
5. *The case of Tzipi Livni demonstrates this; Livni was the Israeli foreign minister during the 2009 assault on Gaza that saw over 1,400 Palestinians killed. That same year, a group of UK-based lawyers managed to get a British court to issue an arrest warrant against her. She subsequently had to cancel her trip to the UK and was similarly forced to cancel travel to Belgium in 2017 when the Belgian Prosecutor's Office announced its intention to arrest her and question her about her role in the assault.*
6. Recently, following the arrest and torture of Samer Arbeed, the ICRC did release a statement, but rather than condemn the Israeli violations it condemned activists who demonstrated and occupied the ICRC office in Ramallah in protest over the organization's silence on Arbeed.

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