



PRISONERS OF INJUSTICE

**Report of the National Lawyers Guild
Delegation to Palestine**

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The National Lawyers Guild was formed in 1937 as the nation's first racially integrated bar association to advocate for the protection of constitutional, human and civil rights.

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Dedication

There have been many harrowing developments since our May 2014 prisoners' rights delegation to Palestine. In the months following our delegation, Israel showed the world just how brutal a military occupation can be by heavily restricting movement throughout the West Bank; arresting hundreds of Palestinians and placing many of them in indefinite administrative detention; and instigating a vicious, ultraviolent bombardment of the Gaza Strip, killing thousands of Palestinians, most of whom were civilian men, women and children.

The goal of our delegation was to meet with, and learn from, as many of the Palestinian political leaders, community organizers, and activists who are most involved in prisoners' rights issues in Palestine. It is with great sadness, anger, and frustration that we write this addendum and describe what Israel has done to so many of the inspiring individuals we met.

Most recently, on December 10, 2014, Israeli forces beat and tear gassed Former Deputy Minister of Prisoners Ziad Abu Ein to death while he planted olive trees in commemoration of International Human Rights Day. Abu Ein was a soft-spoken, thoughtful and dedicated political leader who devoted much of his career to fighting for Palestinian political prisoners. On July 25, 2014, a little more than eight weeks after our delegation concluded, Hashem Abu Maria, a staff member at Defense of Children International-Palestine who led us around Khalil (Hebron), was shot and killed by Israeli forces during a demonstration in protest of Israel's then ongoing slaughter in the Gaza Strip. Israel killed two other Palestinians in the same march. Abu Maria coordinated DCI-Palestine's community mobilization unit and was loved by everyone he met. We fell in love with Hashem as he guided us through Khalil's Old City. Abu Maria, who was 45, is survived by his wife and three children.

Israel also placed Palestinian Legislative Council (PLC) member Ayman Daraghmeh in administrative detention during the summer, and he was released only recently. Na'el Barghouti, considered the "dean of prisoners" before he was released in an October 2011 prisoner swap after 35 years in prison, was also rearrested. He is now at the mercy of an Israeli military "special committee," which will decide whether to reinstate his oppressive sentence. Israel also rearrested the widely respected and loved hunger striker Khader Adnan and placed him under administrative detention. Political leaders Nidal Abu Aker, Ghas-san Zawahreh, and Amer Hajajreh, whom we met at a protest tent in the Dheisheh refugee camp, were all arrested and placed under administrative detention. They are still incarcerated without charge.

Lastly, PLC member Khalida Jarrar was ordered by Israel to leave Ramallah and remain confined in Jericho indefinitely. Jarrar protested the order vigorously, having received international support for her cause, including from NLG, which forced Israel to drop the exile order. Similarly, Daoud Ghouli, who led us on an extraordinary political tour of Jerusalem, was issued an order to leave Jerusalem, along with four other Jerusalemites. After he relocated to the West Bank, Israel issued Ghouli another five-month exile order, this time from the West Bank itself. His complete expulsion from the occupied territories is illegal under international law. The fact that Ghouli was exiled to Haifa shows the absurdity of any claim that he presents a security threat.

The experiences of so many of the individuals who graciously educated, guided, and befriended our delegation is representative of the broader Palestinian experience, which is one of love, friendship and community in the face of exile, dispossession and incarceration. Confronted daily with unabashed, state-sponsored violence, colonization and ethnic cleansing, Palestinians remain steadfast in their struggle to realize self-determination, proving once again that their cause is righteous, pure and embedded in the broader struggle for freedom and liberation.

Introduction

From May 17 to 25, 2014, a five-member delegation of lawyers, legal workers and law students with the Palestine Subcommittee of the National Lawyers Guild International Committee visited Palestine to investigate the status and treatment of Palestinian prisoners.

The delegation was hosted by Addameer Prisoner Support and Human Rights Association¹ in Ramallah in the occupied West Bank, where the delegation was based. We visited numerous other sites in the West Bank, including East Jerusalem, and Israel; met with former prisoners and families of current prisoners; observed proceedings in a military court; and spoke with Palestinian Authority officials, representatives of international human rights organizations and staff and leaders of Palestinian non-governmental organizations that advocate on behalf of prisoners and on related matters.

We also had the opportunity to witness various manifestations of military occupation and its effects, many of them a result of the “security” or “separation” barrier (as it is called by the Israeli state), known as the “apartheid” or “annexation” wall by Palestinians, commonly referred to as “the wall” (in some places it is a high-tech fence with moats and/or security roads, actually consuming more land than the concrete wall portions). Functionally, it snakes for hundreds of miles through the West Bank, including East Jerusalem – the large majority of it not on Israel’s pre-1967 border – annexing Palestinian land and separating Palestinians from each other, from their sources of livelihood and from illegal Israeli settlements that carve up the landscape.

Delegates smelled tear gas and heard bullets whiz by in the Palestinian village of Nabi Saleh as we witnessed a weekly protest against the confiscation of large portions of the village’s land and its fresh water springs by Israeli settlers, with the protection of the Israeli occupation army. We also had the opportunity to meet there with leading members of the local popular resistance committee. Similar committees and organizations exist in dozens of West Bank villages to coordinate popular responses to the confiscation and closure of villagers’ farmland, their primary source of income and support.

Delegates also witnessed how much of central Hebron’s old city has become off limits to its hemmed-in Palestinian residents due to settler communities living literally on top of them, surrounded by horizontal as well as vertical barriers. We inched through heavy traffic at the walled-in checkpoints separating Jerusalem from Ramallah on one side, Bethlehem on the other. We visited what can only be described as a ghost town on the northern outskirts of Jerusalem, cut off by the wall from commerce, services and schools. We witnessed how already cramped refugee camps near Bethlehem have been further hemmed in by the wall to meet the “needs” of settlers. And we saw other places in the West Bank (specifically al-Walaja) and northeast Jerusalem where, despite years of construction, the wall abruptly ends and can easily be circumvented without significant military presence, belying assertions that it is a “security” mechanism as opposed to a mechanism of control for the Israeli state.

¹ See the bibliography at the end of this report for more information about Addameer and its reports on the apartheid nature of the Israeli controlled justice system.



NLG delegation at the Wall with Stop the Wall founder, Jamal Juma. All photos courtesy David Mandel.

The Charge of the Delegation

The purpose of the delegation was to explore the political nature of Palestinian prisoners' confinement, the framework of military orders and military courts that sentence Palestinian prisoners, the widespread and systematic ill-treatment and torture of Palestinian children and youth in Israeli military detention, the targeting of human rights defenders and grassroots Palestinian organizations and their leaders and the use/misuse of administrative detention, plus current resistance to it. We investigated how two distinct legal systems are applied by the Israeli authorities to residents of the West Bank accused of various offenses, depending on an individual's ethnic or national identity, and we examined the conditions of Palestinian prisoners in confinement.

A second objective of the delegation was to establish new and strengthen longtime connections between NLG and grassroots organizations working to support the rights of Palestinian prisoners and on related issues.

The delegation was also charged with examining the role of the United States government in supporting Israel's use of mass incarceration, as well as examining the connections and similarities between the practices of mass incarceration by Israeli occupation forces and U.S. domestic law enforcement, and how these practices are used to control, subjugate and suppress liberation movements among oppressed communities and communities of color.

The delegation's stay coincided with an Israeli Supreme Court hearing on the appeal of a wrongful death action, denied by a lower court, brought by the family of Rachel Corrie. Rachel was an American activist who was killed by the Israeli military on March 16, 2003 when she participated in an international protest against Israel's demolition of a Palestinian home in Rafah, Gaza. The delegation met with the Corrie family and their lawyer following the hearing and issued a press release demanding that the Supreme Court hold the perpetrators of Rachel's killing accountable as mandated by international law.

We also encountered numerous examples of the ongoing memory and legacy of Rachel Corrie for Palestinians. A day before the hearing, we were happy to see a plaque in Bethlehem listing Rachel's name along with those of other foreign volunteers killed in the fight for Palestinian self-determination. And a few days after that we passed by – and exchanged greetings with the owner of – the Rachel Corrie Café in Hebron.

There has been much worldwide attention, investigation and analysis of widespread and egregious violations of international law by Israel, and its suppression of the right of self-determination of the Palestinian people. This report will not seek to duplicate that information, some of which is referenced in the bibliography. Instead, it will focus on information we gathered from firsthand exchanges with Palestinians and their families who are being held by Israel and with representatives of the families of detainees and other prisoners who were on hunger strike during our visit, as well as with Palestinians who have been arrested by the Palestinian Authority. We will also cover what we learned from leaders and other staff with



Plaque in Bethlehem honoring international strugglers for Palestine who were killed

grassroots Palestinian organizations and NGOs that support and advocate for prisoners, from court observations and from meetings with lawyers. And we will attempt to communicate the overall frustrations and despair of Palestinian refugees living in the camps and of those drastically affected by the use and expansion of the ever-present wall, and the attacks on and destruction of Palestinian communities through police and military violence, bureaucratic manipulation and imprisonment of leaders.

As delegation members gathered in Ramallah to begin their mission, they experienced firsthand a manifestation of the fundamental discrimination that characterizes the conduct of Israeli authorities. When she attempted to enter Israeli-controlled territory from Amman, Jordan, NLG President Azadeh Shahshahani was subjected to intense scrutiny, along with many other Muslim and/or Arab (and otherwise ethnically profiled) travelers at the crossing, because her U.S. passport indicates that she was born in Iran.

After the authorities held and questioned her extensively for 11 hours, at one point calling a fellow delegation member to verify her “story,” and after they Googled Shahshahani and discovered her NLG position and NLG’s advocacy on behalf of Palestinian rights, they finally allowed her to enter, perhaps because of her prominence. At the same time, however, Shahshahani reported, they turned away several Arab-American and Indian-American law students who had been slated to undertake summer internship programs. No other delegate experienced such treatment in crossing the border, although if they had been Googled, they too might have been held up or even denied entry – as has happened to numerous Palestinian and Arab Americans and solidarity activists in recent years.



Rachel Corrie Restaurant and Cafe in Hebron.

Findings

While the focus of the delegation was an examination of the situation of political prisoners and the use of mass incarceration and the legal system against Palestinians, it is difficult to report on these concerns without mentioning the overall message of the Israeli government and military in all areas of Palestinian life: We will drive you off your land, and you have no right to defend yourself and your land. This message was even more blatant than some of us had expected.

The Israeli government employs a variety of tools to repress and dispossess the Palestinian population. These include forced evictions,² land grabs and other forms of ethnic cleansing,³ the denial of the right of return to Palestinian refugees, significant monetary and military support for settlements, and apartheid policies and practices, including the “community-shattering”⁴ wall, home demolitions and system of checkpoints, closures, permits and barriers restricting the free movement of Palestinians.

While Israel denies building permits to most Palestinian applicants, then condemns their “illegally built” homes and charges them for the demolitions, settlers constantly expand their hold on Palestinian land with impunity, if not outright support of the authorities. In Sheikh Jarrah and other East Jerusalem sites, members of the Jewish Defense League have taken over homes, with “settlers” from Brooklyn occupying, under court order, the front part of the home of a Palestinian family who had lived there for generations and still lives in the rear part, in highly contentious “coexistence” that is based primarily on dispossession and power.

The construction of portions of the wall and checkpoints in the middle of Palestinian communities (even those with no Israeli settlements nearby) has made those communities unlivable because the schools, hospitals and workplaces are on the other side. We visited one such community, Bir Nabala, which looked like a “ghost town” with one brave and determined family holding out; and we saw others threatened with a similar fate if the wall that partly surrounds them is completed.

The wall also serves to reinforce and complicate what has long been a policy of dividing Palestinians under occupation into different classes of residents and disrupt their lives, even on a very personal level. Rachel Serri, an advocacy officer with Al-Haq human rights law center in Ramallah, explained that most West Bank residents, holders of green ID cards, are barred from crossing the wall or checkpoints into occupied Palestinian East Jerusalem, let alone Israel, without special permits.

Palestinian residents of Jerusalem, however, hold blue ID cards, as do Israeli citizens, and have access to all parts of the country – a result of the fact that Israel applied its civilian law to East Jerusalem shortly after it conquered the territory in 1967. This is the case despite the fact that East Jerusalem is a part of the occupied West Bank under international law. Israel’s purported annexation of East Jerusalem

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2 <https://www.middleeastmonitor.com/resources/reports-and-publications/12647-forced-evictions-in-israel-palestine>.

3 <http://uk.reuters.com/article/2014/03/21/uk-palestinian-israel-un-idUKBREA2K1JM20140321>.

4 <http://www.aljazeera.com/indepth/opinion/2012/10/20121027145235386715.html>.

In all but a few rare cases, the court has upheld the military's sole right to determine what is necessary for "security" – the original rationale for implanting settlements in the West Bank – and now, for closing off large areas to Palestinians, including landowners, demolishing many buildings, barring Palestinians from certain roads and building the wall.

is not officially recognized by the international community, and has no legal effect on international law.

Israel has isolated large portions of the East Jerusalem population from each other by building a wall within the area, thus creating pockets that are officially part of the "united" municipality but are cut off from most of it and seriously lacking in basic services. This causes serious hardship when superimposed with the fact that Palestinian residents of Jerusalem risk losing their Jerusalem identity cards if they reside elsewhere for more than a short time or cannot prove that Jerusalem is their "center of life." Essentially, Palestinian Jerusalemites are treated as immigrants of particularly precarious status in their own city and country.

Thousands of Palestinians from Jerusalem have been stripped of their Jerusalem IDs; it is also used as a political punishment, as in the case of elected Palestinian Legislative Council members Mohammed Abu Teir, Ahmad Atoun and Mohammed Totah, and former minister Khaled Abu Arafah, all of whom were stripped of their Jerusalem IDs before being arrested by Israeli military forces. Couples with one Jerusalem resident and one who is not are particularly adversely affected.

Making life unlivable for Palestinians can easily lead to "self-deportation," driving people to emigrate to other countries if they have the means. It should be noted that even temporary residence outside Palestine has led to the stripping of Jerusalem IDs from Jerusalemite Palestinians. When that is insufficient to maintain control over the entirety of occupied Palestinian land, incarcerating Palestinian political, social and community leadership is another way to undermine the ability to build and strengthen national institutions and resistance efforts.

Settlement construction is the most striking example of the Israeli government's intention to take the land and disempower the people. Red-roofed suburbs with water lines and separate highways to their houses and apartment buildings, typically built on Palestinian agricultural and grazing land, can be seen in many parts of the West Bank. These "settlements," some of them huge housing tracts, even cities, are obviously built with Israeli government approval and support.

This message was conveyed clearly by the lawyer for the military in the Rachel Corrie Supreme Court hearing when she argued in a different context that the military can do whatever it deems necessary: no rights, no rules, no due process.⁵ In all but a few rare cases, the court has upheld the military's sole right to determine what is necessary for "security" – the original rationale for implanting settlements in the West Bank – and now, for closing off large areas to Palestinians, including landowners, demolishing many buildings, barring Palestinians from certain roads and building the wall.

⁵ Despite the removal of settlements in 2005, it has been widely reported that conditions in Gaza are even worse than in the West Bank. Even before the massive assault that began in July 2014, the United Nations called the situation in Gaza a "humanitarian disaster."



Former main street of Bir Nabala, now cut off by the Wall, making it a ghost town.



Red-roofed Israeli settlement in Halamish, across a small valley from Nabi Saleh and on its land.

Legal-Institutional Framework

Though many human rights activists focus in on Israeli violations of the “rule of law” to demonstrate the various forms of repression to which Palestinians are subjected, it may be more suitable to discuss Israel’s rights violations as manipulation of the law. In other words, it is often not violations of the law, but rather the *law itself* that enables Israeli repression. As sociologist Lisa Hajjar argues, “One way a government can project the appearance of acting in accordance with the law is to produce interpretations that the law does not apply.”⁶ Israel has used such legal obfuscation and evasion, as well as the elaboration and adoption of new laws, to justify inhumane treatment and oppressive rule.

Israel’s long-standing “emergency rule” in the occupied territories, built upon a set of regulations adopted by the country’s British rulers in 1945, means that Palestinians are subjected to a matrix of 1,500 military laws that “can be changed arbitrarily, without notice, and applied retroactively, in violation of the most basic tenets”⁷ of the rule of law.

The use of colonial law as a tool of “dispossession, displacement and oppression” is not confined to Israeli conduct in the occupied West Bank.⁸ According to the Adalah human rights law center in Haifa, at least 50 laws discriminate against Palestinian citizens of Israel.⁹

Over the years, Israel has detained thousands of Palestinians without charge or trial for periods ranging from several months to several years. There are three Israeli laws that govern Israel’s administrative detention powers: the Administrative Detention Order, which applies to the West Bank, excluding East Jerusalem; the 1989 Emergency Powers (Detention) Law, which applies to Israeli residents, residents living in Israeli occupied territories and residents of other countries; and the Internment of Unlawful Combatants Law.¹⁰ Enacted by the Israeli Knesset in 2002, the last one applies to Palestinians in Gaza (because Israel does not consider it to be “occupied” since its 2005 redeployment). Providing even less protection than administrative detention orders, this law allows detention for an unlimited period of time without charge or trial, in violation of international human rights norms. The Internment of Unlawful Combatants Law embodies some of the many practices shared between Israel and the United States, which codified its own legal definition of “unlawful combatants” who could be indefinitely detained under the Military Commissions Act of 2006.¹¹

“One way a government can project the appearance of acting in accordance with the law is to produce interpretations that the law does not apply.”
- Lisa Hajjar

6 Lisa Hajjar, “Comparing American and Israeli Ways of War,” Social Text, June 10, 2014, see http://socialtextjournal.org/periscope_article/comparing-american-and-israeli-ways-of-war/.

7 Noura Erakat, “A Conversation with Angela Davis and Noura Erakat,” May 10, 2014. See <https://www.youtube.com/watch?v=NydpTox6-M>.

8 Nasser Rego, “Reading Fanon in Palestine/Israel,” Jadaliyya, April 9, 2012, See <http://www.jadaliyya.com/pages/index/4972/reading-fanon-in-palestine-israel>.

9 <http://adalah.org/eng/Israeli-Discriminatory-Law-Database>.

10 <http://english.al-akhbar.com/node/21328>.

11 For more on the Israeli law, originally enacted to “legalize” the kidnapping and detention of people in Lebanon, see http://www.btselem.org/administrative_detention/criticism_on_the_illegal_combatants_law.

Administrative Detention

Whichever legal rationale is used, the Israeli military's use of administrative detention may be the clearest and most blatant example of the complete absence of the rule of law on the West Bank and the lack of any conformity with international legal standards. Palestinians from all ages, classes, regions, religions and political views are aware that they can be picked up by the military, interrogated, possibly tortured and then held indefinitely with no charges, no lawyers, secret files, no due process and no end in sight.

In our meetings, we learned that people are held for years, in some cases decades, when terms of three to six months are repeatedly renewed. These are people who won't confess to crimes they did not commit and against whom no evidence of criminal activity has been presented. As a result, they cannot be tried even in the regular military courts that lack basic and fundamental due process and fair trial guarantees. The Israeli answer is to simply hold them without charges.

On our first full day in Palestine, we visited a protest tent in Ramallah where wives, mothers, children and other relatives of prisoners – some serving sentences, others being held without charge -- were holding a daily vigil to bring attention to the dire situation of their loved ones, many of whom were on a hunger strike. Later in our visit we attended a similar vigil in Bethlehem. Such vigils and protests, often held outside the offices of the International Committee of the Red Cross, which visits Palestinian prisoners and is charged with the responsibility of upholding international humanitarian law, are a frequent occurrence in nearly all Palestinian cities.

We learned from family members that many of the prisoners are doctors, engineers, elected members of the Palestinian Legislative Council, leaders of popular resistance committees and other people who constitute much of the leadership of Palestinian society and a potential Palestinian state. Just prior to the 2006 election of the council, Israeli forces detained 450 members of the Change and Reform legislative bloc, connected to the Hamas movement (the eventual victor in the election), who were actively involved in campaigning.

As recently as 2009, almost a third of all Palestinian legislators were behind bars, and as of April 2014, 11 PLC members continued to be held by Israel, nine of them under administrative detention. With the West Bank crackdown starting in June, that number had risen to 36 by late August, according to Al-Haq, 28 of them under administration detention, the others without any legal basis. It became clear that there can be no purpose for such widespread incarceration of community and national leaders but to suppress the Palestinian political process.

In meetings with officials of the Ministry of Detainees and Ex-Detainees Affairs of the Palestinian National Authority, including Minister Issa Qaraqe', and other prisoner rights organizations, we were informed that there were at that time more than 5,000 prisoners and detainees in Israeli military detention in more than 17 prisons, detention centers and military camps inside Israel and the West Bank.¹²

12 In the escalation that began on June and continues throughout the West Bank and Gaza, the

According to the Israeli Prison Service (IPS), as of July 31, 2014, 5,383 Palestinians were being held as “security prisoners” in Israeli detention facilities, including 192 children.

According to IPS, 48 percent of the children and 90 per cent of adults were in facilities inside Israel, in violation of Article 76 of the Fourth Geneva Convention. An additional 1,960 Palestinians, including 24 children, were in IPS detention as “criminal prisoners.” Criminal offenses include entering Israel without a permit, most frequently in pursuit of work.¹³

Since 1967 there have been more than 850,000 prisoners, including 13,000 women and 25,000 minors from age 12 through 17. Hundreds have died in Israeli prisons and detention centers due to torture, medical neglect and shooting. The most recent were Arafat Jaradat, who died in February 2013 from in-custody torture five days after being arrested on suspicion of throwing stones and a Molotov cocktail at Israeli soldiers; and Raed Abdel-Salam Al-Jabari, who reportedly died as a result of torture in Eshel prison in July 2014.¹⁴ Many others have died following release due to serious medical problems from long years of imprisonment.

Former prisoners later reported to us the horrendous treatment they experienced in custody. Among others, we met with Na’el Barghouthi, known as the “dean of the prisoners,” who served 33 years in occupation prisons until his release in October 2011 as part of a prisoner exchange. While in custody, he was elected to the Palestinian Legislative Council in 2002.

We met with Mohammed Taj, a former hunger striker who was released from prison in critical condition in 2012 after nine years behind bars. He suffers from a lung disease diagnosed after participating in a hunger strike and falling into a coma. It took eight years to get a chest X-ray, and only after a legal complaint was filed by Addameer lawyers. He is now attempting to obtain a lung transplant. Taj described prison hospitals as the “cemetery for Palestinian prisoners.”

We learned from Ismat Mansour, who was released after 20 years behind bars, that conditions differ starkly for Palestinian “security prisoners” and Israeli criminal convicts. The former are allowed visits only from first-degree relatives, while anyone can visit the latter. Food is better for the Israelis, he said, they receive a larger commissary allowance and are permitted to receive packages from home, while Palestinians are not. Jewish prisoners are also not required to wear prison garb that is forced on Palestinians. They have phone privileges, and unlike Palestinians, many are allowed conjugal visits – including, famously, Yigal Amir, convicted of assassinating Yitzhak Rabin.

Mansour described how Palestinian political prisoners organize themselves into committees that represent them to the authorities and adjudicate inter-prisoner disputes. It reminded us of how in many historical situations, large groups

current total has risen to about 6,200 from a high of 7,000, with 500 now in administrative detention.

13 See <http://www.militarycourtwatch.org/page.php?id=Sz6YlehlT1a384204A8C1ExfyCSF>.

14 Unofficial translation, Autopsy Report of Arafat Jaradat, see <http://mondoweiss.net/2013/03/palestinian-accountability-detainees>; Middle East Monitor, ‘Palestinian prisoner tortured to death in Israeli jail’, September 19, 2014, see <https://www.middleeastmonitor.com/news/middle-east/14237-palestinian-prisoner-tortured-to-death-in-israeli-jail>.

of prisoners of war have handled their situations. In fact, Mansour said, the incarcerated Palestinians should be considered and treated as PoWs.

Observing in a military court at Ofer Prison, a short drive from Ramallah inside the occupied West Bank, we witnessed a military judge extend a term of detention with no evidence and no charges, after a hearing conducted in Hebrew with simultaneous military interpretation into Arabic. While there is a requirement to translate the proceedings into Arabic, Palestinian defendants in Israeli military detention often face difficulties in adequately comprehending them because, despite the translation requirement, the military interpreters and translators do not take their job seriously and loosely translate ongoing proceedings. Because of this situation, Palestinian detainees are often dependent on their defense lawyers for accurate translations – while their lawyers are engaged in actively presenting their cases.

After entering the prison where the military court convenes, we went into a tiny room in a trailer filled with prisoners, family members and lawyers. Each prisoner's case was addressed, quite informally, typically for five or 10 minutes, amid freewheeling discussion of plea deals being carried on in a shockingly chaotic atmosphere. In some cases detention was extended because the prosecution had failed to charge the prisoner and/or prepare a written statement of charges.



NLG delegation visits with prisoners' families at a protest tent in Ramallah.

Hunger Strikers

At the time of our visit about 150 prisoners, most of them held under administrative detention, had been on a hunger strike for up to several weeks. This hunger strike was organized to call for an end to the use of administrative detention. We heard from former hunger strikers that the horrendous in-custody conditions and the lack of hope for any charges or legal process under international standards left them with no choice but to take this drastic action as the only way to resist. They were willing to risk death for their demands for justice to be heard.

In 2012 a hunger strike of more than 2,000 political prisoners was ended when Israel agreed to end the use of long-term solitary confinement and release the 19 Palestinians held in long-term isolation to the general Palestinian prisoner population, limit the use of administrative detention to “exceptional circumstances,” and ease conditions in some areas – to no longer require Palestinian prisoners to wear uniforms, for instance, and to eliminate the thrice daily head count. But Israel has reneged on the agreement. It continues to use administrative detention extensively, and uniforms have been reinstituted.

The treatment of 2014’s hunger strikers was brutal. They were isolated, in solitary confinement; the military withheld vitamins and salt; and the guards would cook and eat their food in front of the hunger strikers in an effort to torture and demoralize them.

The treatment of 2014’s hunger strikers was brutal. They were isolated, in solitary confinement; the military withheld vitamins and salt; and the guards would cook and eat their food in front of the hunger strikers in an effort to torture and demoralize them. Palestinian prisoners held in administrative detention are often prevented from seeing their lawyers – routinely for up to 90 days after arrest – and we were told by staff of the International Committee of the Red Cross that even ICRC met unusually strong resistance from the Israeli military when it tried to see people or even document the identity of those engaged in hunger strikes.

At meetings with two Israeli NGOs, Physicians for Human Rights (PHR) in Jaffa and the Public Committee Against Torture in Israel (PCATI) in Jerusalem, both during the hunger strike, the delegation learned that the Knesset was fast-tracking a bill to permit force feeding of prisoners, “in spite of patients’ rights.” While the Israel Medical Association said its members would not participate in force feeding, the government declared that there are a sufficient number of prison physicians (subject to military orders) to carry it out, and they were discussing implementing it in spite of a pending legal challenge. Prime Minister Netanyahu justified the proposed law, pointing to U.S. force feeding of prisoners at Guantanamo.

The legislation was apparently put on a back burner in late June, after the hunger strikers suspended their protest in light of the major Israeli rampage throughout the West Bank, purportedly as part of the search for three Israeli settler students who had gone missing June 12 in a fully Israeli-controlled section (Area C) of the West Bank. (It turns out the authorities knew from day one that they were already dead.) Over less than three weeks in June, the crackdown involved the killing of six West Bank Palestinians (and more in Gaza bombings even before the “Protective Edge” carnage began July 7), many hundreds of new arrests, curfews, closures and highly destructive home invasions accompanied by reports of widespread theft.

Bana Shoughury of PCATI reviewed the legal status of torture under interrogation by the General Security Service, limited by the Israeli Supreme Court in the 1990s to “ticking time bomb” situations. This has led to some reduction, she said, but has far from eliminated the practice. For one thing, the rule does not apply during the arrest and initial transport phase, before formal interrogation ensues. She said more than 850 complaints were filed from 2001 through 2013 – while the number of criminal investigations opened as a result, let alone indictments, during that period was zero. In 2012 the High Court ruled that there is no legal obligation to open such investigations.¹⁵

In addition to explaining the history and status of force feeding hunger strikers, Amany Dayif at PHR in Jaffa described the organization’s general advocacy for universal access to and provision of healthcare in Israel, especially among underserved populations such as Palestinian citizens, guest workers, migrants and asylum seekers. Regarding prisoners specifically, she said PHR submits several hundred appeals a year by prisoners, about 80 percent of them Palestinians from the occupied territories. Issues include denial of treatment or care in general, torture and other mistreatment by staff, solitary confinement, overcrowding, poor food and hygiene matters. Healthcare in prisons is provided directly by employees of the Israel Prison Services, which Dayif described as woefully inadequate. Not surprisingly, complaints within the system are routinely ignored, so PHR and other human rights groups play a crucial role in maintaining a semblance of standards in prisons.

In Haifa, we met with director Hassan Jabareen and numerous other staff from Adalah, a human rights law center that deals mostly with issues involving human and civil rights of Palestinian Israeli citizens. This includes numerous issues related to arrest and imprisonment stemming from a high level of political protest activity in many areas. Standing out among recent events had been a wave of protests surrounding the threatened expulsion of some 40,000 Palestinian Bedouin from their traditional lands in the south of Israel, under the so-called Praver plan, which would put an end to their agricultural lifestyle and concentrate them in larger townships. And just before our visit, an Adalah staff member, Majd Kayyal, had been arrested and held incommunicado for several days following an open visit he made to Lebanon to attend a journalism conference. His case challenges Israel’s ban on such contact by Palestinian citizens with colleagues in neighboring Arab countries.

More than 850 complaints about torture were filed from 2001 through 2013 – while the number of criminal investigations opened as a result during that period was zero.

¹⁵ Sharon Weill and Irit Ballas, “Investigation of torture claims in Israel: analysis of the 2012 High Court of Justice ruling and the Türkel Commission Report,” Public Committee Against Torture in Israel, 2012. See <http://www.stoptorture.org.il/files/investigation%20of%20torture%20claims%20in%20Israel.pdf>.



NLG delegation meets with former hunger strikers, including Khader Adnan.



Banner in Bethlehem highlighting imprisoned Palestinians and calling for their freedom.

Targeting of Youth

The more we read and learned, the more we came to understand that the targeting of youth is intended to stifle leadership development, curtail educational and vocational opportunities for Palestinian youth and further the goal of “self-deportation.” Interrogation of youths in coercive custody is also a way of obtaining evidence against Palestinian leadership, as frightened youth are more easily coerced into pointing fingers at adults for incitement or similar vague charges.

The NLG delegation met with representatives of Defense for Children International Palestine (DCIPS) and the Jerusalem YMCA (Beit Sahour branch), and with a Palestinian youth who had recently been arrested and mistreated by the Israeli military. All of these conversations reinforced our findings that international juvenile justice standards and specific protections in international law for children are not applied to Palestinian youth and not incorporated into the Israeli military law framework.

On May 24, Brad Parker, attorney and international advocacy officer for DCIPS and an NLG member, took our delegation to Hebron, where we listened to a young Palestinian boy from the village of Beit Ummar describe his arrest and detention. Looking straight ahead and appearing somewhat shy in the face of an international legal delegation, Mohammed, 15, spoke quietly of his transportation to three different detention facilities, his concern for his family, his “confession,” time in solitary confinement and eventual release, three months later.

Mohammed was arrested on his way to receive medical attention for a soccer injury. With a school note in his hand he was nevertheless picked up by the Israeli military, then kicked and hit until a confession to stone throwing was extracted. Post-interrogation he was assigned a lawyer from DCIPS, which represents approximately 25 percent of children who are arrested. There is no requirement for the military to notify parents.

Since his release Mohammed has started smoking and, as is typical of children after their release from prison, quit school. Because he missed three months of classes, he would have been required to repeat the grade. Now 16, he plans to become an auto mechanic. We wondered what his future holds and how his arrest experience, at age 15, will shape that future.

Mohammed is typical of the 500 to 700 children arrested each year by the Israeli military. At the time of our visit there were 196 children in Israeli military detention, and it is customary for 200-300 to be incarcerated in any given month. Their ages typically range from 12 to 18, although children as young as six have been picked up.¹⁶ Until recently, Israel classified Palestinian youth over 16 as adults, contrary to international standards (applied all along to Israelis) defining youth as those under 18.

¹⁶ See the film *Stone Cold Justice*, available on YouTube: https://www.youtube.com/watch?v=61q6KbBGDr8&list=PL-ryDYOP-rmP31GxuSTAea6K2ASRJHT_Y.

Many of the children are jailed for offenses such as throwing stones. According to DCIPS, Palestinian children arrested by Israeli forces from the occupied West Bank and accused of stone throwing or other offenses under Military Order 1651 are by default subjected to pretrial detention.. Under Military Order 1651, throwing stones carries a potential maximum sentence of 10-20 years depending on a person's age and the specific circumstances of the case. While children are generally sentenced to short periods of months or years depending on their age, damage or sabotage of an Israeli army facility carries a maximum sentence of life imprisonment at the court's discretion, and harming, insulting or threatening the army carries a 10-year sentence.

500 to 700 Palestinian children are arrested each year by the Israeli military. At the time of our visit there were 196 children in Israeli military detention, and it is customary for 200-300 to be incarcerated in any given month.

The visit with Mohammed was followed by a meeting at the Arroub refugee camp with the Popular Committee director and representatives of the women's, children's and school committees in the camp. We learned that about 50 kids from the camp are arrested each year with some spending a day, others three years, in detention. Israeli soldiers typically break into homes after 2:00 a.m. to arrest the youth. Part of the committee's focus is to prepare children for arrest and then identify appropriate counseling upon release. The ex-prisoners tend to experience nightmares, psycho-social problems, behavioral changes and loss of interest in school. (One boy who was arrested five times missed so much school that it took him four years to complete seventh grade. If a student misses 60 days of study, he or she is required to repeat the full school year.) During 2013, 76.5 percent of Palestinian children arrested by the Israeli military in the occupied West Bank suffered some form of physical violence during arrest, transfer or interrogation, according to DCIPS.¹⁷

We then went to the Beit Sahour YMCA, where Nader Abu Amsha, director of its rehabilitation program, told us about his work with Palestinian youth released from Israeli detention. Many are suffering from post traumatic stress disorder, while most exhibit some type of trauma-related anxiety. The Swedish branch of Save the Children studied the impact of detention on children and brought some Palestinian children held in Israeli military jails to meet with the Swedish parliament, he reported. Their identification of specific psycho-social issues helped the YMCA create a reintegration program. They work with individual children and their parents prior to release, and with the larger community and with the education system on a national level to initiate policy changes that will help get these kids back in school.

After detention, some kids are stigmatized by teachers, which contributes to a high dropout rate. The YMCA started a vocational assessment unit that is open to everyone in the community, offering three months of training. In addition, it holds retreats with recently released kids, giving them the opportunity to discuss their shared experiences. Overall there are few resources available to the hundreds of children who have been imprisoned, and it is due to the tenacity of the YMCA that some of these youth receive the help they need.

A representative from the Right to Education program described how schools at all levels have been impaired by the occupation. During the first intifada in 1988, for instance, all schools were closed for long, though varying, periods. Teachers organized underground classes in homes. Birzeit University was closed for 3.5

¹⁷ For more information on specific types of ill-treatment go to: http://www.-palestine.org/sites/default/files/report_doc_solitary_confinement_report_2013_final_29apr2014.pdf

years (and for shorter periods previously and subsequently). Even when open, its students and those at other post-secondary institutions suffer from frequent closures at checkpoints they must cross to get to classes. Occupation decrees ban numerous books considered subversive (leftist and Islamist alike); lab equipment is severely limited for fear of bomb making; and visiting faculty from abroad are usually denied visas of more than three months as tourists, if allowed in at all.

Palestinian campuses being hotbeds of political ferment like universities everywhere, students and sometimes faculty are targeted for arrest at times of heightened unrest or even during student election campaigns – both by occupation forces and by Palestinian authorities.

In prison, inmates are allowed to pursue academic classes only if they are sentenced to more than five years, and then only in Hebrew in conjunction with Israel's Open University. Even then, they are hampered by lack of access to books and other supplies, phone communications and Internet.

We met in Jerusalem with Marc Maurer with the International Committee of the Red Cross, which like its counterparts in other conflict zones, is charged with the protection of civilians, including prisoners. ICRC describes its approach as a deliberate effort to maintain “apolitical neutrality” and to engage in what it calls “confidential, bilateral dialogue” with prisoners and then with authorities, rarely going public and never pursuing litigation strategies. This enables it to maintain access to prisoners and to advocate quietly for high priority cases of abuse. Maurer did cite a new interest in engaging more with Israeli civil society to stimulate discussion of issues that are otherwise easy for residents of the Tel Aviv “bubble” to ignore.

It must be noted that Palestinian organizations and families have frequently criticized ICRC for maintaining that “neutrality” when confronted with violations of international humanitarian law in Israeli prisons against Palestinian prisoners, calling on the organization to take a public stand against such practices as the use of isolation, medical neglect, denial of family visits and the punishment of hunger strikers.



At a protest tent in Ramallah with families of Palestinian political prisoners.

Detention of Lawyers

Israel routinely arrests Palestinian lawyers. In the days preceding our delegation, Palestinian Prisoners Society, another Ramallah-based prisoners' rights group, issued a statement condemning Israel's crackdown on Palestinian lawyers. Specifically, Israel arrested numerous Palestinian lawyers for allegedly passing messages between Palestinian prisoners and the Hamas leadership.¹⁸ In one instance this past March, Israel arrested Shireen Issawi and four other Palestinian attorneys from the same firm in East Jerusalem, accusing them of running a network of attorneys who passed messages in exchange for money. The attorneys have vehemently denied the charges, and they accuse Israel of monitoring and grossly mistranslating attorney-client communications in contravention of Israel's own laws.

Approximately six weeks after our delegation concluded, Addameer and Lawyers for Palestinian Human Rights submitted a joint complaint to the United Nations Special Rapporteur regarding Israel's arrest of Palestinian human rights lawyer Murad Shtaiwi. Shtaiwi, like many other attorneys Israel has detained, was arrested pursuant to Israel's notorious law that criminalizes virtually all forms of Palestinian protest. More recently, on September 18, 2014, Israeli soldiers raided the home of Ayman Nasser, Addameer's legal coordinator, and arrested him.¹⁹ Israel has not yet filed formal charges against Nasser, and Addameer researcher Murad Jadallah has stated that it is anticipated that he will be sentenced to administrative detention.²⁰



Banner in Bethlehem demands an end to administrative detention without charge or trial.

18 Dalia Hatuqa, *Israel accused of cracking down on lawyers*, Al-Jazeera English, May 14, 2014, available at <http://www.aljazeera.com/news/middleeast/2014/05/israel-accused-cracking-down-lawyers-2014512125258477247.html>.

19 See Charlotte Silver, *Family held at gunpoint as Israel arrests another Palestinian rights defender*, Electronic Intifada, Sept. 22, 2014, available at <http://electronicintifada.net/blogs/charlotte-silver/family-held-gunpoint-israel-arrests-another-palestinian-rights-defender>.

20 Ibid.

Plea Bargains

The practice of plea bargaining has been criticized for concentrating power in the hands of prosecutors, as well as for its negative impact on potentially innocent, vulnerable and/or marginalized suspects who are often forced to plead guilty since pleading not guilty can have dire consequences in terms of the length of the sentence. In a legal system undermined by institutionalized racism and class bias, recourse to plea bargaining is also an indication of deep-seated structural inequalities. More than 95 percent of criminal cases in the United States are settled through plea bargains, with this limited justice affecting people of color disproportionately.

“War on terror” cases have not been an exception when it comes to the use of plea bargains in cases involving individuals from marginalized communities, with more than 90 percent of cases settled before going to court.

In Palestine, 95 percent of the cases in military courts end with plea bargains, a number that tends to rise during periods of mass arrests, such as occurred from 2001 to 2004, during the second Intifada, when thousands of cases were brought to the courts.

According to Sahar Francis, director of Addameer, there are several reasons for this. First, military prosecutors generally use vague, broad and exaggerated charges, making them difficult to contest. Second, as most of the trial material, including evidence, is in Hebrew, Palestinian lawyers who have not studied in Israel and are not fluent in Hebrew lack confidence in arguing the case, in particular when it comes to cross examination. Also, there is a lack of trust in the translation, as interpreters are soldiers serving in the army. Third, cases that go to trial generally receive much higher sentences and, in some cases, the duration of the trial can be longer than the expected sentence. Fourth, the transfer and holding conditions for trials are deliberately prolonged, uncomfortable and humiliating, leading many prisoners to prefer to be sentenced as early as possible to avoid the discomfort caused by such procedures. Fifth, lawyers who choose to argue their cases are penalized by the courts through extensive and unnecessary delays. Finally, much of the evidence used in trials is derived from confessions of individuals who have been tortured or unduly pressured, making it difficult to refute them in court.

As a result of these repressive circumstances, detainees and their lawyers often enter into plea bargains in an attempt to minimize the harm by getting shorter sentences. Even setting aside the structural injustices inherent in a judicial process operating within a colonial-settler system, the possibility of a Palestinian getting a fair trial in this context is very almost non-existent.

In the United States and in Palestine, over 95 percent of criminal and “security”/political cases respectively are settled through plea bargains. This limited justice disproportionately impacts people of color and colonized people.

Coordination with the Palestinian Authority

The delegation also met with representatives of the Palestinian Authority (PA), including the Ministry of Detainees and Ex-Detainees Affairs. The delegation was aware that the PA has long served as Israel's proxy security force in the West Bank. For example, in 2011, Al-Jazeera released a trove of documents regarding the PA's relationship with Israel. These documents revealed, *inter alia*, that the PA and Israel coordinated assassinations of Palestinian militants from rival Palestinian political parties and worked together to create an elite unit of Palestinian security forces capable of battling "terrorists" with advanced weapons.²¹

One day before the delegation began, there were reports that the PA considered ending its security coordination with Israel in response to the Israeli army's killing of two unarmed teenagers, Mohammed Abu Daher and Nadim Siam, during a protest outside of Israel's Ofer military prison.²² Of course, the delegation did not take the reports too seriously given the PA's long history of coordination with Israel. But several members hoped to take advantage of any tension between the PA and Israel in order to learn more about the plight of Palestinians in PA prisons and the extent to which the PA arrests Palestinians at Israel's behest. However, such rumors were in fact unfounded and the relationship between the PA and Israel is so entrenched that at the height of Israel's massive crackdown throughout the West Bank in June 2014, PA President Mahmoud Abbas stated that coordinating with Israel is in the "Palestinian national interest."²³

Unsurprisingly, the PA officials with whom we met were reluctant to discuss anything related to the PA's military coordination with Israel. When members of the delegation tried to ask PA officials about Palestinian prisoners in PA prisons, our questions were met with demurrals and claimed confusion about the topic. The officials would not even acknowledge questions about the extent to which PA's relationship with Israel complicates the ministry's work on behalf of prisoners. The PA would later take partial credit for the delegation's presence following our presence at a protest tent in Ramallah where prisoners' families gathered holding photographs of their sons, brothers and fathers. When coverage of our delegation appeared on local television, the PA took credit, referring to us as a "delegation of American lawyers." Addameer was not mentioned at all.

21 See Jack Khoury, Avi Issacharoff and Anshel Pfeffer, 'Palestinian Authority closely coordinating security operations with Israel', Haaretz, Jan. 26, 2011, available at <http://www.haaretz.com/news/diplomacy-defense/palestinian-authority-closely-coordinating-security-operations-with-israel-1.339205> (last visited 9/16/14); see also Tariq Dana, *The Beginning of the End of Palestinian Security Coordination with Israel?*, Jadaliyya, July 4, 2014, available at <http://www.jadaliyya.com/pages/index/18379/the-beginning-of-the-end-of-palestinian-security-c> (last visited 9/16/14).

22 More details on Mohammed and Nadim's deaths are included below under "The Mo'ataz Al-Washaha Case."

23 Tariq Dana, *The Beginning of the End of Palestinian Security Coordination with Israel?*, Jadaliyya, July 4, 2014, available at <http://www.jadaliyya.com/pages/index/18379/the-beginning-of-the-end-of-palestinian-security-c> (last visited 9/16/14).

The Mo'ataz al-Washaha Case

Toward the end of the delegation, we had the honor of visiting with the family of Mo'ataz Al-Washaha, a Palestinian young man killed in February 2014 when a large Israeli military force invaded his village and demolished his house in Birzeit with him inside, unarmed, shooting him 65 times in what the family called an expression of hatred and dehumanization. We were shaken by the description yet buoyed by the spirit of determination and popular resistance evident among his surviving family, typical, in fact, of almost all the people we met.

The threat of sudden, extreme violence is a constant under occupation, as we were reminded on several other occasions. The day before the delegation's official start, two members were accompanied by the delegation coordinator from Addameer, Randa Wahbe, on a short taxi ride from Ramallah to Beituniya, near Ofer Prison, where two Palestinian teenagers had been shot dead the day before as a demonstration in solidarity with the hunger striking prisoners wound down. During our short stay we witnessed from a bit behind the front line a mid-range confrontation involving tear gas, burning tires, stone throwing and some shooting, but fortunately, no serious casualties.

A few days later, video footage from a security camera installed by a local business, obtained by DCIPS, showed the two victims being shot, apparently by snipers from a distance, while they were simply walking down the street. This discredited the initial Israeli denials that there had been any shooting there, influencing (with backup from autopsies) the court of public opinion, including Israeli media. It led to a flurry of backup versions from unnamed military officials – that only rubber bullets had been shot, that maybe the video was faked or the victims were merely acting. A week after that, footage by a European journalist on the scene showed an Israeli soldier firing apparently live ammunition at the very moment one of the boys was shot. More than three months later, the victims' memories have faded into an ongoing "investigation" (with no arrests of soldiers) as the horrific news of the assault on Gaza with thousands of casualties and massive destruction grabbed the world's attention.

It is worth noting in this context, however, that the pattern of violence and arrests against civilians in the West Bank did not let up the entire time. In fact it increased, according to the Palestinian Ma'an news service, on August 29:

As the eyes of the world focused on Gaza in recent months, Israel stepped up a campaign of repression, detentions and settlement building across the West Bank, the Palestine Liberation Organization said in a report released on Thursday. Thirty-two Palestinians were killed by Israeli forces in a two month period beginning on June 13, the report said, and 1,397 Palestinians were injured by Israeli fire. During the same period, 1,753 Palestinians were detained – an equivalent of 24 a day – while Israeli forces conducted 1,573 military raids across the West Bank, or an average of 21 a day. The PLO report – which was entitled "Business as Usual" – also highlighted that the construction of Jewish-only settlements built on lands confiscated from Palestinian locals in the



Poster of Moataz al-Washaha on the street; he was killed in February 2014 by the Israeli army, who labeled him "wanted." Unarmed, he was shot 65 times and his home demolished around him.

occupied West Bank had surged during the same period, with three different projects having been announced on Aug. 25-26 just as the Gaza ceasefire was declared. The report said that over the summer so far, more than 1,472 settlement homes had been approved, slated to house around 6,000 Jewish settlers. ... The report also said that the period from June 13 to Aug. 26 had also witnessed a total of 249 attacks by Jewish settlers on Palestinian civilians, or around three a day.²⁴

And inside Israel itself, according to Ha'aretz of August 24: "In the space of a month, 1,471 people who demonstrated against the fighting in Gaza have been arrested, nearly all of them Arabs. Meanwhile, 650 criminal files have been opened and 350 indictments handed down – all of them against Arabs. Let's remember that most of the people attacked during those demonstrations [by police and counterdemonstrators] have also been Arabs."²⁵



With the family of Moataz al-Washaha in Birzeit. Moataz's poster is on the wall at left.

24 Ma'an News, "PLO: 32 Palestinians killed in West Bank since June," August 29, 2014, *see* <http://www.maannnews.net/eng/ViewDetails.aspx?ID=724086>.

25 Oudeh Basharat, "The judges of national resilience are keeping Israeli Arabs in their place," Ha'aretz, August 24, 2014. See: <http://www.haaretz.com/opinion/.premium-1.612231>.

Nothing Here is News to the U.S. State Department

In its 2013 Human Rights Report on Israel/Palestine,²⁶ the State Department acknowledges just about all of the human rights abuses detailed in this report, including: (1) torture and cruel, inhuman or degrading treatment or punishment, which in at least one case, “allegedly led to death” (such as beatings, use of stress positions for long periods, isolation, sleep deprivation and psychological abuses, including threats against family or to demolish homes), particularly during arrest and interrogation (pages 3, 40, 46-7); (2) indefinite administrative detention without charge or trial, including of Palestinian Legislative Council members, and the call by “many NGOs” for the immediate end to such detention (pages 8, 54); (3) solitary confinement (pages 4, 54, 58); (4) arbitrary arrest or detention (page 6); (5) austere and overcrowded detention facilities which sometimes appeared to be used as an interrogation or intimidation method (pages 40, 47); (6) improper use of security detention procedures and the practice of incommunicado detention throughout the duration of interrogation (pages 40, 54); and (7) travel restrictions that affected prisoners’ access to lawyers and visitors (page 5). It also acknowledged “occasional hunger strikes” to protest prison conditions, including the eight-month hunger strike of Samir Issawi (page 4). The report concludes that among the “most significant human rights abuses across the occupied territories was arbitrary arrest and associated torture and abuse, often with impunity, by multiple actors in the region” (page 40).

“Israeli [military] courts had a conviction rate of more than 99% for Palestinians”

- US State Department

The State Department acknowledges the existence of two separate (and unequal) justice systems, with Israeli military law applied to Palestinians in the West Bank, while Israeli civil law is applied to Israeli settlers in the same area (page 53). The report states that “Israeli law provides safeguards against arbitrary arrest and detention, but key safeguards do not apply to Palestinian security detainees,” who are subject to Israeli military law (page 49). It describes the military justice system in great detail: Palestinians can be held in detention for eight days before appearing before a military court; there is no requirement that a detainee have access to a lawyer until after interrogation, a process that may last for weeks; the maximum period for such a detention order is 90 days, but detention can be renewed if deemed necessary; military prosecutors often present secret evidence that is not available to the defendant or counsel (pages 49-50, 57).

The State Department is well aware that the “Israeli [military] courts had a conviction rate of more than 99% for Palestinians” (page 53). The report acknowledges that “NGO and lawyers reported it was better to plead guilty and receive a reduced sentence than to maintain innocence and go through a trial that could last months, if not a year.” And it repeats the complaint of human rights lawyers that the structure of military trials – in military facilities, with judges, prosecutors and court officials all being military officers, and with tight security

²⁶ United States State Department, “Israel 2013 Human Rights Report.” See <http://www.state.gov/documents/organization/220568.pdf>

restrictions – “limited defendants’ rights to public trial and access to counsel” (page 58).

Despite the knowledge of all these numerous systemic human rights and due process violations and the unequal systems of justice, this knowledge has had no effect on the continuing U.S. military, economic, diplomatic and moral support to Israel. The National Lawyers Guild has long called upon Congress to suspend its assistance to Israel in response to its human rights abuses of Palestinians.

The report also singles out the abuse, “possibly rising to the level of torture,” of Palestinian minors, mainly “to coerce confessions” (page 46). It cites claims by Defense for Children International-Palestine and B’Tselem, which called for an end to violent interrogations of children and a thorough investigation of what it described as a “systemic problem” (page 46). It mentions DCIPS’ complaint that most minors arrested saw their lawyer for the first time when they appeared before a military court (page 53), and it specifically addresses the complaint that signed confessions by Palestinian minors, written in Hebrew, a language most cannot read, continue to be used as evidence against them (page 58). The report acknowledges NGO claims that despite changes to Israeli military law in 2011 – never translated into Arabic – that finally categorized Palestinians age 16 and 17 as minors, Israeli authorities frequently failed to inform parents where they took minors when arrested. Moreover, the law does not apply to detention periods, so 16- and 17-year-olds may be detained as long as adults are. There is acknowledgement of the NGO Military Court Watch claim that detention periods for Palestinian children from age 12 to 17 remain at least twice as long as those applied to Israeli settler children (pages 53-4). Significantly, the State Department acknowledges the UN Children’s Fund (UNICEF) finding in February 2013 that “mistreatment of Palestinian children in the Israeli military detention system appears to be widespread, systematic and institutionalized” (page 54).

The report indicates State Department awareness of “reports of failure to take disciplinary action in cases of abuse. ... NGOs reported impunity among Israeli security forces remained a problem. ... Authorities systematically disregarded abuse allegations” (page 51). Specifically noted in the report are cases of arrest for what should clearly have been protected political activity, such as that of Bassem Tamimi, held for 109 days for participation in “an unlicensed demonstration and activity against public order” – a protest at a settlement supermarket. Also noted is the continuing use of a 1967 military order that “effectively prohibited Palestinian demonstrations and limited freedom of speech in the West Bank,” by requiring that a “political” gathering of 10 or more people have a permit from the military regional commander, breach of which can lead to 10 years’ imprisonment (page 69).

Nevertheless, while acknowledging that NGOs “alleged there were non-[Israeli] citizen detainees held for political reasons,” the report inexplicably repeats the Israeli government’s claim that it holds prisoners only on “criminal and security grounds” (pages 10, 55).

Yet despite the knowledge of all these numerous systemic human rights and due process violations and the unequal systems of justice, the U.S. government still considers Israel to be its closest ally. This knowledge has had no effect on the continuing U.S. military, economic, diplomatic and moral support to Israel. The National Lawyers Guild has long called upon Congress to suspend its assistance to Israel in response to its human rights abuses of Palestinians. We are one among many such voices, including Amnesty International USA, the U.S. Campaign to End the Israeli Occupation and Jewish Voice for Peace.

Parallels with U.S. Mass Incarceration/ 'War on Terror' Policies and Practices²⁷

In addition to considering the multiple forms of political, economic and military support the United States provides Israel, it is important to remember that that influence is not unidirectional. The United States borrows Israeli legal justifications²⁸ as well as militarized policing tactics²⁹ and forms of torture employed in prisons.³⁰ The United States borrows Israeli legal justifications as well as militarized policing tactics and forms of torture employed in prisons. Evidence of such borrowing has been reconfirmed in the recently published US senate report on CIA torture. The report documents the CIA's repeated references to an Israeli high court decision to justify torture in the context of the agency's 'war on terror' rendition and black site incarceration program.

As a result of this borrowing, but also of the similar foundations on which both states were founded (racial injustice and settler-colonialism), Israel and the United States share much in common in terms of their techniques of control, especially in relation to mass incarceration, by which whole populations are criminalized in order to further political control.

Although similarly based upon a politics of fear, mass incarceration as a tool of oppression entails less blatant violence than other forms of colonial and racial violence that have been practiced in Israel and the United States. But its impact has nevertheless been harmful and extensive. In *Time in the Shadows: Confinement in Counterinsurgencies*, University of London professor Laleh Khalili examines continuities in carceral strategies from 19th-century colonial rule until today. Khalili shows that while the use of mass incarceration rather than brute force to control "problematic populations" may have developed as a "more humane ... administrative and legal solution" to social unrest, their aims have often been the same: "to oblige" an oppressed or "occupied people to admit defeat and recognize their own subjugation." The institutionalized racism inherent in the U.S. criminal justice system has led Michelle Alexander to describe U.S. mass incarceration as the "new Jim Crow" (in her book of that title), likening it to the "racial caste system" maintained through racist laws and violence after the formal abolition of slavery.

Mass incarceration has a devastating impact on individuals and communities. As a form of state terror, it is designed to strike fear in whole communities and prevent the establishment of sustainable bonds, based on justice and respect, between state and society.

Mass incarceration has a devastating impact on individuals and communities. As a form of state terror, it is designed to strike fear in whole communities

27 Portions of this section of the report were previously published as follows: Corinna Mullin and Azadeh Shahshahani, "From Gaza to Ferguson: Exposing the Toolbox of Racist Repression," Huffington Post, August 22, 2014, http://www.huffingtonpost.com/azadeh-shahshahani/from-gaza-to-ferguson-exp_b_5700764.html.

28 <http://culture.jadaliyya.com/pages/index/18201/comparing-american-and-israeli-ways-of-war>.

29 <http://www.timesofisrael.com/israel-trains-us-law-enforcement-in-counter-terrorism/>.

30 <http://electronicintifada.net/content/israeli-link-possible-us-torture-techniques/5071>.

and prevent the establishment of sustainable bonds, based on justice and respect, between state and society. By breaking up and isolating members of movements and pressuring individuals to collaborate, dissimulate and betray their beliefs, it causes alienation among brothers, sisters and comrades. And with the law often functioning in service of power rather than justice, prisons serve as the handmaiden of legal oppression.

U.S. and Israeli mass incarceration: criminalize, control, disempower

The draconian conditions imposed by Israel's blockade of Gaza have often led critics to liken the embattled strip of land to an "open-air prison," pointing to Israel's panoptical control of Gaza's borders, airspace and sea coast.

But conventional brick-and-mortar prisons continue to enjoy robust use throughout Israel-Palestine. Since the 1948 *Nakba* with its extensive expulsion and dispossession of Palestinians from their land, Israel has imprisoned approximately 20 percent of the total Palestinian population, including 40 percent of the male population. As of October 2014, Israel holds more than 6,200 Palestinian "security prisoners"³¹ in its prisons and detention centers. These include more than 466 Palestinians subjected to administrative detention or other detention without trial, including 19 Palestinian members of parliament (with 27 members of parliament imprisoned overall), and three former ministers.³²

Israel's use of imprisonment as a political tool was on full display in the latest violence in Gaza. Following the June 12, 2014, disappearance of three Israeli settler teens subsequently found dead, Israel detained thousands of Palestinians, effectively using mass arrest and incarceration as a form of collective punishment, which is considered a war crime under the Fourth Geneva Convention. Of those arrested, 62 had only recently been freed in the Gilad Shalit prisoner exchange. Their release, and an end to the siege of Gaza, were Hamas' (and other Palestinians') most strident demands during negotiations to end the violence.

Hamas was clearly the immediate target of Israel's latest wave of arrests, in which well over 2,000 West Bank Palestinians were captured in July alone. But Israel's broader political aim is to terrorize the entire Palestinian population, thereby deterring unity and resistance. At least 15 of those arrested and later released were held under the Unlawful Combatants Law.

The United States is also notorious for its use of incarceration as a tool of repression. Its burgeoning prison population now constitutes a quarter of all the

31 <http://occupiedpalestine.wordpress.com/2014/08/06/israeli-terrorism-july-2014-over-1930-palestinians-arrested-by-occupation-forces/>.

32 <http://samidoun.ca/2014/08/july-2014-over-1930-palestinians-arrested-by-occupation-forces/>.

prisoners in the world. Close to 70 percent of all people in U.S. incarceration, moreover, are people of color. As Adam Gopnik observed in *The New Yorker*, “there are more black men in the grip of the [U.S.] criminal-justice system – in prison, on probation, or on parole – than were in slavery” on the eve of the civil war.³³

Over the past three decades, the U.S. prison population has quadrupled, in large part a result of the “war on drugs.” Since the Anti-Drug Abuse Act of 1986 was passed, incarceration for nonviolent offenses dramatically increased – disproportionately impacting poor black people. “Relegated to a second-class status” by their experience with prison, notes legal scholar Michelle Alexander, an inordinate number of black men have once again become “disenfranchised,” losing the right to vote, to serve on juries and to be free of legal discrimination in regards to employment, education and access to public services.³⁴

This exponential increase in incarceration has accompanied an unprecedented rise in the detention of undocumented immigrants as well as the growth of the prison-industrial complex, demonstrating the salience of the political economy of incarceration. These developments are rooted in the socio-economic changes of the post-industrial era and the retrenchment of social safety net programs that occurred in the United States from the 1980s forward, paralleled by the spread of the neoliberal economic paradigm to the global South. As scholar and social justice activist Angela Davis has highlighted, prisons were central to the government’s strategy of addressing the structural violence “produced by the deindustrialization, lack of jobs” and “lack of education” that has characterized this era, impacting poor people of color in particular.³⁵

In the United States alone as of 2011, there have been 2,934 terrorism-related arrests and 2,568 convictions since September 11, 2001 – eight times the number of such arrests in the previous decade.

With the “war on terror,” the practice of mass incarceration has expanded in use and impact, resulting in a dramatic increase in the targeting of Muslim and Arab communities. An Associated Press report in 2011 found that in the United States alone, there had been 2,934 terrorism-related arrests and 2,568 convictions since September 11, 2001 – eight times the number of such arrests in the previous decade.

Activists have raised serious concerns regarding the “discriminatory investigations”³⁶ and “questionable”³⁷ prosecutorial tactics that have characterized many of these cases. These allegations were detailed in a report by Human Rights Watch and Columbia Law School’s Human Rights Institute, which cited prosecutors’ use of “evidence obtained by coercion, classified evidence that cannot be fairly contested, and inflammatory evidence about terrorism in which defendants played no part” to convict suspects of terrorism.³⁸

33 <http://www.newyorker.com/magazine/2012/01/30/the-caging-of-america>.

34 <http://www.share-pdf.com/2f11b3ca9c6948679ab4552cb14f8043/racial.justice.alexander.htm>.

35 http://www.democracynow.org/2014/3/6/angela_davis_on_prison_abolition_the.

36 <http://www.alternet.org/civil-liberties/how-fbi-creating-terrorists>.

37 <http://www.commondreams.org/news/2014/07/21/fbi-entrapment-created-illusion-terrorist-plots-report>.

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Another unsavory feature of these cases has been “fabricated war crimes,” including “conspiracy” and “material support,” that have been widely used to convict people when in normal legal circumstances there would be no grounds for charge. Moreover, nearly three-quarters of convictions in the “war on terror” are “based on suspicion of the defendant’s perceived ideology and not on his/her criminal activity,” according to a report published by the Muslim civil rights group SALAM and the National Coalition to Protect Civil Freedoms.³⁹

Additionally, “war on terror” cases in the United States have reinforced the widespread use of plea bargains against individuals from marginalized and oppressed communities, with more than 90 percent of cases settled before going to court. According to SALAM, “terror enhancement” effectively quadruples normal sentences, enabling prosecutors to “force defendants to accept plea-bargains as the only alternative to draconian prison terms.” Once in prison, these detainees and prisoners are subjected to “harsh and at times abusive conditions,” including “prolonged solitary confinement and severe restrictions.”⁴⁰

Perhaps the most notorious of the U.S. “war on terror” incarceration sites has been the extralegal regime at Guantanamo Bay, where a majority of the remaining 149 prisoners have been long cleared for release.⁴¹ Inmates in this island prison have been subjected to cruel, inhuman and degrading treatment – including torture and long periods of solitary confinement – without the opportunity to see or challenge the alleged evidence that sent them there. Detainees who have launched hunger strikes in protest of their conditions have been force fed through tubes brutally shoved down their throats.

Added to that are numerous “war on terror” extraterritorial and extralegal “black sites” that have been established around the world, as well as harsh incarceration regimes found within U.S. borders, most notoriously “communication management units” (CMUs).⁴² Described as “little Gitmos” due to their similarities to Guantanamo Bay, these self-contained units within the federal prison system employ harsh segregation and control measures against largely Muslim prisoners.⁴³



Banners for imprisoned Palestinian leader Ahmad Sa'adat and late Venezuelan president Hugo Chavez in Bethlehem.

39 <http://www.projectsalam.org/database.html><http://www.projectsalam.org/database.html>.

40 <http://www.projectsalam.org/inventing-terrorists-study.pdf>.

41 <http://www.closeguantanamo.org/Prisoners>.

42 <http://ccrjustice.org/cmufactsheet>.

43 <http://electronicintifada.net/content/why-us-holding-palestinian-charity-workers-little-gitmos/13494>.

Conclusion

Israel's use of incarceration and the threat of incarceration is a deliberate political tool – a justification for encouraging self-demolition and self-deportation and when that does not work, a tool to undermine the social, political and economic fabric of Palestinian communities.

As the delegation proceeded, each of us processed our shock and revulsion at the terrible conditions and obstacles to self-determination and violations of international legal standards that we witnessed. But we also learned lessons about persistence and commitment to continue the struggle even in the face of unbelievable barriers and oppression. As Aram Mahameed, a lawyer we met with at Adalah in Haifa, said, “Things will not continue like this – because they cannot.”

We saw the internal contradictions witnessed by people from all over the world who come to Palestine to volunteer and see these violations of international standards. Attending a weekly protest in Nabi Saleh against the wall that cuts off access to much of the village's land and the theft of its water source, we talked with solidarity volunteers from many countries, among them two young Israeli women who are refusing to serve in the Israeli army because of the occupation and an Israeli mother of a soldier.

We take heart also from the growing worldwide support for boycott, divestment and sanctions that in at least one specific campaign, touches directly on issues regarding prisoners held under Israeli occupation;⁴⁴ and from the growing recognition of common interests in combating repression of popular resistance to oppression, horrific violence against civilians, mass incarceration and walls – whether in Palestine, Ferguson, or on the U.S.-Mexican border.



The Key of Return in Aida Refugee Camp, symbolizing Palestinian refugees' right of return, denied for 66 years.

⁴⁴ In May, under international pressure, the Gates Foundation disclosed that it has sold the bulk of its shares in the world's largest private military and security company, G4S. More than 100 Palestinian and international organizations launched a campaign calling on the Gates Foundation to divest its \$167 million stake in the company. Universities, banks, charities and trade unions across the world have terminated contracts with the British-based G4S multinational security corporation over its contracts with Israel's prison system, costing the company millions of pounds. But despite some evidenced discomfort, G4S continues to refuse to sever ties with the Israeli Prison Services.

Delegate Biographies

Azadeh N. Shahshahani is a human rights attorney based in Atlanta and President of the National Lawyers Guild. Azadeh also joined NLG delegations to post-revolutionary Tunisia and Egypt. She writes frequently on U.S. foreign policy and domestic civil liberties issues for publications such as the Huffington Post, Truthout, Aljazeera America and the Atlanta Journal Constitution. Azadeh is a 2004 graduate of the University of Michigan Law School and also has a Master's in Modern Middle Eastern and North African Studies from the University of Michigan. .

Karen Jo Koonan has served as national president of the Lawyers Guild, the only non-lawyer to hold that office in the Guild's 75-year history. She has been involved in the NLG since 1969, when she opened the San Francisco office of the Guild. She is nationally recognized for her background and expertise in civil rights and employment law, plaintiffs' personal injury, criminal defense and commercial litigation. She has been a trial consultant with NJP Litigation Consulting/West since 1987. Her resume includes consultation on almost 2,000 cases covering a wide range of litigation from conventional cases to complex legal matters. She has assisted in more than 500 jury selections.

Susan Kaplan is a Chicago attorney who has been a NLG member since legal workers were admitted to the organization. After receiving her law degree in 1976, she pursued a career in criminal defense. In 1985 she became the founding director of the Community Economic Development Law Project, a project of the Chicago Lawyers Committee for Civil Rights. In this capacity she recruited attorneys to provide pro bono transactional legal representation to community organizations and low-income entrepreneurs. She has been on the Board of Directors of the local NLG chapter as well as on the boards of local community organizations.

Andrew Dalack graduated from the University of Michigan Law School shortly before the delegation in May 2014. He is co-chair of the NLG's Palestine Subcommittee and works for a public defender office in New York City. He speaks Arabic, and assisted in translation and interpretation during the delegation.

David L. Mandel is active with Jewish Voice for Peace as well as the NLG Palestine Subcommittee. He has been involved for more than four decades in struggles for justice and peace in Palestine-Israel, including from 1974 to 1985 in Tel Aviv and Jerusalem. He worked there and afterward in the U.S. as an editor, also writing extensively for U.S. and European publications about Middle East politics. He attended law school in Jerusalem and later worked as a legal aid managing attorney in Sacramento, where he lives. Since 2011, he has worked as a volunteer, mostly as an organizer and human rights attorney focused on Palestine, free speech and related issues.

Additional Biographies

The following individuals did not attend the delegation but were involved in significant aspects of preparation for the delegation, legal and academic analysis and the preparation of this report:

Audrey Bomse has been a lawyer since 1980 and an activist basically all her life. She is a longtime NLG member, co-chair of the Palestine Subcommittee for several years and past co-chair of the now defunct Prisoner Rights Committee. She spent seven years in Palestine as a human rights lawyer, concentrating on Palestinian prisoners, particularly on the issue of torture. She has written about the apartheid justice system in the occupied Palestinian territories and about the role of torture.

Corinna Mullin is an activist and academic currently based in Tunis. Mullin spent time working and studying in Palestine throughout the 2000s and taught summer courses at An-Najah University in Nablus in 2010-2011.

Charlotte Kates is the staff coordinator for the NLG's International Committee and coordinator of Samidoun Palestinian Prisoner Solidarity Network. She has organized multiple delegations to Palestine and is a member of the organizing committee of the U.S. Campaign for the Academic and Cultural Boycott of Israel. She is a graduate of Rutgers University School of Law.

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<http://addameer.org>

Adalah
<http://adalah.org/eng>

Al-Haq
<http://alhaq.org>

Al-Mezan Center for Human Rights
<http://www.mezan.org/en>

Defence for Children International Palestine
<http://www.dci-palestine.org/>

Hurriyat Center
<http://www.hurriyat.net/en/>

Lajee Center
<http://www.lajee.org>

Physicians for Human Rights - Israel
<http://phr.org.il>

Public Committee Against Torture in Israel (PCATI)
<http://www.stoptorture.org.il/en>

Stop the Wall
<http://stopthewall.org>

YMCA East Jerusalem
<http://www.ej-YMCA.org>

Other Relevant Organizations:

Nabi Saleh Solidarity
<http://nabisalehsolidarity.wordpress.com/about/>

Samidoun
<http://samidoun.ca>

UFree Network
<http://ufreeonline.net>

⁴⁵ This is not a comprehensive list of the meetings which the delegation held, but a list of key reference websites for those wishing to learn more about the issues explored by the delegates.

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To Exist is to Resist



Art by Nidal al-Khairy in the office of Stop the Wall.



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**For inquiries regarding this delegation, or to invite a delegate to speak,
please contact: international@nlg.org.**

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