**Structural Injustice: How Trials of Palestinians in Israeli Military Courts Lead to Misperception**

By: Palestine Center Interns

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Introduction

The Israeli military court system is notorious for its injustices: long-term “administrative detention,” large-scale arrests and imprisonment, violent interrogations, and courts that maintain an almost 100 percent conviction rate for Palestinians, despite Israeli settlers going through a separate court system that rarely results in convictions for crimes against Palestinians, while such crimes occur on a daily basis. All of this contributes to a legal environment in which the rights of Palestinians are not only neglected but purposefully restricted. The consequences of this are far-reaching. Over 20 percent of the Palestinian population, and over 40 percent of Palestinian males, have been detained over the course of their lives since 1967. While in prison, prisoners’ medical needs are neglected and they are deprived of legal rights.

It is not only imprisonment that convicted Palestinians face. In Israel as well as internationally, their convictions paint them as criminals or terrorists. Despite the fact that many of those who are convicted may have committed no crime and engaged in no violence, the military court system creates a notion that legal due process is happening in Palestine. While this is the opposite of the truth, it still affects global perceptions of Palestine and Palestinians. This can be seen especially in the United States, where major media organizations might play up the alleged charges against a Palestinian while neglecting to mention the circumstances of their situation. While some lawmakers have attempted to engage in discussion of Israeli human rights violations, they are the exception rather than the rule. The negative effect of the false perceptions created by the Israeli military courts can be seen in the laws and resolutions passed by U.S. lawmakers, such as the condemnations of United Nations resolutions that had criticized Israeli activity, or the Taylor Force Act, which passed in the House of Representatives and has called for cutting off aid to the Palestinian Authority because of their alleged support for terrorism. They can be also seen in major media coverage, and in public opinion.

This essay will attempt to demonstrate the injustice of these structures and systems of the Israeli military court and prison system, which has negatively impacted the lives of Palestinians and created false perceptions of their lives, character, and actions.

Structures of legal apartheid

The structures that create and define the nature of apartheid are fully apparent in the military legal system. Palestinians who are accused and tried in the military courts of the Occupied Territories face a conviction rate nearing one hundred percent. Conversely, in cases against Israeli settlers where legal proceedings had taken place between 2005 and 2015, only one of three cases resulted in a conviction, whether full or partial. The legal systems of the Occupied Territories are deliberately separate in institutions, approaches, and consequences, and the effects on Palestinian legal rights are immediately apparent.

Detention and Interrogation

Israel makes significant use of the system of “administrative detention.” This is used for cases where the accused individual is deemed too dangerous to release during the trial. Israeli military courts sometimes wait long periods of time, sometimes even over a year or two like in the case of Mohamed Abu Sakha, before scheduling trials or even charging detainees. Evidence used for justification is kept secret and not released.

Withholding of evidence is commonplace in Israeli military court cases against Palestinians. As administrative detention is based on secret evidence, it is a one-sided system. One defense lawyer in the system remarked: “The state attorneys should also come to the hearing nervous and tense—but they are always very relaxed. They know that no matter what they say or do, they will always win.” Detainees and their lawyers do not have access to the evidence, leading to trials that even state attorneys have described as unfair, with one state attorney describing them as “too easy.” When Khalida Jarrar, a Palestinian lawmaker, was arrested and detained for allegations that she was involved with an organization defined by the Israeli government as a terrorist organization, she was detained for six months. This was recently extended to a year, with no evidence released to the public or even to Jarrar herself.

Further adding to the deprivation of detainees from their legal rights is that Israel sometimes denies their access to attorneys. Kifah Quzmar was interrogated in 2017 for over nineteen days without being permitted to speak to an attorney. His brother, a former detainee, alleged that the Israeli authorities gave him a paper to sign when he was arrested in 2012. This listed “the right to see your lawyer, you have the right to take a bath, to eat, and so on…But the first article in the obligations says that the interrogator has the right to deny you any of your rights if he thinks it’s necessary for interrogation.”

While being interrogated, Palestinians are subject to widespread and pervasive ill-treatment. This led to the Landau Commission of 1987, which published its report outlining acceptable uses of what it termed “a moderate measure of physical pressure.” This created part of the legal structure for torture that continues to this day. In 2007, the Israeli human rights group B’Tselem published a report detailing the continuing abuses of Israeli interrogators. Physical, mental, and emotional humiliation and abuse were part of both “routine” and “special” techniques, lasting an “average of thirty-five days” for those detainees investigated in the report.

While detained or imprisoned, medical care is limited or withheld. Treatment is generally insufficient, often delayed, and available medication is limited. This has often left Palestinians who were injured when they were detained with either wounds that do not heal properly or wounds that worsen over time. Furthermore, some Palestinians that enter the prison system without injury develop medical issues due to the physical stress, interrogation, and adverse medical conditions of detention in the Israeli prison system.

Military Courts

When it comes to the trials themselves, they are as one-sided as the rest of the process. Part of this structure is the people that fill the various roles. As examined by Lisa Hajjar in Courting Conflict: The Israeli Military Court System in the West Bank and Gaza, “all of the judges, prosecutors, and translators are Israeli citizens and soldiers.” The defense, conversely, is made up of civilians and a more diverse group of individuals including residents of the Occupied Territories. Translators are primarily Druze Israelis and selected on the basis of their scores in language exams, leading to many translators being inexperienced and ineffective at translation in a legal system. Recalling an interview with a translator who had mentioned concern that a mistake in translation could lead to an unintended not guilty verdict, Hajjar noted another response. When questioned about whether the same could be true for incorrect guilty verdicts, his response was that “this didn’t matter because in the end all Palestinians were guilty of something.”

Prosecutors are advantaged because of a variety of factors. Not only do they have access to secret evidence that the defense does not, but they operate under a different playing field: the defendant is not presumed to be innocent in the Israeli military court system. Furthermore, judges tend to prefer the evidence of prosecutors. This arises from a number of factors, including those of identity: Judges, like prosecutors, come from the Israeli military, and are largely Jewish Israelis. Recounting an interview with a defense attorney, Hajjar noted that a Gazan lawyer had questioned an Israeli soldier testifying in two separate cases in the same week. In the first case, the soldier testified that he saw a Palestinian man throw stones at 9:15 A.M., and in the second that he saw another Palestinian man throw stones at 9:30 A.M. of the same day. However, the two locations were in separate refugee camps. The lawyer questioned how long it took to get from one camp to another, with the soldier responding that it would take forty-five minutes. After the lawyer requested the dismissal of the case, the judge had the lawyer thrown out of court for insulting the soldier. This is not always the case, as noted in another story that was an exception to the rule, but the issue of judges preferring the evidence of the prosecution remains widespread.

Israeli settlers, conversely, operate under a separate court system. When Palestinians file complaints with the Samaria and Judea District Police, it rarely results even in an indictment. According to Yesh Din, only a little over seven percent of cases result in indictment, and in those cases, only about half result in a full or partial conviction (with a further half of that number resulting in guilt without conviction).

Practical consequences of legal apartheid

The consequences of this system of legal apartheid fall on the Palestinian people. This is seen in their treatment by the legal system, as well as the perceptions that are created around the world of those who are convicted or even accused.

Israa Jaabis is a 33-year-old Palestinian woman. In 2015, she was driving near a military checkpoint, when there was an explosion in her vehicle after she lost control and drove out of her lane. Jaabis, as well as her sister and Addameer, which is a human rights group focused on Palestine, have stated that a fault in the electrical system of her car started a fire, which led to a gas cylinder exploding. She was the only one injured in the incident. Israeli military courts, however, sentenced her to eleven years in prison on charges of attempted murder. With eight amputated fingers, major injuries to her face and heavy burns over her body, she requires help from other prisoners for daily tasks, and has not received sufficient medical assistance from the Israeli Prison System.

Israel also imprisons children at alarming rates. In 2017, the number of children held in Israeli prisons reached heights of over 400. This attracted attention recently, when Ahed Tamimi, a then-16-year-old Palestinian girl whose cousin had been shot in the head an hour previously, slapped an Israeli soldier who had entered her family’s property. Tamimi was arrested and charged with assault, incitement, and other charges. She is slated to remain in administrative detention through the duration of her trial, which has already been postponed and extended.

Children are not protected from the torture and ill-treatment of the Israeli military, either. In 2010, Mohammad Halabiyeh was arrested after breaking his leg while running from advancing Israeli soldiers. They then beat and insulted Mohammad before, during, and after the trip to an Israeli military base for interrogation, and later on the way to a hospital. While being treated at the hospital, the soldiers continued their violence and taped his mouth shut when he threatened to disclose information about their treatment of him. After over 24 hours, having been given almost no food, beaten regularly, and threatened with further violence if he did not sign a false confession of throwing molotovs, he eventually gave in and signed the confession. As noted by Addameer, the interrogator’s Arabic skills were limited and he drafted the statement in Hebrew (which Mohammad did not speak). It still took three more days for Mohammad to receive further medical treatment. After over a year of being on trial without release on bail, he was sentenced to three years in prison despite mishandling of evidence during the trial.

Perceptions

The ways in which media organizations around the world portray events can tell drastically different stories of the same moment. This has long been true for Palestinians. After the arrest of Ahed Tamimi, Newsweek tweeted a link to an article with the caption “Despite her age, Ahed Tamimi has a long history of assault against police and soldiers.”

When Mike Pence visited the Israeli Knesset on January 22, 2018, Al Jazeera reported that Israeli Arab MPs were “forcibly removed from the chamber after staging a protest at the start of US Vice President Mike Pence’s speech.” Conversely, the Washington Post described the same moment by saying that “Israeli Arab lawmakers staged a walkout at the beginning of Pence’s speech, resulting in a small scuffle.” Similarly, when a Palestinian is convicted in the Israeli military courts, the actuality of what occurred loses impact and the conviction often becomes the perception around the world.

Taylor Force, an American, died after being stabbed in an attack in Israel in 2016. As a response, American lawmakers introduced the Taylor Force Act, which passed without objection in the House of Representatives. This act calls for the suspension of financial aid to the Palestinian Authority (PA) until the PA, in turn, suspends payments “for acts of terrorism by individuals who are imprisoned after being fairly tried and convicted for acts of terrorism and by individuals who died committing acts of terrorism.” It is understandable that lawmakers may wish to prevent supporting those that commit acts of violence. However, the wording of this bill implies that there is due process in the Israeli military courts. As this essay has examined, this is anything but the case.

The Taylor Force Act stands in sharp contrast to the discourse within the U.S. on Israel. A Senate resolution condemning U.N. Security Council Resolution 2334 was introduced with more than three quarters of the body listed as cosponsors. U.N.S.C.R. 2334 was a document that called upon Israel to cease settlement activities, prevent violence against civilians, and respect the 1967 borders. Despite Israeli human rights violations, U.S. policy continues to shift even further toward supporting Israel. The false perceptions created by the Israeli military legal system only influence these shifts.

Conclusion

The Israeli military courts are a structure of apartheid. They are designed in ways that disadvantage Palestinians, and do not protect the rights of the defendants. They maintain a conviction rate that is almost one hundred percent. Beyond that, Palestinians that are arrested and detained may be held for over a year or even two before a trial is scheduled, in conditions where torture and ill-treatment are commonplace and medical attention is withheld. For Palestinians, this system is one more unjust structure of apartheid, and almost half of the male population has been forced into the system at one point or another in their lives.

There is another effect of the military court system. Unjust as it is, it creates the image that the Israeli government and military respect due process. Media organizations and governments around the world use it as evidence of the guilt of Palestinians, without analyzing it for what it is: a system that is deliberately structured to repress the Palestinian population. This, unfortunately, has ramifications for international policy and perceptions of the Palestinian people. This is true around the world, but especially true in the United States. As the United States shifts even further toward policy favoring Israel, the justifications created by perceptions originating in these structures of apartheid have very real effects. It is essential for policymakers and members of the media to use more caution when handling policy about Israel; the structures of its apartheid are often barely hidden below the surface and should not be so readily ignored.

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