

# Without Counsel: Palestinian Citizens of Israel

Palestinian citizens of Israel arrested in the course of political demonstrations in October 2000 were often denied the right to legal counsel. **Jamil Dakwar** summarises the legal basis of this fundamental denial, and argues that this practise is inconsistent with basic human rights in a democracy.

In early October 2000, Palestinian citizens of Israel, who comprise 20 per cent of Israel's population, staged massive protests in towns and villages nationwide to express their solidarity with Palestinians in the Occupied Territories. During these demonstrations, the police killed 13 Palestinian citizens and injured hundreds more. Israeli Jewish citizens also engaged in riots starting 8 October, attacking Palestinians citizens, their property and their holy sites. Close to 1,000 Palestinian citizens were arrested in connection with these events; hundreds of those arrested were indicted and detained without bond until the end of trial. Adalah – The Legal Centre for Arab Minority Rights in Israel – responded to the huge need for legal representation resulting from the *Intifada* by initiating and coordinating a nationwide group of 140 Palestinian volunteer lawyers to ensure representation for Palestinian citizens who had been arrested and detained. Representation included extension of detention hearings, appeals of detention orders, appeals on prohibitions on access to counsel in the Magistrate and District courts, as well as appeals to the Supreme Court.

In this article, I want to discuss one aspect of the violations of the rights of Palestinian detainees: the prohibition on meeting with legal counsel, which occurred in numerous instances in which Palestinian citizens were arrested by the Israeli police and subjected to cruel interrogation by the General Security Services (GSS). My argument is that the use of the authority granted to the GSS by law to prohibit the Palestinian detainees from meeting with their lawyers is illegal and discriminatory and that these practices constitute a form of torture, outlawed in September 1999 by the Israeli Supreme Court. (*Public Committee Against Torture v. State of Israel*, 1999). However, the treatment of Palestinian detainees between October and December 2000, particularly the prevention of dozens of Palestinian detainees from meeting with counsel, indicates that GSS personnel utilised alternative means of interrogation banned by international law. It will be argued that there is no meaningful mechanism of judicial review of these practices.

The Commission of Inquiry is an official

commission chaired by Israeli Supreme Court Justice Theodore Or, which was established in November 2000 to investigate “the clashes, which involved security forces and Arab and Jewish citizens of Israel” in early October 2000. In its report before the Commission of Inquiry, the Public Committee Against Torture stated “the security force personnel systematically adopted violent, abusive and humiliating means against Palestinian detainees”. The report also addressed the issue of denying detainees the right to meet a lawyer and stated that in the case of “at least six of the detainees under discussion in the affidavits, orders were issued preventing their meeting with their attorneys; accordingly, they were denied the basic right to proper legal protection”.

A few points are necessary to better understand the situation faced by the Palestinian detainees during the time when they were denied legal counsel. The

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massive detentions and arrest of Palestinians within Israel occurred following the national protests and demonstrations that took place in early October in solidarity with the Palestinians in the West Bank and Gaza Strip. Testimonies that were submitted to the Commission of Inquiry by Adalah show that when security forces arrived at these demonstrations and entered Arab villages and towns, violence erupted. During the street demonstrations, Israeli police killed 13 Palestinian citizens of Israel and injured hundreds more using special anti-terror units, live ammunition, ‘rubber coated bullets’, and tear gas. However, demonstrations at which police were not present ended peacefully. It is worth noting that massive arrests, some of which occurred in the middle of the night and others at temporary check points set up at entrances to Arab towns, were carried out as part of a planned and deliberate policy aimed to suppress demonstrations and to deter Palestinian citizens from

expressing themselves and from continuing their national protests.

Further, when appearing before Israeli courts, police and prosecutors systematically asked to detain protesters without bond until the end of trial — almost without exception to an individual's circumstances such as age or health related problems. The State Prosecutor set special guidelines in order to ensure that the maximum number of protesters, adults and minors, remained behind bars, despite the fact that the charges did not meet the legal standards for such detentions. In the vast majority of cases, Israeli courts, including the Supreme Court, approved such detentions. It appears that the goal of the state's policy, reaffirmed by court decisions, was to suppress the street demonstrations and to punish the detainees before any adjudication of guilt.

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According to Israeli law, every detainee is afforded the right to consult freely with legal counsel (Article 34(a) *Criminal Procedure Law*, 1996). In regular criminal detentions, the police officer in charge may delay the meeting of a detained person with his or her counsel for up to 48 hours by reasoned written decision. However, persons detained on suspicion of involvement in a specific set of security-related offences may be denied the right to meet with legal counsel for a period of up to ten days. (These offences include carrying an illegal weapon or belonging to an illegal association, according to the *Defence Orders* from 1945 that were adopted by Israeli law from the British Mandate.)

The denial of access to counsel for this period is applicable if the GSS officer in charge finds that the meeting is likely to interfere with arrest of other suspects; or is likely to disrupt discovery or seizure of evidence, or to interfere with the investigation in some other manner; or if denial of counsel is necessary to prevent commission of an offence, or to protect human life. Any detainee who is prohibited from meeting with legal counsel has the right to appeal to the District Court, and his appeal will be heard before the President of the District Court, or in his or her absence, before the Deputy President, within up to 48 hours. The decision of the District Court may be appealed again to the Supreme Court and the appeal will be heard before one Supreme Court Justice. Beyond the first ten days of prohibition of meeting a lawyer, the President of the District Court may order that a suspect in such security-related offences is not to meet with counsel for up to 21 days, if the application is made with the

approval of the Attorney General. In these cases decisions can be appealed directly to the Supreme Court.

The GSS interrogated dozens of Palestinian detainees, including minors, the majority of whom were arrested in the course of violent demonstrations (stone throwing, burning car tires and blocking streets). The GSS used the above mentioned legal authority to present arrest applications that included security offences such as belonging to illegal associations or carrying illegal weapons. Usually the prohibition of meeting a lawyer was waived only when the detainee had already given a confession, which in many cases affected other suspected demonstrators. Moreover, the security-related offences that legally justified the prohibition, in most of the cases, did not appear in the indictments and as part of the charges and accusations against the demonstrators. This clearly shows that the GSS illegally issued orders prohibiting Palestinian detainees from access to legal counsel, and used these practices as means of interrogation with the aim of isolating the detained person, who in such cases often had no experience of police and GSS interrogation, and to pressure him to confess. Such practices that isolate the detainee from basic means of legal protection for a lengthy period, at a time in which the danger of torture, abuse and humiliation by the interrogating authorities is at its highest, is inconsistent with international norms and standards. (*Report of the Human Rights Committee*, UN, 1992).

The Israeli Supreme Court recognised the right of a detainee to meet a lawyer as a constitutional right embedded in the *Basic Law: Human Dignity and Liberty* (*Romheya v. Israeli Police* (1992) and *GSS v. Shimon Hen* (1999)). However, very few judgments were delivered by the Israeli Supreme Court, particularly in cases that relate to Palestinian citizens of Israel denied access to legal counsel based on the security offences as described above. Three major reasons for the lack of comprehensive and guiding rulings by the Supreme Court can be identified: first, the judicial review mechanism set by Israeli law minimises the number of cases that reach appeal

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courts; second, when an appeal is filed in the Supreme Court, the GSS usually agrees to allow the lawyer to meet the detainee just before the appeal is heard by the Court; third, appeals are heard by only one justice of the Israeli Supreme Court and if the appeal is not withdrawn as a result of the court's pressure, usually the ruling does not exceed two pages and most are not even officially published.

The *Israeli Criminal Procedure Law* (Enforcement Powers - Arrest), amended in 1996, grants broad discretion and authority to the GSS to deny detainees the right to meet legal counsel. If the detainee or his attorney does not immediately appeal the decision of the GSS, the first time any court reviews the prohibition order would be after ten days and only if the GSS applies to extend the time of prohibition of meeting with legal counsel. However, in cases where lawyers do file immediate appeals on the prohibition orders, the hearing before the President of the District Court is usually scheduled within 24 hours (the law states that the District Court must hear the appeal within 48 hours). In many cases this is too late as far as the detainee's need for legal defence is concerned, because by this time the detainee may have already confessed as a direct result of not being able to consult a lawyer. It is worth noting that the GSS usually issues prohibition orders that are valid for one or two days only, and these orders can be renewed for up to ten days. In most cases by the time the appeal to the District Court is being heard the orders that should be under judicial review are invalid. This is why very few cases reach the Supreme Court on these matters.

Following the arrests of October 2000, almost all the cases regarding denial of counsel that were appealed and reached the stage of judicial review by District Courts and the Supreme Court were dismissed, and the prohibition orders issued by the GSS were reaffirmed. In the vast majority of cases, the courts of appeal, after reading the secret evidence and hearing the GSS representatives without the presence of either the detainee or his lawyer, found no alternative course of action that would have minimised the violation of the detainees' right to meet their lawyer, such as allowing a meeting under strict conditions or shortening the time of the prohibition. This legal reality stands in contradiction to basic principles in any democratic system that respects rule of law and ensures due process to all its citizens regardless of their race, colour, national origin or gender. This use of the law should also not be tolerated because it strongly jeopardises what remains of the confidence of Palestinian citizens in the judiciary of Israel.

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*Criminal Procedure Law* (Enforcement Powers - Arrest) 1996. See also Article 22 of the Israel Bar Law, 5721-1961.

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