

DETENTION

Thematic Note 3

7 June 2021

This thematic note addresses the law regulating arrest and detention of persons. It focuses on practices of Israeli authorities in the course of the resurging violence in the Israeli-Palestinian context that appear to entail a systemic breach of the law in question.

States are prohibited from arbitrarily depriving persons of their liberty, i.e., arresting and detaining them for reasons other than the limited lawful grounds for detention, or without satisfying conditions and procedures required under international law to prevent unwarranted detention. Unlawful confinement of protected persons, as well as their ill-treatment while in detention, constitutes a war crime.¹

AREAS OF CONCERN

Israeli authorities have arrested and detained thousands of Palestinians in the West Bank, including East Jerusalem, as well as in its own territory, often in the absence of clear grounds and procedure for the deprivation of liberty, pointing to the use of detention as a **punitive measure** for persons' participation in protests or based on abstract threats informed by **discriminatory** bias against Palestinians, in breach of express prohibition of **collective punishments**.

Use of violence during arrests: All arrests must be carried out in line with the obligation of humane treatment and the authorities in charge must not unjustifiably inflict bodily injury on persons. Use of unnecessary or superfluous violence, such as beatings, deliberately slamming heads of persons arrested against hard surfaces and dragging them by their hair are incompatible with this obligation.

Invalid grounds for detention: Detention as a measure of control may be used against protected persons in the occupied territory only if they individually pose an imperative security threat. Collective detentions or detentions based on abstract threats are not permitted.

Non-observance of procedural safeguards: Decisions regarding the detention of persons for imperative reasons of security, must be made individually and in accordance with a regular procedure that is compatible with international law. The person concerned must be accorded the right to a prompt appeal in front of a competent body. If the decision to detain is upheld, there must be a periodic review of the decision as to whether the reasons necessitating their internment still exist.

Excessive use of pre-trial detention: All those arrested and detained to be prosecuted for alleged crimes must be promptly brought before a judge who should evaluate whether detention of the person concerned pending trial is necessary as a measure of restraint. Failure to do so, including blanket application of pre-trial detention without individualised assessment violates international law.

Disproportionate nature of prison sentence: The principle of proportionality of sanctions requires that prison sentences are imposed only when no other sanction would be proportionate to the seriousness of the offence and the nature of its commission. Imposition of a prison sentence for participation in manifestations and other related offences without considering alternative sanctions is incompatible with international law.

Detention of children: The best interests of the child should be the primary consideration with regard to the detention of children. Children must not be detained, unless required as a measure of last resort and only for the shortest appropriate period of time.

Ill-treatment during detention: While in detention, the physical and mental integrity and well-being of detainees must be protected. Any ill-treatment of persons by authorities in charge, including during interrogation, or failure to protect them from violence by other detainees violates international law.

Delays in the release of detainees: Detention must not last longer than is absolutely necessary, in other words, detainees must be released as soon as the reasons necessitating their detention have ceased to exist. Undue delays in releasing persons are incompatible with international law.

¹ICCPR, Article 9; Geneva Convention IV, Articles 42-43 and 78; CIHL, Rule 99; UN Human Rights Committee, General Comment 35; Rome Statute, Article 8(2)(a)(ii), (iii) and (vii)

Other relevant resources

- [Legal brief: Resurging violence and hostilities in Israel-Palestine](#)
- [Timeline: From displacement and dispossession in Sheikh Jarrah to hostilities](#)
- [Thematic Note 1: Discrimination](#)
- [Thematic Note 2: Use of force](#)

This thematic note is part of a series. For all notes and a detailed analysis on the resurging violence and hostilities in Israel-Palestine, visit our website: www.diakonia.se/ihl/jerusalem/resurging-violence.

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