

31ST SESSION OF HUMAN RIGHTS COUNCIL, UNITED NATIONS
HELD AT GENEVA, SWITZERLAND

[Item 8 – General
Debate]

21 March 2016

Good Morning

Dear Mr. Vice President and all protocols being observed

Today, South Africa commemorates Human Rights day. A reminder of our hard fought struggle against apartheid.

I bear the burden of submitting to the Human Rights Council of the atrocities that are being committed by the most abominable occupying force this world has ever known.

For Palestinians this nightmare continues 68 years later since the Nakba on 15 May 1948, known as the day of “catastrophe and ethnic cleansing of Palestinians from their homeland”.

I request the Human Rights Council take recognition of the reports, evidence adduced and case studies, by the organisations I represent for victims of torture of the grave situation of Palestinian Prisoners including women and children that are brutally and mercilessly tortured by the Israeli regime.

In 2015, according to Israeli Prison Services own statistics:

1. The last quarter of 2015 saw a marked rise in the number of Palestinians in Israeli custody, including administrative detainees, women and minors:

At the end of 2015, 6,066 Palestinians were being held on contentious security grounds, the highest number since July 2010.

[This includes 584 administrative detainees - the most since September 2008; 422 minors - the most since August 2008 and 44 women - the most since September 2009.¹]

2. Home confinement has also been imposed:

Amjad Abu Asab, Chairman of Prisoners Families Committee of Jerusalem stated that, “*home confinement is the worst thing to happen to Jerusalemite children where they are deprived of freedom of movement and going to school*”.²

¹ B'Tselem website - The Israeli Information Centre for Human Rights in the Occupied Territories

² Written Statement to the UN submitted by the Khiam Rehabilitation Centre for victims of Torture, 05 February 2016

3. Home confinement for children violates the International Declaration of Children Rights of 1959, and the Child Rights Convention with reference to articles 3 and 39 respectively prohibiting torture, arbitrary arrest and/or detention and restriction of movement.³

Comparative apartheid and violation of Prisoners rights

It is incontrovertible that Israel has legislated discriminatory practises and institutionalised racism constituting apartheid.

I note speakers from many countries condemned racism and discrimination at this Council just last week Friday.

Apartheid violates enshrined principles in the bill of rights, offends constitutional and democratic principles and the values espoused in the universal declaration of human rights, treaties, conventions and international law.

For brevity, there is one similarity between former apartheid South Africa and apartheid Israel on administrative detention.

Israel unlawfully detains and tortures young children from as young as eight years under its administrative military detention order/s with no respect of any due process. Furthermore, under Israeli military law, children over the age of 16 instead of 18 are treated as majors. Furthermore many more children held under military detention are re arrested upon release.

This can be compared to the former *South African General Laws Amendment Act of 1964*, or the 90-Day Act which provides **for any person** to be detained, without trial, for 90 days. On the expiration of such, the person could be re-arrested under the same law for another 90 days, a process this new law allows to be repeated indefinitely.

I also refer this Council to the dual legal system which applies in the West Bank that is separate and unequal, whereby Palestinians are tried under a military court system with no due process and Israeli citizens under the civil legal system.

³ Ibid

Furthermore, Palestinian political prisoners are all categorised, *en bloc* as ‘security prisoners’.

The term is applied in a blind categorical manner, without distinction.⁴

Palestinian prisoners are transferred to prisons inside Israel (usually Neve Terza Prison in Ramleh; Hasharon Prison in Telmon; and Damon Prison in Haifa).⁵

This is in violation of **Article 76 of the Fourth Geneva Convention**, which prohibits such transfers. All these prisons are located outside the Palestinian occupied territory, **violating Article 76 of the Fourth Geneva Convention which states that ‘protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein’**.⁶

In Neve Terza Prison, untried Palestinian prisoners are detained as ‘security prisoners’, and sometimes placed in the section housing convicted criminal offenders. This is in clear violation of **Rule 85 of the UN Standard Minimum Rules for the Treatment of Prisoners**, which specifically states ‘**untried prisoners shall be kept separately from convicted prisoners**’.⁷

According to John Dugard, Israel **denies** Palestinian political prisoners, who qualify as combatants, the status of ‘prisoners of war’ (POW) even though POW status is applicable to members of an organised group fighting ‘against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination’, according to **Additional Protocol I to the Geneva Conventions of 1949**.

However, since Protocol I has become part of customary international law because some 170 states are party to it, Israel is therefore bound by the Protocol even though it is not a party.⁸

CHILDRENS TORTURE SEXUAL ABUSE AND EXTRATCING INADADMISSABLE CONFESSIONS

Article 14 of the International Covenant on Civil and Political Rights, which Israel ratified in 1991, requires court procedures to take into account the age of child defendants and “the desirability of promoting their rehabilitation.”

The Convention on the Rights of the Child, which Israel also ratified in 1991, elaborates on this requirement that children are “not compelled ... to confess guilt.” The Committee charged with interpreting the convention has stated that this includes a right to request the presence of a parent

⁴ Why Israel ?, S. Dadoo (Co-Author with F. Osman), 2013

⁵ Ibid

⁶ Ibid

⁷ Ibid

⁸ Quoted from Why Israel. Reference: Dugard, J., ‘The question of Palestinian political prisoners in Israeli prisons and detention facilities: legal and political implications’, Presentation at United Nations International Meeting on the Question of Palestine in Geneva, 3-4 April 2012.

during questioning and that judges must take into account the absence of a parent or lawyer during interrogation, as well as other factors, when considering the reliability of confessions.⁹

Israel further violates fundamental international norms (*jus cogens* norms where no derogation is permitted) embodied in treaties such as the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

In conclusion, I hereby tender the undermentioned proposals for justice to victims and the upholding of enshrined universal human rights:

1. This Council adopts that there are apartheid practices in the detention, treatment and processing of Palestinian prisoners and children. Hence, there are grave breaches of the *International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the General Assembly of the United Nations on 30 November 1973*, observing that, in the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, '*inhuman acts resulting from the policy of apartheid*' are *qualified as crimes against humanity*.
2. Israel unconditionally and immediately release all prisoners and child prisoners held unlawfully under international law, provide adequate compensation for rehabilitation and conform to principles of due process in accordance with the tenets of international law.
3. Israel immediately cease home confinement and its administrative military detention policy and other inhumane and unjust practises like torture, sexual abuse, collective punishment and destruction of homes of detainees which are all inconsistent with international and international humanitarian law.
4. This Council exercise its powers in so far as calling Israel to account for crimes it commits with impunity in contravention of international law and for the referral to the International Criminal Court (ICC) to exercise jurisdiction and/or the establishment of a War Crimes Tribunal.
5. A declaration that torture of children and Palestinians held in Israeli prisons constitute crimes against humanity and a full disclosure of the names and identities by the Israeli Prison Service and /or its relevant Authorities of the perpetrators of these crimes who must be held accountable under international law.

⁹ Human Rights Watch website - Israel: Security Forces Abuse Palestinian Children, Chokeholds, Beatings, Coercive Interrogations

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Notes:

- 1. Refer to written statement by Kham Rehabilitation Centre for Victims of Torture, a non-governmental organisation in special consultative status that includes summary of witness statements of children that have endured torture.***