

Addameer Prisoner Support and Human Rights Association's Response on **The Protection of Lawyers from Undue Interferences and the Independent Exercise of the Legal Profession**

For the Special Rapporteur on the Independence of Judges and Lawyers

Addameer welcomes the opportunity to contribute to the discourse concerning the free and independent exercise of the legal profession. Addameer especially notes its significance in light of its position providing free legal services to Palestinian political prisoners and detainees.¹

For over 72 years, Israel, as the Occupying Power, has established a full apartheid apparatus to suppress, control and delegitimize the Palestinian people. The military regime in the occupied Palestinian territory (oPt) exercises legislative, executive, and judicial powers that forcefully implement and maintain Israel's occupation. Arising out of this regime, the Israeli military judicial system comprises military courts that prosecute Palestinian civilians based on Israeli military orders. These military orders have criminalized Palestinians' exercise of fundamental rights, as guaranteed under International Human Rights (IHRL) and International Humanitarian Law (IHL), prosecuting hundreds of thousands of Palestinians.²

Notwithstanding gross violations of IHL and IHRL, including, *inter alia* expanding extra-judicial, personal, and subject-matter jurisdiction;³ systematic fair trial violations;⁴ the forcible transfer of Palestinian detainees to the Occupying Power;⁵ and torture and ill-treatment;⁶ the Israeli military judicial system produces structural and institutional barriers that prevent the free and independent exercise of lawyers providing legal services to Palestinian prisoners and detainees. Legislative measures adopted by the Israeli occupation regime towards incarcerated populations following the COVID-19 pandemic were discriminatory by rule and in the application, compounding upon fair trial violations and lawyers' representation of Palestinian prisoners' and detainees under the military judicial system.

Lawyers and advocates of Palestinian prisoners face systematic harassment, intimidation, and reprisals by the Israeli occupation regime that surpass punitive disciplinary measures, amounting to threats of lawyers' physical security and liberty. The Israeli occupation regime's most recent criminalization of Addameer, along with five other leading Palestinian civil society organizations, represents a drastic escalation aimed at impeding critical human rights work and further obstructing the free and independent exercise of the legal profession.⁷

¹ In drafting this submission, Addameer relied on past reports and conducted interviews with defense lawyers representing Palestinian prisoners and detainees under the Israeli military judicial system.

² Addameer, "In the Case of the Palestinian People vs. Military Courts," 1 March 2021, https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper_0.pdf (accessed 2 December 2021)

³ https://international-review.icrc.org/sites/default/files/irrc_866_9.pdf

⁴ Amounting to the war crime of intentionally denying Palestinian prisoners their right to a fair and regular trial under Article 8(2)(a)(6) of the Rome Statute of the ICC, see *Supra* 2.

⁵ In violation of Article 76 of the Fourth Geneva Convention, and a war crime in violation of the Rome Statute, *Ibid.*

⁶ Addameer, "I've Been There: A Study of Torture and Inhumane Treatment in Al-Moscobiyyeh Interrogation Center," March 2018. https://www.addameer.org/sites/default/files/publications/al_moscabiyyeh_report_0.pdf.

⁷ Addameer, "PNGO & PHROC: Israel's Sinister Designation of 6 Leading Palestinian Organizations As 'Terror Organizations' is an Attempt to Silence and Control Palestinians," 22 October 2021, <https://www.addameer.org/news/4541>

I. Structural and Institutional Barriers to the Free and Independent Exercise of the Legal Profession Existing in the Israeli Military Judicial System

There exists a host of structural—including legislative, administrative, and institutional—barriers as part of the Israeli military judicial system that obstruct the free and independent exercise of the legal profession in defense of Palestinian prisoners and detainees. The first set of barriers, broadly legislative and institutional, following the arrest and transfer of Palestinian detainees to interrogation, whereupon in many cases, lawyers are denied access to their clients, along with the necessary files, information, and documents for the provision of effective legal services.

Israeli military order allow for the prohibition order against Palestinian detainees to meet with their lawyers for a total period of 60 days.⁸ This prohibition order, explicitly contradicting **Basic Principles 19** and **21** on the Role of Lawyers,⁹ deliberately hinders legal counsel's ability to prepare a legal defense and conceals illegal practices during interrogations, including torture and ill-treatment. Court sessions conducted while the prohibition order is still in effect take place in two sessions: the lawyer first appears in court alone without the detainee, then the detainee appears in a subsequent court session unrepresented, without having spoken with his/her lawyer, and without having received legal advice. An additional procedural barrier arises upon the submission of appeals to the Israeli High Court: as Palestinian lawyers from the West Bank are not enrolled in the Israeli Bar Association, they are unable to appeal prohibition orders against meeting with their clients before the Israeli High Court. This procedure prohibits defense counsel from attesting to the trial and investigation proceedings.

Further, Israeli military courts deny defense counsel the necessary documents and information to prepare for Palestinian detainees' defense, citing the 'confidentiality' of critical documents that are not disclosed to the defense counsel. These documents almost always contain crucial evidence and are often concealed on a spurious and unsubstantiated basis aimed at covering up Israeli interrogators' actions, notably torture and ill-treatment, and preventing cases from moving forward promptly.¹⁰ This phenomenon is most obvious with the practice of administrative detention, where Palestinians are held indefinitely without charge or trial, based on "secret material" that is not disclosed to detainees or their lawyers.

In tandem with lawyer bans and prohibitions denying access to necessary files, Israeli courts regularly issue gag orders during the interrogation periods, parts of court proceedings, in all cases of administrative detention, among other cases. During court proceedings, defense counsel is prohibited from asking questions relating to means of interrogation—i.e. interrogation tactics, interrogators' names/identities, means of discovery, witness testimony, and background, etc.—denying legal counsel any real opportunity to interrogate the allegations laid against their clients.¹¹ Similarly, gag orders arbitrarily issued aim to obstruct alternative means of access to information or legal advocacy. In one such case, in September 2019, the Israeli magistrate court in Jerusalem issued a gag order banning Addameer from publishing any details of documented torture against Palestinian detainees held at al-Mascobiyya interrogation center in Jerusalem. The gag order, lasting over three months, was first issued on

⁸ See *Supra* 2.

⁹ United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, available at: <https://www.refworld.org/docid/3ddb9f034.html>

¹⁰ See *Supra* 2.

¹¹ See *supra* 1.

9 September 2019 and renewed multiple times until it was violated by the Israeli ‘Shabak’ intelligence itself on 19 December 2019. Notably, Addameer and its lawyers were only notified of its issuance through the media. Addameer filed an appeal against the gag order but the appeal was rejected.¹²

During court proceedings, additional administrative and institutional barriers inhibiting any free and independent exercise of defense counsel abound. Structural and institutional barriers emanating from the Israeli military occupation lead lawyers’ citizenship or residency status to dictate their ability to represent Palestinians. Palestinian lawyers from the West Bank require permits to reach detainees held in the Green Line.¹³ Permits are arbitrarily denied or curtailed, an effect of the systematic harassment faced by Palestinian lawyers. Moreover, during the interrogation period, Palestinian lawyers from the West Bank are unable to reach detainees, at times until the first court sessions in Ofer or Salem Military courts in the West Bank.¹⁴

Further, the official language used in Israeli court proceedings is Hebrew, a language most Palestinians, detainees, and lawyers, from the West Bank do not understand. Israeli military courts consistently fail to provide accurate interpretation services to Palestinian detainees, whereby “interpretation” is provided by an Israeli army soldier in military attire, who is neither a professional nor competent interpreter.¹⁵ Such services are invariably deficient, hindering defense counsel’s ability to respond and represent their clients, never minding additional prejudice lawyers face for their lack of fluency in Hebrew. Beyond lingual barriers, Israeli military courts additionally borrow Israeli procedural law and criminal case precedents governing Israeli civil courts. Ergo, Palestinian lawyers from the West Bank are unfamiliar with this additional legal regime and unable to access databases for Israeli procedural law and judicial precedents, obstructing their ability to provide effective legal counsel to Palestinian detainees.

Finally, the absolute lack of confidentiality afforded to lawyer-client communication throughout interrogation, detention, court proceedings, and incarceration handicap lawyers’ free and independent exercise and any free trial guarantees, blatantly contravening **Basic Principle 22**. Lawyer visits to detainees are conducted in poor conditions under constant surveillance by Israeli Prison Services (IPS), where lawyers are only allowed to bring in limited paper documents and where visits take days to schedule. Similarly, during court proceedings, lawyers are unable to properly communicate with detainees without being monitored by IPS, military prosecutors, or judges. This is especially exacerbated by policy measures implemented under the pretext of COVID-19 public health guidelines (see **Section III**).

II. Systematic Harassment of Lawyers by the Israeli Occupation Regime

Beyond structural barriers inhibiting the free and independent exercise of lawyers representing Palestinian prisoners and detainees under the Israeli military judicial system, defense counsel additionally faces systematic harassment by the Israeli occupation regime. Such harassment takes on various forms including, *inter alia*, increased prejudice by Israeli military courts and IPS based on perceived ‘antagonistic’ behavior and/or affiliation; denied access to client files;

¹² Addameer, “I’ve Been There: A Study of Torture and Inhumane Treatment in Al-Moscobiyeh Interrogation Center,” March 2018.

¹³ See *Supra* 2.

¹⁴ See *Supra* 1 and 2.

¹⁵ See *Supra* 2.

arbitrary denial and/or postponement of prison visits; mirroring arbitrary denial and/or curtailing of permits for West Bank lawyers;¹⁶ interrogation of lawyers (and/or interrogation of detainees' regarding their counsel); arising to the detention, imprisonment, and incarceration of lawyers.¹⁷ Defense counsel targeted with increased prejudice by Israeli military courts, pursuant to aforementioned examples, similarly have their other clients/cases arbitrarily targeted, leading some to hand off their cases to other counsel.¹⁸ Notably, Israeli occupation authorities' systematic harassment of lawyers representing Palestinian prisoners and detainees in military courts starkly contravenes with **Basic Principles 16, 17, 18, 19, and 20.**

The severity of sanctions results in a 'chilling effect' surpassing that of the freedom of expression and security of defense counsel, but which additionally handicaps the provision of critical legal services for Palestinian prisoners and detainees. Recent years have witnessed an escalation of an ongoing systematic harassment campaign by Israeli occupation authorities targeting Addameer, as exemplified by the cases of lawyer Salah Hammouri and the October 2021 outlawing of Addameer in its entirety.

Palestinian-French lawyer, human rights defender, and Addameer employee Salah Hammouri has long been the subject of the Israeli occupation regime's targeted harassment campaign.¹⁹ Most recently, on 18 October 2021, the Israeli Interior Ministry officially notified Mr. Hammouri of the revocation of his permanent residency status in Jerusalem based on a "breach of allegiance to the State of Israel," citing vague and broad allegations of "terroristic" activities and/or affiliation, based on withheld "secret information." The practice of withheld "secret" evidence mirrors the Israeli occupation's practice of administrative detention of Palestinians, without charge or trial, based on secret material inaccessible to detainees or their lawyers.

Israeli Occupation Regime's Criminalization of Addameer Prisoner Support and Human Rights Association

On 19 October 2021, in an unprecedented and blanket attack on Palestinian civil society organizations (CSO's), Israeli "Defense" Minister Benny Gantz announced the designations of six leading Palestinian CSO's, among them Addameer, as "terror organizations," effectively outlawing them and placing them at risk of imminent reprisals.²⁰ Despite widespread denunciations by international human rights organizations and UN bodies,²¹ the Israeli

¹⁶ Up to the point of residency revocation, see: *Addameer Prisoner Support and Human Rights Association*, "Israeli Minister of Interior to Officially Revoke Permanent Residency of Lawyer Salah Hammouri," 18 October 2021, <https://www.addameer.org/news/4531>

¹⁷ *Supra 1 and 2*; see cases of Palestinian lawyers Khaled Zabarqah, Iyad Misk, and Firas Sabbagh: *Anadolu Agency*, "Israel arrests lawyer of jailed resistance icon Salah," 04 December 2017, <https://www.aa.com.tr/en/middle-east/israel-arrests-lawyer-of-jailed-resistance-icon-salah/989496>; and lawyer Shireen Issawi: *Alkarama*, "Palestinian Lawyer and Human Rights Defender Shireen Issawi Released from Israeli Prison," 18 October 2017, <https://www.alkarama.org/en/articles/palestinian-lawyer-and-human-rights-defender-shireen-issawi-released-israeli-prison>

¹⁸ *Supra 1.*

¹⁹ Including arbitrary arrests, travel bans, the deportation of his wife, Elsa Lefort, a French national, see *Supra 17.*

²⁰ See *Supra 7.*

²¹ *Human Rights Watch*, "Israel/Palestine: Designation of Palestinian Rights Groups as Terrorists," 22 October 2021, <https://www.hrw.org/news/2021/10/22/israel/palestine-designation-palestinian-rights-groups-terrorists> *OHCHR*, "UN experts condemn Israel's designation of Palestinian human rights defenders as terrorist organisations," 25 October 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27702&LangID=E>

occupation regime doubled down on the designations with a military order signed by the Israeli military commander declaring the six organizations “illegal organization[s].”²² This latest move alarmingly threatens the security of Addameer’s staff, offices, and property—including legal files of Palestinian prisoners and detainees.²³ Since then, to protect the provision of legal services and the security of lawyers, former Addameer lawyers representing Palestinian prisoners and detainees in Israeli military courts have been forced to transition to private lawyers. Beyond the obvious threats to security, and violations of lawyers’ freedom of expression and association (notably **Basic Principle 18**), defense counsel are cut off from resources, collaboration, and advocacy afforded by Addameer, further hindering efforts at the provision of effective legal support in service of their clients.²⁴

III. COVID-19: Compounding Measures Exacerbating Client Representation and Fair Trial Guarantees

Following the outbreak of COVID-19, the Israeli occupation regime declared a state of emergency and adopted a series of legislative measures towards incarcerated populations in the occupied territories that were discriminatory by rule, and application. The measures included a total ban on all visits by lawyers and family members, the halting of prisoners’ transfer to Israeli military courts whereby sessions are conducted via videoconferencing, notwithstanding discriminatory policies subjecting Palestinian prisoners and detainees to harsh living conditions, deliberate medical neglect, torture, and ill-treatment.²⁵ Bans on lawyer visits, poor to absent alternative means of communication, and videoconferencing court sessions had an extreme effect in compounding upon fair trial violations and lawyers’ representation of Palestinian prisoners’ and detainees under the military judicial system.

These measures prompted Addameer and Adalah-the Legal Center for Arab Minority Rights in Israel to file an appeal to rescind the measures and reinstate visitations following the necessary medical precautions.²⁶ In the appeal, Addameer and Adalah stressed that such measures violate the prisoners’ right to seek legal counsel, as well the right to confidential communication with a lawyer as phone calls between the prisoners and lawyers usually take place in the presence of the jailers and officers, effectively diminishing any semblance of privacy.

Due to the transition of Israeli military court proceedings to videoconferencing sessions, Palestinian detainees are no longer physically brought to court. These sessions are marred by poor technology and poor to extant translation services. Addameer documented instances where microphones are deliberately turned off during court sessions, preventing prisoners from understanding the proceedings of the session; other instances included failing to provide

²² *Al-Haq*, “Alert: Israel Takes Alarming Steps to Enforce its Persecution of Six Palestinian Organisations in the West Bank, International Community Must Intervene,” 7 November 2021,

<https://www.alhaq.org/advocacy/19179.html>

²³ *Addameer*, “Addameer Affirms Its Commitment to Protect and Defend Palestinian Prisoners,” 28 October 2021, <https://www.addameer.org/news/4551>.

²⁴ See *Supra I*.

²⁵ *Addameer*, “Palestinian Prisoners and Detainees in the Face of Apartheid,” 16 April 2021, <https://www.addameer.org/media/4364>.

²⁶ *Adalah-the Legal Center for Arab Minority Rights in Israel*, “Urgent petition filed with Israeli Supreme Court calls for cancellation of coronavirus emergency regulations banning prisoners from meeting with lawyers, family,” 26 March 2020, <https://www.adalah.org/en/content/view/9929>

prisoners with an interpreter.²⁷ Similarly, poor translation, exacerbated by faulty technology, hinders the ability of Palestinian lawyers from the West Bank, who lack fluency in Hebrew, to represent their clients. In particular, lawyers note the significant disparate quality of videoconferencing technology employed in Israeli domestic courts as opposed to Israeli military courts.²⁸ Finally, there is an absolute lack of confidentiality between lawyer-detainee communications due to the nature of videoconferencing court sessions, where any communication is heard by the Israeli military judge, military prosecutor, translator, and anyone else present in the session.²⁹

Moreover, Addameer documented several cases where lawyers were unable to determine the location of a detainee due to the declaration of a COVID-19 lockdown by the Israeli occupation regime, and the transfer of detainees to various quarantine sites and prisons during the beginning period of detention.³⁰ Lawyers attempting to locate their clients were burdened with the task of contacting numerous police stations, Israeli Occupation Forces (IOF), IPS, and detention facilities.³¹ In total, legislative measures and administrative and institutional barriers arising out of the COVID-19 pandemic compounded upon existing policies to create immense barriers between lawyers and detainees, handicapping any effective representation and exacerbating mass fair trial violations.

IV. Addameer's Local and International Promotion of the Independence of the Legal Profession

Addameer carries out an array of activities at the local and international levels for the promotion of the independence of the legal profession. Addameer employs legal avenues at the local level through the filing of complaints regarding violations committed by IOF, IPS, 'Shabak' interrogators, and other bodies, beyond innumerable petitions submitted against lawyer bans, gag orders, among others. Over the past ten years, Addameer has submitted dozens of torture complaints annually to Israeli bodies. In the time since, only one complaint, a sexual harassment case, was opened for investigation; the case was later closed without an indictment.³² On the international fora, Addameer regularly engages with UN mechanisms through submissions of urgent appeals submissions, joint reports to the UN Human Rights Council, and other communications. In addition, Addameer represents the cases of the forcible deportation of three Palestinian child prisoners before the ICC.³³

Addameer pursues local and international advocacy efforts, including participation in legal training and advocacy in Palestinian schools, universities, and institutions, along with similar efforts conducted in tandem with national and international CSOs, rights groups, and grassroots organizations. Addameer is a member of the Palestinian Human Rights Organizations Council

²⁷ Addameer, "Annual Violations Report 2020," [English translation forthcoming].

²⁸ See *Supra 1*.

²⁹ See *Supra 1*, *Supra 25*, *Supra 27*.

³⁰ *Ibid*.

³¹ *Ibid*; of note is the case of Khairi Hanoun, 64 years old from Anatba, whose location was unknown to lawyers for three days following his arrest due its coinciding with a full COVID-19 lockdown.

³² See *Supra 12*; According to the Public Committee Against Torture in Israel (PCATI), about 1,200 complaints of torture during Israeli interrogations have been filed since 2001; all the cases were closed without a single indictment.

³³ *Situation in the State of Palestine: In the Case of The Prosecutor v. (Public Document Observations On Behalf of Victims)* ICC-01/18 (16 March 2020) https://www.icc-cpi.int/CourtRecords/CR2020_01151.PDF

and the Palestinian NGOs Network.

V. **Recommendations**

With over three decades of work representing and advocating on behalf of Palestinian prisoners and detainees, Addameer Prisoner Support and Human Rights Association recognizes that there can exist no free and independent exercise of the legal profession under the Israeli military judicial system.