



**Arabic American University**

**Faculty of Graduate Studies**

**Health conditions of the Palestinian prisoners and  
detainees in light of Israeli violations of international  
Humanitarian Law**

By

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**This thesis was submitted in partial fulfillment of the  
requirements for the Master's degree  
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**Thesis Approval**

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## Declaration

I acknowledge that I have complied with all in force regulations, instructions, laws and statements of the Arab American University and scientific and ethical standards.

The work provided in this thesis unless otherwise referenced, is the researcher's one work. And has not been submitted elsewhere for any other degree or qualification.

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## Dedication

*To those whose pure souls drove the soil of the homeland, our righteous martyrs,  
may God have mercy on them*

*To the legends of steadfastness, our brave prisoners*

*To the lofty one who is dedicated to giving, to the one who taught me that nothing  
is impossible in persistence and the strength of faith, my dear mother*

*To the source of my strength, my inspiration, and my self-esteem, my dear father,  
my dear brothers and sisters*

*To my companion in the struggle, my virtuous wife*

*To the most beautiful gifts of the Most Gracious, waiting for you, my daughter  
Shams.*

*To all, my love and respect..*

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## **Abstract**

Prisoners and detainees are considered as the root of the ongoing conflict between Palestinians and the Israeli occupation, as they are the ones who sacrificed and pledged their lives for the sake of liberation from the restrictions of the occupation and its arbitrary practices against the Palestinian people. This study tried to recognize the obstacles and challenges that the Palestinian detainees face through their living in the Israeli prisons, starting from detain or arrest, passing through the investigation stage, ending with the stage of sentencing him and serving his sentence, until his release from prison and liberation from the shackles of captivity, whether this period took place after the end of the sentence imposed on him, or through a prisoner exchange deal between the Palestinian and Israeli sides.

The importance of the study comes as it highlights the Israeli violations of international humanitarian law related to Palestinian prisoners and detainees in general, and their health rights in particular, as all international charters and treaties emphasized the necessity of dealing with prisoners of war and detainees with respect, so that there is no insult to their dignity, and no use of methods of torture and threats to extract their confessions. Rather, they have every right to live in dignity, and to enjoy all their rights in prisons or in detention centers, whether by providing them with a safe healthy environment, or by providing food, clean water, clothes and medicines, and preparing an appropriate healthy environment with allocating doctors to monitor their health conditions, and treat them without shortening.

In order to know the reality of the Palestinian prisoners and detainees in the Israeli occupation prisons, a group of previous studies issued by the official authorities and a number of researchers that concerned with the Palestinian issue were referred to, in

addition to designing a questionnaire and distributing it to a group of released prisoners who are still under occupation, with the aim of surveying their opinions towards those violations committed by the Israeli occupation against Palestinian prisoners as living testimonies of that, in addition to conducting field interviews with a group of officials and official bodies that concerned with the affairs of the Palestinian prisoners.

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## **Chapter One**

### **Study Design**

#### **1.1 Introduction**

Israel continues to violate international humanitarian law related to the health rights of the Palestinians prisoners and detainees, which has negatively affected their physical and psychological health. Where official reports ensure that there were about (1,800) prisoners who suffer from chronic diseases, among them where (6,500) prisoners who are still arrested at the Israeli prisons, and there were nearly (700) prisoners who need urgent treatment intervention, in addition to those who complain of various disabilities, while continuing to delay their obtaining appropriate treatment, and keeping them in an unhealthy environment resulting from overcrowding and lack of ventilation, which has led to exposing their lives to the risks of death and contracting diseases and suffer from chronic illness that accompanied them after their liberation and release from captivity (The Israeli Information Center for Human Rights in the Occupied Territories, B'Tselem, 2021).

Hence, it is of great importance to study the conditions of detention and its repressive practices towards the Palestinian prisoners and detainees, and the suffering experienced by the prisoners in general, and the patients in the occupation prisons in particular, which requires urgent international intervention to protect them, to remove all conditions and causes that endanger their lives, and increase their suffering, whether continuation of the campaigns of abuse, torture and humiliation against them.

The State of Palestine joined a group of international organizations related to the prisoners' health rights declared by the United Nations General Assembly and the International Criminal Court, in addition to signing a number of international conventions

and treaties (especially, The Hague Convention 1907, Third and fourth Geneva Convention 1949 and its annexes), which are considered an international legal tools that can play a pressing and binding role for the occupying power to stop violating international humanitarian law, and to secure the lives of the Palestinian prisoners and detainees.

Among the Palestinian endeavors at the international level, the Palestine's accession to international treaties and agreements related to the health rights of prisoners is an implicit commitment by the Palestinian Authority in order to ensure the provision of a suitable healthy environment for prisoners in the Israeli detention centers, and their access to appropriate treatment, by activating the role of international and human rights organizations in holding the occupation government accountable for the crimes it commits against Palestinian prisoners and detainees, and monitoring these violations in order to overcome and limit them. Which was not adhered to by successive Israeli governments, as the Israeli Prison Service courts issued several decisions, specials orders and military declarations in an attempt to bypass international accountability, which is a flagrant violation of the prisoners' health rights, and a violation of international humanitarian law (Amnesty International, 2015).

## **1.2 Concepts and Terms**

### **- Violation**

Violation is defined as “the state’s failure to implement the rights that it is obliged to provide to the people without this obligation being linked to the availability of the resources available to it, because the right is fixed and there is no room for discussion

regarding its existence, necessity and quality of its application, such as civil and political rights” (Al-Obeidi, 2010: 3).

It defines procedurally the abuses committed by the Israeli occupation authorities to the health rights of Palestinian prisoners and detainees in the Israeli occupation prisons under international humanitarian law.

- **International crime**

Defined as "acts that, if committed or permitted by the state, are considered grave breaches of international law and require international responsibility, and that the idea of international crime applies only to acts of particular gravity, and is liable to cause disturbances in the security and public order of the international community" (Awad, 1966: 294).

It is defined procedurally as the breaches and abuses committed by the Israeli authorities through the mishandling of prisoners and administrative detainees in the Israeli occupation prisons, which considered as war crimes based on what was approved by international covenants and laws.

- **Prisoners of war**

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy: (1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces. (2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: (a) that of being commanded by a

person responsible for his subordinates; (b) that of having a fixed distinctive sign recognizable at a distance; (c) that of carrying arms openly; (d) that of conducting their operations in accordance with the laws and customs of war. (3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power. (4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model. (5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law. (6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war (Geneva Conventions of 1949, article 4).

It procedurally defines all prisoners who were captured/arrested by the Israeli security services under the pretext of belonging to an armed Palestinian organization and who "threaten the security of the state and the safety of the Israeli citizens."

- **Administrative detention**

An administrative detainee is defined as "a person who has been detained in a specific place called the detainee, and who is prevented from moving, contacting others, or performing any work except within the limits permitted by the authority and detention,

and it is a preventive measure intended to protect the security and safety of society” (Abdul Mahdi and Al-Shafi’i, 2005: 12).

Procedurally, administrative detention is defined as any Palestinian civilian citizen who was arrested by the Israeli security forces under the pretext of threatening security and stability, whether there is evidence or just because he suspects that he might commit an act that threatens the security and social peace of the State of Israel.

- **The Israeli Prison Service**

It is a "security organization with a social objective that belongs to the law enforcement apparatus, and works within its competence to detain prisoners and detainees in safe and decent conditions, while providing for their basic needs and preserving their dignity, and providing corrective tools for all appropriate prisoners in order to improve their ability to integrate into society after their release." (The Israeli Prime Minister's Office, 2021).

It is defined procedurally as the authority that operates in the management of Israeli prisons and detention centers, that is designated for the detention of Palestinian prisoners and detainees, and they are subject to its orders, and it has the power to trial them and issue sentences against them without returning to the Israeli constitution or to the regulations, legislations and covenants approved by international humanitarian law.

- **International Humanitarian Law**

It is "a set of rules aimed at reducing the effects of armed conflicts for humanitarian motives. This law protects people who do not participate in hostilities or have ceased to participate in them. It also imposes restrictions on the means and methods used in war. International humanitarian law is also known as the law of war or the law of armed conflict” (ICRC, 2014).

It defines procedurally as set of laws and regulations that deal with Palestinian prisoners and detainees, and which oblige the signatory states with the legal articles contained therein, with a focus on the health rights of this group.

- **Justifications for the war:**

The Charter of the United Nations defines cases of occupation that fall under the name (justifiable law), which it defines as “the transition from a realistic state of war, for example, to the level of occupation, and the concept of occupation law applies duly to that situation, regardless of whether that occupation is legitimate, justified, or It was not” (ICRC, 2004).

It is procedurally defined by the arguments and evidence used by the Israeli security services towards prisoners and detainees, which give them the right to detain or arrest Palestinian citizens in the West Bank and Gaza Strip on the pretext that they belong to an armed organization or that they threaten the security and safety of Israeli civilians.

- **Right to health:**

The United Nations Organization defines the right to health as "a comprehensive right, as it is not only limited to the provision of appropriate and timely health care, but also includes the basic components of health, including: adequate supply of safe food, nutrition and housing, access to safe drinking water and adequate sanitation, and healthy conditions for work, and hygienic environment of work and environment, access to health-related education and information, including sexual and reproductive health, and the right to health includes both freedoms and entitlements, and freedoms include the right of a person to control his health and his body, including his freedom to be safe from medical or medical treatment without consent, and entitlements include the right to benefit from a system of health protection such as health care and the underlying social determinants

of health, which provides equality of opportunity for people to enjoy the highest attainable standard of health” (United Nations, 2000).

It procedurally defines the rights of Palestinian prisoners and detainees and those who have been detained or arrested, whether judicial rulings have been issued against them or not. These rights are based on the legal articles stipulated by international humanitarian law and related to prisoners of war and detainees.

### **1.3 Research Problem**

The continuity of issuing military orders and declarations by the Israeli Prison Service against Palestinian prisoners and detainees, is considered as a flagrant violation of international norms and laws that provided protection for prisoners in wartime, whether through inhuman investigation procedures (PCHR, 2015), or by not providing an appropriate healthy environment to preserve their physical and psychological health.

It is nothing but confirmation that successive Israeli governments are still violating international humanitarian law for the health rights of Palestinian prisoners and detainees inside the Israeli occupation prisons, which was confirmed by all studies that discussed the affairs of prisoners and detainees, which recorded the death of dozens of them in the Israeli occupation prisons as a result of deliberate medical negligence, as well as a reflection of “The stage of captivity and detention” that affects the released prisoners’ health (Addameer, 2020), but most of the previous studies have dealt with prisoners’ issues in general (Detainees and Detainees Affairs Authority, 2019; Ghoneim, 2018; Qattam, 2017; Abu Al-Nasr, 2014; Al-Sarsawy, 2013; Duqmaq , 2005), without specializing in studying the difficult health conditions and suffering of the Palestinian prisoner resulting from Israeli violations of international humanitarian law, which

requires in-depth research into the legal justifications used by Israel to continue its violations without indifference to the existence of a binding legal deterrent.

Thus, the problem of the study lies in the researcher's attempt to reveal the Israeli violations of the Palestinian prisoners and detainees' health rights in the Israeli occupation prisons during the period between 1967-2022.

### **1.4 Research Importance**

The issue of Palestinian prisoners and detainees is among the constants of the Palestinian cause, and it was agreed between the Palestinian Authority and the Israeli government to release all prisoners and detainees inside the Israelis' prisons before the signing of the Oslo Peace Agreement, provided that the issue of captivity and detention will be solved during the final negotiations stage, which exacerbated the health suffering experienced of the Palestinian prisoners in general, and sick prisoners with high sentences in particular. In light of Israel's continued violation of their health rights guaranteed by international laws and treaties, that requires studying the issue in some details.

The importance of the subject is highlighted in the definition of international humanitarian law related to the health rights of the Palestinian prisoners and detainees. On the other hand, the study reviews the justifications resorted to by Israeli governments by issuing laws and orders from the Israeli Prison Court without taking into account its commitments and commitment to the international laws and treaties that it signed and related to the protection of war prisoners. It also introduces an indication of the systematic and intentional neglect towards sick prisoners, whether in the failure to provide an appropriate sanitary environment, or in the delay in providing medical examinations and emergency treatments, which led to the death of dozens of them, and affected hundreds

of chronic diseases, with many of them being permanently disabled.

The current study also provides a modern scientific legal addition by identifying the most important international treaties, laws and conventions that dealt with the health conditions of prisoners, and their effectiveness in obligating the occupying state to their physical and psychological safety, showing how it is possible to defend the health rights of prisoners and protect them from the violation and abuse against them, whether during or after the period of captivity, with a focus on the role of International Criminal Court, through which the case can be presented to it in order to practically start conducting extensive investigations of these violations, which amount to war crimes against Palestinian prisoners and detainees.

The study also provides a realistic description of the Israeli violations of the rules and provisions of international humanitarian law that concern prisoners, by designing a questionnaire and distributing it to prisoners (liberated or still in captivity), with the aim of surveying their views on the extent of Israel's violation of their health rights in the Israeli occupation prisons, as live testimonies from realistic, in addition to conducting field interviews with officials working in the relevant public institutions, with the aim of reaching a set of conclusions, to introduce recommendations to Palestinian decision-makers and the international community stemming from providing an accurate description of Israeli violations, which can be based on restricting and obligating Israeli practices, obeying international humanitarian law, and fulfilling the declared commitments, as well as identifying the extent to which these violations can be linked to war crimes committed against Palestinian prisoners, hereby, the aspects related to the actual violations by the Israeli occupation of the rights of Palestinian prisoners were linked with the provisions of international humanitarian law related to the health rights of

prisoners specifically, which has not been addressed in previous studies related to this specific issue.

The study is important in distinguishing between prisoners and detainees from the point of view of international law and jurists, and the health rights guaranteed by international humanitarian law, in order to distinguish the violations committed against them, especially the health ones.

The importance of research in both theoretical and practical aspects can be summarized as follows:

- **Theoretical Importance:** The importance of the research emerges in its theoretical aspect through its presentation of international humanitarian laws that guarantee the rights of prisoners, and those agreements and treaties to which Palestine and Israel have joined, with the aim of identifying the extent to which these treaties and laws oblige member states to implement the items signed by them, and to indicate the violations of Israeli against the Palestinian prisoners and detainees' health rights, with a review of the most prominent means and methods used by the Palestinian leadership in defending their rights.

- **Practical Importance:** the importance of research is also evident in the results obtained through the answers of the study sample (prisoners and detainees who were freed and those who are still in captivity) about Israeli violations against Palestinian prisoners and detainees, in order to extract testimonies from the reality, as well as conducting field interviews with a group of relevant Palestinian officials and official bodies, with the aim of drawing conclusions and introducing recommendations to Palestinian political and media decision makers, that may help in pointing out the strengths and weaknesses while using methods and procedures to confront these violations.

### **1.5 Research Objectives**

The Palestinian prisoner and detainee in the prisons of the Israeli occupation is subjected to all kinds of abuse, threats, extortion, beatings, and other arbitrary practices, despite the fact that international humanitarian law has guaranteed human rights and the rights of prisoners of war and detainees, with the Israeli governments signing many international agreements and treaties in which they guarantee to save and protect these rights, under the International Humanitarian Law, however, the reality of the prisoners and detainees healthy lives confirms the flagrant violation of these rights.

Accordingly, the study aims to achieve the following:

- Distinguish between the prisoner, the detainee and the administrative detainee.
- Revealing the reality of the Palestinian prisoners and administrative detainees life in the prisons of the Israeli occupation from the point of view of international humanitarian law.
- Investigating the Israel's violation of international humanitarian law in light of the health protection provided to them by the international agreements signed by Palestine and Israel.
- Revealing the point of view of the study sample (represented by released prisoners and detainees who are still in captivity) towards the Israeli violations of their rights, focusing on the health repercussions (physical and psychological) ones, and explaining their point of view on the best ways and procedures that can be implemented to protect them and provide the principles of international human rights for prisoners and detainees who still existing in the Israeli prisons and detention centers.
- Introducing the international treaties, covenants and agreements related to the rights of war prisoners.

- Identifying the legal adaptation and justifications used by the Israeli prison courts administration in transgressing international humanitarian law.
- Explaining the limitations and possibilities of the Palestinian movement to protect the prisoners.
- Coming up with conclusions derived from the results of previous studies and theoretical literature, in addition to the results of the field study, and the reviewed international laws and treaties related to the health rights of prisoners and detainees, in order to introduce some recommendations directed to decision-makers of the Palestinian polity, and to the international community, especially those advocating for the Palestinian right.

### **1.6 Research Questions**

**The main question stated that: What is the position of international humanitarian law on Israeli violations of the health rights of Palestinian prisoners and detainees in Israeli occupation prisons?**

The following sub-questions emerge from it:

1. What is the difference between a prisoner, a detainee, and an administrative detainee?  
And what is the legal description that applies to Palestinians in Israeli prisons?
2. What are the most prominent international treaties, laws and agreements that deal with the health rights of prisoners and detainees?
3. What are the most important treaties, laws and international agreements signed by Palestine and Israel related to the health rights of prisoners and detainees?
4. What is the health situation (physical and psychological) experienced by the Palestinian prisoner and detainee in the prisons of the Israeli occupation?

5. What is the health situation (physical and psychological) experienced by the released prisoner from the Israeli occupation prisons?
6. What are the most prominent Israeli violations against the health rights of Palestinian prisoners and detainees?
7. What are the pillars on which Israel relies in violating international humanitarian law for the health rights of Palestinian prisoners and detainees?
8. What are the measures and means that Palestine can resort to in defending the rights of prisoners and detainees?

### **1.7 Research Hypotheses**

The study assumes that all Palestinians who fall into the hands of the Israeli occupation are considered as war prisoners, whom the Fourth Geneva Convention of 1949 applies.

The study also assumes the existence of serious Israeli violations of the right of Palestinian prisoners in terms of health, in violation of international humanitarian law.

The justifications used by the Israeli occupation government to justify the process of captivity and detention do not take any legal direction that allows it to violate the health rights of prisoners and detainees.

The study also assumes that the Palestinian Authority and the local and international official bodies (humanitarian and human rights) do not adequately confront the Israeli violations against Palestinian prisoners in terms of health in light of the international humanitarian law related to the health rights of prisoners.

## 1.8 Research Limitations

- **Temporal Limitations:** The study is limited to the period between the years 1967-2022, which was divided into two periods, where the first one started at the year of 1967 till the international recognition of the State of Palestine in 1993, while the second one started from the year of 1993 till the end of the year 2022.
- **Spatial Limitations:** The study is limited to liberated Palestinian prisoners and detainees who are still languishing in the Israeli prisons in the West Bank due to the difficulty of access to the Gaza Strip due to the Israeli measures taken in the blockade of the Strip, in addition to the Palestinian official authorities that are concerned with the issues and rights of Palestinian prisoners.

## 1.9 Research Tools

The following tools were used to complete the study:

1. **Previous Studies:** A group of previous studies concerned with the study of the health conditions of Palestinian prisoners and detainees and the Israeli violations committed against them under the international humanitarian law were referred to.
2. **The questionnaire:** which was distributed to Palestinian prisoners and detainees, whether they were freed or those who are still in the Israeli occupation prisons.
3. **Interview questions:** Field interviews were conducted with a number of leaders and officials in the Palestinian ministries and public institutions concerned with prisoners and detainees' affairs and human rights.
4. **International Laws and Treaties:** The study is based on the most prominent international conventions and treaties that concerned the rights of prisoners, detainees, and those resisting colonialism, and the rights guaranteed to them by international

humanitarian law in the event that they fall into the hands of the adversary (enemy). As well as a presentation of a set of international treaties and laws signed by both the Palestinians and the Israelis, which are concerned with the health rights of war prisoners and detainees.

### **1.10 Research Methodology**

Several research methods were used in order to enrich the study, and to make a comparison between each of the theoretical literature related to international treaties and laws, and the summaries of previous relevant studies, and between the point of view of Palestinian prisoners and detainees, in one side, and the official authorities that concerned with the affairs of Palestinian prisoners and detainees at the other side:

**1. The inductive-deductive approach:** This is done by reviewing the theoretical literature, including books, studies, research, international agreements and treaties, and deriving the most prominent results and extracting them with the aim of studying the phenomenon under study, and dealing with its dimensions in an in-depth way, while identifying the most prominent results of previous studies.

**2. The analytical descriptive approach:** two tools were designed; Where the first one was the questionnaire, which was distributed to a random sample of prisoners and detainees, whether they were freed, or those who are still in captivity, while the second tool was represented by the field interview questions, which were conducted with a number of officials, commanders, and those with specialization in the affairs of prisoners and detainees and international law. In order to identify the reality that the Palestinian prisoner lived and is still living in the prisons of the Israeli occupation, as well as to

identify the health condition of the released prisoners, and to know their point of view regarding the procedures that are followed in order to defend the prisoners and detainees.

### **1.11 Research Obstacles**

**I encountered number of difficulties while preparing the current study, which were summarized as follows:**

1. Lack of books and references related to prisoners' issues in Palestinian libraries in general, and the study of health status in particular.
2. Inability to visit libraries, conduct interviews, or distribute questionnaires to the study sample due to the wide spread of prisoners and detainees in the Palestinian territories.
3. Lack of previous (Arabian and Palestinian) studies related to the subject of the research, with an abundance of published articles that present the researcher's point of view on the subject without conducting an in-depth study as in previous studies.
4. The difficulty of translating foreign articles, especially those published in languages other than English (such as French).

## **Chapter Two**

### **Previous Studies**

Many researchers and scholars have been interested in studying the conditions of prisoners, and the given painful reality that war prisoners and detainees suffer in the prisons of the Israeli occupation, many of them dealt with the reality of the lives of Palestinian prisoners. To clarify this, this chapter was divided into two sections; the first section dealt with a group of previous studies that dealt with the issues of Palestinian prisoners and detainees, while the second section dealt with comments on previous studies and what distinguishes the current study from other previous studies.

#### **2.1 Section One: Studies Concerned the Israeli Violations of International**

##### **Humanitarian Law**

Many researchers have been interested in exposing the Israeli occupation's violations of the rights of Palestinian prisoners. To clarify this, this section has been divided into two parts; So that the first part dealt with a group of studies that concerned the conditions of Palestinian prisoners and detainees in the prisons of the Israeli occupation, while the second part dealt with a group of studies that studied the health rights of Palestinian prisoners in the Israeli occupation prisons, at the end, previous studies were commented on, and the aspects of agreement and disagreement with the current study, and what distinguishes the study from other previous ones.

### **2.1.1 Part One: Studies Concerned with the Conditions of Palestinian Prisoners and Detainees in Israeli Prisons**

The study of **(Muhammad, and Al-Taher, 2022)** sought to uncover the crimes committed by the Israeli leadership against the Palestinian people, from 1948 until 2022. The study was based on a set of international covenants, treaties, and decisions related to the Palestinian issue. The study showed that these crimes were attributed to religious discourse in order to adapt their war against the Palestinians, which lead to the absence of a right for non-Jews in Palestine, the study also showed a set of Israeli violations of international rules, with no international intention to create an international criminal court competent to trial Israeli military leaders.

The study of **(Ghoneim, 2018)** aimed to define the psychological and physical violations of the Palestinian prisoners' rights in the Israeli occupation prisons, and focussing on the violations committed against Palestinian female prisoners. The study also aimed to define the legal responsibility for Israeli violations from the point of view of international humanitarian law, and the study recommended the need for a legal defense of the Palestinian prisoners' rights, and working to compel the occupying power to adhere to and abide by the rules and principles of international law.

**Hamdounch (2018)** conducted a study to shed a light on the most prominent achievements of Palestinian prisoners in the Israeli occupation prisons, despite the harsh conditions and the grave challenges that the prisoner is exposed to. A set of laws and international agreements related to the rights of prisoners were relied upon, as well as personal observation. The study concluded that the occupying state did not recognize any status or legal status for the Palestinian prisoners, but rather dealt with them as outlaws, and did not abide by international agreements related to preserving their rights, but rather

dealt with the issue of prisoners as a bargaining chip with the Palestinian side.

**Abu Sha`aban, and others (2017)** conducted a study with the aim of analyzing the reality of Palestinian detainees and war prisoners. The study concluded that there were shortcomings on the part of the Palestinian official authorities towards prisoners' rights, in light of the continued Israeli occupation forces violating international humanitarian law by considering them (criminals) instead of classifying them as freedom fighters and war prisoners, in addition to relying on the emergency regulations of 1945, and transferring all cases related to prisoners and detainees to the Department of Prisons Service affiliated to the Minister of the Army instead of the Minister of Justice, which led to their continued exposure to oppression and torture, and to depriving them of their human rights that have been guaranteed and conserved by the international humanitarian law.

The study of (**Qetam, 2017**) also aimed at defining the rules of international humanitarian law related to human rights, it is a legal study. The study revealed that the occupational state of Israel has no legal and legislative and juridical authority, so it plays the role of roler and executor at the same time, since it issues many arbitrary laws aiming to provide the coverage and legal protection for perpetrators of violations against Palestinian prisoners and detainees, and to continue their legislative, immoral and inhuman violations against Palestinian prisoners and detainees. The study showed that among theses violations came (torture methods, administrative detaaaines, illegal declarations and laws against prisoners' rights, i.e., the law to execute prisoners, force feeding law).

The study conducted by (**PCHR, 2015**) aimed to shed light on the serious physical and psychological violations committed against Palestinian prisoners and detainees in the Israeli occupation prisons, with a presentation of a group of cases of torture and violation of the dignity of Palestinian detainees during the period (2013-2014), in order to raise the

issue with the concerned international bodies to prosecute war criminals and put an end to them. The study emphasized that torture is a common method used against Palestinian prisoners and detainees, and despite the fact that the Palestinian authorities in the West Bank and Gaza Strip are still calling on the international community to intervene, and providing many documents and pictures that confirm this, but it did not take any concrete measures on the ground to end their suffering, so the Palestinian side failed to open an international investigation to hold the Israeli officials accountable.

As for the study (**Abu Al-Nasr and Sa`ad, 2014**), it aimed to provide an abstract legal picture of the concept of prisoners and detainees in the international humanitarian law and the rights they enjoy, according to the development of international law, which gave them protection, and expanded the definition of concepts by distinguishing between war prisoners and legal combatants, specifying the conditions of the fighter, the description of the prisoner of war, and considering all fighters under the grip of the enemy as war prisoners. The study concluded that the Israeli occupational authorities denies any legal description of the Palestinian prisoners and detainees due to the international law definitions and concepts. It also revealed that there were many civil detainees have been captured as administrative ones, with the renewal of provisions and periods of them.

The study of (**Francis, 2014**) sought to identify the position of Palestinian prisoners under international humanitarian law, as the study concluded that the Israeli practices that it pursues against the Palestinians were close to be a form of colonialism and apartheid, whether by imposing its sovereignty on the occupied Palestinian lands, or by denying the Palestinian people's right to self-determination, it dealt with them as criminals. The study asked the international community to revise the legality of the Israeli occupation in front of the International Court of Justice, and to take all necessary procedures to release

prisoners from the occupation prisons.

### **2.1.2 Part Two: Studies Concerned with the Palestinian Prisoners' Health Rights the in Israeli Prisons**

**Addameer (2020)** submitted a report showing data and evidence about the poor health conditions experienced by Palestinian prisoners and detainees in the Israeli occupation prisons. Where the report insured that health ignourance were a methodical procedure that the Israeli prisons apply it against the Palestinian prisoners and detainees, which is cnsidered as violations of their rights by the Israeli occupation forces, the report indicated that there were about 5,000 prisoners and detainees, including 180 children, 41 women, and 430 administrative detainees, and that among them are about 700 sick or wounded prisoners and detainees, and that there are 200 prisoners who suffer from chronic diseases. Where this report where issued due to the spread of Corona pandemic among the Palestinian prisoners and detainees, the report also confirmed the death of five prisoners, where three of them were neglected healthily, and that there are hundreds of prisoners subjected to medical neglect, and the health conditions in the detention centers suffer from the spread of insects, high humidity, and lack of ventilation, overcrowding, which confirms that no preventive health measures have been followed, in addition to the poor quality of food provided, which confirms that these detention centers are dangerous sites for the spread of the virus among the detainees.

As for the **Commission of Detainees and Ex-Detainees Affairs**, it submitted a report for the year (2019) that monitored the violations that Palestinian male and female prisoners are subjected to from the moment of their first arrest, through investigation procedures, until they are transferred to prisons, which clearly shows the suffering that Palestinian prisoners live in, and the poor health conditions inside prisons and detention

centers, in addition to the violations committed by the Israeli Prison Service towards their rights, and without any regard for international treaties and covenants, as the report showed that among all these rights (the right to a fair trial, freedom from arbitrary detention, the right to health, the prohibition of torture or ill-treatment or cruel, inhuman or degrading punishment, the right to receive visits during detention...). The study concluded that Israel continues to pursue an integrated, racist policy against the Palestinians, without regard to age and gender, and is still outside the law, and is not subject to international laws, agreements and covenants.

The study of **(Al-Sarsawy, 2013)** also aimed to introduce the rules of international humanitarian law related to prisoners, the study concluded that the Israeli occupation forces violate the rights of prisoners approved by international conventions and treaties, as they insult prisoners and endanger their lives, it also violates their humanity, which can be considered as a war crime punishable under the rules of international humanitarian law and the Charter of the International Criminal Court. The study concluded that Israel considers itself a state above international law, it is not committed to implementing the Geneva Conventions, as it practices all forms of torture against the Palestinian prisoners, and follows a policy of medical neglect (slow death) against them.

The study of **(Daqmaq, 2005)** aimed at defining the legal status of Palestinian prisoners in the light of international humanitarian law, the study showed that the Israeli presence in Palestine is considered a belligerent occupation. From this concept, the study explained the legal position of the Palestinian prisoners, it also showed how the Israeli occupational authority violated the conditions of captivity and detention, and ill-treatment that could be considered as war crimes (i.e.; torture, humiliation, medical negligence).

## **2.2 Section Two: Commenting on Previous Studies**

Many researchers and academics have dealt with the issue of the prisoners' rights in Israeli prisons, but there are a number of points of similarity and difference between them. The following is a statement of the objectives, methodology, tools, and the most prominent findings of previous studies, as well as a review of what distinguishes the current study from others.

### **2.2.1 Part One: Comparing the Study in Terms of Objectives, Research Methods, Tools, Study Population and Sample**

#### **First topic: Comparing previous studies in terms of objectives**

The objectives addressed by previous studies were varied, as the Addameer (2020) study focused on reviewing the health status of Palestinian prisoners and detainees in Israeli prisons, while the Commission of Detainees and Ex-Detainees Affairs (2019) provided a monitoring of the violations that Palestinian male and female prisoners are exposed to during the stages of detention. While the study of Ghoneim (2018), Al-Sarsawy (2013) and Daqmaq (2005) aimed to identify the psychological and physical violations of the rights of Palestinian prisoners in the occupation prisons, and to explain the violations committed against Palestinian female prisoners, and the study of Qatam (2017) aimed to define the rules of international humanitarian law related to human rights. The study conducted by (PCHR, 2015) shed light on the physical and psychological violations committed against Palestinian prisoners and detainees during the years 2013-2014. As for the study of Abu Al-Nasr and Abdel-Rahman (2014), it provided a definition of the concept of prisoners and detainees under international humanitarian law, with the aim of

defining the status of the Palestinians prisoners and detainees in the Israeli occupation prisons.

### **Second Topic: Comparing Previous Studies in Terms of the Methods and Tools**

Most of the previous studies were based on the legal approach, such as the study of Ghoneim (2018), Qatam (2017), Abu Al-Nasr and Abdel-Rahman (2014), Al-Sarsawy (2013), and Duqmaq (2005). Many studies also used the inductive-deductive approach through studying the reality of Palestinian prisoners and detainees in Israeli prisons, in which a survey was conducted of the reality of Palestinian prisoners and detainees and the conditions of prisoners they live in these Israeli prisons and detention centers, such as the study of Addameer (2020) and the Commission of Prisoners and Ex-Prisoners' Affairs study (2019), and the study of (PCHR, 2015).

### **Third Topic: A comparison Between Previous Studies in Terms of the Community and the Sample**

All previous studies were applied at the Palestinian prisoners and detainees inside the Israeli occupation prisons, and during varying years, according to the date of preparation of the study.

### **Fourth Topic: A comparison Between Previous Studies in Terms of Results**

All previous studies found that Palestinian prisoners and detainees suffer from grave violations inside the Israeli occupation prisons, and that their suffering continues after the end of the period of detention, the end of the period of captivity, or due to prisoners'

exchange deals, due to the cases of medical neglect that they are exposed to inside Israeli prisons and detention centers.

The Israeli occupation has imprisoned and arrested Palestinians, under criminal charges and arguments, despite the fact that the majority of them were arrested as a result of their confrontation with the Israeli occupation forces, and despite the fact that international humanitarian law obliges the State of Israel to take all safety measures, to secure their lives and human dignity, and to provide food, drink and clothing and a clean healthy environment.

However, the results of previous studies confirm the lack of the minimum requirements of the Palestinian prisoners in the Israeli occupation prisons, which leads to their exposure of chronic diseases, not to mention the use of violence of all kinds such as beating, threatening and abusing prisoners, and procrastination in their treatment and the provision of medicines and medical supplies necessary to maintain their health and to save their lives.

### **2.2.2 Part Two: What Distinguishes the Current Study from Previous Studies?**

The researcher benefited from the previous studies in formulating the problem of the study, and defining its variables and objectives. Despite the clear convergence in the titles of the studies, the current study is distinguished from previous studies in that it deals with the study of health violations of Palestinian prisoners and detainees in the Israeli occupation prisons in particular, as well as the use of research methods, either by using the analytical descriptive approach by conducting field interviews with a number of released prisoners to recognize the health conditions experienced by the Palestinian prisoner and detainee in the prisons of the occupation, or by reviewing the study literature

and official reports that studied health conditions of the Palestinian prisoners, in order to clarify the Israeli violations against the Palestinians prisoners under the international humanitarian law.

The current study also distinguishes between prisoners and detainees, in order to determine the Israeli violations committed against them, as well as the position of international law on the issue of prisoners and detainees, and to review the most prominent international legal articles that guaranteed their human and health rights.

## **Chapter Three:**

### **The Reality of the Palestinian Prisoners and Detainees in the Israeli Occupation Prisons After 1967**

The phenomenon of captivity is inherent to all wars (old and new), where the captivity system in international humanitarian law is linked to the fighting person, as he must meet specific conditions to fight the war in order to obtain the treatment of a prisoner of war if he falls into the hands of the enemy (Al-Mezan Center for Human Rights: [www.mezan.org](http://www.mezan.org)).

Within the international efforts made to protect human rights, international humanitarian law provided all rights to prisoners and combatants and guaranteed them protection during the war. However, the reality of Palestinian prisoners and detainees in Israeli occupation prisons confirms the flagrant violation of their rights, as the Israeli occupation authorities practice all methods of terrorism and violence against the Palestinians. This suffering increases in the event of being captured or arrested, whether through investigation and torture procedures, or in the failure to provide them with health security in order to eliminate them indirectly.

We point out here that the period that will be studied includes the beginning of the stage of captivity or administrative detention, through the period of detention awaiting trial, up to the period they spend in prisons and detention centers until releasing them, whether after the end of their sentence, or as a result of a prisoner exchange deal. It also includes the period they spend outside prison or detention in terms of security prosecution and the possibility of re-arresting them on the pretext that they have a prior tendency to threaten the security of the Israeli state, as the Israeli security services had not been hesitated to

re-arrest hundreds of released prisoners under the pretext that they are embarking on “hostile” actions that could become a security threat in the future.

It is worth mentioning that not everyone who falls into the hands of the enemy is considered a prisoner of war, so it is often confused between a prisoner of war and a detainee, despite the different definitions, legal status and rights would be given for each, since many individuals fall into the hands of enemy forces, whether they are military personnel participating in military operations, or civilians. To clarify the concept of capture and detention, and the differences between them, we provide the following linguistic and terminological definition and what has been defined in international conventions and treaties.

### **3.1 First: Definition of Prisoners and Detainees**

#### **3.1.1 Definition of Prisoner / Administrative Detainee in Language**

**1. The linguistic definition of the prisoner:** The word (prisoner) came in the al-Muheet dictionary, its plural is (prisoners), it is defined as “the one who is captured and bound and imprisoned” (Al-Fayrouzabadi, 1999: 6). A chain or prison is a prisoner” (Ibn Manzur, 1999: 6).

**2. The linguistic definition of the detainee:** The word “aql” came in the Arabic language with the meaning of “imprisonment.” The sane person is the one who “confines himself and turns it away from his desires” (Ibn Manzur, 1967: 459), and its equivalent in the English language is the word “detained” (Soulene, 2006: 707).

### **3.1.2 Definition of Prisoner / Administrative Detainee Idiomatically:**

**1. The idiomatic definition of a prisoner:** International law jurists have defined prisoners of war as “people who are described as legal combatants covered by international protection established in the texts of international agreements” (Al-Far, 2009: 73). A captive is also defined as “every fighter who is in the hands of the enemy or in the hands of the opponent” (Abu Al-Wafa, 1996: 651).

**2. The idiomatic definition of the detainee:** the term detainee is applied to “the seizure and restriction of the freedom of a civilian, which is any person who does not belong to the category of combatants who are to be defined as accurately as possible in international conventions” (Abu Al-Nasr and Sa`ad, 2014: 484). In the same context, Article (50) of the first Protocol of Geneva Convention by the year 1949 has defines civilians as "people who do not belong to the regular armed forces, and if there is doubt about a person being a civilian or a soldier, he/she is considered a civilian."

**3. The definition of the administrative detainee:** Although there is no definition of the administrative detainee, as the case of administrative detention is a rare case that has been devised by the Israeli occupation forces against the Palestinian people. (Addaneer, 2000) defined the administrative detainee as “a person that is suspected of the propability of causing a crime that threatens the security of the state and the safety of citizens and property. He is detained without any charges being brought against him, and he is trialed, where the administrative detention process is based on a secret file and secret evidence that neither the detainee nor his lawyer can see. According to Israeli military orders, the administrative detention order can be renewed unlimited times, where an administrative detention order is issued for a maximum period of six months, and is subjected to renewal. Administrative detention was also defined as “imprisoning a person without trial on the

grounds that he/she intends to break the law in the future and has not yet committed any violation (The Israeli Information Center for People's Rights in the Occupied Territories "BTselem, 2017).

Al-Barghouti (2013: 173) shows the similarities and differences between the prisoner and the detainee, where both cases are similar in restricting freedom, while the difference is that the administrative detainees are civilians who are detained by the Israeli occupation authorities in prisons, detention centers, or interrogation centers, without having committed acts punishable by law, and this is done as a precautionary measure.

Through the previous definitions, the period of administrative detention is not specified, and that this detention takes place as a preventive step, without trial, as an order is issued regarding the Israeli security instructions allowing the commander of the occupation army forces in the West Bank to detain any citizen for a period of six months, and it is extended by another six months, renewable, in case there are suspicions based on "reasonable grounds to assume that reasons for the security of the region or the security of the public necessitate the detention of a person in detention". Thus, thousands of West Bankers spent several years under administrative detention in Israeli occupation prisons without a specific charges.

### **3.1.3 Definition of Prisoner in International Law**

The development of international law over the years, resulting from the accession of most countries of the world to international treaties and laws, led to the development of the rules of operation of international law through the development of legal provisions and materials, including the definition of war prisoners, and their distinction from detainees and administrative detainees.

The concept of captivity in the international law was defined by chapter two of the regulations attached to the Hague Conventions of 1899 AD and 1907 AD, as well as defining those related to the laws and customs of land war, followed by Geneva Convention of the year 1929 that is related to the treatment of war prisoners, which was replaced by the Third Geneva Convention on August 12, 1949.

At the beginning of the international covenant related to the codification of the principles of land warfare, two theories emerged related to the status of the combatant in the European continent in the second half of the nineteenth century, as the major countries adopted the process of limiting the combatants to members of the regular armed forces, while the smaller states sought to expand the legal status of the combatants to include members of the resistance movements, due to their weak capabilities and their inability to form a regular army, since many individuals heading towards struggling against the aggressors. Due to the power of the major countries, people who enjoy the legal status of a fighter (war prisoner) have been restricted, and thus many have been deprived among the individuals who engaged in the defense of their homelands were to gain this status and acquire the rights of war prisoners, whether in the Hague Convention of 1907 or at the Geneva Convention of year 1929 (Arab Organization of the Red Crescent and Red Cross, October - 2020).

After the end of World War II, many countries entered into the ranks of the superpowers, in addition to the global liberation movements that coincided with the start of the declaration of independence of many countries, the Geneva Convention of 1949 was drafted, which expanded the scope of persons included as war prisoners or combatants.

In this regard, the Third Geneva Convention of 1949 stipulated in Article (43) that prisoners of war are “people who fall into the hands of the enemy, and belong to one of

the following categories: members of the armed forces of one of the parties to the conflict, other militia parties and other volunteer units, members of the regular armed forces, persons who declare allegiance to a government or an authority not recognized by the detaining power, persons who accompany the armed forces without actually being part of them; such as civilians in the crews of warplanes, members of navigational crews, inhabitants of unoccupied territory who take up arms of their own free will on the approach of the enemy to resist the invading forces without having time to form regular armed units”.

Thus, we find that the Third Geneva Convention of the year 1949 did not include the war fighters of liberation, meaning that they enjoy the legal status of combatants, as Articles 1 and 2 of the Fourth Geneva Convention of the year 1949 stipulated that: “The contracting parties undertake to respect and apply these agreements in all cases, and in addition to Provisions that apply in peacetime, this agreement applies in case of declared war or any other armed conflict that arises between two or more of the contracting parties even if one of them did not recognize the state of war, and this agreement also applies in all cases of partial or total occupation of the territory of one of the parties Even if this occupation did not face an armed confrontation” (Ghazlan and Musa, 2019).

In 1977, the definition of war prisoner was established in 1949 and expanded to take into account the evolving concept of combatant associated with new military methods. Under the new definition, the status of war prisoner is no longer limited to combatants who are members of the armed forces, as it may be granted to civilians participating in hostilities, individuals in resistance movements, and participants in popular uprisings. Thus, the first protocol of the year 1977 took into account the evolution of war methods, and expanded the concept of the term "fighter".

Despite the insistence of the colonial powers, when drawing up the Geneva Conventions in August 1949, to include the term organized resistance movements, in order to clamp down on armed revolutions against the occupation authorities, popular resistance to occupation is a phenomenon that has been well known in history, and the international community has respected this right in more than one occasion; Therefore, the right of resistance is not an emergency issue that caught international law by surprise. Rather, it was an issue that existed and was raised in the second half of the nineteenth century, when the first attempts were made to codify the rules of war. The right to resist aggression, occupation, colonialism and racist regimes is not only a right of the people, but rather it is a national duty and one of the natural rights attached to the citizen.

#### **3.1.4 Definition of Detainee / Administrative Detainee in International Law**

It should be noted that the definition of detainees in international law is of recent origin, as war prisoners were defined in the first legal articles. With the development of international humanitarian law, the concept of detainee began to be used to distinguish between him/her and war prisoner, which was evident in the Fourth Geneva Convention of the year 1949.

Based on international humanitarian law and the Fourth Geneva Convention specifically in Article (42), thereof, administrative detention has been defined as depriving a person of his/her liberty based on an order from the executive authority, not the judicial authority, without criminal or security charges being brought against the detainee or the administrative detainee.

We conclude that the status of war prisoner is linked - as a general rule - to the combatant's status, which was confirmed by Annex (Protocol) I of the third and fourth Geneva

agreements (Article 44), as specific conditions must be met to engage in military operations, which places him/her among the ranks of individuals to whom the legal status applies. In the event that it falls into the hands of the enemy, war prisoners, thus, acquire a set of guarantees; the most prominent of which is "they may not be trial or punished simply for carrying out hostile acts in times of armed conflict", this description does not apply to detainees, who are transferred to the internal jurisdictions in the state, and penal measures are taken against them, in addition to the obligation of the detaining state to treat the prisoner in a humane manner that preserves his/her dignity, honor and self-integrity through all stages of captivity (Naqvi, 2002: 202).

The Israeli military laws related to administrative detention orders refer to the Mandatory Emergency Law of 1945, and its amendments, without regard to the provisions of international laws related to administrative detention, which emphasized and made the use of administrative detention exceptional and based on strict conditions, in specific circumstances, for compelling reasons, and the existence of judicial guarantees, leaving the discretionary power to the detaining state, as Article (9/1) of the International Covenant on Civil and Political Rights stipulates that: "No one may be arbitrarily arrested or detained, and no one may be deprived of his freedom except for reasons stipulated by law and in accordance with the established procedure in it". Article (9/2) of the same covenant added that: "Every person who is arrested must be informed of the reasons for his/her arrest at the time of the arrest, and must be promptly informed of any charge against him/her".

Referring to the Rome Statute, we find that this Statute stipulates the right of the accused to be present, where Article (67/1/d) stated that "when deciding on any charge, the accused shall have the right to have public trial, taking into account the provisions of this

Statute, and that the trial be fair and impartial, and that he/she shall have the right to the following guarantees on an equal footing: 1- To be informed immediately and in detail of the nature, cause and content of the charge against him, in a language he fully understands and speaks. 2- To prepare his/her defence, and to consult freely with a lawyer of his/her choice, in an atmosphere of confidentiality. 3- To be trialed without undue delay.

Through the previous definition, the administrative detention is detention without charge or trial – according to the “Tamir Law”, which allows for administrative detention, depending on a secret file and secret evidence that neither the administrative detainee nor his lawyer can see, and according to military orders, the administrative detention order can be renewed unspecified times, as administrative detention orders are issued for a period of up to 6 months, subject to renewal, and thus violate all international laws and legislations related to administrative detention, as well as Israeli military orders and the Emergency Law itself - which stipulates that administrative detainees must be held in separate sections from detainees and non-administrative prisoners, but the Israeli occupation authorities detain them without committing to detaining them in special centers only for administrators.

Article 2 of the Regulations for Land War annexed to the Hague Convention of 1907 recognized as belligerents the civilian population that rushes to resist the aggressor without having time to organize itself; it defined the people standing up or rising up in the face of the enemy as " The population of a territory which has not been occupied who, on the enemy's approach, spontaneously take up arms to resist the invading troops without having time to organize themselves in accordance with Article 1, shall be regarded a belligerent, if they respect the laws and customs of war." Hence, this agreement considered these citizens "such as the regular forces to whom the status of combatants

applies, and this is in addition to the confirmation of the Hague Convention that members of organized resistance movements must be treated as prisoners of war in the event of their arrest" (<https://www.prc.ps>).

The Fourth Geneva Convention, to which detainees are subject to protection, did not specify the concept of the detainee, although it devoted the fourth section to the rules for the treatment of detainees, without defining the detainee, especially since the provisions for the protection of civilians in general, and detainees in particular, were regulated in the Fourth Geneva Convention. Although the agreement permitted the arrest of civilians in times of armed conflict, it stressed the prohibition arresting civilians except in cases of necessity only, and necessity is assessed according to its measure and it is not permissible to expand it, on the contrary, the state of necessity requires narrowing at the lowest limits. Likewise, the agreement did not leave the state of necessity at its launch, but rather restricted it to security, where civilians may not be arrested except for the requirements of security, and despite all that, it did not address the definition of the detainee, and unlike the prisoner, which received - as we mentioned - permanent clarification and development, and defining the categories to which it applies the description of the fighters, while the definition of the detainee did not receive the same clarification as it is clear through the Fourth Geneva Convention, where the term detainee refers to a civilian (Abu Al-Nasr and Sa`ad, 2014: 484).

A detainee, according to the Fourth Geneva Convention, is a non-combatant civilian who is arrested from his land because the monitoring measures are not sufficient against him, or that state security requires that, or those who request detention of their own free will, or persons who commit offenses intended to harm the occupying state.

With regard to the Israeli-Palestinian conflict, the issue of prisoners and detainees arose from the beginning of the oppression of the Palestinian people and the confiscation of their rights, and was also linked to their resistance to the invaders and occupiers in order to restore their usurped rights and achieve their desired freedom. It is not only linked to the "Israeli" occupation; rather, the history of its inception preceded the "defeat of 1967" and the "catastrophe of 1948", while its roots go back to before the ominous "Balfour" declaration of 1917 (Farwana, 2022).

Since the Israeli occupation of the Palestinian lands in the West Bank and the Gaza Strip in 1967, the Security Council issued its resolution (242), in which it was clearly indicated that the description of the Palestinian lands is occupied by the Israeli occupying state, and this description was subsequently mentioned in all international resolutions issued by the United Nations and its institutions as well as the relevant decisions issued by various international bodies.

Although the first protocol of 1977 attached to the Geneva Convention of 1949 explicitly stated that the armed conflicts in which peoples struggle against domination and foreign occupation and against racial discrimination and peoples' self-determination practices are considered legitimate international practices, and one of these peoples is considered if he/she falls under the grip of a party the other is a war prisoner (Al-Shamrani, 2006: 56), but the Israeli occupation state refuses to treat the Palestinian fighters - the legitimate defenders of Palestine - under the Third Geneva Convention, on the grounds that the status of war prisoners applies only to members of the armed forces and members of the organized resistance movements of one of the parties of the conflict. And since the Palestinian resistance fighters do not belong to any state, they are not eligible to obtain the status of war prisoners, in an attempt to delegitimize the struggle of the Palestinian

people for self-determination, and thus the Israeli occupying state does not recognize those who participate in acts of resistance against its occupation of the Palestinian land as being “Fighters of Freedom” (Jadallah, 2023).

Although, the Israeli occupation authorities announced in 1967 that they would apply the Geneva Conventions to Palestinian prisoners and detainees, they quickly denied those statements, declared that the Geneva Conventions do not apply to the Palestinian territories, and began applying the British Emergency Laws of 1945 on them, without taking into account any of the international standards, as the Israeli occupying state continues to claim that the Palestinian prisoners and detainees are "terrorists and saboteurs", and refuses in principle to consider them as war prisoners, and unleashes measures and procedures for widespread arrests of thousands of citizens and the use of inhuman torture, administrative detention, medical neglect, lack of health care and solitary confinement.

In addition, the Oslo agreement did not bring about any qualitative shift represented in removing the Israeli recognition of the Palestinian prisoners as war prisoners, which means that it had not recognized them as fighter that defeat their land, which has been proved and secured by the international conventions as legal right.

The former Special Rapporteur, Mr. John Dugard, expressed in a paper he presented to the United Nations on the legal status of Palestinian prisoners and detainees in 2012, he said that the Israeli occupation state treats them as prisoners for security reasons and terrorists who have no rights, and the occupying state classifies some of the detainees in the Gaza Strip as fighters they are also illegitimate (Dugard, 2012).

Prisoners in Israeli prisons are divided into two categories: "criminal" prisoners and "security" prisoners. Administrative detainees and Palestinian detainees under the illegal

combatant law are included in the category of security prisoners. In this regard, the orders and regulations of the Prison Service define who is a security prisoner in Order No. (02/03/00), and the majority of the security prisoners are Palestinians. The orders of the Prison Service deal with "security prisoners" according to a collective logic, without any consideration of age differences, health conditions, or the degree of danger of the prisoner. Clause (1/b) of the Prison Service Order (02/03/2000) clarifies the logic behind this classification of security prisoners by saying: Among prisoners sentenced for crimes and misdemeanors against state security, there are usually real latent possibilities for posing a threat to state security. Even the majority of these prisoners are linked to terrorist organizations, and this link conceals within it dangers, especially to order and obedience in prison, and to the security of the state. It concerns their relationship with the outside world, and among these issues are visits and phone calls (Jadallah, 2023).

As for the illegal combatant, the Prison Service regulations define the administrative detainee as: "Every person who is detained in prison under the force of an arrest warrant signed by the Chief of Staff, and does not deserve the status of a war prisoner." Dozens of Palestinians from the occupied Gaza Strip were arrested under this law, especially during the military aggression in December 2008 and January 2009.

As for the legal adjustment of Palestinian prisoners and detainees inside Israeli prisons, there are several opinions centered on the consideration of Palestinians inside Israeli prisons:

### **1. The First Opinion: Considering the Palestinians Inside Israeli Prisons as Detainees**

This opinion represents the position of the International Committee of the Red Cross and is supported by part of the jurisprudence and human rights institutions. The Red Cross

bases its jurisprudence on the fact that members of the Palestinian resistance are not members of a state that enjoys the three pillars that general international law applies to (the territory, the people, and sovereignty), and they do not enjoy the status of a fighter belonging to a regular army.

As for the civilian detainees, they are deprived of their liberty as a preventive measure for security reasons. They are protected by the Fourth Geneva Convention of 1949, and the detainees in Israeli prisons are protected by this convention.

## **2. The Second Opinion: Considering the Palestinians Inside Israeli Prisons as Prisoners of War**

The Palestinian trend today is to consider the Palestinians deprived of their freedom as prisoners of war, not criminal detainees, as Israel describes them, and that the occupation authorities should release them for a simple reason, which is that resisting the occupation is not a crime. In addition, the Palestinian resistance movements have political and military leaders, and each movement has a slogan, banner, and military arms that carry out war operations against the enemy and recognize them, since they fight openly. There is an active tendency of the Palestinian Authority to work towards going to the United Nations to extract international recognition that the Palestinian detainees in Israeli prisons are war prisoners.

## **3. The Third Opinion: Considering the Palestinians Inside Prisons as Kidnapped**

Dr. Mustafa Ahmed Abu Al-Khair considered that dealing with detained Palestinians as war prisoners is among the common legal errors in the international and Arab community, that the Palestinian who is in the grip of the occupation in occupied Arab Palestine is a prisoner and the Third Geneva Convention of 1949 regarding prisoners of war applies to them. It is believed that the proper and correct legal conditioning is that they are

kidnapped and the New York Convention on the Detention and Kidnapping of Hostages of 1979, and the First Additional Protocol of 1977, Annex 119 to the Geneva Conventions of 1949, could be applied on them” (Abu Al-Khair, 2008).

In application of this agreement and the aforementioned article, the Palestinian who falls into the grip of the occupation in historical Palestine is considered a kidnapped hostage, not a prisoner; because this agreement (New York of 1979) is considered in accordance with Article 1 of the First Additional Protocol of 1977 attached to the four Geneva Conventions of 1949 as an amendment to the four agreements and the two additional Protocols of 1977, especially the Third Geneva Convention of 1949 regarding prisoners of war, which makes all Palestinians under the grip of the Israeli occupation in Palestine is hostages, kidnapped, rather than prisoners.

Based on the foregoing, the previous definitions, especially those issued by international conventions and treaties, confirm that there are two categories; some of them are considered war prisoners, while others are considered as detainees, where each of them has rights guaranteed by international humanitarian law. By examining the differences between prisoners and detainees, in the context of the Israeli-Palestinian conflict, it will be basically the right of members of what we can call the “Palestinian army” of the State of Palestine, and members of the resistance recognized by the state, to defend the Palestinian land and protect the Palestinians against any Israeli aggression as an aggression by one state against another. Here, if Israel imprisons any member of the Palestinian security or resistance, it must treat him/her as a "prisoner of war", and therefore it is not permissible to prosecute him for his/her actions in the context of carrying out his duty while defending thier land, even if that includes killing or wounding, as long as this was within the controls stipulated in international law. The first protocol

annexed to the Geneva Conventions considered the liberation movements' resistance to foreign occupation an international armed conflict, and stipulated that prisoners of resistance movements - under certain conditions - are considered war prisoners, and must be treated on this basis, which, of course, is not what Israel adheres to (Issa, 2019).

In order to clarify the lives of Palestinian prisoners and detainees and the health conditions they live in Israeli prisons and detention centers, this chapter has been divided into two sections; the first one reviewed the reality of Palestinian prisoners and detainees after 1967, while the second section presented the reality of Palestinian prisoners and detainees from the point of view of prisoners and detainees and a group of relevant official authorities.

### **3. 2 Section One: The Reality of the Palestinian Prisoners and Detainees in the Prisons of the Israeli Occupation After 1967**

This chapter reviews the lives of Palestinian prisoners and detainees in Israeli prisons, focusing on the health conditions and the conditions of captivity and detention that they suffer from. It was divided into two parts; where the first one deals with the reality of Palestinian prisoners and detainees before 1993, while the second part reviews the reality of Palestinian prisoners and detainees in Israeli occupation prisons after 1993, which coincided with the establishment of the Palestinian Authority following the signing of the Peace Principles Agreement (Oslo 93).

### **3.2.1 Part One: The Reality of the Palestinian Prisoners and Detainees in the Israeli Occupation Prisons Before 1993**

The areas of captivity and detention are divided into a group of Israeli prisons, detention centers, and detention and interrogation centers. Some of them are directly affiliated to the army administration, while the Israeli Prison Service manages most of the prisons and detention centers, and most of them were established in buildings that were specially constructed for the purpose of detention, or consisted of tents that were installed. Inside the Israeli army barracks for the purposes of investigation and temporary detention, and many of them were erected in fodder and tobacco stores during the British Mandate, in addition to the buildings occupied by the Israeli army from the Jordanian authorities after the 1967 war, and all of them suffer from a lack of human living conditions, which poses a threat to the lives of the detainees (Al-Issa 2017: 36).

Many Israeli prisons and detention centers are located in dangerous border areas (such as Nafha prison located near the Dimona reactor), or in barren and isolated desert areas (such as Ansar "Ketzot") that located near the Egyptian border in the southern Negev desert, all of which are not subject to legal and humanitarian monitoring and follow-up. (Farwana, 2021). As for the detention centers, we mention (Hawwara Center, Beit El Center, Etzion Center), while the interrogation centers include (Al-Mascobiyeh Center, Al-Jalama "Kishon" Center, Ashkelon, Petah Tikva, Gilboa`, Shatta, and Al-Sabaa`). As for prisons and detention camps, they include (Ashkelon Prison, Kfar Yona Prison, Ofer Detention Center, Megiddo Detention Center, Rimon Prison, Negev Detention Center "Ansar 3", Secret Prison 1391), with the presence of many secret prisons that are unknown and shrouded in secrecy (Cook, 2010). .

The Israeli occupation authorities is considered the only country in the world that legitimizes the process of solitary confinement for prisoners and administrative detainees, at this regard it issued in 1971 a law that explicitly stipulates “permitting the isolation of a prisoner under a security pretext, and this matter is subject to the director of the prison service and his officers” (Ministry of Prisoners and Ex-Prisoners, 2013: 1).

Israel is also unique in legitimizing torture and developing methods of torture with the latest scientific theories. In order to provide legal protection for torture practitioners, the Israeli General Penal Code of 1977 was approved, leaving the door open to the torture policy in cases of “necessity”, which was confirmed by the Landau Commission’s report of 1987, when Palestinian and international efforts led to a decrease in the methods of torture (the most terrifying) practiced by Israeli prisons with the aim of destroying prisoners character, withdrawing their confession and convicting them under threat, psychological pressure, in addition to use of physical and psychological violence against them (Addameer, 2015).

Among the flagrant violations of the rights of prisoners and detainees is following a policy of food deprivation, or providing food of poor nutritional value, unclean, or reducing the quantities of food provided, which is presented in humiliating and degrading ways to the detainee, with the aim of insulting and humiliating, and limiting the ability of bodies and brains to function normally, which leads to imbalance, loss of energy, and reaching a state of humiliation and fatigue, with the aim of bringing prisoners and detainees to a state of despair and moving away from steadfastness during the period of captivity (Al-Issa, 2017: 91-94).

It is important to point out what the special forces of repression (such as the forces of: Nahshon, Masada, Alimaz, Dror) are committing incursions into Palestinian security

prisoners, bearing in mind that most of them suffer from chronic diseases, as they are shackled with plastic handcuffs from behind, and cold water is sprayed on them, spraying gas on the face directly, with beatings with sticks and feet on the head. Although, all the detainees were seriously injured, the prison administration does not take any measures for medical examination, but rather conducts solitary isolation, which exacerbates and deteriorates the health condition of the injured and sick prisoners (the Commission Affairs of Detainees and Ex-Prisoners, 2020: 19-20).

As for the psychological state of the prisoners and detainees, the period of captivity and detention leaves mental illnesses and health disorders resulting from what is known as trauma, which leads to far-reaching effects, and leads to acute / chronic suffering, both physical and psychological, as the detainee is placed in life-threatening conditions, by depriving him/her from basic needs, in addition to sexual assaults, psychological exploitation, humiliation, exposure to varying temperatures between extreme heat and extreme cold, and isolation from the environment, which leads to what is known as post-traumatic stress disorder “aftermath disorders” (Basoglu, 2009).

It is important to note that there are (26) prisoners called (old prisoners), as they are the oldest prisoners in Israeli prisons, all of them were arrested before the Oslo agreement, which resulted in the establishment of the Palestinian Authority on May 4, 1994. Most of them suffer from chronic diseases, which was accompanied by deliberate medical negligence, that exacerbated the deterioration of their health conditions, and led to the death of many of them later, whether during the period of captivity, or those who were liberated following the signing of a set of agreements for the exchange of prisoners with the Israeli side (Council of Prisoners and Ex-Prisoners Affairs, 2016).

### **3.2.2 Part Two: The Reality of the Palestinian Prisoners and Detainees in the Israeli Occupation Prisons After 1993**

The number of Palestinian prisoners at the signing of the Oslo Accords signed on September 13, 1993 reached about (12,500) Palestinian prisoners distributed in more than 25 interrogation and detention centers between prisons and detention centers, while there are more than (135) thousand arrest cases since the signing of the agreement. The Oslo Accords until the year 2022 affected all segments and groups of Palestinian society, including (20) thousand cases of arrest of minor children under the age of 18, and (2500) cases of arrest of Palestinian women.

It is important to point out that there are many pivotal issues dealt with by the Principles Agreement (Oslo 1993), as a result of which the Palestine Liberation Organization was recognized as the sole and legitimate representative of the Palestinian people, and in return recognition of the State of Israel and its sovereignty over the lands it occupied in 1948, but the survival of a group among the pending issues until the negotiations for the final solution, including the issue of Palestinian prisoners and detainees, has led to the persistence of the Israeli occupation, and the imposition of a *fait accompli* policy on the Palestinians, whether through the systematic arrest of anyone who begged him/herself to violate the “Israeli state security”, and even belonging to an organization or Palestinian parties that resist the peace project.

In a gesture of goodwill, the Israeli government pledged to release prisoners and detainees in occupation prisons in what was known as goodwill initiatives. The Cairo Agreement (Gaza-Jericho) on May 4, 1994 included the Israeli government's pledge to release (5000) Palestinian prisoners, with the aim of strengthening the trust between Israel and the Palestinians, where (4450) detainees have already been released, with the exception of

the remaining number, but it has forced those who were released to sign a pledge to refrain from committing “acts of terrorism and violence”, thus, it has violated what was stated in Article (19) of the Universal Declaration of Human Rights, which explicitly states that "everyone has the right to freedom of opinion and expression, and this right includes the freedom to hold opinions without any interference."

Although the Israeli authorities released a number of Palestinian prisoners in the aforementioned deal, they arrested most of them again, which led to strikes, both individually and collectively, among the prisoners and detainees, in rejection of Israeli practices that proved non-compliance with previously signed agreements. In addition to their rejection of the policy of solitary confinement, and the demand for treatment in accordance with the Third and Fourth Geneva Conventions, the prisoners' strikes were evident in 2012, when more than 2,000 Palestinian detainees and prisoners participated in the strike, and as a result the internal house of the captive movement was rebuilt, and the bet was dropped on the negotiations that resulted according to what is known as the “Wafa’a al-Ahrar” deal, which kept 4,600 Palestinian prisoners, including 110 old prisoners, and removed 19 prisoners from the movement's leaders.

It is important to note that the Israeli occupation prisons are crowded with thousands of detainees and prisoners, both Palestinian civilians and military, and members of the Palestinian Legislative Council. Some of them have served their sentence, while thousands of them are still in captivity or what is known as administrative detention, under the pretext of “combating Palestinian terrorism that threatens the security and safety of the state and Israeli citizens”. Where the Israeli occupation forces hold hundreds of Palestinians as administrative detainees, who are dealt with various types of humiliation, violence and torture. Where the Amnesty International report (2015) showed that the

Israeli army and police forces and the Israeli security service personnel have “tortured and ill-treated Palestinian detainees, including children, especially during arrest and investigation operations, and reports of torture increased amid arrests, mass shootings of Palestinians, which included beatings with batons, slapping, suffocation, long-term chaining of hands and legs, forced stress positions, sleep deprivation, and constant threats”.

In the same context, Addameer Prisoner Support Association for Human Rights presented its annual report for the year 2013, which stated that number of martyrs of medical negligence has risen to (51) prisoners, with more than (700) sick cases among prisoners and detainees, of whom (120) are still prisoners that are in need of urgent and necessary operations, in addition to the presence of (85) prisoners and detainees who suffer from various disabilities (physical, mental, psychological and sensory), and (16) prisoners permanently residing in the clinic of Ramla Prison, among them there are (16) prisoners suffering from cancer.

In an attempt to humiliate the prisoners and detainees, the Israeli Prison Service obliges the prisoners and detainees to wear orange clothes, which bear marks on the chest and sleeves of a phosphorescent color, which makes the prisoners and detainees feel that they are a target for snipers, in efforts to insult and expose them to ridicule, in addition to calling the detainees based on their digital classification (Al Mezan Center for Human Rights, 2020).

Official reports clearly confirm the suffering experienced by the imprisoned activists in the Israeli occupation prisons, which is evident in the Israeli Prison Service’s policy of “deliberate medical negligence” that carefully practiced among the occupation prison

authorities, which led to the death of dozens of prisoners as a result of their lack of access to medical care (Faris, 2010: 1).

Because of this huge number of arrests, the Israeli occupation authorities resorted to opening more prisons and detention centers, to accommodate this large number of prisoners and detainees, and approved a wide range of Israeli legislation and laws with the aim of further restricting the prisoners, insulting their case and distorting their legal status, where all testimonies indicated that all those who have experienced detention have been subjected to one or more forms of physical and psychological torture and cruel and inhumane treatment.

For further clarification, the Israeli violations of the rights of Palestinian prisoners and detainees have been classified as follows:

### **First Topic: Torture**

Neither the deaths that occurred in the cellars of the interrogation of Palestinian detainees nor the international protests and criticisms of human rights organizations deterred the Israeli government from continuing to torture them. It was expected that the Oslo agreement would put a definitive end to the torture policy practiced by the Israeli government since the beginning of the occupation, but that never happened, unfortunately, the torture policy continued after the Oslo agreement (Qaraqe', 2022).

In view of the pressure exerted by human rights institutions, the Israeli Supreme Court of Justice issued a decision on 6/9/1999 prohibiting the use of torture during the investigation. Previously, they are allowed to use many types of torture (such as depriving them of sleep, violent shaking, "shabeh" for a long time and in a painful position, solitary

confinement for a period of two months...) (Addameer Prisoner Care Institution for Human Rights, 2015; Addameer Prisoner Care Institution for Human Rights, 2009) .

The Palestinian prisoners and detainees showed a state of unity and encouragement among their ranks, in defiance of the barbarism and aggression to which they are subjected. The state of unity is evident in their steadfastness and unity in their demands, which contributed to their success - albeit in part - in obtaining a set of rights (family visits, furloughs, treatment, phone calls, university education...) (Addameer, 2015).

### **Second Topic: The Policy of Solitary Confinement for Palestinian Prisoners**

Although the policy of solitary confinement is an old policy applied by the prison administration since 1967, it took more dangerous forms after the Oslo agreement, as the years that followed the agreement witnessed an escalation in the procedures of the isolation policy towards prisoners, under security pretexts and arguments, it took on a new, more dangerous methods on the life and health of the captive from the politics that preceded Oslo (Qaraqe, 2001).

The Israeli Prison Service forces practice a policy of isolation against Palestinian prisoners and detainees in cells that lack all human necessities, as a punitive measure against them, which may be due to a disciplinary violation inside the prison, such as if the detainee disturbs the peace of the prison. According to military orders, the isolation penalty may not exceed 14 continuous days. So that the detainee is isolated in solitary confinement in a cell where he/she is only allowed to bring clothes into it, it contains only a mattress for sleeping and a blanket, thus depriving the detainee isolated in solitary confinement of his/her rights by communicating with the outside world and receiving family visits. The decision of solitary confinement may also be issued by the court itself,

so that the isolation period is 6 months in a room alone, and 12 months in a room with another detainee, and the isolation period may be extended for additional periods and for an infinite period. There is a third reason for isolation, which is for psychological reasons, so the Occupation Prisons Service forces resort to isolating prisoners and detainees who suffer from mental illnesses, as a precautionary measure. However, he/she is not provided with appropriate treatment, where his/her condition worsens due to spending a long period of isolation (Council of Prisoners and Ex-Prisoners Affairs Report, 2020).

The doctors working in the Israeli Prison Service follow the policy of providing a medical permit for the detention of prisoners in solitary confinement and isolation, which causes doubling the harm and pain, and the deterioration of the pathological condition (physical and psychological) to which the prisoner or detainee is exposed during his/her solitary confinement (Marton, 2012).

### **Third Topic: The Policy of Administrative Detention**

The post-Oslo period witnessed a significant increase in the Israeli occupation authorities resorting to the method of administrative detention, and its periods increased. The Israeli authorities arrested thousands of Palestinians within the policy of administrative detention, until it became a sword wielding power over all groups of the Palestinian people, since every Palestinian is exposed, at any time, to administrative detention. Even the children were not spared from it, in order to increase the suffering of the detainees and their families.

What distinguishes administrative detention in recent years is that it has taken on a new and dangerous method, as it is used as a punishment for the Palestinian prisoner and a means to destroy him/her psychologically and physically, because, as we mentioned

previously, a procedure in which a person is detained without being formally charged, or an indictment, and without being brought to trial, the detention is issued under an administrative detention order issued by a non-judicial authority, the executive authority, on the grounds that he/she intends in the future to commit an act contrary to the law, without having committed any offense yet. The Palestinian detainee is detained for periods of up to 6 months, and this administrative detention order is often renewed either before the expiry of the period or upon its expiry, so that the renewal continues in many cases for an indefinite period, which may reach for many years.

It is important to point out the many attempts in which the administrative detention process was resisted, in various ways, the most prominent of which is the hunger strike, as the prisoner/detainee refrains from eating in order to obtain prisoners' right, in order to achieve his/her just demands, whether represented in obtaining a fair trial, or non-renewal of administrative detention, which many Palestinian detainees succeeded in achieving in what is known as the "Battle of the Empty Bowels", where hundreds of Palestinian detainees and prisoners joined. It has become a phenomenon in Israeli prisons, especially those that blatantly violate all the rights of prisoners and detainees in reducing the punitive and retaliatory measures used by the Israeli Occupation Prison Service in recent years (interview with Suha Musleh, Palestinian Red Cross, on 9/27/2022).

#### **Fourth Topic: The Arrest of Children**

It is important to note that the Israeli criminal law defines a child as every person under the age of eighteen who is considered a child. However, military orders have defined a child as anyone who has not reached sixteen years old, thus violating the Convention on the Rights of the Child, which considers all children who are under eighteen years of age.

The military order regarding the detention of minors was also amended, so that minors (under 14 years) are allowed to be detained for a full day before being brought before a military judge, and the police officer is allowed to extend the detention period for another two days, while children (between 14-18 years) are allowed to be detained for two days. This period may be extended for two more days in the event that further investigation procedures are needed (Addameer Prisoner Support and Human Rights Association, 2015).

The grave violations that children are exposed to include: arresting them at night, severely beating them in front of their families, shooting them during their arrest, keeping their hands and feet tied and blindfolded before transferring them to interrogation and detention centers, in addition to depriving them of food and drink for hours, specifically in the first period of detention, depriving them of their right to legal assistance, or the presence of one of their relatives, which doubles the child's exposure to psychological and physical torture, in an attempt to extract confessions from them and force them to sign papers without knowing their content, in addition to insulting them and uttering obscene and insulting words against them, and continuing to detaining them under the so-called completion of judicial procedures, as the court rarely acknowledges their release on bail and deliberately keeps them in prison during the trial period (Detainees and Ex-Detainees Affairs Commission, 2021).

The prison administration also uses the Israeli prison clinic as a means of bartering information from minors, and offering treatment in exchange for information (Wahbe, 2012).

**Fifth Topic: Arresting and Targeting Women**

The occupation continued to target Palestinian women, while subjecting them to all systematic abusive measures, the majority of which constitute fixed policies aimed at depriving them of many rights. The occupation authorities continue to violate the rights of Palestinian female prisoners in occupation prisons, contrary to the 1987 Convention against torture, which prohibited inhumane and degrading treatment, and contrary to the United Nations Standard Rules for the Treatment of Prisoners of 1955. During the stages of detention, Palestinian female prisoners live in an inhuman conditions. They take into account their rights to physical and psychological integrity and privacy, and detain them in difficult living conditions, during which they are subjected to physical abuse and medical neglect, and they are deprived of their most basic daily rights (Ghoniem, 2018). Palestinian female prisoners suffer from deprivation of health and psychological care, as sickness cases escalate among their ranks, and great internal challenges are imposed on them. It is the martyrdom of the elderly prisoner, for example, Sa`adia Farajallah from Hebron, among others, who has risen after a crime committed against her through procrastination in providing health care, and continuing to detain her despite her difficult health condition, as she was martyred on July 2, 2022 in “Damoan” prison (Council of Prisoners and Ex-Prisoners Affairs, 2022, Palestinian National Council, 2022).

Until the end of the year 2022; the occupation authorities are still detaining (29) female prisoners in their prisons, including two minors: Nofouz Hammad and Zamzam Al-Qawasmeh, the oldest of whom is the prisoner Maysoon Musa, who has been detained since 2015, and the most senior of them are the two prisoners Shurouk Doyyat and Shatila Ayyad, who are both sentenced to 16 years in prison, and among them are two female detainees administratively, they are: Shurouk Al-Badan, who has been subjected to

administrative detention several times since 2019, and the captive Raghad Al-Fani, among the prisoners, there are (7) mothers whom the occupation forbids from embracing their children, including the prisoner Ataf Jaradat from Jenin, who is the mother of three prisoners: (Omar, Ghaith, and Al-Muntasir Billah). On the other hand, there are (10) wounded female prisoners, and the most suffering of them; the prisoner Israa Ja'abis, from Jerusalem, who has been sentenced to 11 years in prison, and who was arrested by the occupation forces after shooting at her car, which led to its explosion and severe burns that distorted her face, head, and chest, and her fingers were amputated (Palestinian News and Information Agency, 2023).

#### **Sixth Topic: Israeli Military Courts**

A study presented by Addameer on the work of Israeli military courts revealed serious violations of detainees' rights to a fair trial, which included the right to demand an indictment, the right to prepare an effective defence, the right to trial without undue delay, and the right to have direct translation, the right to refrain from self-condemnation or incrimination, the right to the presumption of innocence, the right to summon and cross-examine witnesses, the right to have fair and independent judicial trial, and the right to issue discriminatory sentences (Addameer Association for Prisoner Care for Human Rights, 2013: 59).

#### **Seventh Topic: The absence of Adequate Humane Conditions in Israeli Prisons**

Palestinian prisoners and detainees constantly suffer from living conditions that are not suitable for human life inside Israeli prisons and various detention centers. The rooms are very small, and the number of detainees is large compared to the size of the rooms and

the prison, in addition to malnutrition and the lack of fruits and vegetables provided to them, which forces them to buy foodstuffs at their own expense from the "cantina" because of bad lunches that provided to them, which are considered poor in quality and quantity, in addition to the Palestinian detainees being subjected to continuous delays in bringing in clothes and educational books through visiting families (Addameer, 2020).

On the other hand, detainees and prisoners are prevented from obtaining water, soap, shaving paste, or toothpaste to maintain their hygiene, which leads to the spread of unpleasant odors and exposure to the spread of infectious diseases, in light of severe overcrowding, and the absence of adequate heating and ventilation (Al-Mezan Center for Human Rights, 2020).

This is in addition to the arbitrary measures that Palestinian prisoners and detainees are subjected to inside Israeli prisons, including brutal assaults, storming of their sections, and provocative searches during the day and midnight, as the prisons witnessed an escalation in the use of violence by the occupation police against them, whether by assaulting them inside their rooms, spraying them with tear gas, firing stun grenades at them, or assaulting them by beating them, which led to the injury of a number of prisoners and affected by various diseases (PCHR, 2015).

It is worth mentioning that some Palestinian prisoners and detainees live in prisons with Jewish criminal prisoners, which causes daily harassment and a threat to their lives (Addameer, 2020).

### **Eighth Topic: Medical Negligence**

The years that followed the Oslo agreement witnessed a remarkable deterioration in the level of medical care provided by the prison administration to prisoners, as a result, a

number of prisoners were died due to poor medical care, wherr Addameer (2020) issued that nearly 70 prisoners were died because of neglegting of their need of medical care.

Where the report of the Commission of Detainees and Ex-Detainees Affairs (2019) showed the persistence of the administration of the occupation detention centers in pursuing a policy of slow killing against the sick, wounded, and injured prisoners in Israeli prisons, this is confirmed by the increase in the number of patients, and the increase in complications resulting from medical negligence, as the occupation authorities deliberately implement a series of arbitrary measures against them, whether by depriving them of treatment, procrastinating in providing it, delaying in disclosing the patient's health condition, not conducting the necessary medical examinations, and the intended delay in performing emergency surgeries, with the use of what is known as the "busta" cart with iron cages equipped to transport the sick and injured, in addition to the lack of medical clinics in prisons and detention centers for the minimum medical requirements. The medical clinics in the occupation prisons lack the minimum level of primary care services, where the report issued by the Commission of Detainees and Ex-Prisoners Affairs (2018) summarized a group of health violations against prisoners and detainees as follows:

- Failure to follow up on the sick condition of prisoners and detainees, procrastination in providing treatment, and seeking to postpone or refrain from performing surgical operations on an ongoing basis.
- Not providing the necessary medicines for the frequent diseases that the prisoner and the detainee suffer from during his/her detention, as the medical prescription is limited to (Acamol) tablet as a magic cure for all diseases.

- Calling a general physician in all cases, as doctors and specialists (eyes, teeth, nose, ear, and throat) are not available until after the detainee's health condition deteriorates.
- There are no doctors on duty at night to deal with emergency cases.
- Many prisoners and detainees have been exposed to severe psychological conditions that require medical supervision by a doctor and psychiatrist, which is not available in any of the Israeli prisons and detention centers.
- Although there are private clinics in Israeli prisons, they lack auxiliary medical devices, since there are no assistive devices for people with special needs, nor respirators or nebulizers for the treatment of asthma and chronic bronchitis.
- The low quality and quantity of food provided to prisoners and detainees, which exacerbates the suffering of diabetics, high blood pressure, heart and kidney patients from not obtaining meals commensurate with their medical condition.
- Although special rooms are available for solitary confinement, they are not used to isolate patients with infectious diseases (acute viral and infectious bowel infections), which leads to the spread of infectious diseases among prisoners, especially in adjacent rooms and wards and frequent periods of overcrowding, as is the case with patients psychologists, who must be isolated from the rest of the prisoners and detainees, which poses a threat to all of their lives.
- The lack of a female gynecologist, as the only doctor present in the clinics of prisons and detention centers is the general physician, in addition to the failure to properly follow up pregnant prisoners during pregnancy and even at birth, and the continued restriction of women prisoners during childbirth, which increases labor pains that threatens their lives.
- Providing prisoners with expired medicines and sedatives.

- When the Prison Service discovers that one of the prisoners or detainees is suffering from illness or injury, he/she is subjected to interrogation with the aim of pressuring him/her to extract a confession, taking advantage of the deplorable health condition of the prisoner.

In an exceptional case, about (14) sick prisoners and detainees are held in (Ramla prison) - until the end of the year 2022, some of whom suffer from paralysis, others suffer from skin cancer, and acute infections in the intestines, some of them need dialysis, while others suffer from heart problems, there are those who suffer from amputations in their feet, which was confirmed by the report of the Ministry of Prisoners and Ex-Prisoners (2020). On the other hand, the number of injured prisoners during the period of captivity and detention has been increased during captivity period (Council of Detainees and Ex-Detainees Affairs, 2021).

According to a report by the Palestinian News and Information Agency WAFA (2020), dozens of Palestinian prisoners were killed at the hands of the Israeli occupation forces, by following the procedures of deliberate medical negligence (slow killing), which is part of a consistent and systematic policy.

The report of the Ministry of Detainees and Ex-Detainees Affairs for the year 2012 presented a report with the names of (48) Palestinian prisoners and detainees who were martyred as a result of medical negligence, or as a result of the prison administration's delay in providing appropriate treatment after discovering that they had a disease, heart attack, or a brain hemorrhage, which are cases of a blog that requires international intervention to monitor these flagrant violations, which aim to end the lives of Palestinian prisoners and detainees, and demolish their morale with the aim of obtaining a confession resulting from their search for salvation from the harsh health conditions and the

compelling conditions in which they live (Ministry of Prisoners and Ex-Detainees Affairs, 2012: 21-22).

In the same context, Addameer Prisoner Support Association for Human Rights presented its annual report for the year 2013, which stated that number of martyrs of medical negligence has risen to (51) prisoners, with more than (700) sick cases among prisoners and detainees, of whom (120) are still prisoners. In need of urgent and necessary operations, in addition to the presence of (85) prisoners and detainees who suffer from various disabilities (physical, mental, psychological and sensory), and (16) prisoners permanently residing in the clinic of Ramla Prison, and (16) prisoners suffering from cancer.

Official reports clearly confirm the suffering experienced by the imprisoned activists in the Israeli occupation prisons, which is evident in the Israeli Prison Service's policy of "deliberate medical negligence" and the careful practice of the occupation prison authorities, which led to the death of dozens of prisoners as a result of their lack of access to medical care. Appropriate medical (Faris, 2010: 1).

From 1967 until the end of 2022, the captive movement presented (233) martyrs, including (73) prisoners who were martyred as a result of torture, and (74) prisoners who were martyred as a result of medical negligence (slow killing), and (79) prisoners who were martyred as a result of deliberate killing. And there are (7) cases of shooting at them directly, in addition of the presence of the bodies of (11) martyred prisoners who are awaiting the release of their bodies (Council of Prisoners and Ex-Prisoners Affairs, 2022). According to the numbers and statistics that were monitored by several Palestinian institutions concerned with prisoners' affairs and human rights, the number of sick prisoners held inside the cellars of the occupation, by the end of 2022, reached more than

(600) prisoners facing extremely difficult health conditions, including (200) female prisoners that suffer from chronic diseases, at least (24) prisoners suffer from tumors and cancer of varying degrees, 6 prisoners are incapacitated, 33 suffer from eye diseases, 34 suffer from kidney diseases, and 120 prisoners were wounded by the occupation army's bullets, 58 prisoners complain of heart diseases, and 16 complain of heart diseases and blood vessels, 79 bone diseases, 45 suffer from psychological and nerve diseases, 27 suffer from respiratory problems, in addition to dozens who suffer from dental problems and other chronic diseases such as diabetes and pressure.

It is worth noting that the Israeli Prison Service repeatedly seeks to charge the costs of treatment, and to evade its international obligations, despite the explicit text in Article (15) of the Third Geneva Convention, which obliges the occupying state to provide appropriate treatment, perform surgical operations, and provide medicines under the supervision of specialist physicians at its own expense (Addameer Association for the Care of Prisoners for Human Rights, 2013: 101).

In two incidents inside Israeli prisons, especially Nafha prison, two poisonings occurred in Nafha prison, the first in April 1998 affected 60 prisoners, while the second one happened in July 1998 with 20 prisoners who were transferred to hospitals, In 2011, 25 Palestinian prisoners and detainees in the Negev prison were injured as a result of eating food sold inside the prison canteen, which is an indication of the lack of control over the food sold inside the canteen (Ministry of Interior and National Security, 2011).

### **Ninth Topic: Corona Pandemic**

What exacerbated the tragic situation of Palestinian prisoners and detainees was the spread of the Corona pandemic in Israeli prisons and detention centers, and the continued

intransigence of the Israeli side and its lack of commitment to providing health care and vaccines for the treatment of the emerging Corona virus, as the Israeli occupation army forces impeded the arrival of medical aid and artificial respirators to the Palestinian territories at the beginnings of the pandemic, which necessitated standing up to these arbitrary Israeli practices, and activating the role of international human rights organizations, which put pressure on the Israeli government that allowed the provision of vaccines to the Palestinian territories, whether through Russian aid provided, or through coordination with the United Nations and the World Health Organization, which contributed through the COVAX organization, that provides vaccines to about 20% of the citizens of the participating countries affected by the Corona pandemic (Center for Policy and Development Studies, 2020: 4).

In the same context, the Israeli Minister of Internal Security, Amir Ohna, issued a decision refusing to vaccinate Palestinian prisoners with the coronavirus vaccine. However, the pressures that the Israeli Prison Service was subjected to by the Israeli Ministry of Health and several human rights bodies led to the waiver of this decision, for fear of an explosion of security conditions inside prisons, and the possibility of transmission of infection to workers in the Prison Authority. Consequently, the Prison Service followed what is known as the “silk fist” policy in parallel with the “iron fist” policy. On the other hand, the Prison Service prevented visits by families and lawyers in prisons in which cases were discovered fully infected with the Corona virus, where prisoners were prevented from going out to the daily picnic areas, so they were kept in detention rooms for the whole day (Farag, 2021).

The Israeli Prison Service has also reduced the visits of prisoners’ families from two to one visit per month, under the pretext of limiting the spread of the Corona pandemic, as

well as restricting movement between prisons and detention centers, and replacing the trial procedure for prisoners, detainees, and administrative detainees from a face-to-face trial to a military trial via the Zoom application, where the prisoner or detainee remains inside the prison (Farag, 2022; interview with Ashraf Idais, the Palestinian Red Cross, on 9/27/2022). No means were taken to protect the detainees, and no means of prevention were provided, and no improvements were made in the health or food system, rather, the soldiers' raids on detention centers increased, and no measures were taken to reduce friction or contact to prevent the spread of the pandemic between prisoners and detainees.

#### **Tenth Topic: Conducting Medical Experiments on Prisoners Inside Prisons**

On the other hand, the Israeli member of the Knesset and the head of Israeli parliamentary science (Dalia Isaac) revealed that there are about a thousand experiments of dangerous drugs under medical testing, which are conducted annually on Palestinian and Arab prisoners at the year of 1997, which was confirmed in front of the Israeli Knesset by (Amy Leftat), head of the pharmaceutical division in the Israeli Ministry of Health, where she referred to an annual increase of (15%) in the volume of permits granted by her ministry to conduct more dangerous drug experiments on Palestinian prisoners and detainees in Israeli prisons every year (Ministry of Prisoners and Ex-Prisoners Affairs, 2013: 5-6).

It was not limited to conducting medical experiments on the prisoners, but rather they were subjected to psychological experiments and research carried out by Israeli psychologists through their visits to prisons and meetings with a number of prisoners under the pretext of helping to know and improve conditions of detention.

### **3.3 Section Two: The Perception of Prisoners and Detainees of Their Health**

#### **Status in the Israeli Occupation Prisons**

Palestinian prisoners and detainees are exposed to flagrant violations against them and a violation of international covenants, norms and treaties that guarantee them the preservation of their lives and their physical and psychological health, despite the success of the Palestinian captive movement in extracting the rights of Palestinian prisoners and detainees through its unremitting efforts, and with unparalleled sacrifices by the prisoners and those who went on hunger strike for long periods of time, however, the Israeli Prison Service continues to issue “legal” justifications for bypassing international humanitarian law, to demonstrate this, two study tools were prepared; the first tool included a questionnaire, which aimed to survey the opinions of a group of Palestinian prisoners and detainees (who have been liberated, or whose sentence has expired), in order to identify the extent of health violations they were subjected to in the Israeli occupation prisons. As for the second tool, it was represented by the interview, where field interviews were conducted with a group of officials and relevant official authorities, which was applied to a group of officials working for the official institutions concerned with the affairs of Palestinian prisoners and administrative detainees. Below is a presentation of that.

#### **3.3.1 Part One: The Results of the Field Study**

Given the importance of identifying the reality of the lives of Palestinian prisoners and detainees in the Israeli occupation prisons, from the moment of arrest, through the investigation and trial period, up to the period of serving the sentence, and ending with their release, to identify the suffering experienced after liberation resulting from the health complications that appear on them during and after the period of captivity or detention,

the researcher designed a questionnaire and distributed it to a sample of released prisoners and administrative detainees, consisting of (100) male and female respondents, in order to reveal their point of view and the reality of the extent of suffering and violations of their health rights. The researcher was able to obtain (87) valid questionnaire for the purposes of analysis.

Field interviews were also conducted with (5) respondents working in the Palestinian national institutions and international institutions related to the issues of Palestinian prisoners and detainees, in order to investigate their views on Israeli violations of the health rights of Palestinian prisoners and administrative detainees in Israeli occupation prisons, in order to answer the interview questions and discuss them in the light of the results of relevant studies and research.

## **First Topic: Results of the Study (Questionnaire)**

### **General Data**

Frequencies and percentages of the study sample's answers were found on all items related to the study questions. The following is a presentation of these results.

#### **1. General Information**

The study concluded that the distribution of the sample of prisoners and detainees based on the gender variable came first in favor of (male) with a percentage of (86.2%), compared to (13.8%) female prisoners and detainees.

More than half of the sample (55.2%) ranged between (26-35 years), and (19.5%) of the sample ranged between (36-45 years), followed by the age group (25 years and under) with a percentage of (14.9%), while the percentage of the sample within the age group

(46-55 years) was about (6.9%), and finally the percentage of the sample came within the category (56 years and over), which amounted (3.4%) of the respondents.

As for the educational qualification variable, the highest answers came in favor of holders of educational qualifications (high school or below), which amounted to (57.5%), followed by the category (diploma / bachelor) with a percentage of (35.6%), while (postgraduate studies) holders presented (6.9%).

The results also showed that the longest period of detention was between (5-10 years), which amounted to (41.4%), followed by the period of detention (less than 5 years), with a percentage of (28.7%), while detention ranged between (10-15 years) and (more than 20 years) rated (10.3%) for each of them, and finally came the respondents who were arrested for a period ranging between (15-20 years) with (10.3%).

### **1. The Sample's Answers to The Paragraphs of The Questionnaire Related to The Second Part (Injury)**

The results showed that more than a third of the respondents with(69.0%) had been exposed to one of the types of injuries, and that the most frequent stage of injury was the (interrogation) period, with a percentage of (34.5%), followed by the (arrest) trip with a percentage of (24.1), as for the period of movement (deportation), the percentage of prisoners and detainees who were injured was about (10.3%).

The results showed that most of the targeted areas that injured prisoners and detainees were in favor of (the whole body), with a percentage of (24.1%). This percentage was close to those who were injured in the area of the face/eyes/jaw and teeth, whose percentage was (23.0%), followed by the site of injury (hands and feet) with a percentage of (14.9%), and finally came the areas (abdomen/back) which had a percentage of (6.9%).

More than half of the sample (57.5%) confirmed that they had been beaten, while the percentage of prisoners and detainees who were hit by rubber bullets was about (11.5%), whom were transferred to different places, whether to a hospital/a detention center or to a prison/detainee directly, with a similar percentage of (23.0%, 24.1%, and 21.8%) respectively. We note here that, despite exposure to injury, only about a third of the sample were taken directly to the hospital.

### **3. The Sample's Answers to The Paragraphs of The Questionnaire Related to The Third Part (Health Status)**

The study found that the largest percentage of prisoners and detainees whose opinions were surveyed confirmed that they had contracted a disease during the period of detention, with a percentage of (88.5%). We emphasize here that the rest of the respondents were suffering from preexisting diseases before their arrest. Where (24.1%) of them had contracted the disease (during interrogation), and (11.5%) had contracted the disease (before arrest), while (8.0%) had contracted the disease during arrest, but the majority of them (44.8%) contracted the disease during the period of detention, which confirms the lack of appropriate conditions inside prisons and detention centers, whether in the prison infrastructure, or in the coercive conditions to which they are exposed during the period of captivity / detention.

The results showed that the majority of those who contracted a disease did not take into account their health condition, whether before or during arrest, especially during the investigation period. The researcher attributes this result to the fact that the prisons and detention centers exploit the health conditions of prisoners and detainees to blackmail and pressure them in order to obtain a confession or to give testimony, which puts them in a

very harsh health and psychological condition, and resulted in the deterioration of the health of many prisoners and detainees during the period of captivity/detention.

It is important to point out that the discovery of the disease takes a long time, as prisoners and detainees believe that their health condition has deteriorated due to the poor conditions in which they live inside the prison, in addition to medical negligence, and the lack of an accurate diagnosis of their health condition, as about two-third of the respondents (64.4%) confirmed that the discovery of the disease after feeling the symptoms, it may (take a long time), while about (24.1%) of the respondents confirmed that the process of discovering the disease took place immediately (after arriving at the prison clinic), and the researcher attributes this result to the fact that prisoners and detainees avoid visiting the prison clinic, for fear of blackmailing them, exploiting them, or giving them drugs that are not suitable for their health condition.

Despite the assurance of the respondents that doctors who carry out the examination process do not have real scientific and academic qualifications, as some of them believe that the medical staff supervising the examination and treatment of prisoners and detainees have obtained scientific qualifications from universities outside the occupying country, in addition to their skepticism that those who carry out the examination process is one of the guards or nurses who are not qualified to detect diseases and diagnose them correctly. Nevertheless, only about (79.3%) of the interviewed prisoners and detainees confirmed that they had been presented to a (specialist doctor).

In the same context, the majority of the respondents confirmed the weak interaction of the Israeli prison administration quickly with sick prisoners when symptoms of illness appeared on them, with (89.7%). Prisons and detention centers provide (painkillers) as a magic cure-all for most diseases, with a percentage of (65.6%). While those who declared

that they have received (appropriate treatment) reached (11.5%), compared to (23.0%) of the respondents who indicated (lack of interest, and no treatment was provided to them. The researcher points out that those who received the appropriate treatment confirmed that this treatment was obtained in hospitals and treatment centers outside the prison/detainee, where the respondents' agreed that they received the proper treatment according to the doctor who work at the prison clinic with (32.2%).

In terms of food, drinks and blankets, the majority of the respondents confirmed that they had not received food and drink meals commensurate with their health conditions, in addition to not receiving sufficient blankets to protect them from the harsh winter inside the prison.

In view of the deterioration of many prisoners and detainees' conditions, it was found that more than two-third of the respondents (67.8%) confirmed that the doctor supervising the examination and treatment process did not record the need of the sick prisoners for surgery, and even those who had obtained approval, the operation was carried out late with (33.3%), which confirms that the prison administration is working with every effort, and within a clear approach aimed at destroying the psychological and physical health of the prisoner.

#### **4. The Sample's Answers to The Paragraphs of The Questionnaire Related to The Fourth Part (Living Conditions in Prison)**

The results showed clear deficiencies in the living conditions inside Israeli prisons and detention centers, where most of the respondents (97.7%) confirmed that the food provided inside the prison was not sufficient (quantity and quality), and that (75.9%) of them were placed outside the prison in the harsh winter. This is either with the aim of

“disciplining” them, or extorting and putting pressure on them, as well as with the aim of weakening their physical and psychological health.

In the same context, the results indicated that (85.1%) of the respondents confirmed that they had suffered most of the periods of captivity and detention from overcrowding in prison sections, where (77.0%) of the respondents confirmed that prison rooms and sections do not accommodate a specific number of prisoners, and that those who answered that there is an absorptive capacity for rooms and sections confirmed (ironically) that solitary confinement does not accommodate more than one person who lives in a very narrow room that does not allow to move or stand.

As for the health environment and infrastructure of Israeli prisons and detention centers, all respondents confirmed, with a consensus rate (100%), that they had suffered from many harsh conditions during the period of detention, which emerged in (The spread of bad smells in the rooms, lack of necessary blankets during the harsh winter, exposure to extreme heat and high humidity inside the prison section).

On the other hand, these very poor living conditions lead to the exposure of prisoners and detainees to skin diseases, as it was found that more than a third of prisoners and detainees (34.5%) were infected with a skin disease resulting from lack of hygiene inside prisons. Despite their regular attendance and continuing to maintain the cleanliness of the rooms and departments, the prison infrastructure does not provide healthy living conditions for them at any way.

It is important to note that the sacrifices made by the prisoners during the hunger strike led to the commitment of the Israeli prisons and detention centers to a period of rest and exit to the prison yard, in what is known as the “Fura”, where they are exposed to the sun

and the open air for about two hours, except that a prisoner or detainee for solitary confinement deprives him/her from this opportunity.

The answers of the prisoners and detainees confirmed that the Israeli prisons and detention centers did not commit to providing protection, nor did they follow the appropriate preventive health measures during the outbreak of the Corona pandemic. However, international pressure and the threat emanating from the Palestinian Authority and organizations forced them to distribute masks to the prisoners, and this came out of fear that the jailers would be exposed to the pandemic, especially after injuries appeared among some of the Palestinian prisoners and detainees.

### **Second Topic: Study Results (Field Interviews)**

The researcher conducted field interviews with (5) respondents, who are:

- Mrs. Suha Musleh, head of the Palestine Red Cross office, Ramallah branch.
- Mr. Ashraf Dais, Director of Public Relations at the Palestine Red Cross Office, Ramallah Branch.
- The freed prisoner, Safi Al-Rushdi.
- Minister of the Prisoners' Affairs Authority, Mr. Qadri Abu Bakr.

With the reservation of the fifth person to mention his name or place of work and job.

#### **1. Personal Data**

The results of the field interviews showed that most of the interviewed sample were freed prisoners who had spent more than 10 years in the Israeli occupation prisons, and that they were elderly and lived through the Al-Aqsa Intifada period (2000), and some of them were imprisoned since 1970.

## **2. Health Conditions in Prisons and Detention Centers**

The sample answers confirmed that the sacrifices made by the Palestinian prisoners have greatly contributed to their obtaining some of their human rights guaranteed by international humanitarian law. Where the Department of Prisons provides some of the materials that help in cleaning the detention facilities, which are carried out by the prisoners and detainees themselves, but it lacks proper ventilation, as darkness prevails in the wards, humidity spreads to a large extent, especially in the detention and interrogation rooms, and there were no cooling and air conditioning devices available except in rare cases, as Mr. Safi Al-Rushdi confirmed that there was only one fan in the prison and it was obtained after strikes carried out by the prisoners (An interview with the released prisoner Safi Al-Rushdi on 2/2/2023).

Among the most prominent manifestations of the poor health care experienced by the Palestinian prisoner or detainee, is the stage of transferring the prisoner or detainee to the (Bosta), which could be described as (hell room), where there is no ventilation, and detention takes place for a long period during the transfer process between prisons and detention centers, and it increases among injured or sick prisoners and detainees, as their health conditions were not taken into account, rather, this process leads to a significant deterioration in their health (interview with the head of the Prisoners Affairs Authority, Mr. Qadri Abu Bakr, on 2/17/2023).

On the other hand, the quantity and quality of food provided to them is considered (very bad), which led to the exposure of most prisoners and detainees to malnutrition, that exhausted their strength and weakened their immunity to diseases.

### **3. Availability of Primary Health Care**

The sample answers confirmed the existence of a private clinic in every prison or detention center, with a doctor available, who is employed with the aim of blackmailing sick prisoners and detainees, as they are denied treatment, whether by delaying it or providing only pain-relieving medications and drugs that do not work to treat it, which exacerbates the pain of poor health conditions, and increases their need for surgeries, or hospitalization.

Among the most common diseases that Palestinian prisoners suffer from in Israeli prisons are intestinal diseases, irritable bowel syndrome, hemorrhoids, and skin diseases. Due to the overcrowding of the wards with prisoners and detainees, the spread of infectious diseases is very common.

It is important to point out that the medical clinic available in Ramleh Prison, which is designated for the old prisoners, is not suitable in any way for treating the diseases (psychological and physical) that the prisoners suffer from.

As for psychiatry, there is no specialized psychiatrist in prison or detention clinics, and in rare cases, a psychiatrist visits prisoners who are being referred for treatment in Israeli hospitals, without providing them with an appropriate treatment course. Hence, the results showed that most Palestinian prisoners were exposed to chronic mental illnesses the longer the sentence or detention period increases, not to mention the investigations practiced by the jailers against the prisoners, which reveal the state of hatred and revenge against the prisoners, whether through vulgar treatment against them, or through continuous insulting.

The Palestinian prisoners and detainees showed a state of unity and encouragement among their ranks, in defiance of the barbarism and aggression to which they are

subjected. The state of unity is evident in their steadfastness and unity in their demands, which contributed to their success - albeit in part - in obtaining a set of rights (family visits, furloughs, treatment, phone calls, university education...).

#### **4. Familiarity with Health Rights in The Light of International Humanitarian Law**

Although, most of the Palestinian prisoners had not educated or considered as holders of law degrees, the suffering they live through forced them to know their rights, whether by taking advice from lawyers, or via new prisoners and detainees, who were introduced to the laws that guarantee their rights, whether International laws, or those imposed by the Israeli Prison Service, and thus the study found high level of awareness and knowledge of their health rights, that appeared clearly in the demands of the prisoners during the strikes, and “the empty bowel battle” that the prisoners carried out to obtain their legitimate rights, ensuring that they obtain the minimum of these rights.

#### **5. The Role of Palestinian and Civil Institutions in Protecting Prisoners and Detainees**

The sample answers indicated that the postponement of the issue of Palestinian prisoners in the Oslo agreement led to an increase in the level of suffering experienced by the Palestinian prisoner, as prisons were subjected to military orders imposed by the Israeli Prison Service Administration, without regard to international laws and treaties. In view of this, the Palestinian Authority had not hesitated to present the issue of prisoners to international public opinion, as well as the Palestinian Red Cross, which is considered an exceptional case in its efforts to follow up on Palestinian prisoners, and to submit periodic reports on their conditions inside Israeli detention centers and prisons.

It is important to note that the Palestinian media plays an important role in showing Israeli barbarism and arrogance, in a blatant challenge to the health rights of prisoners, which

led to the deterioration of their health conditions, and their continued suffering from chronic diseases that haunted them after their liberation from captivity.

### **3.3.2 Part Two: Comparing the Results of the Field Study and Comparing them with the Results of Previous Studies**

Based on the official reports and statistics, and the confessions made by Palestinian prisoners and detainees, the study found that the Israeli occupation army uses administrative detention against Palestinians in a sweeping and routine manner, and it is used as a rule rather than an exception, and thus thousands of West Bankers spent years in detention administrative detainees in the Israeli occupation prisons without directing specific charges against them. It is worth mentioning that there are thousands of administrative detainees in the Israeli occupation prisons who spend long periods in Israeli prisons and detention centers, as a punishment method for the Palestinian people. In this regard, the results of the Amnesty International report (2015) showed that the Israeli army and police forces, and Israeli security service personnel, “tortured and ill-treated Palestinian detainees, including children, especially during arrest and investigation operations, reports of torture increased amid operations of mass arrest of Palestinians, which included beatings with batons, slapping, suffocation, prolonged hand and leg chains, forced stress positions, sleep deprivation, and constant threats”. This is consistent with the vision of the Palestinian prisoners and detainees, which confirmed that they were subjected to various types of torture, especially during the periods of detention and interrogation.

The Israeli occupation authorities escalate the crime of torture and ill-treatment against prisoners and detainees, with the continuation of the escalation of the struggle situation,

and the crime of torture constituted one of the crimes and fixed policies pursued by the Israeli occupation against Palestinian prisoners and detainees in order to extract confessions from them, robbing of their humanity, and impose more control and oversight on them, this policy over the decades led to the death of dozens of detainees and prisoners, since 1967, the occupation has killed dozens of prisoners after they were tortured.

The study of Al-Hamouz (2014) demonstrated a set of psychological and physical torture methods against Palestinian prisoners and detainees in the occupation prisons, which can be summarized in depriving detainees of treatment, solitary confinement, sleep deprivation for more than 24 hours, deprivation of movement, and solitary confinement in narrow and unhealthy cells. In the same context, the study of Abu El-Hain (2010) showed that the Israeli Prison Service followed a policy of sensory and psychological deprivation, through blindfolding, tying hands behind the bodies, and spitting in the face of the detainee.

Faraj (2021) confirmed that the Israeli Prison Service follows a set of repressive measures and means in dealing with sick Palestinian prisoners and detainees, as the hands and feet of patients are shackled while they transferred to civilian hospitals located outside prison clinics. And there are many documented cases in ensured and monitored the restraint of patients undergoing surgeries while they are being performed, as well as keeping the handcuffs on the hands and feet until the period of defecation or showering, and throughout the sleeping period. Patients are also transported in an iron box (the bosta), with delay in scheduling an appointment for emergency surgeries.

Al-Khufash's study (2012) also showed what the investigation committees in Israeli prisons and detention centers do by threatening prisoners and detainees to keep them in prison for a long time, transferring them to administrative detention, threatening to kill or

arrest the wife, sister, or father, and threatening to rape the wife, or demolish the house, in an attempt to destroy their psychological state, without regard to their age or state of health, and without regard to the international covenants and treaties that they signed, which give the prisoner the right to obtain protection and health services, and not to be subjected to torture (Al-Issa, 2017: 16).

The suffering of the prisoners multiplies, and their stories increase in pain and cruelty, and their stories with the families are bitter and unforgettable, as they tasted the bitterness of prisons, the pain of chains, and the cruelty of torture in its physical and psychological forms, so diseases leaked and spread in their bodies without receiving medical care or the necessary treatment, so years of captivity exhausted them, where diseases increased their suffering, which accompanied them for the rest of their lives, which is evident in the deterioration of the health and psychological condition of the liberated prisoners.

The Palestinian prisoner lives in a compulsive state in various aspects, as the suffering of families and life away from family and society increases in light of the absence of the slightest means of protection, prevention and treatment, which increases in pain in light of the deterioration of the health environment and the intended extortion of prisoners, especially the sick ones, with the aim of obtaining a confession from them for crimes against Israeli security, which, although from the Israeli point of view, is an acquired right to protect the state and the civilians, but the Palestinian case is considered an exceptional case, given that all Palestinians arrested and imprisoned in Israeli occupation prisons are prisoners of war according to the international definition of popular resistance, which was endorsed by the United Nations as a legitimate right to defend the usurped rights of the Palestinian people.

The occupation did not differentiate between adults and children, or between women and men in its arrests and violations of their rights. On the contrary, it has been proven, according to the practices of the occupation - which were documented by human rights institutions - towards children and women, that it deliberately exploited the sensitivity of their situation, and the impact of detention on their psychological state, by doubling the harshness of their conditions and exposing them to violence, excessive and intimidating, where the occupation continued to implement a number of consistent and systematic policies against them, which actually start before arrest, where the Palestinian child is subjected to systematic abuse through the structure of violence inflicted on him by the occupation, and Palestinian women are arrested without regard for the privacy of their situation, they are deprived of their rights in order to discourage their resolve and deter them from resisting the occupation, in an attempt to bring the Palestinian people to their knees by exploiting their weaknesses.

### **3.4 Summary of Chapter Three**

With the continuation of the Israeli occupation on the Palestinian territories, and the failure to reach a final solution to end the occupation by recognizing the Palestinian state, the most important question arises about the reality of Palestinian prisoners and detainees in the Israeli occupation prisons, and the foreseeable future for resolving their tragedy, in light of the continued Israeli occupation forces violating their rights at all levels.

Accordingly, the third chapter dealt with a review of the reality of Palestinian prisoners and detainees after 1967, the study revised a group of studies, research and official reports issued by human rights organizations, and a comparison of the conditions of prisoners and detainees with international humanitarian law, which guaranteed them protection,

and guaranteed their right to protect their health and human rights. In order to enhance the results of the study, a questionnaire was designed and distributed to a group of released prisoners or those who are still in captivity and detention, with field interviews conducted with a group of officials working in institutions concerned with the issues of Palestinian prisoners and detainees.

Many researches and studies confirmed the flagrant violation of the health rights of prisoners and detainees. The study concluded from the foregoing that the only case that we can be referred to the reality of the Palestinian prisoners and detainees in the prisons of the Israeli occupation is a war crime, in accordance with international humanitarian law, through what has been approved by international covenants and agreements, which explicitly stipulated that gross violations of the Geneva Conventions are considered a war crime.

## **Chapter Four:**

### **Violations of Occupation of the Health Rights of Palestinian Prisoners and Detainees from the Point of view of International Law**

The Israeli occupation authorities, through the administrations operating in Israeli prisons and detention centers, launched fierce campaign against Palestinian prisoners and detainees, which transgresses all international norms and covenants, ignoring all international conventions and covenants commitment to international conventions, particularly the Third and Fourth Geneva Conventions, and all grave violations committed against Palestinian prisoners and detainees. Where Palestinian prisoners and detainees continue to live in unsuitable conditions for human life, without abiding by the Geneva Conventions or any of the international and humanitarian laws.

The Israeli occupying state deals with Palestinian prisoners in contrast to what international human rights laws and international humanitarian law have emphasized regarding the rights of prisoners and detainees, which we will discuss in this chapter by dividing it into two main sections, to answer the following questions: What are the general rights of prisoners confirmed by international and humanitarian laws? What are the international conventions and covenants related to the health rights of prisoners? Do these international conventions and treaties be applied to the Palestinian prisoners and detainees? Therefore, what is the legal explanation of the Israeli violations against Palestinian prisoners and detainees inside Israeli prisons? What are the most prominent mechanisms for holding the Israeli occupation state accountable for its crimes committed against the rights of Palestinian prisoners and detainees?

To clarify this, this chapter has been divided into two sections; where the first one deals with the rights of Palestinian prisoners and detainees in international humanitarian law,

while the second section deals with the legal reality regulating the occupation policy towards Palestinian prisoners and detainees and the mechanisms of holding Israel accountable.

#### **4.1 Section One: The Rights of Prisoners and Detainees in International Law**

International human rights law recognizes and guarantees set of rights for prisoners, detainees. Therefore, international human rights law and international humanitarian law exist with the aim of protecting prisoners, detainees, combatants, and to alleviate the pain and suffering arising from armed conflicts. In order to achieve this goal, the provisions of international and humanitarian laws have been extended to include protection of combatants who do not participate in hostilities, or who have ceased to participate in them, as well as protecting civilians from them.

International treaties and covenants affirm the right of peoples to self-determination, and to resist occupation by all available means. International conventions and treaties have specialized in those rights in a separate matter, where a distinction has been made between the rights of prisoners and detainees in many international covenants and treaties, to clarify this, this section has been divided into two parts; where the first one reviewed the rights of prisoners in international law, while the second part dealt with the rights of detainees in international law.

##### **4.1.1 Part One: Prisoners' Rights According to the International Law**

The Geneva Convention of 1929 was considered as the first international agreement that dealt with the issues of prisoners, as it included a set of provisions related to the moral values and human rights of prisoners of war. It is not obligatory for countries to respect

it and implement its provisions, and it does not include control mechanisms or any action that can be taken towards countries that do not comply with it (Saad Allah, 1997: 101).

In the same context, the Fourth Geneva Convention of 1949 stipulated the need for “the contracting parties to undertake to respect and apply these agreements in all circumstances, in addition to the provisions that apply in peacetime. This agreement applies in the event of declared war or any other armed conflict that erupts between two or more parties of the contracting parties even if one of them did not recognize the state of war, and this agreement also applies in all cases of partial or total occupation of the territory of one of the contracting parties even if this occupation does not face an armed confrontation.

The same agreement clarified in (Article 3, Paragraph 1) thereof the need for all parties to the conflict to abide by the application of the minimum provisions, while prohibiting the following acts at all times and places: a. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; b. taking of hostage; c. outrages upon personal dignity, in particular humiliating and degrading treatment; d. the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples”.

The first protocol attached to the same agreement for the year 1977 stipulated in Article (1) that “4. Armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes are to be considered international conflicts, and one of these peoples is considered if he falls under the grip of a party, the other is a prisoner of war.

It is important to refer to the protection granted to persons participating in hostilities under Additional Annex (Protocol) I to the Third and Fourth Geneva Conventions, as Article (44) stipulates that "1. Any combatant, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war. 2. While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules shall not deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except as provided in paragraphs 3 and 4. 3. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that he carries his weapon openly in such situations."

The Third and Fourth Geneva Conventions of 1949 provided prisoners with a detailed list of the rights. Where Article 13 of the Third Geneva Convention stipulates that prisoners of war must be treated humanely at all times, and it is forbidden for the Detaining Power to commit any illegal act or omission that causes the death of a prisoner in its custody, which it considered a grave violation (Quba`a, 2009).

Although the least knowledgeable of international human rights law and international humanitarian law realizes that one of the most basic rights guaranteed by laws is the right of medical care and appropriate treatment for prisoners and detainees. Unfortunately, when looking at the details of the application of this right in Israeli prisons for Palestinian prisoners, we find that there is a great disregard on the part of The Israeli Prison Service

and its medical staff accepted the rights of the sick Palestinian prisoner and detainee and its violation of the provisions and rules of international humanitarian law, and its insistence on depriving sick prisoners of the rights granted to them by international instruments, especially The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) declared by the General Assembly resolution No. 70/175, which are confirmed in Articles (22) and (25), that stipulated the need to provide at least a qualified doctor for each prison, who has reasonable knowledge of psychiatry and is assigned to meet daily for all sick prisoners, but the Israeli Prison Service does not take into account all these legal provisions and does not provide the minimum conditions and appropriate conditions of detention, as Palestinian prisoners do not enjoy the right to health care and medical treatment as guaranteed by international humanitarian laws.

With the emphasis of the Third and Fourth Geneva Conventions on Prisoners of War of 1949 on the importance of providing sanitary facilities in which health conditions are met and permanent hygiene is observed, and the provision of a medical clinic in every detention center and wards to isolate those suffering from contagious or mental diseases, and the necessity of transferring prisoners - those with serious illnesses and those who need surgical operations or hospital care - to a military or civilian medical unit to receive an appropriate treatment, where Article (30) of the Third Geneva Convention affirmed that prisoners must be presented to doctors and obtain a medical report showing the nature of illnesses and injuries, and the duration and type of treatment.

Adding to that, Article (31) of the Third Geneva Convention of 1949 stresses the need for medical examinations for prisoners of war at least once a month, since the purpose of

these examinations is to monitor the general condition of the prisoners' health, nutrition and hygiene, and to detect contagious diseases.

However, clinics inside Israeli prisons lack specialized doctors and medical tools and devices, and no comprehensive periodic medical examination is conducted for prisoners over many years, as the majority of prisoners did not undergo this examination despite the passage of more than 10 or 15 years or more inside prisons. In addition to the suppression of sick prisoners in the Israeli occupation prisons, through the deliberate delay of prison administrations and their medical staff in providing an appropriate treatment, or in performing emergency surgery, as it often takes months for a prisoner to suffer until he/she is presented to a doctor, and months until it is approved by the prison administration to conduct the necessary examinations for the prisoner, or to perform an emergency operation for him (Council of Detainees and Ex-Prisoners Affairs, 2019).

One of the most prominent causes of death and the emergence of diseases inside Israeli prisons is the detention of prisoners and detainees in old, sanitary and unsuitable places that do not comply with international standards, as stated in Article (85) of the Fourth Geneva Convention of 1949 that: "It is the duty of the detaining power to take all the necessary and possible measures to ensure that protected persons are accommodated from the start of their detention in buildings or places that meet all health conditions and safety guarantees, and guarantee an effective protection from the harshness of the climate and the effects of war. In no case may places of permanent detention be placed in unhealthy areas or whose climate is harmful to the detainees". In fact, we find that all Palestinian prisoners are deprived of sanitary conditions of detention, and are held in places where there is no sun or air, high humidity, ill-treatment and deteriorating diet.

Thus, the Palestinian prisoners in the Israeli occupation prisons live in exceptional health conditions, rarely experienced by prisoners or detainees in other parts of the world. The images of their suffering are multiple, and the violations against them are many, while the Israeli occupation state insists on treating them in accordance with its military laws, security measures, political vision, and its concept of them as “criminals and terrorists”, without recognizing them as freedom fighters, which negatively affected the conditions of their detention inside Israeli prisons and detention centers, without taking into account their ages, genders, and the special needs of each group of them (Farwana, 2021).

Article (89) of the previous agreement also dealt with the issue of food and clothing, as it expressly stipulated the need to provide food meals that are “adequate in terms of quantity, quality, and variety, so as to ensure a natural healthy balance and prevent nutritional deficiency disorders, and the usual diet of detainees is also taken into account, they are provided with enough quantities of drinking water, and they are allowed to use tobacco”. As for clothing, the same agreement obligated the occupying power to provide detainees with clothes, shoes, and a change of clothing free of charge (Article 90). The same article expressly stipulated that “the clothes that the detaining power gives to internees and the external signs that it may put on their clothes must not be shameful or make laugh of them.”

As for prisoners and detainees’ rights to receive visitors, Article (116) of the same agreement stipulates that “every detained person is allowed to meet his visitors, especially his relatives, at regular intervals and as frequently as possible”. The same article also stipulates the possibility of a detainee or prisoner visiting his family in urgent cases, as it states the following: “Detainees are allowed to visit their families in urgent cases, as much as possible, especially in the event of the death or serious illness of a relative.”

With regard to the process of transferring prisoners to interrogation centers or prisons and detention centers, Article (127) of the same agreement stipulates that the transfer process must be carried out in ways in which they are dealt with in humane ways. The female detainee during transport shall be provided with drinking water and food of a quality, variety, and quantities sufficient to maintain their health in good condition, and with the necessary clothes, shelters, and medical care. She shall take all appropriate precautions to ensure their safety during transport.. Sick, wounded, or infirm detainees, as well as cases of childbirth, shall not be transported as long as the journey endangers their health, unless their safety requires the transport.”

The same Convention took into account deaths in Article (131) with the aim of investigating the causes of death, as it expressly stipulated that “the Detaining Power shall conduct an urgent investigation in connection with any death or serious injury suspected of being caused by a guard, another interned person or any other person, as well as any death of unknown cause. Notification on this subject shall be immediately sent to the Protecting Power, statements of witnesses shall be taken, and a report containing these statements shall be drawn up and sent to the Protecting Power. If the investigation proves the guilt of one or more persons, the Detaining Power shall take all judicial measures to prosecute the person responsible or officials.”

As for the remains of the deceased, Article (34) of the 1977 Additional Protocol I stipulates the need to "a. Facilitate the return of the remains of the dead and their personal belongings to their homeland if this country requests it, or the request of the closest people to the deceased and this country does not object". Here, it must be noted that the Israeli occupation forces continue to detain the remains of a number of prisoners who were martyred in detention centers and prisons, as well as exploiting them as a card of

blackmail and pressure on the Palestinian Authority in order to make concessions, or to accept a fait accompli imposed by the circumstances of the occupation.

**The Following is A Presentation of The Prisoners' Health Rights Guaranteed by International Agreements and Covenants:**

**First Topic: The Right of Health in International Conventions and Covenants**

The human right of health is considered one of the recognized basic rights. International conventions and covenants have given special attention to it due to its importance to human life, as stated in the Universal Declaration of Human Rights, that “every person has the right to a standard of living sufficient to ensure the health of himself and his family, it includes food, clothing, housing, medical care and necessary social services” (Article 15 of the Universal Declaration of Human Rights).

The articles of the International Covenant on Economic, Social and Cultural Rights are more comprehensive, detailed, and affirm the human right to enjoy the right of health. 1966).

The International Covenant also identifies some necessary steps to achieve the realization of the right to health, including: “1. Working to reduce the neonatal and infant mortality rate. 2. Improving various environmental and industrial aspects, preventing infectious, widespread and occupational diseases, limiting them and treating them, and creating conditions that Providing medical services and medical attention in case of illness (paragraphs a, b, and c of the International Covenant on Economic and Cultural Rights, 1966).

The Committee on Economic, Social and Cultural Rights explained in its general comment No. (14) on Article No. (12) paragraph (d) of the International Covenant on Economic, social and cultural rights to include “the creation of conditions that would

ensure medical services and medical attention for all in the event of physical and mental illness, providing both equal and timely access to essential preventive, curative and rehabilitative health services and health education; regular screening programmes; appropriate treatment of prevalent diseases, injuries and disabilities, preferably at the community level; and provision of essential drugs; and appropriate mental health treatment and care". Another important aspect is improving and strengthening the participation of the population in the provision of preventive and curative health services, such as the organization of the health sector, the insurance system, and especially participation in political decisions related to the right to health taken at both the community and national levels.

At the same vein, the √ affirmed the right of everyone to attain the highest possible standard of health. It is the duty of governments to consider this task as one of the most important social goals (WHO, 1978).

The International Convention on the Elimination of all forms of racial discrimination also affirms the need to comply with the basic obligations stipulated in Article (2) of this Convention, so that the states parties undertake to prohibit and eliminate racial discrimination in all its forms, and to guarantee the right of every human being, without distinction of race, color, or national or ethnic origin, to implement equality in front of the law, in particular with regard to the enjoyment of the following rights: "a. economic, social and cultural rights, in particular: b. the right to public health, medical care, social security and social services."

International charters have shown all aspects related to health services and the responsibility of the state towards them, and the need to cooperate with all local institutions, whether governmental or private ones, as well as international institutions to

ensure a good level of health services that guarantee the provision of appropriate treatment and prevention for patients through the integrated human dimension, this also includes prisoners and all persons deprived of their liberty.

### **Second Topic: Obligations of States Parties Regarding the Right to Health**

State parties have general and other basic obligations in the implementation of the right to health, according to General Comment No. (14) issued by the competent Economic, Social and Cultural Committee in May of 2000, it set the levels of obligations for the signatory states to the International Covenant on Economic, Social and Cultural Rights in three levels (ESC, 2000, General Comment No. 14, paras. 33-36):

- 1- Commitment to respect:** This is done through several methods; including providing equal opportunities for everyone to access health services of all kinds, as well as refraining from discriminatory practices, not carrying out any kind of obstruction of health care and its services, not marketing unsafe medicines, not polluting the air, water and soil illegally, and refraining from restricting access health services as a punitive measure, for example, during armed conflicts, including violations of international humanitarian law.
- 2- Commitment to protection:** It includes the duties of states to develop legislation and policies that would ensure equality in access to various health care opportunities, and to take measures so that the privatization of the health sector does not pose a threat to the provision of health services, facilities and essential commodities for them and access to them, and the need to monitor the marketing of medicines and medical equipment by third parties, and taking the necessary measures to ensure the efficient performance of health workers in the scientific, technical and ethical aspects.

**3- Commitment to performance and application:** the need for states to recognize the right to health in the national legal systems of states, through the adoption of modern legislation, and the development of a national health policy and plan to implement the right to health, including the obligation to provide health care and what it includes of national immunization programs against infectious and dangerous diseases, and ensuring the enjoyment of the basic elements of health such as proper nutrition, safe drinking water, and adequate housing, as for the basic obligations of states that must be devoted obligatory to fulfill the application of Article (12) of the International Covenant on Economic, Social and Cultural Rights of 1966 (Paragraph 43) and include Both of:

- a. Ensuring the right of access to all health services and facilities without discrimination, especially the vulnerable and marginalized groups.
- B. Ensuring access to the minimum basic level of food that guarantees sufficiency and safety, in terms of nutrition, with a view to securing freedom from hunger for all people.
- c. Ensure access to adequate housing and clean, potable water.
- d. Providing essential medicines that are determined from time to time by the World Health Organization.
- H. Ensuring equitable distribution of all health services, facilities and commodities.

**Third Topic: The Right of Health in International Humanitarian Law:**

The importance of international humanitarian law lies in the fact that it constitutes a mechanism to protect civilians in times of armed conflict, by protecting the minimum basic rights that must be respected and not violated by the conflicting parties under any

circumstances. The primary sources of international humanitarian law are the law of treaties, which is represented by the four Geneva Conventions, and the two Additional Protocols of 1977, and the second source of international law is the Hague Convention on the Laws and Customs of War and the regulations imposed on it.

In this regard, many international agreements and treaties dealt with the prisoners' health rights during the armed conflict period, as Article (3) of the Second Geneva Convention of 1929 stipulated that: "2. The wounded and sick shall be collected and cared for, and an impartial humanitarian body, such as the International Committee of the Red Cross, may offers its services to the parties to the conflict. The parties to the conflict must work, in addition, through special agreements, to implement all or some of the other provisions of this agreement. Nothing in applying the aforementioned provisions that may affects the legal status of the parties to the conflict".

As for Article (56) of the Fourth Geneva Convention of 1949, it stipulates that "it is the duty of the Occupying Power to work, to the fullest extent of its means, and with the assistance of national and local authorities, to maintain medical facilities, services, hospitals, as well as public health and health conditions in the occupied territories, and that in particular, by adopting and applying the necessary preventive measures to combat the spread of infectious diseases and epidemics, and all medical personnel of all categories are allowed to perform their duties. However, the reality of the situation of Palestinian prisoners in the occupation prisons indicates a flagrant violation of these agreements.

#### **4.1.2 Part Two: The Rights of Detainees According to The International Law**

As for the rules for the treatment of internees - civilians, Article (81) of the Fourth Geneva Convention of 1949 stipulates that “the parties to the conflict who detain protected persons shall undertake to support them free of charge, as well as to provide the medical care required by their health condition. Nothing shall be deducted to pay these expenses from the detainees’ allowances, salaries, or dues.” Article (84) of the same agreement affirms that "detainees must be separated from prisoners of war and persons deprived of their liberty for any other reason".

Article (89) of the same agreement also dealt with the issue of food and clothing, as it expressly stipulated “the need to provide food meals that are sufficient in terms of quantity, quality and variety, so as to ensure a natural healthy balance and to prevent nutritional deficiency disorders, and the usual diet of detainees is also taken into account. They are provided with quantities enough drinking water, and they are allowed to use tobacco.”

As for clothing, the same agreement obligated the occupying power to provide the detainees with free clothes, shoes, and a change of clothing (Article 90), and it also stipulated that “the clothes that the detaining power gives to the internees and the external signs that it may put on their clothes must not be shameful or expose them to ridicule”. This is contrary to the reality experienced by the prisoners and detainees in the prisons of the Israeli occupation, where they are dressed in orange clothes with numbers on them, as a violation of their human dignity.

As for the rights of detainees to meet visitors, Article (116) stipulates that “every detainee is allowed to meet his visitors, especially his relatives, at regular intervals, and as frequently as possible”. The same article affirmed the detainee’s right to obtain a visit to

his family outside the prison or the detainee in emergency cases, as it stipulated that "the detainees are allowed to visit their families in urgent cases, as much as possible, especially in the event of the death or serious illness of a relative."

With regard to the process of transferring detainees, Article (127) provides for the right of the detainee to obtain humane treatment, with their access to water and food in sufficient quantities to ensure his health, and to provide clothes and shelters, while providing appropriate medical care, and taking all means to ensure their safety.

Although, Article (78) of the Fourth Geneva Convention of 1949 explicitly stipulated the authority of the occupying power to take security measures towards persons protected under the Convention, and under compelling security reasons, as this authority is to impose house arrest or detention as a maximum, taking into account their right to appeal as soon as possible, and it can be reviewed every six months through a specialized body formed by the occupying country. However, the Israeli occupation forces did not abide by these rights, as they issued several laws and regulations through the Department of Prisons, which violate the duration and conditions of detention, which were explained in section two.

The Fourth Geneva Convention of 1949 gives the right to any party to the conflict to conduct an investigation in connection with any allegation of violation of the provisions of the Convention, in a manner decided among the parties concerned, and in the event that this is proven, the Convention obliges the parties to the conflict to put an end to this violation as soon as possible. Here, it must be noted that the Israeli occupation authorities do not cooperate with the Palestinian Authority or any other party in revealing the violations it practices against both prisoners and detainees, despite the assertion of the International Covenant on Civil and Political Rights that "every person who is arrested

must be informed of the reasons for arrested on the spot, and must be promptly informed of any charge against him” (Article 9).

In the same context, the fourth paragraph of the same article preserved the rights of combatants, as it stipulated that “a combatant who falls into the hands of the opponent without having fulfilled the stipulated requirements ... violates his right to be considered a prisoner of war, but he is granted – despite this – equal protection from all means.” The aspects which the Third Convention and this Appendix add to prisoners of war. Such protection includes guarantees similar to those which the Third Convention adds to a prisoner of war when such a prisoner is tried or punished for a crime he has committed.

As for international resolutions, the United Nations General Assembly issued Resolution No. (2649) on November 30, 1970, which expressly stated "condemning the denial of the right to self-determination, especially for the peoples of South Africa and Palestine," as it emphasized the following: "1. We affirm the legitimacy of the struggle peoples under colonial and foreign domination whose right to self-determination is recognized, to regain that right by any means within their reach.”

As for the health rights of detainees, many international conventions and treaties dealt with their rights during the armed conflict, which was confirmed by Article (3) of the Fourth Geneva Convention of 1949, which recommended the necessity of collecting and caring for the wounded and sick, and they could be handed over to an impartial humanitarian body (The International Committee of the Red Cross as an example).

Article (56) of the Fourth Geneva Convention of 1949 emphasized the need to maintain all hospitals and health service delivery centers in the territories it occupies, and to work in all seriousness with the national and local authorities, while paying the utmost attention to taking preventive measures to limit the spread of diseases and epidemics. By reviewing

the reality experienced by the Palestinian people, we find repeated raids on Palestinian hospitals in the West Bank without regard for the health conditions of patients, under the pretext of the presence of a person or group that threatens the security of the state.

In terms of places and conditions of detention, Article (85) of the same agreement obligates the Detaining Power to take appropriate measures and procedures with a view to accommodating protected persons during the period of detention in places enjoying health conditions and safety guarantees, with the inadmissibility of placing or confining them in places that are unhealthy or whose climatic conditions are detrimental to their health.

As for Article (85) of the same agreement, it reviewed a set of conditions that must be met to ensure the availability of a healthy environment for the place of detention, whether those related to humidity, heating, and lighting, or those related to sleeping places, with the need for them to enjoy adequate ventilation, and for all detainees to have mattresses and blankets. On the other hand, the same article reviewed the conditions of sanitary facilities, the necessity of cleaning them permanently, providing water and soap, washing their own clothes on a regular basis, and providing showers for washing and obtaining physical hygiene.

As for the health conditions and the provision of medical care for detainees, Article (91) confirmed this by obligating the Detaining Power to provide an appropriate medical clinic and a qualified doctor, with adequate nutritional meals (quantity and quality), with the need to isolate detainees with infectious diseases or those who suffer from psychiatric or mental illnesses in separate clinics, and the obligation to provide immediate treatment for those with serious illnesses, and in cases of childbirth, and to transfer them to hospitals,

with appropriate surgical operations, and to provide treatment in the fullest way without discriminating them from the rest of the citizens of the state.

Article (92) of the Fourth Geneva Convention of 1949 also guarantees the right of detainees to conduct appropriate medical examinations on a monthly basis, with X-rays taken once a year, as needed, in order to ensure that the detainees remain in a healthy state.

On the other hand, Article (119) of the same Convention recommended that the Detaining Power should be committed to providing detainees with humane treatment, even if disciplinary sanctions were applied against them, so as to prevent taking brutal punitive measures that endanger the health of the detainee, and the need to take into account individual differences among them, in terms of age, gender, and health status, it also stressed the right of the detainee to a daily medical examination, according to the state of health.

As for seriously ill prisoners, according to Article (109) of the Third Convention, which obliges the captive country to release seriously ill prisoners and those with serious injuries, after they receive health care that enables them to travel without this being during armed conflicts.

Article (147) of the same agreement considers that the subject of grave violations against prisoners and detainees (such as premeditated murder, torture or inhuman treatment, including life science experiments, intentional infliction of severe pain or serious harm to physical safety or health, exile or unlawful transfer confiscation) are unlawful and abusive.

Article (8) of the same agreement affirms that detainees may not waive any of their rights (partial or total) granted to them in accordance with the same agreement or any special agreement that may be concluded between the conflicting parties.

It is important to point out that the Fourth Geneva Convention of 1949 was not devoted to the protection of detainees, and there are no international agreements or treaties specifically concerned with civilian detainees, and therefore they automatically receive protection as civilians, and it can be considered the legal reference for the protection of detainees.

#### **4.2 Section Two: The Legal Reality Organizing the Occupation Policy Towards Palestinian Prisoners and Detainees, and the Mechanisms of Holding Israel Accountable**

The Israeli occupation state is among those countries that use devious methods with the aim of bypassing international humanitarian law while dealing with Palestinian prisoners and detainees, which requires taking a set of mechanisms and procedures aimed at subjecting them to international legal accountability with the aim of guaranteeing the rights of Palestinian prisoners and detainees in general, and their health rights in particular. To clarify this, this section has been divided into two topics; the first one dealt with the legal reality regulating the occupation policy towards Palestinian prisoners and detainees, while the second topic dealt with the mechanisms of holding Israel accountable.

#### **4.2.1 Part One: The Legal Reality Organizing the Israeli Occupation Policy Towards Palestinian Prisoners and Detainees**

Successive Israeli occupation governments enacted and issued a set of military laws and orders, through the Department of Prisons, in order to prevent the application of international law, and to evade their obligations that they signed upon their accession and signature to a set of international treaties that guarantee the rights of Palestinian prisoners and detainees. To demonstrate this, the Israeli laws regulating the policy of detaining Palestinians in the territories occupied in 1967 were presented, in addition to a presentation of the most important relevant international treaties.

##### **First Topic: The Israeli Laws that Regulate the Detention Policy of Palestinians in the Territories Occupied in 1967**

Since the Israeli army's occupation of the Palestinian territories (West Bank, Gaza Strip, and East Jerusalem), about (1,700) military orders have been issued related to Palestinian affairs, whether those related to house demolitions, conditions of detention, or related to health, education, and other issues (Adameer Prisoner Care Association for Human Rights, 2015), with the aim of imposing a *fait accompli* policy on the Palestinian people, to subjugate them and accept the reality of the occupation, and since then, the Israeli occupation authorities have been arresting Palestinians on the grounds of their resistance to the reality of the occupation and its arbitrary practices, and it is important to note that the arrest or detention process takes place without specifying a charge or procedure a trial, as this takes place under renewable administrative detention orders, and the occupation prison administration relies on (secret) information that the detainees or their lawyers do not see (Amnesty International, 2015: 68-69).

This trend was evident on 7/6/1967, when three military declarations were announced regarding the authority of the military commander in terms of (administration, security and order, land ownership, building homes, freedom of movement, the right of citizenship, the right of assembly...) on the Palestinian occupied lands. and the announcement of the establishment of a military judicial apparatus, and the entry into force of the order related to security operations in the West Bank, which allowed it to arrange legal procedures before military courts, and thus the military commander became the representative of the legislative authority in the occupied Palestinian territories (Addameer, 2015).

In view of the international pressures exerted against the Israeli violations of the rights of prisoners and detainees, and in an attempt to contain the international situation, the Israeli Military Order No. (3) at article (35) for the year 1967 which acknowledged the obligation of military courts to apply the provisions of the Fourth Geneva Convention relating to the protection of civilians during war and occupation, however, it again issued several non-binding decisions applying all the provisions of the agreement, and therefore Palestinian prisoners and detainees are treated according to special regulations issued by the Israeli Prison Service, who are classified as security prisoners or “criminal prisoners”.

As a result, Amendment No. (9) was issued under Order No. 144, which practically abolishes the conformity of the Geneva Conventions on the occupied Palestinian territories, as it came into effect on 11/22/1967, followed by the establishment of military courts in the occupied Palestinian cities in the West Bank and East Jerusalem. Then, the courts of East Jerusalem were abolished after they were annexed on 6/28/1967, and the courts were limited to first instance (Addameer Founder for Prisoner Care for Human Rights, 2015).

In the year 1970, the Israeli military commander issued Decision No. (378), which authorizes arresting of Palestinians in accordance with Article (78A-D), which was amended more than once in accordance with the Israeli Prisons Service and the developments in the situation, as it is permitted to detain any Palestinian person for a period of (8) days without informing him of the reason for the arrest, without obtaining a fair trial, or meeting a lawyer, or informing his family of the reason or location of the arrest. The detention period was extended to 18 days in accordance with Military Order No. (1500) issued on 4/5/2002. We point out here that the period of detention in the Israeli occupation prisons extends for a period of detention up to (180) days, and Military Order No. (1530) has set the duration of the trial to two years and that a judgment must be issued during that period.

The military orders were amended as needed, and for dozens of times, until the Military Legal Adviser issued what is known as the consolidated version (Judea and Samaria), which bears number (1651) for the year 2009. Many amendments were made to the previous orders, for example but not limited to: An amendment to each of (Military Order No. 378, Military Order No. 132 pertaining to the trial of minors, Military Order No. 225 pertaining to standards of criminal responsibility, etc.).

The Israeli “Kol Al-Haq” Foundation has published an explanation of what is known as the confidentiality of intelligence information, which stipulates that “confidential information is not provided to the prisoner or his representative, and that intelligence information is also confidential before the court unless the prisoner or his representative approves of the court to disclose it, and if not, the prisoner shall be represented by a lawyer, and the court shall explain to the prisoner that it is his right to prevent the judge from studying the intelligence information, and at the same time it shall be made clear to

the prisoner that if he consents, the court shall be able to review the classified materials, see the full situation, and issue its decision accordingly, and if a confidentiality certificate is issued, the prisoner has the right to file a petition for the disclosure of evidence” (Kol Al-Haq Foundation, 2022).

The Israeli occupation authorities are considered the only country in the world that legitimizes the process of solitary confinement for prisoners and administrative detainees. For this purpose, it issued in 1971 a law explicitly stating that “a prisoner is allowed to be isolated under a security pretext, and this matter is subject to the director of the prison service and his officers” (Ministry of Prisoners and Ex-Prisoners Affairs, 2012: 1).

In the same context, according to Article (113) of the Prisons Ordinance of 1978, the Prisons Authority issued a set of regulations related to health, as it stipulated in the second chapter entitled “Health and Sanitation” the following: “6. Every room and cell in which prisoners live requires the approval of a doctor Provided that the place is suitable for it. 7. Every prisoner shall clean and arrange the room in which he resides in the manner and at the times determined by the director. 8. Every prisoner shall have a haircut and shave at the times determined by the director – unless he obtains an exemption from the director for that. It is not permissible to force 10-a. The prison director shall order the implementation of the doctor’s instructions b. If the doctor decides that there is a danger to the health or life of the prisoner, and the prisoner refuses the treatment prescribed for him, then it is permissible to use the necessary force.”

Article (23) of the same decision stipulates that “the person in charge of transferring prisoners may handcuff the hands and feet of a criminal prisoner if he deems it necessary, and he may also restrain a criminal prisoner with another criminal prisoner or his comrade, and a civil prisoner who is trying to escape may be restrained.”

The Israeli occupation forces continue to violate international law related to the health rights of prisoners and detainees, by obtaining official approval from the Israeli parliament, the Knesset. In July 2015, the period of work on legislation exempting the “Israeli police and security apparatus” from recording interrogations was extended. Palestinians (security suspects), as well as issuing legislation “allowing the authorities to subject detainees who have declared a hunger strike to force-feeding, despite the opposition of human rights organizations and the United Nations (Amnesty International, 2015: 69; Hamdouna, 2018).

On the other hand, the Public Committee against Torture in Israel has acknowledged that it is not considered a specific crime under the Criminal Code, which expressly contradicts the statements of successive Israeli governments to United Nations bodies that they will enact such a law, as the Israeli Knesset approved the “Criminal Procedure Law (Interrogate suspects), which led to an increase in the use of (special procedures) against security detainees, as the average time taken to process complaints is more than 44 months, and only two investigations have been opened since 2001 against the Shin Bet, noting that the number of complaints has reached 1,300 related complaints. With torture issued by the Israeli Shin Bet until the second half of 2020, which led to a single criminal investigation without the filing of indictments (US Department of State - Bureau of Democracy, Human Rights, and Labor, 2020).

### **Second Topic: The Treaties Signed by Israel That Place Obligations on It in This Regard**

The Israeli occupation state continues to practice the most extreme forms of torture and humiliation of Palestinian prisoners and detainees, whether the aim is to extract their

confessions, or to discourage them from confronting and rejecting the occupation's practices against the Palestinians. Although the State of Israel signed the Fourth Geneva Convention of 1949, it did not abide by the provisions of Articles 1 and 2 of the agreement, as the military commander of the Israeli occupation forces, Haim Merzog, issued Military Order No. (3), where article (35) stated that: “The military court shall apply the provisions of the Fourth Geneva Convention of August 12, 1949 regarding the protection of civilians during war and occupation, and confirm that the military court is committed to applying the provisions of the Fourth Geneva Convention with regard to judicial procedures, and if there is a contradiction between this matter and the Convention, therefore, preference will be given to the provisions of the Geneva Convention (Jadallah, 2023).

This is in addition to the Fourth Geneva Convention, which stipulates that it is the duty of the occupying state to preserve the existing legal status in any region when it is occupied, and this means that the laws and military orders issued by Israel that are inconsistent with international law and local Palestinian laws are invalid, for example criminalizing political action and belonging to Palestinian factions (Issa, 2023).

While Israel did not abide by the international treaties and covenants it signed, it took advantage of Article (5) of the Geneva Convention of 1949, which stipulates that “if one of the parties to the conflict is convinced that there are conclusive suspicions regarding a person protected by the Convention in the territory of that party doing an activity that harms the security of the state, or if it is proven that he is carrying out this activity, such a person is deprived of benefiting from the rights and benefits granted by this agreement, which might harm the security of the state if they were granted to him. If a person protected by the agreement is arrested in occupied territory on charges of espionage or

sabotage, or because there are decisive suspicions regarding his activity detrimental to the security of the Occupying Power, such a person could be deprived, in cases absolutely required by military security, of the communication rights stipulated in this Convention.”

In this, all Palestinian prisoners and detainees are accused of being "terrorists, vandals, threatening the security of the state...", as they are defined by their security as "security prisoners", and thus they lose their rights stipulated in the previous agreement. However, this Israeli characterization of Palestinian prisoners as illegal security prisoners, which came with the aim of the Israeli occupation state evading its obligations towards Palestinian prisoners and detainees from international legal accountability.

Professor Moa`taz Qafisha - a specialist in international law - confirms that Israel does not apply it, explaining that the Fourth Geneva Convention talks about the situation of civilians in armed conflicts, and it applies to Palestinian prisoners even if they participated in military operations against the Israeli occupation. Qafisha added that benefiting from the Third Geneva Convention is not currently possible, because “Israel state” considers the West Bank as a disputed territory, however, it is possible to demand the application of general provisions in international norms (Qafisha, and Adel, 2021).

In the same context, the Israeli occupation forces took advantage of Article (45) of the Additional Appendix of 1977 to the Third and Fourth Geneva Conventions of 1949, related to providing protection for persons who participated in hostilities through what was stipulated in the second paragraph, which stated that “... the representatives of the Protecting Power shall have the right to attend the proceedings during which a decision is being taken on this matter, unless the security reasons of the state require that these procedures be taken exceptionally in secret, and in such a case the Detaining Power shall

notify the Protecting Power of this, "as the secrecy of data is always pretexted for security reasons.

Returning to the amended Basic Law, which came under the title "Human Dignity and Freedom" for the year 1992, which considers the State of Israel as a Jewish and democratic state, and which expressly stipulates: "2- Preserving life, body and dignity: It is not permissible to infringe on a person's life, body or dignity as a human being.. 4- Defending life, body, and dignity: Every person has the right to defend his life, body, and dignity 5- Personal freedom: No one's freedom may be taken away or restricted by imprisonment, arrest, extradition, or any other means".

As for the infringement of rights, an amendment was made to the Basic Law on March 10, 1994, and the amendment came within the following wording: "The rights contained in this Basic Law may not be infringed except by a law that suits the values of the State of Israel and aims to achieve an appropriate goal and does not exceed the necessary limit or according to a law as mentioned by virtue of an explicit authorization in it. This made it possible, on the legal side, to enact legislation and military orders issued by the Occupation Prisons Service, even if it contradicts international law.

However, Article (12) of the same law stipulates that "the emergency regime is not permitted to change this basic law or suspend its effect temporarily or include conditions in it, except that when a state of emergency arises in the state, it is declared according to Article 9 of the Authority and Judicial Systems Law of 1948, an emergency regulation may be issued under the aforementioned article to restrict or deny the rights stipulated in this Basic Law, provided that the deprivation or restriction aims to achieve an appropriate end and does not exceed the necessary limit". It is important to point out that this law

does not define identity, and therefore a question is raised about the rights of Arabs residing in the State of Israel.

The Israeli occupation authorities present security arguments and pretexts in order to bypass international laws that guarantee human rights, as they invoke Article 4 of the International Covenant on Civil and Political Rights to provide security for their citizens, which states that “1. In exceptional emergency situations that threaten the life of the nation, and whose establishment is officially declared, the state parties may in the present Covenant to take, to the extent strictly required by the situation, measures derogating from their obligations under the present Covenant, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination based solely on race, colour, sex, language or religion or social origin.

By reviewing the text of the previous article, we find the blatant distinction of the Israeli laws of the International Covenant, as it distinguishes in its provisions between the “Israeli” population of the state, and the “Arab minorities,” whether in the lands it occupied, or in the lands of the West Bank, Gaza Strip, and East Jerusalem, which appears clearly in the sentences imposed on the Palestinians, they are considered "security offenders", while "civilian" trials are conducted most of the time for "Israeli" persons who have committed crimes, even if they are security offences.

The Israeli army arrests Palestinian citizens based on the military order related to security instructions (Judea and Samaria) No. 1651 of 2009, in Article (31), which was amended later, whereby any Palestinian person is arrested for a period of (4) days without informing him of the reason for the arrest, nor he is presented to any judge, and he is prevented from meeting his lawyer within two days of his detention.

As for the prisoner's hunger strike, the revised Tokyo and Malta declarations of 2006 were consistent with the position of the International Committee of the Red Cross, which stated that "artificial feeding should not be resorted to if a prisoner refuses food at a time when the doctor considers that he is able to take sound rational judgment as to the consequences of voluntarily refusing food, and the decision as to the prisoner's ability to make such a judgment should be reinforced by at least another independent physician, who should explain to the prisoner the consequences of his refusal to eat."

Thus, it requires the commitment of the Israeli Prison Service, and through its accredited physician, to take into account the detainee's freedom of choice and the preservation of his human dignity as basic criteria for his personal choices, even if his hunger strike results from his refusal of military orders issued by the Israeli Prison Service (World Medical Association, 2022).

#### **4.2.2 Part Two: Mechanisms for Holding the Occupation Accountable for its**

##### **Violations Against Palestinian Prisoners and Detainees**

The Palestinian Authority has used several legal and international tools in order to provide protection for Palestinian prisoners and detainees, and to secure their access to their human and health rights guaranteed by international law. To demonstrate this, legal mechanisms and tools were reviewed in the first requirement, while a set of international political tools was presented in the second requirement.

##### **First Topic: Legal Mechanisms and Tools to Hold the Occupation Accountable for its Violations Against Palestinian Prisoners and Detainees**

Strengthening Palestine's position internationally and its accession to many international agreements and treaties; including the Geneva Conventions and the Rome Statute of the

International Criminal Court, especially after obtaining the “non-member observer status” on 11/29/2012, has a great impact on the future of the Palestinian issue, so the recognition of Palestine and its accession to the Convention Rome and the Geneva Conventions are of great importance at the level of international judiciary, whether the International Court of Justice or the International Criminal Courts, which has increased international support for Palestine, whether by governments or international human rights and humanitarian organizations.

By reviewing the Israeli position on international law, we find that it does not recognize that the four Geneva Conventions are applicable to the occupied Palestinian territories, as the occupation government claims that it did not occupy these lands from sovereign states, and that Jordan and Egypt were administering these areas, which was rejected by the international community. as a whole, and considering that these agreements are applicable to Palestinian all occupied territories.

In the sense that Palestine can file lawsuits before the International Court of Justice with regard to some issues, and it also has the right to join the Assembly of States Parties to the International Criminal Court. This means that it has the right to prosecute any individual - whatever his official or individual status - before the international criminal courts if proven committing any international crime against the Palestinian prisoners and detainees due to the International Law, and therefore people who work in Israeli prisons and Israeli politicians can be prosecuted for abusing prisoners, detaining them without trial, and depriving them of their health rights, which led to the death and injury of Palestinian prisoners and detainees with chronic diseases that accompanied them even after their release from captivity (Abdel Ati, 2017).

## **Second Topic: Political Mechanisms and Tools to Hold the Occupation Accountable for its Violations Against Palestinian Prisoners and Detainees**

### **First: At the Arab level**

In view of the importance of the Palestinian cause as the main issue of concern to the League of Arab States, as this was evident through its interest, and in most of its sessions, in the necessity of resolving the Palestinian issue, and discusses Israeli violations of the rights of prisoners, and uses a range of means, including: Most notably "sending notes to the relevant international committees, especially the International Legal Committee, forming a special committee to investigate and collect data on human rights violations by the occupation, following up on Amnesty International's reports, sending telegrams to the United Nations Secretary and members of the General Assembly and the Security Council, sponsoring many conferences for Palestinian prisoners providing material assistance to the families of prisoners through the Martyrs' Families Foundation, raising the issue of prisoners for discussion in the United Nations General Assembly and in the corridors of international institutions" (Hamdouna, 2023).

In efforts to internationalize the issue of Palestinian prisoners, the Council of the League of Arab States took on 11/14/2009, in the presence of Minister of Prisoners and Ex-Prisoners Issa Qaqouq, a decision leading to "assigning the Arab Group in New York to study submitting a request to the United Nations General Assembly to issue a decision requesting an advisory opinion from the Court of Justice International Conference in The Hague on the legal status of Palestinian and Arab prisoners in the prisons of the Israeli occupation, in accordance with the relevant provisions of international law, and their consideration as prisoners of war, and they have the legitimate right to resist the occupation". This decision was approved on May 6, 2012, and an international conference

for Palestinian prisoners was held under the auspices of the League of Arab States (Palestinian Ministry of Foreign Affairs, 2019).

Accordingly, a conference was held on the issue of prisoners, which came under the title “The Urgent Necessity to Address the Plight of Palestinian Political Prisoners in Israeli Occupation Prisons” on 7/3/2011, where its final statement stated that “Great interest in the proposal of the Minister of Prisoners, Issa Qaraqe’, to raise legal accountability related to Palestinian prisoners with the competent legal bodies of the United Nations, including the International Court of Justice.” The statement also denounced the Israeli violations of international humanitarian law in its treatment of Palestinian prisoners, which focused on issues of “administrative detention, detention of children and parliamentarians, the practice of torture of all kinds, and the prevention of families from visiting their imprisoned children, solitary confinement, ill-treatment, assault on the dignity of the prisoners...”. The statement also emphasized the clear violation of the Fourth Geneva Convention, given that prisons and detention centers are located in lands outside the West Bank and Gaza Strip, which deprived prisoners of their human and legal rights. The statement recommended the need to release all prisoners from the occupation prisons.

Returning to the memorandum of understanding between the Palestinian and Israeli authorities held in Sharm el-Sheikh in 2005, which obliges the occupying power to release all Palestinian prisoners who were arrested before the start of the peace process in Oslo (Sharm El-Sheikh Agreement of 4/9/1999). It is important to note that all the negotiations or agreements related to the issues of prisoners did not discuss the Arab prisoners or the Palestinians of 1948, which requires the Palestinian and Arab negotiators to take them into account, bearing in mind that most of them were captured before 1993, with the exception of the prisoners of the Lebanese resistance.

**Second: At the International Level**

Despite the Palestinian endeavors at the international level to provide protection for Palestinian prisoners and detainees, and to secure their access to their health rights, these attempts face many dilemmas, especially the Israeli pressure on the Palestinian Authority, and international humanitarian and human rights organizations, in conjunction with the American veto on any issue addressed. against Israel, which led to delay in submitting an official complaint to the International Criminal Court to demand the opening of an investigation into the crimes committed by the Israeli Prison Service against the health rights of Palestinian prisoners and detainees.

In the same context, the European Union called for sending a "parliamentary fact-finding committee" to visit Israeli prisons and detention centers, and affirmed its condemnation of Israel's violations of the rights of Palestinian prisoners.

There are also unremitting efforts made by international and local organizations to defend the rights of Palestinian prisoners and detainees, and work to provide them with international protection, by monitoring violations and arbitrary practices against prisoners and detainees. The role of the Palestinian Red Cross is evident in its efforts to monitor the provision of food or medicine, and the renewal of water supplies or medical facilities, whether inside or outside Israeli prisons and detention centers (Interview with the Palestinian Red Cross, 2022).

In order to support Palestinian prisoners and detainees, a group of national institutions has been established, in addition to the presence of many international organizations specialized in Palestinian affairs in the Palestinian territories, the most prominent of which is the Ministry of Prisoners' Affairs, which later became the Prisoners' Affairs Commission, which is directly affiliated with the Palestine Liberation Organization, in

addition to the International Committee of the Red Cross, through its headquarters in Palestine (the Palestinian Red Cross), which seeks to protect Palestinians during armed conflict and situations of violence, and to obtain full respect for applicable law.

Despite the inability of the International Committee of the Red Cross (the Palestinian Red Cross) to provide protection for Palestinian citizens, from a material point of view, it is working hard to reduce and limit the dangers to which the Palestinian people in general, and the prisoners and detainees in the occupation prisons in particular, this is done by preventing and ending cases of abuse against prisoners and detainees, as protection activities include work related to detention, such as visiting prisons and assessing conditions of detention, protecting the civilian population, and drawing international attention to their rights, monitoring violations and reporting them to the competent authorities (ICRC, 2014: 89 ).

The international system also provides a variety of interventions for the purpose of monitoring, accountability and protection, and through these international legal means - especially in the context of international humanitarian law and its approved mechanisms - pressure to convene a conference of the states parties to the four Geneva Conventions, in order to discuss the issue of Palestinian prisoners and their rights, and the nature of legal obligations arising from the responsibility of the Israeli occupier; the role and obligations of the parties to confront Israeli violations and violations of the rights of detainees.

Within the framework of international human rights law, international accountability for violations of the occupation can be activated, through the mechanisms provided by international human rights conventions, and addressing international complaints committees, specifically special rapporteurs on the right to enjoy the highest attainable

standard of health, and the concerned special rapporteur to combat torture and others, and to supply the various specialized agencies and agencies of the United Nations with reports.

### **4.3 Summary of Chapter Four**

The fourth chapter dealt with a review of the most prominent international treaties and covenants related to prisoners and detainees, and their relevance to the Palestinian situation. A set of military laws and orders issued by the occupation government, or through the Israeli Prison Service, were reviewed, according to which international law was violated, as the occupation government does not consider that the Palestinian lands are lands whose legitimacy belongs to any state, and that the role of Jordan and Egypt before the occupation of 1967 was the role of land management only, and the government of Israel does not recognize the legitimacy of the Palestinian resistance, as it considers them as terrorists threatening the security and stability of the state, and accordingly all international conventions and norms related to rights of Palestinian prisoners and detainees.

We conclude from the foregoing that the Israeli courts related to the cases of Palestinian prisoners and detainees are directly linked to the military courts and the occupation prisons service, which do not take into account the principles and provisions of international law related to their human and health rights, which give them all the right to appear before a competent, independent and impartial court, with no continuous follow-up of their health conditions by international health organizations and the related bodies, which led to Palestinian prisoners and detainees becoming victims of the crimes of the

occupation and its illegal justifications from the point of view of international humanitarian law.

## **Summary**

The Palestinian people, in general, live in a state of terror in light of the continuation of the Israeli occupation, by following systematic methods aimed at subjecting them to unfair Israeli dictates and conditions for giving up their rights. However, the study of the health status of Palestinian prisoners and detainees requires an in-depth research into the health conditions experienced by this prisoner or administrative detainee inside the detention rooms, and an indication of the availability of medicines, specialists, devices and medical tools that the sick prisoner needs to continue his treatment and obtain his rights legitimized by international laws and treaties.

The State of Israel does not recognize Palestinian prisoners as prisoners of war, and it is not enough to deprive Palestinian prisoners of their rights guaranteed to them under the Third Geneva Convention on Prisoners of War. Rather, this deprivation extends to the rest of the Palestinian civilian detainees who are protected under the Fourth Geneva Convention. Thus, we see that the conditions contained in the matter of prisoners of war do not apply to most Palestinian detainees, and therefore the majority of Palestinians in Israeli prisons are Palestinian detainees and not prisoners of war - according to the Israeli occupation state - as few Palestinian prisoners were captured during resistance operations, and therefore they are subject to the Third Geneva Convention on the treatment of prisoners of war dated in 1949.

According to international laws, a prisoner of war is not considered subject to the authority of the soldiers who fall into their captivity, but rather to the authority of the state that captured him. The captive state must respect the prisoners under its authority, and provide them with protection and humane treatment, because captivity here is not

punishment or retaliation, and it must guarantee protection for them from the time they are captured and until their release and return to their homes and homelands.

As for the majority of Palestinians, they are considered detainees and not prisoners of war, many of the detainees were arrested on the grounds of belonging to resistance factions, but not during the resistance operations, or detained under the name of illegal fighters, or because of throwing stones, possession of weapons, or incitement through social networks, or being arrested without any charge, and these must be subject to the Fourth Geneva Convention related to the protection of civilians during armed conflict or occupation, according to Section IV of the Fourth Geneva Convention, which regulates cases of detention in terms of conditions of treatment by the occupying power, and the rights that people should enjoy.

However, the Palestinian prisoners and detainees in the prisons of the Israeli occupation are deprived of their status as prisoners of war and freedom fighters, and thus they are deprived of the protection prescribed for them according to the rules of international humanitarian law and international human rights law, although international law has guaranteed them protection and immunity. While the inhumane practices carried out by the Israeli prison administration confirm that they are committing war crimes, which require immediate international intervention to stop these attacks (violations), as it is assumed that the purpose of the captivity process lies in preventive detention, without the practice of punishment and retaliation, and the responsibility to protect the prisoners. The responsibility for the protection of prisoners and internees rests with the Detaining Power and not with members of the Israeli armed forces

The occupation authorities continue to arrest Palestinians continuously, whether after the declaration of the state in 1948, and what accompanied it with armed confrontations and

popular struggles against the occupation, with the increase in cases of administrative detention, detention centers and prisons, while continuing to imprison those with life sentences for as long as possible to negotiate with them in peace negotiations that have become ambiguous due to their effectiveness in light of the Israeli intransigence in reaching issues of a final solution to the history of the Palestinian-Israeli conflict.

The suffering of the prisoners multiplies, and their stories increase in pain and cruelty, and their stories with the families are bitter and unforgettable, as they tasted the bitterness of prisons, the pain of chains, and the cruelty of torture in its physical and psychological forms, where diseases leaked and spread in their bodies without receiving medical care or the necessary treatment, so years of captivity exhausted them. And diseases increased their suffering, which accompanied them for the rest of their lives, which is evident in the deterioration of the health and psychological condition of the liberated prisoners.

The Palestinian prisoner lives in a compulsive state in various aspects, as the suffering of families and life away from family and society increases in light of the absence of the slightest means of protection, prevention and treatment, which increases in pain in light of the deterioration of the health environment and the intended extortion of prisoners, especially the sick ones, with the aim of obtaining a confession from them of crimes against them.

Israeli security, which, although from the Israeli point of view, has an acquired right to protect the state and the civilian population, but the Palestinian case is considered an exceptional case, given that all Palestinians arrested and imprisoned in Israeli occupation prisons are prisoners of war according to the international definition of popular resistance, which was approved by the United Nations as a legitimate right to defend the usurped rights of the Palestinian people.

**Section One: Conclusions**

Since the early days of the occupation of the West Bank and Gaza Strip, the Israeli occupation forces have been using torture and threats in all its forms as a daily methodology that must be followed to subjugate the Palestinian people in general, and prisoners and administrative detainees in particular. They did not hesitate to use the method of severe beating, abuse, humiliation, and strip searches before they reached the detention rooms, in light of the imposition of harsh conditions of detention and arrest, where there is no real health care, with poor food, quantity and quality, and therefore the Palestinian prisoner lives in oppressive conditions, which can be expressed by saying that the life of the Palestinian prisoners can be abbreviated by the term (the living martyrs).

The legal status of Palestinian prisoners and detainees - in accordance with international law and the opinions of legal scholars and those working for human rights and humanitarian institutions - can be limited to three classifications, represented in (considering them as prisoners of war subject to the Third Geneva Convention of 1949, dealing with them as detainees enjoying protection in accordance with the Fourth Geneva Convention of 1949, considering that they were illegally kidnapped, given that the Israeli occupation is illegitimate). And whatever the classification of Palestinian prisoners and detainees, all previous classifications guarantee their human and health rights in Israeli detention centers and prisons.

On the other hand, in 2002 the Israeli Supreme Court enacted the Detention of Illegal Fighters Law, defining an illegal combatant as "anyone who participates in a terrorist act against the State of Israel, directly or indirectly, or is a member of a force that carries out such acts against the State of Israel." Thus, it revokes its recognition of Article 4 of the Third Geneva Convention of 1949 relating to the treatment of prisoners of war.

Many international treaties and agreements stipulate the need for prison authorities to provide (safe and healthy living spaces for all prisoners, protect people from violence and coercion, provide health care services and adequate medicines free of charge as much as possible, and provide information and education on health prevention measures and a healthy way of life, and the implementation of primary health protection measures), which may be non-existent, and if available, it does not exceed the minimum required, especially after the Israeli occupation of the Palestinian territories in 1967 until the date of preparing the thesis.

Thus, it is clear that the Palestinian prisoners and detainees have been subjected to flagrant violations against them and a violation of international covenants, customs and treaties that guarantee them the preservation of their lives and their physical and psychological health, despite the success of the Palestinian captive movement in extracting the rights of Palestinian prisoners and detainees through its unremitting efforts, and with unparalleled sacrifices on the part of the prisoners, who have been on hunger strike for long periods, but the Israeli Prison Service continues to issue "legal" justifications for bypassing international humanitarian law.

And by reviewing the orders issued by the Israeli Prison Service, we find that it classifies the Palestinian organizations as hostile (terrorist) organizations, without the presence of any Jewish organization among them, and therefore we find that the imposition of restrictions on Palestinian prisoners (prisoners and administrative detainees) inside the occupation prisons is imposed on every prisoner classified as "Security". That is, he was a member of a hostile organization, or extended a helping hand to a hostile organization, in addition to foreseeing the danger that might affect the security of the state.

The Palestinian people, in general, live in a state of terror in light of the continued Israeli occupation, by following systematic methods aimed at subjecting them to unfair Israeli dictates and conditions for giving up their rights. However, studying the health status of Palestinian prisoners and detainees requires in-depth research into the health conditions experienced by this prisoner or detainee inside the detention rooms, and an indication of the availability of medicines, specialists, medical devices and tools that the sick prisoner needs to continue his treatment and to obtain his rights legislated by international laws and treaties.

The Israeli occupation state continues to practice the most extreme forms of torture and humiliation of Palestinian prisoners and detainees, whether the aim is to extract their confessions, or to discourage them from confronting and rejecting the occupation practices against the Palestinians. Although the State of Israel signed the Geneva Convention of 1949, it did not abide by what was stated in its first and second articles, which explicitly stipulated the obligation of the contracting parties to respect the articles of this agreement.

It also appears that the Israeli courts are linked to military courts and the occupation prisons service, which do not take into account the principles and provisions of international law related to the rights of prisoners and detainees, which give them all the right to present in front of a competent, independent and impartial court, with the absence of continuous follow-up of their health conditions by international health organizations and bodies. .

Israel adopts the (state of emergency) as a settler-colonial regime to express the state of exception in which it is living, taking advantage of the Palestinian popular rejection of Israeli violations and repeated aggressions, to issue a set of illegal military laws and orders

under the pretext of the spread of the state of terrorism, and thus these orders regulate the state of combating “Palestinian terrorism”.

Numerous researches and studies have also confirmed the flagrant violation of the health rights of prisoners and detainees, and this is confirmed by the live testimonies of Palestinian prisoners and detainees in Israeli occupation prisons, and all workers in Palestinian national institutions concerned with prisoners and detainees’ issues.

There is a shortcoming on the Palestinian side, which is apparent in delaying the issue of prisoners until the final negotiations stage, which did not lead to tangible results, such as what was achieved through the empty stomach battle, which led to the martyrdom of many Palestinian prisoners, in return for achieving a set of acquired rights.

With the continuation of the Israeli occupation of the Palestinian territories, and the failure to reach a final solution to end the occupation and recognize the Palestinian state, the most important question arises about the reality of Palestinian prisoners and detainees in the Israeli occupation prisons, and the foreseeable future for resolving their tragedy, in light of the continued Israeli occupation forces violating their rights at all levels.

Despite Palestine obtaining a seat in the United Nations, its accession to many international treaties, as well as the signing of dozens of international conventions, the conditions of Palestinian prisoners and detainees have not improved in light of the continued Israeli intransigence, the violation of the prisoners’ rights, and the transgression of international humanitarian law, with the issuance of many laws and military orders that are adopted for security reasons to evade legal accountability.

The official reports clearly confirm the suffering experienced by the imprisoned activists in the Israeli occupation prisons, which is evident in the Israeli Prison Service’s policy of “deliberate medical negligence” and the careful practice of the occupation prison

authorities, which led to the death of dozens of prisoners as a result of their lack of proper medical care.

We conclude from the foregoing that the only case that we can refer to the Palestinian prisoners and detainees in the prisons of the Israeli occupation is considered as a war crime, in accordance with international humanitarian law, through what has been approved by international covenants and agreements, which explicitly stipulate that gross violations of the Geneva Conventions are considered a war crime.

## **Section Two: Recommendations and Suggestions**

The study recommends public policy makers and decision makers in the Palestinian Authority to adopt local and international policies in their human rights aspect, which emanate from the Third and Fourth Geneva Conventions, with the aim of classifying all Palestinians detained in Israeli occupation prisons as prisoners or detainees, and providing an accurate and clear description of their rights under international law. It is necessary to clarify the legal status of each (Palestinian fighter, members of the popular resistance and civilian detainees, the legality of detention), through the formation of a legal advisory opinion at the International Court of Justice to study the issue of Palestinian prisoners and detainees, and clarify their rights, while specifying the legal obligations that must be implemented by the Israeli occupier regarding them. .

The authorities (official and unofficial) must expose the Israeli judicial system, which flagrantly and tangibly violates international law in defining Palestinian prisoners and detainees as outlaws. With the prisoners' files being submitted directly to the International Criminal Court, aiming at accelerating litigation procedures and holding the Israeli occupation accountable for its crimes and punishing it, starting from the stage of arrest or

captivity, through the stage of investigation and detention, up to the stage of trial and serving the sentence in Israeli prisons, which do not provide the minimum appropriate health conditions in accordance with international law.

The Palestinian Authority should demand the international community in general, and the International Criminal Court in particular, to open investigations related to Israeli violations of the human rights of Palestinian prisoners and detainees, with a focus on their health rights (psychological and physical), in order to preserve their lives.

The study also recommends that the concerned authorities work to uncover the clear violation of international laws stipulated in all treaties, covenants and agreements, which show that Israel followed the emergency regulations of 1945 through the military judiciary of the Minister of Army instead of the Minister of Justice, which is a flagrant violation of international humanitarian law, that led to deprive all Palestinians prisoners and detainees from their legitimate rights. Thus, transferring all issues related to prisoners and detainees to the Minister of Justice and withdrawing all powers given to the Israeli Prison Service.

To pressure on the Israeli occupation government with the aim of abolishing all laws, legislation, regulations, and military orders that deprived Palestinians of their rights, and gave legal legitimacy - from the Israeli point of view - to arresting Palestinians, stopping all kinds of torture (physical and psychological) during the investigation and interrogation period, and improving sanitary conditions and general hygiene in Israeli prisons and detention centers, to ensure the existence of prisoners and detainees in a healthy and hygienic environment, in line with all international laws and treaties that provided health protection for prisoners and legitimate resistance fighters.

Legal cases can be brought to confront Israeli violations of the health rights of Palestinian prisoners and detainees - whether physical or psychological - before the national courts of countries that have agreed to open their jurisdiction over these cases. Especially in the clear violations of the prisoners' right to access health care, or in those violations of the prisoners' freedom not to subject them to medical experiments or to force them to be forcibly fed in the event of a hunger strike.

It is important to work on internationalizing the issue of prisoners and detainees in international forums, especially (the Security Council, the General Assembly, the Human Rights Council, the Office of the High Commissioner for Human Rights), with the aim of issuing new supportive resolutions, and not being satisfied with denunciation, condemnation and denunciation.

And since the Palestinian people have every right to resist the occupation and struggle for liberation, which entails that all Palestinian resisters enjoy the right to protection in accordance with the rules of international law, with their right to acquire the “legal warrior status” that provides them with the rights of prisoners of war in the event of their capture. The Palestinian Authority, through all public institutions and Palestinian ministries, must work to place the issue of prisoners as its top priority, and work to provide material and moral support for prisoners, detainees and their families.

## **List of Sources and References**

### **First: The Documents**

#### **1. Declarations**

Declaration of Alma-Ata - Kazakhstan, issued by the World Health Organization for the year (1978) relating to primary health care.

General Assembly of the United Nations, Resolution No. 2649 (25th session) of November 30, 1970, regarding the condemnation of the denial of the right to self-determination, especially for the people of South Africa and Palestine.

General Comment No. (14) of the Committee on Economic, Social and Cultural Rights, session (22) of 2000.

Report of the Landau Commission for the year 1987.

The Balfour Declaration of 1917.

The military declaration related to the authority of the military commander issued on 7/6/1967. Revised Tokyo and Malta Declarations of 2006.

The Universal Declaration of Human Rights, a set of legal articles (Articles 15, 19).

UN Security Council Resolution No. (242).

United Nations, International Instruments: Standard Minimum Rules for the Treatment of Prisoners, 1957.

#### **2. Treaties and agreements**

Amended Basic Law entitled Human Dignity and Freedom of 1992, State of Israel.

Approval of the Israeli General Penal Code of 1977.

Cairo Agreement (Gaza - Jericho) on May 4, 1994.

Sharm El-Sheikh Agreement on 4/9/1999.

The Authority and Judicial Systems Law of 1948, State of Israel.

The British Mandate Emergency Law of 1945.

The decision of the Israeli Supreme Court of Justice dated 6/9/1999 regarding the prohibition of the use of torture during the investigation.

The Declaration of Principles Agreement (Oslo) signed on September 13, 1993.

The Fourth Geneva Convention for the Protection of Civilian Persons of 1949

The Hague Convention of 1899

The Hague Convention of 1907

The International Convention on the Elimination of All Forms of Racial Discrimination, Article (2).

The International Covenant on Civil and Political Rights of 1976 (a collection of legal articles).

The International Covenant on Economic and Cultural Rights (1966).

The New York Convention on the Detention and Taking of Hostages of 1979.

The Palestinian-Israeli Memorandum of Understanding held in Sharm el-Sheikh in 2005 related to the release of all Palestinian prisoners.

The Rome Statute, a collection of legal articles.

The Second Geneva Convention of 1929 relating to the treatment of prisoners of war.

The Third Geneva Convention for the Treatment of Prisoners of War of 1949

### **3. Protocols**

The first protocol annexed to the four Geneva Conventions of 1977

The second Protocol to the four Geneva Conventions of 1949

### **4. Military orders**

Israeli Military Order No. (3), Article (35) of 1967, issued by the Israeli Prison Service.

Military Order No. (132) related to the trial of minors, issued by the Israeli Prison Service.

Military Order No. (225) related to standards of criminal responsibility, issued by the Israeli Prison Service.

Amendment No. (9) under Military Order No. (144), issued by the Israeli Prison Service.

The merged formula (Judea and Samaria) No. (1651) for the year 2009.

The decision of the Israeli parliament, the Knesset, regarding the extension of the work period on the legislation that exempts the police and the Israeli security apparatus, issued in July 2015.

Resolution No. (378) of 1970, Articles (78 a-d) issued by the Israeli Prison Service.

The Israeli Prisons Ordinance of 1978 (Article 113) of 1978.

Order No. (02/03/00) issued by the Israeli Prison Service.

Military Order No. (02/03/2000) issued by the Israeli Prison Service

Military Order No. (1500) issued on 4/5/2002.

United Nations General Assembly Resolution No. (67/19) dated 11/29/2012 related to granting Palestine the status of a state (non-permanent member) in the United Nations.

## **5. Dictionaries**

Al-Fayrouzabadi (1999). Al-Qamos Al-Muheet, 1st Edition, Beirut: Dar Al-Kutub Al-Alami.

Ibn Manzoor, Abu Al-Fadl Jamal Al-Din (1967), Lisan Al-Arab, Volume 14, Beirut: Dar Sader.

## **Second: Arabic references**

### **1. Books**

Abdul-Mahdi, Ahmed and Al-Shafei, Ashraf (2005). Pretrial detention, 1st edition, Cairo: Dar al-Adalah.

- Abu Al-Wafa, Ahmed (1996). *The Mediator in Public International Law*, Cairo: Dar Al-Nahda Al-Arabiya.
- Abu Shaaban, Jamal and Nasser, Sultan and Qawasmi, Ziad and Abu Shalbak, Naglaa and Maswada, Yasmine (2017). *Policy Analysis Paper: Palestinian Detainees and Prisoners of War - Their Rights and Their Release Between Reality and Ambition*, Palestinian Center for Policy Research and Strategic Studies - Masarat, Palestine.
- Addameer Prisoner Support Association for Human Rights (2013). *Report on violations of the rights of Palestinian female and male prisoners in Israeli prisons 2012*, Jerusalem, Palestine.
- Al Far, Abdel Wahed (2009). *Public International Law*, Cairo: Arab Renaissance House.
- Al-Issa, Firdous (2017). *Methods of investigation in Israeli detention centers between the use of psychological theories and professional ethics*, 1st edition, Commission of Prisoners and Ex-Detainees Affairs, Ramallah, Palestine.
- Amnesty International (2015). *The State of Human Rights in the World*, 1st edition, London: Amity International.
- Commission of Detainees and Ex-Prisoners Affairs (2020). *Annual Report 2020: Prisoners caught between the hammer of occupation crimes and the anvil of the Corona virus*, Ramallah, Palestine.
- Ghazlan, Fleij and Musa, Samer (2019). *Al-Wajeez in International Humanitarian Law*, Baghdad: Iraqi Library of International Law.
- Hamdouna, Raafat (2018). *Creative Aspects in the History of the Captive Palestinian National Movement from 1985 to 2015*, Palestinian Ministry of Information, Palestine.

Ministry of Detainees and Ex-Prisoners Affairs (2012). The policy of medical negligence in the occupation prisons claims the lives of prisoners in light of the silence of the international community, Ramallah, Palestine.

Naqvi, Yasmin (2002). Prisoner of War Status Controversial, International Review of the Red Cross.

Qaraqe`, Issa (2022). The Revolution of Love and Life in the Prisons of the Israeli Occupation, Haifa: The Library of Everything.

Saadallah, Omar (1997). The development of codification of international humanitarian law, 1st edition, Beirut: Dar Al-Gharb Al-Islami.

Solene, Françoise (2006). The Practical Dictionary of Humanitarian Law, translated by Muhammad Masoud, 1st Edition, Beirut: Dar Al-Ilm for Millions.

The Commission for the Affairs of Palestinian Detainees and Ex-Prisoners (2020). Annual Report 2019: Israeli Occupation Crimes Against Families, Ramallah, Palestine.

The International Committee of the Red Cross (2014). International Humanitarian Law: Answers to Your Questions, Geneva, Switzerland.

## **2. Scientific Journals and Conferences**

Abdel-Aty, Salah (2017). Towards a National Strategy Supportive of the Issue of Prisoners in Occupation Prisons, Policy Committee, Masarat Center, Ramallah, Palestine.

Abu Al-Nasr, Abdel-Rahman and Saad, Osama (2014). The Status of Prisoners of War and Detainees in International Humanitarian Law: An Empirical Study of Palestinians in Occupation Prisons, Journal of the Islamic University of Islamic Studies, Volume 22, Issue (1), 473-519.

- Al-Obeidi, Bushra (2010). *International Criminal Violations of the Rights of the Child*, Beirut: Al-Halabi Human Rights Publications.
- Awad, Muhammad (1966). *Studies in International Criminal Law*, *Journal of Law and Economics*, No. (2).
- El-Sarsawy, Mohamed (2013). *Violations of the rights of Palestinian prisoners in Israeli prisons in accordance with international conventions and covenants*, research submitted to the conference "Palestinian Prisoners Towards Freedom", held at the Islamic University, Gaza, Palestine on October 7-8, 2013.
- Farraj, Abdul Razzaq (2021). *The Palestinian Captive Movement: Reality and Challenges*, *Journal of Palestinian Studies*, No. (126), 73-85.
- Francis, Sahar (2014). *The Position of Palestinian Prisoners in International Humanitarian Law*, *Journal of Palestinian Studies*, No. (98), 106-117.
- Ghoneim, Abdul Rahman (2018). *Israeli violations of the rights of Palestinian prisoners in international humanitarian law*, *Jabal Human Rights Magazine*, No. (26).
- Marton, Ruhama (2012). *From the personal to the political prisoners, the involvement of Israeli doctors in the torture and cruel treatment of prisoners*, *Adalah Journal - The Legal Center for Arab Minority Rights in Israel and Physicians for Human Rights and Al Mezan Center for Human Rights, Gaza, Part 1*, pp. 10-14.
- Muhammad, Mohiuddin and Al-Taher, Sadiq (2022). *The responsibility of the Israeli occupation for its crimes in Palestine*, *Academic Journal for Legal and Political Research*, 6(2), 23-47.
- Qabaa, Kamal. *"Prisoners of the Palestinian Resistance and International Humanitarian Law"*, a research paper submitted to the International Conference on the Issue of Prisoners in Israeli Occupation Prisons, held in Jericho on 24-25/9/2009.

Qaraqe`, Issa (2001). Palestinian Prisoners in Israeli Prisons after Oslo 1993-1999, Birzeit: Institute of International Studies - Birzeit University.

### **3. University papers**

Al-Hamouz, Ayed (2014). Psychological toughness and its relationship to some Israeli methods of torture against Palestinian prisoners in Hebron Governorate, an unpublished master's thesis, Al-Quds University, Abu Dis.

Al-Shamrani, Ali (2006). Islam's Policy in the Treatment of Prisoners of War: A Comparative Fundamental Study, Unpublished Master's Thesis, Naif Arab University for Security Sciences, Riyadh, Saudi Arabia.

Barghouti, Nidaa (2013). Prisoners of War in International Law: A Study of General Rules and Their Applications to Palestinian Detainees in Israeli Prisons, Ph.D. thesis, Political Science, Cairo University, Cairo, Egypt.

Dumaq, Najah (2005). The legal status of Palestinian prisoners in the light of international humanitarian law, an unpublished master's thesis, Al-Quds University, Abu Dis, Palestine.

Qatam, Jihad (2017). Israeli Violations of Palestinian Prisoners and Detainees in International Humanitarian Law: An Applied Study of Forced Feeding Law, Unpublished Master's Thesis, Al-Quds University, Abu Dis, Palestine.

### **4. Internet articles**

Abu al-Khair, Mustafa. "International legitimacy and Guantanamo Bay," *Donia al-Watan* (April 24, 2008), <https://pulpit.alwatanvoice.com/articles/2008/04/26/131365.html>, accessed at: 2/12/2023.

Abu El-Hain, Khaled (2010). The experience of families with Palestinian children between child rights and their psychological and social remnants, Child Care and Development Center, [www.atofula.net/ar/default.asp?contentID=69](http://www.atofula.net/ar/default.asp?contentID=69), accessed at: 10/15/2022.

Addameer Association for Prisoner Care and Human Rights. “Administrative Detention,” (April, 2020), available at:<https://www.addameer.org/ar/content/%D8%A7%D9%84%D8%A7%D8%B9%D8%AA%D9%82%D8%A7%D9%84-%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D9%8A>, accessed at: 3/12/2023.

Addameer Prisoner Support Association for Human Rights (2009). “Special episode on military courts,” <https://www.addameer.org/ar/content/>, accessed at: 2/1/2023.

Addameer Prisoner Support Association for Human Rights (2015). Military courts of the Israeli occupation and the Fourth Geneva Convention, available online at: [https://www.addameer.org/ar/israeli\\_military\\_judicial\\_system/military\\_courts](https://www.addameer.org/ar/israeli_military_judicial_system/military_courts), accessed at: 2/5/2023.

Al Mezan Center for Human Rights. “Al-Mezan Center for Human Rights calls on the Israeli Prison Service Administration to stop discrimination and take adequate measures and measures to confront the Corona virus and protect Palestinian detainees,” (March 10, 2020), <https://mezan.org/post/30103>, accessed at: 2/2/ 2022.

Center for Political and Development Studies. “The Center for Political and Development Studies holds a dialogue meeting with European and human rights activists

about the Corona pandemic in the Gaza Strip under the Israeli blockade,” (October 3, 2020), <https://fimeddernegi.com/tag/>, accessed at: 2/1/2023 .

Commission of Detainees and Ex-Prisoners Affairs (2019). The reality of Palestinian prisoners and their difficult living conditions in the Israeli occupation prisons (end of the year 2018-31 May 2019), <http://cda.gov.ps/index.php/ar/ar-prisoner-movement-2/2017-06-01-06-53-33/6913-2018-31-2019>, accessed at: 3/13/2021.

Cook, Jonathan (2010). Secret Prison 1391 Live Images of Human Terrorism, Mizan Foundation for Human Rights (July 3, 2016), [www.meezaan.org](http://www.meezaan.org), accessed at: 9/27/2022.

Dugard, John. “The Legal Status of Palestinian Prisoners in Occupation Jails,” United Nations Organization, (April, 2012), <https://www.un.org/depts/dpa/qpal/docs/2012%20Geneva/P2%20John%20Dugard%20AR.pdf>, accessed at: 2/4/2023.

Fares, Kaddoura. “Medical negligence in the occupation prisons caused the death of 48 prisoners,” (May 23, 2010), [https://www.wafa.ps/ar\\_page.aspx?id=CRyhhGa547231325916aCRyhhG](https://www.wafa.ps/ar_page.aspx?id=CRyhhGa547231325916aCRyhhG), accessed at: 2/1/2023.

Farwana, Abdel Nasser. “Palestinian detainees and the period before the occupation,” (November 2, 2022), <https://hadfnews.ps/post/108415/>, accessed at: 2/2/2023.

Farwana, Abdel Nasser. Health conditions in Israeli prisons and detention centers, Al-Hadaf News Portal (January 12, 2021).

Hamdouna, Raa`fat (2023). The Palestinian and official Arab position is always supportive of the issue of prisoners, Amad electronic newspaper.

International Committee of the Red Cross. "Occupation and International Humanitarian Law: Questions and Answers," (August 4, 2004), <https://www.icrc.org/ar/doc/resources/documents/misc/634kfc.htm>, accessed at: 7/12/2021.

International Committee of the Red Cross. "What is international humanitarian law?" (December 31, 2014), <https://www.icrc.org/ar/document/what-international-humanitarian-law>, accessed at: 7/23/2021.

Israeli Prime Minister's Office (2021). Prison Service, [https://www.gov.il/ar/departments/prison\\_service/govil-landing-page](https://www.gov.il/ar/departments/prison_service/govil-landing-page), accessed at: 1/8/2021.

Issa, Hanna. "Israel defies international agreements by seizing land and accelerating settlement," (June 19, 2019), [https://wafa.ps/ar\\_page.aspx?id=64rvLOa856707138408a64rvLO](https://wafa.ps/ar_page.aspx?id=64rvLOa856707138408a64rvLO), accessed at: 1/4/2023.

Issa, Hanna. "The legal effect of Palestine's accession to international agreements," (Amad Media), <https://www.amad.ps/ar/post/117609>, accessed at: 2/4/2023.

Jadallah, Murad. "The Legal Framework for the Treatment of Palestinian Prisoners and Detainees - Regulations of the Prison Service in the Eye of International Law," The Palestinian Badil Center, <https://www.badil.org/ar/publications/haq-al-awda/issues/items/2905.html>, accessed at: 3/3/2023.

Khuffash, Fouad (2012). Brutal methods and methods used to torture Palestinian prisoners, Ahrar website for prisoner studies and human rights, [www.ahrar.ps](http://www.ahrar.ps), accessed at: 10/10/2022.

Ministry of Interior and National Security. "The Ministry of Prisoners holds the occupation responsible for the lives of the Negev prisoners," (July 13, 2011), <https://moi.gov.ps/home/post/27666>, accessed on 4/2/2023.

Palestine Liberation Organization Research Center, <https://www.prc.ps>, accessed at: 1/4/2023.

Palestinian Ministry of Foreign Affairs and Expatriates. "The Palestinian position towards the issue of prisoners," (January 20, 2019) <http://www.mofa.pna.ps/en-us/mediaoffice/politicalstatement>, accessed at: 2/5/2023.

Palestinian News and Information Agency (WAFA). "The number of prisoners in the occupation prisons during the year 2020," (December, 2020), [https://info.wafa.ps/ar\\_page.aspx?id=M19Zz3a27785477082aM19Zz3](https://info.wafa.ps/ar_page.aspx?id=M19Zz3a27785477082aM19Zz3), accessed at: 8/16/2021.

Palestinian news and information agency WAFA. "Prisoners' institutions: The occupation arrested 7,000 Palestinians during the year 2022," (January 1, 2023), <https://www.wafa.ps/Pages/Details/62065>, accessed at: 1/22/2023.

Qafisha, Moa`taz, and Adel, Ihsan. "The results of Palestine's accession to the Third Geneva Convention and its impact on the classification of Palestinians detained in Israeli prisons," The Asian Journal of International Law, Raya Media Network (November 22, 2021), <https://www.raya.ps/news/1119628.html>, accessed at: 2/2/2023.

The Arab Organization for the Red Crescent and the Red Cross. “Prisoners of War and International Humanitarian Law,” (October, 2020), <https://arabrerc.org>, accessed at: 1/5/2023.

The Commission for the Affairs of Palestinian Detainees and Ex-Prisoners (2016). Systematic Torture of Prisoners in Occupation Prisons, Palestine News Network, (January 7, 2016), [www.pnn.ps/news/183683](http://www.pnn.ps/news/183683), accessed at: 10/2/2022.

The Commission of Detainees and Ex-Detainees Affairs. “Catastrophic conditions experienced by sick prisoners in the so-called Ramla Prison Hospital,” (August 31, 2021), <http://cda.gov.ps/index.php/ar/ar-news-2/9326-2021-08-31-06-33-30>, accessed at: 1/9/2021.

The Commission of Detainees and Ex-Detainees Affairs. “The nature of health violations to which sick prisoners are exposed,” (March 19, 2018), <http://cda.gov.ps/index.php/ar/ar-enthakat-2/ar-medical-negligence/4768-2017-12-26-09-42-05>, accessed at: 8/17/2021.

The Commission of Detainees and Ex-Detainees Affairs. “The Prisoners’ Commission submits a request to the Haifa Magistrate’s Court to dissect the body of the martyr Saadia Farajallah and hand her body over to her family,” (July 3, 2022), <http://cda.gov.ps/index.php/ar/ar-prisoner-movement/2017-06-01-06-53-33/83-fastnews/10974-2022-07-04-05-49-50>, accessed at: 11/29/2022.

The Israeli All-Haq Foundation. “Intelligence information (classified information) about prisoners,” (May 13, 2022), <https://www.kolzchut.org.il/ar>, accessed at: 12/1/2023.

The Israeli Information Center for Human Rights in the Occupied Territories "B'Tselem".

“Administrative Detention,” (January 1, 2017),  
[https://www.btselem.org/arabic/administrative\\_detention](https://www.btselem.org/arabic/administrative_detention), accessed at:  
9/1/2021.

The Israeli Information Center for Human Rights in the Occupied Territories (B'Tselem).

Data on Palestinians Detained by Israeli Security Forces (28 April 2021),  
[https://www.btselem.org/arabic/statistics/detainees\\_and\\_prisoners](https://www.btselem.org/arabic/statistics/detainees_and_prisoners), accessed  
at: 8/23/2021.

The Ministry of Detainees and Ex-Detainees Affairs. “The policy of solitary confinement

is escalating in prisons,” (March 28, 2013),  
[www.shasha.ps/more.php?id=54248](http://www.shasha.ps/more.php?id=54248), accessed at: 10/1/2022.

The Palestinian National Council. Fattouh sends a message to human rights organizations

and the international community and its organizations on the need to form an  
impartial commission of inquiry to investigate the reasons for the death of the  
captive Saadia Farajallah, (July 3, 2002),  
<https://www.palestinepnc.org/news/item/853-2022-07-03-09-56-57>,  
accessed at: 7/24/2022.

US Department of State - Bureau of Democracy, Human Rights, and Labor (2020).

Country Reports on Human Rights Practices for 2020, available at:  
<https://il.usembassy.gov/wp-content/uploads/sites/33/EA-ISRAEL-HRR-2020-ARA-FINAL.pdf>, accessed at: 2/1/2023.

**Third: Personal Interviews**

An interview from the freed prisoner, Safi Al-Rushdi, on 2/2/2023.

An interview with Mr. Ashraf Deais, Director of Public Relations at the Palestine Red Cross Office, Ramallah Branch, on: 9/27/2022.

An interview with Mrs. Suha Musleh, head of the Palestinian Red Cross office in Ramallah branch, on: 9/27/2022.

An interview with the Minister of the Prisoners' Affairs Authority (Qadri Abu Bakr) on 2/17/2023.

**Forth: English References****Journals and Periodicals**

Basoglu, M. (2009). Cruel and inhuman treatment causes more mental damage than physical torture, *American Journal of Orthopsychiatry*, 79(2), 135-145.

**Internet**

Addameer (Prisoner Support and Human Rights Association). Addameer's statement on World Health Day, 7<sup>th</sup> April, 2020, retrieved at <http://www.addameer.org/news/addameer%E2%80%99s-statement-world-health-day>, last visited: 12/3/2021.

Palestinian Center for Human Rights (PCHR) (2015). Crimes of torture in Palestinian prisons and detention centers, <http://webcache.googleusercontent.com/search?q=cache:fgWLAO4mMh8J:library.mas.ps/files/1419.aspx%3Fdown%3D1+&cd=47&hl=en&ct=clnk&gl=ps>.

United Nations. Economic and Social Council, Committee on Economic, Social and Cultural Rights, Twenty second session, Geneva, 25 April-12May 2000, Agenda item3, <https://undocs.org/E/C.12/2000/4>, last visited: 28/8/2021.

Wahbe, M. (2012). Physical and mental health of long-term Palestinian political prisoners: A qualitative study, Mailam School of Public Health, Columbia University, [www.thelancet.com/health-in-the-occupied-Palestinian-territory](http://www.thelancet.com/health-in-the-occupied-Palestinian-territory), visited at: 1/10/2022.

World Medical Association. WMA declaration of Malta on hunger strikers, (5, Dec. 2022), <https://www.wma.net/policies-post/wma-declaration-of-malta-on-hunger-strikers/>, last visited at: 1/1/2023.

## Appendix

Arab American University

Ramallah Site



الجامعة العربية الأمريكية

موقع رام الله

### الملحق "أ"

#### الاستبانة

عزيزي المستجيب

تم إعداد دراسة بعنوان (( أوضاع الأسرى والمعتقلين الصحية في ظل الانتهاكات الإسرائيلية للقانون الدولي الإنساني )) كمنظاب للحصول على درجة الماجستير في العلوم السياسية، وقد تم اختيار شخصكم الموقر للإجابة عن تساؤلات الدراسة، علماً بأن الهدف من هذه البيانات هو لأغراض البحث العلمي فقط، لذا نرجو الإجابة عن جميع الأسئلة بكل شفافية وموضوعية، وأعدكم بسرية التعامل مع إجاباتكم.

مع الشكر الجزيل على تعاونك

إعداد الطالب: حسن أبو عين

إشراف: د. سنية الحسيني

#### الجزء الأول: المعلومات العامة:

الاسم الرباعي (اختياري) .....

الجنس:

ذكر  أنثى

العمر:

25 سنة فما دون  35-26 سنة  45-36 سنة

55-46 سنة  56 سنة فأكثر

المؤهل العلمي:

ثانوية عامة فما دون  دبلوم / بكالوريوس  دراسات عليا

سنوات الإعتقال :  أقل من 5 سنوات  من 5-10 سنوات

من 10-15 سنة  من 15-20 سنة

أكثر من 20 سنة

## الجزء الثاني: الإصابة

هل تعرضت للإصابة؟		<input type="checkbox"/> نعم <input type="checkbox"/> لا
في اي مرحلة تعرضت للإصابة؟	<input type="checkbox"/> الاعتقال	<input type="checkbox"/> أثناء النقل (الترحيل) <input type="checkbox"/> التحقيق
إذا كانت الإجابة نعم / يرجى تحديد مكان الإصابة؟		
نوع الإصابة	<input type="checkbox"/> الرصاص الحي <input type="checkbox"/> الرصاص المطاطي <input type="checkbox"/> الضرب	غيرها <input type="checkbox"/>
اين تم نقلك بعد الإصابة؟	<input type="checkbox"/> المشفى <input type="checkbox"/> مركز التوقيف <input type="checkbox"/> السجن	

## الجزء الثالث: الحالة الصحية

هل أصبت بمرض أثناء فترة اعتقالك؟	<input type="checkbox"/> نعم <input type="checkbox"/> لا
متى أصبت أو بدأت تظهر عليك الأعراض المرضية؟	<input type="checkbox"/> قبل الاعتقال <input type="checkbox"/> أثناء الاعتقال <input type="checkbox"/> أثناء التحقيق <input type="checkbox"/> خلال فترة الاعتقال
هل تم مراعاة حالتك الصحية في حالة الإصابة أو المرض قبل الاعتقال أو أثناء الاعتقال أو التحقيق؟	<input type="checkbox"/> نعم <input type="checkbox"/> لا
متى تم اكتشاف مرضك بعد الشعور بالأعراض؟	<input type="checkbox"/> مباشرة بعد الوصول إلى عيادة السجن <input type="checkbox"/> استغرق مدة طويلة؟؟ وضح.....
عند ظهور الأعراض المرضية عليك أثناء فترة الاعتقال، هل تفاعلت معك إدارة السجن الإسرائيلية بسرعة؟	<input type="checkbox"/> نعم <input type="checkbox"/> لا
هل تم عرضك على طبيب مختص؟	<input type="checkbox"/> نعم <input type="checkbox"/> لا
بعد معرفة طبيعة المرض أو الإصابة، ما هو العلاج الذي قدم إليك؟	<input type="checkbox"/> مسكنات <input type="checkbox"/> العلاج الملائم <input type="checkbox"/> لا اهتمام، ولم يقدم لي أي علاج يرجى التوضيح:.....
هل أبدت إدارة السجن الإسرائيلية اهتمام خاص بك نظرا لحالتك الخاصة من طعام أو شراب أو أغطية؟	<input type="checkbox"/> نعم <input type="checkbox"/> لا
هل تم تقديم العلاج حسب التوصيات؟	<input type="checkbox"/> نعم <input type="checkbox"/> لا
هل تم تحديد وجوب إجراء عملية جراحية؟	<input type="checkbox"/> نعم <input type="checkbox"/> لا إذا كانت الإجابة بنعم، متى تم تحديد موعد العملية؟
هل تم تنفيذ العملية؟	<input type="checkbox"/> نعم <input type="checkbox"/> لا إذا كانت الإجابة بلا، لماذا تم تأجيلها؟.....

## الجزء الرابع: الأوضاع المعيشية في السجن:

هل كان الطعام المقدم لك داخل السجن كافياً كما ونوعاً؟	<input type="checkbox"/> نعم	<input type="checkbox"/> لا
هل تم وضعك في الخارج بالشتاء القارص؟	<input type="checkbox"/> نعم	<input type="checkbox"/> لا
هل كانت غرف وأقسام السجن تتسع لعدد محدد من الأسرى؟	<input type="checkbox"/> نعم	<input type="checkbox"/> لا
هل كنت تعاني من الإكتظاظ في أقسام السجن المقيم فيه؟	<input type="checkbox"/> نعم	<input type="checkbox"/> لا
هل كنت تعاني من الروائح الكريهة في الغرف؟	<input type="checkbox"/> نعم	<input type="checkbox"/> لا
هل عانيت من نقص للأغطية اللازمة في فصل الشتاء القارص؟	<input type="checkbox"/> نعم	<input type="checkbox"/> لا
هل تعرضت للحر الشديد والرطوبة العالية داخل قسم السجن؟	<input type="checkbox"/> نعم	<input type="checkbox"/> لا
هل أصابك أحد الأمراض الجلدية بسبب قلة النظافة داخل السجن؟	<input type="checkbox"/> نعم	<input type="checkbox"/> لا
	<input type="checkbox"/> نعم	<input type="checkbox"/> لا

## التوقيع:

توقيع الأسير:

الاسم..... التوقيع..... التاريخ.....

اسم الباحث الميداني

الاسم..... التوقيع..... التاريخ.....

## الملحق ب: أسئلة المقابلة

Arab American University  
Ramallah Site



الجامعة العربية الأمريكية  
موقع رام الله

### عزيزي المستجيب

تم إعداد دراسة بعنوان (( أوضاع الأسرى والمعتقلين الصحية في ظل الانتهاكات الإسرائيلية للقانون الدولي الإنساني )) كمتطلب للحصول على درجة الماجستير في العلوم السياسية، وقد تم اختيار شخصكم الموقر للإجابة عن تساؤلات الدراسة، علماً بأن الهدف من هذه البيانات هو لأغراض البحث العلمي فقط، لذا نرجو الإجابة عن جميع الأسئلة بكل شفافية وموضوعية، وأعدكم بسرية التعامل مع إجاباتكم.  
مع الشكر الجزيل على تعاونك

إعداد الطالب: حسن أبو عين

إشراف: د.

### أولاً: المعلومات الشخصية

- مكان العمل: .....
- سنوات الخبرة: .....
- المسمى الوظيفي: .....

ثانياً: يرجى الإجابة عن التساؤلات الآتية من وجهة نظرك الشخصية؟

1. كيف كانت ظروف اعتقالك، هل جاءت نتيجة استدعاء أم تمت ملاحظتك من قبل الأجهزة الأمنية الإسرائيلية؟

.....  
.....

2. كيف يمكن وصف الحياة اليومية التي يعيشها الأسرى والمعتقلون الفلسطينيون؟

.....  
.....

3. ما درجة توفر الرعاية الأولية للأسرى المرضى في سجون ومعتقلات الاحتلال الإسرائيلية؟

.....  
.....

4. يرجى وصف الآليات والإجراءات المتبعة لفحص الأسرى المرضى داخل عيادات السجون الإسرائيلية؟

.....  
.....

5. ما درجة المعاناة النفسية التي يعيشها الأسرى والمعتقلون الإداريون في السجون الإسرائيلية، وخصوصاً الأسرى المرضى والجرحى؟

.....  
 .....

6. هل يمكنك وصف مشهد لحالات من الأسرى المرضى الذين اضطروا لإجراء عمليات جراحية وكيف تم التعامل معهم من قبل مصلحة السجون الإسرائيلية؟

.....  
 .....

7. كيف يحمي الأسير والمعتقل الفلسطيني نفسه من تفشي الأمراض والأوبئة في بيئة السجن الإسرائيلية؟

.....  
 .....

8. برأيك، هل يمكن إدانة إسرائيل على الانتهاكات التي تمارسها في حقوق الأسرى والمعتقلين الفلسطينيين في الجانب الصحي؟

.....  
 .....

مع الشكر

## الملحق "ج":

## الجدول الإحصائية: نتائج إجابة الأسرى والمعتقلين على فقرات الاستبانة

جدول (1): توزيع أفراد العينة بناء على متغير الجنس

المتغير	الفئات	التكرار	النسبة المئوية
الجنس	ذكر	75	86.2
	أنثى	12	13.8
المجموع		87	%100

جدول (2): توزيع أفراد العينة بناء على متغير العمر

المتغير	الفئات	التكرار	النسبة المئوية
العمر	25 سنة فما دون	13	14.9
	26-35 سنة	48	55.2
	36-45 سنة	17	19.5
	46-55 سنة	6	6.9
	56 سنة فأكثر	3	3.4
المجموع		87	%100

جدول (3): توزيع أفراد العينة بناء على متغير المؤهل العلمي

المتغير	الفئات	التكرار	النسبة المئوية
المؤهل العلمي	ثانوية عامة فما دون	50	57.5
	دبلوم / بكالوريوس	31	35.6
	دراسات عليا	6	6.9
المجموع		87	%100

جدول (4): توزيع أفراد العينة بناء على متغير سنوات الاعتقال

المتغير	الفئات	التكرار	النسبة المئوية
سنوات الاعتقال	أقل من 5 سنوات	25	28.7
	من 5-10 سنوات	36	41.4
	من 10-15 سنة	9	10.3
	من 15-20 سنة	8	9.2
	أكثر من 20 سنة	9	10.3
المجموع		87	%100

جدول (5): التكرارات والنسب المئوية للإجابة عن الأسئلة المتعلقة بالجزء الأول (الإصابة)

السؤال	الفئات	التكرار	النسبة المئوية
1. هل تعرضت للإصابة	نعم	60	69.0
	لا	27	31.0
2. في أي مرحلة تعرضت للإصابة	لا	27	24.1
	الاعتقال	21	24.1
	أثناء التنقل (الترحيل)	9	10.3
	التحقيق	30	34.5
3. إذا كانت الإجابة بنعم: يرجى تحديد مكان الإصابة	كامل الجسم	21	24.1
	الوجه / العينين / الفك والأسنان	20	23.0
	اليدين والقدمين	13	14.9

6.9	6	البطن / الظهر	4. نوع الإصابة
-	-	الرصاص الحي	
11.5	10	الرصاص المطاطي	
57.5	50	الضرب	
-	-	أخرى	5. أين تم نقلك بعد الإصابة
23.0	20	المشفى	
24.1	21	مركز التوقيف	
21.8	19	السجن	
%100	87		المجموع

جدول (6): التكرارات والنسب المئوية للإجابة عن الأسئلة المتعلقة بالجزء الثاني (الحالة الصحية)

النسبة المئوية	التكرار	الفئات	السؤال
88.5	77	نعم	1. هل أصبت بمرض أثناء اعتقالك
11.5	10	لا	
11.5	10	لا	2. في أي مرحلة تعرضت للإصابة
11.5	10	قبل الاعتقال	
8.0	7	أثناء الاعتقال	
24.1	21	أثناء التحقيق	
44.8	39	خلال فترة الاعتقال	
11.5	10	نعم	3. هل تم مراعاة حالتك الصحية في حالة الإصابة و المرض قبل الاعتقال أو أثناء الاعتقال أو التحقيق
88.5	77	لا	
11.5	10	لا	4. متى تم اكتشاف مرضك بعد الشعور بالأعراض؟
24.1	21	مباشرة بعد الوصول إلى عيادة السجن	
64.4	56	استغرق مدة طويلة	
10.3	9	نعم	5. عند ظهور الأعراض المرضية عليك أثناء فترة الاعتقال، هل تفاعلت معك إدارة السجن الإسرائيلية بسرعة؟
89.7	87	لا	
79.3	69	نعم	6. هل تم عرضك على طبيب مختص؟
20.7	18	لا	
65.6	57	مسكنات	7. بعد معرفة طبيعة المرض أو الإصابة، ما هو العلاج الذي قدم إليك؟
11.5	10	العلاج الملائم	
23.0	20	لا اهتمام ولم يقدم لي أي علاج	
11.5	10	نعم	8. هل أبدت إدارة السجن الإسرائيلية اهتمام خاص بك نظراً لحالتك الخاصة من طعام أو شراب أو إعطية؟
88.5	77	لا	
32.2	28	نعم	9. هل تم تقديم العلاج حسب التوصيات
67.8	59	لا	
32.2	28	نعم	10. هل تم تحديد وجوب إجراء عملية جراحية؟
67.8	59	لا	
33.3	9	نعم	11. هل تم تنفيذ العملية في الوقت المحدد؟
66.7	18	لا	
%100	87		المجموع

جدول (7): التكرارات والنسب المئوية للإجابة عن الأسئلة المتعلقة بالجزء الثالث (الأوضاع المعيشية في السجن)

السؤال	الفئات	التكرار	النسبة المئوية
1. هل كان الطعام المقدم لك داخل السجن كافياً كماً ونوعاً؟	نعم	2	2.3
	لا	85	97.7
2. هل تم وضعك في الخارج بالشتاء القارص؟	نعم	66	75.9
	لا	21	24.1
3. هل كانت غرف وأقسام السجون تتسع لعدد محدد من الأسرى؟	نعم	20	23.0
	لا	67	77.0
4. هل كنت تعاني من الاكتظاظ في أقسام السجن المقيم فيه؟	نعم	74	85.1
	لا	13	14.9
5. هل كنت تعاني من الروائح الكريهة في الغرف	نعم	87	100
	لا	-	-
6. هل عانت من نقص في الأغطية اللازمة فصل الشتاء القارص؟	نعم	87	100
	لا	-	-
7. هل تعرضت للحر الشديد والرطوبة العالية داخل قسم السجن؟	نعم	87	100
	لا	-	-
8. هل أصابتك أحد الأمراض الجلدية بسبب قلة النظافة داخل السجن؟	نعم	30	34.5
	لا	57	65.6
9. هل كنتم تحصلون على الوقت الكافي للخروج إلى الساحة (الفورة)؟	نعم	72	82.8
	لا	15	17.2
10. هل تم اتباع الإجراءات الصحية الوقائية المناسبة فترة تفشي جائحة كورونا؟	نعم	5	5.7
	لا	82	94.3
المجموع		87	%100

## الملخص

يعتبر الأسرى والمعتقلون أصل قضية الصراع الدائر، فهم الذين قدّموا أرواحهم ورهنوا حياتهم في سبيل التحرر من قيود الاحتلال وممارساته التعسفية بحق الشعب الفلسطيني، وقد جاءت هذه الدراسة بهدف التعرف إلى التحديات والصعوبات التي تواجه الأسرى الفلسطينيين في حياتهم داخل السجون والمعتقلات الإسرائيلية، بدءاً من مرحلة الأسر أو الاعتقال، مروراً بمرحلة التحقيق، وانتهاءً بمرحلة الحكم عليه وقضاء فترة الحكم، حتى خروجه من السجن والتحرر من قيود الأسر، سواء أتم ذلك بعد انتهاء فترة الحكم المفروضة عليه، أم من خلال صفقة تبادل الأسرى بين الجانبين الفلسطيني والإسرائيلي.

وتأتي أهمية الدراسة كونها تُبرز الانتهاكات الإسرائيلية للقانون الدولي الإنساني والمتعلقة بالأسرى والمعتقلين الفلسطينيين بشكل عام، وبحقوقهم الصحية على وجه التحديد، إذ أكدت جميع الموثائق والمعاهدات الدولية على وجوب التعامل مع أسرى الحرب والمعتقلين بكل احترام، فلا إهانة لكرامتهم، ولا استخدام لأساليب التعذيب والتهديد لانتزاع اعترافاتهم، بل لهم كل الحق في العيش بكرامة، والتمتع بكافة الحقوق في السجون والمعتقلات، سواء من خلال توفير بيئة صحية آمنة لهم داخل المعتقلات والسجون، أم في توفير الغذاء والماء النقي والملابس والأدوية، وتجهيز بيئة صحية ملائمة مع تخصيص أطباء لمتابعة أوضاعهم الصحية، ومعالجتهم بدون تقصير.

وللتعرف إلى الواقع الذي يعيشه الأسرى والمعتقلين الفلسطينيين في سجون الاحتلال الإسرائيلية، تم الرجوع لمجموعة من الدراسات السابقة الصادرة من الجهات الرسمية وعدد من الباحثين المعنيين بالشأن الفلسطيني، بالإضافة إلى تصميم استبانة وتوزيعها على مجموعة من الأسرى المحررين والذين ما زالوا قيد الاحتلال، وذلك بهدف استقصاء آرائهم نحو تلك الانتهاكات التي يقوم بها الاحتلال الإسرائيلي بحق الأسرى الفلسطينيين كشهادات حية لذلك، فضلاً عن إجراء مقابلات ميدانية مع مجموعة من المسؤولين والجهات الرسمية المعنية بشؤون الأسرى الفلسطينيين.