

נשים נגד הכיבוש ולמען זכויות אדם
نساء ضد الاحتلال ومن اجل حقوق الانسان
Women against the Occupation and for Human Rights



Innocent Until Proven Guilty - Not in this Court
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ENGLISH TRANSCRIPT
Attorney Sahar Francis, CEO of Addameer organization



Photo: +972 Magazine

Attorney Sahar Francis, General Director of Ramallah-based Addameer Prisoner Support and Human Rights Association.

An attorney by training, she joined the association in 1998, first as a human rights lawyer, then as head of the Legal Unit. With over sixteen years of human rights experience, including human rights counseling and representation, Ms. Francis also was on the Board of Defence for Children International – Palestine Section for 4 years, and currently sits on the Board of the Union of Agricultural Work Committees.

The following is a transcript of Sahar Francis' presentation at a MachsomWatch Zoom event.

A recording of the first part of this event in English is available on our YouTube channel: [Innocent Until Proven Guilty - Not in this Court](#)

Here is the full Hebrew Recording [Military Courts Zoom Hebrew Recording](#)

Good evening everyone, thanks for inviting me to participate. Talking about the military courts can take hours.

One cannot analyze and discuss it in an hour or two.

Perhaps I'll begin by telling you about our organization.

We are a Palestinian NGO founded at the end of First Intifada, in late 1991, to represent Palestinians arrestees and prisoners of the occupation, both in Israel's military and in civil courts.

Naturally, I am referring to Palestinians arrested by the occupation and on political grounds.

The organization began with legal representation but now we also visit and collect information, lodge complaints of torture, pay monthly visits to all arrestees and prisoners and collect information, using it to produce materials we distribute in our campaign and work, namely advocacy and lobbying, internationally and locally.

After the PA was formed, we also began to represent arrestees and prisoners in Palestine held by the PA for political reasons.

Our single office is in Ramallah, and our lawyers appear in all military courts including in the PA, so we get to meet Nitza Aminov and the other MachsomWatch friends weekly, until the pandemic...

We've missed you, Nitza.

I must emphasize that from day one the occupation apparatus knew why it was creating the system called military courts.

Not to enforce international conventions and implement humanitarian law and international human rights law in the Occupied Territories, on the contrary. Soon enough they knew that they need an institution to help them rule and persecute for many years and exploit – what Nitza talked about, fines and bail that Palestinians pay the courts, and also, to outlaw any activity that might resist the occupation.

If we look at the courts' work not only as running the trial by international standards of a fair trial.

The essential problem at the courts is defining violations.

Occupation laws allowed the occupier to create military courts but limited this to concrete matters, focusing non severe anti-occupation activity. Not to stone-throwing, or political activity certainly not entering Israel without permits to look for work, or simple things like drug possession or building without permits, all the light violations we see, certainly not traffic violations.

If we look at the number of cases opened at military courts a year, at least for the past 5 years, over 60% are illegal entry into Israel, and traffic violations. And not cases related to rioting or security related, as Israel tries to show.

So what's the point of military courts then if not controlling Palestinian society?

As Nitza said, since the 1967 occupation, any political and civil activity is outlawed.

Last year *Humans Rights Watch* published a very important report, analyzing all 52 years of occupation, how military edicts and courts have fully taken over political life and civil rights in Palestinian society. How founding political parties is forbidden, or belonging to student movements, labor unions etc.

So it's not just stone-throwing that's considered a violation.

Writing posts on social media is called incitement.

Of course, the main problem in defining violations is inaccuracy in describing the violation itself, and its time and place, leaving much room for the military prosecution to present variations, which makes it so hard to manage cases and arrive at a deal.

The second problem is the development of military edicts all these years, it's very complicated, detailing them from 1967 up to now.

When occupation began there was no military court of appeals, just basic military court and that's it.

Judges were not legally trained, that began only in 2004.

Imagine that just one of three sitting judges has legal training, not even a judge in civilian life, just some legal education, and 2 soldiers.

Soldiers with no legal training sentencing people to life imprisonment.

From 1967 until 2004 tens of thousands of people were tried by non-judges.

Naturally in 1988 the military court of appeals was opened.

Much can be said about differences and discrimination of courts in Israel and the entire legal procedure, and the activity of military courts.

Although in recent years there's an attempt to change military ruling as well as judges who also use rulings of Israeli courts, its Supreme Court, district courts, and many principles are applied.

But as a lawyer working there since 1996, I think it's dangerous.

The main question is whether occupation has the authority to judge the occupied who are not Israeli citizens but foreign nationals the same way citizens are tried? I don't think a legal system, especially in international law, can condone decades of occupation that becomes annexation, imposing Israeli sovereignty through military courts on Palestinian land and people.

International law forbids this, it's even considered a war crime.

Naturally when we talk about Palestinian prisoners it's not just courts.

We claim that even their transfer to prisons inside Israel is a war crime.

According to the 4th Geneva Convention, an occupying power may not do this, the same way that it may not establish settler-colonies.

There's the issue of fair trial, also controversial, evidence abounds that there is no fair trial in military courts, most cases end up as Nitza said, in plea bargains. Arrestees must, for many reasons, not just mistrusting the system, but to be spared torture and humiliation on the way from prison to court, and over a year and a half of sessions.

It spares them knowing ... Sometimes it saves years.

If you wish to proceed to providing evidence in court you could be sentenced more harshly than a plea bargain.

There's the issue of attorney access to information, most of them in the military courts have not been trained in the Israeli legal system.

The Israeli law and military courts are not studied in Palestinian universities so they don't have the training needed to manage cases, hear evidence and reach conclusions at the military courts.

I also wish to mention the fines: these add up to 20-21 million NIS a year.

This doesn't include bail which can sometimes be returned.

As Nitza said, when Journalist Amira Hass raised the question what is done with the money, the answer was "development in the Occupied Territories."

Certainly in the settler-colonies and courts, not Palestinian villages and population.

THREE CASES

I'll describe 3 current cases that reflect how things run in military courts:

Amal Nahli is a Palestinian minor arrested the 2nd time a fortnight ago. He was arrested in October 2020, questioned and indicted for throwing stones.

He is 16-years-old and very ill, his respiratory system is affected. He suffers very ill health especially now in jail with the Covid-19 situation. We managed to get him out on bail.

The military prosecution wanted him held in administrative detention, the judge went over confidential material and ruled: no way, not administrative detention. The judge rejected the prosecution's demand and Amal was released.

Less than 2 months later Amal was re-arrested, sent to 60 months of administrative detention, on the claim of new information.

At his arrest he was questioned for hours at Ofer and was told that he spoke on the phone (meaning that the phone is bugged) with some friend and their conversation was the "security" reason for the arrest.

Naturally there is no indictment or confidential material that we, as his lawyers, can see and the judge approved the military

order to detain him for 6 months although we presented an Israeli doctor's medical report who examined Amal when he was released after surgery for issues with his lungs. At that time a non-malignant tumor was removed, but he needs ongoing treatment.

Despite Corona we couldn't convince the court that his health issue should take precedence over "security" accusations against a 16-year-old.

What could he be involved with that poses such a threat requiring 6-months in jail without a trial?

The 2nd case is the torture of **Samer 'Arbid**.

I suppose everyone remembers his name from 2020 when he nearly died under torture. With all the media attention surrounding this case, the state he was in when hospitalized, later we, as his attorneys, collected information including medical reports, and his own signed recollection of what he underwent under torture, 11 broken ribs.

Only now in Feb 2021, the Attorney General ruled the case closed, and did not prosecuting Shabak.

In fact Samer is not the only case. Perhaps here lines were crossed of torture that nearly cost a person his life, but torture is routine.

Over 90% of the people questioned by the Shabak undergo torture, through sleep deprivation and lengthy extremely painful tied positions.

We published a short report with graphic descriptions of these positions.

In Samer's case blows received in this tied position appear to have brought on his dire state. Still the case was closed.

We requested the military court for access to the relevant material, such as a description of what was done and for how long, everything we need as lawyers in order to build our defense in the courtroom.

So far, over a year after this case, we still have not received this.

All cases in military courts are based more or less on confessions obtained under torture, the court doesn't find fault with this.

That's why detainees settle for plea bargains instead of going all the way.

The last case is that of **Khaleda Jarar**. It's her 3rd arrest.

First she was persecuted by the Shabak. This began in late 2014, when a restraining order was issued.

She lives in Ramallah, and was ordered to move to Jericho for 6 months.

God knows the difference between Ramallah and Jericho.

Naturally she refused and protested in Ramallah at the Palestinian legislature.

The order was rescinded a month later.

But 4 months later, in 2015, Khaleda was arrested in her Ramallah home, first ordered into administrative detention.

We opened a campaign. Within less than a month she was indicted for all her activity as a member of the Palestinian Parliament from 2009 until her arrest.

What kind of danger did Khaleda's activity going back to 2009, arrested only in 2015? We first managed to free her on bail, but they appealed and naturally the military court of appeals accepted.

Khaleda remained incarcerated.

17 people testified against her, all freed, all had been detained and were now free.

It took us 8 months to hear 4 witnesses in this case, which is why finally she said "I can't go on coming to court twice a week too much suffering and without an end in sight."

That's why she made the plea bargain. They insisted on the indictment, changing it from 12 violations to 2, leaving membership in a hostile organization, and incitement to take Israeli soldiers hostage, unproven by the evidence.

They insisted on this because they knew the rest was immaterial, and this was the only violation that meant so much to them.

So the pleas bargain was made and she was sentenced to 15 months, released, and then arrested and sent again to 20 months Administrative Detention, released yet again and re-arrested in the mass arrests of 2019.

First, they blew up the story as if Khaleda was linked to the militant attack at ‘En Bubin that led to the murder of an Israeli woman.

Now her indictment has nothing to do with this matter, it’s her political party responsibility and her membership in the Palestinian Parliament.

Again, for her political activity Khaleda sits in prison over a year.

We claim she has already been in administrative detention for 20 months apparently for the same reason, they insist it’s unrelated. How unrelated?

If you admit that her activity was from 2016 until her arrest, and she was in administrative detention from 2017 to 2019, for 20 months?

What kind of political activity did she lead from June 2016 to September 2019 when for 20 months she was in Administrative Detention?

This is the persecution most people whom Nitza mentioned undergo. Dozens, hundreds of activists are persecuted or in administrative detention, or indicted for incitement, political activity, student activity.

It takes some students 10 years to get their BA – as they are arrested 4, 5, 6 times during their studies and put in Administrative Detention or serve a prison sentence for student activity in their own university, associated with cultural programs, not at all anti-occupation.

The mere fact that you're a student in some student group already means you endanger the security of the State of Israel.

NOTE:

To round up this discussion we attach a link to an article by Sahar Francis published in the Guardian, on March 6, 2021:

[Israeli's military courts for Palestinians are a stain on international justice.](#)