



Addameer Prisoner Support and Human Rights Association
Submission to the UN Universal Periodic Review
Update on Effective Implementation of State Recommendations
11 August 2011

In this submission, Addameer provides information under **Section B: Background and Framework** and **Section C: Promotion and Protection of Human Rights on the Ground** of the Human Rights Council's Guidelines for the Preparation of Information under Universal Periodic Review (UPR).

Section B: Background and Framework

A. Scope of International Obligations

Topic 1: Death penalty

Recommendation 1 (Argentina): Evaluate the possibility of ratifying the second optional protocol to the International Covenant on Civil and Political Rights to abolish the death penalty
Recommendation 141 (Slovenia): Move towards the formal and final legal abolition of the death penalty

1. As of 1 August 2011, Israel had not ratified the second optional protocol to the ICCPR. The death penalty therefore continues to exist both in Israeli civilian law, applicable to Israeli citizens, Palestinian residents of East Jerusalem and Palestinians from Gaza, and in Israeli military law, applicable to Palestinians from the West Bank. The death penalty has only been carried out once under civilian law, in 1962 the case of the State of Israel v. Adolf Eichman. Under military law, the death penalty has never been implemented although the sentence has been handed down a number of times, only to be commuted to life sentences. However, Addameer is concerned that as long as provisions allowing the use of the death penalty remain in place in military orders, military prosecutors will continue to seek the death penalty for Palestinians from the West Bank.

Topic 2: Torture

Recommendation 12 (Brazil): Ratify the Optional Protocol to the Convention against Torture
Recommendation 32 (Denmark): Ratify the Optional Protocol to the Convention against Torture
Recommendation 94 (Mexico): Ratify the Optional Protocol to the Convention against Torture

2. As of 1 August 2011, Israel had not ratified the Optional Protocol to the Convention against Torture.

Recommendation 33 (Denmark): Recognize the competence of the Committee against Torture to examine complaints against Israel

3. As of 1 August 2011, Israel had not recognized the competence of the Committee against Torture to examine complaints against Israel.

Section C: Promotion and Protection of Human Rights on the Ground

B. Implementation of international human rights obligations, taking into account applicable international humanitarian law

Topic 1: Equality and non-discrimination

Children

Recommendation 57 (Italy): Apply the definition of a child as a person under 18 also in the Palestinian territories, in line with article 1 of the Convention on the Rights of the Child

4. Approximately 700 Palestinian children (under the age of 18) from the West Bank are prosecuted every year through Israeli military courts after being arrested, interrogated and detained by the Israeli army.¹ As of 31 May 2011,² there were approximately 211 Palestinian children, including 39 children under the age of 16, detained in three Israeli prisons: Ofer, Megiddo, and Rimonim.

5. Since Israel underwent the UPR in December 2008, the definition of a child applied by Israel to the occupied Palestinian territory has not changed and continues to differ from the definition of a child under Israeli civilian law. Military Orders 132 and 378, which were in force in December 2008, have since been replaced, along with 18 other military orders, by a single military order: **Order Regarding Security Provisions [Consolidated Version] No. 1651**, which entered into force in May 2010. Military Order 1651 continues to classify Palestinians under the age of 16 as follows: A Palestinian “child” is a person under 12 years of age; a person of the age of 12 and older yet under the age of 14 is defined as “juvenile” while a “young adult” is an individual of 14 years of age and older yet under the age of 16.³ Between the ages of 16 and 18, Palestinian children continue to be treated as adults with regard to arrest, detention, sentencing and imprisonment.

Topic 2: Right to life, liberty and security of the person

Administrative Detention

Recommendation 35 (Denmark): Ensure that administrative detention is carried out in accordance with international human rights standards

Recommendation 55 (Ireland): Actively seek to address these concerns and review the use of administrative detention, which denies people their rights to liberty, due process and fair trial

6. As of 31 May 2011,⁴ there were approximately 229 Palestinians held in administrative detention. As of 4 August 2011, this number included 3 women and 18 PLC members. Since Israel underwent the UPR in December 2008, the Israeli military authorities have continued to use administrative detention in a way that does not meet international standards set by international humanitarian, human rights and customary law.

¹ See DCI-Palestine, *Child Detention*, (available at: <http://www.dci-palestine.org/content/child-detention>)

² Latest available statistics from the Israeli Prison Service.

³ Military Order No. 1651. Chapter A. General Provisions.

⁴ Latest available statistics from the Israeli Prison Service.

7. International law permits administrative detention under specific, narrowly defined circumstances. In accordance with the International Covenant on Civil and Political Rights (ICCPR) there must be a public emergency that threatens the life of the nation and the Fourth Geneva Convention holds that administrative detention may only be used for “imperative reasons of security”. Furthermore, administrative detention can only be ordered on an individual case-by-case basis, without discrimination of any kind. Administrative detention should not be used as a substitute for criminal prosecution where there is insufficient evidence to obtain a conviction.

8. In practice, however, administrative detention continues to be ordered by Israeli military commanders for vague “security reasons” based on secret evidence, which neither the detainee nor his/her lawyer has access to, in violation of international human rights and humanitarian law.⁵

9. In many of the legal cases pursued by Addameer, administrative detainees spent years in prison after being sentenced for committing violations, in accordance with military orders. When the period ended, however, rather than be released they were placed under administrative detention under the pretext that they still posed a threat to security. Palestinian detainees have spent up to eight years in prison without charge or trial under administrative detention orders.

Release

Recommendation 42 (Egypt): Immediately release all Palestinian, Syrian and other Arab prisoners and detainees

Recommendation 116 (Pakistan): Ensure the release of all prisoners and administrative detainees

Recommendation 129 (Palestine): Ensure the release of all prisoners and administrative detainees

Recommendation 152 (Syria): Commit itself to releasing all Arab prisoners and detainees in Israeli prisons imprisoned for years without trial...

Recommendation 162 (Yemen): Free all Palestinians, Syrian and Arab detainees, including women, children and journalists...

10. As of 31 May 2011,⁶ approximately 5,554 Palestinian political prisoners⁷ remained in Israeli prisons and detention centers. Since 2008, only one prisoner release deal has taken place, with 19 Palestinian women being released on 2 October 2009 in exchange for proof of life of Israeli soldier Gilad Shalit. One of these women, Linan Abu Ghulmeh, has since been rearrested and placed in administrative detention without charge or trial.

Topic 3: Administration of justice and the rule of law

Due Process

⁵ Article 71 of the Fourth Geneva Convention and Articles 9 and 14 of the International Covenant on Civil and Political Rights.

⁶ Latest available statistics from the Israeli Prison Service.

⁷ Defined by Israel as security prisoners, these numbers do not include Palestinian criminal prisoners. The total of Palestinian prisoners in Israeli prisons and detention centers (counting both security and criminal prisoners) is 7,260.

Recommendation 20 (Canada): Ensure that prisoners are informed of charges and evidence against them, have prompt access to counsel of their choice, be charged with a recognizable criminal offence and be given a fair trial

Recommendation 23 (Chile): All detainees be given the reasons for their detention respecting their fundamental rights during detention

Recommendation 160 (United Kingdom): Take immediate action to ensure all cases are reviewed by a court in accordance with fair procedures and that the rights of detainees, particularly the right to a fair trial and family visitations, are upheld

11. Since Israel underwent the UPR in December 2008, no legislative or practical measures have been taken by the Israeli military authorities to ensure that trials of Palestinians in military courts conform to minimum fair trial standards enshrined in international law.

12. Palestinians from the West Bank who are arrested by the Israeli military and charged with security violations (as defined by Israel) and other crimes are prosecuted by two Israeli military courts located in Ofer and Salem in the oPt. Not all Palestinians who are arrested are prosecuted in the military courts; some are released while others are administratively detained without trial. Of those who are charged, approximately 90 percent are convicted,⁸ and of these convictions, the vast majority is the result of plea bargains.⁹

13. As an Occupying Power, Israel has the right under international humanitarian law to establish military courts in the oPt, but applicable international human rights and humanitarian law restrict the jurisdiction of such courts to violations of criminal security legislation. The jurisdiction of Israeli military courts, however, is far broader and includes offenses unrelated to such legislation. Moreover, it is questionable whether the use of military courts to try civilians can ever satisfy the requirements under international human rights law that trials take place before independent and impartial tribunals. International law also guarantees certain fundamental fair trial rights, but these are regularly flouted by Israeli military courts:

14. **The right to prompt notice of criminal charges:** Israeli military orders contain no requirement that the charge be given to the accused without delay, and in a language he or she understands in as required by international law. In practice, information on charges against the accused are often not disclosed by the prosecution until the day of the first hearing, which typically determines whether the accused will remain in detention until the end of the proceedings.

15. **The right to prepare an effective defense:** During interrogation, a detainee can be held for up to 90 days without access to a lawyer. Lawyers acting as defense counsel before the military courts highlight many further obstacles preventing an effective defense, including difficulties in meeting with their clients in detention facilities inside Israel; the lack of proper facilities to hold

⁸ Official Report of the Work of the Military Courts in the West Bank, 2007 (Hebrew) (Military Courts Report 2007).

⁹ Of the 7,563 cases concluded in the military courts in 2007, full evidentiary trials (in which witnesses were questioned, evidence was examined and closing statements were delivered) were conducted in only 93 – or 1.22 percent – of them.

confidential meetings; court documents written in Hebrew; and the provision of incomplete prosecution material.

16. The right to trial without undue delay: Palestinians can be held in custody for eight days before being brought before a judge. Furthermore, a Palestinian can be held without charge for interrogation purposes, by order of a military judge, for an initial period of up to 90 days, which can be extended for another period of up to 90 days. They can therefore be held for a total of 188 days before being charged.

17. The right to interpretation and translation: Israeli jurisprudence provides that a prisoner must be interrogated in his native language and that his statement also be written in that language, but in practice the detainee's confession or statement is frequently written in Hebrew, requiring the detainee to sign a statement he/she cannot understand. Moreover, all proceedings in the military courts are conducted in Hebrew with insufficient or inadequate translation.

18. The right to presumption of innocence: Israeli military orders do not include an explicit provision regarding the presumption of innocence. The exceedingly low rate of acquittals in the military courts, the practice of denying bail to the vast majority of pre-trial detainees, and the uncorrected prosecutorial reversal of the burden of proof against the accused all serve to indicate a strong presumption of guilt built into the military court system.

Topic 6: Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

Human Rights Defenders

Recommendation 3 (Austria): Ensure that human rights defenders are able to carry out their legitimate work in a secure and free environment

19. Since Israel underwent the UPR in December 2008, human rights organizations have noted an escalated campaign of arbitrary restrictions placed by Israeli authorities on Palestinian human rights defenders and civil activists.

20. Between June and August 2009, Addameer carried out research in 16 villages affected by the path of the Annexation Wall Israel is constructing illegally in six different West Bank districts. The aim of the research was to document cases of arrest and detention of Palestinian, international and Israeli human rights defenders and demonstrators protesting the construction of the Wall. In these villages, Addameer documented **at least 292** confirmed cases of Palestinian human rights defenders who were detained and arrested between 2003 and August 2009, including many children as young as twelve. Since then, the number has continued to increase. **As of 1 June 2011, there had been at least 186 documented cases of arrests of human rights defenders in 2011 alone.** This figure includes those who take part in the weekly demonstrations against the Wall and settlements in the West Bank, residents of East Jerusalem protesting Israel's expansionist policies, and Palestinians who took part in the non-violent demonstrations marking



Nakba Day on 15 May. **Approximately 118 of those arrested this year were under the age of 18, and some as young as 14.**¹⁰

21. Israel has adopted a **policy of arrest, detention, intimidation, threats and, at times, collective punishment** against communities who take part in weekly demonstrations and other non-violent actions against the Wall and settlements. Leading Palestinian human rights activists, prominent figures, such as mayors and teachers, and members of the Popular Committees, who are instrumental in coordinating weekly protests and advocacy efforts including legal cases, are often personally targeted and arrested in an attempt to sideline them from organizing the protests, or to discredit them and their efforts. Local cameramen and photographers, as well as members of the press, are also targeted.

22. Some of the protestors and human rights defenders are prosecuted in the Israeli Military Courts under **Military order 101**, which was issued by the Israeli military commander in August 1967 and is still in effect in the occupied West Bank despite the Oslo Agreement and the beginning of the Peace Process. **Military order 101 criminalizes many civic activities including:** organizing and participating in protests; taking part in assemblies or vigils; waving flags and other political symbols; printing and distributing of political material. In addition, the order deems any acts of influencing public opinion as prohibited “political incitement”. Under the heading “support to a hostile organization”, the order further prohibits any activity that demonstrates sympathy for an organization deemed illegal under military orders, be it chanting slogans, waving a flag or other political symbols.

23. **Youth and children** as young as 12 are often the first ones to be arrested in mass arrest campaigns, either during demonstrations, immediately after them or during night raids. Evidence suggests that the purpose of their arrest and detention is threefold. First, targeting the youngest and most vulnerable is intended to exert pressure on their family and the entire community to put an end to all advocacy efforts and social mobilization. Second, Israeli Security Agency officers often arrest children for recruitment purposes. Addameer has collected testimonies suggesting that children from Wall-affected communities are routinely asked to become informants and provide information on both prominent figures involved in advocacy efforts and other children participating in demonstrations. Lastly, arrest is also used as a strategy to deter children from participating in demonstrations and from throwing stones at the Wall or other targets. However, while stone-throwing is the most common charge used against them, children are regularly arrested indiscriminately and remanded in detention with little or no evidence, with the military court often relying only on soldiers’ testimonies to convict. During the process of arrest and detention, children are subjected to harsh interrogation techniques and ill-treatment, and are routinely coerced into signing confessions and revealing names of participants at the protests. In one such case, a 14-year-old boy from the village of Nabi Saleh was arrested on 23 January 2011 in the middle of the night at his home and interrogated for five hours without access to a lawyer or family member. He was forced to sign a statement in Hebrew, a language he does not understand, which incriminated two of the key protest organizers in his village, Bassem and Naji

¹⁰ Although minors are not typically regarded by the international community as human rights defenders, in the oPt they often represent the highest numbers regularly participating in demonstrations.



Tamimi. Since then, Naji Tamimi has been sentenced to one year imprisonment and a fine of 10,000 shekels (\$2,914) on the basis of the child's confession, while Bassem is currently on trial.