



Addameer Prisoner Support and Human Rights Organization

**Shadow Report for Consideration Regarding Israel's Third Periodic Report
to the UN Human Rights Committee**

International Covenant on Civil and Political Rights (1966)

Submitted July 2009

Addameer Prisoner Support and Human Rights Association (Addameer) is a Palestinian non-governmental, civil institution that focuses on human rights issues. Established in 1992 by a group of activists interested in human rights, the center offers support to Palestinian prisoners and detainees, advocates for the rights of political prisoners, and works to end torture through monitoring, legal procedures and solidarity campaigns.

Addameer (Arabic for conscience) believes in the importance of building a free and democratic Palestinian society based on justice, equality, rule of law and respect for human rights within the larger framework of the right to self-determination. To this end, Addameer's work comprises four main program areas, namely: legal aid, research and documentation, advocacy, and the Training and Awareness Program.

Addameer is a member of the Executive Committee of the Palestinian NGO Network, the Palestinian Council of Human Rights Organizations, and works closely with international human rights organizations such as Amnesty International, Human Rights Watch, OMCT and FIDH to provide regular information on the situation of Palestinian political prisoners and detainees.

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TABLE OF CONTENTS

| | |
|--|-----------|
| Introduction | 5 |
| Application of the ICCPR to the OPT | 5 |
| Scope of this Submission | 7 |
| Article 1: The Right of Self Determination..... | 8 |
| Arrest and Detention of Palestinian Political Leaders | 8 |
| The Annexation Wall | 9 |
| Article 4: State of Emergency | 10 |
| Article 7: Prohibition on Torture..... | 10 |
| Torture and Ill-Treatment during Arrest..... | 10 |
| Torture and Ill-Treatment during Interrogation and Detention | 11 |
| Lack of Legitimate Investigation into Claims of Violence, Torture and Ill-Treatment..... | 12 |
| Article 9: Prohibition of Arbitrary Detention..... | 14 |
| Administrative Detention | 14 |
| The ‘Unlawful Combatants Law’ | 17 |
| The Right to Prompt Notification of Criminal Charges | 18 |
| Meeting with Legal Counsel | 18 |
| Discriminatory Detention Laws | 19 |
| Language of Interrogation | 20 |
| Article 10: Conditions of Detention..... | 20 |
| Prison Conditions | 20 |
| Female Prisoners | 21 |
| Juvenile Prisoners..... | 22 |
| Prison Locations..... | 23 |
| Article 14: Judicial Processes and Guarantees | 24 |
| Independence of the Judiciary | 24 |
| Equality Before the Courts – Discriminatory Sentencing | 25 |
| Trial without Undue Delay..... | 25 |
| The Right to Interpretation and Translation | 26 |
| Privilege against Self-Incrimination..... | 27 |
| Presumption of Innocence | 28 |
| Defense Lawyers and Equality of Arms..... | 29 |
| Minors Tried before the Military Courts | 30 |
| Article 15: Non-Retroactivity of Laws..... | 32 |
| Article 19: Right to Freedom of Expression | 33 |
| Article 21: Right to Peaceful Assembly..... | 34 |
| Article 22: Right to Freedom of Association | 35 |
| Appendices | 37 |

Appendix 1: Case Study: Prosecution of Palestinian Political Leaders..... 37

Appendix 2: Case Study: Prosecution of Palestinian Political Leaders..... 39

Appendix 3: Case Study: Lack of Investigation into Claims against Israeli Soldiers 42

Appendix 4: Case Study: Administrative Detention Used as a Political Leverage Tool..... 44

Appendix 5: Case Study: Indefinite Detention under the Unlawful Combatant Law..... 46

Appendix 6: Report Summary: Israeli Prison and Detention Center Conditions 47

Appendix 7: Case Study: Administrative Detention of Minors, Denial of Education..... 50

Appendix 8: Chart: Length of Detention & Access to Counsel, Judiciary 53

Appendix 9: Case Study: Prosecution of Minors before the Military Courts 54

Appendix 10: Case Study: Retroactive Application of Criminal Liability..... 57

Appendix 11: Case Study: Protests against the Wall, Denial of Right to Peaceful Assembly 58

Appendix 12: Arrests used to Suppress Protests against the Wall, Cooperation with the United Nations 60

INTRODUCTION

Since the Israeli occupation of Palestinian territory in 1967, Palestinians have been charged with offenses under Israeli military law and tried in military courts. Over the last 42 years, an estimated 700,000 Palestinians have been detained under Israeli military orders in the occupied Palestinian territory (OPT), including the West Bank, East Jerusalem and the Gaza Strip, which constitutes approximately 20 percent of the total Palestinian population in the OPT, and as much as 40 percent of the total male Palestinian population.¹

There are currently at least 8,100 Palestinians in Israeli prisons and detention centers, of which 60 are women and 390 are children.

Application of the ICCPR to the OPT

Israel has consistently maintained that its obligations under the International Covenant on Civil and Political Rights (ICCPR or the Covenant)² do not apply to areas that are not subject to its sovereign territory and jurisdiction, i.e., to the OPT. To support this contention, it cited in its 2001 State Report to the Human Rights Committee (the Committee) the “well-established” distinction between international human rights and humanitarian law, as well as a variety of agreements executed between Israel and Palestine purportedly giving evidence of a transfer of all responsibility under the Covenant to the Palestinian National Authority.³ Israel makes no mention of the extension of its obligations to the OPT in its most recent Periodic State Report.⁴

However, “well-established” principles of international law clearly indicate that Israel’s obligations under the Covenant continue to apply to the OPT.

The Relationship between International Humanitarian and Human Rights Law

Rather than the mutually exclusive regimes as argued by Israel, legal scholars and international courts and agreements increasingly reflect the opinion that international human rights law is applicable along with humanitarian law during times of armed conflict.⁵ Article 4(1) of the ICCPR explicitly states that some of the non-derogable human rights they provide are to be respected even “in times of war.” The Committee further stated in General Comment No. 31:

“[T]he Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While in respect of certain Covenant rights,

¹ *Human Rights Situation in Palestine and Other Occupied Arab Territories: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian territories occupied since 1967*, John Dugard, A/HRC/7/17, 21 January 2008.

² International Covenant on Civil and Political Rights, 999 UNTS 171, 6 I.L.M. 368. (March 23, 1976) [hereinafter ICCPR].

³ Israel, Second Periodic Report to the Human Rights Committee, CCPR/C/ISR/2001, 4 December 2001, p. 5.

⁴ Israel, Third Periodic Report to the Human Rights Committee, CCPR/C/ISR/3, 21 November 2008.

⁵ Noam Lubell, *Challenges in Applying Human Rights Law to Armed Conflict*, 87 INT’L REV. RED CROSS 737, 740 (2005) (available at: [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-860-p737/\\$File/irrc_860_Lubell.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-860-p737/$File/irrc_860_Lubell.pdf)), citing International Court of Justice, *Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, July 9, 2004, at paras. 107-112.

more specific rules of international humanitarian law may be especially relevant for the purpose of the interpretation of the Covenant rights, both spheres of law are complementary, not mutually exclusive.”⁶

Similarly, in the *Nuclear Weapons* Advisory Opinion, the International Court of Justice (ICJ) officially rejected the traditional idea that humanitarian law takes wholesale precedence over human rights law during armed conflict.⁷ In the *Legal Consequences* Advisory Opinion, the ICJ opined that “in certain circumstances human rights are fully applicable to situations of armed conflict, the question of when depending on the norm and its context. Human rights law is not en bloc overridden by the application of international humanitarian law.”⁸

Thus, the traditional position that human rights agreements like the ICCPR could only be applied in peacetime has clearly been rejected as a lasting principle of international law. The accepted rule is instead that, during an armed conflict, international humanitarian law (IHL) is the *lex specialis* and international law, including human rights law, is in abeyance only as needed.⁹

Israel’s Remaining Obligations under the Covenant

Israel also alleges in its 2001 State Report to the Committee that any obligation it might have borne in regards to international human rights implementation and protection in the OPT were transferred in a series of agreements between Israel and the Palestinian Authority.

However, the ICJ has determined that a State’s obligations under international human rights treaties and international customary law are engaged wherever it exercises effective control over territory, including over non-sovereign Occupied Territory. As Israel currently exercises effective control over the OPT, it therefore retains its obligations in the OPT under international law.

Moreover, although the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip transferred some legal authority over parts of Palestine, it also specifically states in Article XIX that Israel’s human rights obligations persist in accordance with international law.¹⁰

⁶ Human Rights Committee, General Comment No. 31 U.N. Doc. CCPR/C/21/Rev.1/Add.13, May 26, 2004.

⁷ Heike Krieger, *A Conflict Of Norms: The Relationship Between Humanitarian Law And Human Rights Law In The ICRC Customary Law Study*, JOURNAL OF CONFLICT & SECURITY LAW, Vol. 11 No. 2 (2006), p. 7.

⁸ *Legal Consequences* Advisory Opinion, *supra* note 5, at para. 106.

⁹ Dr. Hans-Joachim Heintze, Senior Researcher at the Ruhr-University Bochum, Presentation at the University of Bochum Institute for International Law of Peace and Armed Conflict, “Human Rights Standards, International Humanitarian Law and Refugee Law – Issues of Implementation”, p. 4 (available at: http://www.ruhr-uni-bochum.de/ifhv/news/Tashkent_Speech%20Heintze.pdf). See also, *id.*, p.9, citing Heinrich B. Reimann, “Menschenrechtsstandard in bewaffneten Konflikten”, in: Christophe Swinarski (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, ICRC and Nijhoff, Geneva and The Hague, 1984, p. 773: (“The Martens Clause also confirms that the rules of the laws pertaining to armed conflicts cannot be regarded as the final regulation of the protection of human beings, but can be supplemented with human rights law protection.”).

¹⁰ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, Art. XIX.

“Israel and the Council shall exercise their powers and responsibilities pursuant to this Agreement with due regard to internationally-accepted norms and principles of human rights and the rule of law.”

Furthermore, despite the other agreements mentioned by Israel in their Second Periodic Report as justifying their transfer of authority for the implementation and protection of rights under the Covenant, as Israel continues to exercise effective de facto control over nearly all areas of the OPT, it must therefore retain its responsibility for those areas under the ICCPR.

It is true that agreements executed during the last 15 years have resulted in Israel and the Palestinian Authority sharing some overlapping responsibility for the protection of human rights in the OPT. While Israel cannot be held responsible for failed implementation of human rights protected by the Covenant by the Palestinian Authority in the limited sphere in which they have authority,¹¹ it must be recognized that Israel's authority over the OPT extends far beyond the confines of Areas B and C. In practice, Israel's military laws governing the OPT apply with no effective distinction to citizens of Area A as well as of B and C, and Israel routinely conducts military incursions into all areas of the OPT.

Scope of this Submission

Thus, as Israel maintains responsibility under the Covenant, and has not notified other States of any relevant derogations from its human rights obligations in the OPT (beyond a derogation from article 9 at signing), where limitations on human rights are permitted on security grounds, they must be strictly necessary and proportionate to meet the security threat. However, violations of human rights recognized and protected by the Covenant by Israel in the OPT are wide ranging and ongoing.

The following submission will present evidence to this effect, and will provide suggested questions for the Committee to pose to Israel.

It should be noted that a consequence of Israel's denial of the application of the Covenant to the OPT, and its reporting responsibilities therein, is that it therefore provides no relevant information on the application of the ICCPR to the OPT in its State Reports to the Committee. Therefore, the following submission will not always contain comparative claims or figures by Israel's most recent State Report, as they simply do not exist.

Finally, we limit our comments in this submission to issues under the Covenant related to detention, the prison system and criminal justice, as these issues are the primary focus of Addameer's mission and work in the occupied Palestinian territory.

¹¹ Since the Oslo Accords in 1993, the West Bank has been divided into three areas: Area A – full Palestinian civil and military control (effective in urban areas only); Area B – full Palestinian civil control and joint Israeli-Palestinian military control; and, Area C – full Israeli civil and military control. In practice, however, these distinctions have little application in the Israeli military courts.

ARTICLE 1: THE RIGHT TO SELF-DETERMINATION

Article 1 of the Covenant recognizes the right of all peoples to self-determination, to freely determine their political status and freely pursue their economic, social and cultural development. The Palestinian people, even though constituting a largely non-self-governing territory, similarly enjoy this inalienable right.¹² Israel's policy of widespread and arbitrary arrests and detention, especially of Palestinian political leaders, and ongoing, illegal construction of the Annexation Wall in the West Bank violate the rights of the Palestinian people under this article.

Arrest and Detention of Palestinian Political Leaders

Although international law and Israeli courts have held that the government cannot detain someone for their political opinions, in practice, Palestinian political leaders are routinely arrested and detained as part of an ongoing Israeli effort to suppress Palestinian political processes – and, as a necessary result, political sovereignty and self-determination. In the most recent incident, on 19 March 2009, political leaders from a number of parties were taken into custody. Among those arrested were: Palestinian Legislative Council members Ayman Daraghmeh from Jenin, Azzam Salhab and Nizar Ramadan from Hebron and Khaled Tafish from Bethlehem, all of whom are part of the Change and Reform electoral bloc; Nasser Shaer, former Deputy Prime Minister and Minister of Education, and Mazen Ar-Rimawi, Head of the Change and Reform Deputies' office in Ramallah. (See case of Khaled Tafish, Appendix 1) Also arrested were Adnan Asfour and Rafat Nasif, both political leaders affiliated with Hamas. Most of the individuals detained in the March sweep have been held in Israeli detention since 2006 and were only recently released. (See case of Wael Abdu Rahman, Appendix 2) These latest arrests are merely a continuation of Israel's broad policies to levy collective punishment on the Palestinian people and to stifle their civic efforts, in particular the Hamas movement, following the capture of Corporal Gilad Shalit on 25 June 2006. Four days after Cpl. Shalit was captured by Hamas at the Kerem Shalom Crossing on the Gaza Strip border, Israeli forces seized dozens of leaders and activists associated with Hamas in coordinated raids across the West Bank.

There are currently 40 PLC members in Israeli detention – nearly one third of all Palestinian legislators. Because of this, the Palestinian Legislative Council has not been able to reconvene since mid-2007. Addameer would therefore urge the Committee to clarify that political expression is a basic right of self determination and to ask the Israeli authorities the following:

- What measures is the government taking to ensure the freedom of political expression, which is fundamental to the right of self-determination in the OPT?

¹² General Assembly resolution 2625 (XXV) of 1970, held by the ICJ to constitute customary international law, affirmed the illegality of the acquisition of territory resulting from the threat or use of force, as well as the right of peoples in non-self-governing territories to self-determination. The ICJ has recognized the latter as a right *erga omnes*, i.e., an inalienable right, the protection of which all states have a legal interest. See, Pieter H.F. Bekker, *The World Court Rules that Israel's West Bank Barrier Violates International Law*, July 2004 (available at: <http://www.asil.org/insigh141.cfm>); See also, *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, 102, para. 29, 30 June 1995.

- What measures is the government taking to ensure that no other individuals are detained for engaging in legitimate political activity and that all those thus detained are released immediately?

The Annexation Wall

Five years have passed since the International Court of Justice issued its advisory opinion on the Annexation Wall in the occupied Palestinian territory¹³ – where they held in a unanimous opinion that it was illegal and should be dismantled – yet, no significant advance in the situation on the ground has been achieved since then. On the contrary, Israel has denounced the opinion, Wall construction has continued relentlessly, and the consequences of the Wall and its regime for the Palestinian communities affected have been dire. Palestinians have found themselves physically divided, isolated, ghettoized and cut off from farmland and valuable water sources, which are often expropriated for Israeli settlers. Moreover, Israel has set up a complex system of land controls and permits, enforced by the army and border police, to restrain and monitor Palestinians’ freedom of movement and restrict access to their land and other communities. The regime thereby created by the Annexation Wall has had far reaching and detrimental effects on all the Palestinians living in the West Bank.

In villages across the West Bank, local residents have formed committees and taken on a campaign of mass popular resistance to the Annexation Wall, engaging in weekly, and even daily, demonstrations. These communities have faced a staggering level of repression and violence from the Israeli authorities. In recent months, Israeli Occupation Forces (IOF) have intensified repression of the affected villages struggling against the Wall. Thousands of Palestinians living and mobilizing in affected villages have been arrested when opposing land confiscation and annexation, a number of them have been killed, and many more have been injured, sometimes severely.

Addameer contends that the existing and planned route of the Barrier, the operation of its gates, and the adjacent closed military zones [between the Barrier and the 1949 Armistice Line (“Green Line”)] constitute illegal Israeli annexation methods implemented to fuel their ongoing settlement expansion and support their false security narrative in the West Bank. The severe impact of the Annexation Wall on Palestinians outweighs any objectives it may seek to serve, which could be achieved through alternative, less detrimental means.

Addameer would therefore urge the Committee to ask the Israeli authorities the following:

- What action will the Israeli government take to abide by the ICJ ruling, including (1) Stopping the construction of the Wall in the occupied Palestinian territory; (2) Dismantling the sections built to date; and (3) Providing compensation for all damage, including for land confiscation caused by the construction of the Wall?

¹³ *Legal Consequences Advisory Opinion, supra* note 5.

ARTICLE 4: STATE OF EMERGENCY

Israel has claimed to be under a continuous state of emergency since its inception in 1948, and has used this ongoing status as a tool to justify measures derogating from their duties under international law. In its 2003 Concluding Observations to Israel's last State report, the Human Rights Committee stated its concern "about sweeping nature of measures during the state of emergency that appear to derogate from Covenant provisions other than article 9. These derogations extend beyond what would be permissible under those provisions of the Covenant which allow for the limitation of rights." At that time, Israel was conducting a review by its Ministry of Justice of legislation governing states of emergency pending during 2nd UPR,¹⁴ which the Committee urged it to complete as soon as possible. However, according to Israel's 2008 report, the state of emergency in Israel and the OPT is still ongoing, with little legislative progress towards ending it. At the time of the last review, the emergency periods had been shortened to six months as a gesture of the Israeli government's stated intent to ending ongoing state of emergency. The year-long renewal periods were reinstated and continue to this day.

Addameer asserts that, as the Committee previously stated, and as the contents of this submission will show, measures adopted under this ongoing state of emergency are innately discriminatory. Addameer therefore urges the Committee to renew its expression of concern regarding the measures taken by Israel under the ongoing state of emergency, and to ask the Israeli authorities the following:

- Given that the state of emergency has now been ongoing for more than 60 years, what real measures is Israel taking to end the state of emergency and to respect its duties to uphold human rights according to the standards of international law?

ARTICLE 7: PROHIBITION ON TORTURE¹⁵

Torture and Ill-Treatment during Arrest

More than 750,000 Palestinians have been detained by the Israeli military since the occupation of Palestinian territory in 1967. While arrests can occur at any time and in any place, Palestinians are most commonly arrested at checkpoints, off the street, at border crossings and from raids into homes in the middle of the night.

Physical abuse and humiliation of detainees and their families by Israeli forces during arrest remains common. Addameer has documented numerous cases of IOF abuses during and after arrest, including: beating detainees or one of the family members; failure to present arrest orders or the permit issued by the party in charge of issuing the detention order; using relatives and neighbors as human shields; searching the house and destroying property; illegally confiscating property from the house; using police dogs during arrest; throwing stones, opening fire or using "sound bombs" directed at the house before entering; forcing family members to evacuate the

¹⁴ Concluding Observations of the Human Rights Committee: Israel, CCPR/CO/78/ISR, 21 August 2003, para. 12.

¹⁵ "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation".

house after midnight in severe winter weather without taking children and the elderly into consideration; stripping detainees of their clothing. Moreover, once bound and blindfolded, detainees typically are not informed of the reason for their arrest and neither they nor their families are informed where they will be taken. Detainees may be kept waiting, standing or kneeling, for long periods of time before being thrown on the floor of a military jeep, sometimes face down, for transfer to an interrogation center. During the transfer, which can take up to several hours, Israeli soldiers often abuse detainees. Cases of beatings, kicking, insults, threats and deliberate humiliation have been reported.¹⁶

Addameer would therefore urge the Committee to ask the Israeli authorities the following:

- What measures do the Israeli authorities intend to take in order to put a stop to the use of all violence against detainees, their families and property during arrest?

Torture and Ill-Treatment during Interrogation and Detention

In its 2003 Concluding Observations to Israel's Second Periodic Report, the Committee expressed its concern that "interrogation techniques incompatible with article 7 of the Covenant are still reported to be used frequently."¹⁷ It also stated that the necessity defense retained by Israel in the 1999 High Court decision in *The Public Committee Against Torture v. The Government of Israel*¹⁸ is not recognized under the ICCPR, and directed Israel to provide detailed statistics on its use of the necessity defense in intervening years.¹⁹

However, unlawful interrogation techniques remain in use, and such statistics on the necessity defense use have not been provided in Israel's Third Periodic Report. The methods of ill-treatment most frequently alleged to take place during interrogation include: prolonged constraint of movement in an uncomfortable position causing physical pain, (such as tying the suspect to a chair with the hands behind the back, throughout hours or days of interrogation); sleep deprivation; beatings and long periods of solitary confinement in small, windowless and, often, cold cells.

Less common since the 1999 High Court ruling, but still allowed to continue, are the so-called 'military interrogation' techniques, which are applied in combination with the methods already mentioned above. These techniques primarily involve the use of painful stress positions such as the "banana" position, where the detainee is bent backwards over the seat of a chair causing pain to the back, or the "frog" position where the detainee is forced to stand for prolonged periods against a wall with bended knees. Detainees also report the use of tight handcuffs placed on the upper arm for extended periods.

¹⁶ See Addameer Report: *Violations Against Palestinian Prisoners & Detainees in Israeli Prisons and Detention Centers*, December 2007 (available at: http://addameer.info/wp-content/images/violations_against_palestinian_prisoners.pdf).

¹⁷ Concluding Observations of the Human Rights Committee: Israel, *supra* note 14, para. 18.

¹⁸ H.C.J. 5100/94

¹⁹ *Id.*

Addameer is concerned that the use of torture during interrogation and detention will continue to occur as long as interrogators are allowed to act with impunity, sure of their recourse to the “necessity defence”. Addameer would therefore request the Committee to again clarify with Israel that such a defence is contrary to the provisions of the ICCPR, and ask the Israeli authorities the following:

- What measures do the Israeli authorities intend to take in order to put a stop to the use of all torture during interrogation and detention?
- What measures will the Israeli authorities take in order to ensure that the use of torture is not indirectly sanctioned through recourse to the necessity defense?

Lack of Legitimate Investigation into Claims of Violence, Torture and Ill-Treatment

In its 2003 Concluding Observations to Israel’s Second Periodic Report, the Committee instructed that Israel “should ensure that alleged instances of ill-treatment and torture are vigorously investigated by genuinely independent mechanisms and those responsible for such actions are prosecuted.”²⁰ In its Third Periodic State Report, Israel addresses this instruction, providing that, under Israeli legislation, “acts of torture or cruel, inhuman or degrading treatment or punishment are designated as criminal offenses and perpetrators of such offenses are tried and severely punished by the courts.”²¹ The State Report also cited the 2004 Israel Security Agency Law, and the creation of Israeli Security Agency (ISA)²² and IOF complaint procedures as further evidence of their ongoing implementation and compliance with the provisions of article 7 of the Covenant.²³

However, major issues remain regarding the treatment of complaints concerning torture and ill-treatment and the legitimacy of the few investigations that are conducted. Although the phenomenon of ongoing violence against Palestinian civilians and detainees by soldiers is blatantly illegal, it is reinforced by a weak and biased legal system which conducts only a small number of investigations and legal proceedings concerning cases of abuse by Israeli military and intelligence forces.²⁴

By the Numbers: A Failure to Investigate

Criminal investigation of members of the security forces who commit offenses against Palestinians and their property in the West Bank, ranging from manslaughter to abuse to looting, is under the responsibility of the Military Advocate General (MAG), the Military Police Criminal Investigation Department (MPCID) and the Department for the Investigation of Police Officers in the Ministry of Justice.²⁵ These law enforcement agencies have been under severe criticism for their investigation of suspects and prosecution of members of the security forces accused of

²⁰ Concluding Observations of the Human Rights Committee: Israel, *supra* note 14, para. 18.

²¹ Israel, Third Periodic Report, *supra* note 4, para. 173.

²² Formerly known as the General Security Service (GSS).

²³ *Id.*, paras. 174-176, 202-209

²⁴ See Public Committee Against Torture in Israel, *No Defense: Soldier Violence against Palestinian Detainees* (2 June 2008) (available at: <http://www.stoptorture.org.il/en/node/1136>).

²⁵ See Yesh Din, Accountability Project (available at: <http://www.yesh-din.org/site/index.php?page=criminal&lang=en>)

committing such offenses. According to Yesh Din, during the years of the second intifada, 90 percent of MPCID investigations ended with the files being closed and without indictments being filed.²⁶

The IOF has largely failed to investigate and indict its soldiers involved in criminal offenses against Palestinian civilians in the OPT. According to a 2007 Ha'aretz article, results of MPCID investigations of criminal offenses in which IOF soldiers harmed Palestinians and their property, from the beginning of the second Intifada in October 2000 until June 2007, show that some 90 percent of these investigation files were closed with no indictment. Over nearly seven years, 1,091 criminal investigations were opened following offenses which include killing and injury of civilians, abuse, damages to property and others. These investigations resulted in only 118 indictments, of which 101 led to convictions of the accused. The data also show that out of the 239 investigations on killing and injury of Palestinian civilians not involved in the hostilities, only 16 – less than 7 percent of investigations – resulted in convictions.²⁷

Addameer would therefore urge the Committee to ask the Israeli authorities the following:

- Given the low rate of indictments and convictions resulting from inquiries into allegations of abuse of Palestinian civilians, what effective measures do the Israeli authorities intend to take in order to ensure that violators of human rights are brought to justice?

The Investigations that are Conducted are Seriously Flawed

When complaints are filed against an ISA officer, they are transferred by the Attorney General to an ISA official called the “Mavtan” who works in the Ministry of Justice. The Mavtan is responsible for investigating both his ISA colleagues and the detainee who registered the complaint. The conflict of interests in this matter is clear and as a result, not one ISA interrogator has been criminally charged in recent years following complaints handled by the Mavtan. As stated by the Public Committee Against Torture in Israel, “this fact is outrageous, particularly in view of the large number of complaints that were submitted to the authorities and in consideration of the physical and psychological injuries sustained by persons interrogated by the ISA.”²⁸

As discussed above, the number of MPCID investigations is also shockingly low. There is also an institutionalized *laissez-faire* attitude regarding the need for such investigations. (See case of Ashraf Abu Rahma, Appendix 3) In justifying this policy, the MAG's office contends that since the beginning of the al-Aqsa intifada, an armed conflict has been taking place in the OPT, and that the IOF, therefore, is not automatically required to investigate every attack on civilians. However, a significant number of IOF actions – at checkpoints, in dispersing demonstrations and arresting civilians – are normal police actions outside the scope of an armed conflict.

²⁶*Id.*

²⁷ Uri Blau, Kol Ha'ir “Not to Investigate Palestinian Deaths”, Oznik.com, 1 March 2002 (available at: <http://oznik.com/news/020301.html>)

²⁸ See Public Committee Against Torture in Israel website, “1999 to the present”, available at: <http://www.stoptorture.org.il/en/skira1999-present>

Furthermore, intentional attacks on the civilian population are forbidden even during armed conflict, so the army is still required to investigate such attacks. The MAG's office has also argued that the current situation in the OPT does not enable the investigation of every case in which a Palestinian civilian is killed. While MPCID investigators will undoubtedly face difficulties in conducting their investigations, these difficulties cannot justify the failure to even open an investigation.²⁹

Addameer would therefore urge the Committee to ask the Israeli authorities the following:

- In view of the low number of investigations carried out compared to the number of complaints received, what action do the Israeli authorities intend to take in order to ensure that a proper and independent investigation is carried out in every case?

ARTICLE 9: PROHIBITION OF ARBITRARY DETENTION

Addameer is deeply concerned by Israel's continuing policy of administratively detaining Palestinians without charge or trial in violation of the prohibition on arbitrary detention, torture and inhuman or degrading treatment and punishment.

Israel derogated from article 9 upon ratification of the ICCPR in 1991.³⁰ However, Addameer believes that Israel has exceeded the bounds of permissible derogation, given the widespread and routine use of administrative detention levied on Palestinians from the OPT, and all the human rights violations that accompany its administrative detention regime detailed in this section. As the Committee noted in its 2003 Concluding Observations, "the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the occupied territory, entailing restrictions on access to counsel and to the disclosure of full reasons of the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively than what in the Committee's view is permissible pursuant to article 4."³¹

Administrative Detention

There are currently at least 500 Palestinians from the West Bank and East Jerusalem being detained in administrative detention by Israel, of which three are women and one is a child under the age of 18. All are detained without charge and without any real ability under the law to challenge their detention.

²⁹ B'Tselem website, Military Police investigations during the al-Aqsa intifada (available at: http://www.btselem.org/English/Accountability/Investigatin_of_Complaints.asp)

³⁰ Israel, Derogations: Notifications under Article 4(3) of the Covenant, 3 October 1991 (available at: <http://www.iilj.org/courses/documents/IsraelDerogations.pdf>)

³¹ Concluding Observations of the Human Rights Committee: Israel, *supra* note 14, para. 12.

Administrative Detention used as Tool of Collective, Punitive Punishment

While the Covenant permits administrative detention during armed conflict, such detention is only permitted under very specific and narrowly defined circumstances: There must be a public emergency that threatens the life of the nation, and detention can only be ordered on an individual, case-by-case basis without discrimination of any kind.³² However, Israel has claimed to be under a continuous state of emergency sufficient to justify use of administrative detention since its inception in 1948, and the actual use of administrative detention by Israel is often not for its intended security purposes. Administrative detention in the OPT is ordered by a military commander and typically grounded on “security reasons” that, in practice, are broad enough to include non-violent political subversion and virtually any act of resistance against the occupation. Administrative detention is also used by Israel – in direct contravention to international law – as a measure of collective punishment, and as a substitute for criminal prosecution where there is insufficient evidence to obtain a conviction. (See the case of Anis Abu Elainin, Appendix 4) Vague and expansive definitions of “security” in the laws further enable this practice.³³

Addameer would therefore urge the Committee to clarify that administrative detention must be used only as an exceptional measure, on a case-by-case basis, without discrimination of any kind, and to ask the Israeli authorities the following:

- Given that administrative detention is an extreme measure of control, what action will the Israeli authorities take in order to prevent its misuse, in particular to stop the practice of administrative detention being used as a collective measure or as form of punishment in lieu of criminal prosecution?

Discriminatory Detention Periods

A Palestinian detainee subjected to an administrative detention order must be brought before a judicial review held in the military courts in a closed hearing³⁴ within eight days of his or her arrest, where a single military judge can uphold, shorten or cancel the detention order. At the review, a summary of the “secret information” regarding the detainee is submitted by the Military Prosecutor; neither the detainee nor his or her lawyer is permitted to see this information.³⁵ The detainee can appeal the decision to detain to the Administrative Detainees Appeals Court, but the reasons for detention are rarely disclosed at the appeals level either.

Prior to April 2002, administrative detention orders had to be reviewed after three months. Detention orders can now be given periods of up to six months. At the end of the initial detention period the order can be renewed for another period of up to six months. There is no limitation on the number of times the initial detention period can be renewed. By comparison, administrative

³² ICCPR, *supra* note 2, Art. 9.

³³ Military Order 1591 empowers Israeli military commanders to detain Palestinians without charge or trial for up to six months if they have “reasonable grounds to presume that the security of the area or public security require the detention”. No definition of “security of the area” or “public security” is given.

³⁴ Thus violating article 14 of the ICCPR.

³⁵ *Id.*

detention under Israeli domestic law³⁶ requires a detainee to be brought before a judge within 48 hours, and orders can be given only up to three month periods.

Addameer would therefore request the Committee to express concern over the lack of equality for Palestinians before the law relevant to administrative detention, and ask the Israeli authorities the following:

- What measures are being taken to correct the obvious discrimination arising from the widespread imposition of administrative detention against Palestinians, as well as the fact that Palestinians are subject to renewable administrative detention orders of up to six months duration, whereas Israelis detained administratively have their orders reviewed on a maximum three monthly basis?

The Use of “Secret Information”

Administrative detention orders are often based on “secret information” collected by the ISA. In the vast majority of administrative detention cases, neither the detainee nor his lawyer is ever given access to this alleged information. Lawyers representing administrative detainees must therefore contend with intolerably vague allegations, typically as broad as “*being a threat to the security of the area*”. Even the specific area and the nature of the threat are left classified.³⁷ This obviously severely limits the ability of the detainee to present a credible defense and emphasizes the arbitrary nature of the proceedings.

Addameer would thus urge the Committee to express concern over the widespread use of “secret information” as a basis for administrative detention, and to ask the Israeli authorities the following:

- What procedural safeguards do the Israeli authorities intend to establish in order to ensure that the arbitrary nature of administrative detention based on the use of “secret information” is minimized?
- What measures do the Israeli authorities intend to put in place to ensure that the use of “secret information” is restricted to cases where there is a legitimate security basis?

The Judicial “Rubber Stamp” and the Inability to Challenge one’s Detention

Of significant concern is the often automatic and categorical, rather than individual, imposition and extension of administrative detention by Israel. Detention proceedings typically follow a common formula comprising the threat the individual poses and an automatic number of months of detention, without any burden of proof requirement to justify an individual’s detention. On the rare occasions where judges order that an individual be released, military commanders can simply issue a new detention order citing “new” secret information, thus keeping the detainee in

³⁶ Emergency Powers Law (Detention) 1979.

³⁷ This is a clear breach of Israel’s obligations under article 14 of the ICCPR, as well as other provisions of international humanitarian and human rights law. See, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (GCIV), Art. 71.

administrative detention. While there may actually be “new” information in some cases, the process nonetheless remains somewhat suspect given the frequency with which it happens.³⁸

For example, in 2007, 3059 administrative detention orders were issued.³⁹ Of these, 793 files were new administrative detention orders; 1,204 renewal orders were confirmed by the judge as drafted, and 732 were confirmed by the judge, but for a shorter length of time than requested in the order.⁴⁰ Just 165 new orders, or about 5.4 percent, were cancelled altogether – 137 orders were cancelled by the judge, and 28 were cancelled by the military governor himself before the judicial review.⁴¹ The figures regarding appeals to administrative detention orders further underline the automatic nature of the imposition of detention, and the impossibility faced by Palestinian detainees who try to fight their detention. In 2007, detainees submitted 2,368 appeals to administrative detention orders, of which the courts accepted 329, or about 1.38 percent.⁴² By comparison, the prosecution submitted appeals in 241 cases in 2007, of which court accepted 162, or about 67 percent.

Thus, in practice, Palestinians can be detained for months, if not years, under administrative detention orders, without ever being informed about the reasons or length of their detention. Detainees are routinely informed of the extension of their detention just days before the former order expires. Under the existing administrative detention procedures, Palestinians have no effective means by which to challenge their administrative detention. Addameer would therefore urge the Committee to ask the Israeli authorities the following:

- Does Israel intend to review its policy of administrative detention per the recommendations of the Human Rights Committee for its compliance with article 9 of the ICCPR?

The ‘Unlawful Combatants Law’

Palestinians residing in Gaza are also subjected to indefinite detention by Israel under The Incarceration of Unlawful Combatants Law (Unlawful Combatants Law).⁴³ Passed in 2002, the Unlawful Combatants Law defines an “unlawful combatant” as a person who takes part in hostile activity against Israel, either directly or indirectly, or belongs to a force engaged in hostile activity against the State of Israel, and who is not entitled to prisoner of war status under IHL.⁴⁴

³⁸ 14,198 extensions of detention were granted in 2007 alone. Official Report of the Work of the Military Courts in the West Bank, 2007 (Hebrew) [hereinafter Military Courts Report 2007].

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Note that this doesn’t mean the detainee was released; it could mean simply that the court reduced one extension of administrative detention time period. The individual’s detention could then simply be extended for another six months after the shortened detention period was over.

⁴³ Incarceration of Unlawful Combatants Law, 5762-2002, 1 (Isr.).

⁴⁴ *Id.*, p. 1. Israel and the United States are the only two countries to recognize “unlawful combatant” as a legal category, as the International Committee of the Red Cross and almost all other states have rejected it. See Knut Dormann, “The legal situation of ‘unlawful/unprivileged combatants’”, International Review of the Red Cross, Vol. 845, N. 849, March 2003. The practical effect of the unlawful combatant designation is to place detainees beyond the protection of international humanitarian law, as well as the ordinary protections of human rights law and criminal law.

The law carries with it a presumption that, as long as hostilities continue, the release of an individual will harm national security unless proven otherwise.⁴⁵ It is thus the detainee who must prove that he or she is not a threat. This practice patently violates the accused's right to a presumption of innocence in any criminal proceeding, and results in a system of indefinite detention justified by mere speculation and stacked heavily against the detainee. While Israeli judges have called for the transfer of cases brought under the Unlawful Combatants Law to ordinary criminal courts whenever possible, this may not be a viable solution – under article 9(b) of the Unlawful Combatants Law, security authorities may issue an order for the detention of an unlawful combatant even if criminal proceedings have been initiated against him under the provisions of any criminal law.

As of May 31, 2009, 14 Palestinians are being held as illegal or unlawful combatants under the Unlawful Combatants Law.

Addameer would therefore request the Committee to urge the Israeli authorities to repeal the Unlawful Combatants Law, and to ask the Israeli authorities the following:

- Given that the Unlawful Combatants Law clearly violates the rights of the accused to the presumption of innocence, what measures does Israel intend to take to either repeal this law or redraft the law in order to bring it in conformity with the provisions of the ICCPR?

The Right to Prompt Notice of Criminal Charges

While Israel complies on a facial basis with the provisions of article 14(3)(a) of the Covenant under Military Order 378, which requires that the “substance of the charge” must be given to the accused before his trial, the protections fall short in practice. There is no requirement that the charge be given “immediately” or be written in Arabic, both of which are required under international law. Furthermore, in practice, indictments containing the charge are often not given to the defendant's lawyer until the day of the hearing to determine whether the accused remains in detention until the end of the proceedings.

Addameer would therefore urge the Committee highlight the disparities between Israeli practice and the provisions of article 14(3)(a), and ask the Israeli authorities the following:

- What measures do the Israeli authorities intend to take in order to bring their practice with regard to notification of charges into conformity with international law?

Meeting with Legal Counsel

Under Israeli civil law and military orders, a detainee accused of being a security threat can be prevented from consulting an attorney altogether for varying periods of time. (See Detention chart, Appendix 7) In the military courts, a detainee can be held for up to 90 days without access to a lawyer – typically, access is restricted unless and until the detainee provides a confession. By comparison, in the Israeli civil courts, a detainee charged with a security offense can be

⁴⁵Incarceration of Unlawful Combatants Law, *supra* note 43, para 7.

prevented from consulting an attorney up to 21 days.⁴⁶ To challenge an order barring access to an attorney, the detainee's lawyer must appeal directly to the Israeli High Court. However, Palestinian lawyers from the West Bank do not have the right to appear in the High Court, so this option is available only to lawyers with Israeli citizenship or to Israeli non-governmental organizations. Detainees held in administrative detention usually have the possibility to receive visits from lawyers, albeit with the same difficulties as described above, and access may be denied while detained prior to being placed under administrative detention orders.

Addameer would therefore urge the Committee to ask the Israeli authorities the following:

- What effective measures are the Israeli authorities taking to ensure that all Palestinian detainees are granted prompt access to legal counsel?

Discriminatory Detention Laws

The maximum periods of detention for Palestinians detained by the Israeli occupying power from the initial detention until conclusion of a trial by military court are significantly longer at each stage⁴⁷ of proceedings as compared to those prescribed for the detention of Israelis under the civil court system. (See detention chart, Appendix 8)

As of June 2009, a Palestinian facing charges in the military courts can be held in custody for eight days before being brought before a judge. An Israeli citizen, however, can be held in custody for only a maximum of 24 hours before being brought before a judge.⁴⁸

A Palestinian can be held without charge, by order of a military judge, for an initial period of up to 90 days. This period can be extended for another period of up to 90 days by request of the Chief Area Legal Advisor for the OPT, via an order from the military court of appeals. By comparison, an Israeli citizen can be held without indictment for an initial period of 30 days, which can be extended three times in 15 day increments on the authority of the Attorney General.

Detention from the end of the investigation until indictment is limited to five days for Israeli citizens, while Palestinians before the military courts can be detained for 10 days.

Trials for Palestinians before the military courts must be completed within two years, while the limit for detainees before Israeli civilian courts is nine months. If proceedings have not concluded within this time frame, a judge of the Military Appeal Court can extend the detention of a Palestinian in the military courts by six month increments. Israeli Supreme Court judges can only extend the detention of an Israeli civilian in this situation by 90 days.

⁴⁶ The ISA officer investigating the case may order that a detainee be denied access to an attorney for up to 10 days. This period may be extended for up to an additional 11 days by a district court judge.

⁴⁷ The "stages" referred to include: detention before being brought before a judge, period of detention authorized by a judge, detention from end of investigation until indictment, detention from filing indictment until arraignment, detention from arraignment until end of proceedings, and extension of detention issued by a judge if proceedings have not concluded.

⁴⁸ An Israeli citizen accused of a security offense (almost always Palestinians with Israeli citizenship) can be held for four days before going before a judge.

Addameer would therefore urge the Committee to express its concern over the discriminatory nature of Israel's detention laws and practices, and ask the Israeli authorities the following:

- What measures are being taken to correct the fact that a Palestinian may be held longer at every stage of the judicial process compared to an Israeli charged with the same offense?

Language of Interrogation

Despite some increase in the use of Arabic during interrogations,⁴⁹ Palestinian detainees held for interrogation are routinely made to sign confessions written in Hebrew, a language few of them understand. These confessions then serve as the primary evidence against the detainees before the military courts.

Addameer would therefore ask the Committee to express its concern that confession statements from Palestinian detainees are often recorded in Hebrew, and to ask the Israeli authorities the following:

- What measures are being taken by the relevant Israeli authorities to ensure that Palestinian detainees are always provided the opportunity to record their statements or confessions in Arabic?

ARTICLE 10: CONDITIONS OF DETENTION

In December 2007, Addameer published the report *Violations against Palestinian Prisoners & Detainees in Israeli Prisons & Detention Centers*, which documented widespread human rights abuses throughout the process of arrest and the Israeli prison system. The report, along with ongoing monitoring and research, found that Palestinian detainees and their families are severely affected by the difficulties and abuses inherent in the Israeli detention experience.

Prison Conditions

According to the 2008 Israeli Public Defense Office report, *Conditions of Detention and Imprisonment in the Facilities of the Israeli Police and the Israeli Prison Authorities* (See a summary of the report, Appendix 5), there are very serious violations of the basic human rights of prisoners and detainees in facilities inside Israel, including issues with physical conditions and hygiene, violence and excessive punishment, lack of adequate health and social services, insufficient outdoor recreation time, poor food quality and stifled prisoner complaint mechanisms. Addameer monitoring has also found that detainees in Israeli prisons and detention centers are sometimes held in overcrowded prison tents that are often threadbare and do not provide for adequate shelter against extreme weather. Prisoners and detainees are frequently not provided with adequate food rations, either in quantity or quality, and there are no special dietary considerations made for detainees who suffer chronic illnesses such as diabetes or high blood pressure. Prisoners and detainees are typically not provided with clean clothes or adequate

⁴⁹ See *infra*, note 63.

cleaning supplies, and are forced to buy such essential items at overpriced prison canteens. Solitary confinement is often used as a form of punishment. Some prisoners are kept in long-term isolation for periods of months or even years. Cell searches and confiscation of personal belongings is a common practice; and attacks on prisoners and detainees by beating or firing tear gas into cells occur regularly.

Addameer would therefore urge the Committee to clarify the applicable standards to which the Israeli Police and Prison authorities should be held in terms of ensuring adequate conditions of detention, and to ask the Israeli authorities the following:

- Given the fact that prisoners have to supplement the provision of basic items from the Israeli authorities through their own funds, what measures is the government taking to ensure that prisoners are provided with their needs in terms of outdoor recreation, health care, hygiene products, clothing and food?
- What measures is the Israeli government taking to put a stop to the practice of long-term isolation of prisoners?

Female Prisoners

Female Palestinian prisoners face special challenges in Israeli prison and detention facilities. These include unbalanced diets, insufficient amounts of protein-rich foods, lack of natural sunlight and movement, and poor ventilation and pervasive moisture, all of which contribute to the development and exacerbation of health problems such as skin diseases, anemia, asthma, prolonged stomach aches and joint and back pains. Isolation conditions and the prevention of most family visits combined with strong feelings of insecurity in an often hostile environment also lead to hormonal unbalance in many of the women, which may then result in serious gynecological problems. The lack of preventative gynecological health care also results in unchecked internal infections for many women and leads to further complications in their treatment.⁵⁰ Palestinian women in detention are often subjected to mistreatment on a daily basis; sexual harassment occurs frequently and regular body searches are performed with brutality by prison guards.

We would therefore encourage the Committee to investigate further the conditions of detention under which female Palestinian prisoners are held in Israeli places of detention, and to ask the Israeli authorities the following:

- What measures do the Israeli authorities intend to take in order to improve the conditions of detention for female Palestinian prisoners in accordance with international standards, particularly with regard to healthcare, nutrition, living space and access to the outdoors?

Pregnant Women in Detention

Although Israel is bound under the Covenant to provide special care for certain prisoners, including pregnant women, pregnant Palestinian women in Israeli prisons and detention centers

⁵⁰ Addameer, *In Need of Protection: Palestinian Female Prisoners in Israeli Detention*, November 2008, pp. 6-7.

enjoy no preferential treatment in terms of diet, living space or care during hospital transfers. Such transfers are carried out under strict military and security supervision with the woman's hands and feet shackled with metal chains. Pregnant prisoners are also chained to their beds until they enter the delivery room to give birth, and are re-shackled once again immediately after giving birth. Palestinian female prisoners and detainees who are accompanied by children under the age of 2 similarly do not benefit from additional living space or improved living conditions.⁵¹

Addameer would therefore encourage the Committee to request the Israeli authorities to put an immediate stop to the practice of shackling pregnant women during their transfer to and from hospital and during their stay in hospital before and after delivery. In particular we would request the Committee to ask the Israeli authorities the following:

- What measures are being taken by the Israeli authorities to provide appropriate care to pregnant and nursing mothers in terms of diet, living space and care during hospital transfers?
- What measures are being taken to put a stop to the practice of shackling of pregnant and nursing mothers to their bed in the hospital, as well as during transfers to and from the hospital?

Juvenile Prisoners

Separate Detention Facilities

Article 10 of the Covenant provides that accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. However, all Palestinian children between the ages of 16 to 18 are detained together with adult Palestinian detainees. As a result they are not entitled to preferential treatment. There is currently one Palestinian child being held under administrative detention orders, and 390 Palestinian children are currently detained in Israeli prisons.

Addameer would therefore encourage the Committee to seek clarification from the Israeli government as to why Palestinian juvenile prisoners are still being detained together with adult prisoners, and to ask the Israeli authorities the following:

- What measures are being taken to ensure that all juvenile prisoners, including those between the ages of 16 to 18, are in all cases detained separately from adult prisoners?

Education

In a 1997 court ruling, the Tel Aviv Central Court ruled that Palestinian child prisoners were entitled to the same education rights as Israeli child prisoners, which included an education program based on the Palestinian curriculum. While this ruling appeared to grant Palestinian children in detention the right to education, the court decision contained a caveat requiring that nothing in the ruling should be seen as detrimental to matters of security. Since the court

⁵¹ *Id.*

decision in 1997, Israeli prison authorities have interpreted “subject to the security situation” to permit the limited teaching of Arabic, Hebrew, English and mathematics. Science related subjects are forbidden and geography is not taught to Palestinian children on “security” grounds.

Male Palestinian children are currently held in Megiddo and Rimonim prisons, while female Palestinian children are currently held in Hasharon and Damon prisons, along with Palestinian female adult prisoners. Typically, while in detention, Palestinian children are treated as adults and receive no formal education whatsoever. Adult Palestinian prisoners in the facilities where children are held sometimes offer instruction to the minors, but the lack of adequate educational materials limits the effectiveness of these informal courses. Indeed, released in August 2008, 17 year-old D. affirmed that no teacher ever came to give her courses even though she was a 9th grade student and only 15 at the time of her arrest in January 2007. Thus, despite the court ruling, the Prison Authority has failed to implement the decision in practice.⁵²

Addameer would therefore encourage the Committee to urge the Israeli authorities to provide appropriate educational opportunities for Palestinian juvenile prisoners as for Israeli juvenile prisoners, and to ask the Israeli authorities the following:

- Given the 1997 ruling by the Tel Aviv Central Court that Palestinian child prisoners are entitled to the same education rights as Israeli child prisoners what effective measures are the Israeli authorities taking in order to provide a full curriculum, including science and geography, for all juveniles in detention, including those aged between 16 and 18?

Prison Locations

All but one of the prisons where Israel detains Palestinian prisoners are located inside Israel,⁵³ in direct contravention of article 76 of the Fourth Geneva Convention, which states that an Occupying Power must detain residents of occupied territory in prisons inside the occupied territory. In addition to illegality under IHL, the practical consequences of this system carry human rights implications, in that many prisoners have difficulty meeting with Palestinian defense counsel, and do not receive family visits as their attorneys and relatives are denied permits to enter Israel on “security grounds”. Israeli military orders, based on security claims, have severely curtailed the ability of many Palestinians to visit detained relatives in Israeli custody. For example, on 21 June 1996, Israeli occupying authorities issued regulations related to prison visits stipulating that only first degree relatives (parents, spouses, siblings and children) may visit prisoners. These categories are further restricted in that male first degree relatives will

⁵² By comparison, under Israeli Prison Service (IPS) regulations, Israeli juvenile offenders are able to complete formal education from grades 8 to 12. For example, in the Ofek facility for Israeli juvenile offenders located in the Telmond – Hasharon complex, there is a school with 19 classrooms in which no more than 10 students study at a time. The children there have the opportunity to follow a curriculum specially designed for them by the Israeli Ministry of Education, which includes four hours of class a day combined with educational workshops and work. They have access to 33 teachers employed by the Israel Association of Community Centers on a permanent basis,⁵² and at the end of a 12 week trimester, prisoners take exams and their grades are then certified by the Israeli Ministry of Education.

⁵³ The primary prisons where Palestinian detainees are held include: Telmond Compound (which includes Hasharon and Ofek), Ketziot, Ofer (West Bank), Megiddo, Addamoun, Askelon, Shatta, Gilboa, Ramle Compound (which includes Nitzan Marrash and Ayallon), Ohalekidarr, Eskel, Nafha Ramon and Beersheba.

not be permitted to visit if they are between the ages of 16 and 45. In addition, since the Hamas takeover of Gaza in 2007, relatives who reside in Gaza have been prevented from visiting prisoners and detainees in Israeli jails.

In light of the above, Addameer urges the Committee to ask Israel the following:

- Given that the detention inside Israel of prisoners from the occupied territory is in itself a violation of international law, what measures is the Israeli government taking to ensure that all prisoners and pre-trial detainees have their right to regular family meetings respected?
- What measures is the government taking to reinstate the possibility of family visits for Palestinian prisoners from Gaza, all of whom have been denied visits for the past two years?

ARTICLE 14: JUDICIAL PROCESSES AND GUARANTEES

Addameer wishes to express its grave concern regarding the absence of fair trial procedures concerning the trials of Palestinian civilians before the Israeli Military Courts. As the Human Rights Committee has previously noted, the practice of trying civilians in military courts, while not expressly prohibited by international standards, raises significant fair trial issues.⁵⁴

It is submitted that given the extent of the jurisdiction of the military courts, provisions affording the widest protection are to be preferred. Sufficient evidence regarding the compliance of military courts with basic fair trial rights indicates that they are systematically denied to Palestinians prosecuted in these courts.

Some examples of fair trial deficiencies include:

Independence of the Judiciary

Military orders over the OPT require military court judges to act impartially and to ensure the fair enforcement of the law.⁵⁵ Section 7A of the Order Concerning Security Provisions further provides that, “In matters of judging, there is no authority over anyone who holds the power to judge, except the authority of the law and the Security Legislation.” In practice, however, military solidarity and Israeli national cohesion, combined with the heavy military court system caseload (discussed *infra*), makes fair and impartial adjudication of any case impossible.

⁵⁴ Human Rights Committee, General Comment 13, U.N. Doc. CCPR/C/21/Rev.1/Add.6, 12 April 1984, para. 4; Lebanon: UN Doc. CCPR/C/79/Add.77, April 1997, at para. 13; Inter-American Commission, Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.53 doc.22, 30 June 1981, at p. 222; OEA/Ser.L/V/II.84, doc 39, 1993, p. 108; Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.66, doc.A, 1985, p.183.

⁵⁵ Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza*, University of California Press, London, 2005, p. 275 n. 10, citing a West Bank military order concerning the judiciary: “In matters of adjudication, a person possessing judicial jurisdiction is subject to no authority save the authority of the law and the security legislation.”

Addameer would therefore ask the Committee to clarify whether the Israeli military court system is able to provide the necessary judicial guarantees, and to ask the Israeli authorities the following:

- What measures are being taken to ensure the independence and impartiality of the Israeli military courts? It may be presumed that a judicial procedure outside the chain of command of the military would be more likely to comply with the requirements of independence and impartiality.

Equality before the Courts – Discriminatory Sentencing

In addition to the discrimination seen in detention periods and access to counsel discussed above, the disproportionate trend can also be observed in sentencing differences between the military and civilian courts. As the maximum allowable sentences in civilian courts are considerably less severe than those permitted in the military courts, there are often significant differences in sentences passed for identical crimes committed by Israelis and Palestinians. For example, a Palestinian convicted of manslaughter by a military court is subject to a maximum sentence of life imprisonment, while an Israeli convicted of the same offense in a civilian court and sentenced to life imprisonment is imprisoned for a maximum of 20 years in most cases, and, occasionally, at the most, 25 years. The difference in sentencing structures is reinforced by regulations in the two penal systems regarding the early release of prisoners. Under the Israeli penal code, criminal prisoners may be released after serving one-half of their sentences, whereas Palestinians judged under military rule are only allowed to appeal for probation after two-thirds of the sentence has been served. It should be noted, however, that Palestinian detainees are rarely released early.

Addameer would therefore request that the Committee express concern over the lack of equality for Palestinians before the law, and ask the Israeli authorities the following:

- What measures are being taken to correct the fact that a Palestinian convicted through the military court system receives a heavier sentence than an Israeli convicted of the same offense through the civilian courts?
- What measures are being taken to correct the fact under the Israeli penal code, Israeli criminal prisoners may be released after serving one-half of their sentences, whereas Palestinians convicted through the military courts can only appeal for probation after serving two-thirds of their sentence?

Trial without Undue Delay

The right to trial without undue delay for Palestinians in the Israeli military court system is hindered by both legal and practical impediments. The maximum periods of detention for Palestinians detained by the Israeli occupying power from the initial detention until conclusion of a trial by military court are significantly longer at each stage⁵⁶ of proceedings as compared to those prescribed for the detention of Israelis under the civil court system. Israeli Military Order

⁵⁶ See *supra*, note 47.

378,⁵⁷ for example, dictates that a Palestinian detainee may be held for up to two years awaiting conclusion of trial post-indictment, as compared to nine months allowable for Israelis in the civil system.⁵⁸

The impact on the right to trial without undue delay as a result of this disparity in the procedural law between the two systems is compounded by the practical reality that the vast majority of Palestinian detainees are denied bail and remain in detention centers inside Israel until the end of proceedings. As of 31 May 2009, for example, some 1,682 Palestinian detainees were being held in detention until the end of proceedings.⁵⁹ Moreover, the Israeli military administration has not allocated sufficient staff to the two military courts operating in the OPT. This is evidenced by the conclusions of a 2008 study conducted by the military administration which found that in 2007, there was a deficit of 11,000 hours of time for judges to properly address all with new and pending cases before the military court of first instance.⁶⁰ This figure is all the more startling when one is cognizant of the fact that out of 7,563 cases closed⁶¹ before the military court of first instance in 2007, only 93 cases – or about 1.22 percent – resulted in full evidentiary hearings rather than plea bargains.⁶²

Addameer would therefore urge the Committee to express concern with regard to the undue delay in processing cases through the military courts, and to ask the Israeli authorities the following:

- What action is being taken to reduce the maximum period of detention allowed at each stage of the judicial process through military courts and bring those periods more in line with the standards of Israeli civilian court system?
- What action is being taken to rectify the fact that very few Palestinian detainees are granted bail through the military court system?
- What action is being taken to provide the necessary human resources to the two military courts operating in the West Bank?

The Right to Interpretation and Translation

Language is a fundamental problem in the military courts. While Israeli jurisprudence provides that a prisoner must be interrogated in his native language and that his statement also be written

⁵⁷ Israeli Military Order 378, Order Concerning Security Directives, Art. 78(a)(2)(a) and (b); Israeli Military Order 378 is the primary order governing the jurisdiction and substantive and procedural law relevant to the administration of justice in the occupied Palestinian territory through Israeli military courts.

⁵⁸ For a comparison between periods of detention in the Israeli civil and military courts, see Human Rights Council, “*Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Marin Scheinin – Addendum, Mission to Israel, including visit to the Occupied Palestinian territory*”, 16 November 2007, A/HRC/6/17/Add.4, p. 128.

⁵⁹ *Id.*, p. 130

⁶⁰ Military Courts Report 200, *supra* note 38, p. 25.

⁶¹ Military courts serve indictments based on a broad range of offenses divided into five separate categories: Hostile Terrorist Activity (HTA); Disturbance of Public Order; “Classic” criminal offenses; Illegal Presence in Israel; and, traffic offenses committed in the OPT.

⁶² Military Courts Report 2007, *supra* note 38, p. 11.

in that language,⁶³ in practice, the detainee's confession or statement is frequently written in Hebrew by a policeman, requiring the detainee to sign a statement he/she cannot understand. Moreover, all proceedings in the military courts are conducted in Hebrew. All police reports, military codes and judicial rulings are provided in Hebrew without translation.⁶⁴ There is no official Arabic version of the court proceedings, so when the detainee responds in Arabic to questions, the original version of his/her testimony is not recorded.

While military court proceedings provide a soldier who translates the proceedings into Arabic, consensus among Addameer counsel and affiliated lawyers generally provides that the quality of the official translation is uneven.⁶⁵ Many of the translators are Druze soldiers whose native language is Arabic and whose Hebrew is sometimes flawed. What's more, the translator frequently speaks in a low voice while the judge speaks over him, so even if the translation is accurate, the detainee may have trouble hearing it.⁶⁶ As a result, the detainees and their families are frequently unable to understand the proceedings.

Irrespective of the quality of the court translation, however, many West Bank lawyers report that they feel compelled to speak in Hebrew rather than rely on court translators because they are convinced that the military judges are less likely to take them seriously if they speak in Arabic.⁶⁷

Addameer would therefore request the Committee to express concern that confession statements from Palestinian detainees are often recorded in Hebrew and that the quality of translation in the military courts is often inadequate, and ask the Israeli authorities the following:

- What measures are being taken by the relevant Israeli authorities to ensure that Palestinian detainees are always provided the opportunity to record their statements in Arabic?
- What measures are being taken to improve the quality of translation of military court proceedings and to provide Arabic translations of all court documents where appropriate?

Privilege against Self-Incrimination

Article 14(3)(g) of the Covenant provides the accused with protection against self-incrimination, including statements or confessions obtained through compulsion. However, as detailed earlier in

⁶³ A landmark 2006 High Court decision held that confessions should be in the defendant's mother language. Since then, some, but not all, military court detention facilities have adopted this policy. For example, in Kishon, Moskobiyyeh (Russian compound), Ashkelon and Petah Tiqva, many confessions from Palestinian detainees are taken in Arabic. It is the experience of Addameer attorneys, however, that all of the detention facilities have the capability of taking a confession from a detainee in Arabic, but may do so only when it is to the interrogator's advantage.

⁶⁴ Confessions and statements are typically taken in Arabic by the police officer and then translated into Hebrew. However, when confessions and statements are taken by police officers, particularly in the cases of children, they are typically in Hebrew.

⁶⁵ See Addameer, *Defending Palestinian Prisoners: A report on the status of defense lawyers in Israeli courts*, April 2008 (available at: http://addameer.info/wp-content/images/violations_against_palestinian_prisoners.pdf)

⁶⁶ *Id.*

⁶⁷ *Id.*

this submission, the use of compulsion, coercion and torture against Palestinian detainees – which effectively operates in direct violation of this right – is an ongoing problem.⁶⁸

Addameer would therefore encourage the Committee to express concern with regard to the use of coerced evidence, and ask the Israeli authorities the following:

- What measures are being taken by the Israeli authorities to prevent the use of coerced evidence and to protect the accused from self-incrimination?

Presumption of Innocence

Plea Bargain Rates

According to Military Order 378,⁶⁹ the Israeli law of evidence⁷⁰ applies to proceedings in the military courts and provides for the presumption of innocence. However, in 2006, full acquittals were obtained in just 23 of the 9,123 – or 0.29% – cases in the military courts, suggesting a strong presumption of guilt. Of those who were charged in 2007, approximately 90 – 95 percent were convicted. Of these convictions, approximately 98 percent are the result of plea bargains.⁷¹

Furthermore, as a result of the investigation methods used by the ISA⁷² and the prohibition imposed on many detainees against consulting an attorney during their investigation, many defendants come to court after admitting to the offenses attributed to them or having been incriminated by others. The heavy caseload in the courts leads all the parties – defense attorneys, prosecutors and judges – to then seek plea bargains as a quick way to conclude the processing of a file. Attorneys who represent clients in the military courts feel that conducting a full proof trial, including summoning witnesses and submitting evidence, usually leads to a much harsher sentence; a sort of “punishment” imposed by the court on a defendant who did not reach a plea bargain.⁷³ Added to all the above is the widespread lack of trust in the military justice system on the part of the Palestinian defendants and their families, which frequently manifests itself in a preference to reach a plea bargain rather than leaving the verdict to the judge.

Addameer would therefore ask the Committee to express concern with regard to the unusually high conviction rate and institutionalized use of plea bargain as an indication of lack of confidence in the efficacy of the military court judicial process, and ask the Israeli authorities the following:

⁶⁸ See Addameer Report: *Violations Against Palestinian Prisoners & Detainees*, *supra* note 16; see also, *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, Hamoked and B’Tselem, May 2007; “*Ticking Bombs*” *Testimonies of Torture Victims in Israel*, Public Committee against Torture in Israel, May 2007.

⁶⁹ Military Order 378, Chapter B, Section B – Adjudication Procedures, Art. 9.

⁷⁰ Evidence Ordinance (New Version), 5731 – 1971.

⁷¹ Military Courts Report 2007, *supra* note 38.

⁷² Including threats, torture and ill treatment. See Addameer Report: *Violations Against Palestinian Prisoners & Detainees*, *supra* note 16.

⁷³ See Addameer, *Defending Palestinian Prisoners*, *supra* note 65.

- What measures are being taken by the relevant Israeli authorities to ensure that the military courts respect a presumption of innocence rather than a presumption of guilt as currently indicated by the high level of convictions and plea bargains?

Reverse Onus of Proof Placed on Defendants

Under well-established standards of international law, the burden of proof should be on the prosecution to prove the case and any doubt should benefit the accused.⁷⁴ A reverse onus of proof provision, in which the presumption is of guilt and the accused must prove his or her innocence, is incompatible with the right to fair trial and the presumption of innocence. This right applies at all stages of proceedings until judgment. However, the military court system routinely operates in direct opposition to international standards. The onus of proof is often transferred to the defendant by way of prosecutorial strategy to inflate charges levied against the defendant. For example, a defendant who is accused of throwing a stone at a tank or firing a gun a kilometer away from a soldier could be charged with “trying to kill”, even though any action may have been done at a distance at which it would have been impossible for harm to have come to the soldier. This charge places the burden on the defendant to prove that his act could not have harmed the soldier and therefore did not constitute attempted murder.

Addameer would therefore ask the Committee to express concern with regard to the reverse onus placed on the burden of proof, and ask the Israeli authorities the following:

- What measures is Israel taking to ensure that the burden of proof does not lay with the defendant but with the prosecution?

Defense Lawyers and Equality of Arms

The right of Palestinian detainees to adequate time and facilities for the preparation of a defense also suffers from legal and practical impediments. Although Military Order 378 provides for the right to legal counsel, there are no accompanying provisions to ensure an effective defense.⁷⁵ For example, far from protecting this right, Military Order 378 allows interrogators to prevent attorney/client meetings for up to 30 days.⁷⁶ Orders are usually issued immediately to prevent attorney/client meetings in at least 60 percent of cases of Palestinians arrested by the Israeli occupying forces.⁷⁷ Although the right to appeal this decision exists, one Israeli human rights organization tested the limits of this right by filing appeals to the Israeli High Court of Justice in

⁷⁴ The Human Rights Committee has stated that the right to a presumption of innocence places that the burden of proof on the prosecution and gives the accused the benefit of doubt. Human Rights Committee, General Comment 13, U.N. Doc. CCPR/C/21/Rev.1/Add.6, April 12, 1984, para. 7. According to the Committee, “no guilt can be presumed until the charge has been proved beyond reasonable doubt.” *Id.*

⁷⁵ Nor are sufficient safeguards provided in the subsequent Military Order 400. *The Order Concerning Defense in a Military Court (Judea and Samaria) (No. 400)*, 5730-1970.

⁷⁶ Note that a military court judge can extend the period of detention without access to a lawyer for another 30 days.

⁷⁷ Human Rights Council, “*Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Marin Scheinin, - Addendum, Mission to Israel, including visit to the Occupied Palestinian territory*,” 16 November 2007, A/HRC/6/17/Add.4, p. 112

49 cases. The organization received 49 rejections or had to withdraw appeals following clear indications of an unfavorable ruling to come from the High Court judges.⁷⁸

Regular complaints from lawyers appearing in the military courts include: difficulties in meeting with their clients in detention;⁷⁹ the lack of adequate facilities to take confidential instructions;⁸⁰ court documents written only in Hebrew; lack of access to prior judgments of the military courts, including binding judgments of the Military Court of Appeals; and, the provision of incomplete prosecution material. In practice, lawyers are commonly forced to take instructions from their clients minutes before the hearing in the military court, and plea bargains are entered into to avoid harsher sentences.

Addameer would therefore ask the Committee to clarify whether the law guarantees adequate time and facilities for the preparation of defense, and specifically, to ask the Israeli authorities the following:

- What measures is the government taking to ensure that the time given a detainee to secure an interpreter and/or lawyer is adequate for the enjoyment of this right?
- What measures are being taken to provide lawyers with prompt access to their clients?
- What measures are being taken to protect the confidentiality privileges of the attorney-client communication?
- What measures are being taken to provide full disclosure of prosecution material?

⁷⁸ *Id.*

⁷⁹ Such difficulties include the travel restrictions on Palestinians, which mean that only Israeli lawyers and residents of East Jerusalem can visit prison facilities inside Israel. Moreover, lawyers are frequently allowed to enter the prisons only on certain days, even though the prison regulations state that, in the absence of an order barring access, lawyers should be allowed to visit every day.

Attorney visits to Israeli prisons are regulated by Israeli law, rather than military regulations. Article 45(c) of the Israeli Prison Ordinance requires prison directors to allow attorney visits requested by the prisoner or attorney during normal working hours “as promptly as possible”. Israeli Prison Superintendent Regulation 04.34.00 § 6 states that attorney visits shall be allowed from 8 am until 4:45 pm, Sunday through Thursday. Regulation 03.02.00 § 14(24)(4) states that attorneys are entitled to visit their clients during working hours every day except Saturdays and holidays. Lawyers often may not visit on days the prison is closed for visits conducted by the International Committee of the Red Cross, family visits, and court proceedings that take place in the prison rather than the military courts. They are also frequently in the position of having to track the whereabouts of their clients, as the Israeli prison authority frequently moves prisoners between facilities without notifying lawyers. Further, if there is a “security situation” at the prison, lawyers may wait for hours while the facility is closed to all visitors. Even under normal circumstances, lawyers reported routinely waiting at the prison for hours for the prisoner to be brought for the interview. See Addameer, *Defending Palestinian Prisoners*, *supra* note 65.

⁸⁰ International law and jurisprudence holds that communications between a suspect and his or her lawyer should be confidential. *S v. Switzerland* (EtCHR 1991). The right to counsel includes the right to consultations with counsel which are unsupervised by the authorities of places of detention. This right applies both to personal visits and to correspondence between a detained person and counsel. *Schönenberger and Durmaz v. Switzerland* (EtCHR 1988). However, security prisoners are often required to sit behind a thick plastic window and talk to their lawyers through a telephone or holes in the plastic barrier. The arrangement makes it difficult for the lawyer and his/her client to hear each other, and it compromises the confidentiality of their discussion because prison guards posted in the same room can hear the conversation. Lawyers also frequently have to depend on prison guards to deliver documents to the prisoner, again violating attorney-client privilege. See Addameer, *Defending Palestinian Prisoners*, *supra* note 65.

Minors Tried Before the Military Courts

Approximately 700 Palestinian children (under 18) from the West Bank are prosecuted every year through Israeli military courts after being arrested, interrogated and detained by the Israeli army. Since 2000, more than 6,500 Palestinian children have been detained. One Palestinian child is currently being held under administrative detention orders, and 390 Palestinian children are currently detained in Israeli prisons.

Special Consideration Due to Minors

Article 14(4) of the Covenant recognizes the special circumstances surrounding fair trial rights specific to juveniles, providing that proper regard must be paid to their age, as well as the “desirability of promoting their rehabilitation”. The UN Convention on the Rights of the Child (CRC), to which Israel is a State Party,⁸¹ similarly requires that the deprivation of liberty against children, if used at all, should only be used as a measure of last resort and for the shortest appropriate period of time.⁸² However, Israeli policy towards Palestinian children seems to view detention as a measure of “first and only resort”, as a prison sentence is the only sentence given to Palestinian children. In addition, no provisions are made for an attorney or even a family member to be present when a child gives a confession,⁸³ nor are there special courts for children; Palestinian children as young as 12 years of age are tried in the same courts as adults, and many children above age 14 even serve time in the same prisons and detention facilities. (See cases of Salwa Salah and Sara Siureh, Appendix 6, and of the Al Aroub Children, Appendix 8)

Addameer therefore hopes to see the Committee use the upcoming review of Israel to raise concern about the lack of rehabilitation options and special procedures for children, and to ask the Israeli authorities the following:

- What measures is the government taking to ensure that imprisonment of children is a measure of last resort, including by developing alternatives to prosecution?
- What measures is the government taking to train judges, prosecutors, and investigators in the specific circumstances that arise when children are in conflict with the law?
- What measures is the government taking to ensure that adequate facilities exist for children who are sentenced to prison terms?

Age of majority

The CRC defines a “child” as “every human being below the age of eighteen years”.⁸⁴ The United Nations Committee on the Rights of the Child’s General Comment 10: Children’s Rights in Juvenile Justice calls on signatory states parties to the CRC to define the threshold for legal

⁸¹ The UN Convention on the Rights of the Child (CRC) was signed by the State of Israel on 3 July 1990 and ratified on 4 August 1991.

⁸² *Id.*, Art. 37(b).

⁸³ See Defence for Children International (Palestine Section), Semi-Annual Report 2007.

⁸⁴ CRC, Art. 1. Article 1 defines a child as everyone aged less than 18, unless majority is attained earlier under national law. The age of majority is determined by states, but must not deviate greatly from international norms. Rule 11(a) of the UN Rules for the Protection of Juveniles Deprived of their Liberty also defines a juvenile as “every person under the age of 18”.

majority as no lower than 18. However, according to Israeli Military Order 132, Palestinian children age 16 and older are treated as adults and are tried and sentenced by Israeli military courts as adults. By comparison, juvenile legislation defines Israeli children as age 18 or younger.

Addameer urges the Committee to use the upcoming review of Israel to raise concern about the age of criminal responsibility, and to ask the Israeli authorities the following:

- Will Israel undertake to enact effective legislation to prohibit discrimination between Palestinian children and Israeli juveniles in relation to the definition of a child according to the Military Order 132 is 16 while in the Israeli Civil Law it is 18?

Age and Sentencing

What's more, a Palestinian child's sentence is decided on the basis of the child's age at the time of sentencing, not at the time when the alleged offense was committed. Thus, a child who is accused of committing an offense when he or she is 15 will therefore be punished as an adult if he or she has a birthday while awaiting sentencing.

Addameer therefore requests the Committee ask the Israeli authorities the following:

- What measures are being taken to correct the fact that a Palestinian child's sentence is decided on the basis of the child's age at the time of sentencing and not at the time when the alleged offence was committed?

ARTICLE 15: NON-RETROACTIVITY OF LAWS

There are at least 1,644 military orders governing every aspect of civilian life in the OPT. They are frequently revised, almost impossible to challenge, and can apply retroactively. For example, on 5 April 2002, the Israeli military commander for the West Bank issued Military Order 1500, which confirmed the ability of Israeli soldiers to arrest any Palestinian from the West Bank without providing a reason and without a warrant and lengthened the time they may be detained.⁸⁵ The order decreed that these detainees can be arrested for a period of 18 days before any legal proceedings take place, temporarily lengthening the period permitted by previously issued orders, which required detainees to be brought before a judge within eight days.⁸⁶ Furthermore, although Military Order 1500 was issued on 5 April 2002, it stated its application as retroactive, applying to all detainees arrested since 29 March 2002.

As article 15 of the Covenant clearly prohibits retroactive application of criminal liability and imposition of heavier penalties than present when an offense was committed, it is clear that Military Order 1500 is in breach of this provision.

⁸⁵ Military Order (No. 1500) (5 April 2002).

⁸⁶ This period was reduced shortly thereafter to 12 days, and then back to eight days within six months.

Addameer would therefore request the Committee express concern over the issue of military orders with retroactive application, and ask the Israeli authorities the following:

- Will Israel undertake to enact effective legislation to prohibit the retroactive application of laws, in particular retroactive military orders?

In addition to blatant codification of retroactive laws under the military order system, retroactive criminal liability is also regularly applied to members of the Palestinian Legislative Council, and against individuals accused of involvement with charitable organizations. A number of Palestinian politicians have been arrested in recent years for membership in a political party that was not declared an illegal association until a year or so after their arrest. (See case of Wael Abdu Rahman, Appendix 1) Addameer documented another case featuring a Palestinian man arrested for his association with a charitable committee more than a month before such an association was declared an offense. (See the case of Abdel-Karim Hawarin, Appendix 10)

Addameer would therefore recommend the Committee raise the issue of the retroactive application of criminal liability by the Israeli authorities, and ask the Israeli authorities the following:

- Will Israel undertake to enact effective legislation to prohibit the retroactive application of criminal liability? Such legislation should ensure the prompt release of all those currently detained under charges applied retroactively.

ARTICLE 19: RIGHT TO FREEDOM OF EXPRESSION

The law restricting freedom of expression was augmented early in the Israeli occupation by Orders No.50 and No.51. These Orders required the licensing of publications and occupying forces could confiscate newspapers or other materials published without license. Israeli military censors had to approve all printed material and were free to edit or delete articles, or to refuse permission for publication. The Israeli Censor also drew up lists of books, amounting to more than 6,000 titles, which were banned from publication and distribution in the OPT.

Today, political expression of nearly any kind by Palestinians in the OPT has been made illegal under Israeli military laws. Military Order 101 (27 August 1967) prohibits publication of anything political in any medium, including paintings. Military Order 1079 (14 October 1983) (amending M.O.101) prohibits video and audio work of a political nature and publishes a new list of more than 1000 banned publications, including all United Nations Resolutions pertaining to Palestine, poetry and novels. Putting up political posters, writing political slogans on a wall, belonging to any political party or certain organizations listed in military orders, displaying political symbols and attending a demonstration are all activities of political expression that are prosecuted as crimes in the OPT for “endangering the security” of Israel. Although article 19 of the Covenant allows for the restriction of the enjoyment of the right to freedom of expression for the protection of national security or public order, the blanket nature of the prohibition levied by Israel on all forms of political expression by Palestinians in the OPT clearly exceeds the scope of this restriction.

Addameer would therefore urge the Committee to request clarification from Israel with regard to the degree to which freedom of expression is permitted in the OPT, and ask the Israeli authorities the following:

- Will Israel undertake to enact effective legislation to allow freedom of expression in accordance with the Covenant and other applicable sources of international law and withdraw the military orders prohibiting such expression?

ARTICLE 21: RIGHT TO PEACEFUL ASSEMBLY

In July 2009, Addameer and the Palestinian Grassroots Anti-Apartheid Wall Campaign published a joint report examining Israel's policies of arrest, detention and violent repression against Palestinian Popular Committees and Palestinian and international human rights defenders engaged in the struggle against the ongoing construction of the Annexation Wall in the West Bank of the occupied Palestinian territory.⁸⁷ Evidence collected by Stop the Wall and Addameer suggests that the IOF are carrying out a systematic campaign of violence, threats, curfews, arrests and collective punishment to stop and prevent any act of popular resistance against the Wall – acts by Palestinians to exercise their right to peaceful assembly. As a result, individual leaders and entire communities have been targeted, and protestors have been punished both individually and collectively. While the members and heads of the Popular Committees who have been instrumental in coordinating and mobilizing weekly protests were targeted by IOF during the first years of the Wall's construction, the focus now seems to have shifted to the most vulnerable members of the community: children and youth. They are often the first ones to be arrested in mass arrest campaigns, and the most likely to be injured at demonstrations.

Addameer and Stop the Wall research has further revealed that injuries resulting from military violence at public protests against the Wall are not accidental incidents resulting from measures of crowd control or self defense. Instead, they are the result of intentional actions that form a consistent pattern of repressive violence. At demonstrations, the Israeli military use indiscriminate and vastly disproportionate force against anti-Wall protesters and human rights defenders, non-violent and violent alike. They have killed 16 people since 2002, half of them under the age of 18, and have injured thousands of protestors to date. These findings indicate that the Israeli military is engaging in low intensity warfare against all Wall protesters, in an apparent attempt to crush the popular protest movement, divide communities, and undermine its base of support. In doing so, bearing in mind the illegal status of the Wall and its accompanying regime, the IOF are violating Palestinians' right to peaceful assembly as well as their rights to self-determination and freedom of expression.

Addameer requests the Committee discuss with Israel the degree to which peaceful assembly is permitted in the OPT, and ask the Israel authorities the following:

⁸⁷ Addameer Prisoner Support and Human Rights Association and Stop the Wall Campaign, *Repression allowed, resistance denied: Israel's suppression of the popular movement against the Apartheid Wall of Annexation*, (July 2009) (available at: <http://addameer.info/wp-content/images/repression-allowed-resistance-denied-stw-addameer-joint-report.pdf>).

- In light of the advisory opinion of the International Court of Justice on the illegality of the Wall, will Israel agree to refrain from using force against legitimate peaceful assembly in protest against this illegal structure?
- When confronted with violent protest will Israel agree to use only the minimum amount of force necessary in order to bring that situation under control?

ARTICLE 22: RIGHT TO FREEDOM OF ASSOCIATION

Since the beginning of the occupation of Palestinian territory in 1967, thousands of Palestinians have been detained and charged with maintaining ties to an “organization, institute, office, movement, branch, center, committee, faction, group, or whatever the law defines as a ‘body of persons’ branded ‘hostile or terrorist’” and included in an ever-expanding list⁸⁸ of unlawful associations. Order no. 85 of the Defense (Emergency) Regulations 1945 lists 10 offenses connected with membership in or aid to an unlawful association⁸⁹ and also lists the penalties for these offenses. The arbitrary nature of this law imposed on the OPT, encompassing almost any situation and any person, is revealed in Section 9 of Regulation 85 (revised 1946, 1947) which determines that: “any person...acting on behalf of an unlawful association...by writing, words, signs, or other acts of representation, directly or indirectly, whether by inference, suggestion or implication or otherwise...is likely to be arraigned...”⁹⁰

Moreover, when a person is charged with activity in one of the banned associations, the prosecution is not required to provide evidence to prove that the activities or the goals of the organization are, in fact, hostile. It suffices that, at some point, the organization was designated unlawful. Similarly, the question whether the defendant knew that the organization was illegal is irrelevant. Typically, declarations regarding unlawful associations are not even published in the West Bank, so the residents don’t know about it. Sometimes an organization is declared an unlawful association following a detention or a confiscation, only to sanction by law, retroactively, what the security forces have already done.” (See case of Wael Abdu Rahman, Appendix 1)

The entire Israeli occupation structure, including the army, the ISA and the military court system, view all civil associations, even those that help maintain daily life of the community in the harsh reality of the occupation, as threats to security.⁹¹ Given this view, and the broad nature

⁸⁸ Every year, dozens of organizations both inside Israel and in other countries are added to the list of organizations and agencies declared by the military commander as unlawful. Many of these organizations are not involved in military activities. See Israel Defense Ministry website for the complete list: <http://www.mod.gov.il>. (Hebrew)

⁸⁹ The most common charges are: membership in an unlawful association, activity managing or holding a position in, and providing services for such an association. Other charges include: attending a rally of such an association, allowing such a rally to take place, possession of publications of such an association, writing, preparing, producing, printing, selling or distributing material related to such an association; collecting money for or supporting such an association; and, representing – either directly or indirectly – such an association. See, MachsomWatch, *Guilty: Membership and Activity in Unlawful Associations*, Military Courts 2008, p. 1.

⁹⁰ Order no. 85 of the Defense (Emergency) Regulations 1945, Section 9.

⁹¹ MachsomWatch, *supra* note 89, p. 9. “The presiding judge of the military court of appeals explains: ‘It is common knowledge today that the distinction between military and civilian activity is an artificial one...activities that are lawful and deserving in themselves, such as religious education or food banks for the needy,

of the definition of association offenses, combined with little or no burden of proof by the prosecution to determine actual criminal liability, it is difficult to imagine how anyone would be able to defend themselves against suspicion of this offense.

Addameer would therefore request the Committee express concern over the widespread and arbitrary deprivation of the right to freedom of association and the retroactive sanctions applied in that regard, and ask the Israeli authorities the following:

- Will Israel undertake to enact effective legislation to provide for the right to freedom of association in the OPT in accordance with the Covenant and other sources of international law?
- Will Israel undertake to review its hundreds of laws applicable in the OPT and remove those that are overly restrictive or apply retroactively?

will be considered services for an unlawful association if they are carried out in Hamas's name.'" See Detention Appeals 3249/06 *et al.*

APPENDIX 1: Case Study: Prosecution of Palestinian Political Leaders

Khaled Ibrahim Tafish Dweib

Date of birth: 20 July 1964

Place of residence: Bethlehem, Za'atara

Occupation: Member of the Palestinian Legislative Council, Change and Reform Party

Date of arrest: 19 March 2009

Place of detention: Ofer

Number of arrests: Arrested three times since 2002, held twice in administrative detention; spent nearly five years in prison.



Administrative Detention

“I read the confidential material attached. Out of fear for the safety of the source of information and Shin Bet’s work methods I cannot disclose any confidential information known to me”

– Military Judge, Judicial Review, 1 April 2009

Palestinian Legislative Council (PLC) member Khaled Tafish was arrested in the morning of 19 March 2009 in a raid carried out by the Israeli Occupying Forces across West Bank towns, just a few hours after the collapse of Egyptian-mediated prisoner exchange talks between the Israeli government and Hamas. Nine other political leaders, including three PLC members – all of whom are members of the Change and Reform bloc – were arrested that same night. Following his arrest, Mr. Tafish was transferred to Etzyon detention centre, in the south of the West Bank, where he was subjected to two weeks of interrogation related to his political activities. On 31 March 2009, an administrative detention order was issued against him. Mr. Tafish’s administrative detention was confirmed at the judicial review of the order on 1 April 2009 for a six month period starting from the moment of his arrest. His potential release is thus expected on 18 September 2009. The military judge justified the court’s decision by stating that, as an active member of Hamas, Mr. Tafish “poses a real danger” to the “security of the region and its people”. The date of the appeal remains to be set.

The other PLC members simultaneously arrested with Mr. Tafish include Ayman Daraghme from Jenin, and Azzam Salhab and Nizar Ramadan from Hebron. Addameer argues that their detention is politically motivated and is aimed at pressuring the Hamas leadership in Gaza to release Corporal Gilad Shalit.

Mr. Tafish was arrested twice before his latest imprisonment. His first arrest was on 29 April 2002 during the Israeli invasion of Bethlehem. He was subsequently subjected to 70 days of harsh interrogation in the Moskobiyya (Russian compound) interrogation center, located in West Jerusalem. He was then sentenced to four and a half years of imprisonment, which he spent in Ashkelon, Nafha and Ketziot (Negev) prisons. While still detained, he ran for the 2006 parliamentary elections as a Reform and Change Party candidate, and was elected to the PLC on 25 January 2006. His second arrest occurred on 11 November 2007. He was then placed under

administrative detention for a six month period, reduced following an appeal hearing to four months. Mr. Tafish was released from administrative detention on 17 March 2008.

Professional Life

With nearly one third of Palestinian legislators in Israeli detention and a geographic division between the West Bank and Gaza Strip, the Palestinian Legislative Council has not been able to reconvene since mid-2007. Mr. Tafish therefore concentrated most of his efforts as PLC member on community and social development work. Through his office in Bethlehem, he worked to address individual complaints and grievances by providing advice and information on governmental services and by liaising with different ministries on behalf of individual constituents. Today, following his imprisonment for the third time, most of the office's work is suspended as it requires his approval and follow-up.

Before he was elected to the PLC, Mr. Tafish worked as Imam of the mosque in Bethlehem. He holds a BA degree in Shari'a Law from Al Quds University.

The Tafish Family

The Tafish family consists of six children. The eldest, Duha, is a first year pharmacology student at Al Quds University, and the youngest is in the second grade. Mr. Tafish's wife, Umm Mus'ab says that her husband's absence from their home is very painful and has had a detrimental effect on the children in particular, despite the family's previous experience of coping with his imprisonment. "The role of the father is always very important", she says. "His absence only adds to my responsibilities, making me the mother and the father at the same time". She is afraid that her husband's arrest will affect the children's results in school, especially their oldest son Mus'ab, who is supposed to take his final high school exam (*Tawjihi*) at the end of the year. "This is a very sensitive and important period for the future of one's education" Umm Mus'ab said. "Now is the time when he is in particular need of his father at his side".

Before his arrest, Mr. Tafish began building a new house for his family; however the construction was not fully completed. Previous engagements and obligations are now left without follow-up. A month after Mr. Tafish's arrest, the family was still unable to get a permit to visit him in prison. They have submitted a request through the International Committee of the Red Cross and are now awaiting a reply. From past experiences however, Umm Mus'ab has always been denied the permit, usually for so-called "security reasons" and would only get the right to visit her husband once or twice a year. Sometimes, the Israeli authorities would refuse her the permit claiming that there are no family ties between her and her husband. In the past, the children have had to take turns visiting their father as the prison administration only allows three minors to visit at the same time. In addition to humiliation and fear these trips to see their father cause, they also mean missing an entire school day. Mr. Tafish's family describes him as an educated and well-read person. His personal library counts more than 1,000 books on religion, history and literature. On a personal level, he is a quiet, but social person, with a huge interest in social issues and genuine willingness to help others.

APPENDIX 2: Case Study: Prosecution of Palestinian Political Leaders

Wael Abdel-Rahman

Date of birth: 15 February 1960

Place of residence: Jerusalem

Occupation: Member of the Palestinian Legislative Council, Change and Reform Party

Date of arrest: 29 June 2006

Place of detention: Ketziot

Wael Abdel-Rahman was first arrested in September 2005, in a sweep that detained 450 Palestinian political leaders shortly before the January 2006 parliamentary elections. Placed under administrative detention orders, Wael was released soon after when the court in the order review hearing found that the material in the “secret file” against him was not enough to justify his continued detention. In January 2006, shortly after his release, Wael was elected Member of Palestinian Legislative Council under the banner of the Reform and Change bloc.

On 25 June 2006, Israeli Corporal Gilad Shalit was captured at the Kerem Shalom Crossing on the Gaza Strip border, sparking a widespread Israeli crackdown against organizations alleged to have ties with Hamas. Four days after Shalit was captured, Israeli forces seized dozens of leaders and activists associated with the Reform and Change bloc in coordinated raids across the West Bank.

Wael was one of the dozens of Palestinian elected officials arrested that day. Taken to Ofer detention center for interrogation, Wael freely acknowledged his election to the PLC and membership in the Reform and Change bloc, for as of Wael’s arrest in June 2006, it was no crime to merely be a member of the electoral bloc. It was not until the first week of May 2007, almost a year following his arrest, that the bloc was declared an illegal association.

In July 2006, military prosecutors charged Wael with three offenses based solely on his membership in and activities in support of the Reform and Change bloc, which they alleged was affiliated with Hamas. No charges were filed alleging Wael had any individual or direct connection to Hamas.

Throughout the trial and subsequent appeal, the politics underpinning Wael’s arrest were evident at every turn. For example, the trial court decided to release Wael for the duration of the proceedings, after finding that as he had served in the PLC as a Reform and Change member for six months before his arrest, he did not suddenly pose a security threat upon his arrest. However, the prosecution appealed this decision, and the appeals court overturned the trial court and remanded him to custody. According to Addameer attorney Sahar Francis, Wael’s defense counsel, the feeling in the courtroom that day was that the appeals court’s justifications for remanding Wael had nothing to do with the legal arguments recognized at the trial court level.

During the trial, the prosecution built their case on Wael's interrogation acknowledgement, confessions of other PLC members who were arrested, and the testimony of and report by a General Security Services representative on the relationship between the Reform and Change bloc and Hamas. However, they provided no proof regarding any individual association by Wael with Hamas.

In Wael's defense, Addameer argued that as the Reform and Change bloc had not been declared an illegal association, or a Hamas-affiliated association during the time in question, the prosecution could not simply proceed on the assumption that every member of the Reform and Change bloc was therefore a member of Hamas. This must be proven, but it was not. All of the prosecution's PLC members who acted as witnesses testified that while some members were affiliated with Hamas, there were many, including Wael, in the bloc who did not belong to any political party beforehand. Even some Christians served as part of the Reform and Change bloc in Gaza – individuals who would be entirely unlikely to be part of Hamas. In fact, Addameer proved, Reform and Change had formed many coalitions throughout the OPT. Even the ISA officer testified in support of this point on cross, when he admitted that it would not be accurate to say that every person in the Reform and Change bloc was Hamas.

Wael was acquitted of membership charges before the trial court, but was found guilty of being active in and supporting an illegal organization because of some high profile Hamas activists involved with Reform and Change bloc. He was sentenced to 22 months detention, but, as he had already spent 23 months in prison, he was due for immediate release.

Both the prosecution and defense appealed aspects of this judgment. Wael, who had already spent nearly two years in detention, was again remanded to custody by the appeals court until the end of proceedings. The appeals court summarily determined, without requiring the prosecution to so prove, that every Reform and Change member is a member of Hamas. They found in a syllogism based on speculation and innuendo that because there was a general belief that Hamas won the 2006 elections, and because Reform and Change won the most PLC members, therefore, everyone who was elected under Reform and Change is Hamas.

The appeals court found Wael guilty of all charges, and increased his sentence from 22 to 42 months in prison. Wael's plea for early release after serving two-thirds of his sentence was recently rejected, and he currently remains in detention.

APPENDIX 3: Case Study: Lack of Investigation into Claims against Israeli Soldiers

The Shooting of Ashraf Abu Rahma

Age: 27

Place of residence: Nil'in

Date of assault: 7 July 2008

On 7 July 2008, near the entrance to Nil'in, a village in the West Bank, Ashraf Abu Rahma was detained by the IOF on suspicions that he was taking part in the Ni'lin demonstration against the Wall. He was ordered to sit on the ground, his hands were bound behind him and he was blindfolded. One of the officers present, platoon commander lieutenant Col.

Omri Borberg, who knew Ashraf, instructed him in Hebrew to stop his protesting against the Wall. Ashraf replied, indicating that he did not speak Hebrew and did not understand what the officer said. The officer then turned to one of the soldiers standing nearby, Staff Sergeant L., and said, "...let's go and shoot him with a goomi (rubber-coated steel bullet)". The soldier answered, stating that he had no problem with shooting Ashraf with a rubber covered bullet.

Borberg then pulled Ashraf to his feet, still bound and blindfolded, and led him by the arm to a nearby military Jeep. Staff Sergeant L. followed. Borberg commanded the soldier to cock his gun, and the soldier replied that he already had. Staff Sergeant L. then aimed his gun at Ashraf and shot him from a range of about 1.5 meters. The bullet hit Ashraf in a left toe. He received treatment from an army medic and was then released by the soldiers. Borberg, who later alleged that he had ordered the soldier only to scare Ashraf, pushed the Staff Sergeant L. and yelled at him for shooting at a bound man.

Meanwhile, a young Palestinian girl from Ni'lin, Salam Kanaan, had filmed the entire incident from her house in the village. Her family sent a copy of the tape to B'Tselem on 20 July 2008, who then forwarded a copy to the Military Police Investigation Unit commander and released it to the public. According to press reports, the Military Police then opened an investigation and arrested the soldier who fired the shot.

Apparently, until the video was aired, the army did not conduct a Military Police investigation, and settled instead for an operational debriefing. According to the reports, the debriefing reached the desk of the Judea and Samaria (West Bank) Division Commander, who failed to inform the Military Police or the Judge Advocate General's Office, or to take any measures against Staff Sergeant L. or lieutenant Col. Borberg. Residents of Ni'lin stated that that they saw the soldier still serving in his unit the day after the incident.⁹²



Ashraf Abu Rahma is seen moments before being shot in this stills image from a B'Tselem video.

Photo: B'Tselem

⁹² B'Tselem, "21 July '08: Following exposure by B'Tselem, Military Police investigate shooting of bound Palestinian", 21 July 2008 (available at: http://www.btselem.org/english/Firearms/20080721_Nilin_Shooting.asp).

When questioned by investigators, Staff Sergeant L. stated that Borberg had ordered him to shoot Ashraf. Borberg, however, admitted only that he had ordered the soldier “to frighten” the bound Palestinian.

With the aid of Israeli human rights organizations B’Tselem, ACRI, Yesh Din and PCATI, Ashraf petitioned the Israeli High Court of Justice in August 2008 and demanded that the indictments filed against Staff Sergeant L. and lieutenant Col. Omri Borberg, be changed so as to reflect the severity of the offenses. According to Yesh Din, using a weapon to intimidate, and shooting a handcuffed detainee may amount to abuse of a detainee under aggravated circumstances, an offense that carries a penalty of seven years in prison.⁹³ Instead, the Military Prosecutor decided to charge the two with “unbecoming conduct,” an offense which does not appear on criminal records.

On 9 July 2009, the High Court of Justice ruled in favor of changing the indictments filed against Staff Sergeant L. and Borberg so as to reflect the gravity of the offenses.⁹⁴

While this ruling marks a small victory in the effort to bring accountability to the Israeli military’s treatment of Palestinian detainees, High Court intervention should not be necessary in order to ensure that military law-enforcement agencies convey to soldiers and commanders an unequivocal message to safeguard human life and dignity.

The Persecution of Innocent Bystander Jamal Kanaan

Age: 55

Place of residence: Ni’lin

Date of arrest: 24 July 2008

Date of release: 20 August 2008

Four days after his daughter Salam’s video showing the shooting of cuffed and blindfolded Ashraf Abu Rahma by Israeli soldiers was made public on 20 July 2008, her father, 55-year-old Jamal Kanaan, was arrested by Israeli soldiers at a demonstration. Jamal and a number of youths at the scene said they overheard the arresting soldiers saying “catch him, catch that man with whatever ways you can, this is the father of Salam.”⁹⁵ They said that the soldiers’ intention to arrest Jamal was clearly related to the release of the video. Salam was present during her father’s arrest, which she also managed to record on camera.

Jamal described his arrest in a recent interview:

They started beating me, pushed me on the ground and kicking me with their rifles. In the photos that Salam took you can see that I’m being beaten. Five minutes later they called Amri, the commander that Salam had filmed, by phone. The commander told them on the

⁹³ Yesh Din, “High Court overturns ‘slap on the wrist’ for Abu Rahma shooters”, (available at: <http://www.yesh-din.org/site/index.php?lang=en>).

⁹⁴ The full text of the High Court decision is available at: <http://elyon1.court.gov.il/files/08/950/071/r09/08071950.r09.htm>.

⁹⁵ Stop the Wall interview with Ni’lin resident Salam Kanaan ‘Amira, July 1, 2009.

phone to hit him. On the way to the military jeep, they said, “We will arrest your children, we will beat them up, we will arrest your daughter. You won’t get any of the permits and you won’t see your land. How dare you film a soldier like this and then sell the footage?” I told him we did not sell the footage. For 12 hours, I was taken from place to place before they took me to the detention center. I was in prison for 27 days. During the court hearings, they always asked me about the footage. They tried to charge me with the fact that I had attacked 5 soldiers.

But the lawyer brought the photos from the demonstrations, which showed that I [had actually been] lying on the ground. Eventually, I was released on bail and made to pay 7,500NIS. My court hearing is still pending. [...]

My permit was taken away; I was not able to reach my land and was forbidden from approaching the soldiers. My lawyer helped me get it back after a month [...] The soldiers also damaged our car. They would also come close to the house during patrols and throw tear gas at the house. A month and a half ago they came by the house again, talked to my son. They always say the same thing, “We know your children”, “we will take revenge”.

Salam further explains how their entire family was punished:

Our family has a store and we bring in some products from inside [the Green Line]. My dad’s permit was taken away for an entire month until our lawyer managed to get it back. During that time, we could not purchase any of the needed items in Israel.

APPENDIX 4: Case Study: Administrative Detention Used as Political Leverage Tool

Anis Abu-El'enein

Date of birth: 6 January 1975

Place of residence: Al Yamoun village, Jenin District.

Date of arrest: 13 February 2006

Date of release: 15 December 2007, deported to Gaza two months later

Anis Abu-El'enein was arrested on 13 February 2006. Originally from Gaza, Anis lived with his wife and three children in Al Yamoun village in Jenin District. Anis's brother, who had remained in Gaza, was wanted by Israeli security authorities, and Anis had come under suspicion based solely on the familial relationship they maintained. Denying any personal involvement in criminal activity, Anis made no confession while under interrogation. Unable to charge him criminally, a six month administrative detention order was issued against Anis. Addameer believes that by detaining Anis, Israeli security authorities intended to use him as a lever against his brother.

However, one month after Anis was taken into detention, his brother was assassinated in Gaza.

Nonetheless, Anis remained in administrative detention for the next eighteen months. Due to be released finally on 20 August 2007, the order against him was again renewed, this time until 19 November 2007. On 27 August 2007, Anis was brought before a judge for a review of the renewed order. At this point, Anis requested an extension of the hearing because he wanted to secure representation from Addameer. The court delayed the hearing until 18 September 2007. On the 18th, a lawyer from Addameer went as scheduled to represent Anis at Ketziot. However, by 12:30 p.m., the judge still had not appeared for the scheduled morning hearing, and Anis's lawyer had to leave because he had another hearing scheduled for that afternoon in district court in Beer Sheva. The hearing was again rescheduled, this time for 29 October 2007, more than five weeks later.

At the much delayed hearing on the 29 October 2007, the judge decided to cancel the order against Anis, noting to the court officer that it was unacceptable for the detention order to be signed two months after the renewed detention period began. The judge also noted that the secret material alleged that Anis was involved in planning for military activity with a dangerous motive, given his connection to his brother. He further observed that the initiative and planning for such activity was clearly done by someone else, and that given the change in the circumstances following his brother's death, it was unlikely that Anis would continue on in this planning alone.

However, the prosecution appealed the judge's decision, and requested Anis be kept in custody pending the appeal. On 12 November 2007, court accepted the prosecution's appeal, accepting their renewed argument that Anis was dangerous and should be in administrative detention.

On 13 November 2006, Addameer appealed Anis's continued detention to the High Court. The hearing was held the next day, only five days before the end of the detention order against Anis

was set to expire. The security services came to the High Court hearing armed with the secret evidence file. The judges reviewed the file, and held that they were convinced based on its contents that Anis was involved in military activity and was dangerous, and rejected the petition. At the same time, the prosecution declared they would seek to renew the administrative detention order against Anis on 19 November 2007 for three months.

The review hearing for the renewed order was held on 12 December 2007 with the same judge who had originally ordered Anis's release the previous October. The judge was shocked to learn that Anis remained under administrative detention orders, and repeated his earlier finding that Anis's alleged activities were related to specific circumstances that no longer existed, and that any other allegations against Anis were very general assumptions. Noting that Anis had been held for nearly two years without any new material to show his intentions or activities, the judge again cancelled the order. He gave the prosecution 72 hours to appeal but they did not, and Anis was finally released to return to his home near Jenin.

Two months later, Anis was re-arrested and deported directly to Gaza without a hearing.

APPENDIX 5: Case Study: Indefinite Detention under the Unlawful Combatant Law

Muhammed Abu Aoun

Date of birth: 26 September 1972

Place of residence: Gaza

Date of arrest: 16 October 2003

Place of detention: Ketziot

Muhammed Abu Aoun, a married man living in Gaza with his wife and three children, was convicted before the military courts and sentenced in 2003 to serve five and a half years in prison and to pay a fine of 15,000 NIS. Muhammed served his time without incident, and his family paid the fine on 21 January 2009, the day before Muhammed was finally due for release.

Unluckily for Muhammed, however, his anticipated release date, 22 January 2009, fell during the three weeks of Israeli aggression under “Operation Cast Lead”. Without informing Muhammed’s counsel or family as to their intent to detain him further, Israeli security authorities denied Muhammed’s release on the 22nd. Instead, they issued a detention order under the auspices of the Incarceration of Unlawful Combatants Law of 2002, alleging that Muhammed would pose a security risk if released during the ongoing armed conflict.

Israeli authorities released no evidence to support the suspicion on which they justified Muhammed’s continued detention. On 24 February 2009, weeks after the ceasefire ending Operation Cast Lead, the review hearing for Muhammed’s detention order was held. Israeli authorities argued that although Muhammed had been in prison for five and a half years, they suspected that if he were released, he would contact terror groups, and was a threat to security. The order was confirmed.

Under the law, the authorities must renew the orders detaining Muhammed without trial every six months subject to district court judicial review, and Muhammed’s counsel can appeal the order before the High Court. Nonetheless, in reality, the detention he is now subject to is of indefinite duration.

Muhammed was not involved in any activity while in prison that would warrant further suspicion. The continued speculation of the Israeli security service that he would immediately go back to active criminal activity is unfounded – but, under the Unlawful Combatant Law, mere speculation is enough. No comparable weight is given to the argument that Muhammed served his time in prison and now deserves to be free and back with his family.

Muhammed remains in detention in Ketziot, with no anticipated release date.

APPENDIX 6: Report Summary: Israeli Prison and Detention Center Conditions

Public Defense Office, *Conditions of Detention and Imprisonment in the Facilities of the Israeli Police and the Israeli Prison Authorities, 2008.*⁹⁶

Report Summary

The Public Defense Office (PDO) is a special, government-sponsored Israeli documentation committee that monitors conditions inside Israeli prisons and detention centers. For their 2008 Report entitled *Conditions of Detention and Imprisonment in the Facilities of the Israeli Police and the Israeli Prison Authorities*, the PDO visited 15 prisons administered by the Israeli Prison Service (IPS), six detention facilities administered by the Israeli police and eight detention facilities administered by different courts around Israel. The variety of prisons and detention centers surveyed means that the Report addresses conditions for all categories of prisoners in Israel, from security prisoners to those imprisoned for “ordinary” criminal offenses.

Overall, the 2008 Report found that there are very serious violations of the basic human rights of prisoners and detainees in facilities inside Israel, including issues with physical conditions and hygiene, violence and excessive punishment, lack of adequate health and social services, insufficient outdoor recreation time, poor food quality and stifled prisoner complaint mechanisms.

Physical conditions and hygiene

In some of the facilities the PDO visited, they found very bad physical conditions, including high level crowding, a lack of very basic amenities, poor hygiene and a significant lack of fresh air. The Report indicated that, according to IPS statistics, the average space per prisoner in Israel is 2.9 square meters, a number far removed from the accepted standard in developed countries. For example, according to the Report, in Europe, the average space per prisoner is between 7-12 square meters.

In addition, it found that there is a very serious lack of basic amenities in most of the facilities it visited. The missing amenities included necessary furniture, including a bed for each prisoner/detainee, basic cleaning supplies and appliances necessary to regulate the extreme temperatures experienced in many parts of Israel in the summer (fans) and winter (heaters). As a result, many prisoners are unprotected from the elements and the severe weather of summer and winter in Israel.

The hygiene conditions in many of these facilities were also found to be unacceptably poor. Specifically, in some of the surveyed prisons and detention centers, the degree of bad hygiene reached high levels of neglect in a way that could be very dangerous to the health of the prisoners. The hygiene problems stemming from a lack of space and ventilation supplying fresh air are compounded in some facilities by the location of the toilets and showers in the middle of

⁹⁶ Full text of the report is available at:
<http://www.justice.gov.il/MOJHeb/SanegoriaZiborit/News/DohKliaa2008.htm> (Hebrew).

the living space area. The Report further indicated that the seven detention and prison facilities where Palestinian security prisoners are usually held are among the worst hygiene facilities surveyed by the PDO.

For the above reasons, the report concluded that some of the prison and detention buildings monitored in this Report were found to be insufficient under the basic standards provided by Israeli law and High Court jurisprudence.

Violence and excessive punishments

The PDO also found that there are a large number of complaints among the facilities they monitored regarding the high level of violence used by the police guards. The complaints included individual incidents, as well as instances of collective punishments or extreme punishments. The report highlighted the improperly harsh use of handcuffs against prisoners and detainees as a particular issue, noting that it constitutes a proportionality problem – in some cases is not needed to handcuff prisoners and detainees in such a harsh way.

The Russian Compound facility was mentioned often in the context of violent treatment of prisoners and detainees, and is described in this report as a place where most of the violent phenomena described above are present.

Health and social services

The Report noted a general lack in the medical services available for prisoners and detainees, as well as the lack of appropriate social services, especially for the security prisoners, who get no form of social or educational programs (treatment or rehabilitation).

Family and lawyer visits

The Report further discussed the ongoing problems faced by detainees in receiving family and lawyer visits, despite significant Israeli regulations on the matter. Many Palestinian prisoners who are held in Israel are denied family visits on “security grounds”, as their family members are not permitted to travel into Israel to visit them.

Daily outdoor recreation time

In some facilities monitored in the Report, there were issues regarding the daily outdoor recreation periods granted to prisoners and detainees. For those held in the isolation section, who typically receive the least recreation time per day, most were given only one hour of outdoor recreation daily. The Report indicated that, by comparative standards within Israel, this is a very short recreation period, and that Israeli authorities should consider extending the outdoor recreation period for all prisoners and detainees to at least two hours daily.

Food quality and overpriced prison canteens

The Report mentions the issue of the poor quality and quantity of food typical in prison meals in prisons and detention centers. It also discussed how prisoners are forced to buy food, soap and shampoo, cleaning supplies and other items at very high prices in the prison canteen in order to keep themselves fed and clothed and their cells clean. The report discussed the problem of very high prices in the prison canteens, and discusses as an example how one prison canteen charged between 400-500 NIS (roughly \$100-125 USD) for poor quality shoes.

Prisoner petitions

The Report also found that, despite procedures and internal bylaws of the IPS regarding the right of detainees to file petitions relating to their conditions and life in prison against the IPS on their own, this right is often not respected in practice. In some prison and detention facilities, there is a policy of threatening the detainees if they are about to file a petition; in other facilities, the authorities make it difficult for prisoners and detainees to file such a petition by placing numerous bureaucratic hurdles in their way. For example, IPS authorities in some prisons have required prisoners wishing to file a petition to provide six copies, despite the fact that this request is unnecessary under the relevant regulations, but likely because the prisoners must draft their petitions by hand.

APPENDIX 7: Case Study: Administrative Detention of Minors, Denial of Education

Salwa Salah

Date of birth: 10 November 1991

Place of residence: Bethlehem

Occupation: Student

Date of arrest: 5 June 2008

Date of release: 1 January 2009



On Thursday 5 June 2008, at around 2 a.m., Salwa Salah, then 16, was preparing to go to sleep in her home in Bethlehem when the family suddenly heard a loud banging on the door. Salwa's mother opened the door and was faced with soldiers and the Israeli Security Agency (ISA). The soldiers interrogated Salwa's mother and questioned her about her husband, son and daughter as well as about troubles in the neighborhood. Then a female soldier told Salwa to get dressed. After finishing interrogating Salwa and her mother, the female soldier handcuffed Salwa, blindfolded her and forcefully took her to the military jeep.

Sara Siureh

Age at arrest: 17

Place of residence: Bethlehem

Occupation: Housewife

Date of arrest: 5 June 2008

Date of release: 1 January 2009

Only a half hour earlier that same night, a similar scene occurred at Salwa's cousin Sara's house nearby in Bethlehem. Sara and her new husband were suddenly startled to hear a loud banging on the door. Sara's husband opened the door and was confronted with soldiers and the Israeli Security Agency. They stormed into the house and a female soldier shouted at Sara to get dressed. Sara too, was handcuffed, blindfolded and dragged out to the military jeep.

Salwa and Sara's case marks the first administrative detention of Palestinian girls under the age of 18. Following their arrest, Salwa and Sara were taken briefly to Telmond Prison and then to Ofer Prison where they were interrogated for one hour. During the interrogation, they were allegedly asked about their occupation and activities as well as relations with political groups. The girls did not confess to anything. After one hour the girls were taken back to Telmond prison where they spent a couple of days. They were then taken to Damon prison where they would be detained for the next seven months.

On 12 June 2008, Salwa and Sara were issued with military administrative detention orders. The orders against Salwa had been set for four months, while the orders against Sara were for five months. A military court tasked to review the orders confirmed them on June 18th. An appeal hearing also confirmed the orders on July 16th although Sara's sentence was reduced from five to four months. Both girls were due to be released on 4 October 2008.

On 5 October 2008, both girls were issued with a second administrative detention order. On 6 October 2008, a judicial review of the order took place. Eyal Noon, the military judge presiding over the review, upheld the orders for a further three months from 4 October 2008 until 3 January 2009, claiming that the girls were still “dangerous” to the public, even though the military prosecutor had provided no information supporting this allegation since the girls’ arrest.

On 2 November 2008, the Military Judge at Ofer Military Court rejected the appeal by Addameer Attorney Mahmoud Hassan to reduce Salwa and Sara’s administrative detention orders, effectively prolonging their detention until 3 January 2009.

Both girls were informed of their release only on the morning of January 1st. The news was both a shock and a pleasant surprise to them and their families, who had been living a nightmare for months. As they were informed too late, neither Sara’s nor Salwa’s parents were able to welcome their daughters at the Al-Jalameh checkpoint. Instead, their uncle and cousins who lived in the area came to meet them, while both girls’ parents waited for them at the entry to Bethlehem city.

Beginning with their arrest, Salwa’s and Sara’s human rights were consistently violated. In addition to the soldiers’ use of excessive force during the arrests, the girls also reported that during a transfer from Damon to Ramleh prison on 15 July, they suffered extremely abusive behavior from the female police officer escorting them. In particular, the officer pushed them forcefully with her hands and shouted at them. When they arrived at Ramleh prison, Salwa and Sara were searched according to the existing procedure: they were asked to strip totally naked while a female officer searched their hair, body and mouth with gloves. They felt the search was humiliating.

Additionally, throughout the length of their detention, they were held with adult Palestinian female prisoners in Damon prison. Such an arrangement is blatantly in opposition to international law. The UN Convention on the Rights of the Child provides that anyone below the age of 18 is considered a child. Although such a definition is used by Israel in relation to its own citizens, it is not applied to Palestinians; As per military orders in use in the occupied Palestinian territory, any Palestinian above the age of 16 is considered an adult. Thus, **all Palestinian girls between the ages of 16 to 18** are detained together with adult Palestinian women. As a result, they neither benefit from preferential treatment in terms of detention conditions or more frequent access to family visits, as is also required by international law, nor do they receive access to formal education, whether vocational training or the continuation of their schooling education⁹⁷. By comparison, Israeli Prison Service regulations allow Israeli juvenile offenders to complete formal education from grade 8 to 12 by providing them access to adequately trained teachers and a specially designed curriculum for them by the Ministry of Education⁹⁸.

This breach of international law mostly affected Salwa Salah, who wished to continue her education while in prison. At the time of their arrest, Salwa had just successfully completed the

⁹⁷ UN Rules for the Protection of Juveniles Deprived of their Liberty (1990), E. 39.

⁹⁸ Fact Sheet 3: Denying Chances for a Better Future – Palestinian Female Prisoners’ Right to Education, August 2008, Fact Sheet Series: Behind the Bars: Palestinian Women in Israeli Prisons (available at: www.aseerat.ps).

11th grade and was accepted to the final year of secondary schooling, commonly known as *Tawjihi*. Due to her imprisonment and the lack of access to formal education in prison based on the Palestinian curriculum, she was unable to prepare for the final matriculation exam while in detention, although she had requested to have access to a mathematics teacher. Now, after her release, Salwa is back at school, determined to finish high school on time with her classmates. She has been studying really hard, her father says, taking additional courses after class to catch up on the classes she missed while in prison. She is doing well, full of life again, although prison has left some physical scars: strong headaches and constant stomachaches due to the prison's poor nutrition. But the doctors say that with time, an appropriate nutrition and normal life, her health condition will improve.

An account from Salwa's mother on visiting her at Damon Prison:

Once the security check at Tarqumiya checkpoint ended we proceeded to board an Israeli-plated bus on the Israeli side of the Green Line. This bus was followed and led by an Israeli police escort. It made me feel like I was a criminal. When I saw Salwa, she asked me to bring her basic items such as clothes, pajamas, underwear, t-shirts and toilet paper. The prison administration, however, only allowed me to bring one towel and a pair of shoes and slippers.



Salwa's Grandmother holding a picture of Salwa. Source: Christian Minelli

My first visit to see Salwa was very emotional and difficult. It was the first time I saw my daughter in prison and I felt so helpless; I knew I couldn't do anything to help her. I really wished that I was behind that glass barrier instead of her. She was crying and begging me to help her get out and come home. She kept saying that no charges were filed against her and that she was in prison for no reason. She wanted to go back to school and was really upset about missing her classes. She told me she misses her friends and all of us and dreams of being outside. I started crying also but tried not to let Salwa see me. She told me that the conditions in Damon Prison are really harsh. The toilets are inside the rooms, separated only by a wall. The showers though are located outside, beside the recreation area. This makes it really hard for the girls to maintain their privacy. In the beginning of the visit I was very happy and excited to see Salwa. Towards the end however, I felt myself choking up inside because I knew I had to leave my daughter behind in this miserable place. I was so upset that I started to cry. After 30 minutes, the prison guards began shouting at us to leave the building immediately, as if we were animals.

The last time I tried to visit Salwa I took my two younger daughters, Samia and Shaima with me. We traveled on the bus for 5 hours until we reached Damon prison. When we got off the bus the prison officer informed me that Salwa was not in the prison but had been taken to the military court that day. He said that she would be there a long time so there was no point in waiting. I went home, exhausted and depressed. My other children cry themselves to sleep every night because they are so worried about their sister. They still don't really understand why she is in prison. I feel so helpless because I myself do not know why she is being detained. I don't know what will happen next time or if she will be transferred to another prison. We are just waiting for news.

APPENDIX 8: Chart: Length of Detention & Access to Counsel, Judiciary⁹⁹

| | Israeli Domestic Law | Military Orders |
|---|--|--|
| Detention until access to counsel | Up to 21 days (10 days on order from investigating ISA officer, +11 by district court judge) | Up to 90 days (15 days on request from interrogator, +15 ISA official in charge of interrogation center order, +30 military judge + 30 legal advisor to military courts) |
| Detention until brought before a judge | 24 hours | 8 days |
| Total period of detention authorized by a judge | 30 days (up to 75 on the authority of the Attorney General) | 90 days (up to 180 days on the authority of a judge of the Military Appeal Court) |
| Detention from the end of investigation until indictment | 5 days | 10 days |
| Detention from filing of indictment until arraignment | 30 days | 2 years |
| Detention from arraignment until end of proceedings | 9 months | |
| Judge's approval of extension of detention if proceedings have not concluded | 90 days (Supreme Court judge) | 6 month increments (judge of the Military Appeal Court) |

⁹⁹ The chart on this page is from Yesh Din, *Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories*, December 2007, p. 128 (available at: <http://www.yesh-din.org/site/images/BackyardProceedingsENG.pdf>).

APPENDIX 9: Case Study: Prosecution of Minors before the Military Courts

The Al Aroub Children

Ages as of arrest: 16

Place of residence: Aroub Refugee Camp, Hebron

Date of arrest: 30 October 2008



Source: www.maanimages.com

On the 30th October 2008, at 10:15 a.m., the Israeli army stormed the campus of the Palestine Technical College in Aroub Refugee Camp, Hebron, and arrested students from some of the classrooms. The students were blindfolded, shackled and then repeatedly beaten, slapped and punched all over the body. They were then taken to Gush Etzion military detention centre. At 9:00 p.m., two of the boys were released; however, eight of them remained in detention in Ofer Prison. None of the boys were older than 16.

Hatem is a teacher in the Palestine Technical College. He told Addameer that on the 30th October 2008 at approximately 10:15 a.m. the Israeli Occupation Forces arrived at the college in four military jeeps. Hatem was the only teacher present in the playground area at that time. One of the soldiers shouted at him, “*Where are the boys that threw stones?*” There had been an allegation that stones had been thrown at an Israeli civilian car by a person who came from the Refugee Camp and who had been wearing a black jacket. Hatem told the soldier that the typical school day is from 8:00 a.m. to 2:30 p.m. so all of the children were inside their classes. The soldier then pushed Hatem to the ground and ordered the other soldiers to search the college. Around ten soldiers entered the college. They kicked open the doors and entered one of the classrooms where the children were taking their practical classes. They closed the door, and one of the soldiers started beating a physically disabled student that was sitting in the first row. The soldiers started yelling at the boys and then pushed one of the students, MD. One of the soldiers grabbed MD and shouted, “*You are the boy that threw the stones!*” MD was arrested along with six other boys from that room. The soldiers then entered the other classrooms and began randomly arresting students. They specifically targeted those who were wearing black jackets. The soldiers then took all of the boys to the playground area and prevented the teachers from talking with them.

The soldiers subsequently started to beat one of the students, RB, by slapping his face and kicking him on his head. Hatem tried to help him, but the soldiers threatened to open fire. They then fired stun grenades and live bullets into the playground area. The soldiers continued to beat some of the other detained students. Hatem states that he could hear the students screaming from the beatings, however, he was prevented from doing anything to help them. The director of the college called an ambulance, but it was delayed because the soldiers were blocking the entrance of the Camp. The soldiers then blindfolded and shackled 19 students and forced them to sit at the base of the military tower at the entrance of the Refugee Camp. After fifteen minutes, the soldiers released nine students and took the rest into custody.

Testimony from RB, one of the 16 year-old students arrested on 30 October 2008, taken by Addameer Attorney Firas Sabbah on 3 November 2008 at Gush Etzion Military Detention Centre:

My name is RB. I was born on the 26th of October 1992. I'm a 10th grade student at the Palestine Technical College where I study agriculture. On the 30th October 2008, as usual, I went to school. I was supposed to have an exam that day. At around 10:30 I was terrified when I saw soldiers entering the classroom. They started randomly arresting my classmates. Then the soldier told me to get out of the class. I was taken to the playground area of the school. When the soldier saw me looking at him he grabbed my head and slapped me on the face. He told me to keep my face to the ground. After that he made all of us stand in one row and we were forced to walk one after the other towards the military tower. I lost my place in the row and the soldier hit me on my legs and kicked me. Another soldier beat me until we reached the gate of the Refugee Camp. After that, the soldier laughed in my face and when I looked back he slapped me and beat me so hard on the chest that I felt it was difficult to breathe. I fell to the ground where I continued to be beaten. After about three hours I was blindfolded and shackled and pushed into the military jeep. My blindfold slipped in the process of getting into the jeep so I was beaten again.

On 6 November 2008, the eight children were brought to Ofer military court. They had been detained for eight days with adults in an adult facility.¹⁰⁰ All eight boys were charged with throwing stones at a moving vehicle, even though the sole evidence against them were the testimonies of three Israeli soldiers.

Addameer Attorney Mahmoud Hassan argued in their defense that detaining these children with adults in an adult facility is a direct violation of international law.¹⁰¹ Less than two weeks previously, Adv. Hassan had successfully used a similar argument to secure the release of two 14 year-old boys who were arrested from their homes in Beit Ummar on the 9 October 2008. Each boy in that case was released with a bail of 8,000 NIS (Approx \$2,111). According to Addameer's experience, this marked a landmark decision, in that it was the first time that a military judge agreed to release children under the recognition that it is illegal for them to be detained with adults. On this occasion, however, the military judge rejected Adv. Hassan's argument and ordered that the eight boys were to be detained until the end of their trial. Adv. Hassan appealed this decision and called for the boys to be released on bail. The appeal was successful, and all eight were released on bail for the duration of the trial, which is now underway.

While securing the boys' release on bail marks a small victory for them, and for the rule of law in the military courts, it cannot overshadow the ease with which Palestinian children are

¹⁰⁰ According to Israel military orders, a Palestinian can be detained for up to eight days without the Israeli military informing the detainee of the reason for his/her arrest and without being brought before a judge.

¹⁰¹ Article 37(c) of the UN Convention on the Rights of the Child stipulates that "Every child deprived of liberty shall be separated from adults, unless it is contrary to the child's best interest to do so."

subjected to ill-treatment and months of detention and stressful trials, often, as is the case here, based on no evidence at all.

On 4 June 2009, the first witnesses were heard in the trial against the eight boys. None of the eight confessed while under interrogation in Ofer, and there is no external evidence in the file against them; there have been no complaints submitted from any of the Israeli civilians in the cars allegedly subjected to stone throwing on 30 October 2008. The prosecution's entire case thus rests on the statements of three Israeli soldiers who claimed to witness the children throwing the stones. However, these statements are tenuous at best, and are replete with alarming inconsistencies. For example, in the statements the soldiers speak only in generalities and they do not identify specific children or on what basis they arrested the eight boys; all they do say is that there was a stone throwing incident and they arrested these children. In addition, the three soldiers all claim in their statements to not have entered the school when carrying out the arrests. However, in their statements to Addameer, the school's teachers and the school manager all said the soldiers entered the school and arrested the eight boys there.

Even more indicative of the capricious nature of the selection and arrest of the eight boys, one of the three soldiers confirmed under cross examination in court on 4 June 2009, "*I don't know how many I arrested, I don't know who was throwing stones, but I'm sure that I arrested the ones who were throwing stones*".

The next hearing in the trial is set for September 24, 2009.

APPENDIX 10: Case Study: Retroactive Application of Criminal Liability

Abdel-Karim Hawarin

Date of birth: 30 June 1970

Place of residence: Dahriyyeh, near Hebron

Date of arrest: 6 November 2008

Abdel-Karim Hawarin, a long time member and deputy manager of the Charitable Committee of Dahriyyeh, a philanthropic organization that, among other activities, distributed funds to children who lost one of their parents, was arrested by Israeli soldiers on 6 November 2008.

On 16 December 2008, more than a month later, the Israeli Military Commander of OPT signed an order pursuant to his authority under the Security Regulations of 1945 declaring the Charitable Committee of Dahriyyeh to be an illegal organization, because it “affects the security of the Area, of Israel, the safety of the public and of the public order”. The order made no further findings about the Committee.

Following his arrest, Abdel-Karim was interrogated in Ashkelon interrogation center for 80 days before an administrative detention order was issued to detain him from 21 January 2009 to 21 May 2009. A week after his detention order was issued, Israeli military prosecutors submitted a charge sheet against him, cancelling the detention order and transferring Abdel-Karim to the criminal prosecution system.

In the charge sheet, prosecutors charged Abdel-Karim with three offenses: (1) Being a member of and active in an illegal organization; (2) Acting in a position of official responsibility in an illegal organization; and (3) Entering money to the Area without a permit. The prosecution baldly stated in the charge sheet that the Charitable Committee of Dahriyyeh, in which Abdel-Karim had been active from 2002 through May 2008, was affiliated with Hamas.

Even though the Committee was not declared an illegal organization until a month after Abdel-Karim’s arrest, and even though the declaration established no link between the Committee and Hamas or between Abdel-Karim and Hamas that would support the charge sheet’s allegations, these facts did not seem to prevent the prosecution from charging Abdel-Karim with retroactive criminal liability, or from assuming facts without proving them.

Abdel-Karim’s trial commenced with these illegalities uncorrected. Fearing that he would only be placed back in administrative detention, whether he was convicted or not, Abdel-Karim took a plea bargain in which prosecutors agreed to release him from detention, to not use administrative detention against him for this file, and to drop the charge alleging a connection to Hamas.

Abdel-Karim, who had committed no crime and had none proven against him, was sentenced to time already served, and was released.

APPENDIX 11: Case Study: Protests against the Wall, Denial of Right to Peaceful Assembly

Mohammad Birjiyah

Age: 37

Place of residence: Al Ma'sara

Date of arrest: 1 May 2009

Date of release: 7 June 2009

On 1 May 2009, the IOF arrested seven people in the West Bank village of Al Ma'sara during a demonstration against the Wall. Among the seven was Mohammad Birjiyah, a married father from Al Ma'sara village who has been a vocal opponent of the Wall and a leader in the Al Ma'sara Committee against the Wall and Settlements, which organizes peaceful protests against the Wall every Friday. Also arrested were Mohammad's brother, Hassan Birjiyah, Azmi Ash-Shyukhi, Mustafa Fawaghreh, Mohammad Zawahre, a British activist named Tom Stocker, and one Israeli solidarity activist, Hagai Mattar.

The IOF alleges that Mohammad and the arrested demonstrators had been involved in "rioting, interfering with police work, assault of soldiers and policemen, and the destruction of military property". However, Addameer believes that Mohammad and the other members of the Al Ma'sara Committee were involved in a peaceful protest but were deliberately targeted by the IOF as a result of their role in mobilizing weekly demonstrations in the village, and that the others were suspect by association.

Stocker and Mattar, who were arrested after trying to prevent IOF soldiers from arresting members of the Committee, were released after a couple of hours and payment of 1500 NIS in bail each. Their bail also came with a condition, prohibiting them from entering the West Bank for two weeks.

Azmi Ash-Shyukhi, Mustafa Fawaghreh and Mohammad Zawahre were released on 13 May 2009, on a combined bail of 50,000 NIS, after being detained in military prison for almost two weeks. Mohammad Birjiyah was released later, and was ordered to pay 25,000 NIS bail. Mohammad's brother, Hassan Birjiyah, is still being held as of July 2009.

All four of the Palestinians released on bail are awaiting trial and have been ordered not to participate in any demonstration until their cases are resolved.

Arresting to discourage exercise of right to peaceful assembly

However, as cases before the military courts may drag on in court for years after an arrest, many, including Mohammad, see this as an effort by Israel to prolong this form of deterrence. As Mohammad has stated,

Israel uses a technique – they arrest you and then you cannot participate in the protests, as you have a suspended sentence, an ongoing court case. Therefore, Hassan for instance was

*arrested on 1st May 2009, but his case is likely to be pending until 2011 because of his previous arrest. They put huge pressure on you not to participate.*¹⁰²

Moreover, Mohammad's lawyer Lymore Goldstein believes that the military court prosecutors did everything they could to extend Mohammad's recent detention period, from alleging "randomly warmed-up old charges" to unnecessarily delaying his trial hearing. Even after two judges in the military courts ruled that he should be released, prosecutors managed to extend Mohammad's time in detention by alleging additional, unfounded charges.

Mohammad had been arrested twice before, and harassed at his home, in what Addameer believes is a direct result of his prominent role as an organizer and public speaker at the Al Ma'sara demonstrations. Instructions following his previous arrests to stay away from the demonstrations provide evidence to this effect.

*Three times during the night, [the IOF] came and attacked my house, took out my brothers and nieces during the night, and my children, including my one year-old daughter. They made my family stand outside for three to four hours. They damaged the furniture, told me to get dressed and that they would take me to prison. I was arrested twice in total (first in November 2007 and then in December 2008). They brought me to a court and then released me. [...] I stayed one week, but the arrest was because of the demonstration. They told me not to participate in the demonstration. [...] The accusation was that I beat a soldier, but the video clearly shows that I did nothing like this.*¹⁰³

Discrimination between Palestinian and international protestors

The Al Ma'sara arrests also represented a clear example of discrimination regarding how Israeli and international activists are treated during their detention as compared to Palestinians. Palestinian activists risk paying higher fines, have to undergo long trial procedures in a military court system that fails to meet international fair trial standards – in particular regarding the defendant's access to incriminating evidence and the opportunity to cross-examine witnesses – and face sentences that are disproportionate to the severity of their offences. International and Israeli activists on the other hand, are likely to be released within a few hours and their sentences suspended or significantly reduced.

*There is a big difference [in treatment of Palestinians following an arrest for protesting against the Wall]. When we were arrested, we were 5 Palestinians, one British and one Israeli. The Israeli and the British persons were released after 1 hour. The rules on them are not very hard. They were not allowed to attend the demonstration for 1 week.*¹⁰⁴

¹⁰² Addameer interview with Mohammad Birjijah, June 17, 2009.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

APPENDIX 12: Case Study: Arrests used to Suppress Protests against the Wall, Cooperation with the United Nations

Muhammad Srour

Age: 38

Place of residence: Ni'lin

Date of arrest: 20 July 2009

Date of release: 23 July 2009, unknown charges pending

On 6 July 2009, Muhammad Srour and Jonathan Pollack testified before the United Nations Fact Finding Mission on the Gaza Conflict in Geneva, Switzerland. Srour, a Palestinian from Ni'lin in the West Bank, is a member of the Ni'lin Popular Committee Against the Wall, which participates in demonstrations against the Wall separating the West Bank from Israel and many of Ni'lin's residents from their land. Jonathon Pollack is an Israeli solidarity activist.

Srour and Pollack were invited to testify before the Mission after witnessing the shooting of two Ni'lin residents, Arafat Rateb Khawaje and Mohammed Kjawaje, by Israeli forces during a demonstration against the conflict in Gaza in Ni'lin on 28 December 2008.¹⁰⁵ Led by Richard Goldstone, the Mission has a broad mandate that includes investigations into how the political situation in Israel in the lead-up and aftermath of the conflict in Gaza affected the West Bank.

Two weeks after testifying before the Mission, Mohammad Srour was detained by Israeli border officials while crossing the Allenby Bridge from Jordan and taken to Ofer prison for interrogation.

In his testimony before the UN, Srour anticipated that his presence in Geneva would place him at risk for arrest, stating that "I know full well that I will pay the price for this testimony when I return at Israeli crossing points in my journey of return after this hearing."

On 23 July 2009, Srour was released from detention on "conditions" and after posting bail, said to be around 4,000 NIS. Although Srour was not charged, the courts said they were likely going to charge him, but they did not say on what grounds he was to be charged, or when. No court date has been set for his reappearance.¹⁰⁶

As Srour was not arrested when leaving Israel on his way to Geneva, it is difficult to view the motivation behind Srour's arrest as anything other than a politically-motivated reprisal against Srour's activism and the UN Fact Finding Mission. Arrest and detention of UN witnesses penalizes Palestinians for cooperation with UN institutions and severely undermines the UN's capacity to fulfill its mandate in the occupied Palestinian territory.

¹⁰⁵ Asian Human Rights Commission, Press Release: Palestine: Arrest Of Muhammad Srour, Witness to UN Human Rights Council, 26 July 2009 (available at: <http://www.scoop.co.nz/stories/WO0907/S00444.htm>).

¹⁰⁶ Ma'an News Agency, "No charge for Srour; bail, "conditions" following UN testimony", 23 July 2009 (available at: <http://www.maannews.net/eng/ViewDetails.aspx?ID=214093&MARK=srour>).

Moreover, this arrest is a clear continuation of the increasing oppression of Palestinian communities engaging in ongoing protest against the Wall.

Protests in Ni'lin against the Wall continue amidst an increase in violence by Israeli forces

The West Bank village of Ni'lin has been protesting against the construction of the Wall since May 2008 when the Israeli government began for a second time to construct the Wall on village lands.

Violence from Israeli forces against Ni'lin protesters dramatically increased during and after the recent 22-day conflict in Gaza. Israeli forces have killed three demonstrators in Ni'lin since the beginning of the Gaza assault, and the Israeli army has introduced new weapons against demonstrators, using a high-velocity tear gas projectile and a .22 caliber live ammunition shot by sniper fire as a means of crowd dispersal.

Overall, Israeli forces have killed five residents of Ni'lin and critically injured one American solidarity activist in their efforts to stop Ni'lin resistance to the Wall. Sources place the total injured in Ni'lin demonstration at more than 450 people. At least 76 people have been arrested protesting against the Wall in Ni'lin alone.

For more information on Israel's policies of arrest, detention and violent repression against Palestinian Popular Committees and Palestinian and international human rights defenders engaged in the struggle against the construction of Wall, see *Repression allowed, resistance denied: Israel's suppression of the popular movement against the Apartheid Wall of Annexation* (July 2009), a joint report from Stop the Wall Campaign and Addameer Prisoner Support and Human Rights Association.