



## Addameer Prisoner's Support and Human Rights Organization (Addameer)

### Submission to the United Nations Universal Periodic Review of Israel

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*ADDAMEER* (Arabic for conscience) **Prisoners Support and Human Rights Association** is a Palestinian non-governmental, civil institution which focuses on human rights issues. Established in 1992 by a group of activists interested in human rights, the center's activities focus on offering support for Palestinian prisoners, advocating the rights of political prisoners, and working to end torture through monitoring, legal procedures and solidarity campaigns.

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**Addameer<sup>1</sup> Prisoner's Support and Human Rights Association**  
**Submission to the UN Universal Periodic Review**  
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In this submission, Addameer provides information under Section C, **Promotion and Protection of Human Rights on the Ground: Implementation of international human rights obligations** of the Human Rights Council's Guidelines for the Preparation of Information under UPR.<sup>2</sup>

**Key Words:** Fair Trial, Administrative Detention, Military Courts.

**Category:** Administration of justice and the rule of law

**Topic I:** Systematic trial of Palestinian civilians, including children, by Israeli military courts which do not abide by internationally recognized fair trial standards.

**Key Issue:** Addameer wishes to express its grave concern regarding the absence of fair trial procedures concerning the trialing of Palestinian Civilians in the Israeli Military Courts.

- 1) In the **Human Rights Committee's** latest General Comment, '*Article 14: Right to equality before courts and tribunals and to a fair trial*' the Committee clarified the absolute prohibition, notwithstanding a state of emergency, on deviation from the fundamental principles of a fair trial.<sup>3</sup> The Committee also affirmed that "[w]hile the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the courts concerned."<sup>4</sup> Finally, the Committee reiterated that the "[t]rial of civilians by military or special courts should be exceptional."<sup>5</sup>
- 2) It is estimated that since the Israeli occupation of the Occupied Palestinian Territories (OPT) began, 700,000 Palestinians have been imprisoned by the Israeli military. Presently, there are an estimated 10,000 Palestinian prisoners currently in Israeli jails. Among these thousands of detainees are 323<sup>6</sup> children.<sup>7</sup>
- 3) **It is imperative to note that analysis by the various UN mechanisms concerning Palestinian detainees has largely focused on the conditions of detention pre and post trial. Rarely has**

<sup>1</sup> Addameer also endorses the UPR submissions of Adalah, Al Haq, DCI/PS, JLAC, RTE, Civic Coalition for Jerusalem.

<sup>2</sup> Human Rights Council, "*Human Rights Bodies and Mechanisms, Universal Periodic Review – Follow up to Human Rights Council resolution 5/1: Draft decision submitted by the President.*" A/HRC/6/L.24, 24 September 2007.

<sup>3</sup> UN Human Rights Committee, General Comment No. 32, "*Article 14: Right to equality before courts and tribunals and to a fair trial.*" CCPR/C/GC/32, 12 August 2007. p. 2, para. 6.

<sup>4</sup> Ibid. p. 6. para. 22.

<sup>5</sup> Ibid. p. 6-7. para. 22.

<sup>6</sup> As documented by Defence for Children International – Palestine Section June 2008.

<sup>7</sup> It is also important to note that there are no special trial procedures for Palestinian children who face the military courts unlike in the trial of Israeli children in civil courts inside Israel.

analysis been undertaken which reports the compliance of the Israeli military courts as presently constituted, both in law and in practice, with the fundamental principles of fair trial. The UN, however, is not alone in neglecting the issue of fair trial in Israeli military courts. The Israeli human rights organization Yesh Din, the author of the most authoritative and comprehensive study published on the military courts in over a decade noted that “the [Israeli] military judicial system in the OPT has acted under a veil of almost complete darkness until now.”<sup>8</sup> However, the **Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms** while countering terrorism (the Special Rapporteur on human rights while countering terrorism) visited an Israeli military court during his 2007 country visit and noted the following subsequent to that visit: “...the fact remains that [Israeli] military courts have an appearance of a potential lack of independence and impartiality, which on its own brings into question the fairness of trials.”<sup>9</sup>

The stark reality is that *not a single* Palestinian charged with so-called security-related and other criminal offenses who passes through the Israeli military court system receives a fair trial. While the reporting format for UPR does not allow for an exhaustive discussion of the presence in the Israeli military courts of each of the elements that cumulatively comprise the right to a fair trial, some illustrative examples will be used to show that individual elements of that right are not present either in law, in practice or both.

#### 4) *The Right to a 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 stage<sup>10</sup> of proceedings as compared to those prescribed for the detention of Israelis under the civil court system. Israeli Military Order 378<sup>11,12</sup>, for example, dictates that a Palestinian detainee may be held for up to two years awaiting conclusion of trial post-indictment, as compared to 9 months for Israelis in the civil system wherein an accused can only be held for up to nine months while awaiting trial post-indictment.<sup>13</sup>

5) 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. At the end of 2006, for example, some 1,800 Palestinian detainees were being held in detention until the end of proceedings.<sup>14</sup> Moreover, the Israeli military administration has not allocated

<sup>8</sup> Yesh Din, Volunteers for Human Rights, “*Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories*,” December 2007, p. 11.

<sup>9</sup> 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. 14, para. 29.

<sup>10</sup> 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.

<sup>11</sup> Israeli Military Order 378, Order Concerning Security Directives, Article 78(ja)(2)(a) and (b).

<sup>12</sup> 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.

<sup>13</sup> See *Supra* note 9, p. 128 for a comparison between periods of detention in the Israeli civil and military courts.

<sup>14</sup> See *Supra* note 9, p. 130.

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 7,962 hours of time for judges to deal with (new and pending) cases before the military court of first instance.<sup>15</sup> This figure is all the more startling when one is cognizant of the fact that out of 7,563 cases<sup>16</sup> before the military court of first instance in 2007, only 93 cases resulted in full evidentiary hearings rather than plea bargains.<sup>17</sup>

#### 6) *The Right to Adequate Time and Facilities for the Preparation of a Defense*

The right of Palestinian detainees to adequate time and facilities for the preparation of a defense also suffers from legal and practical impediments. Neither Military Order 378 nor the subsequent Order 400<sup>18</sup> provides any statutory safeguards concerning the minimum requirements under international law for the provision of an effective defense. For example, far from protecting this right, Military Order 378 allows interrogators to prevent attorney/client meetings for up to 30 days<sup>19</sup>. Orders are usually issued immediately to prevent attorney/client meetings in at least 60% cases of Palestinians arrested by the Israeli occupying forces.<sup>20</sup> 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 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.<sup>21</sup>

7) With no legal rights to rely upon, it is to be expected that Israeli and Palestinian lawyers defending Palestinian clients have great practical difficulties throughout the pre-trial and trial stage. For example, during the detention hearing to determine the “legality” of continued detention without access to a lawyer, lawyers are asked to defend their clients without first meeting them and often without knowing the charges against them. Both in cases where there is a ban on lawyer/client meetings and in cases where there is not such ban, secret evidence not provided to the attorney is often used at the detention hearing. Other practical difficulties include: access to investigative material in terms of full disclosure, obtaining copies and the language of record (Hebrew which most Palestinian lawyers do not speak proficiently); logistical and time impediments to lawyer/client meetings; lack of confidentiality of lawyer/client meetings; and lack of access to prior judgments of the military courts, including binding judgments of the Military Court of Appeals (See the case of Nasser Affouri in Annex one).

### **Category: Right to Life, Liberty and Security of person.**

#### **Topic 1: Administrative Detention.**

**Key Issue: 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.**

<sup>15</sup> Military Court Unit of the Military Advocate General, “Annual Activity Report for 2007 for the Military Courts in Judea and Samaria.” 2008. p. 25.

<sup>16</sup> Cases include so-called security-related offenses as well as traffic violations, entry into Israel without permit and normal criminal cases.

<sup>17</sup> See *Supra* note 16, p. 11.

<sup>18</sup> *The Order Concerning Defense in a Military Court (Judea and Samaria) (NO. 400), 5730-1970.*

<sup>19</sup> Note that a Military Court judge can extend the period of detention without access to a lawyer for another 30 days and then the President or Deputy President of the Military Court can extend this 30 days an additional 30 days based on a written statement provided by the Military Commander.

<sup>20</sup> See *Supra* note 9, p. 112

<sup>21</sup> *Ibid.*

8) There are now approximately 800 Palestinian Administrative detainees held in the Israeli prisons, including 5 women, 13 children (of them two girls aged 16). All are detained without any charges or any trial procedures.

9) Administrative detention has been a real concern for different UN official bodies like the **Committee Against Torture**, and the **Special Rapporteur** on the promotion and protection of human rights and fundamental freedoms while countering terrorism.<sup>22</sup> The Committee in its last concluding observations on Israel at its 27<sup>th</sup> session on November 2001 found:

“The committee continues to be concerned that administrative detention does not conform with article 16 of the convention.”<sup>23</sup>

10) Administrative detention in the OPT is ordered by a military commander and grounded on “security reasons.” The security reasons are broad enough to include non-violent political subversion and virtually any act of resistance against the Occupation (See the case of Samer Arbid annex two).

12) International law provides for the use of administrative detention only as a last resort and on an individual, case by case basis. Only imperative reasons of security justify the use of administrative detention under international law. Administrative detention should not be used as a substitute for criminal prosecution where there is insufficient evidence to obtain a conviction. (See the cases of Anis Abu Elainin and Nura Al Hashlamon in Annex three and four).

13) Addameer is profoundly concerned by the Israeli practice of administrative detention that does not meet international standards set by humanitarian law, human rights treaties and customary international law. Moreover its usage by Israel has become a form of collective punishment against the occupied civilian population.

14) Once an administrative detention order has been issued by the military commander, the detainee must be brought before a military judge within eight days. At the hearing before the military judge, a summary of the secret evidence is submitted by the Military Prosecutor; neither the detainee nor his or her lawyer is permitted to see the secret evidence. This is in breach of Israel’s obligations under both International Human Rights and Humanitarian Law.<sup>24</sup> The hearing is not open to the public. This is

<sup>22</sup> See Supra note 9. Para. 25.

<sup>23</sup> Conclusions and Recommendations of the Committee against Torture : Israel.23/11/2001. CAT/C/XXVII/Concl.5. subjects of concern 6 (e).

<sup>24</sup> Article 14 of the International Covenant on Civil and Political Rights.

also a breach of Israel's obligations under International Human Rights Law.<sup>25</sup> The military judge may approve, shorten or reject the order. In practice, the order is usually approved without change.

15) Prior to April 2002 administrative detention orders had to be reviewed after three months. This requirement was abolished in April 2002. Upon the decision of the initial judgment the case can be appealed to the Military Court of Appeals.

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.

16) As a result of the possibility of indefinite renewal of administrative detention orders, detainees do not know when they will be released and/or why they are being detained. In many cases the arrest and detention are renewed at the prison gates when the detainee thinks they are about to be released. Palestinian detainees have spent up to 8 years in prison without being tried under administrative detention orders. The current longest serving Palestinian detainee in administrative detention has been held for 4 years without charge or trial.

17) Lawyers representing administrative detainees must contend with intolerably vague allegations. Allegations against administrative detainees are typically as broad as "*being a threat to the security of the area,*" despite this, the area and the nature of the threat are left undefined. This is a clear breach of Israel's obligation under International Human Rights and Humanitarian Law.<sup>26</sup>

18) It is possible for administrative detention to be combined with regular proceedings in the military courts. For example, a prisoner may be placed in administrative detention for several months, and then charged by the military court. The prisoner will then stand trial while the detention order against him remains in effect. Alternately, a prisoner will be tried and convicted by a military court, complete his sentence, and then be placed under administrative detention. (See the case of Nura Al Hashlamon in annex four).

19) Administrative detention has been used regularly against Palestinian children, in the same manner as it is used against Palestinian adults. Indeed children as young as 16 have been given administrative detention orders and often serve their detention alongside adults. There are currently 13 children in administrative detention (See the cases of Sara and Salwa in annex five).

## Topic 2: Discriminatory Legislations

<sup>25</sup> Ibid.

<sup>26</sup> Fourth Geneva Convention A71, and A14 ICCPR .

20) On the 18/12/07 the Israeli Knesset amended the period of the criminal procedures (Non – Resident Detainee Suspected of Security Offences) (Temporary Provisions) law 2006, for another 3 years. Under which the suspect could be held for up to 96 hours before being brought before a judge, and for up to 21 days incommunicado.

The Special Rapporteur – Martin Scheinin- on Human Rights while counting terrorism noted with concern the derogation of this law from recognized standards of due process.<sup>27</sup>

## Conclusion

Addameer believes that the practice of administrative detention and the absence of a fair trial according to international standards violate fundamental human rights. Addameer does not regard the judicial reviews or the appeal hearings which occur during the administrative detention procedure as constituting a fair trial and believes that administrative detention should not be used as a means of circumventing the criminal justice system and avoiding the due process safeguards it provides. In addition, Addameer is concerned that some of those held in administrative detention in Israel and the OPT are prisoners of conscience, held solely for the non-violent exercise of their right to freedom of expression and association.

While Addameer has only touched on two elements of the right to fair trial, given the cumulative nature of these rights, derogation from these elements alone is enough to cast doubt on Israel's compliance with its fair trial obligations under international human rights and humanitarian law.

## Recommended Questions to Israel:

**Topic 1:** *Systematic trial of Palestinian civilians, including children, by Israeli military courts which do not abide by internationally recognized fair trial standards.*

1). Will Israel undertake to enact effective legislation fully incorporating the fair trial standards in the military courts in the Occupied Palestinian Territories, including a provision of legislation that would protect the right of access of a detainee immediately after his detention and not exceeding eight days. Furthermore will a strict limitation be put on the ninety day interrogation period before a detainee is charged?

2). Will Israel undertake to enact effective legislation to prohibit discrimination between Palestinian children and Israeli juveniles in relation to such issues as:

- I. The definition of a child according to the Military Order 132 is 16 while in the Israeli Civil Law it is 18.

<sup>27</sup> Supra note 9, paragraph 23-24.

- II. Palestinian children are trialed in front of the same military courts as adults while there is no juvenile court in the Military System like in the Israeli Civil System.
- III. 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 offence was committed.

**Topic 2: Administrative Detention.**

- 1). How does Israel's practice of Administrative Detention comply with its obligations under Article 78 of the Fourth Geneva Convention.
- 2). 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?
- 3). Does Israel intend to review its policy of administrative detention per the recommendations of the Committee against Torture for its compliance with Article 16 of the CAT?

## Case Studies for Universal Periodic Review

### ANNEX ONE: Nasser Affourri

Nasser Affourri a resident of Nablus was born on the 20 of January 1986. He was arrested on the 25 of May 2006 along with another man who was travelling with him to Ramallah.

The circumstances surrounding Nasser's arrest are unclear. While walking, a military jeep passed and Nasser's acquaintance told Nasser to run away. His acquaintance was carrying a bag and after the jeep passed, he threw the bag into a nearby field on the side of the road. The jeep noticed the men and followed them. They demanded the I.D. cards from the men and took them away for examination. They subsequently began to look for the bag.

The two men started to run away. The jeep immediately caught up with them and they were arrested.

Both of the men were taken for interrogation to Kishon detention centre until the 4 of July 2006. They submitted a charge sheet on the 11 of July 2006. During detention it is alleged that Nasser was held for long periods of time in solitary confinement and he endured psychological pressure.<sup>28</sup>

In the interrogation Nasser claimed that he was on his way to work in Ramallah. The military interrogator subsequently brought Nasser's acquaintance to the room and he confessed that he was on his way to inside Israel to carry out a suicide bombing. A confession was taken from Nasser along with another confession regarding the planning of the activity.

<sup>28</sup> For further information on the use of torture in interrogation please see DCI/PS 2008 submission to the UPR



It must be noted that Addameer was not representing Nasser before this time. His previous lawyer proposed to make a plea bargain and was intending to submit the confessions and evidence. It was only when Addameer took over the case that it was discovered that there was no new information about the soldiers who arrested the men, there was also no explanation from the bomb disposal unit as to how the bag was found, the contents of the bag and how it was defused. Addameer's Lawyer Adv. Mahmoud Hassan argued that there was no proof the men intended to carry out a suicide bombing. He requested the judge to summon the two soldiers and the bomb disposal unit team. His request was rejected by the military judge who claimed that it would '*complicate procedures and would take too much time*'.

Adv. Hassan then requested for Nasser's acquaintance to be brought before the court as a witness. It later emerged that his name was Isam Najjar. It was also discovered that there was no confession by Isam's in the file of Nasser concerning the intention to carry out a suicide bombing inside Israel. Despite this, the prosecution refused Adv. Hassan's request on the grounds that for 'security reasons' it was threat to the work of Israeli Security Agency (ISA) and for the protection of the witness. An appeal was lodged against this decision and was subsequently rejected. It must be highlighted that without this crucial cross examination of the witness, the military court was deliberately obstructing Adv. Hassan's attempt to find out what exactly happened on the 25 of May 2006.<sup>29</sup>

In May 2008, Nasser's brother paid a visit to Nasser in Ashkelon jail inside Israel. In the middle of the visit, Nasser's brother noticed Isam Najjar among the visitors. He approached Nasser's brother and asked him how Nasser's case was going. He criticized him for the fact that Adv. Hassan had requested his presence in the court. He then suggested that Adv. Hassan should seek a plea bargain for Nasser.

Following this incident, Adv. Hassan requested for Nasser's brother to be a witness before the court. The prosecution has refused this request till now. Requests to be provided with the names of the soldiers that arrested Nasser were rejected on the argument that '*we don't have any information about that*'. Nasser's case is still ongoing.

The right to a fair trial is a cornerstone of democratic societies. How a person is treated when accused of a crime provides a concrete demonstration of how far a state respects human rights. According to the Fair Trial Standards:

'In order to ensure that the right to defence is meaningful, anyone accused of a criminal offence and their lawyer, if any, must have adequate time and facilities to prepare the defence'.

This case highlights the difficulties that Palestinian lawyers face in acquiring the necessary information and time needed to defend their clients. Without such information it will be impossible for Adv. Hassan to defend his client. Ultimately Nasser Affourri will pay a high price for a crime he had no part in and which may not even have existed.

<sup>29</sup> At this point it was suspected by Adv. Hassan that Isam Najjar may be a collaborator for the ISA.

## ANNEX TWO: Samer Meena Arbid

**Samer Meena Arbid** was born on the 18 July 1975. He is an employee of the Palestinian Agricultural Relief Committee in Ramallah. On the 8 of March 2007, Samer was detained while he was on his way to Hebron to spend a day with the local women's organizations for the occasion of International Womens' Day.

On the 8 of March 2007 Samer was issued with a six month administrative detention order for '*being an activist in the Popular Front for the Liberation of Palestine (PFLP) which constitutes a danger to the security of the area*'.

On a previous occasion Samer was released in May 2006. He had been sentenced for 40 months imprisonment for being a member of the PFLP. The period of the detention was subsequently reduced on appeal from 40-30 months. Instead of being released, however, Samer was sent to administrative detention which was continuously renewed for a total period of 10 months.

In March 2007 Samer was rearrested. Samer's detention was based on secret material to which he and his lawyers were not permitted to see. The military court indicated, however, that Samer was particularly active in the organizational and administrative wing of the PFLP with an element of military activities.

In his review of the case the military judge approved the administrative detention order for another six months. The appeal, which was lodged against this decision, was rejected. A petition to the Israeli High Court against the continued extension of his detention order was heard on the 28, June 2007. After reviewing the 'secret evidence' the High Court reaffirmed that Samer was "*posing a threat to the security of the region*" because he was involved in '*dangerous activities*'.

On the 7 September 2007 the administrative detention order was renewed for another six months, however, military judge Ihsan Halabi reduced the administrative detention order from a period of six to three months. The judge stated that the detention period could not be renewed again "*unless new serious secret evidence comes to light,*" or "*a radical change occurs in the general situation*". It is notable that for the first time, the judge revealed that the secret materials were not clear with regard to Samer's connection to a specific dangerous activity. He added that although Samer did have relations with other activists this did not justify keeping Samer for further detention. The prosecution appealed the judge's remarks. The military judge of the appeal accepted the prosecution's appeal and approved the administrative detention order for four months.

On the 6 January 2008 the administrative detention order was renewed for another four months until the 5<sup>th</sup> of May. The military judge disregarded the decision of the previous judge who stated that the administrative detention order must not be renewed if no new information is brought before the court.

On the 2 March 2008 the appeal, which was lodged against this decision, was dismissed. The judge insisted that the 'secret material' against Samer revealed that he was '*highly dangerous*'. A petition was taken to the Israeli High Court and was dismissed.

On the 5 of May 2008 Samer's administrative detention was renewed for another four months. On the 12 of May, the judge reduced the period by limiting the administrative detention order for two months<sup>30</sup>. It must be noted that this was the first time the judge stated that the 'secret evidence' made reference to Samer's organizational activity.

The appeal, which was lodged against this decision, was rejected. On the 9 of July 2008, the military commander extended the administrative detention order for another two months without bringing forward any new evidence. He stated that Samer was still active in the PFLP yet he admitted that the 'secret evidence' suggested that he was not involved in planning or carrying out any military activities. It was also highlighted that Samer's organizational activity did not involve senior members of the party. The judge suggested at the end of this administrative detention order Samer should be released because he is no longer "*posing a threat to the security of the region*".

<sup>30</sup> This was without any restriction that the order could be renewed by the military commander.



Unquestionably, both the process through which Samer was placed in administrative detention and the renewal of his detention are in violation of fundamental principles of international law. This illegality is compounded by the fact that there is no justification for Samer's ongoing detention. He must therefore be released.

Despite the repeated claims of the Israeli authorities that the practice of administrative detention in general, and the administrative detention of Samer Arbid in particular, is in full compliance with their international legal obligations, it is clear that this is a flagrant distortion of international law. As has been noted by the UN Human Rights Committee, Israel's use of administrative detention, in particular restrictions on access to counsel and the disclosure of full reasons for detention, severely limits the effectiveness of judicial review.<sup>31</sup> As such, this practice is in contravention with Israel's obligations under the International Covenant on Civil and Political Rights. This position has also been emphasized by the UN Working Group on Arbitrary Detention, which has repeatedly found Israel's use of administrative detention to be a violation of its obligations under international human rights law. Under international human rights law, a detained person must be informed promptly of the reasons for their detention, and administrative detention must be of a short duration only, not for an indefinite period. Further, under international humanitarian law, the right to a fair trial is guaranteed and the principle that no one may be convicted or sentenced, except pursuant to a fair trial offering all essential guarantees has been deemed customary by the International Committee of the Red Cross.

<sup>31</sup> Human Rights Committee considers Israel's second periodic report on compliance with International Covenant HR/CT/639 28 July 2003.

### **ANNEX THREE: Anis Abu Elainin**

Anis Abu Elainin is a resident of Yamoun village in the district of Jenin. Originally from Gaza, he is married and is the father of three children. Anis was arrested in February 2006 and was issued with a six month administrative detention order for “*posing a threat to the security of the region*”. No further details were provided.

His first administrative detention order was approved for a full six month period. The appeal, which was lodged against this decision, was rejected. The second administrative order was signed by the military commander; however, the military judge reduced the period and limited the order for three months. Following this hearing, all further administrative detention orders were renewed for a period of three months.

On the 20, August 2007 Anis’s administrative detention order was renewed for another 3 months until the 19 of November 2007<sup>32</sup>. During the review of the detention order on the 29, October 2007 the judge alleged for the first time that secret evidence had been obtained against Anis. Neither Anis nor his lawyer were permitted access to the secret evidence alleged against him.

The military judge stated that Anis was involved in dangerous activity before his imprisonment and that there was ‘*now a serious change in his circumstances*’.<sup>33</sup>

The judge cancelled the administrative detention order, however, on the grounds that no new information had been brought against Anis for a long time. The prosecution appealed this action and the judge accepted it. Anis was issued with another three month administrative detention order. A petition to the Israeli High Court against the continued extension of his detention order was made where it was stated that Anis still ‘*posed a threat to the security of the region.*’ No reference was made to the details of his brother’s assassination. The judges of the High Court dismissed the petition and Anis remained in administrative detention.

After the decision of the High Court the order was finished and renewed for another three months. In the review of the new administrative detention order on the 12 of December 2007, the judge reviewed the order and it was subsequently cancelled. He granted three days for the prosecution to appeal. As Anis was due to be released within two days, the prosecutor did not lodge an appeal. Anis was released on the 15 of December 2007.

On the 19 of February 2008 Anis was rearrested and deported to Gaza while his wife and children remain in Yamoun<sup>34</sup>. Anis was never informed of the nature of the secret evidence relied on to keep him detained and was never charged or convicted of any offence.

This case is thus a clear example of collective punishment in that Anis was being detained without charge not for anything that he has done but because he is a relative of a person suspected of committing an offense.<sup>35</sup>

<sup>32</sup> It must be noted that this was the first time that a lawyer from Addameer was representing him.

<sup>33</sup> It emerged during a meeting between Addameer’s Lawyer and Anis that his brother had been assassinated in Gaza a week after Anis was imprisoned.

<sup>34</sup> Israel, as a State party to the Fourth Geneva Convention (the Convention), has violated Article 49 (1), which holds: “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive” (For further information on Israel’ indirect forcible transfer of Palestinians, see Al Haq’s 2008 submission to the UPR).

<sup>35</sup> International law prohibits collective punishment under Article 33 of the Fourth Geneva Convention and Article 50 of the Hague Regulations..

## **ANNEX FOUR: Nura Mohhammad Shukri Jaber Al-Hashlamon**

**Nura Muhammad Shukri Jaber al-Hashlamon** is a 36-year-old housewife who has been held under administrative detention in Israel since September 2006. She has six children at home aged between three and fourteen years. Her children, Fida, Tareer, Haneen, Mohammad, Jihad and Saraya are now living without a mother or father, and are with their grandmother in the family town of Tefuah in the southern West Bank town of Hebron. The children have been able to visit their mother only five times since her arrest, the last time being in September 2007.

Nura al-Hashlamon was arrested from her home in Hebron on the night of 16 September 2006. She was taken to a settlement near Hebron and the next morning to Hasharon Women's prison. She was been transferred for interrogation several times to Ofer prison and questioned about her relationship with affiliates of Islamic Jihad, as well as her brother, who is also in prison. One week after her arrest, Nura al-Hashlamon was issued with a six-month administrative detention order, later reduced to five months on judicial review and then three months on appeal. It has been renewed every three months for a period of three months since then.

Her husband, Muhammad Sami Abdel Mu'eti Ayoub al-Hashlamon, is also an administrative detainee currently held in Megiddo prison. He is 35 years old. He was arrested on 25th September 2005 and has been in administrative detention ever since. He was given permission by the Israeli authorities to visit his wife in Hasharon Women's prison, which he did in November 2006. Following this visit, they both submitted another request to the relevant prison administrations which was granted. However, on 18 February 2007, when Muhammad was taken to visit his wife in Hasharon Women's prison, he was told that the visit was not possible and returned to Megiddo prison. They have not been permitted to see each other since.

In the middle of her administrative detention order in October 2007 Nura was charged in front of the military court. The prosecution requested a 10 months suspended imprisonment. This was granted and Nura remained in administrative detention. A new order of three months duration was issued on 5 March 2008, the day her last order expired. Nura was thus not due to be released until 12 June 2008. On 20 March 2008, Nura Hashlamon was moved to Ramle Prison where she was placed in solitary confinement. She began a hunger strike and her weight fell to 46 kilos. On 25<sup>th</sup> March 2008, Nura Hashlamon was moved from solitary confinement in Ramle to Jalemech prison where she was confined with the other female prisoners.

On June 12 2008, Nura Hashlamon was issued the choice to be deported to Jordan immediately or to face indefinite detention. She chose the latter. She is now detained in Telmond prison without being charged or convicted of any offence. Her current administrative detention order ends on the 31 August 2008.

## ANNEX FIVE: Salwa Salah and Sara Siureh

**Salwa Salah** was born on the 10 November 1991. On Thursday June 5, 2008, at around 2 a.m. Salwa Salah (16 and half) was sitting with her family in their home in Bethlehem. The family suddenly heard a loud banging on the door. Salwa's mother opened the door and was faced with soldiers and the Israeli General Security Services (GSS). A female soldier was present and told Salwa to get dressed. Meanwhile the other soldiers interrogated Salwa's mother and questioned her about her husband, son and daughter.

After finishing interrogating Salwa and her mother, the female soldier handcuffed her hands, blindfolded her and forcefully took her to the military jeep.

**Sara Siureh** was born on 20, November, 1991. On Thursday June 5, 2008, at around 1:30 a.m. Sara Siureh (16 and a half) was in her house with her husband in their family home in Bethlehem. They were suddenly startled to hear a loud banging on the door. Sara's husband opened the door and was faced with soldiers and the Israeli General Security Services (GSS). He refused to let the soldiers in, however, the female soldier told Sara to get dressed. Sara was dragged out to the military jeep.

Both girls are relatives (cousins) and are also in the same class at school. The GSS claims that the girls are involved in militant activities<sup>36</sup>. They were taken to Telmond and then taken to Ofer for interrogation where they were interrogated for one hour. In the interrogation they were asked about what they were doing and did they have any relations with any political group. The girls did not confess to anything. After one hour the girls were taken to Telmond. They are now in Addamoun Prison. On the night before going to Addamoun the girls were taken to Ramle prison. There was a female police officer escorting them and the girls told Addameer's lawyer that she was extremely abusive and was abusing them. The girls claim they were searched in a very humiliating way. Both girls are now in Addamoun prison in Israel and are being held with the other Palestinian female detainees. Neither of the girls has been allowed any contact with their families since their arrest on the 5th of June 2008. Their administrative detention orders have been approved for four months by the court, with the possibility of an indefinite renewal at the end of that period. An appeal against this decision was lodged and subsequently rejected. This is the first time that both girls have been in prison.

International law incorporates a number of basic principles upon which a juvenile justice system should be based. Both the Convention on the Rights of the Child and the Beijing Rules emphasise the well-being of the child in the administration of juvenile justice. The overriding right of the child to maintain regular personal relations and direct contact with his or her parents, enshrined in Article 9 of the Convention, is one aspect of helping a child to achieve this sense of well being. The Beijing Rules specifically highlight the importance of maintaining the relationship with the juvenile's family, so that the juvenile isn't treated in isolation from the family (Rule 1.1).

The twin principles of proportionality and the duty on a state to take into consideration the child's well being underline much of the detail found in international law concerning the aims, restrictions and prohibitions on the sentencing of children. International law requires that any reaction to the juvenile offenders should 'always be in proportion to the circumstances of both the offenders and the offence'<sup>37</sup>. Another fundamental principle of sentencing is that the deprivation of liberty, if used at all, should only be used as a measure of last resort and for the shortest appropriate period of time (Art. 37 (b), CRC). Clearly this is not the case for these two young girls.

<sup>36</sup> Their Uncle was involved in the siege on the Church of the Nativity in 2002. However there was no indication from the Court that this was one of the reasons for their arrest.

<sup>37</sup> Van Beuren, G (1995) 'International Law on the Rights of the Child' Martin Nijhoff Publishers.

## ANNEX SIX: Ziyad Hmeidan

**Ziyad Hmeidan**, 32, lives in al-Khass village near Bethlehem, and has been a fieldworker with Al-Haq since 2000<sup>38</sup>. He is responsible for monitoring and documenting violations of international human rights and humanitarian law in the Bethlehem area of the Occupied Palestinian Territories (OPT). In order to guarantee the accuracy of the evidence collected, it is essential that he speak with a wide variety of people, including victims and eye-witnesses of human rights abuses, some of whom the Israeli authorities may consider security threats. He has two children, a four-year-old boy and a one year old girl. In addition to his wife and young children, Ziyad also supports his elderly parents and some of his brothers and sisters, who are still studying. In addition to his human rights work at al-Haq and his post-graduate studies, Ziyad was also active in his local community. Two years ago, he coordinated with the municipality of his home village and international volunteers to plant olive trees in the village.

On the 23 May 2005 Ziyad was detained at the Qalandiya checkpoint between Ramallah and Jerusalem, while on his way back to Bethlehem from Birzeit University where he was enrolled in postgraduate study. At the time of his first hearing on the 16 June 2005, Ziyad had spent 25 days in detention without any formal charges being brought against him, or being informed of the reasons for his detention. Further, the Israeli authorities had taken measures to inhibit and deny his access to a lawyer; first through transferring him between different detention facilities and then, through an order issued in a hearing on 30 May preventing his access to counsel for eight days. This order, and indeed his subsequent administrative detention, had been justified by security reasons, which had not been disclosed to Ziyad or his legal counsel.

On 14 November 2005, Ziyad was informed by letter that his administrative detention was to be renewed for a further six months. Over the course of the following month, Ziyad was transferred between various detention facilities both in the West Bank and in Israel, underwent interrogations and was brought before a military court on three separate occasions. During the interrogation Ziyad was also denied access to a lawyer, and his families were not informed of his whereabouts. In each instance the Israeli military judicial mechanisms complied with the requests of the investigating military official and prosecutor, confirming Ziyad's detention without charge and further extending it. On 8 December 2005, Ziyad's detention extension was reviewed by a military judge. Although the extension of his administrative detention period was confirmed in principle, it was reduced from six months to four months, i.e. until 21 March 2006.

According to the military court, the reduction was justified on the grounds that no new public evidence or information has been provided to justify his detention, other than the information that dates from his previous administrative detention back in 1996<sup>39</sup>. In addition, the military judge noted that the publicly available information currently used as evidence in his case is in and by itself not sufficient to continue Ziyad's detention, or to provide the Israeli authorities with the ability to formally press charges against him. Although there was a clear recognition by the court that his continued detention violates his fundamental human rights, Israeli authorities argued that based on the secret evidence available to them, Ziyad remains a security threat to the area, thereby justifying his continued detention.

While his detention period was reduced by two months, Israeli authorities reiterated the fact that this is by no means intended to serve as a "genuine reduction" in his detention period. More disturbing is the fact that the secret evidence described as coming from a "trusted" source was not disclosed to Ziyad's lawyer Sahar Francis or her defendant, thereby violating the rights of the defense and leaving the door wide open for extending his detention once again in March when the current order expires.

On 3 January 2006, Ziyad's administrative detention was appealed by his lawyer to a military appeal court at Ansar III (Ketziot) detention center. In addition to the obvious flaws in the legal process leading to his administrative detention, and the illegality of the detention itself, Ziyad's lawyer questioned the source and reliability of the secret evidence, and the fact that Israeli authorities continue to refuse disclosing this information to her or to Ziyad. She also noted that the publicly available information used as evidence is based

<sup>38</sup> Al Haq is one the leading Palestinian Human Rights NGOs in the Occupied Palestinian Territories.

<sup>39</sup> Ziad spent six months in administrative detention in 1996. In the end he was released without being charged for any offence

on statements made during the confessions extracted from another Palestinian detainee regarding an alleged meeting that Ziyad had with a “dangerous” individual, and refers to outdated information concerning events that took place in 1996. In addition, the fact that the court had acknowledged during the earlier review that there was but one single source for the secret evidence justifies the suspicion of the defense that the source for both the public and the secret evidence used in this case is one and the same.

Similarly, in his own defense, Ziyad restated that as Al-Haq’s fieldworker in the Bethlehem area, he is often required to collect first-hand evidence and documentation regarding ongoing violations of human rights by Palestinian and Israeli authorities. As part of his fieldwork activities and efforts to ensure the accuracy of the evidence and information gathered, it is imperative that he is in constant touch with victims, perpetrators, and eye-witnesses of human rights abuses alike, some of whom are allegedly dangerous to Israeli security. Therefore, Ziyad must not be punished for responding to the demands entailed by his work as a human rights defender.

Nevertheless, Israeli authorities continued to claim that according to the secret evidence which they refuse to disclose, Ziyad continues to pose a “real threat” to Israeli security, thereby warranting his continued administrative detention.

The process through which Ziyad was placed in administrative detention, the renewal of his detention, and examination of his appeal are all in violation of fundamental principles of international law. To date, requests to be informed of the reasons for Ziyad’s arrest and detention, and the charges against him, have been unanswered by the Israeli authorities. Moreover, Ziyad’s detention at the Ansar III (Ketziot) detention centre in the Naqab (Negev) desert – renowned for its poor prison condition and dire living standards – was also in violation of his basic human rights.

In mid-March 2006 Ziyad was informed that his administrative detention would be extended for a further four months; approximately one week later, this extension was upheld in a review by a military judge in a court in Ansar III (Ketziot) Prison on 20 March 2006. The judge approved the Military Commander’s extension of Ziyad’s detention from 21 March to 20 July 2006. During the hearing, the State again utilised secret evidence, which was not made available to Ziyad or to his legal counsel, as the basis for their claim that he poses a threat to security. Moreover, no meaningful opportunity was given to Ziyad or his lawyer to dispute this claim. Ziyad’s administrative detention order was subsequently renewed continuously until March 2007.

On 18 March 2007, Al-Haq fieldworker and human rights defender, Ziyad Hmeidan, was finally released by the Israel Prison Service (IPS) at the Dahiriya (Meitar) checkpoint, south of Hebron, at around 14:15. This marked the end of almost two years of detention without charge or fair trial.



## ANNEX SEVEN: Suad Shyukhi

Suad Shyukhi is from Jerusalem and was born on the 5 of August 1986. She was arrested by the Israeli police on the 5 of February 2007. Following her arrest, the Israeli Minister of Defence signed an administrative detention order for a period of six months from the 4 of February – 3 of August. On the 6<sup>th</sup> of February 2007 Suad was brought before the Israeli district court during which the prosecutor submitted 'secret material' for the judge. There was no additional information available to Addameer's lawyer Mahmoud Hassan to indicate why she was arrested.

The representative from the ISA refused to provide any information to Adv. Hassan claiming that it '*posed a threat to the security of the region.*' The judge subsequently approved the order for another six months. Following this six months the administrative detention order was renewed again for another six months. The second administrative detention order was similar to the first in that no new or additional information was provided to highlight why Suad was imprisoned.

After one year on the 4 of February the administrative detention order was renewed again for another six months. Again, the prosecution did not reveal any information as to why Suad was imprisoned, however, the judge still approved the order for another six months. In the second review on the 31 of May, Adv. Hassan stated that during a meeting with Suad she had revealed that she had been working in a law office. Although before her imprisonment this time she was interrogated for a short time concerning phone calls to the Gaza area without any clear indication of what she did. Later on she was arrested and sent to administrative detention Adv. Hassan questioned the representative of the ISA if he knew anything about this incident and he subsequently denied any knowledge.

Following this information the judge ruled that the detention period could not be renewed again "*unless new serious secret evidence comes to light,*" or "*a radical change occurs in the general situation*". Suad is due to be released on the 3 of August 2008. It is entirely possible that on expiry of her current administrative detention order, Suad Shyukhi will simply be issued another. One year and a half we still do not know any information regarding the real reason Suad is imprisoned.