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Stop Administrative Detention

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Administrative Detention in the Occupied Palestinian Territory

A Legal Analysis Report

Fourth Edition 2016





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A Legal Analysis Report



Addameer Prisoner Support and Human Rights Association

Fourth Edition 2016

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Addameer Prisoner's Support and Human Rights Association
P.O. Box 17338, Jerusalem
Tel: +972-2-2960446 Fax: +972-2-2960447
E-mail: info@addameer.ps
www.addameer.org
Ramallah, Al Masyoun, Rafidein Square, Edward Said St.,
Sebat Building, 1st Floor, Suite 2

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Summary

1. Administrative detention is a procedure whereby a person is detained without charge or trial.
2. Administrative detention is permitted under international law but with strict conditions. It should only be used as a last resort and on an individual, case-by-case basis. Only imperative reasons of security justify the use of administrative detention and it should not be used as a substitute for criminal prosecution when there is insufficient evidence.
3. The Israeli practice of administrative detention does not meet international standards set by international law for the following reasons:
 - (i). There is evidence that Israel widely practices the use of torture and corporal punishment;
 - (ii). Israel deports and incarcerates administrative detainees outside the Occupied Palestinian Territory;
 - (iii). There is evidence that Israel uses administrative detention as a form of collective punishment;
 - (iv). There is evidence that Israel widely engages in humiliating and degrading treatment of administrative detainees;
 - (v). Administrative detainees are usually not informed precisely of the reasons for their detention;
 - (vi). There is evidence that Israel uses administrative detention as a substitute for criminal prosecution when evidence is insufficient or non-existent
 - (vii). The process of making and reviewing administrative detention orders falls far short of what would be considered a fair trial
 - (viii). Israel holds administrative detainees for prolonged periods in contravention of the 4th Geneva Convention, which mandates that administrative detention take place for a very brief period of time



- (ix). Administrative detainees are not given the right to communicate with their families up to international law standards;
 - (x). Administrative detainees are often denied regular family visits in accordance with international law standards;
 - (xi). Israel regularly fails to separate administrative detainees from the regular prison population;
 - (xii). The conditions of detention regularly fall below an adequate standard required by international law; and,
 - (xiii). In the case of child detainees, Israel regularly fails to take into account the best interests of the child as required under international law.
4. Israel has historically ratified international agreements regarding human rights protection, whilst at the same time refusing to apply the agreements within the Occupied Palestinian Territory, attempting to create legal justifications for its illegal actions.

However, there is general acceptance that the following international humanitarian law instruments apply to the OPT:

- The Fourth Geneva Convention of 1949
- Article 75 of Additional Protocol I to the Fourth Geneva Convention
- The Hague Regulations

There is general acceptance that the following international human rights law instruments apply to the Occupied Territories:

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The International Convention on the Rights of the Child
- UN Convention against Torture

Introduction

Administrative detention is a procedure under which detainees are held without charge or trial. No charges are filed, and there is no intention of bringing the detainee to trial. In accordance with the detention order, a detainee is given a specific term of detention. On or before the expiry of the term, the detention order is frequently renewed. This process can be continued indefinitely.

Administrative detention has been commonly used by repressive regimes to circumvent the legal process and to hinder access by political dissidents to the protection that they should be entitled to under the law. Places where it has been used to a particular extent include the North of Ireland, South Africa (under apartheid), the United States, and Israel.

Administrative detention (internment) without trial proved to be hugely controversial when it was introduced by the Government in the North of Ireland in 1970 as a means of suppressing nationalist opposition. It was used against one side of the community only and, in practice, led to even greater unrest and increased recruitment to both Sinn Féin and the Irish Republican Army (IRA). It was eventually abandoned some six or seven years later and was never utilized again, despite increased levels of violence and political dissent. There is a general consensus that its use in the North of Ireland was counter-productive and merely exacerbated the conflict there.

Administrative detainees in the US are held both at the renowned detention center in Guantanamo Bay and in a network of secret detention facilities throughout the country. These detainees have spent years without any fair legal process, held on the basis of secret evidence. The first detainees were brought to Guantanamo on January 11, 2002, more than eight years ago. At its height, the detention facility held approximately 775 detainees. However, the Guantanamo internment regime, originally designed to prevent the detainees from receiving the protections of the U.S. Constitution or P.O.W. status under the Geneva Conventions, soon came under heavy scrutiny and domestic and international condemnation. On his second full day in office, American President Barack Obama pledged to close the facility



within a year, a promise that remains yet unmet. In fact, the 2012 National Defense Authorization Act (NDAA), which also authorizes the detention and execution of American citizens without charge or trial, effectively prevents Guantanamo from being closed by restricting detainee transfers and releases.

Israel's practice of administrative detention seriously undermines its claim that it is "the only democracy in the Middle East," particularly given that the practice has been such an integral part of its legal system. The possibility of becoming an administrative detainee is an ever-present threat in the daily lives of all Palestinians and severely impacts the lives of Palestinians living in the occupied Palestinian territory (OPT). Over the years, Israel has held Palestinians in prolonged detention without trying them or informing them of the suspicions against them. While detainees may appeal the detention, neither they nor their attorneys are allowed to see the evidence. Israel has therefore made a mockery out of the entire system of procedural safeguards in both domestic and international law regarding the right to freedom and due process.

Due to the lack of due process and the risk of abuse in detaining a person without charge or trial, strict restrictions have been placed on administrative detention under international law. While international humanitarian law does allow the occupying power to use administrative detention, it is only under explicitly articulated exceptional circumstances. Article 78 of the IV Geneva Convention gives the occupying power the authority to take safety measures concerning protected persons (inhabitants of the occupied territories are regarded in the Convention as 'protected persons'), including internment for 'imperative reasons of security' and not as a mean of punishment.¹ The Israeli authorities, however, have in most cases used administrative detention indiscriminately and as a punitive measure.

Background

Palestinians have been subjected to administrative detention under the British Mandate; in Israel since 1948; and then in the OPT since 1967. According to testimonies given to Addameer, detainees are typically held under administrative detention from periods ranging from six months to six years. The longest serving administrative detainee has spent approximately 12 years, cumulatively, in administrative detention. The frequency of the use of administrative detention has fluctuated throughout Israel's existence, and has been steadily rising since the outbreak of the Second *Intifada* (uprising) in September 2000, following the 2014 war on Gaza, and the recent escalation after October 2015, and has been used as a means of collective punishment for Palestinians who oppose the occupation. As in previous years, whenever the conflict enters a new stage, the Israeli authorities use administrative detention to arrest a large number of Palestinians.

¹ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (GCIV).



ADMINISTRATIVE DETENTION IN NUMBERS

During the period of March 2002 to October 2002, Israeli Occupation Forces (IOF) arrested over 15,000 Palestinians during mass arrest campaigns, rounding up males in cities and villages between the ages of 15 to 45. In October 2002, there were over 1,050 Palestinians in administrative detention. By the beginning of March 2003, Israel held more than one thousand Palestinians in administrative detention.

In 2007, Israel held a monthly average of 830 administrative detainees, which was one hundred higher than in 2006. Furthermore, during the Palestinian Legislative Council (PLC) elections of 2006, Israel placed dozens of candidates from the Islamic ‘Change and Reform Party’ in administrative detention.

On 17 April 2012, approximately 1,200 Palestinian prisoners started hunger strikes and an additional 2,300 refused meals from the IPS in protest of prison conditions, administrative detention and restrictions on family visitation. After 28 days of hunger strike, the prisoners were able to strike an agreement with the IPS that ended the strike, including a provision that new administrative detention orders or renewals of administrative detention orders for the Palestinians currently in administrative detention would be limited, unless the secret files, upon which the administrative detention is based, contained “very serious” information.

An arrest campaign beginning in June 2014 the aftermath of the disappearance of three settlers resulted in the detention of several Palestinians, including Palestinian activists and Legislative Council members. In the context of the Gaza War, this together resulted in the number of those detention of 6,500 political prisoners at height by September 2014, including 500 administrative detainees (reaching the highest number in over 4 years), as compared to 5,721 in May 2014, including 192 administrative detainees.

As of July 2016, there were approximately 750 administrative detainees in Israeli prisons and detention centers, including 3 Palestinian Legislative Council members, 2 females, and 8 children.

Administrative detention in the OPT is ordered by a military commander and grounded on “security reasons.” Detainees are held without trial and without being told the evidence against them. In most cases, they are simply informed that there is ‘secret evidence’ against them and that they are being held for security reasons.

The security reasons are broad enough to include peaceful political subversion and virtually any act of resistance against the Israeli colonial occupation. The definitions of crimes in Israeli legislation are additional sites where ambiguity can be manipulated, often resulting in increased sentences and imprisonment for Palestinians. For example, participation in a demonstration is deemed a disruption of public order. Firing in the air during a wedding, as a form of celebration, constitutes a danger to Israel’s national security, despite the fact that it occurs in areas ostensibly under the sole jurisdiction of the Palestinian Authority (area A). Carrying or placing a Palestinian flag is a crime under Israeli military regulations. Even pouring coffee for a member of a declared illegal association can be seen as support for a terrorist organization. Palestinian national security forces are also seen as an illegal association.

International humanitarian law, comprised primarily of the Geneva Conventions of 1949 and their Additional Protocols, as well as international human rights law, provide the international legal standards that are to be applied to administrative detention in armed conflict and other situations of violence. International law permits administrative detention under specific, narrowly defined circumstances. In accordance with the International Covenant on Civil and Political Rights (ICCPR) there **must be a public emergency that threatens the life of the nation**. Furthermore, administrative detention can **only be ordered on an individual case-by-case basis**, without discrimination of any kind. A State’s collective, non-individual detention of a whole category of persons can in no way be considered a proportional response, regardless of what the circumstances of the emergency concerned might be. According to Adalah: The Legal Center for Arab Minority Rights in Israel, Israel has sought to justify its policy of administrative detention by the remarkable claim that it has been under a “state of emergency since 1948” and is therefore justified in suspending or “derogating” from certain rights, including the right not



to be arbitrarily detained.² Moreover, administrative detention should not be used as a substitute for criminal prosecution where there is insufficient evidence to obtain a conviction. Israel's use of administrative detention deliberately infringes these restrictions.

This report examines Israel's policy of administrative detention in view of general principles of international law governing detention in general and administrative detention in particular. While Israel claims to be abiding by such principles, this report shows that Israel severely violates every one of these principles in practice.

This report will consider administrative detention under three broad headings:

- International Law
- Israeli Law
- Administrative Detention in Practice

International Law

In 1967, Israel occupied the West Bank, including East Jerusalem (both were under Jordanian control at the time) and the Gaza Strip (which was under Egyptian administration), which have come to be known as the OPT. Israel also occupied the Golan Heights and the Sinai Peninsula at the same time. Israel thus became a "belligerent power"³ and subject to international humanitarian law in regards to the occupation of these territories.⁴ Humanitarian law regulates how such territories should be governed, the conduct of the occupying power, and the treatment of the civilian population ("protected persons") during occupation.⁵

The key international humanitarian legal instruments that regulate administrative detention in the occupied Palestinian territory are:

- The Fourth Geneva Convention (1949);⁶
- Additional Protocol I to the Geneva Convention (1977); and,
- Regulations annexed to the Hague Convention No. IV (Hague Regulations)⁷

An international consensus exists among States and the International Committee of the Red Cross (ICRC) that the Fourth Geneva Convention and the Hague Regulations of 1907 apply to all of the territories occupied by Israel after the 1967 war. The United Nations Security Council and the International Court of Justice (ICJ) have confirmed the applicability of the Fourth Geneva Convention to the OPT, including East Jerusalem, in ICJ Advisory Opinions and at least 25 Security Council Resolutions.⁸

International humanitarian law does not allow for any derogation from the law on the basis of any military, security or national rationales. This is because all instruments of international humanitarian law already give due consideration to military imperatives and reconcile military necessity with the demands of humanity.⁹

3 Belligerent military occupation occurs when one nation's military garrisons occupy all or part of a foreign nation during an invasion (during or after a war).

4 International humanitarian law is sometimes referred to as the laws of war or the laws of armed conflict and primarily comprises the Geneva and Hague Conventions.

5 D. Kretzmer, *The Occupation of Justice*, State University of New York Press, New York, 2002 (available at: <http://www.palestine-un.org/tenth/paper.html>).

6 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), 1949.

7 Regulations Annexed to The Hague Convention No. IV respecting the laws and customs of war on land (1907).

8 D. Kretzmer, *supra* note 5.

9 *Ibid.*

2 Adalah, Submission to the UN Human Rights Committee, 22 July 2003 (available at: http://www.adalah.org/eng/intladvocacy/unhrc_03_emergency.pdf).



International human rights law and customary international law also have relevance when considering the nature and scope of permissible administrative detention.¹⁰

The Fourth Geneva Convention (1949)

The Fourth Geneva Convention provides for the protection of civilians who find themselves under the rule of a foreign power in the event of an international and internal conflict. The Fourth Geneva Convention is based on the universally accepted principle that parties to a conflict should ensure that people living in an occupied territory should continue to live in as normal a manner as possible and in accordance with their laws, customs and traditions.

The Convention forms what is probably the most significant body of international humanitarian law applicable to occupied territory and is considered to have acquired customary international law status. As mentioned, it is widely accepted (except by Israel) that the Fourth Geneva Convention applies to the OPT. The Convention rests on the belief, as articulated in Article 27, that civilians, whether in occupied territory or not, are fundamentally “entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices and their manners and customs.” The inviolability of such rights and benefits has been especially pronounced for persons in occupied territories.

Articles 42 and 78 of the Fourth Geneva Convention permit administrative detention only “if the security of the Detaining Power makes it absolutely necessary”¹¹ or for “imperative reasons of security.”¹²

10 International human rights law is comprised of such instruments as the International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), among many others. Customary international law is a body of law created through widespread and consistent practice among States, conducted with a genuine belief that such practice is legally binding (*opinio juris*), affording these laws the status of a legal rule or principle.

11 GCIV Article 42 provides: “The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary.”

12 GCIV Article 78 provides: “If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment. Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical

The consensus, confirmed by the ICRC, appears to be that the application of international humanitarian law, including the Fourth Geneva Convention, ceases only after the effective end of the occupation or with a comprehensive political settlement.¹³ Until this occurs, no derogation is possible from the rights guaranteed under the Convention.

Israel ratified the Fourth Geneva Convention in 1951 and is bound by its terms.¹⁴

Additional Protocol I

In 1977, two additional protocols to the Geneva Conventions of 1949 were adopted to bolster the protection afforded to civilian populations in times of conflict and to take into account the realities of modern warfare. Additional Protocol I applies to international armed conflicts, and protects civilians against the effects of hostilities whilst making it clear that the sphere of operation of the Fourth Geneva Convention and Protocols includes:

*“Armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination.”*¹⁵

Israel has not ratified Additional Protocol I; however, Article 75 of Additional Protocol I is considered to reflect customary international law and is therefore binding on Israel.¹⁶

The Hague Regulations (1907)

Israel is not a party to the Fourth Hague Convention (1907) to which the Hague Regulations are annexed. However, it is accepted that the Fourth Hague Convention (and regulations) is declaratory of customary international law and is therefore binding on all States, including Israel.¹⁷

review, if possible every six months, by a competent body set up by the said Power.”

13 Permanent Observer Mission of Palestine to the United Nations, New York, *Israel's Belligerent Occupation of the Palestinian Territory, including Jerusalem and International Humanitarian Law*, 15 July 1999.

14 GCIV has been ratified by 188 States and is widely accepted as established customary international law.

15 Article 1 of Additional Protocol I.

16 Jelena Pejic, “Procedural Principles and Safeguards for Internment/Administrative Detention in Armed Conflict and Other Situations of Violence”, *International Review of the Red Cross*, Vol. 87, No. 858, June 2005.

17 International Court of Justice, *Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, para. 89.



Other Applicable International Law

On 9 July, 2004 the ICJ handed down its advisory opinion in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.¹⁸ The ICJ relevantly held that in addition to the Fourth Geneva Convention, the following international legal instruments also apply to the Occupied Palestinian Territory:

- The International Covenant on Civil and Political Rights (1966)
- The International Covenant on Economic, Social and Cultural Rights (1966)
- The Convention on the Rights of the Child (1990)

The ICJ has held that the protections offered by human rights conventions do not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the ICCPR.¹⁹ In regards to the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; and yet others may be matters of both these branches of international law.

The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) does permit administrative detention in exceptional circumstances during armed conflict or for protecting State security in certain circumstances.²⁰ The required circumstances are set out in Article 4 of the ICCPR which Israel ratified in 1991.²¹

¹⁸ Adopted by the UN General Assembly on 20 July, 2004 in resolution ES-1015/. The resolution was adopted by 150 votes in favor, 6 against with 10 abstentions.

¹⁹ Article 4 permits a State Party to suspend the operation of certain Articles of the Covenant (including Article 9) “in time of public emergency which threatens the life of the nation.”

²⁰ Article 9 of the ICCPR establishes a *prima facie* position opposed to administrative detention by establishing an entitlement to the following rights: The right to liberty and security of person; Not to be subjected to arbitrary arrest or detention; To be informed, at the time of arrest, of the reasons for his arrest and be promptly informed of the charges against him or her; To be brought promptly before a judge exercising judicial power and to be entitled to a trial within a reasonable time or released; To challenge the lawfulness of the detention in a court; To compensation for wrongful detention.

²¹ ICCPR, Article 4 relevantly provides:

“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other

The United Nations Convention on the Rights of the Child

The fundamental principle underpinning the United Nations Convention on the Rights of the Child (CRC) is that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.²²

Israel ratified the CRC in 1989 and the ICJ has determined that the Convention does apply to the OPT.²³ One of the foremost ways that Israeli Military Orders deviate from the rights provided to children under international law is in their definition of what constitutes a “child.” Under Article 1 of the Convention on the Rights of the Child a child is defined as, “every human being below the age of eighteen years.” Yet, until an amendment to Military Order 1651 in 2011, Palestinian children between 16-18 were considered adults under Israeli military law (Military Order 132). Since this amendment has been announced, the military court has been using a loophole in the order: instead of being sentenced based on their age at the time of the alleged offense, the children are sentenced based on their age at the time of sentencing. This, in effect, means that many children are charged as adults, since they turn 18 during interrogation, pre-trial detention, or during the trial period.

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CAT) prohibits all forms of torture in all circumstances, without exception.²⁴ Israel ratified the CAT in 1991. However, in 1995, Israel rejected the authority of the Committee against Torture, the body that monitors implementation of the CAT, to investigate information it received from individuals and organizations concerning torture. Palestinian and Israeli human rights NGOs have repeatedly supported numerous petitions to the Israeli High Court of Justice against the State practice of torture, which produced some success in 1999 with

obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

²² CRC, Article 3.

²³ ICJ Wall Advisory Opinion, *supra* note 17, para. 113.

²⁴ CAT, Article 2.



the High Court's decision to limit its use.²⁵ In its landmark judgment in September 1999, the High Court of Justice held that the Israeli Security Agency (ISA) did not have legal authority to use "physical means" against interrogees. Pressure and a measure of discomfort are legitimate, the justices said, only as a side-effect of the necessities of the interrogation and not as a means for breaking the interrogees' spirit. However, the court stated that ISA agents who abused interrogees in "ticking bomb" situations may avoid prosecution. This holding implicitly legitimized these severe acts, contrary to international law, which does not acknowledge any exceptions to the prohibition on torture and ill-treatment.²⁶

Israel has continuously attempted to justify its use of torture to the international community and to absolve itself of criminal responsibility in this regard in various ways, foremost of which are the Landau Commission of 1987. The Landau Commission claimed to restrict the use of torture, but approved the use of "moderate" physical pressure and "non-violent psychological pressure" during the interrogation of Palestinian detainees.

Furthermore, Israel does not abide by the UN Standard Minimum Rules for the Treatment of Prisoners or the UN Standard Minimum Rules for the Administration of Juvenile Justice (also known as "The Beijing Rules") in its application of torture against Palestinian prisoners in order to extract confessions for sentencing. Since 1967, 75 detainees have died while in custody as a result of torture. Confessions extracted through torture are admissible in court and/or military tribunals.²⁷

The UN Committee Against Torture reviewed the Israeli government on 2 - 4 May 2016, at the United Nations in Geneva. The Committee had received several shadow reports on Israeli violations of the Convention Against Torture from at least ten NGOs, including Addameer – which highlighted policies including the systematic practice of torture and ill-treatment during arrest, interrogation, and detention by Israeli occupation forces, as well as the increasing use of administrative detention.

At the review session, the Committee addressed detention without charge

25 HCJ 5100/94 Pub. Comm. Against Torture in Isr. v. Israel [1999] IsrSC 53(4) 817. Organizations such as Hamoked and ACRI have played key roles in this process.

26 B'tselem and Hamoked, *Absolute Prohibition: The Torture and Ill Treatment of Palestinian Detainees*, May, 2007 (available at: <http://www.btselem.org/english/publications/Index.asp?TF=03>).

27 Addameer Prisoner Support and Human Rights Association, *Violations against Palestinian Detainees 2007*.

or trial for indefinite periods based on secret information – which had been significantly escalating since October 2015.

The Committee issued its concluding observations on Israel on 13 May 2016 in which it called on the Israeli government to: "Take the measures necessary to end the practice of administrative detention and ensure that all persons who are currently held in administrative detention are afforded all basic legal safeguards," and to "[t]ake the measures necessary to repeal the Incarceration of Unlawful Combatants Law." The Committee also addressed the escalating use of administrative detention against Palestinians, including children. The Committee stated in its report:

*The Committee takes note of the affirmation by the delegation that the number of people in administrative detention increased since September 2015 with the escalation of violence. In this connection, the Committee is gravely concerned that at the time of the dialogue there were 700 persons, including 12 minors, in administrative detention. It is further concerned that three of these persons have been held in administrative detention for more than two years.*²⁸

The Committee also called for an end to the claim of necessity defense as a justification for the widespread and systematic use of torture. In the report, the Committee underlined that torture is prohibited under the convention with no exceptions:

*The Committee recalls that article 2 (2) of the Convention provides that the prohibition of torture is absolute and non-derogable and that no exceptional circumstances whatsoever may be invoked by a State party to justify acts of torture. In this respect, the Committee is concerned that the necessity defence, which is contained in Section 34 (11) of the Penal Law as a defence afforded to any defendant in criminal cases, has not been explicitly excluded for cases involving torture.*²⁹

The Rome Statute of the International Criminal Court (1998)

The Rome Statute of the International Criminal Court (1988) mentions the War Crime of "Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial" (article 8(2)). Addameer considers administrative detention as practiced by the occupying power an arbitrary and illegal policy, consistent with the war crime, of the Rome 28 13 May 2016. Convention Against Torture, Concluding Observations.
29 *Ibid*.



Statute of the International Criminal Court of this wilful deprivation of a protected person from the rights of regular and fair trial.

Specific Rights, Duties and Obligations Imposed by International Law

International humanitarian law and international human rights law each provide for specific rights, duties and obligations in relation to administrative detention, including the following:

- The High Contracting parties to the Fourth Geneva Convention undertake to respect and ensure respect for the Convention in all circumstances.³⁰
- A prohibition against torture (mental and physical), mutilations and cruel treatment.³¹
- A prohibition against corporal punishment.³²
- A prohibition against deportations and transfer of civilians in and out of the occupied territory.³³
- A prohibition against reprisals and collective punishments.³⁴
- A prohibition against outrages upon personal dignity, in particular humiliating or degrading treatment including any form of indecent assault.³⁵

Procedure

- Any person detained shall be informed promptly of the reasons for their detention.³⁶
- No sentence shall be pronounced except after a regular trial.³⁷
- The accused person shall have the right to present evidence necessary to their defense and may, in particular, call witnesses. They shall have

30 GCIV, Article 1.

31 GCIV, Article 3; Additional Protocol I, Article 75(2)(a)(ii); and, CAT, Article 2.

32 Additional Protocol I, Article 75(2)(a)(iii).

33 GCIV, Article 49:

“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...”

“...The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

34 GCIV, Article 33; Additional Protocol I, Article 75(2)(d); and, Hague Regulations, Article 50.

35 GCIV, Article 3; Additional Protocol I, Article 75(2)(b).

36 Additional Protocol I, Article 75(3).

37 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 71.

the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defense.³⁸

- The right to have the detention reconsidered by an appropriate body as soon as possible and reviewed at least twice a year.³⁹
- The right to be released by the Occupying Power as soon as the reasons for the detention cease to exist.⁴⁰

Family Contact

- The detainee has the right, within a week of being detained, to communicate in writing with his or her family informing the family of his or her detention, address and state of health.⁴¹
- The detainee has the right to receive correspondence from his or her family.⁴²
- The detainee has the right to receive visitors, especially near relatives, on a regular basis and as often as possible. In cases of urgency, such as death or serious illness of relatives, detainees should be permitted to visit their homes.⁴³

Conditions of Detention

- The Occupying Power must maintain detainees at its own expense and must provide for the detainees' state of health.⁴⁴
- The Occupying Power must provide for support of those dependent on the detainee in circumstances where they are unable to support themselves.⁴⁵
- Detainees must be held separately from persons detained for any other reason, such as persons convicted of criminal offences. This highlights the distinction made between persons imprisoned after a regular criminal trial and those held in administrative detention who have not

38 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 72.

39 *Ibid.*, Article 43.

40 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 132; Additional Protocol I, Article 75(3).

41 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 106.

42 *Ibid.*, Article 107.

43 *Ibid.*, Article 116.

44 *Ibid.*, Articles 81, 91 and 92.

45 *Ibid.*



been tried or convicted of any offence, and therefore should be kept separately.⁴⁶

- The Occupying Power must intern the detainees in adequate accommodation in regards to health, hygiene and the rigours of the climate.⁴⁷
- The Occupying Power must provide the detainees with sufficient food to maintain their health whilst also taking into account their customary dietary requirements. Detainees must also be given the means to prepare their own food.⁴⁸
- Detainees must be provided with premises suitable for the holding of their religious services.⁴⁹

Women

- Women detained shall be under the immediate supervision of women.⁵⁰

Children

- In all actions concerning children, the best interest of the child shall be the primary consideration.⁵¹
- Where a child is separated from its parents due to the actions of the State, such as through detention, imprisonment, exile, deportation or death, the State shall, upon request, provide information to the family as to the whereabouts of the missing family member.⁵²
- State Parties recognize the right of the child to education.⁵³
- No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.⁵⁴
- No child shall be deprived of his or her liberty unlawfully or arbitrarily. Detention shall be used only as a measure of last resort and for the shortest appropriate period of time.⁵⁵

⁴⁶ *Ibid.*, Article 84.

⁴⁷ *Ibid.*, Article 85.

⁴⁸ *Ibid.*, Article 89.

⁴⁹ *Ibid.*, Article 86.

⁵⁰ Additional Protocol I, Article 75(3).

⁵¹ *Ibid.*, Article 3.

⁵² *Ibid.*, Article 9.

⁵³ *Ibid.*, Article 28.

⁵⁴ *Ibid.*, Article 37.

⁵⁵ *Ibid.*

Enforcement

Article 1 common to the four Geneva Conventions establishes a legal obligation for the High Contracting Parties, both individually and collectively, to not only respect and implement the Conventions, but also to ensure their respect. As noted above, common Article 1 states that, “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.” This article was added at Geneva in 1949 as a provision specifically to enhance enforcement of the Convention. Common Article 1 has been supplemented by Article 89 of Additional Protocol I, which states that “in situations of serious violations of the Convention or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter.”

International humanitarian law, in accordance with the principle of universal jurisdiction, demands that States search for and punish all persons who have committed grave breaches of the law as listed in Article 147 of the Fourth Geneva Convention, such as torture, inhuman treatment, deportation, unlawful confinement, and depriving a protected person of a fair and regular trial.⁵⁶ They must either bring those persons to trial before their own courts or extradite them to a State party to the Convention for prosecution.

The ICJ in its judgment on the Apartheid Wall held that all high contracting parties to the Convention had an obligation to ensure that all the provisions of the Convention were complied with.

⁵⁶ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 147 provides:

“Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”



Israeli Law

Administrative detention is lawful under Israeli domestic law and the law Israel applies to the occupied territory. Administrative detention orders were originally based on the *British Mandate Defense (Emergency) Regulations (1945)*. In recent times Israel has justified its use of administrative detention by citing Article 78 of the Fourth Geneva Convention, which allows the internment of protected persons “for imperative reasons of security.”⁵⁷ Israel has never defined the criteria for what constitutes “state security.”

The Law in Israel

In Israel, administrative detention is authorized under the *Emergency Powers Law (Detentions) (1979)* (Emergency Law). The Emergency Law only applies once a state of emergency has been declared by the Knesset. Such a state of emergency has been in existence since the founding of the State of Israel in 1948.

The Emergency Law allows the Minister of Defense to order detention for up to six months, with the authority to keep renewing the order every six months, indefinitely. The detainee must be brought before a judge within 48 hours of arrest and be periodically reviewed every three months by the president of the District Court.

The Law in the West Bank

In the West Bank, administrative detention is authorized under Military Order 1651.⁵⁸ This order authorizes the military commanders in the area to detain an individual for up to six months if they have “reasonable grounds to presume that the security of the area or public security require detention.” Commanders can extend detentions for additional periods of up to six months if “on the eve of the expiration of the detention order,” they have “reasonable grounds to believe ... that the security of the area or public security still require the holding of the detainee.”⁵⁹ Military Order

⁵⁷ A “protected person” is defined in the Fourth Geneva Convention, Article 4 as:

“Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”

⁵⁸ Administrative detention was originally authorized under Military Order 1226. This was later amended by Military Order 1591, which was in turn replaced by Military Order 1651 as of May 2010.

⁵⁹ Military Order 1226, Section 1B.

1651 does not define a maximum cumulative period of administrative detention. The terms “security of the area” and “public security” are not defined, their interpretation being left to the military commanders.

If a Military Commander deems it necessary to impose a detention order, he may do so for up to six months, after which he can extend the original order for a further six months. There is no limit on the amount of times an administrative detention order can be extended. This in effect allows for indefinite arbitrary detention.

In June 1999, the procedure governing administrative detention orders was modified by Military Order 1466 which provided that a detainee must be brought before a military judge within 10 days of his or her arrest. These modifications also authorized the military judge to approve administrative detention orders as issued, cancel them altogether or decrease the duration of the order. In March 2002, during the Second Intifada, another amendment was issued, extending the period a detainee can be held without seeing a judge to 18 days. By the end of 2002, the limit returned to 8 days, but ISA representatives were no longer required to come to court and present the secret evidence. Military Order 1651, which currently authorizes administrative detention, reduced the period of time an administrative detainee can be held without seeing a judge to 4 days, though a temporary order included in Order 1651 (Chapter I, Article B) currently allows a detainee to be prevented from seeing a judge for 8 days (Chapter I, Article B, 287).

The Law in the Gaza Strip

Until the Israeli military’s withdrawal from the Gaza Strip in 2005, administrative detention was authorized in Gaza under Military Order 941 (1988) and was similar in its operation to the administrative detention order in operation in the West Bank. After the withdrawal, the Israeli government argued that it is no longer an Occupying Power in the Gaza Strip and that it is not bound by international law relating to the duties and obligations of occupying powers. There is consensus among the international community, however, that despite the withdrawal of Israeli military troops in 2005, there are ongoing as well as new methods of Israeli military and administrative control in the Gaza Strip, which amount to “effectual control” of the area. Therefore, the withdrawal of Israeli troops alone does not mean that Gaza is no longer occupied by Israel. It is important to note that facts on the ground



define the legal situation. Israel maintains its effective control over the Gaza Strip by different means, such as control over air space, sea space and international borders. Israel also continues to exercise control, although indirectly, over Palestinian movement in the Rafah crossing – the only exit outside of Gaza to countries other than Israel – namely Egypt. Furthermore, Israel continues to exercise control over the movement of Palestinians, as well as goods, in the Kerem Shalom, Erez, Karni, and Sufa crossings. Even during the period between the Israeli withdrawal in September 2005 and the Israeli military operation dubbed “Operation Summer Rains” in 2006, there has been a consensus amongst the international community that Israel, regardless of the applicability of the laws of occupation, continues to be legally responsible for protected persons that live in the Gaza Strip under general provisions of international humanitarian law.⁶⁰

In March 2002, the Knesset enacted the *Incarceration of Unlawful Combatants Law (2002)*. This law provides for the indefinite administrative detention of foreign nationals and creates a third category of person the “unlawful combatant” with an unclear definition that includes not only persons who participate in hostilities against Israel, but also any members of forces that carry out such hostilities of that force. The usage of the “unlawful combatant” designation runs contrary to the distinction in international humanitarian law between combatants and civilians. It affords detainees neither the protection of the Third Geneva Convention as combatants held as prisoners of war, nor the protection of the Fourth Geneva Convention as civilians. Neither of these Conventions prevents the state from prosecuting suspects for crimes they allegedly committed either as combatants or civilians.⁶¹

The Unlawful Combatants Law further allows a person suspected of being an “unlawful combatant” to be held for up to 14 days without judicial review, and also permits the use of secret evidence and in-court evidence to be taken outside of the presence or in the absence of the detainee. By comparison, under the Israeli military orders in the West Bank, once an administrative detention order has been issued by the military commander, the detainee must be brought before a military judge within eight days. Moreover, if the detention order is approved by a court, the Unlawful

60 Diakonia. “Does international humanitarian law apply to the Gaza Strip after the withdrawal?”, 2007 (available online at: <http://www.diakonia.se/sa/node.asp?node=842>).

61 United Against Torture, *Torture and Ill Treatment in Israel and the Occupied Palestinian Territory: An analysis of Israel's Compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 2008 (available at: www.unitedagainsttorture.org)

Combatants Law allows the administrative detention of individuals for indefinite periods of time, or until such a time that “hostilities against Israel have come to an end” and mandates judicial review of the detention only once every six months. The judge can then either release the detainee or renew the administrative detention order. The detainee is allowed to appeal to the Israeli High Court within 30 days. Finally, on January 17, 2013, the Ministry of Justice amended the law by making Section 10A, a temporary amendment in force from 2008-2010, permanent. According to this amendment, the timeframe for issuing an order after arrest was extended from four to seven days.

The Unlawful Combatants Law also contains a troubling presumption that the detainee would pose a threat to the security of the state if released, which is the grounds for detention under the law (section 3). Additionally, the Defense Minister’s determination that a certain force is carrying out hostilities against Israel, or that such hostilities have or have not come to an end, will serve as evidence in any legal proceeding, unless the contrary is proven by the detainee (section 8). Thus, no legislation is necessary to determine which forces are carrying out hostilities against Israel; the decision is made unilaterally by the executive.⁶²

Israel’s Position towards International Law

Although Israel has stated that it generally applies the humanitarian provisions of the Fourth Geneva Convention in the Occupied Territory (without specifying exactly which provisions it is referring to) (a *de facto* application) it denies that it is legally obliged to do so (a *de jure* application).⁶³ Israel bases this argument on a narrow interpretation of Article 2 of the Convention.⁶⁴ Israel argues that the Convention only applies between two High Contracting Parties, one of which has sovereignty over the territory occupied by the other. Israel posits that Jordan and Egypt were

62 *Ibid.*, p. 60.

63 ICJ, Wall Advisory Opinion, *supra* note 17, para. 93.

64 GCIV Article 2 provides:

“In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”



not acting as sovereigns over the Occupied Territory prior to 1967 (being more in the position of administrators) and that there is no other relevant High Contracting Party, therefore the Convention does not apply.⁶⁵

The ICJ rejected this argument, noting that both Jordan and Egypt were High Contracting Parties to the Covenant in 1967 and that Article 2 does not impose any qualification of sovereignty when referring to the “territory of a High Contracting Party.”⁶⁶

Israel’s argument also ignores Article 4 of the Convention, which is intended to protect the rights of people who find themselves “in the hands of a Party to the conflict or occupying Power of which they are not nationals,” regardless of the competing claims to sovereignty over the territory.

Rejecting Israel’s argument, the ICJ concluded that:

*“This interpretation reflects the intention of the drafters of the Fourth Geneva Convention to protect civilians who find themselves, in whatever way, in the hands of the occupying Power. Whilst the drafters of the Hague Regulations of 1907 were as much concerned with protecting the rights of a State whose territory is occupied, as with protecting the inhabitants of that territory, the drafters of the Fourth Geneva Convention sought to guarantee the protection of civilians in time of war, regardless of the status of the occupied territories, as is shown by Article 47 of the Convention.”*⁶⁷

Finally, the ICJ noted that the Israeli Supreme Court has itself acknowledged the application of the Convention in relation to military action undertaken by the IOF in the Rafah refugee camp in the Gaza Strip.⁶⁸

With regards to the ICCPR and similar international human rights instruments, Israel takes the view that these covenants do not apply to the Occupied Territory.⁶⁹ However, this too was refuted by the ICJ in its ruling, which affirmed the applicability of human rights law to the OPT. The Court stressed that the Hague Regulations of 1907 are part of customary

65 ICJ Wall Advisory Opinion, *supra* note 17, paras. 90-91.

66 *Ibid.*, para. 95.

67 *Ibid.* GCIV Article 47 provides:

“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

68 ICJ Wall Advisory Opinion, *supra* note 17, para. 100.

69 *Ibid.*, para. 110.

international law and are thus applicable in the occupied territory. The Fourth Geneva Convention, as well, is applicable because there existed an armed conflict between two High Contracting Parties to the Convention – Israel and Jordan – when Israel occupied the West Bank.⁷⁰ The Court noted that, according to the first paragraph of Article 2 of the Fourth Geneva Convention, that Convention is applicable when two conditions are fulfilled: first, that there exists an armed conflict (whether or not a state of war has been recognized); and second, that the conflict has arisen between two contracting parties. If those two conditions are satisfied, the Convention applies, in particular, in any territory occupied in the course of the conflict by one of the contracting parties.

Summary of the Legal Position

Israel has historically ratified international agreements regarding human rights protection, whilst at the same time refusing to apply the agreements within the Occupied Palestinian Territory, attempting to create legal justifications for its illegal actions.

However, there is general acceptance that the following international humanitarian law instruments apply to the Occupied Palestinian Territory:

- The Fourth Geneva Convention
- Article 75 of Additional Protocol I to the Fourth Geneva Convention
- The Hague Regulations

There is general acceptance that the following international human rights law instruments also apply to the occupied Palestinian territory:

- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The International Convention on the Rights of the Child (CRC)
- UN Convention against Torture (CAT)

70 N. Sliman, “World Court’s Ruling on Wall Speaks with Utmost Clarity”, *Middle East Report Online*, 2004 (available at: <http://www.merip.org/mero/mero072704.html>).



Administrative Detention in Practice

Administrative detention orders in the Occupied Palestinian Territory are issued by military commanders for between one to six months and can be renewed indefinitely.

Procedure

Under Israeli military regulations the system of administrative detention is implemented as follows:

1. Palestinians are usually arrested by the Israeli military. Large numbers of Israeli soldiers often forcibly enter the home for an arrest, usually breaking down doors and destroying personal property. Arrests also commonly take place at checkpoints and at demonstrations. In some cases, police dogs are used to enter the home, terrifying the occupants. Soldiers also verbally and physically threaten the occupants of the house.⁷¹
2. A Palestinian can then be detained for up to eight days (four days which may be renewed an additional four days) without being informed of the reason for his or her detention and without being brought before a judge. Between April and June 2002, during Israel's mass arrest campaign in the OPT, this period of time was increased by the Israeli Military Order 1500 to 18 days.⁷² This is in breach of international law.⁷³
3. During or following the eight days of detention, a detainee is either:
 - a. sent to an interrogation center;
 - b. charged with an offense;
 - c. given an administrative detention order; or
 - d. released.
4. Once an administrative detention order has been issued by the military commander, the detainee must be brought before a judge for a judicial review within eight days. Occasionally, the matter will be dealt with at the first hearing and the order approved or varied.

⁷¹ Addameer Prisoner Support and Human Rights Association, *Torture of Palestinian Political Prisoners in Israeli Prisons*, 2003.

⁷² Military Order 1500.

⁷³ Additional Protocol I, Article 75(3).

5. At the judicial review, secret evidence is submitted by the Israeli Security Agency (ISA). Neither the detainee nor his or her lawyer is permitted to see the secret evidence. This is in breach of international law.⁷⁴
6. The hearing is not open to the public. This is in breach of international law.⁷⁵
7. The military judge may approve, shorten or cancel the order. In practice, the order is usually approved without change.
8. Previously, administrative detention orders had to be reviewed after three months. However, in April 2002, this requirement was abolished. Upon the initial judgment, the case can be appealed to the Military Court of Appeals, and then, if necessary to the Israeli High Court of Justice.
9. 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. Each time an administrative detention order is renewed the detainee is given a new "hearing."

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 some cases, administrative detention orders are renewed at the prison's gate. In many of the legal cases pursued by Addameer, administrative detainees spent years in prison after being sentenced for committing violations, in accordance with military orders. When the period ended, however, rather than be released they were placed under administrative detention under the pretext that they still posed a threat to 'security'. Palestinian detainees have spent up to eight years in prison without charge or trial under administrative detention orders. Salim Taha Mousa Ayeshe for example, was held in continuous administrative detention from 2001-2007.⁷⁶ The longest serving Palestinian detainee in administrative detention, Mazen Natsheh, has spent approximately twelve years in administrative detention cumulatively since 1994. He was released from his latest administrative detention of 20 months on 21 April 2015.

⁷⁴ GCIV, Article 71.

⁷⁵ *Ibid.*

⁷⁶ See Salim's profile, available at: <http://addameer.info/?p=1082>.



Legal Basis for Administrative Detention

Lawyers representing administrative detainees must contend with impossibly vague allegations. Administrative detainees are usually detained on broad grounds of “being a threat to the security of the area,” but the area and the nature of the threat are left undefined. This is in breach of international law.⁷⁷

Defense lawyers can try to petition military judges for more information about the allegations against their client, but it is unusual for a military court to surrender this information. If military judges do release more information about the suspicions, it is usually only after the prisoner has already been held in administrative detention for months.

Addameer General Director and senior lawyer Sahar Francis represented one client who was placed in Israeli administrative detention in 2001, yet she did not discover until mid-2006 that her client was detained on allegations that he once said he wanted to participate in a suicide attack. However, she still could not determine from the publicly released information on his case when he allegedly made this statement and under what circumstances. Adv. Francis described her frustration with this situation, stating, “After five years, is he still a danger? Is he still related to active people outside? To such questions, I never have answers.”

Right of Review and Appeal

Following the issuance of an administrative detention order, a judicial review of the order must take place within eight days. This review takes place before a military judge who can reduce, cancel, or confirm the order. The detainee then has a right at any time to appeal the decision of the military judge to the Administrative Detainees Appeals Court presided over by another military judge. The appeal process is somewhat farcical, given that the detainee and his or her lawyer do not have access to the “secret” information on which the orders are based. This leaves the defense in the position of having to guess what may or may not be in the security file. The detainee is not able to confront and cross-examine primary witnesses, and since almost all information presented to the court is classified, the detainee is unable to contest its veracity. Detainees are therefore unable to present a meaningful defense. There is no time limit on the right to appeal to the military appeal court.

⁷⁷ Additional Protocol I, Article 75(3).

Prior to March 2002, a representative of the ISA was required to be present at the review and appeal sessions to answer any questions the military judge may have concerning the detainees’ secret file. However, following the mass arrest campaigns conducted by Israel in March 2002, the Israeli military commander amended the military order pertaining to administrative detention to allow the Military Prosecutor to present the “secret information,” expediting the rubber-stamping of administrative detention orders. If the military judge wants to hear from the ISA, he can ask a representative to attend, but this rarely happens in practice.

In very rare circumstances, if the judge finds that the information in the security file is public information, the information will be released to the detainee and his or her lawyer. However, information obtained under interrogation that should be supplied to the military prosecutor and defense is often delayed for months. The military courts are unsympathetic to defense complaints concerning these delays.

The Israeli High Court of Justice has instituted a practice whereby administrative detainees can petition the Court to review their administrative detention order. In most cases, however, these petitions are dismissed.

Lawyers

Lawyers who represent Palestinians in Israeli military and civil courts face obstacles that systematically erode the right of Palestinian detainees to legal representation. Defense attorneys must contend with military orders, Israeli laws and prison procedures that curtail their ability to provide adequate counsel to their clients. A lawyer’s citizenship or residency status dictates his or her ability to represent Palestinian clients. This is a breach of international law.⁷⁸

The military prosecutor is usually the only source of information about the evidence in administrative detention cases; however, the defense lawyer cannot cross-examine the prosecutor as a witness. Instead, the prosecutor answers all of the defense lawyer’s questions without being sworn in and has the right not to answer questions. A typical examination during a hearing to extend an administrative detention order goes as follows:

⁷⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 72.



- Q. Is any of the evidence open?
A. No.
Q. What is my client accused of?
A. Activities to help terrorism.
Q. How did he help terrorism?
A. He's in an organization.
Q. Which organization?
A. That is part of the secret evidence.
Q. Who else is in the organization with him?
A. That is part of the secret evidence.⁷⁹

It is rare for the defense to call witnesses as the evidence against the detainee is not known. In the circumstances, the only evidence that the defense can use is the good character of the detainee and his or her family life.

Palestinians with West Bank Residency

Palestinians with West Bank residency are limited to working in the military courts because they cannot represent clients in Israeli civil courts or in the High Court. They are allowed to work in the military courts of Ofer (near Ramallah) and Salem (near Jenin), but travel restrictions still make their work difficult because they cannot enter Israel to visit their clients who are detained there in Israeli prisons and interrogation centers. Theoretically, they could apply for travel permits to enter Israel for client visits, but no special allowance is made for lawyers in the permit application process and they are routinely denied access.

Palestinians with Gaza Residency

Since Israel withdrew from Gaza and closed the Erez military checkpoint, Palestinians with Gaza residency cannot represent clients in the military courts or Israeli civil courts.

Palestinians with Jerusalem IDs

Lawyers with Jerusalem IDs may take a test administered by the Israeli Bar Association in order to be licensed to represent clients in the Israeli civil courts.

If a lawyer with a Jerusalem ID is licensed only by the Palestinian Bar Association, he must apply each year for permission from the Israeli

⁷⁹ Addameer Prisoner Support and Human Rights Association, *Defending Palestinian Prisoners: A Report on the Status of Defense Lawyers in Israeli Courts*, April 2008.

Department of Justice to represent clients in the military courts and to visit interrogation centers and prisons inside Israel. Lawyers who have the Department of Justice certification may then apply to the prison authority for permission to make individual visits to clients in prisons and interrogation centers.

Palestinians with Israeli Citizenship and Jewish Israelis

With Israeli citizenship come certain privileges for lawyers, including the right to represent clients in the Israeli civil courts and the right to apply for permission to visit Israeli prisons and interrogation centers. In addition to working in the Israeli civil courts, lawyers with Israeli citizenship can also represent clients in the military courts.

Lawyers with Israeli citizenship cannot, however, enter Gaza or regions classified "Area A" in the West Bank. These regions include most Palestinian cities, so Israeli citizens are prohibited from entering much of the West Bank to interview clients, their families and witnesses. Additionally, the Israeli Bar Association prevents Israeli citizens from having offices in the West Bank.

Military Courts and Judges

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 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 international fair trial standards. 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."⁸⁰ However, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism (the Special Rapporteur on counter-terrorism and human rights) 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

⁸⁰ Yesh Din, *Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories*, December 2007, p. 11.



independence and impartiality, which on its own brings into question the fairness of trials.”⁸¹

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. Court proceedings are also held in Hebrew, a language that the vast majority of detainees cannot understand. Holding legal proceedings in a foreign language in occupied territory is against Geneva Convention III Article 105, Geneva Convention 4 Article 71, Additional Protocol 1 Article 75, and Additional Protocol 2 Article 6.

According to Military Order 1651 Article 11 (a)(1)-(6), it is the responsibility of the military commander in the Occupied Palestinian Territory to appoint military court judges. This appointment is made according to a decision taken by a Special Committee to appoint judges.⁸² In addition, the minimum required training for a military judge is five years legal experience.

The military court judges, prosecutors and the ISA have access to the “secret information” allegedly containing allegations and evidence, but this information is not disclosed to the detainee or his lawyer. This is in breach of Israel’s obligations under both international human rights and humanitarian law.⁸³ Administrative detention hearings are not open to the public, in further breach of Israel’s obligations under international human rights law.⁸⁴

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 tribunal. The prisoner will then stand trial while the detention order against him remains in effect. Alternatively, a prisoner will be tried and convicted by a military tribunal, complete his sentence, and then be placed under administrative detention.

Military judges are obliged to provide reasons for their decisions when they rule in administrative detention judicial reviews. Allegations against administrative detainees are typically as broad as “being a threat to the

81 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.

82 Military Order 1652, Article 13.

83 ICCPR, Article 14.

84 *Ibid.*

security of the area,” with “the area” and the nature of the threat left undefined. This is a clear breach of Israel’s obligation under international human rights and humanitarian law.⁸⁵

Typical justification for administrative detention by a military court judge goes something like this:

X is a member of Hamas and a threat to State security. I have searched the secret files and find that the evidence is credible.

Many lawyers who appear in the military courts advocate a boycott of the system. However, at the present time there is no consensus amongst prisoners to boycott the courts.

Torture

Although Israel has ratified the Convention Against Torture, it has prevented the Committee Against Torture from investigating allegations of ill treatment in the Occupied Palestinian Territory.⁸⁶

Under amendments to Military Order 1651, a Palestinian detainee can be interrogated for a total period of 75 days (for children 40 days). Through the military appeals court, the judge can extend the detention repeatedly, each time a further 90 days. There is no upper limit as to how many times this extension may be renewed. Additionally, the detainee can be denied access to a lawyer for up to 60 days during this period in accordance with Articles 58 and 59 of Military Order 1651.⁸⁷ This is a breach of international law.⁸⁸ Not only are these policies illegal under international law, but they also discriminate between Palestinian and Israelis. While a Palestinian can be denied lawyers visits for 60 days, an Israeli ‘security’ detainee and his attorney can only be prevented from meeting for a total of 21 days.

During the interrogation period, a detainee is often subjected to some form of torture or cruel, inhuman or degrading treatment ranging in extremity, whether physical or psychological with the aim of obtaining confessions

85 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 71; ICCPR, Article 14.

86 Addameer Prisoner Support and Human Rights Association, *Torture of Palestinian Political Prisoners in Israeli Prisons*, 2003.

87 Until August 2012, a Palestinian detainee could be interrogated for a total period of 188 days, and denied lawyer visits for a period of 90 days.

88 Additional Protocol I, Article 75(3); GCIV, Articles 71, 72.

for their convictions. On 6 September 1999, the Israeli High Court of Justice ruled to place some limits on the use of torture during interrogation. The ruling, however, did not explicitly forbid the use of torture but rather allowed that interrogation methods deemed as torture (referred to by the court as “moderate physical pressure”) may be used in situations where a detainee is deemed a ‘ticking bomb’ by the Israeli Security Agency (ISA). Despite the High Court’s decision, interrogation methods such as violent shaking, shackling detainees in painful positions, sleep deprivation, playing loud music and exposing detainees to very cold or very hot temperatures for long periods, are still commonly used against Palestinians whom authorities allege have information about an ‘imminent attack’.

Through a loophole in the High Court decision, the interrogator is protected from being legally pursued for using torture in accordance with the Israeli criminal law “protection of necessity” defense. Additionally, Israeli law does not prohibit the acceptance of confessions obtained by force. However, most “security” cases rely on confessions obtained from Palestinian defendants taken before they were provided with a legal representation during the interrogation period. During interrogation, most detainees are denied lawyers’ visits for long periods reaching up to 60 days. As Israel can legally hold detainees incommunicado for up to three months, ISA interrogators are able to use methods of torture with impunity. If a complaint is lodged, investigations are confidential and led by an ISA agent under the authority of the State Attorney. Moreover, since 2001, the State Attorney’s Office has received more than seven hundred complaints of ill-treatment by ISA interrogators, yet has not found cause to order a single criminal investigation. The State Attorney’s Office’s decisions on this issue are based on the findings of an examination conducted by the Inspector of Complaints by ISA Interrogees, who is an ISA agent, answerable to the head of the organization. Even when the findings have shown that ISA interrogators did indeed abuse an interrogee, the State Attorney’s Office has closed the file based on a biased interpretation of the court’s ruling on the applicability of the “necessity defense.”⁸⁹

“They deal with almost every Palestinian as a ticking bomb case.”

Adv. Sahar Francis

Since 1967, approximately 75 detainees have died while in custody as a result

⁸⁹ B’tselem and Hamoked, *Absolute Prohibition*, *supra* note 26.

of torture. Confessions extracted through torture are regularly used as evidence in court and/or military tribunals. This is a breach of international law.⁹⁰

In 1998, the Israeli human rights organization B’Tselem published statistics detailing the use of torture against Palestinian prisoners. The report stated that the Israeli security services interrogated between 1,000-1,500 prisoners each year, with 85 percent of those interrogated subjected to some form of torture. The Israeli High Court of Justice did nothing to prevent this use of torture. The report went on to state that torture was practiced as routine policy.⁹¹

A report published by Defense for Children International – Palestine Section in April 2016 entitled “No Way to Treat a Child”⁹² based on affidavits from 429 children from the occupied West Bank who were detained between 2012 and 2015 revealed that about three quarters of these children were subjected to physical violence. The study found that:

- 97.7% of the children reported their hands being tied
- 97.0% of the children reported being interrogated without a lawyer or family member present
- 88.3% of the children reported being blindfolded
- 88.1% of the children reporting not being informed of the reason for the arrest
- 71.3% of the children reported having been subjected to humiliation, intimidation, and verbal abuse

In recent years, Israel has officially admitted several times that in “ticking-bomb” cases, the ISA interrogators employ “exceptional” methods of questioning, including “physical pressure.” Addameer receives numerous reports of the continued use of abusive techniques being employed against Palestinians during interrogation. These techniques include:

- excessive use of blindfolds and handcuffs
- slapping and kicking
- sleep deprivation and solitary confinement
- denial of food and water for extended periods of time
- denial of access to toilets and denial of access to showers or change of clothes for days or weeks

⁹⁰ GCIV, Article 3; Additional Protocol I, Article 75(2)(a)(ii); CAT, Article 2.

⁹¹ See B’Tselem, *Routine Torture: Interrogation Methods of the General Security Service*, February 1998.

⁹² Defence for Children International - Palestine (2016), «[No Way to Treat a Child](#)».



- exposure to extreme cold or heat
- position abuse and yelling and exposure to loud noises
- arresting family members or alleging that family members have been arrested

Torture appears to be justified in the Israeli perception as a means to obtain a confession and collect evidence, clearly in violation of international law, which stipulates that confessions obtained through force are not admissible.

Holding Administrative Detainees in Israel

The Israeli military regularly moves Palestinian prisoners from the West Bank to facilities inside Israel. Palestinians from the West Bank may be moved between any of three types of facilities:

1. A detention center
2. An interrogation center, or
3. A prison

Whereas detention centers tend to be located on military bases or settlements in the West Bank, interrogation centers and prisons tend to be located inside Israel. The transfer of administrative detainees to Israel contravenes Article 76 of the Fourth Geneva Convention, which prohibits the transfer of prisoners from occupied territories. The policy of transferring detainees to Israel coupled with the restrictive system of permits in operation in the OPT means that many detainees receive few if any family visits. This is in breach of international law.⁹³

In 2003, Israel admitted to having at least one **secret interrogation facility** known as Facility 1391 that falls under the responsibility of the Israeli Security Agency (ISA). It is not identified on any map, so the exact location of this facility is unknown. It is assumed that the center is located within an Israeli military base outside the OPT and that it falls under the responsibility of Unit 504 of the military intelligence. Detainees held in this facility for interrogation are not told where they are being held. Legal counsel for clients held in the secret facility may, upon request, learn of their client's detention at the facility, but remain in the dark about its location. Detainees held in the facility report that interrogations there involve extreme measures amounting to torture and ill-treatment, and that

⁹³ GCIV, Article 116.

the detention conditions are poor, involving sensory deprivation, including frequent and long periods of isolation and the denial of basic sanitary conditions. The International Committee of the Red Cross has no access to this facility. Even those in the highest political and military systems in Israel claim to have no idea what goes on inside this facility.⁹⁴ This is a clear breach of international law.

Discrimination

In practice, there are three different groupings of detainees in Israeli prisons, with each being treated according to varying standards. These include:

1. Israeli Jewish criminal prisoners;
2. Palestinian criminal prisoners with Israeli citizenship; and
3. Palestinian political prisoners from the Occupied Palestinian Territory (including West Bank, Gaza and East Jerusalem) and Palestinian political prisoners who hold Israeli citizenship.

There appears to be clear discrimination legally, politically, and procedurally when dealing with each of the three groupings of prisoners. Palestinian political prisoners from Israel do not enjoy the same rights as Jewish prisoners from Israel, including the right to use a telephone, home visits, early releases (known as “*shleesh*” release after serving two thirds of a sentence), and family visits without being separated by barriers.

One clear example of discrimination is the designation of the term of a life sentence. In the case of Jewish Israeli prisoner Yoram Skolnik who was convicted of killing a Palestinian, the ‘life’ sentence term he received was set at 15 years. The sentence was twice commuted by then-Israeli President Ezer Weizman and reduced to 11 years. Skolnik was released after serving 7 years of his sentence.

By comparison, Waleed Daka and Kareem Younis, Palestinian citizens of Israel who were convicted of killing Jewish Israelis, received life sentences of 40 years. Similarly, Wassfie Mansour and Mahmoud Othman Jabbarin, both Palestinian citizens of Israel, were given life sentences of 30 years for killing Jewish Israelis. Life sentences for Palestinians in the West Bank, on the other hand, are typically unlimited, and last until the detainee's death.

⁹⁴ Addameer Prisoner Support and Human Rights Association, *Torture of Palestinian Political Prisoners in Israeli Prisons*, 2003.



Thus, it is clear that Palestinian political prisoners from the OPT, including residents of occupied East Jerusalem, are not subject to the same standards for national and security considerations.⁹⁵

Another example of discrimination can be found in the application of administrative detention orders in Israel, as opposed to those in operation in the Occupied Territories. In Israel, under the *Israeli Emergency Powers Law (Detention) (1979)* a detainee must be brought before a judge within 48 hours and the detention order must be reviewed every three months. In the OPT, a detainee need not be brought before a judge for eight days, and the requirement of judicial reviews every three months was abolished in April 2002. At present, administrative detention orders may be for up to six-month periods, which are indefinitely renewable.

A further example of discrimination can be found in the fact that Israel affords settlers residing in the OPT illegally all the rights enshrined in international human rights law but does not concede that this covenant applies to Palestinians.⁹⁶

Detention Conditions

Palestinians in Israeli administrative detention are now held under the jurisdiction of the Israeli Prison Service (IPS) and not the Israeli army, as was the case up to 2005. Administrative detainees in Israeli prisons are not separated from the rest of the prison population, without arrangements for food appropriate to their culture and/or religion and to allow them to practice their faiths. In most cases, prison personnel do not receive specific training on how to deal with administrative detainees and on international law regarding administrative detainees. Administrative detainees in Israel must endure severe restrictions on their right to education, rights to communicate with families and receive visits, and right to adequate medical treatment.

At present, administrative detainees are primarily held in three Israeli prison facilities, all but one of which are located in 1948 territory:

1. Ofer Prison (located inside Ofer Military Base, south of Ramallah)

⁹⁵ Palestinian prisoners from Jerusalem who hold permanent resident status and not Israeli citizenship are also treated with discrimination as part of a “preventive deterrence” policy. Israel refuses to release Jerusalemite prisoners in the context of agreements on prisoner releases between Israel and the Palestinian Authority.

⁹⁶ See ICJ Wall Advisory Opinion, *supra* note 17, para. 112.

2. Ketziot Prison (also known as Ansar or Negev Prison; located in the Negev Desert, five kilometers from the border with Egypt)
3. Megiddo Prison (located inside a military base on the main Jenin-Haifa road)

Of these three facilities, only Ofer is located in the OPT. However, it should be noted that while Ofer is located within occupied territory, it has been de facto treated as though it is within Israel. The gate to the facility is located behind the illegal Annexation Wall and families must get permits through the ICRC to visit prisoners there, permits which state that the holder will be visiting a prison “inside Israel.”

Addameer receives regular complaints from both adult and child detainees about the conditions in which they are being held in Israeli prisons. Detainees are held in overcrowded cells that are often poorly ventilated and do not provide for adequate shelter against extreme weather in the winter or summer. Hygiene facilities are dire. Toilets are located inside prison cells with sewage often coming through the drains. The IPS does not provide essential hygiene products, such as toothpaste; only prisoners whose canteen accounts have been closed receive essential personal hygiene products and cleaning products for their cells. Prisoners report that personal hygiene products were provided up until 2002 but from that year on were significantly limited. All prisoners reported that IPS provided only half a liter of floor cleaning liquid and that the rest of their personal products, including all products used for cleaning their cell, were bought at their own personal expense.⁹⁷

Most prisoners reported that the food provided by the IPS was insufficient in terms of quality and quantity. The prisoners buy most of their food from the canteen and re-cook the cooked food they get from IPS. However, the purchasing power of prisoners is radically divergent. In most cases, it is the prisoners’ responsibility to provide more than half of their necessary food, which is problematic as many prisoners come from low-income families. Sometimes, a prisoner’s canteen account is closed, as has occurred to dozens of Palestinian prisoners, especially those who have been identified with Hamas. Prisoners report that IPS food is inappropriate for the medical needs of those who require a special diet. This is a breach of international law.⁹⁸

⁹⁷ Addameer, *Violations against Palestinian Detainees 2007*, *supra* note 27.

⁹⁸ GCIV, Articles 81, 84 and 85.



Females in Administrative Detention

Many females have been in administrative detention. As of July 2016, there were two female Palestinians held under administrative detention. Recent cases from the last year include Jureen Qadah, Asma Qadah, Suad Erzeiqat.

Children in Administrative Detention

Administrative detention has been used regularly against Palestinian children, in the same manner as it is used against Palestinian adults. Children as young as 14 have been given administrative detention orders and serve out their detention in the same facilities as adults. In April 2016, there were 13 Palestinian children aged between 16-18 held under administrative detention.⁹⁹

In practice, Palestinian children may be charged and sentenced in military courts beginning at the age of 12. Between the ages of 12-14, children can be sentenced for offences for a period of up to six months. For example, a child of this age range who is charged with throwing stones can be sentenced to six months' imprisonment. A child 14-15 years old is subject to 12 months' maximum imprisonment, unless the offence carries a maximum penalty of 5 years or more. This effectively means that children in this age range are subject to only the harshest adult penalties. For instance, children in this age range are eligible for 10 years' imprisonment for throwing stones and 20 years imprisonment for throwing stones at moving vehicles, the same penalties faced by adults. Palestinian children ages 16-18 receive adult sentences, though they are tried in the military juvenile court established by Military Order 1644, issued on 29 July 2009. This is the first and only military court for children in the world. The creation of the court, however, is largely symbolic, as it is staffed by the same people who run the adult courts and works within the legal parameters outline above, which allow for the dealing of adult sentences to minors.

Administrative Detention and Forced Deportation

As of the end of 2003, 21 administrative detainees were deported to the Gaza Strip from the West Bank. These deportations were called 'assigned residence' by Israel and were implemented through Israeli military regulations. This practice is in violation of the Fourth Geneva Convention.¹⁰⁰ On 1 June 2008, female prisoner Noura Al-Hashlamon was informed by

Israeli authorities that she would be released from administrative detention if she moved directly to Jordan for three years. Noura, who had been in Israeli detention since her arrest on 17 September 2006, rejected the offer and her administrative detention order was renewed for an additional three months. She was finally released on 31 August 2008 after 714 days in Israeli custody without charge or trial. In 2010, Saleh Al-'Arouri, who has cumulatively spent nearly 18 years in Israeli custody through a combination of 20 administrative detention orders and two prison sentences, was released from administrative detention on the condition that he leave Palestine for three years. He is currently in exile in Syria. In 2012, Hana Al-Shalabi was released from administrative detention after 43 days of hunger strike on the condition that she be deported to Gaza. Similarly, in March 2013, administrative detainee Aymen Al-Sharawna was released after an 8-month hunger strike on the condition that he be banished to Gaza for 10 years. This strategy highlights Israel's use of Gaza as an open-air prison, where Palestinians, by virtue of the continuous Israeli siege on the area, can be easily restricted and punished en masse.

⁹⁹ Btselem. "Administrative detainees by month, 2016"

¹⁰⁰ GCIV, Article 49.



Conclusion

Addameer Prisoner Support and Human Rights Association contends that the practice of administrative detention in Israel and the occupied Palestinian territory contravenes fundamental human rights. Israel uses administrative detention in a highly arbitrary manner without putting even the most basic safeguards in place, leading to other, grave human rights violations, such as inhuman and degrading treatment and torture.¹⁰¹

Addameer accordingly demands that all administrative detainees held on account of their political views or their activities carried out in resistance to the occupation be released promptly and unconditionally. Fair trial standards must be respected for all political detainees, including those accused of committing acts that are considered crimes according to international law.

Addameer further demands that the occupying power adhere to international law and that restrictions on the use of administrative detention be imposed. Addameer insists that the judicial review of administrative detention orders must meet the minimum international standards for due process. The authorities must provide detainees with prompt and detailed information as to the reason for their detention, and with a meaningful opportunity to defend themselves.

Experience in other countries has invariably demonstrated the practical futility of violating normal legal safeguards by adopting a policy of detention/internment without trial. The introduction of internment by the Northern Ireland authorities following the outbreak of civil disturbances there in the early 1970s led only to increased violence and disaffection by large segments of the population. The policy came to be regarded as both morally and politically unacceptable and was abandoned after a few short years. Addameer accordingly calls upon the government of Israel to learn from these and other examples and to end its unjust practice of administrative detention without further delay.

¹⁰¹ In November 2001, the UN Committee Against Torture condemned Israel's continued practice of administrative detention conducted in violation of the Convention Against Torture as well as the continued prevalence of prolonged periods of incommunicado detention.

Administrative Detention Statistics

YEAR	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC
2015	450	454	426	414	401	480	480	350	343	450	545	660
2014	155	175	183	186	192	-	-	480	500	500	530	465
2013	178	178	170	168	156	147	136	134	137	135	145	145
2012	309	309	320	322	308	303	285	250	112	184	156	178
2011	207	221	214	217	220	229	243	243	272	286	278	283
2010	264	264	259	237	222	215	200	190	190	212	214	207
2009	564	542	506	487	449	428	387	363	335	322	291	278
2008	813	788	766	790	776	738	692	649	604	583	569	546
2007	814	788	776	790	761	730	691	651	599	578	569	546

***Statistics for June and July 2014 conflicted due to the high arrest rates and difficulty in obtaining statistics during the arrest campaign in the months of the War on Gaza.**

- An arrest campaign beginning in June 2014 the aftermath of the disappearance of three settlers and the Gaza War, led to the number of those in administrative detention at height by September 2014, to 500 administrative detainees (reaching the highest number in over 4 years), as compared to 192 administrative detainees in May 2014.
- Between 01 October 2015 – 31 December 2015, in the first two months of the recent escalation, Addameer documented the issuance of 461 administrative detention orders, including 324 new orders and 137 renewal orders.
- As of July 2016, there were approximately 750 administrative detainees in Israeli prisons and detention centers, including 3 Palestinian Legislative Council members, 2 females, and 8 children.

Addameer's Campaign to Stop Administrative Detention

Administrative detention is a procedure under which detainees are held without charge or trial. In the occupied Palestinian West Bank, the Israeli army carries out administrative detention on the basis of Military Order 1651. This order empowers military commanders to detain an individual



for up to six months if they have “reasonable grounds to presume that the security of the area or public security require the detention.” On or just before the expiry date, the detention order is frequently renewed. **This process can be continued indefinitely.**

There is no explicit limit for a maximum amount of time an individual may be detained, leaving room for indefinite legal detention. The grounds on which someone can be detained are unclear, leaving it up to the military commanders to decide what constitutes “public security” and “security of the area.” Detainees are not informed of the reasons for their detention; neither are their lawyers.

Addameer is calling for an end to the Israeli practice of detaining people in administrative detention. Addameer demands that the Israeli authorities immediately release all administrative detainees.

About Addameer

ADDAMEER (Arabic for conscience) Prisoner’s Support and Human Rights Association is a Palestinian non-governmental, civil institution that works to support Palestinian political prisoners held in Israeli and Palestinian prisons. Established in 1992 by a group of activists interested in human rights, the center offers free legal aid to political prisoners, advocates for their rights at the national and international levels, and works to end torture and other violations of prisoners’ rights through monitoring, legal procedures and solidarity campaigns.

Addameer believes in the internationality of human rights and respect for human dignity, the totality of which is constructed upon international laws and conviction.

Addameer also 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.

Addameer's Campaign to Stop Administrative Detention

In the occupied Palestinian West Bank, the Israeli army is authorized to issue administrative detention orders against Palestinian civilians on the basis of article 285 of Military Order 1651. This article empowers military commanders to detain an individual for up to six-month renewable periods 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. For Palestinians with Israeli citizenship and residence, administrative detention orders are based on Emergency Powers (Detentions) Law. On or just before the expiry date, the detention order is frequently renewed; there is no explicit limit to the maximum amount of time an individual may be administratively detained, leaving room for indefinite detention.

Administrative detention orders are issued either at the time of arrest or at some later date and are often based on “secret information” collected by the Israeli Security Agency (formerly known as the General Security Service). In the vast majority of administrative detention cases, neither the detainee nor his lawyer is ever informed of the reasons for the detention or given access to the “secret information”.

ADDAMEER

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The Programs of Addameer

Legal Aid Unit: Since its founding, Addameer's legal aid work has formed the backbone of the organization's work, with Addameer's lawyers providing free legal representation and advice to hundreds of Palestinian detainees and their families every year, and working on precedent-setting cases of torture, fair trials and other violations affecting political prisoners.

Documentation and Research Unit: Addameer documents violations committed against Palestinian detainees and monitors their detention conditions through regular prison visits, and collects detailed statistics and information on detainees, which serve as the basis for its annual and thematic publications.

Advocacy and Lobbying Unit: Addameer's advocacy work is aimed primarily at the international community, with the unit publishing statements and urgent appeals on behalf of detainees, briefing international delegations and the media, and submitting reports and individual complaints to the United Nations, urging stakeholders to pressure Israel to change its policies. The unit also works towards building local, Arab and international solidarity campaigns to oppose arbitrary detention and torture while supporting the rights of Palestinian prisoners.

Training and Awareness Unit: Addameer raises local awareness of prisoners' rights on three levels: by training Palestinian lawyers on the laws and procedures used in Israeli military courts; by increasing the prisoners' own knowledge of their rights; and by reviving grassroots human rights activism and volunteerism and working closely with community activists to increase their knowledge of civil and political rights from an international humanitarian law and international human rights perspective.

Addameer's Goals:

- End torture and other forms of cruel, inhuman and degrading treatment inflicted upon Palestinian prisoners;
- Abolish the death penalty;
- End arbitrary detentions and arrests;
- Guarantee fair, impartial and public trials;
- Support political prisoners and their families by providing them with legal aid and social and moral assistance and undertaking advocacy on their behalf;
- Push for legislations that guarantee human rights and basic freedoms and ensure their implementation on the ground;
- Raise awareness of human rights and rule of law issues in the local community;
- Ensure respect for democratic values in the local community, based on political diversity and freedom of opinion and expression;
- Lobby for international support and solidarity for Palestinians' legitimate rights.

Postal Address: P.O.Box 17338

Jerusalem

Ramallah Office:

3 Edward Said Street, Sebati Bldg., 1st Floor, Suite 2, Ramallah (near Rafidein Square)

www.addameer.org