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Stop Administrative Detention

# ADMINISTRATIVE DETENTION IN THE OCCUPIED PALESTINIAN TERRITORY

## A legal Analysis Report





**Stop Administrative Detention**

# **Administrative Detention in the Occupied Palestinian Territory**

## **A Legal Analysis Report**



Addameer Prisoner Support and Human Rights Association

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© 2009 Addameer Prisoner Support and Human Rights Association  
P.O.Box 17338, Jerusalem  
Tel: +972-2-2960446 Fax: +972-2-2960447  
E-mail: [info@addameer.ps](mailto:info@addameer.ps)  
[www.addameer.info](http://www.addameer.info)  
Ramallah, Al Masyoun, Rafidein Sq., Edward Said St.  
Sebat Bldg., 1st Floor, Suite 2

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## Disclaimer

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## 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 a detainee to trial. By 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 (Guantanamo Bay) 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 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. As a result, it is now difficult to envisage a situation in any part of the island of Ireland where internment would ever be acceptable again.

In the military detention facility at the Guantanamo Bay military base, the US is now coming to realize that detention of suspects there without access to legal protections is not only wrong but politically unwise. Detainees at Guantanamo 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.



Likewise, in South Africa, internment was clearly just another element in the flawed legal practices of the apartheid regime. It is only in Israel that the practice of so-called administrative detention has been an integral part of the legal system over an extended period of time and shows no indication of being discarded by present or future Israeli governments as a means of suppressing the political will of the Palestinian people. The possibility of becoming an administrative detainee is an ever-present threat in the daily life 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 and without 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 total 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 explicit and 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.<sup>1</sup> On the contrary, the Israeli authorities have used administrative detention in most cases indiscriminately and as a means of punishment.

## Background

Palestinians have been subjected to administrative detention since the beginning of the Israeli Occupation in 1967 and before that time, under the British Mandate. According to testimonies given to Addameer, detainees have been held under administrative detention orders from periods ranging from six months to six years. The frequency of the use of administrative detention has fluctuated throughout Israel’s occupation, and has been steadily rising since the outbreak of the Second *Intifada* (uprising) in

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

September 2000, and has been used as a means of collective punishment for Palestinians who oppose the occupation. Similar to previous years, whenever the conflict enters a new stage, the Israeli authorities use administrative detention to arrest a large number of Palestinians.

### STATISTICS

During the period of March 2002 to October 2002, Israeli occupying forces 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 PLC elections of 2007, Israel placed dozens of candidates from the Islamic 'Change and Reform Party' in administrative detention. Some of which are still imprisoned to this day.

Over the years, only nine Israeli citizens from settlements in the West Bank have reportedly been detained for periods up to six months.

As of June 2010 there are currently 203 administrative detainees in Israeli prisons and detention centers including 3 women and 1 child under the age of 18.

Administrative detention in the OPT is ordered by a military commander and grounded on "security reasons". Detainees are held without a trial and without being told the evidence against them, but rather that, in most cases, there is 'secret evidence' against them and that they are being held for security reasons.

The security reasons are broad enough to include non-violent 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 Palestinian Authority areas (area A).



Carrying or placing a Palestinian flag is a crime in itself under Israeli military regulations and 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, primarily comprising 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 could in no way be considered a proportional response, regardless of what the circumstances of the emergency concerned might be. Only imperative reasons of security justify the use of administrative detention under international law. According to Adalah, 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.<sup>2</sup> 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

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<sup>2</sup> Adalah, Submission to the UN Human Rights Committee, 22 July 2003 (available at: [http://www.adalah.org/eng/intladvocacy/unhrc\\_03\\_emergency.pdf](http://www.adalah.org/eng/intladvocacy/unhrc_03_emergency.pdf)).

## International Law

After the 1967 war, Israel occupied the West Bank, including East Jerusalem (both 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”<sup>3</sup> and subject to international humanitarian law in regards to the occupation of these territories.<sup>4</sup> 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.<sup>5</sup>

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

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

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.<sup>8</sup>

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> 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>).

<sup>6</sup> GCIV.

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

<sup>8</sup> D. Kretzmer, *supra* note 5.



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.<sup>9</sup>

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

### **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

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<sup>9</sup> Ibid.

<sup>10</sup> 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.

necessary”,<sup>11</sup> or for “imperative reasons of security”.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup>

### **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 time 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.”<sup>15</sup>*

<sup>11</sup> 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.”

<sup>12</sup> 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 review, if possible every six months, by a competent body set up by the said Power.”

<sup>13</sup> 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.

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

<sup>15</sup> Article 1 of Additional Protocol I.



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.<sup>16</sup>

### **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.<sup>17</sup>

### **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*.<sup>18</sup> The ICJ 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.<sup>19</sup> As regards 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.

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<sup>16</sup> 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.

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

<sup>18</sup> Adopted by the UN General Assembly on 20 July, 2004 in resolution ES-10/15. The resolution was adopted by 150 votes in favor, 6 against with 10 abstentions.

<sup>19</sup> 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”.

### ***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.<sup>20</sup> The required circumstances are set out in Article 4 of the ICCPR which Israel ratified in 1991.<sup>21</sup>

### ***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.<sup>22</sup>

Israel ratified the CRC in 1989 and the ICJ has determined that the Convention does apply to the OPT.<sup>23</sup> 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 under Israeli military regulations Palestinian children are treated as adults once they reach the age of 16. This means that youths of 16 are tried in the same courts as adult prisoners and sentenced accordingly.<sup>24</sup>

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<sup>20</sup> 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.

<sup>21</sup> 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 obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”*

<sup>22</sup> CRC, Article 3.

<sup>23</sup> ICJ Wall Advisory Opinion, supra note 17, para. 113.

<sup>24</sup> This law does not apply to Israeli children who are treated as children until they are eighteen



### ***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.<sup>25</sup> 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 the High Court's decision to limit its use.<sup>26</sup> 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.<sup>27</sup>

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

<sup>25</sup> CAT, Article 2.

<sup>26</sup> 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.

<sup>27</sup> 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>).

confessions for sentencing. In some instances, detainees have died while in custody as a result of torture. Confessions extracted through torture are admissible in court and/or military tribunals.

### **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.<sup>28</sup>
- A prohibition against torture (mental and physical), mutilations and cruel treatment.<sup>29</sup>
- A prohibition against corporal punishment.<sup>30</sup>
- A prohibition against deportations and the transfer of civilians in and out of the occupied territory.<sup>31</sup>
- A prohibition against reprisals and collective punishments.<sup>32</sup>
- A prohibition against outrages upon personal dignity, in particular humiliating or degrading treatment including any form of indecent assault.<sup>33</sup>

### ***Procedure***

- Any person detained shall be informed promptly of the reasons for their detention.<sup>34</sup>
- No sentence shall be pronounced except after a regular trial.<sup>35</sup>
- The accused person shall have the right to present evidence necessary to their defense and may, in particular, call witnesses. They shall have

<sup>28</sup> GCIV, Article 1.

<sup>29</sup> GCIV, Article 3; Additional Protocol I, Article 75(2)(a)(ii); and, CAT, Article 2.

<sup>30</sup> Additional Protocol I, Article 75(2)(a)(iii).

<sup>31</sup> 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.”*

<sup>32</sup> GCIV, Article 33; Additional Protocol I, Article 75(2)(d); and, Hague Regulations, Article 50.

<sup>33</sup> GCIV, Article 3; Additional Protocol I, Article 75(2)(b).

<sup>34</sup> Additional Protocol I, Article 75(3).

<sup>35</sup> GCIV, 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.<sup>36</sup>

- The right to have the detention reconsidered by an appropriate body as soon as possible and reviewed at least twice a year.<sup>37</sup>
- The right to be released by the Occupying Power as soon as the reasons for the detention cease to exist.<sup>38</sup>

### ***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.<sup>39</sup>
- The detainee has the right to receive correspondence from his or her family.<sup>40</sup>
- 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.<sup>41</sup>

### ***Conditions of Detention***

- The Occupying Power must maintain detainees at its own expense and must provide for the detainees' state of health.<sup>42</sup>
- The Occupying Power must provide for support of those dependent on the detainee in circumstances where they are unable to support themselves.<sup>43</sup>
- 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 been tried or convicted of any offence, and therefore should be kept separately.<sup>44</sup>

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<sup>36</sup> GCIV, Article 72.

<sup>37</sup> *Ibid.*, Article 43.

<sup>38</sup> GCIV, Article 132; Additional Protocol I, Article 75(3).

<sup>39</sup> GCIV, Article 106.

<sup>40</sup> *Ibid.*, Article 107.

<sup>41</sup> *Ibid.*, Article 116.

<sup>42</sup> *Ibid.*, Articles 81, 91 and 92.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*, Article 84.

- The Occupying Power must intern the detainees in adequate accommodation in regards to health, hygiene and the rigours of the climate.<sup>45</sup>
- 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.<sup>46</sup>
- Detainees must be provided with premises suitable for the holding of their religious services.<sup>47</sup>

### ***Women***

- Women detained shall be under the immediate supervision of women.<sup>48</sup>

### ***Children***

- In all actions concerning children the best interest of the child shall be the primary consideration.<sup>49</sup>
- 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.<sup>50</sup>
- State Parties recognize the right of the child to education.<sup>51</sup>
- No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.<sup>52</sup>
- 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.<sup>53</sup>

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<sup>45</sup> *Ibid.*, Article 85.

<sup>46</sup> *Ibid.*, Article 89.

<sup>47</sup> *Ibid.*, Article 86.

<sup>48</sup> Additional Protocol I, Article 75(3).

<sup>49</sup> *Ibid.*, Article 3.

<sup>50</sup> *Ibid.*, Article 9.

<sup>51</sup> *Ibid.*, Article 28.

<sup>52</sup> *Ibid.*, Article 37.

<sup>53</sup> *Ibid.*



## Enforcement

Article 1 common to the four Geneva Conventions establishes a legal obligation for the High Contracting Parties, both individually and collectively, not only to implement the Conventions, but 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.<sup>54</sup> 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 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.

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<sup>54</sup> GCIV, 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”.<sup>55</sup> 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 122656. 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”.<sup>57</sup> Military Order

<sup>55</sup> A “protected person” is defined in GCIV 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.”

<sup>56</sup> Military Order 1226 was later on amended by Military Order 1591.

<sup>57</sup> Military Order 1226, Section 1B.



1226 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.

### **The Law in the Gaza Strip**

Until the Israeli military withdrawal from the Gaza Strip in 2005, administrative detention was authorized there 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 the 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 from the Israeli military

troops' withdrawal from the Gaza Strip in September 2005 until the Israeli military operation codenamed "Summer Rain" in 2006, there has been a consensus amongst the international community that Israel, regardless of the specific question on 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.<sup>58</sup>

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. 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 for combatants held as prisoners of war, nor the protection of the Fourth Geneva Convention for civilians. Neither of these Conventions prevents the state from prosecuting suspects for crimes they allegedly committed either as combatants or civilians.<sup>59</sup>

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 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

<sup>58</sup> 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>).

<sup>59</sup> 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](http://www.unitedagainsttorture.org))



or renew the administrative detention order. The detainee is allowed to appeal to the Israeli High Court within 30 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 ground 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.<sup>60</sup>

### **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, i.e. a *de facto* application) it denies that it is legally obliged to do so (a *de jure* application).<sup>61</sup> Israel bases this argument on a narrow construction of Article 2 of the Convention.<sup>62</sup> 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 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.<sup>63</sup>

The ICJ rejected this argument, noting that both Jordan and Egypt were

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<sup>60</sup> *Ibid.*, p. 60.

<sup>61</sup> ICJ, Wall Advisory Opinion, *supra* note 17, para. 93.

<sup>62</sup> 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."*

<sup>63</sup> ICJ Wall Advisory Opinion, *supra* note 17, paras. 90-91.

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”.<sup>64</sup>

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.

In 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.”*<sup>65</sup>

The ICJ finally 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.<sup>66</sup>

In regards to the ICCPR and similar international human rights instruments, Israel takes the view that these covenants do not apply to the Occupied Territory.<sup>67</sup> 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 international law and are thus applicable in the occupied territory. The Fourth Geneva

<sup>64</sup> *Ibid.*, para. 95.

<sup>65</sup> *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.”*

<sup>66</sup> ICJ Wall Advisory Opinion, *supra* note 17, para. 100.

<sup>67</sup> *Ibid.*, para. 110.



Convention, 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.<sup>68</sup> 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 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)

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<sup>68</sup> 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.<sup>69</sup>
2. A Palestinian can then be detained for up to eight 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.<sup>70</sup> This is in breach of international law.<sup>71</sup>
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.

<sup>69</sup> Addameer Prisoner Support and Human Rights Association, *Torture of Palestinian Political Prisoners in Israeli Prisons*, 2003.

<sup>70</sup> Military Order 1500.

<sup>71</sup> Additional Protocol I, Article 75(3).



5. At the judicial review, secret evidence is submitted by the Israeli Security Agency. Neither the detainee nor his or her lawyer is permitted to see the secret evidence. This is in breach of international law.<sup>72</sup>
6. The hearing is not open to the public. This is in breach of international law.<sup>73</sup>
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 decision of 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 Association, administrative detainees spent years in the 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 Ayesh for example, was held in continuous administrative detention from 2001-2007.<sup>74</sup> The current longest serving Palestinian detainee in administrative detention, Ayed Doudeen, has been held since his arrest on 14 October 2007 without charge or trial.

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<sup>72</sup> GCIV, Article 71.

<sup>73</sup> *Ibid.*

<sup>74</sup> 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.<sup>75</sup>

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

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<sup>75</sup> Additional Protocol I, Article 75(3).



present a meaningful defense. There is no time limit on the right to appeal to the military appeal court.

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.<sup>76</sup>

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

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<sup>76</sup> GCIV, Article 72.

and has the right not to answer questions. A typical examination during a hearing to extend an administrative detention order goes as follows:

- 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.<sup>77</sup>

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 could call would go to 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.

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<sup>77</sup> Addameer Prisoner Support and Human Rights Association, *Defending Palestinian Prisoners: A Report on the Status of Defense Lawyers in Israeli Courts*, April 2008.



### ***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 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.”<sup>78</sup> However, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism (the Special Rapporteur on human rights while countering terrorism) visited an Israeli military court during his 2007 country visit and noted the following subsequent to that visit: “...the fact remains that [Israeli] military courts have an appearance of a potential lack of independence and impartiality, which on its own brings into question the fairness of trials.”<sup>79</sup>

The stark reality is that *not a single* Palestinian charged with so-called security-related and other criminal offenses who passes through the Israeli military court system receives a fair trial.

According to Military Order 378 Section 3(b), 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.<sup>80</sup> 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.<sup>81</sup> Administrative detention hearings are not open to the public, in further breach of Israel’s obligations under international human

<sup>78</sup> Yesh Din, *Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories*, December 2007, p. 11.

<sup>79</sup> Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Marin Scheinin, - Addendum, Mission to Israel, including visit to the Occupied Palestinian territory*, 16 November 2007, A/HRC/6/17/Add.4, p. 14, para. 29.

<sup>80</sup> Military Order 378 3 (d)(1)

<sup>81</sup> ICCPR, Article 14.



rights law.<sup>82</sup>

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, 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 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.<sup>83</sup>

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.*

The vast majority of hearings in the military courts end with a plea bargain. There is little faith in the system on the part of Palestinian detainees, who fear that if the order is challenged, the ultimate order imposed will be even harsher.

*“Usually, if you argue the case and you lose, the sentence will be higher. The court will say, ‘You had an opportunity not to waste our time.’ They do this even though it contradicts the basic right for any person to prove he’s innocent.”*

– Sahar Francis

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.

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<sup>82</sup> *Ibid.*

<sup>83</sup> GCIV, Article 71; ICCPR, Article 14.

## 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.<sup>84</sup>

A Palestinian detainee can be interrogated for a total period of 188 days, during which time he or she can be denied access to a lawyer for up to 90 days. This is a breach of international law.<sup>85</sup>

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 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’. 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’. (See case of Loai Sati Mohammad Ashqar in the appendix)

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 90 renewable days. In cases researched by Addameer, the interrogation period lasted from

<sup>84</sup> Addameer Prisoner Support and Human Rights Association, *Torture of Palestinian Political Prisoners in Israeli Prisons*, 2003.

<sup>85</sup> Additional Protocol I, Article 75(3); GCIV, Articles 71, 72.



8 to 65 days.<sup>86</sup> 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. **No agent has been charged since the responsibility for investigations was transferred to the Ministry of Justice in 1994.** Moreover, since 2001, the State Attorney's Office has received more than five 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".<sup>87</sup>

*"They deal with almost every Palestinian as a ticking bomb case."  
Sahar Francis*

In some instances, detainees have died while in custody as a result of torture. Confessions extracted through torture are regularly used as evidence in court and/or military tribunals. This is a breach of international law.<sup>88</sup>

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.<sup>89</sup>

Similarly, Defense for Children International – Palestine Section, began work on a report in 2001 detailing statistics of the use of torture against child prisoners. A survey was conducted of 50 cases of child prisoners,

<sup>86</sup> Addameer, *Violations against Palestinian Detainees 2007*, *supra* note 28.

<sup>87</sup> B'tselem and Hamoked, *Absolute Prohibition*, *supra* note 27.

<sup>88</sup> GCIV, Article 3; Additional Protocol I, Article 75(2)(a)(ii); CAT, Article 2.

<sup>89</sup> See B'Tselem, *Routine Torture: Interrogation Methods of the General Security Service*, February 1998.

aged between 10-17 years old, arrested in 2000-2001. The survey found that:

- 95 percent were beaten by the soldiers arresting them. Soldiers used their hands, legs and guns to beat the children all over their body;
- 88 percent were beaten when they were transferred from military detention centers to interrogation centers, prisons or court; and,
- 100 percent were subject to various forms of torture including physical attacks (beating), tight cuffs, cursing, verbal and physical threats, sleep - deprivation, subject to extreme temperatures, blindfolded and shackling of hands or legs.<sup>90</sup>

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
- 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

Mahmoud Shousheh, a 16-year-old child prisoner from Bethlehem, describes his experience during interrogation:

*“I fell to the ground at one point in my interrogation, and when I fell, they kept beating me. After two hours of beating, they threw me into a small cell measuring 1 m by 80 cm. It was winter and very cold, but they turned on the air-conditioning in the cell so that it became much colder in the dark room. Half an hour later, they entered the*

<sup>90</sup> Defense for Children International – Palestine Section, *Torture of Palestinian Child Prisoners: A Clear Violation of Human Rights*, 2002.



*cell and asked me if I was ready to confess. When I remained silent, they started to hit me again. A few minutes later, I confessed and the beatings stopped. Then they took me out of the cell and into another room to sign a piece of paper. After that they took me back to the same cell, and I slept until the next morning.”<sup>91</sup>*

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.<sup>92</sup>

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. 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 client 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

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<sup>91</sup> *Ibid.*

<sup>92</sup> GCIV, Article 116.

report that interrogations there involve extreme measures amounting to torture and ill-treatment, and that 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.<sup>93</sup> 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. Israeli Arab/Palestinian criminal prisoners; and
3. Palestinian political prisoners from the Occupied Palestinian Territory (including West Bank, Gaza and East Jerusalem) and Palestinians 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, Palestinian ‘Ali Amoudi, who was convicted of killing Jewish Israelis, received a ‘life’ sentence term of life imprisonment. Wassfie Mansour and Mahmoud Othman Jabbarin, both Palestinian

<sup>93</sup> Addameer Prisoner Support and Human Rights Association, *Torture of Palestinian Political Prisoners in Israeli Prisons*, 2003.



citizens of Israel, were given life sentences of 30 years for the same charge. 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.<sup>94</sup>

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 illegally resident in the OPT all the rights enshrined in international human rights law but does not concede that this covenant applies to Palestinians.<sup>95</sup>

### **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. Prison personnel in most of the cases 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.

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<sup>94</sup> 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.

<sup>95</sup> See ICJ Wall Advisory Opinion, *supra* note 17, para. 112.

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

1. Ofer Prison (located inside Ofer Military Base, south of Ramallah)
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 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.<sup>96</sup>

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

<sup>96</sup> Addameer, *Violations against Palestinian Detainees 2007*, *supra* note 28.



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.<sup>97</sup>

### **Women in Administrative Detention**

There are currently four women in administrative detention:

1. Raja' Al-Ghoul, 40
2. Hana Yahya Saber Al-Shalabi, 28
3. Muntaha Al Taweel, 45
4. Kifah Qatash, 37

(See case of Raja' Al-Ghoul in the appendix)

### **Children in Administrative Detention**

Under Israeli military regulations in force in the OPT, a child over the age of 16 is considered an adult. This is in contravention of Article 1 of the UN Convention of the Rights of the Child which defines a child as a person under the age of 18 and to which Israel is a signatory.

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. After the age of 16, Palestinian children are tried as adults. Military Order 1644, issued on 29 July 2009, established new juvenile military courts. However, few substantive changes regarding the legal procedures for Palestinian children arrested by Israel have resulted other than that children are sometimes tried separately from adults.

Administrative detention has been used regularly against Palestinian children, in the same manner as it is used against Palestinian adults. Children as young as 16 have been given administrative detention orders and serve out their detention in the same facilities as adults. There are currently two children in administrative detention, Moatasem Muzher, 16 and Emad Al-Ashhab, 17. (See Moatasem's case in the appendix)

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<sup>97</sup> GCIV, Articles 81, 84 and 85.

During 2000, approximately 60 Palestinian children between the ages of 14-16 years were detained at Hasharon Prison inside Israel. Palestinian child prisoners are detained in cells with adult criminal prisoners, often in situations where there are real threats to their lives, causing the children to live with an increased level of anxiety and psychological stress due to the physical and verbal threats that they are subject to by these criminal prisoners. In Hasharon Prison, child prisoner Mohammed Issa Saidally was attacked with a sharp razor by an Israeli criminal prisoner; child prisoner Ayman Zourb had hot water thrown on his face and child prisoner Taiseer Rajabi was beaten on his head by an Israeli criminal prisoner and then transferred to hospital for treatment.<sup>98</sup> This is a breach of international law.<sup>99</sup>

### **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.<sup>100</sup> 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. (See also case of Saleh Suleiman in the appendix)

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<sup>98</sup> Information taken from sworn affidavits given to Addameer Prisoners Support and Human Rights Association in 2000.

<sup>99</sup> GCIV, Article 84; CRC, Articles 3 and 37.

<sup>100</sup> GCIV, Article 49.



## Administrative Detention in the Occupied Palestinian Territory

## 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) The process of making and reviewing administrative detention orders falls far short of what would be considered a fair trial;
  - (vii) Israel is obliged to release administrative detainees as soon as the reason for the detention ceases to exist;
  - (viii) Administrative detainees are not given the right to communicate with their families up to international law standards;
    - (i) Administrative detainees are often denied regular family visits in accordance with international law standards;
    - (ii) Israel regularly fails to separate administrative detainees from the regular prison population;



- (iii) The conditions of detention regularly fall below an adequate standard required by international law; and,
  - (iv) 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

## 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 even basic safeguards in place which also leads to other, grave human rights violations, such as inhuman and degrading treatment and torture.<sup>101</sup>

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 as crimes according to international law.

Addameer further demands that the occupying power adheres to international law and that restrictions on the use of administrative detention are 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. Likewise, in the United States, the policy of indefinitely detaining suspected combatants in Guantanamo Bay, Cuba, has now come to be recognized as not only legally indefensible but also ineffective in America's so-called 'war against terror'. Addameer

<sup>101</sup> 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.



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.

## Administrative Detention Statistics

**Total number of administrative detainees in Israeli custody at the end of the month since January 2001\***

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>2001</b>	16	16	15	12	12	13	10	17	-	27	31	34
<b>2002</b>	36	-	44	111	681	929	943	813	867	878	936	960
<b>2003</b>	1007	1107	1127	1140	1107	952	785	700	528	553	679	649
<b>2004</b>	657	628	630	644	703	747	760	751	781	-	858	863
<b>2005</b>	870	704	647	604	596	-	-	-	-	-	-	-
<b>2006</b>	794	-	-	-	-	-	750	-	708	703	738	783
<b>2007</b>	814	788	776	790	761	730	691	651	599	578	569	546
<b>2008</b>	813	788	776	790	776	738	692	649	604	583	569	546
<b>2009</b>	564	549	540	506	500	440	392	361	335	324	291	278
<b>2010</b>	264	259	237	222	211	203						

\*Statistics are based on reports from the Israeli Prison Service, via B'Tselem.

**Total number of administrative detainees in Israeli custody prior to 2001\***

Year	Month	Number Of Administrative Detainees	Comments
<b>1998</b>	December	250	
<b>1998</b>	April	150	100 administrative detainees were released during February and March
<b>1999</b>	January	100	
<b>1999</b>	December	14	
<b>2000</b>	September	4	
<b>2000</b>	December	16	

\*Statistics are based on documentation done by Addameer



- According to the Israeli military courts, in 2002 approximately 3,475 administrative detention orders were issued. Of these, 2,578 comprised of newly issued administrative detention orders and 897 comprised of those administrative detention orders that were renewed. On 31 December 2002 there were 1,075 administrative detainees in Israeli prisons.<sup>102</sup>
- As of December 2003 there were 700 administrative detainees. 1,398 comprised of new administrative detention orders that were issued and 2,641 comprised of those administrative detention orders that were renewed.<sup>103</sup>
- As of the end of 2006, approximately 2,934 administrative detention orders were issued. Of these 1,299 comprised of newly issued administrative detention orders. 1,635 comprised of those administrative detention orders that were renewed.

**Type of administrative detention order by year from 1997-2002\***

YEAR	1997	1998	1999	2000	2001	2002
Newly issued administrative detention orders	741	271	124	17	56	2578
Administrative detention orders that were renewed	250	112	15	9	5	896
Administrative detention orders that were shortened or cancelled	106	81	29	4	7	243

\*Statistics are from the 2002 Annual Report of the Central Military Prosecutors Office.

<sup>102</sup> 2002 Annual Report of the Central Military Prosecutors Office.

<sup>103</sup> *Ibid.*, p. 1.

## **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 1226. 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 of their detention; neither are their lawyers. Currently, there are approximately 212 Palestinians in administrative detention. Approximately 2 of them are children under the age of 18, 4 women, 5 members in the Palestinian Legislative Council.

**Addameer is calling for the end to the Israeli practice of detaining people in administrative detention. Addameer demands that the Israeli authorities promptly charge all administrative detainees with a recognizable offence or immediately release them..**

### **About Addameer**

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

Addameer believes in the internationality of human rights based on the respect of human dignity as a priority, 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 Prisoner Support and Human Rights Association  
P.O.Box 17338, Jerusalem  
Tel: +972 - 2 - 2960446 Fax: +972 - 2 - 2960447  
E-mail: [info@addameer.ps](mailto:info@addameer.ps)  
[www.addameer.info](http://www.addameer.info)  
Ramallah, Al Masyoun, Rafidein Sq., Edward Said St.  
Sebat Bldg., 1st Floor, Suite 2