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Stop Administrative Detention

Administrative detention is a procedure that allows the Israeli military to hold prisoners indefinitely on secret information without charging them or allowing them to stand trial. Although administrative detention is used almost exclusively to detain Palestinians from the occupied Palestinian territory (OPT), which includes the West Bank, East Jerusalem and the Gaza Strip, Israeli citizens and foreign nationals can also be held as administrative detainees by Israel (over the years, only 9 Israeli settlers have been held in administrative detention). Israel uses three separate laws to hold individuals without trial:

- Article 285 of Military Order 1651, which is part of the military legislation applying in the West Bank;
- Internment of Unlawful Combatants Law (Unlawful Combatants Law), which has been used against residents of the Gaza Strip since 2005;
- Emergency Powers (Detentions) Law, which applies to Israeli citizens.

Palestinians have been subjected to administrative detention since the beginning of the Israeli Occupation in 1967 and before that time, under the British Mandate. 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 in September 2000.

On the eve of the second intifada, Israel held 12 Palestinians in administrative detention. Only two years later, in late 2002- early 2003, there were over one thousand Palestinians in administrative detention. Between 2005 and 2007, the average monthly number of Palestinian administrative detainees held by Israel remained stable at approximately 765. Since then, as the situation on the ground stabilized and violence tapered off, the number of administrative detainees has generally decreased every year. However, during October 2015, a popular uprising started in the occupied Palestinian territory in response to the Israeli occupation's widespread human rights violations and escalation at Al-Aqsa Mosque as well as the ever-growing settlement activity and complete impunity to crimes by settlers. In response to the events, Israeli occupation forces (IOF) intensified human rights violations against Palestinians including mass arrests, leading to a significant rise in the number of Palestinian administrative detainees. As of April 2016, there were at least [750 Palestinians](#) from the West Bank and East Jerusalem being detained in administrative detention, of which 2 are members of the [Palestinian Legislative Council](#).

ADMINISTRATIVE DETENTION UNDER INTERNATIONAL LAW

Although international human rights law permits some limited use of administrative detention in emergency situations, the authorities are required to follow basic rules for detention, including a fair

hearing at which the detainee can challenge the reasons for his or her detention. Moreover, to use such detention, there must be a public emergency that threatens the life of the nation, and detention can only be ordered on an individual, case-by-case basis without discrimination of any kind. (International Covenant on Civil and Political Rights, Article 9).

Administrative detention is the most extreme measure that international humanitarian law allows an occupying power to use against residents of occupied territory. As such, states are not allowed to use it in a sweeping manner. To the contrary, administrative detention may be used against protected persons in occupied territory only for “imperative reasons of security” (Fourth Geneva Convention, Art.78).

In practice, Israel routinely uses administrative detention in violation of the strict parameters established by international law. Tellingly, Israel has claimed to be under a continuous state of emergency sufficient to justify the use of administrative detentions since its inception in 1948. In addition, administrative detention is frequently used – in direct contravention to international law – for collective and criminal punishment rather than for the prevention of future threat. For example, administrative detention orders are regularly issued against individuals suspected of committing an offense after an unsuccessful criminal investigation or a failure to obtain a confession in interrogation.

In practice, Israel’s administrative detention regime violates numerous other international standards as well. For example, administrative detainees from the West Bank are deported from the occupied territory and interned inside Israel, in direct violation of Fourth Geneva Convention prohibitions (Articles 49 and 76). Further, administrative detainees are often denied regular family visits in accordance with international law standards, and Israel regularly fails to separate administrative detainees from the regular prison population as required by law. Moreover, in the case of child detainees, Israel regularly fails to take into account the best interests of the child as required under international law.

ADMINISTRATIVE DETENTION IN THE WEST BANK: MILITARY ORDER 1651

In the occupied Palestinian West Bank, the Israeli army is authorized to issue administrative detention orders against Palestinian civilians on the basis of article 285 of Military Order 1651. This article empowers military commanders to detain an individual for up to six-month renewable periods if they have “reasonable grounds to presume that the security of the area or public security require the detention”. No definition of “security of the area” or “public security” is given. On or just before the expiry date, the detention order is frequently renewed; there is no explicit limit to the maximum amount of time an individual may be administratively detained, leaving room for indefinite legal detention.

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

A Palestinian detainee subjected to an administrative detention order must be brought before a military court in a closed hearing within eight days of his or her arrest, where a single military judge can uphold, shorten or cancel the detention order. In most cases, however, administrative detention

orders are confirmed for the same periods as those requested by the military commander. While the detainee can appeal the decision at the judicial review, in practice, the vast majority of appeals are rejected. By comparison, administrative detention under Israeli domestic law requires a detainee to be brought before a judge within 48 hours, and orders can be given only up to three month periods.

In practice, Palestinians can be detained for months, if not years, under administrative detention orders, without ever being informed about the reasons or length of their detention. Detainees are routinely informed of the extension of their detention on the day that the former order expires. Under the existing administrative detention procedures, Palestinians have no effective means by which to challenge their administrative detention.

ADMINISTRATIVE DETENTION IN THE GAZA STRIP: UNLAWFUL COMBATANT LAW

In the Gaza Strip, Israel uses the Unlawful Combatants Law to hold Palestinians for an unlimited period of time, without effective judicial review. The law was approved by the Israeli Knesset in 2002 in order to enable the state to continue holding Lebanese “bargaining chip” detainees after the Israeli Supreme Court ruled the practice illegal. Although all Lebanese detainees were released in 2004, the law was not revoked. Instead, starting in 2005 after Israel's unilateral “disengagement” from the Gaza Strip and the accompanying end of the application of Israeli military orders there, it began to be used to detain residents of the Strip.

The law defines an “unlawful combatant” as a “person who has participated either directly or indirectly in hostile acts against the State of Israel, or is a member of a force perpetrating hostile acts against the State of Israel,” and who is not entitled to prisoner of war status under international humanitarian law.

The Unlawful Combatants Law allows for the sweeping and swift detention without trial of large numbers of foreign citizens and Palestinians resident of the Gaza Strip. To date, the law has been used to detain 54 individuals, including 15 Lebanese nationals and 39 Gazans, most of whom were detained during Israel's winter 2008-2009 military action against Gaza codenamed “Operation Cast Lead” and have since been released. As of April 2012, Israel was holding 1 Gazan under this law.

Detainees under the law may be held for 96 hours before the issuance of a permanent detention order, or up to seven days if the government declares the “existence of wide-scale hostilities”. Judicial review of an order in a closed hearing must take place within 14 days of its issuance; if it is approved, the detainee must be brought before a judge once every six months. If the court finds that his release will not harm state security, the judge shall cancel the order.

In practice, the Unlawful Combatants Law contains fewer protections for detainees than even the few that are granted under administrative detention orders in the West Bank. For example, judicial review is conducted less often; the legality of the detention does not require the existence of a state of emergency; and, the detention “is carried out pursuant to an order issued by the chief of staff or by an officer holding the rank of major general”. In addition, the law establishes two troubling presumptions that shift the burden of proof to the detainee: first, the release of an individual identified as an “unlawful combatant” will harm national security unless proven otherwise; second, the organization to which the detainee belongs carries out hostilities, if the Israeli Minister of Defense has made such a determination, unless proven otherwise. This practice patently violates the

accused's right to a presumption of innocence in any criminal proceeding, and results in a system of indefinite detention justified by mere speculation and stacked heavily against the detainee.

ADDAMEER'S POSITION ON ADMINISTRATIVE DETENTION

- The government of Israel should release all administrative detainees;
 - In the meantime, administrative detainees must be granted their rights in accordance with international law;
 - The government of Israel should immediately cease using the Incarceration of Unlawful Combatants Law and take action to repeal it;
 - EU member states should raise cases of administrative detainees with the Israeli government under the EU-Israel political dialogue.
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