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## Military Courts

### THE ISRAELI MILITARY COURT SYSTEM

July 2017

The main function of the Israeli military court system is to prosecute Palestinians who are arrested by the Israeli military and charged with “security violations” and other crimes as defined by Israeli in its [military orders](#). However, these orders enforced through the military courts also criminalize a wide array of other types of activities, including “certain forms of political and cultural expression, association, movement and nonviolent protest, even certain traffic offenses – anything deemed to threaten Israeli security or to adversely affect the maintenance of order and control of the territories.” (1)

Once the interrogation period is over, Palestinian detainees from the West Bank are processed for trial, sentencing and imprisonment in one of two Israeli military courts currently operational in the oPt: **Salem**, near Jenin in the northern West Bank, and **Ofer**, in the central West Bank, near Ramallah. Both military courts are located inside Israeli military bases.

Within these military courts, military orders always take precedence over Israeli and international law. On the rare occasions when international law is used, it is used to favor the occupying power.

Judges in the military courts are military officers in regular or reserve service. Most of the judges do not have long-term judicial training, and many served previously as military prosecutors. The prosecutors are Israeli soldiers in regular or reserve service appointed to the position by the Area Commander; some of them are not yet certified as attorneys under the Israeli Bar Association.

### **LACK OF FAIR TRIAL GUARANTEES AND DISCRIMINATION IN PROCEDURAL LAW BETWEEN THE ISRAELI MILITARY AND CIVIL COURT SYSTEMS**

The defendants in the military courts are all Palestinian, and the jurisdiction of the Israeli military court system is never applied to Israeli settlers living in the West Bank who are instead governed by Israeli civil law. The military court system grants Israeli Security Agency (ISA) officers the utmost flexibility in their conduct of interrogations of Palestinian detainees and reduces legal safeguards to the absolute minimum, far below Israeli civil law standards.

- As per Israeli military orders, a Palestinian can be **held without charge for the purpose of**

**interrogation** for a total period of 90 days. By comparison, an Israeli citizen accused of a security offense can be held without indictment for a period of 64 days.

- **Trials** for Palestinians before the military courts must be completed within eighteen months, while the comparable limit for detainees before Israeli civilian courts is nine months. If proceedings before the military courts have not concluded within the eighteen-month time frame, a judge from the Military Court of Appeals can extend the detention of a Palestinian in the military courts by six-month increments.
- **Discriminatory sentences:** A Palestinian convicted of manslaughter by a military court is subject to a maximum sentence of life imprisonment, while an Israeli convicted of the same offense in a civilian court and sentenced to life imprisonment is imprisoned for a maximum of 20 years in most cases. In addition, under the Israeli penal code, criminal prisoners may be released after serving half of their sentences, whereas Palestinians judged under military rule are only allowed to appeal for probation after two-thirds of the sentence has been served. In general, Palestinian detainees are rarely released early.
- **Discrimination in the prosecution of laws relating to the detention of minors:** Criminal liability begins at age 12 for both Palestinians and Israelis. However, Palestinians under the military court system are tried as adults at age 16, while the Israeli justice system sets the age of majority at 18. (2) While Israeli law and police orders provide that children detained in Israel are to be interrogated only by police officers specially trained for the task, Palestinian children are interrogated by police or ISA officers, in situations that are highly intimidating, lack any real form of oversight and are rife with abuse.
- **Language** is a fundamental problem in the military courts. Israeli jurisprudence provides that a prisoner must be interrogated in his native language and that his statement must be written in that language. In practice, however, the detainee's confession or statement is frequently written in Hebrew by a policeman, requiring the detainee to sign a statement he or she cannot understand. Once obtained, these confessions constitute the primary evidence against Palestinian detainees in the Israeli military courts.

## TYPES OF OFFENSES

Military courts file indictments based on a broad range of offenses divided into five separate categories: "Hostile Terrorist Activity" (HTA); disturbance of public order; "classic" criminal offenses; illegal presence in Israel; and traffic offenses committed in the oPt.

- The HTA category includes involvement in what Israel terms "terror attacks", military training, weapons offenses and weapon trading, but also offenses related to membership in "illegal associations" - associations deemed illegal by the Israeli military commander.
- Disturbance of public order includes offenses such as stone throwing and incitement to violence.
- The "classic" criminal offenses category includes crimes such as theft, robbery and trading in stolen goods.
- Illegal presence in Israel includes the offense of "leaving the Area without permission," with which Palestinians who enter Israel without permits, usually in search of work, are charged.
- The last category includes traffic offenses committed in the oPt.

For more information, see the following Addameer publications

- [Presumed Guilty: Failures of the Israeli Military Court System - An International Law Perspective](#), November 2009
- [Defending Palestinian Prisoners: A Report on the Status of Defense Lawyers in Israeli Courts](#), April 2008
- [Addameer Primer: Background Information on Political Detention](#), 2003

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(1) Lisa Hajjar (2005), *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza*, London, The University of California Press, p. 3.

(2) This law was changed on 27 September 2011, raising the age of Palestinian majority to 18, but has yet to be implemented.

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