



Stolen Hope

Political Detention in the West Bank



Addameer Prisoner Support and Human Rights Association

February 2011

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This report examines the phenomenon of political arrests by the Palestinian Authority's security forces in the West Bank. It is part of Addameer's ongoing efforts to end the Palestinian Authority's policy of politically driven arbitrary detention, which threatens political stability, causes social tension and destroys the Palestinian social fabric. Addameer's work in this regard seeks to further the Palestinian people's aspiration for freedom from occupation and colonization and for 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 would like to thank the artist Samir al-Khalili, who graciously offered to design the cover for this report out of his belief in freedom, further demonstrating the role and place of artists in the struggle for the Palestinian cause.

Table of Contents

INTRODUCTION	4
CHAPTER I: POLITICAL DETENTION AND ITS USE BY THE LEGISLATIVE AND EXECUTIVE AUTHORITIES	7
Part One: The Nature of Political Detention	7
I. Political Detention and International Human Rights Law	7
II. Political Detention in National Legislation	7
Part Two: The Legislative and Executive Authorities' Positions on Political Detention	8
I. Legislative Authority	8
II. Executive Authority	8
CHAPTER II: THE ATTEMPT TO LEGITIMIZE POLITICAL DETENTION	10
Part One: The Security Services that Practice Political Detention and Conditions at Their Detention Centers	10
I. General Intelligence Service (Mukhabarat al-'Ama)	10
Detention Conditions in GIS Detention Centers	11
II. Preventive Security Forces	12
Conditions in PSF Detention Centers	12
III. Military Intelligence	14
Conditions in the MI Detention Centers	15
Part Two: Military Judicial Authority	16
I. Origins	16
II. Legal Basis and Constitutionality of the Military Judicial Authority	16
III. Legitimacy of Head of the Military Judicial Authority Decisions to Arrest Civilians	17
CHAPTER III: ARBITRARY POLITICAL DETENTION	19
Part One: Violations of Detention, Arrest and Search Procedures	19
I. Arrest	19
II. Searches	20
III. Detention	22
Part Two: Torture and Other Cruel, Inhuman and Degrading Treatment	24
I. Torture	24
II. Cruel, Inhuman and Degrading Treatment	31
Detention of Family Members	31
III. Denial of the Right to Contact a Lawyer	32
IV. The "Revolving Door" Policy	33
V. Political Detention of Individuals Released from Israeli Prisons:	
"Back to Back" Detention	35
VI. Appearance before Military Courts	37
VII. Non-Execution of Judicial Decisions and/or Stalling of their Execution	40
RECOMMENDATIONS	42
APPENDICES	43
1. Requests for arrest and extension of detention	44
2. Palestinian High Court of Justice release decisions	46
3. Complaint to the Attorney General and his response	48
4. Complaint about the appearance of civilians before military courts	50

Introduction

Several Arab and international experiences have proven that political detention rarely ensures political stability. On the contrary, it causes social tension, destroys the social fabric and foments violence while hindering the achievement of freedom, stability and progress.

Many Arab countries have been guilty of practicing arbitrary detention after achieving national independence and defeating colonialism. The same applies to the occupied Palestinian territory (oPt), where after the establishment of the Palestinian Authority (PA) with the aim of building an independent and democratic state in accordance with the 1994 Oslo agreement, those opposed to the new regime were subjected to such practices, regardless of their political affiliations. As such, the phenomenon of political detention is central to examining the political relationship between the PA and opposition groups. A breakdown in this relationship notably led to the current schism in Palestinian politics, with Hamas controlling the Gaza Strip following its takeover by military force, and the subsequent announcement by the PA on 14 June 2007 of a state of emergency in the West Bank.

4 | Following these events, the PA's security forces (PASF)—including the General Intelligence Service (GIS), the Preventive Security Force (PSF) and to a lesser degree the Military Intelligence (MI)—launched arrest campaigns in the West Bank that violated detainees' rights by referring them to the military instead of the civilian judiciary, in contravention of the Palestinian Basic Law.

The executive authority—represented both by the President's office and the Premiership—has failed to put a stop to such arbitrary detentions, despite having knowledge of their occurrence and their violation of international human rights law; nor has it enforced the legal mechanisms necessary for holding the officers involved in such violations accountable. Three detainees have died since 2007 after being subjected to torture in the security services' detention centers. Those responsible have yet to be brought to justice.

Addameer's research into the phenomenon of political detention in the West Bank covers the period from January 2009 to September 2010, during which time Addameer monitored, documented, followed up and legally represented the cases of 347 detainees. In 2009, Addameer followed 237 cases, of which 148 were PSF detainees, 54 were GIS detainees, and 35 were civilians detained by the MI. From 1 January 2010 until 1 September 2010, Addameer followed 110 cases, of which 60 were PSF detainees, 42 were GIS detainees, and 8 were MI detainees. These are only the cases received and monitored by Addameer, and therefore only represent a snapshot of the total number of detainees in Palestinian prisons.¹

¹ Because of limited access to PA prisons, it is hard to establish the exact figures for detainees in Palestinian prisons in the West Bank. However, the number of complaints received by the Independent Commission of Human Rights can be used as an approximate indicator. In 2010, the Independent Commission received 1,559 complaints of arbitrary arrests by authorities in the West Bank and 321 by the authorities in the Gaza Strip.

This report covers only violations in the West Bank, and not in the Gaza Strip, where different patterns of human rights violations, including political detention, closure of associations and assault on public freedoms, are practiced. Human rights organizations in Gaza are monitoring this situation closely. This report reflects Addameer’s position that political imprisonment is unacceptable, by whomever or wherever it is practiced. In all its work, Addameer attempts to protect and support human rights and basic freedoms, which includes promoting the rule of law and laying the foundation for a democratic political system based on separation of powers. In this context, Addameer calls for an integrated system that guarantees the independence of the judiciary, enables the legislative authority to fulfill its legislative and monitoring responsibilities, and allows the executive authority to enforce the law in compliance with human rights and public freedoms.

This report takes a legal analytical approach in studying the phenomenon of political detention and violations of detainees’ rights, relying on the international legal framework for human rights and relevant local legislations safeguarding the rights of detainees. For this analysis, Addameer collected 50 sworn affidavits from detainees during the period of their detention, as well as from freed detainees. It also referred to approximately 100 reports collected during Addameer’s visits to the detainees and their families, and to 180 decisions of the High Court of Justice demanding the release of detainees following a decision on the illegality of their detention. It is important to note that a number of detainees refrained from giving their testimonies fearing further repression by the security services.

This report has three main chapters. The first chapter highlights the position of both the legislative and executive authorities on political detention; the second addresses the attempt to legitimize political detention; and the third gives more insight into political detention as an arbitrary act.

“The real political task in a society such as ours is to criticize the workings of institutions that appear to be both neutral and independent, to criticize and attack them in such a manner that the political violence that has always exercised itself obscurely through them will be unmasked, so that one can fight against them.”

Michel Foucault

Chapter I: Political Detention and Its Use by the Legislative and Executive Authorities

Part One: The Nature of Political Detention

There is no accepted legal definition of political detention, nor of political prisoners, in international law or local legislations, which is partly why some human rights organizations use the term “politically driven arbitrary detention.”² However, both international human rights law and the Palestinian Basic Law give some indication of what political detention entails.

I. Political Detention and International Human Rights Law

International human rights law includes several provisions banning assault on people’s freedoms for their political or partisan affiliations. Article 19 of the Universal Declaration of Human Rights (UDHR) of 1948 states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Similarly, the International Covenant on Civil and Political Rights (ICCPR) of 1966 states in articles 19(1)(2) that “Everyone shall have the right to hold opinions and the right to freedom of expression without interference.”

II. Political Detention in National Legislation

Political detention is contradictory to the human rights and basic freedoms guaranteed under the Palestinian Basic Law,³ which states that “the governing system in Palestine shall be a democratic parliamentary system based on political and party pluralism,⁴ and that “all Palestinians are equal under the law and judiciary, without discrimination based on race, sex, color, religion, political views, or disability,”⁵ and that “Every person shall have the right to freedom of thought, conscience and expression, and shall have the right to publish his opinion orally, in writing, or in any form of art, or through any other form of expression, provided that it does not contradict the provisions of law.”⁶

² This term is used by the Independent Commission for Human Rights among others.

³ Article 1(11) of the Palestinian Basic Law states that “personal freedom is a natural right and shall be protected and guaranteed.”

⁴ Article 5 of the Basic Law.

⁵ Article 9 of the Basic Law.

⁶ Article 19 of the Basic Law.

Part Two: The Legislative and Executive Authorities' Positions on Political Detention

The legislative and executive authorities do not hold a unified position on political detention due to their differing approaches to upholding human rights and personal freedoms. To highlight these positions, we will first discuss the position of the legislative authority and then that of the executive authority.

I. Legislative Authority

In the context of its monitoring role with regard to the performance of the executive authority, the Palestinian Legislative Council (PLC) and its public human rights monitoring committee have adopted several decisions prohibiting political detention.⁷ PLC decision no. 359/10/A/3, for example, issued on 13 January 1999, prohibits arbitrary detention and calls for the immediate release of political prisoners. Although the PLC has reiterated this position in more than one decision, affidavits given to Addameer by prisoners in PA prisons demonstrate that the executive authority has clearly failed to comply. Furthermore, the PA has boycotted the PLC's sessions allocated to discussing the issue of political detention.⁸

II. Executive Authority

The position of the executive authority on political detention cannot be assessed without considering the agreements signed by the PLO with Israel during peace negotiations. These agreements and projects committed the PLO to a number of security obligations toward the Israeli regime in the oPt, the substance of which was to detain those who opposed the political compromises reached by the two parties. Such obligations are expressly stated in the Wye River memorandum of 1998 and the Road Map of 2003.⁹

The Wye River memorandum includes, under the section on "Security," article 2(A), the following requirements from the Palestinian side:

1. Outlawing and combating terrorist organizations;
2. Declaring a zero tolerance policy for terror and violence;
3. Detaining individuals suspected of committing violent or terrorist acts for the purpose of further investigations, prosecution and punishment.

⁷ Due to the circumstances that surrounded the elections of 2006 – the arrest of PLC members and Mahmoud Abbas's declaration of a state of emergency in June 2007 – the PLC has not been able to fulfill its responsibilities, including the adoption of any official decisions on political detention.

⁸ See PLC Decision No. 357/10/A.3 issued on 7 January 1999.

⁹ The plan was presented by the International Quartet (UN, USA, EU, Russia) and the PLO agreed to it whereas Prime Minister Ariel Sharon added 14 reservations.

In light of this agreement, the late President Yasser Arafat issued Presidential Decree No.3 of 1998 prohibiting incitement.¹⁰ Article 1 of this decision stipulates:

The following acts are considered illegal in all the Palestinian governorates: inciting racial discrimination; encouraging violent actions that are against the law; showing disrespect for different religions; using violence or inciting the use of violence to harm relations with brotherly and foreign states; forming illegal societies that commit or incite the committing of crimes; stirring up the masses to change matters by illegal use of force; incitement to sedition; and incitement to breach agreements between the PLO and brotherly or foreign states.

The 2003 Road Map included, inter alia, the following security obligations under phase one:

Palestinians declare an unequivocal end to violence and terrorism and undertake visible efforts on the ground to arrest, disrupt, and restrain individuals and groups conducting and planning violent attacks on Israelis anywhere.

A rebuilt and refocused Palestinian Authority security apparatus begins sustained, targeted, and effective operations aimed at confronting all those engaged in terror and at dismantling terrorist capabilities and infrastructure.¹¹

Continuing this policy, the Chairman of the Executive Committee of the PLO, Mahmoud Abbas, issued Decree No.17 of 2007 banning all armed militias and military and paramilitary groups regardless of their affiliation.¹²

These policies have allowed the executive authority to disguise any political detentions practiced by its security services as detentions for security or criminal reasons. Nevertheless, these detentions, which are on the rise, suggest that the executive authority is fully aware that the security services it manages practice political detention. Its refusal to admit this is aimed at avoiding further public criticism or demands to hold the perpetrators accountable.

¹⁰ The decree was issued on 19 November 1998 and was published in the official gazette on 26 November 1998, No. 26.

¹¹ Available at: <http://www.globalpolicy.org/images/pdfs/roadmap122002.pdf>.

¹² Issued on 26 June 2007 and published in the official gazette on 13 August 2007, No. 71.

Chapter II: The Attempt to Legitimize Political Detention

Since the establishment of the PA in 1994, its security services have detained hundreds of citizens affiliated with Hamas and other factions opposed to the performance of the PA and the political compromises it has made. The PASF have also detained individuals with no affiliation to any particular faction, including the signatories to the 1999 Communiqué 20, which opposed the peace process.¹³

The PA tried, particularly ahead of the 2006 elections, to bestow some form of legitimacy to political detention, by giving the security services (GIS, PSF and MI) the power to act as judicial police¹⁴ in their exercise of arrests and interrogations.¹⁵ This chapter will first discuss the actions of the security services that are practicing arbitrary detention and the conditions of the Palestinians they detain. Secondly, it will shed light on the military judiciary in terms of its creation and the laws regulating its activities. Thirdly, this chapter will discuss the legitimacy of the detention orders issued by the PA military apparatus against civilians, by referring to rulings of the Palestinian High Court of Justice.

Part One: The Security Services that Practice Political Detention and Conditions at Their Detention Centers

10

This section discusses the laws regulating the activities of the security services; how the security services violate their jurisdictional powers as well as the Palestinian Basic Law and international human rights law; conditions at the security services' detention centers and how these contravene international standards relating to treatment of detainees.

Through Addameer's work with political prisoners in Palestinian prisons, it has become clear that all three PA security services practice arbitrary detention.

I. General Intelligence Service (Mukhabarat al-'Ama)

Despite its creation at the time of the PA's establishment in 1994, the GIS remained without a legal basis until General Intelligence Law No.17 was issued in 2005.¹⁶ According to this law, the GIS is a regular security force subordinate to the President of the PA,¹⁷ who appoints the head of the GIS and his deputy. However, it was also

¹³ Communiqué 20 was signed by a group of Palestinian writers, intellectuals and activists and is a declaration of opposition to the Oslo peace accords.

¹⁴ According to Article 21 of the Code of Criminal Procedure No.3 of 2001, the judicial police department includes: the Police Director and his deputies and assistants; the chiefs of the governorates' police and public administrations; officers and authority officers of each police department, each within the sphere of its jurisdiction; heads of air and marine fleets; and other officers with judicial police powers.

¹⁵ While the GIS and PSF were granted direct authority as judicial police, the MI was required to obtain permission from the Military Judicial Authority before conducting arrests and interrogations.

¹⁶ Issued on 26 October 2005 and published in the official gazette on 11 November 2005, No. 60.

¹⁷ Article 2 of GIS Law No.17.

given legal responsibility for monitoring external dangers beyond the borders of the PA's jurisdiction and for undertaking security missions, but without specifying the exact geographical scope of these powers.¹⁸ The GIS also has the capacity to act as a judicial police, but is bound to respect human rights as enshrined in Palestinian and international law.¹⁹

It is clear from the detention cases that Addameer has been monitoring and documenting that the GIS has failed to safeguard the detainees' basic rights as stipulated in national legislation and international human rights law.²⁰ This includes the Code of Criminal Procedure's stipulation that detainees must be brought before a competent Public Prosecutor within the first 24 hours of arrest.²¹

Detention Conditions in GIS Detention Centers

The GIS has 11 detention centers in the West Bank: a central interrogation center in each governorate, except for Jericho where it also has a local detention center and interrogation facility in addition to the central interrogation and detention center. These detention and interrogation centers are managed by the Public Administration for Security and Intelligence Forces based in Ramallah. Like other security forces, the GIS's detention centers are not subject to any form of judicial monitoring, and the International Committee of the Red Cross (ICRC) and the Independent Commission for Human Rights (ICHR) are the only organizations allowed to make regular visits to examine the detainees' situation. The ICHR's statements issued in 2009 show that the security services, the GIS in particular, prohibited its staff from visiting detention centers across the West Bank.²² The delegate of the ICHR in the northern governorates of the West Bank was also prohibited from visiting the GIS's compound in Qalqilya for a full month.

The following brief affidavits demonstrate the poor conditions that political detainees are subjected to in the GIS detention centers:

- M.H., 24 years old, university student, detained in GIS detention center in Tulkarem: "They held me in a 1*1.80 m cell with an iron door at the top of which was a 20*20 cm window covered in mesh. The cell also had a 20*30 cm window that didn't let the sun through because it was covered by a steel plate. There were small openings but no more than the diameter of a cigarette. As for the lighting conditions, there was a small lamp, which was kept on 24 hours a day. I used to sleep on a dirty mattress and a blanket without a pillow. I was not allowed to leave the cell even for a moment—they would even bring me food in the cell."

¹⁸ Articles 4(1) and 6(1) of GIS Law No.17.

¹⁹ Articles 12 and 13 of GIS Law No.17.

²⁰ See Chapter III of this report.

²¹ Article 34 of the Code of Criminal Procedure No.3 states that "the judicial officer should hear the statement of the person arrested and, if such person fails to come forward with a justification for his release, send him within twenty-four hours to the competent deputy prosecutor." Article 117(2) also stipulates that "detention of an arrestee should never exceed 24 hours without bringing him before the Public Prosecution."

²² Independent Commission for Human Rights, Conditions in the Security Forces Prisons: 2009 Report, Ramallah: 2010 [Arabic].

- **KH.M., 26 years old**, detained at GIS Center in Al-Irsal building, Ramallah: “The cell I was held in was half a meter wide and a meter long, making it impossible for me to lie down. It had two very small windows and I couldn’t see the sun for 11 days.”

II. Preventive Security Forces

Like the GIS, the PSF existed without a legal basis until Law No.11 of 2007 was issued.²³ Article 2 of this law defines the PSF as “a regular public security force subject to the competent ministry,”²⁴ whose Director General and Deputy is appointed by the President of the PA.²⁵ According to the law, the PSF is in charge of internal Palestinian security and preventing threats to the internal security of the PA. Its responsibilities also include the investigation of crimes targeting governmental administrations and public institutions and their staff.²⁶

Article 7 of Law No.11 states that “the officers of the public administration of the PSF shall have, for the sake of fulfilling their responsibilities in line with their jurisdictions, which are approved under the provisions of this law, the capacity of the judicial police.”

12

Article 8 of the same law commits the PSF’s public administration to respect the human rights and fundamental freedoms guaranteed under Palestinian and international law. Chapter 3 of this report will show that, like the GIS, the PSF is actually flouting the laws governing the judicial police by, inter alia, failing to bring the detainees before a competent Public Prosecutor within the first 24 hours of his/her arrest. Furthermore, the PSF refuses to act in accordance with national legislation and international human rights law relative to detainees’ rights.²⁷

Conditions in PSF Detention Centers

Throughout 2009, Addameer monitored and documented 148 detention cases by the PSF. Sixty of these had been in detention since 2010 and were still held on 1 September 2010.

The PSF has ten detention centers in the West Bank, where it has a central investigation center in each governorate. Like the GIS, although the public administration of the PSF supervises the work of these detention centers from Ramallah, they are not subject to any form of judicial monitoring. As such, the arbitrary practices and torture inflicted on detainees in their cells are able to continue

²³ Issued on 20 November 2007 and published in the official gazette on 9 June 2008, No.64.

²⁴ According to Article 1 of Law No.11 of 2007, the Ministry of Interior is responsible for the PSF.

²⁵ Article 4(1) of Law No.11 of 2007.

²⁶ Article 6 of Law No.11 of 2007.

²⁷ See Chapter III of this report.

with impunity. According to Palestinian law,²⁸ the PSF only has the power to arrest, and not detain, Palestinians and should transfer those arrested to Reformation and Rehabilitation Centers.²⁹ In reality, it holds large numbers of political detainees in its centers, sometimes for months on end, without any judicial monitoring and without granting them the full human rights and fundamental freedoms they are entitled to under international law.

PSF detention centers are not suitable for human habitation given their unhealthy and unsatisfactory structure and conditions. Of the ten detention centers, only the one located in Betunia has been recently renovated. Instead, political detainees held by the PSF are held in narrow, dark cells lacking hygiene.

Information and testimonies provided by the prisoners to Addameer support these findings:

- M.A., 49 years old, was detained in July 2010 at the PSF's Betunia detention center on the charge of owning a gun belonging to someone who had been killed by the Israeli Occupation Forces (IOF). He told Addameer that he was held in a 2*1 m cell for ten days under terrible conditions, during which time he had no mattress to sleep on. As a result, he suffered from hemorrhoids and rheumatism because of moisture. H., the son of M.A., was also held in the same detention center for the same period and same reason. He recounts: "I was held in the second cell next to the one where my father was held. The cell was filled with vermin and urine leaking from the upper floor."

- A.A., 40 years old, is married with five children. He was detained by the PSF in March 2010 and held at the Salfit detention center for more than 30 days. "They held me in cell number 5, which is known to be the worst cell at the center. It is about 70*180 cm. I'm (180 cm) tall, so it was not possible for me to lie down; I was forced to hold my feet against the wall. What makes it worse is the fact that it has no window or opening so it was not possible to see the sun or have ventilation. The walls of the cell were not plastered, and when I asked the investigation officer to move me to another place to escape death, he agreed on the condition that I confess to the charges against me."

- M.Q., 32 years old, was detained by the PSF in October 2010 and held at their Nablus detention center. He says: "I was held in a cell for 17 days. I spent ten days alone in a cell meant for two people. It had a lavatory, laundry, two wooden planks, a lamp, a 40*50 cm window and an external window that let the sun and air through. I was not able to take a shower or change my clothes for 8 days. The political detainees are denied the right to recreation time."

²⁸ Article 108 of Code of Criminal Procedure Law No.3.

²⁹ The official name of Palestinian prisons.

- **M.G.**, who was detained by the PSF at Jnaid prison in Nablus for 25 days without seeing sunlight, said that the detainees are usually allowed to go out of the cells and spend two hours in the yard once every fifteen days.

- **H.D.** was detained by the PSF at its Qalqilya detention center where it was possible to have recreation time three times a week for one hour. During this hour, the detainees were allowed to walk in a relatively big yard, but lacking any sports or other recreational equipment.

- **K.H.M.** was detained by the PSF in September 2009 and spent 61 days in solitary confinement in the Betunia detention center, as well as another 25 days in a cell without a lavatory. According to his affidavit, he was allowed to go to the toilet just once every 24 hours outside the cell.

Through the cases it has monitored and documented, Addameer has learned that the political detainees who suffer from diseases or serious illnesses are forced to buy their own medicine, as reported by M.S., who was detained in October 2009 and suffered from chronic stress and an ulcer.

Making the situation worse is the complicity of the PSF's physicians, whose medical reports have allowed investigators to continue interrogations and thus torture and ill-treatment despite their detrimental effects on the health of the detainees.³⁰

III. Military Intelligence

The MI still does not have a full legal basis, although there are bylaws regulating its activities and relationships with other security services and citizens. Specifically, the MI's responsibilities are limited to policing military personnel and suspected collaborators among the different military factions, as well as monitoring the work of other security services.

However, like the PSF and the GIS, the MI has failed to fully comply with national legislation and international law relative to the rights of prisoners, as evidenced by cases of political detention monitored by Addameer.³¹

The MI holds fewer political prisoners than the PSF and GIS; this can be partly attributed to the fact that without a full legal basis they have not been directly granted the powers of judicial police, and have to seek authorization from the Military Judicial Authority before initiating an arrest.

³⁰ For example, in the case of M.D., 27 years old: during his interrogation at Qalqilya detention center in 2009, M.D. was examined by the military medical doctor whose report assured the investigators that they could continue interrogating the detainee. As a result, he suffered a psychological breakdown diagnosed later by psychiatrists as schizophrenia. According to the information received by Addameer from M.D. on 29 April 2010, he is still awaiting treatment from his psychiatrist.

³¹ See Chapter III in this report.

Conditions in the MI Detention Centers

The MI has 11 detention centers in the West Bank: a central interrogation center in each governorate in the West Bank, except for Jericho, where, in addition to the central detention and interrogation center, it also has a local detention and interrogation center.

The MI holds political detainees and investigates them in these centers, which are centrally supervised by the Public Administration in Ramallah.

The MI's operations are subject to supervision by the Military Public Prosecutor, who visits MI prisons but only investigates conditions of detained military personnel, not political prisoners. This supervisory mechanism is also devoid of any independent judicial monitoring.

Although the MI holds fewer political prisoners, the affidavits taken from these prisoners refer to similar patterns of violations of their rights.

- **T.A.** was detained by the MI in the first half of 2009 and was released after seven days of detention. He described the conditions of his detention at the MI interrogation and detention center in the neighborhood of Um-al-Shrayet in Ramallah: "The room where I was held measured about 3*3 m with a red light that was not turned off for two full days. It also had a rectangular 20*80 cm window and a toilet. The water was boiling all the time, so taking a shower was impossible. I spent several days without washing myself as a result of that situation. The fact that the room was overcrowded was a big problem. We were sixteen people with only eight beds in that room, so many of us had to sleep on the floor."

The reports of the ICHR in 2009 show that the MI detention centers suffer from several problems. Most important among these is the lack of water, especially in the summer, which leads to the spread of skin diseases,³² and serious overcrowding which can be attributed to the fact that civilians are held there in addition to military personnel. Addameer monitored 35 political detention cases by the MI in 2009 and another 8 in 2010. ICHR reports suggest that the conditions of the MI detention centers are in fact worse than the other security services, where political detainees are at least held in cells of various sizes. Furthermore, the MI detention centers do not have any facility where the detainees can practice sport and recreational activities.³³

³² Independent Commission for Human Rights, Conditions in the Security Forces Prisons: 2009 Report, p. 61.

³³ To know more about the detention conditions at the Reformation and Rehabilitation Centers, see Independent Commission for Human Rights, Conditions in the Security Forces Prisons: 2009 Report and citizens complaints filed with the commission during the same year.

Part Two: Military Judicial Authority

I. Origins

The Military Judicial Authority was established as the continuation of what was known before the creation of the PA as the Revolutionary Judicial Authority, which itself originated in the provisions of the PLO Revolutionary Law of Penal Procedure of 1979. According to article 356 of this law, the Revolutionary Judicial Authority is one of the PLO's institutions, subordinate to the Public Prosecution, courts and reformation centers. Article 357 further stipulates that the head of the Public Administration supervises the Public Prosecution and military courts in addition to other mandates granted to him.³⁴ The head of the Public Administration is subordinate to the General Commander of the Armed Forces (the PLO's Chairman).

II. Legal Basis and Constitutionality of the Military Judicial Authority

The legal basis for the Military Judicial Authority can be found in the provisions of the Revolutionary Law of Penal Procedure of 1979 and the PLO Revolutionary Penal Code of 1979.³⁵

16

Despite the new political situation that emerged after the establishment of the PA in 1994, the Military Judicial Authority still acts according to these two laws, which, like all legislation issued by the PLO, are void of legitimacy and constitutionality, as can be concluded from the following analysis:

a. Article 1 of Presidential Decree No.1 of 1994³⁶ issued by the late President Yasser Arafat states that “the laws and regulations that were effective before 5 June 1967 in the Palestinian territories (the West Bank and the Gaza Strip) shall continue to be effective until they are unified.”

The laws of the PLO were not effective before 5 June 1967 and no decision has been issued to affirm their application in the Palestinian territory. Furthermore, Law No.5 of 1995,³⁷ issued by President Arafat and complementary to Presidential Decree No.1 of 1994, stipulates in Article 1 that “all powers and jurisdictions enshrined in the legislations, laws and presidential decrees that were in force in the West Bank and the Gaza Strip before 19 May 1994 shall be transferred to the Palestinian Authority.” Therefore, the fact that the laws of the PLO were not effective in the Palestinian territory before 19 May 1994 entails that their enforcement after that date is unlawful.

³⁴ The Revolutionary Law of Penal Procedures of 1979 gives the Military Judicial Authority several mandates to be shared between its head, the military attorney general and public prosecutors.

³⁵ On 11 July 1979, Late Chairman of the PLO Yasser Arafat issued Presidential Decree No.5 enforcing the following three laws and regulation: a. the Revolutionary Law of Penal Procedures; b. the Revolutionary Penal Code; c. the Prison Law – Reformation Centers; and d. the Regulation on Revolutionary Courts Fees.

³⁶ Issued on 20 May 1994 and published in the official gazette on 20 November 1994, No. 1.

³⁷ Issued on 17 April 1995 and published in the official gazette on 6 May 1995, No. 4.

The Palestinian Basic Law has established the procedure for issuing new legislation. Under this procedure, the President of the PA has the power to issue laws only after approval by the PLC.³⁸ The laws issued by the PLO did not undergo such a procedure and should therefore be considered as unconstitutional.

b. Article 487 of the Code of Criminal Procedure No. 3 of 2001 annuls any rules or laws that contradict its provisions. Since the revolutionary laws are very general and abstract and as such could be applied to all prisoners, whatever the crime, it contradicts the principles laid out in the Code of Criminal Procedure and should be considered void.

c. The Jordanian Penal Code No.16 of 1960 and the British Mandate Penal Law No.74 of 1936 still apply in the West Bank and the Gaza Strip, respectively, in light of Presidential Decree No.1, despite the fact that they are outdated and do not reflect the interests of the Palestinian population.

Although it is ultimately the responsibility of the Palestinian High Court to assess the constitutionality of the PLO's laws, the arguments spelled out above highlight their questionable legitimacy and constitutionality.

III. Legitimacy of Head of the Military Judicial Authority Decisions to Arrest Civilians³⁹

The PASF usually contact the head of the Military Judicial Authority followed by the Military Public Prosecutor by fax⁴⁰ to ask for approval to arrest someone or place them in remand. This procedure lacks legality, as the role of the head of the Military Judicial Authority is only to monitor arrest operations in order to guarantee the protection of those who are arrested.

The power to arrest and detain individuals involved in offences jeopardizing the security of the state lies with the Military Attorney General, while the power to arrest such suspects and detain them for up to 45 days lies with the Military Public Prosecutor.⁴¹ Using this framework to detain civilians, however, is unlawful because it contravenes the Basic Law, which in Article 101(2) states that "Military courts shall be established by special laws. The jurisdiction of these courts may not extend beyond military affairs." It also violates the provisions of Article 55 of the Code of Criminal Procedure No.3, whereby the Public Prosecution alone is entrusted with the power to investigate criminal offences, as well as Articles 117 and 34(2) of the same law, which stipulate that anyone arrested should be referred to the Public Prosecution within the first 24 hours of detention.

³⁸ See Articles 41 and 43 of the Basic Law.

³⁹ What applies to the arrest decisions issued by the Head of the Military Judicial Authority also applies to arrest decisions issued by Military Attorney General and Military Public Prosecution.

⁴⁰ See arrest warrants included in Appendix 1.

⁴¹ Article 88 of the Revolutionary Law of Penal Procedure of 1979.

The Palestinian High Court has stressed the illegality of such arrests numerous times, as it did in its decision concerning the case of Yousif Muhamad Mufid Yousif Ayuli (case number 270\2010) issued on 25 June 2010:

“Scrutinizing the case file, it appeared that the person summoned by the Military Judicial Authority on 16 July 2009 is a civilian and was not brought before the Public Prosecution within 24 hours, in contravention of the provisions of Article 34 of the Code of Criminal Procedure Law No.3 of 2001, which alone addresses investigation into criminal offences in accordance to Article 55.

According to Article 101(2) of the Basic Law, the military court has no jurisdiction to issue arrest warrants. As such, the decision of the Head of the Military Judicial Authority to arrest the civilian constitutes a violation of personal freedom guaranteed under Articles 11 and 12 of the Basic Law, and so the decision is considered null and void.

Based on the aforementioned facts, the court decides to cancel the decision⁴² and/or the procedures of holding Yousif Muhammad Mufid Yousif Ayuli from the village of Zawata and to immediately release him unless he is arrested on other charges.”

⁴² See full text of the decision in Appendix 2.

Chapter III: Arbitrary Political Detention

While the previous two chapters highlighted the nature of the PA's practice of politically driven arbitrary detention, and its attempt to legitimize it, as well as the position of the Palestinian legislative and executive authorities on the matter, the following chapter will look at specific violations committed by the PASF during detention and arrest operations, focusing particularly on cases in which detainees have been subjected to torture. These violations will be analyzed in light of the provisions of Palestinian legislation on detention, arrest and searches.

This chapter will also discuss the ways in which the security forces have circumvented the Palestinian High Court of Justice and thereby invalidated its role. Particular emphasis will be placed on the security forces' implementation of a "revolving door" detention policy, whereby Palestinians are consecutively arrested by different PASF branches. This practice reflects the PASF's repressive policing philosophy, in particular with regard to unionist and popular movements; the competition between the various PASF branches to tighten their grip on Palestinian society; and the PASF's increasing coordination with Israeli military and security authorities; all of which directly contradict the PA's official discourse on state- and institution-building and human rights.

Part One: Violations of Detention, Arrest and Search Procedures

In compliance with the basic requirements of any criminal justice system, Palestinian legislation sets forth strict rules to be followed in case of detention, arrest and search.

I. Arrest

Because criminal investigations necessarily restrict the freedom of movement of suspects for the period of time required for interrogation and to determine the necessity of pre-trial detention,⁴³ criminal justice systems, including the Palestinian one, include provisions to outline the circumstances that may justify these infringements on personal freedom.⁴⁴ Accordingly, it is unlawful under the Palestinian Basic Law to arrest anyone without an arrest warrant,⁴⁵ and suspects must be informed of the reasons for their arrest and of the charges against them in a language that they understand.⁴⁶ Following arrest, the suspect's sworn statement

⁴³ Ibrahim Tantawi, *Preventive Detention: A Comparative Study*, Anhafda Arab House, Cairo: 1999, p. 5.

⁴⁴ Article 11(2) of the Basic Law and Article 29 of the Code of Penal Procedures No.3.

⁴⁵ Article 11(2) of the Basic Law.

⁴⁶ Article 12 of the Basic Law.

must be recorded by a judicial officer, and if there is not enough ground to release him/her, the suspect should be referred to a public prosecutor within 24 hours.⁴⁷

These provisions are in line with international human rights law, which states that no one shall be subjected to arbitrary detention or arrest⁴⁸ and that deprivation of liberty shall only be allowed “on such grounds and in accordance with such procedure as are established by law”.⁴⁹

Addameer’s monitoring, however, as evidenced by affidavits collected from hundreds of detainees, demonstrates that the security forces do not take their obligations under national legislation seriously and consistently fail to present arrest warrants.

II. Searches

According to Palestinian legislation, homes are inviolable, and as a result, there are clear rules to be followed when entering them. Home searches form an integral part of criminal investigations and cannot be carried out without a warrant from the Public Prosecution or its presence during the search.⁵⁰ Search warrants should be based on reasonable grounds and can only be issued if a person living inside the house is charged with committing, or participating in, a misdemeanor or felony or if there is evidence that a person living inside the house possesses items related to the offence being investigated.⁵¹ Furthermore, searches can only be conducted during daytime.⁵² Article 181 of Jordanian Penal Code No.16 sets forth the punishment for contravening these requirements:

1. Any public officer entering any home in his official capacity in contravention of the law shall be imprisoned for a minimum of three months and a maximum of three years and pay a fine of JD 20-100.⁵³
2. If an illegal search is coupled with any other arbitrary measure, the punishment will be no less than six months’ imprisonment.

In addition, Article 17 of the Basic Law grants home owners the right to seek remedy from the PA if the sanctity of their home has been unlawfully violated, i.e.

⁴⁷ Article 34 of the Code of Penal Procedures No.3.

⁴⁸ Articles 9 of UDHR and ICCPR.

⁴⁹ Article 9 of ICCPR.

⁵⁰ According to Article 48 of the Code of Penal Procedures No.3, competent authorities may enter a home without a warrant only in the following cases: (a) when a request for assistance has been issued from inside the house; (b) in cases of fire or drowning; (c) if a flagrant crime is being committed inside the home; and (d) when pursuing a fugitive.

⁵¹ Article 39(1) of the Code of Penal Procedures No.3.

⁵² According to Article 41 of the Code of Penal Procedures No.3 homes may only be entered during the day, except when it is the scene of a flagrant crime or if exigencies require it, although what is meant by exigencies is not defined.

⁵³ Article 169 of the Jordanian Penal Code No.16 of 1960 identifies a public officer as “the employee of the administrative or judicial sector and each officer of the civil or military authority or any of its individuals. It also includes any public administration servant.”

if it has been “subject to surveillance, entrance or search without a valid judicial order in accordance with the provisions of the law”. Despite this, the security services constantly search homes without warrants, often ransacking them. In fact, it has become clear from the affidavits collected by Addameer that violations committed during arrest operations have become part of the security services’ modus operandi.

1. Case Study

Name: M.SH., 49 years old

Date of detention: July 2010

Detaining authority: PSF

Place of detention: PSF detention center, Betunia, Ramallah

The PSF broke into the house of M.SH., 49 years old, from the village of GH in the vicinity of Ramallah at 1:10 p.m. M.SH. recounted that “a force of 400 men of the preventive security, national security and the police surrounded the house, forced everyone out and locked the women in one room. They did not tell us what they were doing or show us an arrest warrant. Neither were there any female police officers present. They spent two hours searching the house without being accompanied by anyone from the family. They damaged the windows and the floor of the bathroom and confiscated a computer and some CDs, although the computer was later returned.”

2. Case Study

A.S.: “At 9:30 p.m, a security force of 20 men and 4 vehicles surrounded the house and said that they wanted to search it. My father told them to wait until his daughter had put on the veil. Then, they broke into the house and searched it violently. They did not have a search warrant and my family did not ask them about it. They did not have a female police officer with them either.”⁵⁴

III. Detention⁵⁵

Detention refers to the holding of a suspect in a detention center throughout the duration of an investigation on the basis of a warrant issued by a judge.⁵⁶ This measure is by its very nature biased in favor of the investigation process since it allows for the deprivation of liberty when sufficient evidence is available.⁵⁷ Because personal freedom is held as a natural right in the Palestinian Basic Law, detention is governed by a number of rules, the principal one being that no person shall be detained without a judicial order in accordance with the provisions of law.⁵⁸ The law also defines the duration of pre-trial detention, which can initially

⁵⁴ Addameer has recorded the damage caused by the security force on video.

⁵⁵ Although in addition to “detention”, Palestinian legislation also uses the term “preventive detention,” it would have been better if only one term had been used. Criminal systems around the world use different terms: for example, Egypt and Morocco use “preventive detention”; Jordan, Lebanon and Syria use the term “detention”; while France uses “temporary detention”.

⁵⁶ Abealwahab Humad, *The Law of Criminal Courts*, 4th edition, New Press, Damascus: 1987, p. 728.

⁵⁷ Muwad Abedtawab, *Preventive Detention: Science and Practice*, House of Thought and Law, Amman: 1998, p. 47.

⁵⁸ Article 11(2) of the Basic Law.

be ordered by the Public Prosecution provided that it does not exceed 48 hours.⁵⁹ Beyond this period, detention may only be extended by a court, first by a court of first instance and then by a magistrate court.⁶⁰

To guarantee compliance with the provisions of the law during detention and avoid instances of arbitrary detention, the Public Prosecution and the presiding judges of the court of first instance and the court of appeals are responsible for visiting prisons and detention centers to ensure that no detainees are held there unlawfully.⁶¹ The law also empowers anyone to notify the Attorney General about cases of arbitrary detention. In such cases, the Attorney General may in turn order an investigation into the detention and issue a decision to release the individual in question. In such cases, a memorandum is written so that the necessary legal measures can be taken.⁶²

Palestinian legislation also provides for punishment in cases of arbitrary detention. Article 178 of the Jordanian Penal Code No.16 states that “if an employee detains or imprisons a person in contravention of the law, he shall be imprisoned for a minimum of three months and a maximum of a year.” Article 179 of the same code establishes a minimum sentence of one month, which can go up to one year’s imprisonment, for prison directors or wardens who hold a prisoner without a judicial warrant or accept to extend his/her detention without a judicial order.

The head of the Military Judicial Authority and military prosecutors have regularly issued orders to arrest individuals because of their political activities or affiliation despite knowing that such detention is considered arbitrary and contravenes Palestinian law. As a result, Addameer has filed several complaints with the Attorney General in accordance with article 128 of the Code of Criminal Procedure No.3 informing him of cases of arbitrary detention. The response, however, has always taken the form of a letter issued by the relevant security force affirming that the detention in question complies with the provisions of law.⁶³ It therefore follows that political detainees are often held for long periods in detention centers administered by the PASF in contravention of the law and without any intervention by the Attorney General, leaving them at the mercy of these security services without any recourse to the outside world.

⁵⁹ Article 108 of the Code of Penal Procedures No.3; Article 119 of the same law, however, enables the Public Prosecution to hold someone for a maximum of 24 hours. The contradiction between the articles is clear but article 108 is the one enforced.

⁶⁰ Article 120 of the Code of Penal Procedures No.3 states that: “1. After hearing the public prosecution and the detainee, the judge should release the detainee or hold him for no more than 15 days. The judge also has the right to extend the remand of the detainee several times after that but not for more than 45 days in total; 2. No detainee can be held for more than the duration set forth under paragraph (1) unless the Attorney General or one of his assistants requests the court of first instance to extend the remand for a period not exceeding 45 days; 3. After the end of the period mentioned above, the public prosecution should bring the defendant before the competent court to extend his remand until the completion of the trial; 4. After 6 months of detention, the detainee must be released unless sentenced by the competent court; and 5. The detainee should not be held beyond the term set by the competent court.”

⁶¹ Article 126 of the Code of Penal Procedures No.3.

⁶² Article 128 of the Code of Penal Procedures No.3.

⁶³ See Addameer’s complaint letter and the Attorney General’s response in Appendix 3.

A.S., 40 years old, was detained by the PSF in August 2008. When Addameer's lawyer visited Jnaid prison in Nablus in May 2009, almost a year later, A.S. was still being held there without charge. He was eventually released in August 2009, but was never charged with any offense. Such a case is not exceptional; on the contrary, detaining persons for political reasons for months on end has become common place. D.B., for example, was detained by the PSF in December 2008 and held for 360 days without appearing before a court.

Part Two: Torture and Other Cruel, Inhuman and Degrading Treatment

Political detainees are subject to various forms of physical and psychological torture, which range in severity and overwhelmingly occur in the context of the denial of their right to see a lawyer. Furthermore, political detainees are often detained several times by different security services within the framework of a "revolving door policy". Not only do various Palestinian security forces carry out successive arrests of the same individuals, this report also shows that they often arrest individuals upon their release from Israeli prisons, without any legal justification. These detainees are then brought before military courts in accordance with the PLO Revolutionary Penal Code of 1979, which, as established in Chapter II, Part II of this report, should be considered unconstitutional.

The security forces' failure to respect the rule of law and implement the provisions of Palestinian legislation should be analyzed within the current Palestinian political context. This context has allowed the security forces to exploit the division between Fatah and Hamas and practice a repressive policing authority, justifying their practices with the slogan of "protecting the national project." This failure raises questions about the PA's credibility with regard to its claims of upholding democracy, pluralism, the rule of law and judicial transparency.

I. Torture

Torture is strictly forbidden under International Human Rights Law: Article 5 of the UDHR and Article 7 of the ICCPR state that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a

public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁶⁴

Article 2(2) of the same Convention states that “No exceptional circumstances whatsoever may be invoked to justify torture, including war, threat of war, internal political instability and/or public emergency.” CAT also obligates states parties to “ban the use of evidence produced by torture in their courts.”⁶⁵ Finally, CAT addresses the issue of national and international prosecution of perpetrators of torture⁶⁶ and guarantees the right of any individual subjected to torture to file a complaint with the competent authorities.⁶⁷

The use of torture is also banned under Palestinian legislation: Article 13 of the Palestinian Basic Law stipulates that “1. No person shall be subject to any duress or torture. The accused and all persons deprived of their freedom shall receive proper treatment. 2. All statements or confessions obtained through violation of paragraph 1 of this article shall be considered null and void.”

Article 29 of the Code of Criminal Procedures No. 3 further stipulates that persons arrested and/or detained must be treated in a manner that will preserve their dignity and physical and moral integrity. Article 214(1) holds that confessions admissible in court must be obtained from the suspect without exposing him/her to any kind of coercion, intimidation, or threats. Any violation of these provisions is punishable by law, as provided for in Article 208 of the Jordanian Penal Code No.16, which states that “1. Those who extort confessions by torture shall be sentenced to imprisonment of no less than three months and up to three years. 2. If the torture results in injury or harm, the perpetrators shall be sentenced to imprisonment of no less than six months and up to three years unless the crime calls for a more severe punishment.”

Despite the existence of these laws and regulations banning all forms of torture, the PASF continue to use it. The affidavits collected by Addameer⁶⁸ show that torture forms an integral part of the security services’ practice and that it was ongoing in the security services’ detention centers throughout the reporting period. Such practices are in direct contradiction to Prime Minister Salam Fayyad’s stated policy, as reflected notably on his weekly talk show.⁶⁹

⁶⁴ Article 1 of CAT.

⁶⁵ Article 15 of CAT.

⁶⁶ Articles 4(1), 7 and 6 of CAT.

⁶⁷ Article 12(b) of CAT.

⁶⁸ Addameer’s lawyers face considerable difficulties in obtaining these affidavits. Guards in prisons and detention centers monitor meetings between prisoners and their lawyers, and detainees often fear reprisal by the security services when giving statements on torture, cruel, inhumane or degrading treatment.

⁶⁹ See, for example, statements from 19 November 2010, available at: <http://salamfayyad.wordpress.com>.

1. Case Study

G.F., 40 years old

Profession: School teacher

Date of arrest: End of August 2008

Detaining authority: PSF

Place of detention: Jnaid Central Prison

Date of lawyer's visit: May 2009

Arrest: "I was not summoned by the security service, but I visited it of my own will five days after being released from the Israeli occupation prisons (I served a seven-year sentence) to avoid being sought out by them."

Investigation and torture: "I was held for interrogation for 91 days. At the beginning of each 'torture session', a bag was placed over my head and tightened around my eyes. After tying my hands behind my back, I was then hung by my hands to the ceiling. In this position, they also lifted my legs and swung me and then flogged my feet. They tortured me in this way for two weeks from 8:00 a.m. until 1:00 a.m. They never stopped torturing me except during visits and meal times. After the two-week period, they forced me to remain in painful positions for long periods of time over an eight-day period but without beating me. Some of the positions included tying my hands behind my back without allowing me to sit down, forcing me to stand with my legs apart, balancing a stick between them. Whenever the stick would fall down, they would beat me with a baton or push me against the wall. They continued to torture me for 52 days, including during the month of Ramadan with the exception of the four days breaking the fast. During this time, they brought me meals in the mornings and evenings, but that did not stop them from tormenting me. On the contrary, they kept on telling me that the butchery had just started and that I hadn't seen anything yet. The beatings were worse at night, especially from 11:00 p.m. to 1:00 a.m.; they called this period the 'ceremonial period'. The torture affected me both physically and psychologically."

2. Case Study

B.SH., 39 years old

Profession: Employed

Date of arrest: January 2008

Detaining authority: PSF

Place of detention: PSF detention center, Qalqilya

Date of lawyer's visit: August 2009

Torture at the hands of the PSF: “I was made to stand in a painful position for 32 days from 7:00 a.m. to 2:00 a.m. I was also blindfolded throughout this period with my hands tied behind my back. The only times they untied my hands were during prayer and meal times or when I needed to go to the bathroom. For three months, I endured these conditions in solitary confinement and severely sleep deprived. As a result, I began suffering from hallucinations.”

Torture at the hands of the MI: B.SH. was arrested by the PSF 60 days after being released from the Israeli occupation prisons, where he served a 5-year term. On 27 April 2009, he was transferred to the MI in Qalqilya: “The Military Intelligence held me for a month and a half. I was subjected to stress positions for 12 days, during which time I was also blindfolded with my hands tied behind my back. During this time I was flogged on my back and hands.” B.SH. listed some of the forms of torture he was exposed to in Jnaid prison:

- Shackling of his hands to the bed for 12 hours per day for a month
- Slapping in the face
- Sleep deprivation
- Insults and verbal abuse
- Sexual abuse
- Threats (the prison director threatened to cut off his toes with a knife)
- Stripping

B.SH. told Addameer that the detainees used to eat soap and shampoo to force the authorities to transfer them to hospital to recuperate from the severe torture inflicted on them by the interrogators and other prison staff. One of the detainees even attempted to commit suicide after suffering a nervous breakdown as a result of the severe torture and degrading treatment he was exposed to. The torture that B.SH. endured led to a significant deterioration in his health, including severe stress, hallucinations and sleep walking. He recounted that the ICRC delegate cried when she visited him in Jnaid prison and saw the scars he had incurred from the torture.

3. Case Study

A.A., 50 years old

Profession: Imam

Detaining authority: PSF

Place of detention: PSF detention center, Hebron

Date of arrest: January 2009

Arrest: “I was detained by the Preventive Security from my home at 12:00 a.m. without being shown an arrest warrant.”

Interrogation and torture: “When I arrived in the prison, the medical doctor examined me. After that, they interrogated me for an hour and held me in solitary confinement for 52 days. For the first 8 days, I slept on the floor with only a blanket. Then they moved me to a small cell where I stayed for 32 days. Finally, they transferred me to a proper cell. During this time, they interrogated me for 1 hour every 2 days and allowed me to eat, go to the bathroom and pray. After a week in detention, they let me change my clothes and after 13 days, they allowed me to take a shower. They arrested me on charges of affiliation with the Consultation Council of the Muslim Brotherhood, which is a part of Hamas, but I was never brought before the Public Prosecution or a court... After 30 days in detention, they forced to remain in a stress position for 2 days and I began to feel extreme stress because of my solitary confinement.”

Detention conditions: “We were held in a room meant for four people but we were three prisoners. There were blankets and mattresses and we slept on these directly on the floor. There was a window measuring 50*50 cm that gave only very little amounts of light. It was very hot but there was no fan. The bathroom was outside the cell, but we were not allowed to use it at dawn for our ablutions before prayer, so we were forced to practice Tayamum⁷⁰ to pray. We received clothes and some food from our families.”

Visits: “After 13 days, my family was allowed to visit me, which they did every Saturday for 10-30 minutes. The Red Crescent and the Independent Commission for Human Rights also visited me and gave us three meals a day.”

Recreation time: “At first, my recreation time was not regular, but today it is, usually lasting 1-1.5 hours every day. During this time, we exercise and for a month and a half now they have allowed us to read the newspaper al-Hayyat al-Jadida.”

Health condition: “I suffered from chest pain and incontinence, as well as arthritis. They transferred me once to hospital but didn’t give me any medicine. The doctor examined me after each meal.”

⁷⁰ Tayamum is a form of dry ablution using sand or dust, which may be performed in place of ritual washing if no clean water is readily available.

Further case studies:

- M.A., 30 years old

Profession: Student

Date of arrest: November 2009

Detaining authority: GIS

Place of detention: GIS detention center, Tulkarm

Detention: “I served 45 days in a GIS facility in Tulkarm. During this time, they subjected me to several forms of torture, including keeping me seated on an iron chair for 140 consecutive hours with a black plastic bag over my head and my hands tied behind my back. After 45 days of interrogation, my health condition deteriorated and I began to suffer from asthma attacks because of the high degree of moisture in the cells. They transferred me to medical services on three consecutive days but returned me to my cell after every medical examination. Finally, after a severe deterioration in my health, they gave me some medicine and transferred me to a cell with other detainees. They stopped interrogating me for 15 days but later resumed their interrogations on a daily basis for 5-10 hours per day.”

- H.D., 27 years old

Date of arrest: March 2010

Detaining authority: PSF

Place of detention: Qalqilya prison

H.D. was forced to stand for 15 consecutive hours, including during prayer and meal times. He was not allowed to use the bathroom during this time.

- M.M.SH., 21 years old

Profession: Student, laboratory technician

Date of arrest: July 2010

Detaining authority: PSF

Place of detention: PSF detention center, Betunia

M.M.SH. was forced to remain in a stress position for many hours. He was beaten every time he tried to sit down despite the fact that he suffered from a fractured bone in his leg as a result of a bullet wound. His ill-treatment happened in front of his father.

- M.SH., 49 years old

Profession: Mason

Date of arrest: 31 July 2010

Detaining authority: PSF

Place of detention: PSF detention center, Betunia

M.SH. told Addameer that the guards in the detention center who escort the detainees from the cells to the interrogation rooms violate their rights by blindfolding and shackling them. They also pushed the detainees around, giving them no warning before going down stairs and instead letting them trip or walk into doors and banisters.

- S.D., 37 years old

Profession: Employed

Date of arrest: May 2009

Detaining authority: GIS

Place of detention: GIS, Qalqilya

The GIS interrogated S.D. for three months on charges of gun possession, helping a fugitive and because of his political affiliation. Some of the forms of torture S.D. experienced include:

- Flogging with electric wires followed by deliberate spilling of cold water on his feet
- Use of the 'banana position', where the detainee sits on a chair with his back bent backward with continuing pressure being applied on the testicles
- Sleep deprivation
- Playing loud music
- Forcing the detainee to dance
- Insults and verbal abuse

- E.W., 24 years old

Profession: Student

Date of arrest: November 2009

Detaining authority: GIS, Tulkarm

Some of the forms of torture E.W. experienced include:

- Shackling to a plastic chair for 5 days with short rounds of interrogation, including breaks at prayer time
- Covering his face with a foul-smelling black bag while shackled to a wooden chair inside his cell with his hands cuffed
- Tying his hands using the banner of the Islamic Bloc
- Slapping and punching

II. Cruel, Inhuman and Degrading Treatment

The torture practiced in PA detention centers in the West Bank is coupled with cruel, inhumane and degrading treatment, reflecting a significant deterioration in the human rights situation despite international efforts exerted over the past three years to get the PASF to respect detainees' rights.

The following cases provide details of cruel and degrading treatment of detainees:

- **M.G., 27 years old**, detained by the PSF and held at Jnaid prison: He was forced to clean the corridors, bathrooms and dining rooms of the security servicemen. "I left my cell every day to prepare breakfast for the detainees and the security servicemen in exchange for being able to use the telephone."

- **F.SH., 49 years old**, detained by the PSF and held at Betunia prison: During the month-long Ramadan period as well as from 31 July to 14 August 2010, F.SH. was deprived of drinkable water and prevented from smoking. In addition, he was also left without a bed.

- **A.SH., 24 years old**, detained by the GIS in Tulkarm: The GIS used the banner of the Islamic Bloc, on which the Shahada is printed ("There is no God but one God and Muhammad is his messenger"), to tie A.SH. He was also threatened and sworn at and was warned not to tell the ICRC delegate about the interrogation methods used in the detention center.

- **A.D., 25 years old**, detained by the GIS in Ramallah: He was forced to perform a series of strenuous physical exercises, a hundred times each. He heard other detainees crying from the severe torture they were subjected to and witnessed scenes of torture, including naked detainees being subjected to stress positions and beatings.

Detention of Family Members

Based on the sworn affidavits collected by Addameer, it is possible to claim that the security services use the arrest of detainees' family members as a means of exerting pressure and extracting confessions or information. During the reporting period, Addameer monitored seven such cases:

- **M.H., 24 years old**, was detained by the GIS in Tulkarm at the end of 2009. His brother was arrested three months later from November 2009 to March 2010.

- **SH.A., 48 years old**, was detained by the PSF in July 2010. His brothers and sons were later arrested.

- **B.A., 40 years old**, was detained by the PSF in March 2010 and released after a month of detention. One of his relatives was detained several times during this time.

- **S.A., 30 years old**, was detained by the PSF in July 2009. His father and two sisters were detained and one of the sisters was beaten by a female officer. He was brought before his sisters and father in a very poor condition as a result of the torture and ill-treatment he was subjected to.

- **A.SH., 30 years old**, was detained by the PSF in April 2010 after being released from the Israeli occupation prisons. The PSF detained his brother (G.SH., 34 years old) two weeks before his release from Israeli prison and kept him hostage until A.SH.'s release and re-arrest. One day before A.SH.'s release from Israeli prison, his second brother (W.SH.) was also arrested and released on the same day after he signed a pledge to hand over his brother upon his release from Israeli prison. The PSF did not allow A.SH. to go back home after his release, arresting him directly from Tarqumia checkpoint where the Israeli Nashhon forces had dropped him off.

III. Denial of the Right to Contact a Lawyer

International law upholds the right of detainees to contact their lawyer and emphasizes that this right should be implemented as soon as possible after their arrest to ensure its effectiveness. Article 14(3)(b) of the ICCPR states that anyone charged with a criminal offense is entitled “to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.” The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁷¹ also enumerates a number of provisions relevant to the detainee’s right to a lawyer. Principle 17 states that “A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.” Furthermore, Principle 18 holds that:

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered

⁷¹ Adopted in UN General Assembly Resolution 43/173 on 9 December 1988.

indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

Principle 15 further stipulates that “Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.”

In his 1989 annual report to the Commission on Human Rights, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment emphasized that giving access to a lawyer within 24 hours of arrest “usually functions as an effective remedy against torture” and security personnel violating such provisions should “be severely disciplined.”⁷²

Although Article 12 of the Palestinian Basic Law guarantees the right of detainees and prisoners to contact a lawyer and Article 103 of the Code of Criminal Procedures No.3 upholds attorneys’ right to contact their clients without any restriction or limitation, the security services do not abide by these provisions. Most of the requests to visit detainees filed by Addameer with the security services are denied. Even when Addameer is allowed to visit a detainee, the security services do not abide by the provisions concerning lawyers-clients privilege and the right to meet without monitoring. Instead, in most cases, a prison ward remains with the detainee throughout the visit.⁷³

IV. The “Revolving Door” Policy

The “revolving door” policy, which is used by the PASF, can be defined as the political detention of a person numerous and often consecutive times either by the same or different security agencies. This policy is implemented in the context of the existing competition between the numerous security services, whose roles are often overlapping and not well defined. Despite the fact that these prisoners, who are arrested because of their political affiliation or activities, are recognized as political prisoners by national and international human rights organizations, the security forces refuse to recognize them as such, instead defining them as criminal or “security” prisoners.

Over the past two years, Addameer has monitored an increasing number of political detainees subjected to this arbitrary policy, with some individuals detained as many as 15 times within the space of three years. According to the data collected by Addameer, the PSF appears to practice the revolving door policy more than any

⁷² E/CN.4/1989/15, p. 50, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G89/102/26/PDF/G8910226.pdf?OpenElement>.

⁷³ For example, in June and July 2009, the PSF prevented one of Addameer’s lawyers from visiting 21 detainees.

other security service, in part because they are responsible for the greatest number of arbitrary arrests.

The following table shows the number of cases monitored by Addameer during the reporting period in which the revolving door policy was used, disaggregated according to the security force responsible for the arrest:

Security Force	Preventive Security	General Intelligence	Military Intelligence
Number of arrests monitored by Addameer	208	96	43
Number of detainees subjected to revolving door policy	100	42	9

- Preventive Security Force

Of the 100 detainees arrested by the PSF and subjected to the revolving door policy, 14 were detained three times during the reporting period.

- General Intelligence Service

Of the 42 detainees arrested by the GIS and subjected to the revolving door policy, 18 were detained more than 3 times and 3 were detained more than 6 times during the reporting period.

- Military Intelligence

Of the 9 detainees arrested by the MI and subjected to the revolving door policy, 5 were arrested immediately after being released from an Israeli prison.

The following cases followed by Addameer were exposed to the revolving door policy:

- **A.D., 47 years old**, was detained more than 15 times in 2007 by all three security forces on account of his opposition to the PA and his criticism of the practices of its security services. During his interrogation, A.D. was principally asked about his political beliefs and his alleged incitement against the PA, as well as his habit of watching the Al-Aqsa TV satellite channel. A.D. owns a grocery store that often serves as a social meeting place for young people. Following his release, he was forced to rent out the store to avoid further detentions.

- **S.H., 37 years old**, was detained by the GIS for 8 months and released only 40 days after a High Court decision demanding his release. When he was released, the GIS asked him to return the following day to retrieve his identity card. When he did, they rearrested him and held him for a further 3 months.

- **M.M., 26 years old**, was arrested and held by the PSF for the first time in 2007 for a duration of 11 days. In 2009, he was again detained, this time by the GIS for 61 days. In 2010, he was detained twice, the first time on 25 January 2010 for one day and the second time in June by the GIS for 47 days.

- **M.A., 37 years old**, is employed at the municipality of F. He was detained by the PSF in December 2008 for 4 months. In April 2009, he was transferred to the police and released, only to be immediately rearrested by the MI. He was held for a further five months.

- **A.M., 24 years old**, was detained six times by Palestinian security services; four times by the PSF and twice by the GIS. In October 2007 and August 2008, he was held by the PSF. In April 2009, the PSF detained him for the third time, releasing him in the last week of August of the same year. Only days later, they detained him once again for 35 days. In January 2010, A.M. was then arrested by the GIS and held for one day and in August 2010 he was again detained by the same service but only for a few hours.

- **A.K., 46 years old**, was first arrested by the PSF in 2009 and held for more than 50 days and then by the GIS in June 2010 for 45 days. He was eventually released because of his deteriorating health as medical checks revealed that he was suffering from an enlarged liver.

V. Political Detention of Individuals Released from Israeli Prisons: “Back to Back” Detention⁷⁴

Hundreds of political detainees released from Israeli prisons are immediately detained by the PASF as a result of the increasing security coordination between the PA and the IOF over the past three years. The security services use this coordination to obtain information on the detainees’ date and place of release, often arresting them directly from the Israeli checkpoints where they are dropped off by the Israeli Prison Service.

Addameer is gravely concerned over the unprecedented use of this policy by the PA and stresses that such a policy is contradictory to its obligations toward the Palestinian detainees languishing in Israeli jails.

The following are cases of detainees arrested by the PASF after their release from Israeli jails:

⁷⁴ “Back to back” is originally an economic term that emerged during the second Intifada describing the way in which goods were transferred from the 1948 territories to the oPt.

- **H.A., 35 years old**, was released from the Israeli occupation prisons in July 2009 after serving a 20-month sentence. The IOF dropped him off at the Tarqumia checkpoint near Hebron where his family was waiting for him. Before he even had time to embrace his wife, who had been banned from visiting him throughout his detention, a group of men in plain clothes who were already present in the area, some pretending to repair a car, others ostensibly praying, suddenly attacked him. They tied his hands and told him that they were affiliated with the PSF, leaving him no time to greet his family members. They held him for 45 days in solitary confinement in a cell with no natural light. He was released after the Palestinian High Court issued a decision ordering his release, but he was rearrested only a few weeks later by the PSF in October 2009 and held for 40 days. In June 2010, he was again detained in Bethlehem and held for 40 days. Just a few days after his release, the GIS arrested him and held him for 14 days to find out why he had been detained by the PSF as there had been no coordination between the two apparatuses according to the GIS. It should be noted that H.A. was detained by the PSF due to his participation in the election campaigns of the Change and Reform Bloc. His 20-month sentence in Israeli jails was also for the same reason.

- **H.D., 37 years old**, was detained by the PSF in March 2010, just one day after being released from Israeli occupation jails, in which he spent two and a half years. The PSF arrested him at Tarqumia checkpoint while on his way home from Ketziot Prison, located in the Negev desert.

- **M.A., 28 years old**, was released from Israeli prison on 19 November 2009 after serving 23 months. Immediately after being dropped off at the Inab checkpoint near Tulkarm, he was arrested by the GIS and held for 45 days. During his interrogation, he was subjected to various forms of torture and reported being asked the same kind of questions as during his interrogation by the IOF.

- **A.S., 22 years old**, experienced the back to back policy both on the tail end of his imprisonment in Israeli and Palestinian jails. A.S. was arrested by the IOF several times. He served two and seven months in administrative detention in 2003 and 2007 respectively. He was also detained by the PSF in 2006 for a week and once again in 2008 for 46 days. In 2009, the GIS detained him for 5 months. A month after his release, the IOF arrested and held him for two and a half years for the same reasons that the GIS had put forward to justify his detention.

VI. Appearance before Military Courts

Based on Addameer’s monitoring over the reporting period, only 60 out of 347 detainees were brought before military courts. Their sentences ranged from a minimum of 7 months to a maximum of 20 years. The military courts responsible for trying these cases are divided into two types: 1. Special Military Courts,⁷⁵ whose decisions are final and cannot be appealed; 2. Permanent Military Courts,⁷⁶ whose decisions can be appealed.⁷⁷

Political detainees are tried by these courts on the basis of three key charges: 1. Undermining the PA; 2. Opposing the PA’s public policy; 3. Providing assistance to or affiliation with armed militia. These courts do not meet fair trial minimum requirements and are considered illegitimate by Addameer for the following reasons:

1. Competency

One of the key guarantees of international law is the right to be tried before a competent court. Article 10 of the UDHR states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” Similarly Article 14(1) of the ICCPR states that “All persons shall be equal before the courts and tribunals ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” Principle 5 of the Basic Principles on the Independence of the Judiciary also states that “Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”

This right is also protected under Palestinian legislation. Article 30(1) of the Basic Law states that “litigation is a protected and guaranteed right... Every Palestinian shall have the right to find sanctuary in the legal system.” Article 2 of the Law of Judicial Organization No. 5 of 2001 holds that “the regular courts of Palestine exercise jurisdiction over all disputes and crimes, with the exception of those exempted by a special legislative text, and exercise their judicial authority over all persons.” Military courts are only allowed to exercise jurisdiction over military affairs according to article 101(2) of the Basic Law. The responsibility for trying civilians therefore falls to the civilian judiciary, and any denial of this right violates Palestinian legislation.

⁷⁵ Article 127 of the PLO Revolutionary Penal Code of 1979 states that: a. Special military courts are composed of three judges; b. The presiding judge of the court is appointed by decision of the higher commander; c. The members of the courts should be appointed from the revolutionary criminal chambers by decision of the Head of the Judicial Authority. According to Article 128, the jurisdiction of the Special Military Courts extends to: a. Appeal cases; b. Offenses committed by military officers with the rank of major and above; c. Cases mentioned in the decision to create these courts.

⁷⁶ Permanent Military Courts are composed of three judges nominated by the Head of Judicial Authority and appointed by the higher commander. Their jurisdiction includes all crimes unless a special provision provides otherwise in accordance with Articles 123 and 122 of the PLO Revolutionary Penal Code of 1979.

⁷⁷ Article 119 of the PLO Revolutionary Penal Code of 1979 states that revolutionary courts include: a. Central court – “Single Judge Court”; b. Permanent Military Court; c. Court for the Security of the Revolution – “Supreme Military Court”; d. Special Court; e. Military Field Court.

2. Retroactive Application of the Law

Some civilians have been tried and sentenced retroactively according to laws that did not exist at the time of the alleged offense. This was the case of A.G., who was sentenced according to Presidential Decree No. 4 of 2007, which banned the Executive Force and other Hamas militia, for an offense dating back to 2004-2005. A.G. was therefore punished for actions that were not criminalized at the time of their commission, in breach of the principle of non-retroactivity. Indeed, Article 15 of the Basic Law states that “Punishment shall be imposed only by judicial judgment, and shall apply only to actions committed after the promulgation of law”. Article 117 of the same law reiterates this stipulation.

3. Effective Defense

Detainees are often denied their right to an effective defense as lawyers are generally not given the opportunity to read through their clients’ files before hearings. If they are, the time accorded never exceeds a few minutes in the court’s chamber. Attorney Reema Al-Sayed reports that on one occasion the court gave her only ten minutes to review the files of ten clients. Such measures undermine the requirement that the accused be guaranteed the right to defend him/herself, including the right to appoint an attorney in accordance with Article 14 of the Basic Law.

4. Failure to Respect Palestinian Supreme Court Decisions

In most of the trial cases monitored by Addameer, such as the cases of H.E., M.A., A.S. and A.T., the Palestinian High Court has issued decisions ordering the release of the accused. Despite this, the military courts have pressed ahead with trials and sentencing, thereby undermining the rule of law as guaranteed by Article 6 of the Basic Law.

5. Application of the PLO Revolutionary Penal Code of 1979

Some trials have been conducted in accordance with the PLO Revolutionary Penal Code of 1979 despite the fact that this legislation was issued by the PLO and has not been approved by the PLC, making it unconstitutional. The code that should be applied is the Code of Criminal Procedures No.3 of 2001. Addameer believes that the 1979 code is being used because its provisions are abstract and vague, thereby facilitating the manipulation of the law.

6. Right of Appeal

The decisions of the special military courts cannot be appealed, which violates Palestinian and international law.

Addameer strongly objects to the PA's policy of trying civilians before military courts. Addameer's policy has been to refuse to represent detainees before such courts. In that context, it has sent several letters and complaints to the PA demanding an end to this policy, but as of the publication of this report it had not received an answer.⁷⁸

Cases of detainees tried by Special Military Courts:

- **A.T., 26 years old**, was working as a Muezzin and had been arrested by the IOF several times between 1998 and 2007, spending more than 5 years in Israeli prisons in total. In September 2009, A.T. was detained by the GIS and later released in December 2009 in accordance with a Palestinian High Court decision. In the second week of January 2010, however, the GIS detained him again, transferred him to the MI, which in turn brought him before a Special Military Court. He was sentenced to three years in prison on charges of opposing the PA's public policy and undermining its authority. The verdict, however, was dated 7 December 2009, which means that it was issued before A.T.'s appearance before the court. Such evidence should form sufficient grounds to boycott these courts, which clearly lack jurisdiction and do not comply with minimum fair trial requirements.⁷⁹

- **A.T., 35 years old**, is a journalist. He was arrested in August 2009 and sentenced to a year and a half in prison by the Nablus Military Court in December 2010 on charges of opposing the PA's public policy.

- **GH.S., 44 years old**, is a science teacher at a private school in Nablus. He has served more than five years in Israeli prisons and was deported from the West Bank to the Gaza Strip on 14 October 2003, spending two years there. In October 2007, he was detained by the MI and released again in January 2008. On 15 May 2008, he was arrested by the IOF and released on 27 January 2009. On the same day, the PSF raided his house to arrest him, but his family resisted the operation and managed to avoid his arrest. Four days later, however, the same force returned and arrested him. On 5 August 2009, Addameer's lawyer successfully petitioned the High Court of Justice for his release. The Court's decision, dated 10 August 2009, requested Prime Minister Salam Fayyad to instruct the relevant security force to implement the court's decision. As a result, GH.S. was released on 13 August 2009. In an example of the security services' use of the revolving door policy, however, the MI arrested him again at the end of September 2009, leading Addameer to petition the High Court once more. The Court tried to hold a hearing in GH.S.'s case on 21 January 2010 but the process had to be adjourned several times because of the Public Prosecution's repeated absence. The MI took advantage of these delays to transfer GH.S.'s case to a Special Military Court, whose decisions cannot be appealed, and thereby avoided any intervention by the Supreme Court. Eventually, GH.S. was sentenced to a year and a half in prison.

⁷⁸ See relevant letters in Appendix 4.

⁷⁹ Addameer and other human rights organizations boycott military courts because they do not have jurisdiction over civilians and do not meet minimum fair trial requirements.

VII. Non-Execution of Judicial Decisions and/or Stalling of their Execution

Perhaps the greatest evidence of the deterioration of the rule of law, erosion of public freedoms, and the lack of accountability within the Palestinian security apparatus is the security services' refusal to execute the decisions of Palestinian courts regardless of their jurisdiction.

In order for the security services to start implementing the courts' decisions, it is necessary to involve Palestinian Prime Minister Salam Fayyad's authority as his office oversees the security services. Addameer believes that if Prime Minister Fayyad were aware of all these violations (as reported by Human Rights Watch on 20 October 2010)⁸⁰, given his power to curb the security services, he would have the capacity to put an end to political detention and ensure the prosecution of perpetrators of torture. As long as political repression, censorship, detention and torture continue, however, it can be concluded that the Prime Minister's discourse on institution building, human rights and the rule of law is aimed primarily at embellishing the PA's image and garnering more international financial aid from donor countries, which provide large amounts of financial aid, equipment and training to the PASF, and not at implementing the substance of his discourse.

40

According to Article 106 of the Palestinian Basic Law, refraining from, or failing to, execute judicial decisions is a crime punishable with imprisonment and dismissal from public office. Despite that, the security services regularly fail to implement the courts' decisions or, in the best case scenario, stall their execution. Such conduct constitutes a serious breach of the rule of law, notably as articulated in Article 6 of the Basic Law, which states that "All authorities, powers, agencies, institutions and individuals shall be subject to the law."

Over the reporting period, Addameer was able to obtain High Court decisions to release 44 detainees held by the GIS. While 40 of these were released following these decisions, the GIS referred the four remaining cases to a military court, which tried them, paying no attention to the High Court's decisions. Additionally, in one of the 40 cases where the detainee was released, the GIS deliberately stalled the release of S.D. for 20 days following the Court's decision.

With regard to the PSF, Addameer was able to obtain release decisions for 70 detainees, but despite that, three of them were referred to, and sentenced by, military courts. Furthermore, Addameer also documented 14 cases in which the PSF brought detainees before military courts while the High Court's proceedings were still ongoing. The PSF also stalled the release of those detainees who obtained release decisions from the High Court for 18 days. For example, Rasem Khatab

⁸⁰ Report available at: <http://www.hrw.org/ar/news/2010/10/20-0>.

Hassan Mustapha, who was to be released on 4 October 2009, had to wait until 22 October 2009 to be released, and was released only after Addameer contacted Prime Minister Salam Fayyad directly on 12 October 2009.

As for the MI, it transferred 6 detainees to the military courts despite High Court decisions demanding their release and further brought three detainees before military courts while the High Court's proceedings were still ongoing.

Recommendations

Addameer believes that it is necessary to secure the immediate release of all political detainees without delay as a first step toward banning and criminalizing the PA security forces' practice of arbitrary arrest and punishing those responsible. In the meantime, Addameer requests that the PA implement the following recommendations:

- 1- Admit the use of arbitrary detention as a first step toward ending the practice;
- 2- Order the security services to immediately release all political detainees without any preconditions;
- 3- Investigate all claims of torture; publicize the results of any such investigation in a manner that ensures accountability of all those responsible for violating detainees' and their families' rights; and refer these cases to the civilian criminal justice system to allow for the victims' compensation;
- 4- Compensate, in compliance with the provisions of the law, all political detainees for the terms they served in detention without any legal basis;
- 5- Monitor interrogation and detention centers and allow the Attorney General to play his role in this regard to ensure that no person is detained in violation of the law and no applicable legal procedures are ignored during arrest and detention;
- 6- Ensure lawyers' access to political detainees and facilitate the access of community-based organizations' representatives to detention centers so that they may fulfill their monitoring role;
- 7- Ensure that the security services respect the rule and provisions of the law, and that all necessary measures are taken to enforce the provisions of the law concerning the punishments applicable to public officers refusing to enforce the law;
- 8- End the practice of trying civilians before military courts and annul these courts' sentences in such cases;
- 9- Prohibit the detention of prisoners released from Israeli occupation prisons out of respect for the Palestinian people's legitimate struggle for freedom.

Appendices

1. Requests for arrest and extension of detention

<p>Palestinian National Authority Preventive Security H.Q. Headquarter</p>		<p>سلطة الوطنية الفلسطينية قيادة الامن الوقائي المقر العام</p>
<p>التاريخ 2010/09/07</p>	<p>.. الفائق العام .. حفظه الله</p>	<p>مطلوثة المستشار " احمد المغني " تمهية الوطن وبمعد</p>
<p>السلطة الوطنية الفلسطينية النيابة العامة مكتب النائب العام / رام الله 08-06-2010 4119 وارد رقم :</p>	<p>الموضوع : الموقوفين التالية أسمائهم :-</p>	<ol style="list-style-type: none"> 1. زياد تيبه مريش . 2. محمد أمين نزال . 3. ضياء حاتم قشوع . 4. زاهر صدقي موسى . 5. إسلام صامد خضير . 6. عبد الله ياسين فقها . 7. جاسر محمد أبو عمر .
<p>بمديكم وجه الأمانة الوقائية أطلب منكم التكرم بالتمهيد</p>		
<p>وبالإشارة إلى كتابكم رقم 2010/2469 و المتعلق بالمذكورين أملاء تنفيذ مطو فتكم بالتالي :-</p> <ol style="list-style-type: none"> 1. الموقوفين (الأول ، والرابع والخامس) تم اعتقالهم نتيجة ارتكابهم أفعالا تهدف إلى الإخلال بالأمن والنظام العام ، حيث تم توقيفهم على ذمة النيابة المختصة . 2. الموقوفين (الثاني ، والسادس ، والسابع ، والثامن ، والتاسع ، والعاشر ، والحادي عشر) تم إخلاء سبيلهم بمد انتهاء الإجراءات القانونية بحقهم . 		
<p>مع بالغ الاحترام والتقدير</p>		
	<p>الإسكندر / أباد حبه نهاد بسكي ولد حاد فايلزم كشالله</p>	
	<p>P.1</p>	<p>To:246587</p>
<p>20-PLG-2004 09:29 From:</p>		



السلطة الوطنية الفلسطينية

المخابرات العامة الفلسطينية
المحافظات الشمالية
محافظة جنين

الرقم: ٧٨٨ / ٤١٧٥
التاريخ: ٢٨ / ٥ / ٢٠١٩

بسم الله الرحمن الرحيم

الأخ رئيس النيابة العسكرية/محافظة جنين،، حفظة الله؛

تحية واحترام،،،

الموضوع: طلب تمديد توقيف.

– تاريخ ومكان الميلاد: ١٧/٩/١٩٧٧م – مخيم جنين.

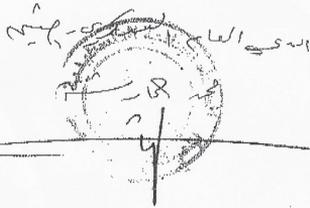
– نعرض لحضرتكم أن المذكور أعلاه موقوف بطرفنا منذ تاريخ ٢٧/٥/٢٠١٠م وذلك لوجود عدة اعتراضات من أشخاص يسوق المذكور بالانتماء لمليشيات مسلحة وتقديم المساعدة لهذه المليشيات، لذا نأمل من حضرتكم تمديد توقيف المذكور حسب الأصول والقانون من أجل إستكمال التحقيق معه.

وتفضلوا بقبول شائق الاحترام،

مدير مخابرات محافظة جنين

ف. ح. ح. ح.

قرأت
بالتاريخ ٢٩/٥/٢٠١٩
واجابوا التحقيق وحسب ما تبين لنا
وتمت على وجه الاستعانة بحسب ما



2. Palestinian High Court of Justice release decisions

دعوى عدل عليا
رقم ٢٠٠٩/٧١٩


السلطة الوطنية الفلسطينية
السلطة القضائية
محكمة العدل العليا

القرار

الصادر عن محكمة العدل العليا المنعقدة في رام الله المأذونه بإجراء المحاكمة وإصدار الحكم
باسم الشعب العربي الفلسطيني

الهيئة الحاكمة : برئاسة نائب رئيس المحكمة العليا السيد القاضي محمود حماد
وعضوية السديدين القاضيين / رفيق زهد وحلمي الكخن

المستدعي: يوسف "محمد مفيد" يوسف عليوي / زوانا
وكيله المحامي أنس البرغوثي / رام الله

المستدعي ضده:- رئيس هيئة القضاة العسكري بالإضافة لوظيفته

الإجراءات

بتاريخ ٢٠٠٩/١١/٤ تقدم المستدعي بواسطة وكيله بهذه الدعوى للطعن في قرار توقيفه.
يستند المستدعي في طعنه إلى أن القرار المطعون فيه مخالف للأصول والقانون.
في جلسة ٢٠٠٩/١١/١٠ كرر وكيل المستدعي لائحة الدعوى وقدم بينته الشفوية والتمس اصدار
القرار المؤقت حسبما ورد في لائحة الطلب.
بتاريخ ٢٠١٠/١/٢٤ تقدم رئيس النيابة العامة بلائحة جوابية تضمنت فيما تضمنته ان القرار
المطعون فيه جاء متفقاً مع الأصول والقانون ملتصقا بالنتيجة رد الدعوى.
في جلسة ٢٠١٠/١/٢٥ كرر رئيس النيابة العامة اللائحة الجوابية وقدم بينته الخطية المبرز ن/١
ثم ترفع الطرفان.



١



دعوى عدل عليا

رقم ٢٠٠٩/٧١٩

المحكمة

بالتدقيق في أوراق الدعوى والبيانات المقدمة فيها تبين ان المستدعي شخص مدني وهو موقوف من قبل هيئة القضاء العسكري بتاريخ ٢٠٠٩/٧/١٦ ولم يتم عرضه على النيابة العامة خلال مدة اربع وعشرون ساعة عملاً باحكام المادة (٣٤) من قانون الاجراءات الجزائية رقم (٣) لسنة ٢٠٠١ التي تختص دون غيرها بالتحقيق في الجرائم والتصرف فيها وفقاً لاحكام المادة (٥٥) من ذات القانون فقد جرى توقيفه من قبل السيد رئيس هيئة القضاء العسكري.

وحيث ان الامر يخرج عن نطاق اختصاص وولاية المحاكم العسكرية طبقاً لاحكام المادة (٢/١٠١) من القانون الاساسي التي نصت على "تنشأ المحاكم العسكرية بقوانين خاصة وليس لهذه المحاكم أي اختصاص او ولاية خارج الشأن العسكري وبالتالي فان قرار السيد رئيس هيئة القضاء العسكري بتوقيف المستدعي يشكل غصباً للسلطة كما انه يمس حرية المستدعي الشخصية التي كفلها القانون الأساسي في المادتين (١٢ و ١١) ولذلك فان قرار توقيف المستدعي يكون قراراً منعدياً. وعليه فان توقيف المستدعي يكون قد تم بوجه مخالف لاحكام القانون.

47

لهذه الأسباب

تقرر المحكمة إلغاء قرار و/او إجراءات توقيف المستدعي يوسف "محمد مفيد" يوسف عليوي من زواتا والإفراج عنه فوراً من مكان توقيفه ما لم يكن موقوفاً على ذمة قضية .

قراراً صدر وتلي علناً وافهم بتاريخ ٢٠١٠/١/٢٥


الرئيس


الكتاب
دقق:

3. Complaint to the Attorney General and his response

جمعية دعم المعتقلين الفلسطينيين لحقوق الإنسان
Addameer Prisoner Support and Human Rights Association

التاريخ: ٢٠١٠/٧/٢٣

الرقم: ٢٠١٠/٨٥

عذرة الاستشارة أحمد المنفي المحترم
النايب العام
رام الله

الموضوع: موقوفين بصفة غير قانونية

تحية طيبة وبعد،

بالإشارة الى الموضوع أعلاه، وعسلاً بأحكام المادة (١٢٨) من قانون الاجراءات الجزائية رقم (٣) لسنة ٢٠٠١، فإننا نحيطكم علماً بوجود موقوفين بصفة غير قانونية في مراكز التوقيف والاعتقال التابعة للأجهزة الأمنية الفلسطينية. وطليه، فإننا نرجو من عطفكم إجراء التحقيقات وإصدار أوامر بالإفراج عن هؤلاء الموقوفين، واتخاذ الاجراءات القانونية اللازمة.

وفيما يلي قائمة بأسماء هؤلاء الموقوفين وأماكن توقيفهم:

الاسم	مكان التوقيف
محمد أنور فتحي أبو العلا	المخابرات العامة / سجن جنيد
إياد حافظ سمحات عبد الجراد	المخابرات العامة / سجن جنيد
شاهر محمد داود عساف	المخابرات العامة / سجن جنيد
أمير خليل محمود أبو عزام	المخابرات العامة / رام الله - الإرسال
زياد نبيه فتح الله مريش	الأمن الوقائي / سجن جنيد
محمد أمين عبد الله نزال	الأمن الوقائي / سجن جنيد
مستز بالله أنيب جميل إسماعيل	الأمن الوقائي / سجن جنيد
وائل عبد الكريم حسن حشاش	الأمن الوقائي / سجن جنيد
زاهر صدقي محمد موسى	الأمن الوقائي / سجن جنيد
إسلام حامد سليمان خضير	الأمن الوقائي / سجن جنيد
عبد الله ياسين عبد الله قهاه	الأمن الوقائي / طولكرم
ضياء حاتم توفيق قشوع	الأمن الوقائي / بيتونيا
محمد محمود أسعد الشميبي	الأمن الوقائي / بيتونيا
جاسر محمد سعيد أبو عمر	الأمن الوقائي / سلفيت
نسيم محمد حسن شنطي	الأمن الوقائي / قلقيلية

وتفضلوا بقبول فائق الاحترام،

المحامي
أنس البرغوثي

24-07-2010

Ramallah, Rafidein Sq, Sebati Bldg, 1st floor, Suite 2
Tel.: 972 (0)2 2960-446

addameer@p-ol.com

رام الله، دوار الرفدين، عمارة صبات، الصابق الأول، شقة رقم ٢
هاتف: ٩٧٢ (٠)٢ ٢٩٦٠٤٤٦ / ٢٩٧٠١٣٦
فاكس: ٩٧٢ (٠)٢ ٢٩٦٠٤٤٧

Public Prosecution
General Attorney Office / Ramallah



النيابة العامة
مكتب النائب العام / رام الله

التاريخ: ٢٠١٠/٠٩/٠٨

الساده مؤسسة الضمير المحترمين ،،



تحية الدولة والبناء ،،

الموضوع: الشكوى المقدمة من قبلكم حول وجود بعض الموقوفين
بصفه غير قانونية في مراكز التوقيف

إشاره إلى الموضوع عاليه، وعطفاً على الشكوى المقدمة من قبلكم بتاريخ ٢٠١٠/٨/٢٤ رقم ٢٠١٠/٨٥ والمتضمنه وجود بعض الموقوفين بصفه غير قانونية في مراكز التوقيف، وعليه نرفق لحضرتكم كتاب جهاز الأمن الوقائي للتفضل بالاطلاع.

مع الاحترام ،،،

النائب العام
أحمد المغني



مرفق:

• صورته عن كتاب جهاز الأمن الوقائي بتاريخ ٢٠١٠/٩/٧



مكتب النائب العام
Office of the General Attorney

النيابة العامة - مكتب النائب العام / رام الله - الهاتف: 02/406588/6 - 02/406587/6

4. Complaint about the appearance of civilians before military courts

مؤسسة الضمير لرعاية الأسير وحقوق الإنسان
Addameer Prisoner Support and Human Rights Association



الرقم: ٢٠١٠/٣٥

التاريخ: ٢٠١٠/٣/١٨

سيادة الرئيس محمود عباس المحترم
رئيس اللجنة التنفيذية لمنظمة التحرير الفلسطينية
رئيس السلطة الوطنية الفلسطينية
رام الله

الموضوع: عرض المدنيين أمام المحاكم العسكرية الفلسطينية

تحية طيبة وبعد،

بالإشارة إلى الموضوع أعلاه، وحيث أننا شهدنا في الأونة الأخيرة عرض أكثر من ثلاثين مواطناً مدنياً أمام المحاكم العسكرية الفلسطينية، وصدور أحكام بالسجن بحقهم تراوحت مدتها من عام إلى خمسة أعوام، وما زال آخرون بانتظار صدور الأحكام، وعملاً بما تقتضيه التشريعات الوطنية والشرعة الدولية لحقوق الإنسان من ضمان توفير محاكمة عادلة، وانطلاقاً من حرصنا على احترام القوانين، فإننا نؤكد على عدم قانونية محاكمة المدنيين أمام المحاكم العسكرية وذلك للأسباب التالية:

١. يعتبر حق التقاضي أمام الجهة المختصة أحد الضمانات الأساسية لحماية الحقوق والحريات، وقد كفلته المواثيق الدولية لحقوق الإنسان، فجاء في المادة (٨) من الإعلان العالمي لحقوق الإنسان لسنة ١٩٤٨م "أن لكل شخص الحق في أن يلجأ إلى المحاكم الوطنية المختصة"، ونصت المادة (١/١٤) من العهد الدولي الخاص بالحقوق المدنية والسياسية لسنة ١٩٦٦م على أن "الناس جميعاً سواء أمام القضاء. ومن حق كل فرد، لدى الفصل في أية تهمة جزائية توجه إليه أو في حقوقه والتزاماته في أية دعوى مدنية، أن تكون قضيته محل نظر منصف وعلمي من قبل محكمة مختصة مستقلة حيادية، منشأة بحكم القانون"، كما نص المبدأ (٥) من المبادئ الأساسية بشأن استقلال السلطة القضائية لسنة ١٩٨٥م على أن "لكل فرد الحق في أن يحاكم أمام المحاكم العادية أو الهيئات القضائية التي تطبق الإجراءات القانونية المقررة، ولا يجوز إنشاء هيئات قضائية لا تطبق الإجراءات القانونية المقررة حسب الأصول والخاصة بالتدابير القضائية لتنزع الولاية القضائية التي تتمتع بها المحاكم العادية أو الهيئات القضائية".

أما التشريعات الوطنية فقد كفلته هي الأخرى، حيث نصت المادة (١/٣٠) من القانون الأساسي المعدل لسنة ٢٠٠٣م على أن "التقاضي حق مصون ومكفول للناس كافة، ولكل فلسطيني حق اللجوء إلى قاضيه الطبيعي"، كما ونصت المادة (٢) من قانون تشكيل المحاكم النظامية رقم (٥) لسنة ٢٠٠١م على أن "تُنظر المحاكم النظامية في فلسطين في المنازعات والجرائم كافة إلا من استثنى بنص قانوني خاص، وتمارس سلطة القضاء على جميع الأشخاص".

ولما كانت المحاكم العسكرية لا ولاية لها خارج الشأن العسكري وفق المادة (٢/١٠١) من القانون الأساسي، بغدو القضاء النظامي هو المختص في محاكمة المدنيين، وبالتالي لا يجوز البتة حرمان أي مدني من هذا الحق لما فيه من إخلال بقواعد العدالة.

٢. جرت محاكمة بعض المدنيين كما في حالة المعتقل عصام عبد اللطيف يوسف جعدي سنداً للقرار بقانون رقم (٤) لسنة ٢٠٠٧م بشأن حظر القوة التنفيذية وميليشيات حركة حماس الخارجة على القانون، علماً بأن حيثيات التهمة تعود للعامين ٢٠٠٤، ٢٠٠٥ وصدر بحقه حكماً بالسجن لمدة عام، أي أنه عوقب على أفعال لم تكن مجرمة في حينه، وهو ما يشكل مساساً خطيراً بنظام العدالة الجنائية، حيث لا عقاب إلا على الأفعال اللاحقة لنفاذ القانون وفق المادة (١٥) من القانون الأساسي الذي نص أيضاً في المادة (١١٧) على أنه "لا تسري أحكام القوانين إلا على ما يقع من تاريخ العمل بها، ويجوز عند الاقتضاء في غير المواد الجزائية النص على خلاف ذلك".

٣. أثناء المحاكمة يتم حرمان المعتقلين من حقهم في الدفاع عن أنفسهم، ولا يتاح للمحامي فرصة دراسة ملف موكله، وإن أتيح ذلك فيكون لعدة دقائق في قاعة المحكمة، وفي ذلك تفويض لأسس المحاكمة العادلة التي تكفل للمتهم ضمانات الدفاع عن نفسه بما فيها الحق بتوكيل محام كما هو منصوص عليه في المادة (١٤) من القانون الأساسي.

٤. معظم من تمت محاكمتهم، كما في حالة المعتقلين زهدي الصايغ، أمجد زامل، غانم سالمة وساري طه، كان صدر بحقهم قرارات إفراج من محكمة العدل العليا الفلسطينية، ودون الالتفات لهذه القرارات مضت المحاكم العسكرية في إصدار أحكامها، وهو ما يعد تفويضاً لمبدأ سيادة القانون المكفول بموجب المادة (٦) من القانون الأساسي.

٥. تمت المحاكمات على ضوء قانون أصول المحاكمات الجزائية الثوري لسنة ١٩٧٩، على الرغم من أن قانون الإجراءات الجزائية رقم (٣) لسنة ٢٠٠١ هو الواجب التطبيق، على اعتبار أن قواعده تنقسم بالعمومية والتجريد، وبالتالي لا مناص من تطبيقها على أي كان مهما كانت الجريمة، عدا عن كونه ألغى في المادة (٤٨٧) كل حكم يتعارض مع أحكامه.

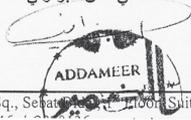
٦. ان الأحكام التي تم إصدارها بحق هؤلاء المدنيين لا تخضع لأي وجه من أوجه الطعن، ما يحرمهم من حقهم في تقديم الاعتراضات والاستئنافات اللازمة، الأمر الذي يشكل تعداً على مبدأ التقاضي على درجتين وفق ما هو معمول به في الأراضي الفلسطينية.

وعليه، ولما في عرض المدنيين أمام المحاكم العسكرية من انتهاك ل ضمانات المحاكمة العادلة، وحيث أن وقف ذلك من شأنه أن يمسون الحقوق والحريات، ويعزز مفهوم سيادة القانون، على طريق إرساء قواعد نظام سياسي ديمقراطي عصري، وانطلاقاً من دوركم في ترسيخ هذه المفاهيم والمبادئ و حمايتها، فإننا نتوجه إليكم بضرورة التدخل السريع لوقف هذه المحاكمات، أمليين منكم اتخاذ الإجراءات اللازمة.

وتفضلوا بقبول فائق الاحترام،

مؤسسة الضمير لرعاية الأسير وحقوق الإنسان

المحامي أنس البرغوثي



Palestinian National Authority

Preventive Security H. Q.
Headquarter



٥٩٢٤

السلطة الوطنية الفلسطينية

قيادة الامن الوقائي

المقر العام

التاريخ: 2009/6/3



سيادة اللواء / عبد العزيز وادي ... حفظه الله.

وغيث هبة القضاء العسكري المحترم.

تحية الوطن وبعد؛

الموضوع: القضية التحقيقية رقم: >

المتهم:

المشتكى: الحق العام.

التهمة:

1. القيام بنشاطات محظورة بموجب القانون لصالح حركة حماس.
2. إثارة الفتنة بين أبناء المجتمع الواحد.

التفاصيل

تم اعتقال المذكور بناء على معلومات تفيد بقيامه بنشاطات محظور بموجب القانون لصالح حركة حماس وإثارة الفتنة بين أبناء المجتمع الواحد.

الطلب:

بناء على ما تقدم نلتزم من سيادتكم الموافقة على توقيف المذكور أعلاه لمدة ستة شهور .

مع فائق الاحترام



قرار
أمر بتوقيف المتهم المذكور أعلاه، و
استكمال التحقيق معه، على أن لا يتجاوز
مدة التوقيف ستة أشهر
- ٢٠٠٩/٦/٣



Addameer Prisoner Support and Human Rights Association

Addameer (Arabic for conscience) is a Palestinian non-governmental, civil institution that focuses on human rights issues. Established in 1992 by a group of activists interested in human rights, the center offers support to Palestinian prisoners and detainees, advocates for the rights of political prisoners, and works to end torture through monitoring, legal procedures and solidarity campaigns.

Addameer is surrounded by a group of grassroots supporters and volunteers, Addama'er, who share Addameer's beliefs and goals, actively participate in its activities, and endeavor to support Addameer both financially and morally.

Addameer is a member of the Palestinian NGO Network, the Palestinian Coalition for the Defense of Civil Rights and Liberties, and the Regional and International Coalition to Abolish the Death Penalty. Addameer is also a member of the International Network against Torture.

Addameer 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 strives to:

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

Addameer's programs:

1. Legal Aid: Addameer provides free legal counseling and representation to Palestinian detainees and their families. Services include legal defense, regular visits to prisons, detention and interrogation centers, submission of petitions and complaints against cases of torture, ill-treatment and other violations.
2. Research and Documentation: Addameer documents violations committed against Palestinian detainees, monitors their detention conditions through regular lawyers' visits, and collects statistics and lists of detainees, providing the basis for the publication of research papers and reports.
3. Advocacy and Lobbying: Addameer publishes statements and urgent appeals on behalf of detainees, submits alternative reports and complaints to the United Nations and other international forums, and briefs international delegations as well as the media on the situation of Palestinian prisoners. The advocacy and lobbying unit also works towards building local, Arab and international solidarity campaigns to oppose torture and arbitrary detention while supporting the rights of Palestinian prisoners.
4. Training and Awareness: Addameer raises local awareness regarding prisoners' rights on three levels: by training Palestinian lawyers on the laws and procedures used in Israeli military courts to improve their efficiency; by increasing the prisoners' own knowledge; and by reviving grassroots human rights activism and volunteerism and working closely with community activists to increase their knowledge of civil and political rights from an international humanitarian law and international human rights perspective.

Addameer Prisoner Support and Human Rights Association

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