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## Article 186 of Military Order 1651

### What is Article 186?

Article 186 of Israeli Military Order 1651 was amended in 2009. It allows for the re-arrest of Palestinian prisoners who had been released as part of a prisoner exchange to serve the remainder of their original sentences by the instructions of a special Israeli military committee. The evidence on which the re-arrests are based is not disclosed to the prisoners or their defense attorneys. Effectively, Article 186 gives an Israeli military special committee the power to revoke previously granted amnesties to ex-detainees. **The article stipulates, in effect, that an ex-prisoner who was released in a prisoner exchange may be rearrested to serve the remainder of his or her sentence – based on a secret file not accessible to the ex-prisoner or his attorney.**

In the larger context, the article allows the so-called goodwill gestures of prisoner exchange deals to be clearly undermined by a legal loophole which allows for the re-arrest of prisoners. It signifies that following a prisoner exchange deal – the most recent brokered between Hamas and the Israeli government on 18 October 2011 in the release 1,027 prisoners in exchange for a captured Israeli soldier (hereafter: the 2011 prisoner exchange deal) – Palestinians can be re-arrested by Israeli forces, and set to continue serving their previous sentences. In addition to severely undermining the good-will character of such an agreement, the article arguably constitutes a way of circumventing the terms of the exchange.

### Arbitrary Re-Arrest

Article 186 of Military Order 1651 has particularly affected Palestinians who were released in the aforementioned prisoner exchange deal of 18 October 2011. Since then, several of these formerly released prisoners were then re-arrested. Addameer Prisoner Support and Human Rights Association has documented approximately **62 cases** since 2011 in which ex-prisoners were re-arrested under article 186, and the majority of those sentenced were ordered to serve the remainder of their previous sentences. Additionally, among these, two prisoners were given new prison sentences based on new charges. Currently, approximately 12 ex-prisoners and detainees remain detained without charge. In documenting dozens of cases of prisoners who have been re-arrested and ordered to return to their previous sentences, Addameer holds that Article 186 is markedly incompatible with international standards and fair trial guarantees, particularly in its use of secret evidence to re-order the detention of ex-prisoners. The alleged violation of the conditions of release is provided for by secret information, which makes the defense for the ex-prisoner highly problematic. **The use of secret evidence significantly obstructs the ability of a prisoner and his or her attorney in the defense.**

A committee effectively orders the previously released prisoner to be imprisoned again, **based on secret information**. Article 186, which falls under the title “Canceling mitigation of punishment – not by conviction”<sup>1</sup> indicates that a committee is established under the order. The article also states that:

<sup>1</sup> Translation from No Legal Frontiers. Accessed 31 May 2015. Available at <http://nolegalfrontiers.org/military-orders/mil01/71-security-provisions-chapter5-111-186?lang=en>.

“If the convict violates any of the conditions for the conditional mitigation of his punishment, the military commander’s representative, with the approval of the legal advisor, shall be empowered to write to the committee, requesting it to order the convict to be brought before it and to cancel the mitigation of punishment.”<sup>2</sup>

During the 2014 war on Gaza, there was a significant spike in the re-arrests of ex-prisoners and detainees in the West Bank and Jerusalem, and Article 186 was used as legal basis to justify the arrests of these previously imprisoned Palestinians. This highly significant time in the political atmosphere indicated the use of Article 186 in the purpose of politically-motivated and vindictive policies, undermining the so-called goodwill nature of such agreements, in addition to **the arbitrary nature of such arrests** and presence of collective punishment as an element to their implementation.

### International Law

The use of secret evidence to constantly arrest and detain individuals in occupied Palestine is also critically neglectful in the scope of International Human Rights Law. Article 9 of the International Covenant on Civil and Political Rights (1966), to which the Israeli state is a party, specifically states that: “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”<sup>3</sup> Additionally, the use of military order 186 additionally contravenes with the basic internationally recognized right of appearing before a court following detention. Article 9 of the Covenant states:

“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”<sup>4</sup>

### Case Summaries

#### *Yousef Eshteivi*

In 2012, the Committee mandated by Article 186 sentenced Yousef Eshteivi for the remainder of his previous sentence, on the basis of information contained in a **secret file**. Eshteivi is considered by the Palestinian Ministry of Prisoners’ Affairs to be the first Palestinian to be re-arrested under Article 186. He was re-arrested on 22 February 2012 and subsequently ordered to serve the remaining 6 years of his 9 year sentence. **The information in the secret file was not accessible to Mr. Eshteivi or his attorney.**

<sup>2</sup> Ibid.

<sup>3</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>

<sup>4</sup> Ibid.

### ***Bushra Al-Taweel***



Prisoners' rights activist and journalist Bushra Al-Taweel was re-arrested on 2 July 2014 under Article 186 of Military Order 1651 during the Gaza War, a time in which hundreds of Palestinians were arrested and several re-arrested under Article 186. The evidence on the grounds of which she was purportedly being detained was not made available to Al-Taweel or to her attorney, effectively preventing her from adequate due process. Addameer and Lawyers for Palestinian Human Rights (LPHR) have expressed concern regarding the case of Ms. Al-Taweel, and the lack of fair trial proceedings in the case. **Having previously served 5 months of a 16-month sentence and then released in the 2011 prisoner exchange deal, she was then effectively being held without charge, trial or knowledge of the secret evidence put forth against her.** After completing the end of her original sentence, Ms. Al-Taweel was released on 17 May 2015.

### ***Samer Issawi***



Samer Issawi, who had been released with over one thousand prisoners as part of the 2011 prisoner exchange deal, was rearrested on 7 July 2012 under Article 186. He later received an order to complete his original sentence of 30 years in prison of which he formerly spent 10 years. Mr. Issawi has suffered from irregular heart rate, kidney pain, low blood pressure, and recurring headaches and has drawn international attention in his hunger strikes. During his imprisonment, Issawi ended his intermittent hunger strike, which lasted for more than eight months, after a deal was brokered with the Israeli Prison Service on 23 April 2013 for his release to his home in Jerusalem, scheduled for 23 December 2013. His latest arrest leading to his current imprisonment took place in 23 June 2014, following the campaign of arrests following the kidnapping of three Israeli settlers and in the wake of the war on Gaza.

### **Addameer's Position**

**Addameer advocates for the rescinding of Article 186 as it gravely impacts the genuine character of any goodwill gestures or prisoner exchange deals. Addameer also holds that the release of Palestinian political prisoners should be at the forefront of political peace negotiations and that the release of political prisoners constitutes an arguably crucial element for a negotiated and lasting peace settlement. Contexts across the globe, including in South Africa and Northern Ireland, exemplify the centrality of prisoner releases in the context of larger peace negotiations, in a future agreement and post-conflict situations. For example, in South Africa, the release of all political prisoners constituted a pre-condition for peace talks between the National Party government and the African National Congress.**

**Addameer also reiterates its calls for upholding human rights standards and international law agreements, particularly in an end to arbitrary arrests and re-arrests of Palestinians. The occupying state must respect its obligations under International Human Rights and International Humanitarian Law by immediately putting an end to arbitrary detention, including those legitimized by article 186.**