UNITED NATIONS INTERNATIONAL MEETING ON THE QUESTION OF PALESTINE

The urgency of addressing the plight of Palestinian political prisoners in Israeli prisons and detention facilities

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CHECK AGAINST DELIVERY

PLENARY II

Arrests and detentions of Palestinians by the occupying Power: Legal aspects

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Administrative Detention in the Occupied Palestinian Territory

A Legal Analysis Report

Addameer Prisoner Support and Human Rights Association

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Introduction

Administrative detention is a procedure under which detainees are held without charge or trial. No charges are filed, and there is no intention of bringing a detainee to trial. By the detention order, a detainee is given a specific term of detention. On or before the expiry of the term, the detention order is frequently renewed. This process can be continued indefinitely.

Administrative detention has been commonly used by repressive regimes to circumvent the legal process and to hinder access by political dissidents to the protection that they should be entitled to under the law. Places where it has been used to a particular extent include the North of Ireland, South Africa (under apartheid), the United States (Guantanamo Bay) and Israel.

Administrative detention (internment) without trial proved to be hugely controversial when it was introduced by the Government in the North of Ireland in 1970 as a means of suppressing nationalist opposition. It was used against one side of the community only and, in practice, led to even greater unrest and increased recruitment to both Sinn Féin and the IRA. It was eventually abandoned some six or seven years later and was never utilized again—despite increased levels of violence and political dissent. There is a general consensus that its use in the North of Ireland was counter-productive and merely exacerbated the conflict there. As a result, it is now difficult to envisage a situation in any part of the island of Ireland where internment would ever be acceptable again.

In the military detention facility at the Guantanamo Bay military base, the US is now coming to realize that detention of suspects there without access to legal protections is not only wrong but politically unwise. Detainees at Guantanamo have spent years without any fair legal process, held on the basis of secret evidence. The first detainees were brought to Guantanamo on January 11, 2002, more than eight years ago. At its height, the detention facility held approximately 775 detainees. However, the Guantanamo internment regime, originally designed to prevent the detainees from receiving the protections of the U.S. Constitution or P.O.W. status under the Geneva Conventions, soon came under heavy scrutiny and domestic and international condemnation. On his second full day in office, American President Barack Obama pledged to close the facility within a year, a promise that remains yet unmet.

Likewise, in South Africa, internment was clearly just another element in the flawed legal practices of the apartheid regime. It is only in Israel that the practice of so-called administrative detention has been an integral part of the legal system over an extended period of time and shows no indication of being discarded by present or future Israeli governments as a means of suppressing the political will of the Palestinian people. The possibility of becoming an administrative detainee is an ever-present threat in the daily life of all Palestinians and severely impacts the lives of Palestinians living in the occupied Palestinian territory (OPT). Over the years, Israel has held Palestinians in prolonged detention without trying them or informing them of the suspicions against them. While detainees may appeal the detention, neither they nor their attorneys are allowed to see the evidence. Israel has therefore made a mockery out of the entire system of procedural safeguards in both domestic and international law regarding the right to freedom and due process.
Due to the lack of due process and the risk of abuse in detaining a person without charge or trial, strict restrictions have been placed on administrative detention under international law. While international humanitarian law does allow the occupying power to use administrative detention, it is only under explicit and exceptional circumstances. Article 78 of the IV Geneva Convention gives the occupying power the authority to take safety measures, concerning protected persons (inhabitants of the occupied territories are regarded in the Convention as ‘protected persons’), including internment for ‘imperative reasons of security’ and not as a means of punishment. The Israeli authorities, however, in most cases have used administrative detention indiscriminately and as a means of punishment.

**Background**

Palestinians have been subjected to administrative detention since the beginning of the Israeli Occupation in 1967 and before that time, under the British Mandate. According to testimonies given to Addameer, detainees have been held under administrative detention orders from periods ranging from six months to six years. The frequency of the use of administrative detention has fluctuated throughout Israel’s occupation, and has been steadily rising since the outbreak of the Second Intifada (uprising) in September 2000, and has been used as a means of collective punishment for Palestinians who oppose the occupation. As in previous years, whenever the conflict enters a new stage, the Israeli authorities use administrative detention to arrest a large number of Palestinians.

**STATISTICS**

During the period of March 2002 to October 2002, Israeli occupying forces arrested over 15,000 Palestinians during mass arrest campaigns, rounding up males in cities and villages between the ages of 15 to 45. In October 2002, there were over 1,050 Palestinians in administrative detention. By the beginning of March 2003, Israel held more than one thousand Palestinians in administrative detention.

In 2007, Israel held a monthly average of 830 administrative detainees, which was one hundred higher than in 2006. Furthermore, during the PLC elections of 2007, Israel placed dozens of candidates from the Islamic ‘Change and Reform Party’ in administrative detention. Some of which are still imprisoned to this day.

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

As of December 2010 there were **207 administrative detainees in Israeli prisons and detention centers including 4 women and 2 children under the age of 18.**

Administrative detention in the OPT is ordered by a military commander and grounded on “security reasons”. Detainees are held without trial and without being told the evidence  

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1 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (GCIV).
against them, but rather that, in most cases, there is ‘secret evidence’ against them and that they are being held for security reasons.

The security reasons are broad enough to include non-violent political subversion and virtually any act of resistance against the Israeli colonial occupation. The definitions of crimes in Israeli legislation are additional sites where ambiguity can be manipulated, often resulting in increased sentences and imprisonment for Palestinians. For example, participation in a demonstration is deemed a disruption of public order. Firing in the air during a wedding, as a form of celebration, constitutes a danger to Israel's national security, despite the fact that it occurs in Palestinian Authority areas (area A). Carrying or placing a Palestinian flag is a crime in itself under Israeli military regulations and even pouring coffee for a member of a declared illegal association can be seen as support for a terrorist organization. Palestinian national security forces are also seen as an illegal association.

International humanitarian law, primarily comprising the Geneva Conventions of 1949 and their Additional Protocols, as well as international human rights law, provide the international legal standards that are to be applied to administrative detention in armed conflict and other situations of violence. International law permits administrative detention under specific, narrowly defined circumstances. In accordance with the International Covenant on Civil and Political Rights (ICCPR) there must be a public emergency that threatens the life of the nation. Furthermore, administrative detention can only be ordered on an individual case-by-case basis, without discrimination of any kind. A State’s collective, non-individual detention of a whole category of persons could in no way be considered a proportional response, regardless of what the circumstances of the emergency concerned might be. Only imperative reasons of security justify the use of administrative detention under international law. According to Adalah, Israel has sought to justify its policy of administrative detention by the remarkable claim that it has been under a “state of emergency since 1948” and is therefore justified in suspending or “derogating” from certain rights, including the right not to be arbitrarily detained. Administrative detention should not be used as a substitute for criminal prosecution where there is insufficient evidence to obtain a conviction. Israel's use of administrative detention deliberately infringes these restrictions.

This report examines Israel’s policy of administrative detention in view of general principles of international law governing detention in general and administrative detention in particular. While Israel claims to be abiding by such principles, this report shows that Israel severely violates every one of these principles in practice.

This report will consider administrative detention under three broad headings:

- International Law
- Israeli Law
- Administrative Detention in Practice

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International Law

After the 1967 war, Israel occupied the West Bank, including East Jerusalem (both under Jordanian control at the time) and the Gaza Strip (which was under Egyptian administration), which have come to be known as the OPT. Israel also occupied the Golan Heights and the Sinai Peninsula at the same time. Israel thus became a “belligerent power” and subject to international humanitarian law in regards to the occupation of these territories. Humanitarian law regulates how such territories should be governed, the conduct of the occupying power, and the treatment of the civilian population (“protected persons”) during occupation.

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

- The Fourth Geneva Convention (1949);
- Additional Protocol I to the Geneva Convention (1977); and,
- Regulations annexed to the Hague Convention No. IV (Hague Regulations)

An international consensus exists among States and the International Committee of the Red Cross (ICRC) that the Fourth Geneva Convention and the Hague Regulations of 1907 apply to all of the territories occupied by Israel after the 1967 war. The United Nations Security Council and the International Court of Justice (ICJ) have confirmed the applicability of the Fourth Geneva Convention to the OPT, including East Jerusalem, in ICJ Advisory Opinions and at least 25 Security Council Resolutions.

International humanitarian law does not allow for any derogation from the law on the basis of any military, security or national rationales. This is because all instruments of international humanitarian law already give due consideration to military imperatives and reconcile military necessity with the demands of humanity.

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

The Fourth Geneva Convention (1949)

3 Belligerent military occupation occurs when one nation’s military garrisons occupy all or part of a foreign nation during an invasion (during or after a war).
4 International humanitarian law is sometimes referred to as the laws of war or the laws of armed conflict and primarily comprises the Geneva and Hague Conventions.
6 GCIV.
7 Regulations Annexed to The Hague Convention No. IV respecting the laws and customs of war on land (1907).
8 D. Kretzmer, *supra* note 5.
9 Ibid.
10 International human rights law is comprised of such instruments as the International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), among many others. Customary international law is a body of law created through widespread and consistent practice among States, conducted with a genuine belief that such practice is legally binding (*opinio juris*), affording these laws the status of a legal rule or principle.
The Fourth Geneva Convention provides for the protection of civilians who find themselves under the rule of a foreign power in the event of an international and internal conflict. The Fourth Geneva Convention is based on the universally accepted principle that parties to a conflict should ensure that people living in an occupied territory should continue to live in as normal a manner as possible and in accordance with their laws, customs and traditions.

The Convention forms what is probably the most significant body of international humanitarian law applicable to occupied territory and is considered to have acquired customary international law status. As mentioned, it is widely accepted (except by Israel) that the Fourth Geneva Convention applies to the OPT. The Convention rests on the belief, as articulated in Article 27, that civilians, whether in occupied territory or not, are fundamentally “entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices and their manners and customs”. The inviolability of such rights and benefits has been especially pronounced for persons in occupied territories.

Articles 42 and 78 of the Fourth Geneva Convention permit administrative detention only “if the security of the Detaining Power makes it absolutely necessary”, or for “imperative reasons of security”.

The consensus, confirmed by the ICRC, appears to be that the application of international humanitarian law, including the Fourth Geneva Convention, ceases only after the effective end of the occupation or with a comprehensive political settlement. Until this occurs, no derogation is possible from the rights guaranteed under the Convention.

Israel ratified the Fourth Geneva Convention in 1951 and is bound by its terms.

**Additional Protocol I**

In 1977, two additional protocols to the Geneva Conventions of 1949 were adopted to bolster the protection afforded to civilian populations in time of conflict and to take into account the realities of modern warfare. Additional Protocol I applies to international armed conflicts, and protects civilians against the effects of hostilities whilst making it clear that the sphere of operation of the Fourth Geneva Convention and Protocols includes:

> “Armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination.”

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11 GCIV Article 42 provides: “The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary.”

12 GCIV Article 78 provides: “If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment. Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power.”


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

15 Article 1 of Additional Protocol I.
Israel has not ratified Additional Protocol I; however, Article 75 of Additional Protocol I is considered to reflect customary international law and is therefore binding on Israel.16

The Hague Regulations (1907)

Israel is not a party to the Fourth Hague Convention (1907) to which the Hague Regulations are annexed. However it is accepted that the Fourth Hague Convention (and regulations) is declaratory of customary international law and is therefore binding on all States, including Israel.17

Other Applicable International Law

On 9 July, 2004 the ICJ handed down its advisory opinion in Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.18 The ICJ relevantly held that in addition to the Fourth Geneva Convention, the following international legal instruments also apply to the Occupied Palestinian Territory:

- The International Covenant on Civil and Political Rights (1966)
- The International Covenant on Economic, Social and Cultural Rights (1966)

The ICJ has held that the protections offered by human rights conventions do not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the ICCPR.19 As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; and yet others may be matters of both these branches of international law.

The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) does permit administrative detention in exceptional circumstances during armed conflict or for protecting State security in certain circumstances.20 The required circumstances are set out in Article 4 of the ICCPR which Israel ratified in 1991.21

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17 International Court of Justice, Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, para. 89.
18 Adopted by the UN General Assembly on 20 July, 2004 in resolution ES-10/15. The resolution was adopted by 150 votes in favor, 6 against with 10 abstentions.
19 Article 4 permits a State Party to suspend the operation of certain Articles of the Covenant (including Article 9) “in time of public emergency which threatens the life of the nation”.
20 Article 9 of the ICCPR establishes a prima facie position opposed to administrative detention by establishing an entitlement to the following rights: The right to liberty and security of person; Not to be subjected to arbitrary arrest or detention; To be informed, at the time of arrest, of the reasons for his arrest and be promptly informed of the charges against him or her; To be brought promptly before a judge exercising judicial power and to be entitled to a trial within a reasonable time or released; To challenge the lawfulness of the detention in a court; To compensation for wrongful detention.
21 ICCPR, Article 4 relevantly provides:
The United Nations Convention on the Rights of the Child

The fundamental principle underpinning the United Nations Convention on the Rights of the Child (CRC) is that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.\(^{22}\)

Israel ratified the CRC in 1989 and the ICJ has determined that the Convention does apply to the OPT.\(^{23}\) One of the foremost ways that Israeli Military Orders deviate from the rights provided to children under international law is in their definition of what constitutes a “child.” Under Article 1 of the Convention on the Rights of the Child a child is defined as, “every human being below the age of eighteen years,” yet under Israeli military regulations Palestinian children are treated as adults once they reach the age of 16. This means that youths of 16 are tried in the same courts as adult prisoners and sentenced accordingly.\(^{24}\)

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CAT) prohibits all forms of torture in all circumstances, without exception.\(^{25}\) Israel ratified the CAT in 1991. However, in 1995 Israel rejected the authority of the Committee against Torture, the body that monitors implantation of the CAT, to investigate information it received from individuals and organizations concerning torture. Palestinian and Israeli human rights NGOs have repeatedly supported numerous petitions to the Israeli High Court of Justice against the State practice of torture which produced some success in 1999 with the High Court’s decision to limit its use.\(^{26}\) In its landmark judgment in September 1999, the High Court of Justice held that the Israeli Security Agency (ISA) did not have legal authority to use “physical means” against interrogees. Pressure and a measure of discomfort are legitimate, the justices said, only as a side-effect of the necessities of the interrogation and not as a means for breaking the interrogees’ spirit. However, the court stated that ISA agents who abused interrogees in “ticking bomb” situations may avoid prosecution. This holding implicitly legitimized these severe acts, contrary to international law, which does not acknowledge any exceptions to the prohibition on torture and ill-treatment.\(^{27}\)

Israel has continuously attempted to justify its use of torture to the international community and to absolve itself of criminal responsibility in this regard in various ways, forefront of

“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

\(^{22}\) CRC, Article 3.

\(^{23}\) ICJ Wall Advisory Opinion, supra note 17, para. 113.

\(^{24}\) This law does not apply to Israeli children who are treated as children until they are eighteen

\(^{25}\) CAT, Article 2.

\(^{26}\) HCJ 5100/94 Pub. Comm. Against Torture in Isr. v. Israel [1999] IsrSC 53(4) 817. Organizations such as Hamoked and ACRI have played key roles in this process.

which are the Landau Commission of 1987. The Landau Commission claimed to restrict the use of torture, but approved the use of “moderate” physical pressure and “non-violent psychological pressure” during the interrogation of Palestinian detainees.

Furthermore, Israel does not abide by the UN Standard Minimum Rules for the Treatment of Prisoners or the UN Standard Minimum Rules for the Administration of Juvenile Justice (also known as “The Beijing Rules”) in its application of torture against Palestinian prisoners in order to extract confessions for sentencing. In some instances, detainees have died while in custody as a result of torture. Confessions extracted through torture are admissible in court and/or military tribunals.28

Specific Rights, Duties and Obligations Imposed by International Law

International humanitarian law and international human rights law each provide for specific rights, duties and obligations in relation to administrative detention, including the following:

- The High Contracting parties to the Fourth Geneva Convention undertake to respect and ensure respect for the Convention in all circumstances.29
- A prohibition against torture (mental and physical), mutilations and cruel treatment.30
- A prohibition against corporal punishment.31
- A prohibition against deportations and transfer of civilians in and out of the occupied territory.32
- A prohibition against reprisals and collective punishments.33
- A prohibition against outrages upon personal dignity, in particular humiliating or degrading treatment including any form of indecent assault.34

Procedure

- Any person detained shall be informed promptly of the reasons for their detention.35
- No sentence shall be pronounced except after a regular trial.36
- The accused person shall have the right to present evidence necessary to their defense and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defense.37

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29 GCIV, Article 1.
30 GCIV, Article 3; Additional Protocol I, Article 75(2)(a)(ii); and, CAT, Article 2.
31 Additional Protocol I, Article 75(2)(a)(iii).
32 GCIV, Article 49: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive...."
33 "...The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."
34 GCIV, Article 33; Additional Protocol I, Article 75(2)(d); and, Hague Regulations, Article 50.
35 GCIV, Article 3; Additional Protocol I, Article 75(2)(b).
36 Additional Protocol I, Article 75(3).
37 GCIV, Article 71.
38 GCIV, Article 72.
• The right to have the detention reconsidered by an appropriate body as soon as possible and reviewed at least twice a year.\textsuperscript{38}

• The right to be released by the Occupying Power as soon as the reasons for the detention cease to exist.\textsuperscript{39}

\textbf{Family Contact}

• The detainee has the right, within a week of being detained, to communicate in writing with his or her family informing the family of his or her detention, address and state of health.\textsuperscript{40}

• The detainee has the right to receive correspondence from his or her family.\textsuperscript{41}

• The detainee has the right to receive visitors, especially near relatives, on a regular basis and as often as possible. In cases of urgency, such as death or serious illness of relatives, detainees should be permitted to visit their homes.\textsuperscript{42}

\textbf{Conditions of Detention}

• The Occupying Power must maintain detainees at its own expense and must provide for the detainees’ state of health.\textsuperscript{43}

• The Occupying Power must provide for support of those dependent on the detainee in circumstances where they are unable to support themselves.\textsuperscript{44}

• Detainees must be held separately from persons detained for any other reason, such as persons convicted of criminal offences. This highlights the distinction made between persons imprisoned after a regular criminal trial and those held in administrative detention who have not been tried or convicted of any offence, and therefore should be kept separately.\textsuperscript{45}

• The Occupying Power must intern the detainees in adequate accommodation in regards to health, hygiene and the rigours of the climate.\textsuperscript{46}

• The Occupying Power must provide the detainees with sufficient food to maintain their health whilst also taking into account their customary dietary requirements. Detainees must also be given the means to prepare their own food.\textsuperscript{47}

• Detainees must be provided with premises suitable for the holding of their religious services.\textsuperscript{48}

\textbf{Women}

• Women detained shall be under the immediate supervision of women.\textsuperscript{49}

\textsuperscript{38} Ibid., Article 43.
\textsuperscript{39} GCIV, Article 132; Additional Protocol I, Article 75(3).
\textsuperscript{40} GCIV, Article 106.
\textsuperscript{41} Ibid., Article 107.
\textsuperscript{42} Ibid., Article 116.
\textsuperscript{43} Ibid., Articles 81, 91 and 92.
\textsuperscript{44} Ibid.
\textsuperscript{45} Ibid., Article 84.
\textsuperscript{46} Ibid., Article 85.
\textsuperscript{47} Ibid., Article 89.
\textsuperscript{48} Ibid., Article 86.
Children

- In all actions concerning children the best interest of the child shall be the primary consideration.\(^50\)

- Where a child is separated from its parents due to the actions of the State, such as through detention, imprisonment, exile, deportation or death, the State shall, upon request, provide information to the family as to the whereabouts of the missing family member.\(^51\)

- State Parties recognize the right of the child to education.\(^52\)

- No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.\(^53\)

- No child shall be deprived of his or her liberty unlawfully or arbitrarily. Detention shall be used only as a measure of last resort and for the shortest appropriate period of time.\(^54\)

Enforcement

Article 1 common to the four Geneva Conventions establishes a legal obligation for the High Contracting Parties, both individually and collectively, to not only respect and implement the Conventions, but also to ensure their respect. As noted above, common Article 1 states that “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”. This article was added at Geneva in 1949 as a provision specifically to enhance enforcement of the Convention. Common Article 1 has been supplemented by Article 89 of Additional Protocol I, which states that “in situations of serious violations of the Convention or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter”.

International humanitarian law, in accordance with the principle of universal jurisdiction, demands that States search for and punish all persons who have committed grave breaches of the law as listed in Article 147 of the Fourth Geneva Convention, such as torture, inhuman treatment, deportation, unlawful confinement and depriving a protected person of a fair and regular trial.\(^55\) They must either bring those persons to trial before their own courts or extradite them to a State party to the Convention for prosecution.

\(^{49}\) Additional Protocol I, Article 75(3).
\(^{50}\) Ibid., Article 3.
\(^{51}\) Ibid., Article 9.
\(^{52}\) Ibid., Article 28.
\(^{53}\) Ibid., Article 37.
\(^{54}\) Ibid.
\(^{55}\) GCIV, Article 147 provides:

“Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”
The ICJ in its judgment on the Wall held that all high contracting parties to the Convention had an obligation to ensure that all the provisions of the Convention were complied with.
**Israeli Law**

Administrative detention is lawful under Israeli domestic law and the law Israel applies to the occupied territory. Administrative detention orders were originally based on the *British Mandate Defense (Emergency) Regulations (1945)*. In recent times Israel has justified its use of administrative detention by citing Article 78 of the Fourth Geneva Convention, which allows the internment of protected persons “for imperative reasons of security”. Israel has never defined the criteria for what constitutes “state security”.

**The Law in Israel**

In Israel, administrative detention is authorized under the *Emergency Powers Law (Detentions) (1979)* (Emergency Law). The Emergency Law only applies once a state of emergency has been declared by the Knesset. Such a state of emergency has been in existence since the founding of the State of Israel in 1948.

The Emergency Law allows the Minister of Defense to order detention for up to six months, with the authority to keep renewing the order every six months, indefinitely. The detainee must be brought before a judge within 48 hours of arrest and be periodically reviewed every three months by the president of the District Court.

**The Law in the West Bank**

In the West Bank, administrative detention is authorized under Military Order 1651. This order authorizes the military commanders in the area to detain an individual for up to six months if they have “reasonable grounds to presume that the security of the area or public security require detention”. Commanders can extend detentions for additional periods of up to six months if “on the eve of the expiration of the detention order,” they have “reasonable grounds to believe ... that the security of the area or public security still require the holding of the detainee”. Military Order 1651 does not define a maximum cumulative period of administrative detention. The terms “security of the area” and “public security” are not defined, their interpretation being left to the military commanders.

If a Military Commander deems it necessary to impose a detention order he may do so for up to six months, after which he can extend the original order for a further six months. There is no limit on the amount of times an administrative detention order can be extended. This in effect allows for indefinite arbitrary detention.

In June 1999, the procedure governing administrative detention orders was modified by Military Order 1466 which provided that a detainee must be brought before a military judge within 10 days of his or her arrest. These modifications also authorized the military judge to approve administrative detention orders as issued, cancel them altogether or decrease the duration of the order.

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56 A “protected person” is defined in GCIV Article 4 as:
“Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”

57 Administrative detention was originally authorized under Military Order 1226. This was later amended by Military Order 1591, which was in turn replaced by Military Order 1651 as of May 2010.

58 Military Order 1226, Section 1B.
The Law in the Gaza Strip

Until the Israeli military withdrawal from the Gaza Strip in 2005, administrative detention was authorized there under Military Order 941 (1988) and was similar in its operation to the administrative detention order in operation in the West Bank. After the withdrawal, the Israeli government argued that it is no longer an Occupying Power in the Gaza Strip and that it is not bound by international law relating to the duties and obligations of occupying powers. There is consensus among the international community, however, that despite the withdrawal of Israeli military troops in 2005, there are ongoing as well as new methods of Israeli military and administrative control in the Gaza Strip, which amount to “effectual control” of the area. Therefore, the withdrawal of Israeli troops alone does not mean that Gaza is no longer occupied by Israel. It is important to note that facts on the ground define the legal situation. Israel maintains its effective control over the Gaza Strip by different means, such as control over air space, sea space and the international borders. Israel also continues to exercise control, although indirectly, over Palestinian movement in the Rafah crossing – the only exit outside of Gaza to countries other than Israel – namely Egypt. Furthermore, Israel continues to exercise control over the movement of Palestinians, as well as goods, in the Kerem Shalom, Erez, Karni and Sufa crossings. Even during the period from the Israeli military troops’ withdrawal from the Gaza Strip in September 2005 until the Israeli military operation codenamed “Operation Summer Rains” in 2006, there has been a consensus amongst the international community that Israel, regardless of the specific question on applicability of the laws of occupation, continues to be legally responsible for protected persons that live in the Gaza Strip under general provisions of international humanitarian law.59

In March 2002 the Knesset enacted the Incarceration of Unlawful Combatants Law (2002). This law provides for the indefinite administrative detention of foreign nationals and creates a third category of person the “unlawful combatant” with an unclear definition that includes not only persons who participate in hostilities against Israel, but also any members of forces that carry out such hostilities of that force. The usage of the “unlawful combatant” designation runs contrary to the distinction in international humanitarian law between combatants and civilians; it affords detainees neither the protection of the Third Geneva Convention as combatants held as prisoners of war, nor the protection of the Fourth Geneva Convention as civilians. Neither of these Conventions prevents the state from prosecuting suspects for crimes they allegedly committed either as combatants or civilians.60

The Unlawful Combatants Law further allows a person suspected of being an “unlawful combatant” to be held for up to 14 days without judicial review, and also permits the use of secret evidence and in-court evidence to be taken outside of the presence or in the absence of the detainee. By comparison, under the Israeli military orders in the West Bank, once an administrative detention order has been issued by the military commander, the detainee must be brought before a military judge within eight days. Moreover, if the detention order is approved by a court, the Unlawful Combatants Law allows the administrative detention of individuals for indefinite periods of time, or until such a time that “hostilities against Israel

60 United Against Torture, Torture and Ill Treatment in Israel and the Occupied Palestinian Territory: An analysis of Israel’s Compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2008 (available at: www.unitedagainsttorture.org)
have come to an end” and mandates judicial review of the detention only once every six months. The judge can then either release the detainee or renew the administrative detention order. The detainee is allowed to appeal to the Israeli High Court within 30 days.

The Unlawful Combatants Law also contains a troubling presumption that the detainee would pose a threat to the security of the state if released, which is the ground for detention under the law (section 3). Additionally, the Defense Minister’s determination that a certain force is carrying out hostilities against Israel, or that such hostilities have or have not come to an end, will serve as evidence in any legal proceeding, unless the contrary is proven by the detainee (section 8). Thus, no legislation is necessary to determine which forces are carrying out hostilities against Israel; the decision is made unilaterally by the executive.61

Israel’s Position towards International Law

Although Israel has stated that it generally applies the humanitarian provisions of the Fourth Geneva Convention in the Occupied Territory (without specifying exactly which provisions it is referring to) (a de facto application) it denies that it is legally obliged to do so (a de jure application).62 Israel bases this argument on a narrow construction of Article 2 of the Convention.63 Israel argues that the Convention only applies as between two High Contracting Parties, one of which has sovereignty over the territory occupied by the other. Israel posits that Jordan and Egypt were not acting as sovereigns over the Occupied Territory prior to 1967 (being more in the position of administrators) and that there is no other relevant High Contracting Party, therefore the Convention does not apply.64

The ICJ rejected this argument, noting that both Jordan and Egypt were High Contracting Parties to the Covenant in 1967 and that Article 2 does not impose any qualification of sovereignty when referring to the “territory of a High Contracting Party”.65

Israel’s argument also ignores Article 4 of the Convention which is intended to protect the rights of people who find themselves “in the hands of a Party to the conflict or occupying Power of which they are not nationals” regardless of the competing claims to sovereignty over the territory.

In rejecting Israel’s argument, the ICJ concluded that:

“This interpretation reflects the intention of the drafters of the Fourth Geneva Convention to protect civilians who find themselves, in whatever way, in the hands of the occupying Power. Whilst the drafters of the Hague Regulations of 1907 were as

61 Ibid., p. 60.
62 ICJ, Wall Advisory Opinion, supra note 17, para. 93.
63 GCIV Article 2 provides:
“In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.
The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.
Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”
64 ICJ Wall Advisory Opinion, supra note 17, paras. 90-91.
65 Ibid., para. 95.
much concerned with protecting the rights of a State whose territory is occupied, as with protecting the inhabitants of that territory, the drafters of the Fourth Geneva Convention sought to guarantee the protection of civilians in time of war, regardless of the status of the occupied territories, as is shown by Article 47 of the Convention.66

The ICJ finally noted that the Israeli Supreme Court has itself acknowledged the application of the Convention in relation to military action undertaken by the IOF in the Rafah refugee camp in the Gaza Strip.67

In regards to the ICCPR and similar international human rights instruments, Israel takes the view that these covenants do not apply to the Occupied Territory.68 However, this too was refuted by the ICJ in its ruling, which affirmed the applicability of human rights law to the OPT. The Court stressed that the Hague Regulations of 1907 are part of customary international law and are thus applicable in the occupied territory. The Fourth Geneva Convention, as well, is applicable because there existed an armed conflict between two High Contracting Parties to the Convention – Israel and Jordan – when Israel occupied the West Bank.69 The Court noted that, according to the first paragraph of Article 2 of the Fourth Geneva Convention, that Convention is applicable when two conditions are fulfilled: first, that there exists an armed conflict (whether or not a state of war has been recognized); and second, that the conflict has arisen between two contracting parties. If those two conditions are satisfied, the Convention applies, in particular, in any territory occupied in the course of the conflict by one of the contracting parties.

Summary of the Legal Position

Israel has historically ratified international agreements regarding human rights protection, whilst at the same time refusing to apply the agreements within the Occupied Palestinian Territory, attempting to create legal justifications for its illegal actions.

However, there is general acceptance that the following international humanitarian law instruments apply to the Occupied Palestinian Territory:

- The Fourth Geneva Convention
- Article 75 of Additional Protocol I to the Fourth Geneva Convention
- The Hague Regulations

There is general acceptance that the following international human rights law instruments also apply to the occupied Palestinian territory:

- The International Covenant on Civil and Political Rights (ICCPR)

66 Ibid. GCIV Article 47 provides:

“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

67 ICJ Wall Advisory Opinion, supra note 17, para. 100.

68 Ibid., para. 110.

• The International Covenant on Economic, Social and Cultural Rights (ICESCR)
• The International Convention on the Rights of the Child (CRC)
• UN Convention against Torture (CAT)
Administrative Detention in Practice

Administrative detention orders in the Occupied Palestinian Territory are issued by military commanders for between one to six months and can be renewed indefinitely.

Procedure

Under Israeli military regulations the system of administrative detention is implemented as follows:

1. Palestinians are usually arrested by the Israeli military. Large numbers of Israeli soldiers often forcibly enter the home for an arrest, usually breaking down doors and destroying personal property. Arrests also commonly take place at checkpoints and at demonstrations. In some cases, police dogs are used to enter the home, terrifying the occupants. Soldiers also verbally and physically threaten the occupants of the house.\(^{70}\)

2. A Palestinian can then be detained for up to eight days without being informed of the reason for his or her detention and without being brought before a judge. Between April and June 2002, during Israel’s mass arrest campaign in the OPT, this period of time was increased by the Israeli Military Order 1500 to 18 days.\(^{71}\) This is in breach of international law.\(^{72}\)

3. During or following the eight days of detention, a detainee is either:
   a. sent to an interrogation center;
   b. charged with an offense;
   c. given an administrative detention order; or
   d. released.

4. Once an administrative detention order has been issued by the military commander, the detainee must be brought before a judge for a judicial review within eight days. Occasionally, the matter will be dealt with at the first hearing and the order approved or varied.

5. At the judicial review, secret evidence is submitted by the Israeli Security Agency. Neither the detainee nor his or her lawyer is permitted to see the secret evidence. This is in breach of international law.\(^{73}\)

6. The hearing is not open to the public. This is in breach of international law.\(^{74}\)

7. The military judge may approve, shorten or cancel the order. In practice, the order is usually approved without change.

8. Previously, administrative detention orders had to be reviewed after three months. However, in April 2002, this requirement was abolished. Upon the decision of the initial judgment the case can be appealed to the Military Court of Appeals, and then, if necessary to the Israeli High Court of Justice.

\(^{71}\) Military Order 1500.
\(^{72}\) Additional Protocol I, Article 75(3).
\(^{73}\) GCIV, Article 71.
\(^{74}\) Ibid.
9. At the end of the initial detention period the order can be renewed for another period of up to six months. There is no limitation on the number of times the initial detention period can be renewed. Each time an administrative detention order is renewed the detainee is given a new “hearing”.

As a result of the possibility of indefinite renewal of administrative detention orders, detainees do not know when they will be released and/or why they are being detained. In some cases, administrative detention orders are renewed at the prison’s gate. In many of the legal cases pursued by Addameer Association, administrative detainees spent years in prison after being sentenced for committing violations, in accordance with military orders. When the period ended, however, rather than be released they were placed under administrative detention under the pretext that they still posed a threat to security. Palestinian detainees have spent up to eight years in prison without charge or trial under administrative detention orders. Salim Taha Mousa Ayesh for example, was held in continuous administrative detention from 2001-2007. The current longest serving Palestinian detainee in administrative detention, Ayed Doudeen, has been held since his arrest on 14 October 2007 without charge or trial.

**Legal Basis for Administrative Detention**

Lawyers representing administrative detainees must contend with impossibly vague allegations. Administrative detainees are usually detained on broad grounds of “being a threat to the security of the area,” but the area and the nature of the threat are left undefined. This is in breach of international law.

Defense lawyers can try to petition military judges for more information about the allegations against their client, but it is unusual for a military court to surrender this information. If military judges do release more information about the suspicions, it is usually only after the prisoner has already been held in administrative detention for months.

Addameer General Director and senior lawyer Sahar Francis represented one client who was placed in Israeli administrative detention in 2001, yet she did not discover until mid-2006 that her client was detained on allegations that he once said he wanted to participate in a suicide attack. However, she still could not determine from the publicly released information on his case when he allegedly made this statement and under what circumstances. Adv. Francis described her frustration with this situation, stating, “After five years, is he still a danger? Is he still related to active people outside? To such questions, I never have answers.”

**Right of Review and Appeal**

Following the issuance of an administrative detention order, a judicial review of the order must take place within eight days. This review takes place before a military judge who can reduce, cancel, or confirm the order. The detainee then has a right at any time to appeal the decision of the military judge to the Administrative Detainees Appeals Court presided over by another military judge. The appeal process is somewhat farcical, given that the detainee and his or her lawyer do not have access to the “secret” information on which the orders are based. This leaves the defense in the position of having to guess what may or may not be in

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76 Additional Protocol I, Article 75(3).
the security file. The detainee is not able to confront and cross-examine primary witnesses, and since almost all information presented to the court is classified, the detainee is unable to contest its veracity. Detainees are therefore unable to present a meaningful defense. There is no time limit on the right to appeal to the military appeal court.

Prior to March 2002, a representative of the ISA was required to be present at the review and appeal sessions to answer any questions the military judge may have concerning the detainees’ secret file. However, following the mass arrest campaigns conducted by Israel in March 2002, the Israeli military commander amended the military order pertaining to administrative detention to allow the Military Prosecutor to present the “secret information”, expediting the rubber-stamping of administrative detention orders. If the military judge wants to hear from the ISA, he can ask a representative to attend, but this rarely happens in practice.

In very rare circumstances, if the judge finds that the information in the security file is public information, the information will be released to the detainee and his or her lawyer. However, information obtained under interrogation that should be supplied to the military prosecutor and defense is often delayed for months. The military courts are unsympathetic to defense complaints concerning these delays.

The Israeli High Court of Justice has instituted a practice whereby administrative detainees can petition the Court to review their administrative detention order. In most cases, however, these petitions are dismissed.

**Lawyers**

Lawyers who represent Palestinians in Israeli military and civil courts face obstacles that systematically erode the right of Palestinian detainees to legal representation. Defense attorneys must contend with military orders, Israeli laws and prison procedures that curtail their ability to provide adequate counsel to their clients. A lawyer’s citizenship or residency status dictates his or her ability to represent Palestinian clients. This is a breach of international law.\(^77\)

The military prosecutor is usually the only source of information about the evidence in administrative detention cases; however, the defense lawyer cannot cross-examine the prosecutor as a witness. Instead, the prosecutor answers all of the defense lawyer’s questions without being sworn in and has the right not to answer questions. A typical examination during a hearing to extend an administrative detention order goes as follows:

Q. Is any of the evidence open?
A. No.
Q. What is my client accused of?
A. Activities to help terrorism.
Q. How did he help terrorism?
A. He's in an organization.
Q. Which organization?
A. That is part of the secret evidence.
Q. Who else is in the organization with him?

\(^77\) GCIV, Article 72.
A. That is part of the secret evidence.\textsuperscript{78}

It is rare for the defense to call witnesses as the evidence against the detainee is not known. In the circumstances, the only evidence that the defense could call would go to the good character of the detainee and his or her family life.

\textit{Palestinians with West Bank Residency}

Palestinians with West Bank residency are limited to working in the military courts because they cannot represent clients in Israeli civil courts or in the High Court. They are allowed to work in the military courts of Ofer (near Ramallah) and Salem (near Jenin), but travel restrictions still make their work difficult because they cannot enter Israel to visit their clients who are detained there in Israeli prisons and interrogation centers. Theoretically, they could apply for travel permits to enter Israel for client visits, but no special allowance is made for lawyers in the permit application process and they are routinely denied access.

\textit{Palestinians with Gaza Residency}

Since Israel withdrew from Gaza and closed the Erez military checkpoint, Palestinians with Gaza residency cannot represent clients in the military courts or Israeli civil courts.

\textit{Palestinians with Jerusalem IDs}

Lawyers with Jerusalem IDs may take a test administered by the Israeli Bar Association in order to be licensed to represent clients in the Israeli civil courts.

If a lawyer with a Jerusalem ID is licensed only by the Palestinian Bar Association, he must apply each year for permission from the Israeli Department of Justice to represent clients in the military courts and to visit interrogation centers and prisons inside Israel. Lawyers who have the Department of Justice certification may then apply to the prison authority for permission to make individual visits to clients in prisons and interrogation centers.

\textit{Palestinians with Israeli Citizenship and Jewish Israelis}

With Israeli citizenship come certain privileges for lawyers, including the right to represent clients in the Israeli civil courts and the right to apply for permission to visit Israeli prisons and interrogation centers. In addition to working in the Israeli civil courts, lawyers with Israeli citizenship can also represent clients in the military courts.

Lawyers with Israeli citizenship cannot, however, enter Gaza or regions classified “Area A” in the West Bank. These regions include most Palestinian cities, so Israeli citizens are prohibited from entering much of the West Bank to interview clients, their families and witnesses. Additionally, the Israeli Bar Association prevents Israeli citizens from having offices in the West Bank.

Military Courts and Judges

It is imperative to note that analysis by the various UN mechanisms concerning Palestinian detainees has largely focused on the conditions of detention pre- and post-trial. Rarely has analysis been undertaken which reports the compliance of the Israeli military courts as presently constituted, both in law and in practice, with the fundamental principles of international fair trial standards. The UN, however, is not alone in neglecting the issue of fair trial in Israeli military courts. The Israeli human rights organization Yesh Din, the author of the most authoritative and comprehensive study published on the military courts in over a decade noted that “the [Israeli] military judicial system in the OPT has acted under a veil of almost complete darkness until now.” However, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while countering terrorism (the Special Rapporteur on human rights while countering terrorism) visited an Israeli military court during his 2007 country visit and noted the following subsequent to that visit: “…the fact remains that [Israeli] military courts have an appearance of a potential lack of independence and impartiality, which on its own brings into question the fairness of trials.”

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

According to Military Order 378 Section 3(b), it is the responsibility of the military commander in the Occupied Palestinian Territory to appoint military court judges. This appointment is made according to a decision taken by a Special Committee to appoint judges. In addition, the minimum required training for a military judge is five years legal experience.

The military court judges, prosecutors and the ISA have access to the “secret information” allegedly containing allegations and evidence, but this information is not disclosed to the detainee or his lawyer. This is in breach of Israel’s obligations under both international human rights and humanitarian law. Administrative detention hearings are not open to the public, in further breach of Israel’s obligations under international human rights law.

It is possible for administrative detention to be combined with regular proceedings in the military courts. For example, a prisoner may be placed in administrative detention for several months, and then charged by the military tribunal. The prisoner will then stand trial while the detention order against him remains in effect. Alternatively, a prisoner will be tried and convicted by a military tribunal, complete his sentence, then be placed under administrative detention.

Military judges are obliged to provide reasons for their decisions when they rule in administrative detention judicial reviews. Allegations against administrative detainees are

81 Military Order 378 3 (d)(1)
82 ICCPR, Article 14.
83 Ibid.
typically as broad as “being a threat to the security of the area”, with “the area” and the nature of the threat left undefined. This is a clear breach of Israel’s obligation under international human rights and humanitarian law.84

Typical justification for administrative detention by a military court judge goes something like this:

* X is a member of Hamas and a threat to State security. I have searched the secret files and find that the evidence is credible.

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

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

— Sahar Francis

Many lawyers who appear in the military courts advocate a boycott of the system. However, at the present time there is no consensus amongst prisoners to boycott the courts.

**Torture**

Although Israel has ratified the Convention Against Torture it has prevented the Committee Against Torture from investigating allegations of ill treatment in the Occupied Palestinian Territory.85

A Palestinian detainee can be interrogated for a total period of 188 days, during which time he or she can be denied access to a lawyer for up to 90 days. This is a breach of international law.86

During the interrogation period, a detainee is often subjected to some form of torture or cruel, inhuman or degrading treatment ranging in extremity, whether physical or psychological with the aim of obtaining confessions for their convictions. On 6 September 1999, the Israeli High Court of Justice ruled to place some limits on the use of torture during interrogation. The ruling, however, did not explicitly forbid the use of torture but rather allowed that interrogation methods deemed as torture (referred to by the court as “moderate physical pressure”) may be used in situations where a detainee is deemed a ‘ticking bomb’. Despite the High Court’s decision, interrogation methods such as violent shaking, shackling detainees in painful positions, sleep deprivation, playing loud music and exposing detainees to very cold or very hot temperatures for long periods, are still commonly used against Palestinians whom authorities allege have information about an ‘imminent attack’. (See case of Loai Sati Mohammad Ashqar in the appendix)

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84 GCIV, Article 71; ICCPR, Article 14.
86 Additional Protocol I, Article 75(3); GCIV, Articles 71, 72.
Through a loophole in the High Court decision, the interrogator is protected from being legally pursued for using torture in accordance with the Israeli criminal law “protection of necessity” defense. Additionally, Israeli law does not prohibit the acceptance of confessions obtained by force. However, most “security” cases rely on confessions obtained from Palestinian defendants taken before they were provided with a legal representation during the interrogation period. During interrogation, most detainees are denied lawyers’ visits for long periods reaching up to 90 renewable days. In cases researched by Addameer, the interrogation period lasted from 8 to 65 days. As Israel can legally hold detainees incommunicado for up to three months, ISA interrogators are able to use methods of torture with impunity. If a complaint is lodged, investigations are confidential and led by an ISA agent under the authority of the State Attorney. No agent has been charged since the responsibility for investigations was transferred to the Ministry of Justice in 1994. Moreover, since 2001, the State Attorney’s Office has received more than five hundred complaints of ill-treatment by ISA interrogators, yet has not found cause to order a single criminal investigation. The State Attorney’s Office’s decisions on this issue are based on the findings of an examination conducted by the Inspector of Complaints by ISA Interrogees, who is an ISA agent, answerable to the head of the organization. Even when the findings have shown that ISA interrogators did indeed abuse an interrogee, the State Attorney’s Office has closed the file based on a biased interpretation of the court’s ruling on the applicability of the “necessity defense”.

“They deal with almost every Palestinian as a ticking bomb case.”
Sahar Francis

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

In 1998, the Israeli human rights organization B’Tselem published statistics detailing the use of torture against Palestinian prisoners. The report stated that the Israeli security services interrogated between 1,000-1,500 prisoners each year, with 85 percent of those interrogated subjected to some form of torture. The Israeli High Court of Justice did nothing to prevent this use of torture. The report went on to state that torture was practiced as routine policy.

Similarly, Defense for Children International – Palestine Section, began work on a report in 2001 detailing statistics of the use of torture against child prisoners. A survey was conducted of 50 cases of child prisoners, aged between 10-17 years old, arrested in 2000-2001. The survey found that:

- 95 percent were beaten by the soldiers arresting them. Soldiers used their hands, legs and guns to beat the children all over their body;
- 88 percent were beaten when they were transferred from military detention centers to interrogation centers, prisons or court; and,

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88 B’Tselem and Hamoked, Absolute Prohibition, supra note 27.
89 GCIV, Article 3; Additional Protocol I, Article 75(2)(a)(ii); CAT, Article 2.
100 percent were subject to various forms of torture including physical attacks (beating), tight cuffs, cursing, verbal and physical threats, sleep deprivation, subject to extreme temperatures, blindfolded and shackling of hands or legs.\textsuperscript{91}

In recent years, Israel has officially admitted several times that in “ticking-bomb” cases, the ISA interrogators employ “exceptional” methods of questioning, including “physical pressure.” Addameer receives numerous reports of the continued use of abusive techniques being employed against Palestinians during interrogation. These techniques include:

- excessive use of blindfolds and handcuffs
- slapping and kicking
- sleep deprivation and solitary confinement
- denial of food and water for extended periods of time
- denial of access to toilets and denial of access to showers or change of clothes for days or weeks
- exposure to extreme cold or heat
- position abuse and yelling and exposure to loud noises
- arresting family members or alleging that family members have been arrested

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

“I fell to the ground at one point in my interrogation, and when I fell, they kept beating me. After two hours of beating, they threw me into a small cell measuring 1 m by 80 cm. It was winter and very cold, but they turned on the air-conditioning in the cell so that it became much colder in the dark room. Half an hour later, they entered the cell and asked me if I was ready to confess. When I remained silent, they started to hit me again. A few minutes later, I confessed and the beatings stopped. Then they took me out of the cell and into another room to sign a piece of paper. After that they took me back to the same cell, and I slept until the next morning.”\textsuperscript{92}

Torture appears to be justified in the Israeli perception as a means to obtain a confession and collect evidence, clearly in violation of international law, which stipulates that confessions obtained through force are not admissible.

**Holding Administrative Detainees in Israel**

The Israeli military regularly moves Palestinian prisoners from the West Bank to facilities inside Israel. Palestinians from the West Bank may be moved between any of three types of facilities:

1. A detention center
2. An interrogation center, or
3. A prison


\textsuperscript{92} Ibid.
Whereas detention centers tend to be located on military bases or settlements in the West Bank, interrogation centers and prisons tend to be located inside Israel. The transfer of administrative detainees to Israel contravenes Article 76 of the Fourth Geneva Convention, which prohibits the transfer of prisoners from occupied territories. The policy of transferring detainees to Israel coupled with the restrictive system of permits in operation in the OPT means that many detainees receive few if any family visits. This is in breach of international law.\textsuperscript{93}

In 2003, Israel admitted to having at least one secret interrogation facility known as Facility 1391 that falls under the responsibility of the Israeli Security Agency. It is not identified on any map, so the exact location of this facility is unknown. It is assumed that the center is located within an Israeli military base outside the OPT and that it falls under the responsibility of Unit 504 of the military intelligence. Detainees held in this facility for interrogation are not told where they are being held. Legal counsel for client held in the secret facility may, upon request, learn of their client's detention at the facility, but remain in the dark about its location. Detainees held in the facility report that interrogations there involve extreme measures amounting to torture and ill-treatment, and that the detention conditions are poor, involving sensory deprivation, including frequent and long periods of isolation and the denial of basic sanitary conditions. The International Committee of the Red Cross has no access to this facility. Even those in the highest political and military systems in Israel claim to have no idea what goes on inside this facility.\textsuperscript{94} This is a clear breach of international law.

**Discrimination**

In practice, there are three different groupings of detainees in Israeli prisons, with each being treated according to varying standards. These include:

1. Israeli Jewish criminal prisoners;
2. Israeli Arab/Palestinian criminal prisoners; and
3. Palestinian political prisoners from the Occupied Palestinian Territory (including West Bank, Gaza and East Jerusalem) and Palestinians political prisoners who hold Israeli citizenship.

There appears to be clear discrimination legally, politically, and procedurally when dealing with each of the three groupings of prisoners. Palestinian political prisoners from Israel do not enjoy the same rights as Jewish prisoners from Israel, including the right to use a telephone, home visits, early releases (known as “shleesh” release after serving two thirds of a sentence), and family visits without being separated by barriers.

One clear example of discrimination is the designation of the term of a life sentence. In the case of Jewish Israeli prisoner Yoram Skolnik who was convicted of killing a Palestinian, the ‘life’ sentence term he received was set at 15 years. The sentence was twice commuted by then-Israeli President Ezer Weizman and reduced to 11 years. Skolnik was released after serving 7 years of his sentence.

\textsuperscript{93} GCIV, Article 116.
By comparison, Palestinian ‘Ali Amoudi, who was convicted of killing Jewish Israelis, received a ‘life’ sentence term of life imprisonment. Wassfie Mansour and Mahmoud Othman Jabbarin, both Palestinian citizens of Israel, were given life sentences of 30 years for the same charge. Thus, it is clear that Palestinian political prisoners from the OPT, including residents of occupied East Jerusalem, are not subject to the same standards for national and security considerations.95

Another example of discrimination can be found in the application of administrative detention orders in Israel, as opposed to those in operation in the Occupied Territories. In Israel, under the *Israeli Emergency Powers Law (Detention) (1979)* a detainee must be brought before a judge within 48 hours and the detention order must be reviewed every three months. In the OPT, a detainee need not be brought before a judge for eight days and the requirement of judicial reviews every three months was abolished in April 2002. At present, administrative detention orders may be for up to six month periods, which are indefinitely renewable.

A further example of discrimination can be found in the fact that Israel affords settlers illegally resident in the OPT all the rights enshrined in international human rights law but does not concede that this covenant applies to Palestinians.96

**Detention Conditions**

Palestinians in Israeli administrative detention are now held under the jurisdiction of the Israeli Prison Service (IPS) and not the Israeli army, as was the case up to 2005. Administrative detainees in Israeli prisons are not separated from the rest of the prison population, without arrangements for food appropriate to their culture and/or religion and to allow them to practice their faiths. Prison personnel in most of the cases do not receive specific training on how to deal with administrative detainees and on international law regarding administrative detainees. Administrative detainees in Israel must endure severe restrictions on their right to education, rights to communicate with families and receive visits, and right to adequate medical treatment.

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

1. Ofer Prison (located inside Ofer Military Base, south of Ramallah)
2. Ketziot Prison (also known as Ansar or Negev Prison; located in the Negev Desert, five kilometers from the border with Egypt)
3. Megiddo Prison (located inside a military base on the main Jenin-Haifa road)

Of these three facilities, only Ofer is located in the OPT. However, it should be noted that while Ofer is located within occupied territory, it has been de facto treated as though it is within Israel. The gate to the facility is located behind the Wall and families must get permits through the ICRC to visit prisoners there – permits which state that the holder will be visiting a prison “inside Israel”.

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95 Palestinian prisoners from Jerusalem who hold permanent resident status and not Israeli citizenship are also treated with discrimination as part of a “preventive deterrence” policy. Israel refuses to release Jerusalemite prisoners in the context of agreements on prisoner releases between Israel and the Palestinian Authority.

96 See ICJ Wall Advisory Opinion, *supra* note 17, para. 112.
Addameer receives regular complaints from both adult and child detainees about the conditions in which they are being held in Israeli prisons. Detainees are held in overcrowded cells that are often poorly ventilated and do not provide for adequate shelter against extreme weather in the winter or summer. Hygiene facilities are dire. Toilets are located inside prison cells with sewage often coming through the drains. The IPS does not provide essential hygiene products, such as toothpaste; only prisoners whose canteen accounts have been closed receive essential personal hygiene products and cleaning products for their cells. Prisoners report that personal hygiene products were provided up until 2002 but from that year on were significantly limited. All prisoners reported that IPS provided only half a liter of floor cleaning liquid and that the rest of their personal products, including all products used for cleaning their cell, were bought at their own personal expense.\(^\text{97}\)

Most prisoners reported that the food provided by the IPS was insufficient in terms of quality and quantity. The prisoners buy most of their food from the canteen and re-cook the cooked food they get from IPS. However, the purchasing power of prisoners is radically divergent. In most cases, it is the prisoners’ responsibility to provide more than half of their necessary food, which is problematic as many prisoners come from low-income families. Sometimes, a prisoner’s canteen account is closed, as has occurred to dozens of Palestinian prisoners, especially those who have been identified with Hamas. Prisoners report that IPS food is inappropriate for the medical needs of those who require a special diet. This is a breach of international law.\(^\text{98}\)

**Women in Administrative Detention**

There are currently four women in administrative detention:

1. Hana Yahya Saber Al-Shalabi, 28
2. Muntaha Al Taweel, 45
3. Kifah Qatash, 37
4. Linan Abu Gholmeh, 30

(See case of former administrative detainee Raja’ Al-Ghoul in the appendix)

**Children in Administrative Detention**

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

In practice, Palestinian children may be charged and sentenced in military courts beginning at the age of 12. Between the ages of 12-14, children can be sentenced for offences for a period of up to six months. For example, a child of this age range who is charged with throwing stones can be sentenced to six months’ imprisonment. After the age of 16, Palestinian children are tried as adults. Military Order 1644, issued on 29 July 2009, established new juvenile military courts. However, few substantive changes regarding the legal procedures for Palestinian children arrested by Israel have resulted other than that children are sometimes tried separately from adults.


\(^{98}\) GCIV, Articles 81, 84 and 85.
Administrative detention has been used regularly against Palestinian children, in the same manner as it is used against Palestinian adults. Children as young as 16 have been given administrative detention orders and serve out their detention in the same facilities as adults. There is currently one child in administrative detention, Emad Al-Ashhab, 17. (See case of former administrative detainee Moatasem Muzher in the appendix)

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

Administrative Detention and Forced Deportation

As of the end of 2003, 21 administrative detainees were deported to the Gaza Strip from the West Bank. These deportations were called ‘assigned residence’ by Israel and were implemented through Israeli military regulations. This practice is in violation of the Fourth Geneva Convention. On 1 June 2008, female prisoner Noura Al-Hashlamon was informed by Israeli authorities that she would be released from administrative detention if she moved directly to Jordan for three years. Noura, who had been in Israeli detention since her arrest on 17 September 2006, rejected the offer and her administrative detention order was renewed for an additional three months. She was finally released on 31 August 2008 after 714 days in Israeli custody without charge or trial. (See also case of Saleh Suleiman in the appendix)

99 Information taken from sworn affidavits given to Addameer in 2000.
100 GCIV, Article 84; CRC, Articles 3 and 37.
101 GCIV, Article 49.
Summary

1. Administrative detention is a procedure whereby a person is detained without charge or trial.

2. Administrative detention is permitted under international law but with strict conditions. It should only be used as a last resort and on an individual, case by case basis. Only imperative reasons of security justify the use of administrative detention and it should not be used as a substitute for criminal prosecution when there is insufficient evidence.

3. The Israeli practice of administrative detention does not meet international standards set by international law for the following reasons:
   (i). There is evidence that Israel widely practices the use of torture and corporal punishment;
   (ii). Israel deports and incarcerates administrative detainees outside the Occupied Palestinian Territory;
   (iii). There is evidence that Israel uses administrative detention as a form of collective punishment;
   (iv). There is evidence that Israel widely engages in humiliating and degrading treatment of administrative detainees;
   (v). Administrative detainees are usually not informed precisely of the reasons for their detention;
   (vi). The process of making and reviewing administrative detention orders falls far short of what would be considered a fair trial;
   (vii). Israel is obliged to release administrative detainees as soon as the reason for the detention ceases to exist;
   (viii). Administrative detainees are not given the right to communicate with their families up to international law standards;
   (ix). Administrative detainees are often denied regular family visits in accordance with international law standards;
   (x). Israel regularly fails to separate administrative detainees from the regular prison population;
   (xi). The conditions of detention regularly fall below an adequate standard required by international law; and,
   (xii). In the case of child detainees, Israel regularly fails to take into account the best interests of the child as required under international law.

4. Israel has historically ratified international agreements regarding human rights protection, whilst at the same time refusing to apply the agreements within the Occupied Palestinian Territory, attempting to create legal justifications for its illegal actions.

   However, there is general acceptance that the following international humanitarian law instruments apply to the OPT:
   - The Fourth Geneva Convention of 1949
• Article 75 of Additional Protocol I to the Fourth Geneva Convention
• The Hague Regulations

There is general acceptance that the following international human rights law instruments apply to the Occupied Territories:

• The International Covenant on Civil and Political Rights
• The International Covenant on Economic, Social and Cultural Rights
• The International Convention on the Rights of the Child
• UN Convention Against Torture
Addameer Prisoner Support and Human Rights Association contends that the practice of administrative detention in Israel and the occupied Palestinian territory contravenes fundamental human rights. Israel uses administrative detention in a highly arbitrary manner without having even basic safeguards in place, which leads to other, grave human rights violations, such as inhuman and degrading treatment and torture.\textsuperscript{102}

Addameer accordingly demands that all administrative detainees held on account of their political views or their activities carried out in resistance to the occupation be released promptly and unconditionally. Fair trial standards must be respected for all political detainees, including those accused of committing acts that are considered as crimes according to international law.

Addameer further demands that the occupying power adheres to international law and that restrictions on the use of administrative detention are imposed. Addameer insists that the judicial review of administrative detention orders must meet the minimum international standards for due process. The authorities must provide detainees with prompt and detailed information as to the reason for their detention, and with a meaningful opportunity to the defend themselves.

Experience in other countries has invariably demonstrated the practical futility of violating normal legal safeguards by adopting a policy of detention/internment without trial. The introduction of internment by the Northern Ireland authorities following the outbreak of civil disturbances there in the early 1970s led only to increased violence and disaffection by large segments of the population. The policy came to be regarded as both morally and politically unacceptable and was abandoned after a few short years. Likewise, in the United States, the policy of indefinitely detaining suspected combatants in Guantanamo Bay, Cuba, has now come to be recognized as not only legally indefensible but also ineffective in America’s so-called “war against terror”. Addameer accordingly calls upon the government of Israel to learn from these and other examples and to end its unjust practice of administrative detention without further delay.

\textsuperscript{102} In November 2001, the UN Committee Against Torture condemned Israel’s continued practice of administrative detention conducted in violation of the Convention Against Torture as well as the continued prevalence of prolonged periods of incommunicado detention.
Administrative Detention Statistics

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
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<td>870</td>
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<td>-</td>
<td>-</td>
<td>-</td>
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<td>-</td>
<td>-</td>
<td>-</td>
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<td>-</td>
<td>708</td>
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<td>212</td>
<td>214</td>
<td>207</td>
<td>-</td>
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</tbody>
</table>

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

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Month</th>
<th>Number Of Administrative Detainees</th>
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<tbody>
<tr>
<td>1998</td>
<td>December</td>
<td>250</td>
</tr>
<tr>
<td>1998</td>
<td>April</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td></td>
<td>100 administrative detainees were released during February and March</td>
</tr>
<tr>
<td>1999</td>
<td>January</td>
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<td>1999</td>
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<td>September</td>
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</tr>
<tr>
<td>2000</td>
<td>December</td>
<td>16</td>
</tr>
</tbody>
</table>

*Statistics are based on documentation done by Addameer

- According to the Israeli military courts, in 2002 approximately 3,475 administrative detention orders were issued. Of these, 2,578 comprised of newly issued administrative detention orders and 897 comprised of those administrative detention orders that were renewed. On 31 December 2002 there were 1,075 administrative detainees in Israeli prisons.103

- As of December 2003 there were 700 administrative detainees. 1,398 comprised of new administrative detention orders that were issued and 2,641 comprised of those administrative detention orders that were renewed.104

- As of the end of 2006, approximately 2,934 administrative detention orders were issued. Of these 1,299 comprised of newly issued administrative detention orders. 1,635 comprised of those administrative detention orders that were renewed.

104 Ibid., p. 1.
## Type of administrative detention order by year from 1997-2002*

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<td>271</td>
<td>124</td>
<td>17</td>
<td>56</td>
<td>2578</td>
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<td>Administrative detention orders that were renewed</td>
<td>250</td>
<td>112</td>
<td>15</td>
<td>9</td>
<td>5</td>
<td>896</td>
</tr>
<tr>
<td>Administrative detention orders that were shortened or cancelled</td>
<td>106</td>
<td>81</td>
<td>29</td>
<td>4</td>
<td>7</td>
<td>243</td>
</tr>
</tbody>
</table>

*Statistics are from the 2002 Annual Report of the Central Military Prosecutors Office.
Case Study: Moatasem Raed Younis Muzher

MOATASEM RAED YOUNIS NAZZAL MUZHER

Date of birth: 23 October 1993  
Place of residence: Qalandiya Refugee Camp  
Occupation: Student  
Date of arrest: 20 March 2010  
Place of detention: Ofer Prison

Number of administrative detention orders: Three  
First administrative detention order: 27 March 2010  
Second administrative detention order: 26 June 2010  
Third administrative detention order: 26 September 2010  
Date of Release: 26 December 2010  
Duration of detention without charge or trial: 282

ARREST

Moatasem was arrested at approximately 3 a.m. on 20 March 2010 when Israeli soldiers broke down the front door and stormed his family’s home in Qalandiya Refugee Camp. Awoken to find heavily armed soldiers in his room, Moatasem was immediately restrained with his hands tied behind his back. Led out of the home wearing only pajamas, Moatasem requested to put on warm clothes, but the soldiers only allowed him to put on sandals. He was then led, blindfolded and still restrained, down the road outside his house to the main road where the soldiers’ military vehicles were parked. The soldiers removed Moatasem’s blindfold and asked his name. After confirming his identity with a photograph, the soldiers put the blindfold back on Moatasem and led him into one of their vehicles. During his transfer, a soldier ordered Moatasem to place his head on his knees and slapped him every time he tried to sit up. Moatasem recalls that this caused him ‘extreme pain.’ At no time during this process was Moatasem told why he was being arrested, or where he was being taken.

Moatasem was then taken to an undisclosed location and made to fill out a medical form before being left tied up outside near two shipping containers. He remained there, cold and shivering for many hours, hearing only threatening sounds of dogs and soldiers. Towards the morning, a soldier brought him a blanket.

At around 2 p.m., Moatasem was taken in another military vehicle to Ofer Military Base near Ramallah. After his arrival at Ofer, he was strip-searched and forced to sit naked on the ground until he was given a brown prison uniform. Moatasem was then taken to a cell holding both adults and children.

INTERROGATION
On 22 March 2010, Moatasem was taken to Binyamin police station for interrogation. Arriving at the police station at 8:30 a.m., he waited for more than five hours with his hands and feet shackled. At 2 p.m., he was taken into an interrogation room for questioning. He remained shackled at the hands and feet the whole time. Moatasem recalled to DCI-Palestine that: “I sat in the chair in the interrogation room while my hands and feet were still shackled. Then, the interrogator started asking me about the plot without explaining what the plot was. ‘I don’t know what you’re talking about,’ I said to him and he asked me about the riot, bullets and weapons without giving any further explanation. I denied knowledge because I really didn’t know what he was talking about and I really had nothing to do with those things. Then, he asked me about the internet and a guy named Mohammad from Gaza I chat with. I told him I didn’t know Mohammad that well. I met him in some chat room and we talk about school and tests and so on. ‘Liar,’ the interrogator said to me and kept focusing on asking me about this guy.”

According to Moatasem, the Israeli interrogator then threatened to send him to Moskobiyyeh, a detention center in Jerusalem notorious for its torture and ill-treatment during interrogations of Palestinian prisoners. The interrogator then gave him a handwritten paper to sign, but Moatasem refused because he could not read the writing.

Moatasem was then sent back to the prison at Ofer Military Base where he was detained for the duration of his administrative detention.

ADMINISTRATIVE DETENTION

On 27 March 2010, Moatasem received an administrative detention order for six months. Military court judge Tzvi Hiilbron confirmed the order at the judicial review on 15 April 2010, citing undisclosed allegations in the secret information that Moatasem was involved in the planning of an unnamed activity, but reduced it to a period of three months. Judge Hiilbron found that, although the secret information indicated that Moatasem constituted “a threat to the security of the area”, the detainee’s young age must be taken into account. Moatasem’s administrative detention order was renewed twice on 26 June and 26 September 2010, each time for a period of three months, and he was finally released on 26 December 2010.

PERSONAL INFORMATION

Although Moatasem’s family applied for a permit to visit him at Ofer, the family never received a reply to their application and were not able to visit him during his detention.

Palestinian children are being routinely detained in prison facilities outside occupied territory, in contravention of Article 76 of the Fourth Geneva Convention (1949) and IPS regulations. This contravention, in practice, means that family visits for detained children made significantly more difficult, and in some cases, are denied altogether.

Case Study: Raja’ Nazmi Qasim Al-Ghoul

Date of birth: 1 January 1970  
Place of residence: Jenin refugee camp  
Date of arrest: 31 March 2009  
Place of detention: Hasharon prison

Number of administrative detention orders: four  
First administrative detention order: 10 May 2010  
Second administrative detention order: 20 October 2009  
Third administrative detention order: 31 March 2010  
Fourth administrative detention order: 30 July 2010  
Date of Release: 9 September 2010  
Duration of detention without charge or trial: 527

ARREST AND ADMINISTRATIVE DETENTION

Raja’ Nazmi Qasim Al-Ghoul was arrested from her family home during the early morning of 31 March 2009. At 2:00 a.m., around 30 Israeli soldiers surrounded Raja’s building and searched the house with police dogs. During the search, they broke cupboards, pulled out the flooring and then took Raja’ to a room where they interrogated her. The soldiers then searched the house’s backyard with the help of the dogs and took her husband to their other home in Jenin refugee camp. When he arrived, Raja’s husband found their home completely surrounded by the Israeli soldiers who had already carried out a search of the house and destroyed a number of the Al Ghoul’s personal belongings. The soldiers then took the husband back to the first house where Raja’ was still being held. The soldiers confiscated the family’s personal computer as well as eight other computers from Raja’s brother-in-law who owns an internet café located near the couple’s home. During this time, Raja’ was also strip-searched. Finally, after a two-hour long search through the couple’s home, the Israeli soldiers arrested Raja’. She was transferred to Salem detention centre blindfolded and shackled.

Raja’ arrived at Salem detention centre at 5:00 a.m., but was left out in the cold until 8:00 a.m. when a judge passed by, shouted at the soldiers in whose custody she was held, and asked them to transfer her to prison. At that point, she was transported to Hasharon where she remained for five days. She was then transferred to Jalameh detention centre where an interrogation began. She was put in a small cell; an emotionally difficult position to be in, especially given her heart problems and issues related to irregular blood pressure. There was one main interrogator throughout her questioning, but four or five others would accompany him at different stages. At no point did anyone read her rights to her. During the interrogation, Raja’ was subjected to degrading insults and curses. In addition, specific issues were raised regarding her husband to intentionally provoke her. She was on a hunger strike for this entire period, protesting her arrest and treatment; she was further weakened by sleep deprivation, as the guards would knock at her cell door late every night. At no point was Raja’ visited by either a lawyer or the International Committee of the Red Cross.

In total, she spent 40 days under interrogation after which an administrative detention order was issued against her for a period of six months starting from the moment of her arrest and lasting until 20 October 2009. Military judge Amit Fries confirmed the order at the judicial review, but shortened the administrative detention period from six to three months, taking
into consideration Raja’s poor health condition. This decision was overruled following the
military prosecution’s successful appeal to the Military Court of Appeals. Raja’s
administrative detention order was expected to end on 20 October 2009, but instead the order
was renewed for an additional six month period, ending on 29 March 2010.

On 31 March 2010, Raja’s administrative detention order was renewed again for another six
months for a second time, set to expire on 30 September 2010. The order was reduced at the
judicial review to five months, and again at the Administrative Detainees Appeals Court to
two months. On 30 July 2010, however, her detention was extended once again but only for
one month. Raja’ was finally released on 9 September 2010.

**PREVIOUS ARRESTS**

This is Raja’s third arrest since 1989, when she was sentenced to four months in prison and
charged with a 16,000 NIS fine. This was followed by another arrest in 2006 when she was
sentenced to nine months in prison for her work in Meshkat Prisoner Support Association, a
Palestinian organization that provides legal counsel to Palestinian prisoners, after it was
declared illegal by the Israeli authorities.

**DETENTION CONDITIONS**

Raja’ shared a cell with five other detainees, one of whom gave birth to a child, who still
accompanies her, in degrading and humiliating conditions within the prison. The room was
no more than two meters by three meters, had uneven roofing, and contained only three bunk
beds. Raja’, alongside other female detainees at Hasharon, suffered from harsh detention
conditions. Overcrowding, poor hygiene, too few hours in fresh air, stress, and emotional and
physical pressure all led to a further exacerbation of her poor health. She was due for a heart
EKG and is in need of regular heart checkups but neither were possible given the realities of
detention in Israeli prisons. After two months of detention, she was given a blood test, and
was told that the results indicated that she should drink more water. Raja’ also suffers from
anemia. Though she is given medication for this condition, she does not have any information
as to its nature and source. In addition, in her early days of detention, Raja’ suffered from a
fainting episode and lost feeling in her tongue. Her experiences in detention have thus been a
certain and definable detriment to her health.

**BACKGROUND INFORMATION**

Raja’ has no children, so her family life revolves around her husband. Having not received
permission, he was unable to visit her throughout her detention period. The Red Cross
questioned the matter but did not receive a clear response as to why he was not allowed to
visit her. Prior to her detention, Raja’ worked with an organization that deals with family
issues. She also planned the founding of a nursery as she greatly enjoys working with
children and hopes one day to work as a child mentor and continue her studies by specializing
in child psychology. Previously, Raja’ studied Social Services at Jerusalem Open University
and worked for seven years, between 1993 and 2000, as a child caregiver in a private
organization.

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106 For more information on Fatima’s case and general information on the conditions of detention for Palestinian
female detainees visit www.aseerat.ps.
Case Study: Saleh Mohammad Suleiman Al-‘Arouri

Date of birth: 19 August 1966
Date of arrest: 22 June 2007
Date of release: 17 March 2010
Previous place of residence: ‘Aroura, West Bank
Place of exile: Damascus, Syria
Residency status: Refugee

Since 1990, when he was just 24 years old, Saleh Mohammad Suleiman Al-‘Arouri has spent a total of almost eighteen years in Israeli detention. These detention periods have been imposed through a combination of 20 administrative detention orders and two prison sentences, measures that each time were taken in relation to his alleged affiliation with Hamas, which along with all other Palestinian political parties including Fatah are illegal under Israeli law.107

DETENTION TIMELINE

1990  Six months in administrative detention
1992  Six months in administrative detention, which began 15 consecutive years in detention
1992 – 1997 Immediately after the expiration of his administrative detention order, issued with a five-year prison sentence
1997  Issued with a six-month administrative detention order shortly before his scheduled release, having served out his prison sentence
1997  Administrative detention order renewed twice (each time for six months)
1998  Two months into his third consecutive administrative detention period, he was tried and sentenced to five years imprisonment
2003  Due to be released following the completion of his sentence, but again immediately detained under a six-month administrative detention order
2003 – 2007 Administrative detention orders renewed (each time for six months) until his eventual release on 11 March 2007
2007  Re-arrested on 22 June 2007 and detained under an administrative detention order
2007 – 2010 Administrative detention under seven administrative detention orders
March 2010 Released from detention on 17 March 2010 after 33 consecutive months in administrative detention

Total number of administrative orders since first arrest: 20

ADMINISTRATIVE DETENTION SINCE JUNE 2007

Number of orders: Seven

107 Hamas was declared an unlawful association by Israel on 15 September 1989.
Expiry date of last administrative detention order: 17 March 2010
Release date: 17 March 2010, made conditional on his leaving Palestine for three years

On 22 June 2007, Israeli soldiers surrounded Saleh’s family home in the village of ‘Aroura, near the West Bank city of Ramallah. They stormed Saleh’s brother’s apartment, and instructed the brother to bring Saleh out and to tell the rest of the family to leave the house immediately. Once in the street, Saleh was arrested, blindfolded and shackled. He was placed in a military jeep and taken to Ofer Detention Center near Ramallah for interrogation.

First administrative detention order

Saleh was interrogated for two days following his arrest, after which a six-month administrative detention order was issued against him.

At the judicial review of the order, the Israeli military prosecution alleged that its “secret information” suggested that Saleh is a leading figure in the Hamas movement and is involved in the movement’s organizational activities and activities “supporting terrorism”. The court was told that the secret information was collected immediately before Saleh’s arrest.

In response, Saleh’s attorney submitted that it is highly doubtful that any compelling evidence could have been obtained in the three months between Saleh’s release from detention in March 2007 and his subsequent arrest and administrative detention in June 2007. In the three months before he was re-arrested, Saleh finally had the opportunity to marry his fiancée of 13 years and to spend time with family and friends in his village of ‘Aroura. In any event, whatever ‘evidence’ the prosecution claimed to have collected was not required to be disclosed to Saleh or his legal counsel since administrative detention orders are made on the basis of ‘secret information’, making the claim of new information particularly dubious.108

Military judge Adrian Agassi nevertheless confirmed the order. An appeal lodged by Saleh’s defense counsel against the decision at the Administrative Detainees Appeals Court in Ofer was denied.

By this point, Saleh’s alleged affiliation with Hamas had already been used as a pretext to detain him for 15 consecutive years under a combination of 15 administrative detention orders and two prison sentences.

Second administrative detention order

The administrative detention order against Saleh was renewed in December 2007 for an additional six months. At the judicial review for the renewed order on 25 December 2007 at the Court of Administrative Detainees in Ofer, military prosecutors reiterated their allegations as to Saleh’s prominence in the Hamas movement. Prosecutors further submitted that their initial suspicions were borne out by new secret information. None of this alleged information was ever disclosed to Saleh or his defense counsel.

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108 Administrative detention is a procedure that allows the Israeli military to hold detainees indefinitely on secret information without charging them or allowing them to stand trial. In the occupied Palestinian West Bank, the Israeli army is authorized to issue administrative detention orders against Palestinian civilians on the basis of Military Order 1591. This order empowers military commanders to detain an individual for up to six month renewable periods if they have “reasonable grounds to presume that the security of the area or public security require the detention.” On or just before the expiry date, the detention order is frequently renewed. This process can be continued indefinitely.
In his testimony before military judge Rafael Yamini, Saleh confirmed that he had been in contact with various Palestinian political leaders, though not in the context prosecutors may have alleged in the secret file. In the four months following his release Saleh had finally been able to marry his long-term fiancée, Hana, to whom he had been engaged for the previous 13 years. As a resident of a small town in which he has a wide social circle, Saleh received visits from many friends and acquaintances – some of whom may have been affiliated to Hamas – who came to congratulate him in the usual Palestinian manner on his marriage and to spend time with him for the first time in fifteen years. However, Saleh repeatedly denied any involvement in political or military activities during the three months in question.

Following this testimony and his examination of the secret information presented by the prosecution, military judge Rafael Yamini stated that he was not convinced that Saleh posed a “security threat” to “the area”. However, Judge Yamini did not dismiss the order in accordance with this finding, despite the fact that it meant that the criteria for holding Saleh under administrative detention were not met. Instead – and, in Addameer’s view, unlawfully – the judge upheld the order but reduced the detention period to four months, stating that a shortened period was sufficient to “review the case” despite the fact that administrative detention may not be used as a substitute for pressing charges or formal interrogation, or to give the military prosecution further opportunity to find ‘secret information’ to justify an allegation that the person in question is a “security threat”.

**Administrative detention orders three through seven**

Despite Judge Yamini’s finding that Saleh posed no security threat and therefore did not fall within the ambit of who may be subjected to detention under Israel’s administrative detention regime, Saleh’s detention without charge or trial continued.

Saleh’s detention order was subsequently renewed a further three times, on each occasion for a four month period.

Then, on 19 February 2009, Saleh’s administrative detention order was renewed for an additional period of six months, set to expire on 18 August 2009. The review of this order, Saleh’s sixth, was again heard before Judge Yamini. On the basis of the same secret information presented to him in December 2007 which had previously led him to the finding that Saleh was not a security threat, as no new material or even claims of ‘developments in the case’ had been presented to the court in the interim period, Judge Yamini was this time “convinced” that Saleh posed a “threat to the security of the area”.

The judge upheld the detention order, but shortened Saleh’s order to four months, reasoning that Saleh had already spent 14 months in administrative detention.
Saleh’s attorney appealed the decision from the judicial review to the Israeli High Court. The appeal, heard on 11 August 2009, was rejected on the grounds that Saleh was a “known leader” in the Hamas movement.

On 17 December 2009, Saleh received his seventh administrative detention order, this time for a period of three months. At the judicial review on 31 December 2009, military judge Tzvi Hiilbron confirmed the order for the entire three-month period, holding, despite the ongoing lack of publicly disclosed evidence, that Saleh was still active in the Hamas movement and had continued to be active during his fifteen year detention.

Saleh testified at the review that he acted as his prison section’s representative in Ketziot Prison, a position which Israeli prison administrations recognize and with whom they routinely engage. In this capacity, Saleh was responsible for lodging complaints with the prison administration on behalf of other detainees regarding any ill-treatment and for coordinating official communication between the prison administration and the section. Saleh also acknowledged being vocal in the Palestinian national reconciliation movement following the Palestinian National Authority’s collapse in Gaza and West Bank factional *de facto* governance.

Saleh consistently maintained that he was not involved in any activities that might threaten the security of the state or that constituted an offense under the military court system.

**RELEASE AND EXILE**

On 17 March 2010, Saleh’s seventh consecutive administrative detention order expired, and he was released on the condition that he leave Palestine for a period of three years. On 30 March 2010, Saleh arrived in Syria after having his refugee application rejected by Jordan. His wife, who is now pregnant, joined him two weeks later. Saleh and Hana now live in Damascus as refugees. Saleh’s mother remains in ‘Aroura.

Under the Syrian constitution, all Arabs have the right to enter Syria without a visa, live in the country indefinitely, send their children to Syrian schools and use the public health system, although the right to work is less liberal. Addameer fears that, in a foreign country and unable to visit his family, Saleh’s adjustment to his release from prison will be made more difficult and his prospects for employment sufficient to provide for his young family may be poor.

Addameer has observed that, on numerous occasions, individuals expelled from Palestine in this way have been refused re-entry even after the expulsion period has ended. For this reason, Addameer remains very concerned about Saleh’s case and fears he will be barred from returning home at the end of his expulsion period.

Furthermore, Addameer submits that such “consensual exile” is in fact *arbitrary exile*, in violation of Article 9 of the Universal Declaration on Human Rights. Furthermore, according to the Human Rights Committee’s authoritative interpretation of Article 12(4) of the International Covenant on Civil and Political Rights (ICCPR), which provides that “no one
shall be arbitrarily deprived of the right to enter his own country”, the right to enter one’s country implies the right to remain in one’s country.109

Addameer also notes that Palestinian administrative detainees are increasingly vulnerable to acceding to ‘voluntary deportation’. Israeli military prosecutors are known to propose ultimatums to long-term administrative detainees, stating that their administrative detention will be indefinite unless they agree to leave Palestine.

PREVIOUS ARRESTS

Saleh was arrested on two occasions prior to his arrest in June 2007.

During the First Intifada (1987-1993), the incarceration rate in the occupied Palestinian territory was the highest in the world. In these six years, the Israeli authorities issued tens of thousands of administrative detention orders against Palestinians.

It was in this context that, in 1990, Saleh was arrested and spent six months in administrative detention. In 1992, as Israel’s aggressive arrest and detention policies continued, Saleh was again arrested and placed in administrative detention for six months. After two months, he was transferred to Moskobiyyeh Interrogation Center (also known as the Russian Compound) in Jerusalem, an Israeli facility that is notorious for its use of unlawful interrogation techniques against Palestinian prisoners. Saleh remained under interrogation in Moskobiyyeh for six months.

This interrogation period led to Saleh being charged, tried and convicted to five years’ imprisonment for “his leadership role in the Hamas movement”.

Just prior to his scheduled release in 1997, Saleh was issued with a six month administrative detention order. The order was renewed twice, each time for six months.110

Two months after his administrative detention order was renewed for the second time, Saleh was charged with “conducting unlawful activities” from inside prison and making “illegal contact” with individuals outside the prison. He was convicted and sentenced to five years in prison.

As had happened previously in 1997, instead of being released in 2003 at the end of his sentence, another administrative detention order was issued against Saleh, to begin, as before, from the day of his scheduled release. This administrative detention order was subsequently renewed eight times, until he was finally released on 11 March 2007.

Three months after Saleh’s release, during the night of 22 June 2007, Saleh was arrested again and held in administrative detention, where he remained without charge or trial for the next 999 days until his eventual release on 17 March 2010.

109 The Human Rights Committee is the UN body of independent experts that monitors implementation of the ICCPR by its State parties. Human Rights Committee, General Comment No. 27: Article 12: Freedom of Movement, CCPR/C/21/Rev.1/Add.9, 2 November 1999, para 19.
110 Six months is the maximum period permitted under Israeli military law for a single order, but military law does not prevent indefinite renewal of administrative detention orders.
DETENTION CONDITIONS

Furthermore, Addameer submits that Saleh was frequently exposed to punitive measures and psychological pressure by Israeli security and prison authorities during his many years in Israeli detention.

Because the IPS deemed that, as an imam, he had “too much influence” on other detainees, Saleh was frequently transferred between prisons during his years in detention, a method of punishment frequently employed to disorient prisoners and to isolate them from the community they developed while in detention. Twice during his period of administrative detention which ended in 2007, Saleh was told he was going to be released only to be re-arrested and issued with a new administrative detention order just as he was leaving the facility.

In addition, for the last three years of his detention leading up to his release in 2007, Saleh was held in isolation where he was prohibited from seeing or interacting with any other detainees. International law provides that prolonged periods of isolation may amount to torture or ill-treatment. Given that the general nature of Saleh’s administrative detention was punishment for his political membership, and in light of the other punitive measures to which he was subjected, Addameer contends that it is furthermore probable that the decision to institute isolation was the result of “arbitrary or vindictive behavior” by prison authorities. Taken together with the length of time Saleh spent in isolation, Addameer submits that Saleh’s isolation could amount to a breach of Article 7 of the ICCPR in that it constitutes “cruel, inhuman or degrading treatment or punishment”.

LEGAL ANALYSIS

Addameer further submits that the many years that Saleh spent in various forms of Israeli detention as punishment for his alleged political affiliations – detention that was without charge or trial, or that followed military court legal procedures that fail to meet international standards – was in deliberate violation of a number of Saleh’s fundamental human rights, including his rights to freedom of expression and association and to due process and fair trial standards.

Nowhere in Saleh’s case history is the arbitrary nature of his prolonged detention more apparent than in the record of justifications military authorities used to detain Saleh under 20 administrative detention orders that totaled more than nine years in detention without charge or trial. Addameer contends that the vagueness of the generic allegation of being “a threat to the security of the area” that was used to justify his administrative detention orders, coupled with the use of secret information inaccessible to the defense and therefore unchallengeable, are symptoms of a system where no burden of proof whatsoever need be met by the prosecution. Such practices can only be interpreted as judicial “rubber stamping” of measures which are unlawful under international law.

International law permits administrative detention during armed conflict, but such detention is only permitted under very specific and narrowly defined circumstances: there must be a

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112 Report of the Human Rights Committee, General Comment No. 07: Torture or cruel, inhuman or degrading treatment or punishment (Art. 7), 30/05/82, Sixteenth session (1982), para. 2.
public emergency that threatens the life of the nation, and detention can only be ordered on an individual, case-by-case basis without discrimination of any kind. However, as Saleh’s case exhibits, administrative detention as used by Israel in the occupied Palestinian territory is ordered by a military commander and is used impermissibly as an alternative to prosecution or as a punitive measure, and is typically grounded on “security reasons” that, in practice, are broad enough to include virtually any act of political and civil activism or resistance against the ongoing belligerent Israeli occupation of Palestinian territory.

Addameer contends that Saleh’s case is a striking illustration of the political agenda that lies behind the Israeli administrative detention system: in Saleh’s case it appears to have been used as individual punishment for his alleged affiliation to a Palestinian political party which continues to vocally resist Israel’s violent occupation of Palestinian territory. Moreover, Addameer denounces the Israeli criminalization of mere membership in or affiliation with a political party, as it violates fundamental international tenets protecting such activities under the freedoms to belief and association, and as it allows Israeli military authorities to detain individuals without proving – or even alleging – any actual individual culpability for activities that could be deemed as legitimate offenses. In the context of administrative detention, the separation of political affiliation from individual culpability for specific actions means that alleging political affiliation automatically presumes that an individual is a “security threat”.

Thus, Addameer submits that Saleh’s conditional release, which required that he leave Palestine for three years, can only be seen as a continuation of the unlawful practice of silencing unwanted political beliefs and associations in an attempt to eliminate him from Palestinian political life altogether. The Israeli military judicial system has made Saleh’s life a mere symbol to discourage Palestinian civil and political activism – to demonstrate what political involvement in Palestinian organizations that do not accede to Israel’s demands will lead to. Addameer therefore strongly condemns Saleh’s protracted periods of politically-motivated punitive detention and his conditional release-based exile as gross abuses of power and severe violations of international law.

113 See International Covenant on Civil and Political Rights, article 9.
114 Recall that in Saleh’s case, Israeli military court judge Rafael Yamini upheld an order administrative detention order against Saleh in December 2007 despite explicitly stating that the secret information on which the order was ostensibly ‘justified’ did not establish that Saleh posed any threat to “security”.


Case Study: Loai Sati Mohammad Ashqar

**Date of birth:** 14 December 1976  
**Place of residence:** Saida, Tulkarem  
**Occupation:** Aluminum light-structures designer and maker  
**Date of arrest:** 9 April 2008  
**Place of detention:** Megiddo Prison

**Number of administrative detention orders:** Four  
**Date of first administrative detention order:** 15 February 2009  
**Date of second administrative detention order:** 13 August 2009  
**Date of third administrative detention order:** 14 February 2010  
**Date of fourth administrative detention order:** 14 April 2010  
**Date of Release:** 29 August 2010  
**Duration of detention without charge or trial:** 615

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**ARREST AND TRIAL**

A few minutes after midnight on 9 April 2008, a large number of Israeli military jeeps surrounded Loai’s family home in the village of Saida near the West Bank city of Tulkarem. After they conducted a search of the house, Loai was blindfolded, shackled and arrested by Israeli Occupying Forces (IOF) soldiers. Loai was then transferred to Salem Detention Center by military jeep and immediately subjected to four consecutive interrogation sessions. At the end of his investigation period, Loai was detained pending trial.

A few months later, Loai was charged with offences relating to allegations of membership of the Palestinian Islamic Jihad Party, a political party Israel declared illegal on 6 June 1989, “helping an illegal organization”, and helping “wanted” individuals. He was sentenced to an 11-month prison term which he served in Megiddo Prison.

**ADMINISTRATIVE DETENTION**

**First administrative detention order**

On 20 January 2009, a military commander issued a six month administrative detention order against Loai set to begin on 15 February 2009, on the basis that he posed a threat to the “security of the area” by virtue of his alleged active membership of the Palestinian Islamic Jihad movement. Loai was only informed of this administrative detention order on 15 February 2009 – the day of his scheduled release, after he had packed his personal belongings and reached the prison gates to leave. Loai was re-arrested at the prison gates and again placed in detention.

In the judicial review of Loai’s administrative detention order, the military prosecutor submitted that, despite having served his sentence, Loai poses an ongoing threat to the security of the area. According to the prosecution, the “secret information” on which prosecutors based this claim related to Loai’s alleged activities well prior to his arrest in 2008. However, Loai’s defense counsel was not permitted access to the secret information, and the prosecution refused to answer the defense’s inquiries as to why Loai was only arrested in April 2008 if the content of the secret material comprised information relating to
‘security risk’ events in 2007. Furthermore, prosecutors failed to address why Loai was not tried for these activities in his 2008 trial. The prosecution also refused to address the defense’s contention that the timing of Loai’s arrest and administrative detention order – which coincided with a scheduled court hearing concerning a compensation claim Loai filed relating to his torture during Israeli interrogation in 2005 – suggested that the order was not about “security” at all. In his complaint for this claim, Loai related how the torture he endured at the hands of an Israeli Security Agency (ISA) officer during interrogation in 2005 resulted in the permanent paralysis of his left leg. Loai’s complaint also seeks compensation for his family for the death of his brother, who was killed by Nahshon and Metzada Unit officers during a raid of Ketziot Prison on 22 October 2007.

In his decision at the review, the military judge did not address the convenient timing of Loai’s arrest and the issue of Loai’s complaint seeking compensation, and stated only that the secret information indicated that Loai is a member of Islamic Jihad and that he took part in military activities. However, the judge did not specify whether these military actions took place before his arrest in 2008. This omission is legally problematic as it is unlawful under both Israeli and international law for administrative detention to be used as a substitute for prosecution.115 Given the similarity in the charges for which Loai was sentenced in 2008 and the justifications for his administrative detention, Loai’s case raises questions as to whether the administrative detention order against him was in actuality further or substitute punishment for activities for which he was or could have been tried in 2008.

Further, the judge determined that although Loai’s debilitating leg injury prevents him from conducting military activities, it does not prevent him from working with a political organization or “supporting terrorism”. The judge therefore confirmed Loai’s administrative detention order for the entire length of the period requested by the military commander.

Second administrative detention order

Immediately upon the expiration of the first administrative detention order, a second six-month order was issued against Loai, set to expire on 13 February 2010. At the judicial review of Loai’s second administrative detention order, the prosecution informed the court that it had new secret information implicating Loai, in the form of two statements of other detainees, but that this alleged material was insufficient for an indictment. Defense counsel was again denied access to the secret information.

The military judge agreed that Loai should not be charged. Instead the judge confirmed that the secret information points to Loai’s involvement in the Islamic Jihad movement and that there is “real danger” to the security of the area because of his activities. The judge shortened the administrative detention order to four months on the basis that Loai had already detained for a lengthy period, but did not impose any restrictions on future renewals of the order.

Third and fourth administrative detention order

At the expiration of the second administrative detention period, the military commander issued, and the judicial review military judge upheld, the imposition of a third order for two months. Again, Loai’s defense counsel was not permitted to examine the secret information

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115 On 20 April 2000, the Israeli High Court of Justice issued a judgment on state-sponsored hostage-taking in which it ruled that administrative detention is impermissible where the person does not pose a future danger to State security, and must not be used as punishment for offenses committed in the past: Further Hearing [F.H.] 7048/97 Anon. v. Minister of Defence, 54(1) P.D. 72 (20 Apr. 2000) (Heb.).
‘justifying’ his continued detention. The third order was due to expire on 14 April 2010 but on the same day, a fourth administrative detention order was issued against Loai, this time for a period of four months. Loai was finally released on 29 August 2010.

Addameer submits that Loai’s denial of his right to confront the ‘evidence’ against him, all-too typical of administrative detention hearings, rendered the task of mounting a legal defense impossible. Moreover, Addameer contends that Loai’s case is a prime example of Israel’s use of administrative detention as an arbitrary rather than preventive measure, and as punishment for past alleged offenses in the absence of sufficient evidence to lay charges. The timing of his arrest casts serious doubts over the lawfulness of the administrative detention since it suggests that the prolongation of his detention was intended to frustrate his legal action against the ISA rather than a measure to address a ‘security threat’.

PREVIOUS ARRESTS
Like many Palestinian youth, Loai was arrested several times when he was still in high school. Each time he spent one to two months in prison. Arrests of youth and children are particularly widespread and indiscriminate as part of the IOF’s highly aggressive military campaigns to quell popular Palestinian protest.

On 12 March 2003, at the age of 26, Loai was sentenced to a year in prison; he was arrested again on 22 April 2005, at the age of 28, and received a 24 month prison term. During that sentence, Loai was held in Ketziot together with his brother, Mohammad.

On 22 October 2007, at approximately 1:30 a.m., sections C1, C2, and C3 of Keztiot Prison were raided by the Nahshon and Metzada Units, special intervention units known for their use of violent tactics against Palestinian prisoners. The Units opened fire at the prisoners with rubber-coated steel bullets and plastic high-speed projectiles that result in welts to the skin. Those prisoners who were dragged by officers outside the sections were shackled and beaten with clubs. Then the officers used sound bombs, setting some of the tents on fire. Approximately 250 prisoners were injured during the raid. Loai’s brother Mohammad sustained a head injury during the raid and died as a result of delays in the provision of medical treatment. Mohammad was due to be released just 50 days after the incident took place.

TORTURE
At 3:00 a.m. on 22 April 2005, Israeli forces surrounded Loai’s family home. Loai related that the family was woken by the sound of gunfire and stun grenades as Israeli soldiers entered the home by force. The soldiers arrested Loai, who was then blindfolded, handcuffed and shoved face-down on the floor of a military jeep and taken to Kishon Interrogation Center.

At Kishon, Loai was brought before eight interrogators, who tried to coerce him into confessing. Loai’s rights were not explained to him. One of the interrogators threatened Loai by telling him:

This time, you either tell us what we want, or get out of prison with permanent disability and you will wish to die.
Loai was also subjected to severe physical torture under interrogation in Kishon, including the prolonged use of the ‘banana’ position, in which detainees are tied while bent backwards over the seat of a chair. In this painful stress position, Loai was forced to bend his back to the point that his head touched the ground while tied to a chair with his hands shackled. During one extended interrogation session, he remained in this position for three consecutive days. He was also deprived of food, and interrogators threatened both him and his family with violence.

As a result of this torture, three vertebrae in his spine were broken. Israeli authorities subsequently failed to provide Loai with adequate medical treatment for this injury, and, as a result, this led to complete paralysis of his left leg.

In 2007, B’Tselem conducted a video interview (available at http://vids.myspace.com/index.cfm?fuseaction=vids.individual&videoid=16440613) with Loai where he discusses at length the torture Israeli interrogators used against him during this period.

Health status

Although Loai suffers from complete paralysis of his left leg as a result of the torture he endured at the hands of prison interrogators in 2005, the ISA denied him permission to travel abroad for medical treatment. He only learned of this refusal to travel through the District Coordinating Office in Tulkarem after he had submitted all the necessary preparatory documents. Instead, Loai underwent surgery for the reconstruction of his bones while in prison, but the surgery was only partially successful. While in prison, Loai did not receive adequate ongoing medical treatment. Loai filed a lawsuit against the Israeli State through Attorney Bishara Jabali, claiming that adequate medical care would have significantly mitigated his injuries.

A doctor recommended that Loai should use a wheelchair but since the prison did not have one and refused to buy one, Loai was forced to use crutches. Loai also suffered from severe stress-related hair loss due to his paralysis and general health condition.

DETENTION CONDITIONS

Loai was held in section nine of Megiddo Prison, where he shared a cell with seven other administrative detainees. The room was located on the second floor, causing him difficulty in moving from his cell to the recreation area and showers. There were five bunk beds in the cell. The cell also contained a small bathroom measuring 1 by 1.2 meters, comprising a sink and a squat toilet. Loai found it extremely difficult to use the toilet as his disability prevents him from bending his legs and balancing in the squat position. He was constantly at risk of falling and injuring himself. The showers were located outside the cells; detainees are only permitted to use them during recreation time which lasts only two hours per day. There are only five showers for 120 to 200 detainees. As all detainees in the different sections have their recreation time at the same time, there is not enough hot water for everyone.

Most Palestinian administrative detainees in Israel are held in either Ketzriot or Ofer. Incarceration in Megiddo is an added hardship for administrative detainees due to the remoteness of the prison from the Court of Administrative Detainees in Ofer where reviews of administrative detention orders are conducted. Loai’s requests for transfer to another prison were consistently rejected. As a consequence of the distance from Megiddo to Ofer,
and the fact that hearings begin in the morning, when Loai was required to attend a judicial review hearing he had to stay overnight in the “Transit” section at Ramla detention facility. The amenities in the Transit section are very basic. Detainees are not permitted to eat their own food; instead they are provided with meals of very poor quality. Rather than beds, prisoners sleep on filthy mattresses, they may not bring any reading material or other personal belongings (including medications), they have no access to radio or television, and do not have recreation time.

While in Megiddo, Loai often filed complaints to the prison administration on behalf of other detainees relating to their ill-treatment. Loai believes that his frequent transfers between sections of the prison were punishment for these advocacy activities. On one occasion a security officer in Megiddo Prison beat him and threatened that he would kill him one day if he did not stop making such complaints. The threats also extended to Loai’s family: the Israeli Area Commander in Saida, Loai’s home village, told Loai’s brother that he (Loai’s brother) will soon be “crying over his children’s lives”.

Loai also complained to Addameer that his canteen account was frozen as a punitive measure. Loai submitted a petition to the Israeli Prison Service (IPS), but the petition to reinstate his canteen account was refused. As a result of having no access to the canteen and the severe restrictions on family visits, Loai did not have enough clothes.

**FAMILY**

When Loai was arrested in 2008, his wife was two months pregnant with their first son, Areen. Having been classified a “security threat”, Loai’s wife was only given a special permit to exit the occupied Palestinian territory and visit Loai at Megiddo Prison once every six months. Loai thus saw his son for the first time in May 2009, but was barred from physical contact with him despite the IPS typically allowing a child under six years old to go to the detainee’s side of the visiting area for the final fifteen minutes of the visit. After the IPS categorically forbade him from holding his son, even though Loai tried to explain that it was the first time he had met Areen, Loai kissed the glass divider to get as close to his son as possible. On 3 April 2010, Loai’s wife and son visited him at Megiddo Prison. This visit was his wife’s third visit since Loai’s arrest on 9 April 2008, and marked only the second time that Loai had ever seen his child. It was also the first time that Loai was able to hug and touch his son.

Loai’s parents, his four brothers and five sisters were denied regular visiting permits on “security grounds”. They were able to visit Loai only once every six months on a special permit. The lack of regular family visits only increased Loai’s sense of isolation.
Case Study: Basim Ahmad Moussa Za’rir

Date of birth: 27 July 1962  
Place of residence: As-Samu’ village, Hebron  
Occupation: Elected Member of the Palestinian Legislative Council, Independent candidate  
Date of arrest: 1 January 2009  
Place of detention: Ketziot Prison

Number of administrative detention order renewals: Three  
Number of arrests since 1993: Five  
Number of convictions since 1993: Zero  
Date of Release: 30 December 2010  
Duration of detention without charge or trial: 727 days

ADMINISTRATIVE DETENTION

PLC Member Basim Za’rir was arrested on 1 January 2009, when Israeli soldiers arrived at his home just after 2:00am. Despite the early morning hour, the soldiers forced all the members of the house outside and started beating his eldest son Ahmad after asking him to open the door, show his ID and raise his hands. After beating Ahmad all over his body with their hands and rifles, the Israeli soldiers searched the house. While the search was occurring, additional soldiers ordered all the men above the age of 16 living in the house nearby Mr. Za’rir’s to come outside as well. Among those ordered outside were Mr. Za’rir’s brother and his brother’s children. The soldiers then began to interrogate everyone outside, and asked questions about Mr. Za’rir’s brothers who live abroad.

Mr. Za’rir was then arrested by the soldiers and was taken to Etzion detention centre where he remained for a week before being transferred to Ofer. He was then placed under an administrative detention order and kept in detention for approximately two months before being transferred again to Ketziot prison in the Negev where he still remains. The administrative detention order against Mr. Za’rir was for a six month period, lasting from his arrest on 1 January 2009 until 2 July 2009. His attorney filed an appeal on Mr. Za’rir’s behalf, challenging this order less than a month after the judicial review took place, but the appeal was denied.

On 2 July, instead of being released, Mr. Za’rir was informed that his administrative detention order would be extended for another six months. The judge at the judicial review for the second order confirmed the additional six month period, setting the current order’s expiration date for 1 January 2010. Mr. Za’rir’s order was subsequently renewed twice and he was finally released on 30 December 2010.

BACKGROUND

Prior to his current administrative detention, Mr. Za’rir had been arrested four times and never sentenced once. In 1993, he was arrested and detained for one month of interrogation before being released without charge. Four years later, in 1997, two months of interrogation again proved nothing, and he was subsequently released without charge for a second time. In 2005, Mr. Za’rir was arrested and detained for one month, yet again without charge.
However, in 2006, Mr. Za’rir was elected to the Legislative Council, and was arrested six months later on charges of belonging to the Change and Reform Bloc. After spending two years in detention awaiting trial on these charges, Mr. Za’rir was tried before the military courts, and was acquitted of all charges and finally released on 23 June 2008. A mere six months later, he was arrested once more and placed under administrative detention without charge or trial.

Mr. Za’rir’s case is a prime example of Israel’s arbitrary use of administrative detention as a substitute for prosecution in cases of unavailable or insufficient evidence.

PERSONAL INFORMATION

Mr. Za’rir was elected to the Palestinian Legislative Council on 25 January 2006 as an independent candidate. Prior to his election to the Council, he was Head of the Municipality of as-Samu’ village. He also served previously as a Secretary to the Commission of the Zakat Fund and contributed to many projects, including the establishment of the Avicenna medical centre in As-Samu’ at a time when there was only one clinic in the whole village. Mr. Za’rir also established a centre for Quran studies and a kindergarten that both operated under his supervision.

He did not resign his post as Deputy in the Legislative Council, but, following his imprisonment, his work has been considerably disrupted. Mr. Za’rir graduated with a Bachelor’s in Business Administration from Birzeit University in 1985.

DETENTION CONDITIONS

Located in the heart of the Negev desert near the southern Israeli-Egyptian border, Ketziot prison is one of the largest prisons in Israel, accommodating around 1,778 prisoners, including a large percentage of the 190 Palestinian administrative detainees currently held in Israeli prisons. Mr. Za’rir suffered from a lack of adequate clothing; the clothes he needed were not provided by the Israeli prison authorities, nor were they allowed to be brought in by his family. Mr. Zarir’s family attempted to mail clothes to him and to bring clothes in person, but most of the clothes were sent back or confiscated from the family during their visits.

Mr. Za’rir is the father of 13 children. However, he could only be visited once a month – as opposed to the bi-monthly visits allowed by the Israeli Prison Service regulations – by his first wife, three of their youngest boys and one daughter. All of his sons above the age of 16 were denied permits. The same regular denials were issued to Mr. Za’rir’s second wife. Her permit application was rejected based on “security grounds” and, as a result, she was not able to visit him at all. She believes that the denial of permits were a collective punishment of the family as two of her brothers are former detainees, one of whom was exiled to Marj Al-Zuhur in southern Lebanon in December 1992, together with more than 400 other Palestinian social and political activists.

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116 As of end of August 2010