

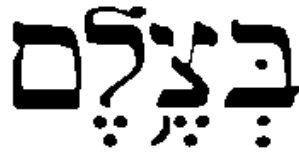
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B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

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# Prisoners of Peace: Administrative Detention During the Oslo Process

June 1997



**B'TSELEM**

**The Israeli Information Center  
for Human Rights in the Occupied Territories**

## **Contents**

### **Introduction**

### **Part One: The Legal Background**

Chapter One: Domestic Law

Chapter Two: International Law

A. Human Rights Law

B. Humanitarian Law

Conclusions

### **Part Two: Israel's Use of Administrative Detention in the Occupied Territories**

Chapter Three: Imperative Reasons of Security

A. The Possibility of Less Severe Measures

B. Prevention or Punishment?

C. Broad Definition of "Security of the Area"

D. Political Expression and Activity as a Danger to Security

1. Restricting Free Speech and Opinion

2. Curtailing Political Opposition Groups

Conclusions

Chapter Four: Individual, Separate Basis

Chapter Five: Due Process of Law

A. Procedural Irregularities

B. Interrogation

C. Appealing Administrative Detention

1. Time Frame

2. The Reliance on Classified Information

3. Outcome of Appeals

4. Appealing to the High Court of Justice

D. The Possibility of Extending Detention

Conclusions

The Current Situation: Appeals Boycott

## Chapter Six: Proper Conditions of Detention

### A. Transfer of Detainees Outside of Occupied Territory

#### 1. Access to Attorneys

#### 2. Family visits

### B. Physical Conditions

### C. The Possibility to Work or Study

### D. Safety of Detainees

### Conclusions

## Chapter Seven: Effect of Administrative Detentions on Detainees and their Families

## **Conclusions and Recommendations**

## **Appendices**

### Appendix A – Statistical Data

### Appendix B – Response of the IDF Spokesperson

## Introduction

Administrative detention is detention without charge or trial, authorized by administrative order rather than by judicial decree. On 13 September 1993, the day the Declaration of Principles was signed between Israel and the Palestine Liberation Organization, Israel held 277 Palestinians in administrative detention. This number fluctuated over the following three and a half years. Two hundred and forty-nine Palestinian men are currently being held in administrative detention. Since the signing of the Agreements, an estimated 800 Palestinians have been detained administratively for periods ranging from two months to four years. In addition, nine Israeli citizens who live in the West Bank have been placed under administrative detention for periods up to six months.

In the application of administrative detention in the Occupied Territories, the authorities only inform the detainee of the allegations against him or her in the most general of terms. Although a detainee may appeal the detention, this proceeding does not constitute a fair trial. 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. In protest of the deficiencies of the judicial review of administrative detention, all Palestinian detainees have maintained a boycott of the appeals process for over six months, and administrative detention has been conducted with no judicial scrutiny whatsoever.

The length of detentions has increased dramatically during the Oslo Period. An increasing number of detainees are given multiple consecutive detentions, with over forty percent detained for over one year. Of these, eleven detainees have been held in administrative detention for over three years. There is no indication that the authorities intend to release any of these long-term detainees.

The report examines Israel's policy of administrative detention during the Oslo process, i.e. since September 13, 1993, and follows a previous B'Tselem report on this subject.<sup>1</sup> This policy will be examined in view of general principles of international law governing detention in general and administrative detention in particular. While Israel claims to be adhering to such principles, the report shows that, rhetorical declarations by officials and judges notwithstanding, Israel severely violates every one of these principles in practice.

The Oslo Process generated an expectation of an improvement in this matter which has not been realized. While Israel released large numbers of convicted Palestinian prisoners in the framework of the Oslo Accords, it continues to employ administrative detention on a large scale. Furthermore, in certain important respects, Israel's use of administrative detention during the Oslo period constitutes a more serious human rights violation than the situation during the intifada. This is due both to the targeting of political opponents of the Oslo Process and the extensive use of detention extensions.

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<sup>1</sup> B'Tselem, *Detained Without Trial: Administrative Detention in the Occupied Territories since the Beginning of the Intifada*, October 1992.

## Part One: the Legal Background

### Chapter One: Domestic Law

In the West Bank, administrative detentions are currently carried out on the basis of Military Order Number 1229, of 1988.<sup>2</sup> This Order empowers military commanders in the West Bank 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 the detention.”<sup>3</sup> 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.”<sup>4</sup> The Order 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.

The Order does not provide for mandatory judicial review of administrative detention. Instead, the detainee may appeal a detention or extension of detention order before a single military judge empowered to uphold the detention, shorten the period of detention or cancel the detention.<sup>5</sup>

Order 1229, issued at the beginning of the intifada, was intended as a temporary replacement of the previous order for administrative detention, “given the special circumstances in the area today.”<sup>6</sup> The earlier Order provided for much broader judicial involvement in administrative detention, including mandatory judicial review before a military judge within ninety-six hours of administrative detention. Furthermore, only the Commander of IDF Forces (either in the West Bank or the Gaza Strip) could issue a detention order, whereas under the current order, all military commanders may do so.

Between February 1995 and September 1996, Major General Ilan Biran, Commander of IDF forces in the West Bank, extended from six months to one year the maximum period for which an administrative detention order could be issued.<sup>7</sup> Where a detention order was issued for a period longer than six months, the military commander was required to reevaluate the decision after six months. If upon

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<sup>2</sup> Administrative Detention Order (Temporary Provision) (Judea and Samaria) (No. 1229), 1988; in Gaza, Administrative Detention Order (Temporary Provision) (Gaza Strip) (No. 941), 1988. However, few if any administrative detention orders of Gaza residents were issued after IDF redeployment from Gaza in May 1994. Throughout the text, Administrative Detention Order (capitalized) will refer to the 1988 West Bank Order, which regulates administrative detention. No capitals will be used to refer to a detention order issued against an individual.

<sup>3</sup> Section 1A.

<sup>4</sup> Section 1B.

<sup>5</sup> Section 4. A military court judge is an IDF officer of the rank of captain or higher with legal training.

<sup>6</sup> Paragraph 1 of Administrative Detention Order. The previous order was the Security Provisions Order (Judea and Samaria) (Number 378) Section 1E - Administrative Detention (Amendment - 1980).

<sup>7</sup> Administrative Detention Order (Temporary Provision) (Amendments 8, 11 and 12) (Judea and Samaria) (Orders 1424, 1439 and 1444), 1995 and 1996. In Gaza, a similar order was issued by Shaul Mofaz, Commander of IDF forces in the Gaza Strip - Administrative Detention Order (Temporary Provision) (Amendment 6) (Gaza Strip) (Order 1115), 1995.

reevaluation the commander decided not to cancel the detention order, the detainee was to be brought, within twenty-one days of this decision, before a military judge who was empowered to uphold, shorten or cancel the detention.

### **Statistics**

Since the signing of the Declaration of Principles, an estimated 800 Palestinians have been detained administratively for periods ranging from two months to four years.<sup>8</sup> Of these, at least two women and nine minors were administratively detained.

Nine Israeli citizens who live in Israeli settlements in the West Bank were detained administratively for periods ranging from three to six months. No Israeli citizen is currently in administrative detention under the West Bank order.<sup>9</sup>

Of those Palestinians currently in administrative detention, all are from the West Bank (including Palestinians from East Jerusalem). Forty percent have been detained for over one year. By the time the current extensions expire, at least eleven will have spent over three consecutive years in administrative detention.

Internal Israeli law also provides for administrative detention and it is this law which is used to detain individuals inside Israel and from southern Lebanon.<sup>10</sup> The Israeli Emergency Powers Law (Detentions), 1979 allows the Minister of Defense to order detention for six-month periods, which can be extended indefinitely. Several safeguards which exist in the Israeli law are absent from the system of administrative detention in the Occupied Territories. The law requires mandatory judicial review within forty-eight hours and periodic review at least every three months by the President of a District Court.<sup>11</sup>

The Emergency Powers (Detentions) Law only applies once a state of emergency has been proclaimed by the Knesset.<sup>12</sup> Such a state of emergency has been in force since the founding of the State of Israel.

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<sup>8</sup> This number is calculated from a compilation of two sources: a list compiled by al-Haq of all Palestinian administrative detainees between 1993-1995; and data on the number of administrative detainees at any given time provided by the IDF spokesperson's office.

<sup>9</sup> According to LAW: the Palestinian Society for the Defense of Human Rights and the Environment, one Palestinian citizen of Israel, Kamal Samara from Lod, is serving a six month administrative detention order.

<sup>10</sup> Israel currently holds nineteen administrative detainees from Lebanon. The majority were detained between 1986-1987. Of the nineteen, eleven served prison terms ranging from one to eight years. Following completion of their sentences, they have been issued administrative detention orders every three months. These Lebanese detainees have now been held in administrative detention for three to ten years. High Court petition of MK 'Azmi Bashara (HCJ 983/97, *Bashara v. Minister for Public Security*); and *Ha'aretz* 18.3.97.

<sup>11</sup> For historical background on the legislative development and use of administrative detention inside Israel and in the Occupied Territories, see B'Tselem, *Detained Without Trial*, October 1992.

<sup>12</sup> Such a declaration can be made under Section 9 of the Law and Administration Ordinance (S.1) and, since 1996, under Section 49 of the new Basic Law: the Government, which entered into effect in June 1996 and stipulates that the Knesset may declare a state of emergency for a period up to one year (Article 49).

### **Lebanese: Years of Administrative Detention**

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## **Chapter Two: International Law**

The right to liberty and the freedom from arbitrary detention are fundamental human rights. The Universal Declaration of Human Rights declares that “everyone has the right to life, liberty and the security of person” (article 3) and that “no one shall be subjected to arbitrary arrest, detention or exile” (article 9). Several international treaties to which Israel is party also contain obligations regarding the right to liberty.

### **A. Human Rights Law**

Israel ratified the International Covenant on Civil and Political Rights (ICCPR) in 1991 and is therefore legally obligated to protect the rights contained therein, both inside its territory and in territory which it occupies.<sup>14</sup> Article 9 of this Covenant states the following:

(1) Everyone has the right to liberty and security of person . No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

(2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

...

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

The Human Rights Committee, the monitoring body of the Covenant, has confirmed that Article 9 allows resort to preventive detention, provided that it is not arbitrary, i.e. that it conforms to international minimum standards; it is based on grounds and procedures established by law; the detainee is informed at the time of arrest of the reasons for detention; and the legality of the detention is subject to judicial review.<sup>15</sup>

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<sup>13</sup> High Court petition of MK' Azmi Bashara (HCJ 983/97, Bashara v. Minister for Public Security); and Ha'aretz 18.3.97.

<sup>14</sup> See art. 2(1). Similarly, in considering the applicability of the European Convention on Human Rights to that part of Cyprus occupied by Turkey, the European Court of Human Rights ruled that “the High Contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their actual territory or abroad.” *Cyprus v. Turkey*, 18 Yearbook Eur. Conv. Human Rights 83 (1975). Only Article 25 of ICCPR, concerning political participation, confers rights solely to citizens.

<sup>15</sup> Human Rights Committee, General Comment 8, Article 9 (sixteenth session, 1982) HRI\GEN\1\Rev.1 at 8 (1994).

Article 4(1) of the Covenant allows states parties to “take measures derogating from [some of] their obligations,” including the right to liberty, “in time of public emergency which threatens the life of the nation.” However, this is allowed only,

...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.

Upon its ratification of the Covenant, Israel entered a declaration to the effect that since its establishment, it considers itself to have been in a situation which “constitutes a public emergency within the meaning of Article 4(1) of the Covenant.” The declaration goes on to state the following:

The Government of Israel has therefore found it necessary, in accordance with the said Article 4, to take measures to the extent strictly required by the exigencies of the situation... including the exercise of powers of arrest and detention.

Insofar as any of these measures are inconsistent with article 9 of the Covenant, Israel thereby derogates from its obligations under that provision.<sup>16</sup>

The right under Article 4 of the Covenant to derogate from certain obligations is not unlimited. Even in times of emergency, basic human rights must be protected to the fullest extent possible. Derogations are subject to the principles of necessity and proportionality, i.e., only measures which are essential may be taken, and even these may only be applied “to the extent strictly required by the exigencies of the situation.”

The European Court of Human Rights has an extensive case law on detention during states of emergency. The Court has stressed the need for early judicial review of detention orders. While ruling that a seven-day detention without judicial scrutiny falls within the state’s “margin of appreciation” during an emergency, it determined that detention for fourteen days without bringing the detainee before a judge is excessive, even during a state of emergency.<sup>17</sup>

Improperly applied (e.g. when used in lieu of proper trial or for prolonged periods), administrative detention may also violate Article 14 of ICCPR, which guarantees minimum standards of fair trial. These standards include:

- (2) The right to be presumed innocent until proved guilty...
- (3) (a) to be informed promptly and in detail in a language which [the detainee] understands of the nature and cause of the charge against him;
- (c) to be tried without undue delay;
- (d) to be tried in his presence and to defend himself...;

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<sup>16</sup> Statement of David Levy, Minister of Foreign Affairs (Sept. 4, 1991) in *Fifth Book of Protocol*, at No. 1750.

<sup>17</sup> Compare *Brannigan and McBride v. United Kingdom*, paragraphs 55 and 60; *Aksoy v. Turkey*, paragraph 78.



(e) To examine, or have examined, the witnesses against him...

## B. Humanitarian Law

Israel's use of administrative detention in the Occupied Territories is also subject to international humanitarian law, specifically the Fourth Geneva Convention, to which it is party.<sup>18</sup> Israel consistently maintains that its use of administrative detention constitutes a legitimate exercise of its legal rights under article 78 of the Fourth Geneva Convention.<sup>19</sup> This article stipulates the following:

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.

According to Dr. Jean Pictet's commentary of the Convention prepared for the International Committee of the Red Cross (ICRC),

article 78 speaks of imperative reasons of security; there can be no question of taking collective measures: each case must be decided separately.... In any case, such measures can only be ordered for real and imperative reasons of security; their exceptional character must be preserved.<sup>20</sup>

Pictet also clearly states that protected persons subjected to internment benefit from the provisions of article 49, which forbids "individual or mass forcible transfers, as well as deportations of protected persons from the occupied territory to the territory of the Occupying Power."<sup>21</sup> Therefore, protected persons must be interned or placed in assigned residence inside the occupied territory itself.<sup>22</sup>

While Article 78 does allow individual use of a preventive detention, the applicability of its provisions to the Occupied Territories is questionable. Article 6 of the Convention stipulates that Article 78 is among those articles the application of which "shall cease one year after the general close of military operations." According to Pictet, the intention is that after a year, the Occupying Power is only bound by the Convention insofar as it continues to exercise governmental functions:

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<sup>18</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949. For a discussion on the applicability of the Fourth Geneva Convention see B'Tselem, *Israeli Settlement in the Occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects*, March 1997.

<sup>19</sup> See for example, Israel's response to the UN Working Group on Arbitrary Detention regarding the case of Sha'wan Jabarin, E/CN.4/1995/31Add.2, decision No. 16/1994, paragraph 8; Colonel David Yahav, ed. *Israel, the "Intifada" and the Rule of Law*, (Tel Aviv: Israel Ministry of Defense Publications, 1993), p. 111; "Background Information on Administrative Detention" prepared by the Israel Foreign Ministry, March 1995.

<sup>20</sup> Dr. Jean S. Pictet, ed. *Commentary: The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: ICRC, 1958). pp. 367-8.

<sup>21</sup> *Ibid*, p.368.

<sup>22</sup> See chapter six for a discussion of holding detainees inside Israel.

as hostilities have ceased, stringent measures against the civilian population will no longer be justified.... The provisions which concern situations connected with military operations ... will no longer apply. The same applies to the clauses relating to internment...<sup>23</sup>

This article cannot, therefore, be a basis for Israel's administrative detentions today. The UN Working Group on Arbitrary Detention also holds this position.<sup>24</sup>

If Israel, nevertheless, continues to detain Palestinians administratively, detainees must also benefit from the following provisions of the Convention:

Article 80: Internees shall retain their full civil capacity and shall exercise such attendant rights as may be compatible with their status.

Article 81: The Detaining Power shall provide for the support of those dependent on the internees, if such dependents are without adequate means of support or are unable to earn a living.<sup>25</sup>

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<sup>23</sup> Pictet, p.63.

<sup>24</sup> UN Working Group on Arbitrary Detention regarding the case of Sha'wan Jabarin, E/CN.4/1995/31Add.2, decision No. 16/1994, paragraph 12.

<sup>25</sup> According to Pictet, this obligation is only assumed "in cases where the beneficiaries are in poor circumstances or unable to earn their living." p.379. Although Israel recognizes this to be one of the provisions to which it is obligated (Yahav 118), to the best of our knowledge, in no case has Israel provided support to the family of a detainee.

## Conclusions:

While international human rights and humanitarian law allow resort to administrative detention in times of emergency, they stipulate several limitations on the application of this measure. Administrative detention cannot be considered legal with strict observance of the following limitations:

1. **Necessary, imperative reasons of security:** administrative detention is to be used solely to prevent acts of violence or other clear dangers to security. It cannot be used as punishment. It may only be resorted to when other, less severe measures have been proved ineffective;
2. **Individual, singular basis only:** administrative detention must never be applied collectively;
3. **Due process of law:** basic rights of detainees, such as the right to counsel, to be brought promptly before a judge, to have access to the evidence, to contest the detention, and to be able to counter allegations against them must be observed;
4. **Prohibition of transfer:** residents of an occupied territory may only be detained administratively within that territory;
5. **Proper conditions of detention:** detainees must be provided with proper housing, clothing, and food and regular family visits; they must be allowed to continue their work and studies to the extent possible in detention.

Israel's use of administrative detention will be examined here in light of these principles. It should be noted that Israel does not deny that it is bound by these restrictions; rather it claims that it adheres to them.

## Part Two: Israel's Use of Administrative Detention in the Occupied Territories

### Chapter Three: Imperative Reasons of Security

Israel has claimed that it uses administrative detention only as a necessary security measure, "intended to enhance public order and safety by removing a person in question from a location in which he is expected or deemed likely to commit acts damaging thereto."<sup>26</sup> It has similarly stated that, administrative detention is only used when normal legal measures or less severe administrative measures have failed and there is therefore no other way to ensure security. In practice, however, the authorities apply administrative detention without exhausting less severe measures and in a manner which obscures the distinction between preventive and punitive sanctions. The authorities also administratively detain individuals who pose no security threat.

#### A. The Possibility of Less Severe Measures

Administrative detention is only to be employed when less severe measures have proved ineffective. In the words of IDF Colonel David Yahav of the Military Advocate General's Unit,

Administrative Detention... would be imposed if a Restriction or Supervision Order were thought not to be effective in preventing the danger or not enforceable in the prevailing circumstances.<sup>27</sup>

Practice in the Occupied Territories belies Israel's declared preference for less severe measures. Mahdi 'Anabatawi was deported to Lebanon in 1992 without ever having been previously detained. After returning from Lebanon, he was detained on 23 January 1995 and given a six-month administrative detention order for being "an Islamic Jihad activist who incites attacks against Jews."<sup>28</sup> Many administrative detainees have never been issued a restriction order prior to detention. In some cases, detainees are given a restriction order after being released from administrative detention. For example, Khaled Deleisheh was detained administratively for four and a half years, from March 1989 to September 1993. Upon his release, he was given a six-month administrative order which prohibited him from leaving his town, El-Bireh, and prohibited him from leaving his home after sundown. Upon the expiration of this restriction order, in April 1994, Mr. Deleisheh was again detained and has been in administrative detention ever since.

After redeployment from West Bank cities, the authorities have claimed that, concerning residents of those cities that have been turned over to the Palestinian National Authority (Area A), less severe measures are not available because the IDF no longer controls these areas.<sup>29</sup> However, the IDF rarely used restriction orders

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<sup>26</sup> Yahav, p.104.

<sup>27</sup> *Ibid*, p.106.

<sup>28</sup> Appeal of administrative detention of Mahdi 'Abd a-Rahim Salah 'Anabatawi, Military Court at Ketziot, 17.5.95.

<sup>29</sup> AAD of Wissam Rafidie before Military Judge at Atlit, 13.2.96.

throughout the intifada, when it had full control over all areas, and rarely uses them today with regard to Palestinians in Areas B and C, which are still under its control. The authorities claim that such restrictions are neither highly effective nor easily enforceable.<sup>30</sup> However, the IDF has refrained, to the best of our knowledge, from using measures which could conceivably be enforceable, such as issuing a prohibition on a Palestinian from leaving Area A and entering other areas of the West Bank.

On the other hand, the authorities have used administrative restrictions with greater frequency against Israeli citizens in the Occupied Territories.<sup>31</sup> For example, Kiryat Arba resident Abraham Shaier was first given a restriction order on 28 February, 1994 preventing his entering Hebron. On 14 March, his weapon was confiscated. On 4 April, he was issued a three-month administrative detention order against him.<sup>32</sup> Prior to his administrative detention, Rabbi Yitzhak Ginsberg, who lives inside Israel but teaches in a yeshiva in Nablus, received a restriction order barring him from entering the West Bank for six months. Similar administrative restrictions have been used against dozens of Israeli citizens in the West Bank who have not been administratively detained.<sup>33</sup>

## B. Prevention or Punishment?

The High Court of Justice has stated that administrative detention is solely a preventive measure, as Justice Y. Kahan wrote:

The purpose of administrative detention... is not to impose a punishment on a man for his actions, committed in the past, but to prevent the anticipated danger he poses in the future.<sup>34</sup>

However, an analysis of Israel's use of administrative detention clearly indicates the opposite: administrative detention is used as a quick and efficient alternative to criminal trial. For example, after Muhammad Hamdan had been interrogated for seven weeks with measures including torture, he was brought before a military court on 10 December 1996. The Court extended Hamdan's detention for another week, but determined that on 24 December, Hamdan must either be charged with an offense or released. On December 24, after sixty-two days of interrogation and despite the

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<sup>30</sup> Yahav, pp.106, 123-4.

<sup>31</sup> Israeli Jews who live in settlements are subject to the law in force there and are administratively detained on the basis of the Administrative Detention Order.

<sup>32</sup> HCJ 2612/94, *Abraham Shaier v. Commander of IDF Forces et al.*, Takdin Elyon, 94(2) 102, 106.

<sup>33</sup> *Ha'aretz*, 22 January 1995 and 8 December 1995. According to official data provided to *Ha'aretz* (published 8.11.96), on 27 December, 1995 OC Central Commander, Major General Uzi Dayan signed 23 restriction orders against Israelis prohibiting them from entering the West Bank or particularly sites. In November 1996, six such orders were in force. According to the *Jerusalem Post* (12.7.96), in July 1996, the IDF had issued 70 administrative orders restricting the movement of Israelis suspected of being right-wing extremists.

<sup>34</sup> AAD 1/82, *Hazem Mahmud Qawasmeh v. Minister of Defense*, P.D. 36(1) 666, 670. This statement was quoted in subsequent Court decisions, including AAD 2/86, *X v. Minister of Defense*, P.D. 41(2) 512.

Court's explicit decision on 10 December, Hamdan received an administrative detention order for four months.<sup>35</sup>

Government officials consistently justify administrative detention as a means to confine individuals who have committed crimes but cannot be tried because the security forces do not wish to disclose incriminating evidence:

Administrative detention is to be used only in those cases where information against an individual cannot be revealed in court and where the protection of witnesses and sensitive sources of information is the reason for not putting the individual on trial.<sup>36</sup>

The Courts have accepted the government's position that administrative detention is an appropriate alternative to criminal prosecution, particularly where it is impractical to disclose evidence, as Justice Kahan wrote in *Kahane*:

Administrative detention... cannot be justified if the authorities have evidence which could result in a criminal conviction and this evidence can be revealed to the detainee without damaging the security of the state or public security.<sup>37</sup>

As illustrated by the quotes above, Israel's use of administrative detention completely obscures the distinction between preventive and penal detention. The only lawful justification for administrative detention is those exceptional circumstances in which an individual is deemed to pose an immediate danger and no other measures have proven effective to avert it. Past actions of the detainee are therefore irrelevant, except insofar as they indicate the *future* danger the detainee may pose. By contrast, the criminal justice system is designed chiefly to punish individuals for past crimes.

The discussion of problems associated with the laws of evidence is therefore irrelevant to the lawful application of administrative detention, which is not a substitute for punishment for past acts. In discussing the case of Sha'wan Jabarin, the UN Working Group on Arbitrary Detention disallowed the use of administrative detention under such circumstances:

The Israeli Government has chosen to detain Mr. Jabarin only because it considers it inadvisable to bring him to trial for fear that the lives of material witnesses will, in the process of giving evidence, be endangered. Individual liberty cannot be sacrificed for the Government's inability either to collect evidence or to present it in an appropriate form.... The Government cannot be allowed to use the power of administrative detention to achieve the purposes

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<sup>35</sup> See B'Tselem, *Legitimizing Torture: The Israeli High Court of Justice Rulings in the Bilbeisi, Hamdan and Mubarak Cases - An Annotated Sourcebook*, January 1997. See also the case of Qattamesh at the end of this section, and Wissam Rafidie in the next section. For a discussion of interrogation, see chapter five, section B.

<sup>36</sup> "Background Information on Administrative Detention: Administrative Detention in Judea, Samaria and Gaza," Israel Foreign Ministry, March 1995.

<sup>37</sup> AAD 1/80, *Rabbi Meir Kahane v. Minister of Defense*, P.D. 35(2) 253, 260.

that it wishes to achieve, without a formal trial. In this fashion the exercise of the power of administrative detention is not preventive but punitive.<sup>38</sup>

Israel consistently justifies administrative detention as an alternative to a criminal trial. Such an application of administrative detention is completely illegal.

### **Ahmad Qattamesh - Forty-three months in administrative detention**

Ahmad Qattamesh, a 45-year old writer from al-Bireh is married and has a seven-year old daughter. He was arrested September 1992 and charged in the Hebron military court with assistance to an illegal organization, possession of illegal material, and falsification of an identity card. Because he had been held for a year before his trial began, the military judge ordered his release. The military court of appeals upheld this decision. Before he could be released however, in October 1993, the military commander issued a six-month administrative detention order. Both the military judge and the High Court of Justice upheld this decision. Supreme Court President A. Barak wrote the judgement:

Administrative detention is not a substitute for detention until the end of [judicial] proceedings. When a court decides to release a defendant until the end of proceedings against him, the military commander is not authorized - on the basis of the same information - to detain the defendant until the end of the proceedings ... However, there is no reason the defendant ... cannot be detained administratively, as long as the evidence supporting the administrative detention differs from the evidence supporting detention during trial. In a democratic system faithful to the rule of law, criminal trial is preferable to administrative detention. However, when there is *prima facie* evidence against a suspect, part of which can be revealed (and used in a criminal trial) and part of which is classified (and therefore cannot be used in a criminal trial), it is appropriate to prosecute on the basis of the non-classified information ... In this situation, if the suspect is acquitted of the criminal charge, there is nothing to prevent good faith use of the classified information for administrative detention proceedings... If this is the case regarding acquittal of criminal charges, how much more so is this applicable regarding administrative detention while the criminal trial has not yet concluded.<sup>39</sup>

Ahmad Qattamesh has remained in administrative detention ever since - and has now entered his fourth year in administrative detention. He is now serving his eighth consecutive detention order for six months.

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<sup>38</sup> E/CN.4/1995/31/Add.2. The Working Group has issued decisions in nine additional cases of Palestinians from the Occupied Territories administratively detained. In all cases, the Working Group determined that the detention was arbitrary due to a non-observance of international provisions relating to the right to a fair trial. E/CN.4/1997/4, E/CN.4/1997/4/Add.1 and E/CN.4/1994/27.

<sup>39</sup> HCJ 6843/93, *Ahmad Suleiman Musa Qattamesh v. IDF Commander in the West Bank*, Takdin Elyon 94(2) 2084, 2085. For additional details on this case, see B'Tselem, *Human Rights Violations in the Occupied Territories 1992/1993*.

Towards Palestinians, the authorities employ administrative detention when they do not want to reveal certain information. Against Israeli Jews, administrative detention is also occasionally used in places where punishment for past crimes might be more appropriate. B'Tselem has documented the authorities' excessive tolerance towards Israelis who commit acts of violence against Palestinians and their property.<sup>40</sup> In some cases, the police, the military, and the judicial system abstain from punishment or give lenient sentences to people whom the military later places in administrative detention.

Avraham Shaier, for example, has a history of violent acts against Palestinians and had previously been convicted of firing on a Palestinian car, for which he received a suspended sentence.<sup>41</sup> On 4 April 1994, the military commander issued a three-month administrative detention order. Eyal Noked was twice convicted of perpetrating acts of violence and property damage against Palestinians. Each time he was sentenced to pay a small fine, and in the second conviction, in March 1993, he received a suspended prison term.<sup>42</sup> On 2 March 1994, Noked was issued a three-month administrative detention order. These cases illustrate that the authorities, on the one hand, are excessively tolerant towards extremist individuals, while on the other hand they employ harsh, non-judicial measures against them.

Even placed against this background, and taking into account that in the case of Jewish settlers the authorities do often prefer less severe measures, such as house arrest (see the preceding section), B'Tselem believes that administrative detention is used arbitrarily and unjustifiably against settlers as well.

### C. Broad Definition of "Security of the Area"

The basis for administrative detention is "reasons of security of the area or public security." The order does not define "the area" nor "security" and attorneys have encountered difficulties in obtaining a definition of either. In the appeal of Jihad Awadeh, attorney Peleg-Sryck attempts to force the prosecutor to define "area," and the following discussion ensued:

Attorney Peleg-Sryck: What is the meaning of danger to the security of the area?

Prosecutor: The area is more than his village.

Advocate: Meaning all of the West Bank?

Prosecutor: I can't give exact detail.

Advocate: You mean all of Judea and Samaria?

Prosecutor: Not all of Judea and Samaria.<sup>43</sup>

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<sup>40</sup> B'Tselem, *Law Enforcement vis-a-vis Israeli Civilians in the Occupied Territories*, March 1994.

<sup>41</sup> HCJ 2612/94, *Abraham Shaier v. Commander of IDF Forces et al*, Takdin Elyon, 94(2) 102.

<sup>42</sup> *Law Enforcement vis a vis Israeli Civilians*, page 116-117. This report also includes testimony of an IDF reserve soldier from 14 March 1994 that Baruch Marzel assaulted a Palestinian toddler in the city of Hebron (page 145). This incident was not pursued and it is likely that he was never charged for it. Later that month, Marzel was issued a three-month administrative detention order.

<sup>43</sup> AAD of Jihad Awadeh, before Military Judge at Ketziot, 27.6.94.



No less problematic, an analysis of cases indicates an extremely broad definition of what constitutes a “danger to security.” Many detainees are accused of posing a danger to security even while in detention. In fact, such a contention is crucial in the case of extensions of administrative detention (see chapter five, section D). In the case of Khaled Deleisheh, for example, who has been in detention since March 1994, both the military court judge and the High Court of Justice accepted the contention that Deleisheh represents a danger to the area even while in detention. In an extremely brief decision, High Court Justice Barak wrote,

The petitioner is a senior activist in the PFLP [Popular Front for the Liberation of Palestine] in Judea and Samaria. His activities - both when he is free and in administrative detention - are not just political. The classified information reveals that, even during his detention, the appellant engages in hostile activities, in addition to political activities, which lead to, or are likely to lead to, violence and danger to the security of the place. Under these circumstances, we are satisfied that the appeal should be rejected.<sup>44</sup>

The vague wording “lead to or are likely to lead to” suggests that Deleisheh himself is not suspected of engaging in violence. Regarding Derar al-’Aza, who has been held in administrative detention since 31 May 1995, Military Court Judge Lieutenant Colonel Shlomo Yosefson stated, “even while in detention he continued his hostile activity as shown in the secret information, consequently it doesn’t matter where the appellant is - he will constitute a danger to public safety and the security of the area ...”<sup>45</sup> Judge Yosefson upheld the detention of al-Aza. However, his description of the appellant begs a basic question pertaining to all these cases: what justifies denying the liberty of persons through extra-judicial means if they continue to pose a danger whether they are detained or free?

#### **Wissam Rafidie - thirty four months in administrative detention**

For nine years, Wissam Rafidie, from al-Bireh, worked as editor, writer and printer of a clandestine publishing house for the PFLP, an illegal organization. He was arrested in August 1991 and convicted for this activity. He was never charged with conducting any violent acts. He was sentenced to 34 months imprisonment, a sentence he completed in June 1994. Two months after his release, he was administratively detained and has been held every since. He is now serving his sixth consecutive detention order. Thirty-seven year old Rafidie is single and suffers from asthma and arthritis.

The authorities have even claimed that administrative detention is necessary to prevent danger that a Palestinian may pose abroad. While serving his second consecutive term of administrative detention, ‘Imad Saba’ received a fellowship to study for an M.A. in economics in Holland. The term was to begin one month before the expiration of his administrative detention order. Sabi’ requested the military commander to release him from detention to enable him to accept this fellowship. He

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<sup>44</sup> HCJ 5978/95, *Khaled Delaisheh v. IDF Commander in the West Bank*, Takdin Elyon 95(3), 1231, 1231. It should be noted that Justice Barak refers to unproved allegations by security forces as if they were facts proven in a court of law.

<sup>45</sup> AAD of Derar al-’Aza, before Military Judge at Megiddo, 8.7.96.

offered to promise not to return to the territories during the eighteen months of his studies. His request was denied and he petitioned the High Court. Justice Heshin, writing the Court's decision, stated:

It has been explained to us ... why the danger which the appellant poses abroad is equal to the danger he poses in the area, and in certain respects, even a greater danger. We have weighed the matters and are satisfied that there is no place for us to interfere with the considerations of the military commander. The reasons for justifying the appellant's administrative detention are the very same reasons that fuel the respondents' refusal to release the appellant from his detention and allow him to leave for abroad, and we do not have any evidentiary basis to intervene in their discretion. We decide, therefore, to deny the petition.<sup>46</sup>

Since this decision, the military commander has extended Sabi's detention three additional times. His current detention order expires on 8 October 1997.

The authorities have claimed, and the High Court has accepted, that Palestinians can endanger the security of the area both while in detention and while residing abroad. Such contentions suggest that "security of the area" is defined very broadly and includes non-violent activities.

#### D. Political Expression and Activity as a Danger to Security

Israel has repeatedly emphasized that administrative detention is not employed on the basis of political opinion. As IDF Colonel Dov Shefi wrote, "no person is detained for his political views. The reason for detention must always be suspicion of active engagement in, or support of, hostile terrorist activities."<sup>47</sup> The High Court of Justice has often confirmed this principle:

Everyone agrees that the political opinions of a person, however much they may be contrary to the opinions of the government and the overwhelming majority of the public, cannot constitute a basis for denying his freedom.<sup>48</sup>

Israeli policy in the Occupied Territories, however, belies the Court's tolerance for political speech, opinion and activity. In upholding administrative detentions, several military judges have stated that "political subversion is equally dangerous - if not more dangerous - than regular terrorism."<sup>49</sup> The practice of administrative detention

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<sup>46</sup> HCJ 5920/96, *'Imad Sabi' v. IDF Commander in the West Bank and the GSS*, Takdin Elyon, 96(3), 687, 688.

<sup>47</sup> Colonel Dov Shefi, "The Protection of Human Rights in Areas Administered by Israel: UN Findings and Realities," 3 *Israel Yearbook of Human Rights*, 1973. p.350.

<sup>48</sup> AAD 2/94, *Baruch Ben Yosef v. Minister of Defense*, Takdin Elyon 94(1), 56, 58. See also AAD 4/94, *Michael Ben Horin v. State of Israel*, Takdin Elyon, P.D. 48(5) 329, 336: "As a free man in a state based on the principles of a democratic system, the appellant is free to express his opinions and manage his affairs provided there is no probability of danger to the security of the state and its essential affairs. The Appellant's freedom cannot be denied as a result of opinions he has voiced and purely ideological initiatives he has taken."

<sup>49</sup> This was stated in the Appeals of Administrative Detention of 'Abd al-Fatah Ahmad Kasem Dahab, 17.5.94; Mahmud Salah 'Abd a-Rahman Toshieh, 24.3.95; and Semah 'Abd Allah Halil Zejibi, 2.4.95

demonstrates that Israel defines non-violent speech, opinion and political activity as acts which endanger Israeli security.

### **1. Restricting Free Speech and Opinion**

Given the extensive reliance on classified information, discussed in chapter five, section C(2), it is impossible to definitively determine the basis for detention of any particular individual. Some cases strongly suggest, however, that detention is based on an individual's speech or opinion.

Jamal Salim Damuni, for example, received a five-month administrative detention order on 8 December 1994 for “being a senior Hamas activist in Samaria who incites against the peace agreement and against IDF forces in Judea and Samaria.” At the appeal, Judge Lotstein agreed with Damuni’s attorney, Tamar Peleg-Sryck, that the allegation of incitement against the peace agreement is a political consideration and therefore prohibited:

I agree that it was improper to add, when detailing the unclassified information, that the appellant incites against the peace agreement. “Incitement” is not a reason for administrative detention, and the prosecution’s representatives would be wise to refrain from stating this in the administrative detention order.<sup>50</sup>

In spite of his criticism, Judge Lotstein ruled that the order was justified and, rather than canceling it, deducted one month from Damuni’s order.

In the appeal of Rajeb Bader, the prosecution similarly presented political opinion as incitement, and again Judge Lotstein reprimanded the prosecution; “it would be better if the respondent and his representatives had not mentioned this opinion [statements against the peace agreement] in presenting the appellant’s statements which incite [to violence].” However, in this case, Judge Lotstein upheld the detention for the period for which it was issued stating that, “even if the aforementioned incitement was the only reason for administrative detention, I would uphold the decision in this case.”<sup>51</sup> In two similar cases, Jamal Ahmad and Said Mu’aten were detained for incitement both against the peace process and to violence.<sup>52</sup> In such accusations, the authorities equate political opinion with illegal actions.

Furthermore, support for the Oslo Process was initially a precondition for the release of all administrative detainees. After IDF redeployment from the Gaza Strip in May 1994, Gaza administrative detainees were released, either upon appeal or upon expiration of their current order. Just as was the case for convicted prisoners released in the framework of the Oslo Accords, many administrative detainees were required to support the Oslo Process in order to be released. For example, administrative

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all before a Military Judge at Ketziot. These decisions cite High Court rulings in AAD 1/87 (unpublished) and 1,2/88, *Raja Mahmud Agrabiye et al v. State of Israel*, P.D. 42(1), 840.

<sup>50</sup> AAD of Jamal Salim Damuni, before Military Judge at Ketziot, 1.3.95.

<sup>51</sup> AAD of Rajeb Bader, before Military Judge at Ketziot, 6.2.95.

<sup>52</sup> Jamal Ahmad was detained for “being a senior Hamas activist in Samaria who incites against the peace process and the security forces.” AAD of Jamal Ahmad, before Military Judge at Ketziot, 1.3.95. At his appeal, it was stated that the basis of Said Mu’aten's administrative detention was that he “gives inciteful speeches in mosques and on the streets against the peace process and for war against the Zionist enemy.” AAD of Said Mu’aten, before Military Judge at Ketziot, 27.6.94.

detainee Walid al-Ghoul, a Gaza resident, claimed that he was required to sign the following statement as a condition to release:

I undertake to refrain from all violent and terrorist activity. I understand that my signature on this document is a condition for my release from prison.

In addition I know that my release will take place as part of the peace process negotiations, which I support, between Israel and the PLO to implement the Declaration of Principles signed on 13.9.93.<sup>53</sup>

Al-Ghoul agreed to sign the first paragraph. However he was not willing to sign the second, both because he opposed the Oslo Process and because as a detainee who had never been convicted of any crime, his release should not be contingent on a diplomatic process. In his decision, Judge Lieutenant Colonel Shlomo Izakson ruled that it was legitimate to ask detainees to promise to abstain from violence. However, Judge Izakson stated:

The second paragraph of this same document, which additional detainees were made to sign, lacks all logic, since it is impossible to coerce a person to commit himself to support an idea politically, no matter how lofty the idea. Not only is the act illogical, but it is clearly anti-democratic.<sup>54</sup>

The judge hinted that conditioning Al-Ghoul's release on his signing the document could constitute grounds for canceling the detention order. The military prosecutor denied that Al-Ghoul's release was conditional on his signing the document. The judge noted in his decision that the prosecutor and al-Ghoul's attorney, Tamar Peleg-Sryck, conducted lengthy negotiations throughout the hearing to draft a document which the detainee would agree to sign. However, the judge would not definitively rule on whether al-Ghoul's release was conditioned on signing such a document, stating that making such a determination was outside his jurisdiction. He therefore upheld the detention order, but deducted five weeks from the detention period. Unlike Gaza detainees, there have been no releases of West Bank administrative detainees in the context of the Oslo Accord prisoner releases, and therefore no releases conditioned on signing such a statement.

## **2. Curtailing Political Opposition Groups**

On 31 January 1996, immediately following the Palestinian elections, 50-year-old Badran Jabber was given a six-month administrative detention order "for being a PFLP activist in his town and in the Hebron area whose activities threaten the security of the area." At his appeal, he testified as follows:

I have never been a member of the PFLP. ... I am a public figure, a teacher, head of the West Bank Teachers Union in the private sector and a member of the High Committee for the Palestinian Center Against Violence Between the Two Peoples. I prefer understanding and dialogue between the two sides. I am also a member of the Enlightenment Club in Hebron which gives lectures on peace between the peoples. I was a member of more than one organization

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<sup>53</sup> Cited in the AAD of Walid Al- Ghoul, before Military Judge at Ketziot, 24.5.94.

<sup>54</sup> AAD of Walid Al- Ghoul before Military Judge at Ketziot, 24.5.94.

against violence and for human rights. During the elections to the Palestinian Council, I was active; I had my political opinion regarding improving the electoral basis and how to ensure democracy.... I wanted to change the elections, I wanted to give women equality and to research the distortions stemming from the constituency-based election system.... I lectured in many villages on these topics. ... I didn't conduct any illegal activity. I have only conducted political activity; according to the agreement political activity is allowed. I think I was detained because of political activity and not for any other activity....<sup>55</sup>

Judge Zicherman, in his decision, denied that Jabber had been detained for his political activity. However, he deducted one month from the detention period, and Jabber was released on 1 Juli 1996. On 28 April 1997 he was re-detained and issued a six months administrative detention order. Due to his poor health, Jabber has been held in the infirmary of the Prison Services since his detention.

Israeli military authorities have declared both secular and Islamist organizations illegal.<sup>56</sup> Thus membership in any of these organizations is grounds for criminal prosecution. However, Israeli courts have ruled elsewhere that mere membership in an illegal organization does not justify administrative detention.<sup>57</sup> Virtually all of these organizations consist of political, social and charitable wings, as well as "military wings." Therefore, affiliation with such an illegal organization does not necessarily indicate that the individual is engaged in activity that endangers the area. The prosecutor or the GSS representative generally justify administrative detention by stating that (in addition to membership in an illegal organization) the appellant is involved in violent activity or activity which fosters violence - although the specific details are invariably classified. However, some Palestinians are given administrative detention orders for non-violent activity in an organization which Israel has declared illegal.

#### **Nasser Khaled Ibrahim Jarrar, three years in detention**

Thirty-eight year old Jarrar, from Barqin, Jenin district, is principle of the charity department of the Islamic Committee. He has been in administrative detention since May 1994; Jarrar is married with two sons: suhab is in the second grade and Ahmad is in kindergarten. His elderly mother and his mentally retarded sister live with the family and are dependent on Nasser for support.

Such was the case with Khaled Jaradat. The basis for his detention order was "being a senior activist in the Islamic Jihad." At his appeal, the GSS representative confirmed that the authorities do not attribute any violent activity to Mr. Jaradat. However, Judge Major Orna David upheld the detention, stating that "the order is based on a number of sources, with an appropriate level of reliability, and attributes to the appellant activity beyond the usual activity in a certain organization."<sup>58</sup>

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<sup>55</sup> AAD of Badran Bader Muhammad Jabber, before Military Judge at Ashmoret, 30.4.96.

<sup>56</sup> This includes the Popular Front for the Liberation of Palestine (PFLP), the Democratic Front for the Liberation of Palestine (DFLP), Hamas and the Islamic Jihad.

<sup>57</sup> *State of Israel v. Michael Ben-Horin* D.R. 161/94 (District Court of Nazareth, 20.3.94).

<sup>58</sup> AAD of Khaled Jaradat, before Military Judge at Ketziot, 19.12.93.

Furthermore, under the Palestinian Authority, all of these organizations, except for their military wings, are legal. Three members of the Popular Front for the Liberation of Palestine (the PFLP) were elected to the Palestinian Legislative Council. Therefore, Palestinians who live in Area A, in which the PNA has complete civilian jurisdiction, may face an impossible situation where, if caught outside their home town, they may be detained, administratively or otherwise, for being members in an organization which is perfectly legal under their domestic law.

Israel's treatment of the secular opposition - the PFLP and the DFLP (the Democratic Front for the Liberation of Palestine) - is often contradictory. In both cases Israel has, on one hand, allowed several prominent members to return to the West Bank and Gaza Strip from abroad, and on the other hand, administratively detained individuals for being active in these same organizations.

Muhammad Barakat was given a six-month administrative detention order on 24 September 1995 for "being a senior DFLP activist whose activity threatens the security of the area."<sup>59</sup> At his appeal, advocate Peleg-Sryck explores the problematic nature of administratively detaining a person for DFLP activity:

The order is based on an ingredient called the DFLP, whose reputation - which serves to frighten whomever they want to frighten - is not consistent with reality. The DFLP today is a small, insignificant, inactive organization. I point out that the GSS representative does not know when the organization last conducted an action. Surely, if the DFLP was like Hamas not only would he know, but we would all know, but here not even he knows. The DFLP is part of the PLO, as opposed to the Islamic organizations like Hamas and Islamic Jihad, and is part of the internal opposition, like Moledet [a right-wing party in Israel] ...<sup>60</sup>

Judge Zicherman rejected the appeal without addressing any of the claims raised by attorney Peleg-Sryck. The reasoning whereby activity in a non-violent organization constitutes a danger to security depends on a very broad definition of this term.

Only a few DFLP members are being held in administrative detention. However, the same phenomenon exists, to a much greater extent, with regard to the PFLP, an organization which has perpetrated acts of violence.<sup>61</sup> Although Israel allowed PFLP leaders from abroad to return to the Occupied Territories, dozens of Palestinians are given administrative detention orders for suspicion of being active in this very same organization. In fact, it is those attributed with membership in the PFLP - as opposed to Hamas and Islamic Jihad, which are responsible for many more and more deadly acts of violence - who serve the longest periods in detention.

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<sup>59</sup> AAD of Muhammad Barakat, before Military Judge at Ashmoret, 27.5.96.

<sup>60</sup> Ibid.

<sup>61</sup> The PFLP took responsibility for an attack on a passenger car in the Occupied Territories on 11 December 1996 in which a woman and her child were killed.

In the appeal of Wissam Rafidie, attorney Tamar Peleg-Sryck raised these issues before Judge Zicherman. Judge Zicherman ruled that he did not receive a satisfactory answer from the prosecutor:

Leaders of the PFLP from abroad were allowed to return to the area, such that today these senior PFLP people can, from their location in Gaza or Ramallah, harm the security of the area. In this matter, I did not receive a satisfactory answer as to whether this fact was brought before the military commander before he issued the order.

Rather than canceling the order, however, Judge Zicherman deducted one month from the detention period to account for Rafidie's interrogation.<sup>62</sup>

### **Conclusions**

While claiming that it uses administrative detention only as a last resort, and strictly to prevent danger to security, Israel has in fact used this measure for far wider purposes. Less severe measures are seldom, if ever, used against Palestinians; administrative detention is often used as an easy alternative to proper trial and punishment; and "security" is defined in terms broad enough to include non-violent political activity and the expression of political opinions.

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<sup>62</sup> AAD of Wissam Rafidie, before Military Judge at Atlit, 27.5.96.

## Chapter Four: Individual, Separate Basis

In discussing the unique considerations involved in a decision to administratively detain an individual, High Court Justice Y. Kedmi accepts the principle of “individuality” laid down by international law. Justice Kedmi wrote the following:

Every detainee is “different” from his fellow. The considerations which form the basis for the administrative detention of a person are rooted in a suspicion that he will damage security if not detained. This fear is fed not only by the ideological affiliation and opinions of the detainee and what follows from them, but also and especially, by his personality, talents, training and ability - mental and physical - to realize the fear; and these unique to him - form the basis of the “difference” between him and others “who sail in the same boat.”<sup>63</sup>

However, Israeli practice of administrative detention suggests the wholesale rather than individual use of administrative detention, which belies Justice Kedmi’s statement quoted above.

Each administrative detention order contains a space to detail the reason for the detention. In the case of Palestinians, the reason provided on the detention order is extremely formulaic and almost invariably consists of some version of the following reason: “being a Hamas [or PFLP, etc.] activist whose activity threatens the security of the area.” Sometimes the order says “being a senior activist.” In a minority of cases, an additional clause is added to the effect that the detainee “incites against Jews” or something similar. Frequently this terse explanation is the only information provided to the detainee regarding the reason for detention. Both in detention orders themselves and in the appeals hearings, there is no attention to the individualized factors discussed by Justice Kedmi.

The reasons given for the administrative detentions of Jews are also of a vague, general nature. The administrative detention order of Kiryat Arba resident Abraham Shaier, for example, gave the reason for

A number of Palestinians attributed with PFLP membership were arrested on the 30 May 1994. Some were immediately put in administrative detention; others were interrogated first and then given administrative detention orders. Of this group, three remain in administrative detention:

- **Muhammad ‘Abd al-Halim Muhammad Rajub**, from Dura, Hebron district. He is 37 years-old, single, and a mechanical engineer. He has been in administrative detention since October 1994. He is now serving his sixth detention order, each order for six months.

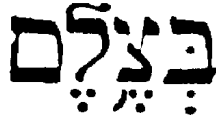
- **Hasan Fataftah**, from al-Bireh, 35, married with three children, a son aged 6, and two daughters age 4 and 3. He is a social worker. He is now serving his eighth detention order.

- **Samir Shallaldah**, a resident of East Jerusalem, 37, married with two children, aged 6 and 4. He is also a social worker. He is now serving his sixth detention order.□

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<sup>63</sup> AAD 6/94, *Baruch Ben Yosef v. State of Israel*, Takdin Elyon 94(2) 1851, 1854.





מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)

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detention as “being involved in violent activities against the safety of the area and public safety.”

Furthermore, every administrative detention order without exception is issued for whole months. It is difficult to reconcile the uniformity of the detention periods with the stated intention of tailoring this measure to the specific exigencies of each situation so as to minimize the injury to liberty. By contrast, in the case of two Palestinian citizens of Israel detained administratively under internal Israeli law, the Minister of Defense ordered their detention from 25 December 1987 until 1 April 1988, the day after Land Day, which was expected to be a day of Palestinian protest.<sup>64</sup> No administrative detention of a Palestinian in the Occupied Territories is issued for an irregular period or makes reference to a particular date or event.<sup>65</sup>

### Conclusions

The standard, uniform reasons given for ordering administrative detentions, the generic time-frame for the detentions and the tendency of the authorities to issue detention orders in groups all suggest that detention decisions are not based solely on the specific circumstances relevant to each individual.

#### **Usama Barham, three and a half years in administrative detention**

Thirty-three year old Barham, from Ramin in the Tulkarm district, was a journalism student at the Ibrahimi College in November 1993 when he was detained and held in administrative detention for ten months. He was released September 3, 1994. thirteen days later he was detained and given a six-month administrative detention order. It is difficult to believe that enough material was accumulated concerning Mr. Barham and his activities in the span of thirteen days to justify a six-month detention. At his appeal, his attorney Tamar Peleg-Sryck suggested that he was detained as part of a round-up of Hamas activists in the middle of September, and not on the basis of information specific to him. However, Judge Lieutenant Colonel Orna David upheld the detention.<sup>66</sup>

Mr. Barham is unmarried. He is now serving his eighth consecutive detention order. He suffers from kidney problems and ulcers. In June 1995, Usama's father died while Usama was in detention

<sup>64</sup> AAD 1,2/88, *Raja Agrabiyeh et al. v. State of Israel*, P.D. 42(1), 840.

<sup>65</sup> The administrative detention of Noam Federman, an extremist right wing settler in Hebron, was widely reported to be intended to prevent violence related to the Israeli redeployment from Hebron (see, for example, *Ha'aretz* 17.1.97). The detention order did not mention the redeployment, however. A two month administrative detention order was issued on 9 November, 1996 for “endangering the security of the area and public security.” Upon expiration, this order was extended for an additional two weeks until 22 January 1997. The IDF redeployed from Hebron on 19 January and Mr. Federman was released three days later upon the expiration of his detention order.

<sup>66</sup> Appeal of Administrative Detention of Usama Barham before Military Judge at Ketziot, 20.10.94.

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## Chapter Five: Due Process of Law

The entire administrative detention process is riddled with irregularity, abuse, uncertainty and lack of fundamental principles of due process. Some of the problems described below are limited to a single individual or an isolated few. Most of the problems discussed, however, pertain to a large number of detainees and comprise Israeli policy or standard practice.

### A. Procedural Irregularities

In many cases the detainee does not receive the administrative detention order upon arrest. Sometimes he is initially subject to investigative interrogation, as discussed below. However, in other cases, the detainee may be transferred to a detention center, but not receive the detention order for days or weeks or even months. Hatem ‘Abd a-Razeq was detained on 6 March 1996 and received his detention order six days later.<sup>67</sup> Mahdi ‘Anabatawi was detained on 23 January 1995. He was detained for three months before receiving his detention order.<sup>68</sup> Thus detainees live in a state of uncertainty, unsure of their status and the length of their detention.

Other irregularities concern the detention order itself. There are several cases of errors in the length of the detention order. Na’im ‘Issa, for example, was issued a seven-month administrative detention order, later corrected to six months. The courts have consistently held that human errors do not invalidate a detention order. ‘Adnan Jabber received a six-month administrative detention order on 31 May 1995 for “being a senior Hamas activist.” On 13 July, while in detention, Jabber received a corrected order which changed the reason for detention to “being a senior PFLP activist.” Such a substantive error should have been grounds for canceling the detention order entirely, but it was not even mentioned in the judge's decision to reject Jabber’s appeal.

#### **Minors in administrative detention**

Three minors were among those detained following the February and March 1996 suicide bombings. All three live in the al-Fawwar refugee camp, the home of those who perpetrated the bombings:

- Muhammad ‘Issa Ahmad was detained 5 March, 1996 and received a six-month administrative detention order. He was 16 when detained. The order was renewed for two months.
- Ihsan Mahmud Abu Warda, brother of one of the suicide-bombers, was detained on 1 March, 1996 and interrogated for a month. He was 16 when detained. On 1 April he was given a three-month administrative detention order. This order was extended for an additional three months. On appeal of the extension, Judge Lieutenant Colonel Ilan Katz canceled the order and gave the authorities thirty days in which to interrogate Ihsan and decide whether to charge him. At the end of the interrogation, Ihsan received a third administrative detention order for six months. He is now serving a four month extension.
- Ahmad Abu Warda, brother of Muhammad Abu Warda whom the authorities

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<sup>67</sup> Testimony taken from Hatem Mustafa ‘Abd a-Razeq by then-B’Tselem fieldworker Bassem ‘Eid, 26 May 1996.

<sup>68</sup> Testimony taken from Mahdi ‘Abd a-Rahim Salah ‘Anabatawi by then-B’Tselem fieldworker Bassem ‘Eid, 23 May 1996.

suspect of having recruited the suicide bombers, was detained on 4 March 1996 and given a four-month administrative detention order. He was 15 when detained. This order was extended for four months.

Unlike most administrative detentions, there was very little classified information in these cases. The reason for the detention of all three boys was the same: under interrogation, a resident of al-Fawwar said that he had overheard all three after the suicide bombings saying that, given the opportunity to carry out a suicide bombing, they wouldn't hesitate. All three boys denied making such a statement. Ahmad Abu Warda, under oath, condemned the suicide bombings.

Judge Yosefson rejected Muhammad's appeal, holding that, "once it was evident that the appellant expressed an intention to carry out a suicide bombing, this ... is the only consideration to be weighed..."<sup>69</sup> Judge Yosefson also rejected Ahmad's appeal, stating that, "I can't imagine that, given the suicide bombings which are carried out daily and the warnings regarding the danger of suicide attacks, any judge hearing a case like this one could sleep soundly at night after releasing a person like the appellant who has expressed such suicide [bombing] intentions."<sup>70</sup> On 11 June, Judge Rachel Tevet rejected Ihsan's appeal.

These youths were detained on the basis of one statement, which they claimed was false, made during interrogation by someone whom they claim not to know.

## B. Interrogation

Individuals may be subjected to interrogation either prior to or during their administrative detention.<sup>71</sup> This procedure is problematic because the General Security Service systematically uses interrogation methods which constitute torture or other ill-treatment in their interrogations of Palestinians.<sup>72</sup> Furthermore, issuing an administrative detention order following interrogation suggests that this measure may be used after interrogators fail to obtain a confession upon which to base an indictment.

Israeli authorities claim to always prefer regular measures (such as criminal proceedings) over administrative detention. Therefore, throughout the detention, whenever evidence which can be investigated appears, the authorities are theoretically required to pursue these leads with the aim of seeking alternatives to administrative detention.<sup>73</sup> The practical implication is that at any time

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<sup>69</sup> AAD of Muhammad 'Issa Muhammad Ahmad, before Military Judge at Meggido, 16.5.96. The appeals of all three minors were filed by Attorneys Khalid Kuzmar and Tamar Peleg-Sryck on behalf of the joint project of the Israel and Palestine Sections of Defence for Children International.

<sup>70</sup> AAD of Ahmad Abu Warda before Military Judge at Meggido, 22.4.96.

<sup>71</sup> According to the military orders in force in the Occupied Territories, a person can be held for up to 11 days without judicial oversight for the purpose of interrogation. After this initial period, he or she must be brought before a judge. , The period of investigative detention may be extended for up to six months. Security Regulations Order (Judea and Samaria) (Order 378), 1970. Article 78, amended by Order 1391, 24 March 1993.

<sup>72</sup> See, for example, the following B'Tselem reports: *The Interrogation of Palestinians During the Intifada: Ill-Treatment, 'Moderate Physical Pressure' or Torture?* March 1991; and *Follow-Up Report*, March 1992; *Torture During Interrogations: Testimony of Palestinian Detainees, Testimony of Interrogators*, November 1994.

<sup>73</sup> In several military appeals, an administrative detention order was canceled or shortened because the detainee was not interrogated prior to administrative detention. See for example, AAD of Hamzeh Masleh before Military Judge at Ketziot, 17.5.94.

during the detention period, detainees may be interrogated. Following the interrogation, a detainee may either be charged, released or issued a new administrative detention order.

On 19 November 1995, military commander Colonel Ilan Harrari, issued ‘Abd a-Rahman al-Ahmar a nine-month administrative detention order. After three months in administrative detention, his detention order was canceled and he was transferred to interrogation. He was interrogated for forty-seven days and subjected to torture.<sup>74</sup> At the end of the interrogation period, al-Ahmar was issued a one year administrative detention order. Although apparently no new information came to light in al-Ahmar's interrogation which could lead to prosecution, he was then detained for longer than the original period.

The authorities generally do not notify family members and attorneys when an administrative detention order is canceled and a detainee is transferred to an interrogation facility, in spite of their legal obligation to do so.<sup>75</sup> Consequently, it is difficult for the detainee to complain about torture and other ill-treatment in interrogation. Usually, family members and attorneys only learn that a detainee has been transferred to an interrogation facility by messages sent through other detainees.

### C. Appealing Administrative Detention

According to the Administrative Detention Order, detainees have the right to appeal their detention before a military judge. The burden of contesting the detention (locating and hiring an attorney and filing an appeal) falls on the detainee. If the detainee does not appeal, there is no judicial review of the administrative detention. The military judge is not required by law to have the detainee present at the hearing. On a few occasions, detainees were not brought to their hearing, even though they had requested to be present.

The judicial review exercised by a military judge in the appeal is limited to ensuring that the considerations that led the military commander to issue the detention order were legal. In *Ben Yosef*, High Court Justice Kedmi defined the hearing:

The approval process is not intended to establish the “guilt” of the detainee ... but rather to check the legality of the Defense Minister’s considerations, as stated above; therefore it is not the reliability of the factual basis which is at the center of the review, but rather its power to serve as a sufficient basis to hold the detainee in administrative detention.<sup>76</sup>

#### 1. Time-Frame

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<sup>74</sup> Allegra Pacheco, *Torture by the Israeli Security Services: the Case of ‘Abdel Rahman ‘Abdel Ahmar*, Public Committee Against Torture In Israel, June 1996.

<sup>75</sup> Security Regulations Order (Judea and Samaria) (Order 378), 1970. Article 78A amended 25 February 1988 (Order 1222).

<sup>76</sup> AAD 6/94, *Baruch Ben Yosef v. the State of Israel*, Takdin Elyon, 94(2), 1851, 1852. This case concerns an administrative detention order issued under internal Israeli law by the Defense Minister.

In 1988 the High Court emphasized the importance of a prompt hearing:

The time until the hearing of the appeal is therefore a very important and substantive issue, since, as stated, only then can a detainee contest his detention and present his claims for release. ... Administrative detention without effective judicial review is subject to errors in fact or judgment which result in the denial of an individual's liberty without any substantive basis. Therefore, every effort must be made to prevent such phenomena. ... The authorities should make every effort to reduce the gap between the time of detention and appeal filing and the judicial review. If it is not possible to return to the immediate judicial review as was the case under 1E before Order 1229, it must at least be ensured that the appeal is heard within a minimum of two to three weeks from the filing of the appeal... <sup>77</sup>

**'Ali Jeridat - thirty three months in administrative detention**

Forty-one year old Jeridat, from Ramallah, is married with two children, aged 6 and 3. Jeridat was detained 10 August 1994, and has been in administrative detention since September 1994. He is currently serving his fifth consecutive detention order, each order for six months. Prior to his detention, he was the director of the Bisan Research Center, in Ramallah.

The suggestion to return to the method of automatic judicial review in effect before 1988 has been ignored. Appeals are generally heard within the time frame set by the court - two to three weeks from the filing of the appeal. However, because there is no automatic hearing, it may take weeks or even months for a detainee to find an attorney and for the attorney to file an appeal.

Mahmud Merub was issued a one year administrative detention order on 10 March, 1996. Due to a delay in filing the appeal, his hearing did not take place until 7 July. Hasam 'Omar received a three-month administrative detention order on 12 February, 1996. On 11 April he filed an appeal without the assistance of an attorney. Judge Izakson heard his appeal on 7 May - two days before expiration of the order - and reprimanded the authorities:

It should have been apparent to those responsible for scheduling the hearings that two-thirds of the detention period had passed ... In order for there to be any relevancy to the appeal, the hearing should have been scheduled as soon as possible and even that same day.... Today's hearing is completely unnecessary if not ridiculous.... What is left to decide?<sup>78</sup>

In some cases, the detainee does not appeal the detention, either for financial or ideological reasons. As will be discussed below, since August 1996, all Palestinian administrative detainees have maintained a boycott of the appeals process.

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<sup>77</sup> H CJ 253/88, *Sajadia et al v. The Minister of Defense*, P.D. 42(3), 801, 820. 1E is the section of the Emergency Regulations which regulated administrative detention prior to the 1988 Administrative Detention Order. As noted, the previous Regulations required mandatory judicial review before a military judge within 96 hours of detention.

<sup>78</sup> AAD of Hasam 'Abd al-'Atif Ahmad 'Omar, before Military Judge at Meggido, 7.5.96.

## 2. The Reliance on Classified Information

In contrast to criminal proceedings, the reliability of the factual basis of the detention order is not established through confronting and cross-examining primary witnesses. Furthermore, in virtually every case of administrative detention, the detainees cannot refute the allegations against them as most, if not all, of the evidence is classified and therefore not revealed to them or their attorney. At the hearing, the detainee and his or her attorney must leave the courtroom while the judge reviews the classified evidence and decides whether any part of it can be revealed. This review has become a formulaic ritual, as to our knowledge no military judge has ever declassified information relating to administrative detention. In all appeals heard by Judge Lieutenant Colonel Orna David that we examined, Judge David writes the following passage in every case:

In a departure from the laws of evidence, I examined the confidential material without the appellant and his advocate being present in order to determine the truth and see justice done. I am convinced that the confidential material cannot be revealed to the appellant or his advocate without damaging security of the area, public security and security of sources of confidential information.

The fact that this passage is repeated *verbatim* in every one of Judge David's decisions, suggests that this decision is automatic and arbitrary. The confidential material must vary from case to case, as should, consequentially, the justification for withholding it from the detainee. It is difficult to believe that in *every* case, none of the material can be revealed for all three reasons given by Judge David. Other military judges make routine use of a similar formulation to uphold the classification of information.

The authorities frequently acknowledge that information must remain classified so as not to reveal the Palestinian collaborators who are the sources. In the past, B'Tselem has documented that Palestinians may provide information to the Israeli security services for a variety of personal motives. For instance, the GSS often threatens to indict Palestinians who are under interrogation unless they provide information.<sup>79</sup> Because the source of the information is not revealed, the detainee is unable to prove that the informant is acting out of questionable personal motives and may be fabricating information.

Although it has consistently upheld its use, the High Court has recognized the problematic nature of classified evidence. In an appeal of an administrative detention conducted according to internal Israeli law, High Court Justice Bach stated the following:

On the one hand, the [Israeli law] states that the judge will cancel the detention order if "it is proven" that the order was given on the basis of illegitimate or irrelevant reasons or considerations, and on the other hand, the detainee is denied the tools and means through which to prove the above stated claims, as he is not given access to the central evidence upon which the respondent's decision is based. The honored [Jerusalem District] judge has rightly stated that 'this situation, so foreign to the basic principles of natural justice, hovers over the entire process.' Judge Zeiler concludes from this, and again I agree, first, that the use of this power should be limited to prominent and rare instances, and second, the court conducting the

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<sup>79</sup> See B'Tselem, *Collaborators in the Occupied Territories: Human Rights Abuses and Violations*. January 1994.

judicial review must make every effort to scrutinize and check whether the information on which the Respondent relied is reliable and if it justifies the administrative detention order.<sup>80</sup>

Despite Justice Bach's strident words, secret evidence is not limited to "prominent and rare instances." Instead in *practically every case* of administrative detention, the detainee is denied access to *virtually all of the information* against him. Furthermore, in no case, to our knowledge, has a military appeals judge or the High Court of Justice ordered that even part of the classified information be revealed to the detainee.<sup>81</sup> In fact, in most cases, the only information provided to the detainee is the one sentence included on the detention order.

Because its content is unknown to them, the detainee and his or her attorney are unable to challenge the classification of information. In certain cases, an attorney succeeds in extracting information from the GSS representative or the prosecutor. In other cases, it is unclear why the answer to a specific question is classified. It seems likely that "secret information" at times serves as a convenient smokescreen behind which to evade questions, as illustrated in the questioning of the prosecutor in the appeal of Hasan Fataftah:

Advocate Leah Tsemel: What are the suspicions against him?

Prosecutor Alon Bachar: That's in the classified information

Advocate: Why was his detention requested?

Prosecutor: In the classified.

Advocate: I request you give some answer.

Prosecutor: I can't detail more than what's written in the order.<sup>82</sup>

...

Advocate: How many pieces of information were brought before the [military] commander? How many events?

Prosecutor: In the classified.

Advocate: I request an answer in the non-classified [information].

Prosecutor: I request in the classified.

Advocate: I request the gentlemen to answer.

Prosecutor: Less than 100, not more than 50.

[Judge Pesanzon rejects the attorney's request to declassify certain information]

...

Advocate: What is the nature of the information, I request in the unclassified.

Prosecutor: In the classified.

Advocate: Are we talking about violent or military activity?

Prosecutor: I can't respond.

...

Advocate: Do the activities attributed to him involve violence?

Prosecutor: I will answer in the classified, and the area I will answer in the classified. I won't detail.

Advocate: Where does he live

Prosecutor: El-Bireh. I won't answer to whether his activities are in el-Bireh.

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<sup>80</sup> AAD 2/94, *Baruch Ben Yosef v. Minister of Defense*, Takdin Elyon 94(1), 56, 56.

<sup>81</sup> In one case of administrative detention conducted under Israeli law, District Court Judge Zeiler decided to declassify a portion of the evidence in an administrative detention conducted according to Israeli law. The state petitioned the High Court of Justice, which accepted the petition and ruled that all the classified information should remain classified. AAD 2/96, *State of Israel v. Arieh Friedman*, Takdin Elyon 96(1), 124.

<sup>82</sup> Hasan Fataftah's detention order states that he is detained "for being a PFLP activist."

...

Advocate: In the questions, is there information regarding the future, for God's sake?

Prosecutor: In the classified.

Advocate: Are all the pieces of information about conducting or planning [violent activity]?

Prosecutor: I will not answer that, because that implicates the sources of information.

Advocate: Why was the detainee detained?

Prosecutor: Because the accumulation of NSM [Negative Security Material] allowed the order.

Advocate: In what sense was it allowed?

Prosecutor: There are security considerations from which an order is issued. And against the appellant, negative material accumulated which met the criteria for administrative detention, and the criteria are decisive security considerations.

...

Advocate: What political activities of the PFLP can you count since July 1993.

Prosecutor: In the classified.

Advocate: I request a response, and here there's no justification.

Prosecutor: There's PFLP activity that's open activity, there's activity which belongs to the classified information.<sup>83</sup>

It is difficult to understand why facts such as the number of pieces of information or the political activities of the PFLP are classified. It appears that the GSS is given great leeway in deciding what information to reveal, and may decide to withhold certain evidence out of laziness or whimsy. The detainee has no basis upon which to challenge these decisions.

The reliance on secret evidence demonstrates a total, unquestioning trust in the General Security Service and its judgment. Such implicit trust should have been dampened by the many known cases in which GSS interrogators have misled and lied to judges. GSS perjury led to the creation of the Landau Commission - the 1987 commission of inquiry appointed by the government. The Landau Commission Report describes the routine and systematic practice of perjury by GSS officials to prevent the disqualification of confessions obtained by coercion. According to the Report, this perjury constituted standard practice and "an unchallenged norm which was to be the rule" from 1971 until 1986:<sup>84</sup>

The picture which emerges ... is a dismal and regrettable one: The GSS ... failed utterly, in permitting itself to violate the law systematically and for such a long period by assenting to, approving, and even encouraging the giving of false testimony in Court.<sup>85</sup>

While the Landau Commission relates specifically to perjury regarding the use of force in interrogations, the motivation for the perjury - to ensure that a suspect considered dangerous will not be set free - is the same as in the case of administrative detention. The desire to ensure detention of an individual whom the GSS agent may genuinely believe to be guilty may lead to misrepresentations and exaggerations of fact. This desire combined with the knowledge that no one will be able to challenge the information increases the temptation to be lax with the truth.

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<sup>83</sup> Appeal of administrative detention of Hasan Fataftah, 8.8.94, before Military Judge at Ketziot.

<sup>84</sup> Report of the Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity, paragraph 2.30.

<sup>85</sup> Ibid, para 2.53.



The Landau Commission claimed that, following exposure and public condemnation, GSS perjury ceased. However, it is clear that, at least in certain instances, it continues. In an appeal against administrative detention under Israeli law, Judge Zeiler accused the GSS of misleading then-acting Defense Minister Shimon Peres to sign the six-month administrative detention order of Amjad Zeghayer, a resident of East Jerusalem. Judge Zeiler found that the GSS disguised assessments as facts in describing the danger posed by Zeghayer. “This is a deed which should not have been done....These examples raise a serious concern that the GSS has adopted improper behavior.”<sup>86</sup>

The systematic and extensive reliance on classified information constitutes one of the most problematic aspects of administrative detention. This reliance contradicts a principle fundamental to due process. Article 11 of the UN Body of Principles for All Persons Under Any Form of Detention states that “a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.” To satisfy this principle, the authorities must promptly provide the detainee with specific, detailed and individualized reasons for arrest and the hearing must comprise a genuine and searching review.<sup>87</sup> The extensive use of classified information blatantly violates these principles.

**Ribhi Qattamesh: Three years in administrative detention**

Ribhi Qattamesh from al-Bireh is 41-years old and is married with two sons, aged 10 and 8. He is a lawyer and journalist.

Qattamesh was detained on 28 March 1994 and interrogated for a month and a half. On 11 May, the Military Commander issued him a six-month administrative detention order. This detention was subsequently renewed for two additional six-month periods. When the military judge upheld his second extension, Mr. Qattamesh petitioned the High Court of Justice. According to his attorney, Leah Tsemel, the GSS offered a deal before the case went to the High Court; if the petition were withdrawn, no extension would be issued upon the expiration of the current detention period. All of the information against Mr. Qattamesh was classified, except for the statement that he was a “senior PFLP activist.” Mr. Qattamesh refused the GSS offer because he was confident that the GSS could not possibly have any incriminating evidence against him. On 23 August 1995, the High Court of Justice upheld the detention in a decision of a single paragraph: “We are aware that the petitioner has been subject to administrative detention for a prolonged period ... however under the circumstances there is no justification for our intervention.”<sup>88</sup> Mr. Qattamesh has remained in administrative detention ever since.

Qattamesh is now serving his seventh consecutive detention order. He suffers from heart disease and ulcers. In February, he was hospitalized at the Prison Hospital ar Ramla.

### 3. Outcome of Appeals

The Administrative Detention Order authorizes a military judge to approve, shorten or cancel the detention. According to the IDF Spokesperson’s office, in sixty percent of the appeals heard

<sup>86</sup> *Kol Ha’Ir* 27.1.95 and *Jerusalem Post* 24.2.95.

<sup>87</sup> Amnesty International, *A Guide to the UN Body of Principles*, August 1989.

<sup>88</sup> H CJ 3847/95, *Ribhi Suleiman Musa Qattamesh v. IDF Commander in the West Bank*. unpublished.

between November 1995 and April 1997, military judges approved the detention for the period for which it was issued. In thirty-five percent of appeals resulted in a shortening of the administrative detention period; in twenty percent of appeals, the parties reached an agreement to shorten the detention and in fifteen percent, judges shortened detention orders either to deduct detention immediately prior to the administrative detention or for substantive reasons concerning the individual detainee.<sup>89</sup> The considerations behind the decisions are not always clear as judges provided very little legal reasoning for their decisions.

*a. Deducting the period of interrogation:* Judge Lieutenant Colonel Yair Lotstein stated that a prior period of interrogation must be deducted from the period of administrative detention as a matter of routine.<sup>90</sup> In some cases, the authorities note that they have already taken the interrogation period into consideration in issuing the detention order.<sup>91</sup> In some cases in which they have not, judges have deducted the interrogation period from the administrative detention period.

*b. Humanitarian considerations,* such as a detainee's health or personal problems.<sup>92</sup>

*c. A detainee's clean record:* Judge Orna David deducted a month from the detention of 'Abd al-Karim Jenam, stating that "in light of his clean record, his status, his age and his family circumstances, it is appropriate to shorten the order."<sup>93</sup> Judge Izakson stated that when dealing with a first time arrest, there is room to demonstrate greater sensitivity; such a person must be treated with "with silk gloves."<sup>94</sup>

The shortening of orders to deduct prior investigative detention refutes the claim that administrative detention is preventive rather than punitive. The detention order is issued at the conclusion of interrogation and is theoretically tailored to the specific time period during which the detainee is likely to pose a danger. The fact that judges, after examining the classified information, routinely issued rulings which determine that the detention order was justified but deducted up to several weeks from the period of detention further indicates that detention orders are not individually tailored and issued for the minimum period necessary given. The same is true with regard to shortening a detention order for humanitarian reasons or a detainee's clean record. If a detainee genuinely represents a danger to the area, this danger must be prevented whether or not he is ill. If a detainee does not represent a danger to the area, his liberty may not be denied, even if he has several prior criminal convictions.

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<sup>89</sup> Letter from Major Avital Margalit, IDF Spokesperson's Office, to B'Tselem, 4 May 1997. Unless otherwise specified, statistics relate to the period November 1995-April 1997.

<sup>90</sup> AAD of Hamed Is'ad Hamed el Kuni, before Military Judge at Ketziot, 17.1.95. In the appeal of Saher Tawil, Judge Lotstein wrote that this principle is based on a Jerusalem District Court decision (HMM 24/88). AAD of Saher Tawil, before Military Judge at Ketziot, 6.2.95

<sup>91</sup> For example, following an interrogation which lasted two and a half months, Colonel Ran Shamai issued Ibrahim a-Shikarna a detention order for three and a half months, such that Shikarna's total period of detention would be six months, from 26 March to 25 September, 1996.

<sup>92</sup> See for example, AAD of Muhammad Tmeizah, before Military JJudge at Ketziot, 4.4.94; AAD of Badran Jabber, before Military Judge at AAshmoret, 30.4.96.

<sup>93</sup> AAD of 'Abd al-Karim Jenam, before Military Judge at Ketziot, 27.5.95.

<sup>94</sup> AAD of Mustafa Sabri, before Military Judge at Ketziot, 24.10.94. But see an opposing view by Judge Shapira, AAD of Muhammad Hoshieh, before Military Judge at Ketziot, 23.3.95.

Twenty-one year old Taha 'Adnan was issued a six-month administrative detention order on 14 November, 1994. At his military court appeal, Judge Lieutenant Colonel Yair Lotstein sent him for psychiatric evaluation. Dr. Shaul Streiber concluded that Mr. 'Adnan suffered from moderate to severe mental retardation; he could not understand the accusations against him and therefore would not be fit to stand trial. His attorney, Ms. Tamar Peleg-Sryck, requested his immediate release. The military prosecutor, however, countered that Mr. 'Adnan suffered from no medical problem which necessitated immediate treatment and therefore it would not be unreasonable to transfer him from the Ketziot detention camp to another detention facility, where he could receive treatment. "I wonder how an administrative detention was authorized for a person with an IQ of 50," the Judge asked rhetorically in canceling the detention.<sup>95</sup>

According to the IDF Spokesperson's office, in five percent of the appeals heard between November 1995 and April 1997, judges canceled the detention order. In some of these cases the detainee was released, while in others, the judge ordered the security forces to interrogate the detainee and then reevaluate.<sup>96</sup> It is extremely rare for a judge to release an administrative detainee without the prosecutor's consent. While judges canceled the detention of many Fatah members still in administrative detention following the signing of the Declaration of Principles in September, 1993, in all of these cases, the judge issued the ruling with the agreement of the prosecutor or the GSS representative.<sup>97</sup> One of the rare cases in which an appeal was accepted in full is that of Taha 'Adnan, who was mentally retarded (see the box in this section).

The increasing use of extensions of detention orders renders a judge's decision to shorten the detention period meaningless. For example, Mahmud Merub was issued a one-year administrative detention order on 10 March, 1996. Judge Colonel Oded Pesanzon, who heard the appeal, stated: "I do not see any justification under the circumstances ... to order an administrative detention of one year." He shortened the detention period by seven months, such that Merub was to be released on 10 August. However, Judge Pesanzon wrote,

this decision does not affect the military commander's obligation on the eve of completion of the appellant's administrative detention; if his release entails danger to the security of the area, and if this is still the case, the commander has the right, and even the obligation, to extend the detention.<sup>98</sup>

In fact, before he was to be released, the military commander renewed Merub's detention for six-months and upon expiration of this extension an additional order was issued for four months until 7 June, 1997.<sup>99</sup> Such complicity between military judges, the GSS and military commanders undermines the integrity of the appeals process.

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<sup>95</sup> AAD of Taha 'Idnan, before Military Judge at Ketziot, 17.1.95. The appeal was filed on behalf of the Association for Civil Rights in Israel.

<sup>96</sup> For example, Judge Lieutenant Colonel Ilan Katz canceled the administrative detention of Ihsan Abu Warda and gave the authorities thirty days to interrogate him and decide whether to file charges. At the conclusion of the interrogation, Ihsan was issued a six month administrative detention order. See the box in section A of this chapter.

<sup>97</sup> See for example Appeals of Administrative Detention of Walid Raj, 27.9.93; Usama Karnaz, 13.10.93; Kamal Shehadeh, 13.10.93; Mahmud Fuad, 16.12.93; and Ziad Sabah, 16.12.93, all before Military Judge at Ketziot.

<sup>98</sup> AAD of Mahmud Sa'id 'Abd al-Hamid Merub, before Military Judge at Meggido, 7.7.96.

<sup>99</sup> Due to the boycott of the Military Appeals Committees, Mahmud Merub did not appeal either of the extensions of detention.

#### 4. Appealing to the High Court of Justice

Once an administrative detention is upheld by the military appeals judge, the detainee may appeal to Israel's Supreme Court.<sup>100</sup> In 1980, Justice Kahan stated that the Court's role is not to weigh the evidence, but rather to determine if the order was made in good faith, or if there were procedural defects. "However, it is clear from the [Israeli law] that the Court will not replace the Defense Minister's considerations with its own."<sup>101</sup>

In 1986, Justice Beisky ruled in favor of a more expansive judicial role, under the internal Israeli law:

The law, in spirit, purpose and wording, created a system of judicial review, periodical, successive and continuous, with a view to determining not only the legality of the order, but also its necessity within the meaning of the purposes specified in section 2, including the detention period specified...[The Court's] powers within the meaning of section 4(a) are to affirm the detention order issued by the Minister of Defense or not to affirm it, in accordance with its own considerations.<sup>102</sup>

Since the signing of the Oslo Accords, the Supreme Court has heard twenty-two appeals and petitions requesting cancellation of administrative detention orders. Of these, eleven concerned detentions carried out according to the West Bank Administrative Detention Order.<sup>103</sup> Five of these cases were Palestinians. In six cases, the appellants or petitioners were Israeli citizens detained under the West Bank Order.

The High Court upheld the detention in all eleven cases. Furthermore, in no case has the High Court invalidated the use of classified evidence.<sup>104</sup> It is likely that the Court's unmitigated support for administrative detention serves as a disincentive for Palestinians to turn to the High Court.

However, the High Court of Justice canceled the 1996 detention order for Rabbi Yitzhak Ginsburg, which was based on internal Israeli law. Ginsburg, who lives inside Israel, teaches at the Od Yosef Hai Yeshiva at Josph's Tomb, in Nablus. On 10 March, 1996 the Minister of Defense issued a two-month administrative detention order against Ginsburg. High Court Justice D. Dorner wrote the Court's decision:

In our case, it was not claimed that the Appellant himself would conduct acts which endanger public security. The Appellant was detained on the suspicion that as a result of his comments, his students would commit acts endangering public security. The question therefore is whether the material presented by Respondent's counsel supports this suspicion. I have examined the unclassified and classified information presented by the Respondent. The Appellant ... did not hide his opinions. He explained that while he forbade acts of revenge on Arabs, in retrospect he did not condemn these acts, and even presented to his students the

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<sup>100</sup> Detainees may also petition the Supreme Court sitting as the High Court of Justice regarding various matters, including habeas corpus and other petitions to invalidate the detention.

<sup>101</sup> AAD 1/80, *Rabbi Meir Kahane et al v. the Minister of Defense*, P.D. 35(2) 253, 257.

<sup>102</sup> AAD 2/86, *X v. Minister of Defense*, P.D. 41(2) 512, 515.

<sup>103</sup> Of the remaining eleven cases, seven concerned Israeli Jewish citizens detained according to the internal Israeli law; one concerned four Lebanese nationals detained under internal Israeli law; and the remaining three were petitions filed by groups of Jewish Israelis, which included both persons detained according to the West Bank Order and persons detained according to the internal Israeli law.

<sup>104</sup> See footnote 81.

view that some consider the deed of Baruch Goldstein, who perpetrated the massacre [of 29 Palestinians] at the Tomb of the Patriarchs [in Hebron], as “sanctification of God’s name.” ... It is possible ... that the Appellant’s speeches and writings constitute an offense. However, regarding proof of these expressions, the State does not lack evidence, and there is, therefore, no need for the extraordinary measure of administrative detention. In any case, the appellant has been lecturing before his students for some years, but there no claim is made that he advocated concrete criminal acts. It has also not been proven that his words are liable - not with near certainty and not a lesser degree of likelihood - to cause his students to injure Arabs. ... Some time has passed since the bombings, which presumably lessens the fear of acts of revenge.<sup>105</sup>

This is the first time the High Court of Justice canceled an administrative detention order on substantive grounds.<sup>106</sup>

#### D. The Possibility of Extending Detention

Our number remains large and the extension orders (our major problem) continue to be issued, mainly targeting a small group of 20-25 detainees, whereas another 30 seem destined to join the ranks of the first, earlier group.

-- Letter from ‘Imad Sabi’, an administrative detainee, to B’Tselem, 13 November 1996

The Administrative Detention Order allows a military commander to extend the detention order if he “has a reasonable basis to believe, upon expiration of a detention order ... that reasons of security of the area or public security still require holding a detainee in detention.”<sup>107</sup> The administrative detention extension is identical to the initial order: it may be issued for a period of up to six months and the detainee may appeal the extension before a military judge.

The Order places no limit on the number of times an administrative detention can be extended. It merely provides that the military commander “is authorized ... to order from time to time the extension of the period of the original detention order...”<sup>108</sup> Over half of those in administrative detention in January 1997 have had their detention extended at least once, and over one fourth had their detention renewed two or more times. Eleven Palestinians have been held for over three years in administrative detention and have had their detention extended up to eight times. This pervasive use of detention extensions is unprecedented throughout Israel’s occupation of the West Bank and Gaza Strip.

#### **Mahmud Zeid, thirty four months in administrative detention**

Twenty-eight year old Zeid, from a-Sila al-Harithiyya, Jenin district. In 1993 he requested an exit permit to study at the University of Leipzig in Germany, and committed not to return to the west bank for the three years of his studies. He was given a three month administrative detention order in May 1993, while waiting for a response to his request. He was released in August 1993 and redetained September 1994. He was initially issued a six month administrative detention order, “for being

<sup>105</sup> AAD 4/96, *Rabbi Yitzhak Ginsburg v. Minister of Defense and the Prime Minister*, Takdin Elyon 96(1), 25, 26.

<sup>106</sup> In 1982 the High Court invalidated an administrative detention order on procedural grounds; Hazem Mahmud Qawasmeh was detained until the conclusion of an appeal against his acquittal by a military court. AAD 1/82, *Hazem Mahmud Qawasmeh v. Minister of Defense*, P.D. 36(1) 666.

<sup>107</sup> Article 1(B), Administrative Detention Order.

<sup>108</sup> *Ibid.*

an Islamic Jihad activist.” This detention order has subsequently been extended every three months. He is now serving his ninth consecutive detention order. Zeid is single.

Numerous extensions raise the fear of a life sentence in administrative detention. The possibility of a life sentence without trial was addressed in the third extension of the administrative detention of Nasser Jerar. According to Judge Orna David, “Given the periodic judicial review of the military commander’s decision, we must trust that each decision will be based on substantive considerations and limited to necessity.”<sup>109</sup> As noted above, appeals do not constitute a full judicial review, nor have they served to restrict the use of extensions.

With regard to the guidelines that should apply to extensions of administrative detention orders, Military Judge Zicherman held:

As the period of detention lengthens, on the one hand, there is the need to present to the appellant as many details as possible so that he can address them, and on the other hand, the reasons justifying an extension must be more substantial. ... As the detention period lengthens, extension of detention should be for shorter periods, except for cases in which during the detention, additional information is received which in itself justifies a longer extension.<sup>110</sup>

Neither military commanders, in issuing extensions, nor military judges, in hearing the appeals, seem to adhere to these criteria.

Military commanders repeatedly extend detentions without giving the detainee any information other than the laconic explanation written on the original detention order. On 11 May 1994, Ribhi Qattamesh received a six-month administrative detention order, which the appeals judge shortened to four and a half months, as he deducted the interrogation period. When this order expired, an additional six-month order was issued. One month was deducted from this period on appeal. Upon expiration, the detention was again extended for six months, and this time the judge upheld the decision. In all of these detention orders, the only information ever provided to the detainee was that he “is a senior PFLP activist.”

This case illustrates the problematic relationship between appeals and extensions. In the appeal, Military Judge Major Yoram Haniel stated that when a judge decides to shorten the period of detention, the military commander must refrain from extending the detention on the basis of the same information. However, Judge Haniel went on to determine that the extension in this case was based on new information and was therefore justified.<sup>111</sup>

In some cases, the authorities explicitly claim that no new information justifies the extension. At the appeal of the first extension of Hasan Fataftah’s detention for example, the prosecutor stated that “the order is based on the information which led to the first administrative detention. No new information has been received.”<sup>112</sup> The extension was nevertheless approved. In other cases of extension, authorities do in fact often claim that new information has accumulated. Because the information is invariably classified, there is no way to evaluate the veracity of this claim. Unless

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<sup>109</sup> AAD of Nasser Khalid Ibrahim Jerar, before Military Judge at Ketziot, 17.5.95.

<sup>110</sup> AAD of Wissam Rafidie, before Military Judge convened in Ashmoret Prison, 27.5.96.

<sup>111</sup> AAD of Ribhi Qattamesh, before Military Judge at Ketziot, 26.4.95 filed by attorney Leah Tsemel.

<sup>112</sup> AAD of Hasan Mohammad Ahmad Fataftah, before Military Judge at Ketziot, 15.2.95.

this new information concerns activities that occurred in the past and only recently became known, it must relate to the detainee's activities while in detention. It is hard to believe, therefore, that any new information which does exist is weightier than that which served as the basis for the original detention, as Judge Zicherman suggested it should be.

At the appeal of the extension of Wissam Rafidie's detention, attorney Tamar Peleg-Sryck explored the implications of "new information:"

Advocate: I understand that you contend that my client is currently active in the PFLP.

GSS Agent: Correct

Advocate: Everyone agrees that he is in jail, that is, his activity is of the type possible from jail?

GSS Agent: Yes.

...

Advocate: You claim that, in spite of his being imprisoned under the circumstances and conditions stated, he is active in the West Bank?

GSS Agent: I didn't claim that.

Advocate: Where is he active?

GSS Agent: Physically he is here. We are convinced that he endangers the security of the area. His release will endanger the security of the area.

Advocate: The reason for the detention order is misleading; you do not state "based on the fact that his release *will endanger* the security of the area;" it is written that he *now endangers* the security of the area. We are addressing what he is doing *now*. You said that only his release in the future will endanger the security of the area [emphasis in original].

GSS Agent: Your client is imprisoned for the danger to the security of the area now as well, while he is imprisoned.

...

Advocate: He doesn't receive family visits, he doesn't see people from outside. Prior to 1 May, he hadn't seen anyone for a long time. How is he currently a danger in prison? ... What he is doing today is the reason for the order?

GSS Agent: Yes.<sup>113</sup>

Because all of the information against Wissam Rafidie is classified, it is impossible to determine the basis for extending his detention. However, given Mr. Rafidie's isolation both from the West Bank and from the majority of administrative detainees, who are held in Megiddo Military Detention Center, it is improbable that his current activities pose a substantive danger.

Military commanders frequently issue extensions for periods equal to - and in some cases, even longer than - the period of the original order. There appears to be no logic behind the length of the extension orders. It is difficult to believe that Ribhi Qattamesh, for example, is more dangerous after his fifth detention period (when he was issued an order for four months) than he was after his fourth (when he was issued an order for three months).

## Conclusions

Administrative detention constitutes a serious violation of the fundamental right to due process. The most serious violation is the denial of vital information at all stages of the process. Detainees do not know why they are being detained. They do not know if, and at which point, their detention

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<sup>113</sup> AAD of Wissam Rafidie before Military Judge at Ashmoret, 27.5.96.

orders will abruptly be canceled, only to be replaced by interrogation, which routinely means torture. They do not know whether, following such an interrogation, a new administrative order will be issued. If a detainee appeals, he does not know when the appeal will be heard (but knows it would take at least a few weeks), and the attorney has no opportunity to contest the basis of the detention as this information is withheld both from her and her client. Even if a military judge orders the detainee's release, the detainee does not know whether he will be released or whether a military commander will extend his detention once, twice, or more. Detainees do not know how long they will be held before finally being set free.

### **The Current Situation: Appeals Boycott**

In view of all the above, it is little wonder that on 4 August, 1996, administrative detainees initiated a collective boycott. On 14 August, 1996, the administrative detainees in Ashmoret prison wrote to the Military Appeals Committee that, "our prior experience in the committees demonstrates that the GSS has confiscated the jurisdictional apparatus of the courts, making these appeals committees a facade lacking effectiveness".

The appeals boycott continues. Because judicial review of administrative detention depends on the detainee filing an appeal, as opposed to the mandatory judicial review which was in effect prior to 1988, the boycott has had the effect of halting any judicial oversight of the detentions. All authority regarding administrative detention now rests solely with the military commanders.

The boycott has continued for over six months, yet the authorities have not responded to it.

In B'Tselem's view, the authorities must correct the grave procedural deficiencies described above to ensure that administrative detention procedures meet a minimal standard of due process. The authorities must also return to the system of mandatory judicial review that was in effect prior to 1988.

## **Chapter Six: Proper Conditions of Detention**



Because they have not been convicted of an offense, administrative detainees are entitled to better conditions than those of prisoners.<sup>114</sup> In many aspects, conditions fall far short of the requirements of international law.

### A. Transfer of Detainees Outside of Occupied Territory

Like all Palestinians incarcerated by Israel, administrative detainees are held in detention facilities inside Israel. The majority are held in Megiddo Military Detention Center, while detainees with medical problems are now held in the Shikma Prison in Ashkelon. This policy has far-reaching implications, both regarding international law and regarding conditions of detention.

Detainees from an occupied territory may be held only inside that territory. Holding detainees from the Occupied Territories inside Israel violates the Fourth Geneva Convention, to which Israel is party.<sup>115</sup>

The question of holding administrative detainees from the Occupied Territory inside Israel was addressed by Israel's High Court of Justice in 1988. In response to this petition, the State claimed the following:

1. Detention of Palestinians inside Israel is regulated by internal Israel law and there is therefore no need to rely on the principles of international law;
2. The Fourth Geneva Convention is treaty law and therefore is not enforceable in court unless it has been incorporated into domestic law by legislation.
3. The provisions of the Convention must be interpreted according to the obligation of the military commander to maintain public order and security, as stipulated, *inter alia*, in article 43 of the Hague Regulations of 1907.
4. The Convention does not expressly prohibit the transfer of administrative detainees to facilities inside Israel.
5. The humanitarian provisions of the Convention are not legally binding norms simply because of the State's decision to honor them.<sup>116</sup>

Article 6B of the 1987 extension of the Defense Emergency Regulations (Judea and Samaria and the Gaza strip- Criminal Jurisdiction and Legal Assistance) states that, "anyone against whom an arrest warrant or detention order in the [territories] is issued on the basis of authority granted by proclamation or order of the commander, his arrest and detention may be conducted in Israel in the manner in which an arrest warrant or detention order are conducted in Israel." The Court ruled that, given any contradiction between this provision and the Fourth Geneva Convention, "an explicit instruction in domestic Israeli law is what is decisive in such a matter."<sup>117</sup>

However, then-Supreme Court President, Meir Shamgar, denied that there is any contradiction between this provision and the Geneva Convention. The Court cited article 79 of the Convention, which states that, "Parties to the conflict shall not intern protected persons except in accordance with the provisions of articles 41, 42, 43, 68 and 78." Since Article 79 does not mention Article

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<sup>114</sup> The United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment states that "Persons in detention shall be subject to treatment appropriate to their unconvicted status" (Principle 8, UN General Assembly Resolution 43/173 of 9 December 1988).

<sup>115</sup> See chapter two, section B.

<sup>116</sup> H CJ 253/88, *Sajadia et al v. Minister of Defense*, P.D. 42(3) 801, 810.

<sup>117</sup> *Ibid*, 816.

76,<sup>118</sup> the Court reasoned, the State is not obligated to hold detainees solely in the occupied territory. In this regard, President Shamgar wrote the following:

I have not ignored, of course, the commentary on article 78 [by Pictet] according to which the instructions of article 78 (administrative detention) must be read in light of the limitation arising from article 49 (deportation). However, the conclusion of the learned editor is not mandated explicitly by the text of article 78, but is rather an interpretative construction of his philosophy which, with all due respect, I do not accept.<sup>119</sup>

Justice Shamgar's interpretation of Article 49 contradicts that of most legal scholars.<sup>120</sup> Over the years, the High Court has authorized both individual<sup>121</sup> and mass<sup>122</sup> deportations of residents from the Occupied Territories.<sup>123</sup> This, in blatant violation of the explicit prohibition in Article 49 of "individual or mass forcible transfers, as well as deportation of protected persons from occupied territory to the territory of the Occupying Power ... *whatever the motive*" [our emphases]. These deportations constitute a "grave breach" of the convention.<sup>124</sup>

The Court's decision does not detract from Israel's obligation to uphold the Geneva Conventions. While there is no remedy available through Israeli courts to enforce the Convention, this does not affect the State's legally binding obligation vis-a-vis the international community not to detain Palestinians inside Israel.

## 1. Access to Attorneys

A general closure has been in effect in the territories since 1991, preventing Palestinians without special permits from entering Israel. The number of permits varies depending on the severity of the closure.<sup>125</sup> Holding detainees inside Israel obstructs their access to Palestinian lawyers from the Occupied Territories, except those from East Jerusalem who may move freely in Israel. An attorney must follow the same procedures as other Palestinians wishing to enter Israel; a request for a permit must be made to the Palestinian District Coordination Office which forwards the request to the Israeli security services. In several cases, Palestinian attorneys were not able to reach their client's hearing due to Israeli-imposed travel restrictions, resulting in lengthy delays and a lack of representation.

Sha'ban Barham from Ramallah was detained in December 1995. According to testimony he provided to B'Tselem, his family appointed Attorney Samara from Ramallah to represent him.

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<sup>118</sup> Article 76 states that "protected persons accused of offenses shall be detained in the occupied country, and if convicted they shall serve their sentences therein."

<sup>119</sup> Sajadia, 817.

<sup>120</sup> Professor Theodor Meron, referring to Justice Shamgar's interpretation of Article 49, describes it as "contrary to the rules of treaty interpretation as established by the Vienna Convention on the Law of Treaties... [which] requires that a treaty be interpreted in good faith in accordance with the ordinary meaning to be given to its terms etc." See *idem*, *Human Rights and Humanitarian Norms as Customary International Law* (Oxford: Clarendon, 1989), n. 131 at pp. 48-49.

<sup>121</sup> See e.g. HCJ 698/80 Qawasmeh *et. al* v. Defence Minister *et al*. P.D. 35(1) 617.

<sup>122</sup> HCJ 5973/92 ACRI *et al* v. Defence Minister *et al*, P.D. 47(1) 267 *et sec*.

<sup>123</sup> For a discussion of these deportations see B'Tselem, *The Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992*, June 1993.

<sup>124</sup> See Article 147.

<sup>125</sup> For a general discussion on the closure, see for example, B'Tselem, *Without Limits: Human Rights Violations Under Closure*, April 1996 and *The Closure of the West Bank and Gaza Strip: Human Rights Violations Against Residents of the Occupied Territories*, April 1993.

However, due to the closure, the attorney could not reach the hearing. Mr. Barham therefore represented himself at the appeal, which was denied.<sup>126</sup> The same is true in the case of Muhammad ‘Ayadeh. According to his testimony, his family hired Attorney Usama ‘Udeh, from Bethlehem, to appeal his seven-month extension order. However, because of the closure, Attorney ‘Udeh could not reach Megiddo, where the appeal was heard. Mr. ‘Ayadeh represented himself, and his appeal was denied.<sup>127</sup>

## 2. Family Visits

The closure also prevents family members from visiting administrative detainees. While military regulation entitles every administrative detainee to receive a half-hour family visit every two weeks,<sup>128</sup> the many bureaucratic impediments, prevent administrative detainees from fully enjoying this right.

In order to visit relatives in detention, all Palestinians must file a request through the International Committee of the Red Cross, which forwards this request to the Israeli authorities. Permits are only granted for group visits organized by the ICRC. As of July 1996, permits to visit detention facilities are granted to the following family members, provided they are not rejected on security grounds:

- Parent, spouse, child or sister of a detainee, regardless of age;
- Brother of a detainee who are under age 16 or over age 30.<sup>129</sup>

Israeli officials deny permits to family members of many long-term administrative detainees. Sabah Deleisheh was initially permitted to visit her husband, Khaled Deleisheh, who has been detained since April 1994. However, at the end of 1996, she was denied a permit on security grounds:

I visited him only at the Atlit prison, in February 1996, and after that, because of the closure, I couldn't visit. The next time I could visit wasn't until July 1996, when my husband was in the Kfar Yona prison. After that I couldn't visit until September 1996, also at Kfar Yona. Altogether, I visited him a total of three times throughout 1996. From October to December, I filed three requests for myself and my three daughters to visit my husband in Ashkelon prison. On all three occasions the visit was approved only for my daughters. It is weird that they approved them to visit alone, because Majed is nine and a half years old, Shahed is six and Wahed is five.<sup>130</sup>

Because of the security restriction imposed on their mother, the three children travel to Ashkelon alone on the ICRC bus to visit their father. The same is true of Suha Barghouti, who since September 1996 is denied a permit “on security grounds” to visit her husband Ahmad Qattamesh, detained since August 1992.<sup>131</sup> Barghouti's seven-year old daughter must travel to Megiddo alone

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<sup>126</sup> Testimony of Sha'ban Muhammad Suleiman Barham provided to then-B'Tselem fieldworker Bassem 'Eid on 27.5.96.

<sup>127</sup> Testimony of Muhammad 'Issa Ibrahim 'Ayadeh, provided to then-B'Tselem fieldworker Bassem 'Eid on 22.4.96.

<sup>128</sup> Emergency Powers Regulations (Detention) (Conditions of Incarceration in Administrative Detention), 1981, Regulation 11(1).

<sup>129</sup> Letter from Lieutenant Gabi Blum, for the Assistant to the Judge Advocate General for International Law to HaMoked: Center for the Defense of the Individual, 16 March 1997.

<sup>130</sup> Testimony of Sabah Nimr 'Alan Deleisheh provided to B'Tselem fieldworker Najib Abu Rokaya on 19.12.96.

<sup>131</sup> Ahmad Qattamesh was detained for a year awaiting trial. When a military judge ordered his release, in September 1993, he received an administrative detention order. See box in chapter three, section B.

in order to visit her father. The trip to visit their fathers takes fourteen hour round trip, and includes a long bus ride, several hours wait at the detention facility, as well as the emotional strain of visiting a parent in prison, all without the supervision of an adult familiar to the children. In March 1997, Deleisheh and Barghouti petitioned the High Court of Justice to compel the authorities to allow them to visit their spouses.<sup>132</sup> The case has yet to be heard.

Even those who are not prevented from visiting detainees on security grounds lose their right to visit when Israel imposes a hermetic closure on the Occupied Territories. These hermetic closures prevent all Palestinians, even those with permits, from entering Israel. Following the imposition of the hermetic closure in February 1996, Israel canceled all visits to detention facilities inside Israel. No visits were allowed until July, 1996. On 21 March, 1997, following a bombing in Tel Aviv, Israel again imposed a hermetic closure which was in effect for five weeks.

With regard to family visits, conditions of Jewish administrative detainees are markedly better than their Palestinian counterparts. Jewish residents of the Occupied Territories are not subject to the travel restrictions imposed on Palestinians and are therefore able to visit detention centers even during times of total closure. Furthermore, special allowances are made to enable Jewish administrative detainees to maintain contact with their families. Baruch Marzel and Shmuel Ben-Yishai were granted furloughs to attend the brit mila (ritual circumcision) of their newborn sons.<sup>133</sup> In contrast, Derar al-'Aza, whose case is described below, was not allowed to visit his dying father in the hospital. Noam Federman, administratively detained for two months in 1996-1997, was housed in the Nir Prison, which also serves as a training center for the Prisons Service. Federman's family spent two weekends with him in the prison. No such arrangements have been made to enable weekend visits for any of the Palestinian administrative detainees, including those who have been detained for years.

**A request to see his dying father**

Derar al-'Aza, from the 'Aza refugee camp in Bethlehem (Area A), was detained on 31 May 1995 just after the death of his mother. He was issued a six-month detention order, which has been renewed continuously every six months.

In the summer of 1996, al-'Aza's father, Ahmad al-'Aza was diagnosed with inoperable stomach cancer. At the appeal of his second extension of detention, on 17 June, 1996, Derar requested a one-day release in order to visit his father in the al-Hussein hospital. Judge Pesanzon wrote in his decision, "I consider it a personal obligation on the purely humanitarian level to ask that this request be positively considered." Although the hospital is located on a joint Israeli-Palestinian patrol road, the security forces decided that security considerations prevented granting the request. Al-'Aza writes from Megiddo:

The commander told me that they couldn't take me to see my father ... I felt then the extent of the discrimination, against me how much these people, whom I can't even imagine as human, must hate me. I broke down. I returned to the

<sup>132</sup> HCJ 1981/97, *Jamila Kena'an et al. v. IDF Commander in the West Bank et al.* In addition to Sabah Deleisheh and Suha Barghouti, the petitioners include Dr. Faisal a-Sabi' who has only been allowed to visit his son, 'Imad Sabi' once since he was administratively detained in December 1995; Fatma Salem a-Radaidah, who has been denied a permit to visit her son Shafiq (administratively detained in August 1995) since September 1996; and Jamila Kena'an whose husband is awaiting trial. The petition was filed by Attorney Dan Yakir of the Association for Civil Rights in Israel and Attorney Tamar-Peleg-Sryck.

<sup>133</sup> *Jerusalem Post* 20.4.94

tent where I am detained, hopeless and full of heartache, imagining the face of my mother who had died two weeks before my detention and the fact that my father will not live long and is liable to join my mother any minute. I broke into sobs. ... After a month of suffering I received the news that my father had died. I don't have much more time to finish my extension; I should be released on 28 September, and the only thing I care about now is getting released and hugging my sisters who have no one left in the world but me.<sup>134</sup>

On 28 September, Derar al-'Aza received an additional six-month extension of his administrative detention, which was again extended on 27 March, 1997.

## B. Physical Conditions

Until 1995, most administrative detainees were held at the Ketziot Military Detention Camp (Ansar III) in substandard conditions, including exposure to extremes of heat and cold, overcrowding, poor quality and insufficient food and extremely poor hygiene.<sup>135</sup>

The authorities closed Ketziot in May 1995, and transferred the majority of Palestinian administrative detainees to the Megiddo Military Detention Center. In his testimony to B'Tselem of April 1996, administrative detainee Usama Barham describes the conditions in the Megiddo detention facility:

We are kept in tents, 8 X 6 meters. In each tent there are more than twenty-two people. We all sleep on wooden beds with a mattress and blanket. Every three tents are in a pen. We have 4 showers and bathrooms. ... For the past week there's been no hot water. ... In September 1995 I was in the cells. There the conditions are much worse. The ventilation is terrible. The cell I was in was 5 X 12 meters. Every cell is of a different size. Thirty-six people lives in the cell and it was very crowded. The beds in the tents are twenty centimeters off the ground. The bathrooms have no cleaning supplies. It always smells horrible and there are a lot of mice.... Nowadays, we can pray in groups. There are religious breaks and they respect our holidays. They allow religious books, though some have been confiscated.... Phone calls are forbidden. Only during the closure did they allow a few of us to call our families. ... We receive newspapers every few days. We don't get the daily paper on the day it's issued.<sup>136</sup>

In January 1997, LAW: The Palestinian Society for the Defense of Human Rights and the Environment petitioned the High Court of Justice on behalf of 'Abd a-Rahman al-Ahmar regarding detention conditions at Megiddo.<sup>137</sup> Al-Ahmar's attorney, Allegra Pacheco, claimed that 600 people, both administrative detainees and prisoners are held in unheated cloth tents which expose them to cold, wind and rain. The petition noted that the temperature at Megiddo can reach 0° Celsius (32° Fahrenheit). The High Court rejected the petition. Although each tent has a television and the cooking tent has a refrigerator, the Court accepted the claim of the Defense Minister that reasons of safety and security prohibited the installation of electricity in the tents. However, the

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<sup>134</sup> From an article by Gideon Levi in *Ha'aretz*, 13.9.96.

<sup>135</sup> For a detailed description of conditions at Ketziot, see B'Tselem, *Detained Without Trial*, 1992.

<sup>136</sup> Testimony taken by B'Tselem fieldworker Fuad Abu Hamed on 22.4.96 at Megiddo.

<sup>137</sup> HCJ 958/97, *'Abd a-Rahman Hader al-Ahmar v. Minister of Defense*, unpublished.

Court gave the government two weeks to propose alternatives, including transferring the detainees to buildings.

On 10 March 1997, the Minister of Defense informed the Court that it would not be financially feasible to construct temporary structures to house detainees during the winter and there is no room to house all the prisoners and detainees in cells. The respondent also stated that the IDF plans to close Megiddo eventually and transfer all detainees and prisoners to Prison Service facilities. This will not be possible, however, until the next prisoner release in the context of the Oslo Accords generates the necessary space.<sup>138</sup> The Megiddo detainees remain in tents.

Administrative detainees who suffer from health problems were initially held in the Ashmoret prison at Kfar Yona, where conditions were worse than at Megiddo. The detainees went on a hunger strike and were temporarily transferred to the Atlit prison and then to the Shikma prison in Ashkelon. Conditions at Shikma are extremely poor. All of the detainees (12-18 people) are kept in a single damp, poorly ventilated cell, with a non-functioning toilet. They remain in the cell nineteen hours a day.

### **C. The Possibility to Work or Study.**

Although many of the detainees would like to continue their work or study in detention, the conditions in Shikma are not suitable to reading and writing.<sup>139</sup>

Detainees at Megiddo have also been denied the opportunity to continue working. 'Imad Sabi', a translator and consultant to the Women's Studies Program at Bir Zeit University, requested permission to continue his work of developing an Arabic dictionary of gender and social science terminology. Although the Women's Studies Program applied to the authorities, stating it had no objection to the authorities' reviewing the documents, the request was denied.

### **D. Safety of Detainees**

In February 1995, two administrative detainees died in the Megiddo military detention center, apparently after being tortured by fellow detainees. 'Abd a-Rahman 'Omar Salim al-Kilani, died on 1 February 1996, three days before he was to be released. 'Adel 'Ayad a-Shahateet died 11 February. In the fall and winter of 1995, three Palestinian prisoners died at the Ketziot detention center, also as a result of torture by Palestinian inmates.

B'Tselem documented the torture of Palestinians by fellow detainees in Ketziot, apparently on suspicion of collaboration with Israel. According to the testimonies given to B'Tselem, the authorities at Ketziot did not intervene to stop the torture. This indifference is particularly grave given the large number of persons involved (the interrogators who perpetrated the torture and the passive eye-witnesses) and the prolonged period over which these incidents occurred. Indeed, the testimonies indicate that the authorities knew about the torture. They obviously were aware of the acts being perpetrated in the facility after two Palestinians died as a result of the violence inflicted on them. Israeli authorities bear responsibility for those detained in their custody, and are obligated to ensure their well-being. In response to B'Tselem inquiries, on 20 December, 1996 the IDF Spokesperson's Office stated that the IDF acknowledges its responsibility for the well-being of

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<sup>138</sup> Second announcement of the respondent by the Attorney General, HCJ 958/97.

<sup>139</sup> Information provided by Attorney Tamar Peleg-Sryck, 6 May 1997.

those it incarcerates and has taken a number of steps to address violence among detainees and prisoners.

### **Conclusions**

Administrative detainees are not criminals. Legally they are innocent people, and international law requires that conditions under which they are held reflect this fact. For Palestinian administrative detainees, the very place where they are held - inside Israel - means that their rights to visits by family members and attorneys are severely curtailed. Physical conditions are poor, and work or study are either denied by those conditions, or by the authorities. The latter have also failed to protect detainees from violent and even lethal attacks by fellow-inmates. These conditions, as well as the fundamental uncertainty inherent in Israel's pervasive use of extensions, take a heavy psychological toll, both on detainees and on their families.

## Chapter Seven: Effect of Administrative Detentions on Detainees and their Families

Administrative detentions in general, and the extensive use of detention extensions in particular, are taking their toll both on detainees and on their families. 'Imad Sabi' writes on 1 March 1997:

Two days ago, on Thursday the 27 February, eighteen administrative detainees were notified of their receipt of a new, of yet another, extension order. The unfortunate soldier assigned the task of informing the detainees of the extensions (and whom we call 'the messenger of death' or less judgmentally 'the extensions man') was met with an outbreak of (spontaneous) abuse and insults. "It's not me," he said defensively, trying to calm the prisoners. The tension was immense; hours later when the *idariyeen* [administrative detainees] gathered in the two sections 'housing' them, to perform what has by now become their traditional protest against the extensions, the anger in their voices was extremely pronounced. A wooden 'bed' was burned in Section B-2, an ominous sign perhaps of things to come?<sup>140</sup>

Indeed, at the next extension of detainees, on 19 March, the protest was even more pronounced and escalated into a riot in which several tents caught fire. The Military Police and the Israel Police were summoned, and used tear gas to quell the riot. According to the IDF Spokesperson, nine detainees and four soldiers were injured, all of them as a result of exposure to tear gas. Attorneys and Red Cross representatives were barred from entering Megiddo for three days.

The military authorities are visibly concerned about the psychological state of the administrative detainees in Megiddo and the potential adverse affects this may have on the security of the compound. In December 1996, the authorities invited a group of psychologists from Tel Aviv University to evaluate the detainees and make suggestions for improving detention conditions. At an initial meeting between the psychologists and a group of the detainees, the detainees stated that they were not interested in participating in the study and were able to communicate their demands regarding detention conditions directly to the authorities.<sup>141</sup>

The uncertainty caused by the extensions of detention also has detrimental effects on the detainees' families. Suha Barghouti, wife of longtime detainee Ahmad Qattamesh, described the effect of extensions on herself and her seven-year old daughter:

Like 380 other families, my daughter and I are forced every six months to try to contain our anxiety, our hope, our expectations that this time the administrative detention period will not be renewed and Ahmad will be released. Administrative detention redoubles the pain of the prisoner and his family because it adds to all the hurt and anger that is present due to absence of the husband and father, an ambiguity about when he will be reunited with his family. This renewability of the administrative detention orders has drastic psychological effects on the family, the prisoner and mostly the children.<sup>142</sup>

Thirty-eight year old engineer Khaled Deleisheh, from al-Bireh is married and has three daughters, ages 9, 6, and 5. He has been in administrative detention consecutively since 16 April 1994. Prior to this, he was in administrative detention from January 1992-October 1993. He was released for

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<sup>140</sup> Letter from 'Imad Sabi' to B'Tselem, 1 March, 1997.

<sup>141</sup> This information was provided by Khalida Jarrar of Addameer Prisoners Support Association on 28 January, 1997. See also *Ha'aretz*, 8.1.97.

<sup>142</sup> Public Statement from 19 August, 1996.



six months, during which time he was under house arrest, and then redetained in April 1994. He has therefore been in administrative detention for sixty months of the past five and a half years and is now serving his seventh consecutive detention order. In an open letter entitled, “Who will help me get my dad released?” Deleisheh’s oldest daughter Majed describes her feelings regarding the constant extensions of her father’s detention orders:

When I was five, my dad was detained in administrative detention. They told me that it would only be for six months. I didn’t know then that those six months would continue for five years. And the hardest thing of all in this detention is that every six months, my sisters and I get dressed up in our new clothes and wait and wait, but he doesn’t come. And we ask our mom, ‘why doesn’t he come home?’ And she says, ‘because they renewed for another six months.’ We keep asking, ‘so when will he come home?’ And mom says, ‘that’s the hardest question of all; if only I knew when he was coming home.’ And we wait another six months and another six months, and so now five years have gone by and we don’t know when this hard and painful situation will end. ... There’s nothing in this world which can make me happy; not new clothes, not candy and not even the carnival. The only thing I need is for my dad to be with me. I need him to hug me, to pick me up, to spoil me, to take me to school like the rest of my friends. I wish I could call to him: ‘daddy, daddy.’ Please help me. We used to be a happy family, but now we are miserable. Who, who will help make us a happy family? Who can answer our hardest question: when is my daddy coming back to us?

Administrative detention also has adverse affects on released detainees. Because the security services’ considerations and policies regarding administrative detention are classified, an individual does not know if he or she is “wanted” for administrative detention or what activities will result in an administrative detention. This uncertainty causes many Palestinians, and particularly past administrative detainees, to live in fear of being subjected to administrative detention.

Ghassan Jarar, a resident of Ramallah, has spent a total of twenty-eight months in administrative detention over the past nine years. He was released from a six-month detention on 11 March, 1996. In his testimony to B’Tselem, he stated the foiiowing:

Since my last release, I have not left Area A, because I don’t know what will happen to me; I don’t know if the Israelis still have a need to detain me. I started studying for my M.A. at Bir Zeit university [which is in Area B], but I stopped out of fear that I would be detained on the way to or from the university.<sup>143</sup>

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<sup>143</sup> Testimony provided to Najib Abu Rokaya on 27 March 1997.

## Conclusions

Administrative detention is not illegal under international law, which recognizes that under certain circumstances there may be no alternative to preventive detention. However, because of the serious injury to due process rights inherent in this measure and the obvious danger of abuse, international law has placed rigid restrictions on its application.

Israel's use of administrative detention in the Occupied Territories blatantly violates these restrictions, and is therefore illegal under international law. Israel makes sweeping use of its power to detain administratively, holding people for years without charge or trial. In this way, Israel makes a charade out of the entire system of procedural safeguards in both domestic and international law regarding the right to liberty and due process.

- Rather than being a preventive measure, the authorities employ administrative detention as an alternative to punishment, particularly in cases where they do not have evidence or are unwilling to present evidence in criminal proceedings. This is a completely unacceptable use of administrative detention, which is not designed to provide governments with a means of evading due process of law.
- In several prominent cases, administrative detention is used against political opponents of the Oslo Accords and in response to non-violent speech, opinion or activity, which fall under the authorities' extremely broad definition of what constitutes a danger to the security of the area. Such usage is a blatant contradiction of the right to freedom of speech and freedom of opinion guaranteed under international law.
- The authorities continue to use administrative detention on a large scale, rather than as an exceptional measure. Furthermore, administrative detention is conducted on a wholesale basis, rather than being individually tailored as required by international law. The detention period is not crafted for the minimum period necessary.
- The authorities detain Palestinians for prolonged periods of time even though administrative detention is intended under international law as a short term measure. The pervasive use of detention extensions raises the possibility of "administrative detention for life." Detainees have spent up to four years in administrative detention without knowing why or when they will be released. This uncertainty has devastating effects on the detainees and on their families. There is no indication that the authorities intend to release any of these long term detainees.
- Detainees are provided with no information as to why they are detained and are denied even the basic elements of due process. Virtually all of the information justifying the administrative detention is classified. The detainee has no access to this information and therefore no opportunity to contest its veracity. The reliance on classified information prevents a meaningful opportunity to appeal the detention.
- Detainees are held outside of the Occupied Territory, in violation of clear provisions to the contrary in international instruments.
- Conditions of detention fall far short of the minimum requirements of international law. In addition to poor physical conditions, detainees' rights to family visits and access to lawyers are severely impaired, as is their right to pursue work or study.

## Recommendations

- **Israel must immediately release all administrative detainees or bring them to trial for any criminal offenses they are suspected of having committed.**

If in the future, a circumstance arises where a grave danger can be prevented only by holding an individual in administrative detention, the following rules must be observed:

- Detainees must be held in conditions which meet international standards.
- Administrative detainees may only be held inside the Occupied Territories; they must have access to their attorneys, including Palestinian attorneys from the Occupied Territories, and receive regular visits from their family members.
- The judicial review of administrative detention 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 defend themselves. Judicial review must be conducted regardless of whether the detainee initiates an appeal.

There can be no justification for the continued application of the 1988 Administrative Detention Order, which was intended to be a short-term measure. This Order must be repealed. At a minimum, if an isolated case of imperative security arises in the future, administrative detention must, in addition to the requirements stated above, adhere to those standards in effect prior to 1988. These include limiting the power to detain administratively solely to the IDF Forces and requiring swift and automatic judicial review.

# Prisoners of Peace:

## Administrative Detention During the Oslo Process

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