

# STARVED OF JUSTICE

PALESTINIANS DETAINED  
WITHOUT TRIAL BY ISRAEL

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Cover photo: Former administrative detainee Hana Shalabi, from Burqin in the West Bank, at a protest tent in the Gaza Strip, 7 May 2012. The Israeli authorities transferred Shalabi to Gaza after her 43-day hunger strike against her detention without charge or trial. © Anne Paq/Active Stills

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# 1. INTRODUCTION

**“You are destroying my life and I want to know why. As a human being I have my own mind and I am educated, and I want to know what I am detained for. The military prosecution talks of its professionalism, and meanwhile I have no rights?”**

Ahmad Qatamesh, prisoner of conscience held in administrative detention by the Israeli authorities, speaking at Ofer military court on 31 October 2011

For decades, the Israeli authorities have held Palestinians without charge or trial under renewable detention orders, denying them any semblance of justice. In the first half of 2012, detainees such as Khader Adnan and Hana Shalabi engaged in prolonged hunger strikes to protest their incarceration without charges as well as ill-treatment during interrogation, denial of adequate medical care, and denial of family visits. Other detainees began their own hunger strikes to highlight the plight of the hundreds of administrative detainees and the routine violations endured by Palestinian prisoners. The protest grew, and a mass hunger strike began on 17 April 2012, with an estimated 2,000 prisoners and detainees demanding improved detention conditions, an end to solitary confinement, family visits for all detainees, and an end to administrative detention.

Palestinians held by Israel have used hunger strikes over the years to protest detention conditions and demand respect for their human rights, but in the wake of the wider protests which have taken place since early 2011 across the Middle East and North Africa, this recent wave of hunger strikes have had a greater resonance. Their non-violent protests – which brought several detainees close to death – drew global attention to the fact that Palestinian prisoners held by Israel continue to be starved of justice. Whether the protests have secured greater respect for Palestinian prisoners' rights from the Israeli authorities remains to be seen, but the signs were not encouraging at the time of writing of this report in late May 2012.

Administrative detention is a form of detention without charge or trial. Its use may result in arbitrary detention and if prolonged or repeated can amount to cruel, inhuman and degrading treatment or punishment. Other violations to which administrative detainees – as well as other Palestinian prisoners held by Israel – are routinely subjected include the use of torture and other ill-treatment during arrest and interrogation; poor prison conditions, including inadequate medical care; detention in prisons inside Israel rather than in the Occupied

Palestinian Territories (OPT); and prohibitions on family visits. Since 1967, hundreds of thousands of Palestinians in the OPT have been arrested – some of them repeatedly – by the Israeli security forces.<sup>1</sup> At the time of writing, well over 4,000 – considered by the Israeli authorities to be “security prisoners” and thus held under harsher conditions than “criminal prisoners” – are detained or serving sentences in Israeli prisons.<sup>2</sup> Over 300 of these “security prisoners” are held under administrative detention orders, with no intention to try them for any criminal offence, a violation of their right to a fair trial.

As the hunger strikes escalated, the Israel Prison Service (IPS) took systematic measures to punish hunger-striking prisoners and detainees and pressure them to end their strikes, putting their lives at risk. These measures included solitary confinement; preventing the detainees from contact with family members and lawyers; refusing to transfer hunger strikers whose health was in danger to hospitals suitable for their condition; and preventing detainees from seeing independent physicians so that they could receive accurate medical information from doctors they trusted. Some hunger striking detainees even reported physical assaults by IPS staff.<sup>3</sup>

Some of the administrative detainees on prolonged hunger strikes were, according to their lawyers, offered release on condition that they agree to be deported outside the OPT or transferred within them, but all refused. Hana Shalabi, an administrative detainee from the village of Burqin in the West Bank, was transferred to Gaza for at least three years on 1 April 2012, three days after a deal was reached that ended her 43-day hunger strike in what appears likely to have been a forcible transfer. She was isolated from her independent lawyers and family, and is reported to have subsequently claimed she had not been given full information about the conditions of the deal. Other administrative detainees have been forcibly deported from the OPT in the past – a grave breach of international humanitarian law. All should be allowed to return to their homes without delay.

On 14 May 2012, a deal was struck between prisoner representatives and the Israeli authorities, including the IPS and the Israel Security Agency (ISA),<sup>4</sup> brokered by intensive Egyptian mediation, leading to the suspension of the mass hunger strike. Under the deal, Israel reportedly agreed to end solitary confinement for 19 prisoners held in isolation for up to 10 years; lift a five-year ban on family visits for prisoners from the Gaza Strip; and discuss prisoners’ demands regarding improvements to prison conditions.<sup>5</sup> There were conflicting reports on whether the deal included a commitment by the Israeli authorities to restrict their use of administrative detention.<sup>6</sup> While most prisoners held in isolation had been returned to general prison wings, no family visits had been allowed from the Gaza Strip at the time of writing in late May.<sup>7</sup> Additionally, reports that the Israeli military had by the time of writing renewed at least 30 administrative detention orders and issued at least three new ones<sup>8</sup> since the deal was signed suggest that the Israeli authorities may have simply returned to “business as usual” as far as administrative detention is concerned.

Israel’s record following previous agreements over releases of Palestinian prisoners and detainees or the improvement of prison conditions does not provide grounds for optimism that the deal will lead to a reduction in the use of administrative detention. For example, Hana Shalabi was released on 18 October 2011 after spending 25 months in detention without trial, in a deal between Israel and Hamas that saw the staged release of 1,027 Palestinians prisoners and detainees in exchange for the release of Israeli soldier Gilad

Shalit, who had been held captive for over five years by Palestinian armed groups in the Gaza Strip.<sup>9</sup> At the time, Hamas officials claimed that Egypt, which helped broker the deal, had guaranteed that Israel would not re-arrest prisoners who were released. Hana Shalabi was arrested again four months later and once again placed in administrative detention.

Nor did the deal result in all individual detainees ending their hunger strikes, and at least two men – Akram Rikhawi and Mahmoud al-Sarsak – remained on hunger strike at the time of writing. The latter had been on hunger strike for more than 70 days in protest at his continuing prolonged detention without charge or trial, and both were in critical condition.

## CONTEXT

Israel has routinely detained Palestinians from the West Bank, including East Jerusalem, and the Gaza Strip for political reasons since its occupation of these territories in 1967. Palestinian residents of the OPT also continue to be subjected to multiple other human rights violations by Israeli forces, including grave breaches of international humanitarian law.

Ongoing Israeli violations include the expansion of illegal settlements and demolition of Palestinian homes and infrastructure in the OPT; the failure to protect Palestinian civilians from frequent attacks by Israeli settlers or prosecute those responsible for such attacks; arbitrary restrictions on movement which affect access to livelihoods and basic services such as water, education and medical care; and the indiscriminate and disproportionate use of force against demonstrators as well as during military operations. Stringent restrictions imposed by Israel on the movement of Palestinians within the OPT, and an ongoing military and economic blockade imposed on Gaza in June 2007, have stifled the Palestinian economy and caused high unemployment and poverty. Many Palestinians in the OPT – including most of the 1.6 million people living in the Gaza Strip – depend on international aid to meet at least some of their basic needs.

Palestinians have also suffered human rights violations at the hands of the Palestinian Authority's security forces. Beginning in 1993, Israel and the Palestine Liberation Organization signed a series of agreements known collectively as the Oslo Accords after lengthy negotiations with international mediation. The Oslo I agreement, signed in May 1994, stipulated that that Israel would transfer administrative functions in some parts of the occupied West Bank and Gaza Strip to the Palestinian Authority (PA) for a five-year interim period as negotiations on a "final status agreement" continued. As no such agreement was ever reached, many aspects of the "interim arrangement" delineated by the Oslo Accords remain in place some 18 years later, and Israel's military occupation of the OPT continues.

Inter-factional tensions between the two main Palestinian political parties, Fatah and Hamas, increased after Hamas won the Palestinian parliamentary election in January 2006, leading to severe armed clashes during which hundreds of people were killed in the first half of 2007.<sup>10</sup> Since June 2007, Hamas has maintained a de facto administration in the Gaza Strip and the Fatah-led PA administers parts of the West Bank, while Israel retains overall control over both areas. Amnesty International has documented continuing human rights violations including arbitrary arrests and torture and other ill-treatment by both the Hamas de facto administration and PA forces.<sup>11</sup> Since 2010 the Hamas de facto administration has also executed 11 individuals for alleged offences including murder and passing sensitive information to the Israeli intelligence services.

Israeli civilians have also suffered human rights abuses at the hands of Palestinian armed groups, although Israeli civilian casualties have consistently been far lower than the numbers of Palestinians killed by the Israeli military, particularly since the outbreak of the second *intifada* (uprising) in September 2000. Though there have been no suicide bombings since February 2008, Israeli civilians continue to be targeted by other armed attackers, and Palestinian armed groups continue to fire indiscriminate rockets from Gaza into southern Israel. Attacks which target civilians or use indiscriminate weaponry in civilian areas are war crimes, and Amnesty International condemns all such attacks unreservedly, regardless of the perpetrator.

Amnesty International, along with the UN Fact-Finding Mission on the Gaza Conflict headed by Justice Richard Goldstone, concluded that war crimes and possible crimes against humanity were committed by both Israeli forces and Palestinian armed groups during Operation “Cast Lead”, the 22-day military assault on the Gaza Strip launched by Israel on 27 December 2008, during which hundreds of Palestinian civilians and three Israeli civilians were killed.<sup>12</sup> There has been no accountability for these crimes, as both Israel and the Hamas de facto administration have failed to conduct credible, independent investigations or prosecute perpetrators,<sup>13</sup> while the international community has failed to implement the recommendations of the UN Fact-Finding Mission.

## ABOUT THIS REPORT

This report aims to contribute to the ongoing efforts of Palestinian detainees held by Israel to obtain their human rights, and to build on Amnesty International’s campaigning over many years for an end to detention without trial in Israel. It complements the work of many local Israeli and Palestinian human rights organizations, such as the Association for Civil Rights in Israel, Addameer, Al-Haq, B’Tselem, HaMoked, the Palestinian Center for Human Rights and Physicians for Human Rights - Israel, which have also on numerous occasions reported on the injustice of the practice of administrative detention and campaigned for its use to be drastically curtailed or ended. The report reviews the history of the practice of administrative detention by the Israeli authorities, analyzes the development of relevant legislation, and documents the cases of individuals held under this measure, including other human rights violations to which they have been subjected.

The report is based on information collected from detainees, their families, and their lawyers through interviews by telephone and in the field, as well as Israeli and Palestinian human rights organizations and correspondence with the Israeli authorities. Some of the individuals referred to in this report have been followed closely by Amnesty International for many years while others have more recently come to the organization’s attention. This report is not intended to address violations of detainees’ and prisoners’ rights by the Palestinian Authority, or the Hamas de facto administration, concerns which Amnesty International has addressed elsewhere and is continuing to research and document. It also does not address the situation of irregular migrants and asylum-seekers currently detained administratively by the Israeli authorities pending deportation under the Entry into Israel Law - 1952, or the recently-passed Prevention of Infiltration Law, both of which allow for the detention without trial of individuals who have entered the country in an irregular manner.<sup>14</sup>

## KEY RECOMMENDATIONS

In the final chapter of this report, Amnesty International makes several recommendations to



the Israeli authorities and the international community. In particular, the organization is calling on the Israeli authorities to:

- release immediately and unconditionally all prisoners of conscience held solely for the non-violent exercise of their rights to freedom of expression, association and assembly;
- release all administrative detainees unless they are promptly charged with internationally recognizable criminal offences and tried in accordance with international fair trial standards;
- end the practice of administrative detention;
- end the practice of forcible deportation or transfer of Palestinians from the OPT or from the West Bank to Gaza, including in the context of deals to release individuals held under administrative detention orders;
- protect all those in Israeli custody from all forms of torture and other ill-treatment, including denial of appropriate medical care, at all times; investigate all allegations of torture or other ill-treatment promptly and impartially, and bring to justice anyone found responsible for abuses;
- ensure that no prisoner or detainee is punished in any way for non-violent protests such as hunger strikes, and that all prisoners and detainees are given access to their lawyers and families, as well as to independent doctors when necessary;
- ensure that Palestinian prisoners and detainees are held in prisons and detention centres inside the Occupied Palestinian Territories, and that conditions in all such facilities fully meet international standards.

## 2. BACKGROUND ON ISRAEL'S USE OF ADMINISTRATIVE DETENTION

Administrative detention describes measures under which individuals are detained by order of state authorities – which can include the army – usually on security grounds, without intent to prosecute them in a criminal trial (even if there is some form of judicial review over the detention). While not completely prohibited under international law, its use is only permitted in exceptional circumstances, subject to stringent safeguards (see Section 5.1). Nevertheless, it has been – and continues to be – used by a variety of countries to circumvent the legal protections and due process that all detainees are entitled to under international law.<sup>15</sup>

During the British Mandate in Palestine, administrative detention under emergency laws<sup>16</sup> was used to hold both Arabs and Jews, including future Israeli leaders such as Golda Meir and Moshe Dayan, who voiced strong opposition to its use at the time.<sup>17</sup> After the establishment of the State of Israel in 1948, the Israeli authorities used these same emergency laws to detain Israeli citizens without charge or trial. The Israeli army issued military orders providing for the same practice after occupying the West Bank and Gaza Strip in 1967. The legal provisions and procedures governing administrative detention which are currently used by the Israeli authorities are detailed in Section 3.

The Israeli authorities justify the continuing use of administrative detention as a necessary preventative measure used “as the exception,” when evidence against an individual “engaged in illegal acts that endanger the security of the area and the lives of civilians” cannot be presented in ordinary criminal proceedings “for reasons of confidentiality and protection of intelligence sources.”<sup>18</sup> They stress that it is not a punitive measure, and the Israeli High Court of Justice has ruled that it may not be used as punishment for past actions or as a general deterrent, but only as a preventative measure against a person who poses an individual threat.<sup>19</sup> The High Court of Justice has also ruled that administrative detention is subject to the principle of proportionality, and may only be used if it is “not reasonably possible” to prevent the danger posed by an individual through criminal proceedings or a less severe administrative measure.<sup>20</sup>

However, Amnesty International has collected evidence over many years indicating that administrative detention is used regularly by the Israeli authorities as a form of political detention, enabling the authorities to arbitrarily detain political prisoners, including prisoners of conscience,<sup>21</sup> and that the practice is used to punish them for their views and suspected political affiliations when they have not committed any crime.<sup>22</sup>

People held as administrative detainees spend months and sometimes years in prison without being tried and without knowing the details of the allegations against them. No criminal charges are filed and there is no intention of bringing the detainee to trial. Because most or all of the material justifying the detention order is withheld from the detainee and his or her lawyer, it is impossible for detainees to defend themselves meaningfully or refute the allegations against them. Since administrative detention orders are renewable an unlimited

number of times, no administrative detainee knows when they will be released. Nor does eventual release provide any guarantee that the same person will not be detained administratively again or be subject to further harsh measures. Amnesty International has documented cases of Palestinians such as **Ali 'Awad al-Jamal** who spent over six consecutive years in administrative detention. Over two decades, **Saleh Mohammed Suleiman al-'Aroui** received 20 administrative detention orders and two prison sentences; he spent more than nine years in detention without charge or trial, before he was released in March 2010 in a deal which saw him forcibly deported from his home in the West Bank to Syria for a minimum of three years (see Section 4.6 for further details on his deportation).

Thousands of people, the vast majority of them Palestinians, have been detained under administrative detention orders in Israel and the OPT, but the numbers have varied greatly over the years. From 1948 to 1966, administrative detention was one of many harsh measures which Israel's Palestinian Arab citizens were subjected to under military rule, but statistics regarding the extent of its use are not readily available. After 1967, the measure was extensively deployed against Palestinians from the West Bank and Gaza Strip in the first years of the Israeli occupation; for example, more than 1,100 administrative detainees were reported in 1970.<sup>23</sup> During the 1970s, the number fell to dozens, as Israel came under increasing domestic and international pressure – including from Amnesty International – over the practice.

For approximately three years after March 1982, when Ali 'Awad al-Jamal was released after spending six years and nine months in administrative detention, no administrative detainees from the West Bank or Gaza Strip were held,<sup>24</sup> although the military order authorizing administrative detention was not repealed and there was an increasing resort to administrative control orders confining individuals to their towns or villages. In August 1985, the Israeli authorities announced that they would reintroduce administrative detention and deportations in order to “clamp down on terrorism and incitement” in the OPT. Dozens of new orders had been issued by the end of the year. Amnesty International documented 144 Palestinians detained administratively during 1986.<sup>25</sup>

A new phase began with the outbreak of the first *intifada* (uprising) in December 1987. By June 1989, more than 5,000 Palestinians had been administratively detained, including students, labourers, human rights workers, journalists, trade unionists and teachers.<sup>26</sup> Following the peace agreements between Israel and the Palestine Liberation Organization in 1993 and 1994, many administrative detainees were released, but hundreds remained in detention, including prominent Palestinians opposed to the Oslo process. Between 1993 and 1997, the number of administrative detainees fluctuated from about 100 to over 400, according to data collected by the Israeli human rights organization B'Tselem, with some 350 detained at the end of 1997.<sup>27</sup>

After many administrative detainees were released in early 1998, the number decreased to dozens and remained at that level or lower until the end of 2001, despite the eruption of the second *intifada* in September 2000. Following the large-scale Israeli military incursions known as Operation “Defensive Shield” into major West Bank cities, which began in March 2002, during which Israeli forces arrested thousands of Palestinians,<sup>28</sup> the number of Palestinians detained administratively spiralled again, reaching 1,140 by April 2003. After that date, numbers declined somewhat: monthly statistics collected by B'Tselem ranged from

628 to 863 during 2004. From 2005 to 2007, the number of administrative detainees continued to vary on a monthly basis but averaged 765.<sup>29</sup> Following the capture of Israeli soldier Gilad Shalit by Palestinian armed groups in the Gaza Strip in June 2006, dozens of Palestinian parliamentarians affiliated with Hamas were arrested and placed in administrative detention, in an effort to pressure Hamas for his release.

From November 2007, however, the number of administrative detainees began to decrease again, to a low of 189 in August 2010. Since then, numbers have again increased steadily to over 300 administrative detainees held at the time of writing in May 2012, a trend which Amnesty International views with concern.

According to data provided by the Israel Prison Service to B'Tselem, at the end of April 2012, around 31 per cent of the 308 known administrative detainees had been held for six months to one year, and another 34 per cent for one to two years. Thirteen Palestinians had been in administrative detention continuously for two to four and a half years, and two had been held for over four and a half years.<sup>30</sup> At least four Palestinian journalists were being held as administrative detainees.<sup>31</sup> There are no Palestinian children currently held as administrative detainees, but dozens of Palestinians under the age of 18 were detained administratively between 2004 and 2008, after which numbers dropped to a single child administrative detainee at the end of 2010.<sup>32</sup>

Although the vast majority of administrative detainees since 1967 have been Palestinians from the OPT, smaller numbers of Israeli citizens (both Jewish and Palestinian) and foreign nationals have also been detained administratively under the different laws and procedures detailed in Section 3.

### 3. LAW IN THE SERVICE OF INJUSTICE: LEGAL PROVISIONS FOR ADMINISTRATIVE DETENTION IN ISRAEL AND THE OPT

**“We examined the secret evidence, ex parte. It is not possible to reveal it. Considering the materials that we saw, we cannot say that there is a reason to intervene in the military commander’s decision to prolong the administrative detention.”**

The entire text of a 2010 decision by Israeli Supreme Court justices upholding the extension of an administrative detention order, HCJ 2021/10 Abu-Sneina v. Military Court of Appeals

The legal mechanisms for administrative detention in Israel and the OPT have evolved over the years, as Israel has sought to use the measure against its own citizens – whether Arabs or Jews – Palestinians in the OPT, and a relatively small number of foreign nationals. For many years after 1948, Israel resisted introducing its own laws providing for administrative detention, instead relying on Articles 108 and 111 of the Defence (Emergency) Regulations, inherited from the British Mandate. These provisions authorized a military commander to issue administrative detention orders without specifying the maximum duration of such orders, and provided for only minimal review by an advisory committee whose opinion was not binding.<sup>33</sup> Israel applied these Regulations to the West Bank and Gaza Strip following its occupation of these territories in 1967, and then incorporated the relevant provisions into Military Order 378 in April 1970.<sup>34</sup> The Regulations, enacted by the British colonial administration in 1945, have never been fully repealed.

In 1979 Israel stopped using the Defence (Emergency) Regulations to hold certain categories of detainees – mainly Israeli citizens, residents of East Jerusalem and foreign nationals – without charge or trial after the Israeli Knesset (parliament) enacted the Emergency Powers

(Detention) Law (see Section 3.2 below).

Military Order 815, issued in January 1980, amended Military Order 378 to reflect some provisions in the Emergency Powers (Detention) Law, introducing a new judicial review procedure for administrative detainees from the OPT.<sup>35</sup> Although subsequent military orders making further amendments were issued over the years, key provisions – including those allowing detention orders to be based on secret information withheld from the detainee and his or her lawyer and allowing orders to be renewed an unlimited number of times – have remained.

The Internment of Unlawful Combatants Law was introduced in 2002, mainly to provide for the administrative detention of foreign nationals, although it has since been used to detain individuals from Gaza (see Section 3.3 below).

Thus, at the time of writing, a consolidated military order and two pieces of legislation enable the Israeli authorities to hold individuals in administrative detention: Military Order 1651, the Emergency Powers (Detention) Law, and the Internment of Unlawful Combatants Law. The effect of these legal provisions is clear: indefinite detention without charge or trial is permitted by law in both Israel and the OPT.

### 3.1 MILITARY ORDER 1651

The Order Regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651),<sup>36</sup> hereafter referred to as Military Order 1651, went into effect on 2 May 2010, and replaced a number of military orders, including Military Order 378. In theory, it applies to everyone in the occupied West Bank, including Palestinian residents, Israeli citizens (Jewish settlers and Palestinian citizens of Israel living in the West Bank), and foreigners. However, Amnesty International is unaware of any cases in which paragraphs 284 to 294 Military Order 1651, which provide for administrative detention, have been invoked against Jewish citizens of Israel. Instead, since the late 1970s, Jewish settlers in the occupied West Bank have been brought before Israeli civilian courts as a matter of policy, rather than the Israeli military courts established to judge Palestinians, on the basis of the Emergency Regulations Law (West Bank and Gaza - Criminal Jurisdiction and Legal Assistance) 1967, which extended Israeli civil law over Israeli citizens residing in or travelling through the OPT.<sup>37</sup> This enabled the Israeli authorities to exempt Israeli citizens from the military orders governing Palestinians. A similar military order applicable to the Gaza Strip was repealed upon implementation of the “disengagement” plan in September 2005.

Administrative detainees are held under individual temporary administrative detention orders of up to six months issued by a military commander pursuant to Chapter I, Article B of Military Order 1651. An order can be issued if there are “reasonable grounds” to presume that an individual presents a risk to “the security of the area” or to “public security”. These terms are not defined and their interpretation is left to the discretion of military commanders. On or before the expiry of the detention order, a military commander can extend it for up to six months, and this can be done an unlimited number of times. Hence the administrative detention order can be extended indefinitely.

Chapter I, Article B of Military Order 1651 requires an administrative detainee to be brought before a military judge within eight days of issue or renewal of the detention order. According

to paragraph 287 B of Military Order 1651, “if a detainee is not brought before the judge and a hearing is not initiated within eight days as noted, the detainee shall be released, unless there is another reason to detain him under any law or security legislation”.

This procedure is known as judicial review and is conducted in a closed court session. It is generally a routine confirmation of the administrative detention order, although the military judge can also cancel the order or reduce the period of detention. Decisions by the military judge to cancel the detention order are extremely rare, and decisions to reduce it are usually “insubstantial”, which means that a military commander may still extend the order when it expires. In rare cases the reduction is “substantial”, stipulating that the detention order cannot be renewed upon its expiry unless there is significant new intelligence material against the detainee.<sup>38</sup>

Although administrative detainees have the right to appeal every detention order and are entitled to legal counsel of their choice, neither the lawyer nor the detainee is informed of the details of the evidence against him or her. In most cases they are not even told the specific allegations against the detainee, which are presented by the military prosecution to the military judge, together with the evidence provided by interrogators from the Israel Security Agency (ISA), in meetings at which they are not present. The military judge can withhold any information or evidence if he or she deems that disclosing it would “harm the security of the region or public security.” There is therefore no possibility for the defence lawyer to cross-examine witnesses or even to inquire about their existence.

Both the detainee and the military commander can appeal the judge's decision to the Military Court of Appeals. The appeal hearing generally takes place within a few weeks from the date of appeal. It is also held in closed session, and the same provisions allowing the allegations and evidence to be withheld from the detainee and his or her lawyer apply. In most cases, detainees' appeals are rejected and the administrative detention order is again confirmed, although in some cases the military judge shortens the order. However, since the evidence on which the administrative detention order is based is not disclosed, some detainees feel that there is no point in going through the appeal procedure.

The Israeli authorities stress that Palestinians in the OPT can contest decisions of the military courts, including on administrative detention, by petitioning the Israeli Supreme Court. The Supreme Court has issued some key rulings emphasizing the importance of judicial review,<sup>39</sup> and that administrative detention may only be used as a preventative measure against an individual posing a danger to security which no other means will prevent.<sup>40</sup> However, it has not set clear substantive standards for reviewing administrative detention, has rarely examined whether military judges decisions conform to its own rulings, and has been very reluctant to intervene in specific cases or question the privileged intelligence information on which detention orders are based.<sup>41</sup>

Moreover, the Supreme Court virtually always accepts the arguments of the state attorney and the classified evidence presented (once again, in a separate closed session without the detainee or his or her lawyer) by the ISA and denies the appeal. In fact, there is only one recorded case in which the Supreme Court ordered the release of an administrative detainee from the OPT held under a military order.<sup>42</sup> A comprehensive review of the 322 administrative detention cases heard by the Supreme Court between January 2000 and

December 2010 – the vast majority of which were petitions to the HCJ by detainees from the OPT held under military orders – found that not a single case resulted in a judicial decision for the detainee's release.<sup>43</sup>

On the other hand, petitioning the Supreme Court can sometimes help defence lawyers learn something about the nature and strength of the secret evidence against the detainee, or prompt the ISA to reassess the necessity of the detention, resulting in a “bargaining process” in which a settlement is negotiated and the petition is withdrawn. Frequently, the Supreme Court participates either formally or informally in this “bargaining process”, in some cases approving settlements reached between the defence and the state attorney, or issuing non-binding recommendations to the state in its decision.<sup>44</sup> In some negotiated settlements, the state agrees to release the detainee at the end of his or her current detention order unless “significant new intelligence information emerges”. Without knowing the evidence against them, detainees and their lawyers are at a significant disadvantage in negotiating such settlements, which must ultimately be approved by the ISA.

Given these dynamics, it is understandable that many detainees and defence lawyers feel that overall, the Israeli Supreme Court does not effectively place any limits on the Israeli authorities extensive use of administrative detention – supposedly a measure to be used only in extremely limited circumstances – but instead functions only to make its use seem more legitimate and proportionate to the Israeli public and the international community. Some detainees and lawyers have told Amnesty International that they prefer not to petition the Supreme Court in administrative detention cases. Even for detainees who do wish to exercise this option, there is often not enough time to petition the Supreme Court before the administrative detention order expires. If the administrative detention order is extended, it is considered as a new detention order and the detainee must go through the appeal procedure anew.

At the end of April 2012, 308 Palestinians from the occupied West Bank were held as administrative detainees according to data provided by the IPS to B'Tselem. All are presumed to be held under Military Order 1651.

Detention is not the only administrative measure permitted on the basis of classified material under Military Order 1651 if a military commander deems it necessary for “imperative reasons of security”. Chapter I, Article C allows military commanders to impose various types of administrative control or restraining orders that limit freedom of movement or amount to deprivation of liberty, such as restricting someone to a defined area, prohibiting him or her from entering a particular area, or house arrest.<sup>45</sup> An appeals committee appointed by the President of the Military Court of Appeals can cancel or reduce an order, or change its conditions, but its proceedings are also based on material that is not disclosed to the suspect or his or her lawyer.

### 3.2 THE EMERGENCY POWERS (DETENTION) LAW - 1979

This law applies to citizens and residents of Israel, to residents of territories occupied by Israel, and to residents of other countries. Although it has been used at times to detain citizens of Arab states and residents of the OPT, it has more often been used to detain Israeli citizens and Palestinian residents of occupied East Jerusalem.



The Emergency Powers (Detention) Law<sup>46</sup> replaced the provisions for administrative detention in the Defence (Emergency) Regulations from the British Mandate. Like various other Israeli laws and ordinances, it is only valid when an official state of emergency has been declared under the Law and Administration Ordinance - 1948, but such a declaration has been renewed continuously since 1948.<sup>47</sup> The Basic Law: The Government, passed by the Knesset in 1992 and revised in 2001,<sup>48</sup> limited each declaration to one year but allowed for unlimited renewals, and the Knesset has renewed the state of emergency on a yearly basis since. The Basic Law specified that emergency regulations “shall not be enacted...except to the extent warranted by the state of emergency”, and “may not prevent recourse to legal action, or prescribe retroactive punishment, or allow infringement on human dignity”.

In 1999, the Association for Civil Rights in Israel (ACRI) petitioned the Israeli Supreme Court, sitting as the High Court of Justice (HCJ), to cancel the state of emergency. The HCJ instructed the government to specify a timetable for ending the state of emergency, and the Ministry of Justice to prepare alternative legislation for the various laws and ordinances valid under it.<sup>49</sup> Some 13 years later, on 8 May 2012, the HCJ dismissed ACRI’s petition, ruling that “the appeal has exhausted itself, although the work has not been finished.”<sup>50</sup> The Israeli government seems intent on continuing the state of emergency, and the accompanying legislation including the Emergency Powers (Detention) Law, for the foreseeable future.

Administrative detention orders under the Emergency Powers (Detention) Law can be issued by the Minister of Defence for up to six months if there are “reasonable grounds to presume that the security of the state or public security require the detention.” No further criteria are given in the law and the orders are renewable indefinitely. The detention order must be reviewed within 48 hours by a civilian judge – the President of a District Court – who has the power to uphold, shorten or cancel the order. The District Court is also required to automatically review the order no later than three months after the first judicial review. The detainee can appeal the decision of the District Court to the Supreme Court. Once again, proceedings at both the District and Supreme Courts are held behind closed doors and evidence justifying the order can be withheld from the detainee and his or her lawyer.

Amnesty International is unaware of how many detainees are currently held under the Emergency Powers (Detention) Law. According to the Israeli authorities, 14 administrative detention orders were issued against Israeli citizens in 2011, but Amnesty International has not been able to verify this figure or ascertain which law the orders were issued under.<sup>51</sup> Administrative control orders were issued against Israeli settlers during 2011.<sup>52</sup>

### 3.3 THE INTERNMENT OF UNLAWFUL COMBATANTS LAW

This law was enacted by the Knesset in 2002 and was originally intended to enable the holding of Lebanese citizens. Its impetus was an Israeli Supreme Court ruling in 2000 that the state could not continue to hold people in administrative detention who did not personally pose a security threat.<sup>53</sup> The petition concerned Lebanese nationals who had been held for years under the Emergency Powers (Detention) Law as “bargaining chips” for information about Ron Arad and other Israeli soldiers who went missing in action in Lebanon during the 1980s. Following this decision, 13 Lebanese nationals were released, but Israeli government officials made clear that two Lebanese men – Mustafa al-Dirani and Sheikh ‘Abd al-Karim ‘Ubayd, abducted by Israeli soldiers from their homes in Lebanon in 1994 and 1989 respectively – would not be released.<sup>54</sup> Instead, they set about drafting a new law,

despite the fact that the Emergency Powers (Detention) Law of 1979 already enabled the administrative detention of foreign nationals.<sup>55</sup>

The law provides for the detention of those who carry out hostilities against Israel and are not entitled to prisoner-of-war status under Article 4 of the Third Geneva Convention.<sup>56</sup> According to the law, an “unlawful combatant” is a person who has taken part in hostilities against Israel, directly or indirectly, or who is a member of a force carrying out hostilities against Israel. The term “hostilities” is not defined under the law. The law allows the Chief of Staff, or an officer holding the rank of major-general designated by him, to issue an indefinite incarceration order if he has “reasonable cause to believe that a person being held by the State authorities is an unlawful combatant and that his release will harm State security.” The internment ends only when the Chief of Staff decides that one of these two conditions ceases to exist or that there are special grounds justifying release of the detainee.

The law presumes that the release of someone defined as an “unlawful combatant” – in other words, a detainee who is a member of a force carrying out hostilities against Israel, or who has directly or indirectly participated in such hostilities – would “harm state security as long as the hostile acts of that force against the State of Israel have not ceased, unless proven otherwise.” This puts the burden of proof on the detainee and his or her lawyer, rather than the state, and is a violation of the fundamental legal principle of presumption of innocence. However, as with the other forms of administrative detention, evidence justifying the detention is withheld from both the lawyer and detainee. Furthermore, the law states that “[t]he determination of the Minister of Defence... that a particular force is perpetrating hostile acts against the State of Israel or that hostile acts of such force against the State of Israel have ceased or have not yet ceased, shall serve as proof in any legal proceedings, unless proven otherwise.”

Although judicial review takes place before a civil court, rather than a military court, the procedural safeguards under the law are weaker than those of Military Order 1651. The detainee must be brought before a District Court judge within 14 days of the date of the detention order. The judge can only cancel the order if he finds that the (very malleable) conditions for it are not satisfied, and as the order is of indefinite duration, there is no provision for the judge to shorten it. Once an order is approved, the detainee is brought before a District Court judge every six months, but the judge can only annul the order if he finds that release of the detainee will not harm state security (contrary to the presumption under the law), or that there are special (unspecified) grounds for release. Decisions of the District Court may be appealed to the Supreme Court, but such cases are heard by a single Supreme Court judge who reviews the case according to the same stipulations as the District Court.

According to an Israeli Supreme Court ruling from 2008,<sup>57</sup> detention under this law is a form of administrative detention, and therefore restrictions that apply to the use of administrative detention under Military Order 1651 or the Emergency Powers (Detention) Law also apply to internment under this law. The Court held that the status of “unlawful combatant” does not exist in international humanitarian law, that such persons are civilians entitled to the protections of the Fourth Geneva Convention, and that the state must prove that the individual poses a danger or a threat. Nevertheless, the justices did not discuss the presumptions specified in the law. In effect, the law enables the state to hold detainees

indefinitely under presumptions of guilt that render the judicial review almost meaningless.

Since the law was passed in 2002, some 15 Lebanese nationals have been held under the law, of whom 11 were detained during the Second Lebanon War in 2006. The last Lebanese detainees were released in July 2008, and no foreign nationals are currently held under the law.<sup>58</sup> More recently, the law has been used to detain Palestinians from the Gaza Strip without charge or trial. At least 39 people from Gaza have been interned under the law, with 34 of them detained during or after Operation “Cast Lead”, Israel’s 22-day military assault on the Gaza Strip that began on 27 December 2008. All but one have since been released: as of May 2012, Israel is holding Mahmoud al-Sarsak, from Rafah in the Gaza Strip, under this law. The fact that only a single detainee is currently held as an “unlawful combatant” does not lessen Amnesty International’s concerns about this law, particularly following its amendment in 2008 to provide for expanded internment powers if and when the government declares the “existence of wide-scale hostilities”.<sup>59</sup>

## 4. ONGOING INJUSTICE

### ADMINISTRATIVE DETENTION AND OTHER HUMAN RIGHTS VIOLATIONS

At the end of April 2012, 308 Palestinians were held in administrative detention: a slight decline on the 320 held in February and March, almost twice as many as were held in August 2010, the most recent low point.<sup>60</sup> Palestinians currently held under administrative detention include 24 members of the Palestinian Legislative Council (PLC), the Palestinian parliament, human rights defenders, at least four journalists, university students, graduates, and lecturers. Some are prisoners of conscience, such as **Ahmad Qatamesh**.

### RESPONSES TO AMNESTY INTERNATIONAL MEMBERS FROM THE ISRAELI MINISTRY OF JUSTICE

The Israeli Ministry of Justice regularly responds to Amnesty International's appeals for the rights of administrative detainees. Some of the responses are made public on the Ministry's website and several are reproduced in Appendix 1 of this report.

In these responses, the Israeli authorities generally state that the administrative detainee in question is a member of a terrorist organisation, as defined by a government-issued list of organisations, including the Popular Front for the Liberation of Palestine, Hamas and Islamic Jihad. They claim that the evidence for criminal activity relating to such membership cannot be presented in court due to reasons of confidentiality and because the information is classified, but that on the basis of this secret "evidence", the military has assessed that the detainee poses a "danger to public security" or a "danger to the region". They also describe the Israeli authorities' view of administrative detention.

These responses do nothing to allay Amnesty International's concerns that the system of administrative detention as practised by Israel violates the human rights of those held under it. These concerns, and the relevant international law, are detailed in Section 5.

In the early months of 2012, Palestinians held under administrative detention began a series of different non-violent protests against their detention without charge or trial. Some administrative detainees began prolonged hunger strikes, risking their lives to protest at their ill-treatment and poor conditions of detention.<sup>61</sup>

The protests began with one detainee's hunger strike, which he began on 18 December 2011 and which lasted for 66 days. **Khader Adnan** went on an open-ended hunger strike to protest against his administrative detention and the ill-treatment he was subjected to by Israeli forces during his arrest and interrogation. His protest was followed by other administrative detainees including **Hana Shalabi**, **Bilal Diab**, **Tha'er Halahleh**, **Mahmoud al-Sarsak** and others.

By March 2012, there were over 30 administrative detainees on hunger strike. The majority of them conducted limited solidarity strikes with others who were on open-ended hunger strikes. By April 2012, there were six administrative detainees on open-ended hunger strike, all of whom were eventually moved to the IPS Medical Centre at Nitzan prison in Ramleh, in central Israel. Their protest inspired hundreds of other detainees and prisoners to join them,

culminating in the mass hunger strike which began on 17 April 2012 and ended with the 14 May deal.

Other administrative detainees such as **Ahmad Qatamesh** and **Waleed Hanatsheh**, along with others, began to boycott the administrative detention procedures at the military courts.

The stories of these individuals and others are emblematic of the human rights violations that Palestinian administrative detainees are subjected to. The protest of the hunger strikers helped bring international attention once more to the injustice inherent in the practice of administrative detention, as well as the Israeli authorities' systemic ill-treatment of Palestinian detainees and prisoners.

However, the information received by Amnesty International that the Israeli authorities have continued to renew administrative detention orders since the 14 May deal causes grave concern that their protest has done little to bring about a much-needed end to this practice. At the time of writing, Amnesty International had received the names of 30 individuals whose orders had been renewed since 14 May. Three detainees had a new administrative detention orders issued. Their names may be found in Appendix 2.

#### 4.1 ARREST AND INTERROGATION

Some Palestinians are served with an administrative detention order directly upon their arrest. Others have alleged that they were interrogated after arrest, subjected to torture or other ill-treatment during their interrogation, and then given an administrative detention order rather than being charged and tried. Some have suggested that this was because they refused to "confess" during their interrogation.

For decades, many, if not most Palestinian detainees have experienced torture or other ill-treatment, particularly during interrogations by the ISA, a practice well-documented by Amnesty International and other human rights organizations. Methods reported to Amnesty International and other organizations include painful shackling and binding, immobilisation in stress positions, sleep deprivation, the use of threats against family members, threats and verbal abuse. Interrogations under torture can last for weeks, with the detainee denied access to a lawyer. According to reports, torture and other ill-treatment are frequently inflicted with the complicity of medical professionals.<sup>62</sup>

**Khader Adnan** began his hunger strike initially to protest against his ill-treatment during arrest and interrogation in December 2011. The 33-year-old baker, post-graduate student, and political activist told lawyers and human rights organizations that masked soldiers broke into his house, where his mother and children were present. He said that the soldiers cuffed his hands behind his back, threw him onto the floor of their jeep and kicked and slapped him while they took him to the settlement of Mevo Dotan. When he arrived at the settlement, his hands were swollen from the handcuffs and his lower lip was bleeding. He was then transferred to Kishon detention centre in Israel for interrogation by ISA officials.

Khader Adnan told lawyers that he went on hunger strike on the second day of his arrest to protest his ill-treatment by ISA officials. According to the ISA briefing that his lawyers received, Khader Adnan was interrogated almost every day from 18 until 29 December 2011; on some days he was interrogated twice. There were seven regular interrogators; other security officials were also present at some points. During

interrogations, he was shackled to a crooked chair with his hands tied behind his back in a stress position that caused him back pain. He said that interrogators threatened him constantly and verbally abused him and his family. On 10 January 2012 Khader Adnan was taken to a military court in Ofer and given a four-month administrative detention order signed by the military commander in advance.

In responses to Amnesty International members who sent urgent appeals regarding Khader Adnan, the Israeli authorities alleged that Khader Adnan “is a senior activist in the ... (West Bank) branch of Palestinian Islamic Jihad (PIJ). In the past, he was a spokesman for the terrorist organization. He is not suspected of direct involvement with terrorist attacks. However, he has taken an active role in the organization’s activities, including the transfer of money to the group. Additionally, he has been in contact with elements of Islamic Jihad in Syria and the Gaza Strip” (see Appendix 1). However, no evidence regarding these allegations, which would constitute criminal offences under Israeli military orders applicable in the West Bank, was ever provided to Khader Adnan or his lawyer, so he was unable to effectively exercise his right to challenge his detention.

Khader Adnan ended his hunger strike on 21 February after a deal was reached between the Israeli authorities and his lawyer from the Palestinian Prisoners Club.<sup>63</sup> The deal allowed for the release of Khader Adnan on 17 April 2012 if he ended his hunger strike immediately, unless “significant new intelligence information” was presented. Khader Adnan was released as scheduled on 17 April.<sup>64</sup>

Israeli law allows the right rights of all persons to protection of their life, body and dignity to be restricted during a state of emergency, which, as stated above, has been in place in Israel since 1948. Israel’s existing legislation does not contain an absolute prohibition on torture. More specifically, a Supreme Court ruling of 1999,<sup>65</sup> while prohibiting the use of torture and other ill-treatment generally, ruled that exceptionally, interrogators using “physical interrogation methods” in “ticking time-bomb” situations may escape criminal liability under the “defence of necessity” found in Israel’s Penal Law. This justification for torture has – far from being a mere theoretical construct – resulted in total impunity for alleged torturers during the past 12 years, and is a clear breach of Israel’s international human rights obligations.

Twenty-five-year-old **Mahmoud al-Sarsak** from Rafah refugee camp in the Gaza Strip was arrested on 22 July 2009 at the Erez crossing between Israel and the Gaza Strip when he went there to receive a permit to travel to the West Bank to play professional football for the Balata Football club in Nablus. Before his arrest, he was the youngest player for the Palestinian National Football Team, for which he played as centre forward, and was in his third year of Information Technology studies at Al-Quds Open University in Rafah.

When Mahmoud al-Sarsak arrived at the checkpoint to ask for the permit, he was called in by ISA officials and taken for interrogation. According to his lawyer, during interrogation Mahmoud al-Sarsak was tied to a chair and kept sitting for long hours at a time in a stress position with his arms tied behind his back and to a pole in the floor – a practice known as *shabeh*. Mahmoud al-Sarsak’s family were not notified of their son’s arrest and whereabouts until two days after his arrest. The family has not been able to see their son since his arrest, as Gazan prisoners and detainees have been denied family visits since June 2007. Mahmoud al-Sarsak, like other “security” prisoners, is not allowed phone calls to his family unless there is an emergency.

Upon learning of his arrest, the family appointed a lawyer who was unable to see Mahmoud al-Sarsak for the first ten days because the ISA prevented him from doing so.

Mahmoud al-Sarsak was interrogated for 40 days by the ISA after which he was handed a military order issued under the Internment of Unlawful Combatants Law (see Section 3.3 above) for his indefinite detention without charge or trial. The Israeli authorities have alleged that he has links with Islamic Jihad, a Palestinian armed group and political party which oppose negotiations with Israel, although the evidence on which his detention order is based has never been provided to him or his lawyer. At the time of writing, he had been administratively detained for almost three years. His detention order is reviewed every six months, and he has appealed his case to the Israeli Supreme Court four times, but his appeals have been rejected each time. The next review of his detention is due to take place on 22 August 2012.

Mahmoud al-Sarsak began an open-ended hunger strike on or before 24 March 2012 in protest against his detention without charge or trial. He was moved to the IPS Medical Centre in Ramleh on 13 April 2012 due to the deterioration of his health as a result of the hunger strike. In verbal negotiations, the Israeli authorities reportedly offered to release him on 1 July 2012, but subsequently withdrew the offer, and told him that his detention order would only be considered at his next judicial review.

He remained on hunger strike and in critical condition at the time of writing reporting late May 2012. Despite the grave danger to his life after more than 70 days on hunger strike, the IPS were continuing to deny him access to independent doctors, and refusing to transfer him to a civilian hospital where he could receive specialized medical care.

Amnesty International has documented numerous cases of detainees who received administrative detention orders shortly before or just after the end of their prison sentences. Many detainees also report that the Israeli authorities offer to release them from detention or reduce their detention periods if they agree to “collaborate” with the Israeli security authorities upon release by, for example, providing information.

**Hassan Hasnin Hassan Shuka**, from Bethlehem in the occupied West Bank, was first arrested on 7 July 2004 when he was 16 years old. He was sentenced to just over four years in prison. He was released on the 29 June 2008 and arrested again only 20 days after his release. On 4 August 2008, he received an administrative detention order for 6 months, which was repeatedly renewed until his release on 25 May 2010, after a military judge ruled that his detention order could no longer be renewed. He was arrested again on 17 September 2010, and given another administrative detention order 10 days later.

According to his testimony before the military judge in his judicial review, he was transferred to the interrogation centre in Jerusalem on 7 February 2011 and interrogated for 40 days. He was subsequently charged and sentenced to six months’ imprisonment. At the end of his sentence, on 1 August 2011, he was handed another administrative detention order for six months. His detention order was extended on 31 January and 31 May 2012, both times for another four months.

Hassan Shuka, told his lawyer and testified before judges that the ISA made many attempts to draft him as a “collaborator” and that his repeated administrative detention orders were intended to “convince” him to agree. As the above description indicates, the judges who heard his testimony have simply confirmed and renewed his detention orders.

## 4.2 INDEFINITE DETENTION

All three forms of administrative detention orders allow for the possibility of indefinite political detention. The administrative detainee spends months and sometimes years in

prison without having been tried and without knowing the details of the allegations against him or her. This may reflect a failure of the ISA to obtain evidence or “confessions” by the detainee which would make possible the conviction of suspects by a military court. Others who were charged, tried and served prison terms have been placed in administrative detention immediately or very shortly after the expiry of their prison sentence. Still others have been taken for interrogation by the ISA during the time that they were serving an administrative detention order, and were returned to administrative detention afterwards.

**Waleed Hanatsheh**, 43, the father of two girls, works as the Finance and Administration Manager for the Health Work Committees, a Palestinian charity that provides health services in the West Bank and Gaza. He was arrested without being given any reason for his arrest on 22 November 2011 when a large group of masked Israeli soldiers and ISA officials raided his house in Ramallah at 1.30am.

He was given a military order for his administrative detention on 30 November 2011. A military judge confirmed his administrative detention order on 1 December 2011. An appeal to the Military Courts of Appeal was rejected on 15 January 2012. The administrative detention order was renewed on 22 March 2012, despite a ruling by the Supreme Court on 22 February 2012 which reduced his detention period by two months.

Waleed Hanatsheh has never been charged or tried for any offence. This is his fourth arrest and the third time has been placed under administrative detention. He was first arrested in 1994 and interrogated for 30 days before being released without charge. On 18 May 2002, he was arrested for the second time and held for three years in administrative detention. He was finally released on 21 December 2005. Waleed Hanatsheh was arrested for the third time and held in administrative detention from 12 January 2009 to 10 January 2010. Waleed Hanatsheh is currently held in the Ofer detention centre near the West Bank city of Ramallah and his current administrative detention order is due to expire on 22 July 2012.

#### 4.3 PUNISHMENT AND ILL-TREATMENT OF HUNGER STRIKERS

Throughout the past few months, detainees and prisoners who have embarked on hunger strikes in protest at prison conditions or their administrative detention have been punished by being placed in solitary confinement, fined, and prevented from receiving family visits. Hunger strikers whose health has deteriorated as a result of their hunger strike have not been provided with adequate medical care and have been prevented from seeing independent doctors and medical professionals and denied transfer to properly-equipped civilian hospitals, even when their lives were at risk. Many of the hunger strikers have been denied access to independent lawyers.

Some hunger-striking detainees have reported that Israeli Prison Services (IPS) officials placed them in solitary confinement as punishment for their hunger strikes, on the basis that launching a hunger strike is against prison regulations. IPS officials have also delayed the hunger strikers' access to medical examinations and treatment, apparently to further pressure them to end their strikes. Some hunger strikers have also reported physical assaults and verbal abuse by the IPS, while others have reported that IPS personnel forcibly administered treatment such as injections against their will. Since the beginning of the hunger strikes in late 2011, the IPS has limited hunger-striking detainees' access to independent lawyers of their choice.

Detainees whose health deteriorates substantially due to hunger strike are usually transferred eventually to the IPS Medical Centre in Ramleh. Hunger-striking detainees have described ill-



treatment by staff there, all of whom are IPS staff with medical training. Independent doctors have told Amnesty International that this facility is unfit for hunger strikers. As a hunger striker's health deteriorates, the detainee requires specialist medical care, which is only available in civilian hospitals. On no account should hunger striking detainees be subjected to ill-treatment such as shackling to their bed.

**Khader Adnan**, for example, was put in a solitary confinement cell on the fourth day of interrogation, as punishment for the hunger strike which he had begun the day after his arrest. He remained in solitary confinement for 10 days before he was moved to the IPS Medical Centre on 30 December 2011, after his health deteriorated as a result of his hunger strike. On 10 January 2012, Khader Adnan was taken to a military court in nearby Ofer where he was given a four-month administrative detention order signed in advance by the military commander of the West Bank. On 31 January 2012, IPS officials moved him to a civilian hospital, and proceeded to move him to four other hospitals and medical centres in a period of a week. Khader Adnan's lawyers told Amnesty International that this was intended to add further pressure on him to stop his strike, including by making it harder for his lawyers and family to visit him. He remained shackled to his hospital bed at all times – a form of cruel, inhuman and degrading treatment, given his condition – and under constant armed guard. Khader Adnan's wife, Randa, was allowed to visit her husband in hospital for the first time on 7 February, 52 days since his detention, after she received a one-day permit from the Israeli authorities.

On or before 24 March 2012, **Mahmoud al-Sarsak** began a hunger strike to protest against his continued detention without charge or trial. His lawyer told Amnesty International that upon starting his hunger strike Mahmoud al-Sarsak was placed in solitary confinement by the IPS as a form of punishment. He was moved to the IPS Medical Centre on 13 April 2012 after his health deteriorated as a result of his hunger strike. At the time of writing in May 2012, after more than 70 days on hunger strike, he continued to be denied access to independent doctors, despite numerous court petitions by local NGO Physicians for Human Rights - Israel on his behalf.

**Hana Shalabi**, aged 30 and from the village of Burqin near Jenin, went on hunger strike to protest at her arrest and ill-treatment immediately upon her arrest from her home on 16 February 2012. She remained in interrogation until 23 February, when she was given a four-month administrative detention order, which prompted her to extend her hunger strike to demand her release from administrative detention. Hana Shalabi was previously arrested by the Israeli authorities on 14 September 2009 and spent 25 months in administrative detention without charge or trial before her release on 18 October 2011 as part of a prisoner exchange deal negotiated between Israel and Hamas for the release of captive Israeli soldier Gilad Shalit.

The Israeli authorities allege that Hana Shalabi is affiliated with the Islamic Jihad movement, but she has never been charged with a criminal offence. After her arrest, media reports quoting an army spokesperson alleged that she was "a global jihad-affiliated operative" and that she "violently attacked the soldiers who arrested her."<sup>66</sup> Hana Shalabi, in contrast, told her lawyers that she was ill-treated by Israel security forces during her arrest. The Israeli authorities subsequently told Amnesty International members who wrote urgent appeals on behalf of Hana Shalabi that "[o]n 29 September 2009, an administrative detention order was issued based upon intelligence information regarding her involvement in dangerous activities including planning to commit a terrorist suicide attack." The response alleged that the reason for subsequent extensions of the order were "that Ms. Shalabi remained ready to commit a suicide attack". However, the evidence on which these allegations were based has never been revealed to Hana Shalabi or her lawyer and she has not been able to challenge it (for further details of the Israeli authorities' response, see Appendix 1).

Hana Shalabi's lawyer said that she began the hunger strike to protest at being strip-searched by male Israeli soldiers after her arrest. Her lawyer also stated that she was kept in solitary confinement from 23 until 27 February 2012 as punishment for her hunger strike. She was transferred to the IPS Medical Centre after her lawyer filed a request to the IPS to transfer her there from HaSharon detention centre, which lacked the facilities required to treat her deteriorating state of health. After further deterioration to her health, she was moved to Meir hospital in Israel where she remained until 28 March, when she ended her hunger strike after a deal was reached between the Israeli authorities and one of her lawyers from the Palestinian Prisoners' Club which led to her transfer three days later to the Gaza Strip, which Amnesty International believes is very likely to have amounted to a forcible transfer, a breach of international humanitarian law.

#### 4.4 PREVENTING FAMILY CONTACT

All but one of the Israeli prisons where Palestinian administrative detainees are held are located inside Israel, in violation of international law. The majority of administrative detainees are held in one of three prisons: Ofer, in the occupied West Bank near Ramallah; Ketziot/Ansar 3, in the Negev desert; and Megiddo, in northern Israel, near Haifa. All three facilities were previously controlled by the IDF but are now managed by the Israel Prison Service. Conditions for detainees in Ofer, Ketziot/Ansar 3, Megiddo and other prisons and detention centres are poor, with inadequate food, sanitation and medical care, which in many cases may amount to cruel, inhuman or degrading treatment or punishment.

One particular grievance of Palestinian families, whether living in the West Bank or Gaza, is the restrictions placed on visiting their detained or imprisoned relatives. Families from the West Bank cannot visit unless they are granted a permit from Israel. Many family members are denied permits to visit their detained relatives on unspecified "security" grounds. Palestinian families in Gaza have been completely banned from visiting their detained relatives since June 2007 and visits envisaged under the 14 May deal had not begun by the time of writing in late May 2012. Most detainees are not even allowed telephone contact unless there is a death in the family. This violates Israel's obligations under international humanitarian law.

In many cases, the Israeli authorities claim that the relatives of detainees who are refused visiting permits are a "security threat" and as such cannot be allowed to enter Israel. According to the IPS prison regulations, family visits for detainees are a privilege and not a right: they stipulate that after three months' detention prisoners "may" receive visits from close family members.

In 2008, the High Court of Justice rejected a petition by ten human rights organizations to reinstate family visits for prisoners from the Gaza Strip. The petitioners argued that the deprivation amounted to collective punishment.<sup>67</sup>

For **Hassan Shuka** who is held in Hadarim prison, north of Tel Aviv, it is only his sister, Rujan, who is allowed to visit him. At 14 years old, she is the only member of his family young enough not to need a permit. She last saw him on 24 April 2012. This was her fourth visit to see him at Hadarim, which entails a journey that takes an eight-hour round trip facilitated by International Committee of the Red Cross officials. She began visiting him when she was eight years old.

**"[My four-year-old sister] starts kissing the glass between us and my dad. Between me and my dad are only a few centimetres. I can't touch him or hug him. We pick up the phones that allow us to talk to him. There is no voice. The phones are still turned off. The stopwatch on the wall is at 00:00:00. Then the timer starts, we can start talking for 45 minutes, exactly,**

Mais Hanatsheh, Excerpt from a blog titled "No permission for the blanket!"<sup>68</sup>

**Waleed Hanatsheh's** wife, Bayan, and daughters have been able to visit him twice since his detention. His mother has never been allowed to visit him in prison during any of his periods of detention for "security reasons". As with all other family visits for "security" prisoners, Waleed Hanatsheh's family can only visit for 45 minutes and must speak with him by phone through a glass barrier. Part of the family visit is always taken up with discussion of work at the Health Works Committee where Waleed is the financial and administrative director.

**Hana Shalabi** was not allowed family visits during the period of her most recent detention. Her father was prevented from attending the military court hearing on 7 March 2012, and was thus unable to see her. She was able to see her family for one hour on 1 April at the Erez Crossing as she was being transferred to the Gaza Strip. Subsequently, her parents managed to obtain permits or visas from the Israeli, Jordanian, and Egyptian authorities in order to travel to Gaza via Jordan and Egypt to visit her there, but she will be unable to see her extended family in Burqin for at least three years.

**Mahmoud al-Sarsak's** family who live in Gaza knew nothing about his arrest and whereabouts until two days after he had left to go to the Erez crossing. His immediate relatives have not been able to see him since his arrest as Gazan families have been banned from visiting detainees and prisoners held by Israel since June 2007. He, like others, is not allowed phone calls unless there is an emergency.

After he was moved to the IPS Medical Centre because of his hunger strike, Mahmoud al-Sarsak was cut off from any direct communication with his family. By late May 2012, he had been able to exchange messages with his family on a few occasions, with the help of the ICRC after officials visited him at the IPS Medical Centre.

An Israeli commitment to resume family visits for Gazan prisoners and detainees was reportedly part of the deal reached on 14 May 2012 ending the mass hunger strike. However, by 31 May 2012, no Gazan detainees had received family visits.

## 4.5 PRISONERS OF CONSCIENCE

Amnesty International believes that some of those held in administrative detention in Israel and the Occupied Territories are prisoners of conscience, held solely for the non-violent exercise of their right to freedom of expression and association. This has been facilitated by the broad and vague grounds for administrative detention, as laid down in Israeli law, which provide the authorities a wide margin of latitude and are open to abuse. Ostensibly introduced as an exceptional measure to detain people who pose an extreme and imminent danger to security, administrative detention has for years been used to detain a much wider range of people who should have been arrested, charged and tried in accordance with the international fair trial standards, or against individuals who should not have been arrested at all.

Palestinian academic **Ahmad Qatamesh**, a left-wing commentator on Palestinian political and cultural affairs, has been held in prison by the Israeli authorities since 21 April 2011. Amnesty International considers him to be a prisoner of conscience, detained solely for the peaceful expression of his non-violent political beliefs, and apparently held to deter political activities of other Palestinian left-wing political activists. He says he is not a member of any Palestinian political party.

Ahmad Qatamesh was arrested by Israeli security forces on 21 April 2011, at 2am, at his brother's home in Ramallah's al-Bireh district, in the occupied West Bank. He was taken to Ofer detention centre in the West Bank, and imprisoned there after around 10 minutes' questioning by the Israel Security Agency (ISA), who alleged that he was a member of the political bureau of a leftist Palestinian political party which has an armed wing, the Popular Front for the Liberation of Palestine (PFLP). He has been held since then under a series of military administrative detention orders, without charge or trial. While Ahmad Qatamesh was a political and intellectual supporter of the PFLP in the 1990s, he says he has not been involved with them for 13 years. To Amnesty International's knowledge, he has never been involved with PFLP-affiliated armed groups nor has he advocated violence. His latest work focuses on political solutions that put an end to the violent conflict between Israelis and Palestinians, which he calls a "nightmare".

On the day he was arrested, the security forces had first gone to his family's home to arrest him. When they did not find him there they broke down the door of the house next door, to search for him. According to his daughter, they then ordered her at gunpoint to telephone him. His wife told Amnesty International that Ahmad Qatamesh answered the phone and gave the security forces directions to his brother's house where he was staying, so they could arrest him. She said that when they arrested him, the security forces made no attempt to search either their home or the house where they arrested him.

At a hearing on 28 April 2011, a military judge agreed to extend his detention by six days for further questioning, although he was not actually questioned during these six days. At another hearing on 2 May, the ISA made a request to extend his detention for a second time in order, according to his wife, to question him about his association with the PFLP. Ahmad Qatamesh denied being active in the PFLP and the military judge refused the ISA's request.

A military court official told Ahmad Qatamesh's lawyer on 3 May that he would be released at 5pm that day, and a prison officer gave him the same message. However, at 8.30pm on 3 May 2011, Ahmad Qatamesh was handed a six-month administrative detention order signed by the West Bank military commander of the Israel Defense Forces (IDF). The order appeared to have been produced for another detainee, since Ahmad Qatamesh's name was written over another name, which had been obscured with correction fluid. The order was for an "extension" of administrative detention even though Ahmad Qatamesh had not been issued an administrative detention order since the 1990s. The order also stated that he was an activist in Hamas, a political party with very different political views from those of the PFLP.

On 19 May 2011, a military judge confirmed his detention order though she reduced it to four months. While acknowledging that the 3 May order contained factual errors and was produced for another detainee, she justified her decision on security grounds.

On 2 September 2011 the administrative detention order was renewed for six months, to expire on 1 March 2012. An appeal against the renewal was rejected on 8 November 2011. On 1 March 2012, a military commander issued another six-month detention order. At the judicial review of the order, which took place on 5 March 2012, the military prosecutor sought the confirmation of the order by the military judge. The military

judge confirmed the detention order a few days later.

Ahmad Qatamesh, together with other administrative detainees at Ofer prison, has declared that he does not recognize the legitimacy of the military courts and administrative detention procedures, and have refused to attend judicial hearings. Because the judicial review normally takes place in the presence of the detainee, the prosecution insisted that Ahmad Qatamesh be brought to the court room on 5 March 2012. He reiterated his rejection of the military court process and immediately returned to his cell.

Following his detention in April 2011, his wife, Suha Barghouti, a board member of local human rights NGO Addameer, called his arrest "an attempt to silence his critical voice". Ahmad Qatamesh has voiced his criticism both of Israeli policies and practices of the Palestinian Authority in articles, art reviews, television debates and in his academic lectures. His position is independent of any party-political line. He espouses the gradual formation of a single democratic state in the area of Israel and the Occupied Palestinian Territories, which he sees as an inevitable development, not to be achieved by violent conflict. His analysis is based on his Marxist understanding of history and society and his aim is to garner popular support for the establishment of a "humanist fraternity" of Palestinians and Israelis by giving each person and family equal rights and material means. He has criticized Palestinian military actions because they have killed and injured Israeli civilians, as well as Israeli military operations and discriminatory practices.

Ahmad Qatamesh's arrest coincided with a sweep of arrests of Palestinians associated with the PFLP that took place in March and April 2011. The sweep took place in the aftermath of the killing of a family of Israeli settlers in the West Bank.<sup>69</sup> The Israeli army reported at the time that a new cell of the PFLP armed wing had been uncovered. However since then the perpetrators of the attack, whose family relations were members of the PFLP, have been charged convicted and sentenced. The PFLP distanced itself from the attack.

At that time, when PFLP activists were put under pressure by the Israeli authorities, Ahmad Qatamesh's arrest took place and he was put under administrative detention, despite his denial of any involvement with political parties or activities. It appears that his known political stance identifies him as a mentor to left-wing activists, in particular his university students who have been in close contact with him personally. This is supported by his lawyers' stating to Amnesty International that the basis for the extension of his administrative detention in September 2011 was a number retrieved from the mobile telephone of a student of his. His detention appears to be part of a strategy to put pressure on the PFLP.

It is Amnesty International's assessment that the reasons for Ahmad Qatamesh's arrest and continued administrative detention are his peaceful expression, in his writing and teaching, of non-violent political views and the fact that he is considered a mentor for leftwing students and political activists, including some who sympathize with the PFLP. Therefore, the organization considers him to be a prisoner of conscience and has called for his immediate and unconditional release.

In a response to Amnesty International members who wrote expressing concerns about Ahmad Qatamesh's continuing administrative detention, the Israeli authorities have responded that he was arrested "on 10 June 2011 [sic]" and was issued with an administrative detention order on 3 May 2011 (see Appendix 1). The response acknowledged that the military judge who reviewed his detention reduced it from six to four months as a result of a technical error" in issuing it, and stated that it has since been renewed after "the court was presented with new intelligence in addition to the previous data already accumulated. This material confirmed that Mr Qatamish's involvement with the PFLP poses a security threat and therefore, his administrative detention was renewed". That "new intelligence" has never been revealed to Ahmad Qatamesh and his

lawyer.

#### 4.6 ADMINISTRATIVE DETENTION OF PALESTINIAN LEGISLATORS

At least 24 Palestinian legislators are currently held in administrative detention, raising concerns that they may have been targeted for arrest on account of their political activities. As with other administrative detainees, Amnesty International is calling for them to be released unless they are to be charged with a recognizable criminal offence and tried in conformity with international fair trial standards.

Among the 24 Palestinian legislators held is 63-year-old **Aziz Dweik**, the Speaker of the PLC. He was arrested on 19 January 2012 and given a six-month administrative detention order on 24 January 2012. The detention order expires on 24 July 2012.<sup>70</sup>

In responses to urgent appeals by Amnesty International members, the Israeli authorities have stated:

“Mr Dweik works in the organisational structure of Hamas in the West Bank, whose aim is to strengthen the movement’s presence and influence in the West Bank and Hebron in particular.

In addition to his functions in the organisational structure of Hamas, Mr Dweik is an active member of the Legislative Council. His dual functions have the potential to result in a situation where Mr Dweik takes advantage of his status and position in order to push the agenda of Hamas.

The arrest was decided as an outcome of a thorough investigation based on large number of information accumulated in the past few years about his involvement in Hamas infrastructure rehabilitation in the West Bank.”

Despite the claim that Aziz Dweik’s dual function allows him to “take advantage of his status and position”, the Israeli responses have gone on to state that, “[t]he arrest of Mr Dweik has no relation whatsoever with his position or activities in the Legislative Council” (see Appendix 1 for further details of the Israeli response). Neither Aziz Dweik nor his lawyer has ever been provided with the evidence on which his administrative detention order was based.

In 1992, Aziz Dweik was one of 415 Palestinian men, mostly associated with Hamas, who were rounded up by Israeli forces in one day and deported to the “no-man’s land” at Marj Zuhur, between southern Lebanon, occupied by Israel at the time, and Israel.<sup>71</sup> The mass deportation followed the killing of Sergeant-Major Nissim Toledano, an Israeli Border Policeman, the previous week, which had been claimed by Hamas. The men spent a year in tents in the no-man’s land, before being allowed to return to the OPT.

In June 2006, Aziz Dweik was detained along with dozens of other Hamas-affiliated members of the PLC after the capture of the Israeli soldier Gilad Shalit, who had been taken to the Hamas-controlled Gaza Strip. Aziz Dweik had been elected Speaker just six months before his arrest, shortly after he was elected into the PLC as a representative from the Hamas-affiliated Change and Reform bloc. Aziz Dweik was subsequently convicted of “belonging to an illegal organization [Hamas]” and sentenced to three years in prison. He was released two months early in 2009, apparently in connection with his poor health. He was never accused of any involvement in violent acts. Since his release from prison in 2009, he has been involved in reconciliation talks between Hamas and Fatah, Hamas’ main political rival. He suffers from diabetes and high blood pressure.

## 4.7 FORCIBLE DEPORTATIONS AND TRANSFERS

"I have been in prison for 18 years, most of that under administrative detention - the authorities have no charge against me and they don't intend to try me. On what basis am I forced into exile? I want to live in my country, but since I was given the difficult choice between staying in prison and living in exile with my wife, I am forced, despite all my wishes, to choose the latter. I will try to make what I can of it; I plan to continue my higher education.

Saleh al-'Arouri, speaking to Amnesty International in March 2010

Some administrative detainees have been released if they have agreed to leave the OPT and go into exile abroad. While the West Bank, including East Jerusalem, and the Gaza Strip are internationally recognized as a single territorial unit under the Oslo Accords and international humanitarian law, the Israeli authorities do not allow Palestinians living in the Gaza Strip access to the West Bank via Israel or vice versa, and residents of both areas are denied access to East Jerusalem. The Fourth Geneva Convention prohibits an occupying power from forcibly transferring or deporting people from an occupied territory.

For example, after a petition to the Israeli High Court of Justice against the order to detain him without charge or trial, the State Attorney suggested that **Waleed Hanatsheh** be deported for two years as an alternative to his detention, but not released. Waleed Hanatsheh and his family strongly opposed this proposal, so the petition was dismissed by the HCJ and Waleed Hanatsheh remained in detention.

**Saleh Mohammed Suleiman Al-'Arouri**, widely held to be one of the founders of the armed wing of Hamas, was released from nearly three years in administrative detention on 16 March 2010. He had previously spent over six years in administrative detention. The Israeli Supreme Court ruled in March 2010 that he would no longer be held in administrative detention, and instead accepted the Israeli authorities' proposal to deport him outside the OPT for a period of three years.

On 23 March 2010, the ISA told Salah al-'Arouri that if he were not out of the country by 28 March, he would be rearrested. He eventually left for Syria on 30 March after the Jordanian authorities initially refused permission for him to enter the country and his wife, Hana' al-'Arouri, whom he had married during a brief period of liberty, joined him about a month later. They have since had a daughter, and have moved to Turkey following the outbreak of unrest in Syria.

Hana' al-'Arouri's sister, Taqwa al-Khasib, and mother, Fathiye al-Khasib left their home on 12 June 2011 intending to visit Hana in Syria to help with the care of the newborn. At Allenby Bridge, which is the border crossing between the West Bank and Jordan, they were detained by Israeli border officials and told they could not cross the border for security reasons. They were informed that they could obtain further details in a meeting with the ISA. On 2 July 2011, ISA officials came to their home in Aroua village to inform them that the meeting was set for the next day in Ofer military base. Taqwa al-Khasib attended the meeting, in which officials asked her about her sister Hana', the baby and their life in Damascus. Though the official reason for the travel ban was that such travel would pose a "danger to the security of the State", the questioning left no doubt in Taqwa al-Khasib's mind that the real reason was related to her sister and brother-in-law.

The Israeli authorities have asserted that Saleh al-'Arouri was a senior Hamas figure in the West Bank, but during his lengthy periods of administrative detention, they never revealed specific information so that he and

his lawyer could contest the allegations against him. Like all other Palestinian political organizations, both the political and military wings of Hamas are banned under Israeli military orders, and membership in either is thus a criminal offence. Saleh al-'Aroui was in fact charged and convicted of membership in Hamas and "participating in illegal activities" by Israeli military courts in 1992 and 1998, so concerns for protection of intelligence sources did not prevent the Israeli authorities from sentencing him twice. However, upon completion of both of his sentences, he was given administrative detention orders which were repeatedly renewed, rather than being released. It is hard to understand how these administrative detention orders, issued while he was still in prison, were preventative rather than simply a further punitive measure, or why, if he did indeed present a genuine threat, it could not have been addressed again through criminal proceedings.

Saleh al-'Aroui has confirmed to Amnesty International that he considers he had no choice but to accept the deportation deal offered to him in order for him to be able to continue his family life. His deportation constitutes forcible detainee, and the organization is campaigning for him to be allowed to return to his home in the West Bank immediately.

**Hana Shalabi** was eventually released in exchange for ending her hunger strike in a deal brokered by a lawyer for the Palestinian Prisoners' Society which stipulated that she would be released and transferred to the Gaza Strip, where she would have to remain for at least three years before the Israeli authorities would consider allowing her to return back to her home in the West Bank.

Although Hana Shalabi's initial statements after her release suggested that she had entered into the agreement voluntarily, after she arrived in the Gaza Strip she publicly requested clarification of contradictory statements made by the lawyer who negotiated the deal. Her brother, Imad Shalabi, told Amnesty International that when his sister was brought to meet them at the Erez Crossing as she was being transferred to Gaza, she was surprised to see her family as she had not been informed of the meeting. He said that she told them she thought she was being transferred to another detention facility, and that her were family was the first to inform her that she was being transferred to Gaza. In light of these reports, Amnesty International believes that Hana Shalabi's transfer to the Gaza Strip is very likely to amount to forcible transfer.

On previous occasions the Israeli authorities have not always honoured agreements to allow Palestinians deported from the West Bank to Gaza for a specified time period to return once that period has elapsed.



## 5. INTERNATIONAL STANDARDS AND AMNESTY INTERNATIONAL CONCERNS

Israel has ratified the major universal human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>72</sup> Its conduct as the occupying power in the West Bank (including East Jerusalem) and Gaza Strip must comply with the provisions of international human rights law, including these treaties, as well as international humanitarian law applicable to belligerent occupation.

Israel is a party to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention), but does not recognize its applicability to the OPT (the West Bank, including East Jerusalem, and the Gaza Strip).<sup>73</sup> The government of Israel has frequently stated that it abides by what it has termed the “humanitarian provisions” of the Geneva Conventions, without enumerating which provisions it considers “humanitarian”. However, all relevant bodies, including the High Contracting Parties to the Geneva Conventions, the UN Security Council and General Assembly, and the International Court of Justice have reaffirmed on numerous occasions the applicability of the Fourth Geneva Convention to the OPT.<sup>74</sup>

Israel has also argued that its obligations under the international human rights treaties it has ratified are not applicable in the OPT. This position has also been rejected by all the UN bodies monitoring adherence to these treaties and by the International Court of Justice.<sup>75</sup>

As an occupying power, Israel is required by international law to ensure the protection of the fundamental rights of the Palestinian population in the OPT, and to treat them humanely at all times. Any measures of control or security must be “necessary as a result of the war” (Article 27, Fourth Geneva Convention). However, “regulations concerning occupation... are based on the idea of the personal freedom of civilians remaining in general unimpaired... What is essential is that the measures of constraint they adopt should not affect the fundamental rights of the persons concerned... those rights must be respected even when measures of constraint are justified.”<sup>76</sup>

### 5.1 ADMINISTRATIVE DETENTION

Amnesty International opposes all systems of administrative detention because they are used by states throughout the world to circumvent the fair trial safeguards of criminal proceedings. The organization considers that all political prisoners, including those held in administrative detention, must be charged with a recognizably criminal offence and given a fair trial within a reasonable time, or else released. Amnesty International believes that the practice of administrative detention in Israel and the OPT violates human rights. The government of Israel has routinely used it to punish without charge or trial individuals, including prisoners of conscience, who it suspects have acted against its interests, rather than as an

extraordinary and selectively used preventative measure. Such safeguards that exist have failed to prevent violations of detainees' human rights, including the right to be informed promptly and fully of the reasons for their detention, the right to defence, the right to a fair and public hearing, the right to call and examine witnesses, the right to an appeal, and the presumption of innocence.

Article 9 of the ICCPR makes clear that no one should be subjected to arbitrary detention and that deprivation of liberty must be based on grounds and procedures established by law (para. 1). Detainees must be informed at the time of arrest of the reasons for their arrest (para. 2). They must also have access to a court empowered to rule without delay on the lawfulness of their detention and order their release if the detention is unlawful (para. 4). All these requirements apply to "anyone who is deprived of his liberty by arrest or detention", and therefore apply fully to administrative detainees.

Although Israel ratified the ICCPR in 1991, it has derogated from its obligations under Article 9. The authorities cite the fact that the country has been in a declared state of emergency since its formation in 1948 as the reason for this.<sup>77</sup> In the context of both non-international and international armed conflict, the ultimate crisis a nation can face, the right to a fair trial is non-derogable under the Geneva Conventions, as well as under the Additional Protocols to those Conventions. Amnesty International considers the right to a fair trial to be fundamental; it should therefore be guaranteed at all times, even in an emergency.

Article 4 of the ICCPR allows governments to take measures derogating from the provisions of Article 9 when they face a "public emergency which threatens the life of the nation". Such measures can only be "to the extent strictly required", may not discriminate against a particular group, and may not be inconsistent with other obligations under international law. Furthermore, Article 4(2) prohibits derogation from certain rights in the ICCPR even during a state of emergency, including the right not to be subjected to torture or cruel, inhuman or degrading treatment (Article 7).

A state of emergency is, by definition, a temporary legal response to an exceptional and grave threat to the nation. The Human Rights Committee, which monitors and interprets the ICCPR, has emphasized that "Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature."<sup>78</sup> A perpetual state of emergency is a contradiction in terms. The Committee further notes: "States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence."<sup>79</sup>

It is, therefore, extremely disturbing when a state of emergency becomes de facto permanent, as in Israel, since it means that human rights violations may also become a permanent state of affairs. The Human Rights Committee has repeatedly expressed concern at Israel's perpetual state of emergency, its prolonged process of review regarding the need for it, its frequent and extensive use of administrative detention and the resulting violations of detainees' rights.<sup>80</sup> While recognizing Israel's security concerns, the Committee has stated that the restrictions on detainees' access to lawyers and the failure to disclose the reasons for their detention "limit the effectiveness of the judicial review, thus endangering the protection

against torture and other inhuman treatment under article 7 and derogating from article 9 more extensively than what in the Committee's view is permissible pursuant to article 4.”<sup>81</sup> In its most recent Concluding Observations, the Committee recommended that Israel “refrain from using administrative detention...and ensure that detainees' rights to fair trial are upheld at all times”, and repeal the Internment of Unlawful Combatants Law.<sup>82</sup> Amnesty International does not dispute the duty of a government to safeguard the security of those under its jurisdiction, but concurs with the Committee that this must be done in a way that does not violate the human rights of any person.

Administrative detention – ostensibly introduced as an exceptional measure to detain people who pose an extreme and imminent danger to security – has been and continues to be used against a much wider range of people, including individuals who should have been arrested, charged and tried in accordance with normal laws and under the criminal justice system, or against individuals who should not have been arrested at all and are held as prisoners of conscience.

Despite the fact, as noted above, that the Israeli authorities have consistently rejected the applicability of the Fourth Geneva Convention to the OPT, they maintain that the use of administrative detention in the OPT is consistent with Article 78 of the Fourth Geneva Convention,<sup>83</sup> which states that, “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 the commentary of Dr. Jean Pictet, the leading authority on the Geneva Convention, “such measures can only be ordered for real and imperative reasons of security; their exceptional character must be preserved.” Furthermore, “in occupied territories the internment of protected persons should be even more exceptional than it is inside the territory of the Parties to the conflict”, and detainees can only be interned within the occupied territory, not inside the occupying state.<sup>84</sup> Israel's practice of administrative detention over many years clearly violates these provisions.

The Israeli authorities have said that administrative detention “may be used as the exception only when the evidence in existence is clear, concrete and trustworthy, but for reasons of confidentiality and protection of intelligence sources, cannot be presented as evidence in ordinary criminal proceedings.” However, Amnesty International believes it is the duty of a government to find ways to deal with confidential or sensitive information in a way which does not compromise an individual's right to a fair trial, particularly when it results in deprivation of liberty. No one should be deprived of his or her liberty because a state is incapable of dealing appropriately with evidence.

The requirement that the government use the institutions and procedures of ordinary criminal justice, including the presumption of innocence, whenever it seeks to deprive a person of liberty based on allegations of essentially criminal conduct is a fundamental bulwark of liberty and security of the person, and an underlying principle of international human rights law.

Among the countries in which Amnesty International has, in recent years, documented abusive systems of administrative detention – and called for an end to administrative detention – are Sri Lanka, Egypt, China, and India (Jammu and Kashmir.) In Amnesty

International's long and global experience, creating a system of indefinite or prolonged detention without trial, regardless of any supposed "substitute" safeguards, inevitably results in the long-term imprisonment of individuals who in fact have not planned or perpetrated acts of violence or other serious crimes and facilitates other violations, including torture and other ill-treatment.

Finally, the Committee against Torture concluded in 2001 that administrative detention as practised by Israel did not conform to the prohibition on cruel, inhuman and degrading treatment or punishment under Article 16 of the Convention against Torture.<sup>85</sup> It repeated this assessment in 2009, noting that administrative detention was sometimes used for "inordinately lengthy periods", and that "the detainee may be de facto in incommunicado detention for an extended period, subject to renewal."<sup>86</sup>

Amnesty International also considers that Israel's use of administrative detention, including under the Internment of Unlawful Combatants Law, may amount to cruel, inhuman and degrading treatment.<sup>87</sup> Administrative detainees do not know when they will be released and cannot mount a proper defence due to the secret evidence deployed against them. Thus, they and their families hope that each order will be the last, that each judicial review will somehow be different from those before, and that the High Court of Justice will challenge the secret evidence and order their release, despite all the evidence that it consistently fails to do so. In the vast majority of cases these hopes are dashed, and the detainees and their families are left in a seemingly unending cycle of vain hope and despair. Even when no physical ill-treatment is involved, the perpetual uncertainty of indefinite detention without charge or trial can amount to cruel, inhuman and degrading treatment or punishment.<sup>88</sup>

## 5.2 ISRAELI DETENTION CENTRES AND FAMILY VISITS

All but one of the Israeli prisons where Palestinian administrative detainees are held are located inside Israel. The detention of Palestinians inside Israel violates international law. Articles 49 and 76 of Fourth Geneva Convention stipulate that detainees from occupied territories must be detained in the occupied territory, not in the territory of the occupying power. If all Palestinian detainees were held in the OPT, their families would not need to enter Israel to visit them and the issue of permits would not arise.

The Israeli authorities' refusal to grant permits to thousands of relatives of Palestinian detainees is a punitive policy that penalizes both Palestinian detainees, by denying them regular visits or any visits at all, and their relatives. No such prohibition exists for relatives of Israeli prisoners.

Although under international human rights standards and international humanitarian law, Israel is responsible for ensuring that Palestinian detainees receive family visits, the international community, via the ICRC, has been shouldering the cost of the family visit programme for decades. The ICRC not only arranges family visits for Palestinian detainees but also provides transport.

The Israeli authorities' failure to ensure that Palestinian detainees receive family visits breaches international standards, including:

- Article 116 of the Fourth Geneva Convention;
- Principle 5 of the UN Basic Principles for the Treatment of Prisoners;

- Rules 37 and 92 of the UN Standard Minimum Rules for the Treatment of Prisoners;
- Principle 19 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Rules 60 and 67 of the UN Rules for the Protection of Juveniles Deprived of their Liberty.

Conditions in Israeli prisons and detention centres vary but frequently violate other provisions of the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), including those concerning food, accommodation, sanitation and medical services. Persons arrested or detained without charge are supposed to benefit from the “special regime” outlined in Part II.C of the Standard Minimum Rules, which includes holding them separately from convicted prisoners. The Israel Prison Service does not generally abide by this provision, and continues to hold administrative detainees in wards for sentenced prisoners, despite the fact that this also violates the IPS’ own regulations.<sup>89</sup>

### 5.3 TORTURE AND OTHER ILL-TREATMENT, INCLUDING OF DETAINEES AND PRISONERS ON HUNGER STRIKE

Amnesty International is extremely concerned at continuing reports that Palestinians arrested by the Israeli security forces are tortured or otherwise ill-treated during arrest and interrogation. The organization is also concerned that the Israeli authorities’ treatment of administrative detainees and other prisoners on hunger strike often amounts to cruel, inhuman or degrading treatment or punishment, including solitary confinement as a punishment; prohibitions on family visits; restricting lawyers’ access to detainees; verbal abuse, violent handling and other forms of pressure to end the hunger strike; and restrictions on access of detainees to independent doctors to examine the hunger striker.

Such treatment is strictly prohibited under the International Covenant on Civil and Political Rights, and the Convention against Torture, to which Israel is a state party. It is also a violation of the requirement under international humanitarian law of humane treatment.<sup>90</sup>

### 5.4 FORCIBLE TRANSFER OR EXILE

Amnesty International opposes forcible exile – when a government forces individuals to leave their own country on account of their political, religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour, language, national or social origin, economic status, birth, or other status, and then prohibits their return. Amnesty International also opposes deportation from territories under military occupation in all cases.

Article 49 of the Fourth Geneva Convention prohibits an occupying power from forcibly transferring or deporting people from an occupied territory. Deals under which Palestinian detainees are pressured to “agree” to be transferred into either the Gaza Strip or the West Bank, or to leave the OPT completely, violate this prohibition.

## 6. RECOMMENDATIONS

In light of the ongoing violations highlighted in this report, Amnesty International is making recommendations to both the Israeli authorities and the international community.

### TO THE ISRAELI AUTHORITIES

- Release immediately and unconditionally all prisoners of conscience.
- Release all administrative detainees unless they are to be promptly charged with internationally recognizable criminal offences and tried in accordance with international fair trial standards.
- End the practice of administrative detention.
- Repeal the Internment of Unlawful Combatants Law and rescind paragraphs 284 to 294 of Military Order 1651, which provide for administrative detention.
- Protect all those held by Israeli authorities from all forms of torture and other ill-treatment at all times.
- Ensure that hunger strikers are treated humanely at all times, given adequate medical care including in civilian hospitals with specialised facilities and by granting them access to independent doctors of their choice.
- Ensure that no prisoner or detainee is punished for their being on hunger strike. Any artificial feeding should be only for medical reasons, under medical supervision, by suitably trained personnel, and must never be done in a manner that amounts to cruel, inhuman or degrading treatment.
- Ensure prompt, effective investigation by an independent and impartial body into complaints and reports that detainees and prisoners have been tortured or otherwise ill-treated, including into alleged violations by Israel Prison Service and Israel Security Agency staff against prisoners and detainees on hunger strike since December 2011. Suspend from active duty personnel suspected of torture or other ill-treatment during the investigation.
- Prosecute, wherever there is sufficient admissible evidence, those responsible for torture or other ill-treatment in fair trials.
- Provide victims of torture and other ill-treatment with prompt reparation, including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.
- Ensure that detainees and prisoners are held in prisons and detention centres in the Occupied Palestinian Territories.
- Allow all Palestinian detainees and prisoners – including those from the Gaza Strip – to have family visits, including from close relatives who have been barred on “security” grounds.

- End all forced deportations of Palestinians from the OPT into exile, or forcible transfers from the West Bank to Gaza, including in the context of deals to release individuals held under administrative detention orders.

## TO THE INTERNATIONAL COMMUNITY

All states, as High Contracting Parties to the Geneva Conventions, have an obligation under Article 1 of the Fourth Geneva Convention to “respect and ensure respect for” the Convention. In this regard the organization is also calling on the international community to:

- Ensure that Israel, as the occupying power, fulfils its obligations to treat Palestinians humanely and refrains from forcible transfer and deportation.
- Exercise universal jurisdiction to prosecute grave breaches of the Geneva Conventions.
- Pressure the Israeli authorities to end the practice of administrative detention.

# APPENDIX 1

Verbatim responses from the Israeli authorities to Amnesty International members' urgent appeals regarding various Palestinian administrative detainees:

**From:** Embassy of Israel - Assistant to the Director of Public Affairs

**Sent:** Tuesday, April 10, 2012 2:29 PM

**Subject:** Mr Qatamish

**Re: Ahmad Qatamish**

Dear Sir/Madam

I would like to acknowledge receipt of your letter regarding the detention of Mr Ahmad Qatamish. Please find below some background information with the timeline of Mr Ahmad Qatamish judicial antecedents and the latest update on his detention.

1. Mr Qatamish was arrested on 10 June 2011 on the grounds of his involvement with the Popular Front for the Liberation of Palestine (PFLP).
2. A criminal investigation took place against Mr Qatamish, and an arrest warrant was issued against him on 3 May 2011. Following extensive intelligence gathered from several sources, he was considered to pose a threat to regional security and therefore, the IDF Commander of the West Bank ordered his arrest according to the customary procedure as appearing of the security legislation.
3. A preliminary judicial hearing regarding the administrative detention of Mr Qatamish took place on 8 May 2011 in the presence of him and his lawyer at the military court for administrative detentions. It was decided that further investigation and analysis of the evidence was required and therefore after this done, a second hearing took place.
4. On 19 May 2011 the order for his administrative detention was approved and the court reduced it from 6 months to 4 months ending 2 September 2011. The judge stated that: *"I was convinced that the defendant poses a severe and immediate danger to the public and regional security. I found the material that was brought before me to be reliable, up to date and verified by several sources. It coherently established the imminent risk posed by the defendant if he were to be released. I believe that in the case before us, the intelligence and evidence gathered demonstrates the great and unusual danger posed by the defendant."*
5. Note: the reduction of the detention time was due partially to technical procedural errors that took place during the issuing of arrest warrant. The court ruled that due to the risk that Mr Qatamish poses, they were unable to decide on the annulment of the arrest warrant though errors were made. The balance between the public interest and the rights of the detainee will manifest itself in the reduction the detention time. The military advocate appealed against this decision before the military court of appeals and was rejected.
6. Furthermore, on the 3<sup>rd</sup> of October 2011, the court approved the renewal of his arrest warrant for a further 6 months (starting 2<sup>nd</sup> September 2011). This was due to the court's concerns following the reading of classified intelligence that was presented to it.



7. We would like to also mention that the court was presented with new intelligence in addition to the previous data already accumulated. This material confirmed that Mr Qatamish's involvement with the PFLP poses a security threat and therefore, his administrative detention was renewed.

Latest information received from the Judicial department responsible for administrative detentions in the West Bank and from the High Court of Justice:

A. An administrative detention order (the third) against the above was issued on 1.03.12 by the military commander, and whose validity is extended until 31.08, i.e. for a period of six months (the maximum period for administrative detention).

B. During the Judicial review held on 05/03, a judge heard the prosecution's position and the position of the detainee who was present at the hearing.

The detainee was not legally represented, and when the Court asked why, Mr Qatamish said he was boycotting the Court and does not recognize its authority. Shortly after, the detainee asked to go back to his cell and to not participate in the discussion (as Mr Qatamish already did in the past).

C. On that same day, 05/03, the Judge confirmed the detention order for the specified period (in light of additional information provided by the security agencies and the assessment of the level of threat).

Note that the prisoner filed a petition against the detention order before the High Court in November 2011. On 02/02/12 a representative of the Mr Qatamish came to the Court and asked for the petition to be cancelled, without specifying the reasons behind his demand.

Thank you for contacting us,

**Re: Mr Khader Adnan**

Dear Sir/Madam,

I would like to acknowledge the receipt of your letter regarding Mr Khader Adnan. You will find below the last update published by the Justice Ministry Spokesman's office. In addition, please find some more information about Mr Khader Adnan.

**Justice Ministry Statement Regarding Khader Adnan**

(Communicated by the Justice Ministry Spokesman's Office)

Following is a translation of a request submitted by the State Attorney and the attorney of the appellant (Khader Adnan) to the Supreme Court:

1. This petition regards the appellant's request for an order to revoke the administrative detention order that was issued against him, and is in force until 8.5.12.
  2. The State would like to announce – after the issue had been brought before the Attorney General – that it agrees to offset the days in which the appellant was detained for the purpose of a criminal investigation prior to his administrative detention from the period of the current administrative detention order, and also announces that as long as no new significant and substantive material is added regarding the appellant, there is no intention to extend the administrative detention.
- Therefore, as long as no new significant and substantive material is added regarding the appellant, his administrative detention will end on 17.4.12.
3. In light of State's foregoing announcement, the appellant states – via his attorney – that he is halting his hunger strike effective immediately.
  4. In light of the foregoing, the State and the appellant ask that the honorable Court order that the petition be dismissed without an order regarding costs, and that the discussion scheduled for today (Tuesday), 21.2.12, be cancelled."

**The Hunger Strike**

**Background Facts**

**Introduction:**

Khader Adnan has been on hunger strike since his arrest on 17 December 2011, protesting his administrative detention. It should be noted that administrative detention is conducted under judicial supervision. He is under medical supervision and is receiving appropriate medical care.

**Terrorist Activities:**

Adnan has been jailed a number of times for his involvement in terrorist activities.

Adnan is a senior activist in the northern Samarian (West Bank) branch of Palestinian Islamic Jihad (PIJ). In the past, he was a spokesman for the terrorist organization. He is not suspected of direct involvement with terrorist attacks. However, he has taken an active role in the organization's activities, including the transfer of money to the group. Additionally, he has been in contact with elements of Islamic Jihad in Syria and the Gaza Strip.

Adnan's involvement in PIJ is ongoing and he was involved in the recent renaissance of the

Islamic Jihad in the northern Gaza Strip.

**History of Arrests:**

A military court has extended his current detention until 8 May 2012.

Adnan was arrested in December 2011, but already in the previous May, Israel tried to detain him. He ran away from the arresting officers and spent seven months in hiding in the area of his village, Araba, in northern Samaria. During the May event, materials connecting him to PIJ activities were found in his house.

Adnan has been arrested eight times by Israel. Each time, upon his release, he immediately returned to terrorism and therefore eventually was arrested again. In his previous arrest, he was held for 6 months, from March to September 2008. Then, as now, the reason for his arrest was his involvement in the Islamic Jihad.

**In the past, he has also been arrested for interrogation purposes by the Palestinian Authority.**

**History of Hunger Strikes:**

Adnan claims that he is striking because of the "humiliation" he suffered during his questioning. However, he started his hunger strike a few hours after being arrested, while questioning began only a day later.

**It should be noted that when he was arrested in September 2010 for a month by the Palestinian Authority for his involvement in PIJ, he also conducted a hunger strike, leading to his release. It is apparent that he is using the same technique in the hope that it will work again, this time with the Israeli authorities.**

**Medical Care:**

Adnan was originally held in the Megiddo prison. He was transferred to the medical center of the Nitzan detention center in order to receive close medical supervision. During this period he was sent to Assaf Harofeh Hospital for tests. On the advice of his doctors, he was sent to Ziv Hospital in Safed, where he was hospitalized under the supervision of the Israel Prison Service.

Adnan was treated by Prof. Weingarten, of Physicians for Human Rights – Israel. He received intravenous fluids and was under constant medical supervision.

**Living Conditions:**

The detainee has been given the opportunity to make phone calls, as well as visit with his lawyer, family, a religious figure and the Red Cross. At his request, a visit with Jamal Zahalka, a member of the Knesset, has been approved.

**Background on Palestinian Islamic Jihad (PIJ)**

The PIJ is a fundamentalist Islamic terrorist organization, striving to establish "an Islamic caliphate under Shariah Law" through terrorism. According to the organization, "freedom of Palestine" (a geographical and political definition that denies the right for Israel to exist) is the first step to "Redemption of Islam", and the only way achieve it is through "Jihad" and uncompromising terrorist activities against Israel.

The organization operates from Damascus where the organization's leadership enjoys freedom of action. In addition, there is clear evidence that the organization receives direct support from Iran. The PIJ is considered as an Iranian proxy, as it receives the vast majority of its financial support. The PIJ is listed as a terrorist organization by the U.S., UK, EU, Australia, Canada, and Japan.

During the 80s, the PIJ was the most active terrorist organization and carried out terror attacks against Israeli targets. After the signature of Oslo agreements, the organization immediately expressed its opposition to any form of dialogue. Consequently, the organizations shifted its tactical agenda to suicide bombings and carried out several terror attacks inside Israel. During the second Intifada (September 2000) prominent PIJ activists (from the West Bank in particular), carried out a series of suicide bombing attacks, which killed dozens of Israelis and wounded hundreds (For instance, the suicide attack in Eilat on January, 29<sup>th</sup>, 2007).

Following Israel's counterterrorism operations on the West Bank, and the establishment of "buffer zone" in northern West Bank, there was a dramatic decline in the number of terrorist attacks. The organization maintains its agenda and continues its efforts to carry out suicide bombings in Israel. However, its activity is now mainly located in the Gaza Strip, from where it carries out another type of terrorist activity: launching of rockets and mortars against Israel, including rockets of the type "Grad" that can reach indiscriminately highly populated cities in the heart of Israel.

Thank you for contacting us,

**Re: Mr Aziz Dweik**

Dear Sir/Madam,

I would like to acknowledge the receipt of your letter concerning Mr Aziz Dweik. Please find updated information regarding his case. Moreover, please find some background information about Hamas ideology and facts about administrative detention.

Mr Dweik is a leading figure in the West Bank division of Hamas. He was elected in 2006 as chairman of the parliament on behalf of Hamas. His last imprisonment in Israel was between 2006 and 2009.

Mr Dweik works in the organisational structure of Hamas in the West Bank, whose aim is to strengthen the movement's presence and influence in the West Bank and Hebron in particular.

In addition to his functions in the organisational structure of Hamas, Mr Dweik is an active member of the Legislative Council. His dual functions have the potential to result in a situation where Mr Dweik takes advantage of his status and position in order to push the agenda of Hamas.

The arrest was decided as an outcome of a thorough investigation based on large number of information accumulated in the past few years about his involvement in Hamas infrastructure rehabilitation in the West Bank. The arrest of Mr Dweik has no relation whatsoever with his position or activities in the Legislative Council.

**Hamas**

Hamas organisation is ideologically committed to destroy the State of Israel through a long-term holy war (jihad):

The main points of the Hamas charter:

- The conflict with Israeli is religious and political: The Palestinian problem is a religious-political Muslim problem and the conflict with Israel is between Muslims and the Jewish "infidels."
- All Palestine is Muslim land and no one has the right to give it up: The land of Palestine is sacred Muslim land and no one, including Arab rulers, has the authority to give up any of it.
- The importance of jihad (holy war) as the main means for the Islamic Resistance Movement (Hamas) to achieve its goals: An uncompromising jihad must be waged against Israel and any agreement recognizing its right to exist must be totally opposed. Jihad is the personal duty of every Muslim.
- The importance of fostering the Islamic consciousness: Much effort must be invested fostering and spreading Islamic consciousness by means of education [i.e., religious-political indoctrination] in the spirit of radical Islam, based on the ideology of the Muslim brotherhood.
- The importance of Muslim solidarity: A great deal of importance is given to Muslim solidarity, one of whose manifestations is aid to the needy through the

establishment of a network of various “charitable societies.”

- In addition, the charter is rife with overt anti-Semitism: According to the charter, the Jewish people have only negative traits and are presented as planning to take over the world. The charter uses myths taken from classical European and Islamic-based anti-Semitism.

### **Administrative Detention**

- 1) Since 2000, Israelis have been the victims of a relentless and ongoing campaign by Palestinian terrorists to spread death and destruction, condemning our region to ongoing turmoil.
- 2) In light of this lethal threat, Israeli security forces have sought to find new effective and lawful counter-measures.
- 3) These measures may be used as the exception only when the evidence in existence is clear, concrete and trustworthy but for reasons of confidentiality and protection of intelligence sources, cannot be presented as evidence in ordinary criminal proceedings.
- 4) Issuance of administrative detention orders against detainees who pose a danger to public security in the West Bank or the Gaza Strip, in those cases outlined above, is recognized by international law and is in full conformity with Article 78 of the Fourth Geneva Convention 1949.
- 5) Furthermore, the measure is used only in cases where there is corroborating evidence that an individual is engaged in illegal acts that endanger the security of the state and the lives of civilians, and each order is subject to judicial review with right of appeal to the Military Court of Appeals, and also a subsequent petition to the Israeli High Court of Justice for a repeal of the order. Petitioners may be represented by counsel of their choice at every stage of these proceedings and have a right to examine the unclassified evidence against them. Note that an administrative detention order is limited to six months and its extension requires reevaluation of the relevant intelligence, as well as further judicial review and appeal.

### **Israel**

Administrative detention is when intelligence and security information is brought to the Judge about a particular defendant. On the basis of this information the defendant is put to prison. This procedure occurs without due process of law as normally regulated. The legality of the procedure comes from the fact that an appeal is automatically given and its relevance checked every three months. Details of the case and reasons behind the defendant's detention cannot be revealed as their contents are subject to a high classification.

### **In the World:**

A. Administrative detention exists in other parts of the world, and even in other democratic countries fighting terrorism, primarily the United States and Britain. A terror suspect can be held in detention without trial indefinitely according to the US-Patriot Act passed after the attacks 9/11. The Patriot act also allows for the government to hold terrorism suspects without bringing them before a judge for a period of 6 months. This period might be unlimited when the Ministry of Justice concludes that it is necessary.

B. UK law allows to hold terrorism suspects without an arrest warrant for 28 days.

C. Other countries coping with widespread illegal immigration, such as Australia and Ireland, also have forms of administrative detention.

D. One should also compare this situation with the regulations of undemocratic governments surrounding Israel (Including Gaza) where administrative detention is not only systematically adopted on the suspicion of involvement in activities threatening the regime but often resumes in the execution of the defendant. In this case, the alternative to administrative detention is also often execution.

**From Amnesty international:**

In the West Bank, the security forces of the Fatah-controlled Palestinian Authority (PA) arbitrarily detained people connected with Hamas, while in the Gaza Strip the Hamas de facto administration arbitrarily detained people connected with Fatah. In both areas, detainees were tortured and otherwise ill-treated with virtual impunity. Both the PA and Hamas restricted freedom of expression and association. In Gaza, at least 11 people were sentenced to death and five executions were carried out, the first since 2005.

**Arbitrary arrests and detentions**

PA security forces in the West Bank arbitrarily arrested and detained suspected Hamas supporters, and Hamas security forces in Gaza arbitrarily arrested and detained suspected Fatah supporters. In both areas, the authorities gave the security forces wide powers of discretion, including to arrest and detain suspects in breach of the law and to torture and otherwise ill-treat them with impunity. The Independent Commission for Human Rights (ICHR) reported receiving complaints of more than 1,400 arbitrary arrests in the West Bank and more than 300 in Gaza.

Thank you for contacting us.

Sincerely,

**From:** Embassy of Israel – Assistant to the Director of Public Affairs

[mailto:public@london.mfa.gov.il]

**Sent:** Wed 4/11/2012 1:14 PM

**To:**

**Subject:** RE: Please release Hana Shalabi

**Re: Ms Hanna Shalabi – update April 2012**

Dear Sir/Madam,

I would like to acknowledge the receipt of your letter regarding Ms Hanna Shalabi. You will find below the last update published by the Justice Ministry Spokesman's office. In addition, please find some more information about Ms Hanna Shalabi.

**Last update:**

Ms Hana Shalabi stopped her hunger strike after more than 40 days and was transferred from Israel to the Gaza Strip.

According to the media (Haaretz newspaper this morning), Ms Hana Shalabi agreed with the conditions of her release from administrative detention and her transfer to the Gaza Strip for a period of three years. During this three-year period, she agreed to avoid any engagement in activities that are directly or indirectly threatening the security of the state of Israel. After the three years, Ms Hana Shalabi will be entitled to return to her family home near Jenin.

Assisted by the Red Cross, Hana Shalabi was able to meet with her family before being transferred to Gaza via Erez crossing point. There, Ms Hana Shalabi was welcomed by supporters from all political sides.

**Justice Ministry statement regarding Ms. Hanna Yehyeh Tzabbar Albazor Shalabi**

Ms. Shalabi was released from administrative detention on 18 October 2011, despite significant security concerns about her (and many other individuals), as part of the Shalit prisoner exchange agreement.

On 16 February 2012, due to the unique circumstances of her behavior in the weeks and months following her release, Ms. Shalabi was arrested again and a new administrative detention order was issued. This decision, the only one of its kind of an administered detainee included in the Shalit agreement, was taken in light of her renewed involvement in planning terrorist action. Due to the graveness of these concerns, the order was given for six months, until 16 August 2012.

A judicial review of the order with the presence of Ms. Shalabi and her seven legal representatives was held last week, on 29 February, in the Military Court for Administrative Affairs. On 4 March, a judicial decision was given to shorten the current Administrative order to four months, until 23 June 2012.

This decision was given due to concerns regarding Ms. Shalabi's current psychological state and was not related to the significant security concerns regarding her. The judge determined that a closer judicial review was necessary in the circumstances and ordered a review in four months.

\* \*

Ms. Shalabi began a hunger strike on 20 February 2012. In this regard, the judge said that no medical document was presented by either side indicating a threat to Ms. Shalabi's health. She ordered that in an event of a deterioration in Ms. Shalabi's health, a review of the decision will be allowed.

Ms. Shalabi was detained in Hasharon prison. For some time she was held in a separate cell and over the last couple of days has shared a cell with another female prisoner. Since her declaration of a hunger strike, she has received routine visits by prison medical personnel, though she refused to allow them to examine her. Ms. Shalabi receives regular visits by her attorneys and Red Cross doctors. A family visit was also approved and took place before her transfer to Gaza.

\* \*

One of the unique aspects of the case of Ms. Shalabi is that there have been significant security concerns about her for quite some time. Ms. Shalabi was initially arrested on 14 September 2009. On 29 September 2009, an administrative detention order was issued based upon intelligence information regarding her involvement in dangerous activities including planning to commit a terrorist suicide attack. The original order was given for six



months.

In a judicial review of the order in the presence of Ms. Shalabi, the Military Court for Administrative Affairs stated that "credible and high quality intelligence information was presented, which point towards danger to the safety of the Area if the detainee is released. The Court was persuaded that a detention period shorter than six months will not suffice, and this period is proportionate to the danger posed by the detainee as indicated by intelligence information." The Court also stated that "there is well founded and varied intelligence information, from several sources of information and from several kinds of information sources, according to which the detainee has high motivation to carry out a terrorist act, has initiated and requested to carry out murderous terrorist activities, and even took initial steps to implement her initiative." The Court affirmed the order for its entire duration minus the number of days Ms. Shalabi was detained prior to the issue of the order.

On 3 November 2009, Ms. Shalabi's counsel filed an appeal against the decision. The appeal was rejected by the Military Court of Appeals which determined that "the Military Commander had reasonable grounds to assume [...] that the safety of the Area or the safety of the public obligates that the appellant will be held in detention. The length of the detention is proportionate to the estimated threat inflicted of the appellant."

Upon the expiration of the first order against her, an additional order was issued against Ms. Shalabi until 12 September 2010. The second order was affirmed by the Military Court for Administrative Affairs for its entire duration. On 7 September 2010, an additional order was issued against Ms. Shalabi for a further period of six months. That order was also affirmed by the Military Court for administrative affairs.

Following an appeal filed by Ms. Shalabi's attorney, the Military Court of Appeals again affirmed the order for its entire duration, emphasizing its concern that Ms. Shalabi remained ready to commit a suicide attack. The order was renewed again in March 2011. It should be noted that Ms. Shalabi was represented by counsel throughout all of these proceedings.

\* \*

Two petitions have been submitted to the High Court of Justice by Ms. Shalabi with regards to her administrative detention during the last two years. In the first petition, no. 8761/10, which was heard on 24 January 2011, the judge stated that after hearing the arguments and reviewing confidential information, she recommended that Ms. Shalabi's counsel withdraw the petition, and Ms. Shalabi's attorney closed the case. In the second petition no. 5823/11, heard on 27 September 2011, both sides agreed to withdraw the petition since agreeing that if no additional information would be discovered, she would be released in three months.

\* \*

Thank you for contacting us,

Sincerely,

## APPENDIX 2

### PALESTINIANS WHOSE ADMINISTRATIVE DETENTION ORDERS HAVE BEEN RENEWED OR ISSUED BETWEEN 14 AND 31 MAY 2012

Amnesty International has received the names of 30 Palestinian administrative detainees whose detention orders have been renewed and three who had been issued with new orders since the deal ending the mass hunger strike was signed on 14 May.

#### **New orders:**

- 1) Sameeh Eleiwi
- 2) 'Ala Fahmi Za'qeeq
- 3) Mohammed Saeed Ali Ba'aran

#### **Renewed orders:**

- 1) Mohammed Maher Bader (PLC member)
- 2) Abdel Rahman Zidan (PLC member)
- 3) Ahmed al-Haj Ali (PLC member)
- 4) Mohammed Jamal Natsha (PLC member)
- 5) Nayef Mohammed al-Rajoob (PLC member)
- 6) Khalid Tafish (PLC member)
- 7) Hasan Youssef (PLC member)
- 8) Samir Qadi (PLC member)
- 9) Mohammed Ghazal (university lecturer)
- 10) Hussam Mohsen al-Raza
- 11) Samer al-Barq
- 12) Mohammed Karam al-Qadi
- 13) Rashad Ahmad Abd al-Rahman
- 14) Falah Taher Nada
- 15) Aziz Haroon Kayed
- 16) Shafiq Qawasmi
- 17) Khalil Abu Matar
- 18) Ahmad Assida
- 19) Mohamed Ali Abu al-Rob
- 20) Salah Nada
- 21) Hassan Shtayyeh
- 23) Sajed Militaat
- 24) Rida Khaled
- 25) Hussam Harb
- 26) Abdel Basset al-Hajj
- 27) Yassir Badrasawi
- 28) Farouq Tawfiq Musa
- 29) Hussam Khader
- 30) Hussein Abu Kweik
- 31) Tareq al-Sheikh

# ENDNOTES

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<sup>1</sup> See, for example, Sharon Weill, "The judicial arm of the occupation: the Israeli military courts in the occupied territories", *International Review of the Red Cross*, Vol. 89, No. 866, June 2007, p. 396.

<sup>2</sup> See B'Tselem, "Statistics on Administrative Detention", accessed on 31 May 2012, [http://www.btselem.org/administrative\\_detention/statistics](http://www.btselem.org/administrative_detention/statistics)

<sup>3</sup> Amnesty International, "Accountability for violations needed despite Palestinian prisoner deal", 16 May 2012, <http://www.amnesty.org/en/news/palestinian-prisoner-deal-provides-relief-accountability-violations-needed-2012-05-16>

<sup>4</sup> The Israel Security Agency is also known as the General Security Services, which is a direct translation of its Hebrew name (*Sherut HaBitakhon HaK'lali*, abbreviated as Shabak, and sometimes referred to by its first two initials as the Shin Bet). Its website is [www.shabak.gov.il/Pages/default.aspx](http://www.shabak.gov.il/Pages/default.aspx) (Hebrew) and [www.shabak.gov.il/english/Pages/default.aspx](http://www.shabak.gov.il/english/Pages/default.aspx) (English).

<sup>5</sup> See Israel Ministry of Foreign Affairs, "End of hunger strike by security prisoners", 14 May 2012, [http://www.mfa.gov.il/MFA/Government/Communiques/2012/End\\_hunger\\_strike\\_security\\_prisoners\\_14-May-2012.htm](http://www.mfa.gov.il/MFA/Government/Communiques/2012/End_hunger_strike_security_prisoners_14-May-2012.htm)

<sup>6</sup> See for example Addameer, "Progress for Prisoners' Movement: Palestinian Prisoners' Mass Hunger Strike Concludes After Agreement is Reached", 15 May 2012, <http://www.addameer.org/etemplate.php?id=481>

<sup>7</sup> Some media reports suggested that family visits to Gazan prisoners would resume within a month; there is no date set in the official Israeli account of the deal.

<sup>8</sup> For the names of those reported to have had their administrative detention orders renewed, please refer to Appendix 2.

<sup>9</sup> See Amnesty International, "Israel-Hamas prisoner swap casts harsh light on detention practices of all sides", 18 October 2011 (Index: PRE01/524/2011).

<sup>10</sup> See Amnesty International, *Occupied Palestinian Territories: Torn apart by factional strife*, Index: MDE 21/020/2007, October 2007, <http://www.amnesty.org/en/library/info/MDE21/020/2007/en>

<sup>11</sup> See Amnesty International, *Palestinian Authority Annual Report entry*, May 2012, <http://www.amnesty.org/en/region/palestinian-authority/report-2012>

<sup>12</sup> See Amnesty International, *Operation 'Cast Lead': 22 Days of Death and Destruction*, July 2009 (Index: MDE 15/015/2009)

<sup>13</sup> See, for example, "Amnesty International's updated assessment of Israeli and Palestinian investigations into the Gaza conflict", 18 March 2011 (Index: MDE 15/018/2011); "Amnesty International's assessment of Israeli and Palestinian investigations into the Gaza conflict", 27 September 2010 (Index: MDE 15/022/2010).

<sup>14</sup> For a brief review of some of Amnesty International's concerns about Israel's detention of irregular migrants and asylum seekers, see Amnesty International, *Israel: Briefing to the Committee on the Elimination of Discrimination against Women*, June 2005 (Index: MDE 15/037/2005); *Amnesty*

*International Memorandum Concerning the Proposed "Prevention of Infiltration Law - 2008"*, 20 June 2008 (Index: MDE 15/024/2008); and "Israel: New detention law violates rights of asylum seekers", 10 January 2012.

<sup>15</sup> Amnesty International has documented the use and abuse of administrative detention in many different countries, and campaigns against detention without charge or trial in many different contexts. For recent Amnesty International reports focusing on administrative detention, see: *Locked away: Sri Lanka's security detainees*, 13 March 2012 (Index: ASA 37/003/2012); *Guantánamo: A decade of damage to human rights and 10 anti-human rights messages Guantánamo still sends*, 16 December 2011 (Index: AMR 51/103/2011); *The spring that never blossomed: Freedoms suppressed in Azerbaijan*, 16 November 2011 (Index: EUR 55/011/2011); *Time for justice: Egypt's corrosive system of detention*, 20 April 2011 (Index: MDE 12/029/2011); *A 'lawless law': Detentions under the Jammu and Kashmir Public Safety Act*, 21 March 2011 (Index: ASA 20/001/2011); and *New order, same abuses: Unlawful detentions and torture in Iraq*, 13 September 2010 (Index: MDE 14/006/2010).

<sup>16</sup> Articles 108 and 111 of the Defence (Emergency) Regulations, enacted in September 1945, available at <http://nolegalfrontiers.org/en/military-orders/mil02>.

<sup>17</sup> Emma Playfair, Al-Haq: Law in the Service of Man, *Administrative Detention in the occupied West Bank*, 1986, p. 3 (Playfair, *Administrative Detention in the occupied West Bank*); Amnesty International, *Administrative Detention during the Palestinian Intifada*, 1 June 1989 (Index: MDE 15/006/1989).

<sup>18</sup> Taken from responses from the Israeli Ministry of Justice to urgent appeals from Amnesty International members regarding individuals held under administrative detention. See Appendix 1 for some of these responses.

<sup>19</sup> See, for example, HCJ 814/88, *Nasrallah v. Commander of Military Forces in the West Bank, Piskei Din* 43 (2) 271; HCJ 7015/02, *Ajuri v. Commander of Military Forces in the West Bank, Piskei Din* 56 (6) 352, par. 24.

<sup>20</sup> HCJ 253/88, *Sajadiya v. Minister of Defense, Piskei Din* 42 (3) 801, 821.

<sup>21</sup> Amnesty International calls for the immediate and unconditional release of prisoners of conscience – people imprisoned solely because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status, who have not used violence or advocated violence or hatred.

<sup>22</sup> See, for example, Amnesty International, *Administrative Detention during the Palestinian Intifada*, 1 June 1989 (Index: MDE 15/006/1989); *Israel and the Occupied Territories: Administrative detention: Despair, uncertainty and lack of due process*, 30 April 1997 (MDE 15/003/1997); *Israel and the Occupied Territories: Mass detention in cruel, inhuman and degrading conditions*, May 2002 (Index: MDE 15/074/2002); *Israel and the Occupied Palestinian Territories: Briefing to the Committee Against Torture*, September 2008 (Index: MDE 15/040/2008); "Palestinian writer detained without charge by Israeli authorities", 10 May 2011.

<sup>23</sup> Playfair, *Administrative Detention in the occupied West Bank*, p. 3-4; Amnesty International, *Administrative detention during the Palestinian intifada*, 1 June 1989, p. 3 (Index: MDE 15/006/1989).

<sup>24</sup> Playfair, *Administrative Detention in the occupied West Bank*, p. 4-5; *Administrative detention during the Palestinian intifada*, June 1989, p. 4.

<sup>25</sup> Amnesty International Report 1987, p. 350 (Index: POL 01/02/1987)

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- <sup>26</sup> Amnesty International, *Administrative detention during the Palestinian intifada*, June 1989, p. 1.
- <sup>27</sup> B'Tselem, *Prisoners of Peace: Administrative Detention during the Oslo Process*, July 1997, p. 90, and [http://www.btselem.org/administrative\\_detention/statistics](http://www.btselem.org/administrative_detention/statistics).
- <sup>28</sup> Amnesty International, *Israel and the Occupied Territories: Mass detention in cruel, inhuman and degrading conditions*, May 2002 (Index: MDE 15/074/2002)
- <sup>29</sup> See B'Tselem and HaMoked, *Without Trial, Administrative Detention of Palestinians by Israel and the Internment of Unlawful Combatants Law*, October 2009, p. 13 (B'Tselem and HaMoked, *Without Trial*).
- <sup>30</sup> See B'Tselem, "Administrative detainees Bilal Diab and Thaer Halahlah are near death after 70 days of their hunger strike" 7 May 2012, [www.btselem.org/administrative\\_detention/diab\\_and\\_thaer](http://www.btselem.org/administrative_detention/diab_and_thaer).
- <sup>31</sup> Reporters without Borders, "Palestinian journalists at the mercy of arbitrary Israeli justice", 19 April 2012, <http://en.rsf.org/israel-palestinian-journalists-at-the-19-04-2012,42331.html>.
- <sup>32</sup> See [www.btselem.org/statistics/minors\\_in\\_custody](http://www.btselem.org/statistics/minors_in_custody), [www.dci-palestine.org/content/child-detainees](http://www.dci-palestine.org/content/child-detainees), and B'Tselem and HaMoked, *Without Trial*, p. 22. In recent years Amnesty International has campaigned on behalf of child administrative detainees such as Salwa Salah, Sara Siureh, and Hamdi Mohammed Shehadeh al-Ta'mari.
- <sup>33</sup> See the Defence (Emergency) Regulations, available at <http://nolegalfrontiers.org/en/military-orders/mil02>.
- <sup>34</sup> The full name of this military order was the Order Regarding Security Provisions (Judea and Samaria) (No. 378). See: Playfair, *Administrative Detention in the occupied West Bank*, p. 10-11; Amnesty International, *Administrative detention during the Palestinian intifada*, June 1989, p. 3-4.
- <sup>35</sup> Playfair, *Administrative Detention in the occupied West Bank*, p. 10-11; Amnesty International, *Administrative detention during the Palestinian intifada*, June 1989, p. 3-4.
- <sup>36</sup> A full English translation of this military order is available at <http://nolegalfrontiers.org/en/military-orders/mil01>.
- <sup>37</sup> Sharon Weill, "Reframing the Legality of the Israeli Military Courts in the West Bank: Military Occupation or Apartheid?" in *Threat: Palestinian Political Prisoners in Israel*, Pluto Press, 2011, p. 140-141. This is not the case for Palestinians citizens of Israel or residents of East Jerusalem, who are brought before military courts for alleged offences committed within the OPT..
- <sup>38</sup> B'tselem, HaMoked, *Administrative Detention of Palestinians by Israel and the Internment of Unlawful Combatants Law*, October 2009, [http://www.btselem.org/sites/default/files2/publication/200910\\_without\\_trial\\_eng.pdf](http://www.btselem.org/sites/default/files2/publication/200910_without_trial_eng.pdf)
- <sup>39</sup> For a good summary of these rulings, see Shiri Krebs, "Lifting the Veil of Secrecy: Judicial Review of Administrative Detentions in the Israeli Supreme Court", *Vanderbilt Journal of Transnational Law*, Vol. 45, No. 3, p. 668-669 (Krebs, "Lifting the Veil of Secrecy").
- <sup>40</sup> See, for example: HCJ 814/88, *Nasrallah v. Commander of Military Forces in the West Bank*, *Piskei Din* 43 (2) 271; HCJ 7015/02, *Ajuri v. Commander of Military Forces in the West Bank*, *Piskei Din* 56 (6) 352, par. 24; HCJ 253/88, *Sajadiya v. Minister of Defense*, *Piskei Din* 42 (3) 801, 821.
- <sup>41</sup> David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*,

2002, SUNY Press, p. 132-135.

<sup>42</sup> Krebs, "Lifting the Veil of Secrecy", p. 670. The case was HCJ 907/90, Zayad v. Military Commander in the W. Bank (1990),

<sup>43</sup> Krebs, "Lifting the Veil of Secrecy", p. 672.

<sup>44</sup> Krebs, "Lifting the Veil of Secrecy", p. 688-691. Some 36 per cent of petitions submitted to the HCJ between 2000 and 2010 by administrative detainees being held under military orders were withdrawn by the detainee as a result of this "bargaining process" (p. 675).

<sup>45</sup> [http://nolegalfrontiers.org/en/military-orders/mil01/67-security-provisions-chapter9-271-315#Article\\_C\\_-\\_Restraining\\_orders\\_and\\_supervision](http://nolegalfrontiers.org/en/military-orders/mil01/67-security-provisions-chapter9-271-315#Article_C_-_Restraining_orders_and_supervision).

<sup>46</sup> An unofficial English translation of this law is available at [http://www.btselem.org/sites/default/files/1979\\_emergency\\_powers\\_law\\_detention.pdf](http://www.btselem.org/sites/default/files/1979_emergency_powers_law_detention.pdf).

<sup>47</sup> The Law and Administration Ordinance was enacted on 19 May 1948. On the same day, a state of emergency was declared under Section 9(a) of the Ordinance, which permits any "Minister to make such emergency regulations as may seem to him to be expedient in the interests of the defence of the state, public security, and the maintenance of supplies and essential services." Hundreds of emergency regulations have since been enacted, many of which compromise civil, political, and labour rights. See Adam Mizock, "The Legality of the Fifty-Two Year State of Emergency in Israel", U.C. Davis Journal of International Law and Policy, Spring 2001, p. 226-227 (Mizock, "Legality of the Fifty-Two Year State of Emergency").

<sup>48</sup> See *Basic Law: The Government* (1999), Articles 49 and 50, available at [www.knesset.gov.il/laws/special/eng/basic7\\_eng.htm](http://www.knesset.gov.il/laws/special/eng/basic7_eng.htm), and *Basic Law: The Government* (2001), Articles 38 and 39, available at [www.knesset.gov.il/laws/special/eng/basic14\\_eng.htm](http://www.knesset.gov.il/laws/special/eng/basic14_eng.htm).

<sup>49</sup> Mizock, "Legality of the Fifty-Two Year State of Emergency", p. 229.

<sup>50</sup> ACRI, "Supreme Court Rejects Petition to End Continual State of Emergency", 8 May 2012, [www.acri.org.il/en/2012/05/08/state-of-emergency-petition-rejected/](http://www.acri.org.il/en/2012/05/08/state-of-emergency-petition-rejected/).

<sup>51</sup> Email response sent by the Public Affairs Department, Israeli Embassy, London to Amnesty International members on 11 May 2012

<sup>52</sup> See B'Tselem, "Restraining orders issued to settlers are unacceptable", 3 August 2011, [www.btselem.org/administrative-detention/3-aug-11-restraining-orders-issued-settlers-are-unacceptable](http://www.btselem.org/administrative-detention/3-aug-11-restraining-orders-issued-settlers-are-unacceptable).

<sup>53</sup> CrimReh 7048/97, A. and B. v. Minister of Defense.

<sup>54</sup> See Amnesty International, *Detention as hostages – Mustafa al-Dirani and Shaykh Abd al-Karim Ubayd*, 21 June 2000 (Index: MDE 15/029/2000)

<sup>55</sup> In January 2004, in a German-mediated prisoner swap, Mustafa al-Dirani and Sheikh 'Abd al-Karim 'Ubayd, along with some 20 other Lebanese detainees, about 400 Palestinian prisoners from the OPT, and 12 Palestinian citizens of Israel were released in exchange for the bodies of three Israeli soldiers and Israeli businessman and ex- soldier Elhanan Tannenbaum.

<sup>56</sup> See Amnesty International, *Israel: Draft law before the Knesset today will undermine humanitarian law*, 19 June 2000, (Index: MDE 15/028/2000). An English translation of the law is available on the

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Israeli Ministry of Justice website at

<http://www.justice.gov.il/MOJHeb/HeskeminVeKishreiHutz/KishreiChutz/HukimEnglish/>.

<sup>57</sup> CrimA 6659/06, CrimA 1757/07, CrimA 8228/07, CrimA 3261/08, A. and B. v. State of Israel.

<sup>58</sup> B'Tselem and HaMoked, *Without Trial*, p. 54.

<sup>59</sup> See Amnesty International, *Israel/OPT: Briefing to the Committee Against Torture*, 30 September 2008 (Index: MDE 15/040/2008); B'Tselem and HaMoked, *Without Trial*, p. 55.

<sup>60</sup> Israel Prison Service statistics available at [http://www.btselem.org/administrative\\_detention/statistics](http://www.btselem.org/administrative_detention/statistics).

<sup>61</sup> Other detainees also boycotted the military courts, refusing to attend judicial review or appeal sessions, while some chose not to file appeals to the Supreme Court.

<sup>62</sup> Physicians for Human Rights – Israel and The Public Committee against Torture in Israel, *Doctoring the Evidence, Abandoning the Victim: The involvement of medical professionals in torture and ill-treatment in Israel*, October 2011,

<sup>63</sup> See Amnesty International, *Israeli decision to release Palestinian detainee in April 'insufficient'*, 21 February 2012, <http://www.amnesty.org/en/for-media/press-releases/israeli-decision-release-palestinian-detainee-april-insufficient-2012-02-21>.

<sup>64</sup> See Amnesty International, *Palestinian detainee freed: Khader Adnan*, Index: MDE 15/021/2012, 18 April 2012, <http://www.amnesty.org/en/library/info/MDE15/021/2012/en>

<sup>65</sup> HCJ 5100/94 *Public Committee against Torture in Israel v. the State of Israel*, 6 September 1999.

<sup>66</sup> See Agence France Press, *Israeli troops re-arrest Palestinian woman prisoner*, 16 February 2012, <http://www.google.com/hostednews/afp/article/ALeqM5gMXd9Kv9dZqIPQlvfW-fFSryUzSQ?docId=CNG.3b6af75a730047c02c96f63e3f5ab348.561>

<sup>67</sup> See HaMoked, "Visits to prisoners by relatives from Gaza: HCJ petition 5268/08", <http://www.hamoked.org/Case.aspx?cID=Cases0073>

<sup>68</sup> See ePalestine, "No permission for the blanket!", <http://epalestine.blogspot.co.uk/2012/02/epalestine-no-permission-for-blanket.html>

<sup>69</sup> See Amnesty International, "Spike in West Bank violence condemned", 14 March 2011, <http://www.amnesty.org/en/news-and-updates/spike-west-bank-violence-condemned-2011-03-14>

<sup>70</sup> See Amnesty International, "Palestinian legislator held without charge: Aziz Dweik", 25 January 2012, (Index: MDE 15/002/2012) <http://amnesty.org/en/library/info/MDE15/002/2012/en>

<sup>71</sup> See Amnesty International, *Israel / South Lebanon: deportation / fear for safety: over 400 Palestinians*, 21 December 1992, (Index: MDE 15/032/1992) <http://www.amnesty.org/en/library/info/MDE15/032/1992/en> and later updates

<sup>72</sup> These are of greatest relevance to the concerns raised in this report, but Israel is also bound by its obligations as a state party to the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Rights of the Child.

<sup>73</sup> Israel has argued that the Fourth Geneva Convention only applies to the sovereign territory of a High

Contracting Party, and that as Jordan and Egypt never had legal sovereignty over the West Bank and Gaza Strip, these areas should not be considered as occupied territories under international law. This contention is not accepted by relevant international bodies.

<sup>74</sup> See, for example, Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention, 5 December 2001, para. 3, <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/5FLDPJ>; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, International Court of Justice, 9 July 2004, para. 101, available at [www.icj-cij.org/homepage/index.php](http://www.icj-cij.org/homepage/index.php) (ICJ Advisory Opinion).

<sup>75</sup> For recent examples see: Concluding Observations of the Human Rights Committee: Israel, 3 September 2010, CCPR/C/ISR/CO/3, para.5; Concluding Observations of the Committee against Torture: Israel, 23 June 2009, CAT/C/ISR/4, para. 11; Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, 16 December 2011, E/C.12/ISR/CO/3, para. 8; ICJ Advisory Opinion, paras 111-113.

<sup>76</sup> ICRC Commentary on Article 27 of the Fourth Geneva Convention, available at [www.icrc.org/ihl.nsf/COM/380-600032?OpenDocument](http://www.icrc.org/ihl.nsf/COM/380-600032?OpenDocument).

<sup>77</sup> Israel's derogation, submitted when it ratified the ICCPR on 3 October 1991, is available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec).

<sup>78</sup> Human Rights Committee, General Comment 29: States of Emergency (Article 4), 31 August 2001, CCPR/C/21/Rev.1/Add.11, para. 2.

<sup>79</sup> Human Rights Committee, General Comment 29, para. 11.

<sup>80</sup> See: Concluding Observations of the Human Rights Committee: Israel, 3 September 2010, CCPR/C/ISR/CO/3, para. 7; Concluding Observations of the Human Rights Committee: Israel, 21 August 2003, CCPR/CO/78/ISR/, para. 12; Concluding Observations of the Human Rights Committee: Israel, 18 August 1998, CCPR/C/79/Add.93, paras 11 and 21.

<sup>81</sup> Concluding Observations of the Human Rights Committee: Israel, 21 August 2003, CCPR/CO/78/ISR/, para. 12. Previously, with reference to Lebanese detainees held as "bargaining chips", the Committee found Israel's application of administrative detention "incompatible with articles 7 and 16 of the Covenant, neither of which allows for derogation". See Concluding Observations of the Human Rights Committee: Israel, 18 August 1998, CCPR/C/79/Add.93, para. 21.

<sup>82</sup> Concluding Observations of the Human Rights Committee: Israel, 3 September 2010, CCPR/C/ISR/CO/3, paras 7 and 13.

<sup>83</sup> See Appendix 1

<sup>84</sup> ICRC Commentary on Article 78 of the Fourth Geneva Convention, available at <http://www.icrc.org/ihl.nsf/COM/380-600085?OpenDocument>.

<sup>85</sup> Conclusions and Recommendations of the Committee against Torture: Israel, 23 November 2001, CAT/C/XXVII/Concl.5, para. 6(e).

<sup>86</sup> Concluding Observations of the Committee against Torture: Israel, 23 June 2009, CAT/C/ISR/4, para. 17.



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<sup>87</sup> Amnesty International, "Israel and the Occupied Palestinian Territories: Briefing to the Committee against Torture" (Index: MDE 15/040/2008); "Israel and the Occupied Palestinian Territories: Update of the Briefing to the Committee against Torture" (Index: MDE 15/014/2009).

<sup>88</sup> See Tamar Pelleg-Syrck, "The Mysteries of Administrative Detention", in "Threat: Palestinian Political Prisoners in Israel", Pluto Press, 2011, p. 125-126.

<sup>89</sup> IPS Order No. 04/02/00, "Holding Conditions for Administrative Detainees". See: Addameer, Administrative Detention in the Occupied Palestinian Territory: Between Law and Practice, December 2010, p. 15-16. This report lists the various provisions of IPS Order No. 04/02/00, argues that IPS treatment of administrative detainees often fails to comply with them in practice (see p. 24-37).

<sup>90</sup> See Geneva Conventions, common Article 3; Fourth Geneva Convention, Articles 5 and 27; Additional Protocol I, Article 75.