

# ADMINISTRATIVE DETENTION

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*There are approximately 546 administrative detainees in Israeli prisons and detention centers including 3 women and 13 children under the age of 18.*

## What is Administrative Detention?

- Administrative detention is a procedure under which detainees are held without charge or trial. In the occupied Palestinian West Bank, the Israeli army carries out administrative detention on the basis of Military Order 1226 (1988). This order empowers military commanders to detain an individual for up to six months if they have “*reasonable grounds to presume that the security of the area or public security require the detention.*” On or just before the expiry date, the detention order is frequently renewed. This process can be continued indefinitely.
- Israeli military and civil laws related to the administrative detention orders are based on the British Mandate Emergency Law for the year 1945.
- No definition of “*public security*” is given and the initial six-month period can be extended by additional six-month periods indefinitely. Administrative detention orders are issued either at the time of arrest or at some later date and are often based on secret evidence collected by the Israeli Security Agency (ISA). Neither the detainee, nor the detainee’s lawyers are given access to the secret evidence.<sup>1</sup>
- The detainee is brought before the Administrative Detention Court within **eight days** of his or her arrest, for the Court to decide on the legality of the detention, however, information concerning the reasons for the detention remains secret.

<sup>1</sup> Amnesty International describes administrative detention in Israel as «a procedure under which detainees are held without charge or trial [...] No charges are filed, and there is no intention of bringing a detainee to trial. By the detention order, a detainee is given a specific term of detention. “On or before the expiry of the term, the detention order is frequently renewed. This process can be continued indefinitely.”

## How Does International Law Protect from Arbitrary Detention?

*“No one shall be subjected to arbitrary arrest or detention”<sup>2</sup>.*

*“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”<sup>3</sup>.*

- The Geneva Conventions and their Additional Protocols, as well as human rights law, provide the international legal standards that are to be applied to administrative detention in armed conflict and other situations of violence. International law permits administrative detention under specific narrowly defined circumstances.
- In accordance with the International Covenant on Civil and Political Rights (ICCPR) there **must be a public emergency that threatens the life of the nation**. Furthermore, administrative detention can **only be ordered on an individual case-by-case basis**, without discrimination of any kind. A state’s collective, non-individual detention of a whole category of persons could in no way be considered a proportional response, regardless of what the circumstances of the emergency concerned might be.
- In terms of reasons for internment, the Fourth Convention specifies that a protected person may be interned or placed in assigned residence only if **“the security of the Detaining Power makes it absolutely necessary”** (Article 42) or, in occupied territory, for **“imperative reasons of security”** (Article 78).

## How does Israel use administrative detention?

- According to Adalah, Israel has sought to justify its policy of administrative detention, or arrest without charge or trial, by the outstanding claim that it has been under a “state of emergency since 1948” and is therefore justified in suspending or “derogating” from certain rights, including the right not to be arbitrarily detained.<sup>4</sup>
- Administrative detention has been used as a form of **collective punishment** by the Israeli military against Palestinians, illegal in this form under international law. For example, during the

period of March 2002 to October 2002, Israeli Occupying Forces arrested over 15,000 Palestinians during mass arrest campaigns, rounding up males in cities and villages between the ages of 15 to 45. In October 2002, there were over 1,050 Palestinians in administrative detention. By the beginning of March 2003, Israel held more than one thousand Palestinians in administrative detention. In 2007, Israel held a monthly average of 830 administrative detainees, which was one hundred higher than in 2006. Furthermore, during the PLC elections of 2006, Israel placed dozens of candidates from the Islamic ‘Change and Reform Party’ in administrative detention. Some of them are imprisoned to this day.

- Over the years, **only nine Israeli citizens** from settlements in the West Bank have reportedly been detained for periods up to six months.
- In many of the legal cases pursued by Addameer Association, Palestinian detainees spent years in prison after being sentenced for committing violations, in accordance with military orders. When the period ended, however, they were placed under administrative detention under the pretext that they still pose a threat to security. Israeli authorities do not hesitate to violate the standards of fair trial, and fail to take international law or humanitarian dimension into consideration while handling the issue of administrative detention.

## What are Administrative Detention Conditions?

- Administrative detention should never be of a punitive nature. As enshrined in article 10 of the ICCPR, “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”. This implies not only the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, but also that those deprived of their liberty should be kept in conditions that take into account their status and needs.

<sup>2</sup> Article 9 of the Universal Declaration of Human Rights

<sup>3</sup> International Covenant on Civil and Political Rights (ICCPR), Article 9

<sup>4</sup> Adalah (2003) Submission to the UN Human Rights Committee Adalah (22 July 2003). Available online at: [www.adalah.org](http://www.adalah.org)

### **Minimum Rights and Guarantees of Administrative Detainees under states of emergency**

- ✓ The right to be brought before a judicial authority promptly after arrest
- ✓ The right to receive an explanation of rights upon arrest in their own language or soon thereafter and to be informed of the specific reasons for the deprivation of liberty;
- ✓ The right of immediate access to family, legal counsel and a medical officer;
- ✓ The right to communicate with and be visited by a representative of an international humanitarian agency, such as the ICRC;
- ✓ The right to challenge, in a fair hearing and periodically if necessary, the lawfulness of the detention and to be released if the detention is arbitrary or unlawful;
- ✓ The right to complain to a judicial authority about mistreatment;
- ✓ The right to seek and obtain compensation if the detention proves to be arbitrary or unlawful.

*United Nations Committee of the Human Rights Commission (1962) in charge of the study on the right of everyone to be free from arbitrary arrest, detention and exile.*

- The above mentioned minimum standards are not fully and adequately respected. When guaranteed, they are often applied only partially. **Detainees are brought before a judicial authority only eight days following their arrest.** The right to immediate access to family is compromised with detainees waiting in some cases for a month before their first visit. But most importantly, the fairness of the trial in military court is never assured making it difficult, if not impossible, to prove that one's detention is arbitrary or unlawful, especially in a situation where the Israeli authorities maintain the security discourse.
- Addameer interviews and lawyers' visits indicate that administrative detainees in Israeli prisons are not separated from the rest of the prison population. Neither do they benefit from special food<sup>5</sup> nor from the right to wear their own clothes to which they are entitled by the Israeli law. Prison personnel usually do not receive specific training on how to deal with administrative detainees and on international law regarding administrative detainees. Administrative detainees in Israel must endure severe restrictions on their right to education, rights to communicate with families and receive visits, and right to adequate medical treatment.

<sup>5</sup> As per Israeli law, administrative detainees are entitled to the same food as police guards as opposed to the food served to other "security prisoners".