

Administrative Detention

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The procedure of administrative detention, in which a detainee is held without charge or trial, first emerged in the British Mandate era, based on the *British Mandate Defense (Emergency) Regulations (1945)*. The colonial practice was reappropriated and incorporated by the Israeli occupation under three separate laws: (1) Article 285 of Military Order 1651, which is part of the military legislation applying in the West Bank; (2) Internment of Unlawful Combatants Law (Unlawful Combatants Law), which has been used against residents of the Gaza Strip since 2005; (3) Emergency Powers (Detentions) Law, which applies to individuals holding Israeli citizenship.¹

Administrative detention in the occupied Palestinian territory (oPt) is ordered by the Israeli military commander and grounded on "security reasons." Detainees are held without trial and without being told the evidence against them. In most cases, they are simply informed that there is 'secret evidence' against them and that they are being held for security reasons. Further still, Israeli law grants the military commander the power to make any modifications to military orders relating to administrative detention for "military necessity" without considering any international standards related to the rights of detainees. Thus, the Israeli military commander bases his decision on 'secret evidence' that cannot be accessed by the detainee nor his lawyer, in stark violation of fundamental fair trial procedures, enshrined in Article 9(2) of the International Covenant on Civil and Political Rights (ICCPR).

The Israeli occupation regime's issuance and confirmation of administrative detention orders drastically increased in 2021. During the Palestinian *Unity Uprising*, beginning April 2021, Israeli Occupation Forces (IOF) launched mass arbitrary arrest campaigns against Palestinians that included the use of administrative detention. Between January and June 2021, Addameer Prisoner Support and Human Rights Association documented over 759 administrative detention orders, far surpassing previous years.² **The most significant uptick in administrative detention orders occurred in May and June 2021, at the height of the Unity Uprising and emerging solidarity movements across the occupied territories. During that period, the Israeli occupation issued 379 administrative detention orders, as opposed to 208 in the same period in 2020.**

On 12 May alone, nearly 60 Palestinians, including journalists, activists, leaders, and candidates for the Palestinian Legislative Council, had their homes stormed, families attacked and were arrested. The majority of them were former political prisoners. At least 25 of them

¹ Addameer Prisoner Support and Human Rights Association, "Administrative Detention in the Occupied Palestinian Territory: A Legal Analysis Report," Fourth Edition 2016, https://www.addameer.org/sites/default/files/publications/administrative_detention_analysis_report_2016.pdf

² Addameer Prisoner Support and Human Rights Association, "Mass Arrests and Detention Amidst the Escalation of Israeli Aggression Against the Palestinian People," 20 May 2021, <https://www.addameer.org/index.php/media/4393>

were transferred to administrative detention without charge or trial. Among those held in administrative detention were four Palestinian women from the West Bank, including a mother and daughter and several children, including a 16-year-old from Hebron.

- *"Judicial Review," Israeli Military Courts and the Confirmation of Administrative Detention Orders*

Palestinians are regularly charged in Israeli military courts that do not guarantee them the right to a fair trial and do not comply with the legal and international standards that preserve their right to equality before the law and fair trial guarantees.³ **The inherent structure of the Israeli military courts, in which Israeli military officers serve as the judge and prosecutor, ruling following Israeli military orders issued by the Israeli military commander precludes any independence and impartiality, violating the essence of fair trial guarantees.**⁴ In addition, the Israeli military commander is further allowed to assign military judges and prosecutors. Instead, the core establishment of the Israeli military courts serves as a means to prosecute thousands of Palestinians and infringe on their right to a fair trial guaranteed under international conventions.

Following the issuance of an administrative detention order, a judicial review of the order must take place within eight days. Since administrative detention is without an actual trial, judicial review of administrative detention files is done by a judicial control court before a military judge and not a committee. In the past, the court would invite an Israeli intelligence officer to view the 'secret evidence' in detail when examining each file. However, this procedure was amended during the re-occupation of IOF to cities in the West Bank in 2002. **Currently, the Israeli military judge retains the decision as to whether to invite the Israeli intelligence officer, which means, in most cases, that the military judge decides upon the confirmation of the administrative detention order only by familiarizing him or herself with a summary of the evidence, without reading the entire contents of the secret material, and without examining the information's authenticity.**⁵

Moreover, a review of administrative detention orders takes place under closed hearings, which does not allow the public or family members of the detainee to be present. Only detainees, their lawyers, the military judge, the military prosecutor, and, in some cases, an Israeli intelligence officer are allowed to be inside the court, constituting a denial of the detainee's right to a public trial.⁶ The military judge then rules to reduce, cancel, or confirm the order. **However, the overwhelming majority of administrative detention orders are either approved or reduced in duration.** The detainee then has a right to appeal the military judge's decision to the Administrative Detention Appeals Court, which is presided over by another military judge.

³ Addameer Prisoner Support and Human Rights Association, "In the case of The Palestinian People vs. Military Courts," 2021, https://www.addameer.org/sites/default/files/campaigns/campaign%20Paper_0.pdf

⁴ *Ibid*

⁵ Addameer Prisoner Support and Human Rights Association, "Administrative Detention," July 2017, https://www.addameer.org/israeli_military_judicial_system/administrative_detention

⁶ *Ibid*.

The appeal process is largely farcical, given that the detainees and their lawyers do not have access to the "secret" information on which the orders are based.

The long-term administrative detention of child detainee [Amal Nakhleh](#), 17 years old, and who suffers from a rare medical condition, beginning 21 January 2021 and renewed for an additional four months on 4 May 2021, reflects the farcical citation of 'secret evidence,' which is inaccessible to Amal and his attorney. Moreover, the case particularly highlights the Israeli occupation's systematic targeting of Palestinian children, demonstrating that no one is exempt from Israel's arbitrary policy of administrative detention and deliberate medical neglect, not even vulnerable Palestinian children or when grave health conditions emerge.

Most recently, the arrest and transfer of human rights defender and 79-year-old retired lawyer [Bashir Khairi](#) to administrative detention makes clear the arbitrary nature of administrative detention orders and their use as a coercive tool amounting to torture. The case of Bashir Khairi highlights the marked deference of the Israeli military courts to the military prosecution and Israeli occupation authorities' broader persecution of Mr. Khairi. Mr. Khairi was first arrested by IOF on 29 October 2021, whereupon, following repeated extensions of his detention by the Israeli military prosecution, he was ruled to be released on bail due to his old age, health condition, and the dated charges laid against him. In response, the military prosecutor requested an extension of his detention to submit an appeal, twice, before issuing a 6-month administrative detention order against Bashir Khairi until 28 April 2022, based on "secret evidence" that he constituted an imminent "security threat" to the region.

- *Hunger Strikes against Arbitrary and Indefinite Administrative Detention*

The long history of Palestinian prisoners in mass and individual hunger strikes reveals the lack of trust in any judicial process and the lack of fair trial guarantees they face under the Israeli occupation's military and civil court systems. Palestinian prisoners and detainees have resorted to hunger strikes as early as 1968 as a legitimate peaceful protest to Israeli detention policies and cruel detention conditions, including the use of solitary confinement, denial of family visits, inadequate medical treatment and torture, and other forms of cruel, inhuman or degrading treatment.⁷

In response to the use of hunger strikes by Palestinian prisoners, Israeli occupation authorities practiced force-feeding during the 1980s. It was subsequently ceased by order from the Israeli High Court following several deaths of Palestinian prisoners due to force-feeding. Nevertheless, in recent times following the mass hunger strike of Palestinian prisoners in 2012, then-Israeli Minister of Public Security Gilad Erdan proposed legislation allowing for the force-feeding of prisoners in an attempt to circumvent future hunger strikes and to further

⁷ Addameer Prisoner Support and Human Rights Association. "Factsheet: Force-feeding Under International Law and Medical Standards." 16 November 2015. Available at: <https://www.addameer.org/publications/factsheet-force-feeding-under-international-law-and-medical-standards>

deprive Palestinian detainees and prisoners of their fundamental right to peaceful protest. The bill was approved by the Israeli Knesset on 30 July 2015.⁸

In 2021, an increasing number of Palestinian administrative undertook individual open hunger strikes as a last recourse, protesting their arbitrary and indefinite administrative detention without charge or trial, reaching around 60 Palestinian detainees announcing their hunger strike. Several outstanding cases emerge in which Palestinian hunger-striking detainees reached critical health conditions, to the point of sustaining permanent health consequences and/or facing an imminent threat to life, including [Ghadanfar Abu Atwan](#) (65 days), [Kayed Fasous](#) (131 days), [Miqdad Al-Qawasameh](#) (113 days), and, most recently, the longest hunger strike initiated by [Hisham Abu Hawash](#) (141 days).

Beyond the obvious health risks undertaken by Palestinian prisoners on hunger strikes, they often face additional reprisal in the form of ill-treatment, physical and psychological torture, and deleterious prison conditions by the Israeli Prison Service (IPS) and special units. These include raids on prison cells, solitary confinement, threats of indefinite detention, banning of family visitations, beatings, psychological torture, reduction of essential hygienic items and clothing, along with the money spent in the prison canteen, up to the aforementioned coercive practice of force-feeding.

- *Administrative Detention Under International Law*

Administrative detention remains the most extreme measure that International Humanitarian Law (IHL), consisting of the Geneva Conventions of 1949 and their additional protocols, allows an Occupying Power to employ against the occupied population.⁹ To this end, strict legal provisions govern administrative detention, which may only be used in extremely limited circumstances in the most exceptional cases for "imperative reasons of security," where no other alternative is available. In accordance with Article 9 of the International Covenant on Civil and Political Rights (ICCPR), administrative detention can only be ordered on an individual case-by-case basis without discrimination of any kind. Most importantly, administrative detention can not be used in a sweeping manner as a form of collective punishment, nor should it ever be used as "an alternative to filing charges or for the sole purpose of interrogation or as a general deterrent for future activity."¹⁰ Further, administrative detention is still governed by basic rules for detention, including fair trial guarantees, minimum detention conditions, and absolute prohibitions against torture, ill-treatment, and other cruel, inhuman, or degrading treatment or punishment.¹¹

⁸ Efrati, Ido and Jonathan Lise. "Israeli Government Approves Bill to Force-feed Prisoners on Hunger Strike." *Haaretz*. 14 June 2015. <http://www.haaretz.com/israel-news/1.661127>

⁹ Article 78 of the Fourth Geneva Convention.

¹⁰ UN Human Rights Council, "Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021," A/HRC/WGAD/2021/61, 3 December 2021, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session92/A_HRC_WGAD_2021_61_AEV.pdf

¹¹ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)* prohibits all forms of torture in all circumstances, without exception. Despite Israel's ratification of the CAT in

In practice, the Israeli occupation regime's systematic and arbitrary practice of administrative detention, in which it routinely holds thousands of Palestinians under arbitrary, indefinite administrative detention, violates core IHL principles, as well as many other international standards as well. These include, *among other things*, the forced transfer of administrative detainees, as the occupied population, to prisons in the Occupying Power;¹² inhumane living conditions and ill-treatment and torture; detention of Palestinian women and children; and arbitrary detention as a form of torture and political persecution.

In its most recent opinion, published on 3 December 2021, the UN Working Group on Arbitrary Detention cited several egregious violations of the Israeli occupation's practice of administrative detention, beginning with the violation of fair trial guarantees, noting that "the trial of civilians by military courts is in violation of the Covenant [ICCPR] and customary international law," noting that Israeli military courts do not fulfill Article 14 of the ICCPR mandating independent and impartial courts.¹³ Significantly, the Working Group finds that Israeli occupation authorities' sweeping practice of administrative detention "to detain Palestinians, especially males, on an indefinite basis without charge or trial" concludes that a case in point¹⁴ was "detained on a discriminatory basis," confirming the case to be arbitrary detention. Similarly, in 2012, and as cited by the Working Group, the Committee on the Elimination of All Forms of Racial Discrimination (CERD) "urges the State Party to end its current practice of administrative detention, which is discriminatory and constitutes arbitrary detention under International Human Rights Law."¹⁵

Finally, United Nations experts and Special Rapporteurs have issued several statements, [most recently on 21 October 2021](#), strongly condemning Israeli practices of administrative detention in violation of international law, which continue to hold "more than 500 Palestinians – including six children – without charges, without trials, without convictions," indefinitely, based on "secret" evidence inaccessible to detainees or their lawyers. Noting the significant hunger strikes undertaken by several administrative detainees at the time, UN experts expressed "grave fear" for their lives, calling on Israeli occupation authorities to "release or charge" them and end its "unlawful practice of administrative detention," emphasizing their arbitrary nature "which is strictly prohibited under international law, including international humanitarian law."

1991, the Israeli occupation regime continues to regularly employ physical and psychological torture against Palestinian detainees, and since 1995, has rejected the authority of the Committee against Torture to investigate any complaints submitted by individuals and organizations. See *supra* 1.

¹² The deportation of protected persons from the occupied territory to the Occupying Power violates Articles 49, 76, and 147 of the Fourth Geneva Convention, and is recognized as a war crime under Article 8 of the Rome Statute of the International Criminal Court.

¹³ See *supra* 10.

¹⁴ The Working Group on Arbitrary Detention considered the case of Palestinian administrative detainee Jamal Al-Niser, see *supra* 10.

¹⁵ Committee on the Elimination of Racial Discrimination, "Consideration of reports submitted by States parties under article 9 of the Convention," CERD/C/ISR/CO/14-16, 9 March 2012, <https://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>

The arbitrary detention of children, they note, "is particularly abhorrent, violating minimum standards established by the Convention on the Rights of the Child."