



**ICC submission to the OHCHR: Universal Periodic Review Mechanism**

## **Arbitrary Detention of Palestinian Detainees at Israeli Detention Centers (The system of Administrative Detention)**

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### **Why the administrative detention is considered arbitrary detention?**

The Israeli authorities have transferred large numbers of Palestinian citizens to administrative detention which is called so because it is issued by an administrative official of the territory but not by a specialized legal court of law. The issue is transferred to the military legal counselor so that the wanted person is brought within 96 hours of issuing the verdict. The wanted person appears before a military judge who would confirm, abolish or reduce the period of the detention verdict. Administrative detention might be renewed periodically without providing any clear specified charges against the detainee or referring him to a just trial.

Recently, the Israeli government has gone excessively too far in imposing administrative detention orders on Palestinian detainees as a punishment procedure against any person who have been suspected of committing security violations. While the Israeli authorities claim that the administrative detention is a precautionary preventive measure, the detention period of some Palestinian detainees has been renewed for several successive times that in some cases reached 14 successive times under the excuse of having evidence in secret files against such detainees without granting the detainee or his authorized lawyer the right to look at the alleged evidence which is presented to a military judge in closed confidential unilateral sessions attended by only the military judge and the secret service officer to present the secret evidence. This act makes the detention an arbitrary detention carried out within pro forma trials. In this respect, the Israeli government overlooks Clause (2) of Article (9) of the International Covenant on civil and political rights that states "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". The same guarantee is stated in Article 14/3/A of the same Covenant. At the same time, it has violated the text of Article 10 of the

International Declaration of Human Rights since it deals with the issue of administrative detainees in an unjust and un-public way so as to take a verdict in criminal charges directly charged to the detainee within secret data that neither the detainee nor his lawyer can look at so that they can challenge them seriously.

In addition, the review sessions of the administrative detention held to confirm the verdict of the administrative detention are carried out in closed confidential sessions which neither the public nor family members of the detainee are allowed to attend. Only the lawyer, the detainee, the judge, the military district attorney and sometimes intelligence representatives attend such sessions. Consequently, the detainee is deprived from his right of having public hearings which are considered a basic element of just trial according to Article 14 / 1 of the International Covenant on civil and political rights. The detainee is brought before the judge within 8 days of issuing the administrative detention verdict. This period is subject to the jurisdiction of the military commander who has the right to make modification whenever necessary as was the case in April 2002 when the period was extended to 18 days.

### **The Legal Basis of the Administrative Detention:**

The administrative detention is imposed from the Israeli point of view for allegations of "security conservation", or "prevention of security deterioration in the territories" and it is based on Article 111 of defense regulations of "Emergency Cases" of the year 1945 during the British Mandate of Palestine which stated that "any military commander may issue an order to detain any nominated person in such order for a period that does not exceed one year at any detention center specified in such order."

In most cases of administrative detention, the Israeli military commander refers to secret information according to Article (87d / c) of the military order No. 378 entitled "Order of Security Instructions" issued in the year 1970. The said Article states that "the judge is allowed to accept the evidence after investigating it or hearing the allegations – even in the absence of the detainee or his deputy – if he is convinced that showing the detainee or his deputy such evidence would endanger the security of the territory or the safety of the public". The evidence intended here is basically the materials that indicate the dangers of the person i.e. the evidence against him which cannot be uncovered so as not to expose its sources to dangers or to expose the method of obtaining such materials. In these cases, the Israeli Supreme Court has more than once confirmed that it is possible not to uncover such evidence and the authorities are not obliged to respect the right of the suspect to have fair and just trial procedures.

The Israeli authorities also exploit Article (87 / b) of the Military Order No. 378 of 1970 which allows to renew the order in succession for six-month periods. The said Article states that "if the territory commander has any bases of belief that at the eve of the expiry of the order issued in accordance with Clause (a) that there are reasons related to the security of the territory or the safety of the public demand detention of the detainee at the detention center, he is allowed to issue an order signed by his signature to renew the effect of the original detention order from time to time." Therefore, from a practical point of view, the detention process may continue for an unlimited period of time. It should be emphasized that the detention periods of about 70 % administrative detainees have been renewed for more than one successive time during the last three years.

### **The Fourth Geneva Convention:**

The occupation authorities claim that in accordance with Article 78 of the Fourth Geneva Convention relative to the protection civilian persons in time of war they have the right to detain people who are under the occupation jurisdiction by administrative detention.

However, the actual practices of the occupation authorities in the Palestinian occupied territories prove that the military commander entitled to issue administrative detention orders does not do that in extremely emergency cases. This is proved by the fact that there are more than 800 Palestinian administrative detainees at the Israeli detention centers at present. Some of them have been in detention for periods ranging from two to three years. What is the real serious danger embodies by such person that requires his detention for two or three years? Some of the detainees have spent several years after having been sentenced for violations according to military orders. Upon completing their term in prison, they were transferred to administrative detention for the pretext that they are still dangerous to security!

In addition, the Fourth Geneva Convention does not at all talk about the competence of using confidential materials to prove the danger of a person and to deprive the lawyer of defending his client since he does not know the real charges against the client.

Moreover, the competence of Article 78 comes into effect only if it is not possible to suit a person because of not committing a violation of the criminal law but the danger is based on an action that cannot be considered a criminal felony or if he declares his intention of carrying out an action that is considered criminal violation even if not accompanied by actual action. Nevertheless, the military orders related to administrative detention show that the majority of the detainees are detained because they are suspected of belonging to illegal organizations or carrying out

military actions, which is usually indicated in the military orders themselves. On the other hand, there are many detainees against whom there are open materials such as confessions of other detainees attributing to them carrying out specific actions. Nevertheless, the Israeli authorities detain them according to administrative detention orders.

Ironically, the Israeli government is still insisting on not recognizing that the Fourth Geneva Convention is applicable on the occupied Palestinian territories because it claims that it did not occupy these territories in 1967 from an authority of supremacy. The verdicts of the Israeli Supreme Court during the last years have come to confirm this attitude. However, it indicated that the criteria of humanitarian type of the Convention are applied in the territories. Therefore, the Israeli Supreme Court confirmed that Article 78 of the Geneva Convention determines the legal jurisdiction of the administrative detention while at the same time Israel violated this Article more than once by issuing orders of administrative detention for one year. This has taken place more than once according to the Military Order No. 1281 issued on 10/8/1989 which allowed the issuance of orders of administrative detention for periods of twelve months. However, this order has been modified to be for six-month periods so that such periods are renewable for successive periods for unlimited number of times. The Israeli government applied this modification in order to justify that its legal basis in the administrative detention is Article 78 of the Fourth Geneva Convention.

### **Israeli Courts of Appeal "Plea Committees"**

The Israeli authorities grant the administrative detainee the right of appeal before a military judge first, then before the Supreme Court of Justice. However, the confidential materials on which the administrative detention orders are based make these courts not more than pro forma appeal courts. The decision-maker in such courts is the intelligence officer "the prosecutor" since the defense lawyer is not allowed to look into the items of charges. In a number of cases, the plea committee reduced the administrative detention period from six to three months according to the negotiations of the military plea committee and according to the view point of the military judge who attends the committee. Nevertheless, the administrative detention order is renewed after completing the first term despite the reduction of the period of the first order. In cases when the defense lawyers refer the issue to the Supreme Court to plea against the verdict of the Military Plea Committee, they face the same procedures since neither the accused nor the defense lawyers are allowed to look into the confidential terms of charges.

In general, the general situation of the administrative detention is in continuous deterioration since the number of detainees is rising

continuously. The number of administrative detainees is now about 810 including a selective group of academicians such as doctors, teachers, lawyers, journalists, university students, and clergymen. Many of them are elderly and ill. The administrative detention orders are not restricted to them but they include scores of children under 18 years old and a number of Palestinian women. The majority of administrative detainees (about 660 detainees) are confined in the desert Negev Detention Center which was reopened during Al-Aqsa Uprising. The occupation authorities deal with these detainees as numbers - not by their names, and they live under severe tragic living conditions.

One of the most prominent administrative detainees is 38-year-old Shukri Mahmoud Al-Khawaja from Naeleen, Ramalla who was transferred to administrative detention after completing his 9-year term in prison. A few months ago, Khawaja suffered from beginnings of losing sight in one of his eyes. Following long pressures by the Doctors Without Frontiers Organization, the prison administration agreed to transfer him to "Barzalai Hospital" in Asqalan (Ashkelon) where it was found that he was suffering from cataract in his right eye and beginnings of cataract in his left eye. Although the doctors informed him that it was necessary to perform a surgical operation in both eyes, the Israeli authorities returned him to the Negev prison without allowing him to having the required surgical operation carried out. Clearly, this medical need is exploited to blackmail the detainee so as to force him to make confessions about specific charges.

**To sum up:**

1. A large number of the administrative detainees have undergone prolonged periods of investigation without confirming any security charges or violations that can be penalized by law against them. Nevertheless, administrative detention orders were issued against them, and in most cases these orders are renewed for several times – in some cases 14 times.
2. The Israeli authorities transferred many Palestinian detainees to administrative detention after they had completed their imprisonment terms that were carried out according to legal verdict issued by Israeli courts for specific charges.
3. A number of administrative detainees who were released were detained later after few days of their release.
4. The administrative detention policy is not restricted to men, but it also affected Palestinian children and women.
5. The Israeli authorities resort to using the administrative detention as a means of pressure to deport the Palestinian prisoner from his homeland so that he would either remain under administrative detention or accept to sign the order of his deportation.