

## PLO NEGOTIATIONS AFFAIRS DEPARTMENT

# PALESTINIAN POLITICAL PRISONERS

AUGUST 2006

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*“It would be better to drown these prisoners in the Dead Sea if possible, since that’s the lowest point in the world.”*  
– Avigdor Lieberman, Head of Yisrael Beiteinu Party<sup>1</sup>

### FREQUENTLY ASKED QUESTIONS:

#### 1. How many Palestinian political prisoners are there?

There are **approximately 9,400** Palestinian political prisoners in Israeli prisons or detention camps, including 120 women<sup>2</sup> and 425 children.<sup>3</sup> All of these have been charged with “security offenses” by Israeli authorities. Israel also recently detained **27 Palestinian parliamentarians and 6 ministers**. Of the total, **around 2,200 have not been put on trial, including approximately 800 held without charge**.

#### 2. What does Israel consider a “security offense”?

The majority of Palestinian political prisoners are charged with offenses under Israeli military orders. These orders employ a broad definition of “security”, such that they ban, among other things, political expression.

For instance, Military Order 101 states that it is “forbidden to conduct a protest march or meeting (grouping of ten or more where the subject concerns or is related to politics) without permission from the Military Commander.” The order also prohibits the distribution of political articles and pictures with “political connotations.”<sup>4</sup> Similarly, Military Order 938 even considers “supporting a hostile organization by holding a flag or listening to a nationalist song” a “hostile action.” Military Orders 101 and 938 are only two amongst numerous orders that restrict Palestinian political life in the occupied Palestinian territory.

Because of the breadth of Israel’s definition of “security,” Palestinians can be arrested and imprisoned for practically any form of public activity, regardless of whether or not they present any legitimate security threat to Israel.

#### 3. Do Palestinian prisoners enjoy minimum standards of due process?

No. International, Israeli and Palestinian human rights organizations have thoroughly documented the Israeli military court system’s failures in providing Palestinians with minimum guarantees of due process. Some of the failures of the system include the following:

- Palestinian political prisoners are put on trial in Israeli military tribunals. These military tribunals are made up of judges, prosecutors, and translators who are all appointed by the Israeli military commander – the same individual who is empowered to make changes to Israeli military orders. Also, some of the judges appointed by the military commander do not have legal training. As a result, these tribunals fail to meet the standard required by Article 14 of the International Covenant on Civil and Political rights which calls for a “fair and public hearing by a competent, independent and impartial tribunal established by law.”<sup>5</sup>
- Lawyers are denied the means necessary to build a proper defense. According to Addameer Prisoners’ Support and Human Rights Association, it takes an average of 30 to 45 days before a lawyer is able to meet his or her client due to a series of bureaucratic obstacles placed by the Israeli authorities.<sup>6</sup> Additionally, lawyers are often searched at the prison before they are able to meet with their client, and client visits are often monitored by guards such that the attorney-client privilege is compromised.<sup>7</sup>
- Palestinian detainees are often tortured, or subjected to cruel and degrading treatment during their interrogation or detention.<sup>8</sup> The use of torture, combined with the absence of prompt access to an attorney compromise the veracity of confessions obtained through interrogation.
- Palestinians can be held in Israeli jails for 90 days without charge. This period can be extended by another 90 days by Israeli authorities.
- Sentences handed down by the military courts cannot be appealed to courts outside the military court system. Given that all actors within the military court system fall under a single command, and share common institutional allegiances and sets of interests, the military courts review process provides limited recourse, at best. As a result, Palestinians convicted of “security offenses” do not have access to an effective appeals process, and hence are denied the right guaranteed under the International Covenant on Civil and Political Rights to have a “conviction and sentence ... reviewed by a higher tribunal according to law.”<sup>9</sup>

#### 4. What is “Administrative Detention”?

Israel has over **800 Palestinians** locked up in what is called “administrative detention.”<sup>10</sup> “Administrative Detention” refers to the detention of individuals for preventative purposes

**The practice of administrative detention as exercised by Israel is illegal.**

- Israel uses administrative detention as “a quick and efficient alternative to criminal trial”,<sup>11</sup> circumventing international procedural protections for the accused.<sup>12</sup> Under Israeli law, administrative detention orders may last for up to six months, with

Palestinians held without charge or trial during this period.<sup>13</sup> Israel routinely renews the detention orders and may do so any number of times, thereby holding Palestinians without charge or trial indefinitely.

- The Israeli military detains Palestinians on a broad definition of “security threat” – a definition so broad as to include “political subversion.”<sup>14</sup>
- Detainees are not informed of the reason for their detention.
- While detainees may appeal their detention, neither they nor their attorneys are allowed to access the State’s evidence, making it very difficult for them to refute the allegations against them.<sup>15</sup>

### **5. Does Israel Use Palestinian Prisoners as Political Bargaining Chips?**

Yes. Israel has often used Palestinian political prisoners as bargaining chips in its history of negotiations with Palestinians. For instance, in 1994, Israel agreed to release 5,000 Palestinian political prisoners within 5 weeks,<sup>16</sup> but failed to do so. Instead, it made the release of Palestinian political prisoners an issue to be renegotiated, to extract further Palestinian concessions.

In 1999, Israel agreed to release Palestinian prisoners arrested prior to May 4, 1994 in the Sharm el-Sheikh Memorandum. However, Israel failed to release these prisoners, and opted to hold onto them instead.

A more recent example is the “arrest” of 27 members of the Palestinian Legislative Council and 6 Palestinian ministers on June 29, 2006. These 33 officials were arrested following the kidnapping of Israeli Corporal Gilad Shalit. Only months before, Israel did not prevent these same people from running and campaigning in Palestinian elections, raising serious doubt that they presented a real security threat to Israel.

### **6. Do conditions of detention for Palestinian children meet minimum standards?**

No. Under the UN Convention on the Rights of the Child, Israel is obligated to refrain from imprisoning children except as a measure of last resort and only for the shortest appropriate period of time. Yet, over 4,000 Palestinian children were arrested and detained between September 2000 and April 2006.<sup>17</sup> Today, 425 children remain in Israeli jails, some as young as 12 and 13. Almost all child detainees have reported some form of torture or mistreatment, whether physical (beatings or being placed in painful positions) or psychological (abuse, threats or intimidation).<sup>18</sup> Children are routinely held in detention centers under appalling conditions: In some centers, up to eleven children have been packed into cells as small as five square meters.<sup>19</sup> Children are also kept in centers with adults, all in contravention of the United Nations Convention on Rights of the Child.<sup>20</sup>

A United Nations committee reported:

A few witnesses also drew the attention of the Special Committee to the appalling conditions of imprisoned minors, mixed up with adults, sometimes with women adults. They were allegedly arrested in the same way as adults, at night, taken to military camps and beaten up. They were interrogated without the presence of relatives and could not meet their lawyers for 60 days. They were subjected to various threats such as destruction of their homes, life imprisonment, beheading or rape. One youth had reportedly been confined in an isolated cell for 60 days. They were often kept three to a cell, sleeping on the floor, struggling with cockroaches and suffering poor hygienic conditions owing to lack of water. They were often exposed to ill-treatment when transferred to the court or to another prison. Unlike Israeli detainees, they had no rehabilitation or recreational programmes.<sup>21</sup>

### **7. Do conditions of detention for Palestinians meet minimum standards?**

No. Israel has regularly failed to ensure that the conditions under which Palestinians are detained or imprisoned meet minimum standards.<sup>22</sup> Prisons and detention centers often provide prisoners little to no protection from the summer heat, or the winter cold. They are poorly equipped, poorly maintained and overcrowded. In many cases, prisoners have contracted diseases as a result of poor hygiene.

In January 2006, a report by the United Nations Special Rapporteur found that:

Prison conditions are harsh: prisoners live in overcrowded and poorly ventilated cells which they generally leave for only two hours a day. Allegations of torture and inhuman treatment of detainees and prisoners continue. Such treatment includes beatings, shackling in painful positions, kicking, prolonged blindfolding, denial of access to medical care, exposure to extreme temperatures and inadequate provision of food and water.

Additionally, Israel transfers Palestinian prisoners to facilities in Israel despite its obligation to detain them within occupied Palestinian territory.<sup>23</sup> Moreover, according to the UN Special Rapporteur, “family visits remain a serious problem. As prisons are held in Israel and many Palestinians are denied admission to Israel, a majority of prisoners receive no family visits.”<sup>24</sup>

### **8. Why is the release of Palestinian prisoners so important?**

**No issue highlights Israel’s 39-year denial of Palestinian freedom under military occupation better than that of political prisoners.** Palestinians have been subjected to one of the highest rates of incarceration in the world. Since 1967, Israel has detained and imprisoned over 650,000<sup>25</sup> Palestinians as part of a policy to quash resistance to Israel’s occupation and to intimidate the civilian population. Of the 3.9 million Palestinians living in the West Bank and Gaza Strip, there are few who have not been personally affected by Israel’s imprisonment of Palestinians – either through their own imprisonment or that of a family member, friend, or colleague. The widespread imprisonment of Palestinians, along

with the inhumane treatment they receive while imprisoned, has placed the release of all Palestinian prisoners high on the national agenda.

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<sup>1</sup> Avigdor Lieberman as Israel's Transport Minister offered to bus Palestinian political prisoners to the Dead Sea to be drowned. Israel Radio, July 7, 2003.

<sup>2</sup> The Palestinian Central Bureau of Statistics, *Press Release on the Occasion of Palestinian Prisoners Day*, available at: <[http://www.pcbs.gov.ps/Portals/\\_pcbs/PressRelease/E-Prisoners%20Day%202006\(1\).pdf](http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/E-Prisoners%20Day%202006(1).pdf)>, last checked July 23, 2006.

<sup>3</sup> See Defense for Children International, figure as of July 22, 2006, available at <<http://www.dci-pal.org/english/home.cfm>>, last checked July 23, 2006

<sup>4</sup> Military Order 101, CONCERNING PROHIBITION OF INCITEMENT AND HOSTILE PROPAGANDA (1967).

<sup>5</sup> Through its ratification of the International Covenant on Civil and Political Right, Israel has accepted the international agreement that sets the standard for the fundamental rights of the accused in a criminal case. The International Court of Justice in its 2004 Advisory Opinion found that the International Covenant on Civil and Political Rights applies to the Occupied Palestinian Territory (See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (9 July 2004), para. 111 (I.C.J.).)

<sup>6</sup> Lawyers often must first find out where their clients are detained. Then they must coordinate the visit with Israeli authorities, and typically can only meet with their clients during three days of the week (other days being reserved for family visits, and visits by the International Committee of the Red Cross). In order to obtain copies of material related to their clients' cases, lawyer must schedule an appointment to use the coin-operated copy machine at the military court. Files are not translated into Arabic.

<sup>7</sup> Addameer, *Status of Palestinian Political Prisoners In Israeli Prisons, Detention and Interrogation Centers* (June 2004), available at: <<http://www.addameer.org/resources/reports/addameerSumoud.html>>, last checked August 2, 2006.

<sup>8</sup> The use of torture by Israeli authorities is widespread. On 6 September 1999, the Israeli High Court ruled that the Israel Security Agency (formerly known as GSS) could no longer use a number of methods of torture (including violent shaking, tying prisoners in contorted positions to a small child's chair, covering the prisoner's head with a sack, and sleep deprivation). This ruling was widely reported as an end to Israel's practice of torture. However, according to the Public Committee Against Torture in Israel and B'Tselem, the practice of torture has not ceased. Methods of torture include: sleep prevention, tying a detainee to a chair in painful positions, beating, slapping, kicking, threats, verbal abuse and humiliation, bending the body in extremely painful positions, intentional tightening of the handcuffs, stepping on manacles, application of pressure to different parts of the body, forcing the detainee to squat in a painful position ("Kambaz"), choking and other forms of violence and humiliation (pulling out hair, spitting etc.). Ill treatment in solitary confinement includes: sleep prevention, exposure to extreme heat and cold, continuous exposure to artificial light, and confinement in inhuman conditions.

See: <<http://www.stoptorture.org.il/eng/background.asp?menu=3&submenu=2>>; and [www.btselem.org](http://www.btselem.org), last checked July 23, 2006; and International Federation for Human Rights, *Palestinian Detainees in Israel: Inhuman Conditions in Detention*, 2003 (21-22), available at: <<http://www.fidh.org/IMG/pdf/ps365a.pdf>>, last checked July 23, 2006.

According to Amnesty International:

"Among the thousands of Palestinians arrested after 27 February 2002, some hundreds were transferred to full-scale interrogation by the GSS [Israel Security Agency], in centers.... Amnesty International has received reports that some of the detainees interrogated by the GSS were subjected to prolonged sleep deprivation, *shabeh* (prolonged standing or sitting in a painful position), and being violently shaken."

Amnesty International, *Israel and the Occupied Territories: Mass detention in cruel, inhuman and degrading conditions*, May 2002 (14).

<sup>9</sup> International Covenant on Civil and Political Rights, Article 14 (5)

<sup>10</sup> The Palestinian Central Bureau of Statistics, *Press Release on the Occasion of Palestinian Prisoners Day*, available at: <[http://www.pcbs.gov.ps/Portals/\\_pcbs/PressRelease/E-Prisoners%20Day%202006\(1\).pdf](http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/E-Prisoners%20Day%202006(1).pdf)>, last checked July 23, 2006

<sup>11</sup> B'Tselem, *Prisoners of Peace: Administrative Detention During the Oslo Process*, July 1997 (13).

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<sup>12</sup> *Fourth Geneva Convention*, Arts. 64 to 77; and the International Covenant on Civil and Political Rights, Article 14.

<sup>13</sup> Administrative detentions are currently carried out on the basis of Military Order No. 1229, of 1988. This Order empowers military commanders in the West Bank to detain an individual for up to six months if they have “reasonable grounds to presume that the security of the area or public security require the detention.” Commanders can extend detentions for additional periods of up to six months.

<sup>14</sup> B’Tselem, *Prisoners of Peace: Administrative Detention During the Oslo Process*, July 1997 (18).

<sup>15</sup> B’Tselem, *Prisoners of Peace: Administrative Detention During the Oslo Process*, July 1997 (31); and Hamoked, *Annual Report*, 2004 (39). Available at: <[http://www.hamoked.org.il/index\\_en.asp](http://www.hamoked.org.il/index_en.asp)>, last checked July 23, 2006.

<sup>16</sup> Agreement on the Gaza Strip and the Jericho Area, Article XX (May 4, 1994)

<sup>17</sup> The Palestinian Central Bureau of Statistics, *Press Release on the Occasion of Palestinian Prisoners Day*, available at: <[http://www.pcbs.gov.ps/Portals/\\_pcbs/PressRelease/E-Prisoners%20Day%202006\(1\).pdf](http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/E-Prisoners%20Day%202006(1).pdf)>, last checked July 23, 2006.

<sup>18</sup> Defence for Children International/Palestine Section, *Palestinian Children in the Judicial System*, <http://www.dci-pal.org/english/display.cfm?DocId=171&CategoryId=2>, last checked July 23, 2006.

<sup>19</sup> Defence for Children International/Palestine Section, Press Release, *Israeli Government Fails to Release Child Detainees – 330 Still in Custody*, 7 June 2003. See also, International Federation for Human Rights, *Palestinian Detainees in Israel: Inhuman Conditions in Detention*, 2003 (15-16).

<sup>20</sup> Article 37 of the Convention on the Rights of the Child states that “every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.”

The Article also states that “[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” See Convention on the Rights of the Child, available at:

<http://www.unhchr.ch/html/menu3/b/k2crc.htm>, last checked July 31, 2006.

<sup>21</sup> United Nations, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories*, September 26, 2005 (para. 96)

<sup>22</sup> *Ibid.* (para. 91-96)

<sup>23</sup> *Fourth Geneva Convention*, Arts. 49, 76 and 78.

<sup>24</sup> United Nations, Report of the Special Rapporteur on the Commission of Human Rights, *Question of the violation of human rights in the occupied Arab territories, including Palestine*, January 2006 (para. 42)

<sup>25</sup> The Palestinian Central Bureau of Statistics, *Press Release on the Occasion of Palestinian Prisoners Day*, available at: <[http://www.pcbs.gov.ps/Portals/\\_pcbs/PressRelease/E-Prisoners%20Day%202006\(1\).pdf](http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/E-Prisoners%20Day%202006(1).pdf)>, last checked July 23, 2006.