



Fact sheet titled:

Israeli administrative detention against Palestinians

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Introduction:

The Israeli occupation authorities continue their escalating violations against the Palestinians, and the occupation government follows the policy of administrative detention against the Palestinians in an increasing and illegal way. This is the detention on which the occupation authorities rely and claim that the administrative detainees have secret files that cannot be disclosed at all, violating the law clearly and explicitly. Therefore, this paper aims to shed light on the Israeli administrative detention against the Palestinians, which has escalated rapidly in the last three years in the West Bank due to the escalation in the struggle situation amongst the Palestinian people. Therefore, the problem of the study lies in the policy of administrative detention by the Israeli occupation forces against the Palestinians, and to know what administrative detention is in international law, what is the legal and historical background of Israeli administrative detention, and what is the reality of the Israeli administrative detention against the Palestinians.

First: Administrative detention in international law:

The principle of the right to resist foreign occupation and invasion stems from the principle of peoples' right of self-determination and national independence. The United Nations confirmed this right in its Charter issued in 1945 AD in the second paragraph of Article 1, which is related to the objectives of the United Nations in its text. It talks about developing relations between states: "And that each of them has the right to self-determination, as well as taking the necessary measures to strengthen international peace¹."

International humanitarian law has given special protection to prisoners, granting them rights and privileges on the grounds that they are lawful combatants and not criminals. International humanitarian law has worked to preserve human dignity by establishing specific controls and rules that oblige states to specific standards for dealing with prisoners and detainees and preventing extra-judicial killings and torture.

Administrative detention is considered an arbitrary and illegal measure, and is inconsistent with the most basic international human rights standards, as stipulated in article 42 of the Fourth Geneva Convention states that "the internment of protected persons may not be ordered, or their compulsory residence imposed upon them, unless the security of the power in whose power the protected persons are there so requires. If any person requests his

¹-Qabaa, Kamal: The Legal Status of Palestinian Resistance Prisoners, Palestine Liberation Organization Research Center, 2013, at the link: <https://www.prc.ps>

internment of his own free will through the representatives of the Protecting Power, and his situation is warranted, he is arrested by the State in whose power he is²".

International conventions and norms, and international humanitarian law regulated the legal status of prisoners of war, in order to prevent abuse of the rights of prisoners. Many international conventions and treaties stipulated many rules regulating the process of capturing soldiers, members of the armed forces, and individuals belonging to resistance movements, with the aim of preserving human dignity and preventing killings. and torture of prisoners and detainees³.

Prisoners of war in the Hague Convention in 1907 AD

Since the beginning of the twentieth century, human thought began to work on setting specific criteria and controls to regulate the process of prisoners of war, with the aim of preventing transgression against the human soul and protecting human dignity from the violation under the pretext of revenge. International conventions regulated the legal status of prisoners of war, as well as wars between the regular armies of two states, and civilians who resist the occupation that occupied their land, as international humanitarian law and United Nations charters guarantee the right of peoples to resist the occupier and their right to self-determination⁴, It works to resolve humanitarian issues arising directly from armed conflict, whether of an international or non-international nature⁵.

The Hague Regulations of 1907 CE specified prisoners of war in Article 1: "The laws, rights, and duties of war apply not only to the army but also to militia members and volunteer units that meet the following conditions:

1. To be led by a person responsible for his subordinates.
2. It shall have a fixed distinctive emblem that can be recognized at a distance.
3. To bear arms openly.
4. To abide by the laws and customs of war in its operations.

²Fourth Geneva Convention for the Protection of Civilian Persons in Time of War.

³Abu Naim, Tawfiq. The political and legal effects of the Oslo Accords on the Palestinian captive movement in Israeli prisons (1993-2019 AD) Master Thesis, Islamic University, Gaza, Palestine 2020, pg. 90.

⁴-Shabeer, Abdul Karim: The legal and human rights implications of accepting Palestine as a non-member state in the United Nations, Hemaya Center for Human Rights, Gaza, 2013, p. 32.

⁵-Amr, m-tide Abu Hajaza, Ashraf: Al-Wajeez in Public International Law, Cairo University, Faculty of Law, Cairo, 1st edition, 2011, p. 71.

In countries where militias or volunteer units take the place or form part of, the army, they shall be included in the category of army.

The persons who are entitled to benefit from prisoner-of-war treatment are members of the armed forces of the two parties to the conflict, members of militias and volunteer teams belonging to these forces, members of other militias, and other volunteer teams, including members of organized resistance movements belonging to a party of a conflict and operating inside or outside their territory, even if they are occupied lands. Provided that these militias or volunteer teams, including organized resistance movements⁶.

As defined by the Universal Declaration of Human Rights “The Universal Declaration of Human Rights”, issued in 1948 CE, in five of its basic articles, which are suitable to be defined as general humanitarian principles that may not be violated in dealing with prisoners, whatever the circumstances and these principles are⁷:

1. No one shall be subjected to torture or to cruel or inhuman treatment or punishment (Article 5).
2. All people are equal before the law and have the right to enjoy equal protection without any discrimination (Article 7).
3. No one shall be arbitrarily arrested, detained, or exiled (Article 9).
4. Everyone has the right, of full equality with others, to have his case heard by an independent and impartial court in a fair and public manner (Article 10).
5. Every person accused of a crime is presumed innocent until proven guilty according to law (Article 11).

The Four Geneva Conventions

The four Geneva Conventions and their additional protocols are international treaties that contain the most important rules for limiting the barbarity of war. The Conventions provide protection for persons who are not taking part in hostilities (civilians, health workers, and relief workers) and who have ceased to take part in hostilities (wounded, sick, shipwrecked, prisoners of war). The Geneva Conventions and their additional protocols are at the heart of international humanitarian law, the backbone of international law that regulates

⁶-Amouri, Yasser: The Legal Status of Palestinian Political Prisoners in International Law, a working paper presented to the United Nations International Meeting on the Question of Palestine, Bir Zeit University, Ramallah, 2012, p. 3.

⁷-Abu Hilal, Firas: The Suffering of the Palestinian Prisoner in the Prisons of the Israeli Occupation, Al-Zaytouna Center for Studies and Consultations, Beirut, 2009, p. 14.

behavior during armed conflicts and seeks to limit their effects. Wounded, sick, shipwrecked soldiers and prisoners of war cease to take part in hostilities⁸.

Four international humanitarian agreements have been concluded, representing the international humanitarian law that regulates wars, which represents⁹.

1. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
2. Geneva Convention to improve the condition of the wounded, sick, and shipwrecked armed forces at sea.
3. Geneva Convention Relating to the Treatment of Prisoners of War.
4. Geneva Convention Relating to the Treatment of Civilians in Time of War.

The Fourth Geneva Convention for the Protection of Civilians of 1949 indicates that the arrest of civilians is subject to the principle of necessity, and accordingly it is not permissible to arrest people protected under the convention, or to impose house arrest on them unless this absolutely affects the security of the state under whose authority the protected persons are located. As mentioned in the first paragraph of Article (42) of the Convention International practice in developing rules for the protection of prisoners has also aimed at devoting two basic principles¹⁰:

The first principle: It is evident that captivity during war is not for the purpose of punishment or revenge, but rather for the purpose of preventive detention. The second principle: It states that a prisoner of war is under the responsibility of the detaining power, and not of the members of the armed forces that detained him¹¹.

Efforts on the part of the international community proceeded through successive stages with the aim of developing the rights of prisoners and expanding the protection guaranteed to them, the first in the year 1977 AD.

⁸-The Geneva Conventions of 1949 and their additional protocols, the website of the International Committee of the Red Cross, 10/19/2010, at the link:

<https://bit.ly/2xKn1SG>

⁹-Shalaldehy, M-D: International Humanitarian Law, Dar Al-Maarif, Alexandria, 1st edition, p. 38.

¹⁰ -Al-Daour, Ismail: The Role of Prisoners in the Palestinian Political Movements (1987-2006), previous reference, p. 49.

¹¹-club, moh-D: Prisoners of War and International Humanitarian Law: The Model of Palestinian Prisoners, Arab Organization for the Red Cross, United Arab Emirates, 2019, p. 26.

Second- The Israeli position on the issue of Palestinian families and detainees:

In the issue of captivity and detention, the occupation authorities refused to apply the four Geneva Conventions to the occupied land under the pretext that they did not occupy this land from a sovereign state, and this reflects the policy of the occupation authorities in employing the law for their political purposes, while on the other hand, the international community has repeatedly affirmed its rejection of the policy of the occupation authorities and its position on the non-application of international law, especially the four Geneva Conventions, on the occupied Palestinian territory. The Occupied Palestinian Territory is international humanitarian law, including the four Geneva Conventions, international human rights law, and relevant conventions and covenants¹².

The Late Administrative detention legal and historical background:

Administrative detention is an old and recent policy pursued by the Israeli occupation authorities against the Palestinians, as the policy of administrative detention has been increasingly used since the early years of the occupation of the West Bank and Gaza Strip in 1967, and the occupation authorities rely on administrative detention procedures in Israel and the occupied territories on Article (111) of the defense regulations for the state of emergency imposed by the British authorities in September 1945, and in order to facilitate the administrative detention process, the occupation authorities issued military orders, including Resolution 1228 issued on 17/3/1988. This gave the authority to issue a transfer decision for administrative detention to officers and soldiers of a lower rank than the district commander¹³.

Fourthly - The reality of Israeli administrative detention against Palestinians:

Looking at the issue of Israeli detention against the Palestinians, we find that it is constantly escalating. The number of Palestinian prisoners languishing in the prisons of the occupation authorities: 4900 prisoners, including 30 female prisoners, 170 children, 967 administrative detainees and 5 members of the Legislative Council, including more than 360 prisoners who spent more than 20 years in prisons, 554 prisoners sentenced for life, and 40 prisoners who spent more than 25 years in Israeli prisons¹⁴.

¹²- Sahar Francis, The Position of Palestinian Prisoners in International Humanitarian Law, Journal of Palestinian Studies, 2014.

¹³Wafa, Palestinian National Information Center. <https://2u.pw/eeUV3L>.

¹⁴Addameer Association for Prisoner Care and Human Rights.

The administrative detainee is imprisoned for an indefinite period and has been renewed more than once to reach three months, six months or eight, and sometimes it may reach a full year, to the extent that there are those who spent more than four years under administrative detention. Administrative detention operations were concentrated among the ranks of the intellectual elite. Palestinian academics: doctors, teachers, lawyers, journalists, university students, clerics, political and popular leaders, and deputies in the Legislative Council. The occupation authorities did not exclude patients, the elderly, women and even children under the age of eighteen¹⁵.

In view of the number of administrative detainees, it is not fixed, as the number of administrative detainees reached a record number in 1989, following the first Palestinian Intifada to 1794 detainees. Whilst in April 2009, there were 560 administrative detainees. In the aftermath of the struggle steps taken by the prisoners in general, and the administrative prisoners in particular, which were represented in a continuous series of long hunger strikes, individually and collectively, and were accompanied by a wave of official, popular and international protests during the year 2013. The number of administrative prisoners decreased to reach 150 in December 2013, and 183 until the end of February 2014¹⁶.

While the year 2022 saw many transformations in terms of the reality of the arrest operations carried out by the Israeli occupation authorities, which were linked to the escalation of the state struggle and issues against the occupation, as the occupation authorities resorted to the most prominent tool, which is the policy of administrative detention, in order to undermine any state of struggle that could contribute to achieving self-determination and freedom for the Palestinian people. According to the follow-up of human rights institutions specialized in the affairs of prisoners, the occupation authorities arrested (7000) Palestinians, from Jerusalem and Gaza, during the year 2022, including 882 children, 172 females, and nearly 3 thousand cases of arrest in Jerusalem, while the number of detainees reached in the year 2021 to 6000 administrative detainees¹⁷

From the beginning of the year 2023 until 11/3/2023, the occupation authorities issued 580 administrative detention decisions, between new and renewal of previous decisions, among the administrative decisions 357 of administrative detention for periods extending between 2-6 months, which reached 5 times more for some prisoners, and 223 decisions. It was issued for the first time, and the number of administrative prisoners in the occupation prisons rose to

¹⁵Wafa, Palestinian National Information Center.<https://2u.pw/zFFf16>.

¹⁶- The Palestinian Ministry of Detainees and Ex-Prisoners Affairs and the Prisoners Club.

¹⁷Addameer Association for Prisoner Care and Human Rights<https://2u.pw/A7PmoN>.

1,000, which is the highest statistic in 20 years. It should be noted that more than 85% of administrative prisoners are former prisoners.

Conclusion

This paper dealt with the Israeli administrative detention policy against the Palestinians, and it became clear that the occupation authorities continue their violations against the Palestinians in a systematic manner, defying all international laws and agreements of the international community. The study reached a set of recommendations that must be worked on urgently to confront the crime and policy of administrative detention followed by the Israeli occupation authorities against the Palestinians, which are as follows:

1. International institutions and the international community must intervene urgently to stop the massacre of administrative detention, which violates international laws, agreements and human rights.
2. Work to send an international committee to look closely at the reality of the prisoners and the violations and physical and moral torture they are subjected to.
3. The Palestinian Authority must urgently raise the file of administrative detention to international courts in light of the occupation authorities' refusal to immediately release administrative detainees.
4. Work on activating international accountability and accountability tools to ensure the rights of victims of administrative detention, which the occupation authorities are based on.

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