



Defence for Children International/Palestine Section
الحركة العالمية للدفاع عن الأطفال / فرع فلسطين

Palestinian Child Detainees¹

Administrative Detention

Briefing Paper

October 2008

1. Administrative Detention

- 1.1 Administrative detention is a procedure whereby a person is detained without charge or trial. Under Military Order 1226, Israeli military commanders in the West Bank can issue an order for renewable periods of up to six months.
- 1.2 Administrative detention is permitted under international law in strictly limited circumstances and only if “*the security of the state ... makes it absolutely necessary*” and only in accordance with “*regular procedure.*”² Further, international law to which Israel is bound, provides that “*No child should be deprived of his or her liberty arbitrarily and detention should only be used as a measure of last resort for the shortest appropriate period of time.*”³ Administrative detention should never be used as a substitute for criminal prosecution where there is insufficient evidence to obtain a conviction.
- 1.3 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) (formerly known as the General Security Service (GSS)). Neither the detainee, nor the detainee’s lawyer are given access to the secret evidence, and therefore have no effective means of challenging the detention, as is required under international law.⁴
- 1.4 In practice, Palestinians under administrative detention orders can be detained for months, if not years, without ever being informed about the reasons or length of their detention; and

¹ For general information on Palestinian child detainees see: <http://www.dci-pal.org/english/publ/display.cfm?DocId=725&CategoryId=8>

² See article 42 of the *Fourth Geneva Convention* and article 4 of the *International Covenant on Civil and Political Rights*.

³ See article 37(b) of the *UNCRC*.

⁴ See article 78 of the *Fourth Geneva Convention*.

detainees are routinely informed of the extension of their detention on the day that the former order expires. This latter practice causes severe emotional trauma.

2. Facts and figures

- 2.1 On average approximately 30 children are held in administrative detention each year.
- 2.2 There are currently 691 Palestinians being detained in administrative detention, of which six are women and 13 are children, including two girls.⁵

3. Recommendations

- 3.1 The UK should call on Israel to reform the military legal system applied to Palestinian children, in order to bring it in conformity with international standards of juvenile justice and the treatment of civilians in conflict, with particular regard to:
 - The right to prompt access to legal assistance, prior to and during interrogation;
 - The rejection of all evidence obtained through coercion; and
 - The right to be detained within the Occupied Palestinian Territory (OPT).
- 3.2 The UK should call on Israel to end the practice of detaining persons under the age of 18 in administrative detention and immediately and unconditionally release the 13 children currently held in administrative detention or charge them with a recognisable criminal offence and promptly try them in a proper court of law with internationally accepted standards for fair trial.
- 3.3 As a fellow signatory to the *UN Convention Against Torture* (UNCAT), the UK should call on Israel to immediately ensure its compliance with UNCAT and thoroughly and impartially investigate all allegations of torture and abuse of Palestinian detainees and bring those found responsible for such abuse to justice.
- 3.4 The UK should use its influence to make the upgrade of *EU-Israel bilateral relations* conditional upon measurable and confirmed progress by Israel to uphold EU human rights standards in the OPT, in particular, in the context of efforts made towards the implementation of the *EU Guidelines on Children in Armed Conflict* in the OPT.
- 3.5 Human rights and civil society organisations in Israel and the OPT should be extensively consulted and fully involved in monitoring Israel's progress towards compliance with its obligations under international law and the implementation of the *EU Guidelines*.

Ramallah
9 October 2008

⁵ Israeli Prison Service. Addameer estimates the true figure to be higher (around 750) as the IPS figures do not include administrative detainees temporarily held in IDF facilities.

Annex 1: Administrative Detention of Obaidah A.⁶

Name: Obaidah A.
 Date of Birth : 4 March 1990
 Age at arrest: 17 years
 Place of Residence: Tell Village, Nablus District
 Date of Arrest: 23 May 2007

At 4.00 in the morning on 23 May 2007, Israeli soldiers surrounded Obaidah's home and told the family to come outside. The soldiers then threw sound bombs into the house, after which they conducted a search. A computer was confiscated and Obaidah was arrested in front of his family. He was handcuffed and blindfolded and placed in an Israeli military jeep for transfer to Huwarra Interrogation and Detention Centre. During the transfer Obaidah was beaten and kicked by the soldiers in the jeep.

Obaidah spent 13 days in Huwarra without being questioned. He was then transferred to Petah Tikva Interrogation and Detention Centre (near Tel Aviv) where he spent nine days in solitary confinement. During this period he was interrogated for three hours each day, while handcuffed and shackled. During his two months there, he was not permitted to see any family members or a lawyer.

On 26 July 2007, Obaidah was brought before the Israeli Military Court at Salem. He was charged with assisting a person suspected of being a member of Islamic Jihad. It was alleged that this person asked Obaidah to contact a member of Islamic Jihad in Syria and request this person to transfer money. Whether or not Obaidah made the telephone call was not relevant to the offence. The offence was that a conversation regarding assistance had taken place. The evidence contained in the file compiled by the chief interrogator was based on an apparent confession made by Obaidah under interrogation, the confession of another child, and the statements of the interrogator and an Israeli police officer in charge of the investigation.

The case again came before the military court at Salem on 29 July 2007. The prosecutor asked the judge not to release Obaidah on bail pending the determination of the case. DCI/PS lawyer Adnan Al-Rhabi requested that bail be granted on the basis that there was insufficient evidence to detain Obaidah. The military court agreed with DCI/PS's lawyer and ordered that Obaidah be released on bail of 1,000 NIS (US\$250). The prosecutor then applied to the military court for an order suspending the granting of bail for 72 hours. The military court rejected this application.

While Obaidah's parents were arranging for the money to be deposited, the prosecutor lodged an appeal to the Military Court of Appeal asking for bail to be revoked. It was 5.00 pm; the Court of Appeal determined the matter in the absence of Obaidah's lawyer who was in another Court and granted the suspension of the bail order, revoked Obaidah's bail, and re-listed the case for the next day, 30 July 2007.

On 30 July 2007, the Military Court of Appeal found that there was insufficient evidence against Obaidah and he was granted bail again on the same conditions. Immediately afterwards, the prosecutor obtained an administrative detention order from the Military Commander of the West Bank. Military Order 1226 gives the Military Commander the power to arrest a person and place them under administrative detention, for "security reasons" which he is not obliged to disclose. Obaidah was placed under administrative detention for six months, from 30 July 2007.

⁶ <http://www.dci-pal.org/english/display.cfm?DocId=826&CategoryId=12>

Obaidah's first administrative detention order was set to expire on 29 January 2008. According to Military Order 1226, an administrative detention order made by a Military Commander must be reviewed before a military court within a week from the making of the order. The military court has the power to confirm, amend or cancel the administrative detention order.

On 2 August 2007, Obaidah was brought back before the court, this time under administrative detention, for a review of the administrative detention order. The order was confirmed by the court. The two months he had already spent in prison, were not taken into account in making the order. It is not known what evidence was presented to the Court on this occasion, and whether or not the prosecutor had obtained additional evidence not available to the lower Court when Obaidah was initially charged, or relied on the evidence already in the prosecutors file and revealed to the defence.

Obaidah's family approached the lawyers for DCI/PS and requested that they attempt to negotiate with the prosecution for a fixed sentence rather than the uncertainty of administrative detention. Accordingly, on 30 October 2007 the case came back before the military court at Salem on the family's application. The prosecutor told Obaidah's lawyer that he would cancel the administrative detention order if Obaidah agreed to confess to the list of charges and accept a seven month prison sentence and a fine of NIS 2,500. Obaidah accepted the prosecution offer, which included time already served, and was due for release on 1 December 2007.

On 1 December 2007 DCI/PS lawyers received a telephone call from Obaidah's family saying that he had not been released. On 2 December 2007, DCI/PS lawyers searched the records of the Administrative Detention Court and discovered that Obaidah had just been issued with a second administrative detention order for six months. DCI/PS lawyers contacted the prosecution to complain about the breach of the plea agreement. The prosecutor responded that the second administrative detention order was for "activities within the prison".

On 6 December 2007, Obaidah was brought back before the court for a review of the second administrative detention order. DCI/PS lawyers reminded the court of the previous plea agreement. The military court confirmed the order but reduced the period of detention from six to four months.

The second administrative detention order made no mention of "activities within the prison" and simply repeated the allegations contained in the first administrative detention order. Obaidah is now due for release on 31 March 2008, unless the Military Commander decides to issue him with a third administrative detention order.

On 4 March 2008, Obaidah's 18th birthday came and went in an Israeli prison under administrative detention.

On 31 March 2008 Obaidah received his third administrative detention order for a further period of four months. This order was confirmed by the Administrative Detention Court on 6 April 2008. Once again, the Administrative Detention Order made no mention of "activities within the prison" and repeated the allegations contained in the first order. The period of detention was for another four months.

Most recently, on 31 July 2008, Obaidah received his fourth administrative detention order for being "a threat to the security of the area". Obaidah has now spent more than 14 months in Israeli prisons, most of that time being held without charge or trial. His latest administrative detention order is set to expire on 30 November 2008, but his exact release date remains uncertain.