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ADMINISTRATIVE DETENTION

in the occupied West Bank

LAW IN THE SERVICE OF MAN
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Appending relevant extracts from Israeli Military Order 378 and related regulations translated into English by Jonathan Kuttab.

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INTRODUCTION

On 4 August 1985 the Israeli cabinet announced that it was reintroducing administrative detention as well as deportation and other strong measures in the occupied West Bank in order "to clamp down on terrorism and incitement". Within a week, five six-month administrative detention orders had been imposed and confirmed, and by the first week in September a total of 62 people from the West Bank and Gaza were reported to have been administratively detained.

Administrative detention, sometimes called preventative detention or internment, is the imprisonment of individuals by the executive without charge or trial using administrative procedures. Under the Israeli military occupation of the West Bank the executive power is in the hands of the military authorities and it is thus the military authorities who exercise this power.

Israel made use of administrative detention from the first years of the occupation which began in 1967. For many years this practice was a major topic of discussion amongst those concerned with Israel's policies in the West Bank and in Israel itself. Little has been written in recent years on the subject however, because, in response to strong international and internal pressure, Israel began to phase out the use of administrative detention in 1980. The last administrative detainee was released in 1982, and it thus became of historical interest only. With the reintroduction of administrative detention it once again becomes a live issue and of the utmost importance involving as it does a serious infringement of the individual's liberty and right to due process.

The aim of this report is to summarise and discuss the provisions of the law and practice relating to the use of administrative detention by the Israeli authorities in the West Bank. This is

of particular importance since major changes were made to the law and to the related regulations only as the practice of administrative detention was being phased out, and are thus not widely known.

In examining Israel's use of administrative detention in the West Bank three questions must be asked. Firstly whether the introduction of such a measure is justified at all by the present situation in the West Bank, secondly whether the power to detain administratively is being exercised in accordance with local and international law, and thirdly whether, since it is being used, the interests of the detainee are safeguarded adequately.

After a brief summary of the historical background, the first question will be considered in the light of international law and current developments in the occupied West Bank. The law and practice relating to administrative detention in the West Bank will then be examined in detail, concentrating on three aspects - the basis on which the order is issued, the provision for judicial review of the order and the treatment of the detainees while interned - in an attempt to answer the remaining questions.

Although the scope of this report is limited to the West Bank, similar legal provisions apply in Gaza and in Israel itself, and judgments of the Israeli High Court of Justice are treated as precedents in relation to all three areas. Frequent reference will thus be made to Israeli law and precedents. The study takes into account developments to October 1985.

THE HISTORICAL BACKGROUND

Until recently in both the West Bank and Israel the law under which orders of

administrative detention were made was still essentially that used by the British Mandate against both Jews and Arabs before 1948. Many of those who later became members of the Israeli Government or the Knesset were themselves detained under these emergency laws (1) and at that time voiced strong opposition to their use by the British. The laws were not repealed on the establishment of the State of Israel however, since they were found to be a useful method of control both of Arabs and, in the early years, of dissident Israelis. For over 30 years Israel resisted introducing its own laws containing these repressive measures, and even the military orders issued in the West Bank and Gaza were based on the Mandate laws. As late as 1971 when asked whether it would not be better for Israel to enact its own laws than to continue to use the much criticised British Mandate law, the then Minister of Justice, Ya'akov Shapiro replied "It is one thing for the military to use someone else's law. It is quite another thing for the Knesset to enact as its own a preventative detention law" and added that he could not himself vote for such a law (2).

It was an Israeli opposed to administrative detention, however, who pointed out that "a population gets used to 'special rules of war' and has difficulty living without them even when peace returns" (3). Israel finally enacted its own laws authorising administrative detention in 1979. In introducing the bill and explaining the necessity for the law to the Knesset in 1979, Shmuel Tamir, then Minister of Justice, described Israel as "a state under siege" (4), although this was 31 years after the establishment of the State of Israel, 12 years since the start of the occupation of the West Bank, and 6 years after the last war in which Israel was involved.

Except in the first years of the occupation, when, for example, in 1970 there were 1,131

administrative detainees in the West Bank and Gaza according to the then Defence Minister Moshe Dayan, Israel did not make extensive use of administrative detention to effect mass arrests but has applied it on an individual basis. In later years the numbers were much smaller, in general less then one hundred and sometimes fewer than twenty at any one time (5). This is doubtless due in part to the fact that provision exists in the military orders relating to the West Bank for the holding of detainees for a period of up to eighteen days, fourteen of them incommunicado, without bringing the detainee before a judge and up to six months in total without charge (6). It is this provision which is generally used to round up and detain large numbers of Palestinians after disturbances.

During the late 1970s and early 1980s Israel came under increasing public pressure both internally and from abroad to abandon the use of administrative detention, from such varied sources as Amnesty International, the United Nations and Israeli lawyers, journalists and others (7), and in the early 1980s it began to phase out use of the measure. The last administrative detainee in the West Bank at that time, Ali Awwad al-Jammal, was released on 2 March 1982 after spending 6 years and 9 months in prison without charge or trial.

The phasing out of administrative detention did not however mean an end to extra-judicial restrictions being imposed on freedom of movement. It coincided with an increase in the use of 'restriction orders' by which a person is confined to his or her town, village, or house, generally confined to home after dark, and required to report at regular intervals at a police station. Ali Awwad al-Jammal for instance was served with such an order immediately after his release from administrative detention in 1982 and remained

under town arrest until the end of February 1984. These orders themselves have come under similar criticism, since they too are used as an extra-judicial method of control and restrict the individual's right to freedom of movement (8). 81 such orders had been issued by the end of 1982, no reasons being given except for the vague term "security reasons". At the time of writing there are some 34 such orders in force, in addition to the 62 administrative detention orders (9).

The reintroduction of administrative detention in 1985 in the West Bank seems to be in response to intensified pressure on the government in the preceding months from Israeli settlers and other extremists for harsh measures to be taken against Palestinians in the Occupied Territories. These calls were made partly in response to a series of attacks on Israelis in the West Bank and bordering areas of Israel, and partly from anger at the action of the Israeli authorities in releasing 1150 Palestinian political prisoners in May 1985 in an exchange agreement (10). Under the terms of the exchange an amnesty was granted to all those freed, many of whom could choose whether to stay in the West Bank or Gaza or to leave the area. The prisoner exchange was politically a very unpopular move and was heavily criticised by many Israelis, protests being made both about the releases collectively and about individual cases.

The incident which appears to have triggered the reintroduction of the measures was the murder of two Israeli teachers from Afula, a town just inside Israel. Three Palestinian youths were reported to have confessed to the attack. Ironically later reports have indicated that there was no political motive behind the attacks, but the arrests of the youths and the initial reports were sufficient to spark off virulent expression of hatred, racist attacks and demonstrations against Palestinians generally. Mounting demands

were made for the reintroduction of the death penalty, deportations and administrative detention and a few days later the last two measures were introduced. Reintroduction of the death penalty is still under consideration.

The first order of administrative detention made since its use was phased out was issued on 31 July 1985 and confirmed on 2 August, even before the Israeli cabinet's announcement of its decision to reintroduce the measure. The order was made against Ziad Abu 'Ein, a former political prisoner released only three months earlier in the prisoner exchange of May 1985. Four further orders were made on 5 and 6 August against students of al-Najah University who allegedly headed student factions aligned to different Palestinian political groupings. Between 29 August and 4 September 57 more administrative detention orders were made, bringing the total number to 62.

THE LAW

A. International Law

Imprisonment without charge or trial constitutes a serious infringement on the individual's rights to protection from arbitrary arrest and to due process. Not only does it infringe these basic legal principles but it also contravenes international law. Article 9 of the Universal Declaration of Human Rights (UDHR) and Article 9(1) of the International Convention on Civil and Political Rights (ICCPR) both state that "No one shall be subjected to arbitrary arrest or detention...", while the right to due process is protected in Article 10 of the UDHR which states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his

rights and obligations and of any criminal charge against him".

Despite these provisions administrative detention is widely used in many parts of the world, especially in times of national emergency - according to the International Commission of Jurists' information at least 85 countries in the world have legislation permitting this practice and have used it within the last 3 or 4 years (11) - and its use in times of war or occupation is sanctioned by international law, albeit in strictly limited circumstances.

The Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War (12) contains provisions regulating the powers and conduct of an occupying power towards the civilians of the occupied territories. When challenged on the legality of administrative detention procedures under international law, Israel customarily refers to Article 78 of this Convention, which provides that "If the occupying power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment."

However, Article 6 of the same Convention states that, with the exception of a number of specified provisions, mainly humanitarian in nature and not including Article 78, the provisions of the Convention in the case of occupied territories shall cease to apply "one year after the general close of military operations". The reason for this appears to be that it is expected that by the end of one year the occupying power will have had the opportunity to establish its authority well enough not to need the stringent methods of control provided for by the articles concerned, and that life will to a substantial extent have returned to normal.

Israel's occupation of the West Bank is now in its nineteenth year. With few exceptions the violent acts of resistance by the occupied population are minor and isolated incidents. Such acts of resistance cannot be described as military operations in the meaning of a convention on warfare, and it is submitted that the relevant articles in the convention should have ceased to apply some considerable time ago, and that administrative detention therefore cannot be justified under this section.

Even when administrative detention is permitted by the Convention it is authorised only if considered 'necessary for imperative reasons of security' (emphases added). Jean Pictet states in his commentary to the Convention that "In occupied territories the internment of protected persons should be even more exceptional than it is inside the territory of the Parties to the conflict ... such measures can only be ordered for real and imperative reasons of security; their exceptional character must be preserved." Pictet comments further that Article 78 relates only to those not charged with any offence so that precautions taken against them cannot be in the nature of a punishment, only preventative (13).

Other criteria were proposed for the use of administrative detention by the International Commission of Jurists as long ago as 1962 at an International Conference in Bangkok. One of the principles which it considered should govern the use of administrative detention was that its use "should be lawful only during a period of public emergency threatening the life of the nation" (14). Although equivalent principles have not yet been adopted by other international bodies, it is submitted that the principle quoted presents a reasonable limitation on such a drastic deprivation of individual liberty. The intention would then be to deal with an immediate threat,

and it would not be acceptable for such powers to remain in use except when the life of the nation was under real threat. At no time could the powers be used as a mere adjunct to, or even substitute for, ordinary criminal process.

Are there then either imperative reasons of security necessitating the use of administrative detention or is there an emergency threatening the existence of Israel or the West Bank?

It is recognised that Israel does have a security problem within the Occupied Territories and that this is likely to continue as long as the occupation continues. Attacks by Palestinians should not be minimised. Nevertheless it should be recognised that they occur partly as a direct result of the confrontational situation created by Israel's policy of settling its own citizens in the occupied Palestinian territories, contrary to international law, and by the extremist and racist attitudes of those settlers towards the Arab population.

As to the present extent of the security problem, Vice-Premier Yitzhak Shamir acknowledged in a recent interview, when questioned about the reintroduction of administrative detention, that the present rash of attacks is by no means the worst in the history of the state, "But the more we get used to conditions of normalcy and security, the more such incidents anger and aggravate people. Moreover the pattern of sporadic murders of individuals is particularly disruptive to normal life and emotionally effects so many people". Disruption of normal life and the causing of anger, aggravation and emotion to people, however numerous, cannot amount to imperative reasons of security, nor be a threat to the area as a whole. The level of resistance within the Territories does not justify the claim that Israel is under siege from the Territories. Indeed in 1982 when the level of resistance was much greater

following the invasion of Lebanon the military authorities apparently saw no need to introduce the severe measure of administrative detention.

Extensive powers are available to the military government to prosecute in the military courts those responsible for actual attacks or for incitement and these powers are widely used. It is clear from Article 78 of the Fourth Geneva Convention that administrative detention is only justifiable when it is absolutely necessary for security reasons. This precludes its use either as a substitute for criminal proceedings or as a palliative for the public.

B. The Local Law

The law governing administrative detention in the West Bank is to be found in Article 84A and Article 87 of Military Order 378 of 1970, an Order Concerning Security Provisions, as amended by Military Orders 815 and 876 of 1980. Regulations have also been issued relating to appeal proceedings and conditions of detention, pursuant to Article 87G.

Provision for the imposition of administrative detention existed in Palestine under the British Mandate in the form of Articles 108 and 111 of the Defence (Emergency) Regulations 1945. These provisions authorised a Military Commander to issue such an order but did not limit the duration of the order, nor restrict the discretion of the Commander nor prescribe rules of evidence. They provided only minimal opportunity for judicial review and that to an advisory committee whose opinion the Commander was not bound to follow, although the Supreme Court could theoretically intervene if there was a legal flaw in the order.

The Defence (Emergency) Regulations 1945 were implicitly repealed and not used during

Jordanian rule of the West Bank. Israel, however, considered the Regulations an extant part of the law on its occupation of the area in 1967 and proceeded to make use of many of their provisions. To ensure that this use would not be successfully challenged in court, Article 3 of Military Order 224 of 1968 explicitly provided that the regulations do apply (16). Specific provision for administrative detention was made soon afterwards in 1970 by Article 87 of Military Order 378.

Article 87 of Military Order 378 before amendment authorised a military commander to issue an order of administrative detention on essentially the same basis and using the same procedure as under the Mandate law, thus mirroring the practice in Israel where the Mandate emergency regulations still applied.

Substantial changes were made to the law in Israel in 1979 when a new law was enacted entitled the Emergency Powers (Detention) Law 5739-1979. On 11 January 1980 Military Order 815 was issued relating to the West Bank, which amended Article 87 of Military Order 378 to bring it broadly into line with the new Israeli law. These new provisions specified grounds on which administrative detention orders could be made, introduced a new judicial review procedure, restricted delegation of powers and made other refinements to the law. There are differences between the law in Israel and the Military Orders in the West Bank but wherever the Israeli law is mentioned below without comment it can be assumed that the provisions in the law applicable to the West Bank are equivalent. Articles 84A and 87 of Military Order 378 as amended together with a minor amendment made by Military Order 876 and some regulations issued pursuant to the order constitute the legislation relating to administrative detention at the time of writing.

(i) The Issuing of the Administrative Detention Order

The Defence (Emergency) Regulations 1945 authorised a Military Commander by order

> "to direct that any person shall be detained in such place of detention as may be specified ... in the order" (Regulation 111(1)), if he is of opinion that it is "necessary or expedient to make the order for securing the public safety, the defence of Palestine, the maintenance of public order or the supression of mutiny, rebellion or riot" (Regulation 108).

No limit to the duration of the order was specified, but the place of detention had to be specified in the order (17). The commander was specifically permitted to delegate his powers to any person (Regulation 111(8)).

Military Order 378 as issued in 1970 initially contained essentially the same provisions relating to administrative detention as the Defence (Emergency) Regulations 1945, giving very wide powers to the commander, but the amendments introduced in 1980 by Military Order 815 restricted these powers considerably.

By Article 87(a) of Military Order 378 as amended, an Area Commander of the Israeli Army can order the detention of any person for not longer than six months

> "...if he has reasonable cause to believe that reasons of the security of the area or public security require that (that) person should be held in custody..."

and by Article 84A

> "No Military Commander may exercise (this) authority unless he believes it to be necessary for definitive security reasons".

The amendments thus provide for an objective standard for the decision to detain, since the belief that the order is necessary must be a reasonable one in contrast to the subjective opinion required before.

Although the duration of the original order cannot exceed 6 months, Article 87(b) provides that the order can then be renewed for successive periods of six months. In practice therefore the detention can continue indefinitely.

The Area Commander is not authorised to delegate his power, but by Article 87(c) a District Commander is empowered to order a person to be detained if he believes that the Area Commander would have had reason to make the order. A detention order issued by the District Commander may not be for a period exceeding 96 hours and he has no power to renew the order. This prohibition of delegation leaves ultimate responsibility with one individual only.

Various attempts have been made by Israeli officials closely concerned with the policy and practice of administrative detention to define the circumstances in which the orders can be made.

According to Colonel Hadar, a former Military Advocate-General, the measure is employed only when

> "..no other legal measure exists which could prevent the detainee's dangerous activity ...(and) the extent of the danger of the detainee remaining free is so great that the only appropriate measure against him is administrative detention" (18).

More recently in 1982 the then Israeli Attorney-General Itzhak Zamir issued guidelines concerning the new laws introduced, saying:

> "Administrative detention is meant not as a punitive but only as a preventative measure. In other words a person may not be administratively detained as a punishment for

an act prejudicial to state security or public security. A punishment for such an act may only be imposed by a court in ordinary judicial proceedings. Where there is sufficient good evidence for a conviction in such proceedings this will not by itself justify administrative detention.

Administrative detention is justified only to avert a danger to state security or public security. But even where such a danger exists, administrative detention should not be resorted to if more effective and less severe means of defence against the danger are available, e.g. a criminal action ... or a restricting order... At the same time, the expression of an opinion, even an extreme opinion inconsistent with the ordinary concepts of state security or public security, is not in itself a sufficient ground for administrative detention..." (19).

The assurance that a person will not be detained administratively simply because of an act committed in the past should however be considered in the light of Colonel Hadar's statement that "commission of an offence by the detainee in the past is proof of his inclination to commit such acts again" (emphasis added) (20). In practice, again according to Colonel Hadar, the basis for by far the majority of administrative detention orders is the actual commission of a security offence by the detainee where the government is unable to prove the case under the normal rules of evidence. This may be, for instance, because the information is inadmissible, such as hearsay, or because the witness is involved in espionage and would be endangered if his identity were to be revealed, or because the witness is abroad.

Further clarification of the grounds on which the power to detain administratively may be exercised has been made by the courts. As will be

seen below the courts reviewing administrative detention orders have been reluctant to substitute their own considerations for those of the issuing officer. The courts have however interpreted the grounds on which the Area Commander is entitled to issue administrative detention orders strictly, and have discharged such orders where it is apparent on the face of the order or the request for extension of the order that grounds other than the security of the state or area or the security of the public were paramount.

In the case of Qawasma v. Minister of Defence (1982) (21) the Israeli Supreme Court held that an order of administrative detention had been issued for a reason other than the security of the state or public safety, namely to detain Qawasma pending the prosecution's appeal against his acquittal in criminal proceedings, and it discharged the order. In his decision Justice Kahan stated that:

> "The power vested in the Minister of Defence* is wide and exceptional since it enables the freedom of a person to be denied otherwise than by ordinary legal process. This power should therefore be exercised with great care and only in cases where the danger to state security and public safety is serious indeed and there is no other way to avert it except by the detention of the person... Precisely because the discretion given to the Minister of Defence is wide, this power should be used with extreme caution." (22)

A judge of the District Court* refused, in

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* The Minister of Defence and the President of the District Court in Israel exercise the same powers in relation to administrative detention as the Area Commander and the Military Judge respectively in the West Bank.

the case of Gemayel Bathish v. Minister of Defence (23), to confirm the Minister's order of administrative detention on the ground that it had not been made on objective grounds of public security. Bathish was strongly opposed to the annexation of the Golan Heights and became a leader of the opposition to it, but was not personally involved in violence. The court held that

> "...obviously the outlook and nationalistic opinions of the detainee do not constitute a reason for the imposition of an administrative detention order ...and he must be judged by his actions... Forcing without violence the opinions of a section of the public upon another section of the public does not constitute an infringement on the security of the public as there are no physical assaults upon anyone."

However, this decision does not constitute a precedent for other decisions, since it was made by a District Court and not from the Israeli High Court of Justice.

From the various statements above it is clear that administrative detention is only intended to be used as a preventative not as a punitive measure, and only when no alternative exists and the detainee's freedom poses a serious threat to state and public security. In order to assess whether this is so in practice it may be helpful to consider briefly the first orders of administrative detention imposed after its reintroduction. At the time of writing full details of those most recently placed under administrative detention are not available and so it is not yet possible to draw clear conclusions as to the general principles upon which the current wave of arrests are being made.

The first order made was against Ziad Abu 'Ein, a 26-year-old Palestinian from al-Bireh in

the West Bank, who became known worldwide following his extradition from the USA to Israel in 1979 to stand trial for a bomb attack in Tiberias. He has always denied any involvement in the attack, but he was convicted on the basis of another person's confession, later retracted, and sentenced to life imprisonment. Ziad Abu 'Ein was freed in the prisoner exchange in May 1985 (24). He chose to remain in al-Bireh, and like many of the freed prisoners, threats were made against his life and safety by Israeli settlers. Due to his notoriety and the act of which he was accused his release was one of those most unacceptable to the settlers. Under the terms of the prisoner exchange agreement, which was negotiated through the auspices of the International Red Cross, Israel is unable to rearrest any of the prisoners to whom amnesty was granted for the same alleged activities for which they were imprisoned. There must be a strong suggestion that the measure of administrative detention was here being used to imprison and punish Ziad Abu 'Ein for previous acts in order to satisfy public opinion rather than for preventative reasons.

The four students from Al-Najah University in Nablus who were placed in administrative detention on 5 and 6 August 1985, are each alleged to have headed student factions aligned with three different Palestinian parties outlawed in the Occupied Territories. It is a strange coincidence that leaders of different opposing factions should all simultaneously be found to pose such a serious threat to Israel's security or public safety that their custody is imperative, and yet that it is not possible for the authorities to charge and bring even one of them to trial in the normal way for an offence under the security legislation such as incitement or membership of an illegal organization (25). Again there appears more reason to believe that the four are being held for their

political beliefs and because they are local leaders, and as such 'inconvenient' to the military authorities.

In view of the secrecy imposed on the court procedures, it is not possible to conclude with certainty the motives behind the orders, but certainly there must exist a serious doubt as to whether the orders are not being used to satisfy public demand in the first case and to silence political opposition in other cases rather than for genuine reasons of state or public security.

(ii) Judicial Review of Administrative Detention Orders

Under the Defence (Emergency) Regulations 1945 and Military Order 378 section 87 before amendment the provision for judicial review was very limited. The detainee was entitled to appeal to an advisory committee, which was also required to consider each order at intervals not greater than six months. However the committee could only make recommendations to the Military Commander who could either accept or reject those recommendations. A further appeal could be made to the Israeli High Court.

The amendments made by Military Order 815 in 1980 introduced a more extensive review and appeal procedure. Any person detained under an order of administrative detention must be brought before a military judge for review of the detention order within 96 hours of the initial detention, whether under the order of the Area Commander or the District Commander (Article 87B (a) as amended). The detention order must be reviewed again by the judge not later than three months from the decision, even if the duration of the order itself is for a longer period, and thereafter at least every three months. The detainee must be released

if either review does not start within the time specified. (Articles 87C and 87B (a)).

The decision of the military judge can be appealed against within 30 days to the President of the Military Courts, or to a judge appointed by him (26). The judge of this court has the same powers as the military judge. A final appeal lies to the Israeli Supreme Court since the actions involved are administrative.

Extensive though the provisions made for judicial review appear to be, the ability of the detainee to challenge the order effectively is severely limited both by procedural rules and by limitations placed on the courts' powers.

Military Order 815 introduced a number of provisions as to the procedure to be followed in the review and appeal hearings, the most important of which are the following:

Article 87D (a & b): When reviewing the administrative detention order the judge is not bound to observe the usual rules of evidence if he is satisfied that this will help reveal the facts and reach the truth, but any deviation from the rules must be recorded.

Article 87D (c): The judge may examine evidence in the absence of the detainee and his counsel and need not disclose the evidence to them if he is satisfied that such disclosure could impair state security or public safety.

Article 87F: The review proceedings are to be held in secret.

At the review the military judge must set aside the detention order

> "...if it is proved to him that the reasons for which it was issued were not objective reasons of state security or public security or that it was made in bad faith or from irrelevant considerations." (Article 87B (b)).

The burden of proof is thus on the detainee

to prove that the order was based on improper grounds, and not on the Area Commander to show justification for the order. However, in almost every case neither the detainee nor his lawyer will be shown the evidence.

As explained by the military government of the West Bank in a book issued under the name of the Israeli Section of the International Commission of Jurists ('the IICJ'):

> "...detention orders are in virtually all cases issued on the basis of intelligence information submitted to the regional commander. Such information, by its very nature, is either inadmissable in court under the strict rules of evidence pertaining to hearsay, or consists of classified material, the disclosure of which could lead to exposure of sources of intelligence and endanger the lives of such sources or Israeli operatives." (27).

The reasons which precluded the production of the evidence in the regular military court will also preclude its presentation to the administrative detainee in the review sessions. The review judge will thus in.virtually every case exercise its right not to disclose the evidence and to vary the rules of evidence to accept evidence that could not be relied on in court and may also exclude the detainee from the hearing.

The detainee and his lawyer are thus set the almost impossible task of having to prove to the judge that the order is not required for security reasons, without knowing any details of the evidence on which the order is based.

The recording of deviations from the rules of evidence on the court record does little to protect the detainee against abuse, since those records themselves are secret. There is no requirement that such deviations must be recorded in the decision given to the detainee.

The protection afforded to the detainee is weakened further still by the fact that the proceedings are not open to the public since all review procedures are required to be held in closed session. It should be noted that this is compulsory in all cases of administrative detention not merely where special reasons of state security require the hearing to be secret. Only the detainee and his lawyer may attend the hearings, if not themselves excluded under the above provisions, and they are forbidden from revealing anything that transpires during the session, even the reasoning of the decision.

As required by the military order, all 62 orders of administrative detention recently imposed have been reviewed and confirmed in secret session. There is thus no means of determining whether the review and appeal procedure have any value at all because the basis on which the judge decides whether or not to reveal the evidence and on which he bases his final decision is not known. This is so both to the external world and to the detainee's own lawyer who is not shown the evidence and is excluded from much of the argument. In this way the criteria on which the judge reaches his decision are closed to scrutiny both by the public and by the detainee's lawyer.

Such lack of answerability is prejudicial to justice in any circumstances, but especially in this procedure where both the review and the appeal are heard by military officers inferior in rank to the issuing officer, who is their commander. Thus not only is the review not independent, but it puts the reviewing officer in the invidious position of having to reverse a decision of his military superior if he wishes to quash the order, and such a decision cannot be easily taken.

Furthermore the issuing of the order, the

review and the appeal are all in the hands of individual officers, not a board of two or more which might lessen the pressure on the officers concerned. This is also contrary to the provisions of Article 78 of the Fourth Geneva Convention which requires the administrative detention order to be reviewed by a 'competent body'. The intention behind this provision appears to be that the order be reviewed by more than one person, thus safeguarding the detainee by not leaving his liberty to the discretion of a single person on review.

A potential danger to the reputation and safety of the detainee also arises from the secrecy of the sessions. Clearly when a person is detained and the detention order confirmed by a judge, members of the public may well assume that he has committed some serious offence, or poses a grave threat to the public, and this itself makes him a target for attack by Israeli settlers in the occupied territories on his eventual release. Unlike in military or criminal court hearings the 'charges' will not be made public and the detainee will not have had the opportunity of a fair trial to present his response to the charges and to have his innocence or guilt determined. The detainee's lawyer is bound by the secrecy of the court to disclose no details of the proceedings and is thus unable to defend his reputation against the assumptions of the public if unfounded.

This point is well illustrated in the case of Ziad Abu 'Ein. The order of administrative detention imposed on Abu 'Ein was reviewed on 2 August 1985 in closed session by a military judge. Apart from military personnel only Ziad and his lawyer were able to attend this session, and both were bound by the secrecy of the proceedings. Despite the secrecy of the session the media subsequently reported that he was accused of planning an attack on a bus. Abu 'Ein's lawyer,

Jonathan Kuttab, confirms that he did not reveal details of the proceedings even to Ziad's family, and Ziad himself was immediately returned to detention. Unless the reports were ill founded, and there has been no retraction of them, there seems to be no other explanation for the announcement than that the military themselves released this information, true or false, regardless of the secrecy of the proceedings.

Meanwhile Abu 'Ein's lawyer remained bound by the court and unable to respond to these reports. In the eyes of the Israeli public Ziad is a guilty man and the administrative detention order is justified whatever may be the basis of the charges announced, but never publicly or judicially verified.

In addition, limitations placed by the Supreme Court on its own powers of review and thus on the review and appeal bodies' powers, also severely limit the effectiveness of the review procedures.

In the case of Rabbi Kahane et al v. Minister of Defence (1981) (28) the Supreme Court reviewed proceedings before the District Court* in which the order of administrative detention issued by the Minister of Defence* against Rabbi Kahane was confirmed. The Supreme Court ruled that a review court could not substitute its own considerations for those of the Minister. It stated that the issuing of the order is an administrative action even though reviewable by the court, and that the order will only be set aside if the reasons for which it was made were

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*The Minister of Defence and the President of the District Court in Israel exercise the same powers in relation to administrative detantion as the Area Commander and the Military Judge respectively in the West Bank.

not objective reasons of state security or public security or if the order was made in bad faith or from irrelevant considerations. Justice Kahan did state that the reasons given in s.4(c)* for setting aside the order are not exhaustive, but from the examples given it appears that the only other circumstances in which it could be set aside are if the order is in fact illegal because of procedural defects, such as delegation of power. He emphasised that

> "...it is clear from the provisions of s.4(c)* that the court may not substitute its own considerations for those of the Minister of Defence..." (29).

In an article by Professor Klinghoffer of the Hebrew University in Jerusalem (30) it is argued that this is an incorrect interpretation of the powers of the court. In Professor Klinghoffer's view the act of issuing an administrative detention order is not complete until reviewed and confirmed by the court and it is thus not an administrative act but a joint administrative/judicial act. The fact that the President of the District Court is authorised to 'confirm' the order implies, he argues, the use of the President's own discretion. Furthermore the use of the term 'require' in section 2(a)* implies an estimation by the Minister of Defence, not merely a factual finding, with which the President is entitled to disagree, for instance by finding that a restriction or supervision order would be more appropriate and that an administrative detention order was not required. This article was

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**s.2(a) and s.4(c) of the Emergency Powers (Detention) Law 5739-1979 contain provisions in relation to Israel equivalent to Articles 87(a) and 87B (b) of Military Order 378 in relation to the West Bank.

considered and referred to in the appeal decision by the President of the District Court in the case of Gemayel Bathish v. Minister of Defence (1982) (31). The President stated that he was bound by the precedent of the Supreme Court in the Kahane case but that had he not been he would have accepted Professor Klinghoffer's interpretation of the law. In this case however, as mentioned above, the President was still able to set aside the order, since he found that the Minister had used his power to issue a detention order on grounds not justified in law.

Courts in Israel are indeed bound to follow precedents of the Supreme Court by s.33(b) of the Courts Law 5717-1957, and the Kahane case set a precedent which still stands. However there is no system of precedents in the Occupied Territories so that the military judge, in theory at least, is not bound to follow the decision in the Kahane case. However, in practice military judges in the Occupied Territories treat the High Court precedents as highly persuasive and it is thus unlikely that any such military judge would depart from the High Court's decision. This presents another problem for the Palestinian detainee. Since decisions of the Israeli Supreme Court, even those relating to the Occupied Territories, are published only in Hebrew, and not in Arabic or English, many West Bank lawyers appearing before the review or appeal courts will not be aware of those decisions.

So long as the review judges consider themselves bound by the decision in the Kahane case and refuse to substitute their own views for those of the issuing authority, the review is little more than a rubber stamp to the decision of the military commander issuing the order. It can do little to safeguard the rights of the individual detainee.

More generally, it is only very rarely that

the Supreme Court will accept any opinion other than that of the military authorities as to what is required by 'security', even in the regular military court system in the occupied territories. In the case of Amira et al -v- Minister of Defence et al (32) the court held that

> "In a dispute ... involving questions of a military-professional character ... the Court ... will presume that the professional arguments of those actually responsible for security in the occupied territories ... are valid. This presumption may only be rebutted by very convincing evidence to the contrary".

All administrative detention cases are by definition related to 'security', and for the administrative detainee with minimal rights of defence the difficulty of overcoming this obstacle will be greatly magnified.

In summary, as indicated above, there have in the past been cases where an administrative detention order has been revoked at the review or on appeal, but these are cases where an improper reason can be shown on the face of the order or the request for confirmation of the order. On the substantive issues, it is effectively impossible for the detainee to challenge the evidence on the basis of which he is detained or to argue against the Area Commander's view as to what is required for security reasons.

(iv) Conditions of Detention

It has been declared by Itzhak Zamir that administrative detention is used for preventative and not punitive reasons, and that it regrettably involves the infringement of the freedom of the individual for the benefit of the security of the state and the public. It is therefore reasonable to expect that all possible measures will be taken

to ensure that the detainee, convicted of no offence, is subjected to minimal discomfort and kept in conditions as unprisonlike as possible. This would be expected all the more when the number of detainees is small since it would present few practical problems. Jean Pictet in his Commentary to the Fourth Geneva Convention of 1949 says:

> "It is a humanitarian duty to alleviate to the greatest possible extent the effect of internment on the mind and spirits of the internees" (33).

With this point in mind the Fourth Geneva Convention contains extensive provisions in Articles 79-131 relating to the treatment of internees. These provisions relate to such matters as clothing, bedding, light, correspondence, visits, medical care, disciplinary offences, internal organization and transfer of detainees.

The Regulations Concerning Administrative Detention (Terms of Confinement in Administrative Detention) issued by the Israeli military authorities pursuant to Military Order 378 Article 87(g) on 31.1.82, a translation of which appears in the appendix hereto, set out detailed provisions concerning the conditions of administrative detainees covering many of the same points as the Convention. If fully implemented these provide for quite different treatment for administrative detainees from other detainees and prisoners, the following being a summary of some of the main points relating to the detainee:

(i) He shall not be placed with other prisoners detained or sentenced in the normal criminal process;

(ii) He may only be ordered to be held in solitary confinement if the commander is convinced this is necessary for reasons of the security of the area, the maintenance of discipline, to

safeguard the detainee, or at the detainee's own request; such an order must be reviewed at least every two months;

(iii) He has the right to wear his own clothes, unless contrary to proper order or health;

(iv) He shall have the same meals as the prison guards, not the other prisoners and shall be allowed to purchase food from the canteen, if any;

(v) He shall be medically examined at least once a month and whenever else necessary;

(vi) He shall go out for exercise for two hours each day, under the open sky;

(vii) He may receive washing and other hygienic items, any newspapers and books approved by the commander of the prison, and up to 400 cigarettes a month from outside, and may keep items required for religious worship;

(viii) He may be allowed to work for his own benefit;

(ix) He must make his own bed and keep his sleeping place clean (this provision presumably implies that he is to have a bed, and indeed the Fourth Geneva Convention provides that the detainee is to have sufficiently spacious and well-ventilated sleeping quarters and suitable bedding and blankets);

(x) He is entitled to 1/2 hour visits every two weeks from close family members and from any other relative at the prison commander's discretion; the prison commander may also permit 'special' visits or more frequent visits at his discretion;

(xi) He is entitled to see his own lawyer on request, such visit to be arranged as soon as possible, but the prison commander may suspend such visits for up to 15 days for reason of the security of the area.

(xii) He may send up to 4 letters and 4

postcards a month, excluding those to his lawyer and to the military authorities, and may receive unlimited mail through the prison commander, although the commander retains the right to prohibit receipt or sending of mail if necessary for the security of the area.

(xiii) Most importantly, Article 19 provides that the detainee must be informed of these regulations as soon as possible after his internment and he is entitled to see and take a copy of them.

It should be noted that while some of these provisions are subject to the discretion of the Prison Commander and others can be suspended for security reasons, many are mandatory under all circumstances.

Since the regulations were issued only as administrative detention was being phased out in 1982 it is too early to assess fully their effect. Initial indications were that many provisions were not being implemented, as the case of Ziad Abu 'Ein illustrates.

The detainee Ziad Abu 'Ein's lawyer, Jonathan Kuttab, visited him in Hebron prison where he was being held, seven days after his initial detention. He reports that when he spoke of the regulations he found that Abu 'Ein had no knowledge of them and on going into further detail it was clear that few of the regulations concerned with differentiating between administrative detainees and ordinary prisoners were being observed, other than his being kept isolated from other such prisoners.

Abu 'Ein was indeed being kept apart from other prisoners of different status, but since there were no other administrative detainees in the prison he was in effect being held in solitary confinement at the time of writing. This situation was quite unnecessary since it would require little effort to transfer either him or one or

more of the other detainees in the West Bank to ensure that none were confined alone.

His living accomodation was a cell without a bed or any other comforts. His food was the same as that given to other prisoners, not as that provided to the jailers as required by the regulations. Far from being allowed to exercise in the open air for 2 hours daily, he was permitted one hour of exercise per day inside. Neither he nor his family were informed of the special provisions entitling them to supply him with items from outside.

Mr Kuttab states that he asked the prison guards why these provisions had not been complied with and was told that it was "for security reasons". When he pointed out that many of these provisions are mandatory and cannot be suspended, they referred him to the Prison Commander. When he asked the Prison Commander why Abu 'Ein had not been shown a copy of the regulations and why they were not being complied with and asked him to rectify the situation, he was told to write to the Prison Services Authorities, the central body in charge of prisons conditions. This he did, and at the time of writing he is still awaiting a reply.

The initial failure to implement the new conditions may however be in part due to bureaucratic failure to communicate the new regulations to the prison authorities. Some of those more recently detained report that their conditions are now better than those of other detainees. They do now have two hours or more of exercise daily; they have been allowed to receive clothes from their families, though some bedding sent by families has been returned; fortnightly visits are allowed, but the detainee is always closely attended by guards and separated from his visitors by bars; medicine may not be brought in, but families are requested to provide a medical certificate if they think medicine is required and

this will be considered by the prison doctor; the food provided is still that given to other prisoners not that provided to the guards. Since there are now large numbers of administrative detainees they are not in general being kept in solitary confinement, but Ziad Abu 'Ein remains isolated.

Although conditions thus seem to have improved to some extent, the generally punitive attitude of the authorities to the administrative detainee is illustrated by their reaction to a request made on compassionate grounds to the authorities by Ziad Abu 'Ein's family. On Abu 'Ein's re-arrest his mother suffered a major stroke and was admitted to hospital. While she was still conscious but in a rapidly worsening condition Abu 'Ein's brother asked permission for Ziad to be allowed to visit her in hospital. This request was rejected. A repeated request for a visit, as his mother went into a coma, was under study for about three days until she finally died. An urgent appeal for permission for Ziad to attend the funeral was supposedly granted, but despite this Ziad was never in fact released from the prison for the funeral.

It is clear that the practical problems in escorting a single prisoner to hospital for such a visit or to a funeral does not present insurmountable obstacles, and in the light of the claim that Israel regrets impinging on the freedom of the individual the decision seems extraordinary and even vindictive. Furthermore it contrasts strangely with the treatment accorded to the accused in the Jewish terrorist trials in 1984/5, who were charged with serious criminal offences. One of the accused was released to attend his son's Bar Mitzvah ceremony, while another was allowed out for the Rosh Hashana festival and several were taken for a swim by their guards after a court hearing.

The initial impression is that some administrative detainees are now receiving better treatment than that accorded to other prisoners. Some provisions specified in the military regulations remain to be implemented however, and at least one detainee, and possibly more, are effectively suffering the punitive measure of solitary confinement, possibly over a long period of time, and that in a situation where the detainee knows of no limit to the duration of his imprisonment.

CONCLUSION

Administrative detention was described by the then Attorney-General, Yitzhak Zamir, as "an exceptional measure of great severity because of its harsh impact on the freedom of the person". He added that the decision to implement it was arrived at as a result of balancing "the need to defend state and public security and the need to respect the freedom of the individual person" (34).

In this report an attempt has been made to assess whether the reintroduction of administrative detention to the West Bank is justified in the light of that balance, and whether, in view of the admitted severity of the measure, the detainee's interests are adequately safeguarded by the military orders in force in the West Bank. These questions were considered in the light of local and international law.

Although Article 78 of the Fourth Geneva Convention authorises the use of administrative detention in limited circumstances, Article 6 of the Convention provides that this article shall cease to apply one year after the general close of military operations. It is argued that this article cannot therefore be used to justify the

use of administrative detention in the West Bank where the occupation is in its 19th year.

Even where the Fourth Geneva Convention permits administrative detention it can only be imposed for 'imperative reasons of security' and this is echoed in the Military Orders in force in the West Bank, which authorise it only when required 'for reason of the security of the area or public security'. In addition both courts and Israeli sources concerned with implementing the law have repeatedly stated that it is to be used only as a preventative, not as a punitive measure.

Israel does undoubtedly have a security problem arising out of its occupation of the West Bank, but, as admitted by the Israeli Vice-Premier, the present level of unrest is by no means the worst in Israel's history. Acts of resistance during the 1982 invasion of Lebanon were much greater but far from making use of such stringent measures, the use of administrative detention was actually phased out. On the other hand the pressure on the Israeli government from settlers to take repressive measures against the Palestinian inhabitants of the territories is ever-increasing. It seems likely that it is at least partly in response to these demands that administrative detention has been reintroduced, and not to satisfy immediate imperative security needs. If this is so, however expedient a measure it be, it is not justifiable in international law.

The review procedure provided by the military orders appears on the face of it to provide considerable opportunity for the detainee to challenge the order, but there are many features which together combine to render the review in most cases little more than a formality.

The detainee is faced throughout the proceedings by 'security reasons' behind which he cannot look, and which he is effectively unable to challenge. Security reasons justify his initial

detention; it is security reasons which justify the refusal to allow him to see the evidence, and which justify also the refusal to allow him to examine the informant or even to know the nature of the evidence against him; it is also security reasons which allow the judge to vary the rules of evidence, and security reasons allow the detainee's exclusion from the court. Finally it is presumably security reasons that dictate the inevitable secrecy of the session and of the proceedings so that the need for security cannot be assessed by others.

Despite the disadvantages suffered by the detainee, the burden of proof is on him to prove that the order is not required for reasons of public security or the security of the area, both in the review session and on appeal. The Area Commander is not required to prove that the order is justified. The detainee and his lawyer are thus set the task of shadow-boxing, arguing against an order while knowing only rudimentary details of the information which is before the judge and on which he will base his decision.

The judges charged with reviewing the order and hearing any appeal are not only not independent, being military officers themselves, but are actually officers of a lower rank than the Area Commander who issues the orders. They are thus placed in the unenviable position of having to assess the actions of their military superiors; it can be surmised that many an officer would wish to avoid having to say that his superior officer had misjudged the security situation, and indeed it is indicative that to date not one of the 62 orders of administrative detention made since its reintroduction has been reversed on review.

In any case, as explained above, decisions of the High Court have strictly limited the scope of the review, most importantly by stating that the review court may not substitute its own

considerations for those of the issuing authority. The review judge is thus limited in effect to considering whether there is a technical flaw in the order or whether the reasons for which it was issued are prima facie improper, and the power is left substantially in the hands of one individual, the Area Commander.

Finally, there is no public scrutiny of the proceedings since all hearings must be held in closed session. Such lack of public accountability, especially as a routine measure, gives dangerous opportunity for abuse of the process. The lawyer himself is forced to choose between participating in lending an appearance of judicial respectability to these proceedings and leaving his client without representation; the path which is not open to him is to criticise in public the procedures followed by the court in any one case, since this would violate the secrecy imposed on him by the court.

Because of the secrecy of the proceedings it is generally impossible to say whether justice is done or not in any one case. Neverthless, what is very clear is firstly, that there exists considerable potential for abuse of the process by any one of the individuals involved at each stage, and secondly, that justice is most certainly not seen to be done.

Israel is jealous of its claim to be a democratic country, observant of the rule of law. The reintroduction of administrative detention and the inadequacy of the legal safeguards for those subject to these draconian orders makes this claim difficult to substantiate.

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3. Professor Y.H. Klinghoffer quoted by Alan Dershowitz in op.cit. p.314.
4. See explanatory memorandum issued on the tabling of the Emergency Powers (Detention) Law 5739-1979 before the Knesset: (1977/78) Hatzaot Hok (Bills of the State of Israel)(no.1360)294.
5. See National Lawyers Guild, 'Treatment of Palestinians in the Israeli-Occupied West Bank and Gaza', (New York, 1978) p.81/2 and Shtereet, Simon 'A Contemporary Model of Emergency Detention Laws: an Assessment of the Israeli Law', IYHR Vol.14 (1984) p.187 both of which cite numbers of those administratively detained at various dates obtained from different sources.
6. Military Order 378 Article 78.
7. See for example Amnesty International Report 1980 p. 339, the National Lawyers Guild, op.cit. p.79-82, UN General Assembly Resolution 36/147 C7(g) of 16.12.81 and UN Commission on Human Rights Resolution No. 1A,B, (XXXVII) of 11.2.81, as well as Israeli individuals such as the journalist and writer Amos Kenan and the lawyer Felicia Langer.
8. In October 1984 Amnesty International published a report entitled 'Town Arrest Orders in Israel and the Occupied Territories' in which they concluded that "Although town arrest orders may only be issued when they are deemed by the

military authorities to be essential for reasons of security, Amnesty International believes that the curtailment of these people's freedom of movement is in many cases a punishment for their non-violent political activity. Amnesty International is also concerned that they are restricted without being formally charged or brought before a court of law."

9. Law in the Service of Man maintains a regularly updated list of all those subject to such restriction orders. See also a report by Amnesty International 'Town Arrest Orders in Israel and the Occupied Territories', (London, 1984).
10. On 20 May 1985 Israel released 1150 political prisoners in exchange for the release of 3 Israelis captured in Lebanon by the DFLP-GC.
11. MacDermot, Niall (Secretary-General of the International Commission of Jurists), Draft Intervention on Administrative Detention to the UN Commission of Human Rights, ICJ Newsletter No. 24, Jan/March 1985, p.53.
12. The General Assembly of the United Nations and most governments in the world, including that of the United States, hold that the Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War is applicable to the occupation of the West Bank. Israel however maintains that the Convention is not applicable to the occupation, but declares that it voluntarily observes the humanitarian provisions of the Convention.
13. Pictet, Jean, 'Commentary to the Fourth Geneva Convention', (ICRC, Geneva, 1958), p.367.
14. MacDermot, Niall, op. cit. p.52.
15. The Jerusalem Post, 6 September 1985.
16. See Shehadeh, Raja and Kuttab, Jonathan, 'The West Bank and the Rule of Law', (Geneva, 1980), p.24-5.

17. In the case of Al-Khouri v. the Chief of Staff, HC 94/49 4 P.D. 34A, 4b, an administrative detention order was rescinded solely because it did not specify the place of detention.
18. Hadar, Col. Zvi, 'Administrative Detention Employed by Israel', IYHR 1 (1971) p.285.
19. Zamir, op.cit. p.158-9.
20. Hadar, op.cit. p.285.
21. A.A.D. (Appeal Against Administrative Detention) 1/82, 36 (1) P.D.666.
22. supra p.669
23. A.A.D. 18/82
24. supra, note 10.
25. Article 85(1)(a) of the Defence (Emergency) Regulations 1945 makes it an offence to be a member of an illegal organization and Military Order 101 Article 7A makes incitement an offence. Both provisions are freely used by the military authorities to imprison youths in the occupied territories.
26. Regulations concerning Administrative Detention (Rules of Legal Trials and Dates for Presenting Appeals), 1981.
27. Israeli Section of the International Commission of Jurists, 'The Rule of Law in the Areas Administered by Israel', (Jerusalem 1981), p.73.
28. A.A.D. 1/80 35(2) P.D.253.
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MILITARY ORDER 378 - AN ORDER CONCERNING SECURITY REGULATIONS 1970 (extracts)

Chapter 5. Restriction and Surveillance Orders

Restriction on Exercise of Powers

Article 84 (a) No military commander may exercise his authority under Chapter 5 unless he believes that the order is necessary for imperative reasons of security.

Administrative Detention

Article 87 (a) If the area commander has reasonable cause to believe that reasons relating to the security of the area or public safety require that a particular person be detained he may, by order under his hand, direct that such person be detained for a period stated in the order, provided that it shall not exceed six months.

(b) If the area commander has a basis for believing at the end of the period stated in the order issued according to sub-paragraph (a) (hereafter 'the original detention order'), that reasons related to the security of the area or public safety continue to require the detention of that person, he may, by order signed under his hand, order from time to time the extension of the period of the original detention order for a period not exceeding six months, and the extension order shall be considered for all purposes as the original detention order.

(c) If any military commander who is a district commander has reasonable grounds for believing that the conditions under which an area commander may order the detention of a person under sub-paragraph (a) are in existence he may by order signed under his name order the detention of that person for a period not exceeding 96 hours,

which cannot be extended except by an order of a military commander.

(d) An order under this article may be issued in the absence of the person to whose detention it relates.

Execution

Article 87A The detention order under this chapter may be executed by a soldier or a policeman and shall serve as a document for the confinement of the detainee in the place of detention specified in the order or in any subsequent order.

Judicial Supervision of the Detention Order

Article 87B (a) If a person is arrested according to an order issued by an area commander under this chapter, he shall be brought within 96 hours of his arrest, and if he was immediately before that time under detention by virtue of an order issued by a military commander who is a district commander, then within 96 hours of his arrest according to the order of the military commander who is a district commander, before a legally-qualified judge as defined in Article 3(c)(i) of this order and such a judge may confirm the detention, revoke it or reduce the period of detention stipulated, and if the detainee is not brought before the legally-qualified judge and he does not begin to deliberate on the matter during the said 96 hours he shall be released unless there is other reason for his detention under any law or security legislation.

(b) The legally-qualified judge shall cancel the detention order if it is proven to him that the reasons for which the order was issued were not objective reasons relating to the security of the area or the public safety or that the order was not issued in good faith, or that it was issued for irrelevant considerations.

Periodic Review

Article 87C After the confirmation of the arrest order issued under this chapter with or without any charges being made thereto, as long as the detained person has not been released the legally-qualified judge shall review his detention within a period not exceeding three months from the confirmation of his arrest under Article 87B or after the issuance of the decision according to this Article or during a shorter period specified by the legally-qualified judge in his decision and if the review before the judge is not initiated during the said period such detainee shall be released unless there is another reason for his arrest under any law or security legislation.

Deviation from the Rules of Evidence

Article 87D (a) In the proceedings taken under Articles 87B and 87C, it shall be permitted to deviate from the rules of evidence if the legally-qualified judge is convinced that such a deviation is useful for the purposes of revealing the truth and achieving justice.

(b) If it is decided to deviate from the rules of evidence the reasons for such deviation shall be recorded.

(c) In proceedings taken under Article 87B and 87C, the legally-qualified judge may accept evidence even in the absence of the detainee or his attorney, or without revealingsuch evidence to them, after he has examined the evidence or heard contentions even in the absence of the detainee or his attorney and was convinced that revealing such evidence to the detainee or his attorney is likely to harm the security of the area or the public safety. This text shall not reduce or derogate from the right not to present evidence under Article 9A of this order.

Appeal

Article 87E (a) The decision of the legally-qualified judge to confirm the detention order, with or without introducing any amendments to it or cancelling it, and also his decision under Article 87C, shall be subject to appeal to the president of the court, as defined in Article 3C or before a president appointed under Article 3C(ii), and the president of the court or the delegated president shall have all the authorities of the legally-qualified judge under this article.

(b) An appeal does not delay the execution of the order unless the legally-qualified judge or the president of the court determine otherwise.

(c) The detainee may be present in all the proceedings under Article 87 and 87C to 87E, taking into consideration the provisions of Article 87D(c).

Secrecy of Proceedings

Article 87F Proceedings under this chapter shall take place behind closed doors and in secret.

Rules of Proceedings

Article 87G The area commander may issue regulations for carrying out this chapter, including regulations regarding the rules of procedure for any proceeding under this chapter, the date for presenting an appeal, and any other action undertaken under this chapter.

Non-delegation of Powers

Article 87H The powers given to the area commander under this chapter may not be delegated.

Article 87J The text of Articles 87H shall not derogate from the authority of the area commander to cancel any detention or order issued under these articles whether before it is confirmed under Article 87B or thereafter.

ORDER CONCERNING SECURITY REGULATIONS 1970

REGULATIONS CONCERNING ADMINISTRATIVE DETENTION (TERMS OF CONFINEMENT IN ADMINISTRATIVE DETENTION)

According to the authority vested in me in article 87G of the Order Concerning Security Regulations for the year 1970 I hereby issue as follows:

Definitions

1. In these regulations:

"The commander" - as defined in the order concerning the operation of prison institutions (West Bank) (Number 29) for the year 1967.

"The commander of a military institution" - hereafter

"military institution" - when the detainee is held in a military institution.

"The place of detention" - the place stipulated as the place of detention for the detainee in the detention order issued under the order.

"The detainee" - the person detained under the order.

Isolation

2. The detained person shall be isolated in the place of detention from others who have been sentenced or are being detained pending trial.

Solitary Confinement

3. (a) The commander may order that a detained person be held in isolated confinement if he was convinced that that is necessary for reasons required by the security of the area or the maintenance of discipline in the prison or the safeguarding of the health or safety of the detained person or of other detainees.

(b) The commander may also, at his discretion, order the detention of the person in solitary

confinement based upon his own request.

(c) If the commander orders that the detained person be held in solitary confinement he must reconsider this order at least once every two months, or before that if he is requested to do so by the detained person and he finds that there is reason for the reconsideration.

(d) After a detained person has been kept in solitary confinement for a period exceeding three months he shall have the right to object before the commander of the area to the last decision taken by the commander for his solitary confinement, and in such a case the commander of the area may, at his own discretion either order the continuation of the solitary confinement or its cancellation.

(e) The commander shall not order the solitary confinement of a detainee for a period exceeding six months except after obtaining a confirmation from the commander of the area.

Clothing

4. (a) The detainee may not wear any badges or symbols other than those used for religious purposes. Such items must be made of material and be of a size that is reasonable and common.

(b) The detainee shall not wear any official uniform.

(c) The detainee has the right to wear his private clothes in prison unless there is something in them that is contrary to proper order or health.

(d) A person who is detained in a military compound shall wear the clothes that are given to him by the commander.

Receiving Clothes and Foodstuffs

5.(a) A person detained in a prison shall be given the meals that are offered to the jailers there.

(b) If there is a canteen in the place of

detention the commander may permit the detainee to buy his materials from there.

(c) Food shall not be prepared for the detainee in a manner other than is provided in this article except with permission from the commander.

Medical Examination and Care

6. (a) The detainee shall be examined once a month by the doctor who is appointed by the commander and also at any other time when it is necessary.

(b) The detainee has the right to receive medical care and medical items that are necessitated by his medical condition.

(c) If the doctor determines that the health of the detainee or his life is in danger and the detainee refuses to receive the care which is decided on by the doctor the necessary force may be used to carry out the doctor's instructions in the presence of the doctor.

Exercise

7. (a) The detainee shall go out to exercise under the open sky for a period of not less than two hours daily. However the commander may, based on the request of the detainee, relieve him of the obligation to go out for exercise if he finds that there is a reasonable reason for that.

(b) The commander may order that the person not go out for exercise for a period not to exceed three consecutive days at a time, if he is convinced that that is necessary for reasons dictated by the security of the area or the discipline in the prison or the care for the safety or health of the detained person.

(c) The commander shall specify the manner of the exercise.

The Right to Receive Personal Possessions

8. (a) The detainee may receive from the commander personal items from the items that he deposited

when he entered the prison, if he needs to use them. There is also a right to receive bathing and hygienic equipment which is necessary for his use provided that it shall not consist of items which it is prohibited to possess in prison.

(b) The detained person shall have the right to keep with him a Bible, Qur'an or New Testament or whatever he needs of worship material to carry out ceremonies of worship according to his religion.

(c) The detainee shall be permitted to receive the newspapers and books which are approved by the commander for reading.

Work

9.(a) The commander may according to his discretion and based on the request of the detainee, permit him to carry out the work which is specified in the permit within the premises of the place of detention in return for pay. The commander may also permit him to carry out any other work for his own private benefit.

(b) The detainee must arrange his own bed and keep it clean and the room in which he is in order, but beyond that he shall be exempted from the obligation to do any work.

Receiving Cigarettes

10.(a) The detainee who has proven to the commander that he is a habitual smoker shall have a share of cigarettes equal to that usually given to prisoners in the prison.

(b) The detainee may receive from a person outside the prison an amount of cigarettes not exceeding 400 cigarettes a month if he has convinced the commander that he is a habitual smoker.

(c) If the commander is convinced that the detainee is using the cigarettes in a manner which infringes upon discipline, he may deny him or limit his right to receive cigarettes.

Visits to the Detainee

11. (a) The detainee shall have the right to be visited in the place that is specified by the commander for a period of half an hour as follows:
(i) one visit to members of his family once every two weeks; members of his family in this article shall include any of his parents, grandparents, spouse, siblings and children
(ii) a visit from a person in any other degree of consanguinity or any visitor to whom Article 12 applies - by means of a special permission given by the commander according at his discretion.

(b) The commander may, at his discretion, permit visitors mentioned in Article (a)(i) to conduct a special visit or more frequent visits to a particular detainee.

(c) The number of visitors during a single visit, other than the spouse and the children shall not exceed three except by special permission given by the commander at his discretion.

(d) Despite what is mentioned in subparagraph (a), the commander may prohibit visitors generally or prohibit a particular visitor from visiting a particular detainee if he is convinced that that is necessary for reasons required by the security of the area. And in this case the prohibition shall be relayed to the detained person and if the prohibition shall exceed 2 months, the detained person may appeal that decision before the commander of the area who shall have the right to confirm the prohibition, limit it or cancel it.

(e) If the commander prohibits visits according to subpara graph (d) he shall reconsider such an order at least once every 2 months, or if the detained person or the visitor requests that he shall reconsider this decision at an earlier time and the commander finds that there is reason for such reconsideration.

(f) Nothing in this article shall derogate

from the text of article 12 concerning visits by a lawyer to the detained person.

Visits to a Detainee by a Lawyer

12. (a) If the detained person asks to meet a lawyer to conduct his legal affairs, the commander must permit that as soon as possible and in the place that is appointed by him.

(b) The commander, with the approval of the area commander may prohibit any meeting with the lawyer for a period not exceeding 15 days if he is convinced that there are reasons of the security of the area that require such a prohibition.

(c) The provisions of Article 13 shall not apply to a visit by a lawyer under this article.

Presence During a Visit to the Detainee

13. (a) Any person delegated by the commander shall be present throughout the visit if the commander is convinced of the necessity of his presence for reasons required by the security of the area, public safety, or security in the prison.

(b) A person who is so authorized, may halt the conversation of the visitor with the detained person if he is convinced that such conversation must be interrupted for reasons required by the safety of the area, public safety or security in the prisons and he may take all other reasonable measures to prevent any harm to them occasioned by the visit.

(c) The detained person may present an appeal against the interruption of his conversation to the commander who may, at his discretion, decide whether to permit the continuation of the conversation or its termination.

Letters

14. (a) A letter under this article shall mean

anything written or typed or drawn, or calligraphy, or the use of any other means to transmit numbers, words or figures.

(b) The detained person shall not issue or receive any letter except through the commander.

(c) The detained person may send four letters and four postcards every month to a person outside the prison and he may send them more frequently by a permission issued by the commander at his discretion.

(d) The number of letters mentioned in subparagraph (a) shall not include letters sent by the detainee to the authorities of the area command, the authorities of the State of Israel or to his lawyer.

(e) Despite what is written in subparagraph (a) the detained person may not send the books and newspapers which he has received to outside the prison except by permission given by the commander at his discretion.

(f) The detained person may receive letters sent to him from outside the prison.

(g) The commander may exercise censorship over the letters.

(h) The commander may prohibit the sending of any letter, all of it or part of it, by the detained person, or his reception of it if he is convinced that the security of the area so requires and he may do with the letter whose sending or reception he has prevented, as he deems fit.

(j) The commander may refrain from informing the detainee that he has failed to send or deliver to him a letter if he is convinced that the security of the area requires it, except for a letter that is sent to or from one of his relatives mentioned in Article 11(a)(i).

(k) The provisions of subparagraphs (g)(h)and (j) shall not apply to letters sent to the lawyer who is the legal representative of the detainee

verified under Article 12(a).

Prohibition on Receiving or Paying Money

15. The detained person may not receive or pay to others any sum of money except by a special permission from the commander who may give it at his total discretion.

Crimes in Prison

16. Any detainee who commits one of the following actions shall be considered to have committed a crime in his place of detention:

(i) if he carries out any action against the proper discipline and the orderliness of the prison.

(ii) if he has refused to obey a legal order issued by a guard or some other person acting on behalf of the commander.

(iii) if he contacts in writing, verbally or in any other way a person outside the prison, contrary to these regulations.

In that case the commander may impose a punishment of solitary confinement for 14 days.

Escape from Lawful Detention

17. If the detained person has escaped or conspired to escape, or assisted another to escape, the commander may impose upon him the punishment of solitary confinement for a period not exceeding one month. However this article shall not derogate from the provisions of any other law or security regulation.

Delegation of Authority

18. The commander of the area may delegate in writing his authority under these regulations with respect to a particular matter except his authority under Article 3.

The Right to Know

19. (a) As soon as possible after a detained person is brought to a prison he shall be informed of the contents of these regulations.

(b) The detained person may see these regulations and copy them at any reasonable time based upon his request.

Date of Commencement

20. These regulations shall commence 60 days after they have been signed.

The Title

21. These regulations shall be entitled Regulations Concerning Administrative Detention (Conditions of Detention) (West Bank) 1982.

Issued on 31/1/1982

Benyamin Ben Eliezer
Area Commander

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