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ISRAEL AND THE OCCUPIED TERRITORIES

ADMINISTRATIVE DETENTION DURING THE PALESTINIAN INTIFADA

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More than 5,000 Palestinians have been in administrative detention since the beginning of the Palestinian intifada (uprising) in the Occupied Territories in December 1987; most of them for six months; some repeatedly. At least 1,100 are reported to be in detention at present, the vast majority in harsh conditions in the Ketziot detention centre in Israel.

Administrative detention in Israel and the Occupied Territories can and has been abused to detain prisoners of conscience, held for the non-violent exercise of their right to freedom of expression and association.

Existing procedural safeguards are insufficient to prevent abuse of the detainees' right to challenge their detention, particularly their right to be informed promptly and fully of the reasons for their detention. In the Occupied Territories, in many cases the first if not the only opportunity detainees have to learn about the reasons for their detention is at an appeal hearing which takes place weeks or months after arrest. Even then in almost every single case detainees and their lawyers are not given sufficient specific information about the reasons for detention to enable them to exercise effectively the right to challenge the detention order.

Amnesty International recommends that the cases of all administrative detainees currently held in Israel and the Occupied Territories be urgently reviewed. It also recommends that the Israeli authorities review the appropriateness and necessity of maintaining the practice of administrative detention without charge or trial.

This summarizes a 36-page document, Israel and the Occupied Territories: Administrative Detention During the Palestinian Intifada (AI Index: MDE/15/06/89), issued by Amnesty International in June 1989. Anyone wanting further details or to take action on this issue should consult the full document.

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ADMINISTRATIVE DETENTION DURING THE PALESTINIAN INTIFADA

I. INTRODUCTION

More than 5,000 Palestinians have been in administrative detention since the beginning of the Palestinian intifada (uprising) in the Occupied Territories in December 1987; most of them for six months; some repeatedly. At least 1,100 are reported to be in detention at present, the vast majority in harsh conditions in the Ketziot detention centre in Israel.

Some people have been administratively detained solely on account of their non-violent exercise of the right to freedom of expression and association. Detainees are rarely told the reasons for detention when they are arrested. Their first and only opportunity for finding out why is usually at an appeal hearing which takes place weeks if not months after arrest. Even then, however, the available information is almost invariably insufficient for them and their lawyers to be able to exercise effectively their right to challenge the detention order.

Administrative detention is a measure used in some countries by executive government authorities to detain people without charge or trial. Because it can deprive people of their liberty without charge or trial international standards emphasize the exceptional nature of the measure and state the need for procedural safeguards. Article 78 of the Fourth Geneva Convention on the treatment of civilians in wartime (and under occupation) states, in Section III entitled "Occupied Territories":

> "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.
>
> Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power."

Jean Pictet's Commentary -- the official commentary of the International Committee of the Red Cross on the Geneva Conventions -- as regards Article 78 states: "In the occupied territories the internment of protected persons should be even more exceptional than it is inside the territory of the Parties to the conflict". It further specifies that "such measures can only be ordered for real and imperative reasons of security; their exceptional character must be preserved".

Article 9 of the International Covenant on Civil and Political Rights makes clear that detention must not be arbitrary and must be based on grounds and procedures established by law (Para 1). Detainees must be informed at the time of arrest of the reasons for their arrest (Para 2). They must also have access to a court empowered to rule without delay on the lawfulness of their detention and order their release if the detention is unlawful (Para 4). All these requirements apply to "anyone who is deprived of his liberty by arrest or detention" therefore apply fully to administrative detainees.

According to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly on 9 December 1988, "[a] person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority" (Principle 11,1). Such "person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor" (Principle 11,2).

Also according to the Body of Principles, "[a] detained person shall be entitled to have the assistance of a legal counsel" (Principle 17,1) and "shall be allowed adequate time and facilities for consultations with his legal counsel" (Principle 18,2). At any time, a detainee and his or her counsel shall be entitled "to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful" (Principle 32,1).

The Israeli authorities assert that they use administrative detention as a preventive, not a punitive, measure and that it is warranted by the special security situation and the danger the state faces from terrorism. In 1983 the Israeli Attorney General stated that administrative detention "must be aimed at striking the right balance, in the circumstances of the case, between the need to defend state security or public security and the need to respect the freedom of the person" (Opinion on Administrative Detention by the then Israeli Attorney General Yitzhak Zamir, published in the Israeli Law Review, Winter 1983).

Amnesty International has for some years been concerned that administrative detention in Israel and the Occupied Territories has been abused to detain prisoners of conscience, held solely for the non-violent exercise of their right to freedom of expression and association. It has also been concerned that detainees seldom receive sufficient information about the reasons for their detention to enable them to exercise effectively their right to challenge the detention order. Since the start of the intifada the use of administrative detention has become widespread. The number of those entitled to issue administrative detention orders has increased and detainees' rights have suffered serious erosion as procedural safeguards which did exist have been dropped.

The information contained in this report was collected through

interviews with Israeli and Palestinian lawyers who have represented administrative detainees between 1985 and 1989, with members of Palestinian and Israeli human rights organizations and with former administrative detainees. Court decisions too have been studied. Amnesty International's concerns about administrative detention have been raised repeatedly over the years with the Israeli authorities.

II. BACKGROUND

A. From 1945 to 1985

Administrative detention as applied in Israel and the Occupied Territories is based on Articles 108 and 111 of the Defence (Emergency) Regulations (DER) enacted in September 1945 by the British authorities governing the Mandate of Palestine.

The 1945 DER empowered the High Commissioner, or a Military Commander, to order the administrative detention for up to a year of any individual if they were of the opinion that it was "necessary or expedient to make the order for securing the public safety, the defence of Palestine, the maintenance of public order or the suppression of mutiny, rebellion or riot". Shortly afterwards the order's one-year time limit was lifted and the British authorities were thus entitled to order indefinite administrative detention. These provisions were mainly prompted by the violent activities of the Jewish underground.

Although opposed by Jewish leaders at the time, the DER were retained after the State of Israel was established in 1948. During the early years of Israel's existence administrative detention was used by the government to deal with Israeli opposition groups. Its use then became infrequent. Following the June 1967 Arab-Israeli war the DER were extended to apply to the newly occupied territories, the West Bank and Gaza. Israeli provisions for administrative detention in the Occupied Territories were eventually introduced by the April 1970 Military Order 378 (Order Concerning Security Regulations).

According to Article 87 of this Order, a Military Commander, or whoever the latter so authorized, was entitled to order an individual's indefinite administrative detention. This Article also provided for the establishment of a judicial appeals committee to hear appeals against detention orders and to review automatically an individual's detention at least every six months. Article 84-A of the Order stated that a Military Commander was not to use these powers "unless he is of the opinion that it is necessary to do so for imperative security reasons".

In 1970 about 1,130 Palestinians were reportedly in administrative detention in the Occupied Territories. In later years the number decreased, and by 1978 only between 20 to 30 Palestinians were so detained. There were some cases of long-term detention without charge or trial.

Following increasing international and domestic pressure to curb the use of administrative detention or to abolish it altogether, in March 1979 (5739 Hebrew calendar) the Israeli authorities enacted the Emergency Powers (Detention) Law which introduced greater administrative and judicial safeguards in Israel proper. In 1980 similar provisions were extended to the Occupied Territories by a series of military orders (including Orders 815 and 876 for the West Bank and Orders 628 and 667 for Gaza).

Under these new provisions the Minister of Defence or a Military Commander could issue administrative detention orders if they had "reasonable cause to believe" that "reasons of state security or public security" (for Israel) or "reasons of security of the area [under military command] or public security" (for the Occupied Territories) so required. A maximum time limit of six months was set for the duration of each administrative detention order. Once it had expired, however, an order could be renewed indefinitely for up to six months.

In both Israel and the Occupied Territories fresh judicial review procedures were introduced. Judges were empowered to confirm, reduce or cancel a detention order if it was proved that the order had not been issued for "objective reasons" of security , or "was made in bad faith or from irrelevant considerations". Deviations from normal rules of evidence were allowed and proceedings were to be conducted in camera.

In Israel and in East Jerusalem an automatic judicial review of the order by the President of the District Court was required within 48 hours of arrest. The judge's decision could be appealed against to the Supreme Court, sitting as the High Court of Justice.

In the Occupied Territories a review of the order by a Military Court judge was required within 96 hours of arrest. The judge's decision could be appealed against to the President of the Military Court in the Occupied Territories and afterwards to the High Court.

Moreover in both Israel and the Occupied Territories a second automatic judicial review of the order was required (no later than three months from the first judicial decision) by the District Court in Israel and by a Military Court judge in the Occupied Territories. The same appeals procedures as those applicable to the initial judicial review could still be followed by the detainee.

After the introduction of these provisions the use of administrative detention decreased significantly. At the end of 1980 there were no more than seven administrative detainees in the Occupied Territories. In 1982 'Ali 'Awad al-Jamal, who had been in administrative detention continuously for almost seven years and was the sole remaining administrative detainee at the time, was released. Alternative measures, such as restricting people to their towns or villages, were increasingly used instead.

B. From August 1985 to December 1987

In August 1985 the Israeli cabinet announced that it was reactivating certain administrative measures in order to respond to "terrorism and incitement" in the Occupied Territories. These measures included deportation, house demolition and administrative detention. The cabinet decision was partly prompted by criticism by the Israeli public of a prisoner exchange in May 1985 in which 1,150 Palestinian political prisoners held in Israel were released in order to secure the return of three Israelis held in Lebanon by the Popular Front for the Liberation of Palestine - General Command. Many of those released by the Israeli authorities had been convicted of acts of violence and chose to return to their homes in the West Bank or Gaza.

By the first week of September 1985 more than 60 Palestinians were administratively detained, and by December 1987 more than 300 individuals

had been administratively detained at some time since August 1985. All but one of these people came from the West Bank or Gaza. The official number of administrative detainees for 1987 is 164 (147 from the West Bank and 17 from Gaza).

Most of those administratively detained during this period belonged to clearly defined groups. Although some were ex-prisoners released in the 1985 exchange, most were Palestinians believed to be leading figures in their community. They included trade unionists helping to inform workers about their employment rights or demanding better working conditions; student council members who organized seminars on Palestinian history, culture or politics; health workers who had set up mobile health clinics in refugee camps; and other activists who organized local voluntary work, such as street cleaning or olive picking.

Most of those put in administrative detention were active supporters of Palestinian nationalism and viewed the Palestine Liberation Organization (PLO) as their only legitimate representative. They may have helped to organize demonstrations to celebrate days of Palestinian national significance, such as Balfour Day, Land Day or the anniversary of the Sabra and Chatila massacres in Lebanon, or strikes to protest about Israeli policies in the Occupied Territories. They may also have expressed publicly opinions held by one of the PLO factions. Most of these people were believed by the authorities to be operating within legal organizations while actually working on behalf of one of the PLO factions -- which are illegal bodies under Israeli law. They were therefore considered to be engaged in political subversion.

During this period Amnesty International appealed for the release of a number of prisoners of conscience who had been detained for the non-violent exercise of their right to freedom of expression and association. It also expressed concern because in general detainees were not being given sufficiently specific reasons for their detention for them to be able to challenge the orders effectively, and this was conducive to abuse of their rights.

C. After December 1987

On 9 December 1987 demonstrations against the Israeli occupation erupted throughout the West Bank and Gaza, marking the beginning of the period of unrest soon to become known as the intifada. Since 9 December almost every day Palestinians, including children, have staged demonstrations in which stones, petrol bombs and other missiles have often been thrown at Israeli soldiers and settlers. The Israeli authorities have responded with force, which has often been excessive and indiscriminate, using such means as live ammunition, rubber and plastic bullets, tear-gas and gravel cannons. More than 360 Palestinians were reported to have been killed by early April 1989 in shooting incidents alone. Thousands have been injured, many of them requiring hospital treatment. A number of Israeli soldiers and civilians too, as well as several Palestinians suspected of collaborating with the Israeli authorities, have been killed or injured in violent attacks by Palestinians.

As well as demonstrations and riots, mass strikes and tax boycotts have been organized by Palestinians in the Occupied Territories, and popular committees have been set up to coordinate such activities and create alternative structures to the Israeli Civil Administration. They

have organized, among other things, food distribution, medical relief, and educational programs. Some Palestinian employees of the Israeli Civil Administration, particularly police officials, have resigned from their posts.

In their attempt to suppress such activities, the Israeli authorities resorted to various measures. A number of Palestinian newspapers and institutions were closed down and the popular committees proscribed. Currency restrictions were introduced to control money going to families and institutions in the Occupied Territories. New identity cards were issued in the Gaza Strip to monitor the population more closely. More than 60 Palestinians were served with deportation orders and 48 were actually deported. Villages, towns and refugee camps have been put under prolonged curfew, sometimes for a month or more, during which time electricity, water and telephones have often been disconnected. Trees have been uprooted and crops ruined. Dozens of Palestinian homes have been demolished or sealed up as punishment.

During the first few months of the uprising hundreds of teenagers and young men were arrested, summarily tried on criminal charges -- often without legal representation -- and sentenced to several months' imprisonment for throwing stones and setting up roadblocks. In March 1988, however the Israeli authorities decided to make more use of administrative detention.

On 17 March the Israeli authorities issued Military Order 1229 for the West Bank and Military Order 941 for Gaza (Order Concerning Administrative Detainees [Interim Provisions]), extending the power to issue up to six-month detention orders to all officers with the rank of aluf mishne (colonel) and above. These orders also temporarily suspended the prompt, automatic judicial review of administrative detention orders in the Occupied Territories. Although detainees could still appeal, they could do so only to a three-member Advisory Appeals Committee, entitled only to make recommendations to the Military Commander of the military area. The right of final appeal to the High Court of Justice was retained.

The Israeli authorities claim that the March military orders were necessary in order to ease the burden on the prosecutors and the courts created by the increased number of people put in administrative detention. By June it was estimated that more than 2,500 Palestinians were held in administrative detention. In September Defence Minister Yitzhak Rabin stated that 2,700 were being held. By December the number had apparently dropped to 1,450, and by February 1989 it was officially estimated to be 1,100. The overall number of Palestinians who have been administratively detained since the beginning of the intifada was well over 5,000 by April 1989.

All sections of Palestinian society -- not, as before, primarily prominent figures in the community -- have been included. Those arrested have included labourers and the unemployed, trade unionists, students, journalists, doctors, lawyers, academics, teachers, members of voluntary organizations and human rights workers. Many were rounded up during mass arrests after disturbances in which violence was used, or during house-to-house searches at night following disturbances the previous day. The authorities have maintained that some were involved in demonstrations, throwing stones or other missiles, or setting up road blocks. Others were alleged to be activists belonging to organizations deemed illegal by Israeli law (either a PLO faction or one of the popular committees), to

have incited others to carry out or organize disturbances, or to have transferred funds in order to support the uprising. Still others were said to be leading and influential figures in the uprising.

The first appeal under the new procedures did not take place until 1 May 1988; altogether about 30 appeals appear to have been heard by the Advisory Appeals Committee. However, the non-binding nature of this committee's decisions was strongly criticized in Israel. The authorities responded on 13 June by issuing an amendment to the West Bank and Gaza March 1988 Military Orders, which has remained in force ever since. The amendment -- Military Order 1236 -- abolished the three-member Advisory Appeals Committee and replaced it with a single military judge empowered to make binding decisions on whether a detainee's order should be confirmed, cancelled or reduced.

According to official figures, as of August 1988 more than 2,600 appeals had been lodged (over 1,400 of which had been heard), more than 400 orders having been reduced or cancelled as a result. Such appeals take place only if a detainee lodges a request, and they are heard weeks if not months after the arrest. They are normally heard in the detainees' places of detention, which include the detention centres of Ketziot (also known as Ansar III), Katiba (also known as Ansar II), Dhahiriyya, Ofer, al-Fara'a, Tulkarem and Megiddo. In the Ketziot detention camp, where the vast majority of administrative detainees have been held since March 1988, there are apparently two military judges sitting separately who hear appeals five days a week.

The Ketziot detention camp, known as Ansar III, is in Israel in a remote part of the Negev desert near the border with Egypt. Those held here, guarded by the Israeli military, have had to face harsh conditions of detention including poor accomodation (consisting of tents providing little protection from desert temperatures and rain); inadequate medical services; special restrictions on family visits (consequently no visits were reported to have taken place as of April 1989); regular roll-calls three times a day regarded by most detainees as a form of punishment; the seemingly arbitrary use of solitary confinement and other punishments; and the repeated and possibly unjustified use of tear-gas and firearms within the camp.

Detainees in Ketziot have often protested about conditions as well as about the unfair use of administrative detention. Some administrative detainees seem to have been held illegally as court orders for their release or for reduction of their detention have apparently been disregarded by the camp authorities.

The extreme tension in this detention centre has often erupted in clashes between detainees and the Israeli military. Following one such clash in August 1988, in which two detainees were killed, the International Committee of the Red Cross deplored the incident and stressed that "detention and internment of persons from the occupied territories on Israeli soil, particularly in the harsh climatic conditions prevailing in this case, was not compatible with the provisions of the Fourth Geneva Convention, and could only lead to tension and unrest". Further disturbances in Ketziot, in the course of which several detainees were injured, were reported in September and November 1988, and in January and February 1989. Many detainees went on hunger-strike from the end of February until early March 1989 -- again over the general situation in the camp and the use of administrative detention.

Some of the conditions of detention, particularly the overcrowding and the use of enforced standing as a disciplinary measure, were criticized by the High Court in November 1988. The court also recommended the appointment of an advisory committee, headed by a military judge, to monitor the conditions in the camp. No such committee, however, was known to have been created by April 1989. Concern about conditions of detention in Ketziot has also been expressed by the New York-based Lawyers Committee for Human Rights in a report issued in December 1988 and an open letter to the Israeli authorities made public in March 1989. Al-Haq, the West Bank affiliate of the International Commission of Jurists, has repeatedly called for the closure of this detention facility.

Problems encountered by administrative detainees in Ketziot include the difficulty of contacting a lawyer, owing to its remoteness (it is about three hours' drive from Jerusalem, where many lawyers live) and the need to get prior permission for lawyers' visits from the military authorities, who may forbid them. The allotted time for lawyers' visits is very short -- usually only 15 minutes during which time the lawyer is supposed to see several detainees. These visits have been held in a special area of the camp without proper shelter from wind and dust and in the presence of armed guards. Lawyers are also not always told the dates of appeal hearings, which means that detainees have had to ask lawyers who happened to be at the camp on the day of the hearing to assist them, even though they had had no opportunity to prepare the case.

Because of these practical obstacles, on top of the problems to do with the legal issues involved in the use of administrative detention in Israel and the Occupied Territories, lawyers representing Palestinian detainees maintain that it has become extremely difficult, if not impossible, to represent their clients properly.

III. AMNESTY INTERNATIONAL'S CONCERNS

During the late 1970s, and particularly since 1985, Amnesty International has expressed concern about administrative detention to the Israeli authorities, both in letters and in discussions with government officials. Amnesty International's concerns have been twofold:

Firstly, administrative detention can and has been abused to detain prisoners of conscience held for the non-violent exercise of their right to freedom of expression and association. This has been facilitated by the broad formulation of the grounds for detention.

Secondly, existing procedural safeguards are insufficient to prevent abuse of the detainees' rights. One major procedural concern is that detainees are not given sufficient specific reasons for their detention to enable them to exercise effectively their right to challenge the detention order.

These concerns have become more acute since March 1988, when the use of administrative detention became widespread, the number of those entitled to issue administrative detention order increased, and existing judicial safeguards were removed.

A. Broad formulation of the grounds for detention

To reduce the risk of abuse, the formulation of the grounds of administrative detention should include precise guidelines or criteria so that an administrative detention law -- ostensibly introduced as an exceptional measure to detain people who pose an extreme and imminent danger to security -- is not used to detain a much wider range of people who should have been arrested, charged and tried in accordance with the normal laws of penal procedure, or against individuals who should not have been arrested at all. It should clearly exclude the expression of non-violent political opinions or the peaceful exercise of the right to freedom of association. The grounds for administrative detention, as laid down in Israeli law, are broadly worded and liable to wide interpretation.

The Emergency Powers (Detention) Law of 1979 and the parallel military orders for the Occupied Territories require those entitled to issue administrative detention orders to do so when they have "reasonable cause" to believe that "reasons of state security or public security" (in Israel) and "reasons of security of the area [under military command] or public security" (in the Occupied Territories) necessitate the detention of a particular individual.

The 1979 law does not mention the requirement (introduced in 1970 in the Occupied Territories by Military Order 378) that those authorized to issue administrative detention orders should not use such measures unless they are of "the opinion that it is necessary to do so for imperative security reasons". However, this requirement appears to be still in force in the Occupied Territories.

A 1982 High Court decision recognized that administrative detention was liable to abuse if not applied carefully and only as a last resort:

> "The power vested in the Minister of Defence by [the 1979 law] 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 security 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 ... [T]he object of administrative detention under the said Law is not to punish a person for acts he committed in the past, but to avert a danger he may create in the future." (Appeal Against Administrative Detention, 1/82 Qawasme v Minister of Defence 36 P.D. (1) 666, 669).

Amnesty International believes that the broad formulation of the grounds of administrative detention has allowed this measure to be abused to detain people on account of non-violent political beliefs or activities, and has often raised this matter with the Israeli authorities. In their discussions with Amnesty International delegates in January 1987 the Israeli authorities described the kinds of activity that are regarded as a threat to security.

According to the Israeli authorities, administrative detention is intended only for those who act as leaders of the PLO factions by being directly in touch with PLO headquarters, by recruiting for the PLO, by distributing money to members and by stirring up unrest. They admitted that such people may not themselves have committed acts of violence, but

may have helped to organize the PLO, which has committed acts of violence. They stressed that they saw the aim of the PLO as the elimination of the state of Israel by violence, and argued that anyone who was a member of, or active on behalf of, the PLO or any of its factions automatically subscribed to its violent aims and means. They also stressed that administrative detention was used only after other milder administrative measures had been tried, such as restriction orders.

Although the Israeli authorities distinguish between those who have and those who have not committed acts of violence, they do not acknowledge any difference, as far as the gravity of the threat to security is concerned, between violent acts and non-violent activity which they consider "political subversion". This position has been reflected in recent High Court decisions:

> "Indeed there is no actual physical violence in the activities of the appellant. He is not the one who places explosive charges nor the one who sends those who do. But according to the material I have read about him I can say that his activities of coordination between organizations is of inestimable importance to the organizational structure that carries out the terrorist acts of the various organizations, acts we constantly read about in the papers ... The fact that the appellant's activities were of a political nature does not change their destructive characteristics." (Appeal Against Administrative Detention, 1/87 Faisal 'Abd al-Qadir Hussaini v Minister of Defence, 6 December 1987.)

Amnesty International believes that the authorities should show conclusively in every case how "political subversion", where there is no direct involvement in violence, can pose such an extreme and imminent threat to security as to warrant the exceptional measure of administrative detention. If they do not, the measure is liable to be abused and people to be detained on account of non-violent political beliefs or activities.

Amnesty International does not, in any case, share the Israeli authorities' view that any member of or activist on behalf of the PLO automatically subscribes to the use of violence. It believes the PLO is an organization composed of several bodies in which different factions are represented. The vast majority of Palestinians view the PLO as their sole representative and the only vehicle for organized expression of their national aspirations. Not all Palestinians with nationalist views personally use or advocate violence, and membership of or association with the PLO or one of its factions cannot in itself be conclusive evidence that a certain individual has used or advocated violence.

There are also student and women's associations, cultural and trade union bodies which may support the PLO in general, or may even be financed by it, but which are not necessarily engaged in activities involving the use or advocacy of violence. Amnesty International acknowledges that PLO factions advocate armed struggle and have committed acts of violence but also recognizes that PLO bodies and factions carry out both violent and non-violent protest and that it is possible for individuals to support the political aims of the PLO or one of its factions without themselves espousing or engaging in violence.

Since the beginning of the uprising in December 1987, particularly since March 1988, the net has been cast even wider than before. Many of those in administrative detention in the Occupied Territories have been

accused of being active in Palestinian organizations that are illegal under Israeli law (that is, either a PLO faction or one of the popular committees), of trying to recruit others, or of transferring funds to organizations that support the uprising. But they are not necessarily said to have acted as leaders, to have been directly or indirectly in touch with PLO headquarters, or to have been involved in any violent activities.

In Israel and East Jerusalem too the net has been cast wider. For many years the only administrative detainee was Faisal Hussaini, a prisoner of conscience regarded by the authorities as a leading member of the PLO. Since December 1987 more than 130 people have been administratively detained in Israel and East Jerusalem. They have included journalists, trade unionists and members of local organizations.

In reviewing the decision to administratively detain an individual, inboth Israel and the Occupied Territories judges are empowered to confirm, reduce or cancel a detention order if it is proved that the order had not been issued for "objective reasons" of security, or "was made in bad faith or from irrelevant considerations" (as in Article 4 (c) of the 1979 law). The High Court has taken different positions in interpreting the role of the judges in this respect.

In a decision referred to by the Israeli Attorney General in his Opinion on Administrative Detention (1983) the High Court made the following statement:

> "... according to the provisions of the Detention Law, the decison whether to detain a person is not left to the court, but the detention order is made by the Minister of Defence, and he decides whether it is advisable to deny the freedom of a person for the reasons specified in section 2 of the Law. The detention, even if subject to judicial review, is still an administrative detention. The function of the court, when dealing with an application for approval for a detention order is to examine the considerations of the Minister of Defence, as appears from the provisions of section 4(c) of the Law:
>
> > 'The President of the District Court shall set aside the detention order if it has been proved to him that the reasons for which it was made were not objective reasons of state security or public security or that the order was made in bad faith or from irrelevant considerations.'
>
> ... it is clear from the provisions of section 4(c) that the court may not substitute its own considerations for those of the Minister of Defence, and there is not room to compare the court's function of review under the Detention Law to the function of a court sitting in a criminal case." (Appeal Against Administrative Detention, 1/80 Rabbi Kahane et al v Minister of Defence 33 P.D. 257, 258). (Emphasis added.)

However, in 1986 the High Court decided that the judge did have the authority, in accordance with Article 4 (c) of the 1979 law, to examine the evidence more thoroughly and to make an independent decision on whether there were grounds for detention. Judge Beisky refers in this decision to an article by Professor Klinghoffer ("Preventive Detention for Reasons of Security" in Mishpatim 11, 5741):

"It is therefore far from 'obvious' that Article 4 (c) instructs the Court not to substitute its considerations for those of the Minister of Defence. Quite the contrary. Its powers in the meaning of Article 4 (c) are to confirm the detention order issued by the Minister of Defence or not to confirm it in accordance with its own considerations". (Emphasis added.)

Official figures indicate that by the end of August 1988 the number of detention reductions or cancellations amounted to almost 30 per cent of the cases heard. Some lawyers have reported that in as many as 50 per cent of their cases the judge reduced detention; others note that in only five to 10 per cent of their cases was detention reduced. A number of orders have been cancelled outright. Since March 1988, with the increase in the number of detainees and appeal hearings, more reserve officers (as opposed to career military officers), are serving as judges. According to lawyers representing detainees, the reserve officers appear often to be more willing to question the lawfulness of the detention, and this has apparently helped to reduce or cancel detentions.

Generally, however, all lawyers note that the reasons why judges decide to reduce or cancel detention differ. Sometimes the reason is health, age or family circumstances, but at other times such considerations do not apply. Sometimes the reason is procedural irregularities, or so as to take account of a period spent in detention before the order was issued. The introduction of precise guidelines or criteria defining the grounds of detention would reduce the risk of inconsistent or arbitrary decisions on the part of the judges.

B. Failure to provide sufficient reasons for detention

According to international standards all detaineees, including administrative detainees, must have access to a court promptly after arrest. The court should be entitled to rule without delay on the lawfulness of their detention and to order their release if detention is unlawful.

For this remedy to be meaningful detainees must be given the reasons for their detention at the time of their arrest and this information must be specific enough and individualized for them to be able to exercise effectively their right to challenge the lawfulness of the detention. The relevant evidence should normally be made fully available in court to the detainees and their lawyers.

If for very exceptional reasons it is proposed that a part of the evidence should be withheld -- for example on narrowly defined grounds of national security -- there should be a vigorous assessment by the court of the necessity of such withholding. In this context additional safeguards should be implemented to protect against abuse, such as a prompt and automatic review by a higher tribunal of any decision by the court to withhold from the detainee evidence which has a bearing on the case.

1. The detention order

In Israel and the Occupied Territories, administrative detention orders are issued on the basis of information contained in a file compiled by members of the General Security Service (GSS), Israel's internal security service (also known as the Shin Bet). The file is supposed to contain information

about the alleged activities of the individual concerned which the GSS regards as a threat to security warranting administrative detention, and may include details about any previous arrests, convictions and periods in administrative detention or under town arrest. Some of the information in the file may be disclosed to the detainee, but most of it remains classified.

The Israeli authorities stated in a letter to Amnesty International (dated 30 May 1988) that administrative detention orders "must be based on sound and reliable material, not hints or rumours" and on "at least two or more independent, reliable sources of information." The sources used by the authorities are generally believed to be either Palestinian informants or members of the GSS.

The file is sent to the Minister of Defence, or to the Military Commander of the military area concerned in the case of the Occupied Territories, who is required to examine the evidence before signing the detention order. In June 1988 the High Court accepted the appeal of Hatem 'Abd al-Qader, a journalist, on the grounds that the Minister of Defence had not properly assessed the information contained in the relevant file before signing the order to put him in administrative detention.

Written detention orders should normally be served on detainees on arrest together with requests to them to sign them as an acknowledgement of receipt. However, this has not always happened, and since March 1988 such orders have seldom been served on administrative detainees at the time of arrest. Often detainees are not even told by word of mouth that they are being administratively detained.

The written order normally gives the person's name and personal data, dates of arrest and release, designated place of detention, and reasons for arrest. Sometimes the reasons given are vague and standardized, such as:

> "According to the powers vested in me in the meaning of Article 1 of the Order Concerning Administrative Detainees (Interim Provisions) ... and whereas I am of the opinion that this is imperative for decisive security reasons and have reasonable grounds to assume that this is necessary for maintaining the security of the area and public security, I hereby order the detention of:" ('Abd al-Karim Kana'an, order relating to his first period in administrative detention between March and September 1988. He was served a second order of administrative detention in November 1988 and was still detained by April 1989).

Sometimes additional but still vague information is added:

> "He engaged in activities in the university, incitement of students in the university and activities in al-Fatah." (Tareq 'Abd al-Qadir al-Ghul, detained from February to August 1987.)

Very occasionally more information is included:

> "He was arrested in 1981 on charges of being recruited to the Democratic Front for the Liberation of Palestine (DFLP) which he did not admit to and was sentenced on the basis of others' testimonies to 15 months' imprisonment. He is a senior activist in the DFLP and he works for the promotion of the organization's aims in the region." (Majed 'Abdullah Muhammad al-Labadi, detained for six months from October 1985.)

Almost invariably the information on an order is general and not specific about the nature, date and place of the particular actions by the individual concerned which have led to the conclusion that imperative security reasons required the use of administrative detention.

2. The review and appeal hearings

Before the march 1988 procedural changes some additional information about grounds for detention was usually given to detainees and their lawyers at the initial automatic review hearing which in the Occupied Territories took place before a Military Court judge within 96 hours of arrest (in Israel it still takes place before the President of the District Court within 48 hours of arrest).

In the Occupied Territories before March 1988 a review hearing was held before a Military Court judge and usually attended by the military prosecutor, a GSS representative and the detainee and his or her lawyer. The hearing was held in camera. The prosecutor read out the grounds for detention, which normally included information about the detainee's previous arrests and convictions, if any, as well as information about recent activities considered by the GSS to be a threat to security. As previouly mentioned, such information was almost always general rather than specific. This was the unclassified information. Nearly all the specific evidence was classified and was withheld from detainee and lawyer for what were stated to be security reasons.

The detainee's lawyer could question the prosecutor about the information supplied and request more detailed information about the detainee's alleged activities. The prosecutor would reply after consulting with the GSS representative in order to check whether the information requested was considered classified or not. Sometimes more information would be given, but it seldom amounted to much and usually the request was refused on the grounds that the information was classified. In some cases lawyers called for the production of defence witnesses and sometimes this was permitted. However, as far as Amnesty International is aware, lawyers were never allowed to summon "hostile" witnesses such as informants or GSS members responsible for collecting the information, although this was sometimes requested. Questioning the GSS representative at the hearing was usually impossible too, but the lawyer could supply the judge with questions to put to the GSS representative. The length of hearings varied -- some lasted no longer than five or 10 minutes; others may have lasted an hour or two.

After the hearing, the judge would see the GSS representative in closed session and put to him any questions asked by the detainee's lawyer. The judge would also examine the classified material, then decide whether to confirm, reduce or cancel the order.

With the suspension on 17 March 1988 of automatic review hearings in the Occupied Territories, administrative detention orders may be reviewed only at an appeal hearing held at the detainee's request. These hearings take place weeks or months after arrest and often provide the first, or only, opportunity for detainees and their lawyers to learn the reasons for the detention. Even then in almost every single case detainees and their lawyers are not given sufficient specific information about the reasons for the detention to enable them to exercise effectively their right to challenge the detention order.

Delays in lodging appeals often occur because detainees are not always told at the time of their arrest that they are being put in administrative detention and because of difficulties detainees in Ketziot face over contacting lawyers. Another contributing factor appears to be the insufficient number of judges and prosecutors.

The situation has not significantly improved in this respect despite recommendations by the High Court contained in a ruling issued in November 1988. In its ruling, which followed a petition submitted by lawyers of administrative detainees, the High Court stated the following:

> "The lapse of time passing before the appeal hearing is ... one of the most essential questions, since ... it is only then that the detainee may raise his objections with regard to his arrest and his arguments in favour of his release. The fact mentioned [by the representative of the state], that 28% of the appeals lodged until now have received a positive response in the form of ... release or reduction of the period indicated in the original order, cannot but reinforce us in our conclusion that administrative detention without effective judicial control may entail errors of fact or judgement resulting in a person being deprived of his liberty without any objective foundation. All should be done, in this respect, to absolutely avoid such eventualities. The essential means at our disposal to proceed with an effective repeated review, in the present juridical situation (whereby the detainee is not brought within 96 hours before a judge), is to hear the appeals as early as possible. More specifically, the authorities should effectively work towards reducing the period of time between the arrest and lodging of the appeal, and the judicial review.
>
> If it is still impossible to revert to a judicial review close to the time the order was issued, as was provided for [until March 1988], it must at least be ensured that appeals are heard within a maximum of two to three weeks following the date of submission of the first appeal relating to the arrest or to the decision to prorogate the detention order, depending on the case. As far as it is possible, efforts should be made to bring the current regulations closer to those that the Knesset in 1979 considered to be appropriate and correct, and efforts should be made more specifically to shorten to the maximum possible extent the period of time between the administrative decision [to place someone in administrative detention] and the implementation of effective judicial review." [Ibrahim Sajadia et al v Minister of Defence, HCJ 253/88, App. HCJ 323/88, point 9(D)]. (Emphasis in the original).

Remedial measures suggested by the High Court in the same ruling included increasing the number of judges and prosecutors. In this regard the court said:

> "The current emergency conditions have required, without any doubt, the widespread deployment of forces to confront the riots that have erupted in Judea, Samaria and the Gaza Strip ... However, according to the same criteria, efforts should be made and funds allocated to preserve the detainees' rights and increase the extent of judicial review". (Ibid.)

The procedures of the Advisory Appeals Committee which sat between 1 May and mid-June 1988 were not unlike the procedures at previous review hearings (as outlined above) except that this committee was purely advisory.

The single judge appeal hearings, introduced on 13 June 1988, were supposed to strengthen detainees' safeguards by reassigning the judge the power to decide on the order. However, lawyers have complained that these new hearings have been inferior to previous review hearings, particularly during the first months after they were introduced. An Israeli lawyer, who at the beginning of July petitioned the Supreme Court about the single judge appeal hearings, gave the following account of one of them, held in Ketziot at the end of June 1988:

> "It was attended only by a military lawyer [the prosecutor] ... without the General Security Service being represented and without the detainee's personal file being produced.
>
> On the morning of that day the [prosecutor] had been provided ... with a single sheet of paper, in which only about three or four lines related to the detainee. As the [prosecutor] said in his statement, his task was solely that of an announcer reading out a set text. He read out the few lines, declaring that he had no information about the detainee and was totally unable to add the slightest detail to what was written on that sheet of paper.
>
> Throughout the hearing the [prosecutor] did not give the detainee's counsel a copy of the said sheet, although he gave one to the judge. A copy of the administrative detention order was not provided either, in spite of applications to do so ...
>
> Since the few lines read out were virtually uninformative and devoid of any significant details, the detainee's counsel demanded to be given further details giving full information about the material available to the [Military Commander] at the time he decided to issue an administrative detention order, except such details whose disclosure would reveal intelligence sources ...
>
> An apology was read out to the [detainee's counsel] claiming that both the legally trained judge and the [prosecutor] had been faced with a fait accompli and that there was no option other than to hold the hearing on that day in that particular form."

Thus, with the detainee's file and the GSS representative absent from the hearing, the detainee's lawyer was unable to obtain more detailed information. The classified information was examined later by the judge elsewhere with a GSS representative. The judge made his decision without the benefit of any additional information which might have been provided by the detainee's lawyer had details of the evidence against the detainee been made available at the hearing.

Since the first few months of the single judge appeal hearings many of the procedures' inadequacies appear to have persisted. Most hearings are still summary, usually lasting for 10 to 15 minutes unless the detainee is a prominent figure or in cases where, for example, there are medical reports to examine and discuss. The general standard of information disclosed in court is apparently decidedly inferior to that disclosed before March 1988, and it has been noted that detainees' files are usually much slimmer. There is seldom any opportunity to call defence witnesses.

In Israel, the District Court still reviews administrative detention cases. Review hearing procedures in this court are usually better than the appeal hearings before a military judge in the Occupied Territories. Lawyers can call witnesses more easily, including witnesses against the detainee who can be questioned by the detainee's lawyer. They may also question the GSS representative in court. However, although more information may be given in court on the grounds for detention it is usually still insufficient to enable detainees to exercise effectively their right to challenge the order.

The authorities seldom disclose the factual allegations that back the claim that the detainee in question is engaged in activities that jeopardize security. For instance, detainees are accused of "hostile" and "subversive" activities, but the actual form, time and place of such activities are not stated. The amount of information given may vary, but even when a considerable amount is supplied it is apt not to be very specific -- as is revealed by following cases:

i) - engaged in hostile activities of the Popular Front for the Liberation of Palestine (PFLP)
- active in the Polytechnic as a student from 1980 to 1982
(Zahi Jaradat, administratively detained from September to December 1985.)

ii) - active in political subversion
- senior activist for the Democratic Front for the Liberation of Palestine (DFLP)
- member of a DFLP cell in Jenin
- engaged in breaches of the peace from March almost until the time of her arrest
- in October 1987 a town arrest order was issued for her but she continued her activity outside Jenin within the organization
(Rana Muhammad Khatib Sinan, administratively detained on 12 April 1988.)

iii) - a senior al-Fatah activist in Jerusalem, the West Bank and Gaza - as far as the security forces are aware, he belongs to the decision making level of terrorist organizations in Jerusalem, the West Bank and Gaza - his activities are designed to promote the aims of terrorist organizations in the above mentioned areas by disturbing the peace by violence and by threatening state security and public security (Ghassan Abdullah Salah Ayub, administratively detained from 7 March to 6 September 1988.)

Even when additional information about a particular incident is given, or a particular incident is mentioned which might enable the lawyer to prove the allegation unfounded, there may be other allegations which are too vaguely worded to challenge but may constitute the basis for the judge's decision to confirm the order.

Sha'wan Ratib Abdullah al-Jabarin, a human rights worker, is a case in point. He was administratively detained on 17 March 1988 for six months. The explanation given was that he was a senior PFLP activist and had been involved in incitement. At his appeal hearing before the Advisory Appeals Committee in June 1988 the judge decided to disclose additional information from the file -- namely that he had taken part in an incident in his home village of Sa'ir (no date was given) in which an Israeli bus which had by accident turned up in a Palestinian village was attacked and burned. The

lawyer indicated that the incident occurred on 25 March, nine days after the detainee had been arrested and put in detention. The judge argued, however, that the other information (apparently including undisclosed information) was sufficient to convince him that the order should be confirmed. The order was upheld on 2 June. Six months later it was renewed, apparently on the same charges, and al-Jabarin's family home was demolished.

No serious attempt is apparently made to present the information in such a way that a balance is struck between the need to protect sources and the need to comply with the internationally recognized requirement for all detainees to be told why they have been arrested and given a meaningful opportunity to challenge the legality of their detention.

In Israel and the Occupied Territories people are often charged, brought to court and convicted of criminal offences -- including security offences -- on the basis of witnesses' testimonies, including the testimony of GSS members. In 1988 four Israeli editors of the newspaper Derech Hanitzotz were tried on charges mainly relating to membership of the DFLP. The trial was held in open court and witnesses (including members of the GSS) were produced to testify against the defendants. The latter and their lawyers had the chance to examine these witnesses and dispute their allegations.

A Palestinian journalist from Ramallah who worked on the same newspaper was also arrested for similar reasons. However, instead of being charged with a criminal offence and tried in open court, as were his colleagues, he was served with an administrative detention order applicable from 8 March to 15 August 1988. The question arises, why was the Palestinian journalist administratively detained while the Israeli journalists were charged and tried?

An Israeli lawyer who has represented administrative detainees before the District Court has on a number of occasions asked to see the evidence, even though the detainee could not, so that he might be able to dispute the allegations and challenge the order. The request was refused each time on the grounds that the lawyer might inadvertently disclose the information or that it might put him at risk.

Occasionally judges have decided to disclose some of the material which the GSS had decided should remain classified. As regards the cases Amnesty International knows about it is very difficult to understand why such information was classified in the first place. This calls in question the criteria used by the GSS when deciding which information should be classified.

Ahmad Jaradat was administratively detained from 3 September 1986 to March 1987. He was told at the initial review hearing that the reason why he was in detention was that he was a PFLP activist, that he had incited others to take part in hostile activities and that he had organized public disturbances and other nationalist activities. The judge refused to disclose any further information on the grounds that it would threaten security. Ahmad Jaradat appealed against this decision to the President of the Military Court. At the appeal hearing on 20 November the judge rejected the appeal and decided that the following information from the classified evidence might be disclosed:

> "The appellant also said things which include a call to armed activities. For example - a demonstration held on 31 October 1985 at Bethlehem University in the course of which the students, including the appellant, ran riot and clashed with the Security Forces. On 26 March 1986, which celebrated Land Day, there was rioting at the University in the course of which students, including the appellant, threw stones at the Security Forces. Also, on 21 March 1986 during a meeting commemorating "Operation Karame" the appellant made a speech where he said among other things that the "Battle of Karame" had proved that Israel is not invincible and that it should be possible to overcome it again."

The above-mentioned case of Sha'wan Ratib Abdullah al-Jabarin is another example of the difficultly of understanding why the information disclosed -- that he had been allegedly involved in an attack on an Israeli bus -- should have been considered classified in the first place.

Given that information often seems to be unjustifiably classified secret by the GSS it is most important for judges to take a firmer stand over deciding which parts of the evidence should be disclosed. Judges seem reluctant -- even High Court judges -- to use their authority to challenge the GSS on the need to withhold evidence from the detainees and their lawyers. They also seem unwilling to question the evidence provided by the GSS.

The Emergency Powers (Detention) Law of 1979 and the parallel military orders for the Occupied Territories clearly state that at a review hearing the judge may deviate from the rules of evidence if "satisfied that this will be conducive to the discovery of the truth and the just handling of the case" (as in Article 6 (a) of the 1979 law). This permits consideration of hearsay evidence or other evidence which would be inadmissible in a criminal trial.

The 1979 Law and the parallel military order for the Occupied Territories also allow the withholding of evidence from detainee and lawyer by allowing the judge to:

> "accept evidence without the detainee or his representative being present and without disclosing the evidence to them if, after studying the evidence or hearing submissions, even in their absence, he is satisfied that disclosure of the evidence to either of them may impair state security or public security."
> (As in Article 6 (c) of the 1979 law.)

In practice, however, instead of this being the exception rather than the rule it appears that in almost every administrative detention case virtually all the specific evidence is withheld from the detainee and his or her lawyer on the grounds that to disclose it would reveal methods of investigation and sources of information.

In a letter to Amnesty International of May 1988 the Israeli Attorney General offered the following explanation:

> "Regarding the information given to detainees, when danger to state security or public safety exists, administrative detention is resorted to if the evidence proving the existence of danger is not admissible in court according to the rules of evidence or when security considerations preclude the disclosure of the evidence or the sources

of evidence in a regular trial. It is quite obvious why these sources must remain unknown to the accused; their exposure would result, at the least, in their neutralisation, or at the most (and most likely), in their elimination."

The High Court too has taken this line. In the administrative detention appeal case of Rabbi Kahane et al v Minister of Defence in 1980 the lawyer argued that the non-disclosure of evidence to the detainee seriously affected their ability to challenge the order. The High Court ruled:

"There is a great difference between the hearing of an application for the approval of a detention order and an ordinary criminal proceeding. Acceptance of the argument that the approval of administrative detention should not be based on evidence not brought to the knowledge of the detainee or his attorney would almost completely rule out the possibility of using the provisions of the Law precisely in those rare cases where there are weighty reasons for applying the severe measure of administrative detention, i.e. when the danger to state security or public security, which the detention is intended to avert, is very serious. Administrative detention, even if subject to judicial review, constitutes without doubt a serious infringement of a citizen's right not to have his freedom denied ... without proper legal process. Such an infringement is not justified where the authorities have evidence which may lead to a conviction in a criminal case and which can be disclosed to the detainee without impairing state security or public security. Therefore the interpretation of the Law suggested by counsel for the defence would in fact empty the Law of its content. With all our willingness to enable the detainee to defend himself against the detention order and to permit a thorough judicial inquiry, which cannot take place when the detainee does not know the details of the acts or designs imputed to him, we cannot lay down as an inviolable rule that the non disclosure of details to the detainee and his attorney requires us to reject an application for approval of a detention order." (Appeal Against Administrative Detention 1/1980, Rabbi Kahane et al v Minister of Defence, 33 P.D. 259)

Although the Israeli authorities might be able to plausibly maintain that on very exceptional circumstances security considerations may justify the withholding of a particular part of the evidence from detainee or lawyer, the use of the security argument in almost every case of administrative detention -- and there have been well over 5,300 cases in Israel and the Occupied Territories since August 1985 -- is cause for grave concern. Amnesty International does not accept that details of the evidence cannot more often be disclosed and that the authorities could not have used regular criminal trials in more cases.

The approach of some judges to the issue of examining the evidence produced by the GSS is also a cause for concern. In December 1985 the President of the Military Court in Gaza, ruling on an appeal by Raji Sourani, who was administratively detained on 23 September 1985, said:

"The judge presumes that everything brought before him is true. Should he be presented with lies and false evidence, it would be difficult for him from a practical point of view to find out the lies ... The judge presumes that the security authorities will not dare to lie to the court for, if they do, it will be the end, and the danger to security and to the rule of law in Israel and the Gaza district will be ten times more real and serious."

He said this two years before the October 1987 publication of the Landau Report, which contained the findings of a judicial inquiry into GSS interrogation methods. The inquiry had been set up by the Israeli Government and was headed by former Supreme Court President Moshe Landau. According to the Landau Report the GSS had committed perjury over proceedings to do with the admissibility of confessions since 1971 in order to conceal interrogation methods and to ensure that the accused were convicted. The report proposed increased government supervision and control of the GSS.

It is not known how far this has come about and what safeguards there are to ensure that evidence is not fabricated or unintentionally false or to ensure the validity of GSS claims that particular individuals constitute a security risk. There is no reason to assume that all the information gathered by the GSS is necessarily correct; indeed, instances of inaccurate information are mentioned elsewhere in this paper.

On this issue the High Court, in its above mentioned November 1988 ruling, made the following statement:

> "Given the fact that in the majority of cases, if not all of them, confidential evidence that only the judge is allowed to examine is introduced, the detailed study of the case by the judge is of great importance. It must be scrupulously ensured that all evidence relating to the case be actually presented to him. It would not be worthless to add, in this context, that judges are expected never to allow quantity to influence the quality and the detail of the judicial examination.
>
> In receiving classified evidence, the judge may ask himself whether there is other factual information not provided to the detainee which could be disclosed to him, in the opinion of the state, without the risk of harming the interests of security. Since at this stage the possibility of effective cross-examination by the detainee and his lawyer does not exist, the judge must proceed, on his own initiative, with a detailed examination of the information and the position of the army." (Ibrahim Sajadia et al v Minister of Defence, HCJ 253/88, App. HCJ 323/88, point 10)

The inadequacy of the explanation for detention given before or at review hearings has always been a crucial matter, and since March 1988 more so than ever. Lawyers who represent administrative detainees frequently argue in court that enough information has simply not been given to either detainee or lawyer to tell them just why a detention order has been issued. Without such information they are at a loss as to how to challenge the legality of the order.

The internationally recognized guarantees enshrined in Article 9 of the International Covenant on Civil and Political Rights and relevant Principles of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment are an important safeguard against arbitrary or erroneous detention because they allow the reasons for arrest to be tested in court. These fundamental guarantees are contravened insofar as people are being deprived of their liberty on the basis of allegations -- by members of the security services and informants -- which are kept secret.

In Israel and the Occupied Territories administrative detainees are not allowed to question their accusers and challenge the veracity of their allegations. They are usually not even informed of the details of such allegations. As such, questions of fact are irrefutably and conclusively presumed against them. As shown by the case of Sha'wan Ratib Abdullah al-Jabarin (incorrectly accused of having been involved in an attack on an Israeli bus), when detainees are properly informed about the allegations against them they may be able to disprove them.

IV. SAMPLE CASES

A. Raji Sourani

Raji Sourani is a member of the Gaza Lawyers' Association. He studied law at the Arab University of Beirut and at Alexandria University in Egypt. He then returned to Gaza where he worked with a qualified lawyer for a year in order to complete his practical training. He qualified in 1978 and continued to work with the same lawyer until 1979. He is 35 and lives in Gaza.

In 1979 he was convicted of belonging to the PFLP. He was sentenced to an actual and a suspended prison sentence and was released from jail in 1982. His suspended sentence applied until July 1985.

Following his release in 1982 he returned for a year to the office of the lawyer with whom he had worked before going to prison. In 1984 he started his own legal practice in the town of Gaza and began to specialize as a defence lawyer in security cases before the military courts. He helped to monitor the treatment of his clients before, during and after interrogation, made complaints to the authorities and publicized cases if those concerned seemed to have been ill-treated.

First period of administrative detention

On 21 July 1985 he was arrested while visiting a client in prison. He was charged on 19 August 1985 with having belonged to the PFLP since 1983 and having handled the legal affairs of PFLP members in the area. One of the reasons given by the military prosecutor for believing he belonged to the PFLP was that he had defended Gazan PFLP detainees in military courts.

He denied the charges and maintained that he had been ill-treated during interrogation in Gaza Prison. He said he had been handcuffed, hooded and deprived of sleep for five days. At the first court session on 18 September the prosecution asked for an adjournment so that the evidence could be considered. The military legal adviser decided to stop proceedings because he considered there was insufficient admissible evidence to warrant trying him. On 23 September 1985 he was served with a six-month administrative detention order.

The unclassified explanation of his detention, as given at the initial review hearing on 26 September 1985, was as follows:

> "In general, the detainee was an active member of, and the spirit behind, the voluntary work committees, which are part of the Popular Front [for the Liberation of Palestine - PFLP]. During his imprisonment in September 1982 he was in charge of prisoners' activities. He had connections with ex-prisoners and was a member of public organizations (like the Red Crescent Society), university

committees, etc. in November 1984. He was third in command in the left political hierarchy containing the PFLP, the university committees and the high school committees in June 1985. He used his profession as a lawyer to have contacts with prisoners, to obtain information about conditions in the prisons and to have contact with students in Gaza Islamic University in May 1985. He met with ex-prisoners of all kinds in July 1985. Another prisoner under interrogation, Mahmud Jirbawi, gave verbal evidence against Sourani in August 1985, when Sourani was already imprisoned. All other material is confidential."

The lawyer argued that the GSS had fabricated evidence; that Raji Sourani had became a "security risk" only when the authorities were unable to continue the trial, and that the potential threat to security of having contacts with students and ex-prisoners, or any others mentioned by the prosecution, had not been demonstrated. The judge confirmed the order, saying he was convinced by both the confidential and unclassified material that Raji Sourani was a security risk.

Raji Sourani appealed against this decision to the President of the Military Court. At the appeal hearing which took place on 3 December, the lawyer argued that the order had not been issued for security reasons but because there had been insufficient evidence to convict Raji Sourani on a criminal charge. He claimed that the information constituting the grounds of detention had been in the hands of the Military Commander for months. If, as had been said, Raji Sourani's activities constituted a threat to security why had the Military Commander not issued an administrative detention order much sooner instead of waiting for the trial to be stopped?

The appeal judge ruled that it was appropriate for the Military Commander to issue an administrative detention order after the Legal Adviser had decided to stop the trial for lack of evidence so long as the Military Commander considered that the detainee was a security risk and that the evidence against him was inadmissible in a trial.

The lawyer also pointed out that the classified material should have been studied more closely because of the possibility of fabricated evidence. The appeal judge, however, said that:

"The judge presumes that everything brought before him is true. Should he be presented with lies and false evidence, it would be difficult for him from a practical point of view to find out the lies ... The judge presumes that the security authorities will not dare to lie to the court for, if they do, it will be the end, and the danger to security and to the rule of law in Israel and the Gaza district will be ten times more real and serious."

The lawyer also pointed out that the unclassified information at least did not constitute a legal offence and there was no suggestion that his activities amounted to incitement to violence. The judge stated that:

"the applicant, having served three years in prison for security reasons, returned (to his political activities) and became a senior activist in the PFLP, ie he held a senior position in this murderous organization whose aim is to destroy and devastate the area even at the cost of life. The applicant uses his lawyer's profession in a way that makes it possible to say that his professional work is a cover for hostile activity which guides him in this life."

The appeal was rejected. Raji Sourani was released from administrative detention on 20 March 1986. In June he was served with an order restricting him from representing anyone charged with a security offence in the Military Court. The order was lifted in June 1987.

Second period of administrative detention

On 24 March 1988 Raji Sourani was again arrested; this time he was told immediately that he was under a six-month administrative detention order. He was not, however, shown the order nor offered any reason for his arrest.

He was held initially in Ketziot then moved to Gaza Central Prison on 17 April. During the transfer he is said to have been kept blindfold, to have been asked to sing in solidarity with an Israeli military brigade and to have been repeatedly beaten. On 30 March his lawyer lodged an appeal against the order and on 1 May the appeal hearing took place before the newly constituted Advisory Appeals Committee. It was the first case heard by that committee.

The unclassified information disclosed at the hearing as grounds of detention was as follows:

- Raji Sourani was imprisoned and found guilty of recruiting for the PFLP. After his release in 1982 he was a senior activist in the organization in the Gaza Strip. He kept in contact with activists in the organization, including those who had been in prison for many years and were released in the 1985 prisoner exchange.

- He helped to instruct activists on various PFLP committees, including local student and women's committees.

- He refrained from taking part in any kind of open activity.

- He had contacts with activists who discussed actions within the framework of the intifada.

- He was known to be one of those in the higher political echelons of the organization.

The lawyer asked for at least some of the salient details of the evidence to be disclosed, but this request was refused after the Advisory Appeals Committee had discussed it in closed session with the GSS representatives for about 45 minutes.

The lawyer then asked the committee to summon the informants to the hearing so that she could question them. The prosecutor objected and said the committee had no authority to do this.

The lawyer questioned the military prosecutor in order to try to ellicit more detailed information about the accusations against Raji Sourani, but was unable to obtain any more real information. The lawyer then spoke about her client's monitoring and publicizing of human rights violations in Gaza and produced two affadavits, from Knesset member Dedi Zucker and political science professor Ya'av Peled, which bore out the lawyer's opinion that in his contacts with Israelis and when organizing meetings between the two sides, Raji Sourani had been working for peace and co-existence and for a two-state solution.

The military prosecutor, however, maintained that there was another side to him -- that it was a case of Dr Jekyll and Mr Hyde, but that they could not disclose any further details about his activities because such information was classified. The judge stated:

> "It is obvious that the physical confrontation taking place daily between the inhabitants of the region [Gaza] and the Israeli Defence Force originates from the guidance of an active leadership. There is therefore no necessity to show that the appellant personally committed violent activities in order to justify his detention. His 'pulling the strings' and his instigation of the subversive plans behind the scenes, suffice." (Quote from a letter by Colonel Joel Singer, head of the International Law Section of the Judge Advocate General's office, to the President of the American Bar Association, as reported by the Lawyers' Committee for Human Rights in a report published in December 1988.)

The hearing lasted for about two hours and the detention order was confirmed. Raji Sourani was in administrative detention until 22 September 1988.

B. Dr Jad Elias Basil Ishaq

Dr Ishaq, aged 41, is an agronomist and teaches at Bethlehem University. He lives in the nearby town of Beit Sahour which, like many other towns, villages and refugee camps since the outbreak of the intifada, had been increasingly active in a civil disobedience campaign aimed at establishing alternative Palestinian structures to the Israeli Civil Administration in the Occupied Territories. Popular committees have been set up to deal with health, agriculture and education.

Earlier in 1988 Dr Ishaq and some friends formed an agricultural centre in a shed in Beit Sahour. They sold seeds, plants, fertilizer and pesticides, and advised residents how to grow vegetables. Palestinians had started to grow their own vegetables in order to stop being dependent on Israeli-produced food stuffs. Dr Ishaq and his friends began to be harrassed by the Israeli authorities. He received summonses to the military governor's office, his phone was cut off and soldiers stationed near his home reportedly questioned his visitors and shone flashlights through his windows at night. On 17 May 1988 he was arrested and held for about 12 hours. Then, in early June, he and his friends were summoned the Military Government Headquarters and accused of belonging to the popular committees. They were told that their agricultural activities were political and a threat to security. Although Dr Ishaq and his friends denied these accusations they agreed to sign a statement that they would close the shop and stop giving advice, even though it appeared that none of this was illegal. They also said that they would not belong to any popular committees.

Early in the morning on 7 July 1988 soldiers entered Beit Sahour and reportedly began breaking into homes and confiscating identity cards, gold, money, private cars and video recorders. A number of people were arrested and beaten. Residents were told they could retrieve their possessions only after they had gone to the authorities and proved that they had paid all their taxes.

At about 10am several hundred residents gathered in protest inside and in front of the municipal building. They decided to hand their identity cards over to the Israeli authorities via the Deputy Mayor. The latter and the Military Commander started negotiations and the crowd was told to return at 4pm to hear the results. Dr Ishaq was at Bethlehem University that morning but the Deputy Mayor asked him to come over to help in negotiations, which he did, arriving in the early afternoon.

At 4pm the crowd returned to the municipal building. The army ordered the crowd to disperse, but apparently they refused to leave and sat down on the ground. The army then dispersed the crowd, using rubber bullets and tear-gas. Dr Ishaq who was there ran, together with others, into the municipal building, pursued by soldiers. According to Dr Ishaq, "the Commander of the Bethlehem district entered the building and said that people who were assembled there should disperse. I did my best to convince the people to do so and was the first to make my way out. Captain Yacobi sent soldiers to pick me out of the crowd and to arrest me when I was heading homewards." Dr Ishaq was released at 3am on 8 July, but was then rearrested at his home at about 4.30pm. On 12 July he and about seven others from Beit Sahour were served with six-month administrative detention orders.

The Deputy Mayor stated in an affidavit which the detainee's lawyer read out at the appeal hearing:

> "I would like to clarify the following matters related to the part which Dr Jad Ishaq played on that particular day:
>
> 1. Dr Ishaq was not at the Municipality building when citizens started to hand in their identity cards at 9am.
>
> 2. Dr Ishaq came to the Municipality building at about 1pm in answer to a personal request that he and a number of town dignitaries known for their moderation come to the Municipality building to discuss the crisis with me. When he arrived, Dr Ishaq was not aware of what happened before.
>
> 3. While at the Municipality building, Dr Ishaq did not have any part in the handing in or the receiving of identity cards. He did not incite any one at all to hand in his identity card. On the contrary, he helped to quieten the situation, and did not hand in his identity card.
>
> 4. I am deeply dismayed by Dr Ishaq's cruel arrest and I feel that I am personally responsible for what happened to him because I personally asked him to come to the Municipality building. I believe that Dr Ishaq's positive response, and his moderate and balanced efforts to quieten the situation on that day should have been rewarded by respect and gratitude not by his unjust arrest."

Dr Ishaq was initially kept in a detention centre on the West Bank, then on 31 July was moved to Ketziot. His lawyer lodged an appeal shortly after his arrest and the hearing took place on 1 August. The unclassified reasons for his detention, as revealed at the hearing were as follows:

- He was born in 1947 and in 1976 was President of the Orthodox Club in Beit Sahour.

- In the 1970s he took part in demonstrations and in the formation of the teachers' union.

- Since June 1988 he has been known to be a supporter of the Popular Front [for the Liberation of Palestine] and has attended activists' and organizers' meetings.

- He joined in a discussion about collecting money for the Gaza Strip.

- In April 1988 he belonged to a popular committee for agriculture in Beit Sahour.

- Since May 1988 he has been very active in the Bethlehem district encouraging the intifada and persistently urging the public not to pay taxes.

- In July 1988 he was one of the main activists in Beit Sahour over the returning of identity cards and over inciting people to do so.

The appeal hearing lasted for about half an hour. The classified material was not produced at the hearing and as no GSS representative was present,, no additional information on the accusations against Dr Ishaq could be obtained and no questions answered. The lawyer had previously asked for "hostile" witnesses (reportedly, several members of the Israel Defence Force (IDF) and a member of the GSS from the Bethlehem area) to be summoned to the hearing, but this request had been refused.

The lawyer argued that Dr Ishaq had never been involved in any activity that might threaten security. He stressed Dr Ishaq's moderate views, as revealed in such actions as closing down the seed shop when asked to do so, not returning his identity card and using his influence to ameliorate the situation on 7 July. The Deputy Mayor's affidavit was handed to the judge.

As usual, the judge examined the classified material at a later date in closed session in the presence of the GSS representative. He decided to reject the appeal. Part of the decision was received by the lawyer on 7 September, the other part on the 20 September. In rejecting the appeal the judge said:

> "The result of this examination confirms the evidence and information that the appellant is active in inciting the population to turn in identity cards following the disturbances in Beit Sahour. The appellant is active and a leading activist encouraging the uprising against the authorities of the district. The activity of the appellant is harmful to the security of the district and to public order".

Dr Ishaq was released on 29 November 1988.

C. Ribhi al-'Aruri

Ribhi al-'aruri is a Palestinian from Ramallah in the West Bank who worked on the Arabic edition of a newspaper published in Israel called Derech Hanitzoz/Tariq ash-Sharara. He was arrested on 16 February 1988. Two days later the newspaper's licence was revoked by the Israeli authorities.

Four other Israeli Jewish editors on the paper were subsequently arrested too and brought to trial in May 1988 on charges relating to membership of the DFLP. They were convicted in January 1989, after plea bargain, and sentenced to from nine to 30 months' imprisonment. Amnesty International considered them prisoners of conscience.

Ribhi al-'Aruri was arrested late on 16 February at the Jerusalem home of one of the newspaper's editors. He was taken to the Moscobiyya detention centre in West Jerusalem where a police officer informed him that he was being held on the charge of belonging to a hostile organization. In an affidavit given to his lawyer Ribhi al-'Aruri said that while in the detention centre he was beaten and insulted by several police then partially stripped and tied to a wall in a yard with his hands handcuffed behind his back. His head was hooded. He claimed that this treatment was repeated for long periods after he refused to confess to links with the DFLP or that his newspaper had links with it. Before being moved to an ordinary cell, he said that he had been kept for long periods in the "cupboard" (a cell of 60 by 60 centimetres) in further, but unsuccessful, attempts to extract a confession.

On 26 February his lawyer visited him for the first time and applied for his release on bail. At the bail hearing two days later he was accused of belonging to the DFLP, of incitement and of possessing inflammatory leaflets, all of which he denied. He was refused bail and the judge remanded him in custody for a further 15 days in order to complete the investigation saying that if there were no specific charges against him by then he would be released.

On 3 March his lawyer telephoned the Moscobiyya detention centre and was told that he had been released. However, it was later confirmed that he had been moved to Junaid Prison near Nablus in the West Bank and that he had been served with a six-month administrative detention order.

Within 96 hours (in accordance with current procedure) he was brought to the initial review hearing in order to have his order confirmed, but the judge said his case should be considered in accordance with the new procedures that were about to be introduced (that is, the review hearings were to be suspended and the Advisory Appeals Committee was to be set up). The lawyer lodged an appeal, but no date was given for the appeal hearing. On 23 May Ribhi al-'Aruri was moved to Ketziot and his lawyer was told he should lodge another appeal because of this relocation. The appeal hearing finally took place on 20 June before the Advisory Appeals Committee.

The unclassified information on the reasons for detention at the hearing was as follows:

- Ribhi al-'Aruri had been convicted in 1978 of membership of the DFLP.

- He was issued with an administrative detention order in 1985.

- He remained an active member of the DFLP.

- He was active in the intifada: he had written inflammatory leaflets and had had connections with the newspaper Derech Hanitzotz.

Replying to his lawyer Ribhi al-'Aruri denied that he had remained a member of the DFLP after he left prison. He also denied that his connections with the newspaper had been anything other than professional and said he knew nothing about the paper having links with the DFLP.

The prosecutor admitted that he had not confessed to the activities he had been accused of, but would give no further details in reply to questions from the lawyer about the leaflets nor say whether there were any affidavits or confessions from other people nor whether working for a newspaper before it was shut down was illegal. The judge said it was impossible to answer such questions without studying the classified information, which he intended to do later.

Ribhi al-'Aruri's lawyer said that in that case, it would be pointless to ask any more questions, that the allegations were invalid and that the order should be cancelled. After the judge had examined the evidence in closed session he recommended that the order should be confirmed but that the detention period should include the 23 days' detention Ribhi al-'Aruri had served before receiving an administrative detention order. No further explanation of the grounds for detention was given. The hearing lasted between 30 and 40 minutes and the appeal was rejected. Ribhi al-'Aruri remained in administrative detention until 15 August 1988.

D. Ghazi Shashtari

Ghazi Shashtari, aged 27, from Nablus in the West Bank, is a fieldworker for the West Bank human rights organization al-Haq. He has worked for the organization since 1983 and has been administratively detained twice since 1985.

Al-Haq, formerly known as Law in the Service of Man, is the West Bank affiliate of the International Commission of Jurists. It was set up in 1980 by a number of lawyers in the West Bank concerned to safeguard individual and collective human rights in the Occupied Territories. It employs full-time administrative and research staff who document cases of human rights violation and advise detainees and their families about their legal rights. As well as producing a number of its own publications al-Haq also has a legal library. Many individuals and organizations have used al-Haq's publications as a source of information on human rights in the Occupied Territories. Its fieldworkers are trained to collect affidavits and details on human rights violations. They are sent to different places in the West Bank and often work part-time for al-Haq.

First period of administrative detention

Ghazi Shashtari was arrested on 4 September 1985 and immediately served with a six-month administrative detention order which merely stated that the detention would be in the interests of security. He was not questioned when arrested, but some time earlier had been questioned by a security officer about al-Haq and the people who worked for it -- though he had been assured that working for al-Haq was not illegal.

Shortly before his arrest he and another al-Haq worker, Zahi Jaradat, who was arrested at the same time, had been interviewing ex-detainees about health conditions in Israeli prisons. Many of these ex-detainees were prisoners who had been released in the May 1985 prisoner exchange.

The initial review hearing to confirm the order was held on 6 September 1985. The unclassified reasons for detention given at the hearing were that he had been convicted of participating in public disturbances in 1977 at the age of 16 and sentenced to four months imprisonment; that he was a member of the PFLP; that he was an active member of voluntary committees affiliated to the PFLP; and that he had incited people.

The hearing was held in camera and Ghazi Shashtari's lawyers were forbidden to discuss the proceedings outside the court. They requested further details about the activities he was accused of which constituted a threat to security, but no further information was given, for what the authorities said were reasons of security. Twenty-one other cases were heard at the same time and the hearing lasted for three hours, with a half hour recess. After the judge had considered the classified material in closed session with the GSS representative, Ghazi Shashtari's order was confirmed on the grounds that he was suspected of disturbing the peace and committing incitement. There was no explanation of what the alleged incitement had consisted of. He was sent to Junaid prison near Nablus.

An appeal on his behalf was lodged with the President of the Military Court. At the hearing, which took place on 20 October, his lawyers argued that the judge at the review hearing had failed to consider imposing a less severe penalty, such as restriciton to his home town. Ghazi Shashtari had not been questioned when he was arrested nor, so his lawyers contended, had any serious attempt had been made either to obtain evidence which would have been admissible in normal court proceedings, or to check whether the information already acquired was correct.

The appeal was rejected. Ghazi Shashtari remained in administrative detention until 3 March 1986. The day of his release he was questioned again by a security officer about his work for al-Haq.

Second period of administrative detention

On 9 December 1987 he was driving to Balata Refugee Camp near Nablus to do fieldwork for al-Haq. According to his account, when he entered the camp a soldier struck his car. When he got out to ask why, the soldier hit him then another struck him on various parts of the body. He lodged a complaint that day at Nablus police station.

According to his account, a few days later an official of the Civil Administration known as Charlie Danino came to see him at his parents' house together with a number of soldiers. Charlie Danino threatened him with reprisals because of his complaint to the police. The previous March Ghazi Shashtari had apparently been questioned about his activities for al-Haq by this same official, who had said that if he saw him around the refugee camps, hospitals or schools in or near Nablus he would have him arrested.

Early on 19 December Ghazi Shashtari was arrested at his home without being given any explanation. His lawyers tried for several days to find out where he was and were eventually told that he was in al-Fara'a detention centre. They were allowed to visit him for the first time on 30 December. He had not been interrogated but he gave his lawyers detailed information about at least two Palestinian detainees he said had undergone electric shocks during interrogation in al- Fara'a. This information was

later publicized at a press conference on 6 January 1988 in Jerusalem by the two detainees' lawyer. The IDF denied the allegations. On 6 January 1988 Ghazi Shashtari was served with a six-month administrative detention order which stated that "reasons of area security" necessitated the detention.

The grounds for detention were stated to be:

- he had been an active PFLP member who had promoted the organization's aims and provoked public disorder in the area;

- his various activities had reduced the security of the area and its inhabitants and, should they continue, would harm them in future.

At the initial review hearing on 11 January 1988 the authorities did not say which incidents he was supposed to have instigated or which of his activities were supposed to have reduced the security of the area and its inhabitants.

The hearing, which was in two sessions, lasted altogether about two and a half hours. At the first session the lawyer asked for more specific information about the things his client was accused of having done -- for instance, the date, place and size of the demonstration he was supposed to have taken part in and the part he played in it. No such details were, however, forthcoming. He asked whether the fact that his client worked for a human rights organization or his dispute with Charlie Danino and his injury were mentioned in the file. The judge replied that these facts were not included in the file. The lawyer then expressed concern as to the reliability of the informants who had supplied the information against Ghazi Shashtari and gave the judge a list of questions to bear in mind when considering the classified information: Were the informants hostile to the detainee? Was the evidence based on affidavits or memos? Had the informants ever lied in the past in court? Finally the lawyer pointed out that his client had been preoccupied for some while before his arrest with his wife who was in hospital and therefore would have had little time to instigate disturbances.

At the second session the judge said he had now considered the classified information, that no further information would be disclosed and that there were grounds for detention. Two people were questioned by the lawyer: the detainee himself who described the nature of his work, the nature of his relationship with Charlie Danino and his wife's illness; and the director of al-Haq, who explained what the organization was, the kind of work it undertook, how it selected its staff and how fieldworkers gathered information by, for instance, meeting recently released prisoners and visiting injured people in hospital immediately after disturbances. She said it was understandable that the GSS might jump to conclusions about Ghazi Shashtari and unintentionally make mistakes.

Ghazi Shashtari's detention order was, however, confirmed. It was renewed on 20 June 1988, no further information being offered. His lawyers appealed against the decision. They were not informed that the hearing was to take place on 23 August and in their absence Ghazi Shashtari asked another lawyer (who happened to be at Ketziot that day) to represent him. The appeal was rejected.

In July 1988 the Israeli Ambassador to the United States responded to an inquiry by a US Senator by stating that Ghazi Shashtari was "identified

with the Popular Front faction of the PLO and has been active on its behalf. He was detained for distributing manifestos calling for civil disorder." (Quoted by the Lawyers' Committee on Human Rights in a report published in December 1988).

In a letter dated 25 August 1988 the Director of the Human Rights and International Relations Department at the Israeli Ministry of Justice replied to Amnesty International's appeals for the release of Ghazi Shashtari, stating the following as regards the period before his arrest in December 1987:

> "Upon the expiration of the detention order on 2 March, 1986, Mr. Shashtari was asked to sign a statement to the effect that he would not revert to subversive activities. He refused.
>
> From the date of his release in March 1986 and onwards, information accumulated on Mr Shashtari indicating an ongoing connection with the PFLP, including initiating and organizing violent demonstrations. He was the representative of the Nablus PFLP in the annual Bir Zeit University celebration of "PFLP Day" (a day set aside to glorify the PFLP and its terrorist "achievements"). He was also involved in the publication and distribution of pamphlets calling for public disturbances and was a chief inciter of the violent incidents in the administered areas which began on 9 December, 1987.
>
> In light of these facts, and additional information indicating continuing involvement with terrorist organizations, Mr. Shashtari was detained on 19 December, 1987, and an administrative detention order was issued against him on 5 January, 1988, for a period of six months. Mr. Shashtari's detention, we wish to stress again, had no connection whatsoever with his employment at Al-Haq, nor with his alleged complaint against an Israeli soldier, a matter raised in Amnesty's campaign material. The legal authorities of the army note that their records do not show that any complaint had recently been filed by Ghazi Shashtari. They stress that even if such a complaint had been lodged by him, this would certainly not be a reason to detain him."

Ghazi Shashtari's lawyer told Amnesty International that these allegations were never brought to the attention of either Ghazi Shashtari or his lawyer, nor was any inflammatory material the former was supposed to have been involved in. He was released on 19 December 1988.

Replying to the claims made in the Israeli letter, Ghazi Shashtari after his release stated the following in a communication received by Amnesty International:

> "Concerning their request to me to sign an undertaking that I would stop my subversive activities, it is true, I refused, for two reasons. The first was the absence of a lawyer to check the statement from a legal angle. The second was the text itself, because the statement made me confess to things that I had not done. The text of the statement in Arabic was the following: 'I declare that I will not revert to activities that disturb security', which implies that in the past I had engaged in such activities. By signing this statement I would confess to things I never did. Therefore, I felt that I had a right to refuse."

He also denied that he had had further continuing connections with the PFLP after his release in March 1986 or that he had organized demonstrations. With regard to the allegation that he was the Nablus PFLP representative at the annual Bir Zeit University celebration on "PFLP day" he stated the following:

> "I understand from the accusation that the event must have taken place either in 1986 or in 1987. If it is supposed to be PFLP day in 1986 (11 December), I was not in Bir Zeit on that date, and I challenge the occupation authorities to prove that I was there. If it is supposed to be 11 December 1987, the university was closed that day and furthermore, I was at the hospital [in Nablus] with my wife that day who had been there since the 8th. I can prove this via the testimony of the hospital staff and Dr Amir al-Masri, who was responsible for my wife's treatment.
>
> In addition, I have never been questioned by the authorities about this charge. I had never even heard about it until I saw the Israeli authorities' letter to Amnesty."

As regards the allegation that he was "involved in the publication and distribution of pamphlets calling for public disturbances and was a chief inciter of the violent incidents" which began in the Occupied Territories on 9 December 1987, he stated:

> "Concerning the authorities' claims about my distributing leaflets calling for general strikes and inciting violence that occurred in the Occupied Territories on 9 December and after, this is untrue.
>
> Since the 8th of December, I was preoccupied with my wife's treatment. She was hospitalized from the 8th until the 11th, when she was transferred home because of the troubles in the hospital following the deaths in Balata camp that day. Later, on the day of my arrest (19 December), I had gone to see three doctors: Dr Amir al-Masri, Dr Imad al-Sayfi and Dr Muhammad al-Masri. Throughout this period I was busy keeping track of the violations that were taking place in Balata refugee camp, which I visited several times along with my colleague 'Abd-al-Karim Kana'an."

Finally, with regard to the claim that the legal authorities of the Israeli armed forces had no record of any complaint lodged by him (presumably in relation to the incident in the Balata refugee camp in December 1987), he stated:

> "On 9 December, I went to Balata refugee camp as I had heard about inhuman activities by the IDF that were taking place there. When I entered the camp by car, a soldier hit my car. I got out and asked why he had done that. He struck me on my face with his fist, and another soldier clubbed me, causing me injuries in different places of my body. The most serious injury was on my right hand, which caused a tearing of the muscle tissue. I got into my car at once and went to the police station in Nablus to submit a complaint against the soldiers. I showed the investigator the injuries on my body and the damage done to the car. He told me to get a medical report about my condition from the hospital. So I obtained the medical report, went back to the police and attached the report to the complaint.

I would like to note that a few days before my arrest on 19 December, an officer from the Civil Administration by the name of Charlie Danino came to my house with a number of soldiers, and threatened me because of the complaint which I had submitted against the army following the harassments I suffered in the course of my work. Al-Haq submitted a complaint about this to the Minister of Police, Haim Bar-Lev. This refutes the authorities' claim that I did not lodge a complaint."

Ghazi Shashtari was again detained from 28 March until 3 April 1989, then released uncharged.

V. AMNESTY INTERNATIONAL'S CONCLUSIONS AND RECOMMENDATIONS

Amnesty International believes that the existing practice of administrative detention in Israel and the Occupied Territories falls short of international human rights standards.

Administrative detention can and has been abused to detain prisoners of conscience, held for the non-violent exercise of their right to freedom of expression and association. This is facilitated by the broad formulation of the grounds for detention.

Existing procedural safeguards are insufficient to prevent abuse of the detainees' right to challenge their detention, particularly their right to be informed promptly and fully of the reasons for their detention.

With the removal of the automatic review hearings, which existed until March 1988 in the Occupied Territories, in many cases the first if not the only opportunity detainees have to learn about the reasons for their detention is at an appeal hearing which takes place weeks or months after arrest. Even then in almost every single case detainees and their lawyers are not given sufficient specific information about the reasons for detention to enable them to exercise effectively the right to challenge the detention order.

The withholding of such crucial information is facilitated by the extensive classification of information made by the GSS and by the apparent reluctance on the part of the judges to challenge the need to withhold classified information from detainees and their lawyers and to question the evidence provided by the GSS.

In view of the above, Amnesty International recommends that the cases of all administrative detainees currently held in Israel and the Occupied Territories be urgently reviewed. Those who are held on account of their non-violent political opinions or activities should be released immediately and unconditionally. With regard to the others, those who were not given an adequate opportunity to exercise effectively their right to challenge their detention should be allowed to do so, taking into account strict safeguards aimed at protecting detainees' internationally recognized rights, or be released without delay.

Amnesty International also recommends that the Israeli authorities review the appropriateness and necessity of maintaining the practice of administrative detention without charge or trial. Amnesty International believes that administrative detention should not be used as a substitute for, and means of avoiding the safeguards of, the criminal justice system.

If the Israeli Government persists in using administrative detention the following safeguards would be necessary as a minimum in order to diminish the possibility of abuse of the detainees' internationally recognized rights:

1. The formulation of the grounds on which administrative detention orders may be issued should be reviewed. Any such formulation should include precise guidelines or criteria so that an administrative detention law -- ostensibly introduced as an exceptional measure to detain people who pose an extreme and imminent danger to security -- is not used to detain a much wider range of people who should have been arrested, charged and tried in accordance with the normal laws of penal procedure, or against individuals who should not have been arrested at all. It should clearly exclude the expression of non-violent political opinions or the peaceful exercise of the right to freedom of association.

2. All persons arrested under administrative detention provisions should be provided, immediately at the time of arrest, with a copy of the detention order or with a written statement clearly indicating that they are being put in administrative detention and containing specific and individualized reasons for the arrest in the detail necessary to enable them to exercise effectively the right to challenge the lawfulness and necessity of their detention.

3. All administrative detainees should have the right to appear before a court, with legal assistance of their choice, during the first hours or days of detention in order to have assessed the legality and necessity of their detention, as well as their treatment. In this respect all efforts should be made to facilitate access by detainees to lawyers of their choice, and consideration should be given to making the initial review hearing automatic.

4. In reviewing the lawfulness of the detention, the court should carefully examine the available evidence, particularly the factual basis of the detention order and any challenge by the detainee to the allegations of fact, and determine whether on that basis there are sufficient grounds for the very exceptional measure of administrative detention.

5. All detainees should have the right to be present at the review proceedings with legal assistance of their choice. During the proceedings detainees should normally have the right to examine or have examined the evidence and any witness produced against them, as well as the right to introduce evidence and to call witnesses in the same way as the prosecution.

6. Evidence used as the basis for an administrative detention order should normally be made fully available to the detainees and their lawyers; one must have full knowledge of the case against oneself if the right to challenge the legality of detention is to be meaningful. If for very exceptional reasons it is proposed that a part of the evidence should be withheld -- for example on narrowly defined grounds of national security -- there should be a vigorous assessment by the court of the necessity of such withholding. In this context additional safeguards should be implemented to protect against abuse, such as a prompt and automatic review by a higher tribunal of any decision by the court to withhold evidence which has a bearing on the case.

7. Particular efforts should be made to ensure that detainees who exercise their right of appeal to a higher tribunal against a decision by the court to keep them in detention have their cases heard without delay.

8. There should be a frequent and periodic review of the necessity of continuing to hold the individual in administrative detention. This should be conducted by a competent, independent body providing the detainee with the same guarantees of fair process as those indicated for the initial review.

In the absence of safeguards such as these, the practice of administrative detention in Israel and the Occupied Territories will continue to violate fundamental human rights.