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amnesty international**GAZA OG VESTBREDDEN****PALESTINIAN AUTHORITY****Defying the Rule of Law:
Political detainees held without
charge or trial**

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SUMMARY

AI INDEX: MDE 21/03/99

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Hundreds of political detainees are currently held in Palestinian prisons and detention centres without charge or trial. Some have been held for more than four years, outside the framework of local Palestinian law and in violation of international human rights standards.

This report analyses the practice of prolonged detention without charge or trial in areas under the jurisdiction of the Palestinian Authority (PA). It examines the response of various Palestinian institutions, such as the Palestinian Legislative Council, the High Court and the Attorney General's office to this phenomenon and describes how the PA has undermined the rule of law by defying court orders requiring the immediate release of individual prisoners.

The report assembles a number of representative case histories from political detainees held without charge or trial. Recommendations are made to the PA, Israel and the rest of the international community with the aim of ensuring that the right to liberty and security of person and the right to a fair trial are respected by the PA in the future.

KEYWORDS: POLITICAL PRISONERS1 / DETENTION WITHOUT TRIAL1 /
UNLAWFUL DETENTION / JUDGES / LAWYERS / INVESTIGATION OF
ABUSES / UDHR / POLITICAL VIOLENCE

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PALESTINIAN AUTHORITY

**Defying the Rule of Law:
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Front Cover Photograph: Relatives of Palestinian political detainees demonstrating in front of the Palestinian Legislative Council, January 1999. Photographer: Khaled Zighari. ©LAW

PALESTINIAN AUTHORITY

Defying the Rule of Law: Political detainees held without charge or trial

INTRODUCTION

Hundreds of political detainees are currently held in Palestinian prisons and detention centres without charge or trial. Most of these prisoners have now been held for over a year, some for more than four years, outside the framework of local Palestinian law and in violation of international human rights standards.

The Palestinian Authority has undermined the rule of law by defying Palestinian High Court judgments requiring the release of individual prisoners. It has also ignored calls by the Palestinian Legislative Council (PLC) and local human rights organizations and individual Palestinians appealing for the release of prisoners who have been held without due process. In January 1999 the PLC passed a resolution recommending that the Palestinian Authority cancel political detention. In the same month hundreds of Palestinians protested on the streets of various West Bank towns in support of a hunger strike by political prisoners, held for years without charge or trial, in Jneid Prison and Jericho Military Prison. Around 40 individuals are said to have been released; hundreds remain detained.

In all parts of the world the judiciary should act as a vital safeguard of the rights of the individual; in the Palestinian Authority the sidelining of the normal system of justice has dangerously injured individual freedoms.

The political detainees held by the Palestinian Authority fall into two distinct categories: those whom the Palestinian Authority calls "security prisoners", who are believed to be held on suspicion of collaborating with the Israeli authorities or involvement in selling land to Jews and those whom the Palestinian Authority calls "political prisoners", who are held for suspected membership of Islamist or leftist groups opposed to the peace process with Israel.¹ "Political prisoners" who suffer prolonged detention without trial are almost invariably those suspected of support for the Islamist groups, *Hamas* and *Islamic Jihad*, and their detention is closely linked to pressure from the international community, especially Israel and the United States of America (US), to arrest individuals involved in "terrorism". Amnesty International recognizes the pressure in this respect placed on the Palestinian Authority by other governments. However the primary responsibility to maintain the rule of law and human rights in the

¹In this report quotation marks show that "political" and "security" prisoners are used in the limited sense used by the Palestinian Authority. Both categories are recognized as political detainees by Amnesty International.

areas under its jurisdiction must fall on the Palestinian Authority and the Authority has an obligation to resist external pressure to violate human rights. Other governments concerned in the peace process in the region have a responsibility not to endorse or encourage violations of human rights and to ensure that human rights do not suffer in any search for peace or security.

This report analyses the practice of prolonged detention without charge or trial in areas under the Palestinian Authority's jurisdiction and presents a number of case histories of political detainees. It also contains recommendations to the Palestinian Authority, Israel and the rest of the international community with the aim of ensuring that the right to liberty and security of person and the right to a fair trial are respected by the Palestinian Authority in the future.

Other serious concerns of Amnesty International with regard to the Palestinian Authority, including the use of the death penalty, unfair trials before the State Security Court and military courts, and torture and ill-treatment are not discussed in this report.²

THE RIGHTS OF DETAINEES

Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 a framework of minimum standards to protect the rights of all those placed under arrest has been drawn up by the United Nations and endorsed by the international community. Although the Palestinian Authority has not yet the right to ratify and become a state party to international human rights treaties, President Arafat stated in October 1993 to Amnesty International delegates that the Palestine Liberation Organization was committed to respecting all internationally recognized human rights standards and to incorporating them fully into Palestinian legislation. In 1998, the 50th anniversary of the UDHR, President Arafat, like more than 13 million other individuals throughout the world, made a renewed commitment to uphold the rights contained in the UDHR.

The detention of hundreds of individuals outside any legal process breaches the UDHR. Article 9 affirms that:

"No one shall be subject to arbitrary arrest, detention or exile".

Article 10 lays down the right to fair trial:

²See, besides news releases and Urgent Actions, *Israel/Occupied Territories and the Palestinian Authority: Five years after the Oslo Agreement: human rights sacrificed for "security"*, September 1998 (MDE 02/04/98).

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

Article 8 declares the right to *"an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law"*.

The rights of any person placed under arrest are spelt out in more detail by the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly of the United Nations on 9 December 1988. Arrests should only be carried out according to the law (Principle 2). Principle 4 states:

"Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority".

The arrested person should be told the reasons for his or her detention and brought promptly before a judicial authority who should be empowered to review his continued detention (Principle 11); he should have unrestricted communication, in private, with his legal counsel (Principles 17 and 18); he should have the right to regular family visits (Principle 19); he should have the right to trial within a reasonable time or to release pending trial (Principle 38). The Body of Principles, like the UDHR and other human rights standards, lays down categorically the absolute and unconditional prohibition of torture (Principle 6) and the right to *"humane treatment and respect for human dignity"* (Principle 1).

These rights are equally affirmed in the Palestinian Basic Law, passed by the Palestinian Legislative Council in 1996 but not yet signed by President Arafat: Article 11 states:

"1) Personal liberty is a natural right and shall be guaranteed and not harmed.

2) It is not permitted to arrest, search, imprison, restrict the freedom or prevent the movement of any person, except by judicial order in accordance with the provisions of the law. The law shall determine the period of detention on remand. Imprisonment or detention are not permitted in locations that are not subject to laws regulating prisons".

Article 12 states:

"Every arrested person shall be informed of the reasons for his arrest or detention. He should be promptly informed of the nature of the charge brought against him and enabled to contact a lawyer and to be tried without delay".

The Palestinian Authority has denied hundreds of Palestinians arrested for political reasons these fundamental rights. Political detainees have tended to be held outside any legal framework; they almost invariably are arrested without warrant; they are not charged; they are not brought promptly before a judge; and they are not brought to trial. The few who have been brought to trial have received only summary and grossly unfair trials before State Security Courts; since 1994 a total of more than 2,000 individuals have been held at some time for political reasons for days, months or years in the areas under the Palestinian Authority's jurisdiction; only one political detainee is known ever to have been brought to trial before a normal criminal court.³

"POLITICAL PRISONERS"

There are about 120 "political prisoners" who have been held by the Palestinian Authority without charge or trial for more than one year, in addition to about 100 held for less than a year. The vast majority are suspected sympathisers with *Hamas* and *Islamic Jihad* and most of them were detained during mass arrests by the Palestinian Authority following bomb attacks directed against Israeli civilians. It is possible that some "political prisoners" are prisoners of conscience: in certain cases, there is credible evidence to indicate that suspected Islamist sympathisers are being detained for extended periods for their non-violent opposition to the Palestinian Authority or to silence them from speaking about matters that could embarrass the Palestinian Authority.

Although some "political prisoners" have been arrested for criticising the Palestinian Authority and opposing the peace process, far more are believed to have been detained because of pressure from outside the Palestinian Authority to put down "terrorists". This pressure comes primarily from Israel and partly from the US, which has invested resources into brokering a peace in the Middle East. The greatest danger to the peace process is seen by Israel and the US, as "terrorism" - attacks against Israeli civilians carried out by *Hamas*, *Islamic Jihad* and other armed groups - and frequent Israeli government statements have said that the only way to halt "terrorism" will be for the Palestinian Authority not only to lock up the "terrorists" but also to ensure that they are not released. Israeli government statements do not ask for "terrorists" to be detained without trial: they call for them to be

³ In February 1995 a preacher was acquitted of making remarks against President Arafat during a sermon which he gave in a mosque in Gaza.

"prosecuted". But Israeli authorities themselves detain Palestinians without charge or trial under administrative detention orders or sentence them after unfair military trials on the basis of confessions extracted by torture. Therefore it is not surprising that the strong insistence on the need for the Palestinian Authority to detain suspected "terrorists" is accompanied by a failure to insist that this be done according to Palestinian law and international human rights standards.

This extrajudicial detention of "political prisoners" has existed since the establishment of the Palestinian Authority in May 1994. After September 1994 there were waves of arbitrary detentions as a result of Israeli pressure after the kidnapping of an Israeli soldier and suicide bombs in September and October 1994. These detainees were normally humanely treated but were held for days, weeks or months without being charged with any offence or brought before a judge. Lawyers might gain access as normal visitors, rather than as lawyers. Often the detainees were not even interrogated. Sometimes these detentions were in order to detect the perpetrators of violent acts or to detain those who might endanger the peace process by carrying out violent acts but frequently the detentions appeared to be at the behest of Israel.

The institution of the State Security Court in February 1995 appears to have been as a result of complaints by Israel and the US that Islamist "terrorists" were being detained without charge and released at will, instead of having been given heavy prison sentences. Thus, from April 1995, a number of those thought to have organized suicide bombs, recruited bombers, or members of the *'Izz al-Din al-Qassam* brigades, the armed wing of *Hamas*, were tried in grossly unfair trials - secret and summary, often in the middle of the night, with military judges, prosecutors and defence - and given heavy prison sentences of up to 25 years. These trials were praised by prominent US officials. However, the outcry at the use of such mockeries of trials helped to limit their use, and the Palestinian Authority, since June 1995, has again tended to hold political opponents - mostly suspected Islamists - without charge or trial. Summary trials have more often been used against those whose extradition may be sought by Israel if they are not swiftly sentenced.

The largest wave of arrests in the Palestinian Authority was carried out after suicide bombings in February and March 1996. More than 1,200 suspected members of Islamist groups were arrested by Palestinian Authority security services in the West Bank and Gaza; they often spent weeks in incommunicado detention and remained in prison for months without charge or trial. Torture was widespread. Waves of arrests have continued to occur: for instance more than 150 alleged sympathizers with Islamist groups were arrested in 1997 and about 40 persons, allegedly linked to *Hamas*, were detained and subjected to torture in Ramallah in March and April 1998 in connection with the killing of Muhi al-Din al-Sharif, a prominent member of *Hamas'* military wing.

Detention outside any judicial process has also been used against anyone thought to have criticised the Palestinian Authority, including journalists and human rights defenders. Such arrests have attracted a great deal of international attention and local public pressure, and the Palestinian Authority has normally released these detainees within days or, exceptionally, months.

However, the hundreds of suspected Islamist activists detained without charge or trial have not benefited from the same media attention or international support. The pressure exerted by the Israeli Government upon the Palestinian Authority to keep suspected Islamist activists in detention has been great; the Israeli government has frequently complained about what it calls "the revolving door" - that is, that suspected Islamist sympathisers in detention have frequently been released after weeks and months, - and demanded that they stay in detention. Amnesty International has consistently raised with the Palestinian Authority the cases of those who suffer prolonged detention without charge or trial. Occasionally spokespersons have denied that there has been pressure on them to arrest; however, by the autumn of 1997 even those Palestinian ministers who had at one time denied pressure were prepared to agree that the pressure was immense. One Palestinian official at the Palestinian Authority's Ministry of Justice told an Amnesty International delegation in 1997 that those concerned with justice knew "that 80% of those we arrested had committed no offence either under Palestinian or under Israeli law"; they were just being arrested because of pressure from Israel, either because they were suspected of being Islamist activists or to "make up the numbers" and show that the Palestinian Authority was making a serious effort to act against "terrorism".

When, following demonstrations and intense protests by families, and after many debates and interventions by the PLC, the Palestinian Authority eventually in January 1999 released about 40 prisoners held without charge or trial, the Israeli Government complained bitterly. "It looks like a resumption of the revolving door. Actually we have no idea who the prisoners released are. This is another violation" [of the agreement] commented Prime Minister Binyamin Netanyahu.

"SECURITY PRISONERS"

No one knows the exact number of "security prisoners" (those suspected of collaboration with Israel) held by the Palestinian Authority, but it is estimated that there are at least 250 prisoners who have been held without charge or trial for more than one year. The majority of these prisoners are believed to be held by the *istikhbarat* (Military Intelligence), headed by General Musa Arafat. Human rights organizations do not have access to the *istikhbarat*'s detention centres and the International Committee of the Red Cross was only given access in 1998.

Most "security prisoners" are subjected to torture or ill-treatment. During this period they are held incommunicado, without access to families or lawyers. Sometimes they continue to be held incommunicado for weeks, months or even years after their interrogation has ended; at least two detainees have "disappeared" after arrest.

The Palestinian Authority is not known to have put any person accused of "collaboration" with Israel on trial for his/her actions. One reason for the Palestinian Authority's reluctance to put such persons on trial may be Article XVI(2) of the Oslo II Agreement which states:

Palestinians who have maintained contact with the Israeli authorities will not be subjected to acts of harassment, violence, retribution or prosecution.

This provision of the Oslo Agreement was intended to discourage the Palestinian Authority from exacting retribution from the Palestinians who had worked on behalf of Israel during the occupation of the West Bank and Gaza Strip. Nevertheless, suspected "collaborators" have been arrested and the clause appears to be used by the Palestinian Authority as a pretext for depriving "security prisoners" of their right to receive a fair trial.

Their detention, even without charge or trial, has frequently been privately or even publicly welcomed by virtually all sectors of Palestinian civil society who regard "collaborators" with Israel as having betrayed the Palestinian cause. Thus, especially during the first months of the Palestinian Authority, families of those detained were often silent about the arrest and detention of family members, either because they were ashamed of them or because they feared that speaking out would jeopardize their release. At the same time Palestinian human rights organizations who had campaigned against Israeli human rights violations over the previous years and were prepared to take up the cases of "political prisoners", including members of *Hamas* or *Islamic Jihad*, tended to have an ambivalent attitude towards "security prisoners" whose cases they took up with more reluctance. Many of the families of "security prisoners" deny that they were involved in "collaboration", and labels of collaboration have, indeed, often been used by the Palestinian Authority to slur some political opponents. Those detained for alleged "collaboration" are faced, therefore, with an accusation which stigmatizes them whilst denying them the means to answer the charge and defend themselves, as is their right.

THE RESPONSE OF PALESTINIAN INSTITUTIONS TO ARBITRARY DETENTION BY THE PALESTINIAN AUTHORITY

The Palestinian Legislative Council (PLC)

Ever since the elections in January 1996 many PLC members have been vocal in their criticism of the Palestinian Authority for detaining political detainees without charge or trial for long periods. Members of the PLC have visited detainees said to be in incommunicado detention or tortured and have also on many occasions visited "political prisoners" who have launched hunger strikes demanding to be brought to trial or released.

On 13 January 1999, while a peaceful demonstration of families of "political prisoners" took place outside, the PLC debated the question of political detention without charge or trial. The PLC called for the prohibition of political detention and the immediate release of those detained only for political reasons. A Special Committee was established to monitor the implementation of the decision by following it up with the Minister of Justice and the Minister of Parliamentary Affairs. President Yasser Arafat promised to release "political prisoners" on the occasion of 'Id al-Fitr, in January. In fact only about 40 "political prisoners" were released.

The Palestinian High Court

The Palestinian judiciary should be an important check to prevent the Palestinian Authority from indulging in arbitrary exercise of power, including unlawful detentions of political prisoners. The Palestinian Authority has however seriously undermined the rule of law and damaged confidence in the Palestinian courts by failing to enforce Palestinian High Court judgments ordering the release of political detainees and, on two occasions, removing judges from office without good cause. Amnesty International is unaware of any single case where the High Court has ordered the release of a political detainee on the grounds that he or she was unlawfully detained and the Palestinian Authority has immediately complied with the order and released the detainee.

Many Palestinian human rights organizations, such as the Palestinian Society for Human Rights and the Environment (LAW), the Birzeit Human Rights Action Project, the Jerusalem Centre for Legal Aid, the Palestinian Centre for Human Rights (PCHR), and the Palestinian Human Rights Monitoring Group (PHRMG) as well as the Palestinian Independent Commission for Citizens' Rights (PICCR) have challenged the legality of detention without charge or trial before the Palestinian High Court. In most such cases brought before it, the High Court has found detention without charge unlawful and has ordered the Palestinian Authority to immediately release the applicants. There are currently more than 50 applications for *habeas corpus* pending before the High Court. The vast majority of these cases have been brought on behalf of "political prisoners" but Amnesty

International knows of at least one case which is being brought on behalf of a "security prisoner".

The Palestinian Authority, as represented in the courts by the office of the Attorney General, has generally not been cooperative with the High Court. The Attorney General's office frequently requests an adjournment on the grounds that information requested by the court has not yet been obtained, even after the Palestinian Authority has been ordered to show cause by the court as to why a person is in detention. In a serious violation of the rule of law, the Palestinian Authority and its security services have failed to implement High Court orders for the immediate release of detainees. In a number of cases, the Palestinian Authority has released detainees months after the High Court ordered their release; in other cases they remain in detention. For example, the Palestinian High Court ordered the release of **Rajab al-Baba**, who was arrested on 17 March 1996, on 28 December 1997; he was released on 5 April 1998. The release of **Mahmud Muslah**, who was arrested on 5 September 1997, was ordered on 30 November 1997. As of 19 March 1999, he was still detained in Ramallah.

On several occasions, the High Court has declined to order the release of detainees after the Palestinian Authority has claimed that the detainee's case is before the State Security Court. The court has ruled that it lacks jurisdiction over such cases. However, in these cases, even though the Palestinian Authority has argued before the High Court that the detainee's case was before the State Security Court, the detainee has never actually been prosecuted. The Palestinian Authority appears in such cases to use the argument that a detainee's case is before the State Security Court as a means to avoid a High Court order against the Palestinian Authority for the detainee's release. For example, the Palestinian Centre for Human Rights (PCHR) submitted a petition to the High Court for the release of **Ibrahim al-Maqademeh**, a prominent figure in *Hamas* in the Gaza Strip, who was arrested in April 1998. During the hearing of the application on 20 July 1998, the Attorney General's representative informed the court that Ibrahim al-Maqademeh had been charged before the State Security Court and argued that the court therefore did not have jurisdiction in the case. The PCHR stated that for two months his lawyers had tried to find out from the Attorney General's office why he was detained without success. The High Court ruled that it had no jurisdiction over the case. As of 19 March 1999, Ibrahim al-Maqademeh was still in detention and he had not been prosecuted before the State Security Court.

The Palestinian Authority has also on two occasions removed judges without good cause. This type of behaviour is in flagrant contravention of the UN Basic Principles on the Independence of Judiciary which requires that the independence of the judiciary should be assured (Principle 1) and that there should be no unwarranted interference with the judiciary and judicial decisions (Principle 4). In August 1997 the Palestinian High Court, sitting in a

**OUTCOME OF CASES KNOWN TO AMNESTY INTERNATIONAL WHERE THE
HIGH COURT ORDERED RELEASE OF POLITICAL DETAINEES**

Name	Date of Arrest	Date High Court Ordered Release	Current Status
Fu'ad Hussein 'Atiya	3 March 1996	18 August 1996	Released on 14 November 1996
Muhammad Muhammad Ba'alushi	6 March 1996	18 August 1996	Released on 3 December 1996
Bajis Khalil Nakhleh	8 March 1996	18 August 1996	Released on 6 October 1996
Khalil Sulayman Rumaneh	8 March 1996	18 August 1996	Released on 30 August 1996
Talal 'Abd al-Karim Silek	3 March 1996	18 August 1996	Released on 27 August 1996
Fahmi Jibril al-Muqayed	3 March 1996	18 August 1996	Released on 30 August 1996
Mustafa Muhammad 'Atari	3 March 1996	18 August 1996	Released on 16 January 1997
Muhammad 'Abd al-Aziz Hamdan	26 March 1996	18 August 1996	Released on 27 August 1996
Yazid Ya'qub Abu Ghosh	29 March 1996	18 August 1996	Released on 6 October 1996
Mahmud Muslah	5 September 1997	30 November 1997	Still in detention on 19 March 1999
Rajab al-Baba	17 March 1996	28 December 1997	Released 5 April 1998
Ghassan al-'Adassi	29 March 1998	6 October	Still in detention on 19 March 1999
'Abd al-Aziz al-Rantisi	9 April 1998	4 June 1998	Still in detention on 19 March 1999
Wa'el Farraj	24 April 1996	20 February 1999	Still in detention on 19 March 1999
Marwan 'Issa	16 March 1996	14 March 1999	Released on 16 March 1999

five-judge panel, with Chief Justice Amin 'Abd al-Salam presiding, ordered the release of ten Birzeit University students, on the grounds that they were being held unlawfully. Soon after the court decision, the Palestinian Authority retired Judge Amin 'Abd al-Salam. In January 1998 the Palestinian Authority dismissed Chief Justice Qusay 'Abadlah, the head of the Palestinian judiciary. In his letter to the Chief Justice dated 17 January, Muhammed Abu Shari'a, the head of the General Personnel Council of the Palestinian Authority, informed him that he was being relieved of his duties, on the grounds that he was over the retirement age of 60. In fact, the law regulating the appointment and dismissal of High Court judges, including the Chief Justice, makes no reference to a retirement age. It is widely believed that Chief Justice Qusay 'Abadlah was "retired" because he criticized the Palestinian Authority's Minister of Justice for interfering with the courts in an interview published in the weekly *al-Risaleh* on 15 January, just two days earlier. As of 19 March 1999, a new Chief Justice had not been appointed.

Despite these setbacks for respect for the rule of law the High Court has continued to assert its independence from the executive by issuing orders for the release of political detainees.

The Attorney General's Office

According to Article 108 of the Jordanian Law of Criminal Procedure No. 9 of 1961, which regulates arrest and detention in the West Bank, officials in the Attorney General's office (*al-niyaba al-'amma*) are under an obligation to investigate immediately any complaint that a person is detained or imprisoned unlawfully. The Attorney General's office must release any person who is unlawfully detained. The Attorney General's office enjoys similar powers in the Gaza Strip. Generally, the Attorney General's office has failed to intervene to order the release of detainees who are being illegally detained. Normally, Palestinian human rights organizations present complaints of arbitrary detention to the Attorney General's office before challenging the detention in courts. These organizations complain that they either receive no response at all from the Attorney General's office, even though it is under a legal obligation to investigate such complaints, or the Attorney General's office claims that it does not have the jurisdiction to investigate these complaints because the person is being detained by order of a military prosecutor or for security reasons.

In July 1997 the Palestinian Authority appointed a new Attorney General following the resignation of Khaled al-Qidreh in May 1997. Fayez Abu Rahmeh publicly stated that he would review the dossier of 185 political detainees being held by the Palestinian Authority. In August 1997 the Attorney General ordered the release of 11 such detainees. Prison officials at Gaza Central Prison duly released the detainees. The Preventive Security Service rearrested all the prisoners within 24 hours, in defiance of the Attorney General's orders and also briefly arrested the officials who had released the prisoners. In April 1998 Fayez Abu Rahmeh resigned. He said: "I offered my resignation because I felt I could not perform my

duties because of the interference and the obstacles placed in the way of my work by others". As of 19 March 1999, the Palestinian Authority had still not appointed a new Attorney General.

The Palestinian Authority's failure to enforce High Court decisions, the Attorney General's failure to intervene in many cases of unlawful detention referred to him and the Palestinian Authority's failure to enforce the Attorney General's orders to release detainees on the rare occasions when he has intervened, have undermined confidence in institutions and in the legal system generally. In February 1996 President Arafat told Amnesty International delegates in Gaza that "No one is above the law". However, there is a widely-held perception that the President, Minister of Justice and heads of the security forces ignore the law in many of their actions. Detainees and their families have often been reluctant to use the law to challenge unlawful detention. Those who suffer prolonged illegal detention do not appoint lawyers feeling that they will lose money for nothing. Instead families approach officials and other individuals who wield political influence with the Palestinian Authority and request them to intervene informally with the Palestinian Authority to secure their release. Public lack of confidence in the courts and the Attorney General's office is another serious blow to the rule of law in areas under the Palestinian Authority's jurisdiction. However, Palestinian human rights organizations have been persistent in their attempts to use the law and the office of the Attorney General and the High Court to seek an end to arbitrary detention.

CASE HISTORIES

The following are case histories of political detainees, who have been detained for months and sometimes years without charge or trial, by the Palestinian Authority. Many of the other hundreds of cases of prolonged detention without trial under the Palestinian Authority follow similar patterns.

Faruq ABU HASAN

At 11pm on the evening of 8 November 1994, an officer from the Palestinian *istikhbarat* came to the home of Faruq Muhammad Salama Abu Hasan, at that time a 40-year-old postal inspector, and asked him to come for a 10 minute interview. He never returned home. For the first few months his wife Zahira was allowed to visit him in detention; then, from January 1995 for more than two years he was held incommunicado. She was allowed to leave things such as juice, food and clothes for him, but not allowed to see him. She wrote letters to President Arafat, the Minister of Justice, Freih Abu Middein, the Attorney General and anyone who

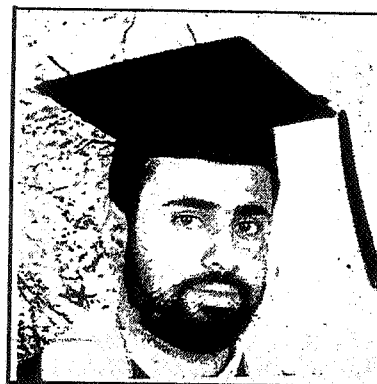


Faruq Abu Hasan

might have influence, but without success. Only in January 1998, after Faruq Abu Hasan had started a hunger strike, was Zahira allowed to see him. Since then, she has been allowed to visit him every week with his three children, but he has neither been charged nor brought to trial. His family says they have no idea why he has been arrested and detained; he reportedly states that he has only been interrogated over a letter of appeal he signed with other prisoners to President Sadat in 1979 during his 13 years in Israeli prisons before the Palestinian Authority was set up in 1994. It is probable that he is accused of "collaboration", which he denies, but as he has never been charged it is impossible to answer any accusations against him.

Usama and Karima HAMAD

In late 1995 Usama Hamad, a 27-year-old civil engineer, was giving refuge to his friend Yahya Ayyash at his home in Beit Lahya, Gaza. At that time Yahya Ayyash was wanted by both Israeli and Palestinian security services as, nicknamed the "engineer", he was reputed to have played a major part in fabricating the *Hamas* suicide bombs which had killed nearly 100 Israeli civilians over the previous two years. However, on 5 January 1996, Yahya Ayyash was killed when a mobile phone, apparently voice-activated, exploded while he was using it. The killing was said to have been carried out by the Israeli General Security Service; the Israeli Government did not accept responsibility but it did not deny involvement.



Usama Hamad

The same day, Usama Hamad was arrested by the Palestinian Preventive Security Service; he was detained at night but allowed to move about with a military escort during the day. On 7 January 1996 he gave a press conference about Yahya Ayyash's death: he linked his uncle, Kamal Hamad - allegedly a "collaborator" with Israel and who had provided the mobile phone - with Musa Arafat, Head of Military Intelligence. After the press conference Usama Hamad was detained for six weeks incommunicado in Tel al-Hawa' Prison in Gaza. He was released on 20 February.

A month later, on 17 March 1996, Usama Hamad was rearrested by Palestinian Military Intelligence. This time he was interrogated but, according to his family, he was only questioned about the press conference. He spent six months in solitary confinement, and is still detained, without charge or trial, at the Military Intelligence's headquarters at *al-Saraya* in Gaza. It appears that the sole reason for his detention is because of the press conference he gave which linked the head of the *istikhbarat* with an alleged "collaborator".

Around the same time as Usama Hamad was arrested in March 1996 other members of the Hamad family were detained and then released. Among them, **Karima Hamad**, born in 1975 and married with a baby, was arrested in May 1996 and released after one day. She was rearrested on 19 June 1996, held by the PSS in Tel al-Hawa' Prison and reportedly tortured. Under torture she confessed to knowing that Yahya Ayyash was living in the house - although, according to her family she had not known that he was in hiding in Usama's flat at all. She was reportedly taken to hospital four times during her detention in Tel al-Hawa'. Later she was moved to Gaza Central Prison where she is visited by her family every week. In April 1998 she was visited by an AI delegation and said she was well treated in prison. But she wept bitterly for the loss of her freedom and her child (during her detention her husband divorced her so she has not been able to see her son now aged three). She has never been charged with any offence.

Wa'el FARRAJ

At 2am on 24 April 1996 several men in plain clothes and in military uniform came to the home in Gaza of Wa'el 'Ali Farraj, a history student at the Islamic University in Gaza. The house was searched and Wa'el Farraj, then aged 21, was arrested by the officers who told his wife, then two months pregnant, that he was only wanted for questioning and would return shortly. In fact he was taken to a General Intelligence Centre in Beit Lahya in the north of the Gaza Strip. There he was interrogated about membership of *Hamas* and possession of weapons. He says that during the first three days he was badly beaten, deprived of sleep, and hooded all the time, even during meals. During March and April 1996 hundreds of suspected supporters of *Hamas* were arrested in all areas of the Palestinian Authority, after four suicide bombs had killed Israeli civilians in February and March.



Wa'el Farraj

The father of Wa'el Farraj first saw his son about 15 days after his arrest; he was being held in solitary confinement; his face looked bruised and there were signs of beating on one leg. Wa'el Farraj's father started writing for help to President Arafat and members of the Palestinian Authority asking that his son should be released but he had no success. He also contacted human rights organizations. In August 1997 Wa'el Farraj was moved to Gaza Central Prison where his treatment improved. His family, including his wife and son, who was born while he was in prison, are able to visit him once a week. But as of 19 March 1999, he has still not been charged or brought to trial. His father managed to see the Deputy Attorney General who reportedly told him that the Attorney General's Office could do nothing as this was a "political" case. Wa'el Farraj was apparently arrested as part of a group of nine from Shaja'iya, where he lives. However, the others have all been released and only Wa'el Farraj remains in detention.

The Palestinian Centre for Human Rights in Gaza took up the case of Wa'el Farraj and put in a petition for *habeas corpus* to the Palestinian High Court. Eventually, on 20 February 1999 the High Court ordered his release. But for him, as for many others, the release order has been a dead letter: Wa'el Farraj remains in jail without charge or trial.

'Abd al-Rahman RADDAD

In May 1997 the Palestinian Minister of Justice, Freih Abu Middein, had announced that the Palestinian Authority would use Jordanian law to sentence to death Palestinians who sold land to Jews; dozens of suspected land-dealers were arrested though none was brought to trial.⁴ 'Abd al-Rahman Muhammad Saleh Raddad, from al-Zawiyeh village near Nablus, was arrested by Palestinian police with a warrant from the Jericho Public Prosecutor on 9 July 1997. He was interrogated about whether he had sold land to real estate dealers said to be involved in selling land to Jews. He has remained in detention in Nablus Central Prison, without charge or trial, ever since. His family have many times asked for bail without success although, according to them, the estate agents involved in the case have already been set free. Born in 1935, 'Abd al-Rahman is said to suffer from a stomach ulcer and diabetes and is frequently in hospital for treatment. His family visit him every week. They have said that he has to be carried into the room by guards because of his health problems.

Jamal MANSUR

Jamal 'Abd al-Rahman Mansur, a journalist, was arrested in Nablus by the Palestinian *mukhabarat* on 4 September 1997. The arrest was one in a wave of arrests of suspected sympathizers with *Hamas* carried out by Palestinian security forces in towns in the West Bank and in the Gaza Strip after a suicide bomb, claimed by *Hamas*, killed Israeli civilians in West Jerusalem. However, it has never been suggested that Jamal Mansur had any involvement in this attack; in fact, many of those who were arrested at that time were members of an Islamist political party opposed to the use of violence.

Jamal Mansur was initially held in Nablus Prison, but in December 1997 he was transferred to the Military Prison in Jericho. On 26 March 1998 he started a hunger strike to protest against his detention without charge or trial; during this he lost 23 kilos in weight and afterwards suffered itching and acute pain. A dermatologist said that the weight loss may have caused a fluid and electrolyte imbalance. He was transferred to Jneid Prison, Nablus in May, 1998 where he is allowed visits by his wife, Mona, and children (he has three girls and a boy). In October 1998 LAW submitted an application for the release of Jamal Mansur and 47 other detainees held without charge or trial. In January 1999 he and other political detainees in Jneid Prison went on hunger strike again in protest at their continued detention without charge or trial; they ended the hunger strike on 1 March, after 36 days.

⁴ Four land dealers were found dead in May and July 1997, apparently extrajudicially executed.

Jamal al-TAWIL

Jamal al-Tawil, a *Hamas* supporter from Ramallah, had spent many years in Israeli prisons under administrative detention. After he was eventually released in 1997 he started to work for supporters of *Hamas* detained in Israel and those detained in the West Bank by the Palestinian Authority. On 6 October 1998 he was arrested at his home by five members of the security forces. No arrest warrant was produced and no reason was given for his arrest. The house was searched and computer discs, videotapes, books and papers were confiscated.

Jamal al-Tawil was first taken to the Ramallah Centre of the General Intelligence where, after refusing to leave until she had seen him, his wife was permitted to see him: he had not been interrogated nor informed of the reasons for his arrest. It was to be 31 days before his wife was to be allowed to see him again. On 7 October he was transferred to Jneid Prison in Nablus and then, the following day, to the General Intelligence Detention Centre in Jericho, 30 kilometres from Ramallah. There he remained incommunicado: his wife and lawyers from many Palestinian human rights organizations made efforts to gain access to him but without success.

Eventually, on 6 November 1998, his wife was allowed to see him in Jericho; he looked unwell and, watched closely by *mukhabarat*, they could not talk freely. On a later visit she learned that he had been tortured for 20 days after his arrest; he had been hung from the ceiling, often deprived of food, and the first night interrogated all through the night. He was accused of being a leader of *Hamas*. A High Court application challenging his unlawful detention was made by the Palestinian human rights organization LAW. His family were kept hopeful with promises of release but, though he has now been transferred to Ramallah Prison, over five months after his arrest, he has still not been charged or brought to trial.

RECOMMENDATIONS

The Palestinian Authority has a right and a duty to bring to justice those who have committed crimes and the Israeli Government has a right to demand that those who have committed recognizable crimes in Israel be brought to justice. But anyone arrested should be released if not charged with a recognizably criminal offence, guaranteed all other safeguards under international law and tried in accordance with international standards for fair trial.

To the Palestinian Authority

- Release immediately and unconditionally all prisoners of conscience, that is all those held because of their conscientiously held beliefs who have not used or advocated violence;

- Release other political detainees unless they are to be tried promptly and fairly before courts capable of offering guarantees for fair trials conducted in accordance with international standards;
- Ensure directors of prisons and detention centres admit detainees only after receiving a legal order of detention and that a register of all detainees and their movements is kept in all detention centres and made available to lawyers and human rights organizations.
- Ensure that detainees are kept only in recognized places of detention;
- Ensure that all detainees are informed promptly of the charges before them and brought before a judicial authority within 48 hours;
- Enforce decisions of the Palestinian courts according to the law; release immediately all persons whose release has been ordered by the Palestinian High Court;
- Cease unwarranted interference with the judicial process;
- Appoint a Chief Justice and Attorney General who should be suitably qualified persons of known integrity;
- Establish a Higher Judicial Council with full independence to handle matters relating to the appointment and removal of judges and the administration of judicial matters;
- Ensure that the Attorney General's office carries out its legal obligations to investigate fully complaints of unlawful detention and to order the release of detainees held in contravention of the law;
- Ensure that the security services and all other members of the Palestinian Authority recognize the rule of law and implement judicial decisions.

To Israel

- Ensure that any calls for perpetrators of violent attacks to be arrested and prosecuted make it clear that prosecutions should only be carried out according to the law in courts which meet international standards for fair trial.

To other members of the international community

- Issue a public statement condemning prolonged detention without charge or trial by the Palestinian Authority and calling for the immediate and unconditional release of all prisoners of conscience and the release of other political prisoners unless they are to be tried promptly and fairly before courts capable of offering guarantees for fair trials conducted in accordance with international standards;
- Ensure that efforts to support the peace process and to ensure security in the region are not carried out at the expense of human rights;
- Actively use influence in contacts with the Palestinian Authority, Israel and the United States to secure the recommendations made in this report.

