

FACT SHEET: ADMINISTRATIVE DETENTION

Administrative detention is a government policy of arresting and temporarily detaining an individual without a trial because he or she poses an imminent high security risk.

Administrative detention is practiced when an individual has not yet committed a crime but the state has sensitive intelligence indicating he or she is actively involved in terrorist activity. In this situation the detainee is not charged with a crime and does not have a criminal trial.

Though Israel has been criticized for its use of administrative detention, many other liberal democracies also use this policy to protect their citizens from terrorist attacks or to control illegal immigration. However, no other liberal democracy faces the systematic, organized terrorism at its borders that Israel confronts. Its administrative detention policy must be viewed in this context. It is a life-saving tool.

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- **Like the U.S., the UK, Canada, Italy, and other liberal democracies, Israel uses administrative detention to prevent terrorist acts.**¹ The policy involves detaining individuals who intelligence indicates may be planning, orchestrating, facilitating, or assisting in acts of terrorism.² Other liberal democracies use this policy to control illegal immigration.³
 - **Administrative detention is legal under international law.** A nation and occupying powers are allowed to detain individuals who pose a grave security threat but have not yet carried out criminal acts.⁴
 - **In 2012 the Global Counterterrorism Forum (GCTF) officially endorsed administrative detention as a counterterrorism tool.**⁵ The GCTF is a 30 member multilateral organization which includes the U.S., EU, Canada, Australia, Japan, South Africa, New Zealand, India, and the U.A.E.⁶
 - **Like other democracies, Israel uses administrative detention only as a last resort when other legal channels are ineffective or inapplicable.**
 - **Administrative detention is used when criminal trials would be ineffective or even counterproductive.** In some cases civil trials would force Israel to expose its intelligence networks as evidence. Making this information available to defendants, their attorneys, or the public would undermine counterterrorism operations by giving away secret intelligence methods and by exposing the identities of informants whose lives could be endangered. In addition criminal justice is not designed to prevent planned attacks, only to punish past offenses. The risk of letting active terrorists go free is too great to make a criminal trial a suitable alternative.⁷
 - **Administrative detention is used when the laws of war are inapplicable.** The laws of war allow detention of anyone identified as an enemy combatant until the end of hostilities. This is inapplicable to unconventional wars like terrorist campaigns because it is difficult to distinguish terrorists from the civilian population, and hostilities usually last much longer than conventional wars. The risk of accidentally detaining innocent people for indefinite periods is too great when relying on the laws of war.⁸
 - **The number of detainees fluctuates directly according to the level of Palestinian terrorist activity.** The number of detainees dropped from a high of 1,700 in November 1989 during the first intifada to a low of 12 in December 2000, just after the Camp David negotiations. The number rose again during the terrorist campaign known as the second intifada (2000-2005), reaching a high of 1,007 in January 2003 and falling to an average of 307 per month in 2012.⁹

- **The number of administrative detainees under the age of 18 is negligible.** There were no Palestinian detainees under the age of 16 from 2006 to 2012.¹⁰ Terrorist groups recruit youths between the ages of 16 and 18, but still the number from this group held in administrative detention is negligible: none were held in 2012, only one in 2011, and none or only one or two were held in detention each month during 2009 and 2010, with the exception of January and February 2009, when the number went up to five or six. During 2008, when there was an increase in terrorist activity, the number fluctuated from a high of 18 in January to a low of zero in March.¹¹
- **Israeli law includes multiple safeguards against abuse of administrative detention.**
 - **Review of all intelligence and alternatives by a prosecutor:** A military prosecutor must review all intelligence about the suspect and alternatives to detention before a detention order is issued. If approved by the prosecutor, the order is made by an IDF commander and carried out by the IDF.¹²
 - **Review of all intelligence and alternatives by a judge:** Detainees are brought before a military district court judge who, after reviewing all the available information, approves the order, rejects it, or reduces the period of detention. Hearings are conducted in Hebrew and translated into Arabic simultaneously.¹³
 - **Right to appeal court decisions:** If a detention order is approved, the detainee may appeal the decision before the military court of appeals. If the order is upheld, the detainee may appeal to Israel's Supreme Court, which is completely independent from the military.¹⁴
 - **Right to legal counsel:** Detainees have the right to legal counsel throughout court proceedings. They have the right to be present during all parts of the hearings except when classified intelligence is presented to and discussed by the court. In these cases general reasons for detention are provided.¹⁵
 - **Six-month detention limit:** Detention can be renewed but only after the above process is repeated in full. The IDF commander or security services personnel must prove that the detainee continues to pose a threat.¹⁶
- **Currently, Israeli officials and the public are debating ways to improve administrative detention policies while still protecting Israeli civilians from terrorist attacks.**¹⁷

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- ¹ Ministry of Foreign Affairs, “Background Information on Administrative Detention,” at www.mfa.gov.il/MFA/Archive/Peace+Process/1995/BACKGROUND%20INFORMATION%20ON%20ADMINISTRATIVE%20DETENTION
- ² Stephanie Blum, “Preventive Detention in the War on Terror: A Comparison of How the United States, Britain, and Israel Detain and Incapacitate Terrorist Suspects,” *Homeland Security Affairs*, October 2008, at www.hsaj.org/?fullarticle=4.3.1; Ashley S. Deeks, “Administrative Detention in Armed Conflict,” *Case Western International Law Journal*, 2009, at www.case.edu/orgs/jil/vol.40.3/40_deeks.pdf
- ³ Daniel Wilsher, “The Administrative Detention of Non-Nationals Pursuant to Immigration Control: International and Constitutional Law Perspectives,” *The International and Comparative Law Quarterly*, October 2004, at www.jstor.org/discover/10.2307/3663433?uid=3739560&uid=2129&uid=2&uid=70&uid=4&uid=3739256&sid=21100809629161
- ⁴ International Law Department, “Administrative Detention in the West Bank: Q&As,” *IDF Mag Corps*, May 7, 2012, at www.mag.idf.il/163-5090-en/patzar.aspx; Geneva Conventions “Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949,” *ICRC*, n.d. at www.icrc.org/ihl.nsf/full/380
- ⁵ Rule of Law Working Group, “The Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector,” *Global Counterterrorism Forum*, February 7-8, 2012, at <http://www.thegctf.org/documents/10162/19594/Rabat+Memorandum+on+Good+Practices+for+Effective+Counterterrorism+Practice+in+the+Criminal+Justice+Sector>
- ⁶ Global Counterterrorism Forum, “Members and Partners,” n.d., at <http://www.thegctf.org/web/guest/home>
- ⁷ Matthew C. Waxman, “Administrative Detention: The Integration of Strategy and Legal Process,” *Brookings Institute*, July 24, 2008, at www.brookings.edu/~media/research/files/papers/2008/7/24%20detention%20waxman/0724_detention_waxman.pdf
- ⁸ Matthew C. Waxman, “Administrative Detention: The Integration of Strategy and Legal Process,” *Brookings Institute*, July 24, 2008, at www.brookings.edu/~media/research/files/papers/2008/7/24%20detention%20waxman/0724_detention_waxman.pdf
- ⁹ B’Tselem, “Statistics on Administrative Detention,” May 7, 2012, at www.btselem.org/administrative_detention/statistics
- ¹⁰ B’Tselem, “Statistics on Palestinian Minors in Custody of Israeli Security Services,” at www.btselem.org/statistics/minors_in_custody and www.btselem.org/statistics/minors_in_ips_detention
- ¹¹ B’Tselem, “Statistics on Palestinian Minors in Custody of Israeli Security Services,” at www.btselem.org/statistics/minors_in_custody and http://www.btselem.org/statistics/minors_in_ips_detention
- ¹² International Law Department, “Administrative Detention in the West Bank: Q&As,” *IDF Mag Corps*, May 7, 2012, at www.mag.idf.il/163-5090-en/patzar.aspx
- ¹³ International Law Department, “Administrative Detention in the West Bank: Q&As,” *IDF Mag Corps*, May 7, 2012, at www.mag.idf.il/163-5090-en/patzar.aspx
- ¹⁴ International Law Department, “Administrative Detention in the West Bank: Q&As,” *IDF Mag Corps*, May 7, 2012, at www.mag.idf.il/163-5090-en/patzar.aspx
- ¹⁵ International Law Department, “Administrative Detention in the West Bank: Q&As,” *IDF Mag Corps*, May 7, 2012, at www.mag.idf.il/163-5090-en/patzar.aspx
- ¹⁶ International Law Department, “Administrative Detention in the West Bank: Q&As,” *IDF Mag Corps*, May 7, 2012, at www.mag.idf.il/163-5090-en/patzar.aspx
- ¹⁷ Barak Ravid, “Israel should reduce use of administrative detentions for Palestinians, top official says,” *Haaretz*, May 3, 2012, at www.haaretz.com/blogs/diplomania/israel-should-reduce-use-of-administrative-detentions-for-palestinians-top-official-says-1.428118