**Without Trial – Executive Summary**

Under international law, a state may detain a resident of occupied territory without trial to prevent danger only in extremely exceptional cases. Israel, however, holds hundreds of Palestinians for months and years under administrative orders, without prosecuting them. By doing so, it denies them rights to which ordinary detainees in criminal proceedings are entitled: they do not know why they are detained, when they will go free and what evidence exists against them, and are not given an opportunity to refute this evidence.

As with many patterns of its activity in the West Bank and in the Gaza Strip, Israel cites what it defines as "security needs" to explain its policy of detention without trial. Yet these needs, assuming they indeed exist in every case of administrative detention, cannot justify such grave infringement of human rights, in breach of international humanitarian law.

The report presents the stories of nine persons who were detained without trial, illustrating their great difficulty in mounting a proper defense against this draconian measure.

**The Administrative Detention Order in the West Bank**

Most administrative detainees in Israel are residents of the West Bank who are held under administrative-detention orders issued by OC Central Command or by an officer delegated by him. The grounds given for the detention are that the person endangers the "security of the region" and that the danger cannot be prevented by other means.

The number of Palestinians that Israel has held in administrative detention at any given moment exceeded the 1,000-person line during the second intifada. In recent months there has been a steady drop in the number: on 30 September 2009, Israel held 335 Palestinians in administrative detention, among them three women and one minor. Some 37 percent of them have been held for six months to one year, and almost 33 percent for one year to two years. Some eight percent have been detained for two to five years.

The judicial-review apparatus established under the Administrative Detention Order creates a semblance of a fair legal system. In practice, however, it denies the detainees any possibility to reasonably defend themselves against the allegations made against them. In the vast majority of cases, the judges declare the evidence privileged and suffice with Israeli Security Agency reports submitted to them in the absence of the detainee and the detainee's attorney. Consequently, it is

impossible for the detainee to refute the allegations against him or to present alternative evidence.

According to the army's figures, between August 2008 and July 2009, judges in the court of first instance gave decisions regarding 1,678 administrative-detention orders. In these decisions, the judges cancelled 82 orders (5 percent) and approved 1,596 (95 percent). In 2008, the military appellate court accepted 57 percent of the prosecution's appeals of lower-court decisions, while accepting only 15 percent of detainees' appeals.

HaMoked: Center for the Defence of the Individual and B'Tselem call on the government of Israel to release the administrative detainees or prosecute them in accord with the due-process standards set forth in international law. So long as Israel continues to administratively detain Palestinians, it must use this means in a way that comports with international law.

**Incarceration of Unlawful Combatants Law**

In 2002, the Knesset enacted the Incarceration of Unlawful Combatants Law. This statute, too, arranges the holding of detainees without trial. The Law was originally intended to enable the internment of Lebanese nationals whom Israel classified as "bargaining chips" for the exchange of prisoners of war and bodies. To the best of B'Tselem's and HaMoked's knowledge, Israel has used the Law against 54 persons thus far: 15 Lebanese nationals, who were subsequently released, and 39 residents of the Gaza Strip. Most of the latter were interned in 2009, which began with Operation Cast Lead, and most of them have been released. On 30 September 2009, Israel was holding nine Gazans pursuant to the Law.

The Law enables the sweeping and swift detention without trial of large numbers of persons. An amendment to the Law, passed in 2008, enables even broader use of the Law in the event of "wide-scale hostilities." Furthermore, the Law provides internees with fewer protections than the few that are granted detainees under the Administrative Detention Order, which applies in the West Bank.

The Law defines an "unlawful combatant" as a person who is not entitled to the status of prisoner of war and belongs to a force carrying out hostilities against the State of Israel or has taken part in hostilities against the State of Israel, even indirectly. The chief of staff or an officer delegated by him may order the internment of such a person without trial and for an unlimited

period of time if he has "a reasonable basis for believing" that the person poses a danger to state security.

With regard to legal proceedings on internment, the Law established two presumptions: first, the release of a person classified as an "unlawful combatant" will harm state security, unless proven otherwise; second, the organization to which the internee belongs carries out hostilities, provided that the minister of defense has made this determination. The presumptions release the state from the need to provide evidence justifying the internment and its continuation, thus switching the burden of proof onto the shoulders of the internee, who can never refute the allegations. The first presumption also contradicts the fundamental requirement specified in the Law that the person "pose a personal danger."

HaMoked and B'Tselem call on the government of Israel to immediately cease use of the Incarceration of Unlawful Combatants Law, and to act to repeal the statute.