

"If your enemy is the judge, to whom will you complain" (Arab proverb)

The military justice system, with its network of detention and lock-up facilities, prisons, interrogation centres and courts, is one of the key elements in the occupation of the West Bank by the Israel Defense Forces. Its installations are, in one way or another, largely concealed from the public gaze: some operate in secrecy, while others are inaccessible to the public. Even the military courts – which on the 'open court' principle should permit public access and following of proceedings – are located inside military bases or police stations into which entry is only possible for those holding special permits.

Machsomwatch – an organization of women against the occupation and for human rights – has, since the end of 2005, taken on the task of monitoring the military courts. The monitoring function includes: presence conducted at court hearings, observation and documentation. Documentation of the observations between December 2005 and December 2006 serves as the basis for preparation of this report.

Machsomwatch website:
www.machsomwatch.org



EXTENSION OF REMAND IN CUSTODY IN
**ISRAELI MILITARY
 COURTS DURING 2006**

מחסום WATCH

MACHSOMWATCH IS AN ISRAELI WOMEN'S ORGANIZATION THAT MONITORS ONE OF THE GRAVEST ASPECTS OF THE OCCUPATION – THE RESTRICTION OF FREE MOVEMENT BY PALESTINIANS IN THE OCCUPIED TERRITORIES.



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EXTENSION OF REMAND IN CUSTODY IN
**ISRAELI MILITARY
COURTS DURING 2006**



**Extension Of Remand In Custody
In Israeli Military Courts During 2006**

by Hagit Shlonsky and Hava Halevi.

Based on reports of observations conducted by some 20 members of Machsomwatch at military courts.

Our thanks and appreciation to **Attorneys T. Peleg, G. Laski and S. Ben-Natan** for their advice throughout the project.

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MACHSOMWATCH
ISRAELI MILITARY
COURTS DURING 2006

WATCHDODOT

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Introduction

The military justice system, with its network of detention and lock-up facilities, prisons, interrogation centres and courts, is one of the key elements in the occupation of the West Bank by the Israel Defense Forces (IDF). Its installations are, in one way or another, largely concealed from the public gaze: some operate in secrecy, while others are inaccessible to the public. Even the military courts – which on the 'open court' principle should permit public access and following of proceedings – are located inside military bases or police stations into which entry is only possible for those holding special permits. Obtaining such a permit involves complicated, time-consuming procedures whose outcome is by no means certain.

Military law and the many orders issued by IDF commanders in the various regions of the occupied West Bank govern every aspect of the lives of the local Palestinian population. A Palestinian need not be a criminal or a terrorist in order to find him or her self in the hands of the military justice system's many agents, whether the General Security Services (commonly known as the Shabak, an acronym of its Hebrew name, and referred to as such throughout this report), the police, the Prison Service, the army, the legal advisors of the defense establishment, and the judges. At the beginning of the legal process, the Shabak operates clandestinely; for those found 'guilty', the process ends in an isolated and remote prison. In between come events that get little public attention: arrests (which may take place from a person's home, in the street, at school, crossing a checkpoint, during an 'incident' or in an IDF-initiated action), interrogations, charges and confessions, the preparation of indictments, trial, and conviction or acquittal.

There is only one stage at which it is sometimes possible to observe the working of the military justice system: the point at which the detainee is brought before a judge. Between December 2005 and December 2006, we, a group of women, members of Machsomwatch, conducted some 130 observations of remand in custody extensions in six military courts. Our objective was to describe and expose the workings of the legal system that governs the lives of the Palestinians in the Occupied Territories and to establish the degree to which the system maintains or violates the population's human rights. Initially, we limited ourselves to observing remand extension hearings only, but subsequently extended our observations to all stages of the judicial procedure up to the conclusion of trial. In only very few cases do the Palestinians brought before military courts ever reach the stage of actual trial; in most cases the defence and the prosecution arrive at a plea-bargaining arrangement and the court generally accepts the deal and hands down sentence.

This present report concentrates on hearings for the extension of remand in custody of Palestinian residents of the Occupied Territories, but does not include hearings at which evidence was heard from prosecution and defence witnesses. For the most part, the detainees were still only in the early stages of interrogation, during which incriminating evidence was being collected, which would ultimately be used in preparing an indictment. In a few cases, the hearings we observed dealt with detainees whose interrogation had been completed and whose files had already been passed to the prosecution.

According to figures provided by government authorities and published by B'Tselem (Statistics on Palestinians in Custody www.btselem.org), 9075 Palestinians were held in Israel as 'security prisoners' in November 2006; the vast majority in facilities of the Israel Prisons Service, and a small number in IDF facilities. This figure included 5935 prisoners serving sentences handed down by the courts, among whom 170 were minors (under age 18), about 2400 detainees awaiting trial, among whom 182 were minors (under 18), and 740 held in 'administrative detention' (detention without charge or trial, authorized by administrative order rather than by judicial decree) among whom 22 were under 18.

Our observations were conducted on a random basis and we have no way of estimating how many Palestinian detainees went through the military justice system in the period under discussion.

Extension of remand in custody – a general description

Under the law governing the Palestinian population of the Occupied Territories, a man/woman may be held in custody for 96 hours without arrest warrant (in Israel, the relevant period is 24 hours) and for a total of eight days without being brought before a judge. Thereafter, a judge may approve further remand for up to 90 days (30 days in Israel), by which time an indictment must be filed. The judge's decision on whether, and by how much, to extend remand should be based on a perusal of the documents detailing the suspicions against the prisoner and the record of the interrogation, including certain privileged material withheld from the suspect's attorney.

Detention is designed to permit questioning of the suspects with a view to obtaining a confession and additional incriminating evidence to support the suspicions. But there is also a further purpose: the obtaining of information that incriminates others. Military law sanctions the issuing of an order which bars contact between a suspect and his attorney for up to 30 days (a period which can be extended by a judge, and subsequently by a higher instance, for up to 90 days). In the initial stages of the interrogation, when what is sought is a confession, suspects are indeed barred from consulting their attorneys. Thus, the attorneys may appear before the judge, but only if their clients are not in the courtroom. Hence, although they officially represent their clients, such representation is at best hollow, since they have never met those they represent. When the banning order is lifted, attorneys are allowed to meet their clients and both parties may be present in the court during hearings for the extension of remand. The order which bars contact between suspect and attorney can be lifted and re-issued at the request of the investigating authority.

When the investigation is complete, suspects' files are sent to the office of the Military Prosecutor where indictments are prepared. (Should there be insufficient evidence to support an indictment, the suspect may sometimes be held as an 'administrative detainee' – a category of prisoner with which we have not dealt, because proceedings for declaring a suspect to be an 'administrative detainee' are held behind closed doors.) The military court may then extend remand until completion of proceedings, i.e. the handing down of a verdict. Legally, two years may pass from the day of arrest until the verdict (in Israel, this period is limited to nine months).

We visited six military courts to observe the proceedings for extension of remand, four of them are within Israel's borders and two in the Occupied Territories:

- the Military Court for the Extension of Remand in Custody in the police lock-up in the Russian Compound, Jerusalem (hereafter referred to as the Russian Compound);
- the Military Court for the Extension of Remand in Custody in the police lock-up in Petah Tikva (hereafter – Petah Tikva);
- the Military Court in the Kishon prison at Jalameh (hereafter – Kishon);
- the Military Court at Shiqma prison, Ashqelon (hereafter – Ashqelon);
- the Military Appeals Court for Judea and Samaria, near the Ofer military base (in the Occupied Territories; hereafter – Ofer);
- the Samaria Military Court in the Palestinian village of Salem (in the Occupied Territories; hereafter – Salem).

Presence Of The Detainees' Families and Attorneys In The Courtroom

The location of the courts for the extension of remands is a key factor in determining attendance at proceedings by the public in general and the detainees' families and attorneys in particular. Detainees and their families are for the most part residents of the Occupied Territories, and as such may not cross into Israel without being in possession of a special permit which, as already noted, is very difficult to obtain. Thus, the families of suspects are almost invariably prevented from attending hearings in Jerusalem's Russian Compound, in Petah Tikva, in the Kishon Prison and in Ashqelon. Over the years, Israel's High Court of Justice has been petitioned in this matter of making court proceedings truly public and ensuring suspects' families the possibility of being present in court during hearings (High Court 2560/96). But despite recommendations by the High Court that it should be made easier for families to be at court, it remains difficult for them to obtain permits to cross the checkpoints in the West Bank and enter Israel. This might explain why these four courts do not usually inform detainees' families of the dates of hearings.

Detainees' families are usually present at hearings for the extension of remand in custody held in the Salem and Ofer courtrooms. At Ofer, the families wait in a yard and are called to the courtroom when their relative is brought in. Generally, only two relatives are permitted to be present; children may not be brought to the court. The many staff – soldiers, police, military police and interpreters – prevent any physical contact between the detainee and his or her family. Sometimes they manage to exchange a few words from a distance until a guard silences them.

The difficulty of getting to the courts located in Israel also militates against lawyers resident in the Occupied Territories. They, too, must obtain entry permits to Israel, and sometimes have to travel by long and tortuous routes, and wait in line at checkpoints in the West Bank

and at entry points into Israel. The difficulties they face are aggravated still further during periods of 'closure', when movement through the checkpoints is halted or drastically curtailed.

Arraignment of detainees

In the Russian Compound, Petah Tikva, Kishon and Ashqelon detainees are brought from the respective local cells to the military courtrooms, handcuffed and sometimes in leg irons. In the Russian Compound and Petah Tikva, suspects are also blindfolded with what look like pilots' goggles. They await their turn outside the courtroom, each one pushed into the corner between a wall and an open door, facing the corner. As each is taken into the courtroom, blindfolds and handcuffs are removed, and the detainee is seated on a bench facing the judge.

At Ofer, detainees are brought from various detention centres. While they await their turn to appear before the judge, they are held in sealed iron cages measuring some three by four meters, with a small grille window. Sometimes there are as many as 30 detainees in each cage, bitterly cold in winter and burning hot in summer. An attorney can sometimes be seen talking to a detainee through the grille. We do not know whether the men are handcuffed while there or whether they can sit. They are generally brought into the courtroom in groups of four, and seated on the defendants' bench chained together in pairs by the legs.

Many of the remand extension hearings at which we were present took place in winter. Many detainees wore clogs without socks and were dressed in lightweight clothes. We also saw detainees bandaged, presumably because of injuries, and men who seemed in obvious need of medical attention.

The Courtroom Personae

The Judge

Some of the judges are regular IDF soldiers whose regular military duty this is, while others are called to reserve duty for this purpose. All hold at least the rank of captain and have legal training. They run the court sessions exactly like an assembly line: as one detainee leaves, another enters. Hearings for the extension of remand often take no more than two minutes per person.

The Police Investigator

If the detainee is still under investigation, this investigator will be a policeman or a Shabak operative, in civilian clothes; if an indictment has been filed, this role will be taken by a representative of the Military Prosecution Department, a male or female soldier of one of several possible ranks.

The representatives of both the investigating authority and the prosecution behave like overworked clerks who are not fully cognizant of the details of the files they are handling. They recite a ready-made rubric that covers the suspicions held or the charge being brought, but when required to give details, make very heavy weather of going through the files.

The Attorneys

Most attorneys work under the auspices of non-profit organizations in the Occupied Territories – Nadi L'Asir (Palestinian Prisoners Club), Ansar Al-Sajeen (Supporters of Prisoners, a foundation with a religious orientation), and A-Damir (Conscience). Minors are usually represented by attorneys from either Defence for Children International, Palestinian Section (DCI), or UNICEF. They receive lists of detainees being brought to court for the extension of their remand in custody, and in many cases meet detainees for the first time only in court. Those whose remands are

to be extended, and others brought to court after having been indicted, may find themselves being represented not by the lawyer whom they have already met, but by another from the same organization. Consequently, some of the attorneys display what is, to say the least, a rather poor acquaintance with the details of the suspicions levelled against their clients. Among them are some whose command of Hebrew is less than fluent, which at best hampers their understanding of the material in the detainee's file, and, all too often, completely prevents them from understanding. Often the files include details of statements and confessions which have been scrawled in handwriting that is difficult to read even for people whose Hebrew is perfect.

Anyone who can afford to do so hires a private attorney. Among these, we have met some who impressed us with the effort they made to prepare their client's defense, although even they have little success in shortening the remand period.

The Interpreter (a soldier)

Speaking both Hebrew and Arabic, the interpreter has a multi-functional role: he will translate, keep order, and make announcements to the families of detainees waiting their turn to go into the courtroom.

The Typist (a female soldier)

The typist records what is dictated to her. In the Russian Compound and in Ofer, she is seated where the judge and the police investigator or prosecutor can see on the computer screen just what she has typed; furthermore, they dictate at a speed and with emphases that facilitate accurate recording, and where they detect inaccuracies they make immediate corrections. The lawyer, because of where he is seated in the courtroom, cannot follow the typist's work and verify that it accurately corresponds to what he said in court. True, he can see the protocol when the hearing is over, but it is obviously more complicated to have mistakes corrected at that point. We know of no lawyer who appealed

against the protocol after reading it when the hearing was over. In Salem there are a number of computer screens so that the lawyers too can follow what is being recorded. In Ashqelon, Kishon and Petah Tikva, the court functions without a typist and without a computer; the protocol is handwritten by the judge.

The Security Personnel

These are policemen, soldiers and prison guards, several of whom stand with their rifles at the ready.

The Detainees In The Courtroom

Order no. 378 of the Defense Regulations (Judea and Samaria, October 2004) lays down that 'A soldier may arrest, without a warrant, any person violating the provisions of this order or giving grounds for suspicion that he has committed an offence under this order.' And, clause E.1 states that: '(1) a 'detainee' [is] a person arrested in the area in the course of operational activity to combat terror and where the circumstances of his arrest give rise in his/her case to the suspicion that the said person endangers or is likely to endanger the security of the area, the security of IDF personnel or the security of the public at large.' This accurately describes who the detainees are - absolutely anyone: children, youths, adults, women and the elderly.

Israeli law lays down that - for the purposes of trial - a 'minor' is someone not yet 18 years of age. But in the Occupied Territories, a minor is someone under 16 years old. The age of criminal responsibility for Palestinian children is 12, and a youth of 16 or more is considered an adult in the eyes of the law. Palestinian minors are interrogated without a family member or social worker being present. The law forbids the imprisonment of over six months of anyone not yet 14 years of age. A lawyer specializing in defending children told us that the sentencing is often delayed until the young 'offender' turns 14.

Grounds For Arrest

Until the investigation of a detainee is complete, the material in his file is classified and the acts of which he is suspected are referred to in court only in general terms, such as 'activity endangering the security of the area', or 'posing a danger'. Covered by such expressions are suspicions of what may be either slight or very grave offences which presumably have been detailed in the confidential report placed before the judge.

One can learn more about the grounds for arrest during remand extension hearings in cases where an indictment has been prepared. Most commonly cited are the following:

- i) Membership in Palestinian organizations on the list of forbidden associations as determined by decree of the military commander (Order 84 in the Emergency Regulations relating to forbidden organizations). This also includes passive participation in the activities of these organizations (for example, children are arrested for 'membership' if they helped bring and arrange chairs for a meeting of the organization, or carried flags in a procession, painted slogans, put up posters, etc.). In a number of cases, the prosecution cited a ruling of the Judea and Samaria Appeals Court that even 'token membership in a terror organization constitutes sufficient grounds for holding a person in custody until the completion of proceedings against him';
- ii) Membership of organizations which, while they are not on the list, are nevertheless regarded by the court as hostile associations (this we learned from a discussion with a judge at the Russian Compound);
- iii) Giving shelter to a 'wanted' person – which may include feeding or providing a bed for such a person. Many detainees are acquaintances, relatives and family members of 'wanted' persons, and they may be arrested so that they can be interrogated, provide testimony and incriminate others. The term 'wanted' is commonly accepted as synonymous with 'guilty' and 'dangerous,' but it must be remembered that many of the 'wanted' are merely people whom the Shabak has

determined that it needs for its own purposes;

iv) Raising funds or arranging for their transfer to various organizations in the Occupied Territories;

v) Throwing stones, or Molotov cocktails, possession of combat materiel, trading in weapons or ammunition;

vi) Suspicion of causing death, or of conduct likely to cause death including involvement in an attempted terrorist action, recruitment of a candidate for a suicide mission;

vii) Conspiring to carry out any of the above activities (in this case, it is sufficient if the suspect merely spoke about or agreed to such activity even if in practice nothing came of it).

We also saw a few detainees who had been arrested on suspicion of committing crimes such as robbery, theft, forgery, etc.

The Procedure For Remand Extension

Many detainees whose indictments had not yet been filed were brought to court for an extension of remand in custody while they were still barred from meeting with an attorney. When such detainees came before the court in the Russian Compound (cases of this kind made up about half of those observed here) the attorneys who were supposed to appear were told to leave the courtroom, as were we, too. One of the guard-escorts described the courtroom proceedings for us: the interpreter explains to the detainee the charges against him, and tells him that he may not meet his attorney. The detainee is then immediately taken out of the courtroom, and his attorney is allowed in and is given an explanation by the court, to which he is expected to respond on behalf of his client.

An attorney who often defends detainees told us that a ban on meeting with an attorney can be imposed at any stage of a detainee's investigation and that he will then receive no explanation of his rights, while his attorney will be allowed no access to the evidence against him. The only recourse against such a banning order is by appeal to the Supreme Court – an expensive procedure – in the hope that the Court will order the ban lifted.

An equally serious situation arises when, although the detainee may meet with his attorney, the latter is denied access to his client's file, which contains a classified report that only the judge may read. Typically, this is what then happens: the attorney and the detainee are both present in court. The police investigator asks the judge for an extension of the remand in custody; the judge asks the defense attorney whether he has anything to say. In many cases that we observed, the lawyer was only then, for the first time, seeing his client, and in the courtroom at that. He did not know when or under what circumstances his client had been arrested, he had no knowledge of what he was suspected of, and

whether he had confessed to the charges, or, in the language of the court, whether he was 'cooperating with his interrogators.' On a few occasions we saw attorneys vehemently demanding to know when their clients were arrested and how many times they had been interrogated, and protesting at having to defend clients while knowing nothing of the circumstances of their arrest; the police investigators, they said, were requesting remand extensions, but the investigations were proceeding at a snail pace – if at all.

A remand extension hearing lasts between two and four minutes. When the detainee is brought into the court, the police investigator hands the classified file to the judge, who briefly looks through it – which takes a minute at most – and ascertains that the detainee before him is indeed the suspect mentioned in the file (with a simple "What's your name?"). The policeman usually asks for 15 or 22 days remand extension. The defense attorney who, as noted, may only now be meeting his client for the first time, and with no knowledge of the classified material in the file, has the right of cross-examination; generally, however, he will merely exchange a few quick words with his client, and then tell the court that the detainee agrees to the requested extension.

Sometimes an attorney will attempt cross-examination along the lines of the following case (observed in the Russian Compound on January 3, 2006):

Attorney (to police investigator): Has the detainee given his version?

Silence and a smile.

Attorney: Does the detainee admit to or deny the charges?

Silence and a thin smile.

Attorney: In what year were the offences attributed to the suspect committed? A long time ago, or recently?

The prosecutor pointed to the classified report.

Attorney: Is he cooperating with his interrogators?

Silence, a lazy smile and a vague wave towards the file before the judge.

Attorney: Are there any other charges against him?

A thin smile and a shrug of the shoulders.

Attorney: Are any other people mentioned in the file?

A smile, a shrug and a glance at the judge.

Attorney: Was he interrogated by the Shabak?

This time the prosecutor answered: Of course!

Attorney: When was he interrogated? During the day? At night? Continuously?

The policeman drew a circle on the floor with his shoe: We interrogate whenever we need to.

This scene (and many like it) ended with the judge dictating to the typist that, in light of the serious suspicions raised in the classified report, it seemed that there was reason for extending the remand, because the detainee in question constituted a security risk vis-à-vis the area and thus he, the judge, was ordering remand extended in order to further the investigation (generally for another 15 or 22 days).

We have also seen lawyers who insisted on their right to be given more concrete answers, whereupon the police investigator turned to the judge saying that since these are remand extension proceedings and the case was not at the 'presentation of evidence' stage, the police was under no obligation to answer the defense attorney's questions. At this point detainees are usually given the right to speak. Most will forego this right, but we did hear one detainee ask what he was suspected of. He did not receive an answer. A few detainees asked why they were being held such a long time if the investigation against them had been concluded – a week or more had already passed without interrogation,

and the police investigator himself had said the investigation was over. The answer here was that 'various lines of inquiry are being checked out', and the judge extended remand by 15 days.

The number of days by which remand is extended is also partly a function of court arrangements, i.e. how often and on what days remand extension hearings take place. For example, in Ashqelon, the Russian Compound and Ofer, hearings are held twice a week; in Kishon and Petah Tikva the court sits only once a week.

Even when an indictment has already been submitted, the procedure for extending remand in custody is very brief. Few defense attorneys bother to go into details of the indictment. In not a few cases they ask for an extension of remand to allow them to study the file which, for reasons beyond their control (i.e. they have not been able to photocopy the material), they have hitherto been unable to do. In many cases, defense attorneys are likely to agree to 'remand in custody until the end of proceedings' in order to speed up the detainee's transfer from the temporary remand centre, where conditions are particularly harsh, to a remand prison where conditions are marginally better. The general procedure in remand extension cases is for the defense and the prosecution to agree on the time-frame and for the judge to sum up and order the setting of a date for the hearing. The police investigator will not normally haggle over the length of the remand, because he can always ask for – and will always be granted – a further extension.

Release On Bail

In some cases, the judges agreed to hear requests by the defense for release on bail or on restrictive conditions until the end of the trial. But we saw only a very few cases of release on bail. Bail is imposed to ensure that the detainee will appear for trial on the set date. In one case that we witnessed in Ofer, the judge agreed to release two 16-year-olds on bail of 25,000 shekels each. This was a clear mockery, for there was no chance at all that the detainees, or their families, could raise such sums. In consequence, although the youths' guilt had yet to

be proven in court, and although they clearly did not pose any really serious danger to the security of the area – for the judge had been prepared to release them on bail – they would now remain imprisoned, possibly for a long period, till the end of their trial. We saw a very small number of detainees whose investigation had ended, but against whom no indictment had yet been filed: they were released on bail of between 1,000 and 2,500 shekels, the money being paid into the IDF's coffers until the end of their trial, and who could say when that would be?

Conclusion

'If your enemy is the judge, to whom can you complain?'
(Arab proverb)

The procedures for remand in custody, and for remand extension for Palestinians resident in the Occupied Territories, as we have observed them, present a most depressing picture. Many detainees are incarcerated in detention facilities and prisons for protracted periods in harsh conditions, prior to proof of their guilt. The principle whereby a man is regarded as innocent until his guilt is proven is one that is regularly violated, as the military courts and the entire system of military justice deprive suspects of their liberty and their ability to defend themselves against accusation.

Placing remand extension procedures under the supervision of a judge supposedly limits the harm done to men who are in practice being punished before proof of guilt has been established. But our observations raise doubts about this procedure.

We do not know whom the IDF recruits to serve as judges, or what criteria govern such appointments, and we certainly cannot evaluate the judges' professionalism. What we have noticed is that some are clearly more, and others certainly less, attentive. On many occasions we were horrified by the off-handed ease with which judges extended remands, even when it was obvious that the investigations for which the detainees were allegedly being held were either not taking place or were proceeding painfully slowly. The judges' hurried skimming through the detainees' files testified to their not having studied the cases before them and to their total reliance on the Shabak investigators. The judges are surely as aware as we are that prolonged detention is a tool in the hands of investigators to pressure detainees to sign confessions to the offences attributed to them. They surely know, as we do, that it is also designed to allow the investigators to put pressure on detainees'

families, and ultimately to lead to the incriminating of others – whether detainees, or fellow villagers, or members of the same organizations, etc.

How ironic it is that these same Palestinians – of whom we are endlessly told at the checkpoints that "they're all liars, and you can't believe a word any of them says" – are suddenly to be believed here, in the courtroom of all places, when they incriminate themselves or others. Hearsay, testimony, and the incrimination of others – all extracted by the investigators – and certainly the detainees' own confessions to the crimes of which they are accused are always accepted as reliable evidence (and let's not speculate here as to precisely how such confessions are obtained).

Our impression is that judges hearing applications for remand extension exercise no independent judgement. They do not hear witnesses, do not question the investigators or check the reliability of their reports.

We can do no better than to quote the words of the President of the Military Appeals Court writing in the context of an appeal against the release on bail of a man against whom charges had been filed: 'When we take into consideration the extent of the offences with which the security forces must cope, it is difficult to expect that every case... will have invested in it all those various factors used in investigating serious incidents... Nevertheless we cannot compromise on less than the accepted minimum'. (from the Minutes of Judea and Samaria Appeals Court, No. 1299/06).

Remand extension hearings preserve all the rituals of the courtroom, and all the dramatis personae are present: the judge and the attorney (assuming that the detainee has not been prevented from meeting with his advocate), and, of course, the typist, the interpreter and the security forces representatives. The detainee, too, is present, but his voice is not heard.

So why should these sessions be held with all the trappings of a court hearing? Would it not be sufficient to make do with a purely

administrative procedure during which a list of detainees is submitted to a judge or a specially designated and suitably trained clerk? The answer to this not merely rhetorical question is that there is apparently a need to maintain a suitably respectable image which demonstrates to the world that we do conduct a proper trial; we do regard the suspect as innocent until he is proven guilty; we do weigh the verdict handed down for each and every Palestinian; the detainee does enjoy the services of a defending attorney.

Our observations have pointed up the way in which the military justice system undermines the social solidarity of Palestinian society – for every instance of even token membership in cultural, political, religious or student organizations can be interpreted by the military authorities as suspect. Further, the system of using Palestinians drawn from the same family, or the same village, the same workplace or the same classroom to encourage detainees to talk and unwittingly implicate themselves or others deepens mutual distrust and enmity within these groups. Further weakening Palestinian society is the extensive system of fines imposed by the courts often within the framework of the plea bargain, bail monies which are difficult, if not impossible, to recuperate, and fines levied for a wide range of traffic offences against which there is never any successful appeal.

Clearly, we make no claims to being able to evaluate the benefits to Israeli security that may result from the proceedings that we have observed. Our purpose has been to describe them and to expose the infringements of human rights that result from them. Our observations thus far have revealed a vast bureaucracy – almost an 'industry' in itself. Many of us, with a few years experience of observations at the checkpoints, have wondered more than once whether, in addition to spawning a host of provocateurs, collaborators, and men willing to incriminate others, this bureaucracy may not also be creating the avengers, the bearers of grudges, and the terrorists themselves?

Appendices

A Selection Of Reports From Observations In The Military Courts

**The Russian
Compound**

29.12.2005

Rep.: Hava H.

We came into court a little after 10:45. It is somewhat difficult to describe the 'judicial process' that takes place here. The detainee's defense attorney was standing in for a colleague and told Hagit and me privately that he would not continue appearing in remand extensions, because they were pointless and humiliating. Nevertheless he is continuing. He exchanged a few words with the police investigator and the judge.

The first detainee was brought in chained and blinking (later we found out why), and had his handcuffs removed by the escorting policeman once he was in the courtroom. After two minutes, during which nothing happened, he was handcuffed again and led out. We saw and heard nothing, but were told that 'there was an agreement': in other words the defense attorney had agreed to a 15 day extension of his client's remand in custody.

The second detainee was not brought into court because he is still barred from meeting with his attorney. (The attorney, P.A., like all the other defending counsel on hand today, was here on behalf of Ansar Al-Sajeen, a foundation that supports religious prisoners, although today's detainees were not all necessarily religious). P.A. asked for access to the confidential material given to the judge, saying that he could not defend his client if he did not know what he was suspected of. The request was denied. At this stage, all the lawyers left the court but, unlike the previous occasion, we were not asked to leave. The detainee, a Ramallah man, was then brought in; he asked to see his attorney, but was told that this was impossible. The judge dictated his decision: 'I am

aware that the accused is barred from meeting his defense attorney, and that therefore the attorney is groping in the dark. Nevertheless, the investigation is only at its outset and the suspicions are extremely grave. I am satisfied that the investigation is proceeding properly, and that due time must be allowed for it to be completed. On the other hand, one has to weigh the court's continuing supervision of the period of remand. Balancing the two – one against the other – I order the remand extended by 15 days.'

The third detainee was T.N.B. His attorney, A.R., told the court that his client needed a further medical checkup and should also have his eyes examined, as he was losing his sight.

The judge ruled that the lock-up's doctor would examine T.N.B. and give him any necessary medical attention.

It was at this point that we learned why the detainees blink on entering the well-lit courtroom – they are brought blindfolded from the lock-up to the court and only when they enter the courtroom are the blindfold and the handcuffs removed. Hardly have these been removed when it is time to replace them as the detainees are taken out of the courtroom.

In T.N.B's case there was again an agreement on the extension of remand, and there was no discussion between the defense attorney or the detainee himself, and the judge.

The fourth detainee, like the second, was still barred from meeting with his attorney and was not in the courtroom as his counsel tried to question the police investigator.

Attorney: Where was the man arrested?

The investigator calmly answered that it was the army that made arrests, not the police, and therefore he did not know the answer to the question.

Attorney: Until recently, the detainee was abroad for the past eight years. Was he arrested here or abroad?

No answer. (Everything is in the secret report, and because it's secret, it is secret. H.H.)

Attorney: For how many hours or days has he been interrogated?

No answer.

At this point the judge intervened and explained to the attorney that there really was nothing to be done. The investigation was in its early stages, the interrogation was secret, and it was impossible to tell him (the attorney) anything. The lawyer left the courtroom and we, too, were suddenly asked to leave. But here the judge again intervened, saying that we were nice women who only wanted to ensure that everything was alright: we knew nothing of what was in the confidential report he had in front of him and could not reveal its contents and therefore there was no need to ask us to leave the room. So we stayed. And the detainee was brought in: he had nothing to say.

The judge's decision: 'I am aware of the defense attorney's difficulty in that he knows nothing of the suspicions against the detainee. These suspicions are of a very grave nature. The suspect has given his version.'

This was a mantra we were to hear throughout the time we spent in the court. And how reassured we felt when we learned that 'the judge is satisfied that the investigation is proceeding properly and that additional time is needed for the planned activities in the continuation of the investigation, etc., etc.... supervision of the court... when I balance.... remand extended by 15 days.'

The fifth detainee was brought into the court with the same ritual: he too was blinking and, once in the courtroom, his handcuffs were removed. We have seen him before. His leg is in a plaster cast. He has nothing to say to the court. The two sides are agreed on the extension of his remand. But... Bravo! The routine has been broken. He was only remanded for a further 11 days! The blindfold was replaced, the handcuffs were snapped on and he was taken out. It took less

than a minute.

The sixth detainee: Again the same ritual, the blinking eyes, the handcuffs removed. His attorney explained to him that extension of his remand in custody had already been agreed to – again the blindfold, the handcuffs, and out he went.

The seventh detainee: Now they really seemed to have gone wild—his remand was extended by 12 days. The whole thing, rituals and all (eyes, handcuffs, bench) took a minute and a half.

The eighth detainee: Attorney S. managed to obtain the court's permission to bring in the detainee's mother. Then the detainee himself was brought in to go through the same ritual. His mother went up to him: there were kisses, hugs, a few quick words, then another few words and a gentle stroking. The detainee tried hard to calm his mother and assure her that it would all be okay. There was agreement on the extension of remand. Then came the usual concluding ceremony (eyes, handcuffs – how hard it must have been for his mother to watch all this). Then more kisses and hugs to round the 'hearing' off. The embraces at the start and those at the end were separated by perhaps a minute. How heart-breaking...

And so it went on, and on, for a total of 11 detainees. 'I am satisfied... very grave suspicions... the secret report... the needs of the investigation' and everything by agreement.

Petah Tikva **The first sight to catch our attention were four young men, their eyes covered by what looked like black pilots' glasses, their hands and legs chained, standing in a corridor with their faces to the wall (we need to check why their eyes are blindfolded). Sometimes they have to stand for hours like this, until they are called into the courtroom. Some of them appeared to us to be minors.**

4.01.2006

Rep.: Rahela M.

The police prosecutor brought us in, saying he'd already received a list of names of those of us permitted to enter. They seated us at the back of the room.

We knew that 15 people were to appear today, of whom eight to 10 were barred from meeting their lawyers. We missed some of the hearings because today the trials had apparently started before 12:00 (one never knows when they'll begin). No family members were present in the courtroom. Only three lawyers were on hand, all Israeli citizens, sent by the non-profit organizations that help prisoners: A-Damir, Ansar Al-Sajeen, Nadi L'Asir (a fourth organization, Mizan, was not represented in court today). The judge, in IDF uniform, was Captain Adi Feigel. Alongside him was an interpreter, also in uniform, and, on the left, the police prosecutor, in civilian clothes. In addition there were two armed Military Police, who also sat in the back row.

No minutes of the proceedings were recorded, as they are at the Ofer court, for example. The attorneys were seeing the detainees whom they were to represent for the first time only when each was brought into the courtroom. This was also the moment when the black eye covering was removed. It was only at this stage too that the defense attorneys received copies of the grounds for arrest|: these bore only one sentence (as we saw for ourselves when the attorneys showed them to us), identical for each and every detainee: 'forbidden activity endangering the security of the region' (the whole region!). We did not hear the prosecutor (who, it was explained to us, is in the police, not the army). He simply passed a written sheet to the judge, who read it and, needless to say, granted an extension of remand in custody to permit further investigation.

Petah Tikva The lawyers were N. from Nadi L'Asir, A.M. from Ansar Al-Sajeen, P.
31.05.2006 from A-Damir, and Z. and A., privately hired attorneys.
Rep.: Rahela M.

The judge was Adi Feigel.

There were 14 detainees, including one who was barred from meeting his attorney.

Extension of remand for H.D. from Nablus, a deputy bank manager, who has been barred from meeting his attorney for the past 34 days. A young lawyer, Z., from Nazareth, who knows H.D. personally, began to represent him, but he was not familiar with the maze that is the military justice system. The following is an excerpt from the exchange between Z. and the police representative:

Z: What is he suspected of? What activity?

Policeman: It's in the confidential report. I can't say. Activity in a hostile organization.

Z: Is it some specific activity or a number of things?

Policeman: The activity and those involved are detailed in the confidential report.

Z: Contact with a member of Hamas?

Policeman: I didn't say that.

Z: Can you tell me about the type of suspicions in a way that won't damage the investigation?

Policeman: No.

Z: Are you talking about something that he has actually done or about some suspicion that has arisen from his status [as a bank manager] or about his being present in a particular place?

Policeman: Something that he did. Activity in Hamas.

Z: Has he confessed to the acts you suspect him of?

Policeman: It's in the confidential report.

Z: I ask the court to order the police representative to answer.

Judge: He cannot answer because this isn't something that can be answered with a yes or a no.

Z: I'm asking the police representative to answer whether the

suspicious have been denied or there is an admission of guilt.

Judge: After studying the confidential report, I find that there is no place for answering such a question.

Z: The detainee has already been held for 34 days (since 18 April). What has been done during all this time?

Judge : Don't ask him questions that he cannot respond to.

Policeman: We are asking for an extension of 22 days remand in custody.

Z: Is that time designed to wear him down?

Policeman: No.

Z: Then is this the reason why you can't answer what you have done up to now?

Judge: I'm here for you... Some judges would have told you long ago that you can only ask two questions. Ask what you want.

Z: Whatever it is that you want to do has to take 22 days?

Policeman: This is a complex investigation that justifies this long period.

Z: What is so complex?

Policeman: It's in the confidential report.

Z: Is the suspicion one of a link with a Hamas member? Is it connected to the fact that he is a bank manager?

Policeman: Directly, no.

Z: In other words, it's not connected with the transfer of money?

Policeman: It's in the confidential report.

Z: Everything's in the confidential report. What else is there to be said.

Judge: You go up to a door and the door's locked, so you go to the window and the window's closed. Everything's closed. and you still try, so don't be surprised that there are no answers...

Z: (The penny has just dropped)... I thought we were in a democratic country. We're talking about human rights here, not even civil rights. So what can I ask?

At this point Z., in despair, relinquished his role to A.M., the advocate from Ansar a-Sajin.

The prosecution and the police obviously regarded Z. as a failure. But it seems to me that what we witnessed here was the all-too rare sight of a lawyer up against the system for the first time who dared to speak out fearlessly and did exactly what the regular lawyers cannot permit themselves (or the prisoners they represent) to do: challenge the court.

In summing up, the attorney surprised the judge by reading out the decision of a judge at a previous hearing: 'I am extending his detention with a heavy heart: it is possible that we are dealing with an innocent man.' He then told the court about the detainee's family: H. D. is the father of twins who were born crippled and who now have no-one to provide for them. Then A.M., more experienced than Z., pointed to the especially thin file with its very few pages. He saw no justification, he said, for such a long extension of remand and asked for his client's immediate release, or, failing that, for a release on bail.

The decision: 18 days extension of remand in custody.

Extracts Of Reports By Subject

Conditions Of Detention

Ofer ...when I looked for the attorney, I discovered an area of the court that I had not previously known, and it was perhaps the most shocking thing that I have seen at Ofer: three or four metal containers, each approximately three by four meters. They were completely sealed apart from two small slits. It is in these cages that detainees brought to court spend all the hours they must wait before they enter the courtroom and it is here, too, that they are subsequently held after their hearing as they await return to the detention centre. According to the lawyer, each cage sometimes accommodates up to 30 men, in the bitter cold of winter and the oppressive heat of summer. The attorneys talk to the detainees through the slits, which are so small that only the detainee's eyes are visible. This is the grotesque manner in which a detainee's right to meet his attorney is being implemented.

5.03.2006
Rep.: Hagit S.

Grounds For Detention

Ofer ...Advocate A.C. was representing a 28-year-old detainee, married and the father of children. She had asked the court to reconsider a case that has apparently already been before it. The charge: membership in Ousra of Hamas, a group that meets for religious purposes - to study the Koran and pray. The accused had admitted taking part in a parade and waving flags and placards. The attorney asked the court whether anyone knew what was written on the placards. Perhaps the parade had been part of the celebrations of a religious festival? Perhaps it had been a parade mourning the death of a political or religious leader? Maybe the placards bore a religious message or a message of peace? Parades, the attorney

10.05.2006
Rep.: Hava H.

argued, scarcely justify use of the term 'endangering public safety.' The detainee had no past record and an alternative to detention in custody would surely be sufficient.

The prosecutor disagreed with the defense attorney's remarks, saying that the very fact that the accused had taken part in a parade testified to his membership in Hamas, and he quoted: 'Even token membership in a non-permitted organization is justification for detention until completion of proceedings,' and in this case, according to the prosecutor, membership had not been merely 'token'.

The defense attorney repeated her contention that there was nothing in the evidence to point to the detainee being a 'danger', nor should Ousra of Hamas be viewed as a 'non-permitted' organization.

The judge refused the request to re-open the case.

Petah Tikva ...Detainee no. 12 is from Nablus. His brother has been on the
20.09.2006 'wanted' list for a long time. The army has been putting heavy
Rep.: Sarah K. pressure on the family to turn the brother in. The authorities tried to arrest the mother and threatened the detainee that if he didn't turn his brother in within a month they would arrest him, and that's just what they did.

Attorney N. claimed that there was no justification for extending detention.

The prosecutor alleged that the brother of the accused had come home with other wanted men to eat and drink, and that no one had stopped him.

The defense lawyer claimed that this did not constitute guilt. The house does not belong to the accused, but to his parents. He could not tell his brother what to do.

However, the judge thought that remand in custody was justified.

The detainee was collaborating with his brother; thus, his remand should be extended so that the investigation could be continued. He extended remand in custody by 23 days.

Bail Sums For Conditional Release

Ofer ...the third detainee was represented by Advocate A.T. who opposed remand in custody until the completion of proceedings.
10.05.2006
 Rep.: Hava H.

The detainee was accused of having put up a Hamas poster in Na'alín village in 2005, and of displaying pictures of Hamas candidates in the elections in Na'alín in January 2006.

The judge agreed that this was indeed not a case in which the accused should be remanded in custody until completion of proceedings. Instead, he ruled that the detainee be released on restrictive conditions, after posting bail of 7,000 shekels plus a third-party surety of 20,000 shekels. The prosecutor appealed the decision and was granted a 72-hour stay of execution.

Here again, we are up against the question of the bail sums demanded of very poor people. The trial will take place in perhaps only another year or more, and is likely to go on for a long time. And getting one's bail money back is, in itself, no simple matter, as was pointed out to us in many conversations with the families of detainees. Are the Palestinians financing the Occupation themselves?

Ofer ...The next detainees were two children, cousins, who looked about 12 but were actually 15. The army had caught them on their way home from school a week ago. Three members of the family were in court. The prosecutor contended that there was a video showing the boys throwing stones. Their defense attorney cast doubt on the existence of such a video, which had not been brought to court, and objected to remand being extended by a further four days.
27.03.2006
 Rep.: Hava H.

The judge concluded the hearing by saying that in the four days that the children had been in custody, no investigative procedures had taken place; he was therefore ordering their release on bail of 25,000 shekels each, pending the filing of an indictment, if it was decided to press charges.

The defense attorney objected, saying that the family would not be able to raise and deposit such a sum. Thereupon the judge agreed to another hearing after lunch, which would allow the prosecution time to locate the video and show it to the court.

When we spoke to the boys' counsel late that night, he told us that no video had been produced in the special, second hearing, and it had been decided that no mention would be made of any such incriminating video. Of course, he said, he could have demanded a full trial in which the prosecution would have had to produce proof of the charges, but that would take a year and a half during which time the boys would be held in prison. He thought it better to go for a plea bargain which would result in the youngsters getting a month and half prison term, and that would be the end of it all. He also told us that in the other four cases heard that afternoon, the judge had ordered the detainees released on bail of 25,000 shekels each...

It would be interesting to know what bail sums are in fact levied against Palestinian detainees. We have observed the trials of detainees released on not inconsiderable bail sums who, when their cases eventually came to court – often a year or more later – then found that the bail sum had been converted into a 'fine'.

Return Of Deposited Bail Sums

G. comes from Yatta and was arrested in March 2002 when a file was opened against him in the Hebron police station. On 26 March 2002, bail of 2000 shekels was deposited for him in the Kiryat Arba post office (he had a receipt to this effect) and he was freed and summoned to appear at the Beit-El military court in June 2002. When he presented himself there he was told to return home: there was to be no trial because the case had been dropped. He told us that he had been trying to get his money back for the past four years, even using the help of a lawyer. Following our intervention, on 28 July 2006 he called to thank us: he had been given 2020 shekels.

This was what the rigmarole involved: first, it had to be established that the file had indeed been closed, by going to the police station where it had been opened; in G.'s case, this was the Hebron police station. Here, a clerk issued a form testifying to the closure of the case, addressed to the finance department of the Beit-El civil administration office where there is a clerk who deals with the return of bail money. The applicant, and it must be the applicant in person, had to make his way to this office equipped with his identity card, the original receipt for the bail money, and the form attesting to the closure of the file, on the back of which the first clerk had listed G.'s telephone number, in case the second clerk should need to contact him. The office of the second clerk, it transpired, was not in that area of the building where Palestinians usually go to obtain a magnetic card or apply for various permits, but instead in a section dealing with 'general' matters (as, for example, the return of bail money). Once located, the second clerk gave G. an order addressed to his bank (and if he had not had a bank account, then he would have had to open one). This document had to be taken to the bank (back in Yatta, far away from Beit-El) and then returned to the Beit-El clerk, duly authorized by the bank and giving the details of G.'s account. A fortnight then passed (in the case of G.)

during which the Beit-El clerk worked on the case – her phone was mostly 'busy' and, when we did get through to her we found that her computer had all too often 'crashed', although it has to be said that she was invariably polite. Finally, at the end of this fortnight, she sent a check to the bank. But, in G.'s case, the bank too had work to do on the check and it was another fortnight before it was deposited in G.'s account (according to the Beit-El clerk, this was how the bank always behaved).

The whole business took six weeks during which G. lost several days' work and spent hours being sent hither and thither, travelling from one office to another and standing endlessly in line. We, for our part, made numerous phone calls to ask questions, to remind people of things to be done and to try to hurry things along.

Attitudes Of Judges

Ofer ...The next three detainees, residents of Beit Fajar, were accused of
6.04.2006 'membership.' There was some haggling over the amount of bail.
Rep.: Hagit S. One was required to deposit 6,000 shekels, which the attorney managed to lower to 5,000. Bail of 3,000 shekels was imposed on the second, while the third was asked to pay 5,000 shekels, the money to be deposited within five days. The detainees could not agree to these terms for the simple reason that they did not have that kind of money. The judge smiled scornfully: 'Let them make a collection in the village.'

An attorney from Nadi L'Asir represented a detainee accused of firing at IDF soldiers. The accused admitted shooting, but said that the shots had been unintentional: the gun had gone off by accident. But the man who had incriminated him contended that it was no accident, but a deliberate action.

The attorney: The accused is a policeman in the Palestinian Authority. The weapon in his possession was legal...

The judge, breaking into the attorney's words: 'Rabin certainly gave them weapons, after Oslo they got weapons from Israel, and that was his -Rabin's- mistake, and so much the worse for us that he did.'

...Discussion of the remaining 20 detainees' cases proceeded as if the courtroom were a fully-automated conveyor belt. Every file got a minute to a minute and a half of discussion. Almost all the 20 files related to youngsters from Beit Oumar who had been arrested on different dates last March for throwing stones and Molotov cocktails. Eventually, the tired judge said to the prosecutor: 'Photocopy all the indictments. They are all the same, the same witnesses, the same incriminators.' But although this was said with some degree of irony, and doubtless also out of fatigue and boredom, he expressed no doubts about the credibility of the files.

Ashkelon
16.10.2006
 Rep.: Yael A.

The judge arrived an hour late; the interpreter failed to arrive altogether; the investigation's police representative in this case acted in three capacities – doing his own job and also serving as interpreter, and as the person who announced to the families when 'their' detainee was to be called. The judge was a major whom we had not seen before. When we went up to him at the end of the session to ask his name and whether the court would be sitting the following week, he did not give us his name.

The Russian Compound
29.05.2006
 Rep.: Hagit S.

...When the session was over, we remained for a few minutes while the judge told us, at some length, how hard the Shabak worked and how very reliable he thought their investigations were. The detention centres and prisons were bursting at the seams with prisoners, and clearly they didn't just arrest people for no reason. The detainees were dangerous people. The police investigator then added his two cents, saying that everything started with membership in these cells and that these people simply had to be imprisoned, etc., etc.

The privately-hired attorney, M.Z., who was representing three detainees, kept the court busy for a long time. He asked to be allowed to meet his client, N.M., a man so far barred from meeting with counsel, in the court, so that he could get a power of attorney from him to act on his behalf before other bodies: specifically, he wanted to appeal to the district court to remove the order barring his client from meeting with an attorney.

The judge refused the attorney's request, and would not allow him to be present when the detainee was brought into the courtroom. He suggested that M.Z. obtain the power of attorney from the detainee's family. The advocate explained that a power of attorney sent by fax had no legal validity, and since the man's family live in that part of the Occupied Territories which falls within the Palestine Authority, he (the attorney) was barred (as an Israeli citizen) from travelling there to get the document. The judge, however, continued to turn down his request, and the investigator then raised his own objection, saying that there had never been any divergence from the 'two-part' procedure (in the first part the detainee is brought before the judge, and in the second the attorney may appear). Total separation within the courtroom. M.Z. then tried another tack, arguing that the law required the order barring a meeting between detainee and counsel to be delivered to the attorney, and as long as he (the attorney) had not received it, then the order had no validity. The order had not been delivered to him, nor had he been given the court records from previous hearings. The judge listened carefully to the attorney's remarks, and then ordered the police investigator to photocopy the order and give it to M.Z.

Kishon A relaxed and remarkably friendly judge. At the beginning of the hearings, he turned to us, told us that he looks at MachsomWatch's web site, and asked where he could find the reports on court observations. Netta explained that since the site is being rebuilt,

7.02.2006
Rep.: Netta G.
Anna N.S.

they have not yet been uploaded. He then asked us what our impression of the previous session had been.

Then the interpreter arrived, having been held up by a traffic accident. We don't know whether he had sent a message about the delay, or whether there had been any attempt to find a replacement. He took his seat next to the prosecutor.

A few minutes later, the judge turned to us and said (as we remember it): 'These are all suicide-bomber terrorists, yet we protect their rights and translate for them.' In other words: see how enlightened we are compared with this bunch of murderers.

Anna: Are they all terrorists?

The judge: Mostly. They are ready to commit suicide, terrorists armed with explosives. They were caught on their way to a suicide attack. They have admitted this.

He said that he had once had occasion to ask a potential suicide, who had been caught at a checkpoint with an explosive belt, why he had done it, and the terrorist had answered that it was because of the virgins he had been promised as a reward in paradise.

The judge then asked us : Do you know why they do it?

Somebody answered : Because they were promised 17 virgins.

There then began a discussion on whether suicide bombers were promised 17 or 77 virgins, and the reliable source from which the information came, and all with the judge's active participation ...

Ofer Six youngsters sat on the suspects' bench: discussion of each case went quickly , with the attorney from Nadi L`Asir agreeing, without raising any objection, to a six-day extension of remand to permit indictments to be prepared . R.A., who like the other five youngsters had been asked to stand to hear the judge's remarks, looked towards us confused by what had been imposed on him, and Netta went up

4.05.2006
Rep.: Hagit S.

to the suspects' bench. The judge, taken aback, asked Netta if she was a lawyer. Netta explained who we were, and added that we were friends of the family: the boy, she said, had been taken out of a taxi and had then vanished. The family had been given no news of him for five days. We asked what he was suspected of.

The judge then spent a minute or so on the issue of the failure to inform the lad's family about his arrest and said that this was against the law. He then asked to see the suspect's file. Until that moment the judge had not read this file, nor had he read those of the other youngsters whose remands had just been extended by six days with his authority. Within a few seconds, after he had failed to find mention of the suspicions against R.A., he passed the file to the prosecutor and asked her to find what it was that he was suspected of. He had been about to rule without knowing anything at all about the suspicion against the boy. The prosecutor stood for several minutes alongside the judge, trying to find some answer in the file, until finally, she returned it to him with an embarrassed smile. Apparently all that she could find was a suspicion that R.A. had been a member of Koutla Islamia (a cell in the student organization that identifies with Hamas). The judge asked R.A. if he had 3,000 shekels to deposit as guarantee that he would appear for trial whenever a date was set. R.A. said he didn't have the money, and we promptly announced that we could see to it. The judge decided to release R.A. on bail.

Bail deposit was eventually set at 2,500 shekels (the judge apparently took pity on the nice ladies). That same evening, the family succeeded in raising the money. The following day, at five in the afternoon, R.A. returned to his home in Yatta, 24 hours after the judge had ruled that there was no reason to hold him in prison.

The Russian
Compound

19.01.2006
Rep.: Hava H.

...We were out of luck. By the time we entered, hearings of the 'ordinary' detainees' cases were over, and those remaining were men barred from meeting with counsel. There were two attorneys whom we already knew, M.A. and M.M, in the courtroom. The judge, Lieutenant Colonel (res.) Hanan Rubenstein, addressed us in a patronizing way as 'girls' (though our average age was 60).

...On our way out we asked the judge a number of questions. If this is the way things are, and the lawyers cannot argue for shorter detention time because they do not know what the accusations are, why does he need to see the detainees at all? Why doesn't see simply sit in his office and sign the extensions of remand to accord with the confidential reports before him?

The judge said that he needed to see for himself that the detainees were in good health, to know whether they had specific complaints, to check for himself the situation of each detainee, to make a referral to a doctor if there was a justified request and to hear whether the detainee had anything to say.

...We asked if membership in Hamas is considered a violation of the law. Sure, said the judge. Hamas is an organization that supports terrorism.

We asked whether there were other organizations in which membership was considered an offence. 'Sure,' said the judge. 'There is a long list of such organizations that has been prepared by the Shabak. There are other organizations that are not yet on the list, but there is an unofficial ruling that regards them as hostile, and I [the judge] accept the Shabak's opinion in this matter, and therefore regard membership in them as illegal.'

In other words, the Shabak can declare even Mother Theresa's organization as 'hostile', and from then on, anyone belonging to it or with any kind of connection with it, is liable – indeed, virtually certain – to find himself standing behind the door, blindfolded and handcuffed. The confidential report on him prepared by the

Shabak will be placed on the table before the military judge, and his attorney will participate in this legal farce, able only to mutter some objection in a weak voice.

Presence Of Lawyers

Ashqelon ...At 11:45 a detainee represented by Advocate J. is brought in, and
18.09.2006 he and the attorney have time to exchange a few words while the
Rep.: Yael A. judge studies the material. The police have requested an 18-day
extension of remand.

Attorney: Is there some new suspicion?

Investigator: Yes.

Attorney: You are requesting an extension after [having held him for] 60 days?

Investigator: Yes, see clause 18/2.

Attorney: Are you interrogating other people?

Investigator: The answer's in the report.

Attorney: Has the suspect admitted forbidden activity in the recent past?

Investigator: No.

Attorney: Is there evidence that the suspect engaged in forbidden activity?

Investigator: The answer's in the report.

Attorney: The detainee has been held in custody since 10 July 2006, and has been under investigation since then. Recently there has been no frontal investigation. I draw the judge's attention to the extension before last, 12 days ago, when in the opinion of the judge at that hearing the extensions had to end; therefore I am asking the court to put an end to the remands and bring this man

to trial immediately or, alternatively, to release him.

Judge: The hearing is over, I'm now writing my decision. I am convinced that there is no reason for continued remand, and I order the detainee released on his own recognizance and that of a third party, a resident of Jerusalem, bail to be set at 10,000 shekels each. (The attorney volunteered to finance the bail, but the judge told him that was forbidden).

The investigator requested a 72 hour delay to allow appeal. This was opposed by the detainee's attorney who suggested that implementation of the judge's decision be held up only until 12:00 next day. The judge approved the investigator's demand of 72 hours.

Petah Tikva ...The detainee, I.B.R. 23, had been brought from Salem especially
1.11.2006 for this hearing of a request to extend his remand in custody...
Rep.: Sarah K. The investigator explained to the judge that there had been no
alternative, since there were no court hearings in Salem today and
they needed to extend I.B.R.'s remand. They had kept his attorney,
P., informed, but he had not been able to come because, as a
Palestinian from the Occupied Territories, he is not allowed to be in
Petah Tikva. He had been told of the hearing by telephone ...

Judge: The interrogation is only in its initial stages and should continue until completion with the detainee remaining in custody to avoid any interference.

The judge ordered that the detainee be permitted to meet with his attorney and extended remand by nine days, adding that any further remand extension requests should be heard in Salem so that the attorney could be present.

Children

Ofer ...The child was accused of throwing a Molotov cocktail. He was 14, but looked far younger. After the defense attorney had had his say, the judge called in the boy's father, a heavy-set man wearing dusty work clothes. The conversation between them was carried on through the interpreter.

14.02.2006
Rep.: Hava H.

The judge: Why didn't you keep an eye on the child so he wouldn't throw Molotov cocktails? Do you promise to keep an eye on him in the future?

The father swore that the child was a good boy, and then the judge summed up:

'I have talked with the father and this has made me even more certain that this was a one-time slip, and that the father sincerely intends to stand by his promise to keep a closer eye on the child. Imprisonment will serve no purpose in this case, so I am sentencing him to six months suspended sentence for three years, from which will be deducted the time he has spent in detention (one week).

The prosecutor immediately announced that he would appeal the sentence.

...Another child was accused of belonging to a hostile organization. He too was 14. His attorney pressed for an amendment to the indictment, and the judge urged the prosecution to reach an agreement with the defense counsel. The compromise that the prosecution accepted was a ten-month prison sentence, plus a suspended sentence and a 500 shekel fine. In this case, too, the judge showed some consideration, sentencing the lad to six months imprisonment, a suspended sentence to run for five years and a 500 shekels fine.

While we were in Ofer, a number of children who were released from detention were given fines of 500 shekels each.

Follow Up Reports On Remand Extension Of Two Detainees

The following reports, illustrating how the military justice system treats detainees who do not admit guilt, deal with the cases of Saed Bassem Yassin and Ibrahim Abu Dalow.

Saed Bassem Yassin – Extension Of Remand In Custody

Petah Tikva
22.03.2006
Rep.: Rahela M.

Saed Bassem Yassin (Abu Omar), is Head of the Legal Bureau of the Ansar Al-Sajeen Club in Nablus. The suspicion against him is membership in Hamas. He was represented by A., a colleague in Ansar Al-Sajeen.

A: When was his remand last extended?

Policeman: On March 2. By the Shabak; he has not yet been interrogated by the police.

A: How many times was he interrogated by the Shabak between March 2 and today (20 days)?

Policeman: There is no indication of that. A number of times.

A: Are you sure?

Policeman: Sure.

A: He was interrogated only once. Why has he been interrogated once only in the past 15 days?

The policeman pointed to the confidential report.

A: Has there been some other form of investigation?

The policeman again pointed to the confidential report.

A: Has everything discussed last time been carried out?

The policeman indicated the confidential report.

A: Has there been any development?

Again the policeman gestured to the report.

A: Nothing at all has moved forward! The investigation is stuck.
Can you deny that?

Another nod towards the report.

A: What exactly was it that you wanted time to do?

The policeman pointed to the report.

A: Exactly how many additional actions did you need to carry out?

A gesture to the report.

A: Is further action required?

The policeman again indicated the report.

A: Couldn't you take all the action you needed to take in the time
since the last hearing?

The policeman pointed again to the report.

A: (Concluding) We oppose the extension of remand as constituting an injustice to the detainee. The prisoner, when he learned that there was another detainee, named Abu Salha, made direct contact with the director of investigations and complained that a mistake had been made. He turned to the director, even though he knew that he would be arrested for it. The detainee was arrested on the basis of false and incorrect information. Abu Salha, whom I also represent, has explained to me that he informed on Yassin after the authorities threatened his life and the lives of his family. Further, Abu Salha was also given false information that Yassin had been killed, so it was this name that he gave [the Shabak] in order to stop the torture of interrogation. Abu Salha's testimony has already been heard on a few occasions in front of various judges. The information [that he gave about Yassin] is false and incorrect, and this is a point that Abu Salha stresses; and the fact is that

there is no investigation of Yassin because the authorities have nothing to investigate. There is no new evidence and there are no new witnesses. The investigation is stuck. The court must put an end to what is going on. How is it possible that while he has only been questioned once in more than 15 days, they are now asking a further 22 days remand? The accused is being held for no reason. Immediate release is the thing required now in the democratic state in which we live.

We are talking about a well-respected man whose work is concerned with the law. The authorities know his address and they know where he works. There are many people prepared to stand guarantee for his appearing for further investigation if he is granted bail. The fact that he initiated the conversation with the director of investigations testifies to the honesty of his intentions. I ask the court to reject the prosecution's application for an extension of remand and instead to order Yassin released from detention. If the court believes additional investigation is needed, then remand for this purpose should be limited to another 24 hours and an instruction to end the investigation should be issued.

Yassin's continued detention is inflicting mental and physical torture on him and on the hundreds of workers and people who are dependent on him, his attorney concluded.

Judge Itai Regev: I have up to date information in front of me. The programme of further investigations seems quite appropriate in light of the fact that the suspect approached the authorities at his own initiative. Remand is hereby extended for 15 days (rather than 22...).

Petah Tikva
1.05.2006
Rep.: Rahela M.

Saed Bassem Yassin has already been detained for 58 days. He was again represented by his colleague, A. Today the court heard an application for a fifth extension of his remand in custody. On Tuesday, April 4, the court at Kishon ruled that he be released on

bail of 20,000 shekels, but the Shabak appealed that decision, and, of course, were successful. The exchange between A. and the police representative was no different in content from those on previous occasions (A. asked the questions, and the answer was always: it's in the confidential report). The judge granted the full 17 days extension asked for by the Shabak, and informed A. that there were new suspicions against Yassin, and there would apparently be yet further remand extensions.

Petah Tikva Saed Bassem Yassin has now been held in custody for 73 days.
17.05.2006 Today's hearing was the sixth application for an extension of
Rep.: Rachela M. remand.

The prosecution requested 20 more days to prepare for the submission of a charge sheet. A. objected and pointing to Yassin's thin file, said that 24 hours would afford ample time to study it. As we have already noted, the prison conditions in which detainees are held prior to the filing of charges are the worst of all, and defense lawyers always try to shorten this period.

According to the prosecution, they have a new witness incriminating Yassin: H.D. Advocate A. spoke to him yesterday at the court in Megiddo during a hearing for the extension of his remand, and H.D. told him that he does not even know Yassin. A. stressed that Yassin has already given his version to the police, and denies any guilt. A. again tried to get Yassin's remand in custody exchanged for bail, in line with the ruling of a judge at an earlier hearing (4 April 2006, at Kishon).

A., who had tried to deliver a Koran requested by Saed Yassin, now asked that it either be delivered forthwith or returned to him.

The judge's decision will be handed down later.

Petah Tikva Saed Bassem Yassin's file has been transferred to the prosecution
31.05.2006 for the preparation of an indictment.

Rep.: Rachela M.

Salem The accused: Saed Bassem Yassin; the attorney: Advocate Fares Abu
12.07.2006 Hassan; the prosecutor: Orli Oren.

Rep.: Netta G.

We received the protocol of the proceedings:

The judge identifies the accused. His lawyer hands in a power of attorney and says that at this stage his client is pleading 'not guilty'.

Decision: The case is scheduled for presentation of proof on 3 September 2006 when all prosecution witnesses will be summoned to appear.

Salem We came to court to observe the ongoing trial (presentation of
31.08.2006 proof stage) of Saed Bassem Yassin, whose indictment we had
Rep.: Netta G. observed in this court on 12 July 2006. Meanwhile a plea-bargain

had been arrived at which also affected a second accused, H.D., who had assisted in the transfer of monies. Under the terms of the plea bargain, Yassin is to be sentenced to eight months prison, 2000 shekels fine and probation at the discretion of the judge... The accused admitted that he had asked H.D. to transfer funds into the area. The offence was economic, said the prosecutor, but it had subversive overtones because of the purpose for which the money was intended. The accused had a past association with Hamas. The defense counsel joined the prosecution in accepting the plea bargain. He described the case as marginal, and said both sides had agreed to a plea bargain in order to save time, especially since the accused has two children. The judge accepted the terms of the plea bargain, but added 24 months probation.

Ibrahim Abu Dalow – Extension Of Remand In Custody

The Russian
Compound

12.06.2006
Rep.: Hava H.

The judge was Major Shmuel Fleischman; the attorney was M.H.Ibrahim Abu Dalow, the detainee, is a student at the American University near Jenin; he has Israeli citizenship. He was born in Oman to Palestinian parents living in Algeria who at some point received Israeli citizenship. A year or two ago, when Abu Dalow had completed secondary school, he came here to study at the American University. He was arrested on 24 April 2006 and has since then been under interrogation for the past 52 days. On 5 June, the material from the interrogation sessions was passed to the military prosecutor at Salem (with the aim of having him brought to trial in a court near the place where he 'committed the offences'). Subsequently he was brought for trial to Ofer where the authorities could not find his file and did not know what to do with him. After some clarification, he was taken to Salem where yet again they could not find the file and did not know what to do with him. Thus he was sent to the Russian Compound. We met him after a run-around such as only the military justice system could dream up. The police prosecutor sought a 10-day extension of remand and the following is an account of the session at which that request was heard.

Attorney: Since when has he been held?

Policeman: Since 24 April.

Attorney: Does the detainee know what he is suspected of?

Policeman: Membership in a hostile organization and endangering the security of the area.

Attorney: Which organization?

Policeman: I don't know the details (and indeed he did not know them, being similarly unable to answer many other questions; nor did he think this was any of his business).

Attorney: Would it be true to say that what he is suspected of is selling books off a stall set up at a computer fair at the university?

The policeman directed the attorney to the confidential report, but the judge, who was leafing through the file, said that the detainee was suspected of membership and activity in a hostile organization (we would like to know which one, H.H.).

Attorney: Is it true to say that one of the things of which he is accused of is dancing at a party of the organization?

Policeman: The accusations are all detailed in the confidential report.

Attorney: Where was the offence committed?

Policeman: We are not at the stage of presenting proof and I don't have to answer you. But I am prepared to have a look again at the file and then to tell you. Although the policeman claimed that this was the second time he was reading the file, I believe it was in fact the first time.H.H.)

After looking at the file, the policeman continued: At Zababdeh (i.e. at the university).

Summing up, the policeman again asked that remand in custody be extended for a further 10 days to permit the interrogation to be completed.

Attorney: The suspect has already been held in custody for 52 days. For one semester he was a member of Jabhat el-Amal organization which is part of Itihad el-Talabeh (the university's student union). He sold books at a stall and danced at some celebration held by Jabhat el-Amal. The last time he was interrogated was on 24 May, or 19 days ago. Everything surrounding this case, and the way in which he has been shunted from here to there, backwards and forwards, testifies to the carelessness with which this file has been

handled. He has family in Jerusalem ready to post bail for him.

Summing up, the attorney asked that his client be released either on restrictive conditions, or placed under house arrest, pending the case coming to trial.

In handing down his decision, the judge detailed the suspicions against the detainee. In addition to his activities in the student organization, the selling of the books and the dancing, the judge also noted that one of the students had sought his help in gaining entrance to Jerusalem: "Luckily for him", the judge said, "he refused" (if he refused, why was this detail noted in the interrogation file? H.H.). Other offences: he had tried, but failed, to recruit two students to Jabhat el-Amal. Further: a fellow student had asked Abu Dalow to put him up overnight in his room because Nablus was totally closed on that occasion and he (the fellow student) had nowhere to spend the night. Abu Dalow had acceded to his request. And finally, the detainee was suspected of going to visit a female student who was also 'active in the organization 'and there meeting with the daughter of Ahmed Sa'adat (who planned the assassination of Israeli cabinet minister Rehavam Ze'evi in October 2001).

In handing down his decision, the judge extended remand in custody by four days, saying that if charges were not filed by 15 June, the detainee would be released on terms to be decided by the court. There would be no further extension of remand in custody, he ruled.

Salem
15.06.2006
Rep.: Netta G.

With truly amazing speed, Abu Dalow's case had been transferred from the Russian Compound to the Salem military court, perhaps in the prosecution's hope of overturning the decision detailed above. But we found no trace of him at Salem, learning from his attorney that the authorities had apparently forgotten about him and that therefore the case would be heard in Jerusalem. The attorney made

arrangements with a colleague to stand in for him in Jerusalem in case he could not get there in time. But he did manage and, once in the court there, he heard the police prosecutor ask for a further four days remand in custody. This the judge refused to grant (in line with the earlier decision), ruling instead that Abu Dalow be released on bail of 10,000 shekels with two guarantors. The family produced the money and the two guarantors, but the detainee was no longer in Jerusalem. He had been sent off to Salem. The attorney rushed off in pursuit to find that in Salem the police prosecutor was claiming that the family had failed to meet the bail terms and that the detainee must therefore not be released. And so it went on, backwards and forwards between the attorney, the detainee, the family, the police prosecutor, the bail terms, the judge, etc. etc.

When I spoke by phone to the attorney at around 6:30 that evening, he was on his way back to Jerusalem with Abu Dalow in his car after the young man had been released under restrictive conditions and on 10,000 shekels bail, until the hearing of his case on 20 August, in Salem.

