



Incarceration of Unlawful Combatants Law
(Amendment 4 and Temporary Provision – Iron Swords), 2023

Background

Since October 7, thousands of Palestinian residents of the Gaza Strip have been detained inside the territory of the State of Israel and imprisoned in accordance with the provisions of the Incarceration of Unlawful Combatants Law, 5762–2002. During a discussion in the Knesset Foreign Affairs and Defense Committee on December 18, 2023 concerning the Proposed Law: Incarceration of Unlawful Combatants Law (Amendment No. 4 and Temporary Provision – Iron Swords), it became apparent that Israel is holding some 2,000 detainees from the Gaza Strip. At the time of the discussion, 80% of the detainees were arrested in the Gaza Strip, while only 20% were arrested inside Israel.

The Legislative Amendment

Amendment No. 4 to the Incarceration of Unlawful Combatants Law was adopted on December 18, 2023 as a temporary provision for a period of four months (through May 17, 2024). It includes the formalization in law of the Emergency Regulations, including a further extension of the timeframe specified in the Emergency Regulations (in previous legislation). Accordingly, the period of time within which the military commander is required to issue a detention order for a person defined as an illegal combatant will now be 45 days (instead of 96 hours); the period of time that may pass before judicial review of such an order will be 75 days (instead of 14 days); and the judicial review will be undertaken by video conference, even when the imprisoned person is not represented by an attorney. The period of time during which an illegal combatant may be denied a meeting with an attorney will be 75 days, with the approval of the official established in the law, and a cumulative period of 180 days with the approval of the court (instead of 10 and 21 days, respectively).

<i>Proceeding</i>	<i>Period of time under the original law</i>	<i>Period of time following Amendment 4</i>
Issuing a detention order	96 hours	45 days
Judicial review	14 days	75 days *by video conference
Denial of meeting with attorney	10 days on instruction of official / 21 days with court approval	75 days on instruction of official / 180 days with court approval



Practical Ramifications

According to the IDF Spokesperson, detainees from the Gaza Strip are held at Sde Teman military base in the Negev. The facility is intended for preliminary questioning and screening of detainees before they are transferred to the Israel Prison Service (IPS) or released back to the Gaza Strip. “Detainees who are found not to have been involved in terror activities and whose continued holding is not justified are returned to the Gaza Strip at the first opportunity.” Media reports based on the testimonies of individuals who were incarcerated in Israel and released back to Gaza show that the arrests undertaken in the Gaza Strip often include individuals who are not involved in combat. Recently, for example, it was reported that an 82-year-old woman suffering from Alzheimer’s was held at Damun Prison for two months as an “unlawful combatant” without access to an attorney before she was returned to the Gaza Strip.

Thus even individuals who are not involved in combat may be held for up to 45 days without a detention order – i.e., without any formal authority for detention. They may be held without their relatives being informed where they are being held and without contact with the outside world, including an attorney and/or representatives of the Red Cross.

Conditions of Incarceration of Individuals Imprisoned in Israel under the Law

The absence of procedural protections for detainees is particularly grave in light of the statistics and testimonies of detainees who have been released to Gaza exposing violations that may pose a tangible threat to the lives of incarcerated persons:

- A. Testimonies from detainees released to Gaza [as published in the Israeli and international media](#), as well as a source of the Haaretz newspaper, state that detainees are held in inhuman conditions tantamount to torture: **detainees are held in open pens, exposed to the extreme cold during the winter months in the desert; they are held for days and weeks blindfolded and their hands tied with plastic shackles, and forced to kneel for 20 hours a day; anyone who moves or speaks is punished. They sleep on thin mattresses and cover themselves with flimsy blankets, without any additional means of heating. Some of the detainees have injuries that become infected; sick and injured detainees receive only minimal medical treatment.**
- B. The detainees are subjected to punishments by the soldiers in the incarceration facility, including physical violence, withholding of food, and placement in painful positions – shackled to a fence, tied to a fence with their hands above their head, and so forth.



Detainees are also exposed to violence and threats from interrogations during questioning. According to the testimony of Jihad Hamuda, published in the [Washington Post](#), interrogators beat him when he denied being a member of Hamas. One of the interrogators held a knife and threatened to cut off Hamuda's finger if he did not admit to owning a firearm.

- C. Both according to the testimonies and according to statements by the IDF Spokesperson, **there have been fatalities among detainees at Sde Teman. The IDF refuses to provide the precise number of instances, but confirmed that it is more than one.** Since there is no public authorization of the detention of individuals held at Sde Teman until their 45th day in detention, there is grave concern that detainees arrested in Gaza who die at the facility will be left without record. This may constitute "forced disappearance," a war crime under international law.
- D. In the absence of any access to the outside world, there is currently a lack of information about the conditions in which hundreds of individuals defined as "illegal combatants" are being held in the IPS facilities. However, [data collected by human rights organizations](#) regarding the situation in Israel's security prisons, in wings holding detainees from the West Bank, shows that **since October 7 prison guards have used extremely severe violence against Palestinian detainees from the West Bank, including sexual violence and harassment, degradation, and threats. These reports are compounded by the fact that to date seven Palestinian detainees have died in prisons** – an unprecedented number. In addition, statements by Public Security Minister Itamar Ben-Gvir that [Hamas detainees will be deliberately held in harsh conditions](#) raise serious concern for the wellbeing of detainees in the IPS facilities.

Amendment 4 to the Incarceration of Illegal Combatants is Unlawful and Contrary to International Law and Rulings

Amendment 4 to the Incarceration of Illegal Combatants Law permits the denial of liberty without trial in conditions of isolation from the outside world and for an extremely protracted period. The amendment violates a wide range of basic constitutional rights in a manner that is inconsistent with the democratic values of the State of Israel and is not for a fit purpose or in a proportionate manner. Rights violated include the right to life, dignity, liberty, the right not to be subjected to torture, the right of access to the courts, and the right to due process.



When the original law was the subject of judicial review in 2008, the Supreme Court¹ ruled that the periods stipulated in the law were exceptional and protracted. It approved their constitutionality since they were only intended to apply during wartime and noted that the law establishes maximum periods which the state must seek to reduce; We reiterate that Amendment 4 extended the periods determined as maximums by the Supreme Court and multiplied them many times over.

Amendment 4 also violates Israel's undertakings under international law. Systematic and broad violations of the basic guarantees for the above-mentioned rights in wartime are liable to constitute war crimes in accordance with the Treaty of Rome and may even be tantamount to crimes against humanity.

In light of the above, the following immediate actions should be taken:

- ⇒ Amendment 4 of the Law should be nullified; at the very least, it must be ensured that its validity will not be extended beyond the four-month period stated (the Temporary Provision is due to expire on March 17, 2024);
- ⇒ External mechanisms must be added to the Law ensuring the wellbeing of those held under its terms. This should include access to attorneys and visits by the Red Cross and other official visitors empowered by law;
- ⇒ The military authorities and the IPS must be required to provide full and updated information on the condition of individuals held in the various incarceration facilities, including age, sex, medical condition, and legal status (whether incarceration orders have been issued against these individuals and whether the orders have undergone judicial review). The authorities must also state the full and precise number of detainees who have died while under Israel's custody, including the reasons of death and place of burial, and the steps taken to return their bodies to their families.

Tel Aviv, February 2024

¹ Criminal Appeal 6659/06 [John Doe vs. The State of Israel](#) (11 June 2008).