



Incarceration of Unlawful Combatants Law

(Amendment no. 4 and Temporary Provision – Iron Swords) (Amendment no. 2), 2024

Background

Since October 7 and the ongoing military campaign, over 4,000 Palestinian residents of the Gaza Strip have been detained by the State of Israel. Official statistics indicate that Israel as of late July 2024, is holding 1,400 detainees from Gaza in facilities operated by the Israeli Prison Service (IPS), and approximately 900 detainees in designated military camps, namely Sede Teiman in southern Israel, and Ofer and Anatot in the West Bank. Over 1,900 detainees have been subsequently released to return to the Gaza Strip.

Unlike Palestinians residing in the West Bank, who are subject to Military Law, individuals detained from Gaza fall under the Incarceration of Unlawful Combatants Law of 2002. Originally designed to govern the detention of members of armed groups from foreign nations, this law deprives detainees of their rights as Prisoners of War and the protections granted to civilian populations under Humanitarian Law in occupied territories.

The law mandates that a military commander issue an arrest warrant for an individual deemed an unlawful combatant, necessitating their removal from the battlefield for security reasons. Once issued, an arrest warrant formally records the person's detention by the military and can be renewed indefinitely. These warrants are subject to review by a civilian judge, and detainees are entitled to legal representation during this process. However, the military commander retains the authority to deny access to counsel for specified periods.

While the Israeli High Court of Justice (HCJ) [upheld this law in 2008](#), significant amendments have been made since the onset of war in Gaza, which go far beyond the court's initial ruling.

The Legislative Amendment

Amendment No. 4 to the Unlawful Combatants Law was introduced in December 2023 as a temporary measure initially set for four months. It was subsequently extended in April 2024 for an additional three months. Currently, the law is undergoing another extension for four months, until November 30, 2024, now under the designation "Amendment No. 2".

Earlier amendments to the law included emergency regulations that extended the durations of procedural stages in the detention of individuals labeled as "unlawful combatants," thereby compromising fundamental procedural protections and significantly impacting detainees' rights. In response to public pressure and extensive litigation efforts, the most recent amendment has partially reversed this trend by gradually reducing the timeframes for issuing detention orders, judicial review of arrest warrants, and periods during which counsel may be denied. However, even with these changes, the law continues to exceed maximum timeframes sanctioned by the High Court of Justice (HCJ), leaving detainees vulnerable to arbitrary detention.

Proceeding	timeframe under the original law	timeframe following Amendment no. 4 (December 2023, April 2024)	Timeframe under Amendment no. 4 (amendment no. 2), July 2024
Issuance of a detention order	96 hours	45 days	30 days
Judicial review	14 days	75 days *by video conference	45 days *by video conference
Denial of counsel	10 days on instruction of official / 21 days with court approval	75 days on instruction of official / 90 days with court approval	45 days on instruction of official / 70 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 south of Israel (and later on, also in Anatot and Ofer bases in the West Bank). 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. In February 2024, 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. Already 47% of detainees arrested in Gaza have been release back to the strip – indicating the arbitrariness of arrests in the first place.

As a result, individuals who are not involved in combat may be detained for up to 30 days without a formal detention order, meaning there is no official record of their detention. During this period, their relatives are not informed of their whereabouts, and they are isolated from the outside world, including representatives of the International Committee of the Red Cross (ICRC). Access to private attorneys has been restricted until recently, with bureaucratic hurdles limiting legal counsel meetings to approximately 60 detainees as of mid-July. Most hearings and detention reviews are conducted via video-conference without legal representation present.

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, 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, which have been corroborated by affidavits gathered by PCATI, state that detainees in Sde Teiman are held in inhuman conditions tantamount to torture: **detainees are held in open pens, exposed to the extreme cold and heat of the Israeli desert; they are held blindfolded and handcuffed at all times, and forced to kneel for most hours of the day.** They sleep on thin mattresses and cover themselves with flimsy blankets, without any additional means of heating or cooling. Some of the detainees have injuries that become infected; sick and injured detainees receive only minimal medical treatment. In Offer reports, detainees are housed in sheds, 20 persons each; and are handcuffed at all times.
- B. Detainees are subjected to punishments by the soldiers in the military detention camps, including physical violence, withholding of food, and placement in painful positions – shackled, tied to a fence with their hands above their head, and so forth. Detainees are also exposed to violence and threats during interrogations, in line with [PCATI's decades-long record](#) of torture utilized by the Israeli Security Agency (ISA or Shabak), as well other agencies in the field – a practice which in all odds has worsened since October 7 events.

- C. Both according to the testimonies and according to statements by the IDF Spokesperson, there have been fatalities among detainees at Sde Teman. Recently it was reported that the military is conducting [criminal investigations into the deaths of 48 Gazans during the war, mostly detainees](#). Since there is no public authorization of the detention of individuals held at Sde Teman until their 30th 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 enforced disappearance, a war crime under international law.
- D. In IPS facilities, [data collected by human rights organizations](#) shows that since October 7 prison guards have used extremely severe violence against Palestinian detainees from both the West Bank and Gaza, including sexual violence and harassment, degradation, and threats. These reports are compounded by the fact that to date over a dozen 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 Unlawful Combatants Law is unconstitutional, and contrary to International Law and Rulings

Amendment 4 to the Unlawful Combatants Law allows for prolonged detention without trial, in conditions of isolation from the outside world, for an extended period of time. In a petition filed to the Israeli High Court of Justice in February 2024, PCATI and its partner organizations argued that this amendment violates a wide range of basic constitutional rights in a manner inconsistent with Israel's democratic values and lacks a justified purpose or proportionate measures. The rights they argued were violated include the right to life, dignity, liberty, the prohibition against torture, the right of access to courts, and the right to due process. PCATI's criticisms of the law were later echoed by [UN Special Rapporteur on Human Rights and Counter Terrorism](#), Prof. Ben Saul, in his communication to Israel in May 2024, to which the state did not respond.

When the original law was the subject of judicial review in 2008, the Supreme Court ruled that the periods stipulated in the law were exceptional and protracted. It approved their constitutionality as maximum measures, only to be applied during wartime, and which the state must seek to reduce; Amendment no. 4 (amendment no. 2) has extended the periods determined as maximums by the Supreme Court and multiplied them many times.

Amendment no. 4 (amendment no. 2) also violates Israel's obligations 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 Rome Statute and may even be tantamount to crimes against humanity.

Required mitigation steps

In light of the above, the following immediate steps are crucially needed, **to uphold the rule of law, protect human rights, and ensure that legal standards are maintained in the treatment and detention of individuals under Israeli jurisdiction:**

- ⇒ **Amendment No. 4 (Amendment No. 2) of the Law should be revoked and not extended any further.** The state should adhere to the legal framework established in the original law as approved by the High Court of Justice (HCJ).
- ⇒ **External oversight mechanisms must be incorporated into the Law to safeguard the well-being of individuals detained under its provisions.** These mechanisms should guarantee uninterrupted access to legal representation, visits by the International Committee of the Red Cross (ICRC), and the ability to communicate regularly with family members.
- ⇒ **The military authorities and the IPS must be required to provide full and updated information on the identities and 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).
- ⇒ **Accountability for documented abuses in both IPS and military camps is essential.** Authorities must disclose the accurate number of detainees who have died while in Israel's custody, conduct thorough and impartial investigations into these incidents, publicly disclose their findings, prosecute those responsible, and take measures to repatriate the bodies of victims to their families in Gaza.

Tel Aviv, July 2024