

## **The Definition of Palestinian Prisoners in Israeli Prisons as “Security Prisoners” – Security Semantics for Camouflaging Political Practice**

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What are we dealing with here? With a definition? Can this or that definition do anything to add or detract from the prisoners’ conditions of confinement, or to release those we seek to release? The answer is: Yes! The definition we are demanding is a political definition and not a legal one, and not only a theoretical position of principle derives from it, but also a politically practical one. (Walid Daka, Gilboa Prison, 2005)<sup>1</sup>

### **Introduction**

Prisoners incarcerated in Israel are classified in two categories: “criminal” prisoners and “security” prisoners. The commands and directives of the Israel Prison Service (IPS) do not define a “criminal” prisoner, but they do define a “security” prisoner.<sup>2</sup> In practice, most of the prisoners defined as “security” prisoners are Palestinians, but there is a very small number of Jewish prisoners who are defined as such.

The determination that a particular prisoner is considered a “security” prisoner is the result of an internal administrative decision by the IPS and not as a result of a particular legislative order. In time, this definition has become a code of identification for Palestinian prisoners<sup>3</sup> in general and not only *vis-à-vis* the IPS or the law enforcement authorities.

In this article, I argue that the definition of these prisoners as “security” prisoners – which I call “collectivization” – is problematic at the constitutional level and at the practical level. This definition, applied in a blind, categorical manner without distinction, transforms thousands of Palestinians imprisoned today in Israel into a single group that poses, as such, an identical level of danger

which justifies their stricter living conditions and supervision, and also the reduction of their prospects of early release. In contrast to the general approach towards prisoners, which is based on an individual assessment of a person and the extent of danger he or she presents, the attitude of the State of Israel toward the “security” prisoners is based on their group affiliation. In addition, the blurring of a prisoner’s personal characteristics by attaching to him or her the “security” definition not only violates the prisoner’s rights as an individual, but also denies his or her political existence and conceals the background and reality behind the imprisonment. As I will demonstrate, this collectivized approach is also reflected in the courtroom.

The same approach is not applied to Jewish prisoners categorized as “security” prisoners. Israel’s approach toward these prisoners is based on their characteristics as individuals, and not necessarily on their security classification within the prison. This attitude is not the result of a particular policy, but it is indirectly anchored in the directives of the IPS. In order to demonstrate how deeply rooted this attitude is – both in practice and in the written directives – I will first analyze the legal aspects of the definition of “security” prisoner and point out the practical ramifications of this definition and the discrimination it creates. I will then describe the collective lifestyle of Palestinian prisoners and focus on the connection between this lifestyle and the way in which the prisoners view themselves compared to the way in which they are viewed by the prison system and the courts.

### Who is a "Security" Prisoner?

A "security" prisoner is defined as "A prisoner who was convicted and sentenced for committing a crime, or who is imprisoned on suspicion of committing a crime, which due to its nature or circumstances was defined as a security offense or whose motive was nationalistic."<sup>4</sup> This definition is grounded in the internal directives of the IPS and is not a normative directive anchored in primary legislation.

The IPS does not deny the fact that the classification of prisoners as "security" prisoners is intended, *inter alia*, "to make it easier to properly manage the prison facilities by holding these groups separately."<sup>5</sup> It is not clear which *groups* are referred to here, since the classification turns these prisoners into one, single group. The IPS explains the rationale behind this collective classification as follows:

Prisoners sentenced for crimes against state security usually have real potential for endangering the security of the state, in general, and the order and discipline in the prisons in particular – and this in light of the type of offense they committed, their past, their motives and their involvement in activity against the security of the state.

Most of these prisoners are also connected to terror organizations and this connection poses special dangers to order and discipline in the prison, as well as to the security of the state. The anticipated security threat from the 'security' prisoners requires that they be confined separately from criminal prisoners and be subjected to special restrictions in all things related to connection with the outside. This includes issues such as furloughs, visits, telephone calls and conjugal visits.<sup>6</sup>

By means of this general explanation, thousands of Palestinian prisoners classified as "security" prisoners are assigned an identical level of risk. A fourteen-year-old boy suspected

of throwing a Molotov cocktail that did not explode is regarded as equally dangerous as a forty-year-old man who commanded an armed cell that carried out attacks. Similarly, members of the Islamic Movement suspected of economic crimes and of forging economic ties with Palestinian organizations defined as hostile are regarded as threatening state security to such an extent that they are prevented from having physical contact with their children during visits to the prison,<sup>7</sup> in the same way that combatants caught in the midst of active fighting are. And again, a prisoner sentenced twenty years ago for being a member of an armed cell that killed a soldier is considered to pose the same level of security risk as a prisoner who very recently committed a murder.

### Ramifications of the Definition and its Blanket Application to Palestinian Prisoners

According to the directives of the IPS Commission, the assignment of the "security" definition to particular prisoners is ostensibly supposed to influence the IPS's approach to handling these prisoners and detainees only with regard to designated issues pertaining to contacts with the world outside of the prison, as follows:<sup>8</sup>

1. Determining in which prison or in which prison-wing the prisoner will serve his sentence;
2. Granting furloughs;
3. Making telephone calls from the prison;
4. Making home visits under guard;
5. Regular reporting to the General Security Services (GSS) or police prior to completing two-thirds of the prison term in order to formulate a recommendation for the State Prosecutor's Office.

It should be emphasized that these five items constitute only a partial list of the things that Palestinian prisoners are automatically denied because of their “security” classification. It is possible to enumerate a long list of additional violations of many other rights, but for the sake of brevity, I will not do so here.<sup>9</sup>

I will focus instead on those things that derive from the IPS Commission’s directive quoted above, and their *de facto* significance. The directive creates a sweeping prohibition that prevents prisoners classified as “security” prisoners from using the telephone and going on furloughs. The prohibition even blocks them from petitioning for early release from prison. Nonetheless, two exceptions were made to this rule, as will be discussed in detail below. A reading of the exceptions indicates, ostensibly, that they are based on an individualized conception that enables a person to enjoy such rights on the basis of his or her personal record. However, a thorough examination of these exceptions reveals that this individualized approach does not apply to Palestinian prisoners.

**Exception (1): Non-affiliation with a Hostile Organization<sup>10</sup>**

One of the exceptions that allow someone classified as a “security” prisoner to avoid restrictions is if the prisoner has not been a member of a “hostile organization” and has not assisted such an organization in committing a crime, and where in the GSS’s assessment state security will not be harmed if special restrictions are not imposed on him or her.

A “hostile organization” for the purposes of this paragraph is one of the following organizations: Hamas, the Islamic Jihad, the Popular Front for the Liberation of Palestine, the Democratic Front for the Liberation of Palestine (Hawatmah), Hezbollah, Fatah (Abu Mousa), the Popular Front for the

Liberation of Palestine – General Command (Jibril), the Abu Nidal organization, and Osama bin Laden’s organization.<sup>11</sup>

Reading this exception, one could get the impression that this directive expresses an individual approach to the prisoner, based on an assessment of the level of his individual threat, despite his or her classification as a “security” prisoner. However, this individualized approach does not apply to the overwhelming majority of Palestinian prisoners classified as “security” prisoners. My contention is that this exception mainly serves Jewish prisoners classified as “security” prisoners.<sup>12</sup>

Firstly, no Jewish organization is listed among the hostile organizations defined in the IPS Commission’s directive, although history has demonstrated that there are Jewish organizations that advocate harming Arabs solely because they are Arabs, such as the Jewish Underground or the Kach Movement.<sup>13</sup> Thus, this exception automatically applies to any Jewish prisoner classified as a “security prisoner,” whether he belongs to an organization that advocates the use of violence or not and regardless of the severity of any such organization’s activities. In other words, the approach toward Jewish “security” prisoners is always individualized because the exception that expresses an individualized approach always applies to such prisoners. The application of this exception dramatically eases the restrictions imposed on “security” prisoners. Consequently, the Jewish “security” prisoner will always enjoy the easing of restrictions, regardless of his organizational affiliation, as opposed to a Palestinian, whose organizational affiliation in almost all cases will preclude the easing of restrictions.

Secondly, in practice this exception can be applied to very few Palestinian prisoners. Practical experience teaches that the overwhelming majority of Palestinian prisoners are held in Israeli prisons on the charge of belonging to a "hostile organization", in addition to other offenses. It was not possible to obtain updated figures for the number of Palestinian prisoners who are being imprisoned at least in part because of organizational affiliation. An indication of the small percentage of prisoners whose organizational affiliation is not defined can, however, be found in data presented in one of the IPS's publications.<sup>14</sup> According to this data, among the 3,167 Palestinian "security" prisoners sentenced for crimes that the IPS describes as involving "blood on the hands" (66% of all "security" prisoners) and who were confined in prison in 2005, only 101 were not recorded as not belonging to a "hostile organization". The publication cited here does not address affiliations of the group of prisoners who do not have "blood on their hands."

The significance of the aforementioned exception should not be understated. As a result of its application, Jewish "security" prisoners have received a significant easing of their terms of confinement and have been able to maintain contact with the outside world. An example is the Israeli Jewish prisoner Yigal Amir, who was convicted of assassinating former Israeli Prime Minister Yitzhak Rabin. Amir is classified in prison as a "security" prisoner. As such, and as with thousands of Palestinian prisoners, there is supposed to be a glass partition separating him from his family during visits.<sup>15</sup> However, the fact that the IPS considers him to have no organizational affiliation enables him, according to the IPS Commission's directive, to receive open contact visits.<sup>16</sup> This prisoner, unlike all of the

other "security" prisoners, is also granted the right to speak with his family on a daily basis without disruption. The "non-affiliation" exception also helped him to fulfill his right to conjugal visits at the prison.<sup>17</sup> Initially, Amir was denied the right to parenthood through conjugal visits due to concerns over state security, but the IPS later allowed him to father babies through *in vitro* fertilization.<sup>18</sup> The security argument had suddenly vanished. This process is sufficient to demonstrate the individualized approach to this prisoner: despite the fact that he is defined as a "security" prisoner, the IPS examined him in accordance with updated assessments of risk, which can of course change.

Similarly, Israeli Jewish prisoner Ami Popper (who murdered seven Arab laborers in 1990) received many privileges in the terms of his confinement in comparison to other "security" prisoners. Popper was given the right to marry while in prison and to receive conjugal visits, through which he fathered three children. Popper even receives furloughs<sup>19</sup> and is in constant contact with his family by telephone.

The conclusion is that this exception violates the right to equality, because as it is applied it discriminates based on national belonging, whether intentionally or otherwise.<sup>20</sup> This directive is unconstitutional if only because a constitutional right can only be violated if this violation is grounded in primary legislation; in this case, the violation of the prisoners' constitutional right to equality is grounded only in an administrative order.<sup>21</sup>

### **Exception (2): Affiliation with a Hostile Organization after Serving a Third or Ten Years of a Sentence**

The second exception in the IPS Commission's directive,<sup>22</sup> which also is ostensibly based on

an individualized approach to the extent of danger posed by a prisoner, stipulates that it is possible to refrain from imposing certain restrictions on a "security" prisoner, even if he or she has been a member of a "hostile organization" or aided a "hostile organization" to commit a crime, on two conditions. The first is that the prisoner has served a third of his or her sentence or ten years of it, whichever comes first. The second is that GSS has determined that the prisoner has severed all contact, direct and indirect, with the aforementioned organization and its members. The GSS is supposed to affirm thereby that it believes that state security would not be jeopardized by refraining from imposing special restrictions on the prisoner.

Theoretically, the significance of this exception, at best, is that the individualized approach toward a "security" prisoner who belonged to a hostile organization would apply only after serving a third or ten years of his or her sentence. In reality, almost no Palestinian prisoner has received particular privileges as a result of this exception.<sup>23</sup>

The classification of the prisoners as "security" prisoners continues to overshadow any of their legitimate demands in prison, and the approach toward them continues to be collective and not individual. To illustrate this, it is sufficient to note that by the end of 2006 there were about 424 Palestinian prisoners who had been imprisoned for over ten years.<sup>24</sup> However, to the best of my knowledge there has not been any case so far in which these prisoners have received significant easements, such as conjugal visits, open visits on a regular basis, or daily telephone use. By contrast, some Jewish prisoners who were convicted of murdering Arabs with nationalistic motives were not only granted significant easements in prison, but were even released before serving

a third or ten years of their sentence.

In a report written by prisoner Mukhles Burgal,<sup>25</sup> a Palestinian citizen of Israel, he conducted a comparison that indicates that unlike Jewish prisoners who are citizens of the state and perpetrated acts against Arabs based on ideological motives, Palestinian prisoners who are citizens of the state have yet to receive any real commutation of their sentence or early release. For example, Danny Eisman, Michal Hillel and Gil Fox were convicted of murdering a taxi driver, Khamis Tutanji, a Palestinian resident of Israel, and were sentenced to life in prison. Tutanji's national identity was the motive of the crime of murder.<sup>26</sup> All three convicts were released less than a decade after committing the murder.

In 1993, Yoram Skolnik murdered an Arab in cold blood who was detained and handcuffed. He was sentenced to life in prison. His sentence was commuted several times by the president of the state and he was released after serving seven years.<sup>27</sup>

Zeev Wolf and Gershon Hershkovitz, activists in the "Kahane Chai" movement, were sentenced in July 1993 to ten years' imprisonment for throwing a hand grenade into the butchers' market in East Jerusalem. The act was committed in revenge for the murder of the movement's leader, Meir Kahane. Both were convicted of causing the death of an Arab merchant and of injuring eight others. In 1997, less than four years after their conviction, then-president Ezer Weizman pardoned them and they were released from prison.<sup>28</sup>

By contrast, two Palestinian prisoners, Muhammad Mansur Ziadeh and Mukhlis Burgal, who are citizens of the state, were sentenced in 1987 to life in prison for throwing a hand grenade at a bus. The grenade did not explode and no passengers were hurt. Today,

twenty years later, the two prisoners are still incarcerated. Their sentence was recently commuted to forty years. This means that they are expected to be released after another twenty years, when they will both be in their seventies. Hafez Kondus, another Palestinian citizen of Israel, was sentenced to twenty-eight years imprisonment for tossing a grenade at the home of the Director of the Islamic *Waqf* because of the latter's intention to sell an Islamic cemetery to an Israeli construction company. Kondus has so far served over twenty-two years in prison and the parole board refused to release him after completing two-thirds of his term.

Prisoner Walid Daka is a Palestinian citizen of Israel and resident of the city of Baqa al-Gharbiyeh. In 1984 Daka was sentenced to life in prison for being a member of a cell that abducted and murdered an Israeli soldier. So far, he has been in prison for over twenty years; his sentence was not commuted and a request for clemency submitted to the Chief of Staff of the Israeli military was rejected.

Thus, the exceptions defined by the IPS, which include conditions and criteria for granting privileges to "security" prisoners, were only designed for Jewish prisoners, and maintain the most severe conditions for Palestinian prisoners classified as "security" prisoners. This conclusion derives, as we have seen, from the interpretation of these exceptions, as well as from the way in which they are implemented in practice.

### **Collective Life in Prison – Danger or Democracy?**

Until now we have discussed the legal difficulties associated with defining prisoners as "security" prisoners and the nationality-based discrimination it entails. The wording of the definition in the IPS's directives reflects

a collective approach toward Palestinian prisoners. However, the legal definition is not the only component on which the collective approach to prisoners is based. Another factor behind the IPS's collective attitude toward Palestinian "security" prisoners pertains to the prisoners' way of life inside the prison. The solidarity of Palestinian prisoners is interpreted by the Palestinian side as a symbol of democracy; from the perspective of the Israeli legal system, by contrast, it is regarded as a symbol of danger and as a security threat.

### **The Organization of Palestinian Prisoners within the Prisons from the Palestinian Perspective**

Palestinian prisoners' way of life inside the prisons and their approach toward each other is different from that of other prisoners. A primary characteristic of their way of life is their collective outlook regarding the fact of their incarceration and the political reality that brought them to spend many years, if not their entire lifetimes, behind bars. This collective approach is expressed, for example, in managing a joint bank account for all of the prisoners and allocating a uniform sum to each prisoner; in maintaining unique rules of discipline, while preserving a high level of norms and values that include, for example, shunning prisoners convicted of crimes involving drugs, sex or alcohol; and in defining a mechanism for decision-making based primarily on cooperation. In the decision-making mechanisms, emphasis is placed on exchanging ideas and views, and in choosing the option of dialogue as a solution for disputed issues.

Despite the multiplicity of political factions to which the prisoners belong and the various disagreements liable to erupt as a result, the prisoners succeed in achieving cooperation

between all of the factions in the prison. The cooperation is facilitated by a mechanism through which decisions are made by representatives elected by the prisoners. In addition to the elected representatives, one can also find an institutional allocation in the prison. This is expressed mainly in the election of various committees, each responsible for handling a particular subject.<sup>29</sup> This organization sets rules and internal lists that define life within the prison cell, which includes everything from sleeping arrangements on the floor if necessary, quiet time in the cell, to television viewing.<sup>30</sup>

With regard to relations with the prison administration, the prisoners fought to receive permission to elect a representative in each prison to serve as a contact to liaise between the prisoners and the prison authorities. In 1984 and 1986,<sup>31</sup> the Palestinian prisoners initiated a general hunger strike to demand recognition for their representatives as spokesmen. In the wake of these hunger strikes, the prisoners succeeded in institutionalizing the role of the spokesman, and annual elections are held in which prisoners compete to serve as spokesman for their prison wing or the entire prison. The spokesman's role is to address the everyday problems of the prisoners and coordinate communication with the prison administration. Today, the status of the spokesman is even defined in the directives of the IPS Commission.<sup>32</sup>

The difficult conditions of incarceration impelled the prisoners to work together to formulate strategies for their struggle against the prison authorities, out of collective rather than narrow, personal interests. The management of general hunger strikes is a central and salient characteristic of their shared struggles to improve their living conditions, for the release of prisoners or an expression of

identity with a particular political idea. Sometimes a hunger strike is declared as an expression of protest. Not infrequently, general hunger strikes have led to an improvement in the living conditions of Palestinian prisoners.<sup>33</sup>

It would be natural to assume that relationships among Palestinian prisoners have also been accompanied by disagreements, disputes and rifts between the factions. Internal activities in the past were accompanied by competition and confrontation, which sometimes became violent.<sup>34</sup> However, these confrontations diminished over time, apparently due to the increased severity of the conditions of confinement. The success of the prisoners' struggles has influenced the development of the cultural movement and social action in the prison. The internal organization and cooperative ties between the prisoners have preserved the conciliation and mutual recognition of each of the factions, despite their ideological differences. According to Khaled al-Hindi, a Palestinian researcher who has himself been a prisoner, the way in which the prisoners worked to build their institutions within the prisons, their adherence to the norms they set, and their decisions to implement democratic electoral processes – which took place as scheduled – all provides an important indication of the strengthening of democratic values among the Palestinian factions. In his view, the prisoners have reached a higher level of democracy in their organization within the prison than any of the Palestinian political groups outside of the prison, from the PLO to the Muslim factions.<sup>35</sup> However, the democratic nature of the organization of Palestinian prisoners within the prisons has been interpreted by the state authorities, including the IPS, the State Prosecutor's Office, the courts and the legislature, in an entirely different way.

### **The Organization of Palestinian Prisoners Within the Prisons from an Israeli Perspective**

Prisoner Muhammad Dahoud Darwish appealed to the Supreme Court<sup>36</sup> against the IPS and complained about many violations of his rights, including the IPS's refusal to provide him with a bed. The IPS argued before the court that a bed can be used by prisoners as a "dangerous weapon of destruction; and while this applies to any prisoner, it does even more so to security prisoners."<sup>37</sup> It was demonstrated to the court that prisoners in general – and not necessarily the "security" prisoners – use beds in an abusive way. However, the IPS decided to prevent the "security" prisoners from using a bed, while the other prisoners' right to a bed was recognized without exception.<sup>38</sup>

The Supreme Court justices in 1980 in *Darwish* were divided over the question of whether or not a "security" prisoner has an inherent right to receive a bed. In the minority opinion, Justice Haim Cohen argued that a prisoner's request for a bed should be approved and that the IPS's concerns about the abuse of beds supplied to prisoners do not justify descending below minimum standards for the treatment of prisoners. Justice Cohen concluded his opinion with the following words: "*If we treat them as human beings, there is hope that they will also learn to act like human beings.*"<sup>39</sup> Justices Yehuda Kahan and Menachem Alon rejected the prisoner's appeal and accepted the position of the IPS.

For the purposes of the article, there is particular importance in the opinion of Justice Kahan, who addressed Darwish's argument that he was discriminated against vis-à-vis criminal prisoners who are not classified as "security" prisoners, because some criminal prisoners are violent people who have abused parts of beds or could do so, but have

nevertheless not been denied the right to a bed. Justice Kahan recognizes that this is indeed a case of discrimination, but explains that it is not invalid discrimination because he accepted the IPS's position. According to this position, this discrimination is justified because:

The security prisoners are an organized group that operates as a uniform ideological group and in accordance with the directives of an organizational mechanism that the prisoners maintain in every prison, and which decides on the activity of the prisoners, while imposing severe discipline and means of punishment that can culminate in the physical extermination of those who refuse [their orders]. The affidavit states, inter alia, that the security prisoners go to work often and conduct other collective activities indicative of discipline and leadership that is capable of imposing such discipline. It is also stated in the affidavit that security prisoners receive instructions and directives for action from various terror organizations and execute those directives.<sup>40</sup>

We see here how the collective life of the Palestinian prisoners within the prison is perceived by the prison authorities. The organization of the prisoners and their subordination to their leadership and rules of discipline are seen by the IPS, with the backing of the Supreme Court, exclusively from the perspective of danger and violence. Darwish's argument – that he is not a violent prisoner and therefore poses no danger of abusing the bed – was not challenged by the IPS or by the court, but at the same time this argument did not constitute a sufficient reason for consenting to his request. Darwish's classification as a "security" prisoner and as a prisoner affiliated with a group that maintains an independent organization within the prison – without any connection to his individual dangerousness or the probability that he would make ill use of



the bed – is what prevented him from receiving a bed on which to lie.

In fact, by creating a separate group of prisoners, bearing the name “security prisoners,” and attaching patterns of collective behavior to that group, the IPS succeeded in convincing the court that what is relevant when discussing a prisoner’s array of rights is not the prisoner’s personal characteristics and behavior within the prison, but rather his or her group affiliation. Justice Kahan attempted to explain this approach by arguing that the self-organization of “security” prisoners leads to hostility being expressed towards the government and that this is sufficient to justify the adoption of severe measures against them. In taking this approach, the court rejected any other dimension characterizing these prisoners, preferring to view them as inanimate objects lacking personal characteristic. Hostility to the State of Israel is the only dimension that the court saw in Darwish, without relating to his other dimensions as a person entitled to be imprisoned in minimal conditions of dignity. The words of Justice Kahan at the conclusion of his opinion demonstrate this distorted and one-dimensional view, which borders on dehumanization, toward Palestinian prisoners:

My honorable colleague expresses hope that we will awaken human attributes in security prisoners – “if we act like human beings, there is hope that they will also learn to act like human beings.” I doubt whether we can “win” the hearts of security prisoners through various improvements in prison conditions. According to life experience, particularly in the case of prisoners who are guided by ideological, national motives, I fear that this is a false hope.<sup>41</sup>

As noted, this approach not only characterizes the court’s attitude, but also applies to state authorities in general, and finds expression in

the directives of secondary legislation. Regulation 22 of the Criminal Procedure Law<sup>42</sup> explicitly stipulates a series of restrictions that erode the rights of any prisoner suspected of having committed a security offense. According to this regulation, in every detention cell there should be a table, chairs and shelves for storing the personal items, and there should be no more than four beds. However, a cell in which detainees suspected of security offenses are held does not contain any of these items, including beds.<sup>43</sup> Regulation 4 of this law states that the prison cell should be painted at least twice a year and that it should be disinfected and sprayed with insecticide at least once a year. However, the cells of “security” prisoner are painted at least once a year only and there is no directive requiring any disinfection or pest control in the cell.<sup>44</sup>

Another restriction is the denial of the right of “security” prisoners to use the telephone and to have a daily walk, while criminal prisoners have acquired these rights by law.<sup>45</sup> The interesting point in this regulation is that in the case of criminal prisoners, the legislature took pains to adhere strictly to the principle that any violation of a prisoner’s rights should be proportionate, for a defined period of time, and accompanied by a written explanation. The regulation stipulates, for example, that sending a detainee to a cell that lacks a bathroom requires an explicit and written explanation,<sup>46</sup> and that denying certain prisoners the right to a daily walk should only be done for a limited period of time, for purposes of interrogation and with a written explanation for exceptions.<sup>47</sup> The logic guiding the wording of this regulation as it applies to criminal prisoners is that, as a rule, the prisoners should be allowed to fully enjoy all of their rights and that the rights of particular prisoners can be limited only in exceptional

circumstances, in accordance with the need, for a defined period of time, and without affecting other prisoners' abilities to exercise their rights. This logic is not applied to detainees suspected of having committed security offenses. According to Regulation 22, a suspicion of the commission of a security offense is sufficient to justify a sweeping violation against the rights of an entire population of detainees in a categorical way, without making any distinctions between them.<sup>48</sup>

### **The Politics and De-Politicization that Hides Behind the Semantics**

The definition of Palestinian prisoners as "security" prisoners has become a tool used by the state authorities to promote an ideological outlook that regards a Palestinian, as such, as an existential threat lacking any humanity or political existence, and whose only place is behind walls and fences.<sup>49</sup> The same outlook has served as the basis for all of the expressions of collective punishment imposed upon Palestinians, ranging from the family unification between Palestinians from the OPT married to Palestinian citizens of the state in Israel<sup>50</sup> and the attempt to prevent them from receiving compensation for damages caused by the Israel security forces,<sup>51</sup> to confinement in their homes and a sweeping prohibition on movement, even for the purposes of studies and acquiring higher education.<sup>52</sup> This collective punishment is based on a political and ideological stance that regards Palestinians as inanimate objects devoid of human characteristics.<sup>53</sup>

Some view the term "security" prisoner as a means of de-politicizing the prisoners' actions, of blurring their political aspirations. According to Dr. Anat Matar, the term "security" erases the prisoners as subjects and

turns them into objects, like "a falling wall, like a burning roof, like a sling-short or knife or fingernails,"<sup>54</sup> which can constitute a security threat against which we must defend our lives. A subject, on the other hand, is always political. In her view, through the application of this label the entire Palestinian struggle is denied and Palestinian political existence becomes a dangerous object for the sole subject in the arena.<sup>55</sup> Many believe that the demand of Palestinian prisoners, and their brethren, to define them as "political" and not "security" prisoners derives from the desire to highlight the national and ideological motives behind the actions attributed to them. In an illuminating explanation, Walid Daka argues that the desire to be labeled as a "political" prisoner rather than a "security" prisoner is not at all related to the political motive behind the prisoners' actions or their failures. In his view, the political element in the attitude toward these prisoners is built into the definition "security," which seeks to conceal a discriminatory and racist approach toward Palestinian prisoners and to make an ugly reality look less unpleasant.<sup>56</sup>

### **Summary**

The Israel Prison Service is entitled, like any administrative authority, to conduct its administrative affairs as it sees fit, on condition that matters are conducted with transparency, in good faith, without extraneous considerations and while maintaining an equal approach toward all prisoners, without distinction as to religion, race, gender or nationality. This article does not express a view regarding the need to categorize prisoners into subgroups. I will suffice by saying that even if the management needs of the prison institutions require dividing the prisoners by particular definitions, these definitions should

be based on clear and convincing criteria designed to serve administrative needs only, while preserving the dignity and rights of the prisoners to a maximum extent. The attempt to justify the definition of prisoners as "security" prisoners on the basis of administrative needs is disingenuous, to put it mildly. A thorough examination of this definition reveals that it is primarily designed to violate the rights of Palestinian prisoners defined as "security" prisoners, while at the same time providing benefits to Jewish prisoners also defined as "security" prisoners. This objective, in part, is not evident to all, but the reality and everyday practice demonstrate it. The discriminatory and racist attitude at the base of this definition comes to serve a political, ideological agenda of concealing the dimensions of the Palestinian individual as a person, while portraying the democratic characteristics he expresses in conducting his life in the prison as no more than a security threat.

End Notes

- 1 Walid Daka, "Security Prisoners or Political Prisoners," *Adalah's Newsletter* Vol. 24, April 2006.
- 2 Since 1967, Israel has arrested nearly 700,000 Palestinians. The number of the Palestinian prisoners shortly before the outbreak of the second Intifada in October 2000, was approximately 1,150. With the outbreak of the second Intifada in 2000 and in its wake, the number of Palestinian prisoners rose sharply. Data from the Israel Prison Service indicates that by the end of October 2006 the total number of Arab prisoners – Palestinians and citizens of Arab states – classified as "security" prisoners was approximately 9,140. Among them were 289 Palestinian citizens of Israel. The Palestinian National Center for Information reports that since 2000 Israel has arrested around 5,000 Palestinian children (below the age of eighteen). As of mid-August 2006, nearly 335 Palestinian children were still in prison. The number of Palestinian women arrested since October 2000 is 500. In October 2006, there were still over 100 women in prison. See, <http://www.pnic.gov.ps>; <http://www.addameer.org>; <http://www.mod.gov.ps> and the IPS's letter of response to Adalah: The Legal Center for Arab Minority Rights in Israel, of 30 October 2006.
- 3 In this article, the term "Palestinian prisoners" refers solely to prisoners classified as "security" prisoners.
- 4 Paragraph 1(A) of the IPS Commission directive of 4 May 2000.
- 5 Id.
- 6 Paragraph 1(B) of the IPS Commission directive of 3 February 2000.
- 7 See the appeal of Sheikh Raed Salah, the head of the northern branch of the Islamic Movement, seeking permission to have physical contact with his infant child during a prison visit. PPA 436/04, *Sheikh Raed Salah Mahajneh v. The Israel Prison Service* (not yet published) delivered on 1 August 2004. The appeal was rejected.
- 8 Paragraph 1(B) of the IPS Commission's directive, supra note 4.
- 9 Besides the restrictions pertaining to the use of telephones and furloughs, there are many additional limitations that are difficult to cover in this article, such as restrictions relating to the right to visitation, conjugal visits, education, social and medical treatment, and early release. However, I will emphasize that the very fact that these restrictions on fundamental constitutional rights are based on an administrative directive constitutes a basic constitutional flaw; such restrictions should only be instituted via or in accordance with primary legislation. However, rectifying this constitutional flaw via primary legislation would not lessen its violation of prisoners' rights; it would only make it harder to impose judicial review on these restrictions were they anchored in law.
- 10 Para. 1(C) 1 and 2 of the IPS Commission's directive of 3 February 2000.
- 11 Id. para. 1(C) 3. It should be noted that this article was amended in February 2007. The definition of a "hostile organization" according to the new amendment is now: "Every organization that has been declared a terrorist organization according to the Prevention of Terrorism Ordinance – 1948 or has been declared an illegal association according to the Defense (Emergency) Regulations – 1945, or against which a confiscation order has been issued according to the abovementioned regulation. An updated list of hostile organizations is held by the legal advisor to the IPS." It should be noted that the coinciding of the publication of the above amendment with the publication of this article has made it more difficult to examine the consequences of the amendment for the rights of "security prisoners" in practice. In addition, the author's attempts to obtain the list of "hostile organizations" from the legal advisor to the IPS were unsuccessful. Despite the new amendment, the contents of this article remain valid up to the date on which the new amendment comes into force, and may remain relevant thereafter, until the effects of the new amendment become clear.
- 12 IPS data indicates that there were twelve such prisoners as of 30 October 2006.
- 13 For information on Jewish organizations declared to be "terror" organizations see the background document entitled, "Political Violence by Jews in Israel," the Knesset Research and Information Center, August 2005 (Hebrew). See: <http://www.knesset.gov.il/mm/doc.asp?doc=m01268&type=doc>.
- 14 Ayelet Verzer, *Security Prisoners Incarcerated in the Israel Prison Service*, (Israel Prison Service, Spokesperson's Office, 2005) at 8 (hereinafter: the "IPS report") (Hebrew).
- 15 Para. 14(J) of the IPS Commission's directive, supra note 6.
- 16 Id.
- 17 Id. para. 15.
- 18 See PPA (Tel Aviv District Court) 4714/04 *Yigal Amir v. Israel Prison Service* (not yet published) delivered on 7 March 2005; H.C. 2245/06 *MK Neta Dobrin v. The*

- Israel Prison Service* (not yet published) delivered on 13 June 2006.
- 19 According to statements by the IPS, Popper had been released on furlough 125 times as of January 2007. See Yair Ettinger, "Ami Popper Drove Without a License in the Arava; His Wife and Child Were Killed in an Accident," *Haaretz*, 19 January 2007.
- 20 Regarding the "results test", see H.C. 7052/03, *Adalah v. The Minister of Interior* (not yet published) delivered on 14 May 2006; H.C. 11163/03, *The High Follow-up Committee for Arab Citizens of Israel v. The Prime Minister of Israel* (not yet published) delivered on 28 February 2006 (hereinafter: "Follow-up Committee ruling").
- 21 On the constitutional principle and the explicit violation according to law, see the Follow-up Committee ruling; and H.C. 1437/02, *The Association for Civil Rights in Israel v. The Minister of Public Security*, P.D. 58(2) 746.
- 22 Paragraph 1(C) and 2 of the IPS Commission's directive, supra note 6.
- 23 It should be noted that the only evidence of this exception's discriminatory nature is in its practical results. The data presented herein does not preclude the need for a comprehensive and empirical study to examine the extent of the application of this exception to Palestinian prisoners, if at all.
- 24 According to data from the Palestinian National Information Center: <http://www.pnic.gov.ps/arabic/social/prisoners/9-2006.html>.
- 25 See the report written by the prisoner Mukhlis Burgal, available at: [www.kibush.co.il](http://www.kibush.co.il).
- 26 For details of the facts of this case, see Criminal Appeal 747/86, *Hillel v. The State of Israel*, P.D. 42(3) 447.
- 27 See, Mazal Mualem, "Yoram Shkolnik, Who Murdered a Palestinian, Will Be Released in About Two and a Half Years," *Haaretz*, 4 February 1999.
- 28 "Those Who Threw a Hand Grenade in the Butcher's Market to be Released; Sentences of Four Others Commuted," *Haaretz*, 5 October 1997.
- 29 Khalid al-Hindi, *The Democratic Practice of the Palestinian Prisoners' Movement* (Mowaten - The Palestinian Institute for the Study of Democracy, Ramallah: Palestine, 2000) at 134 (Arabic) (hereinafter: "al-Hindi").
- 30 The information is based on a memorandum by al-Jama'a al-Islamiya, which was distributed in the central Gaza prison, entitled "Document of Understandings" between Hamas and the Islamic Jihad on 11 June 1991. See "al-Hindi", supra note 29, at 146.
- 31 IPS report, supra note 14, at 16.
- 32 Para. 3 of the IPS Commission's directive, supra note 6.
- 33 IPS report, supra note 14, at 18.
- 34 Al-Hindi, supra note 29, at 145-146.
- 35 Id. at 185.
- 36 H.C. 221/80, *Muhammad Dahoud Darwish v. The Israel Prison Service*, P.D. 35(1) 536.
- 37 Id. at 537.
- 38 The facts presented in the Darwish ruling are relevant to the year in which the ruling was made. Today, there is no directive preventing a sentenced prisoner from receiving a bed, just as there is no directive requiring the provision of a bed. However, during the interrogation stage, prisoners classified as "security" prisoners have no inherent right to a bed. In Israel, there is great shortage of beds for prisoners and this shortage is attributed to a lack of funds. See a ruling of principle on this matter, delivered 12 February 2007. H.C. 4634/04, *Physicians for Human Rights v. The Minister of Public Security* (not yet published).
- 39 *Darwish* ruling, at 541 (emphasis added).
- 40 Id. at 544. The court reiterated these words in Leave for Prison Appeal 1076/95, *The State of Israel v. Samir Kuntar*, P.D. 50(4) 492, at 500-501. The paragraph quoted above is the only support to which Judge David Bar-Ophir refers in his book, *Prisoners' Appeals*, in presenting the legal source of the different approach toward prisoners classified as "security" prisoners. See, David Bar-Ophir, *Prisoners' Appeals* (Perlstein-Ginossar, 2003) at 1-2 (Hebrew).
- 41 *Darwish* ruling, at 545.
- 42 The Criminal Procedures Law (Powers of Enforcement – Detention) (Conditions of Holding in Detention) (1997) (hereinafter: "Criminal Procedures Law"). On 19 December 2004, Adalah wrote to the minister of public security demanding to overturn this regulation as being unreasonable in an extreme way. The minister rejected Adalah's demand. The letter to the minister can be viewed at: <http://www.adalah.org/newsletter/eng/dec04/7.php>.
- 43 A detainee's right to a bed is anchored in Article 9 of the Criminal Procedures Law (Enforcement Powers –

Detention) (1996). But as part of the minister of public security's authority (under Article 11(4) of the aforementioned law) to restrict the rights of detainees suspected of security offenses, the minister stipulated in the regulation that, unlike a criminal prisoner, a security prisoner does not have a right to a bed. This stipulation is consistent with the spirit of the *Darwish* ruling cited above. Regarding the right to a bed, see also: Article 19 of the UN Standard Minimum Rules for the Treatment of Prisoners, 1955; H.C. 4634/04 *Physicians for Human Rights-Israel v. The Minister of Public Security* (not yet published) delivered on 12 February 2007; H.C. 5678/02, *Physicians for Human Rights-Israel v. The Minister of Public Security et al.* (delivered on 24 June 2003); H.C. 7082/97, 3910/99, *The Central Committee of the Israel Bar Association v. The Minister of Public Security et al.* (not yet published); H.C. 545/02, *Physicians for Human Rights-Israel v. The Minister of Public Security et al.* (not yet published).

children during prison visits. The contention was that in some cases the prisoners had tried to smuggle forbidden items via their children. As punishment for this, all of these prisoners were denied the right to approach their children. The IPS allowed the parents to have physical contact with their children only after a Supreme Court petition, and conditioned this on the submission of a written request by the prisoner to prove that he indeed seeks to be close to his or her children. Adalah opposed this approach and the IPS retracted its demand for the submission of a written request. See H.C. 7585/04, *Hakim Kana'aneh et al. v. The Israel Prison Service* (petition pending). On 2 March 2005, the Supreme Court issued a ruling that requires the IPS to explain the reasons for preventing physical contact between children and their prisoner parents. On the restrictions during visits in general, see Anat Bar Sela, "Forbidden Visits: The Violation of the Right to Family Visits of Palestinians Imprisoned in Israel," Information Sheet, *B'Tselem* (September 2006).

44 Planning for the cell's construction began after 1997. See, Regulation 3(E) Paras. 1-4, and Regulation 4, 22(1)(B) and 22(2) of the aforementioned regulations.

54 Anat Matar, "Objects or Subjects? Theoretical Comments on the De-Politicization of the Issue", *Adalah's Newsletter*, Vol. 35, April 2007.

45 See Regulation 22(2)(B) 3 of the Criminal Procedure Law. For a complete list of all of the restrictions on detainees suspected of having committed security offenses, see Adalah's letter to the Minister of Internal Security of 19 December 2004: <http://www.adalah.org/newsletter/eng/dec04/7.php>.

55. Id.

56. Daka, supra note 1.

46 See Regulation 7(2) of the Criminal Procedure Law.

47 See Regulation 9(C) of the Criminal Procedure Law.

48 On the importance of an individual evaluation as a guarantee of meeting the proportionality test for the violation of constitutional rights, see H.C. 5627/02 *Ahmad Seif et al. v. The Government Press Office et al.* P.D. 58(5), 70; Chief Justice Barak's words in H.C. 6778/97, *The Association for Civil Rights in Israel v. The Minister of Public Security et al.*, P.D. 58(2) 358.

49 See Yitzhak Laor, "Let Them Die," *Haaretz*, 18 April 2004.

50 H.C. 7052/03, *Adalah v. The Minister of Interior* (not yet published) delivered on 14 May 2006.

51 H.C. 8276/05, *Adalah v. The Minister of Security* (not yet published) delivered on 12 December 2006.

52 H.C. 8242/06, *Susan Salameh v. The Commander of IDF Forces in the West Bank* (petition pending).

53 A good example of the collective punishment is the Israel Prison Service's decision to prevent Palestinian prisoners from having physical contact with their