

Lasting Injustice: Discrimination against Palestinian political prisoners in the commutation of sentences and early release

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The fact that Palestinian political suspects, detainees and prisoners are discriminated against in comparison with Jewish suspects, detainees and prisoners who committed politically-motivated crimes against Arabs is not new.¹ Discrimination against them includes harsher conditions of confinement, more severe punishments, and less lenience in sentence commutation. One of the most critical issues concerning Palestinian political prisoners is discrimination against them in the reduction of their prison sentences and early release.

The State of Israel does not recognize Palestinian prisoners – whom it classifies as ‘security prisoners’ – as prisoners of war, in contravention of international humanitarian law, including the 1907 Fourth Hague Convention, the Third Geneva Convention of 1949 regarding the treatment of prisoners of war,² and the 1977 Protocol I to the Geneva Convention.³ Palestinian prisoners are brought to trial in Israeli civil and military courts, and Israel does not distinguish between Palestinian prisoners who attacked or intended to attack soldiers and other military targets and those who attacked or intended to attack civilians and civilian targets. This is the case regarding both Palestinian residents of the Occupied Palestinian Territories, and Palestinians who are citizens and residents of Israel. Indeed, the citizenship of Palestinian political prisoners who are citizens of Israel is used as a justification for their harsher treatment, including longer sentences, and the denial of the reprieves that are granted to many Jewish prisoners. As of early April 2013, Israel is holding 4,804 Palestinian ‘security’ prisoners, 170 of whom are citizens of Israel.

Since the signing of the Oslo Accords in 1993, the issue of the release of Palestinian prisoners has been explicitly linked to political negotiations between Israel and the Palestinian Authority. One of the far-reaching implications of the Oslo Accords was that they granted Israel the right to select the individual prisoners to be released as

¹ See Position Paper by Adalah, Physicians for Human Rights and Al Mezan, “Inhumane Conditions of Imprisonment of Palestinian Security-Classified Prisoners in Israeli Prisons,” *Adalah's Newsletter*, vol. 95, July 2012:

http://adalah.org/Public/files/English/Publications/Position%20paper%20Prison%20conditions%20English%20final%2031_7_2012.pdf

² Article 4 of the Convention lists eight categories of persons who may be classified as ‘prisoners of war’. These categories include members of militia and organized resistance movements providing that they fulfill certain conditions based on the distinction between combatants and civilians. See HCJ, 769/02, *The Public Committee Against Torture in Israel, et al. v. The Government of Israel, et al.*; and Orna Ben-Naftali and Keren Michaeli, “‘Do Not Make a Scarecrow of the Law’: A Legal Analysis of the Israeli Policy of Targeted Killings,” 36(2) *Cornell Journal of International Law* 234-292 (2004).

³ Israel is not a signatory to the Protocol and refused to recognize its customary law status.

part of the political process. Over the years, political agreements have brought about the release of thousands of Palestinian prisoners. Crucially, however, these agreements have excluded Palestinian political prisoners who are citizens of Israel because Israel does not officially recognize them as a part of the Palestinian-Arab-Israeli conflict. Therefore, this group of prisoners can only resort to the Israeli justice system to secure a commuted sentences or a pardon.

Many Palestinian citizens of Israel were convicted in courts in Israel and have been served multiple life sentences. Israel's Penal Code –1977 stipulates that a person convicted of an offense that carries a life sentence will receive an unlimited or indefinite prison sentence. The law lists four offenses that are punishable by life imprisonment: mutiny with intent to impair national security (Article 107), knowingly delivering information to the enemy with intention to injure the national security (Article 111), murder (Article 300), and abduction from custody in order to commit murder or to place a person in danger of being murdered (Article 373(b)). The Basic Law: The President of the State granted the President of Israel the power to pardon offenders and lighten their punishment by reducing or commuting their sentences, including life sentences. Articles 29 and 30(a) of the Conditional Release from Imprisonment Law – 2001 determine that a special parole committee is authorized to recommend to the President that he reduce the sentence of a life prisoner, provided that the reduced period of the sentence it recommends is not less than 30 years and that the committee does not submit its recommendation earlier than seven years after the period of imprisonment commenced. Article 5 of the Conditional Release from Imprisonment Law authorizes a special parole committee to conditionally release a life prisoner whose sentence has been reduced and who has served a minimum of two-thirds of his or her prison term, if the committee is convinced that the prisoner is worthy of parole and that his or her release does not endanger the public safety.

Until recently, many of the Palestinian prisoners with Israeli citizenship who are serving life terms did not receive any reduction of their sentence or an early release. In August 2012, however, Israeli President Shimon Peres reduced the life sentences of seven Palestinian citizens of Israel who were convicted before the Oslo Accords and imprisoned for at least 25 years each.⁴ Significantly, however, when Peres commuted their sentences, in wake of a recommendation by the Minister of Justice, he chose the most severe of the range of penalties recommended by the committee.

⁴ Tomer Zarchin and Jack Khoury, "Peres commutes sentences of 7 Israeli Arabs jailed before Oslo," *Haaretz*, 27 August 2012: <http://www.haaretz.com/news/diplomacy-defense/peres-commutes-sentences-of-7-israeli-arabs-jailed-before-oslo-1.461038>

In sharp contrast, Jewish Israeli prisoners have long benefited from displays of benevolence by Israeli presidents and various parole committees that have pardoned them, commuted their sentences to relatively light sentences, and ordered their early release, sometimes only a few years into their prison term. For example.⁵

- Members of the Jewish Underground who were arrested in 1984 and convicted of the murder of three Arab students at the University of Hebron and the wounding of others by gun shots at the university; the bombing of cars of mayors of West Bank cities and causing severe harm to three persons; planning to bomb five buses and their Arab passengers; and planning to bomb the Al-Aqsa mosque in Jerusalem. **Only 15 of the accused Jewish Underground members were convicted. Three were given life sentences and the others received sentences of seven years or less.** An appeal submitted against the lenience of the sentences of five of the accused was rejected. Within several years most of the Underground members had been released. Those who remained in prison were primarily those who had been given a life sentence. Ultimately, the President commuted their sentences three times, and at the end of 1990, after a third of their term has been deducted, the three individuals sentenced to life were released, **having served less than seven years.**
- Four youths, members of Kahane Chai [Kahane Lives], who founded the 'Revenge Patrol' in 1992 hurled a grenade into the butchers market in the Muslim Quarter of the Old City of Jerusalem, killing an elderly Arab man and wounding seven others. **The four were sentenced to five to fifteen years imprisonment. Two were granted a pardon by the President. The individual convicted as the principal perpetrator was sentenced to fifteen years, which were then reduced to 10 years.**
- Alan (Harry) Goodman was convicted of murdering a Waqf guard and wounding police officers in 1982 at the Al-Aqsa Mosque. **He was given a life sentence plus an additional 40 years, but received a pardon and was released after serving fifteen and a half years of his term.**
- Nir Eftoni and Eli Vanunu were convicted of murdering a Palestinian in 1984 and both were handed life sentences in 1991. In 1996, Eftoni's sentence was commuted to 20 years and, one year later, to fifteen years. He was released in 1999 after a deduction of a third of his term. The sentence of his partner, who had committed additional offenses, was commuted to 20 years. **He was released in 1999 after eight years in incarceration.**
- In 1984 David Ben Shimol fired a Lau missile at a bus crowded with Arab passengers killing one person and wounding at least ten others. He was given

⁵ The list is based on a list which appears on the Wikipedia website in Hebrew under "Jewish Terrorism".

a life sentence, which was later commuted to 17 years. After a deduction of a third of his term, **he was released in 1995 having served 11 years of his sentence.**

- Dani Eisenman and his partners Michal Hillel and Gil Fuchs were convicted of murdering a Palestinian taxi driver in 1985 and all three were given a life sentence. **Michal Hillel was released after serving 5 years of her sentence. Fuchs was released after 9 years and Eisenman was released after 11 years.**
- In 1990, Ami Popper shot and killed seven Palestinian day laborers from Gaza and wounded 11 others who were waiting for work at the Gan Havradim junction in Rishon Letzion. The court convicted him of murder and sentenced him to seven consecutive life terms plus an additional 20 years. **In 1999, the President commuted his sentence to 40 years.**
- Nachshon Walls was convicted in 1992 of the 1990 murder of a female resident of Hebron and given a life sentence. In 1996 his sentence was commuted for the first time and a year later his sentence was again commuted, this time to 13 years. After a deduction of a third of his prison sentence, **he was released in 1999 after serving 8 years of his prison term.**
- In 1993, Yoram Shkolnick murdered a Palestinian who had been detained and was handcuffed. Shkolnick shot the detainee in the back while he was lying helplessly on the ground. Shkolnick was sentenced to life in prison. His sentence was commuted twice by the President, first to 15 years and then to 11 years. After a deduction of a third of his term, **he was released after serving only 8 years of his sentence.**⁶
- In 1997, Daniel Morali murdered a Palestinian truck driver. Morali was given a life sentence which was commuted in 1999 to 20 years. After the deduction of a third of the term, **he was released from prison in 2007 having served 13 years of his sentence.**

Not only have Palestinian citizens of Israel serving life sentences have been given more severe sentence in relation to the type and nature of the offense than Jewish Israeli citizens, but they are also gravely discriminated against due to the persistent refusal to commute their sentences. For example:⁷

- Sami Younis, a resident of Ar'ara in the Triangle, was sentenced to life in prison for membership in a unit that kidnapped and murdered a soldier in 1981. His sentence was commuted to 40 years and he was finally released in the Shalit prisoner exchange in October 2011. The sentences of Karim Younis and Maher Younis, who were also members of the unit, were commuted in

⁶ HCJ 89/01 *The Public Committee Against Torture in Israel v. The Parole Committee, the Maasiyahu Prison, the Israel Prison Service et al.*

⁷ The list is based on interviews with released Palestinian political prisoners.

August 2012 to 40 years. Both prisoners have so far served more than 30 years of their prison term.

- Of five persons involved in a unit that kidnapped and murdered a soldier in 1984:
 - Walid Namir Dakka, resident of Baqa-el-Gharbiya, was accused of involvement in the murder of the soldier and given a life sentence. For 28 years Dakka stuck to his contention that he only heard about the event while in the General Security Service (GSS) interrogation chamber, denying any involvement in the kidnapping and murder. In August 2012, Dakka's sentence was commuted after 27 years of incarceration and reduced to 37 years.
 - Rushdie Hamdan Abu Mukh, a resident of Baqa-el-Gharbiya who suffers from chronic diabetes, was handed a life term for being a member of the unit. He participated in the kidnapping but not in the murder. His sentence was commuted in August 2012 to 35 years.
 - Ibrahim Naef Abu Mukh and Ibrahim Abed al-Razek Biyadseh, residents of Baka-el-Gharbiya, were sentenced to life in prison for membership in the unit. They have been incarcerated for approximately 39 years. Their punishment was commuted in August 2012 to 40 and 45 years respectively.
 - Ahmed Abu Jabar, a resident of Kufr Qassem, was given a life sentence for membership in the unit. Although he has been in prison for more than 27 years, his sentence has not been commuted.
- In 1987, Mukhlis Ahmed Burghal and Muhammad Mansur Ziadeh, both from Led (Lod/Lydd), were sentenced to life in prison. Burghal was convicted of hurling a grenade at a bus crowded with soldiers, and Ziadeh was convicted of assisting and participating in this action. The grenade did not explode and no one was hurt. Burghal's sentence was commuted in 2003 to 40 years. After 25 years in incarceration, the two prisoners were released in the framework of the Shalit prisoner exchange.
- Mahmud and Mohammed Jabareen, residents of Umm-el-Fahem, were arrested in 1988 and given a life sentence for murdering a Palestinian suspected of collaborating with Israel. Their sentence was commuted to 30 years. Mahmud is still serving his prison term. Mohammed was released in the framework of the Shalit prisoner exchange.
- In 1988, Samir Sarsawi and Ali Amariya, residents of the village of Ibtin, were detained and sentenced to life for participating in the hurling of a hand grenade that caused injuries in Haifa. Amariya's sentence was commuted in 1999 to 40 years and he was released in the framework of the Shalit prisoner exchange. Sarsawi's sentence was commuted to 45 years and, in August

2012, it was again commuted to 30 years. Sarsawi has so far served 25 years of his sentence.

Today, there are at least ten Palestinian political prisoners, citizens of Israel, who are serving life sentences that have not yet been commuted, despite the fact that most have served many years of their sentences.

As the above lists show, even those Palestinian citizens who did not murder or wound anyone were sentenced to life in prison (after being tried in a military court on the basis of emergency regulations despite being citizens of Israel).⁸ At the same time, the sentences of all the Jewish prisoners who were convicted of the politically-motivated murders of Palestinians listed above were commuted and significantly reduced.⁹

In contrast, in most cases where the sentences of Palestinian citizens of Israel were commuted, it was only after they had served decades of their sentence. The total prison term they served after the commutation of their sentences was no less than 30 years, and in most cases 40 or 45 years. Some of their sentences have not been commuted.

Palestinian prisoners incarcerated by Israel have repeatedly demanded that the conditions of their incarceration be equivalent to those of Jewish prisoners, particularly regarding the commuting of their sentences and early release. However, the Israeli authorities have continued to discriminate against them. One of the explanations given for easing the sentences of Jewish prisoners is that Jewish prisoners must be released as a counterbalance to the release of Palestinian prisoners in the framework of political agreements between Israel and the PA. This rationale cannot justify discrimination against Palestinian prisoners who are citizens of the state, since the state has refused to view these prisoners as part of the Israeli-Palestinian conflict, and refused for decades to release them within the framework of political agreements, and only rarely in prisoner swap deals, on the grounds that they are citizens of the state.

The principles of equality and the rule of law that theoretically underlie the Israeli legal system mandate the equal treatment of all prisoners who are citizens of the

⁸ See the editorial in *Haaretz*, "Belated Justice", 29 August 2012: <http://www.haaretz.com/opinion/belated-justice-1.461296>

⁹ Yigal Amir, who assassinated Prime Minister Rabin, is an exception as his sentence has not yet been commuted. Although the Conditional Release from Imprisonment Law prevents a special parole committee from recommending that the President commute the sentence of a prisoner handed a life sentence, there is no limitation on the President's authority under the Basic Law: The President to commute the sentences of these prisoners on his own initiative.

state, be they Jewish or Palestinian. Prisoners who committed similar offenses are supposed to be tried before the same courts according to the same laws, and to receive similar penalties, both in terms of the sentence and the service of the sentence in practice. In general, the actual penalty is meant to reflect the severity of the offense committed and considerations of deterrence and punishment. When deliberating the granting of a pardon or the reprieve of a sentence, preference should not systematically be given to a Jewish prisoner over a Palestinian prisoner.

In addition, Palestinian prisoners who are citizens of Israel are also discriminated against with regards to early release on medical grounds. The Conditional Release from Imprisonment Law determines the authority of the parole committee to recommend the conditional release of a prisoner who is terminally ill, requires artificial respiration, is unconscious, or whose physical or cognitive condition leaves him or her permanently unaware of time and his or her own whereabouts. The law authorizes the parole committee to temporarily release a prisoner, with conditions, for a period of half a year. This period of time may be extended for as long as the prisoner receives medical care, in the case of cancer, or is in need of a vital organ transplant.

Over the past decades, many Palestinian prisoners have died in Israeli prisons due to illness and medical problems, rather than benefiting from the Conditional Release from Imprisonment Law. Only recently a prisoner suffering from cancer, Maysara Abu Hamadiya, died in prison as a result of complications associated with his illness. The late Abu Hamadiya was not a citizen of Israel, but similar directives apply to Palestinians from the OPT.

In the limited cases when Palestinian political prisoners are released before the end of their sentence, strict conditions are imposed which, if violated, cause the prisoner to be brought back to prison to serve the remainder of his or her term as it stood at the time of the early release. These conditions are notably harsher than the stipulations set in the Conditional Release from Imprisonment Law, according to which the prisoner must not commit an additional offense or crime during parole. The parole committee has the discretion to decide to extend the period of parole under conditions that it determines, or to determine other conditions for parole if the prisoner did not receive a prison term for an additional offense that he or she committed. Orders to release Palestinian prisoners have stipulated that if the prisoner commits an offense carrying a sentence of three months' imprisonment, his or her parole is annulled and a conviction by a court is not required. This condition is exceedingly harsh, as are other conditions imposed on released prisoners. For example, the early release of the prisoner Samer al-Issawi, a resident of Jerusalem, was annulled because he visited suburbs of Jerusalem located outside the Separation

Wall and he will, most likely, serve the remainder of his sentence amounting to decades as a result. Conditions such as these have not been imposed on Jewish prisoners granted an early release.

Beyond the injustice of the above-described discrimination in Israel's policy of granting commutation of sentences and early release, it sends out the clear message that the security of the state only refers to the security of its Jewish citizens. The state treats those who attack Jewish citizens as harshly as possible while showing lenience to Jewish citizens who attack Palestinians.