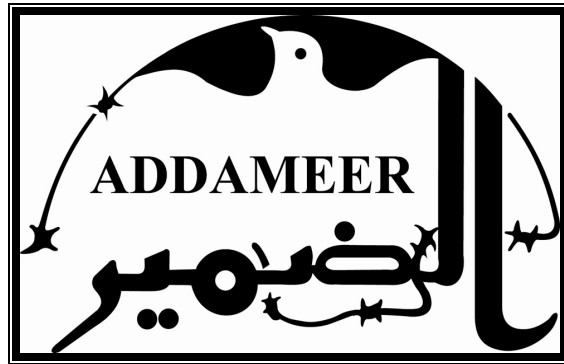


# **Reaching the ‘No-Peace’ Agreement: The Role of Palestinian Prisoner Releases in Permanent Status Negotiations**

Addameer Prisoner Support and Human Rights Association



December 2009

**Addameer Prisoner Support and Human Rights Association (Addameer)** is a Palestinian non-governmental, civil institution that focuses on human rights issues. Established in 1992 by a group of activists interested in human rights, the center offers support to Palestinian prisoners and detainees, advocates for the rights of political prisoners, and works to end torture through monitoring, legal procedures and solidarity campaigns.

Addameer (Arabic for conscience) believes in the importance of building a free and democratic Palestinian society based on justice, equality, rule of law and respect for human rights within the larger framework of the right to self-determination. To this end, Addameer's work comprises four main program areas, namely: legal aid, research and documentation, advocacy, and the Training and Awareness Program.

Addameer is a member of the Executive Committee of the Palestinian NGO Network, the Palestinian Council of Human Rights Organizations, and works closely with international human rights organizations such as Amnesty International, Human Rights Watch, OMCT and FIDH to provide regular information on the situation of Palestinian political prisoners and detainees.

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## 1. Introduction

*“There will be no peace until all Palestinian prisoners are released”.*  
 – Yasser Arafat, in a telegram to families of Palestinian detainees in 2004

Following the end of last winter’s 23-day Israeli aerial and ground offensive on the Gaza Strip, which killed at least 1,400 Palestinians, including 353 children, and left more than 5,380 wounded, an Israeli-Palestinian prisoner exchange has been high on the region’s political agenda. As this paper goes to press, international media reports following statements by Hamas officials indicate that such an exchange may be imminent, and that the list of those prisoners to be included in the exchange, agreed upon between Hamas and the Israeli authorities, is close to being finalized. These reports further indicate that an Israeli soldier captured in June 2006 at the Kerem Shalom crossing into the Gaza Strip is to be released in exchange for a “large number” of Palestinian prisoners from different political factions and regions, including residents of the occupied Palestinian territory (OPT) – comprising East Jerusalem, the West Bank and the Gaza Strip – and 1948 territory Palestinians holding Israeli citizenship.

Although Palestinian post-Oslo experience has long taught that such large scale prisoner releases fail to occur as often as not, it remains clear that political prisoner exchange and release, along with other steps such as mutual cessation of violence and military disengagement, is a central issue on both sides. In a 2006 report entitled *The Arab-Israeli Conflict: To Reach a Lasting Peace*, the International Crisis Group wrote that a mutual accommodation with Israel was necessary for the Palestinian Authority to overcome the international isolation imposed following the January 2006 parliamentary elections, and should be based on “a mutual ceasefire and prisoner exchange along with steps to allow the Palestinian government to govern and improve movement and access for its people”, followed by an Israeli military disengagement from Palestinian areas.<sup>1</sup>

Palestinian political prisoners<sup>2</sup> also play a crucial role in the effort to achieve internal Palestinian national unity. In February 2007, following a year-long economic embargo and sanctions imposed by members of the Quartet, Hamas and Fatah formed a national unity government based on an 18-point political agreement reached by Palestinian prisoners held in Israeli jails, including prominent Hamas and Fatah members.<sup>3</sup> The agreement, also referred to as the Prisoners’ Initiative or the National Reconciliation Document, eventually lost political support but succeeded in establishing the general outline of a common platform that could have led to the re-launch of negotiations with Israel.

The instrumental role Palestinian prisoners must play in reaching a lasting peace has also been recognized at times by Israel. In March 2009, imprisoned members of the Palestinian Legislative

<sup>1</sup> International Crisis Group, *The Arab-Israeli Conflict: To Reach a Lasting Peace*, Middle East Report No. 58, 5 October 2006 (available at: <http://www.crisisgroup.org/home/index.cfm?id=4427&l=1>), p. 8.

<sup>2</sup> Addameer defines as “political prisoners” those prisoners detained in relation with the occupation, as opposed to detainees suspected or convicted of crimes/offenses unrelated to the occupation, as adopted in the Report of the UN Fact Finding Mission on the Gaza Conflict, UN Human Rights Council, *Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact Finding Mission on the Gaza Conflict*, September 2009, para. 1434 (available at: [http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC\\_Report.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf))

<sup>3</sup> BBC News, “Palestinian heads clash over vote”, 11 June 2006 (available at: [http://news.bbc.co.uk/2/hi/middle\\_east/5068460.stm](http://news.bbc.co.uk/2/hi/middle_east/5068460.stm)).

Council and other prominent political figures associated with the Hamas movement were gathered in Israel’s Ketziot prison in the Negev desert and given mobile phones with clear instructions to influence prisoner-exchange negotiations that were taking place in Cairo at that time. Although the Palestinian prisoners refused to take part in these negotiations, as the Israeli authorities did not allow them to participate more directly in the talks, this incident reflects Israel’s view of the pivotal role that Palestinian prisoners can have on specific political events, and possibly an entire peace process.

The 1993 Oslo I Agreement, together with a number of other related Israeli-Palestinian agreements discussed in this paper, contained provisions intended to serve as the foundation for future negotiations and form integral steps toward a just and lasting peace settlement between Israel and the Palestinians. Among the provisions of many of these agreements were articles regarding the release of Palestinian political prisoners held in Israeli detention for their involvement in activities related to the ongoing belligerent Israeli occupation of Palestinian territory, including the West Bank, East Jerusalem and the Gaza Strip.

However, more than sixteen years after the beginning of the “Oslo Peace Process” (Oslo Process), Israel still holds 330 Palestinian political prisoners who were arrested before 13 September 1993, the cutoff date for arrests that determined which prisoners would be eligible for inclusion in subsequent releases.<sup>4</sup> Approximately 95 of these political prisoners have spent more than 20 consecutive years in Israeli prisons.

Today, serious doubts remain as to whether Israel has ever been willing to engage in a genuine peace process, having never abandoned its policies of unilateralism, settlement expansion or arrests of Palestinians under the sweeping banner of “security”. Tellingly, Israel continues to perceive Palestinian grievances against the prolonged occupation of Palestinian territory as “security” threats or criminal activity, rather than as legitimate acts of political resistance. The Israeli military judicial system imposed on the West Bank and Gaza Strip, with its net of thousands of military orders criminalizing every aspect of Palestinian life, continues to depoliticize Palestinian national aspirations. In policy and in practice, Palestinian activities against the military occupation are never deemed “political” by Israel – and acts that would or could constitute “political offenses” have never been defined.

Comparative studies of recent peace processes, such as those in South Africa and Northern Ireland, reveal the importance and centrality of prisoner releases to the greater negotiations towards a lasting peace. In a negotiated peace settlement, amnesties are often a necessary condition for putting an end to a conflict. Prisoners often play a central role in post-conflict politics – both during their internment and after their release – and can be instrumental in addressing past grievances and in seeking justice and reconciliation. In South Africa, for example, after Nelson Mandela’s release in 1990 a joint African National Congress-government committee was established to define what constituted “political offenses” and to advise on the future release of political prisoners. While the South African government originally wanted to distinguish between prisoners who had been convicted of what they considered to be “genuine” political offenses, such as membership in a banned organization, and ordinary criminal law offenses, such as killings, use of explosives and arson, these distinctions were eventually

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<sup>4</sup> See discussion on arrest cutoff dates on p. 18, *infra*.

discarded in the name of continuing the peace process, recognizing that retribution and reconciliation are best held as mutually exclusive when negotiating for peace.

By comparison, Israeli authorities have remained unwilling to explore a similar shift in discourse regarding the identification of “political offenses” or to even acknowledge Palestinian political motivations. To the contrary, those whom in any other post-conflict situation would become partners in peace are still considered “security”, rather than “political” detainees. Moreover, Israeli legislation and court decisions have long enabled the State to hold detainees as “bargaining chips”, held for their potential value in hostage or political negotiations, disregarding their status as political actors and denying them fundamental human rights protections.

Today, it is clear that the Oslo Process has failed, both in spirit and in practice. Like many other Palestinian human rights organizations, Addameer consistently opposed the Oslo Process on the grounds that it was based on unjust Palestinian compromise, and was therefore unlikely to achieve Palestinian self-determination or lasting peace. However, as recently renewed American and European pressure to re-launch permanent status negotiations indicates that the peace process will inevitably continue, it is necessary to examine the failed process from all perspectives in preparation for more successful future efforts towards a just and durable peace settlement and a viable solution to the Palestinian prisoner question.

In examining the legacy of Oslo I and other related agreements, Addameer contends that Israel has systematically failed to act in accordance with many of its obligations under the Oslo Accords<sup>5</sup> and related Israeli-Palestinian peace agreements, particularly in regards to prisoner releases. In addition, while recent historical comparison indicates that prisoner releases are of central importance to negotiations towards a lasting peace, Israel continues to treat the issue as a public relations opportunity and a means to achieve political gains. Working within such constraints, the Palestinian leadership has been forced to negotiate with the Israeli government over the numbers of prisoners included in releases, and has failed to develop a strategy to challenge the military courts system in the OPT that defines all Palestinian resistance to Israeli occupation as “security offences”. Action is therefore needed at both domestic and international levels to ensure Israeli respect for its obligations towards Palestinian political prisoners under the agreements it has signed, and to put pressure on Israel to shift their approach towards prisoner releases and the need for a redefinition of policy and practice in categorizing political offenses. Such pressure must also focus on compliance with requirements under international law with regards to the ongoing arrest, interrogation, trial and detention of thousands of Palestinian political actors in the OPT.

Should permanent status negotiations resume, Addameer calls on the international community, and all actors involved in the Israeli-Palestinian peace process, to put all the necessary pressure on the government of Israel to:

- Release all Palestinian and Arab political prisoners arrested before 13 September 1993, in accordance with previous agreements;

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<sup>5</sup> For the purposes of this paper, the term “Oslo Accords” will be understood to comprise both the Oslo I Agreement and the Oslo II Agreement, discussed *infra*. The “Oslo Peace Process” (or Oslo Process) refers to the negotiations process and resulting agreements during the years 1993-2000.

- Release all Palestinian prisoners arrested by Israel in relation to their activities opposing the occupation without any pre-conditions, thus cancelling previously defined categories of prisoners in Oslo II and effectively creating one category of “political prisoners”;
- Create a joint committee to define “political offenses” and set a timeline for future prisoner releases; and,
- Draft all necessary provisions to prevent future arbitrary arrests of Palestinians in the occupied Palestinian territory and their unlawful transfer to prisons inside Israel.

At the same time, Addameer calls on the Palestinian Liberation Organization (PLO) to ensure that resolving the issue of Palestinian prisoners is set as a condition precedent for the re-launch of permanent status negotiations and remains a top priority throughout any renewed peace process.

## 1. Pre-Oslo Process Status of Palestinian Political Prisoners

Hundreds of thousands of Palestinians have been arrested and detained under Israeli military orders since the Israeli occupation of Palestinian territory in 1967. Prior to the Oslo Accords, Palestinian prisoners were held in Israeli military prisons inside Palestinian territory, including: Ramallah prison, Jenin prison, Jneid prison in Nablus and Al Far’a prison, located between Nablus and the Jordan Valley. Israeli military prisons were also located in Jericho, Hebron and Gaza.<sup>6</sup> Prison conditions during this period were typically poor, and Israeli detention practices in the OPT were subjected to little domestic or international oversight.

During the First Intifada (1987-1993), prison conditions deteriorated further with the thousands of prisoners that crowded the Israeli prisons and interrogation centers, detained for an impossibly broad range of offenses under Israeli military orders.<sup>7</sup> Little effort was made by Israel to monitor or improve the protection of human rights in the prisons, and torture of Palestinian detainees, including those as young as 12, was endemic and conducted with near impunity.<sup>8</sup> Medical treatment and food provisions were inadequate, and family visits, which had been largely unrestricted before the Intifada, were limited to just 30 minute periods, twice a month.

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<sup>6</sup> This changed significantly in 1995 when Israel transferred a large number of their Palestinian prisoners, those with longer sentences, to prisons inside Israel. See *infra*, p. 6.

<sup>7</sup> Including, for example, possession of banned publications, or wearing a t-shirt with the Palestinian flag on it.

<sup>8</sup> In its landmark 1999 decision in *The Public Committee Against Torture v. The Government of Israel*, the High Court of Israel placed certain limits on the use of torture by Israeli authorities. Following this decision, there was a reduced frequency of unlawful interrogation techniques by Israel as interrogators understood there would be more need to justify their use of techniques in specific cases. The methods of torture and ill-treatment most frequently alleged to currently take place during interrogation include: prolonged constraint of movement in an uncomfortable position causing physical pain, (such as tying the suspect to a chair with the hands behind the back, throughout hours or days of interrogation); sleep deprivation; shaking; hooding using dirty hoods bearing very strong unpleasant odors; the use of loud music; beatings and long periods of solitary confinement in small, windowless and, often, cold cells. Less common since the 1999 High Court ruling, but still allowed to continue, are the so-called ‘military interrogation’ techniques, which are applied in combination with the methods already mentioned above. These techniques primarily involve the use of painful stress positions such as the “banana” position, where the detainee is bent backwards over the seat of a chair causing pain to the back, or the “frog” position where the detainee is forced to stand for prolonged periods against a wall with bended knees. Detainees also report the use of tight handcuffs placed on the upper arm for extended periods.

Prior to and throughout the Intifada, Palestinian prisoners conducted a large number of hunger strikes in protest of their detention conditions. These strikes were typically met by prison authorities with violent measures, including tear gas and beatings with clubs.<sup>9</sup>

## 2. Israeli-Palestinian Agreements Affecting the Release of Political Prisoners

*“Those who participated in the secret negotiations that led to the signing of Oslo did not include any Palestinian negotiators from the Occupied Territories...those who signed do not have the same sensitivity and empathy with the case of the prisoners as do Palestinians in the Occupied Territories.”*

– Ziad Abu Zayyad, former legislator and Palestinian minister of state

### *The Oslo I Agreement (1993)*

On 13 September 1993, representatives of the PLO and the State of Israel signed the Declaration of Principles on Interim Self-Government Arrangements (known as the “Oslo I” Agreement), which was intended to commence a peace process and form a framework for the future relations between Israel and the Palestinians. At that time there were at least 12,000 Palestinian prisoners in Israeli detention.<sup>10</sup> Although the issue of political prisoners was not directly addressed in the articles of this agreement,<sup>11</sup> concurrent Israeli government statements indicated that there was to be a mass release of Palestinian prisoners.<sup>12</sup> However, there were a number of stipulations attached to these releases, including: the cutoff arrest date for prisoners who might be released was set as 13 September 1993; detained members of political parties that opposed the Oslo process were to be excluded from the releases; no release of prisoners would take place unless the Palestinians declared an amnesty for Palestinian collaborators with Israel; and, prisoner releases would not take place unless progress was made on the issue of missing Israeli soldiers.<sup>13</sup>

### *The Gaza-Jericho Agreement (1994)*

The Agreement on the Gaza Strip and the Jericho Area and Exchange of Letters (Gaza-Jericho Agreement) between the PLO and Israel was signed in Cairo, Egypt, on 4 May 1994. The agreement provided that Israel was to withdraw from the Gaza Strip and the Jericho area,<sup>14</sup> and contained a number of provisions regarding the jurisdiction of those areas, the provision of safe passage between them, and fishing rights off the Gazan coast, among others.<sup>15</sup> The Gaza-Jericho

<sup>9</sup> See the annexed case of Nael Barghouthi, the world’s longest-held political prisoner, detained by Israel since 1978, *infra* p. 27.

<sup>10</sup> Kieran McEvoy, “Prisoner Release and Conflict Resolution: International Lessons for Northern Ireland”, *International Criminal Justice Review*, Vol. 8 (1998), p. 39.

<sup>11</sup> According to The Palestinian Human Rights Monitor, Palestinian prisoners sent a letter to President Arafat, written following the signing of the Declaration of Principles in Oslo, in which they asked, “Where is our place in the Accords?” See: <http://www.phrmg.org/monitor1999/mar99-peace.htm>.

<sup>12</sup> McEvoy, *supra* note 10, p. 39, citing Prime Minister Yitzhak Rabin, statement on resumption of peace talks, Jerusalem, April 21 1993. *Journal of Palestinian Studies*, 22(4), 148-151.

<sup>13</sup> McEvoy, *supra* note 10, p. 39.

<sup>14</sup> Agreement on the Gaza Strip and the Jericho Area and Exchange of Letters between the PLO and Israel, Cairo, May 1994 (Gaza-Jericho Agreement), Article II.

<sup>15</sup> More specifically, the agreement: Set out the jurisdiction of the Palestinian Authority within the Gaza Strip and Jericho area, excluding settlers living in those areas (Article V); Stipulated that Israel was to provide safe passage for Palestinians traveling between the Gaza Strip and Jericho area (Article XI); Provided that Israel was to transfer authority from the Israeli military



Agreement also stipulated that Israel would release 5,000 Palestinian political prisoners within five weeks of the signing.<sup>16</sup>

However, Israel subsequently made these releases conditional on the signing of an individual declaration to support the peace process.<sup>17</sup> As this condition had not been agreed upon in negotiations in Cairo, it was greeted with considerable opposition and protest. Most of the Palestinian political parties that opposed the agreement refused to allow their imprisoned members to sign this pledge, even if they would otherwise be willing. Despite these restrictions, on 6 June 1994, several Hamas prisoners presented themselves and each signed declarations of support. Instead of being released, however, they were simply transferred to another prison.<sup>18</sup>

By the end of July 1994, 4,450 prisoners had been released.<sup>19</sup> However, 550 of these prisoners were “released” into the custody of the Palestinian Authority (PA), but remained confined to the small West Bank city of Jericho for the remainder of their sentences, sparking further protest and outrage from Palestinians and international observers of the Oslo process. The release of the remaining prisoners pledged under the agreement became an issue that was then renegotiated and used by Israeli negotiators in order to extract further Palestinian concessions, as more than 7,000 Palestinian prisoners then remained in Israeli detention.

### *The Oslo II Agreement (1995)*

The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, also called the “Oslo II” or “Taba” agreement, was signed by Israel and the PLO on 24 September 1995 in Taba, Egypt, and countersigned by Israeli Prime Minister Yitzak Rabin and PLO Chairman Yasser Arafat four days later in Washington D.C. The Oslo II Agreement mandated Israel’s

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government to the Palestinian Authority (Article III); Provided that Palestinians shall have the right to fish 20 nautical miles from the Gazan coast (Annex I, Article 11(a)(2)); and, codified Israel’s agreement to deploy a temporary international presence in the Gaza Strip and Jericho area. (Article XXI).

<sup>16</sup> Gaza-Jericho Agreement, *supra* note 14, Article XX(1).

“1. Upon the signing of this Agreement, Israel will release, or turn over, to the Palestinian Authority within a period of 5 weeks, about 5,000 Palestinian detainees and prisoners, residents of the West Bank and the Gaza Strip. Those released will be free to return to their homes anywhere in the West Bank or the Gaza Strip. Prisoners turned over to the Palestinian Authority shall be obliged to remain in the Gaza Strip or the Jericho Area for the remainder of their sentence.”

<sup>17</sup> The pledge stated the following:

“ I, the undersigned.....

ID Number.....

Pledge to avoid any terror or violent acts. I also declare that I am fully aware that signing this pledge is part of the condition of my release from prison. I also know that my release has been executed as part of the peace process between Israel and the PLO which seeks to implement the Declaration of Principles that was signed on 13 September 1993, which I fully support.”

It should be noted that by requiring prisoners to sign this pledge, Israel acted in violation of the prisoners right to freedom of opinion and expression, protected by international law and enshrined in a number of international agreements, including Article 19 of the Universal Declaration of Human Rights, which provides that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

<sup>18</sup> McEvoy, *supra* note 10, p. 39.

<sup>19</sup> The Palestinian Human Rights Monitor, “III. The Peace Accords between the PNA and Israel and the Case of the Prisoners”, March 1999 (available at: <http://www.phrmg.org/monitor1999/mar99-peace.htm>). McEvoy sets the number of those released by July 1994 slightly higher at 4,500. McEvoy, *supra* note 10, p. 39.

troop pullout and the expansion of Palestinian self-rule in the West Bank<sup>20</sup> and the holding of Palestinian elections in the West Bank and Gaza. Article XVI and Annex VII of the Oslo II Agreement outlined the procedures for further releases of administrative detainees and sentenced prisoners. Unlike the Gaza-Jericho Agreement the previous year, Oslo II's prisoner release provisions related to the release of prisoners by criteria rather than by quantity. Article XVI of the Oslo II Agreement<sup>21</sup> required Israel to release Palestinian prisoners in three stages. The first stage called for the release of prisoners on the signing of the agreement. The second stage was to take place prior to Palestinian elections, and Annex VII called for the third stage to take place during final status negotiations. No minimum number of released prisoners was set; instead, categories of those to be released were established in Annex VII.<sup>22</sup> In addition, and in further contrast to the Gaza-Jericho Agreement which required released prisoners from the West Bank to remain in Jericho, Oslo II permitted all released prisoners to return to their homes throughout the West Bank and Gaza Strip.<sup>23</sup>

On 10 October 1995 Israel freed 882 Palestinians as part of the first stage of the Oslo II agreement.<sup>24</sup> Of these, only two-thirds were held for political reasons and offenses related to the occupation. The remaining 300 were imprisoned for criminal offenses.<sup>25</sup> Only one woman was released<sup>26</sup>; twenty-one female prisoners slated for release refused to leave in protest of Israel's refusal to release four other women, citing Israel's pledge in the Oslo II Agreement calling for

<sup>20</sup> Since the Oslo Accords, the West Bank has been divided into three areas: Area A (the autonomous territories), which was placed under full Palestinian civil and military control (effective in urban areas only), except for foreign affairs; Area B (the occupied territories), which was placed under mixed Palestinian-Israeli control, with PA civil control and joint Israeli-Palestinian military control; and, Area C (including Israeli settlements, military bases and the areas connecting them with the Green Line and with each other), which retained full Israeli civil and military control. In practice, however, these distinctions have little application in the Israeli military courts.

<sup>21</sup> Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, September 1995 (Oslo II), Article XVI, para 1: "1. Israel will release or turn over to the Palestinian side, Palestinian detainees and prisoners, residents of the West Bank and the Gaza Strip. The first stage of release of these prisoners and detainees will take place on the signing of this Agreement and the second stage will take place prior to the date of the elections. There will be a third stage of release of detainees and prisoners. Detainees and prisoners will be released from among categories detailed in Annex VII (Release of Palestinian Prisoners and Detainees). Those released will be free to return to their homes in the West Bank and the Gaza Strip."

<sup>22</sup> Oslo II, *supra* note 21, Annex VII: Release of Palestinian Prisoners and Detainees:

(...)

2. The following categories of detainees and/or prisoners will be included in the abovementioned releases:

- a. all female detainees and prisoners shall be released in the first stage of release;
- b. persons who have served more than two thirds of their sentence;
- c. detainees and/or prisoners charged with or imprisoned for security offenses not involving fatality or serious injury;
- d. detainees and/or prisoners charged with or convicted of non-security criminal offenses; and
- e. citizens of Arab countries being held in Israel pending implementation of orders for their deportation.

3. Detainees and prisoners from among the categories detailed in this paragraph, who meet the criteria set out in paragraph 2 above, are being considered by Israel to be eligible for release:

- a. prisoners and/or detainees aged 50 years and above;
- b. prisoners and/or detainees under 18 years of age;
- c. prisoners who have been imprisoned for 10 years or more; and
- d. sick and unhealthy prisoners and/or detainees.

<sup>23</sup> Oslo II, *supra* note 21, Article XVI, para. 1.

<sup>24</sup> UNISPAL, Chronological Review of Events Relating to the Question of Palestine, October 1995 (available at: <http://unispal.un.org/unispal.nsf/361eea1cc08301c485256cf600606959/b6981ef72294227c8525628c0052dda4?OpenDocument>)

<sup>25</sup> *Id.*

<sup>26</sup> 18-year-old Bashayer Abu Laban had been in isolation in prison and was not aware of the boycott. Serge Schmemmann, "20 Jailed Arab Women Say No to Israeli Offer of Freedom", *The New York Times*, 9 October 2005 (available at: <http://www.nytimes.com/1995/10/09/world/20-jailed-arab-women-say-no-to-israeli-offer-of-freedom.html>).

the release of all female Palestinian prisoners as soon as the agreement went into effect.<sup>27</sup> The four women were denied release because Israeli President Ezer Weizman “refused to give pardons to two women who had been convicted of murder, and military officials followed suit with two other murder suspects held by the West Bank occupation authorities”.<sup>28</sup> Following a release order issued by Prime Minister Benyamin Netanyahu and an Israeli Supreme Court decision upholding it, all female Palestinian prisoners were finally released on 11 February 2007, nearly 17 months after their release was scheduled in the Oslo II agreement.<sup>29</sup>

Releases and transfers to Palestinian custody pursuant to the second phase of the Oslo II agreement were carried out in January 1996 prior to Palestinian general elections, which were held on 20 January 1996.<sup>30</sup> On 10 January 1996, Israeli authorities released 800 Palestinian prisoners.<sup>31</sup> All of the released prisoners were forced to sign a pledge of support to the Oslo Process, and all had been sentenced for minor offences and had already served at least two-thirds of their sentences. No prisoners involved in attacks resulting in fatalities or serious injuries – those referred to by Israel as having “Jewish blood on their hands”<sup>32</sup> – were included in the release.<sup>33</sup> On 11 January 1996, another 230 Palestinian prisoners were transferred to PA custody. According to the Israeli Ministry of Foreign Affairs, the released prisoners were “residents of the territories mostly Fatah members who were charged with the death or wounding of Palestinians”.<sup>34</sup>

Meanwhile, full Israeli evacuation of the Area A cities, except Hebron, was scheduled for the end of 1995, followed by a partial withdrawal from Hebron by 28 March 1996. The evacuation started with Jenin on 13 November, and reached a climax with the Israeli Occupying Forces withdrawal from Bethlehem on 21 December. During this period, Israel also began the transfer of Palestinian political detainees and prisoners who were not included in previous releases to prisons inside Israel, in violation of Article 76 of the Fourth Geneva Convention, which states that an Occupying Power must detain residents of occupied territory in prisons inside the occupied territory.<sup>35</sup>

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<sup>27</sup> Voice of America Digest, 10 October 1995 (available at : <http://www.hri.org/news/usa/voa/1995/95-10-10.voa.html>) Other reports place the number of female detainees refusing release at 23. See, e.g., UNISPAL, Chronological Review of Events Relating to the Question of Palestine, *supra* note 24.

<sup>28</sup> *Id.*

<sup>29</sup> On 7 February 2007, Israeli Prime Minister Netanyahu ordered the release of all Palestinian female prisoners held by Israel. Following a decision by the Israeli Supreme Court, which rejected a petition against the release, Israel released 30 Palestinian female prisoners. UNISPAL, Chronological Review of Events Relating to the Question of Palestine, February 1997 (available at: <http://unispal.un.org/UNISPAL.NSF/0/9037E5FD724DCB558025646D005FC255>)

<sup>30</sup> See Website of the Central Elections Commission – Palestine, Results and Statistics, 1996 General Elections (available at: <http://www.elections.ps/template.aspx?id=54&sndx=5>)

<sup>31</sup> Israel Ministry of Foreign Affairs, Palestinian Prisoners Released, 11 January 1996 (available at: <http://www.mfa.gov.il/MFA/Archive/Peace+Process/1996/PALESTINIAN+PRISONERS+RELEASED++11-Jan-96.htm>).

<sup>32</sup> Annex VII(2)(c) of Oslo II provided that only “detainees and/or prisoners charged with or imprisoned for security offenses not involving fatality or serious injury” would be among the categories of detainees and prisoners included in the staggered releases. This clause, which later developed into the “Jewish blood on their hands” condition, was used by Israel to justify not releasing hundreds of Palestinian prisoners.

<sup>33</sup> Israeli Ministry of Foreign Affairs, Palestinian Prisoners Released, 11 Jan 1996 (available at : <http://www.mfa.gov.il/MFA/Archive/Peace+Process/1996/PALESTINIAN+PRISONERS+RELEASED++11-Jan-96.htm?DisplayMode=print>)

<sup>34</sup> *Id.*

<sup>35</sup> Conversely, Art. 49 of the Fourth Geneva Convention provides that the Occupying Power must not transfer parts of its own civilian population into the occupied territories as settlers.

Subsequent intervening events, including the assassination of Yitzhak Rabin by right-wing Israeli radical Yigal Amir on 4 November 1995, continued suicide bombings and the 1996 election of a Likud-led coalition government that froze all discussions on prisoner releases stalled any further progress in carrying out the terms of the Oslo II Agreement.

No Palestinian prisoners were released under the third and final phase of the Oslo II Agreement, as this phase is still due to be implemented during the Final Status Negotiations in accordance with Appendix VII.

### ***The Wye River Memorandum (1998)***

The Wye River Memorandum was signed by Israeli Prime Minister Binyamin Netanyahu and PLO Chairman Yasser Arafat at the White House on 23 October 1998 following a nine-day Middle East summit conference held at the Wye River Plantation in Maryland, U.S. The memorandum was intended to facilitate implementation of the Oslo II Agreement by clarifying the responsibilities of the two parties, though critics have observed that the provisions of the agreement dealing with Israel's security are drafted in imperative tense, while Israel's obligations were put in "frivolous", non-binding language.<sup>36</sup>

The Wye River Memorandum called on Israel to release 750 political prisoners. While it was announced that 250 prisoners were released by 20 November 1998 under this agreement,<sup>37</sup> further implementation of the memorandum was then halted by Israel.<sup>38</sup>

### ***The Sharm el-Sheikh Memorandum (1999)***

The Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations (Sharm el-Sheikh Memorandum) was signed on 4 September 1999 in Sharm el-Sheikh, Egypt. Its purpose was to implement the 1995 Oslo II Agreement as well as all other agreements between the PLO and Israel since September 1993.

In an effort to break the then-deadlocked Israel-PLO negotiations, the parties met in Sharm el-Sheikh in the presence of U.S. Secretary of State Madeleine Albright, Egyptian President Hosni Mubarak and King Abdullah of Jordan. There, PLO Chairman Yasser Arafat and Israeli Prime Minister Ehud Barak signed an agreement that called for the release of 350 Palestinian prisoners

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<sup>36</sup> The Palestine Yearbook of International Law, Vol. X, 1998/1999, p. 265 (available at: <http://books.google.ca/books?id=C3NIRejwfUwC&pg=PA257&dq=%22palestinian+prisoners%22+%22hunger%22&lr=&sig=ACfU3U0iDocQADUIFE4gbg5XUp26kPkfpg#>)

<sup>37</sup> Of this 250, only 100 were political prisoners. The other 150 were detained for criminal offenses. "Dismissing the resulting Palestinian outrage that 150 of the first 200 prisoners released were mostly car thieves, Israeli Prime Minister Benjamin Netanyahu said he never promised to release 'security prisoners' and indicated that the upcoming two releases could well be more of the same. Palestinians felt Netanyahu had gone over the top in what was clearly viewed as an attempt to humiliate and provoke the Palestinian leadership to renounce the agreement." Maureen Meehan, "Netanyahu's Refusal to Release Palestinian Political Prisoners Seen as Attempt to Turn Them Against Wye", *Washington Report on Middle East Affairs*, January/February 1999, pp. 12-13 (available at: <http://www.wrmea.com/backissues/0199/9901012.html>)

<sup>38</sup> *Id.*

in two stages (to be carried out on 9 September 1999 and 15 October 1999), and provided that Israel would also aim to release additional Palestinian prisoners before the next Ramadan.<sup>39</sup>

On 9 September 1999, Israel released 199 Palestinian prisoners.<sup>40</sup> Another 107 Palestinian political prisoners and 42 political prisoners from other Arab states were released on 15 October 1999.<sup>41</sup> By releasing a total of 348 prisoners of the 350 it pledged, for the first time since the beginning of the Oslo Process, Israel largely complied with a political agreement regarding the number of released prisoners. However, the release nonetheless failed to address the flaws inherent to the peace process regarding the prisoners' issue, and, rather than addressing the fundamental flaws in the legal system, Israel yet again made prisoner releases a media event and a public relations opportunity.

On 30 December 1999, Israel freed an additional 26 political prisoners, half of whom had only months left to serve, in a "goodwill" gesture during Ramadan.<sup>42</sup> According to Human Rights Watch, for the first time, the releases included prisoners who had been involved in attacks on Israelis resulting in fatalities or serious injuries – those who, in the view of Israeli authorities, had "blood on their hands".<sup>43</sup> The PA protested, however, expecting closer to 150 prisoners in this release. In response, Israel released another seven prisoners, all from East Jerusalem, on 30 December 1999. On 19-20 March 2000 a further 15 Palestinian prisoners were released. Three additional "security" prisoners were released on 19 June 2000 as another "goodwill" gesture.<sup>44</sup>

### *The Camp David Summit and the Beginning of the Second Intifada (2000)*

On 11 July 2000, permanent status negotiations convened at the Middle East Peace Summit at Camp David between U.S. President Bill Clinton, Israeli Prime Minister Ehud Barak and PLO Chairman Yasser Arafat. Arafat believed the Oslo interim process had failed to meet expectations and thought resumption of peace talks at Camp David was premature. Although the

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<sup>39</sup> Sharm el-Sheikh Memorandum on Implementation Timeline of Outstanding Commitments of Agreements Signed and the Resumption of Permanent Status Negotiations, 4 September 1999, Sharm el-Sheikh, Egypt (Sharm el-Sheikh Memorandum).

3. Release of Prisoners

- a. The two Sides shall establish a joint committee that shall follow-up on matters related to release of Palestinian prisoners.
- b. The Government of Israel shall release Palestinian and other prisoners who committed their offences prior to September 13, 1993, and were arrested prior to May 4, 1994. The Joint Committee shall agree on the names of those who will be released in the first two stages. Those lists shall be recommended to the relevant Authorities through the Monitoring and Steering Committee;
- c. The first stage of release of prisoners shall be carried out on September 5, 1999 and shall consist of 200 prisoners. The second stage of release of prisoners shall be carried out on October 8, 1999 and shall consist of 150 prisoners;
- d. The joint committee shall recommend further lists of names to be released to the relevant Authorities through the Monitoring and Steering Committee;
- e. The Israeli side will aim to release Palestinian prisoners before next Ramadan.

<sup>40</sup> UNISPAL, Chronological Review of Events Relating to the Question of Palestine, September 1999, (available at: <http://unispal.un.org/UNISPAL.NSF/0/221E7054439D43C48525686C004EA820>).

<sup>41</sup> Human Rights Watch, Israel, the Occupied West Bank & Gaza Strip and Palestinian Authority Territories, 1999 (available at: <http://www.hrw.org/legacy/wr2k/Mena-07.htm>). See also, BBC News, World: Middle East Prisoners Released, 15 October 2009 (available at: [http://news.bbc.co.uk/2/hi/middle\\_east/475567.stm](http://news.bbc.co.uk/2/hi/middle_east/475567.stm)).

<sup>42</sup> UNISPAL, Chronological Review of Events Relating to the Question of Palestine, December 1999 (available at: <http://unispal.un.org/UNISPAL.NSF/0/6ABFBD39A2B4AC5C85256870004F85BD>).

<sup>43</sup> Human Rights Watch, Israel, the Occupied West Bank & Gaza Strip and Palestinian Authority Territories, 1999 (available at: <http://www.hrw.org/legacy/wr2k/Mena-07.htm>).

<sup>44</sup> Eur, *The Middle East and North Africa 2003*, 49th ed., Routledge (2002), p. 533.

Palestinian side had requested more time to build consensus and prepare for negotiations, under mounting American pressure and Clinton's guarantee that the U.S. would remain neutral if no agreement was reached and the Palestinians would not be blamed, Arafat acquiesced.

However, after 14 days of negotiations, the talks subsequently failed and Arafat rejected the Israeli proposal for a Palestinian state, which denied the Palestinians control over their own borders, airspace and water resources, while dividing Palestinian territory into "four separate cantons entirely surrounded, and therefore controlled, by Israel."<sup>45</sup> Despite his initial agreement with Clinton, Arafat was directly blamed for rejecting Ehud Barak's "generous offer".

On 28 September 2000, Ariel Sharon, then the Chairman of the Likud Party, visited the Dome of the Rock, Islam's third holiest site, located in the Haram al-Sharif complex (known to Jews as Temple Mount) in Jerusalem's Old City.<sup>46</sup> Accompanied by thousands of Israeli security forces, this visit was perceived as a deliberate provocation against the Palestinians and led to mass protests in Jerusalem, to which the Israeli military responded with force. The Second Intifada, also referred to as the "Al Aqsa" Intifada, thus began.

Mass arrests of Palestinians were conducted throughout the Second Intifada (2000-2005). Between March and October 2002, for example, Israeli forces rounded up Palestinian men and boys between the ages of 15 to 45 in cities and villages across the OPT. Approximately 15,000 Palestinians were arrested during this time, many of whom were later placed under administrative detention.<sup>47</sup> Data from the Palestinian Ministry of Detainee Affairs puts the total arrest figures of Palestinians during the Second Intifada at more than 45,000.<sup>48</sup>

### ***The "Road Map to Peace" (2003)***

In 2002, the Quartet (the United States, Russia, the European Union and the United Nations) proposed a plan to restart the peace process and establish a Palestinian state by 2005, which came to be known as the "road map to peace" (Road Map).<sup>49</sup> No provisions regarding prisoners'

<sup>45</sup> Palestine Liberation Organization, Negotiations Affairs Department, *Negotiations Primer* (available at: <http://www.nad-plo.org/news-updates/magazine.pdf>).

<sup>46</sup> Suzanne Goldenberg, "Rioting as Sharon visits Islam holy site", *The Guardian*, 29 September 2000 (available at: <http://www.guardian.co.uk/world/2000/sep/29/israel>).

<sup>47</sup> For more information on Israel's illegal use of administrative in the OPT, see Addameer Prisoner Support and Human Rights Association, *Administrative Detention in the Occupied Palestinian Territory – A Legal Analysis Report*, November 2008 (available at: <http://addameer.info/wp-content/images/administrative-detention-analysis-report-final.pdf>).

<sup>48</sup> Palestinian Central Bureau of Statistics, Press Release on the Occasion of Palestinian Prisoners Day, 16 April 2007 (available at: [http://www.pcbs.gov.ps/Portals/\\_pcbs/PressRelease/e-Prisoners\\_Day2007.pdf](http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/e-Prisoners_Day2007.pdf)).

<sup>49</sup> "A performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict" (available at: <http://www.un.org/news/dh/mideast/roadmap122002.pdf>) The Road Map established three phases of action towards the peaceful establishment of a Palestinian State: Phase One, due to be completed by May 2003, called for the end of violence by Palestinians, or those affiliated with the liberation movement; for the Palestinians to hold democratic elections; and, that Israel should withdraw from Gaza Strip and West Bank settlements and freeze all settlement activity. Phase Two, due to be completed by June-December 2003, was designed to create a provisional Palestinian state with temporary borders, and called for an international conference to be held to start the rebuilding of Palestine by discussing its economy, establishing Israeli-Arab links, setting borders, and rebuilding infrastructure. Phase Three, due to be completed in 2004-2005, called for a second international conference to finalize borders, decide on the status of Jerusalem, and international recognition for both Israel and Palestine. For more information on the Road Map, see Sharon Otterman, "Middle East: The Road Map to Peace", Council on Foreign Relations, 7 February 2005 (available at: <http://www.cfr.org/publication/7738/>).

release were included in the plan, but, at the beginning of August 2003, Israel pledged to free 540 prisoners as a confidence-building measure to support progress under the Road Map.<sup>50</sup>

However, on 7 August 2003, Israel released just 331 prisoners, instead of the 540 it had initially pledged, though Israeli authorities said a further 100 prisoners would be released at a later date.<sup>51</sup> Although the move was meant to bolster the Road Map, according to BBC reports on that day, the release was met with frustration and anger by many Palestinians, who felt the lower number and composition of the released prisoners – around 100 of the released Palestinian prisoners were not political prisoners imprisoned for their activities related to the Israeli occupation, but instead were prisoners charged with criminal offenses or with entering Israel without a permit – failed to mark Israeli commitment to progress under the peace plan.<sup>52</sup>

### *The Sharm el-Sheikh Summit (2005)*

On 8 February 2005, a summit was held between Israeli Prime Minister Ariel Sharon, Palestinian President Mahmoud Abbas, Egyptian President Hosni Mubarak and King Abdallah II of Jordan, in Sharm el-Sheikh, Egypt, formally marking the end of the Al-Aqsa Intifada. At the summit, both Abbas and Sharon affirmed their commitment to peace and to principles included in the Road Map. In his statement at the summit, Prime Minister Sharon expressed Israel’s agreement to transfer “security responsibility for Palestinian areas” to the PA and announced the release of “hundreds of prisoners” as part of confidence-building measures and the establishment of a “joint committee to explore future release of prisoners”.<sup>53</sup> However, no timeline for such releases was set.

On 21 February 2005, Israel released 500 Palestinian prisoners, mostly from Ketziot prison in the Negev, as a goodwill gesture to Palestinian President Abbas in the wake of the Sharm el-Sheikh summit.<sup>54</sup> However, that same month, Israel arrested at least 141 Palestinians, including 14 children in the OPT.<sup>55</sup> Israel freed an additional 398 prisoners on 2 June 2005 in further fulfillment of the pledge it made to President Abbas at the Summit in February.<sup>56</sup>

### *The Annapolis Conference (2007)*

On 27 November 2007, a US-sponsored peace conference was held at the United States Naval Academy in Maryland, U.S. The conference, attended by Palestinian President Mahmoud Abbas,

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<sup>50</sup> Timothy Heritage, “Palestinian fury as Israeli homebuilders in Gaza Strip carry on regardless”, Reuters, 2 August 2003 (available at: <http://www.smh.com.au/articles/2003/08/01/1059480556638.html>).

<sup>51</sup> BBC News, “Israel defends prisoner releases”, 7 August 2003 (available at: [http://news.bbc.co.uk/2/hi/middle\\_east/3131015.stm](http://news.bbc.co.uk/2/hi/middle_east/3131015.stm)).

<sup>52</sup> *Id.*

<sup>53</sup> Statement of Israeli Prime Minister Ariel Sharon at the Sharm el-Sheikh Summit, 8 February 2005 (available at: <http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2005/Statement+by+PM+Sharon+at+Sharm+el-Sheikh+Summit+8-Feb-2005.htm>): “I informed Chairman Abbas of our intention to take a series of confidence-building measures: soon we will release hundreds of Palestinian prisoners, and also establish a joint committee to explore future release of prisoners.”

<sup>54</sup> “Israel releases 500 Palestinian prisoners”, *The Guardian*, 21 February 2005 (available at: <http://www.guardian.co.uk/world/2005/feb/21/israel2>).

<sup>55</sup> Palestinian Monitoring Group, Monthly Summary of Israeli Violations, February 2005 (available at <http://www.nad-plo.org/pmg/pmg-month/PMG.Feb.Monthly.15.03.05.pdf>)

<sup>56</sup> Joel Greenberg, “Israel releases 398 Palestinian prisoners, fulfilling February pledge”, *Chicago Tribune*, 2 June 2005.

Israeli Prime Minister Ehud Olmert and American President George W. Bush, marked the re-launch of permanent status negotiations between the PLO and Israel in an effort to conclude a peace agreement by the end of 2008. Convened only four months after the Hamas takeover of Gaza in June 2007, the conference was criticized for not adopting the Arab Peace Initiative principles, setting an unrealistic timetable and deepening the political divide between the West Bank and Gaza Strip authorities by excluding Hamas from the negotiations process. The conference produced only a statement of “joint understanding”, which was read by President Bush at the conclusion of the talks, and which promised further negotiations and the goal of a peace treaty by the end of 2008.<sup>57</sup> The statement remained vague and included only “a commitment to immediately implement their respective obligations under the performance-based road map”, rather than action items needed to finalize permanent status negotiations. The issue of Palestinian prisoners was absent from the document.

On 3 December 2007, Israel released 429 prisoners – including just 20 from Hamas-controlled Gaza – as part of a goodwill gesture aiming at boosting Palestinian president Mahmoud Abbas in the framework of the Annapolis peace process.<sup>58</sup> During the year following the Annapolis Conference, Israel released 770 Palestinian prisoners as confidence building measures.<sup>59</sup> The releases were accompanied by a great deal of media attention, again marking the public relations motives of the Israeli authorities, rather than a genuine willingness to resolve the “prisoners’ issue”. Further, according to reports by the Palestinian Monitoring Group, Israel arrested and/or detained 4,945 Palestinians, including approximately 4,351 Palestinians from the West Bank and 574 from the Gaza Strip, during the same period.<sup>60</sup>

### 3. Flaws in the Peace Process from the Perspective of Political Prisoners

Since the Israeli occupation of Palestinian territory in 1967, an estimated 700,000 Palestinians have been detained under Israeli military orders in the OPT,<sup>61</sup> which constitutes approximately 20 percent of the total Palestinian population in the OPT, and as much as 40 percent of the total male Palestinian population. More than 13,000 Palestinians were arrested during the Oslo years (1993-2001), and at least 50,000 were arrested between the start of the Second Intifada in September 2000 and the present day.

As of November 2009, there are 7,290 Palestinians held in Israeli prisons and detention centers, including 32 women and 326 children. Israel at present detains 18 members of the Palestinian Legislative Council, and 322 administrative detainees, held without charge or trial. Three

<sup>57</sup> Full text of the joint declaration is available on the Website of the Israel Ministry of Foreign Affairs:

<http://www.mfa.gov.il/MFA/History/Modern+History/Historic+Events/The+Annapolis+Conference+27-Nov-2007.htm>.

<sup>58</sup> Isabelle Kershner, “In Gesture, Israel Frees 429 Palestinians”, *The New York Times*, 4 December 2007 (available at:

<http://www.nytimes.com/2007/12/04/world/middleeast/04mideast.html>). Although list of 441 prisoners intended for release was approved on 19 November 2007, the implementation of the release was delayed until 3 December. No reason was provided. Most of the 429 belonged to Fatah, the mainstream organization led by Mr. Abbas, though there were also a few from other Palestine Liberation Organization factions like the Popular Front for the Liberation of Palestine and the Democratic Front for the Liberation of Palestine. None were from Hamas or Islamic Jihad, another militant group.

<sup>59</sup> Palestine Monitor, “A Year after Annapolis: Has it Brought Any Peace?”, 26 November 2008 (available at:

<http://www.palestinemonitor.org/spip/spip.php?article706>)

<sup>60</sup> *Id.*

<sup>61</sup> *Human Rights Situation in Palestine and Other Occupied Arab Territories: Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian territories occupied since 1967*, John Dugard, A/HRC/7/17, 21 January 2008.



hundred and thirty Palestinian political prisoners who were arrested before the signing of the Oslo I Agreement in 1993 remain in Israeli detention.<sup>62</sup>

In the years following the Oslo Process, the situation for Palestinian political prisoners of Israel has remained poor, drawing the relevant limitations and failures of the Oslo process into sharp relief. These lasting problems include:

### ***Failed Compliance with International Humanitarian Law***

The agreements comprising the Oslo Process notably failed to call for the immediate release of all Palestinian prisoners; as such, they have been widely criticized for being out of step with international humanitarian law as codified in the Geneva Conventions. According to article 77 of the Fourth Geneva Convention, when an occupier withdraws, it is required to “hand over” all prisoners from the liberated territory to the area’s authorities.<sup>63</sup> Commentary on this article, which states that this provision is an “absolute obligation and no exception is permitted”, further provides that, “This provision is of prime importance; the absence of such a rule would have allowed an Occupying Power with not too many scruples to take detained persons with it in its retreat and thus to circumvent the prohibition on deportation in Articles 49 and 76”.<sup>64</sup> None of the Israeli-Palestinian agreements comprising the Oslo Process, or those signed thereafter, contained provisions in line with this requirement of international humanitarian law.

It is perhaps unsurprising then, that when Israel withdrew from Palestinian cities in 1995 pursuant to the Oslo II Agreement, instead of releasing all Palestinians held in military prisons, it transferred many of them to prisons inside Israel, in clear breach of the Fourth Geneva Convention.<sup>65</sup>

### ***Israel’s Policy Not to Release Those with “Jewish Blood on Their Hands” Controlled***

One of the most damaging terms of the provisions in the Oslo Accords can be found in the Oslo II Agreement, and the Palestinian agreement to divide prisoners into categories according to the offense they had (in many cases, allegedly) committed. Annex VII(2)(c) of Oslo II provided that only “detainees and/or prisoners charged with or imprisoned for security offenses not involving fatality or serious injury” would be among the categories of detainees and prisoners included in the Agreement’s staggered releases. This clause, which later developed into the “Jewish blood on their hands” condition, is still used by Israel to justify not releasing hundreds of Palestinian political prisoners. In addition, because there was no concrete timeframe or commitment to release all the Palestinian political prisoners built into any of the agreements, the Palestinians were forced to negotiate each individual release within this Israeli-led framework. These restricted prisoner release categories also enabled Israel to effectively criminalize legitimate

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<sup>62</sup> See the annexed case of Nael Barghouthi, *infra* p. 28.

<sup>63</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 (GCIV), Art. 77: “Protected persons who have been accused of offences or convicted by the courts in occupied territory, shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territories.”

<sup>64</sup> GCIV, Commentary to Art. 77 (available at: <http://www.icrc.org/ihl.nsf/COM/380-600084?OpenDocument>).

<sup>65</sup> GCIV, Arts. 49, 76. Articles 49 and 76 of the Fourth Geneva Convention require that an Occupying Power detain protected persons accused of offenses in the occupied territory, and prohibit the deportation of protected persons into the territory of the Occupying Power.

resistance actions done in opposition to the Israeli military occupation. Those convicted of a minor offense like throwing stones thus became in a sense more “worthy” of release than a resistance fighter who engaged in military activities.

***Palestinian Political Prisoners from East Jerusalem and 1948 Territories Ineligible for Prisoner Releases***

The issue of East Jerusalem was deemed too controversial to be addressed in the Oslo Accords and subsequent agreements, and was left to be decided at a later stage. The hundreds of Palestinian political prisoners from East Jerusalem, along with Palestinians from 1948 territories who held Israeli citizenship, were therefore excluded from prisoner releases occurring throughout the Oslo process.<sup>66</sup> Today, Israel still holds 45 detainees from East Jerusalem and 20 Palestinians from 1948 territories who have Israeli citizenship, all of whom were arrested before 13 September 1993.

***No Effective Provisions Were Made for Those Arrested During the Oslo Process or to Prevent Future Arbitrary or Politically-Based Arrests***

During the years of the Oslo Process (1993-2000), an additional 13,000 Palestinians were arrested by Israeli forces.<sup>67</sup> Originally, only Palestinian prisoners arrested prior to the signing of the Oslo I Agreement on 13 September 1993 were to be eligible for release under the Accords.<sup>68</sup> Later agreements moderately extended the arrest cutoff date establishing those eligible for release under the peace process. For example, the Sharm el-Sheikh Memorandum, signed on 4 September 1999, extended the arrest cutoff date to 4 May 1994.<sup>69</sup> However, the thousands of Palestinians arrested after the signing of the Oslo I Agreement, and, later, after 4 May 1994, were excluded from the conditions outlined in the agreements to follow. Moreover, despite the ongoing peace process, no change in Israel’s arrest policies regarding Palestinians were ever in evidence.

**4. Israeli Laws and Jurisprudence Regarding Political Prisoners – Detention of Political Prisoners as Legalized State Hostage Taking**

An extension of the Israeli unwillingness to acknowledge the legitimacy of Palestinian resistance to the occupation and its release obligations under international humanitarian law can be seen when tracing the legal history of administrative detention inside Israel and the OPT. Israeli military orders governing the OPT have long sought to criminalize all forms of Palestinian political resistance and civic life, and have created a regime whereby it is legally impossible for a Palestinian to claim legitimacy of action under applicable international law.

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<sup>66</sup> Anecdotal evidence obtained by Addameer indicates that there may have been one or two instances where a very small number of Palestinian women from East Jerusalem were included in prisoner releases related to the Oslo Process.

<sup>67</sup> Roane Carey and Noam Chomsky, *The new Intifada: resisting Israel’s apartheid*, Verso Press USA, 27 September 2001, p. 198.

<sup>68</sup> Nonetheless, hundreds of prisoners arrested prior to the Oslo I Agreement remained in Israeli detention.

<sup>69</sup> Sharm el-Sheikh Memorandum, Art. 3(b).

Inside Israel, a law adopted in 1979 enabled Israel to detain an individual without charge or trial for the broadly-termed “reasons of State security”. For the next twenty years, Israel used this law to detain, among many thousands of others, Lebanese “bargaining chip” prisoners, held for their potential value in negotiations to free captured Israeli soldiers. The Israeli Supreme Court upheld this practice in an unprecedented 1997 decision that held the State’s interests in obtaining the release of missing or captured soldiers above the need to show an individual threat to security to justify detention, completely abrogating the detainee’s fundamental human right to liberty in the process. Although this State-sponsored hostage taking practice was finally ruled illegal by a reversal at the Israeli Supreme Court in 2000, the Israeli Knesset neatly sidestepped this decision with the 2002 passing of the Incarceration of Unlawful Combatants Law, which created a new category of administrative detainees, termed “unlawful combatants”, who could be held indefinitely by Israel without the restrictions of law or due process.

The following sections detail the evolution of administrative detention in Israel and the Israeli legalization of state-sponsored hostage-taking.

### *Israeli Military Orders in the OPT*

Included among the more than 1600 Israeli military orders that govern the OPT and criminalize nearly all aspects of Palestinian civic life – including nonviolent political activity – is Israeli Military Order 1591,<sup>70</sup> which empowers Israeli military commanders to detain Palestinians without charge or trial for up to six month, indefinitely renewable, periods if they have “reasonable grounds to presume that the security of the area or public security require the detention”. Ideally drafted to suppress resistance to the Israeli occupation, this order is broadly drawn, providing no definition of “security of the area” or “public security”. Thus, along with dozens of other military orders that establish criminal offenses tried before the Israeli military courts for nonviolent political activity,<sup>71</sup> these provisions are routinely used for suppressing – and criminalizing – all political resistance to the Israeli occupation of Palestinian territory.

It should be noted that, although the Oslo Process left this military orders regime completely untouched, by criminalizing political activities that form the very foundation of Palestinian civil society, Israel operates in severe noncompliance with international law.<sup>72</sup>

### *Emergency Powers (Detention) Law of 1979*

Article 2(a) of the Israeli Emergency Powers (Detention) Law – 1979 (Administrative Detention Law) grants the Israeli Minister of Defense authority to issue an administrative detention order against an individual to hold them without charge or trial for “reasons of State security”, and

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<sup>70</sup> Formerly known as Military Order 1226 (1988). Israeli military and civil laws related to administrative detention orders are based on the British Mandate Emergency Law (1945).

<sup>71</sup> For example, putting up political posters, writing political slogans on a wall, belonging to any political party or certain organizations listed in military orders, displaying political symbols and attending a demonstration are all activities that are prosecuted as crimes that endanger the security of Israel. The offense of “threatening the security of the state” is an umbrella charge that can include socializing with an individual who has been classified as a security threat, even after that individual’s alleged activities were completed.

<sup>72</sup> International law requires military courts in occupied territories to operate in a “non-political” manner. GCIV, Art 66. In practice, Palestinian political leaders are routinely arrested and detained as part of an ongoing Israeli effort to suppress Palestinian political processes; as many as one-third of Palestinian legislators have been detained at the same time by Israel.

remained the only law authorizing such detention inside Israel until 2000.<sup>73</sup> During this period, which also included the years of the Oslo Process (1993-2000), the law served as the basis for the prolonged detention of individuals deemed by Israel to be valuable as bargaining chips, or hostages, in its efforts to secure the release of Israeli POWs and MIAs from the Lebanon war.<sup>74</sup>

It was as part of this effort that, beginning in 1986, 21 Lebanese individuals were detained by Israeli security forces and brought to Israel.<sup>75</sup> According to a 1997 report by Human Rights Watch, several of the detainees were reportedly tortured during interrogation in southern Lebanon “with electric shocks”, done by Lebanese mercenaries “in the presence of Israelis who gave orders”.<sup>76</sup> After being transferred to Israel, some of the detainees were convicted on various counts, such as membership in illegal organizations, and were sentenced from two to eight years in prison. Others were not charged and were held as long-term administrative detainees. Citing national security grounds, deportation orders and the Administrative Detention Law, Israel continued to hold the detainees, including those whose sentences had expired.

### *Anon. v. Minister of Defence (1997)*

In a ruling on 13 November 1997,<sup>77</sup> the Israeli Supreme Court denied the detainees’ legal challenges against their ongoing detention,<sup>78</sup> and held instead in an unprecedented majority view (with which the Chief Justice of the Supreme Court Aharon Barak concurred) to adopt the State’s contentions that Israel has the right to hold the Lebanese petitioners on security grounds until those persons holding Israeli navigator Ron Arad were prepared to talk about his release. The Supreme Court found it lawful to hold prisoners as “bargaining chips” for exchange with Israeli nationals killed or missing in Lebanon or information concerning them. Chief Justice Aharon Barak held that “a detention is legal if it is designed to promote State security, even if the danger to State security does not emanate from the detainees themselves”, and that detention of the Lebanese appellants “for the purpose of release of the captured and missing soldiers is a vital interest of the State”.<sup>79</sup>

<sup>73</sup> The Emergency Powers (Detention) Law replaced Regulations 108 and 111 of the Defense (Emergency) Regulations - 1945. The law grants the Minister of Defense broad discretionary power to issue an administrative detention order against an individual who is a citizen of the state, and allows an individual to be held without charge or trial. Under Article 2(a), the Minister of Defense may order a person detained if he “has reasonable cause to believe that reasons of State security or public security require that a particular person be detained.”

<sup>74</sup> Perhaps most notably including Ron Arad, an Israeli Air Force navigator captured on 16 October 1986 by the Lebanese Shi’ite militia group Amal; Arad’s fate is as yet still unknown. Website of the Israel Ministry of Foreign Affairs, Israel’s MIAs (available at: [http://www.mfa.gov.il/MFA/MFAArchive/2000\\_2009/2004/1/Israeli+MIAs.htm](http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2004/1/Israeli+MIAs.htm)).

<sup>75</sup> They included Shaikh ‘Abd al-Karim ‘Ubayd, abducted from Lebanon with three others in 1989, and six Lebanese Shi’a Muslims transferred secretly to Israel in 1990 after having been detained by the Lebanese Forces militia in 1987. See Amnesty International, 1995 Annual Report for Israel and the Occupied Territories (available at: <http://www.amnestyusa.org/annualreport.php?id=3B5357A88A57F85D80256A0F005BB4EF&c=ISR>)

<sup>76</sup> Human Rights Watch, *Without Status or Protection: Lebanese Detainees in Israel*, December 1997.

<sup>77</sup> Administrative Detention Appeal [A.D.A.] 10/94 *Anon. v. Minister of Defence*, 53(1) P.D. 97 (Nov. 13, 1997) (Heb.). Although the decision was rendered on 11 November 1997, the Supreme Court did not release it for publication until 11 March 1998.

<sup>78</sup> The detainees argued against the validity of their detention, arguing that holding them as “bargaining chips” did not fall within the framework of “reasons of State security” under the Administrative Detention Law.

<sup>79</sup> Norman G. Finkelstein, *Beyond chutzpah: on the misuse of anti-Semitism and the abuse of history*, Univ. of California Press, Berkeley and Los Angeles, 2005, p. 215, citing Human Rights Watch, *Human Rights Watch Submission to the Human Rights Committee* (New York, 13 July 1998) (quoting Barak).

After the Supreme Court’s ruling, the petitioners submitted an application for a further hearing<sup>80</sup> before the Court on the basis of a special provision in the Court’s (Consolidated Version) Law of 1984. The application for the second hearing was upheld.

### *Anon. v. Minister of Defence (2000)*

On 20 April 2000, an expanded bench of the Supreme Court of Israel delivered a judgment following a further hearing on the issue of State-sponsored hostage taking in the form of “bargaining chip” administrative detention. In re-examining the issue, the Court reversed its earlier ruling, and held six justices to three that the State of Israel was not entitled to hold the Lebanese petitioners solely as bargaining chips to broker the release of Israeli soldiers under the 1979 Administrative Detention Law.<sup>81</sup> As Barak himself noted, “there is probably no State in the Western world that permits an administrative detention of someone who does not himself pose any danger to State security”. The then-Chief Justice further noted that “holding persons as ‘bargaining cards’ actually means holding them as hostages”.<sup>82</sup> The Court found that, as the detainees themselves did not pose individual threats, their continued detention could no longer be justified.

Following this decision, all but two of the 21 Lebanese bargaining chip detainees were released. Despite the Court’s decision, the remaining two detainees remained held as hostages in incommunicado detention in a secret location.<sup>83</sup> The courts renewed the detention orders against them in 2001, after the State contended their release endangered national security. The two detainees were held until January 2004, when they were finally freed in a prisoner swap with Hezbollah.

### *Incarceration of Unlawful Combatants Law (2002)*

In 2000, following the Court’s reversal in the *Anon.* case, the Israeli Cabinet approved draft legislation entitled *Imprisonment of Combatants Not Entitled to Prisoner of War Status Law* in order to legalize the “hostage”-taking policies that had been disavowed by the Supreme Court. In 2002 the Israeli Knesset approved the *Incarceration of Unlawful Combatants Law (5760-2002)* (Unlawful Combatants Law) based on this draft legislation. The law defines an “unlawful combatant” as a “person who has participated either directly or indirectly in hostile acts against the State of Israel, or is a member of a force perpetrating hostile acts against the State of Israel,” and who is not entitled to prisoner of war status under international humanitarian law.<sup>84</sup>

The Unlawful Combatants Law enables the sweeping and swift detention without trial of large numbers of foreign citizens and Palestinians resident in the Gaza Strip,<sup>85</sup> and contains fewer

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<sup>80</sup> A “further hearing” is a special procedure by which the Supreme Court considers a difficult issue it has previously decided.

<sup>81</sup> Further Hearing [F.H.] 7048/97 *Anon. v. Minister of Defence*, 54(1) P.D. 72 (20 Apr. 2000) (Heb.).

<sup>82</sup> Finkelstein, *supra* note 79, p. 215.

<sup>83</sup> *Id.*, p. 216, citing “Israel and the Occupied Territories”, in Amnesty International Report 2001 (London).

<sup>84</sup> *Incarceration of Unlawful Combatants Law (5760-2002)* (Unlawful Combatants Law), para 2.

<sup>85</sup> In its decision in *Anon. v. State of Israel* (6659-06), the Israeli High Court determined that the law applies only to those not citizen of or resident in Israel. For Israeli citizens and residents, the Court instructed authorities to apply already-existing domestic laws. However, following the 2005 Israeli withdrawal from the Gaza Strip, Israel determined the Unlawful Combatants Law could be applied to Gazan residents. In addition, although a 2008 amendment to the Unlawful Combatants Law authorized

protections for detainees than even the few that are granted under administrative detention orders in the West Bank. For example, judicial review is conducted less often; the legality of the detention does not require the existence of a state of emergency; and, the detention “is carried out pursuant to an order issued by the chief of staff or by an officer holding the rank of major general”.<sup>86</sup> In addition, the law establishes two troubling presumptions that shift the burden of proof to the detainee: first, the release of an individual identified as an “unlawful combatant” will harm national security unless proven otherwise<sup>87</sup>; second, the organization to which the detainee belongs carries out hostilities, if the Israeli Minister of Defense has made such a determination, unless proven otherwise.<sup>88</sup>

According to a report issued by B’Tselem and HaMoked in October 2009, to date, Israel has used the Unlawful Combatants Law against 54 individuals: 15 Lebanese nationals, who were subsequently released, and 39 Palestinian residents of the Gaza Strip.<sup>89</sup> According to the report, most of those detained from the Gaza Strip were interned in 2009 during the 23-day Israeli aerial and ground offensive in Gaza codenamed “Operation Cast Lead”, and most of them have since been released.<sup>90</sup> As of November 2009, Israel is holding nine Gazans under this law.

On 11 June 2008, the Supreme Court of Israel rendered a decision confirming the constitutionality of the Unlawful Combatants Law in the case of *A and B v. State of Israel*.<sup>91</sup> The case concerned two Palestinian inhabitants of Gaza who had been detained under the internment law since 2002 and 2003, respectively, on the grounds that they were “unlawful combatants”, that they were associated with the Hizbollah organization and that they had committed hostile acts against Israel. The detainees in the case had appealed decisions by the District Court approving their continued internment and upholding the constitutionality of the internment law upon which their detention was based. The Court of Appeals rejected the appellants’ assertions regarding the legality of the Unlawful Combatants Law under Israeli Basic Law and international law and upheld their internment orders. While the court found that administrative detention constituted an unusual and extreme measure, and, as such, the State was required to demonstrate by clear and convincing evidence that a sufficient security threat existed to warrant its use, the court further held that the internment law had a “proper purpose” in that it was meant to prevent individuals who threaten the security of Israel from returning to the “cycle of hostilities”.

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the creation of special military courts to conduct judicial review of detention orders issued under the law, Israeli authorities have continued to conduct these reviews in Israeli district courts.

<sup>86</sup> B’Tselem and HaMoked, *Without Trial: Administrative detention of Palestinians by Israel and the Incarceration of Unlawful Combatants Law*, October 2009 (available at: [http://www.btselem.org/Download/200910\\_Without\\_Trial\\_Eng.pdf](http://www.btselem.org/Download/200910_Without_Trial_Eng.pdf)), p. 60.

<sup>87</sup> Unlawful Combatants Law, *supra* note 84, para 7.

“Presumption

7. For the purposes of this Law, a person who is a member of a force perpetrating hostile acts against the State of Israel or who has participated in hostile acts of such a force, either directly or indirectly, shall be deemed to be a person whose release would harm State security as long as the hostile acts of such force against the State of Israel have not yet ceased, unless proved otherwise.”

<sup>88</sup> *Id.*, para 8

“Determination regarding hostile acts

8. A determination of the Minister of Defense, by a certificate under his hand, that a particular force is perpetrating hostile acts against the State of Israel or that hostile acts of such force against the State of Israel have ceased or have not yet ceased, shall serve as proof in any legal proceedings, unless proved otherwise.”

<sup>89</sup> B’Tselem and HaMoked, *Without Trial*, *supra* note 86, p. 58.

<sup>90</sup> *Id.*

<sup>91</sup> The official English translation of the court’s judgment is available at: [http://elyon1.court.gov.il/files\\_eng/06/590/066/n04/06066590.n04.htm](http://elyon1.court.gov.il/files_eng/06/590/066/n04/06066590.n04.htm).

## 5. Why Prisoner Release is a Vitally Important Element in the Peace Process

*“[No] one is more eager for peace than a soldier held in captivity. We are profoundly convinced that peace is the most important and precious goal for every nation. The battle for peace is much more difficult than waging war and destruction. But as this battle for peace is waged, the time has come to grant those who fought for the liberation of Palestine and to end the Israeli military occupation the right to build Palestinian society in the peacetime and live off the fruits of their struggle. Our release is integral to ensure peace’s victory.”*

- Jaaber Mutlaq Wishah, imprisoned by Israel in 1983, in a personal letter to U.S. President Clinton in November 1998<sup>92</sup>

Historical narrative of past peace processes has indicated that the release of political prisoners is an integral step in any just and durable peace process. To this end, the notion of the release of former combatants after a period of international violence has become one of the mainstays of international humanitarian law.<sup>93</sup>

The lessons of the peace processes in both South Africa and Northern Ireland indicate that the question of political prisoners is a crucial building block that may sustain a process as a political and constitutional deal is reached between parties.<sup>94</sup> Additionally, for families and communities that have been engaged in long term violent armed conflict, the release of prisoners is a key practical and symbolic indicator that they are involved in a genuine peace process.

### *South Africa*

In South Africa, resistance activities against apartheid policies, which ranged from civil disobedience to “armed struggle”, led to an escalation of state repression against political dissidents that began in the 1960s and continued until the early 1990s. The struggle against apartheid during this period was marked by widespread detention of political prisoners, who were largely classified within the South African prison system as “security prisoners”. By releasing Nelson Mandela and other political prisoners held in the notorious Robben Island prison in the first phase of a series of releases beginning in 1987-1989, South Africa ushered in a meaningful peace process that resulted in the end of the apartheid regime. This first phase of releases served as the groundwork for the initiation of negotiations between the South African government and the African National Congress (ANC). Among those released were veteran antiapartheid leaders Govan Mbeki in November 1987, Walter Sisulu in October 1989 and Nelson Mandela in February 1990.

After Mandela’s release, the government and the ANC agreed to establish a committee to define political offenses and advise on the release of such prisoners. While the government originally wanted to distinguish between prisoners who had been convicted of “genuine” political offenses, such as membership in a banned organization, and ordinary criminal law offenses, such as killings, bombings and arson, regardless of political motivation, these distinctions were

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<sup>92</sup> Meehan, *supra* note 37.

<sup>93</sup> McEvoy, *supra* note 10, p. 33.

<sup>94</sup> *Id.*, p. 54.

eventually discarded in the name of continuing the peace process.<sup>95</sup> As then South African President F.W. de Klerk said following a large release of political prisoners from both sides, including Robert McBride, a member of the ANC's militant wing convicted of the 1986 bombing of a bar in Durban, and white supremacist Barend Strydom, convicted of shooting dead seven black South Africans in Pretoria in November 1988, none of the deeds of the freed prisoners "can be morally excused...But we are trying to close the book. Retribution and reconciliation are mutually exclusive terms in South Africa."<sup>96</sup>

The South African apartheid regime was dismantled in a series of negotiations from 1990 to 1993, culminating in elections in 1994, the first in South Africa with universal suffrage. Although not without difficulties, the gradual ability of the government to relax the legal distinctions between politically motivated prisoners and those whom the government would deem "ordinary" criminal offenders, and thus release them all as political prisoners, enabled the ANC to support the successful peace process. The South African Truth and Reconciliation Commission, which provided for amnesty in return for complete disclosure of acts of politically-motivated violence, furthered this process.

### ***Northern Ireland***

*"Crime is crime is crime. It is not political, it is crime. There can be no question about granting political status".*

- British Prime Minister Margaret Thatcher, in response to a prison hunger strike led by Bobby Sands, the Provisional Irish Republican Army volunteer and elected member of the U.K. Parliament, who was protesting the removal of political status for Irish republican political prisoners. Sands later died in the prison hospital after continuing the strike for 66-days.

The "Troubles" in Northern Ireland refer to a period of conflict that ran from the late 1960s to the Belfast Agreement of 1998 (also referred to as the "Good Friday Agreement") over the constitutional status of Northern Ireland and the relationship between the mainly Protestant Unionist and mainly Catholic Nationalist communities in Northern Ireland. In a political and armed struggle that spilled over at various times into England, the Republic of Ireland, and mainland Europe, the Troubles left Northern Ireland with a prison system in which more than 50 percent of offenders were imprisoned for politically motivated offenses.<sup>97</sup>

Throughout the negotiations process, both sides to the conflict held the release of their political prisoners as a key priority. The decommissioning of paramilitary arms in Northern Ireland began in 1993 when U.K. Prime Minister John Major and Republic of Ireland Taoiseach Albert Reynolds issued the Downing Street Declaration,<sup>98</sup> and ceasefire declarations by the Irish Republican Army followed in August 1994 and again in July 1997.<sup>99</sup>

<sup>95</sup> *Id.*, p. 35.

<sup>96</sup> Scott Kraft, "S. Africa Prisoner Release Reopens Wounds - Amnesty: Some are ready to forgive and forget. But those who lost limbs and loved ones say it's too soon", *L.A. Times*, 5 October 1992.

<sup>97</sup> McEvoy, *supra* note 10, p. 40

<sup>98</sup> The Joint Declaration of 15 December 1993 (Downing St. Declaration) (available at: <http://www.dfa.ie/home/index.aspx?id=8734>)

<sup>99</sup> BBC, 1997: IRA declares ceasefire, 19 July 1997 (available at: [http://news.bbc.co.uk/onthisday/hi/dates/stories/july/19/newsid\\_2450000/2450845.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/july/19/newsid_2450000/2450845.stm))



Multiparty talks that would eventually culminate in the Good Friday Agreement began in January 1998. However, as peace talks stalled later that month, it became clear that there would be no settlement without the support of the prisoners. Thus, when loyalist prisoners from the Ulster Defence Association and Ulster Freedom Fighters, the largest loyalist paramilitary groups, withdrew their support for talks in January 1998, British Secretary of State for Northern Ireland, Mo Mowlam made a surprise visit to ‘Maze’ prison to talk directly to the prisoners. Shortly after the one-hour meeting, the paramilitaries’ political representatives announced that they were allowed to re-join the peace talks.<sup>100</sup> According to BBC reports, “political representatives of the prisoners made it clear that Dr Mowlam’s visit had been ‘instrumental’ in bringing the loyalist paramilitaries back from the brink”.<sup>101</sup>

On 10 April 1998, the Good Friday Agreement was signed marking the formal end to the conflict in Northern Ireland.<sup>102</sup> The Agreement also established the power-sharing Northern Ireland Assembly, which met for the first time in 1999 as powers were devolved to the Assembly by the British government.<sup>103</sup>

In addition, and despite the centrality of the political prisoners to the peace process, one of the most controversial parts of the Good Friday Agreement was the decision to grant early release to certain paramilitary prisoners. Up to 500 loyalist and republican prisoners sentenced before the Agreement were slated for release before the scheme’s cut-off date of July 2000.<sup>104</sup> Prisoners sentenced to five or more years in prison were slated to serve only one third of their sentence, and prisoners sentenced to life were agreed to serve terms comparable to a prisoner not sentenced to terrorist-related crimes minus one-third.<sup>105</sup> In the two years following the Good Friday Agreement, at least 428 political prisoners were released.<sup>106</sup>

## 6. Conclusion & Recommendations

*“It is clear that for the supposedly democratic Israeli state, no tactic – no matter how peaceful – is an acceptable way for Palestinians to resist an illegal occupation.”*  
– Naomi Klein, journalist and author<sup>107</sup>

Beginning with the inception of the Israeli occupation of Palestinian territory in 1967, Israel’s policies towards Palestinian prisoners have showed a clear and unsettling progression – first depoliticizing the issue, then criminalizing it (by creating the category of “murderers”, or those

<sup>100</sup> BBC News, The H-Blocks, Mo Mowlam’s Gamble 1998 (available at: [http://news.bbc.co.uk/1/hi/english/static/in\\_depth/northern\\_ireland/2000/maze\\_prison/1998.stm](http://news.bbc.co.uk/1/hi/english/static/in_depth/northern_ireland/2000/maze_prison/1998.stm))

<sup>101</sup> *Id.*

<sup>102</sup> See Website of the Northern Ireland Assembly, General Information, Summary of the Northern Ireland Assembly (available at: [http://www.niassembly.gov.uk/10/summary/new\\_summary.htm](http://www.niassembly.gov.uk/10/summary/new_summary.htm)).

<sup>103</sup> *Id.*

<sup>104</sup> BBC News, Understanding Northern Ireland, The Search for Peace, Prisoner Release (available at: [http://news.bbc.co.uk/1/hi/english/static/northern\\_ireland/understanding/themes/prisoner\\_release.stm](http://news.bbc.co.uk/1/hi/english/static/northern_ireland/understanding/themes/prisoner_release.stm))

<sup>105</sup> *Id.*

<sup>106</sup> John Mullin, “Out of the Maze”, The Guardian, 28 July 2000 (available at: <http://www.guardian.co.uk/uk/2000/jul/28/northernireland.johnmullin>)

<sup>107</sup> Seth Freedman, “Filling up Israel’s jails to no avail”, The Guardian, 20 October 2009 (available at: <http://www.guardian.co.uk/commentisfree/2009/oct/20/israel-palestine-mohammad-othman>)

having “Jewish blood on their hands”), and, finally, creating a new category of criminal “unlawful combatants”.

Addameer contends that releasing political prisoners is a legal obligation and not a “concession”. Respect for international humanitarian and human rights law should therefore never be considered as something that may be subjected to political negotiations or used as a tool to extract political gains or publicity.

Nevertheless, Addameer has observed that Israel’s lack of respect for the agreements it executes with Palestinians regarding prisoner releases, and for its obligations under international humanitarian and human rights law, continues unnoticed and unchallenged by the international community. Time and again, Israel has proven unwilling to uphold its agreements regarding the release of Palestinian political prisoners or to re-frame its depiction of Palestinian political prisoners as criminal or “security” detainees, and, as such, has never fully engaged in the political process. Many of the “concessions” Israel has made in regards to prisoners are, on closer inspection, revealed to be hollow, agenda-driven initiatives rather than genuine commitments to peace building. For example:

- Of the approximately 121 prisoners released by Israel on 3 June 2003, 100 of them were administrative detainees, most of whom had detention orders that expired that same day or who had less than 19 days remaining on their detention orders. Twenty of the released Palestinians were held in custody with no detention orders or charges against them. Israel released only one political prisoner who had actually been tried before the courts.
- On 29 June 2006, 27 members of the Palestinian Legislative Council were arrested following the capture of an Israeli soldier from the Kerem Shalom crossing in the Gaza Strip. Only months before, Israel made no effort to prevent these same people from running and campaigning in Palestinian elections, raising serious doubts as to whether they presented a genuine security threat to Israel – or, whether as Addameer contends, the arrests were done in a calculated retaliation and means of collective punishment.
- During the year following the Annapolis Conference in November 2007, Israel released 770 Palestinian prisoners as confidence building measures.<sup>108</sup> However, according to reports by the Palestinian Monitoring Group, Israel also arrested and/or detained 4,945 Palestinians, including approximately 4,351 Palestinians from the West Bank and 574 from the Gaza Strip, during the same period.<sup>109</sup>

These examples illustrate Addameer’s contentions that Israel continues to carry out detention policies aimed at suppressing even nonviolent Palestinian political activity, and that Israeli prisoner releases are meant only to achieve short term political gains, and are not intended to facilitate a true peace process or genuinely solve the prisoners’ issue.

Should permanent status negotiations resume, Addameer calls on the international community, and all actors involved in the Israeli-Palestinian peace process, to put all the necessary pressure on the government of Israel to:

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<sup>108</sup> Palestine Monitor, “A Year after Annapolis: Has it Brought Any Peace?”, *supra* note 59.

<sup>109</sup> *Id.*

- Release all Palestinian and Arab political prisoners arrested before 13 September 1993, in accordance with previous agreements;
- Release all Palestinian prisoners arrested by Israel in relation to their activities opposing the occupation without any pre-conditions, thus cancelling previously defined categories of prisoners in Oslo II and effectively creating one category of “political prisoners”;
- Create a joint committee to define “political offenses” and set a timeline for future prisoner releases; and,
- Draft all necessary provisions to prevent future arbitrary arrests of Palestinians in the occupied Palestinian territory and their unlawful transfer to prisons inside Israel.

At the same time, Addameer calls on the Palestinian Liberation Organization (PLO) to ensure that resolving the issue of Palestinian prisoners is set as a condition precedent for the re-launch of permanent status negotiations and remains a top priority throughout any renewed peace process.

## 7. Annex

### **Prisoner Profile: NAEL SALEH ABDALLAH BARGHOUTH**

*Nael Al-Barghouthi, aged 52, is the longest-held political prisoner in the world. Arrested from home on 4 April 1978 at the age of 21, he has spent the last 31 years – most of his adult life – in prison. Nael is one of 350 Palestinian political prisoners who were arrested before the signing of the 1993 Oslo Peace Agreement and who are still held in Israeli detention.*

**Date of birth:** 23 October 1957

**Place of residence:** Kobar, Ramallah

**Date of arrest:** 4 April 1978

**Place of detention:** Eshel Prison, Section 11

**Occupation:** Tawjihi student prior to his arrest



On 13 September 1993, the day representatives of the Palestine Liberation Organization and the State of Israel signed the Declaration of Principles on Interim Self-Government Arrangements (also known as the “Oslo I” Agreement), starting the so-called “Oslo Peace Process”, Israel held more than 12,000 Palestinian political prisoners in its prisons and detention centers. Nael Al-Barghouthi was one of them.

Although this initial agreement failed to directly tackle the issue of political prisoners, the Gaza-Jericho Agreement, signed in 1994, and the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (also known as the “Oslo II” Agreement), signed in 1995, outlined procedures and steps for the release of sentenced prisoners and administrative detainees as a series of “confidence building measures”. The Gaza-Jericho Agreement called for 5,000 Palestinian prisoners to be released within five weeks of signing, but Israel failed to comply with its obligations and released only 4,450 prisoners. One year later, Israel agreed to release Arab and Palestinian prisoners in three stages under the Oslo II Agreement., but then unilaterally froze all releases in 1996 after the assassination of Yitzhak Rabin and the election of the right-wing Likud government. Since the beginning of negotiations over prisoner releases, Israel has continuously used Palestinian political prisoners as a tool to secure political gains, and considered their release concessions a “goodwill gesture”, as opposed to an obligation incurred under previous agreements.

Nael Barghouthi is one of 350 Palestinian political prisoners who has been excluded from the releases and forgotten by the “peace process”.

During his 31 years of imprisonment, Nael, as he relates, “was detained with thousands of prisoners”, at times even with close relatives and extended family and friends from his village. He saw people being released and a few years later re-arrested. With limited access to the outside world, he learned about political developments through his transfers between different prisons, meeting new people and listening to their stories. He experienced Israel’s detention centers in the

West Bank – the Ramallah prison, which has now become the Palestinian Authority’s headquarters, and Jneid prison in Nablus – before the Israeli authorities took the decision to transfer all political prisoners outside of the occupied Palestinian territory following the Oslo Agreements, thus violating international law. In Israel, he was transferred from prison to prison a number of times, although he never requested any of these transfers himself and believes that some of them were designed to break up communication and contacts between prisoners, especially during times of prisoner strikes or protests. For years, he was transferred between prisons in the south and centre of Israel and was detained at several different times in Ashkelon, Nafha, Hadarim, Ramla, Hasharon and Eshel prisons.

## **ARREST AND TORTURE**

On 4 April 1978, Nael was arrested in his house in Kobar, a village north of Ramallah. A few minutes past midnight, a group of Israeli Border Guards stormed his family home. Nael still remembers how one of them told him, “we will take you with us for two hours and then we’ll bring you back home”. The guards then handcuffed Nael and blindfolded him. “On the way to Ramallah prison, there was a military camp. We stopped and eight soldiers started kicking me and hitting me with their rifles all over my body including my head”, Nael recalls. “During the interrogation, I was made to stand on my toes with my hands tied behind my back for several hours at a time. My hands were tied continuously for seven consecutive days. During the entire time, the interrogators beat me. At one point, the interrogators brought my father and my brother to the interrogation room. They kicked them and punched them in front of me. They did the same to me in front of them. Finally, I confessed to the charges against me. My brother was interrogated for 120 consecutive days and was eventually sentenced for life. He was released in a prisoner swap in 1985, which included 17 other Palestinian political prisoners. My dad was sentenced to one year of prison. My trial took place in the Ramallah military court, which was located in the same military compound as the prison. At the military court, my lawyer argued that I was coerced into confessions through torture. But eventually, the judges took the military prosecution’s side and stated I had admitted to the charges while drinking coffee with the interrogator. I was found guilty of partaking in the killing of an Israeli army officer and sentenced to a life sentence and 18 years”.

## **THE OSLO AGREEMENTS AND PRISONER RELEASES**

When asked about the Oslo peace agreements and subsequent prisoner releases, Nael talks about mixed feelings. “There was a general sense of confusion in the prison; we all had mixed feelings”, he says. “We all wanted a general prisoner release, but at the same time we saw that conditions were set and that there was discrimination from prison to prison and between different political groups. Some were given preference over the others. There was a confidence crisis, even amongst the Fatah leadership and a huge sense of disappointment and rage. I felt that neither the Palestinian leadership nor the Israeli authorities treated us as human beings. No one saw the added value in our release. As prisoners, we were neither recognized for our human value, nor for our political value. Instead, we became a card in the political bickering [between Israel and the Palestinian Authority] and a tool for achieving political gains. During all these years, I have been held with thousands of prisoners who were released as part of negotiations or simply at the end of their sentences. I always remained in prison. So I asked my family to plant a

lemon tree for me. I saw the signing of these agreements as a way of separating us from our land. I asked my family to take care of the tree and water it regularly, and now apparently it turned into a big tree. I was against the Oslo Agreement from the outset as I was convinced that they would never be able to secure a prisoners' release. The Israeli authorities always maintained that those who have blood on their hands should be held in prison and become an example for future generations. And so we are."

## **DETENTION CONDITIONS**

Today, Nael shares a room in Eshel prison with seven other prisoners. The small room, which comfortably fits only four people, measures approximately just 3.5 by 6.5 meters and includes a bathroom with a shower. Palestinian prisoners detained at Eshel are allowed to leave their rooms for recreation time only twice a day, for two-and-a-half hours in the morning, including an hour of sports, and for approximately two hours in the afternoon. However, there again the prisoners suffer from overcrowding, as the recreation area measures only 140 square meters and is too small to fit all 70 prisoners at the same time. Nael affirms that he now has access to a radio, a TV set and the prison canteen, where prisoners can purchase, at their own expense, products that the administration fails to provide. However, this was not always the case. Such detention conditions, although still falling short of international standards, are a considerable achievement of the Palestinian prisoners' movement and years of hunger strikes inside and protests outside of prison.

## **Hunger Strikes and Prisoner Protests**

Since 1978, Nael has joined all hunger strikes and other protests declared by Palestinian prisoners in Israeli detention to oppose their detention conditions. In 1978, Nael took part in the first hunger strike declared in the Ramallah prison. In the 1980s, Nael and other political prisoners protested against their sleeping accommodations and demanded that they each receive a bed, as previously they had been forced to sleep on thin unsupported mattresses. In 1984, Nael again went on strike for 17 days and joined with other prisoners to demand the right to listen to the radio in the cells. In 1985, Nael took part in a strike against a policy of wardens' violent attacks on prisoners. Prison authorities often responded to such Palestinian prisoners' strikes with violent measures, including tear gas and clubs.

In 1987, Nael spent 20 days on a hunger strike, drinking only water and eating only salt. The aims of this strike included the right to receive books from family members and establish libraries, to be able to receive food from family members, to have TV sets in the cells and, to have physical contact with children during family visits. Most of these demands have been achieved today, but are still considered privileges that can be suspended or restricted at any time by the prison administration as individual or collective punishments.

During the years 1988 and 1991, Palestinian prisoners, including Nael, went on strike on a weekly basis to express their solidarity with the civilian population affected by the Gulf War. In October 1992, prisoners declared a hunger strike, demanding the improvement of detention conditions and that the Israeli authorities set a time limit to the life sentence. The hunger strike was called off two weeks later when violent clashes erupted in Israel and the occupied

Palestinian territory, resulting in fatalities and forcing Israeli officials to finally promise that they would investigate Palestinian prisoners' demands. Nael again joined a week-long protest in June 1995 in Jneid prison in Nablus, demanding the release of all political prisoners as per a number of high profile Israeli-Palestinian agreements coming out of the Oslo process. In 2000, Nael and other prisoners went on a 25-day strike to protest the use of isolation against prisoners. Four years later, in 2004, Nael took part in an 18-day hunger strike, which comprised almost 3,000 Palestinian political prisoners held in 10 different prisons, demanding the removal of glass dividers separating family members from detainees during family visits, the right to use public phones, and an end to the use of humiliating strip searches by prison authorities.

Although Palestinian prisoners have succeeded through nonviolent protest to force the Israeli authorities to improve their detention conditions in some areas, and, as a result, some aspects of Israeli detention have physically changed for the better, according to Nael, now there is greater psychological pressure on the prisoner and his or her family, especially in terms of restrictions imposed on family visits.

### **Punishments**

During the 31 years he has been imprisoned, Nael has often been subjected to both individual and collective punishments. He has been placed in isolation several times for periods ranging from weeks to months. In 2002, he was placed isolation for six months in Hadarim prison and again for 10 months in Eshel prison between 2003 and 2004. Sometimes, according to Nael, the isolation was also accompanied by late night searches from special intervention units. "Now the prison authorities have started to implement punitive measures, which did not exist in the 80s and 90s, such as fines deducted from prisoners' accounts. Other punishments, such as solitary confinement, the denial of family visits, denial of recreation time and of the right to education have remained unchanged", says Nael.

### **NAEL'S FAMILY**

In the 1980s, and until the late 1990s, Nael was allowed to receive regular family visits, once every two weeks. Following the outbreak of the Al-Aqsa Intifada in September 2000, and resulting Israeli-imposed travel restrictions on West Bankers, however, such visits became rare and irregular. Overall, only Nael's father, Saleh Abdallah Al-Barghouthi was allowed regular visits, which he continued until 2004, when he passed away at the age of 80.

During that time, Farha, Nael's mother, was often denied permits to visit with Nael's father on the grounds that there was no familial link between her and her son. The last two times she visited Nael before her death at the age of 74 in 2005, she had to be driven to the family visit in Nafha in an ambulance given her poor health



**Nael and his mother, Farha, c. 1978**

condition. Tragically, Nael was transferred to Ashkelon prison on the day of his mother's first visit by ambulance and missed the precious chance to see his ailing mother. Although he was able to see his mother the second time she made the trip by ambulance, this was her last visit and Nael suffers when recalling their lost time together. Currently, Nael's sister Hanan and his brother Omar are the only first degree relatives that Nael has left, and are thus the only people eligible to apply for a permit to visit him. However, as both were in prison at some point in time, their permit applications are usually denied on "security grounds" and they are typically only allowed to see Nael once a year.



**Nael's father, Saleh.**

The entire Barghouthi family has experienced Israeli detention at some point. Nael's father Saleh was first arrested by the Israeli authorities in 1978, in relation to the arrest of his sons Omar and Nael. Then again, 10 years later, Saleh was arrested by the Israeli authorities and spent a year and a half in prison. Nael's mother Farha was arrested several times for her participation in solidarity demonstrations with political prisoners, and each time spent a few days in detention. While her husband was detained in 1988, Farha also spent 12 days in Moskobiyya interrogation centre in an effort to exert pressure on Saleh.

Nael's sister Hanan, aged 45, has been arrested five times since 1985. Like her mother, she was interrogated at the Moskobiyya interrogation centre, but she has never been charged with an offense. One of Hanan's sons, Enad, has been detained twice. Nael's brother, Omar, aged 57, has spent 20 years in Israeli detention, some of which was served in the same facility as Nael. Omar was arrested only four days after Nael, but was freed in 1985 in a prisoner release deal. In 2004, Omar was again held for interrogation; this time, his wife and their children, 'Asfat and Essam, were also arrested in an effort to exert more pressure on him. Nael first met his nephew Essam in Nafha prison when Nael was transferred there in 2007.

## **PERSONAL INFORMATION**

Nael took his *Tawjihi* (final matriculation exam) in prison. He also studied Hebrew, but has continuously refused to apply for higher education at the Open University of Israel, maintaining that Palestinian political prisoners should have the right to study in Arabic, and liaise with Palestinian educational institutions. Throughout his 31 years of imprisonment, he says that the most painful experience was the loss of his parents, and not having the opportunity to say goodbye to them. Nael also recounts the recent illegal Israeli aggression into the Gaza Strip, from 27 December 2008 – 18 January 2009, as a very hard period, as some of the prisoners he shares a room with had lost their entire families and were denied the right to communicate with surviving friends and family.



## Timeline of Palestinian Political Prisoner Releases Since the Beginning of the Oslo Process

### 1993

**13 September 1993** Israel and the Palestine Liberation Organization (PLO) sign the Declaration of Principles (Oslo I Agreement). The agreement fails to address the issue of prisoners directly and no releases take place. At the time of signing the agreement, more than 12,000 sentenced prisoners and administrative detainees are held in Israeli prisons.

### 1994

**7 January 1994** Israel releases 101 Palestinian prisoners, of which 54 are West Bank residents and 47 are from the Gaza Strip. This date marks the first release as part of what Israeli authorities describe as “confidence-building measures” under the so-called “Oslo Peace Process” (Oslo Process). Most of the prisoners released were members of the Fatah movement and had only a short period of their sentences remaining. None of the released prisoners were involved in carrying out an attack against Israeli civilians or soldiers.<sup>110</sup>

**March 1994** 47 Palestinians appear before Israeli military courts in the occupied Palestinian territory (OPT). Harsh sentences, including life terms, are passed.

As of the beginning of the month, there are 11,315 Palestinian political prisoners, including 3,860 who are held in central prisons managed by the Israeli Prison Services (IPS) and an approximate 7,335 who are kept in military camps and detention centers. An additional 120 Palestinian detainees are held at the Moskobiyyah interrogation center in West Jerusalem.<sup>111</sup>

**1 March 1994** Approximately 570 Palestinian prisoners are released by Israel. All of them had served most of their sentence at the time of release, were affiliated with PLO factions supporting the Oslo Process and were not charged with serious offences, i.e., were not involved in attacks resulting in fatalities or “serious injuries”.<sup>112</sup>

**3 March 1994** Approximately 400 Palestinian prisoners are released. All of them were subjected to the same criteria as described above.<sup>113</sup>

**15 – 30 April 1994** Despite the signing of Oslo I and the beginning of prisoner releases as goodwill gestures, Israel continues mass arrest campaigns in the OPT. In the span of just two weeks, 2,700 Palestinians are arrested on the charge of belonging to the Hamas movement. Approximately 200 detainees are issued with administrative detention orders and held in Ketziot prison in the Negev desert.<sup>114</sup>

**4 May 1994** The Gaza-Jericho Agreement (also known as the “Cairo Agreement”) is signed. The agreement provides for Israeli withdrawal from the Gaza Strip and Jericho, granting the newly created Palestinian Authority administrative rights over these areas. Article XX of the agreement provides for the release or handover of 5,000 prisoners and detainees to the Palestinian Authority within a period of five weeks. The released prisoners were to be free to return to their homes in the West Bank and Gaza Strip, whereas prisoners turned

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<sup>110</sup> UNHCHR, (available at:

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/2848af408d01ec0ac1256609004e770b/293d9dd2204df2de802566f7005e42d4?OpenDocument>)

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

over to the Palestinian Authority were “to remain in the Gaza Strip or the Jericho Area for the remainder of their sentence”. At the same time, both parties agreed to continue to negotiate over the release of additional prisoners and detainees.

- May 1994** The Palestinian Authority takes over detention facilities in the Gaza Strip and Jericho. At the time of the handover, the prisons do not meet minimum international standards, as per reports of local and international human rights organizations and the United Nations.
- 29 June 1994** Israel releases 500 Palestinian prisoners.<sup>115</sup>
- End of July 1994** Israel fails to release the 5,000 political prisoners as agreed under the Gaza-Jericho Agreement. Approximately 4,450 prisoners are released, of which 550 are handed over to the Palestinian Authority in Jericho until they finish their sentences. Mass protests break out against this measure and the continuous imprisonment of the more than 7,000 prisoners that remained in Israeli custody.<sup>116</sup>
- 14 October 1994** Israeli Prime Minister Yitzhak Rabin, Israeli Foreign Minister Shimon Peres, and Yasser Arafat are awarded the Nobel Peace Prize for their roles in the Oslo I Agreement.

## 1995

- Throughout 1995** Palestinian prisoners undertake hunger strikes many times throughout the year to protest their detention conditions. They demand a general prisoner release as part of confidence building measures during the peace process. Prisoners complain of overcrowding, mistreatment, lack of hygiene in tents and cells, use of solitary confinement as a punitive measure, denial of lawyers’ visits and lack of adequate medical healthcare.<sup>117</sup>
- 25 April 1995** A Palestinian detainee, Abdulsamad Harizat, dies in Hadassah hospital in Jerusalem as a result of torture during an Israeli police interrogation in Moskobiyya interrogation center in West Jerusalem.<sup>118</sup>
- 18 June 1995** Palestinian prisoners begin an open-ended hunger strike in protest of their poor detention conditions and demand their release from Israeli custody.<sup>119</sup>
- 28 September 1995** Israel and the PLO sign the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, also called the “Oslo II” or “Taba” Agreement. Article XVI of the Oslo II Agreement<sup>120</sup> required Israel to release Palestinian prisoners in three stages; only the first stage was tied to a specific time limit, in that it provided that the release must take place on the signing of the agreement. The second stage was to take place prior to Palestinian elections, and there was no time limit set for the third stage. No minimum number of released prisoners was set; instead, categories of those to be released were established.

<sup>115</sup> PASSIA, Palestine Facts, 1994-1995 (available at: [http://www.passia.org/palestine\\_facts/chronology/19941995.htm](http://www.passia.org/palestine_facts/chronology/19941995.htm)).

<sup>116</sup> The Palestinian Human Rights Monitor, *supra* note 19.

<sup>117</sup> PASSIA, Palestine Facts, 1994-1995, *supra* note 115.

<sup>118</sup> Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment the Administration of Justice and the Human Rights of Detainees, Commission on Human Rights, 52 Session (available at: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/2848af408d01ec0ac1256609004e770b/a9c296902df014ef8025668f0036cbdc?OpenDocument#COMMISSION%20ON>).

<sup>119</sup> PASSIA, Palestine Facts, 1994-1995, *supra* note 115.

<sup>120</sup> “1. Israel will release or turn over to the Palestinian side, Palestinian detainees and prisoners, residents of the West Bank and the Gaza Strip. The first stage of release of these prisoners and detainees will take place on the signing of this Agreement and the second stage will take place prior to the date of the elections. There will be a third stage of release of detainees and prisoners. Detainees and prisoners will be released from among categories detailed in Annex VII (Release of Palestinian Prisoners and Detainees). Those released will be free to return to their homes in the West Bank and the Gaza Strip.”

- 10 October 1995** Israel frees 882 Palestinians as part of the second stage of the Oslo II agreement. Of these, only two-thirds were held for political reasons and offenses related to the occupation. The remaining 300 were imprisoned for criminal offenses.<sup>121</sup> Around the same time, Israel begins withdrawing its forces from the West Bank, making Salfit the first Palestinian city to be turned over to the Palestinian Authority.<sup>122</sup> A day later, the towns of Qabatiya near Jenin, Kharbatha near Ramallah and Yatta in the Hebron governorate are turned over to the Palestinian Authority.<sup>123</sup> Twenty-three female prisoners held in Hasharon prison set to be freed refuse to be released, protesting Israeli President Ezer Weizman’s refusal to sign release orders for four additional female prisoners, in violation of the Oslo II Agreement, which called for the release of all Palestinian female prisoners.
- Autumn 1995** Israel begins the transfer of Palestinian political detainees and prisoners who were not included in previous releases to its prisons inside Israel.<sup>124</sup>
- 13 November 1995** The Palestinian Authority takes over Jenin.<sup>125</sup>
- 6 December 1995** The UN General Assembly, in its 50th session, “calls upon Israel, the occupying Power, to accelerate the release of all remaining Palestinians arbitrarily detained or imprisoned, in line with agreements reached”.<sup>126</sup>

### 1996

- 10 January 1996** 800 jailed Palestinians are released. All were forced to sign a pledge of support to the Oslo Process and met the same criteria applied to Palestinian prisoner releases since 1994: All of the released prisoners had been sentenced for minor offences and had already served at least two-thirds of their sentences. No prisoners involved in attacks resulting in fatalities or serious injuries – those referred to by Israel as having “Jewish blood on their hands”<sup>127</sup> – were included in the release.<sup>128</sup>
- 11 January 1996** 230 prisoners were transferred to Palestinian Authority custody. According to the Israeli Ministry of Foreign Affairs, the released prisoners were “residents of the territories mostly Fatah members who were charged with the death or wounding of Palestinians”.<sup>129</sup>

### 1997

- 13 February 1997** Israel releases 30 Palestinian female detainees from Hasharon prison after an Israeli Supreme Court decision approves the release of all the Palestinian female prisoners,

<sup>121</sup> UNISPAL, Chronological Review of Events Relating to the Question of Palestine, October 1995 (available at: <http://unispal.un.org/unispal.nsf/361eealcc08301c485256cf600606959/b6981ef72294227c8525628c0052dda4?OpenDocument>).

<sup>122</sup> *Id.*

<sup>123</sup> PASSIA, Palestine Facts, 1994-1995, *supra* note 115. Other major cities are turned over to the Palestinian Authority later in the year. The Israeli forces leave Bethlehem on 3 December, Nablus on 11 December and Ramallah on 27 December 1995.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> UN General Assembly, *Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of The Occupied Territories, Report of the Special Political and Decolonization Committee (Fourth Committee) (A/50/606)*, 1 December 1995 (available at: <http://www.undemocracy.com/A-50-606.pdf>).

<sup>127</sup> Annex VII(2)(c) of the Oslo II Agreement provided that only “detainees and/or prisoners charged with or imprisoned for security offenses not involving fatality or serious injury” would be among the categories of detainees and prisoners included in the staggered releases. . This clause, which later developed into the “Jewish blood on their hands” condition, was used by Israel to justify not releasing hundreds of Palestinian prisoners.

<sup>128</sup> Website of the Israel Ministry of Foreign Affairs, Palestinian Prisoners Released, 11 January 1996 (available at: <http://www.mfa.gov.il/MFA/Archive/Peace+Process/1996/PALESTINIAN+PRISONERS+RELEASED++11-Jan-96.htm?DisplayMode=print>).

<sup>129</sup> *Id.*

including those whose release was denied in October 1996 by Israeli President Weizman. Their release, scheduled in the Oslo II agreements, was implemented with a 17 month delay.<sup>130</sup>

## 1998

- 3 February 1998** Israel releases 23 Palestinian prisoners in a goodwill gesture to mark the end of the Muslim holy month of Ramadan.
- 23 October 1998** Israeli Prime Minister Binyamin Netanyahu and PLO Chairman Yasser Arafat sign the Wye River Memorandum at the White House following a nine-day Middle East summit conference held at the Wye River Plantation in Maryland. The memorandum calls on Israel to release 750 political prisoners.
- 20 November 1998** Israel releases 250 Palestinian political prisoners in accordance with the Wye River Memorandum.<sup>131</sup> Of those released, only 100 were political prisoners; the remaining 150 were detained for criminal offenses. Dismissing the resulting Palestinian outrage that 150 of the first 200 prisoners released were mostly car thieves, Israeli Prime Minister Benjamin Netanyahu said he never promised to release “security prisoners” and indicated that the upcoming two releases would likely be more of the same. Further implementation of the memorandum is then halted by Israel.<sup>132</sup>

## 1999

- 9 September 1999** Israeli authorities release 199 Palestinian political prisoners from Israeli prisons in accordance with the Sharm el-Sheikh Memorandum, signed on 4 September 1999 in Sharm el-Sheikh, Egypt, in an effort to break deadlocked Israel-PLO negotiations and implement the Oslo II Agreement. Of those released, 101 are West Bank residents and 98 are from the Gaza Strip. Palestinian residents of East Jerusalem, 1948 Palestinians, members of Hamas and Islamic Jihad as well as those accused of killing or severely wounding Israelis are all excluded from the release. Israel still holds approximately 1,800 Palestinian political prisoners.<sup>133</sup>
- June 1999** A hunger strike breaks out in the isolation wing of Ashkelon prison to protest detention conditions.<sup>134</sup>
- 15 October 1999** 107 Palestinian political prisoners and an additional 42 prisoners from Arab states are released.<sup>135</sup>
- 30 December 1999** Israel releases 33 Palestinian prisoners, which includes for the first time the release of prisoners involved in attacks against Israelis. The release is viewed as a sign of “goodwill” for the month of Ramadan.<sup>136</sup>

<sup>130</sup> PASSIA, Palestine Facts, 1997 (available at: [http://www.passia.org/palestine\\_facts/chronology/1997.htm](http://www.passia.org/palestine_facts/chronology/1997.htm)).

<sup>131</sup> Reuters, “Chronology of Palestinian prisoners released by Israel”, 2 June 2005 (available at: <http://www.reliefweb.int/rwarchive/rwb.nsf/db900sid/EVIU-6CYF8R?OpenDocument&rc=3&emid=ACOS-635PFR>).

<sup>132</sup> Meehan, *supra* note 37.

<sup>133</sup> PASSIA, Palestine Facts, Palestine Chronology, 1999, (available at: [http://www.passia.org/palestine\\_facts/chronology/1999.html](http://www.passia.org/palestine_facts/chronology/1999.html)).

<sup>134</sup> Human Rights Watch, Israel, the Occupied West Bank & Gaza Strip and Palestinian Authority Territories, 1999 (available at: <http://www.hrw.org/legacy/wr2k/Mena-07.htm>).

<sup>135</sup> *Id.* See also, BBC News, World: middle east prisoners released, 15 October 2009 (available at: [http://news.bbc.co.uk/2/hi/middle\\_east/475567.stm](http://news.bbc.co.uk/2/hi/middle_east/475567.stm)).

<sup>136</sup> Reuters, “Chronology of Palestinian prisoners released by Israel”, *supra* note 131.

### 2000

- January 2000** Approximately 1,650 Palestinian political prisoners remain in Israeli jails.
- 11-24 July 2000** Permanent status negotiations take place at the Camp David Summit in accordance with the 1993 Declaration of Principles (Oslo I). The Palestinian side requests more time to build consensus and prepare for final status negotiations in view of Israel’s non-compliance with interim commitments, but under mounting American pressure, Palestinian Authority Chairman Yasser Arafat agrees to go to Camp David under the guarantee that the Palestinians would not be blamed if the event the summit failed. Clinton promises that the US would be neutral if no agreement is reached. However, the talks fail and Arafat rejects the Israeli proposal for a Palestinian state, which denied the Palestinians control over their own borders, airspace and water resources, while dividing its territory into “four separate cantons entirely surrounded, and, therefore, controlled by Israel.”<sup>137</sup> Despite his initial agreement with the Americans, Arafat is directly blamed for rejecting Ehud Barak’s “historic, generous offer”.
- 28 September 2000** Israeli Prime Minister Ariel Sharon visits the Dome of the Rock, part of the Haram al-Sharif complex in Jerusalem’s Old City and Islam’s third holiest site. Accompanied by thousands of Israeli security forces, this visit is perceived by Palestinians as provocation and leads to an outbreak of protests in Jerusalem. The Israeli military responds with force. The Second Intifada, also referred to as the “Al Aqsa Intifada”, thus begins.

### 2001

- 1993 – 2001** 13,000 Palestinians are arrested, detained and/or sentenced by Israel as the Oslo Agreements fail to reduce or prohibit further Israeli arrests of Palestinians.<sup>138</sup>

### 2002

- March – October 2002** Israeli forces round up males between the ages of 15 to 45 in cities and villages across the occupied Palestinian territory and conduct mass arrests. Approximately 15,000 Palestinians are arrested during this time, many of whom are later placed under administrative detention.<sup>139</sup>

### 2003

- 30 April 2003** The “Road Map” to peace is launched by the Quartet (the United States, Russia, the European Union and the United Nations) in an attempt to restart the peace process and establish a Palestinian state by 2005. No provisions regarding prisoners’ release are included.
- 7 August 2003** Israel releases 331 prisoners, instead of 540 as initially pledged by Israel. Although the move was meant to bolster the “Road Map” plan unveiled in Jordan in April 2003, according to BBC reports on that day, around 100 of the released Palestinian prisoners were not political prisoners imprisoned for their activities related to the Israeli

<sup>137</sup> Palestine Liberation Organization, Negotiations Affairs Department, *Negotiations Primer* (available at: <http://www.nad-plo.org/news-updates/magazine.pdf>).

<sup>138</sup> Roane Carey and Noam Chomsky (2001) ‘The New Intifada: Resisting Israel’s Apartheid’, supra note 67, p.198.

<sup>139</sup> For more information on Israel’s illegal use of administrative in the OPT, see Addameer Prisoner Support and Human Rights Association, *Administrative Detention in the Occupied Palestinian Territory – A Legal Analysis Report*, November 2008 (available at: <http://addameer.info/wp-content/images/administrative-detention-analysis-report-final.pdf>)

occupation, but instead were prisoners charged with criminal offenses or with entering Israel without a permit.<sup>140</sup>

## 2004

- January 2004** Israel frees more than 420 Arab detainees, almost all Palestinians, in return for the release of an Israeli businessman and the bodies of three Israeli soldiers held by the Lebanese militant group Hizbollah.<sup>141</sup>
- September 2004** 161 Palestinians are released to ease overcrowding in Israeli prisons.<sup>142</sup>
- 27 December 2004** Israel frees 159 Palestinian prisoners as a gesture to Egypt, which freed an Israeli convicted of spying. The move is also viewed as a gesture to Palestinian Prime Minister Mahmoud Abbas in the run up to presidential elections scheduled for 9 January 2005. However, of the released prisoners, approximately one-third had been imprisoned for entering Israel without a permit, and not for political purposes or so-called “security offenses”.<sup>143</sup>

## 2005

- 8 February 2005** A summit between Israeli Prime Minister Ariel Sharon, Palestinian President Mahmoud Abbas, Egyptian President Hosni Mubarak and King Abdallah II of Jordan, takes place in Sharm el-Sheikh, Egypt, formally marking the end of the Al-Aqsa Intifada. Both Abbas and Sharon affirm their commitment to peace and to principles included in the Road Map. In his statement, Prime Minister Sharon expresses Israel’s agreement to transfer “security responsibility for Palestinian areas” to the Palestinian Authority and announces the release of “hundreds of prisoners” as part of confidence-building measures as well as the establishment of a “joint committee to explore future release of prisoners”. No timeline is set.<sup>144</sup>
- 21 February 2005** Israel releases 500 Palestinian prisoners, mostly from Ketziot prison in the Negev, as a goodwill gesture to Palestinian President Abbas. However, at least 141 others are arrested in the same month.<sup>145</sup>
- 2 June 2005** Israel frees 398 prisoners to fulfill the pledge made to President Abbas at the Sharm el-Sheikh summit on 8 February 2005.<sup>146</sup>

## 2007

- 20 July 2007** Israel releases 252 Palestinian political prisoners, including six female prisoners. The released prisoners included members of the Popular Front for the Liberation of Palestine, the Democratic Front for the Liberation of Palestine and Fatah, but excluded prisoners from Hamas and Islamic Jihad. None of the released prisoners were administrative detainees.

<sup>140</sup> BBC News, “Palestinian prisoners head home”, 6 August 2003 (available at: [http://news.bbc.co.uk/2/hi/middle\\_east/3127413.stm](http://news.bbc.co.uk/2/hi/middle_east/3127413.stm)).

<sup>141</sup> Reuters, “Chronology of Palestinian prisoners released by Israel”, *supra* note 131.

<sup>142</sup> *Id.*

<sup>143</sup> Greg Myre, “Israel frees 159 prisoners in a Gesture of Good Will”, *The New York Times*, 28 December 2004 (available at: [http://www.nytimes.com/2004/12/28/international/middleeast/28mideast.html?\\_r=1](http://www.nytimes.com/2004/12/28/international/middleeast/28mideast.html?_r=1)).

<sup>144</sup> Statement by PM Ariel Sharon at the Sharm el-Sheikh Summit, 8 February 2005, available at: <http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2005/Statement+by+PM+Sharon+at+Sharm+el-Sheikh+Summit+8-Feb-2005.htm>

<sup>145</sup> Palestinian Monitoring Group, Monthly Summary of Israeli Violations, February 2005 (available at <http://www.nad-plo.org/pmg/pmg-month/PMG.Feb.Monthly.15.03.05.pdf>)

<sup>146</sup> Joel Greenberg, “Israel releases 398 Palestinian prisoners, fulfilling February pledge”, *Chicago Tribune*, 2 June 2005.

- 1 October 2007** Israel releases 57 Palestinian prisoners, all residents of the West Bank, in a gesture to bolster Palestinian President Mahmoud Abbas and to mark the holy month of Ramadan. The planned release of 29 prisoners from Gaza is delayed until the next day. Although the Israeli cabinet also approved the release of the Gazan prisoners, Israeli media reported that “security concerns” of Israeli President Shimon Peres were the cause of the delay.<sup>147</sup>
- 2 October 2007** Israel releases the 29 Palestinian prisoners and returns them to Gaza.<sup>148</sup> Eleven of those sent back to Gaza were members of Fatah members; the rest were described as belonging to the PFLP and DFLP, to other, unspecified organizations; or to the Palestinian Authority. None of those released were affiliated with Hamas, and none had been directly involved in attacks in which Israelis were killed.
- 27 November 2007** The US-sponsored Annapolis conference marks the re-launch of permanent status negotiations between the PLO and Israel in an effort to conclude a peace treaty by the end of 2008. Convened only four months after the Gaza takeover in June 2007, the conference was criticized for setting an unrealistic timetable at a time of a growing political divide between the West Bank and Gaza Strip authorities.
- 3 December 2007** Israel releases 429 prisoners as part of a goodwill gesture aiming at boosting Palestinian president Mahmoud Abbas in the framework of the Annapolis peace process.<sup>149</sup> A list of 441 prisoners was approved on 19 November 2007, but the implementation of the release was delayed until 3 December. No reason was provided.

## 2008

- 25 August 2008** Israel releases 199 Palestinian political prisoners, including PLC member Mohammed Abu Ali-Yata and Said al-Ataba, the longest-serving Palestinian prisoner. The release also included two female prisoners, Khawla Zitawi and Ayat Dababsa, but no administrative detainees. The prisoner release is viewed as a goodwill gesture to Palestinian Authority President Mahmoud Abbas.
- 26 November 2008** During the first year of the Annapolis peace process (27 November 2007-26 November 2009), Israel releases 770 Palestinian prisoners as confidence building measures, but according to Palestinian Monitoring Group reports, arrested and/or detained 4,945, including approximately 4,351 Palestinians from the West Bank and 574 from the Gaza Strip.<sup>150</sup>

## 2009

- December 2009** In response to Israel’s aggression in the Gaza Strip (referred to by Israel as “Operation Cast Lead”), which started on 27 December 2008, Palestinian President Mahmoud Abbas suspends permanent status negotiations. The large scale aerial and ground offensive,

<sup>147</sup> Isabel Kershner, “Israel Frees 57 Prisoners as Gesture to Abbas”, *The New York Times*, 2 October 2007 (available at: <http://query.nytimes.com/gst/fullpage.html?res=9C07E5DE1430F931A35753C1A9619C8B63&scp=2&sq=Israel%20Completes%20Prisoner%20Release%20as%20it%20Frees%2029&st=cse>).

<sup>148</sup> “Israel Completes Prisoner Release as It Frees 29”, *The New York Times*, 3 October 2007 (available at: <http://www.nytimes.com/2007/10/03/world/middleeast/03middleeast.html?scp=1&sq=Israel%20Completes%20Prisoner%20Release%20as%20it%20Frees%2029&st=cse>). See also, website of the Israel Ministry of Foreign Affairs, Statement on the release of Palestinian prisoners, 1 October 2007 (available at: <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Statement%20on%20the%20release%20of%20Palestinian%20prisoners%201-Oct-2007>).

<sup>149</sup> AFP, “Israel releases over 400 Palestinian prisoners”, 3 December 2007 (available at: <http://www.france24.com/france24Public/en/archives/news/world/20071203-israel-olmert-abbas-release-palestinian-prisoners-gaza.php>).

<sup>150</sup> Palestine Monitor, “A Year after Annapolis: Has it Brought Any Peace?”, *supra* note 59.

which lasted until a cease-fire was declared on 18 January 2009, resulted in the deaths of at least 1,400 Palestinians in Gaza, and injured more than 5,380.<sup>151</sup> Thirteen Israelis were killed, including three civilians and ten soldiers.

**2 October 2009**

Israel releases 19 Palestinian female prisoners in exchange of a video showing an Israeli soldier captured in June 2006 in a deal was brokered by German and Egyptian mediators.

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<sup>151</sup> UN Human Rights Council, *Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact Finding Mission on the Gaza Conflict*, *supra* note 2.