

Forgotten City, Forgotten People: Jerusalemite Political Prisoners, the Oslo Process and a Struggle for Freedom

Documentation of prison life is widely recognized as a vital tool to build the collective conscience and to confront the unlawful suppression and denial of Palestinians' political and legal rights. To date, however, little research has addressed the particular conditions for Palestinian political prisoners from occupied East Jerusalem. In 2008 Addameer published a special paper on the socio-economic and legal challenges facing Jerusalemite prisoners in an effort to fill this gap [1]. The following paper aims to build on this report by discussing the current conditions of Jerusalemite political prisoners in the context of the Oslo "Peace Process" agreements. As well as addressing the interrogation and trial procedures pertaining to political prisoners from East Jerusalem, this paper reviews the history of the Palestinian political prisoner movement during and after the bilateral agreements of the Oslo years (1993-2000), and addresses how these agreements have affected Jerusalemite prisoners' due process rights and negotiated prison releases. Finally, this paper will highlight the broad socio-legal and political questions surrounding Jerusalemite political prisoners.

At the end of May 2011 there were 189 Jerusalemite political prisoners in Israeli jails.

Of these:

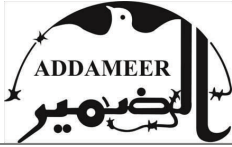
- ✦ **2 are women**
- ✦ **171 have been sentenced**
- ✦ **18 are under interrogation and/or awaiting trial**

This figure does not include the large number of minors who are arrested in Jerusalem every week and held for a few hours or sometimes days for interrogation. In 2010, an estimated 1,200 minors were detained from Jerusalem. Of these 230 were charged and either released on bail or to house arrest or made to do community service.

1. Background on Prisoners and East Jerusalem

Israel's unlawful policies and practices in Jerusalem have had a devastating impact on the daily living conditions of all Palestinian Jerusalemites. Immediately following the end of the 1967 war and Israel's illegal annexation of East Jerusalem, the Israeli government proceeded to register Palestinians living there, providing them with the status of "permanent residents" rather than granting them full legal citizenship, as part of its unofficial "collective transfer" or "more land and less Arabs" policy [2]. The rationale behind this policy was to slowly erase the Arab population of Jerusalem and replace the land with Jewish Israeli citizens. Furthermore, Israel's ideological and material motives were reaffirmed in 1980 when the Israeli Knesset passed the *Basic Law* declaring Jerusalem as the "whole and united [...] capital of Israel".

Denied both Israeli citizenship and a Palestinian identity card, the legal and political rights of Jerusalemites fell under the full discretion of the Israeli authorities, creating a unique disadvantage for Jerusalemite political prisoners. As a result, Palestinian prisoners from East Jerusalem have been isolated, and left out of nearly all negotiated prisoner releases since the beginning of the



“Oslo Peace Process” with a disappointing lack of opposition from Palestinian negotiators. This situation continues to exacerbate existing feelings of social and political exclusion among Jerusalemite prisoners, who are already the targets of Israeli efforts to revoke residency rights, particularly among Jerusalemites who are members of the Palestinian Legislative Council [3].

Since the beginning of 2008, the IPS has transferred a large majority of Jerusalemite prisoners to Gilboa Prison in the north-east of the 1948 Territories in an attempt to fragment any unity of the greater Palestinian prisoner movement and segregate the Palestinian demographic, a strategy that was also advanced during the Oslo years.

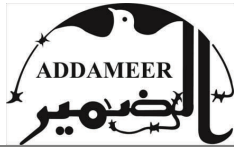
Most of the Palestinian prisoners from East Jerusalem who remain in Israeli prisons today were arrested during the Second, or Al Aqsa Intifada. However there are also 45 detainees from East Jerusalem who were arrested before the PLO signed the Oslo Agreement in 1993. Over the years, Israeli authorities have imposed harsh judicial sentences on Jerusalemite prisoners, an issue that will be addressed further in section 4 of this paper.

2. Framing Jerusalemite Prisoners in Light of the Oslo “Peace Process”

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 future relations between Israel and the Palestinians. According to the Oslo I Agreement, the Government of the State of Israel and the PLO team agreed in the first stage of the Oslo negotiations in 1993 to:

“...put an end to decades of confrontation and conflict, recognize their mutual legitimate and political rights, and strive to live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation through the agreed political process.”^[4]

The call to release Palestinian political prisoners was a key demand of the PLO during the years of the Oslo “Peace Process” (1993-2000), a demand that increased in resonance with the Israeli withdrawal from Area A in the West Bank which began in late 1995, in accordance with the Oslo Accords [5]. However, as they evacuated, Israeli authorities failed to release or “hand over” the Palestinian prisoners from the “liberated territory” in its custody to the area’s authorities, in clear violation of Article 77 of the Fourth Geneva



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Convention (1949) [6]. Instead, all Palestinian prisoners and detainees imprisoned by Israel were transferred to detention facilities inside 1948 territory, further violating Articles 49 and 76 of the Fourth Geneva Convention, which prohibit forcible transfers of protected persons out of occupied territory and require any imprisonment of protected persons to take place inside occupied territory.

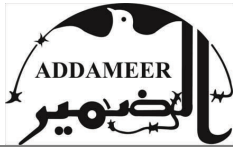
Palestinian prisoners from East Jerusalem, as well as Palestinian prisoners from the 1948 territory, were entirely excluded from negotiated prisoner releases during the Oslo process as they were viewed by Israeli authorities as prisoners under the authority of the State of Israel, rather than political prisoners of the Israeli-Palestinian conflict. Moreover, the issue of East Jerusalem was considered too controversial to be addressed during Oslo negotiations, and this necessarily implied that the release of prisoners from Jerusalem would not be negotiated [7]. As Abd An-Nasser Farawna, a researcher on Palestinian prisoners' rights, asserts:

“The Jerusalem prisoner issue is complex and thorny, but also painful and bitter because they have not only been subjected to heightened amounts of suffering but have also been excluded from all prisoner releases taking place between 1995 and July 2009.” [8]

In October 1993, in a famous letter entitled “Where is our place in the Accords?” political prisoners held in Jneid prison in Nablus requested from the Palestinian leaders that their legal rights be addressed under the Oslo process [9]. The failure in the Oslo Accords to include their demands and uphold relevant international legal provisions on political prisoners, including the call to release all political prisoners in Israeli custody, left many feeling that the voice of Palestinian political prisoners was left entirely out of the negotiations.

Speaking on behalf of the Palestinian leadership, Palestinian minister Nabeel Sha'th recognized this failing and accordingly refused to sign the 1994 Gaza-Jericho Agreement until a deal was reached that would set a timetable for the release of all Palestinian political prisoners detained before 13 September 1993, the cutoff date for arrests that determined which prisoners would be eligible for inclusion in negotiated releases. The Gaza-Jericho Agreement did stipulate that Israel would release 5,000 Palestinian political prisoners within five weeks of the signing, and although Israel failed to meet this deadline due to imposing extra conditions on their release, by July 1994, 4,450 prisoners had been released [10]. Over 7,000 Palestinian prisoners then remained in Israeli prison.

The future of these remaining prisoners appeared to rank extremely low on the Palestinian negotiators' agenda in the Oslo II Agreement, signed on 24 September 1995. The details of the “Release of Palestinian Prisoners and Detainees,” were addressed very swiftly in one page only, with any further reference



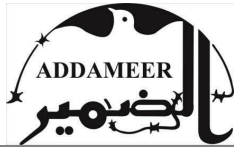
relegated to the very last annex to the agreement (Annex VII). By comparison, as many as four pages were devoted to detailing the special passage of Palestinian VIP's [11], divided into three different categories, including amongst others, "holders of the most senior positions within the Council and officers of the Palestinian Police of the rank of Major-General", "director-generals of departments in the Council", and "heads of units in departments in the Council, officials of the Council of equivalent rank to such persons and officers of the Palestinian Police of the rank of Commander"[12].

Palestinian prisoners from East Jerusalem, including those who were imprisoned by Israel during the Second Intifada (2000-2005), continue at present to be excluded from ongoing peace negotiations between Israel and the Palestinian Authority (PA). As with prisoners from the West Bank, Israel refuses to recognize Jerusalemite detainees as political prisoners, and classifies them as criminal or security prisoners under Israeli authority; and the Palestinian leadership has yet to adopt a more principled negotiation policy with respect to the release of Jerusalemite prisoners, specifically by refusing to accept Israel's paradigm of territorial distinction. In the past, before the signing of the Oslo Accords, Palestinian political groups had been successful in rejecting this distinction and achieving the release of Jerusalemite prisoners. For example, on 14 March 1979 and again on 20 May 1985, the Popular Front for the Liberation of Palestine—General Command (PLFP-GC) secured an exchange of Palestinian prisoners in return for the release of captured Israeli soldiers in what were known as the Galilee Exchanges. In their negotiations, the PFLP-GC refused to distinguish between Palestinian prisoners on the basis of their residency, and was able to secure the release of Palestinian prisoners from East Jerusalem along with residents of other areas in the oPt and those within the 1948 borders of Israel. However, at present the PA continues to undermine the notion of Palestinian prisoners as a single population, which not only precludes the release of Jerusalemite prisoners but further demoralizes and divides Palestinian society by demonstrating the PA's acceptance of Israel's territorial paradigm and its efforts to divide the oPt and weaken its national identity.

3. Oslo's Aftermath: A Weakening of the Palestinian Resistance Movement

Some researchers have described the period of Palestinian history between 1994 and 2004 as the "most dangerous and dark" days in the history of the prisoner's movement [13] as the Oslo negotiations had the effect of impeding and dividing the political mobility of the Palestinian factions and eroding their commitment to nationalist aspirations. Creating such division and disillusion within Palestinian society was clearly one Israeli objective in its approach to the Oslo process.

As interviewees have recounted to Yaseen Abu Khdeir:



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“We feel disappointed regarding our Jerusalemite prisoners. The Palestinian Authority failed to deliver their promise of getting the Jerusalemite prisoners ‘unilaterally released’ which has collectively paralyzed the Palestinian resistance movements. After hearing about the many reports describing the release of prisoners from the West Bank and the Gaza Strip, we cannot help but feel neglected and alone.” [14]

Throughout the Oslo process and afterwards, the release of political prisoners was not sufficiently understood as an integral step towards a just and durable peace negotiation, failing to learn from previous experiences in South Africa and Northern Ireland where this was an important and central demand [15].

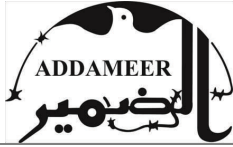
4. Violations during Interrogation, Trial and Detention

Jurisdiction abuses during interrogation and trial

As part of its efforts to deny East Jerusalem the status of occupied territory in accordance with international law, in theory, Israel subjects Palestinian residents of the city to Israeli civilian law. East Jerusalemites are therefore obliged to pay municipal taxes, even though they do not receive the same services as Jewish residents of the city, and the Ministry of Interior can revoke their residency should they move abroad or to the West Bank. In addition to this, the Israeli authorities invoke both Israeli civilian law and military orders with Jerusalemite prisoners on a purely discretionary basis.

Moreover, rather than recognizing the status of these prisoners and detainees as “protected persons” under international humanitarian law, Israel registers Jerusalemites as security or criminal offenders [16].

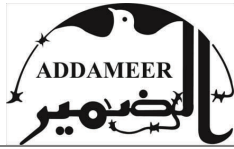
If a Jerusalemite is charged with an offense which was committed in Jerusalem or territories inside the Green Line, he / she will be tried before the Israeli civilian courts, according to the 1977 Penal Code, the 1948 Prevention of Terrorism Ordinance and the 1982 Criminal Procedures Law. However, military court jurisdiction can be extended to Palestinian residents of East Jerusalem if their alleged offense was committed in or otherwise has ties to the West Bank. Regular practice shows that very little burden is placed on the Prosecution to prove such a connection, and that arbitrary decisions are always taken to extend the interrogation period to the maximum, to allow the utmost flexibility for Israeli Security Agency (ISA) officers in their conduct during an interrogation and to reduce legal safeguards ensuring respect for international fair trial standards.



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The first-hand experiences of Addameer defense lawyers demonstrate that the Israeli authorities often detain and interrogate Palestinians from East Jerusalem under military orders, a system that features pervasive physical and psychological abuse and ill-treatment and which permit longer periods of detention with little or no effective judicial oversight. Under the Israeli military judicial system, individuals (including children as young as 12) may be detained without being brought before a judge for up to 8 days [17], and without access to legal counsel for up to 90 days [18]. In total, detainees in the military system may be held without charge for up to 188 days [19]. By comparison, individuals in Israel who are accused of security offences within the Israeli civil system may be detained for a maximum of 4 days before going before a judge, can be denied access to legal counsel for up to 21 days and may be held in custody without being charged for up to 64 days [20]. After interrogation Palestinians are then transferred to the Israeli civil system for trial, a move that permits prosecutors to seek higher sentences for Jerusalemite defendants based on the principle that 'security' offences are less common in the Israeli civil system than in the military system in the oPt, and therefore require a harsher penalty. As a security prisoner within the Israeli civil system, Palestinians are denied the rights afforded to an Israeli criminal prisoner. Typically, Israeli criminal prisoners are entitled to earn money inside the prison system, receive family visits without the imposing presence of a glass divider, have as many books or other items they want in their cell, and long-term prisoners are allowed to take occasional visits outside the prison; privileges which a Palestinian prisoner is denied.

Through this manipulation of law on the basis of territorial status, Jerusalemite prisoners are subjected to the most oppressive aspects of both military law and Israeli civil law. This deliberate strategy precludes Jerusalemite prisoners from enjoying their right to a fair trial, a fundamental human and humanitarian right recognized in Article 147 of the Fourth Geneva Convention and Article 14 of the International Covenant on Civil and Political Rights.



Detention

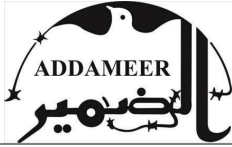
At present, Palestinian political prisoners are held in 26 central detention facilities, including 19 prisons, four interrogation centers and three detention centers. The vast majority of these facilities are located within Israel's declared borders, meaning that Palestinian political prisoners – including those from Jerusalem – are forcibly and unlawfully transferred outside occupied territory and into the occupier's territory. Such transfer is in direct violation of Article 49 of the Fourth Geneva Convention, which “prohibits forcible and collective transfer or deportation of protected persons from the occupied territory into the territory of the occupation power”, as well as Article 76 of the Convention, which stipulates that “accused protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein”.

Moreover, all of these facilities are incompatible with the standards prescribed by international treaties, especially with regards to the provision of health services [21]. Jerusalemite prisoners routinely suffer from exacerbated medical conditions due to medical negligence, and are frequently exposed to torture and ill-treatment throughout the process of arrest, interrogation and detention. At least seven Jerusalemite political prisoners have died as a result of medical negligence while in Israeli detention [22], and three prisoners from Jerusalem have died after being tortured during interrogation [23].

5. Conclusion

The aftermath of the Oslo ‘peace process’ created a sharp decline in the national values of the Palestinian struggle, reducing the living conditions of Palestinians to standards of “bare life” [24] and directly affected the prisoners’ movement. Subsequent research on the impact of the Oslo years on the prisoners’ movement has described it as “nothing short of an earthquake” [25]. Addameer contends that the ongoing exclusion of Jerusalemite prisoners from prisoner exchange and release negotiations and the deliberate distinction policy between Jerusalemite and West Bank/Gazan prisoners, violates Israel's obligations under international law and makes a mockery of the PA's duty to act in the interests of all Palestinians under occupation, and has severely eroded the unity, persistence and integrity of the Palestinian collective struggle and prisoner movement.

After being excluded from all peace negotiations throughout the past 16-plus years, Jerusalemite prisoners continue to emphasize the importance of having their voices heard. The call to have their needs met exists on two fronts. This call is directed first towards the Israeli authorities, who undermine the dignity of the Palestinian prisoner struggle by couching prisoner releases in the terms of “good will gestures” and



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manipulating them as leverage to improve their public relations and global image. As suggested by Sahar Francis, the General Director of Addameer:

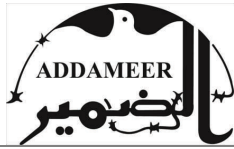
“Since the Oslo Accords, without fail, Israel has taken advantage of the prisoner issue to a great extent, using political prisoners as ‘bargaining cards’ in an attempt to put pressure on the Palestinian Authority and impose conditions that violate standards of international law.”

Second, Jerusalemite prisoners’ demands must also be heard by Palestinian officials who have systematically failed to recognize the rights of Jerusalemite prisoners and continue to disrespect the prisoners’ movement and its significant contributions to resisting the occupation. The PA uses the rhetoric of “genuine long-lasting peace negotiations” to conceal Israel’s continued violations of human rights that are direct techniques and products of the Israeli occupation.

The Palestinian leadership’s failure to hold the Israeli authorities accountable for the conditions of the occupation, especially as they affect Jerusalemite prisoners, makes them complicit in exacerbating the situation. The PA has consistently neglected its legal obligations concerning the status of Jerusalemites, and more importantly their unique circumstances of imprisonment. What can only be explained as a lack of political will has trickled into the culture of Palestinian resistance and exacerbated the conditions of suffering and multiple forms of marginalization inflicted upon Jerusalemite prisoners.

Moreover, Palestinian civil and human rights institutions rarely address the unique political conditions of Jerusalemite political prisoners, let alone develop strategies for advancing their rights in the context of bilateral negotiations with the Israeli authorities. The period following the establishment of the Palestinian Authority post-Oslo spawned a multitude of civil society institutions working for the rights of Palestinian prisoners, but their ongoing existence today is evidence of the PA’s profound failure to address the issue of a full prisoner release as part of any ‘negotiated settlement’. Moreover, the international community considers the issues of East Jerusalem and political prisoners, as too “sensitive” and “controversial”, and consequently refrains from taking any concrete action in order to address the systematic violation of rights of Palestinian East Jerusalemite prisoners, and fulfill its third party obligations towards the Palestinian people living under military occupation.

In light of political inaction, Palestinian non-governmental organizations and support group took upon themselves the responsibility of providing various services to political prisoners, including legal aid, the provision of books in prison, the provision of medical care, and communication with their families. In



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focusing on service delivery rather than addressing the root cause of these human rights violations, Palestinian organizations- consciously or unconsciously - are accepting the terms of the occupation and excusing the occupying power of its obligations to Palestinian political prisoners under international law. The growth of the service provider industry post-Oslo has also resulted in a dependency culture among so-called victim populations such as prisoners who increasingly look to these organizations for individual materialistic benefit. The shrinking culture of resistance and the marginalization of the prisoner issue in the Palestinian collective consciousness are therefore also partly products of the 'NGO industrialization' of civil society.

Addameer contends that what is needed today is a call to reactivate the issue of political prisoner justice and its place in the Palestinian collective conscience. This work, however, cannot be undertaken successfully without addressing the political and judicial conditions of Jerusalemite prisoners in their struggle against Israel's regime of colonial occupation. Negotiation strategies must include, as they have in the past [26], a recognition and demand that Jerusalemites are part of the Palestinian struggle for independence and self-determination; that the prisoners from Jerusalem can no longer be a forgotten people without a voice in defining and determining the framework for negotiations. Moreover, the future of a united Palestinian prisoners' movement is contingent upon recognizing and resisting the unlawful conditions of prosecution, imprisonment and medical neglect inflicted upon Jerusalemite prisoners. Without such recognition on the part of the PA, any future 'peace' negotiations will fail to substantively address Palestinians' full right to self-determination.

Endnotes

1. Defence for Children International – Palestine Section and Addameer Prisoner Support and Human Rights Association, *Jerusalemites in the Israeli prisons*, published by the Jerusalem Coalition to defend the Palestinian rights in Jerusalem, 2008 [Arabic]
2. Nour Masalha, *Ard Akthar wa-Arab Akal* [More Land, Less Arabs] (Beirut: Institute for Palestinian Studies, 1997 [Arabic])
3. Four Palestinians who were elected under the Change and Reform bloc to the Hamas-led PLC in 2006 were arrested by the Israeli authorities after they defied an order by the Ministry of Interior to resign from their elected positions due to its affiliation with Hamas. After spending 3-4 years in prison, they were given deportation orders to leave Jerusalem by 2 July 2010 based on their 'disloyalty to the Israeli state' as members and deputies of the PLC, despite the Oslo Accords allowing for participation of Jerusalemites in PLC elections. One of the men, Muhammad Abu Teir, was re-arrested on 30 June 2010 and deported to Ramallah, whilst the other three sought asylum in the International Committee of the Red Cross Headquarters in Jerusalem a day before the deadline.
4. Declaration of Principles on Interim Self-Government Arrangements, September 13, 1993.
5. In October 1995, Israel begins withdrawing its forces from the West Bank, making Salfit the first Palestinian city to be turned over to the Palestinian Authority. On 11 October 1995, the towns of Qabatiya near Jenin, Kharbatha near Ramallah and Yatta in the Hebron governorate are turned over to the Palestinian Authority. 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.
6. Article 77 requires that: "*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 territory.*" Commentary to this article provides that this is an absolute obligation and no exception is permitted.
7. For more information on the release of Palestinian prisoners from 1993 to 2009, see Addameer Prisoner Support and Human Rights Association, *Reaching the 'No-Peace' Agreement: The Role of Palestinian Prisoner Releases in Permanent Status Negotiations*, December 2009.
8. Abd Nasser Farawna, *The Prisoners of Jerusalem – who will release them?*[Arabic] (2008) <http://www.alquds-online.org/index.php?s=23&id=751> accessed on 19 June 2011.
9. "Where is Our Place in the Accords?", letter by Palestinian political prisoners held in Jneid prison.
10. Of these 4,450 prisoners, 550 were "released" into the custody of the PA and remained confined to the small West Bank city of Jericho for the remainder of their sentences
11. Norman Finkelstein, *This Time We Went Too Far – Truth and Consequences of the Gaza Invasion*, New York 2010
12. The Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, 28 September 1995, Annex I, Appendix V, Section F
13. Rasim Obeidat, *Oslo and its impact on the Palestinian prisoners' movement*, 13 July 2009 [Arabic]: <http://>

14. Ibid.
15. For a more in-depth comparative analysis on this subject, see Addameer Prisoner Support and Human Rights Association, *Reaching the 'No-Peace' Agreement: The Role of Palestinian Prisoner Releases in Permanent Status Negotiations*, December 2009.
16. Israeli citizens accused of security offenses are almost exclusively Arabs, or Palestinians with Israeli citizenship, in addition to Palestinian residents from the Gaza Strip. As Israel maintains its authority over Jerusalemite prisoners, they also fall within this jurisdiction. As a 'security' prisoner there are also further restrictions on legal guarantees compared with Israeli citizens accused of criminal offenses. However, as noted on this page, Israeli authorities often detain and interrogate East Jerusalemites under military orders, where even harsher restrictions are applied
17. Military order 1651 (previously order 378)
18. Military order 1651. The ban on access to counsel can be instituted for up to 15 days on request from the interrogator, an additional 15 days by request of the Israeli Security Agency official in charge of the interrogation center where the detainee is held, 30 days on the order of a Military Judge, and 30 days on the order of the military appeals court following a request by the Chief Area Legal Advisor.
19. Military order 1651. These 188 days constitute 8 days without appearing before a judge, 90 days by judicial order, 90 days by request from the Chief Area Legal Advisor and order from the military appeals court judge.
20. Criminal Procedure Law (Detainees suspected of security offenses) (Emergency Order) 2006.
21. Addameer Association (2008), *Violations against Palestinian Prisoners in Israeli Prisons and Detention Centers*, Annual Report 2008.
22. This includes Hussein Abidat, who died 4 October 1992 after going on hunger strike in Ashkelon prison; Muhammad Hazen Abu Huduan, died 4 November 2004 after being in prison for nearly 20 years; Ali Julani, who died 5 August 2009 after being shot on arrest; Juma Ismael Musa, who died 24 December 2008 in Ramleh prison at the age of 66.
23. Kazem Abdullah Abu Akker, died 23 March 1969 after being tortured during interrogation; Tarik al Hindi, died 2 February 1986 in Ashkelon; Mustafa Al Akawi died 4 February 1992 following torture under interrogation at Hebron prison.
24. The concept of 'bare life' refers to "a process of categorizing people and bodies in order to manage, control and keep them under surveillance and reducing them to 'bare life'. See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*. Stanford University Press, 1998.
25. Rasem Obeidat, supra note 13.
26. As mentioned above in the PFLP-GC Galilee Exchanges in 1979 and 1985. Recent media reports related to a possible prisoner exchange between Hamas and Israel, as part of Israel's efforts to secure the release of captured IOF soldier Gilad Shalit, also suggest that Hamas officials are making similar demands to include Jerusalemites in negotiated releases.