Family Prison Visits by Palestinians with Relatives Held in Prisons inside Israel / Sigi Ben-Ari

The importance of family visits in prison cannot be overstated, particularly in the case of prisoners labeled "security prisoners", often sentenced for many years, who are subject to an occupying regime, held far from their homes and denied any other contact with their loved ones. Unlike any other prisoners inside the prison, contacts between Palestinian prisoners and their families are at the mercy of an occupying army, changes in the security situation and shifting political interests. These and other factors have often prevented, sometimes for years, contacts between the prisoners and their closest relatives – spouses, children and parents.

We begin with the importance of the right to family life and its enshrinement in international and Israeli law, followed by a review of the arrangements for family visits in prisons and the many restrictions imposed on them. We conclude with a description of the hardships the relatives face on the day of the visit itself.

The right to family visits and family life

The right to family visits in prison facilities is a fundamental right of both the prisoners and their families. It is a basic right which stems from the perception of humans as social creatures living in families and communities.

Preventing family visits with incarcerated loved ones severely infringes upon the fundamental right of the relatives and the prisoners to family life. Society has always treated the right to family life as a supreme value throughout time and across cultures. The rights of families are recognized and protected in public international law. Art. 46 of the Hague Regulations stipulates: "Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected."[1]

The right to family visits is enshrined in a number of international legal sources. Among these, one may note the Fourth Geneva Convention, which stipulates in Art. 116: "Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible;" and the UN Standard Minimum Rules for the Treatment of Prisoners, 1955 which stipulates in Art. 37 that [p]risoners

[1] See also: Arts. 17 and 23 of the International Covenant on Civil and Political Rights, 1966; Arts. 12 and 16(3) of the Universal Declaration of Human Rights, 1948; Art. 12 of the European Convention on Human Rights; Art. 27 of the Fourth Geneva Convention; Art. 10(1) to the International Covenant on Economic Social and Cultural Rights of 1966; Preamble to the Convention on the Rights of the Child of 1988.

shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits." Art. 92 addresses untried detainees and stipulates that "[a]n untried prisoner… shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution." It should be noted that the right to visit relatives who have been tried and imprisoned is not enshrined in Israeli legislation. The Prison Ordinance specifies only that "visits from friends may be permitted"[2] and accordingly, the Israel Prison Service (IPS) treats family visits as a privilege that can be withheld.[3]

The right to family visits in prison facilities also stems from the concept, which governs both international and Israeli law, that the mere fact of incarceration does not deny the prisoner's fundamental rights. The walls of the prison may restrict the prisoner's freedom of movement, with all that this entails, but they do not invalidate his other fundamental rights. It follows that incarceration is not to invalidate the prisoner's right, as a human, to family life and continued contacts with his family and friends.[4]

Art. 10(1) of the International Covenant on Civil and Political Rights stipulates that: "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." This article received a very broad interpretation by the Human Rights Committee, the organ charged with implementing the covenant, in CCPR General Comment No. 21, dated April 10, 1992: "[R]espect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. **Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.**"

Arts. 1 and 5 of the Basic Principles for the Treatment of Prisoners which were adopted by the UN General Assembly (in Resolution 45/111 on December 14,1990) also set forth the principle that prisoners are entitled to all human rights with the exception of those denied as a result of the incarceration itself. Art. 1 stipulates that "[a]ll prisoners shall be treated with the respect due to their inherent dignity and value as human beings." According to Art. 5, "[e]xcept for those limitations that are demonstrably necessitated by the fact of incarceration, **all prisoners shall retain the human rights and fundamental**

[2] Prison Ordinance [new version] 5732-1971, Sec. 47(b)

[3] See for example: Prison Commission Order 04.42.00 Arrangements for Visits with Prisoners and Prison Commission Order 04.17.00 Granting and Withholding Privileges.

[4] HCJ 337/84 **Hokma v. Minister of the Interior**, *Piskei Din* 38(2) 826, 832; Prisoner's Petition Appeal 4463/94 **Golan v. Israel Prison Services**, *Piskei Din* 50(4), 136, 152-153; Prisoner's Petition Appeal 4/82 **State of Israel v. Tamir**, *Piskei Din* 37(3) 201, 207; HCJ 114/86 **Weil v. State of Israel**, *Piskei Din* 41(3) 477, 490.

freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants."

The arrangements for and restrictions on Palestinians' visits to prisons in Israel

The right to family visits and family life is severely impinged in the framework of the arrangements for and restrictions on family visits by Palestinians from the Occupied Territories to their loved ones in prisons inside Israel.

The foundation for this severe impingement is the fact that the Palestinian prisoners are held inside Israel in contravention of international law.[5] Art. 49 of the Geneva Convention prohibits the forcible transfer of protected civilians outside the occupied territory: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive." The convention also explicitly stipulates, in Art. 76, that "[p]rotected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein." If Palestinian prisoners were held in the Occupied Territories, at least some of the difficulties and restrictions currently imposed on family visits would have been prevented – primarily, the need for permits to enter Israel and the hardships the visitors face on the day of the visit.

Between late 2000 (the beginning of the second intifada) and March of 2003, no family visits by residents of the Territories to their loved ones in prisons were made possible. Following petitions to the High Court of Justice (HCJ) filed by HaMoked: Center for the Defence of the Individual,[6] the military began to gradually allow family visits from the West Bank to imprisoned relatives. Initially, visits were allowed only from the districts of Ramallah, Jericho and Qalqiliya. During the second phase, the arrangement was extended to the districts of Bethlehem, Tulkarem and Salfit and today, it includes all districts. The military established narrow criteria which define who is entitled to visit: spouses, parents, grandparents as well as siblings and children, all of whom must be under the age of 16 or over the age of 46. In July of 2005, the military removed the age restriction on daughters and sisters who are eligible for visits. The

[5] The Supreme Court of Israel ruled that transferring prisoners to the territory of the state is legal in two judgments handed down at different times. See: HCJ 253/88 **Sajdiya v. Minister of Defense**, *Piskei Din* 42(3) 301 (1988), HCJ 2690/09 **Yesh Din v. IDF Commander in the West Bank** (not yet published, handed down on March 28, 2010). For more on this issue see the article by Att. Michael Sfard in this volume.

[6] HCJ 11198/02 **Diriya et al. v. Commander of the Ofer Military Prison Facility et al.** (unpublished, decision dated October 1, 2003).

military later stipulated that males between the ages of 16 and 35 could visit an incarcerated father twice a year and an incarcerated brother once a year only.

The military does not allow residents of the West Bank to arrive at the prison for the visits independently and does not itself see to any visitation arrangements, despite being obligated to do so under international law, due to its control over the Territories. The visits are organized and executed exclusively through the International Committee of the Red Cross (ICRC). Applications for visits are submitted by residents of the Territories to ICRC offices in the various districts; the ICRC submits these to the military which examines the applications and transmits its response to the ICRC, which, in turn, notifies the applicants of the answer. The ICRC also provides and pays for the transportation to the visits, in coordination with security forces and the IPS, including strict security procedures.

According to routine procedure, when an application for a prison visit is approved, the military grants the applicant a permit valid for three months. The military has recently begun issuing permits for six months and also a year. The permit is valid only for the ICRC prison visit shuttles and in the period of validity, one can visit the prison once every two weeks, or once a month, depending on the restrictions imposed by the IPS.

When the visits were renewed in March of 2003, it soon became clear that in many cases, the military refuses to allow relatives to visit prisoners on "security grounds." This applied to a large segment of the population which was designated by the Israel Security Agency (ISA) as "precluded from entering Israel." Such persons were automatically denied prison visits in Israel as well.

In late 2003, following petitions filed by HaMoked: Center for the Defence of the Individual (HaMoked) against this sweeping restriction[7], the military changed its policy and determined that in principle, individuals classified as "precluded from entering Israel" would be able to take part in ICRC organized prison visits on condition that an ISA examination determines there is no impediment to their entering Israel solely for the purpose of prison visits. Following this policy, a new arrangement was put in place by which prison visit applications by residents of the Territories who are precluded from entering Israel are submitted to the military via the ICRC and transferred to the ISA for individual examination and screening. If there is no impediment to allow the applicant to visit his loved one in prison via the ICRC shuttles, the applicant is issued a single use entry permit to Israel for the purpose of a prison visit, valid for 45 days. This permit, which is transferred via the ICRC allows a single prison visit and can be used on

[7] HCJ 8851/03 **Nahleh v. Commander of IDF Forces in the West Bank** (unpublished), HCJ 11193/03 **Nazal v. IDF Commander in the West Bank** (unpublished).

a date when there is an ICRC shuttle from the applicant's district to the prison in which his relative is held. At the end of this visit, the permit is revoked and the applicant may submit a new application via the ICRC which would then be transferred to the ISA for reexamination. So long as the security diagnosis remains unchanged, the applicant would receive a new permit of the same kind and the cycle will repeat itself.

This process which involves many agencies and necessitates individual examination by the ISA before each and every visit is cumbersome and takes several months. At best, those who are "precluded from entering Israel" are able to visit their loved ones three times a year. They are often issued a permit to enter Israel once a year only. Every year, HaMoked files dozens of petitions regarding prolonged delays in responding to prison visit applications by persons precluded from entering Israel. Of the applications by such individuals which were processed by HaMoked in 2009, some 80% received a response only three to eight months after the prison visit application was submitted.

Another obstacle which stands in the way of relatives from the Territories wishing to visit prisons is a regulation which stipulates that a person who was previously incarcerated for a criminal offence may not visit a prisoner in prison unless approved by the IPS commissioner (Art. 30(a) of the Prison Regulations 5738-1978). This regulation has been preventing hundreds of Palestinians formerly incarcerated in IPS facilities from crossing the gates of prisons in Israel. It applies also in cases where the applicant was a prisoner 20 years ago, a detainee who was tried and acquitted or a person who was detained but released without charges. It is possible to contact the IPS and request the preclusion be lifted, and it often is indeed lifted, yet many Palestinians are not aware of the preclusion and/or have no access to IPS officials. After waiting for many months to receive a permit to enter Israel and the excruciating journey on the ICRC bus, these individuals are unable to actually visit due to the former-prisoner preclusion imposed on them. HaMoked and the Association for Civil Rights in Israel petitioned against this arbitrary and sweeping regulation which infringes on the rights of the prisoners and their families.[8] Following the petition, some changes, mostly procedural, were made to the Prison Commission Ordinance which stipulates how the regulation is implemented. Yet, the regulation enshrining the preclusion remained intact.

Prevention of family visits from Gaza

Family visits from Gaza to prisons in Israel were held, in principle, under arrangements similar to those practiced in the West Bank. On June 6, 2007, family visits from the Gaza Strip to prisons in Israel were halted. The fundamental right of some 900 prisoners from the Gaza Strip who were incarcerated in Israel

[8] HCJ 5154/06 **HaMoked: Center for the Defence of the Individual v. Minister of Public Security** (unpublished, decision dated March 12, 2009).

at the time and that of their relatives was denied. The explanation for the revocation of prison visits was that in view of the Hamas military takeover of the Gaza Strip, there was no Palestinian agency with which to conduct security coordination of movement through the crossings which were now under the control of terrorist entities. This, despite the fact that the visits had always been coordinated through the ICRC, and that it is willing to continue to coordinate the visits and calling for their reinstatement.

In June 2006, after two years during which no family prison visits were held, HaMoked and other human rights organizations[9] petitioned against the revocation of the visits, arguing that the fundamental rights of thousands of Palestinians (prisoners and their relatives) are being denied and that the state is practicing collective punishment which is prohibited under international law. In response, the state argued that the major component of the policy denying the visits is political, that the state is entitled to determine who may enter it and that residents of the Gaza Strip have no legal right to enter Israel. As for captive soldier Gilad Shalit – the state argued it was obliged to consider his matter and his return when reviewing the policy regarding entry from Gaza.

The Supreme Court held a hearing on the petition in October 2008 and delivered its ruling a year later, in December 2009. The court found that there was no cause to intervene in the decision of the competent officials and that family visits in prisons do not amount to a basic humanitarian necessity which is incumbent on the state to provide. Thus, to this day, for some three years, more than 700 Gazan prisoners and their relatives have been cut off from one another. Since the vast majority of them are defined "security" prisoners, they are not permitted to make telephone calls and rarely get letters from their families via the ICRC.

Hardships on the day of the visit

The trials and tribulations facing relatives of prisoners do not end once they receive the permit to enter Israel. Relatives who obtained such permits go through many hardships on the day of the visit itself. Visitors arrive at a predetermined central meeting place in one of the major cities in the West Bank. From there, they travel on buses organized by the ICRC to a checkpoint located at an entry point into Israel. For many, particularly those residing in villages around the large cities, the day begins in the early morning hours and ends well into the night as a result of the many restrictions on movement and roadblocks on the way to the meeting place.

At the checkpoint leading into Israel, following meticulous examinations of all persons and luggage, the visitors board Israeli buses, also rented by the ICRC. From the moment they leave the checkpoint until

[9] HCJ 5268/08 **'Anbar v. GOC Southern Command** (not yet published, decision dated December 9, 2009)

they reach the prison, the buses are accompanied by Israeli police cars. Due to the limited number of police cars allocated for accompanying the buses transporting Palestinians to the prisons, the visitors are forced to wait at the checkpoint until everyone is security screened and the buses can continue to travel together. The delay sometimes takes a few hours. The buses are prohibited from stopping and passengers cannot get off until they arrive at the prison.

The passengers arrive at the prison facility in the late morning and spend the rest of the day waiting for their turn to visit or for other visitors to finish.

The number of visitors varies on different visit days and at different facilities, but in most cases there are at least four or five buses, and sometimes as much as 10, arriving on a given day to a single facility. This is a result of the restrictions the IPS imposes on the number of visit days. The immediate effect of the large number of visitors is long waiting periods for the visit. The conditions in which visitors wait vary from one facility to another. In some facilities, the visitors wait in halls or rooms with benches, beverage vending machines and toilets. In others, visitors wait outside in both summer and winter. Sometimes the waiting room is not large enough and has a limited number of seats and toilets which does not match the number of visitors. After waiting for many hours, the visit with the imprisoned relative lasts no longer than 45 minutes.

The many prohibitions, long hours necessitated by each visit, the hardships on the way and the dire conditions during the wait often prevent adult relatives from visiting, particularly men who are breadwinners, as well as elderly and infirm parents. As a result of this and of the security preclusions often imposed on adult family members, in some families, only the children or minor siblings of a prisoner are able to visit. On every visit day, dozens of children aged three to 16 leave their homes in the early hours of the morning and travel alone, sometimes with another young sister or brother or a neighbor, for a visit which can take an entire day.[10]

In some facilities, the IPS holds separate visit days for criminal and security prisoners. IPS regulations stipulate that, with the exception of extraordinary cases, visits with criminal prisoners should be open, without barriers between prisoner and visitor, both children and adult. Visits with prisoners labeled "security" prisoners are held in complete separation. Physical contact between the prisoners and their relatives is impossible as they are separated by thick glass. Conversations are held via a telephone receiver or small holes in the plastic sheets separating between the prisoner and the visitors. The visits are held in large long halls. Prison guards walk amongst the families and dozens of relatives sitting in front of their loved ones try to listen and be heard and overcome the bustle around them.

[10] For further information see: **Barred from Contact: Violation of the right to visit Palestinians held by Israel** (B'Tselem), September 2006.

Since the ICRC provides its visitation program without any help or support from Israel, it is unable to provide separate shuttles for families of Palestinian prisoners classified as security prisoners and those classified as ordinary criminal prisoners, unless the IPS issues a specific demand to do so. The separation is done only in the prison, with an IPS representative organizing the groups entering for the visit according to classification. According to a representative of the legal advisor for the IPS, the visit itself is carried out in the same visitation room, which means that in many cases, Palestinian criminal prisoners receive visits in conditions harsher than those of criminal prisoners who are citizens of Israel.

As noted, the visits are particularly significant for "security" prisoners as this is their only contact with their families other than letters which are limited and often do not reach their destination or arrive late. Physical contact during the visit is of particular importance to the children of the prisoners, but such contact is denied to the children of "security" prisoners. In the past, the IPS allowed children and siblings of "security" prisoners who are under 10 years old to go into the prisoners' section for the final 15 minutes of the visit. However, since the visits were reinstated, the IPS has prohibited children of "security" prisoners to make any physical contact with their incarcerated relatives. Approval of such contact is granted as an exception.

In response to a petition on this matter filed by Adalah on behalf of children of prisoners,[11] the IPS notified that it would permit children under the age of six to have physical contact with their incarcerated relatives, but refused to guarantee such contact would be allowed in every visit. The IPS also subjected physical contact to the behavior of the prisoner in the prison and the absence of a security preclusion. According to the state, the denial of physical contact during visits stems from concern that contact with relatives and children be used for the purpose of transmitting messages and prohibited objects to and from the prisoners. This claim cannot justify such a sweeping infringement. The arbitrary and sweeping nature of the restriction on contact and the fact that this prohibition has been in place for years do not meet the test of minimal infringement on human rights. It is doubtful that the harm done to the children is proportionate to the number of cases in which children's visits were abused. The prohibition constitutes prohibited collective punishment of all children of "security" prisoners in response to a few and specific cases in which visitation regulations were breached. Rather than making the restriction of a right the exception which is based on an examination of each case as per concrete information justifying the same, the IPS opts to make its job easier and deny this right to all children in a sweeping manner.
The judgment in the petition which was handed down in March of 2010 instructs that the "open visit" arrangement shall apply to all children under the age of eight, at least once every two months and subject

[11] HCJ 7585/04 **Kana'aneh v. Israel Prison Service** (not yet published, decision dated March 25, 2010).

to individual circumstances which may justify denying an open visit to a prisoner. The arrangement will come into effect on August 1, 2010.

Conclusion

The arrangements for prison visits by Palestinian families with their relatives incarcerated in prisons inside Israel, as they are today, severely impinge on the right to family visits and family life of both the prisoners and their relatives. The source of the impingement is primarily the breach of international law which prohibits holding prisoners from the occupied territory in the occupying power's territory. Additionally, the state shirks its responsibilities toward the prisoners and their relatives using all manner of security and political excuses, and often changes the policy regarding visits in view of changing circumstances, The state also makes use of the right to family visits as leverage in the context of the overall conflict. As such, recently, a number of bills seeking to worsen the holding conditions of "security" prisoners, including denial of family visits, have been tabled.

At the same time, there are severe restrictions on physical contact between those labeled "security" prisoners and their relatives. Additionally, the various preclusions the IPS is empowered to impose on all prisoners have a particularly far reaching effect on Palestinian prisoners and their relatives. These restrictions include preventing former prisoners from visiting the prison (a large number of the Territories' residents, certainly the men, are "former prisoners") and denying visits to prisoners as a punishment or as a result of a classified security preclusion which, for the most part, does not pass judicial review. Relatives who wish to visit their incarcerated loved ones and preserve a modicum of family life must overcome many hurdles imposed by the state, the military and the IPS, in order to get a mere taste of family contact which does nothing to alleviate their hunger.