

ARTICLE

## The “One Carceral State”: Mass Incarceration and Carceral Citizenship in Palestine/Israel

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### Abstract

Using the concept of the carceral state, this article articulates how Israel’s control of the West Bank and the Gaza Strip has shifted to a nondemocratic one-state paradigm. While, initially, Israel operated a separate military carceral system for these areas, between 2000 and 2006 it dismantled the military system, transferred most Palestinian prisoners into Israel, and rebranded its civilian prison service as the National Prison Authority, making it the sole agency responsible for the incarceration of Palestinians. This reorganization consolidated a single carceral system inside Israeli territory—the one carceral state—which serves as crucial evidence of the de facto one-state paradigm and forms a centerpiece of this new regime in Israel/Palestine. By analyzing a broad range of archival and administrative documents and 168 Supreme Court decisions on the management of prisons and Palestinian prisoners, this study reveals how the massive “exclusionary inclusion” of the Palestinian prisoner population in Israeli state law and its administrative mechanisms changes the entire landscape of the Israeli settler-colonial citizenship regime. Palestinian prisoners become “carceral citizens” of the “one state” and are subject to a parallel, alternate legality, in which they expand their repertoire of resistance against the wider racialized and repressive regime across Palestine/Israel.

**Keywords:** carceral state; Israel; Palestine; citizenship; mass incarceration

This article traces a dramatic shift in Israel’s carceral system, providing crucial evidence of a broader shift in Israel’s control of the West Bank (WB) and the Gaza Strip (GS) toward a one-state regime and articulating the features of this regime. Between 2000 and 2006, Israel dismantled its military prisons in the Occupied Palestinian Territory (OPT, comprising the WB and the GS) and transferred the Palestinian prisoner population into civilian prisons, thereby consolidating a single carceral system in which Palestinian noncitizens are now imprisoned inside Israeli territory. Our analysis of this single carceral system—a configuration termed here the “one carceral state”—exposes how the long-practiced mass arrests of Palestinians in the OPT have undergone an organizational transformation, quietly turning them from an external military operation into an internal civilian matter. We argue that this internalization renders the scale of Palestinian mass incarceration, its political salience, and the racialized repression that underlies it a centerpiece of the regime in Israel/Palestine as a whole.

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The most recent iteration of the one carceral state, taking place at the time of writing, has been unfolding since October 2023. Shortly after the October 7 Hamas-led attack on southern Israel and the outbreak of Israel's war on Gaza, Israeli military forces detained thousands of Palestinians (predominately men) in the OPT. The vast majority of these detainees, formally noncitizens of Israel, were forcibly transferred into Israeli territory. Since military detention facilities had previously been dismantled, the military resorted to opening two new detention facilities after the outbreak of the war.<sup>1</sup> Although many of the detainees were initially transferred to these newly opened military facilities, gradually most were transferred and confined in Israeli civilian prisons.

To help Israel deal with these mass detentions, the legislature introduced a new term, "carceral state of emergency" (*matsav herum kli'ati*), under which the civilian Israeli Prison Service (IPS; Sherut Batey Hasohar) was exempted from its legal obligation to provide prisoners with a minimal living space and a bed to sleep on.<sup>2</sup> This emergency measure allowed the IPS to deviate from a 2017 High Court of Justice (HCJ) order to reduce prison overcrowding, which had set a minimum living space of four square meters per prisoner (to be achieved gradually).<sup>3</sup> The state submitted to the court that the war had necessarily turned the tables on prison decrowding efforts. Prior to the events of October 7, 2023, the total prisoner population in the IPS (including citizens and noncitizens across all prisoners' categories) stood at 16,353; but by June 2024 about 5,000 new "security" prisoners and detainees—a euphemism for Palestinian prisoners—had been added.<sup>4</sup> This number represented a 30 percent increase to 21,474 prisoners, and did not include hundreds of detainees from the GS in military detention facilities, held under the status of "unlawful combatants". Strikingly, as of May 2024, 91 percent of the security prisoners in IPS prisons (compared to just 27 percent of "criminal" prisoners) were confined in subminimum living spaces.<sup>5</sup> By August 2024, some 840 Gazan detainees had been transferred from military to IPS facilities, further exacerbating the overcrowding crisis.<sup>6</sup>

The state's decision to declare a carceral state of emergency was not about assisting the military detention operations taking place in the OPT; rather, it was aimed at relaxing domestic Israeli legal standards that theoretically applied to all prisoners under the IPS. Although since 1967 Israel had operated a separate military carceral system in the OPT, ultimately, by 2006, it had dismantled the military system in this area and transferred all Palestinian prisoners to prisons managed by the civilian IPS. All but one of these were located inside Israel.<sup>7</sup> The IPS was rebranded as the National Prison Authority (Irgun Kli'a Le'umi), marking it as the sole authority responsible for all prisoners confined by the

<sup>1</sup> Horrific testimonies of torture and ill-treatment have emerged from these military facilities. See Tamara Qiblawi et al., "Strapped Down, Blindfolded, Held in Diapers: Israeli Whistleblowers Detail Abuse of Palestinians in Shadowy Detention Center," CNN, 11 May 2024, <https://www.cnn.com/2024/05/10/middleeast/israel-sde-teiman-detention-whistleblowers-intl-cmd/index.html>; B'tselem, "Welcome to Hell: The Israeli Prison System as a Network of Torture Camps," August 2024, [https://www.btselem.org/sites/default/files/publications/202408\\_welcome\\_to\\_hell\\_eng.pdf](https://www.btselem.org/sites/default/files/publications/202408_welcome_to_hell_eng.pdf).

<sup>2</sup> High Court of Justice (HCJ) 1892/14, *Association for Civil Rights in Israel v. Minister of Public Security*, 20 June 2024.

<sup>3</sup> *Ibid.*, 13 June 2017.

<sup>4</sup> In this article, we use the term "Palestinians" to refer to residents of the West Bank and the Gaza Strip who are not Israeli citizens. "Palestinian citizens of Israel" or "Palestinian citizens" refers to Palestinians holding Israeli citizenship, residing within the 1948 borders, including Druze and Bedouin. "Israeli Jews" refers to Israeli citizens belonging to the Jewish majority. Smaller numbers of prisoners belong to other nationalities, including migrant workers and asylum seekers.

<sup>5</sup> HCJ 1892/14, 13 June 2017, 11–15.

<sup>6</sup> HCJ 4268/23, *Association for Civil Rights in Israel v. Minister of Security*, Submission by the State, 4 August 2024, [https://01368b10-57e4-4138-acc3-01373134d221.usrfiles.com/ugd/01368b\\_f32f5ef6555f45d8b5a9659cc44383fc.pdf](https://01368b10-57e4-4138-acc3-01373134d221.usrfiles.com/ugd/01368b_f32f5ef6555f45d8b5a9659cc44383fc.pdf) [Hebrew].

<sup>7</sup> Ofer prison remains in the West Bank, adjacent to the formal green line separating it from Israel and run by the IPS.

state.<sup>8</sup> Therefore, in the wake of Israel's mass detention of Palestinians in 2023, most detainees were taken to civilian prisons inside Israel's 1948 borders. Even the new military detention facility opened in Sde Teiman, now nicknamed the "Israeli Guantanamo" due to the multiple testimonies of torture and ill-treatment there, was not placed in a remote location, such as that of the actual Guantanamo camp chosen by the Bush Administration to create a "legal black hole."<sup>9</sup> Rather, it was located within the state, normalizing the military detention operation and subjecting it, in theory, to an elaborate web of laws, regulations, and oversight by the Ministry of Justice and the courts. This sequence of events shows how, in the one carceral state, mass wartime detentions are inextricably linked to domestic incarceration, and therefore constituted a major upheaval for Israel's civilian carceral system in 2023.

Israel's broader paradigm shift to a one-state regime has been at the forefront of academic debates in political science, law, political geography, and sociology.<sup>10</sup> Under the one-state paradigm, it is widely understood that the OPT cannot be regarded as separate from Israel and that the entire territory of Palestine/Israel is, de facto, governed by Israel as a single, nondemocratic, state.<sup>11</sup> What has escaped scholars' attention, however, is the role of the carceral system in this new configuration. We use the concept of the carceral state to address this scholarly lacuna and connect the conceptualization of the state with the management of prisons. This concept considers incarceration to be a central manifestation of state power, and we apply it here to articulate how incarceration is leveraged by the Israeli state in pursuit of government policies.<sup>12</sup> The new conceptualization we propose, the one carceral state, seeks to capture the integration of prisoners and detainees from both Israel and the OPT within Israel's prison system as an expression of the one-state regime.

We articulate the one carceral state by providing the first comprehensive account of the territorial and organizational unification of the carceral apparatus, revealing a transformation from two separate prison systems to unification under the IPS and the one state. We also analyze the subsequent changes in the treatment of Palestinian prisoners and in the respective mechanisms of Israeli law, government institutions, and political discourse. This detailed analysis enables us to advance beyond proving the existence of the one state toward demonstrating the massive "exclusionary inclusion" of this population into Israel. We argue that this changes the landscape of the Israeli citizenship regime by creating a new citizenship category of "carceral

<sup>8</sup> Israeli Prison Service (IPS), Annual Report 2008, 48, [https://www.gov.il/BlobFolder/reports/repotr\\_2008/he/2008%20report.pdf](https://www.gov.il/BlobFolder/reports/repotr_2008/he/2008%20report.pdf) [Hebrew]; Knesset Research and Information Center (RIC), "Asirim bit'honiyim bebatey-kele be'Israel" (report), 18 May 2009, <https://drive.google.com/file/d/1Tj6SolpP5XFm20aa2eIEct5fUOctmwvG/view?usp=sharing>; B'tselem, "Statistics on Palestinians in Israeli Custody," updated 2 September 2024, [https://www.btselem.org/statistics/detainees\\_and\\_prisoners](https://www.btselem.org/statistics/detainees_and_prisoners).

<sup>9</sup> Tal Steiner, "We Warned about Sde Teiman: The Torture There Has Backing from High Up," *Haaretz*, 30 July 2024, <https://www.haaretz.com/opinion/2024-07-30/ty-article-opinion/.premium/we-warned-about-harsh-treatment-at-sde-teiman-the-torture-there-has-backing-from-high-up/0000191-030c-dfca-a991-bf7d5cfa0000?gift=e55c06ea2fb944ffab629b9074818a28>.

<sup>10</sup> Ariella Azoulay and Adi Ophir, *The One-State Condition: Occupation and Democracy in Israel/Palestine* (Stanford, CA: Stanford University Press, 2012); Ian S. Lustick, *Paradigm Lost: From Two-State Solution to One-State Reality* (Philadelphia: University of Pennsylvania Press, 2019); Michael Barnett et al., eds., *The One State Reality: What Is Israel/Palestine?* (Ithaca, NY: Cornell University Press, 2023).

<sup>11</sup> Our interchangeable use of the expressions Israel/Palestine and Palestine/Israel is intended to convey the inextricability of these two entities.

<sup>12</sup> Jonathan Simon, "The Rise of the Carceral State," *Social Research* 74, no. 2 (2007): 471–508; Kelly Lytle Hernández, Khalil Gibran Muhammad, and Heather Ann Thompson, "Introduction: Constructing the Carceral State," *Journal of American History* 102, no. 1 (2015): 18–24.

citizenship.”<sup>13</sup> Thousands of Palestinian prisoners become carceral citizens of the one state, as subjects of one of its most coercive powers yet also as rights-bearing actors. The entire carceral apparatus (the web of administrative agencies responsible for or otherwise engaged with incarceration) and other state institutions are now engaging with them.<sup>14</sup> We therefore argue that the one carceral state affects the essential elements of the modern state: territory, population, and government, and therefore lies at the heart of Israel’s one-state regime.<sup>15</sup>

Once they are transferred into Israeli territory, imprisoned Palestinians are formally placed under Israeli law and IPS regulations. As we will describe, following a typically brutal arrest and interrogation, the inclusive aspects of citizenship develop over the course of lengthy imprisonment terms.<sup>16</sup> Because Palestinians are now included in a carceral system originally designed for Israeli citizens, they are inadvertently afforded legal rights pertaining to Israeli prisoners (such as the right to a minimal living space) and also avenues to claim these rights (such as access to courts). Although the distribution of rights by the state remains frugal and profoundly unequal, laws applicable to citizens still provide mechanisms with which to challenge state power and claim rights. As our study shows, even as the state seeks to curtail Palestinian prisoners’ rights, it simultaneously makes it possible for them to exercise agency and engage with it as rights-bearers. Palestinian prisoners expand their repertoire of resistance by generating civic engagement with Israeli state mechanisms and civil society, such as the courts, the legislature (Knesset), government ministries, professional associations, and civil rights organizations.<sup>17</sup> The result is a dynamic in which the content of carceral citizenship is constantly negotiated between the prisoners and the state. This perverse form of repressive and racialized citizenship regime is emblematic of settler-colonial domination across Palestine/Israel.

## Background and Methodology

Although Palestinian prisoners end up in Israeli prisons with Israeli prisoners, their pathways to prison are distinct and separate. Palestinians are arrested in the OPT by the military and are either prosecuted and sentenced in military courts or detained without charge under administrative military orders. In times of heightened conflict, Palestinian detainees are initially held and screened in military facilities before charges are made or detention orders issued. Ultimately, many are released without charge and the rest are processed by one of these two routes and transferred into IPS facilities. In contrast, Israeli citizens are arrested by the police and prosecuted in civilian courts. Only a very small minority is detained under security administrative detention orders, reviewed in a civilian procedure.<sup>18</sup>

<sup>13</sup> Jenna M. Lloyd, “Carceral Citizenship in an Age of Global Apartheid,” *Occasion* 8, no. 1 (2015): 1–15; Reuben Jonathan Miller and Forrest Stuart, “Carceral Citizenship: Race, Rights and Responsibility in the Age of Mass Supervision,” *Theoretical Criminology* 21, no. 4 (2017): 532–48.

<sup>14</sup> Hernández et al., “Carceral State,” 19.

<sup>15</sup> Michel Foucault, *Security, Territory, Population: Lectures at the College de France 1977–1978* (New York: Palgrave Macmillan, 2007).

<sup>16</sup> For arrest and interrogation practices, see Lena Meari, “Sumud: A Palestinian Philosophy of Confrontation in Colonial Prisons,” *South Atlantic Quarterly* 113, no. 3 (2014): 547–78. For the timeline of captivity in historical perspective see Sibylle Scheipers, ed., *Prisoners in War* (Oxford, UK: Oxford University Press, 2010), 1–20.

<sup>17</sup> Anna Johansson and Stellan Vinthagen, “Dimensions of Everyday Resistance: An Analytic Framework,” *Critical Sociology* 42, no. 3 (2016): 417–35; Basil Farraj, “Rejecting Defeat and Approaching Liberation: Palestinian Prisoners’ Hunger Strikes,” *Wasafiri* 39, no. 2 (2024): 13–23.

<sup>18</sup> These are typically Palestinian citizens of Israel and Jewish Israeli settlers. The procedure is set out in the Emergency Powers (Detentions) Law, 1979, 33 LSI 89.

In the IPS, prisoners are classified into distinct categories. Israeli prisoners and detainees, who are primarily Jewish citizens, are mostly classified as criminal prisoners. Palestinians, both administrative detainees and those convicted of offenses relating to political violence and security (security being defined very broadly by the state), are classified by the IPS as security prisoners.<sup>19</sup> Palestinian prisoners typically reject the security label, which depoliticizes their struggle, and self-identify instead as political prisoners or simply prisoners, using an Arabic word also meaning captives (أسير).<sup>20</sup> In both categories—security and criminal—there also are smaller numbers of Palestinian citizens of Israel, who form about 20 percent of the Israeli population, as well as foreign nationals. This means that population groups of every political status in the one state are (disproportionately) represented in Israel's civilian prisons.

To render visible the one carceral state, our inquiry traces spatial, organizational, and legal processes in the carceral system since 1967 across the Palestine/Israel divide and analyzes them in relation to broader political developments. To achieve this, we located and triangulated legal and bureaucratic documents dealing with security prisoners and their position within Israeli law and state institutions. We obtained the release of military correspondence from the Israeli Defense Forces (IDF) Archive and collected relevant documents and data from the websites of the IPS, the Knesset, and the Public Defender's Office (PDO).<sup>21</sup> For statistics on military and civilian detainees and prisoners, we relied on data from the military and the IPS gathered by the NGO B'tselem.<sup>22</sup> Together, these enabled us to map the movement of prisons and Palestinian prisoners, and the changing activities and logics of the web of organizations that engage with them. Additionally, we searched the Nevo legal database for decisions of the HCJ for the period of 1967 to 2022 on the treatment of Palestinian prisoners, arriving at a final data set of 168 decisions.<sup>23</sup> We used these legal decisions as secondary sources to document changes in prison organization and prisoners' rights and as primary sources on prisoners' adoption of legal strategies to claim rights and on their involvement with Israeli civil society.

In our discussion of the extant literature, we bring together works from prison studies and criminology with literature on political science, sociology, and law. Studies on Israeli incarceration of Palestinians can broadly be categorized into three types, according to the positionality of scholars and their access to data, which we aim to integrate.<sup>24</sup> At the risk of overgeneralization, Palestinian scholars largely focus on the prevalence and effects of incarceration in Palestinian society, drawing on interviews with formerly incarcerated individuals and data produced by Palestinian NGOs. Israeli scholars work from either a traditional or a critical criminology perspective and tend to examine Israeli policies toward Palestinian prisoners, enjoying access to materials produced by Israeli authorities, typically in Hebrew. The third type of studies are mostly produced by Israeli citizens, either

<sup>19</sup> Formally, the classification does not rely on a person's ethnic or national identity but on the offence they were convicted of, and therefore each category also includes few members of other population groups. See more under the subsection "Classification as security prisoners' below."

<sup>20</sup> Abeer Baker and Anat Matar, eds., *Threat: Palestinian Political Prisoners in Israel* (London: Pluto Press, 2011), vii–xi.

<sup>21</sup> For legislative sources, see the Knesset website: [www.knesset.gov.il](http://www.knesset.gov.il); and the RIC website: <https://main.knesset.gov.il/EN/activity/Pages/MMMAbout.aspx>. For IPS annual reports, see [https://www.gov.il/he/departments/prison\\_service/govil-landing-page](https://www.gov.il/he/departments/prison_service/govil-landing-page). These are currently available only starting in 2008.

<sup>22</sup> An Israeli NGO devoted to documenting human rights violations in the OPT. B'tselem, "Statistics on Palestinians in Israeli Custody."

<sup>23</sup> Israeli online legal database for Israeli case law, legislation, and literature, available by subscription at <https://www.nevo.co.il>.

<sup>24</sup> On the reproduction of colonial power relations in the academic field, see Areej Sabbagh-Khoury, "Tracing Settler-Colonialism: A Genealogy of a Paradigm in the Sociology of Knowledge Production in Israel," *Politics & Society* 50, no. 1 (2022): 1–40.

Palestinian or Jewish, who are involved in legal representation or NGO work around Palestinian prisoners, and therefore have access to both of the aforementioned sources of data and perspectives. This in-between position also is our own. The first author, Israeli Jewish, was formerly a practicing lawyer who represented many Palestinian prisoners. The second author is a Palestinian citizen of Israel and was until recently a practicing lawyer involved in representing Palestinian prisoners. Thanks to this particular blend of backgrounds and experiences, we were able to bring knowledge of the two perspectives and access to relevant sources, which we combine here in a critical analysis of the Israeli carceral system. This dual perspective contributes to a thicker understanding of the one-state condition.<sup>25</sup>

### The One State and the Carceral State: A Literature Review

The one-state paradigm evolved as a response to what we call the separation paradigm.<sup>26</sup> For decades, the dominant separation paradigm has portrayed Israel as a sovereign and democratic state exercising temporary military control over the OPT as a separate non-sovereign territory.<sup>27</sup> This paradigm stems from formal Israeli politics and the international law of occupation and is embedded in two main political decisions, international and Israeli, respectively.

Internationally, according to the 1947 United Nations (UN) General Assembly Resolution 181, the UN accepted a plan for the partition of Palestine into two states: one Jewish, one Palestinian, each with its own designated territory. Despite the eventual outcomes of the 1948 war and the establishment of a single State of Israel, separation into two states remained the internationally agreed-upon vision in the well-known two-state solution to the Israeli–Palestinian conflict, which requires separation to maintain a viable Palestinian state.<sup>28</sup> Internally, Israel identifies itself as a sovereign state within the 1949 green line in which the WB and the GS were not included. Following the 1967 occupation, Israel chose to refrain from annexation of the OPT and to control the area and its population as a nonsovereign territory that is referred to as “administered” (according to the mainstream official Israeli position) or “occupied” (according to other official positions and Israeli and international legal institutions). The international law of occupation requires the OPT to remain a separate political and legal unit and views annexation as unlawful, regardless of the envisioned political solution to the conflict, which is why we call this the separation paradigm (and not the two-state paradigm).<sup>29</sup> The formal separation is not only territorial but also legal and organizational, and it has been maintained by the military government of the OPT, including the military management of courts and prisons, enabling Israel to argue that it is abstaining from annexation and is therefore abiding by international law.

<sup>25</sup> This article is part of a larger ongoing research project. To date, we have conducted 21 interviews that are not analyzed here but inform our overall understanding and add to our professional experiences.

<sup>26</sup> Azoulay and Ophir, *One-State Condition*; Lustick, *Paradigm Lost*.

<sup>27</sup> Neve Gordon, *Israel's Occupation* (Berkeley, CA: University of California Press, 2008); David Kretzmer and Yaël Ronen, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, 2nd ed. (Oxford, UK: Oxford University Press, 2021). Our definition of the separation paradigm is different from the “separation principle” defined by Gordon to describe the change in Israeli control of the OPT from colonization to separation after the First Intifada. Gordon describes a principle of policy seeking to control Palestinians and exercising extensive military violence, while retreating from managing their daily lives. We refer to a more general paradigm that conceptualizes Israel and the OPT as separate political and legal units.

<sup>28</sup> Noura Erakat, *Justice for Some: Law and the Question of Palestine* (Stanford, CA: Stanford University Press, 2019).

<sup>29</sup> Aeyal Gross, *The Writing on the Wall* (Cambridge, UK: Cambridge University Press, 2017); Eliav Lieblich and Eyal Benvenisti, *Occupation in International Law*, Elements in International Law (Oxford, UK: Oxford University Press, 2022).



Scholars working within this paradigm define Israel and the OPT as separate political units, and the entire situation as temporary. Their research unit is limited to the territory, law, population, and political systems of either Israel or the OPT on their own respective terms and does not extend to analyzing them within the same framework.

However, especially from the early 2000s onward, critical scholars have sought to highlight the widening gap between the political and legal definitions of the State of Israel and the ongoing political reality.<sup>30</sup> Speaking from the one-state paradigm, these scholars maintain that formal separation serves to obfuscate the reality in which Israel/Palestine is, in fact, governed as a single, fragmented, and unequal political system and that the occupation is not temporary but a permanent, or at least indefinite, characteristic of the one state. The ongoing de facto annexation of the OPT has been evidenced through the expansion of Israel's state mechanisms beyond its formal borders: the settlement project and the extension of rights to Israeli settlers; building roads and infrastructures and operating public transportation that serve the settlements; the control and use of water resources; and Israeli control over the population registry and border crossings to and from the OPT. All of these policies serve the privileged settler population and maintain domination over the Palestinian population through the organizational remit of the military. A single-state paradigm also exists as the settler-annexationist agenda; however, in this case, proponents justify and promote Israel's undemocratic control of Palestine/Israel based on Jewish supremacy.<sup>31</sup>

The critical one-state paradigm has two variants. On the one hand, the colonial and settler-colonial variant's focus is a critique of the colonization of Palestine through Israel's establishment in 1948 and views the 1967 occupation as a continuation of the same colonizing project.<sup>32</sup> In our context, a colonial approach problematizes Westphalian sovereignty of the nation-state as the single model of unitary sovereignty and points to colonial sovereignty as inherently fragmented and unequal. This understanding allows us to conceptualize Israel's control over Palestine/Israel as colonial sovereignty, which comprises a hierarchical scale of territorial units and populations. On the other hand, the focus of scholars in the more state-centered variant is critical of the 1967 occupation specifically. This perspective highlights the creeping de facto annexation and unification of Israel and the OPT, which also impedes a two-state solution.<sup>33</sup>

Both variants, whether expressed in terms of settler-colonialism or de facto annexation, critique the current single-state apparatus and political reality in the entire territory of Palestine/Israel, as well as the separation paradigm as a fiction that obfuscates this reality.

<sup>30</sup> Azoulay, and Ophir, *One-State Condition*; Erakat, *Justice for Some*; Lustick, *Paradigm Lost*; Nir Gazit, "Social Agency, Spatial Practices, and Power: The Micro-Foundations of Fragmented Sovereignty in the Occupied Territories," *International Journal of Politics, Culture, and Society* 22, no. 1 (2009): 83–103; Oren Yiftachel, "Between Colonialism and Ethnocracy: 'Creeping Apartheid' in Israel/Palestine," in *Pretending Democracy: Israel, an Ethnocratic State*, ed. Na'eem Jeena (Pretoria: Afro-Middle East Centre, 2012), 95–113; Honaida Ghanim, "The Composite Framework of a Hybrid Regime: The Controversy of Settler Colonialism, Occupation and Apartheid in Palestine," in *Israel and the Apartheid: A View from Within* (Ramallah, OPT: Madar, 2018), 15–53; Amal Jamal, "1967 Bypassing 1948: A Critique of Critical Israeli Studies of Occupation," *Critical Inquiry* 44 (2018): 370–78; Raef Zreik, "Palestine As a Question: Formation," *MISR Review* 4 (2020): 8–50.

<sup>31</sup> Ian S. Lustick, "Annexation in Right-Wing Israeli Discourse: The Case of Ribonut," *Frontiers in Political Science* 4 (2022): 1–15; Gershon Shafir, "From Jewish Privilege to Judaic Supremacy: The Religious Zionist One State Solution," in *The One State Reality: What Is Israel/Palestine?* ed. Michael Barnett et al. (Ithaca, NY: Cornell University Press, 2023), 51–67.

<sup>32</sup> Erakat, "Justice for some". Areej Sabbagh-Khoury, "Citizenship As Accumulation by Dispossession: The Paradox of Settler Colonial Citizenship," *Sociological Theory* 40, no. 2 (2022): 151–78.

<sup>33</sup> Omar M. Dajani, "Israel's Creeping Annexation," *AJIL Unbound* 111 (2017): 51–56; Lustick, *Paradigm Lost*; Ronit Levine-Schnur, Tamar Megiddo, and Yael Berda, "A Theory of Annexation," SSRN/Elsevier, February 5, 2023, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4330338](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4330338).

As Oren Yiftachel and Raef Zreik argue, the old separation between Israel and the OPT, reflected in territory and legal citizenship status, has transitioned to a new hierarchical separation and segregation based on racialized ethnonational identities, typifying the apartheid regime of the one state.<sup>34</sup>

To date, scholars from both the separation and the one-state paradigms have entirely neglected the prison system and incarceration as part of their analyses of the state. Most studies dealing with criminal justice and criminology abide by the separation paradigm, focusing on either the OPT or Israel, whereas Palestinian prisoners are mostly studied as part of their own society and national struggle.<sup>35</sup> Although Palestinians account for between a third and a half of the prisoner population in Israel, studies of the Israeli criminal and carceral mechanisms construct an imagined carceral system that is separate from the OPT. They either ignore the prosecution and incarceration of Palestinians by Israel and inside Israel or focus on Palestinian prisoners as exceptional and external to the state systems, often through the lens of terrorism and radicalization.<sup>36</sup> Critical studies exploring policies toward incarcerated Palestinians have emphasized the growing category of security prisoners that facilitates their treatment under a different carceral ideology and depoliticizes their status, and highlighted the parallel regime that denies them many of the rights afforded to Israeli Jewish prisoners.<sup>37</sup> Recently, one of us (Ben-Natan) has argued that the Israeli carceral state should be analyzed independently of formal sovereign borders and law, because it imprisons Palestinians beyond and within Israeli borders in a single carceral system.<sup>38</sup> Although helpful in problematizing the basic condition of inclusion of Palestinian prisoners in Israel, such literature has yet to consider how this inclusion reflects on Israel's political regime.

To connect the study of the state and the study of prisons, we adopt here the aforementioned concept of the carceral state. Scholars of punishment in the United States have developed this term to articulate the mass scale of incarceration and its function as a manifestation of state power.<sup>39</sup> In this sense, it is a descriptor of a state that uses incarceration and similar technologies of control as a central repressive tool of government, affecting multiple areas of life and wielded to subordinate and marginalize racialized groups in particular.<sup>40</sup> Scholars studying the OPT use this and other terms such as mass incarceration, adopted by US scholarship, to highlight just how central the role of incarceration is to Israel's control of the OPT and its prevalence throughout Palestinian society.<sup>41</sup>

<sup>34</sup> Yiftachel, "Between Colonialism and Ethnocracy"; Zreik, "Palestine."

<sup>35</sup> Esmail Nashif, *Palestinian Political Prisoners: Identity and Community* (London: Routledge, 2008); Meari, "Sumud."

<sup>36</sup> Gideon Fishman and Arye Rattner, "The Israeli Criminal Justice System in Action: Is Justice Administered Differentially?" *Journal of Quantitative Criminology* 13, no. 1 (1997): 7–28; Mimi Ajzenstadt and Ariel Barak, "Terrorism and Risk Management: The Israeli Case," *Punishment & Society* 10, no. 4 (2008): 355–74; Hagit Lernau, *Criminal Behavior and Law Enforcement* (Haifa: Pardes, 2016); Sagit Yehoshua, "Palestinian and Jewish Security Prisoners in Israeli Prisons: Radicalisation, Management, and Risk Assessment," in *Terrorist Deradicalization in Global Contexts: Success, Failure, and Continuity*, ed. Rohan Gunaratna and Sabariah Hussin (London: Routledge, 2020), 33–43.

<sup>37</sup> Baker and Matar, *Threat*; Hedi Viterbo, "Ties of Separation: Analogy and Generational Segregation in North America, Australia, and Israel/Palestine," *Brooklyn Journal of International Law* 42, no. 2 (2017): 695–760; Netanel Dagan, "Enemy Parole," *Punishment & Society* 25, no. 3 (2022): 1–21.

<sup>38</sup> Smadar Ben-Natan, "The Boundaries of the Carceral State: Accounting for the Role of Military Incarceration," *Theoretical Criminology* 28, no. 1 (2024): 5–27.

<sup>39</sup> Simon, "Rise of the Carceral State"; Hernández et al., "Carceral State," 18–24.

<sup>40</sup> Loic Wacquant, "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh," *Punishment & Society* 3, no. 1 (2001): 95–133; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012).

<sup>41</sup> Rashid Khalidi, "Israel: A Carceral State," *Journal of Palestine Studies* 43, no. 4 (2014): 5–10; Stéphanie Latte Abdallah, *A History of Confinement in Palestine: The Prison Web* (New York: Springer, 2022).



It is estimated that, since 1967, more than 800,000 Palestinians—approximately 20 percent of the population and 40 percent of the male population—have been detained, and that, of these, over 600,000 have been incarcerated for longer periods.<sup>42</sup> Imprisonment is a defining experience for the Palestinian community and its political consciousness.<sup>43</sup> Inside Israeli prisons, Palestinian prisoners organize in multiple ways, which is a characteristic of political imprisonment in colonial contexts.<sup>44</sup> The Palestinian Prisoners Movement and practices of resistance have profound effects outside the prisons, and the prisoners issue is central to Palestinian politics.<sup>45</sup> Indeed, it is rare to find a family in the WB or the GS that has not experienced the incarceration (even if short-term) of at least one of its male members. As one father of four sons observed: “Just as it was clear to me that every living creature eventually dies, it became evident that every Palestinian man would eventually be taken to prison.”<sup>46</sup>

The term carceral also extends to the confinement of movement and surveillance directed at a larger targeted population. In this sense, it has been used to describe the entire Israeli military control of Palestinians’ day-to-day life, comprising checkpoints, manned crossings, movement-permit requirements, and physical impediments including walls, fences, and blockades. When orchestrated, all such measures exert a carceral effect by creating ghettoization, open-air prisons, and caging.<sup>47</sup>

The seminal research of Alina Korn in the early 2000s showed the connection between Israeli incarceration and the Israeli–Palestinian conflict, accounting for incarcerated Palestinians within the framework of the Israeli carceral system.<sup>48</sup> Korn found that significant changes in the number of prisoners and rates of incarceration are mostly determined by the conflict and the incarceration of Palestinians, who, as noted earlier, account for between a third and a half of the prisoner population at any given time. More recently, Ben-Natan showed that the numbers of Palestinian prisoners continue to be the definitive factor in Israel’s rising incarceration rates.<sup>49</sup> The one carceral state, we argue, extends mass incarceration, which until now has been used to describe the incarceration of Palestinians, to the entire Israeli carceral system, by raising the overall rates of incarceration and affecting the capacity and management of the entire carceral apparatus.<sup>50</sup>

We argue that the connection between incarcerating Palestinians and the civil mechanisms of the state has now become so central to the one-state regime that it constitutes carceral citizenship. The concept of carceral citizenship has been articulated in two different yet complementary contexts, global and national. Jenna Lloyd frames it as a relation of exclusion from citizenship (which, in US history, has been constructed around race) that defines stateless, “deportable alien,” and asylum-seeker populations, which are increasingly

<sup>42</sup> Meari, “Sumud”; Hedi Viterbo, *Problematizing Law, Rights, and Childhood in Israel/Palestine* (Cambridge, UK: Cambridge University Press, 2021).

<sup>43</sup> Maya Rosenfeld, “The Centrality of the Palestinian Prisoners’ Movement to the Palestinian Struggle against the Israeli Occupation: A Historical Perspective,” in *Threat: Palestinian Political Prisoners in Israel*, ed. Abeer Baker and Anat Matar (London: Pluto Press, 2011).

<sup>44</sup> Nashif, *Palestinian Political Prisoners*.

<sup>45</sup> Julie M. Norman, *The Palestinian Prisoners Movement: Resistance and Disobedience* (London: Routledge, 2021).

<sup>46</sup> Rosenfeld, “Centrality,” 4–5. See also Meari, “Sumud,” 548–49.

<sup>47</sup> Alina Korn, “The Ghettoization of the Palestinians,” in *Thinking Palestine*, ed. Ronit Lentin (London: Zed Books, 2008), 117–30; Nadera Shalhoub-Kevorkian, *Incarcerated Childhood and the Politics of Unchilding* (Cambridge, UK: Cambridge University Press, 2019); Gary Fields, “Lockdown: Gaza through a Camera Lens and Historical Mirror,” *Journal of Palestine Studies* 49, no. 3 (2020): 41–69.

<sup>48</sup> Alina Korn, “Rates of Incarceration and Main Trends in Israeli Prisons,” *Criminal Justice* 3, no. 1 (2003): 29–55.

<sup>49</sup> Ben-Natan, “Boundaries of the Carceral State.”

<sup>50</sup> David Garland, ed., *Mass Imprisonment: Social Causes and Consequences* (London: Sage, 2001), 9–11.

subject to domestic and offshore detention.<sup>51</sup> Lloyd argues that global exclusions based on race, together with the carceral state, constitute global apartheid and carceral regimes in “regional racial formations.” Therein, populations are racialized and managed by mechanisms of mobility restriction and confinement within the political and cultural structures of a particular region, such as the Americas and the Pacific.

Focusing on the domestic US dynamic, Jonathan Miller and Forrest Stuart make an argument similar to ours, that mass incarceration has effectively remade the US state and has therefore affected citizenship, because incarceration has become such a common feature of the state and is so strongly correlated with the racialized impoverished classes.<sup>52</sup> Understanding citizenship as a set of rights, privileges, and responsibilities, Miller and Stuart argue that carceral citizenship not only reduces citizenship (leading to second-class citizenship) but also creates a unique set of rights and entitlements, constituting an alternate citizenship category in which carceral citizens are governed through institutions of coercion and care. Imprisonment embodies care when it renders the state responsible for meeting basic needs and providing social benefits (shelter, food, health care, legal representation, therapy, and so on) under some standard of adequacy. Such benefits are especially pronounced in the capitalist US, where many ostensibly free American citizens have no such minimal social guarantees, and in Israel/Palestine when imprisonment confers rights on noncitizens. Miller and Stuart also note the care afforded by social organizations developing “prisoner-friendly” policies and advocating for prisoners.

In Israel/Palestine, the citizenship literature remains firmly within the separation paradigm and barely touches on the realities of Palestinians from the OPT. A burgeoning body of literature, by Hassan Jabareen, Nadeem Rouhana, Areej Sabbagh-Khoury, Amal Jamal, and others, focuses on Palestinian citizens of Israel and stresses their exclusion and subordination vis-à-vis the Jewish majority as part of a settler-colonial project.<sup>53</sup> Gershon Shafir and Yoav Peled’s major contribution discusses citizenship as a social institution and outlines the “incorporation regime” that places different social groups on a hierarchical scale.<sup>54</sup> In this account, Palestinians participate in Israeli citizenship only on the very margins, through the labor market.<sup>55</sup>

We believe, however, that the forcible transfer of Palestinian prisoners, followed by their active participation in the carceral state, deserves equal attention in the one-state condition, complementing the aforementioned accounts of settler-colonial citizenship of Palestinian citizens of Israel.<sup>56</sup> In this sense, as Yael Berda argues, citizenship is constituted by

<sup>51</sup> Lloyd, “Carceral Citizenship in an Age of Global Apartheid.”

<sup>52</sup> Miller and Stuart, “Carceral Citizenship.”

<sup>53</sup> Amal Jamal, “Nationalizing States and the Constitution of ‘Hollow Citizenship’: Israel and Its Palestinian Citizens,” *Ethnopolitics* 6, no. 4 (2007): 471–93; Hassan Jabareen, “Hobbesian Citizenship: How the Palestinians Became a Minority in Israel,” in *Multiculturalism and Minority Rights in the Arab World*, ed. Will Kymlicka and Eva Pföstel (Oxford, UK: Oxford University Press, 2014), 189–218; Nadeem N. Rouhana and Areej Sabbagh-Khoury, “Settler-Colonial Citizenship: Conceptualizing the Relationship between Israel and Its Palestinian Citizens,” *Settler Colonial Studies* 5, no. 3 (2015): 205–25; Lana Tatour, “Citizenship As Domination: Settler Colonialism and the Making of Palestinian Citizenship in Israel,” *Arab Studies Journal* 27, no. 2 (2019): 8–39.

<sup>54</sup> Gershon Shafir and Yoav Peled, *Being Israeli: The Dynamics of Multiple Citizenship* (Cambridge, UK: Cambridge University Press, 2002).

<sup>55</sup> Guy Mundlak, “Power-Breaking or Power-Entrenching Law: The Regulation of Palestinian Workers in Israel,” *Comparative Labor Law & Policy Journal* 20 (1998/1999): 569–620; Leila Farsakh, *Palestinian Labor Migration to Israel: Labor, Land and Occupation* (London: Routledge, 2005).

<sup>56</sup> Hassan Jabareen, “Hobbesian Citizenship,” 189–218; Rouhana and Sabbagh-Khoury, “Settler-Colonial Citizenship”; Tatour, “Citizenship As Domination.”

mobility, but mobility also includes the forced mobility of Palestinian prisoners into Israel, and the absolute denial of mobility that underlies the paradox of carceral citizenship.<sup>57</sup>

Joining scholars of citizenship studies, we do not limit our study of citizenship to formal status but, rather, examine the contingent interactions and social institutions constituting the relationships between individuals and communities with the state as members of the polity, in which, we argue, Palestinian prisoners take part.<sup>58</sup> We draw on Linda Bosniak's work on citizenship beyond the state, which outlines four conceptions of citizenship: as legal status, as a system of rights, as a form of political activity, and as identity and solidarity.<sup>59</sup> These framings are helpful in examining the carceral citizenship in our case, which refers to formal noncitizens who do not enjoy the rights to vote, be elected for office, or travel freely in and out of the country.<sup>60</sup> Other rights, however, are not necessarily dependent on formal citizenship.<sup>61</sup> Similarly, political activity is not limited to voting and party politics but is also understood as active engagement in the life of the political community. We consider criminalization and incarceration as mechanisms under which individuals (regardless of formal citizenship status) negotiate various rights and deprivations vis-à-vis the state.<sup>62</sup>

Under the conditions in Israel/Palestine, we conceptualize carceral citizenship as a mechanism of exclusionary inclusion, whereby some Palestinians exceptionally become rights-bearers under Israeli law and regulations as well as political actors, but only as prisoners.<sup>63</sup> Adi Ophir et al., following Giorgio Agamben, argued that Israel's treatment of Palestinians in the OPT constituted "inclusive exclusion," whereby they were paradoxically included by the Israeli legal order only by constituting an exception to that order. In this idea, inclusion is a tacit conceptual acknowledgment that is only used to materially exclude. However, what we discuss here is territorial, material, and legal inclusion under complete state control and the more repressive conditions of incarceration.<sup>64</sup> The exclusion created by incarceration paradoxically enables a greater degree of legal inclusion and civic agency. Against this backdrop, we turn to our own study and findings.

### Consolidating the One Carceral State

The consolidation of the one carceral state that we describe in this section across two periods—from the occupation (1967–2000) to the one state (roughly since 2000)—reflects the transition of the Israeli state from the separation paradigm to the one-state paradigm.

<sup>57</sup> Yael Berda, "Citizenship As a Mobility Regime," in *The One State Reality: What Is Israel/Palestine?* ed. Michael Barnett et al. (Ithaca NY: Cornell University Press, 2023), 89–102. See also Ann Laura Stoler, "Epilogue: In Carceral Motion; Disposals of Life and Labour," in *A Global History of Convicts and Penal Colonies*, ed. Clare Anderson (London: Bloomsbury, 2018), 371–80.

<sup>58</sup> Mariana Valverde, "Practices of Citizenship and Scales of Governance," *New Criminal Law Review* 13, no. 2 (2010): 216–40.

<sup>59</sup> Linda Bosniak, "Citizenship Denationalized," *Indiana Journal of Global Legal Studies* 7, no. 2 (1999/2000): 447–509.

<sup>60</sup> *Ibid.* See also Berda, "Citizenship As a Mobility Regime."

<sup>61</sup> David D. Cole, "Against Citizenship As Predicate for Basic Rights," *Fordham Law Review* 75 (2007): 2541–48.

<sup>62</sup> Valverde, "Practices."

<sup>63</sup> This is somewhat similar to Reynolds' use of "repressive inclusion," whereby Palestinians are included within the Israeli juridical order only while legally differentiated and discriminated against. See John Reynolds, "Repressive Inclusion," *Journal of Legal Pluralism and Unofficial Law* 49, no. 3 (2017): 268–93.

<sup>64</sup> Adi Ophir, Michal Givoni, and Sari Hanafi, eds., *The Power of Inclusive Exclusion: Anatomy of the Israeli Rule in the Occupied Territories* (Zone Books, 2009). This discussion builds on Agamben's work on sovereignty, state of exception, and bare life as total exclusion; see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998). Reynolds, "Repressive Inclusion," 268–93.

This transition is traceable through state documents and other archive or online materials, analyzed here for the first time, that articulate the differences between these periods.

Pre-1967, Israel's carceral system operated as a centralized national prison system, the IPS, under the Ministry of Police (Misrad Hamishtara). Although both civilian courts and military courts (under Israel's military regime over Palestinian citizens) were used to prosecute and punish both citizens and noncitizens, the central prison system confined all types of prisoners.<sup>65</sup> In 1958, the IPS started distinguishing Palestinian and Arab prisoners linked to armed resistance by categorizing them as security prisoners.<sup>66</sup> The conquest and occupation of the WB, GS, Sinai Peninsula, and the Golan Heights in 1967 was followed by extensive arrests of Palestinians by the military in the WB and the GS. In the very first days of the occupation, the Israeli military took over the management of detention facilities and prisons, thereby ostensibly establishing a separate military carceral system.<sup>67</sup> After nine months, 500 Palestinians were serving prison sentences; and in the second year of occupation 894 were administratively detained.<sup>68</sup>

On the formal level, Israel refrained from annexing the OPT but established a separate military government system therein. Although it did not acknowledge these territories as occupied under international law and thereby denied the applicability of the Fourth Geneva Convention (hereafter the Convention), Israel initially constructed its military judicial and carceral system according to the Convention rules. These mandate a separation of territory and population: military courts should operate in the occupied territory, and prisoners from the occupied population should serve their sentence therein.<sup>69</sup> By following this strategy, Israel effectively maintained a *de jure* separate status: the military issued orders carrying the status of law and established a new prison system under military command.

However, very early on, Israeli authorities permitted the military and civilian carceral systems to cooperate. The IPS assumed responsibility for existing prisons in the WB cities of Jenin, Nablus, Ramallah, Hebron, and Gaza, whereas the military was responsible for other detention and prison facilities in the OPT and inside Israel.<sup>70</sup> Within a short time, the prisons in the OPT were overcrowded. In response, in July 1967, the government allowed, under emergency regulations, the transfer of prisoners and detainees into Israel.<sup>71</sup> This move already constituted a violation of international law, since the Convention prohibits individual or mass transfer of occupied people, specifically prisoners, out of occupied territories, but the military carceral system continued to operate.<sup>72</sup> To house the rapidly growing

<sup>65</sup> Smadar Ben-Natan, "The Dual Penal Empire: Emergency Powers and Military Courts in Palestine/Israel and Beyond," *Punishment & Society* 23, no. 5 (2021): 741–63. Korn, "Rates of Incarceration."

<sup>66</sup> Nomi Levenkron, "Is 'Work the Path to Rehabilitation?': The Shata Prison Uprising (1958) and Its Effect on Detention Policy in Israel," *Journal of Israeli History* 44, no. 2 (2022): 321–53.

<sup>67</sup> Order Regarding Operation of Prison Facility (No. 29), 1967, 2 CPOA 57 (23 June 1967); Order Regarding Establishment of Prison Facilities (No. 127), 1967; Military Order Regarding Prison Service (Judea and Samaria) (No. 254), 1968, 13 CPOA 509 (1968).

<sup>68</sup> Annual reports of the Military Advocate General, retrieved from the IDF Archive. Annual Report for 1967–68, IDFA 52/79-23, 22. Annual Report for 1968–69, IDFA 181/894-28, 68.

<sup>69</sup> Geneva Convention Relative to the Protection of Civilian Persons in Times of War, adopted 12 August 1949, articles 66, 76. <https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-protection-civilian-persons-time-war>.

<sup>70</sup> Korn, "Rates of Incarceration."

<sup>71</sup> Emergency Regulations (Offenses in the Administered Territories: Adjudication and Legal Assistance) 5727–1967 2069 KT 2741. The regulations have been extended by law ever since: Law Extending the Validity of Emergency Regulations (Judea and Samaria, Adjudication of Offenses and Legal Assistance) 5777–2017, 2645 SH 994. This law also extended the jurisdiction of Israeli courts over offenses in the OPT, allowing settlers to be judged by Israeli courts inside Israel.

<sup>72</sup> Article 49 of the Fourth Geneva Convention prohibits forcible transfers of protected persons outside of the occupied territory; the aforementioned Article 76 specifically prohibits the transfer of prisoners.

incarcerated population, new prisons were established inside Israel in 1968, 1969, 1980, and 1984. Also, in 1984, Israel opened the Central Prison (Judea-Samaria Central) in the WB.<sup>73</sup> Over the years, then, prisoners have been held either in Israel or in the OPT, subject to the discretion of administrative authorities and negotiated between the military and the IPS. In fact, the two formally separate prison systems operated jointly through territorial and organizational fluidity.<sup>74</sup>

During the First Intifada that broke out in December 1987, thousands of Palestinians were arrested and the number of detention facilities inside Israel grew accordingly. Israel established the Ketsiot (Naqab) detention facility in the south, near the Egyptian border.<sup>75</sup> At its peak in 1991, this military-managed facility held over 7,000 Palestinian administrative detainees.<sup>76</sup> Ofer military facility also was opened around the same time.<sup>77</sup> Many other prisoners were transferred from the OPT to other Israeli prisons, peaking at about 4,000.<sup>78</sup>

Importantly, mass detentions were not yet the centerpiece of punitive measures; home demolitions and deportations were also widely used.<sup>79</sup> In 1992, for instance, the Israeli government carried out a mass deportation of over 400 Palestinians who allegedly belonged to the militant groups Hamas and Palestinian Islamic Jihad. The men were rounded up, transported in buses, and dropped beyond the Lebanese border, under military deportation orders valid for two years. Defying these harsh conditions, they organized a training camp supported by Hezbollah and gained world media attention. One member of Hamas is quoted as saying: “The Israelis have done us a big favour. We are the winners in all of this.” The Hamas members eventually returned home more militant and politically stronger, internally and internationally.<sup>80</sup> This took the Israeli authorities entirely by surprise, adding to the pressure from international bodies to allow the deportees’ return.<sup>81</sup> Externalizing the conflict proved to involve serious unintended consequences, which were later avoided by increasingly relying on incarceration.

The First Intifada also created major problems for the carceral apparatus. The volume of prisoners was beyond the military’s capacity and resulted in severe overcrowding and constant tensions between the military and the IPS on the allocation of prisoners. Additionally, human rights organizations reported widespread abuse of detainees.<sup>82</sup> Israeli

<sup>73</sup> Korn, “Rates of Incarceration.” These prisons are Ashkelon (Shikma) in 1968; Eshel (near Beersheba) in 1969; Nafha (near Mitzpeh Ramon) and Ohaley Keidar (near Beersheba) in 1980. All were designated wholly or mainly for prisoners from the OPT.

<sup>74</sup> HCJ 5591/02, *Yassin v. Commander of Military Camp Ketsiot* (2002) (hereafter *Yassin*); HCJ 3278/02, *Hamoked, Center for the Defense of the Individual v. Military Commander of the West Bank* (2002) (hereafter *Hamoked*); HCJ 2690/2009, *Yesh Din v. Military Commander of the West Bank* (2010) (hereafter *Yesh Din*).

<sup>75</sup> HCJ 253/88, *Sajadiyah v. Defense Minister* (1988) (hereafter *Sajadiyah*).

<sup>76</sup> Human Rights Watch, “Prison Conditions in Israel and the Occupied Territories,” Middle East Watch Report, April 1991, <https://www.hrw.org/reports/Israel914.pdf>. The report details: “Ketsiot is more than four times the size of the next largest incarceration facility of any kind in Israel or the territories” (64).

<sup>77</sup> See the IPS website at [https://www.gov.il/he/departments/units/unit\\_ofer](https://www.gov.il/he/departments/units/unit_ofer).

<sup>78</sup> Stéphanie Latte Abdallah, “Denial of Borders: The Prison Web and the Management of Palestinian Political Prisoners after the Oslo Accords (1993–2013),” in *Palestinians and Israelis in the Shadows of the Wall: Spaces of Separation and Occupation*, ed. Stéphanie Latte Abdallah and Cédric Parizot (New York: Routledge, 2016), 2–8, 39–55; Korn, “Rates of Incarceration”, 51.

<sup>79</sup> B’tselem, “Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992,” 1993, [https://www.btselem.org/sites/default/files/publications/199306\\_deportation\\_eng.pdf](https://www.btselem.org/sites/default/files/publications/199306_deportation_eng.pdf).

<sup>80</sup> Minna Saarnivaara, “From Terrorists to Celebrities: Deportation as a Political Opportunity for Palestinian Islamic Hamas,” *Studia Orientalia* 114 (2013): 274.

<sup>81</sup> Yaron Druckman, “KsheRabin geresh et Haniyah vebkhirey Hamas,” *ynet*, 2012, <https://www.ynet.co.il/articles/0,7340,L-4319492,00.html>.

<sup>82</sup> B’tselem, “The Interrogation of Palestinians During the Intifada: Ill-treatment, “Moderate Physical Pressure” or Torture?,” 1991, [https://www.btselem.org/sites/default/files/sites/default/files2/the\\_interrogations\\_of\\_palestinians\\_during\\_the\\_intefada\\_ill\\_treatment\\_moderate\\_physical\\_pressure\\_or\\_torture\\_march\\_1991.pdf](https://www.btselem.org/sites/default/files/sites/default/files2/the_interrogations_of_palestinians_during_the_intefada_ill_treatment_moderate_physical_pressure_or_torture_march_1991.pdf).

human rights lawyers challenged harsh imprisonment conditions and the transfer of prisoners into Israel as a violation of international law.<sup>83</sup> The military appointed Major General Raphael Vardi to probe into the abuse allegations. Among other recommendations, the Vardi report (1991) recommended that responsibility for imprisoning Palestinians should be transferred from the military to the IPS, which was expected to be more professional, provide proper conditions, and be more likely to avoid committing abuses.<sup>84</sup> The recommendation already reflected the civilian logic of a single state, assigning the responsibility for abuse to the military while presenting the IPS as the solution. However, it was not implemented.

The 1993 Oslo Accords and ensuing negotiations between Israel and the Palestinian Liberation Organization (PLO) brought a sharp drop in prisoner numbers, which is arguably one reason why this recommendation of the Vardi report was shelved. The pace of arrests declined, and collective prisoner releases were carried out as part of the agreements. Israel withdrew from Palestinian cities where prisons were located (defined as Area A), and new prison facilities were built in more peripheral areas (areas B and C). Ketsiot and Ofer facilities were closed, and the total number of Palestinian prisoners fell to a low of just 800 by 2000.<sup>85</sup>

In 1996–97, due to the decrease in numbers, it was agreed between the ministries of defense and internal security that it was unnecessary to operate two carceral systems. The various rationales also echoed the Vardi report recommendations in favor of a switch of powers to the IPS. These included greater operational efficiency (avoiding redundancies and constant coordination between the two systems); the superior logistical and professional capacities of the IPS; reducing the cost to the military budget, which came at the expense of essential operations; and avoiding arbitrary differences in treatment of prisoners in the two systems.<sup>86</sup> Nevertheless, once again, the organizational transfer of the carceral apparatus to the IPS was not completed and the separation paradigm was maintained.

During the occupation period, then, the separation of prison systems was never absolute, since Palestinian prisoners have been held inside Israel and by the IPS since 1967. But, until 2000, the military carceral system was maintained as part of the organizational separation paradigm. What was new in the one-state period was the formal civilianization of incarceration: the military system was dismantled and the IPS was institutionalized as the state authority responsible for confining Palestinians.

It was the outbreak of the Second Intifada following the ultimate failure of Israel–PLO negotiations, toward the end of 2000, that brought about this transition. Hostilities intensified, the scale of arrests grew, and the number of Palestinian prisoners and security detainees rose sharply as the military summarily arrested around 6,000 detainees.<sup>87</sup> Ketsiot and Ofer were then hastily reopened in April 2002, and yet more Palestinian prisoners were transferred to prisons inside Israel.<sup>88</sup> The total number of Palestinian prisoners rose from 1,854 in 2001 (20 percent of the total prisoner population of 10,339) to 9,178 (44 percent of the total of 20,835) in 2006.<sup>89</sup> As complaints and legal challenges to the ill-treatment of

<sup>83</sup> *Sajadiyah*.

<sup>84</sup> IDF headquarters correspondence, March to June 1993, IDF Archive 1995-219-341. The Vardi report itself was never published in full.

<sup>85</sup> *Yassin*, 408; RIC, “Asirim” (report), 18 May 2009.

<sup>86</sup> Correspondence between the Ministry of Internal Security, Ministry of Defense, and IDF headquarters regarding reorganization of Palestinians’ imprisonment in the IDF, 1996–1997, IDF Archive 1999-182-300.

<sup>87</sup> *Hamoked*. Many detainees were released after screening and did not become prisoners.

<sup>88</sup> *Yassin*; *Yesh Din*.

<sup>89</sup> Ben-Natan, “Boundaries of the Carceral State,” 27–28.



detainees mounted, the HCJ raised the bar of human rights obligations toward Palestinians under military detention.<sup>90</sup> Crucially, due to the collapse and abandonment of the peace negotiations, the sustained increase in incarceration rates was no longer looking like a temporary spike but an issue to be managed for the long term.

In 2005, Israel initiated a unilateral withdrawal of military forces and settlements (“disengagement”) from the GS, which entailed closing the detention facilities therein and revoking the military orders under which Gazans had previously been detained. As incursions into Gaza continued, newly captured detainees were transferred to IPS prisons inside Israel and arrested under Israeli law.<sup>91</sup> These differences in the detention regimes between the WB and the GS were but part of the “division policy” between these areas that Israel adopted after Hamas took over Gaza’s government in 2007.

Politically, in the post-2000 one-state period, the Israeli government adopted a “no partner for peace” approach, under which it ceased any attempts, genuine or performative, at conflict resolution, including prisoner releases.<sup>92</sup> With the two-state solution off the table, the paradigm shifted from conflict to governance. The detention and management of Palestinian prisoners became an integral part of the role of the state for the foreseeable future. Recognizing this shift, the HCJ stated that “Israel will continue to hold significant numbers of security detainees.”<sup>93</sup> With Israeli-run prisons in the OPT having been previously abandoned, more prisons were now built and expanded inside Israel, creating large compounds comprising several facilities.<sup>94</sup> Currently, the Ofer facility remains the only Israeli prison on the fringes of the WB. Being located adjacent to a military court and military base, it can provide more support to military detention operations.<sup>95</sup> Until October 2023, the military also continued to operate only very small transitory facilities where detainees were held for short periods.

Critically, it was between 2005 and 2006 that the shift to a single carceral system was completed, when the entire organizational responsibility was transferred to the IPS. Although this reorganization had been contemplated since the Vardi report, its actual implementation was only seriously pursued in the era of the one state, when it aligned with the transformation from conflict to governance. The military prison facilities in Megiddo and Ketsiot in Israel, as well as Ofer prison, were all transferred to the IPS.<sup>96</sup> Although the military continued to arrest, prosecute, and sentence Palestinians in military courts, it ceased to be responsible for incarcerating them, thereby turning incarceration into an internal “homeland security” issue.<sup>97</sup> To manage the additional

<sup>90</sup> Hamoked; Yassin.

<sup>91</sup> See B’tselem, “Distant Relatives, Severe Restrictions Imposed on Prison Visits by Immediate Family to Gazans Held in Israel,” 22 January 2018, [https://www.btselem.org/gaza\\_strip/20180122\\_restrictions\\_on\\_gazans\\_prison\\_visits](https://www.btselem.org/gaza_strip/20180122_restrictions_on_gazans_prison_visits).

<sup>92</sup> 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, <https://www.addameer.org/sites/default/files/publications/addameer-report-reaching-the-no-peace-agreement.pdf>.

<sup>93</sup> Yassin, 408n73; RIC, “Asirim” (report), 18 May 2009.

<sup>94</sup> Gilboa prison was opened in 2004, adjacent to Shata prison in the north, and Ramon Prison was opened in 2006, adjacent to Nafha prison in the south. Both are described on the IPS website as intended to provide space for incarcerating Palestinian security prisoners. IPS, “Gilboa Prison,” accessed 26 November 2024, [https://www.gov.il/he/departments/PublicBodies/unit\\_gilboa](https://www.gov.il/he/departments/PublicBodies/unit_gilboa); IPS, “Ramon Prison,” accessed 26 November 2024, [https://www.gov.il/he/departments/PublicBodies/unit\\_ramon](https://www.gov.il/he/departments/PublicBodies/unit_ramon). The maximum occupancy is not formally set per prison, and the statewide occupancy is determined from time to time by the responsible minister. At any given time, each one of these new prisons has housed 650 to 950 prisoners.

<sup>95</sup> Ofer is located between Jerusalem and Ramallah.

<sup>96</sup> RIC, “Asirim” (report), 18 May 2009 2n8; IPS, Annual Report 2008, 48. See also B’tselem, “Statistics on Palestinians in Israeli Custody,” Notes on the data.

<sup>97</sup> On 9 February 2005, the chairperson of the Knesset Foreign Affairs and Security Committee explained in a Knesset plenary session that this would relieve thousands of military personnel from their duties guarding security

organizational and budgetary burden, the military has been assigning soldiers to the IPS, who perform their compulsory military service as guards in prisons housing Palestinian prisoners.<sup>98</sup> Ultimately, in 2010, ruling on a petition brought by the human rights organization Yesh Din against the mass transfer of prisoners, the HCJ legalized this policy, citing the long-term outlook of Palestinians' imprisonment and improved conditions as the primary justifications.

After the transfer of prisoners from the military, the number of prisoners in the IPS spiked from 13,869 in 2004 to 20,708 in 2006, constituting a rise of about 30 percent in the total prisoner population.<sup>99</sup> The World Prison Brief documented Israel's rate of incarceration as 208 per 100,000 inhabitants in 2004, rising to 302 per 100,000 in 2006, which reflects the transfer of Palestinian prisoners to the IPS.<sup>100</sup> All post-2006 figures place Israeli incarceration rates far higher than those of most developed countries and within the range of nondemocratic states such as Iran and Morocco or highly racially divided states such as South Africa and Brazil (which remain behind the United States as an outlier in its incarceration rates).<sup>101</sup> In 2020, Oren Gazal-Ayal predicted that by 2040 Israel would need to accommodate 9,300 security prisoners, approximately double the volume at that time.<sup>102</sup> That number has already been reached: as of June 2024, Israel holds 9,440 Palestinian security prisoners.<sup>103</sup>

The logic of external conflict once dictated an organizational division of labor and costs by which the military was considered responsible for Palestinians and negotiated the shared burden of incarceration with the IPS. But this has changed in the one state, shifting to governmental-managerial logics of the state such as efficiency, professional capacities, standardization, and human rights standards. The shift also channeled all long-term investment in the construction of prisons into Israeli territory, efficiently locating them adjacent to existing facilities and standardizing imprisonment conditions that would withstand judicial review and pressure from NGOs. Furthermore, the IPS came to be considered the professional organization fit for the job, which also freed military personnel to attend to other security missions.

### Carceral Citizenship

As the scale of incarceration increased dramatically in the one state, Israel's scaled citizenship regime incorporated thousands of carceral citizens. Although Israeli citizens maintain and exercise the right to vote even while incarcerated, in the one-state regime, Palestinians as noncitizens constitute a constant 30 to 45 percent of the civilian prison population, having no political representation or voting rights. These rates reflect the undemocratic and racially repressive nature of the one-state condition. However, paradoxically, the one state also creates additional rights for Palestinian prisoners vis-à-vis the state,

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prisoners. See [https://docs.google.com/document/d/1iwZ0qmDLH-cK7IRfAtVcWjA\\_rTTRRghP/edit?usp=sharing&ouid=114566386782193115200&rtfpof=true&sd=true](https://docs.google.com/document/d/1iwZ0qmDLH-cK7IRfAtVcWjA_rTTRRghP/edit?usp=sharing&ouid=114566386782193115200&rtfpof=true&sd=true) [Hebrew].

<sup>98</sup> Guy Israel Seidman, "Tsava Vehafrata," *Mishpat Ve'asakim* 17 (2014): 15–339. This was made possible through a legislative amendment, the Military Service Law (Temporary Provision) (assigning military personnel to the Prison Service), 2005.

<sup>99</sup> Ben-Natan, "Boundaries of the Carceral State."

<sup>100</sup> World Prison Brief, "Israel," 2023, <https://www.prisonstudies.org/country/israel>. For further analysis of statistical data, see Ben-Natan, "Boundaries of the Carceral State."

<sup>101</sup> Emily Widra, "States of Incarceration: The Global Context 2024," Prison Policy Initiative, June 2024, <https://www.prisonpolicy.org/global/2024.html>.

<sup>102</sup> RIC, "Sugiot beklifa be'Israel" (report), 3 June 2020, 41; <https://drive.google.com/file/d/1m2VHudPMnbjLclgTe9hi6DFQI4TsJOJs/view?usp=sharing>.

<sup>103</sup> B'tselem, "Statistics on Palestinians in Israeli Custody."

thereby establishing grounds for claims of equal treatment compared to other prisoners, which they seize upon to engage with the state in new ways. Following Bosniak, we argue that, despite not possessing citizenship as a formal status, carceral citizenship reflects citizenship as (limited) rights and political activity. Our analysis of court cases and other official documents demonstrates these aspects of rights-based and civic engagement between Palestinian prisoners and multiple mechanisms of the state and civil society.

Within a legal framework that was originally intended to apply only to Israeli citizens, the transfer of responsibility to the IPS meant that Palestinian prisoners became subject to Israeli law and IPS regulations, which left state authorities having to deal with these new rights-bearers. Once in the system, they gained direct access to civilian Israeli courts, inmate litigation, and IPS parole boards; and they became eligible to be represented by public defenders.<sup>104</sup> These are all rights to which prisoners held by the military or in the OPT are not entitled.

The state's discriminatory response was to curb the rights and benefits of this cohort. Based on our analysis of court cases and other documents, starting around 2002, visits to Palestinian prisoners began to be strictly limited; physical connection during family visits was severed by a separating glass; access to books, newspapers, and TV channels was restricted; higher education in the Israeli Open University was banned; access to private social workers and psychologists involved in reentry programs was prohibited; force-feeding of hunger-striking prisoners was legalized; and the IPS responded more aggressively to hunger strikes.<sup>105</sup> Such measures were described by Walid Daka, a longtime prisoner and a Palestinian citizen of Israel, as an "aspect of the shock doctrine ... during and after the second Intifada."<sup>106</sup>

Additionally, the Palestinian prisoners issue has acquired more prominence than ever before in Israeli politics, involving state agencies, civil society, and public discourse, as we further elaborate below. In line with growing populist trends in Israeli politics, ministers and politicians have adopted a "tough on Palestinians" stance in their rhetoric, often creating linkages between carceral policies and the politics of the conflict, turning the prisoners into bargaining chips of the Israeli government. Indeed, as we will show, government ministers have made this issue a platform for gaining media attention and popular support. Other public actors also engage in this issue, adopting various positions. The Knesset members, committees, and Research and Information Center (RIC) began to study this topic and frequently discuss it in public arenas; the PDO provides these prisoners with legal representation and increasingly criticizes their imprisonment conditions; and NGOs and other civil society actors have stepped up their involvement, some advocating for prisoners' rights and others, such as movements of victims of terrorism and families of Israeli captives, pushing back against them having any such rights.

Palestinian prisoners themselves have a long tradition of organizing: initiating hunger strikes and other protests alongside constant negotiations with prison authorities, which typify anticolonial struggles.<sup>107</sup> Since the Oslo Process and the Second Intifada, many of these strategies have continued, although some of them have weakened.<sup>108</sup> With the emergence of the one carceral state, prisoners have increasingly turned to means of

<sup>104</sup> Inmate litigation allows inexpensive petitions by prisoners against the IPS via Israeli District Courts. Both parole boards and inmate litigation can be appealed before the district courts and the Supreme Court.

<sup>105</sup> Walid Daka, "Consciousness Molded or the Re-Identification of Torture," in *Threat: Palestinian Political Prisoners in Israel*, ed. Abeer Baker and Anat Matar (Pluto Press, 2011), 234–53.

<sup>106</sup> *Ibid.*, 239.

<sup>107</sup> Mary Gibson, "Global Perspectives on the Birth of the Prison," *American Historical Review* 116, no. 4 (2011): 1040–63.

<sup>108</sup> Norman, *Palestinian Prisoners Movement*, 78.

claiming rights that are more typically associated with citizenship, such as bringing claims before the courts, either independently or with the help of lawyers and civil society organizations.<sup>109</sup> The prisons also became a site of encounter with other groups of prisoners, including Israeli Jews, with whom most Palestinians in the OPT would very rarely interact outside the prison, and with broader sectors of Israeli politics and society.<sup>110</sup> To a lesser extent, the prisons are also a space for encounter between Palestinians from the fragmented areas of Palestine (the WB and the GS) and Palestinian citizens of Israel.

Take the example of Muhammad, arrested during the Second Intifada. Thirteen years into his sentence, in an exchange with an Israeli judge while giving testimony in Hebrew, he looked back over his incarceration:

[When I was interrogated,] I didn't know Hebrew at all. I learned Hebrew in prison.... I read [about this case] a week ago in *Yediot Ahronot* [Israeli newspaper].... I study Hebrew at the university. [Judge: What do you study?] Democracy and dictatorship. Now they have banned this [program] so I study through a university in Gaza ... I am now studying history.... You will not find a person who wants peace, or, like, wants this mess in all of Palestine to end, more than I do. Because after I entered prison and met prison guards, I learned what is a Jew, or, like, an Israeli. I was brought up thinking that all Jews are bad. But when I started to know Jews in prison, the prison guards and the criminal prisoners... my thinking has changed. I don't think like that anymore.<sup>111</sup>

This passage captures multiple dimensions of Palestinian prisoners' carceral engagement with Israel, regardless of whether they come to the same conclusions (which may have been intended to please the Israeli courtroom audience). Like many others, Muhammad acquired language skills and followed the news as reported in Israeli newspapers, and he studied remotely at an Israeli university. And, when university access was banned in 2011, he and other prisoners resumed their studies by contracting a Palestinian university. The ambivalence of the colonial encounter intensifies in these carceral encounters, which effectively form a hybrid citizenship and identity.<sup>112</sup>

Through our analysis of documents and court cases, we mapped the following thematic examples, demonstrating how, since the 2000s, authorities have devised ways to deny the rights that Palestinian prisoners have automatically gained under liberal state law designed for Israeli citizens. These examples also illustrate different ways in which the prisoners challenge these repressive measures with a widening repertoire of civic engagement and resistance.

### *Classification as Security Prisoners*

The category of security prisoners has existed since 1958.<sup>113</sup> However, after 2000, its definition was expanded to include more prisoners and detainees, and, in 2002, the IPS

<sup>109</sup> Abeer Baker, "Asirim Falastininim Bein Hakehila Laprat—Mabat mibifnim," *Ma'asey Mishpat* 8 (2016): 95–112.

<sup>110</sup> With the blockade on Gaza, Israeli prisons also are where Palestinians from the GS and the WB meet, a subject that requires further research.

<sup>111</sup> Protocol in Jerusalem District Court, 31.12.2013, civil case 2538/00, *Estate of Yosef Avrahami v. The Palestinian Authority*. The prisoner, Muhammad (full name with the authors), was a witness, which had no bearing on his own case. Similar accounts appear in multiple interviews we conducted with former long-term prisoners.

<sup>112</sup> Homi K. Bhabha, "Of Mimicry and Man: The Ambivalence of Colonial Discourse," in *Tensions of Empire: Colonial Cultures in a Bourgeois World*, ed. Ann Laura Stoler and Frederick Cooper (University of California Press, 1997), 152–60.

<sup>113</sup> Levenkron, "Shata Prison Uprising."

changed its internal ordinances, specifying a different carceral regime.<sup>114</sup> These IPS rules provide that security prisoners are to be kept in separate wings from those of criminal prisoners, and visits were restricted to first- and second-degree family members only, excluding all men between 17 and 50 years old. Security prisoners are not allowed regular phone calls or furloughs; do not have access to educational activities, work, or conjugal visits; and have limited access to books, newspapers, television, and radio. Furthermore, the IPS may change a prisoner's status from security to criminal or exempt a prisoner from some of the restrictive conditions, after consulting with the Israeli Security Agency (Sherut habitaḥon haklali, acronym Shabak, also formerly known in English as Shin Bet or GSS). Our analysis of court cases shows that prisoners have been using the courts to challenge various aspects of this regime; some demand to be categorized as criminal prisoners, and others seek exemption from some of these restrictions.<sup>115</sup>

Although this classification system also is applicable to ultra-right-wing Jewish prisoners who target and harm Palestinians, very few Jewish prisoners have been categorized as security prisoners, and they are not housed in the same wings as their Palestinian counterparts. They are typically handed shorter sentences and are often acknowledged as qualifying for exemption from security prisoners' conditions.<sup>116</sup>

### Carceral Populism

The living conditions of Palestinian prisoners have become a matter of heated political debate, especially after the capture of Israeli soldier Gilad Shalit by Hamas in 2006. A popular movement for Shalit's release mobilized arguments against Hamas prisoners and demanded that the government harshen their allegedly luxurious imprisonment conditions to pressure the organization. Such new policies were described by the Knesset's RIC as "reflecting a criticism ... that security prisoners held by Israel receive improved conditions while Israeli captives and hostages who are held by terrorist organizations do not enjoy similar conditions, not even the minimum of visits by the International Committee of the Red Cross."<sup>117</sup>

The populist mobilization of the "too-good conditions" rhetoric remains a constant public issue, long after Shalit's release in 2011. The IPS's stated plan for 2012 was to "restrict and standardize living conditions of Palestinian prisoners across prisons, dispersing their leadership and isolating dominant figures."<sup>118</sup> When the RIC compared the living conditions of criminal and security prisoners in 2015, it found that the latter's were considerably harsher across the board, affecting, among other aspects, food, canteen account management, cigarette purchases, medical and dental treatment, and religious practices.<sup>119</sup> Facts, however, were not sufficient to mute the debates in the Knesset. For example, in a 2016

<sup>114</sup> Baker, "Asirim Falastininim.," Rachel Noah Hefetz, "Understanding Conflict Penalty: Dominant Themes and the Case of the Israeli–Palestinian Conflict," *Theoretical Criminology* 27, no. 4 (2023): 619–37. Relevant IPS ordinances (internal administrative regulations) include Ordinance 04.05.00, Process for Classifying a Security Prisoner, 29 October 2020, <https://tinyurl.com/yc2vnu2x> [Hebrew]; Ordinance 03.02.00, Rules Regarding Security Prisoners, 15 November 2020, <https://tinyurl.com/ymkf8eua> [Hebrew]; and Ordinance 04.04.00, Conditions in Administrative Detention, 11 February 2003, <https://tinyurl.com/3rvx2axj> [Hebrew].

<sup>115</sup> See next section, "Using the Courts." For example, the restrictions on visits were challenged in Appeal 6956/09, *Yunes v. IPS* (denied, 7 October 2010).

<sup>116</sup> Yehoshua, "Palestinian and Jewish Security Prisoners." See also HCJ 1130/18, *Anonymous v. IPS*, 2018, regarding the security classification of a Jewish prisoner.

<sup>117</sup> RIC, "Asirim" (report), 19 May 2009, 7n84.

<sup>118</sup> IPS, Annual Report 2011, 214.

<sup>119</sup> RIC, "Tna'ey hakli'a shel ha'asirim habit'honiyim bemitkaney hakli'a shel shabas" (report), 16 August 2015, [https://drive.google.com/file/d/15uJ\\_LyXBFXeC26o-9osQ35BqVJaQDoeP/view?usp=sharing](https://drive.google.com/file/d/15uJ_LyXBFXeC26o-9osQ35BqVJaQDoeP/view?usp=sharing).

plenary session, a member of the Knesset challenged the public security minister, arguing that “security prisoners receive outrageous conditions, such as many television channels, more than 200 products in the canteen, long and multiple visits, while Hamas holds the bodies of IDF fighters.”<sup>120</sup> The minister, Gilad Erdan, responded to the criticism:

The whole subject of academic studies ... has already been canceled. Even the matriculation exams have been canceled, except for minors to whom the state is bound [to allow exams] by the Geneva Convention. Security prisoners are not entitled to telephones, conjugal visits, furloughs, employment, and social services. For Hamas prisoners, visits also have been significantly reduced, the number of television channels was reduced and the number of purchases in the canteen was reduced.<sup>121</sup>

In 2018, Erdan appointed a public committee with a specific remit to review the conditions of security prisoners and identify any that could be limited even further. Following the committee’s recommendations, Erdan publicized their adoption, including “revoking security prisoners’ autonomy in prison,” cutting off money transfers, and limiting the “water usage time of the terrorists.”<sup>122</sup> These recommendations were not fully implemented at that time, however, partly because the security establishment opposed them.<sup>123</sup> The subsequent minister, appointed in 2022, Itamar Ben Gvir, changed the name of the ministry from public security to national security, and escalated both discourse and practice in pursuit of vindictive and populist policies, even more so after the beginning of the 2023 war on Gaza.<sup>124</sup>

### Using the Courts

To assess the effect of the one carceral state in terms of litigation, we searched the Nevo legal database for Supreme Court decisions on cases relating to Palestinian prisoners from 1967 to 2022, using the search terms “security prisoner” and “imprisonment conditions.”<sup>125</sup> Our initial search produced 260 results, and the final data set (after screening out unrelated cases) comprised 168 decisions. Of these, 146 cases concerned Palestinian noncitizens and citizens, and 22 concerned Jewish citizens classified as security prisoners.<sup>126</sup> Analysis showed that, in the period from 1967 to 2022, the vast majority of cases (102) have been brought since 2006, marking the turn to the era of the one carceral state. These published HCJ decisions constitute only a meager portion of the entire scope of litigation, not all of

<sup>120</sup> Knesset plenary session, 22 June 2016, MK Elazar Stern, 227.

<sup>121</sup> Plenary session, 22 June 2016, 228. Other examples include a government decision from 2017, “pressuring Hamas by halting family visits to prisoners from the GS,” which was legally challenged by prisoners and denied by the HCJ: HCJ 6314/17, *Namnam v. Government of Israel*, 4 June 2019; Knesset plenary session, 28 June 2018.

<sup>122</sup> Ministry of National Security, “Revoking Security Prisoners’ Autonomy,” 2019, <https://www.gov.il/en/pages/security-prisoner-conditions-020119>.

<sup>123</sup> Amos Harel and Josh Breiner, “IDF, Shin Bet Oppose Plan to Crack Down on Security Prisoners over Fear of Unrest,” *Haaretz*, 6 November 2018, <https://www.haaretz.com/israel-news/2018-11-06/ty-article/.premium/idf-shin-bet-oppose-plan-to-crack-down-on-security-prisoners-over-fear-of-unrest/0000017f-e072-d568-ad7f-f37b9d5a0000>. Our interviews support this point.

<sup>124</sup> Henriette Chacar, “Israeli Far-Right’s Ben-Gvir to Be National Security Minister under Coalition Deal,” Reuters, 28 November 2022, <https://www.reuters.com/world/middle-east/netanyahu-party-signs-first-coalition-deal-with-israeli-far-right-2022-11-25>.

<sup>125</sup> <https://www.nevo.co.il>, by subscription. The proceedings include direct petitions (Bagatz, referred to as HCJ) and appeals on decisions of district courts.

<sup>126</sup> Of the 22 cases, 10 are by or about Yigal and Hagai Amir, convicted of murdering Prime Minister Yitzak Rabin. For the purposes of analysis, we inferred ethnicity by name, which made it impossible to distinguish between Palestinian citizens and noncitizens. However, the treatment of these two groups does not differ. Although we cannot determine numbers, most litigation concerns noncitizens or does not distinguish between them.



which is published, starting in parole committees and district courts. According to one report, during the 2.5 years from 2013 to mid-2015, approximately 15,447 petitions were submitted to the district courts by security prisoners.<sup>127</sup>

The proceedings we analyzed included strategic litigation by NGOs seeking to extend or limit prisoners' rights, and proceedings on behalf of individual prisoners. To map the issues raised by prisoners, we classified them into 14 categories, presented here with the number of respective cases we identified: release, parole, and parole revocation (68); imprisonment conditions (43); accompanied leave or furlough (13); visitation (10); family connections and reproductive rights (10); classification as criminal/security and in-prison organizational affiliation (9); schooling and academic education (7); transfer between prisons (7); deportation after release (5); solitary confinement (5); conviction and punishment (5); meeting with counsel (4); hunger strike treatment (3); and access to rehabilitation (2).<sup>128</sup> The diversity of issues exemplified here shows that prisoners use the courts to challenge a wide range of decisions pertaining to their length of sentence as well as their individual treatment over the course of imprisonment.

### Prison Overcrowding

One of the consequences of mass incarceration is severe and chronic overcrowding of prisons.<sup>129</sup> In 2014, several NGOs petitioned the HCJ over the continuous violation of the prisons' maximum occupancy and the legal minimum living space per prisoner. As mentioned earlier, in 2017 the HCJ ordered the state to reduce overcrowding within 18 months.<sup>130</sup> Although the case may seem unrelated to Palestinian prisoners, our analysis, outlined above, shows that the increasing imprisonment of Palestinians in the one carceral state was the critical contributing factor that led to overcrowding in the first place. After the HCJ decision was given, the state excused its noncompliance by arguing, *inter alia*, that a third of the prisoner population comprised Palestinian security prisoners who were allegedly too dangerous for early release or parole. The Knesset also amended provisions regarding early administrative release so that they categorically excluded security prisoners, a decision that was challenged jointly by individual prisoners and Adalah, the Legal Center for Arab Minority Rights in Israel.<sup>131</sup> The new carceral emergency of 2023 seems to have frustrated decrowding for the foreseeable future, showing once again the impact of the Palestinian prisoners issue on the entire Israeli carceral landscape.

### Eligibility for Parole

In practice, parole has always been very difficult for Palestinian prisoners to obtain, even when it theoretically applied to them. Since 1967, parole arbitrarily applied only to those

<sup>127</sup> RIC, "Tna'ey hakli'a" (report), 16 August 2015, 23n118. This does not attest to rates of success. Most proceedings by prisoners are denied by the courts, but they may achieve some results by "negotiating in the shadow of the court" with state representatives. See Yoav Dotan, "Judicial Rhetoric, Government Lawyers and Human Rights: The Case of the Israeli High Court of Justice During the Intifada," *Law and Society Review* 33 (1999): 319–63; Shiri Krebs, "Lifting the Veil of Secrecy: Judicial Review of Administrative Detentions in the Israeli Supreme Court," *Vanderbilt Journal of Transnational Law* 45, no. 3 (2012): 639.

<sup>128</sup> Security prisoners are further classified by specific organizational affiliation such as Hamas or Fatah. Prisoners may seek to change their affiliation, or be classified as criminal prisoners, for which they should show that they severed their connections with any such organization.

<sup>129</sup> Jonathan Simon, "The New Overcrowding," *Connecticut Law Review* 48, no. 4 (2016): 1191–1216.

<sup>130</sup> HCJ 1892/14, *Association for Civil Rights in Israel v. Minister of Public Security*, 13 June 2017.

<sup>131</sup> HCJ 1406/19, *Anonymous v. The Knesset*, 27 February 2022; Oren Gazal-Ayal and Fadi Makalda, "Mahapekhat hashihurur haminhali—mimediniyut Kli'a mevuseset bikush lemediniyut mevuseset hetsa," *Iyuney Mishpat* 47, no. 1 (2023): 1–71.

Palestinian prisoners held inside Israel and by the IPS. In 2001, Israel enacted a new Parole Law with mostly Israeli citizens in mind, assigning great importance to rehabilitation programs. Since security prisoners had always been excluded from such programs, the law rendered their chances of being granted parole even slimmer. When the one carceral state was consolidated in 2006, all Palestinian prisoners became subject to the law and theoretically eligible for parole. However, under this new law, and because parole decisions remained highly discretionary, the parole boards developed distinct standards for security prisoners, making releases almost impossible to attain.<sup>132</sup> Netanel Dagan analyzed 207 decisions of the Israeli parole boards, showing that security prisoners were overwhelmingly denied parole (91.78 percent of the study sample from 2019 to 2020).<sup>133</sup> Dagan concluded that parole boards constructed “enemy parole” as an exceptional, exclusionary, and punitive process disguised as inclusionary and equal.

### *Eligibility for Rehabilitation and Reentry Programs*

The 2001 Parole Law created an incentive for Palestinian prisoners to undertake rehabilitation and reentry programs. IPS policy has long been to deny security prisoners access to these, but it was not until 2012 that this policy was enacted into law.<sup>134</sup> For the first time, the Prisons Ordinance was amended to formally limit such programs only to prisoners “who are residents of Israel,” which of course excludes all Palestinians from the OPT.<sup>135</sup> The rationale offered by the IPS was that security prisoners are ideologically motivated and supported by their own society and are therefore “irredeemable” with regard to their motives, and that the IPS should not engage in attempting to change their ideology.<sup>136</sup>

In a bid to surmount this obstacle, prisoners and defense lawyers have suggested alternative plans delivered by private reentry services. Attempting to block this route, in 2015, the IPS prohibited visits to security prisoners by private social workers and therapists, who were essential to preparing such plans. Our research found that several prisoners petitioned the HCJ against this prohibition, and the PDO submitted an amicus curiae brief in support of the petitions. This collaboration between civil society actors and Palestinian prisoners was successful in that the court ordered the IPS to enable the visits.<sup>137</sup>

### *Academic Education*

Academic education in prison used to serve Palestinian prisoners as a primary route to personal growth.<sup>138</sup> Unlike the informal education of the prisoners’ movement, academic studies confer degrees that prisoners can benefit from once released. Since prisoners, in general, were allowed to undertake academic studies through the Israeli Open University, once Palestinian prisoners were included in the IPS, they, too, enjoyed this right. They took courses taught in Hebrew, including content on Israeli society, history, and politics (the IPS having banned the study of sciences, considered high risk due to potentially delivering

<sup>132</sup> Maya Rosenfeld and Rachel Noah, “Va’adot (i) shihurim? Mabat Empiri el ever hashihurim hamukdam be’Israel bere’i hamegama letsimtsum shi’ur hakli’a,” *Hukim* 15 (2021): 9–66.

<sup>133</sup> Dagan, “Enemy Parole.”

<sup>134</sup> Hedi Viterbo, “Rights as a Divide-and-Rule Mechanism: Lessons from the Case of Palestinians in Israeli Custody,” *Law & Social Inquiry* 43, no. 3 (2018): 764–95. PDO, “Tna’ey hama’atzar vehama’asar bemitkaney hakli’a shel sherut batey hasohar bashanim 2013–2014” (report), July 2015, 29, [https://www.gov.il/BlobFolder/reports/public\\_defender\\_detention\\_and\\_imprisonment\\_conditions\\_reports/ar/prison\\_conditions\\_report\\_2013\\_2014.pdf](https://www.gov.il/BlobFolder/reports/public_defender_detention_and_imprisonment_conditions_reports/ar/prison_conditions_report_2013_2014.pdf).

<sup>135</sup> Prisons Ordinance [New Version] (Amendment No. 42) Law, 5772–2012.

<sup>136</sup> Viterbo, “Rights.”

<sup>137</sup> RA 4644/15, *Ra’i v. IPS*, 15 June 2016.

<sup>138</sup> Viterbo, “Ties of Separation.”

knowledge of explosives).<sup>139</sup> However, in 2011, Prime Minister Netanyahu declared a ban on all academic studies among security prisoners, in response to Hamas holding captive the Israeli soldier Gilad Shalit, thereby discontinuing the studies of 210 prisoner students who were already enrolled. This ban has remained in place ever since, despite the time that has elapsed since Shalit's release in 2011.

Several prisoners, represented by the Association for Civil Rights in Israel, petitioned the HCJ against this ban in 2012.<sup>140</sup> Researchers and professors from the Open University submitted an *amicus curiae* brief supporting the petition, explaining the benefits of higher education to prisoners. Pushing back, the right-wing Legal Forum for Eretz Israel argued that allowing studies went against the retributive principle that prisoners should suffer as part of their punishment. The HCJ denied the anti-ban petition, ruling that Israel has no obligation to provide higher education to security prisoners. However, as the aforementioned testimony of Muhammad shows, this was not the only possibility that prisoners pursued, and many opted to resume their studies with a Palestinian university instead (a fact the IPS is aware of but does not authorize).

### *Hunger Strikes and Force-Feeding*

Palestinian prisoners have historically used hunger strikes to protest and pressure prison authorities.<sup>141</sup> In the one carceral state, the treatment of all hunger strikes became subject to Israeli law and IPS management, as well as to Israel's Patient's Rights Act and medical treatment by civilian hospitals and doctors. In 2004, a collective hunger strike was treated harshly and failed to yield any significant results.<sup>142</sup> In 2012, prisoners launched another mass hunger strike that was more successful, demanding the end of long-term solitary confinement, the resumption of academic studies, and family visits from Gaza. Israel agreed to remove 18 out of 19 Palestinian prisoners from long-term solitary confinement, among other concessions.<sup>143</sup>

In 2015, Israeli efforts to quell hunger strikes moved to the next level. For the first time, the Knesset legalized the force-feeding of prisoners under the Law to Prevent Harm Caused by Hunger Strikes, effectively overriding the Patient's Rights Act that gives primacy to the dignity and informed consent of the individual patient.<sup>144</sup> This amendment permits, in some instances, coerced medical treatment and force-feeding, creating a procedure for legal, rather than medical, authorization of force-feeding, in which the court should consider "risk to human life or a real risk of serious harm to national security."<sup>145</sup> In response, the Israeli Medical Association (IMA) and several human rights NGOs (including the Palestinian, Gaza-based, Al Mezan Center for Human Rights, and the Palestinian-citizens', Israel-based, Youssef al Sadik Society for Prisoner Support), petitioned the HCJ on the matter. They argued that

<sup>139</sup> RIC, "Limudim akademyim shel asirim bit'ho'niyim" (report), 28 November 2013, [https://drive.google.com/file/d/1FfID-BCRi4MvM2xN\\_KNgG0eponSuDZDb/view?usp=sharing](https://drive.google.com/file/d/1FfID-BCRi4MvM2xN_KNgG0eponSuDZDb/view?usp=sharing).

<sup>140</sup> Additional Hearing 204/13, *Salah v. IPS*, 14 April 2015.

<sup>141</sup> Malaka Shwaikh, "Engendering Hunger Strikes: Palestinian Women in Israeli Prisons," *British Journal of Middle Eastern Studies* 49, no. 4 (2022): 507–25; Farraj, "Rejecting Defeat."

<sup>142</sup> Daka, "Consciousness Molded," 242–44.

<sup>143</sup> Addameer, "Administrative Detention in the Occupied Palestinian Territory: A Legal Analysis Report," 3rd ed., 2013, 9, [https://www.addameer.org/sites/default/files/publications/legal\\_analysis\\_report\\_english\\_final\\_4.pdf](https://www.addameer.org/sites/default/files/publications/legal_analysis_report_english_final_4.pdf).

<sup>144</sup> Prisons Ordinance [New Version] (Amendment No. 48) Law, 5775-2015. The Prisons Ordinance is the primary legislation authorizing and regulating prisons, and thus different from IPS Ordinances, which are internal regulations.

<sup>145</sup> Prisons Ordinance [New Version] (Amendment No. 48) Law, 5775-2015, Article 19.

the amendment was unconstitutional under Israel's Basic Law: Human Dignity and Liberty, but the court denied the petition, alluding to the permanence of Israel's responsibility for the lives of Palestinian prisoners and citing national security concerns.<sup>146</sup>

Despite the HCJ's ruling, however, the government's attempt seems to have failed. The IMA still prohibits Israeli physicians from administering force-feeding, in line with the policy of the World Medical Association. Israel has reportedly been seeking to hire foreign physicians instead.<sup>147</sup> At the same time, the IPS changed its general approach to hunger strikes—and for the worse: in 2017, a hunger strike of over 1,500 Palestinian prisoners was countered with harsh measures and achieved only one demand, additional family visits, out of a longer list.<sup>148</sup>

Together, the foregoing thematic examples demonstrate how holding Palestinian prisoners inside Israel has involved multiple sectors shaping and contesting carceral policies, far beyond those concerned with civil rights and prisoners' rights. These include, inter alia: higher education and healthcare systems; professionals such as doctors, professors, and social workers; and social movements, professional associations, and NGOs. Entities involved in legal proceedings include Israeli organizations on both sides of the political divide, as well as collaborations in the one state across ethnic, political, and geographical lines, with organizations of Palestinian citizens of Israel and Palestinians in the OPT.<sup>149</sup> The Palestinian prisoners issue has come to occupy multiple core institutions of the state.

### Postresearch Reflections: Detentions during the War on Gaza

As part of the war on Gaza that began in October 2023, there has been another peak in carceral operations. As in previous hostilities, large numbers of Palestinians have been detained; but, this time, the military has been left without any sizable detention facilities. To solve this problem, two new military facilities were hastily erected, in Sde Teiman in southern Israel and Anatot in the WB. As of August 2024, the military had arrested around 14,400 Palestinians, some of whom have been released; 6,100 were added to IPS facilities.<sup>150</sup>

At least 4,500 detainees from the GS have been detained in the Sde Teiman facility under the 2002 Incarceration of Unlawful Combatants Law, which allows for longer periods of incommunicado detention than the military law in the WB.<sup>151</sup> A series of legislative amendments after 7 October 2023 extended even further the permitted duration of incommunicado detention and prevented any monitoring of these detention facilities for months on end, creating a screen behind which horrific conditions, torture, and ill-treatment have been documented.<sup>152</sup> Due to these reports and under pressure from the media, NGOs, and the HCJ, the state announced its intention to transfer prisoners from the military facilities to the IPS and close the Sde Teiman detention camp. By June 2024, 1,415 detainees defined as

<sup>146</sup> HCJ 5304/15, *Israel Medical Association (IMA) v. The Knesset*, 11 September 2016, <https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Israel%20Medical%20Association%20v.%20Knesset.pdf>.

<sup>147</sup> Michael T. Samuel, "The Jurisprudence of Elimination: Starvation and Force-Feeding of Palestinians in Israel's Highest Court," *International Journal of Law in Context* 18 (2022): 156–74.

<sup>148</sup> Smadar Ben-Natan, "Politics on Empty Stomachs: Palestinian Prisoners Demand Dignity and Self-Determination," *Social Justice* (blog), 23 May 2017, <https://socialjusticejournal.org/politics-on-empty-stomachs>; Peter Beaumont, "Mass Palestinian Hunger Strike in Israeli Jails Ends after Visitation Deal," *Guardian*, 27 May 2023, <https://www.theguardian.com/world/2017/may/27/mass-palestinian-hunger-strike-israel-ends>.

<sup>149</sup> Hassan Jabareen, "Transnational Lawyering and Legal Resistance in National Courts: Palestinian Cases before the Israeli Supreme Court," *Yale Human Rights and Development Law Journal* 13 (2010): 239.

<sup>150</sup> HCJ 4268/23, Submission by the State, 4 August 2024, [https://01368b10-57e4-4138-acc3-01373134d221.usrfiles.com/ugd/01368b\\_f32f5ef6555f45d8b5a9659cc44383fc.pdf](https://01368b10-57e4-4138-acc3-01373134d221.usrfiles.com/ugd/01368b_f32f5ef6555f45d8b5a9659cc44383fc.pdf) [Hebrew].

<sup>151</sup> *Ibid.*

<sup>152</sup> Qiblawi et al., "Strapped Down."

unlawful combatants had been transferred to the IPS.<sup>153</sup> A new permanent military detention facility was also recently opened adjacent to the IPS-managed Ofer prison in the WB, which is constructed according to the same standards as IPS facilities, and has absorbed many of the new detainees.<sup>154</sup> As of August 2024, Anatot facility in the WB had been emptied and closed, and the occupancy in Sde Teiman has now been drastically reduced.

These developments suggest that, so far, military detention continues to be an exceptional short-term and flexible measure, and that IPS imprisonment of Palestinians continues to be the rule. Like other facilities in the past, Ofer prison in the WB has now been turned into another multifacility compound. Since the new wing, managed by the military, is described as consistent with IPS standards, it could potentially be transferred to the IPS in the future. Meanwhile, the engagement of civil society with detained Palestinians continues, with petitions demanding the closure of the Sde Teiman facility submitted by several NGOs. It is reported that the current national security minister, the extremist Itamar Ben Gvir, has ordered drastic reductions in food rations and has discontinued the collective purchase of food items, which is also currently being challenged in the HCJ. A major report on these new abusive policies was made public by the Israeli NGO B'tselem.<sup>155</sup>

Unlike before, “unlawful combatants” status (which was hardly used prior to October 7, 2023) has now become an additional subclassification within the security prisoners category that distinguishes between prisoners from the WB and those from the GS (a large proportion of whom are classified as unlawful combatants). This constitutes yet another facet of fragmentation in the scaled citizenship regime of the one state, mirroring Israel’s policy of distinction between the WB and the GS, internalizing it in the carceral apparatus, and under it subjecting detainees from Gaza to harsher conditions.

As part of this new policy, the PDO has effectively been prevented from representing these Gaza detainees.<sup>156</sup> A bill proposing that the PDO be officially barred from doing so is pending at present, and the PDO has reportedly opposed it.<sup>157</sup> The PDO has, however, conducted visits to IPS facilities to monitor detention conditions and issued a special report criticizing the extreme deterioration in the treatment of both criminal and security prisoners since the war began.<sup>158</sup> Such attempts to restrict the PDO are also part of a broader attack on the legal system by the far-right Israeli government in power. Government ministers and supporters now vocally and unabashedly advocate for vindictive policies, one of which is seeking to maintain the Sde Teiman military facility. The one carceral state has further increased internal fragmentation by differentiating detainees from the Gaza Strip amid mounting demands to end any inclusionary and rights-granting policies that might apply to Palestinian prisoners.

## Conclusion: In the One Carceral State

The perverse citizenship regime of the one state does not treat Palestinian prisoners as citizens, either by legal status or by identity, two aspects of exclusion.<sup>159</sup> At the same time, it

<sup>153</sup> B'tselem, “Statistics on Palestinians in Israeli Custody.”

<sup>154</sup> HCJ 4268/23, Submission by the State, 4 August 2024.

<sup>155</sup> HCJ 4268/24, demanding that detainees cease to be held in Sde Teiman Facility; HCJ 2858/24, demanding to stop the starvation policy targeted at security prisoners; B'tselem, “Welcome to Hell.”

<sup>156</sup> Email correspondence with Deputy to the National Public Defender, 7 July 2024.

<sup>157</sup> Chen Maanit and Noa Shpigel, “Israel’s AG Opposes Bill to Deny Public Legal Representation to Hamas Terrorists,” *Haaretz*, 21 January 2024, <https://www.haaretz.com/israel-news/2024-01-21/ty-article/.premium/israels-ag-opposes-bill-to-deny-public-legal-representation-to-hamas-terrorists/0000018d-2bdd-dd75-addd-fbfdee9a0000>.

<sup>158</sup> Ministry of Justice, Public Defender’s Office, “Tna’ey hakli’a bemitkanev Sherut Batey Hasohar: Doh meyuhad al reka matsav h’herum hakli’ati,” 2024, <https://tinyurl.com/2bdb9y3j>.

<sup>159</sup> Bosniak, “Citizenship Denationalized.”

does provide them with a limited set of rights and benefits, and access to mechanisms for claiming them, but only under conditions of incarceration.<sup>160</sup> Some of these rights are afforded inadvertently, as unintended consequences or collateral damage to including Palestinians in a system originally designed for full citizens. Others are provided intentionally, as means to maintain order and control and to comply with international and domestic legal standards. The rights aspect of carceral citizenship should be contrasted not only with the rights of Jewish citizens, in which Palestinian prisoners are clearly disadvantaged, but also with “free” Palestinians in the OPT, who are systematically subjected to Israeli violence and oppression, absent the legal recourse to which prisoners are entitled.<sup>161</sup>

It is the prisoners themselves who increasingly incorporate these rights-based means into their repertoire of resistance, utilizing practices of claiming and negotiating rights vis-à-vis the state.<sup>162</sup> In so doing, their repertoire expands to political activity and civic engagement, the third aspect of citizenship, liaising with a range of state agencies and civil society actors. As Muhammed’s testimony demonstrates, political engagement also is facilitated by acquiring language, which many prisoners do. It enables one to take part in political and social life, such as by reading newspapers, and is a common requirement in naturalization, attesting to one’s ability to engage in society.

But this civic engagement with Israel does not mean that these prisoners abandon Palestinian society, where they also are citizens in the crucial sense of their identity and solidarity with other Palestinians. Carceral citizenship places them in a liminal position. Metaphorically speaking, just like individuals with dual citizenship, they practice civic engagement with Palestine and Israel simultaneously: with the one state. A perfect example of this dynamic is the ban on academic education: prisoners both challenged the ban in Israeli courts (and failed) and switched civic spaces by replacing the Israeli university with a Palestinian one.

The idea of carceral citizenship in Israel/Palestine as a racial regional formation applies to Palestinians—indigenous yet stateless, refugees and internally displaced, racially constructed as undesirable—who are included only in so far as their citizenship rights are recognized due to their incarceration.<sup>163</sup> The regional logic of the one state in Palestine/Israel is to incorporate these prisoners into Israeli territory, in contrast to Lloyd’s examples of Haitian refugees and Guantanamo Bay detainees, whom the US did its utmost to keep offshore as a way to exclude them from rights under the law.

Unlike offshore detention, incorporating detainees does not result in a “vacuum of rights.”<sup>164</sup> Rather, it includes them within a regime of rights that, as observed by Miller and Stuart, comprises both coercion and care.<sup>165</sup> The coercive effect of incarceration is almost self-explanatory: it denies freedom of movement, rights, entitlements, and simple pleasures; and it creates subordination, duties, and restrictions, often subjecting prisoners to violence, torture, and abuse. Against this backdrop, the idea that prisoners are governed through care may seem counterintuitive. Perhaps the best way to demonstrate it is by contrasting today’s Israeli prisons with the Hamas deportation of 1992, which reflected an earlier regional logic of exclusion beyond state borders. Deportation to the rural mountains of southern Lebanon, from the perspective of Israel, constituted a form of banishment,

<sup>160</sup> Miller and Stuart, “Carceral Citizenship.”

<sup>161</sup> Palestinians in the OPT have a much more limited recourse to the Israeli legal system, only through the HCJ. See Kretzmer and Ronen, *Occupation of Justice*.

<sup>162</sup> Anna Johansson and Stellan Vinthagen, “Dimensions of Everyday Resistance: An Analytic Framework,” *Critical Sociology* 42, no. 3 (2016): 417–35. Farraj, “Rejecting Defeat.”

<sup>163</sup> Lloyd, “Carceral Citizenship in an Age of Global Apartheid.”

<sup>164</sup> Compare Berda, “Citizenship As a Mobility Regime,” 102.

<sup>165</sup> Miller and Stuart, “Carceral Citizenship.”



abandonment to “bare life” in Agamben’s terms, as deportees were given no protection by status, not even from the elements, nor provided with any basic means of subsistence. What Agamben’s concept of bare life misses and Lloyd’s regional formation captures is the regional context and quasi-sovereignties in which Hezbollah took the deportees under its wing. But both conceptualizations failed to consider the deportees’ agency in organizing a training camp, capturing the attention of international media, and building the power of their organization. This outcome was also not foreseen by Israel; sanctioning total exclusion also means renouncing control.

Inclusion in the carceral state thus embodies a trade-off between care and control. Incarceration triggers a set of rights to physical conditions such as shelter, food, and health services, visits by families, entitlement to public defenders, access to parole committees, courts, and independent monitoring of prisons, and contact with a range of professionals that includes educators, probation officers, and social workers. Care also is provided by voluntary bodies and professionals, including human rights NGOs, lawyers, and psychologists. Although many of these were intended to serve Israeli citizens, some actors (notably, the PDO and human rights NGOs) devote unique attention to Palestinian prisoners, practicing genuine care toward them.<sup>166</sup> The connections between prisoners and Israeli civil society are not merely technical. Many public defenders representing Palestinian prisoners and other professionals in human rights NGOs are, themselves, Palestinian citizens of Israel. It is not the type of care we know from other contexts, nor one that anyone would choose over freedom, yet it extends beyond control to include solidarity, compassion, and human connection that those not participating in carceral life find hard to imagine. As Irit Ballas argues, based on interviews with Palestinian-Israeli lawyers representing Palestinians, “[these lawyers] challenge the very boundaries of the political community promoted by the state ... they promote an indigenous community of Palestinians from both sides of the border, a nation-state with different borders, or a universal political community.”<sup>167</sup>

Looking beyond expansion and annexation as the main features of the one state, the one carceral state lens reveals a movement in the other direction: from external to internal, from military to civilian, and from temporary to permanent. The state has internalized the incarcerated Palestinian population into the territory and civilian government mechanisms of Israel, and the military carceral system has been dismantled and absorbed into the core organizational apparatus of the state.

As Israel is camouflaging its one-state condition under the guise of separate sovereignty, our analysis shows that the one carceral state reflects the actual governance and citizenship regime, which goes much deeper than the contours of borders and formal status. Sovereignty that is bound by territory and international law serves as a smokescreen to obscure the organizational apparatus that transcends these boundaries. Organizational changes should be taken as primary evidence of the transition to a one-state regime, and their effects are not limited to the carceral apparatus but involve major state institutions, civil society, and professional communities. Inside the prison system, the old separation has been internalized, constituting a new hierarchical segregation of security and criminal prisoners. This new citizenship regime is created through layers of organizational, legal, and administrative means, but has so far remained hidden behind prison walls. The unfolding prison overcrowding catastrophe, cramming individuals from the entire one state into the same

<sup>166</sup> Kenneth Mann and David Weiner, “Creating a Public Defender System in the Shadow of the Israeli–Palestinian Conflict,” *New York Law School Law Review* 48 (2003): 91–124.

<sup>167</sup> Irit Ballas, “Territoriality and Status in Human Rights Litigation: The Case of Israel/Palestine,” *Social & Legal Studies* 32, no. 4 (2023): 697. Ballas interviewed 25 Israeli lawyers, 14 of whom were Palestinian citizens of Israel. See also Jabareen, “Transnational Lawyering.”

prison system, and subjecting Palestinians to torturous treatment, epitomizes Israel's carceral system as the regime of the one state.

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