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Israel-Hamas prisoner swap casts harsh light on detention practices of all sides

The prisoner exchange involving Israeli soldier Gilad Shalit and 477 Palestinian prisoners highlights the need for the humane treatment of all detainees in Israel and the Occupied Palestinian Territories (OPT), Amnesty International said today.

“This deal will bring relief to Gilad Shalit and his family after an ordeal that has lasted more than five years. Many Palestinian families will feel a similar sense of relief today when they are reunited with their relatives, many of whom have spent decades under harsh conditions in Israeli detention,” said Malcolm Smart, Amnesty International’s Middle East and North Africa Director.

“However, more needs to be done to protect the rights of thousands of others who remain in detention. The Israeli authorities, the Hamas de facto administration in Gaza, and the Palestinian Authority in the West Bank must seize this opportunity to ensure respect for the rights of all prisoners and detainees in their custody.”

Gilad Shalit was captured by Palestinian armed groups from Gaza in a cross-border raid on 25 June 2006. Since then he has been allowed no contact with his family, who have campaigned relentlessly for his release. Nor was he allowed access to the International Committee of the Red Cross, despite repeated appeals by Amnesty International and other organizations, which made it impossible to verify the conditions of his captivity.

Amnesty International has repeatedly called on the Hamas authorities not to treat Gilad Shalit as a hostage and a bargaining chip, in violation of their obligations under international humanitarian law.

It has also consistently raised concerns with the Israeli authorities about the prison conditions of Palestinian detainees, and the fact that Israel continues to imprison Palestinians from the OPT inside Israel, in violation of its obligations under the Fourth Geneva Convention.

Over 5,200 Palestinians from the West Bank – including East Jerusalem – and the Gaza Strip, which together comprise the OPT, are currently detained in facilities run by the Israel Prison Service. The vast majority are detained inside Israel.

“International human rights standards and international humanitarian law guarantee every person deprived of liberty the right to humane and dignified conditions of detention, adequate medical care, and regular family visits,” said Malcolm Smart.

“Israel, the Hamas de facto administration, and the Palestinian Authority must ensure that all detainees receive fair and prompt trials meeting international standards, and that judicial rulings on the release of detainees are implemented”.

Since 27 September, hundreds of Palestinian prisoners have been on hunger strike in protest against recent punitive measures imposed by the Israeli authorities.

Prisoners are demanding that the Israel Prison Service end the arbitrary isolation of prisoners and allow them regular family visits.

The fact that they are detained on Israeli territory makes it difficult, if not impossible for their families to visit them, as the Israeli authorities often refuse to grant them travel permits. Israel suspended family visits for all prisoners from Gaza in June 2007, in a punitive policy that penalizes both the detainees and their families.

The 477 prisoners released by Israel today, including 450 men and 27 women, include 275 sentenced by Israeli military courts to one or more life terms. Prisoners released include those convicted of ordering or carrying out attacks on Israeli civilians.

The Israeli High Court of Justice yesterday rejected appeals against the release filed by Israeli families and organizations opposed to the deal.

In two months time, another 550 prisoners, who have not yet been identified, are due to be released in the second phase of the deal.

Two hundred and seventeen of the prisoners released today will return, without restrictions, to their homes in the Gaza Strip, Israel or the occupied West Bank, including East Jerusalem.

Fifty-five prisoners will return to their homes in East Jerusalem or other parts of the West Bank under a "security arrangement" which will restrict their movement and subject them to regular monitoring by the Israeli authorities.

Another 164 prisoners from the West Bank, including East Jerusalem will be transferred to the Gaza Strip. According to the Israel Prison Service, 18 of them will be transferred for three years; it is unclear if or when the other 146 will be allowed to return to their families.

While the West Bank, including East Jerusalem, and the Gaza Strip are internationally recognised as a single territorial unit under the Oslo Accords and international humanitarian law, the Israeli authorities do not allow Palestinians living in the Gaza Strip access to the West Bank or vice versa. These Palestinians will thus be entirely cut off from their family members with no possibility of visits.

Finally, 41 prisoners, including one woman, will be exiled abroad. Most of them are serving life sentences.

It is unclear whether they are being exiled permanently or will be allowed to return to their homes in the OPT at some point in the future.

Article 49 of the Fourth Geneva Convention prohibits an occupying power from forcibly transferring or deporting people from an occupied territory. In the event that those prisoners being exiled abroad or transferred to Gaza from the occupied West Bank, including East Jerusalem, have not given their consent, Israel would be violating its obligations under international humanitarian law.