

The prisoners' exchange; what price?

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After last month's astonishing speculation about a breakthrough in the prisoner exchange negotiations between the Islamic Resistance Movement (Hamas) in Gaza and Israel, it is now clear that the swap deal brokered by Germany has run into a brick wall.

This high stake diplomatic poker match was expected to result in the release of the French citizen and Israeli soldier Gilad Shalit in exchange for hundreds of Palestinian prisoners held in Israeli jails.

Five obstacles appear to have brought the process to a grinding halt: (1) Israel's refusal to release all the prisoners demanded by Hamas in return for Shalit. (2) Its insistence that some of the main Palestinian figures should upon release be deported to Arab or European states and not be allowed to return to Palestine. (3) Its refusal to release unconditionally ten Palestinian leaders from the Izz al Deen al Qassam Brigades, the military wing of Hamas, the Fatah leader Marwan Barguthi and the Secretary-General of the [Popular Front for the Liberation of Palestine](#), (PFLP), Ahmad Sadat. (4) Israel's refusal to release five female prisoners Hamas wants to see free, including Ahlam Al Tamimi. (5) Israel's refusal to ease the siege of Gaza which Hamas demands; Israel insists there is no possibility of easing the blockade, let alone lifting it completely.

Apart from their failure to agree on numbers and specific names, the two sides have also disagreed on the issue of deportation. Some reports assert that while Hamas has expressed grave reservations over the principle of deportation it has opted to defer this to the individuals concerned. Apparently this stand has been taken because Israel has refused to give any guarantees that none of the released prisoners will be rearrested or assassinated. At the same time, the Israelis have even refused to specify the period of deportation for those who wish to return to their country. In the event that an agreement is reached on this issue it appears that Hamas is seeking to limit the number of deportees to a bare minimum.



Though not directly involved in the prisoner exchange negotiations, the Palestinian National Authority leader Mahmud Abbas has reportedly exerted some influence behind the scenes. Quds Press reported from Egyptian sources that Abbas convinced both the Americans and Israelis to delay the prisoner exchange because he disapproves of the list which includes Marwan Barguthi, the jailed Fatah leader whom he sees as a rival and likely successor. Other reports claim that Barguthi has contacted Hamas and offered assurances that the issue of reconciliation between the two factions will be resolved should he be included in the exchange. Meanwhile, speculation remains rife that in the event of his release Barguthi will be amongst those scheduled for deportation - for the second time - by the Occupier Israel.

Deportation

Deportation has been a long-standing method of repression used by the Israelis. In fact, its use against Palestinians preceded the creation of Israel. During the Great Uprising (1936-39) the British Mandatory Government rounded up the leaders of the Arab Higher Committee and deported them to the Seychelles. When this failed to produce the desired results, in 1945 the authorities enacted Regulation 112 of the British Defence Emergency Regulations, allowing the regional commander 'to make an order under his hand, requiring any person to leave and remain out of Palestine.'

Deportation was more than a means of individual and collective punishment. It was used largely as a device to dispossess and render the Palestinians a powerless minority in their land. Although this regulation was revoked in Israel in 1979 it has remained applicable in the West Bank; hence, in December 1992, Israel had a legal cloak under which to deport 415 Palestinians to Lebanon.

In order to bring about an end to the Israeli siege of Bethlehem's Church of the Nativity in [May 2002, the EU brokered](#) a deal allowing Israel to deport 13 Palestinians from the Occupied Territories to several European countries. However, this arrangement, instead of being a demonstration of humanitarian intervention, implicated the EU in Israel's violation of international humanitarian law.



On the first count Article 6 [c] of the Nuremburg Charter specifically states;

“Crimes against humanity.- ' namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.”

Similarly, the Forth Geneva Convention affirms;

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. (Article 49)

The following are short profiles of the main prisoners at the centre of the negotiations:



Ahlan Al Tamimi, 28 years old; has been imprisoned since the Aqsa intifada. She was sentenced by a military court to sixteen life terms, roughly equivalent to 1,584 years of imprisonment.

Before her sentencing Al Tamimi was tortured severely. She suffered broken arms and was held in administrative detention for 2 years before her sentence.

Her condition has since deteriorated due to the unhygienic conditions in the prisons, solitary confinement and her hunger strike.



Hassan Salama, 30 years old; has been in solitary confinement in Al-Ramla prison serving 48 life terms plus 20 years.

His condition is described as serious due to a wound in his abdomen that was left open after an operation. He has been on hunger strike numerous times to plead for better prison conditions. Salama is disallowed visits from any family members.





Ibrahim Hamid is 38 years old and the father of two children. He was the West Bank leader of Al-Qassam Brigades and was one of the prisoners “*most wanted*” by the Israeli authorities.

Hamid was detained in 2006 and has been in solitary confinement ever since. He has not been brought to trial and has been beaten severely on numerous occasions.



Abbas Al-Sayyid, a prominent mechanical engineer, was arrested during the Aqsa intifada. He was sentenced to death; this was commuted later to 36 life sentences plus 200 years.



Abdullah Al Barguthi Born in 1972 in Kuwait, from a young age he was driven by the struggle of his people and their longing to return to Palestine. He returned to Jordan with his parents after the first Gulf war and later managed to enter Palestine as a visitor. After this he decided never to leave his homeland after realizing his dream of return.

Abdullah Al Barguthi was first arrested in August 2001 by the Preventive Security Services and subjected to harsh interrogation. He lived with his wife and their two small children on the run for 15 months before he was finally arrested. He was sentenced in August 2003 to 67 life sentences.





Marwan Al Barguthi was born in the West Bank village of Kubar. He joined Fatah at the age of 15 and helped form the Shabiba, its youth wing in the West Bank. After six years of Israeli imprisonment he was deported in May 1987. While in exile, he was elected to the Revolutionary Council of Fatah, in August 1989.

After the signing of the Oslo accords between Israel and the PLO, Barguthi returned from exile in April 1994 and became secretary-general of Fatah's Higher Committee in the West Bank. He supported the peace process and tried to mobilize Palestinian support for it. In January 1996, he was elected to the Palestinian National Council.

During the Aqsa Intifada Barguthi broke with other Fatah figures and supported the armed resistance against the Israeli occupation. Israel accused him of forming and leading the Aqsa Martyrs' Brigades. In April 2002, Barguthi was arrested in Ramallah by Israeli forces. On June 6, 2004, he was sentenced to five consecutive life terms and 40 years.



Ahmed Sadat, Secretary General of the Popular Front for the Liberation of Palestine (PFLP), was arrested in connection with the killing of the right-wing Israeli Tourism Minister Rehavam Zeevi in 2001. He took refuge in the Muqata'a headquarters of PLO leader Yassir Arafat, who refused to hand him over to Israel.

Israel called off the siege of the Muqata'a in May 2002 after an agreement between the USA, UK, Israel and the PNA, which led to Sadat's arrest. He was put before a military court and imprisoned in a Palestinian jail in Jericho, with a force of US and British guards overseeing his captivity. In March 2006 the US and British monitors withdrew from the compound after Israel launched an assault on the facility and captured Sadat.

On 25 December 2008, an Israeli military court sentenced him to 30 years in prison for heading an *"illegal terrorist organization"* and being responsible for all its actions.



A battle of wills

Amid all the uncertainty surrounding the prisoner exchange negotiations one thing is clear: Israel has taken a strategic decision to negotiate for the release of its captured soldier. All the other methods adopted in the past have been futile. The question is, though, at what price? While it seeks to minimise the price in terms of numbers and status of prisoners, Israel's adversary Hamas seeks to achieve maximum political gain from this affair. The exact number of Palestinians in Israeli jails varies from one source to another. A few months ago after the release of the Shalit video *The Guardian* correspondent in Jerusalem [Rory McCarthy](#) reported that [there are more than 7,000](#) Palestinians in Israeli jails. The Palestinian human rights organization Ad Dameer, which specializes in prisoner affairs, estimates the figure to be just over 9,000.

Both protagonists need to bring down the final curtain on this drama. If all its demands are met, Hamas undoubtedly stands to benefit politically. It would have delivered the freedom of hundreds of patriots whom the Western-backed Palestinian Authority failed to deliver despite its security cooperation and years of negotiations with the Occupier. Apart from its own military leaders, its delivery of Marwan Al Barguthi and Ahmad Sadat may well prepare the way for the long overdue reconciliation with Fatah and facilitate wider national unity. On its part, the Netanyahu government would be able to silence its political critics and the Israeli electorate should it succeed in freeing Shalit.

Given the high stakes both sides are bracing themselves for the long haul. Now that the machinery of negotiations have started to roll it seems unlikely that they will allow them to falter. The crucial issue is what Israel will do with the men who it claims have 'blood on their hands;' it has always vowed never to release them. As for Hamas, these individuals are its foremost leaders, of legendary status; it cannot afford to strike a deal that excludes them. The clock is ticking and the stakes remain high, for both sides.

