

# Rights as a Divide-and-Rule Mechanism: Lessons from the Case of Palestinians in Israeli Custody

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*Critics have highlighted the complicity of human rights law in mass disempowerment and domination – a criticism equally applicable to child law. This article investigates this issue, as evidenced by three recent developments that Israel has justified by invoking these legal frameworks: an increased separation of Palestinian adults and children in Israeli custody; the Israeli legal system’s growing preoccupation with “rehabilitating” the now-segregated Palestinian children; and the Israeli authorities’ ever-diminishing interest in such rehabilitation for adult Palestinian prisoners. By canvassing the legal architecture, judicial rationalizations, adverse effects, and socio-political context of these developments, this article foregrounds their divide-and-rule logic and structure of driving a generational wedge between Palestinians and potentially weakening their political ties, solidarity, and resistance.*

## INTRODUCTION

Human rights law has been increasingly complicit in mass disempowerment and domination, as several critics (Perugini & Gordon 2015; Douzinas 2007) have shown. Of the numerous pitfalls of human rights law, three in particular have contributed to this: first, its all-too-frequent insensitivity to social, political, and legal context; second, its one-size-fits-all application of rights – the crude grouping of individuals into legal

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categories without due attention to their diversity; and finally, its overemphasis, at times, on formal as opposed to actual rights (Kennedy 2004; Douzinas 2007, 2012; Scheingold 2004). For these and related reasons, some have indeed cautioned against applying this legal framework to the contexts of military occupation (Gross 2007) and armed conflict (Modirzadeh 2010).

Child law, the gamut of legal frameworks relating to children, likewise has a long history of contributing, unwittingly or not, to the disempowerment and domination of many, including some of its own purported beneficiaries (Monk 2009; Kline 1992; White 1994; Viterbo forthcoming). In various ways, child law has targeted and affected adults as much as children. The legal separation and distinction of adults from children – through, for instance, the setting up of a juvenile justice system, the establishment of compulsory schools, and the legal separation of home from work – has radically transformed both childhood and adulthood. Childhood has become mostly a time of prolonged dependency, of exclusion and “protection” from the adult world, while adulthood has come to denote a state of unsurpassed autonomy, rationality, and maturity (Feld 1999; Kennedy 2006; Buckingham 2000; Ainsworth 1995). Modern law’s demarcation of the category “child” has thus both invented adulthood in its present form and, to some extent, exempted society from leniency and compassion toward adults. Criminal law, for one, has generally come to hold adult transgressors – now considered the antithesis of children – to excessively idealized standards of responsibility, autonomy, and fixed character (Ainsworth 1995).

While the child/adult divide may be ubiquitous, certain ethnic and socio-economic groups seem to have borne its major brunt. Western discourses and practices surrounding the Global South provide various examples: humanitarian campaigns that disenfranchise Third World adults by treating children as quintessential aid recipients (Burman 1994); humanitarian agencies that regard even the most violent child soldiers as powerless victims, granting them access to postwar development funds while neglecting their victims (Rosen 2007); and counterinsurgency discourses, wherein the image of children and women as relatively innocent victims helps perpetuate the presumption that Muslim men are culpable terrorists (Carpenter 2006). In addition, since at least the seventeenth century and well into the twentieth century, across the world, children of certain backgrounds were taken from their families and communities in the name of law, in some instances on a large scale, and placed in reformatories, industrial schools and orphanages, or put up for adoption. Such removals were typically presented as salvaging children from depraved and unhealthy social environments and turning them into civilized, disciplined, and productive citizens. The result in many cases, in addition to severing family, communal, and cultural ties, was rampant child abuse in state custody. Among those subjected to such separation were poor and

working-class children in Britain; indigenous and “mixed-race” children in countries ranging from Australia, Canada, and the United States to Indonesia and Morocco; ethnic minority children in Switzerland; and the list could go on (Viterbo forthcoming).

Shedding light on these pitfalls of human rights law, child law, and their offspring children’s rights law, this article examines the joint infusion of these legal frameworks into the context of Palestinians in Israeli custody, and foregrounds their consequent implication in Israel’s burgeoning divide-and-rule apparatus. This inquiry focuses on three recent developments: a growing separation of adult Palestinian inmates from their child counterparts; greater preoccupation, on the Israeli legal system’s part, with “rehabilitating” the now-segregated Palestinian children; and the ever-growing disinterest of Israeli authorities in “rehabilitating” Palestinian adult prisoners.

Rather than legalistically asking to what extent these developments constitute a “correct” interpretation of international law, this article critically investigates how, to what effect, and why Israeli authorities have interpreted and utilized the law as they have. As ever, law – including international children’s rights law – lends itself to competing uses and interpretations, by both proponents and critics of these developments. Thus, children’s separation and rehabilitation in penal settings are principles enshrined, in different formulations, in the Convention on the Rights of the Child (Art. 37(c)), the International Covenant on Civil and Political Rights (Arts. 10.2.(b), 10.3, 14(4)), and relevant UN General Assembly resolutions (Beijing Rules, Arts. 13.4, 24.1, 26.3; Havana Rules, Arts. 27, 29, 32; Mandela Rules, Arts. 4, 11, 88, 91-94, 96, 98, 104, 112); at the same time, according to most of these documents, actions concerning children, including separation and rehabilitation, should only be carried out when they are in children’s “best interests” and/or when they enhance children’s “well-being” (CRC, Arts. 3, 37(c); Beijing Rules, Arts. 1.1, 5.1, 14.2, 17.1(d); Havana Rules, Arts. 2, 29, Annex – Arts. 1, 28).

When publicly referring to these developments, Israeli authorities and officials have indeed invoked international human rights law and child law. This is in keeping with Israel’s tradition of shaping and justifying its policies through legal arguments, institutions, and professionals (Craig 2013; Playfair 1992; Hajjar 2005; Viterbo 2014); it is also, more broadly, representative of the growing prominence of human rights in security discourses worldwide (Kennedy 2004; Douzinas 2007; Perugini & Gordon 2015). The Israel Prison Service (IPS), Israel’s national prison authority, has thus made a point of publicly maintaining that Palestinian prisoners “are held ... pursuant to law and international treaties” (IPS n.d.-a), and that their “living conditions, obligations, and rights ... are legally defined ... in accordance with international legal definitions” (IPS 2007). Along similar lines, in his statements to the UN Committee Against Torture concerning Israel’s periodic report (UN Committee Against Torture 2009, ¶17-

18), Israel's Deputy State Attorney remarked: "Regarding ... [Palestinian] minors' rights, ... under international law ... [and IPS] rules, minors [are] ... held in separate facilities from adults." Similarly, according to the Israeli military: "While various complaints have been made about [Israel's] ... administration of law [in the West Bank] ... generally, and regarding [Palestinian] minors specifically, it is important to emphasize [its] conformity with international law and the law applicable [therein]" (Military Courts Unit 2015). The military further asserts, in a leaflet distributed to foreign delegations, that its courts "were established in accordance with international law", and that as part of its "efforts to protect the rights of all [Palestinian] defendants [in the West Bank] and particularly minors, ... a juvenile military court was established ..., [which] recognizes [Palestinian minors'] welfare and best interests as a factor in the proceedings." Israeli military law, the leaflet continues, now "provides for a separation between minor and adult detainees, ... [and the] Juvenile Military Court may order ... a Probation Officer's Report [assessing a minor's rehabilitation chances]" (Military Courts Unit 2013). The military's Legal Advisor in the West Bank (Legal Advisor to the IDF 2009) has likewise portrayed the military youth courts as "aimed to reflect the legal approach seeking to enshrine in legislation the minor's rights as defendant, while taking into account the principle of the best interests of the minor."

Many human rights organizations have shared not only this appeal to law, as they have done before, but also the Israeli authorities' current interpretation of the law as dictating the separation and rehabilitation of Palestinian child inmates. NGOs and UN bodies alike tended to campaign against Israel's non-separation of Palestinian child and adult inmates, and some persist by criticizing occasional instances of non-separation. Arguments in support of separation, when explicitly provided, have commonly rested on either a legalistic will to meet legal standards (UN Committee on the Rights of the Child 2013; Addameer 2010, 2011; DCIP & Save the Children – Sweden 2009; Cook, Hanieh & Kay 2004; Yesh Din 2007; Military Court Watch 2014) or essentialist assumptions, usually vaguely formulated, about the nature and needs of children (DCIP 2003; DCIP & Save the Children – Sweden 2009; Cook, Hanieh & Kay 2004; for criticism of such assumptions, see Kennedy 2006; Moss 1996; Kelly 2012). Some NGOs did question the desirability of separation – contrary at times to other statements they made – but in most cases this was late into the shift toward separation (DCI 2007, 42) or even after the fact (B'Tselem 2011; but see the earlier Cook, Hanieh & Kay 2004). The non-rehabilitation of Palestinian children in Israeli custody has also attracted criticism (UN Committee on the Rights of the Child 2013; DCIP 2016; No Legal Frontiers 2011; B'Tselem 2010; DCIP & Save the Children – Sweden 2009), though from fewer organizations – perhaps suggesting that others may

be aware of its complexities. In these and other respects, human rights organizations and Israeli authorities are neither clearly opposing camps nor monolithic.

Challenging the dominant, pro-separation and pro-“rehabilitation” discourse(s), this article sheds critical light on the judicial justifications, inimical effects, and socio-political context of the recent developments concerning separation and rehabilitation in Israeli custody. In the following sections, these developments – which Israeli authorities have advocated and justified in the name of law and rights – are shown to evince the divide-and-rule logic and structure of severing intergenerational Palestinian influences and creating a future Palestinian generation devoid of its predecessors’ political resolve.

The seemingly self-explanatory phrase “divide and rule” may warrant some clarification, not least because, while having socio-political fragmentation as its typical cornerstone (Kilty & Haymes 2000), it has come to incorporate ideas and patterns that differ in their mechanisms, details, and implications (Posner, Spier & Vermeule 2010). Whereas some (ibid) have applied this phrase to strategies deemed intentional and specifically planned, others (Rogers 1990), myself included, avoid equating “divide and rule” with “intentions”, whatever the latter term may mean. Typically, scholarly quests for intent or motivations either profess to unearth “invisible”, “underlying” motives, or treat deeds or statements as indicative of intentions. Yet the former line of inquiry tends to resort to questionable structural and/or causal explanations (see Valverde 2003, 12-14), while the latter rests upon untenable assumptions about the transparency, knowability, and even existence of intentions. Aside from these interpretive and epistemological perils, conceptualizing state practices in terms of intentions might inadvertently facilitate state attempts to legitimize its contentious actions by characterizing their consequences as “unintentional”.

Further, the divide-and-rule dynamic discussed here, significant as it may be, does not encapsulate the developments under examination; other forces and patterns, falling outside the purview of this article, are certainly at work. Needless to say, in other domains divide and rule is far outweighed by more overt violence – two examples are Israel’s killing of thousands of Gazan Palestinians in recent years and the subjection of West Bank Palestinians to constant violent assaults by Israeli soldiers and settlers. In fact, according to the UN Office for the Coordination of Humanitarian Affairs (UNOCHA 2016), 2015 saw the highest number of Palestinian casualties in the West Bank in the last decade, and 2014 the highest number ever in the West Bank and Gaza Strip. Furthermore, as in other contexts, the state discourses and practices relating to the developments in question are neither univocal nor free from contradictions. The aim of this article is therefore to identify and explore an important element without reducing all relevant issues to it.

The following section provides further background details on the three interrelated developments mentioned above, specifically, and on Israel's incarceration of Palestinians, generally. The next section, *Judicial Rationalizations: Battling over Palestinian "Souls"*, analyzes the Israeli judiciary's divide-and-rule justifications, according to which separation and "rehabilitation" hold the promise of severing intergenerational Palestinian influences and ridding young Palestinians of their elders' political ideologies. The section *Effects* examines the changes in governance and discourses arising from the developments in question, as well as the potentially detrimental impact of these developments on most Palestinian inmates, adults and children alike. Placing these developments in their broader context, the section *Israel's Divide-and-Rule Apparatus* points to the proliferation and refinement of complementary divide-and-rule mechanisms in and outside Israeli prison. The *Conclusion* ties all of these together.

## BACKGROUND

Since assuming control of the West Bank and Gaza Strip in 1967, Israel is estimated to have taken between 700,000 and 800,000 Palestinians into custody (see, respectively, UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories 2008; Rudoren & Abu Aker 2013), which equates to about a fifth of the current Palestinian population in these territories (UNRWA 2010). In the absence of clear aggregate figures, it is estimated that Israel has detained between 8,500 (DCIP et al. 2014) and 12,000 (Addameer 2016) non-citizen Palestinian children since 2000 (see B'Tselem n.d.-a for monthly figures obtained from the Israeli authorities).<sup>1</sup>

The IPS classifies most non-citizen Palestinian inmates as "security prisoners" – a category rarely applied to Israeli Jews (Adalah 2013b, based on information gathered from the IPS). While each prisoner's classification is left to the prison authorities' discretion, IPS regulations generally define a "security offense", vaguely, as an offense that is either "by its nature or circumstances a security offense" or is specifically listed in the regulations (IPS Commission Ordinance 04.05.00, Arts. 3-4 and Appendices A-B). According to IPS figures, in recent years the proportion of "security offenders" among Israel's prison population has ranged roughly from half to a quarter (IPS 2015), and their proportion among child inmates has ranged from half to a third (Knesset Research

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1. These figures do not include East Jerusalem, where nearly 800 non-citizen Palestinian children were detained in 2014 alone, according to information provided by the Israeli police (ACRI 2016a).

and Information Center 2015). These inmates are normally held in separate facilities and denied many of the rights granted to others in matters including welfare, education, and family visits (IPS Commission Ordinance 03.02.00, Arts. 1b & 4a).

The laws Israel applies to Palestinians suspected of “security offenses” vary depending on their place of residence, as do the courts in which they are tried. Each year, West Bank Palestinians are tried in their thousands by Israeli military courts (see IDF Spokesperson 2007), which assume jurisdiction over Palestinians in the West Bank, including territories formally under Palestinian Authority control (Order 1651, Arts. 10(d)-10(e)) but excluding East Jerusalem (which Israel controversially purports to have annexed). Information obtained from the military suggests that in 2010 the conviction rate in these courts was 99.76 percent, and appeals by the military prosecution to increase the sentence were twice as likely to succeed than defendants’ appeals (Levinson 2011). Since Israel’s unilateral withdrawal from the Gaza Strip in 2005, Gazans arrested by the Israeli military during its incursions are tried in Israeli civil courts, under civil security legislation. All of these non-citizen Palestinians are also often detained without trial on the basis of secret evidence that is not disclosed to the defense, for consecutive periods of six months each with no set cumulative maximum. Palestinian citizens of Israel are tried in civil courts, are not normally held in detention without trial (see Adalah 2001 for an exception), and are less frequently classified as “security prisoners” (Adalah 2013b).

Recent developments concerning Palestinian “security prisoners”, as mentioned above, include, first, their growing generational segregation – a shift toward increasingly separating Palestinian adults from their juniors. Palestinians can be held in the custody of either the military or the IPS, the former formally operating according to Israeli military statutory law (though occasionally deviating from it – see Viterbo 2012), and the latter according to Israeli domestic law. Until not long ago, non-citizen Palestinians were incarcerated mostly in facilities run by the military, where, in accordance with the military law, all child prisoners were held with adults, as were child detainees aged sixteen and over (Order 132, Art. 3). Though there was a legal requirement to separate detainees younger than sixteen (*ibid*), it had limited effect, not only because the vast majority of Palestinian child detainees are older (B’Tselem n.d.-a), but also because it was not always enforced (Cook, Hanieh & Kay 2004; DCIP & Save the Children – Sweden 2009; *Jasser v. Military Advocate General* 1996; *Barakan v. Military Prosecution* 2010). In the 1980s, Israel avowed it would designate one of its detention facilities in the West Bank for Palestinian children awaiting summary trial, but reports suggested that the detainees, actually aged up to twenty-three years, were subjected to torture and harsh conditions (UN General Assembly 1985).

During the early and mid-2000s, responsibility for all facilities holding Palestinian detainees and prisoners transferred from the military to the IPS (*Yesh Din v. IDF Commander in the West Bank* 2010; IPS 2007; see B'Tselem n.d.-b for detailed figures obtained from the Israeli authorities), which separates inmates under the age of 18 from their elders, pursuant to the domestic law (Youth Law, Arts. 13(a), 34b(a); IPS Commission Ordinance 03.02.00, Art. 21g; IPS Commission Ordinance 04.08.00, Arts. 8a & 8e).<sup>2</sup> Israeli military law was later amended to extend separation to military-run facilities (Order 1644, Art. 46n), where non-citizen Palestinians can still be detained (B'Tselem n.d.-b). The amended military law, like Israeli domestic law, generally requires placing children either in a separate facility or in a separate wing inaccessible to adult inmates.<sup>3</sup> Another amendment to the military law (Order 1644, Art. 1) introduced the world's first and only (UNICEF 2013a) "military youth courts", thereby instituting separation in Israel's military courts as well.<sup>4</sup> As a result of these complementary changes, Palestinian adults are now, as a rule, separated from their child counterparts in Israeli custody (DCIP et al. 2014), though joint incarceration with children remains legally permissible in certain circumstances (Youth Law, Arts. 13(b1), 34b; IPS Commission Ordinance 04.08.00, Arts. 8-9; Order 1651, Art. 149(a1); Order 1644, Art. 46n); in addition, the IPS still allows several specific Palestinian adult prisoners contact (though not joint incarceration) with child inmates, as discussed below.

The second development examined in this article is the Israeli legal system's growing preoccupation with "rehabilitating" Palestinian child prisoners. In the various relevant Israeli statutes, ordinances, and regulations, "rehabilitation" refers to social treatment, education, and employment.<sup>5</sup> As shown below, Israeli courts have pushed for the IPS to rehabilitate Palestinian children by these very means. This, however, has so

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2. In addition, the Israeli police have formally relinquished their responsibility for some detention facilities to the IPS (though in practice the division of responsibility is in dispute – see State Comptroller 2015). The domestic law (Youth Law, Art. 13(b)) and military law (Order 1644, Art. 46n) require generational separation in police stations in the West Bank, where Palestinian children can be detained and interrogated before being transferred to IPS custody (see B'Tselem 2014).

3. There is currently one IPS facility designated exclusively for children: the Ofek facility at Hasharon Prison, which is designed to hold up to 200 inmates (IPS n.d.-b). While this is where most of the educational and rehabilitative services for child inmates are provided (Knesset Research and Information Center 2015), reports suggest that the vast majority of Palestinian children are held in other facilities, separately from most adult inmates (Addameer 2010; B'Tselem & HaMoked 2010; DCIP 2011, 2016).

4. Remand hearings, which constitute about 40 percent of first instance military court hearings (IDF Spokesperson 2007), are legally exempt from the separation requirement (Order 1644, Art. 1). Nevertheless, UNICEF (2013b) has reported that in practice, the military courts recently started holding most of these hearings separately as well when they involve children.

5. The procedures for such rehabilitation are not entirely clear (State Comptroller 2014).

far been more a shift in judicial discourse than in actual incarceration or trial arrangements. Two recent statutory amendments represent very little change. First, Israel's military youth courts have been legally authorized to order pre-sentence evaluations of the likelihood of Palestinian child defendants' rehabilitation (Order 1651, Art. 148), yet in reality such evaluations are infrequently ordered (No Legal Frontiers 2011; B'Tselem 2011; DCIP 2010).<sup>6</sup> Second, the IPS is now legally instructed to provide all child prisoners, as well as child detainees facing trial, with educational and vocational services (Youth Ordinances, Arts. 6-10); but in practice, and largely in line with the IPS's own regulations (IPS Commission Ordinance 04.08.00, Art. 27h), many Palestinian child detainees are either denied or inadequately provided with these services, an issue criticized by NGOs (Adalah 2013a; Addameer 2010; B'Tselem 2011; DCIP 2012a, 2016; ACRI 2016a), the Israeli Public Defense (2015), and Israel's Supreme Court (see analysis below). The limited actual change in this area may be partly attributable to the Israeli authorities' discord over the feasibility of rehabilitating ideologically motivated Palestinians, an issue addressed below.

A third, related development has been the Israeli authorities' ever-diminishing interest in rehabilitating Palestinian adults. Israeli authorities had relatively little interest in such rehabilitation in the first place: unlike other adult prisoners (Prisons Directive, Arts. 11c-11d), adult Palestinian "security prisoners" are not normally referred to rehabilitation services (IPS Commission Ordinance 04.54.02, Art. 1b; IPS Commission Ordinance 03.02.00, Art. 4b; *John Doe v. Parole Board* 2016, ¶3, 5; Ashkenazi 2013), and the Israeli authorities rarely consider Palestinian rehabilitation facilities a viable alternative (B'Tselem 2011; *E-Nasirat v. Military Advocate General* 2003; *Military Advocate General v. El-Farukh* 2009). Until recently, Palestinian prisoners could take Israeli Open University courses – in which an average of 250 prisoners had been enrolled each year, mostly under Palestinian Authority sponsorship (petition in *Sallah v. Prison Service* 2013; Shaked 2009) – but the Israeli government banned these studies in 2011. In their petition to overturn this decision (petition in *Sultany v. Prison Service* 2011), Palestinian prisoners argued at length that these academic studies facilitated their rehabilitation, an argument reiterated by Open University lecturers who joined the case as *amicus curiae* (*Sallah v. Prison Service* 2015). However, the IPS responded that "security prisoners" could not be meaningfully rehabilitated, and both a district court (*Sallah v. Israel Police* 2012) and the Supreme Court (*Sallah v. Prison Service* 2012, 2015) denied the petitions. Further, the Supreme Court has reserved its relentless pro-rehabilitation stance for Palestinian children, while denying adult Palestinian prisoners'

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6. The military courts have recently been pushing for an amendment that would authorize them to also order a pre-trial report by a social worker (*Military Advocate General v. Qadare* 2011; *Military Advocate General v. Alami* 2012; *John Doe v. Military Prosecution* 2014).

petitions against IPS decisions to exclude them, as it usually does, from rehabilitation programs (*Kharuve v. Prison Service* 2014). While recently lifting a new blanket ban on Palestinian prisoners' access to private mental health professionals (who are needed to prepare rehabilitation plans for the parole board), the Supreme Court authorized the IPS to continue denying access on a case-by-case basis, and emphasized: "the IPS policy – which the present case does not challenge – is to exclude security prisoners from rehabilitative programs" (*Ra'ee v. Prison Service* 2016, ¶10, 32 of Justice Vogelmann's opinion). Israeli authorities thus seek to rehabilitate only on their own terms and only those they deem corrigible.

## JUDICIAL RATIONALIZATIONS: BATTLING OVER PALESTINIAN "SOULS"

Many Palestinian former prisoners have spoken of Israeli prison as a site for acquiring valuable political knowledge and consciousness, terming it "a university", "a school", "a lecture hall", and "an academy of political activism". This imagery, which has taken hold in Palestinian society at large, mainly refers to informal study activities operated by Palestinian prisoners, usually in self-segregated groups affiliated with different political organizations, with teachings that have included Palestinian and Zionist histories, Palestinian culture, Islam, security outside the prison, Arabic literacy, and Hebrew or English as a second language (Rosenfeld 2004; Collins 2004; Peteet 2000; Taraki 1990). In a sense, these study activities represent Palestinian prisoners' struggle to defy Israeli narratives and confines, to transcend the Israeli prison's enclosed space, if not physically then ideationally (Nashif 2008). The intergenerational knowledge transfer involved in these activities (cf Rosenfeld 2004) is among the reasons why, in Palestinian discourses, detention and imprisonment have come to signify a rite of passage of sorts – a transition of the incarcerated from childhood to adulthood, and especially from boyhood to manhood (Peteet 2000; Nashif 2008; Quota, Punamäki & El Sarraj 1997).

In judgments delivered before or during the shift toward generational segregation, Israeli military courts presented such intergenerational knowledge transfer as a major source of concern. Despite their importance and the fact that they try most of the Palestinians in question (Yesh Din 2007; Adalah 2013b), Israeli military courts have hitherto received relatively scant academic attention, as have their judgments. Possible reasons for this scholarly lacuna include the difficulty of accessing many of these

judgments,<sup>7</sup> the restrictions imposed on observing military court hearings or interviewing military officials (Hajjar 2005; Yesh Din 2007), and the difficulty of obtaining clear and precise information from the Israeli security forces about, for example, Israel's handling of Palestinian children (UN Committee on the Rights of the Child 2010; Military Court Watch 2015, 2016; B'Tselem 2011; State Comptroller 2015). Yet, military court judgments yield invaluable insights into the workings of Israel's rule over the West Bank, including those relating to Palestinian detainees and prisoners.

Thus, in 2004, Military Court of Appeals judge Shaul Gordon rejected the Military Advocate General's appeal to increase a Palestinian's sentence (*Military Advocate General v. Sha'alan* 2004), rationalized this decision by describing the convict as "a young youth about 18 years old", and added: "if [he] has not yet adopted the ideology popular among many of the prisoners, then in fact a prolonged imprisonment might lead him to adopt it." A few years later (*Military Advocate General v. Makhoul* 2009), Judge Amir Dahan of the Judea Military Court voiced similar concern over a sixteen-year-old's non-separation from older Palestinian detainees, alluding to the rehabilitation issue as well: "The defendant's stay in prison hinders ... his rehabilitation: it is not difficult to predict the consequences of a tender youth's long, continuous and daily stay with such adults in an institutional doctrinal [meant to say: indoctrinating] framework". Judea Military Court judge Sharon Rivlin-Ahai likewise warned, in another case (*Military Advocate General v. El-Farukh* 2009), that under the military law in effect at the time "a 16-year-old [Palestinian] defendant can be incarcerated with adults who committed grave security offenses. ... Protracted incarceration in such conditions is likely to severely harm both his rehabilitation chances and the public interest."

An earlier ruling (*E-Nasirat v. Military Advocate General* 2003), also by Judge Gordon, linked separation and rehabilitation in greater depth. Gordon explained as follows his decision to shorten a twelve-year-old Palestinian's sentence and, unusually, accept the suggestion of the defense to transfer him to a Palestinian rehabilitation facility:

[T]he appellant is incarcerated with other prisoners, older than him, who were convicted of security offenses .... If ... there is an alternative framework that may distance the appellant from those adults ..., then

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7. Since 2008, the military has been sending Israeli online commercial legal database Nevo new judgments of the Military Court of Appeals. Yet, first-instance judgments, the vast majority of military judgments – in 2006, there were approximately 42,000 first-instance hearings (IDF Spokesperson 2007) compared with 267 appeal hearings (Military Advocate General 2011) – often remain unpublished, as do most military judgments from previous years.

surely this framework must be preferred over prison. ... [T]he appellant may indeed be distanced, for a while, from those adults who wished to capture his soul, and may even receive rehabilitative treatment that will help him oppose those adults ... in the future. Furthermore, ... there is inherent risk in imprisonment in the company of security prisoners, as the exposure to these prisoners' ideologies and the social pressure may also have their influence.

While this decision resonates with other judgments in its reasoning, sending a defendant to a Palestinian rehabilitation facility is a rare act. Indeed, later Israeli judgments, examined shortly, have pressed for Palestinian children's "rehabilitation" at Israeli, not Palestinian hands. What makes this decision unusual is, first, the general absence of rehabilitation facilities acceptable to both the Israeli military and the Palestinian Authority, as mentioned above; and second, the military courts' high prison sentence rate for Palestinian children.

Indeed, in 2010, I was given supervised access to the Salem Court archive, where I analyzed all the court cases from the years 2008-2009 the military had classified as involving minor defendants.<sup>8</sup> None of these 155 cases ended in an acquittal; the prison sentence rate was 93.55 percent (with an average prison sentence of 7.91 months), the probation sentence rate was 98.71 percent, and fines were imposed in 96.77 percent of cases (indicating that most sentences included all three components: actual imprisonment, an additional suspended sentence, and a fine). The few cases ending with neither a sentence nor acquittal were closed or deleted for various reasons. Most children – 81.7 percent – were remanded until their trials ended, and only 14.5 percent were released on bail. Similar findings appear in NGO reports (ACRI 2016b; No Legal Frontiers 2011; B'Tselem 2011; DCIP 2011, 2016). In stark contrast, the custodial sentence rate in Israel's civil youth justice system has ranged between only 6.5 to 20.6 percent of cases (see, respectively, DCIP 2011, referring to 2008; ACRI 2014, referring to 2010). In addition, the statutory law applicable to Israeli children permits detention only as a last resort (Youth Law, Art. 10a).

The Palestinian child's "soul", as Judge Gordon put it, appears in the above judgments as an object of a legal-political battle, a battle over space – over Palestinian adults' proximity to their juniors – and also against time: one requiring prompt action,

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8. Salem Court is one of two Israeli military courts currently operating in the West Bank, and its archive is a portable cabin storing cases from the past two years. The analyzed data concerned the defendants' age and gender; the charges; the sentences (their length, nature, and rate); the duration of time from one stage of the legal process to another; and the length of the charge sheets and court decisions.

before these children are irreversibly inaugurated into an allegedly nationalistic adulthood. Reproducing a prevalent albeit debatable conception of children as highly impressionable and tractable, these judgments depict the Palestinian child as simultaneously suggestible to the allegedly negative influence of Palestinian adults and Israeli intervention. It is in the light of this presumed plasticity of children that the judges cited above espouse segregation on preventative grounds and “rehabilitation” on corrective ones.

Israel’s Supreme Court has taken this rationale a step further, by repeatedly calling for the systematic “rehabilitation” of Palestinian children rather than on a case-by-case basis. Palestinian children’s removal from their elders was no longer considered sufficient for harnessing their assumed plasticity to its fullest. Instead of merely preventing Palestinian ideological influences, a new frontier emerged in the battle over these children: systematic Israeli counter-influences. Most of these judgments have been unanimous, written by the current Deputy Chief Justice Elyakim Rubinstein, whose career, like that of many of his peers, includes service in the military legal system (Supreme Court of Israel n.d.-a).

In a decision to reject the appeals of two Palestinians, aged 14 and 15 at the time of their offenses (*John Doe v. State of Israel* 2007a), Justice Rubinstein commented:

The lack of social treatment and educational arrangements [for young “security prisoners”] .... requires rethinking .... [N]obody wishes for minors (or others who are very young) ... [convicted of] terrorist offenses to be upgraded in criminality, and [for] prison to become their university for terrorist science ... in the absence of ... treatment [and] ... education. This is not only in the minors’ interest .... It is in the public interest, in order to exhaust the possibility ... [that they] can be brought to function in accordance with norms and productively.

This extract appears verbatim in three later Supreme Court judgments (*John Doe v. State of Israel* 2007b; *Dirbas v. State of Israel* 2009; *Taritari v. State of Israel* 2014), one of which (*John Doe v. State of Israel* 2007b) further warns that imprisoning such “minors with no employment whatsoever, is almost by definition a school for many future terrorist experts”.

Along similar lines, in a decision to shorten the sentences of two defendants, one of whom was seventeen years old at the time of the offenses (*State of Israel v. Gurin* 2009), Rubinstein remarked:

[W]e have repeatedly raised ... [the issue of] the absence of social or educational treatment in prison for minors or very young adults convicted of security offenses, whose rehabilitation chances are better [than those of older “security offenders”]. ... Should prison be ... an academy for terrorism, in the absence of any counter-barrier of education and treatment?<sup>9</sup>

As explained above, this recurrent image of Israeli prison as a quasi-academic setting originates from Palestinian prisoners themselves. Demonstrating the Israeli authorities’ awareness of the prisoners’ original use of this imagery is an article on “security prisoners” in the IPS journal (Shaked 2008, 27; see also *ibid*, 28-29), which characterizes Israeli prison as a “Palestinian academy for national leadership” and adds:

For [such] prisoners ..., [Israeli] prison is a stage in ... national development, personally and collectively. ... [T]hese prisoners ... have delved into Israeli issues, mainly by reading books, ... [and] have translated ... [writings by prominent Zionist leaders and thinkers]. They have had ideological debates on the ways and means of acquiring Palestinian political independence ... [and] the future character of the Palestinian state. Over the years, Open University studies were also made available in prison. Security prisoners completed Bachelor’s and Master’s degrees within the prison walls, and a few successfully pursued doctoral studies. ... Not for nothing has prison been called “the national Palestinian academy”.

It is thus through Palestinian prisoners’ own conceptual framework that the Israeli judiciary has come to problematize their intergenerational interactions. In an attempted reconfiguration of prison, this conceptual framework and the intergenerational politicization to which it alludes were reconstructed from markers of collective Palestinian empowerment into grounds for deploying divide-and-rule techniques (cf. Khalili 2013, on the rise, in liberal counterinsurgencies, of incarceration policies focused on social engineering).

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9. While stressing that “this applies primarily to minors and very young adults”, Rubinstein remarked, in passing, that rehabilitation “should [also] be an option for others interested in reforming.” Yet, this one-off comment was not quoted or reiterated elsewhere, and therefore remains unrepresentative of the Court’s otherwise insistent distinction between Palestinian child inmates and their elders in this context.

Neither the lack of “rehabilitation” services for Palestinian child prisoners nor the court’s resultant anxieties has subsided, as three similar judgments from 2014 illustrate (two are quoted below and the third is *Bakhirat v. State of Israel* 2014). In one of these (*Taritari v. State of Israel* 2014), Justice Rubinstein remarked: “This Court has repeatedly raised the issue of the treatment of security prisoners who are minors or young adults .... Yet unfortunately ... we see no actual change.” In another case (*John Doe v. State of Israel* 2014, ¶12), Justice Uri Shoham – who like Rubinstein had previously held high-level positions in the military legal system, including service as the Military Advocate General and the president of the Military Court of Appeals (Supreme Court of Israel n.d.b) – wrote for a three-judge panel:

We believe, regardless of our rejection of the appeal, that ... defining minors as security offenders and the [resultant] lack of a rehabilitative program [for them] ... is often a self-fulfilling prophecy. ... [Including such] minors in a therapeutic-rehabilitative process tailored to their needs may bear positive outcomes and prevent [their] future return to activity of a security-ideological nature...

The Supreme Court, spearheaded by Justice Rubinstein, has generally been unanimous in pushing for Palestinian children’s so-called rehabilitation. Justice Edna Arbel initially expressed skepticism: “I agree with [Justice Rubinstein] ... about the importance of the rehabilitative process .... At the same time, the question arises of whether the purposes of the rehabilitative process can indeed be achieved in ideological offenses” (*John Doe v. State of Israel* 2007b). Yet, eventually, Arbel moved to endorse Rubinstein’s position unreservedly (*Kawasme v. State of Israel* 2013).

Reverberating well beyond the Court, these calls to rehabilitate Palestinian children have been reported in the Israeli press (Hovel 2014; Levinson 2014), in addition to either being cited approvingly by, or receiving support from, the military courts (*Military Advocate General v. El-Farukh* 2009), Members of Parliament (Public Petitions Committee 2013), the Public Defense (*John Doe v. State of Israel* 2007b), and the Youth Probation Service in the Ministry of Social Affairs and Social Services (*John Doe v. State of Israel* 2007a).

The IPS, in contrast, has shown reluctance to adopt the Court’s rehabilitation vision. In a position paper it submitted to the Supreme Court (quoted in *John Doe v. State of Israel* 2007b, ¶b(3) of Justice Rubinstein’s opinion), the IPS asserted: “security prisoners ... consider themselves neither offenders nor in need of social treatment. [They] ... are generally not interested in any contact with social workers whom they

consider part of the Israeli establishment.” Questioning this stance, Justice Rubinstein contended (ibid, ¶b(5) of his opinion):

With due respect, I doubt that all the minor prisoners share the view described by the IPS .... Even if this is the majority view, ... there is no room for giving up. Presumably, suitable professional treatment will eventually yield results, if not full then at least partial. The benefit ... is not only the minors' ... *but also of the State of Israel.*

The Supreme Court is thus one among various institutional players in this dispute. The competing views and interests of these different players regarding “rehabilitation”, as opposed to their consensus regarding generational separation, may explain the disparity between these two areas in terms of actual change on the ground.

## EFFECTS

The effects of separation from others are never entirely predictable, nor are those of rehabilitation – in itself a highly elastic concept. Changes concerning generational segregation and “rehabilitation” in Israeli custody are also bound to affect each Palestinian inmate somewhat differently. This, however, should not eclipse systemic issues that impact most Palestinian inmates indiscriminately, even if not equally. Such issues, and their implications for separating and “rehabilitating” (or not “rehabilitating”) these inmates, are the subject of this section. Without dismissing possible positive effects, and without claiming the ability to fully generalize or predict outcomes, the focus here is on potentially detrimental consequences, in order to bring into question and problematize the taken-for-granted of the dominant, pro-separation and pro-“rehabilitation” discourse(s).

### Generational Segregation

“Penalty”, Michel Foucault (1995, 272) observed, is “a way of ... neutralizing certain individuals and of profiting from others.” This is achieved by drawing distinctions and regulating those on both sides – even if only one group is the explicit object of regulation (cf ibid, 193). Indeed, as explained earlier, child-related laws, policies, and institutions impact and even target adults as much as children. The increased generational segregation in Israeli prisons and detention facilities is likewise

no less the separation of adults than it is of children. The terminology currently in use distinguishes between “youth” and “regular” incarceration facilities/wings and courts. However, even if not formally or explicitly designated as such, “regular” facilities and courts are adult-specific – and in this sense profoundly new – legal spaces.

Previously, when Palestinian adults were held with children, there was intense pressure on Israel to ensure that its courts, detention facilities, and prisons met “children’s rights” standards. But despite their adult inmates making up around 95-97 percent of the Palestinian “security prisoners” population (B’Tselem n.d.-a, n.d.-b), the new adult-specific legal sites, devoid of children, are no longer subject to such scrutiny, as a fair number of local and international human rights organizations have directed their attention away from them. No less importantly, the image of the child, with all its emotive-political potency, has been rendered unavailable to campaigns on behalf of adult Palestinian inmates. Further eroding the symbolic currency of these adults is the intersection of their age and gender – the fact that they are overwhelmingly men (IPS 2007).

As discourses surrounding the now-separated Palestinian inmates transform, so do Israel’s modes of governance and penalty. For the most part, both Palestinian children and adults continue to be denied rights, but now through significantly different legal methods. Children, on the one hand, are formally granted rights or special treatment, yet often with little if any actual change.<sup>10</sup> Military youth court hearings do not differ significantly from those concerning adult defendants: sentencing guidelines for Palestinian children have not changed since the establishment of these courts, and reportedly (B’Tselem 2011) nor have the actual sentences imposed. Though military youth court judges are legally required to undergo “appropriate training”, the exact nature of this training is not publicly known (DCIP 2010). Two other provisions, which were introduced into Israeli military law in 2011 (Order 1651, Arts. 136a-136c), come with clauses and caveats that render them inapplicable in most cases. First, there is now a legal requirement to notify parents or relatives of children’s arrest, but the police are authorized to refrain from doing so in the name of safeguarding “national security”, “the success of the interrogation”, or “the child’s wellbeing”. Deviation from this requirement is also permitted when children are suspected of “security offenses” (ibid; IPS Commission Ordinance 04.08.00, Art. 15) – a broad statutory term encompassing all common charges against Palestinian children, such as stone throwing

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10. A notable exception is the recent shortening of the maximum detention periods for Palestinians, adults and children (Order 1651, Arts. 31-33, 37). Yet, this change is limited because, among other reasons, the statutory amendments sometimes either do not apply to “security offenders” or authorize the same maximum detention period as before.

or membership of a proscribed association.<sup>11</sup> Though similar exceptions formally exist in the domestic law applicable to Israeli citizens (Youth Law, Art. 9g), in practice Israeli Jews are, as noted above, a tiny fraction of those classified as “security offenders”. Second, the police are required to inform children, prior to their interrogation, of their right to legal counsel; however the law places the onus of having an attorney’s details not on the police but on the arrested child, who is unlikely to have such information at his or her disposal. Hundreds of testimonies of Palestinian child ex-detainees indeed suggest that it is rare for children to either receive legal counsel before their interrogation or be interrogated in the presence of their parent (UNICEF 2015; DCIP 2016; DCIP et al. 2014; Military Court Watch 2014).

On the other hand, when it comes to these children’s older counterparts who are now held in adult-only facilities, Israeli ordinances not only continue to deny but also increasingly erode these same rights. In contrast to the formal requirement to inform parents or relatives of children’s arrest, Palestinian adults’ arrest can be kept secret for up to twelve days (Order 1651, Art. 55). And whereas Palestinian children are now formally entitled to be informed of their right to legal counsel, no such provision is made for their elders, who – unlike other detainees – can be refused legal counsel, including in remand hearings, for up to a month (ibid, Arts. 58-59a; IPS Commission Ordinance 03.02.00, Art. 17.22.(2); for discussion see Public Committee Against Torture in Israel & Palestinian Prisoner Society 2010). The lack of contact with families – an issue partly resulting from the complexity and length of obtaining visit permits to Israeli incarceration facilities (Ben-Ari & Barsella 2011) – is an area in which the erosion of these adults’ rights is particularly pronounced; while this issue pertains to Palestinian inmates indiscriminately, adults and children alike, it has been further institutionalized of late in relation to Palestinian adults: the primary IPS regulations concerning “security prisoners”, which hitherto made no reference to either adult detainees or pre-charge detention (IPS Commission Ordinance 03.02.00 – 2011 version), now categorically deny visits to adults who are held in pre-charge detention on suspicion of “security offenses” (IPS Commission Ordinance 03.02.00 – 2014 version, Art. 17b; see also IPS Commission Ordinance 04.08.00, Art. 24). Another regulation (IPS Commission Ordinance 04.34.00) was recently amended to specify restrictions on meetings of “security inmates” with their attorneys.

The socio-legal category “child” thus operates as a template for governing Palestinian adults no less than Palestinian children. This is also reflected, to some

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11. Common charges in the 155 military court cases discussed above were stone throwing (63 percent of cases, usually as a sole charge), membership or activity in proscribed associations (30 percent), Molotov cocktail throwing (17 percent), and possession/trade/use of firearms (25 percent). For similar findings see DCIP (2011, 2016); No Legal Frontiers (2011).

degree, by the preoccupation of the above-cited Israeli judgments with Palestinian adults: the allegedly nationalistic adult “security prisoners” as well as the future adults whom Palestinian children could turn into. In fact, other ostensibly child-focused Israeli legal measures, outside the separation context, have also been significantly, if not primarily, targeted at Palestinian adults. As a case in point, a 2003 military ruling held that Palestinian children should be punished severely in order to deter their elders from recruiting them into nationalistic activities (*Military Advocate General v. E-Nasirat* 2003; see also Viterbo 2012).

At the same time, the potential consequences for those on the other side of generational separation – the child inmates – are no less detrimental. The common justification for such separation is the moral and physical threat adult criminals putatively pose to their younger counterparts. This rationale, however, does not necessarily apply to most Palestinian prisoners in Israeli custody, who are not criminals in the common sense of the word (Veerman & Waldman 1996; B’Tselem 2011) but “political prisoners”,<sup>12</sup> as many of them self-identify, or “security prisoners”, as Israeli authorities classify them. And, as noted above, the IPS is legally required not only to distinguish, but also to separate these inmates from those classified as “criminal prisoners”.

Moreover, the increased generational segregation might have robbed many Palestinian child inmates of valuable intergenerational support. While neither adult Palestinian “security prisoners” nor their child counterparts are a uniform group, reports suggest that, prior to the shift toward generational segregation, these children used to receive educational, psychological, and material care from adult inmates, who also represented their concerns to the prison authorities (Veerman & Waldman 1996; Cook, Hanieh & Kay 2004; B’Tselem 2011). Indeed, showing their support for intergenerational contact, Palestinian prisoners have secured the right to elect a few adults serving long sentences to oversee Palestinian child inmates, while still being held separately from these children at night. This, reportedly, has improved these children’s welfare in some respects (DCIP 2016), but has also, as explained below, provided Israeli authorities with a new stratagem for tricking child suspects into confessing.

For the many children who are transferred to facilities inside Israel and subsequently denied contact with their families (B’Tselem 2011; DCIP 2011, 2016; Military Court Watch 2014, 2016), such support is particularly crucial (Cook, Hanieh & Kay 2004; DCIP 2016). Further, child abusers are often other children – in Palestinian society (Cook, Hanieh & Kay 2004), in Israeli prisons (Curiel 2014;

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12. This term is in inverted commas to avoid the overly simplistic distinction between “criminal” and “political” prisoners, and specifically to avoid portraying crime outside military occupation as apolitical.

Prosmushkin 2012), and elsewhere (Ambert 1995; Spain 2013). Prior to their separation, adult Palestinian prisoners reportedly facilitated better relations among the children by peacefully mediating their potentially violent conflicts (Veerman & Waldman 1996), and the several adult prisoners who, as discussed above, are currently allowed interaction with child inmates still assume this responsibility (DCIP 2016). In addition, some children might experience their separation from adult inmates as extra punishment, because in poor families – from which the majority of Palestinian child detainees and prisoners come (Cook, Hanieh & Kay 2004; DCIP 2012a; ACRI 2016a) – children and adults often sleep in the same room (Veerman & Waldman 1996).

Indeed, when interviewed by NGOs, some former detainee Palestinian children portrayed their joint detention with adults in an unequivocally positive light – an issue NGOs have otherwise tended to overlook, as noted above (on how some NGOs in Israel/Palestine overlook Palestinian narratives and perspectives, see also Allen 2013: 25-26). Considering that children’s testimonies are heavily informed by adults’ ideologies and expectations (James 2007; Spyrou 2011), and given most NGOs’ opposition to joint detention, such positive depictions are especially noteworthy.<sup>13</sup>

Thus, a book published in association with the Palestine branch of Defence for Children International (Cook, Hanieh & Kay 2004, 134) cites this NGO’s social workers as highlighting a “range of factors that helped [Palestinian] children survive their time in [Israeli] prison”, adding:

Some [children] specifically mentioned adult detainees who were role models, and a critical source of care and support in a very hostile environment: ‘The adult detainees helped me a lot. They developed my character and I benefited from their experience of culture and life. They made me feel comfortable. Without their support I would have been lost in prison’; ‘The children lived with adults who took a lot of care of us. Support was strong and detainees discussed their problems. I am still in touch with friends I made in prison even though they are much older than me.’

A twelve-year-old Palestinian provided Israeli NGO B’Tselem (2008) with a similarly positive account of his detention with adults:

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13. This, of course, ought not overshadow the insights of critical writing on “voice” and “authenticity”: children’s testimonies do not reveal “the truth”, nor do they represent “authentic” voices (Spyrou 2011).

They [the Israeli soldiers] took [me and a fourteen-year-old friend] ... to Ofer Prison and put us in [a] ... section ... which had eighty-three detainees, of all ages. ... The detainees treated us well. They gave us candy, chocolate and potato chips. I felt comfortable. ... A detainee helped me ask for the doctor to treat my leg. ... At first, I was afraid and cried sometimes, because my family was far away. ... The adult detainees took care of me because I was the youngest detainee in the Department, and they decided to make me assistant to the [detainee acting as] sergeant of the Department.

Other children's positive accounts, or mentions thereof, can be found elsewhere (DCIP et al. 2014, 26; DCIP 2016).

In fact, Palestinian child inmates in Israeli custody have not been separated from adults. They are not separated from the Israeli adults under whose control they remain – the prison and security authorities – and against whose potential abuse they might now be less protected in the general absence of Palestinian adults (cf DCI 2007; Cook, Hanieh & Kay 2004). Commonly reported forms of abuse of Palestinian children during their detention and interrogation include physical violence, threats, and protracted handcuffing or binding in stress positions (UNICEF 2015; Military Court Watch 2014, 2016; DCIP 2016; DCIP et al. 2014; Addameer 2016). Such abuse by the formally non-military IPS is inseparable from Israeli soldiers' violence (on which see Public Committee Against Torture in Israel 2008; Viterbo 2014) because, among other reasons, the majority of IPS staff dealing with Palestinian prisoners are either soldiers on active duty or former combat soldiers.<sup>14</sup>

Coerced confessions of Palestinian children are a particularly prevalent issue, according to various NGO reports (No Legal Frontiers 2011; Madaa Creative Center 2012; DCIP 2012a; B'Tselem 2011). The main and sometimes only evidence against Palestinian children is the confessions Israeli interrogators extract from them, confessions that Israeli military judges rarely exclude (Hajjar 2005; DCIP 2016). Some Palestinian ex-detainees, when interviewed about their encounter with the Israeli legal system, described their interrogation rather than their courtroom trial as their "real" trial (ibid; Collins 2004). This depiction becomes clearer when one considers the characteristics of Israeli military court proceedings: the rarity of evidentiary trials, which include witness testimony, evidence examination, and closing arguments; the relative

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14. The IPS assigns soldiers to facilities holding "security prisoners" (IPS 2012), where they form a large part of the personnel. For example, soldiers make up 51 percent of Ofer Prison staff (Telem 2012) and 40 percent of Nafha Prison staff (IPS 2013). Combat military service or training is also a prerequisite for employment in the IPS (IPS 2012).

brevity of the hearings;<sup>15</sup> and the prevalence of plea bargains, effectively meaning that many trials are concluded outside the court (Yesh Din 2007; Hajjar 2005; B'Tselem 2011).

As noted above, during the crucial stage of interrogation, Palestinian child detainees are denied contact with their parents and prospective attorneys. In addition to potentially reducing abuse and coerced confessions, contact with these Palestinian adults may also abate the Israeli authorities' alleged efforts to use or recruit Palestinian children as collaborators (Veerman & Waldman 1996; cf. DCIP 2016) – informants or incriminators – a practice reportedly combining inducements and threats, primarily during and in between interrogations (Addameer 2014, 2016; DCIP 2012b; Madaa Creative Center 2012). At the same time, reports suggest, Israeli authorities arrange for contact with other Palestinian adults – informants – who are placed either in the same cell as the child or in an adjacent cell with a small opening to solicit confessions (B'Tselem & HaMoked 2010; DCIP et al. 2014; DCIP 2016). There have been reports of informants posing as the adult prisoners who, as discussed above, are allowed contact with children (DCIP 2016); in this manner, Israeli authorities seem to be using the limited intergenerational interaction Palestinian inmates have secured from them against the children it was aimed to assist.

The use of children as collaborators has a dual connection with the developments at the core of this article. First, recruitment as a collaborator can hinder a child's reintegration into Palestinian society upon release (Veerman & Waldman 1996), and thus operates similarly to the wedge driven by the generational segregation of Palestinian inmates. Second, the Israeli judiciary's desire to depoliticize Palestinian children can be seen as an attempt to turn these children into Israel's collaborators in the broad sense of the word.

Finally, as a result of the increased generational segregation of Palestinian prisoners, their self-organized study activities – the centrepiece of the prison-as-university – have been deprived of much of their crucial capacity for intergenerational knowledge transfer, discussed above (cf Addameer 2010, 71-72). In addition to losing this intergenerational power, remaining study groups have been placed under heavy regulation by the IPS (IPS Commission Ordinance 03.02.00, Arts. 21a-21d), which also recently revoked a provision allowing “security prisoners” to teach fellow inmates in their ward (IPS Commission Ordinance 03.02.00 – 2011 version, Art. 21b). These

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15. According to Israeli NGO Yesh Din (2007), the average length of military court detention hearings observed between 2006 and 2007 was: three minutes and four seconds for extension of detention for the purpose of interrogation prior to filing an indictment; a minute and 54 seconds for authorizing continued remand until completion of trial; and three minutes and twenty seconds for detention hearings concerning minors. For similar findings see No Legal Frontiers (2011).

aggregate and complementary developments may help elucidate why these informal study activities, though still in existence (Addameer 2010; Journal of Palestine Studies 2014a, 2014b), have reportedly been on the wane (Daka 2011; Rosenfeld 2014).

### “Rehabilitation”

The insight that rehabilitation is far from necessarily benign or benevolent is of relevance beyond the context of Palestinians in Israeli custody (Foucault 1989, 1995; Rose 2007), but its significance and ramifications in this context are unique. The very proposition that Israeli authorities should be rehabilitating Palestinian child prisoners, though hitherto lacking significant effect, raises three key questions. The first is whether Palestinians who violate Israeli military law need rehabilitation, for instance if they throw stones at Israeli soldiers – indeed, as noted above, the most common charge against Palestinian children. For many Palestinians, the answer is a resounding no (B’Tselem 2011). This is among the reasons why some defense lawyers object to the military courts’ power to order pre-sentence rehabilitation evaluations, a procedure discussed above. The excerpt from the IPS position paper quoted earlier also cites this view as a main consideration against rehabilitating these children. Thus, in a sense, Palestinians share Israeli courts’ conception of prison as a political academy as well as the IPS’s reservation about rehabilitation, though obviously for different reasons.

A second question is whether Palestinians’ rehabilitation, even if considered desirable, should be carried out by Israeli authorities. For example, the task of writing pre-sentence rehabilitation evaluations has been placed in the hands of the Civil Administration – the Israeli body dealing with non-military affairs in the West Bank such as land registry, movement permits and work permits – whose commitment to Palestinian interests is questionable (Gordon 2008; Zertal & Eldar 2007; Brown 2015).

The third issue is the actual impact and use of rehabilitation. With regard to child inmates, the greater emphasis on rehabilitation has not necessarily substituted incarceration, nor has it served as a mitigating factor. Most of the above-cited Israeli judgments championing rehabilitation neither avoided nor reduced – and in one case (*State of Israel v. Gurin* 2009) actually increased – young Palestinians’ prison sentences. This is not entirely surprising, given the high prison sentence rate and relatively low rate of release on bail for Palestinian children, both mentioned above. Justice Shoham’s caveat to his previously quoted espousal of rehabilitation – “regardless of our rejection of the appeal” (*John Doe v. State of Israel* 2014, ¶12) – explicitly divorces rehabilitation from punishment. In addition, the legal system’s growing preoccupation with the notion of rehabilitation might actually mean longer incarceration: the result of ordering

pre-sentence rehabilitation evaluations, some defense lawyers have warned, would be to prolong Palestinian children's detention (DCIP 2010). Moreover, according to a recent ruling by Justice Noam Sohlberg – a settler living in the West Bank – the continued non-referral of most Palestinian “security prisoners” for rehabilitation (despite the judiciary's calls) should normally prevent the parole board from ordering their release, even when dealing with child prisoners (*John Doe v. Parole Board* 2016).

While the exclusion of adult Palestinian prisoners from rehabilitation may exempt them from many of these issues, it presents them as incorrigible, and consequently works to their detriment in two ways, as touched upon earlier. First, it makes them less likely to be paroled, as the Supreme Court indeed recently acknowledged (*Ra'ee v. Prison Service* 2016; *John Doe v. Parole Board* 2016). And second, it makes it easier to retract the few benefits they receive, such as the previously discussed enrollment in Open University studies. The Israeli government presented the ban on these academic studies as a means to pressure the Palestinian Hamas into releasing Israeli soldier Gilad Shalit from captivity in Gaza, but despite Shalit's release in 2011 in exchange for Palestinian prisoners, this ban remains in place. And since these studies enable Palestinians to ideationally traverse the prison's confines (somewhat like the prisoners' informal study groups), this ban operates as a sort of mental incarceration and thus as extra punishment, even if not formally presented as such. At the time of writing, a bill supported by government ministers is being considered, which would revoke Palestinian prisoners' remaining benefits that are allegedly “not enshrined in any international treaty” (Liel 2016) – thus potentially turning a minimum threshold of legally recognized rights into a maximum threshold, as Israel has done before (see Weizman 2011, 81-86).

## ISRAEL'S DIVIDE-AND-RULE APPARATUS

Israeli authorities subject Palestinians in the West Bank and Gaza Strip – as well as Palestinian citizens (Lis 2014; Abu-Saad 2008) – to a broader array of complementary divide-and-rule policies and practices, some longstanding and others recent. Though neither uniform nor fully successful, this divide-and-rule apparatus operates to fragment Palestinians, spatially, politically, and socially. Recent years have witnessed the proliferation and refinement of this apparatus, both in and outside Israeli prison. It is from this wider socio-political context that the above developments derive their significance and effects.

It seems that for Israeli authorities, Palestinian prisoners are most dangerous when unified. Along similar lines to those of the Israeli judgments examined earlier, a publication by the IPS (2007, 8, 10) expounds:

Security prisoners ... endeavor to ... turn prison into a place of training, instruction, [and] forming an ideology .... [They seek to] ensure ... internal discipline and prevent prisoners from collaborating with the prison management intelligence. In addition, the prisoners try to operate various committees for organizing ... education ... [and] instructing prisoners ....

Possibly to thwart such collective endeavors, there has been an overall rise in Palestinians' segregation and isolation, of which the shift toward generational separation in Israeli custody is but part. Among other things, the IPS has been reported to increasingly segregate Palestinian inmates into cells, wards, and facilities on the basis of their regions of residence (Addameer 2011; Daka 2011). While not equally implemented across all IPS facilities, this geographically based segregation resonates with the general fragmentation of the Palestinian territories, which is ascribable to what Israeli officials have publicly termed Israel's "separation policy" (Gisha 2014; see also Shavit 2004). The Gaza Strip, under constant if changeable closure, has been cut off from the West Bank, while the latter, enclosed by the Separation Wall and subject to restrictions of Palestinian movement, has been splintered into enclaves that each experience Israel's control somewhat differently (Handel 2009; Gordon 2008; Bornstein 2008; Korn 2008; Gisha 2015). To an extent, Israel's actual prisons mirror the transformation of the Palestinian territories into a colossal prison of sorts, or rather a disjointed network of prisons (Korn 2008; Bornstein 2008; Khalili 2013). In the same vein, the Israeli government has both censured and refused negotiation with the Palestinian unity government (Sharon 2014), which in 2014 brought together the theretofore separate West Bank and Gaza Strip Palestinian governments.

In addition to generationally and geographically based segregation, other recent changes have further divided Palestinians in Israeli custody into non-coordinated units. Until a short while ago, the IPS regulations made provision for "security prisoners" to elect both a ward representative and a central prison representative, the latter receiving access to all relevant wards; however, the election of a central representative is now banned (IPS Commission Ordinance 03.02.00 - 2011 & 2014 versions, Arts. 6a, 6g; see also Rosenfeld 2004; Daka 2011). The heavy regulation and restriction of the prisoners' informal study groups, discussed above, can be understood as aimed to further stymie their political coordination.

Incarceration itself has been a means for Israel to remove political activists from Palestinian society (Ron 2000; Nashif 2008), including those who are physically non-violent (Peteet 2009; Jaraisy & Feldman 2013). While in custody, these Palestinians are often denied family visits, as explained above, and the IPS highly restricts their access to media sources and books (IPS Commission Ordinance 03.02.00, Arts. 21a, 21c, 21e; Temporary IPS Order – Acquisition of Newspapers; Matar 2016; see also Addameer 2010; Daka 2011), and also, as of late, to Members of Parliament (Khoury 2016). Palestinian prisoners whom Israeli authorities deem especially troublesome, such as hunger strikers, are even more radically cut off from fellow inmates and the outside world (IPS Commission Ordinance 04.16.00, Art. 6a & Appendix A). Palestinian adults are thus not the only “problem” group increasingly segregated in Israeli prison. After their release, Israel keeps Palestinian former detainees under heightened surveillance and restrictions, thereby, in a sense, extending their incarceration beyond prison (Smith 2013).

In the spirit of “divide and rule”, such Israeli policies and practices, more than merely segregative, are potentially divisive. Israel’s use and recruitment of Palestinians as informants and incriminators, for example, undermines the trust among Palestinians that is necessary for solidarity, alliances, and collective resistance (Kelly 2010; Gordon 2008; Sa’di 2005). In addition to Palestinian children, whose recruitment was mentioned above, Israeli authorities have also – according to Israeli NGOs (Physicians for Human Rights – Israel 2008, 2015) and veterans (Rudoren 2014) – focused recruitment efforts on other vulnerable sections of Palestinian society, including patients, their families, and others in need of exit permits; people requiring other vital services and permits; suspects and defendants; and closeted homosexuals. Likewise divisive, reportedly, has been the collective punishment of Palestinian “security” prisoners for individual violations (Daka 2011).

Alongside this divisiveness, Israel’s divide-and-rule apparatus also manifests a desire to reshape Palestinian consciousness. Recent formulations of this desire vary: from “rehabilitation” of Palestinian children in Israeli custody, as discussed above, through “searing Palestinian consciousness” in recent attacks on the Gaza Strip (Shavit 2006, cited in Daka 2011, 236), to “displaying presence” and “sowing fear” in military brutality toward West Bank Palestinians (Zagor 2010). One main arena for such attempts to govern and remold collective consciousness has been Palestinian educational institutions – key contributors to national identity building and centers of political resistance (Bruhn 2006; Zerkovitz 2014). As shown earlier, both Palestinians and the Israeli legal system have come to conceptualize Israeli prison as a political university. The Israeli judiciary’s calls to dismantle this so-called university, discussed earlier, can be interpreted as aiming to retrieve, in prison, the sort of control Israel once

had over Palestinian education outside prison: in the past, Palestinian universities' and schools' curricular and extracurricular activities, as well as their textbooks, were under close Israeli monitoring and censorship, anchored in specially designed military legislation (Gordon 2008; Bruhn 2006; Zelkowitz 2014).

## CONCLUSION

Recent years have witnessed three significant developments concerning Palestinians in Israeli custody: the increased separation of Palestinian adults from their juniors; the Israeli legal system's growing preoccupation with "rehabilitating" the now-segregated Palestinian children; and Israeli authorities' ever-diminishing interest in rehabilitating Palestinian adults.

The Israeli judiciary's championing of these processes, this article has shown, largely revolves around creating a future Palestinian generation devoid of its predecessors' political tendencies. On the basis of assumptions about children's high corrigibility and adults' lack thereof, and in drawing on the Palestinian imagery of Israeli prison as a quasi-academic site, Israeli judgments have called to prevent Palestinian inmates' intergenerational influences through separation, and to counter, if not undo, these influences by "rehabilitating" Palestinian children at Israeli hands.

These developments have given rise to new forms of governance and penalty, and have transformed surrounding discourses, with potentially adverse effects for most of those on both sides of the generational division: Palestinian adults and children alike. As this article has explained, inimical effects include: growing disregard for adult Palestinian inmates' rights and conditions; granting formal rights to Palestinian children with very limited effect, while continuing to deny or even increasingly eroding these rights in relation to their adult counterparts; the loss of various forms of intergenerational support and protection among many of the inmates; the increased vulnerability of many child inmates to abuse and threats by both the Israeli authorities and other children; a rehabilitative discourse that overlooks Palestinian reservations while neither decreasing incarceration nor sentences; and delegating new powers to Israeli authorities whose commitment to Palestinian interests is questionable.

In large measure, the developments concerning Palestinians in Israeli custody symptomize the broader pitfalls of both human rights law and child law. The former, as some critics have shown, often suffers from context-insensitivity, the crude imposition of rights with insufficient regard for human diversity, and neglect of actual (as opposed to formal) rights. The latter, as this article has explained, has been implicated, from its

inception, in legitimizing harshness toward adults, and their disenfranchisement, while also breaking up ethnic, racial, and socio-economic “problem groups”. That these pitfalls manifest themselves as they have in Israel/Palestine warrants further problematization, more broadly, of the often uncritical invocation of these legal frameworks. At the same time, in the present context, these legal frameworks have both reinforced and been informed by Israel’s ever-evolving divide-and-rule apparatus, which operates to fragment Palestinian society geographically, socially, and politically in and beyond prison. This article thus sheds new light on these transnational legal frameworks, this specific socio-political context, and their interrelationship.

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