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Israel/Occupied Territories: Letter to Knesset members - Do not approve detention law which may increase risk of torture

16 June 2006

Chair and Members,
Constitution, Law and Justice Committee
Knesset

I am writing concerning the proposed new Law 5765 – 2006, the "Criminal Procedure (Enforcement Powers - Detention) (Detainees Suspected of Security Offences) (Temporary Provision)", which you are currently considering and on which you are scheduled to vote next week.

Amnesty International is concerned that in its latest version this draft law contains provisions which are inconsistent with international human rights treaties to which Israel is a State Party, notably Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which stipulates:

- "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."(2)
- "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release..."(3) - "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."(4).

The proposed law would allow for any person suspected of "security offences" to be detained incommunicado and without charge by security forces for 96 hours (increased from 48 hours) before being brought before a judge, and for up to a further 20 days thereafter. It would also allow for the detainee to be denied access to legal counsel for up to 30 days, and to be denied the right to be present at court hearings held to consider the extension of his incommunicado detention for 20 days.

Furthermore, the proposed law would eliminate detainees' right, as guaranteed by the law currently in force, to be present at court hearings held to consider an extension of their incommunicado detention, except for the first hearing (96 hours after arrest), as well as any appeal hearing against the said extensions. The law would therefore allow for detained suspects to be completely cut off from the outside world for up to 30 days, with the exception of an appearance before a judge on the fifth day of detention when they would be denied the presence of a lawyer.

A detainee who is denied access to legal counsel and is also barred from attending court hearings to extend

his/her detention will be prevented from effectively exercising his/her right to challenge the legality of the detention, a right guaranteed under Article 9 (4) of the ICCPR.

If enacted, this law would significantly increase the risk that those detained incommunicado for such prolonged period could be subject to torture or ill-treatment. Effectively, the law would facilitate violations of international human rights law and breach a number of international human rights treaties which Israel has ratified and is obliged under international law to uphold.

The proposed extension of the already lengthy period of incommunicado detention permitted under the law currently in force in Israel cannot be reconciled with Israel's obligations under international human rights law.

Indeed, virtually all the reports of ill-treatment of detainees that are received by Amnesty International relate to the period during which detainees were held incommunicado and were subject to interrogation. The organization's concerns as to the period permitted by the existing law and any further extension are widely shared by other organizations and by UN human rights bodies and experts.

In 2003 the UN Human Rights Committee, the United Nations (UN) body mandated to interpret the ICCPR and to monitor states parties' compliance with its provisions, expressed concern that: "...the use of prolonged detention without any access to a lawyer or other persons of the outside world violates articles of the Covenant (arts. 7, 9, 10 and 14, para. 3 (b).)" and called on Israel to: "...ensure that no one is held for more than 48 hours without access to a lawyer." (para 13, Concluding observations of the Human Rights Committee; CCPR/CO/78/ISR - 21 August 2003).

With regard to the practice of prolonged incommunicado detention in general, the UN Special Rapporteur on Torture, Sir Nigel Rodley, noted in his report of 3 July 2001 (A/56/156), that: "Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal. Legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention....".

The Commission on Human Rights, in its Resolution 2005/39 of 19 April 2005 (Torture and other cruel, inhuman or degrading treatment or punishment) reminded all States that: "...prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person."(9).

With regard to the provision contained in the proposed law that would deny detainees the right to appear at court hearings being held to consider extending their detention, we draw your attention to article 9(4) of the ICCPR, where the right to challenge the lawfulness of one's detention before a court is clearly set out. In its General Comment 29 of 2001, the Human Rights Committee confirmed that this right is protected at all times, including during a state of emergency. Clearly, if a detainee is not permitted to be present in court when his detention is being considered, he will be denied an adequate opportunity to challenge either the lawfulness of his detention or the grounds on which the authorities propose to extend it at the same time as the detaining authority is asserting its necessity. In addition, a detainee who is or has been subject to ill-treatment while in incommunicado detention will be unable to bring any complaint before the court.

Finally, we wish also to draw your attention to UN Security Council Resolution 1456 of 20 January 2003, which requires that: "States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law."(6).

In light of the above, we urge you not to support this proposed law and, further, to take the steps necessary to amend the law currently in force so as to eliminate altogether or reduce significantly the period during which a person may be held in incommunicado detention, and thereby bring the current law into conformity with international human rights standards.

Amnesty International notes that in the original version of this draft law its provisions were solely applicable to non-residents (defined as persons not registered in the population registry or not legally present in Israel for a period exceeding three consecutive years), which we considered to be discriminatory. We welcome the removal of this discriminatory provision from the current, revised draft and urge you to ensure that no such discriminatory provisions are reintroduced.

We trust that you will give due and urgent consideration to the matters raised in this letter.

Yours sincerely,

Malcolm Smart

Director

Middle East and North Africa Programme