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Israel/Occupied Territories: Knesset should reject draft detention law which increases risk of torture

Amnesty International is urging members of the Israeli Knesset to reject a new government-sponsored law which would grant security forces the power to hold detainees in virtually total isolation from the outside world for up to 50 days, if they are not classified as residents of Israel.

By the government's own admission, the proposed law [Criminal Procedure (Enforcement Powers - Special Provisions for Investigating Security Offences of Non-Residents) (Temporary Provision) Law, 5765 - 2005] is chiefly aimed at Palestinians from the Gaza Strip, though it would also apply to other non-Israelis suspected of security offences.

Under the proposed law, suspects detained incommunicado for interrogation by the General Security Services (GSS) could be denied access to a lawyer for 50 days and barred even from being present when a court considers extending their detention when an appeal against such an extension is heard.

In a letter to members of the Israeli Knesset's Constitution, Law and Justice Committee and its Foreign Affairs and Security Committee, Amnesty International expressed concern that the law would discriminate against non-residents and also place detainees at greater risk of torture or ill-treatment. *[See External Document - Letter to Knesset members: Do not to approve discriminatory detention law which could increase risk of torture, AI Index: MDE 15/056/2005]*

Amnesty International considers that the proposed law, if enacted would violate Israel's obligations under international human rights treaties to which it is a party - including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).

The prohibition on discrimination is a cornerstone of international human rights law and the status of detainees as non-citizens or non-residents cannot serve to deny them their rights which are protected under international human rights law.

UN Security Council Resolution 1456, of 20 January 2003, stipulates 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."

According to the UN Human Rights Committee, aliens are entitled to equal protection by the law, and there must be no discrimination between aliens and citizens in the application of these rights. The UN Committee

on the Elimination of Racial Discrimination has called on states to: "Ensure that non-citizens detained or arrested in the fight against terrorism are properly protected by domestic law that complies with international human rights, refugee and humanitarian law".

The provision contained in this proposed new law to further extend the period of incommunicado detention – already far too long under the law currently in force in Israel – cannot be reconciled with Israel's obligations under international human rights law.

It is during incommunicado detention, when detainees are held completely cut off from the rest of the world, that they are most at risk of being subjected to torture and ill-treatment to force them to provide confessions or information.

Such risk is widely recognized by UN human rights bodies and experts, who have consistently urged states allow detainees prompt access to lawyers. The UN Human Rights Committee, on 21 August 2003, expressed concern that: "The use of prolonged detention without any access to a lawyer or other persons of the outside world violates articles the Covenant ..." and called on Israel to: "Ensure that no one is held for more than 48 hours without access to a lawyer".

As Israel marks the tenth anniversary of the late Prime Minister Yitzhak Rabin's assassination by an Israeli gunman in November 1995, warnings by high-level Israeli security and intelligence officials about a possible recurrence of such attacks by Israeli citizens against government officials are but a reminder that there can be no security justification for such a law, which would discriminate against non-residents and which would increase the risk of torture for non-residents.