

[Knesset Member]  
The Knesset  
Kiryat Ben Gurion

AI Index: MDE  
15/30/00

Jerusalem 91950  
ISRAEL

20 June 2000

Dear Knesset Member

Amnesty International has been informed that the Israeli government has recently submitted to the Knesset a draft law entitled "The Imprisonment of Combatants not Entitled to Prisoner of War Status". We are writing to express our grave concern that this bill, if adopted, would undermine basic principles of international humanitarian law and to urge you to vote against it.

If passed, the draft law would give the Chief of General Staff of the Israel Defence Force (IDF) the power to detain indefinitely without charge or trial a person who belongs to a force fighting against Israel or a person taking part in hostile activities of such a force and who would not be entitled to status of prisoner of war under the Fourth Hague Convention of 1907 Respecting the Laws and Customs of War on Land or the Third Geneva Convention of 1949 Relative to the Treatment of Prisoners of War.

The four Geneva Conventions of 1949 provide a comprehensive regime for the protection of victims of war in international armed conflicts, dealing respectively with wounded and sick in armed forces; wounded and sick and shipwrecked in armed forces at sea; prisoners of war; and civilians. Israel is a party to all these Conventions. Article 4 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 describes the persons whom this particular treaty protects:

"Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are. ...

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention."

Article 4 of the Fourth Geneva Convention makes it clear that if Israel detains persons who are not Israeli nationals during a conflict or occupation, they will, subject to certain other exclusions related to nationality, be protected by the Fourth Geneva Convention unless they are protected by the Third Geneva Convention which regulates the detention of prisoners of war.

According to Article 1 of the draft law, the law purports to incorporate the imprisonment of "combatants who are not entitled to prisoner of war status in a manner consistent with the provisions of

international humanitarian law, particularly the Geneva Conventions of 1949.” In fact the draft law is completely inconsistent with the Conventions. Detained persons who meet the requirements of nationality will be protected by the Fourth Geneva Convention unless they enjoy prisoner of war status, in which case they are protected by the Third Geneva Convention. No such status as "a combatant who is not a prisoner of war" exists under the four Geneva Conventions.

The draft law would in fact regulate the detention of persons who are entitled to the protection of the Fourth Geneva Convention and should therefore provide them with the guarantees provided in this treaty. It fails to do so. Article 42 of the Fourth Geneva Convention states that internment (detention without charge or trial) may only be ordered “if the security of the Detaining Power makes it absolutely necessary”. The draft law does not require that detention should be absolutely necessary and would allow persons to be detained if they belonged to a force fighting against Israel or participated in hostile activities of such a force and were not entitled to the status of prisoner of war under international humanitarian law. Additional protections are accorded by the Fourth Geneva Convention to protected persons who are in occupied territory. The law does not incorporate such protections.

This draft law, by seeking to create an intermediate category of "combatants who are not entitled to prisoner of war status", a status not known to international humanitarian law, undermines the protections accorded to victims of armed conflicts under the Geneva Conventions. If adopted such a law will set a dangerous precedent internationally.

The Israeli government has made it clear that this law is being adopted to ensure that Shaykh ‘Abd al-Karim ‘Ubayd and Mustafa al-Dirani, who have been held without charge or trial in administrative detention since 1989 and 1994, incommunicado in an undisclosed place of detention, can continue to be detained. This is despite the April 2000 ruling by the Supreme Court that Israeli law does not authorize the Minister of Defence to hold individuals in administrative detention in instances where that individual does not pose a threat to the security of Israel. Prime Minister Barak stated following the cabinet decision to adopt the draft law on 11 June 2000: "Israel is obligated to exhaust all chances to find out what happened to Air Force navigator Ron Arad and its other POWs and MIAs, hence the need for draft legislation."

Amnesty International opposes the detention of political prisoners without a fair trial, including the holding of political prisoners in administrative detention. We have also been concerned for many years that Shaykh ‘Ubayd and Mustafa al-Dirani were being held in secret detention by Israel as hostages in return for information concerning Israeli soldiers who went missing in Lebanon. Amnesty International welcomed the ruling of the Supreme Court that detentions for such purposes were unlawful and we called for the release of all Lebanese nationals held as "bargaining chips", including Shaykh ‘Ubayd and Mustafa al-Dirani. We are extremely disappointed that these two Lebanese nationals have not been released and that the Israeli government is going so far as to introduce new legislation, which in itself undermines international law, in order to keep them in detention.

Amnesty International shares the Israeli government’s concern regarding the fate of Ron Arad and other Israeli nationals who went missing in Lebanon during the 1980s. Our membership has campaigned on behalf of these Israeli nationals and we have for many years called on governments involved in the conflict in Lebanon *to investigate the fate of all those who “disappeared” or went missing and to ensure that adequate resources are given to such investigations. Notwithstanding the plight of Israeli nationals who have gone missing, hostage-taking is unacceptable in any circumstances.*

Shaykh ‘Ubayd and Mustafa al-Dirani enjoy the status of protected persons under the Fourth Geneva Convention. Their detention clearly contravenes international humanitarian law. The holding of hostages is prohibited by Article 34 of the Fourth Geneva Convention and is defined as a grave

breach of the Convention, i.e. a war crime. In addition, in the light of Israel's recent withdrawal from Lebanon, they should be released in accordance with Article 133 which states that "internment shall cease as soon as possible after the close of hostilities."

We urge you to vote against this draft law which contravenes the fundamental principles of international humanitarian law and is contradictory to Israel's obligations under the Geneva Conventions.

We look forward to receiving your response to this letter.

Yours sincerely

June Ray  
Director  
Middle East Program