

Lawyers under Suspicion

By Abeer Baker¹

On 31 January 2005, a United States District Court judge ruled that persons suspected of committing security offenses and imprisoned in the American base at Guantanamo Bay, Cuba, are entitled to consult with attorneys, contest their detention in United States' courts, and challenge the evidence against them. On the same day, the Israeli parliament voted on an unprecedented, draconian bill, and passed it on first reading by a massive majority.

The proposed bill grants the Israeli Prisons Commissioner, his deputies, and prison wardens the power to prohibit a prisoner held on security charges to meet with his attorney, if there is a genuine danger that the meeting is liable to enable the perpetration of an offense that endangers the security of a person, public safety, or state security.

For example, the bill would permit the authorities to prohibit, a meeting between an attorney and security prisoner for a period of six months with the approval of the district court, and for longer if Supreme Court approval is obtained. The decision to prevent the meeting is supposed to be based on concrete information indicating that the purpose of the attorney-prisoner meeting is not to provide professional services, but to advance the committing of a criminal offense.

The explanatory notes to the bill indicate that the authorities will inform the attorney of why the meeting is prohibited, unless disclosure of the reasons will harm state security or a matter of public importance. In effect, the Prisons Commissioner, his deputy, and prison wardens will be authorized to infringe on the prisoner's constitutional right to counsel, and the constitutional right of the attorney to freedom of occupation, for a lengthy period of time. Furthermore, these prison officials can deny the meeting for a reason "that cannot be disclosed."

If adopted as currently worded, the bill would unquestionably deny thousands of prisoners their rights to counsel and to access to the courts. Another no less grave problem inherent in the bill is that it is directed precisely against the attorneys who are willing to represent security prisoners in judicial proceedings. The Israel Prisons Service seeks to be the ultimate power for granting these attorneys a "certificate of integrity and professional qualification," and for filtering out those who do not meet its standards. In this way, they would determine which lawyers will be allowed to represent security prisoners and which lawyer won't be allowed.

It is unclear how the 'particular' attorney who seeks to take part in the committing of "grave offenses" is able to walk about the streets freely, with no stain on his or her name, and yet, the moment he or she reaches the prison's gates to visit a security prisoner, becomes a suspect. The attorney is consequently prevented from meeting his or her client, not necessarily because the prisoner is dangerous, rather because the attorney is a danger.

Apparently, the bill was proposed in order to achieve two objectives. The first objective was to bypass the Supreme Court's decision a year ago to void the power granted by the Minister of Internal Security to the Prisons Commissioner and wardens to prohibit a meeting between prisoner and legal counsel. The Supreme Court held that it was forbidden to restrict the fundamental right of a prisoner by means of secondary legislation, and that a Knesset statute was required.

The second objective was to add another victim to the list of the Prisons Service's victims. This list includes the prisoners' children, who are not permitted physical contact with their fathers;

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the prisoners' wives, who are not allowed to spend time alone with their husbands, as the wives of prisoners being held for criminal, as opposed to security, offenses, are allowed; and even the prisoners' attorneys, who are forbidden to meet with their clients as frequently as necessary in order to provide proper representation.

The Knesset acted in its customary manner. It ignored the statements made by the Supreme Court on the importance and supremacy of prisoners' right to counsel, and chose to enact a statute which will infringe that right, hoping that, this time, judicial review can be avoided. The same prohibition, just dressed up to look different.

The time has come for the Israel Bar Association, public defenders, and human rights organizations in Israel to wage the just struggle for the rights of prisoners and their attorneys.