



1 November 2005

Mr. Martin Scheinin
United Nations Special Representative on the Promotion and Protection of Human Rights and
Fundamental Freedoms while Counteracting Terrorism
Office of the UN High Commissioner for Human Rights
United Nations
Palais des Nations
CH-1211 Geneva 10
Switzerland

Dear Mr. Scheinin:

Al-Haq and Addameer write to you to express their grave concern over the introduction of a new bill to Israel's Parliament (Knesset) entitled the "Criminal Procedures Bill (Enforcement Powers - Special Provisions for Investigating Offenses of Non-Residents)." Approved by Israel's Ministerial Committee for Legal Affairs on 9 October 2005, the proposed law further undermines the already neglected fundamental rights of Palestinians detained by Israel, and will be considered by the Knesset in the coming weeks.

According to this new bill, a detained person, not resident in Israel, who is suspected of a "security offence" can be held for up to 96 hours before being brought before a judge, and his or her detention may be extended for up to a renewable total of 20 days at a time. The new bill also stipulates that the Attorney General's approval for the extension of the detention period is only required after 40 days, and that a detainee may be barred from access to legal counsel for a period of up to 50 days. Moreover, the detainee may not appeal such a decision.

Since confessions extracted during interrogation of Palestinians by Israeli security personnel often form the primary and decisive evidence against detainees, Al-Haq and Adameer are deeply concerned that the passing of this bill will increase the likelihood of psychological and physical ill-treatment. For many years, Israeli policies towards detained Palestinians in the Occupied Palestinian Territories (OPT) have reflected a systematic breach of Palestinians' fundamental rights to dignity and life, and have remained the focus of documentation and repeated interventions by Al-Haq, Addameer and other human rights organisations and concerned UN bodies.

The bill allows for the application of standards and procedures to govern the investigation, interrogation and detention of Palestinians that are different from those applied to Israelis, thereby entrenching discrimination in the judicial process. In stark contrast to the proposed bill, under the Israeli criminal procedure law, the detention of a suspect resident in Israel is only permitted for 48 hours before being brought before a judge, and may only be extended for 15 days at a time. Furthermore, the approval of the Attorney General is needed for a detention period of more than 30 days, and a detainee must have access to a legal counsel after 21 days.

Israel's unilateral withdrawal from the Gaza Strip, also known as the Disengagement Plan, has not terminated its effective control of this area. However, the end of its permanent military presence therein has resulted in the cancellation of all Israeli military procedures and orders

applicable to Gaza, including those governing criminal acts. These orders and procedures were the framework within which Israel exercised its "legal" control. Al-Haq, Addameer and other Palestinian and Israeli human rights organisations fear that the timing of the new bill by Israeli authorities is intended to allow for the introduction of domestic Israeli criminal procedure laws, applicable to non-residents, the absolute majority of whom are Palestinians, to replace the military orders system. This would allow Israel's General Security Service to continue undermining the rights of Palestinians from the Gaza Strip who are or will be detained, investigated, interrogated in the same - if not harsher - manner as they were under Israeli military orders and procedures that are still in effect in the West Bank. Equally alarming, the bill represents an effort by Israel, the Occupying Power, to apply its own domestic laws within the OPT, in violation of fundamental provisions of international humanitarian law

To date, under the vague and sweeping pretext of state security, Israel has issued numerous military orders that have served to sustain and tailor the detention of thousands of Palestinians in the West Bank and Gaza Strip. These orders effectively deny Palestinians any meaningful protection of their fundamental human rights during their arrest and detention, including access to legal counsel; adequate conditions of detention; and freedom from torture and other forms of cruel, inhuman and degrading treatment.

Clearly this law breaches not only due process rights but also that of non residents. In accordance with the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the right to equality before the law is non-derogable, and thus can not be suspended, not even in times of emergency.

The principle of non-discrimination is a fundamental cornerstone of international law. The discriminatory nature of the Detention Law is in violation of Israel's obligations as a State Party to various human rights treaties, particularly International Convention on the Elimination of All Forms of Racial Discrimination and the ICCPR.

The bill, if passed, would constitute a serious violation of international legal standards which are binding on Israel, including the rights to fair trial, judicial review, and equality before the law. Israel may not compromise and infringe on the rule of law under the pretext of protecting its security or their population from the "threat of terrorism." Resolutions adopted by the General Assembly, Security Council and Commission on Human Rights stress that states must ensure that any measures taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with international law.

In addition to illustrating Israel's discriminatory approach to "justice" in the case of Palestinians in the OPT, the bill highlights Israel's persistent resorting to legal pretexts to grant legitimacy to its violations of Palestinians' fundamental rights. The legal formalisation of Israel's illegal practices towards the Palestinian population only serves to further undermine the legal and judicial protections formally afforded to Palestinians in the OPT under international law.

We urge you to give immediate consideration to this matter and to intervene with the Israeli authorities in order to prevent this bill from coming into effect, and to ensure that Israel abides by its legal obligations under international human rights and humanitarian law. If you require any further information please do not hesitate to contact us.

Best Regards,

Randa Siniora
General Director
Al-Haq

Khalida Jarar
General Director
Addameer

cc: Consuls General