Denying the Right to Legal Counsel to Exert Pressure on Palestinian Detainees

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Introduction

The right of a detainee to meet with and be represented by an attorney has long been recognized as a basic constitutional right, one which derives from an individual's rights to personal liberty, dignity and due process. Israel's Supreme Court has recognized this right, going so far as to disqualify evidence gathered due to a violation of that right.[1] However, the Court's recognition of the right to counsel does not extend fully to those classified as 'security detainees,' most of whom are Palestinians from the Occupied Palestinian Territory (OPT). The existence of a separate military legal system, which defines, or more precisely, diminishes the rights of prisoners, underlines the distinctions created by the state between its citizens and residents of the OPT, who are under its control. Israeli civil law and the laws of the military system that apply to residents of the OPT distinguish between regular prisoners and those who are classified as security prisoners. The General Security Service (GSS or Shin Bet) makes extensive use of its authority to prevent meetings between security detainees and their attorneys.

Even since the enactment of the 'Basic Law: Human Dignity and Liberty' in 1992, the Israeli Supreme Court has upheld sweeping provisions to prevent security detainees from meeting with their attorneys. One ruling in particular must be noted, as it has provided the legal basis for consistently rejecting detainees' challenges. In the ***Sufian*** ruling, the Supreme Court rejected a prisoner's petition to meet with his attorney, arguing that according to classified material reviewed by the court, it was nearly certain that allowing the meeting would harm the security of the region and be detrimental to the investigation.[2] The Supreme Court intervened only partially, choosing not to examine the circumstances of the arrest or the interrogation, and ultimately basing its decision on classified GSS material. Since the judgment in this case, any appeals from the GSS to 'the security of the region' or 'the interests of the investigation' have provided the justification for preventing a prisoner from exercising his right to counsel.

In addition to the existing legislation restricting meetings between detainees and their attorneys in the course of an interrogation, recent legislation has led to convicted prisoners also being exposed to abuse and ill treatment at the hands of the Israel Prison Service.

[1] HCJ 3412/91 **Sufian v. Commander of IDF Forces in Gaza**, PD 47(2), 843, 847 (1993) (hereinafter: **the Sufian case**), Criminal Appeal 5121/98 **Issacharov v. Chief Military Prosecutor**, Paragraph 14 of the ruling by President Beinisch (issued on 4 May 2006); HCJ 3239/02 **Marab v. Commander of IDF Forces in Judea and Samaria**, PD 57(2), 349, 380 (2003) (hereinafter: **the Marab case**.)

[2] See *Sufian case*, at note no. 1 above

1. Legal provisions which deny detainees their right to meet with an attorney

The situation under Israeli civil law and the military legal system

1.1 The right to meet with a lawyer according to Israeli law in the State of Israel:

The Criminal Procedure Law, which applies in Israel, authorizes a police officer in charge to postpone a detainee's meeting with an attorney for several hours if the detainee is in the middle of an interrogation and if halting or delaying that activity would materially jeopardize the investigation.[3] The meeting can be delayed for up to 24 hours in order to advance the interrogation,[4] and for a maximum of 48 hours on the grounds of protecting human life or stopping a serious crime.[5] In the case of a detainee suspected of a security offense, the law authorizes the GSS to prevent him from meeting with an attorney for up to ten days.[6] Subsequently, the president of a district court has the authority to extend the prevention of the meeting for a period not to exceed 21 days in total.[7]

1.2 The status of the right to counsel under the Israeli military court system applicable to Palestinians in the OPT:

The right of Palestinian detainees residing in the OPT to meet with an attorney is anchored in military law under Section 78B of the Order Regarding Security Directives (Judea and Samaria) (No. 378), 2009, (hereinafter Order 378).[8] This section requires the person in charge of the interrogation to allow the meeting unless he sees a reason to postpone it under Subsection (C) of the above order. In that case, he is authorized to postpone the meeting for 96 hours. However, Section 78B(F) of the order stipulates that Subsection (C) will not apply to the case of a detainee as defined in Section 78B of the order – that is, detainees suspected of security offenses.

Section 78C of the order stipulates that the person in charge of the interrogation can authorize preventing the meeting for up to 15 days for reasons of the security of the region or for the sake of the investigation, and that GSS officials are entitled to extend the prevention of the meeting for an additional period of 30 days. Section 78D of the order stipulates that the president of the military court is authorized to extend the prevention of the meeting for another 30 days.

1.3 Summary of the means used to prevent detainees from meeting with attorneys:

"Regular" detainees:

The military order which applies to the OPT relating to detainees who are not suspected of security offenses enables the prevention of a meeting between a detainee and an attorney for 96 hours. This provision alone violates the rights of Palestinian detainees in comparison with the regulations applied to regular detainees inside Israel, which permits the postponement of the meeting for 24 hours, and in rare cases up to 48 hours.

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[3] Section 34(D) of the Criminal Procedures Law (Enforcement Authorities-Detentions) - 1996 (hereinafter: Detentions Law).

[4] Section 34 (E) of the Detentions Law.

[5] Section 34 (F) of the Detentions Law.

[6] Section 35 (A) of the Detentions Law.

[7] Section 35 (D) of the Detentions Law.

[8] Order no. 378 was replaced by the Order Regarding Security Directives [Consolidated Version] (Judea and Samaria) (No. 1651), 2009, which came into effect on 5 May 2010.

Detainees classified as security detainees:

In the case of security offenses, under Section 78C of the military order applying to the OPT, a detainee can be arrested and interrogated without the possibility of meeting or consulting with an attorney for a total period of three months. Since most of the detainees from the OPT are suspected of offenses that the military law defines as security offenses, the exception has become the rule, enabling the prevention of security detainees from meeting with counsel.

While the arrangements regarding meetings between security detainees and their attorneys are more stringent in the OPT, the parallel arrangements that apply to security detainees who are citizens or residents of Israel, and are therefore not subject to military law, nevertheless severely and significantly violate the detainees' rights. The relevant sections of the Criminal Procedure Law and their implementation blatantly violate basic rights, even though the nature of the offense is not supposed to serve as a justification for this violation and the detainee should receive all of the protections in the criminal law.

The case of Dr. Omar Saeed is a salient example of a detainee's rights being violated by means of being prevented from meeting with an attorney. Dr. Saeed was interrogated for 16 days, during which he was not allowed to meet with counsel and was held in total isolation. A gag order was imposed on the case. Adalah and attorney Hussein Abu Hussein filed an appeal against Dr. Saeed's detention prior to trial, including the issue of preventing a meeting with an attorney. Dr. Saeed was convicted of the minor offense of providing services to an illegal association and sentenced to only seven months in prison from which the days he spent in detention were deducted[9].

2. The objective and consequences of preventing meetings with attorneys in light of other restrictions imposed on the detainee:

The isolation of detainees and efforts to prevent them from meeting with counsel, in particular, constitute one of the most frequently cited practices of the GSS's interrogation policy.[10] The right to meet with an attorney is one the essential guarantees of due process and a key defense against torture and abuse of prisoners for several reasons. Interrogating an individual under conditions of total isolation, including by preventing any contact between the detainee and any person other than his interrogators and preventing meetings with an attorney, raise the level of psychological stress the detainee is subjected to. This may expose him to illegal means of interrogation, which could amount to torture. Preventing a detainee's meeting with an attorney denies the principle means of oversight for determining that whether legal means are being employed in the interrogation. In these circumstances, there is an increased danger to the disruption of the detainee's judgment, the provision of false confessions and even the conviction of innocent people.

There is a vast amount of international legal literature on how human rights are violated by holding detainees in isolation while denying them contact with their families or attorneys, a process known as 'incommunicado detention.' Professor Nigel Rodley, the former UN Special

[9] Nazareth District Court, Criminal File 44055-05/10 **State of Israel v. Omar Saeed** (8 July 2010)

[10] A report by B'Tselem and Hamoked: Center for the Defence of the Individual: "Utterly Forbidden: The Torture and Ill-Treatment of Palestinian Detainees by Israel's Security Forces" (May 2007), pp. 29-30;

Rapporteur on Torture, determined that this type of detention is an important component in determining whether a detainee is exposed to torture[11].

Studies based on statistical data, affidavits of Palestinian detainees investigated under a military order preventing a meeting with counsel, and statements by attorneys who represent these detainees indicate that in the overwhelming majority of cases where meetings were obstructed, the interrogators withheld information from the detainee about how long the ban on meeting with an attorney would last. In the vast majority of cases, the interrogators also fail to inform the detainees about an extension of the ban or that they are being represented by an attorney in the remand proceeding. In more than half of the cases, the interrogators do not inform the suspect when the ban on the meeting with attorney was lifted.[12]

Detainees arrested for security offenses are subject to an additional constraint due to an emergency order allowing the GSS to extend the remand of these suspects outside of their presence and without the presence of their attorneys.[13] New legislation extended the validity of the Emergency Order Regarding a Detainee Suspected of a Security Offense by another two years and was specifically designed to overturn the Israeli Supreme Court ruling of February 2010 in the **John Doe** case. In that case, the rights of the detainee were doubly violated: the remand of his detention was extended in his absence and his detention was extended before he was allowed to meet with an attorney. The Court determined that the Emergency Order is not proportional and gravely violates the right of a suspect to due process anchored in the basic right to liberty and dignity. The court rejected the state's position, which contended that the law's objective is to improve the capability of law enforcement agencies to conduct an effective interrogation in the realm of security offenses and to thwart terrorist actions. The court determined that conducting proceedings to extend the remand of a security detainee outside of his presence is illegal.[14]

In the military court system, the authority to order the extension of detention in the absence of a security detainee has been anchored in a new order enabling this practice, when there is fear that an offence may be stopped, or in order to prevent harm to human life.[15]

In most cases, preventing a security detainee from meeting with his attorney takes place alongside additional, detrimental measures and practices. These means include conducting a hearing in the absence of the detainee, or his attorney, or both; withholding information from the detainee regarding the duration of the ban on meeting with an attorney and its extension or that he is represented by an attorney, and more. The cumulative use of all or some of these means creates a situation in which the detainee is held in total isolation. This isolation is aimed at breaking his spirit so that he will cooperate with the interrogators and provide them with any information demanded of him. It is an inappropriate and illegal goal.

3. Data on preventing meetings

As noted, the GSS prevents most Palestinian security interrogees from meeting with their attorneys as a matter of course. However, it refuses to provide data on this practice. The Supreme Court upheld this refusal in a ruling issued on a petition submitted by Yesh Din and the

[11] Report by the Special Rapporteur on Torture, UN Doc. A/54/426. 1 October 1999.
[12] Report of the Public Committee Against Torture in Israel: "When the Exception Becomes the Rule" (October 2010), p. 26.
[13] Criminal Procedures Law (Detainee Suspected of a Security Offense) (Emergency Order) (Amendment 2), 2010.
[14] Criminal Appeal 8823/07 **John Doe v. State of Israel** (issued on 11 February 2010).
[15] Order Regarding Security Directives (Amendment no. 15) (West Bank) Temporary Order (No. 1684), 2012

Movement for Freedom of Information against the GSS. In this case, these groups requested information on the number of times that meetings were prevented and the scope of the restrictions on meetings between attorneys and detainees. The Supreme Court justices accepted the state's position that exposing this data would harm the security of the state. The court determined that accepting the petition in a broad or narrow manner would likely open a small window that, ultimately and unintentionally, would to some extent help hostile elements that seek to harm the state.[16] Although the court claimed that when it considered whether the material was likely to cause damage to state security, it did not adopt an "all or nothing"[17] approach. However, it indeed adopted a sweeping solution and refrained from seeking the required constitutional balance regarding the disclosure of data, even if only partially, all in the name of security.

Data from the reports of human rights organizations, supported by testimonies and assessments, indicate that between 2000 and 2009, 70-90% of all Palestinian security detainees from the West Bank were denied the right to meet with their attorneys for their entire interrogation or a significant part of it. Combining these assessments with the data provided by the GSS regarding the total number of Palestinians detained for security offenses, it appears that from 2000 to 2007, some 8,370 to 10,773 detainees were held in GSS facilities without being given the right to meet with an attorney during all stages of interrogation or a significant part of them.[18] It appears that it would be groundless to claim that in the case of each and every one of these detainees, a meeting with an attorney would have posed a severe threat to the security of the region, or would have been detrimental to the investigation. It is also clear that this sweeping policy was most probably not the result of individual assessments in specific cases.

4. International law concerning the right to legal counsel:

A comparative analysis

As emphasized earlier, a detainee's right to meet with his attorney derives from the constitutional right to due process. In international law, the right to meet with an attorney is also derived from the right to due process as anchored in several international instruments including the Universal Declaration of Human Rights;[19] Article 14 of the International Covenant on Civil and Political Rights, which defines minimal standards for due process;[20] and Article 5 of the Fourth Geneva Convention.[21] All of these documents state that under no circumstances should a person be denied the right to a fair trial, even during times of emergency.

In the **Marab** case, the petitioners challenged the legality of an emergency order issued by the commander of Israeli military forces in the West Bank during Operation Defensive Shield. This order was issued to legalize mass arrests and allowed for the detention of an individual for eighteen days, without clear cause and without judicial review, and banned in a sweeping manner the meeting with an attorney during the period of arrest. The petitioners contended that the order gravely breached the right to liberty and due process. The Court ruled that the length of time during which a detainee may be prevented from meeting his attorney is consistent with

[16] HCJ 2669/09 **The Movement for Freedom of Information v. Prime Minister's Office**, paragraph 5 of the ruling (issued on 4 January 2011).
[17] Ibid, paragraph 4
[18] PCATI, "When the Exception Becomes the Rule", see note no. 12 above, p. 9.
[19] Approved by the UN General Assembly on 10 December 1948.
[20] International Covenant on Civil and Political Rights, 16 December 1996, (21) 31, p. 269
[21] Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, (21) 1, p. 559

international law. The Court explained that the international conventions do not include an explicit directive regarding the duration of periods of preventing a meeting with an attorney and, therefore, this duration depends on "the circumstances of the case." The court determined that since this was a period of warfare, the detainees should not be allowed to meet with attorneys if it is feared that they would endanger, or are liable to endanger, "the security of the region, the security of IDF forces or the security of the attorneys, and until it is possible to weigh the individual circumstances of each and every detainee".[22] The Supreme Court once more formally recognized the right of a detainee to meet with his attorney, but again stripped it of content due to security considerations while disregarding the directives of international law that forbid the violation of the right to due process even during a time of emergency.

In the past, democratic states that had enacted directives which distinguished between suspects who are citizens and those who are non-residents failed the test of judicial review and were forced to rescind the policies. For example, the Anti-Terrorism, Crime and Security Act, enacted in the United Kingdom in 2001, vastly extended the powers of the police to hold terror suspects who are not British citizens and detain them for an unlimited period of time without filing an indictment. In 2004, the House of Lords determined that the authorities granted by this law are unconstitutional due to discrimination on the basis of citizenship and the violation of the right to liberty; the law was subsequently annulled.[23]

Further, democratic countries (surveyed below)[24] to prevent meetings between security detainees and their attorneys typically impose shorter periods during which such meetings may be banned, compared to the periods set by domestic Israeli law and by military law applied to Palestinians the OPT. In some countries, the restrictions on meetings are imposed only on detainees suspected of particular and defined offenses, as opposed to Israel's sweeping prevention applied to all security suspects for such a broad range of offenses so as to encompass most Palestinian detainees. Some states even offer altogether different means to minimize the harm caused to a detainee as a result of the ban on his meeting with an attorney, such as a meeting with the consul of the foreign resident's country.

In Britain, a meeting of a detainee suspected under the Terrorism Act and his attorney may be postponed for up to 48 hours by a police officer of the rank of superintendent or higher, but only if he has a reasonable basis to assume that there are sufficient grounds as stipulated in a defined and closed list in the law.[25] In any event, foreign detainees are entitled to meet with a consular representative of their country, a right that may not be postponed even in exceptional cases which do allow the prevention of a meeting with counsel.

In France, a detainee suspected of a terrorism offense is allowed to meet with an attorney 72 hours after his arrest, and this meeting may be postponed for 24 additional hours upon approval by a judge, and only in exceptional cases.[26]

In Germany, the rule is that written or oral contact between attorneys and detainees, including those arrested for terror offenses must be allowed. Preventing a meeting between attorneys and detainees applies only to the offenses of membership, establishment or assistance to a terrorist

[22] The Marab case, see note no. 1 above, pp. 378-380
[23] A(FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent) [2004] UKHL 56
[24] Information in this section is drawn from Knesset Research and Information Center, "Detention of Terror Suspects," 5 March 2006. Available at <http://www.knesset.gov.il/mmm/data/pdf/m01510.pdf>
[25] Schedule 8, paragraph 8(3)-(4) of the Anti-Terrorism Act in the United Kingdom, 2001.
[26] Section 706-88 of the Criminal Procedures Law in France.

organization.[27] The law allows the stipulation of the correspondence between a detainee suspected of these offenses and his attorney on the granting of an agreement allowing disclosure of the content of the correspondence and its examination by a judge.[28] The Minister of Justice is only authorized to issue a directive ordering the prevention of correspondence between a detainee suspected of terrorist offenses and his attorney in exceptional cases. This order expires after 30 days. This exception is intended to prevent an immediate danger to life, limb and liberty, and in such cases the detainee is entitled to have an attorney appointed to assist him while adhering to the objectives of the directive.[29]

In Spain, which imposes exceptionally strict terms on this matter, the restriction on the prevention of a meeting between a detainee suspected of a terrorist offenses and an attorney is limited to an aggregate period of 13 days. However, after three days of detention, a Bar Association "appointed defense attorney" must be assigned and the detainee's interrogation from that moment on must be conducted in the presence of the appointed defense attorney, who advises the detainee on procedural matters.[30]

In Australia, preventing a meeting with an attorney is under the authority of the police in the framework of extending the remand to arrest, starting with 24 hours and, with judicial authorization, for a maximum period of seven days.[31]

5. Disregarding constitutional protections against violating basic rights

The prevention of a meeting with an attorney creates a situation with far-reaching repercussions, including the violation of core human rights. For this reason, it is essential that judicial oversight of the use of this measure employ a stringent approach. The court must ensure that the use of this measure conforms with international and Israeli law.

Situations in which the court determined that the use of the prevention of meeting with counsel is justified

The court has already addressed the obligation to allow a meeting between detainees and attorneys, even in a situation of extensive military activity. For example, in the matter of detainees from the first Lebanon war in 1982, the court ruled:

> "In light of the respondents' position […] in any event, there is no need to add and elaborate regarding the question of a prisoner's right to meet with an attorney. In order to remove any doubt, I will add that even the relevance of restrictions that may derive from individual security considerations finds normative and explicit expression in the second paragraph of Article 5 of the Fourth Geneva Convention."[32]

Even when the policy is driven by security reasons but entails the violation of human rights, the court is obliged to assess the reasonableness of the judgment of the authority involved and the proportionality of the means it seeks to employ.[33] An established principle in the rulings of the Supreme Court is that when examining a procedure that violates basic rights, the requisite to

[27] Sections 129a and 129b(1) of the Criminal Code in Germany.
[28] Section 148 of the Criminal Code in Germany.
[29] Sections 31-38 of the Introductory Act to the Court Constitution Act.
[30] Section 527 of the Spanish criminal procedure.
[31] Section 3 of Australia's Crime Act.
[32] HCJ 102/82 **Tsemel v. Minister of Defense**, PD 37(03) 365, 378 (1982).
[33] HCJ 7015/02 **Ajouri v. Commander of IDF Forces in the West Bank**, PD 56(6), 352, pp. 375-376.

employ the least harmful device often prevents the use of a sweeping procedure (flat ban). The foundation for this is that examining each case on an individual basis achieves the appropriate objective while employing the least harmful measure.[34] It is, therefore, necessary that in the matter of detainees, the existing material pertaining to the arrested suspect and the justification for preventing the meeting between him and his attorney should be studied in a concrete and individual way. Further, the duration of the prevention of the meeting and the possibility for mitigating the prevention by informing the detainee that he is represented by an attorney or by communicating legal consultation in another way must also be assessed. However, given the data regarding the extent to which meetings with counsel are prevented, it is apparent that an individual assessment is not conducted at all and the alternative protections are not considered.

In the 1999 **Public Committee Against Torture in Israel** case, the Israeli Supreme Court declared an absolute prohibition on exerting pressure in interrogations that violates human dignity and is aimed at making the detainee provide information against his will.[35] And yet, the denial of the right to meet with an attorney, as expressed in the military court system and in domestic legislation, undermines the ability to verify that pressure is not being exerted during interrogations, and does not make it possible to ensure that torture is not being used. From the time the suspect is arrested until an indictment is submitted or the detainee is released, there is no one other than the detainee's attorney who can verify that the prohibition on exerting pressure during interrogations is being respected.

6. The attorney as a potential criminal and the procedure for prevention of meetings between convicted prisoners and their attorneys:

The justification for preventing a meeting between the detainee and an attorney is the fear that the attorney would exploit the meeting with the detainee and the confidentiality set in the law to obstruct and undermine the investigation.

This fear does not justify the violations of the detainee's rights. Certainly, an attorney who commits a crime of obstructing investigation proceedings is liable to be indicted, lose his license and jeopardize his future. In any event, the allegation that attorneys pose a threat is a serious charge and one that demands proof. An order preventing a meeting is not directed at a specific attorney but only prevents the detainee from meeting a lawyer.

The portrayal of the attorney as a suspect and potential criminal was expressed in a provision of a law legislated in the summer of 2011, which violates the rights of convicted prisoners categorized as security prisoners and the rights of their attorneys. In an expedited legislative process, the Knesset enacted an amendment to the Prisons Authority Order which expanded the reasons for preventing a meeting between security prisoners and their attorneys and dramatically extended the length of time in which the meeting can be prevented.[36]

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[34] HCJ 3477/95, **Ben-Atiya v. the Ministry of Education** PD 49(5) 1,15

[35] HCJ 5100/94 **The Public Committee Against Torture in Israel v. State of Israel**, PD 53(4) 817

[36] Law Amending the Prisons Order (No. 40) 2011. Prior to its enactment, a meeting could be prevented if there was a real fear that the meeting would result in harm to a person's security, public security or the security of the state or the security of the prison. The new legislation adds another reason for preventing the meetings: if there is a fear that a meeting between a prisoner and a particular attorney would enable the transfer of information between prisoners or between prisoners and people outside the prison, and if there is a fear that the transfer of information is related to facilitating the activity of a terrorist organization or is being conducted under its direction. The amendment further expanded the prevention of meetings for significant periods of time: The prison warden's authority to prevent the meeting for up to 24 hours was extended to 72 hours without special reasons and for 24 additional hours due to special reasons that are recorded; the authority of the prison commissioner to extend the

Incarceration obviously denies prisoners many liberties and controls all aspects of their lives. The right to choose an attorney and the right to counsel and representation are necessary means to guarantee the right of convicted prisoners to seek the advice of attorneys, particularly in matters relating to prison conditions and their conditions of confinement,[37] other civil proceedings, and the protection of their rights in prisons. The realization of this right ensures the upholding of constitutional rights including the right to dignity, the right to physical integrity and the right to receive medical care. In this connection, the prevention of meeting with an attorney is interpreted as a way of isolating the prisoner from the outside world, an act that may expose him to torture and degrading treatment with no external oversight and no remedy.[38]

Prior to the passage of this amendment, Adalah sent a letter to the Knesset urging that it not be passed and arguing that the justice system has numerous means for contending with attorneys who violate their professional and legal obligations, provided that there is clear and substantial evidence justifying those actions. Adalah emphasized that in the absence of such evidence, there is no reason to deny a prisoner his basic, fundamental right to consult with an attorney of his choice or to violate the fundamental rights of both the prisoner and his representative. Most of the Knesset members ignored these arguments and the proposed procedure was quickly enacted[39].

In September and October 2011, during a hunger strike conducted by Palestinian prisoners to protest the violation of their rights in Israeli prisons, the Israel Prisons Service (IPS) made flagrant use of preventing the meetings of attorneys with prisoners classified as security prisoners. This practice was in violation of the IPS's commitment to refrain from imposing the ban on meetings between prisoners and attorneys during the course of the hunger strike,[40] and contradicted the state's identical stance before the Supreme Court in a petition submitted by Adalah and the Association for Civil Rights in Israel in 2004.[41] After the conclusion of the hunger strike, the IPS made use of the new law to submit requests to extend bans on meetings with counsel and the courts approved these requests. For example, in a recent decision, the district court extended the prevention of meeting between a certain attorney and security prisoners for a period of six months on the basis of confidential evidence.[42]

Conclusion

Preventing meetings between detainees and their attorneys is a way in which to isolate the detainee, exert pressure on him, and attempt to break his spirit. It denies the detainee legal consultation as to his rights, prevents prompt reporting of rights violations and the use of illegal means of interrogation, and increases the likelihood that the detainee will become a victim of

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meeting ban with the consent of the attorney general for an additional period of 5 days was extended for another 10 days; the court was authorized to hear the matter starting from the 15th day of the ban, while according to the previous legislation the extension of the ban beyond 5 days was under the sole authority of the court; the court was authorized to extend the validity of the meeting ban for a period not to exceed 6 months each time (instead of 21 days) and for a cumulative period of one year (instead of 3 months). In addition, the legislation enabled the Supreme Court to extend the periods indefinitely, if a request is submitted that was approved by the attorney general and meets one of the reasons for the ban.

[37] The **Issacharov** case, note no. 1 above, pp. 760-761

[38] Report by the Special Rapporteur, see note no. 11 above.

[39] The original letter (Hebrew) is available at <http://www.adalah.org/eng/pressreleases/pr.php?file=28_06_11>

[40] The IPS committed to prisoner-attorney meetings in its response, dated 4 October 2011, to a letter Adalah sent by Adalah on 2 October 2011 demanding that the prisoners' rights be protected during the hunger strike.

[41] HCJ 7864/04 **Fida Kawar et al. v. Prisons Service** (issued on 1 September 2004).

[42] Civil Appeal (District - Center) 1955-01-12, **the State of Israel v. Attorney John Doe** (issued on 4 January 2012)

torture. The protocols set in both the military court system in the OPT and in the domestic Israeli legal system enable the prolonged prevention of meetings between detainee and attorney; they therefore constitute an illegal means of interrogation.

Arguments used to prevent meetings between detainees and their attorneys cannot justify the existing legal procedures. They certainly cannot justify the existence of discriminatory laws that enact harsher rules for detainees that are subjected to military law than for those detainees that are subject to Israeli civil law. Both groups are interrogated in Israel by the same interrogators and, at times, even in connection to the same events.

The contention that if meetings between detainees and lawyers were not restricted it would jeopardize state security originated in the period before the Israeli Supreme Court ruling forbidding the use of torture.

It is the position of the three human rights organizations – Adalah, Al Mezan and Physicians for Human Rights-Israel - that even when proceedings involve security detainees, it is essential to strictly protect their right to meet with an attorney in order to ensure due process, to prevent interrogations which result in false confessions being given, and to expose torture.

The procedures set in Israeli law and military law applied to Palestinians in the OPT leave detainees isolated and cut off from the outside world during their interrogation.

The human rights organizations believe that the distinctions and disparities created by the military orders deprive most Palestinian detainees of their rights and should be cancelled, and that the use of confidential secret evidence to justify the prevention of meetings between a detainee and an attorney must be stopped.

The human rights organizations also believe that the absolute prohibition on torture in interrogations should be extended to include the right of detainees to meet with their attorneys at any time during the course of the interrogation. The right to consult with an attorney must be ensured in order to provide real protection for the right to due process, and to prevent false confessions that lead to the conviction of innocent persons.