



מדינת ישראל
משרד המשפטים
State of Israel
Ministry of Justice

The Department for International Agreements and International Litigation
The following is a translation of the Hebrew version, In case of divergence of interpretation, the Hebrew text shall prevail.

Date: 8 Iyar, 5767

28 April 2007

Re: 2752

Mr. Yechezkel Lein
B'tselem
8 HaTa'asiya St.,
Jerusalem 91531

Dear Sir,

**Re: Reference to "B'tselem" Draft Report "Torture and Abuse towards
Palestinian Detainees"**

Your letter regarding our reference to the abovementioned draft report was received by our office, and our response is as follows:

Methodology

1. The report was based upon a non representative sample that seems to have been deliberately chosen which distorts the reality prevailing in the course of arrest and interrogation of security prisoners.
2. Presenting a report which includes description of cases with no identifying details and without allowing the relevant authorities, headed by ISA and the IDF, to review those specific cases raised within, effectively denies these authorities the opportunity to examine the claims raised in the report.

The Department for International Agreements and International Litigation

Claims regarding the Operational Rank

A. IDF soldiers

3. An enquiry held resulted with the following findings:

3.1. The admittance procedure in a detention facility:

3.1.1. The procedure, except for rare circumstances, is extremely short, and contrary to claims raised in the report, does not include undressing of detainees, except for strictly defined cases.

3.1.2. Includes a mandatory examination by either a medic or a physician, in order to determine aptness for arrest.

3.1.3. Includes an inquiry about injuries, if occurred, during the arrest and escort, and if the detainee claims that he was beaten or if signs of violence are found on his body, the details of the case are transferred to the Military Police for investigation.

3.2. A professional Escort squad has been established in order to insure proper conditions during transfer of detainees between facilities.

3.3. Every case of deviation from the rules of conduct, including such rare cases where cursing or beating occurs, is examined and treated. As aforesaid, additional information about the cases mentioned in the report would have allowed the IDF to check each such individual case.

4. The IDF has been striving to assimilate the judicial rules affecting both proper conduct in combat and in conjunction with the civilian population, among its soldiers by means of training and teaching. Officers of the Military Attorney General's Law School, who lead the training in this field, have held numerous lectures on the subject in recent years, in which thousands of soldiers took part. The training focuses, among other things, on the duty of IDF soldiers of all ranks to provide humane and proper treatment to detainees captured by the IDF, while maintaining their dignity as human beings. Lectures on these subjects are also incorporated as an integral part in the IDF basic training, including officers training

The Department for International Agreements and International Litigation

and courses held in the IDF's Tactical Command Academy. The Military Law School also provides designated lectures focused on proper treatment of detainees.

5. In addition, the Military Law School produced various guidance materials, including educational computer programs in the aforesaid fields, which allow effective guidance for multiple populations. These programs, commonly used as vital guidance tools of IDF soldiers and officers, refer, *inter alia*, to proper treatment of detainees while emphasizing the strict prohibition of applying inhumane or degrading treatment to detainees captured by IDF forces.

B. Israeli Police Officers

6. Israeli police officers that operate in police detention facilities, in which ISA interrogators operate, comply with law and its frame, and the treatment of detainees held in these facilities, including security detainees, is compatible to the law as well as internal police regulations and is subject to continuous scrutiny by the Department for the Investigation of Police Officers in the Ministry of Justice and of the courts.

C. Interrogators of the ISA

7. The Israel Security Agency is responsible by law for the safeguarding of Israel's security, regime, and state institutions, from terror threats, espionage and other threats. In order to do so, it has the duty to foil and prevent any unlawful activity aiming to harm the aforesaid targets.
8. In order to fulfill its purpose, the Agency performs, among other things, investigations of suspects in terrorist activity. The main goal of such investigation is data gathering intended to foil and prevent terrorist acts.
9. The day by day fighting against terrorist infrastructure that seeks to carry out terrorist attacks and to spread death and destruction within the state of Israel, obligates the security services, including the interrogators of the Israel Security Agency, to make every effort to foil and disrupt such aspirations. The last few years saw many civilians' lives saved as a direct consequence of data originating from those investigations.

The Department for International Agreements and International Litigation

10. The report itself refers to a group which is named in the report as “ordinary” detainees, concerning interrogatees which were arrested between 13 – 17 of July 2005, when on the day of July 12, 2005 there was a terrorist attack in the city of Netanya, that caused the death of five people and the injury of many others. (The other group – mentioned in the report as "senior detainees" - includes Palestinians arrested between July 2005 and January 2006).
11. Following the abovementioned terrorist attack, suspects associated with the attack were arrested and interrogated, and as a result of the interrogations, the perpetrators of the attack, as well as the terror infrastructures that supported them, were exposed. In addition, more terrorist units were exposed and weapons that were to be put in use in future terrorist attacks were handed over.
12. Due to confidentiality reasons we can not address here, in details, the interrogation techniques mentioned in the report, and therefore may not address each and every claim raised in the report in this context. Furthermore, since the report does not mention specifically the names of the detainees who have initiated the complaints, the accuracy of the claims cannot be examined. We will state, however, that the report is fraught with mistakes, groundless claims and inaccuracies.
13. In order to illustrate the inaccuracy and the tendentiousness of the report, a few salient examples can be pointed out. The claims, for instance, as if the ISA uses measures intended to cause "detachment" of the interrogatees from the outside world, while instilling a feeling of uncertainty about their fate, are unfounded. In this matter we would like to point that persons interrogated by the ISA receive, at the beginning of the interrogation, a document that states their rights as interrogatees in a criminal investigation, stating their right to refrain from self incrimination, their right to see a lawyer', etc. All this in contrast to the claims in the report.
14. Another example in this context is found in the claim that the Israel Security Agency deals with “designing the appearance” of the food given to the detainees, “in order to create a deterring affect”, which is supposed to create disgust and deterrence among the interrogatees. This bizarre claim is unfounded and is indicative of the lack of seriousness and tendentiousness of the person claiming it.

The Department for International Agreements and International Litigation

15. As a further example, we would like to point out that there is no basis for the claim that interrogators of the ISA routinely practice the habit of "cursing and swear wording the interogatees callously and rudely".
16. The claim as if the Israel Security Agency is involved in the undressing of the detainees as part of the admittance procedure is unfounded as well. The ISA is not involved in the detainees' admittance procedure and certainly does not instruct that detainees will be completely undressed on their arrival to the facility, as claimed.
17. We shall reemphasize that these are only examples concerning the framework of the matters, and that it is impossible to refer to each and every claim that appears in the report.
18. Regarding the issue claimed in the report concerning the use of the term "military investigation", it should be pointed out that this term has a vague meaning, hence perceived differently by different people. Despite the above, it has been recently decided that ISA investigators shall avoid using this term in general.
19. It should be clarified that ISA investigations are performed in accordance with the law, procedures and instructions, while being regularly scrutinized by Israel Security Agency supervision bodies, the Ministers' Commission for Israel Security Agency Issues, the Subcommittee for Intelligence and Secret Services of the Foreign Affairs and Defense Committee of the Knesset, the Ministry of Justice, the State Comptroller's Office and the different legal instances of the courts.

Claims Regarding the Supervision Mechanisms

A. the Ministry of Justice

20. The ISA complaints inspector (hereinafter, "the Inspector") - an integral part of the ISA - operates independently, and no element within the ISA, including the head of the Agency, has the authority to interfere with his investigation manner or his findings and he performs a practical and comprehensive investigation which is not dependent on all other elements within the Agency.
21. The appointment of such Inspector is carefully carried out in order to avoid any conflict of interests emanating from any of the various positions held by the

The Department for International Agreements and International Litigation

Inspector in the past or present, with his role as an Inspector. Accordingly, the present Inspector, as his predecessors, was not an investigator in his past career.

22. It should be emphasized that there are clear advantages for appointing an ISA member as an Inspector. Being familiar with the system, he is allowed access to all the relevant information, including highly sensitive materials, hence he is able to comprehend that information better than any external factor, since as a member of the ISA he is familiar with the organization's culture and the "organization's language".
23. The Inspector operates under the instruction and close guidance of the Ministry of Justice's specially designated supervisor, who is a high-ranking attorney in the Ministry of Justice. The Inspector is professionally guided by the supervisor which, in turn, approves the Inspector's decisions.
24. In addition, the supervisor of the Inspector is vested with the authority to initiate an examination of a complaint, whereas the ISA or the Inspector does not have the ability to prevent such examination from taking place.
25. Following completion of an Inspector's investigation, the investigation report is examined thoroughly by the supervisor. The investigation report is further examined by the Attorney General and the State Attorney when the issues mentioned in the report are sensitive or when the circumstances so necessitate

B. IDF

26. Complaints concerning harm to Palestinians or soldiers' behavior are solemnly inspected and examined. The Military Attorney's general policy is that complaints concerning violence of soldiers towards Palestinian residents – all the more so in abuse complaints – are investigated by the Investigating Military Police. Thus, in the year 2006, of the 71 complaints submitted regarding soldiers' violence in Judea and Samaria, 61 investigations were initiated. In the year 2005, 87 complaints of violence were submitted and 76 investigations initiated. It should be clarified that contrary to the information in the draft report, the opening of criminal investigation files against soldiers, including in such cases where unjustified violence was ostensibly involved amid arrests and holding detainees in custody, is not subject to

The Department for International Agreements and International Litigation

the Military Attorney General's pre-affirmation. Military Police's investigation files are frequently opened immediately upon complaints' submission, with no instruction of the Military Attorney's Office.

27. Contrary to the claims, a special effort is devoted in order to severely judge those who abuse Palestinians or apply force unlawfully. Severe indictments are submitted in every case where sufficient evidence - gathered in full compatibility with criminal law requirements – is presented, alongside with prosecution's appeal for imposing ample imprisonment periods. In suitable cases, appeals were lodged by the prosecution to the Military Court of Appeals for aggravation of the punishments.
28. In addition, it should be pointed out that several meetings were held in the past between the Military Attorney's Office' senior officers and representatives of "B'tselem" organization. It was clarified to the "B'tselem" representatives in a number of occasions that every complaint concerning soldiers' violence communicated to the Military Attorney's Office will be seriously examined in accordance with the Military Attorney's Office policy.
29. Military Courts also pertain an uncompromising position in regard to violence offences committed by soldiers towards Palestinian detainees, as can be inferred from the following examples:

29.1. Cen/274/06 – A soldier was convicted of an offence of abuse for beating a handcuffed Palestinian detainee. Further to his demotion back to private, the soldier was sentenced to seven months of imprisonment, out of which four months were to be served in prison and the rest by a suspended imprisonment for two years, provided he would not commit any further offence involving threat or violence. The military court stated in its decision that:

"It is unnecessary to heap words as to the gravity of the act in which the defendant was convicted. The Military Court of Appeals expressed its opinion in the recent years about acts of this kind, the severe and serious fault attached to them and the severe harm to the IDF's reputation and the purity of its lines. Indeed, the defendant deserves an aggravated penalty for his acts which hold an element

The Department for International Agreements and International Litigation

of harm to a helpless person, even if the person was regarded according to the defendant's point of view, as a terrorist and one who carried out shooting attacks against our forces. **When the terrorist was arrested, handcuffed and could not react anymore, there is a grave prohibition to harming him in any manner and the fact that no injury or damage was caused to him can not reduce significantly the moral fault of the act".**
(highlight not in the origin).

29.2. Cen/472/05 – A soldier was convicted of an offence of abuse and a related offence of improper behavior for beating a handcuffed Palestinian detainee. The indictment was submitted against the soldier who already served a sentence of 28 days of imprisonment and had been suspended from serving as a combat soldier, following his conviction in a disciplinary court. As the military court was not satisfied with this punishment, it convicted the defendant as previously mentioned and sentenced him for an additional sentence of 45 days of imprisonment and 5 months of suspended imprisonment for two years if committing an offence concerning abuse, assault or act of violence against other person, thus in total, the soldier was sentenced to two and a half months of imprisonment. As well as demoted to private. One of the judges pointed out in his judgment that "the behavior of the defendant imposes disgrace on him, tarnishes his unit, damages the combat ethics of the IDF and reflects upon the image of the IDF on the whole and the image of its soldiers".

29.3. Cen/471/05 – A soldier was convicted of an offence of abuse and an offence of dishonorable behavior due to the beating of Palestinian detainees who were under his custody. The soldier was sentenced to a punishment of four months of imprisonment, three of which in prison and the rest by suspended imprisonment if committing an offence of abuse or violence against another person in a period of three years. In addition, the soldier was demoted back to private.

30. In accordance with the Supreme Court's recommendation in *HCI 3985/03 Bedawi et.al. v. the Commander of IDF forces in Judea and Samaria et. al.*, an advising

The Department for International Agreements and International Litigation

committee to the Chief of Staff was appointed, headed by a military-juristic judge, that carries out occasional inspections of the incarceration conditions in detention facilities under IDF responsibility. In addition, inspections of this matter are carried out by the Control and Supervision Unit which is subjected to the Deputy to the Chief of Staff. Following recommendation submitted by the advising committee, several changes were recently applied in order to improve the incarceration conditions, including the transfer of authority over detention facilities to the Regional Military Police Commander, whereas authority over incarceration facilities was transferred to the Israeli Prisons Service, budgets of incarceration facilities were increased and a specialized task force responsible for escorting the detainees was established. Fully recognizing the importance of the subject, the IDF has continuously been striving to improve incarceration conditions in the few detention facilities that remain under its responsibility.

Sincerely yours,

Boaz Oren, Adv.

Deputy Director

C.c: Mr. Meni Mazuz, the Attorney General

Mr. Eran Shendar, the State Attorney

The legal advisor of Israel Security Agency

Brigadier General Avichai Mandelblit, Judge-Advocate General

Mr. Shai Nitzan, the Deputy to the State Attorney (Special Affairs)

Mr. Yoel Hadar, the legal advisor, the Ministry of Public Security

The Supervisor of the Inspector for the Complaints within ISA, the State Attorney's Office