COALITION FOR CHILDREN AND FAMILY (ISRAEL)
REPORT ON ARBITRARY ARREST AND DETENTION
ARTICLE 9, ICCPR

Submitted for General Discussion Day in Preparation for a General Comment on Article 9 (Liberty and Security of Person) of the International Covenant on Civil and Political Rights, Oct. 25, 2012

The Coalition for Children and Family (Israel) is pleased to share its experience regarding ICCPR Art. 9 in Israel, in the context of the Israeli fathers' fight to gain equal rights to custody and visitations. Israeli fathers have no legal rights to see their children during and after divorce. Israeli family laws violate every human rights convention, because the laws clearly discriminate against men. Efforts to change this since 1997 have all failed. Currently, activist fathers are being detained, arrested and interrogated in effort by the State authorities to quash the criticism.

Background

Israeli men and fathers without criminal records often find themselves in trouble with the police, when divorce starts. Fathers' rights activists are under surveillance, attack, blacklisting, and police harassment.

In July-August 2012 the Israeli Minister of Justice, and Minister of Welfare declared a "war" against activist fathers. The fathers movement has been unofficially declared a "corrupt organization", and family court judges were encouraged to file criminal complaints against activist fathers, so as to intimidate fathers from participating in protests, and from publishing criticism. All those actively involved in separating fathers from children started searching "incriminating" information in fathers' rights blogs and Facebook groups to fish out information against the fathers, using

charges such as “intimidation”, “criminal contempt of Judiciary”, and “insulting a public official”.

The Minister of Welfare himself filed complaints against fathers who expressed intent to demonstrate in front of his home. The police fabricated a probative cause for a “weapons search warrant”, and a judge quickly signed it, ex parte. The next day, homes were searched for nonexistent weapons, while police destroyed and mutilated everything in the house.

Next, government employed social workers were given instructions to search on the internet for names of activists who write in fathers facebook groups. Fathers were summoned in for “talks”, and their contact with their children was suspended. Seven fathers were arrested on separate occasions based on complaints filed by judges or social workers.

The fathers organized two demonstrations in front of three of the cruelest family judges who torment fathers, Tova Sivan, Esther Stein and Espernza Alon. All three judges retaliated by filing police complaints against fathers litigating in their court rooms.

The police reaction was fierce. The police videotaped the events. Participants received intimidating phone calls from the police. Judge Tova Sivan used the Judiciary’s intra-net email system to send letters to all judges saying that men are violent and they intimidate the judges. The police seized the fathers’ computers and phones. Three other participants were called for interrogation about the contents of their blogs. Immediately thereafter, another Judge, Esperanza Alon in Haifa quickly issued a judgment against one of the fathers, called him and provoked him. She then filed charges against him resulting in 40 days detention. Judge Alon then searched the internet for more information and found a caricature. Based on that caricature, police was dispatched from Haifa to Tel Aviv to seize another computer and arrest another activist. This was supplemented by more phone calls from the police to fathers whose names were extracted from the seized computers. Meanwhile, the

Administration of the courts in association with the minister of justice Yaakov Neeman, invited activists to a “reconciliation talk” promising to set up of a “team” to work out problems. Anybody who showed up for this trap, was blacklisted. Two fathers were later arrested on some fabricated charge, and the two others were so panicked, they decided to withdraw from further protest.

For now, the Judiciary of Israel has won the war against fatherhood applying draconian techniques reserved for the infiltration of terrorist, money laundering or pedophile groups, to innocent fathers and social defenders.

Here are some of our observations as to Art. 9, ICCPR:

1. Insult laws

Insult laws are commonly used in dictatorial regimes and regimes that manifest oppression of their own public (e.g. Russia, Zimbabwe). They are common in Israel, too. They are used to stifle and punish political discussion and dissent, editorial comment and criticism, satire and even news that the government would rather hide from the public. Insult laws are used in Israel to raid homes and offices, seize computers, intercept websites, and stain people with criminal records. These are purely harassment and deterrent tactics couched in the system’s self preservations inertial force. Indictments have been filed against people who blurted out curses in moments of emotional turbulence.

As a matter of good practice we recommend that no one should be detained for insult crimes, or any crime that infringes on the right to speak. Warrants for computer seizures should never be issued in connection with speech, expression, thought or criticism. In fact, these “crimes” of insult, as well as criminal libel should be abolished altogether. They can be handled civilly in libel laws. Point 9(d), (g).

Special caution should be made to avoid using Internet Crime Police Units to hunt political or social activists for opinions and even satire which they publish on the internet. Point 9(i).

2. Ex parte warrants and ex parte computer seizures.

When the police targets a political or social activist, the easiest way to intimidate him or her so as to refrain from further political or social dissent is to raid the home, and either seize the computer, or vandalize the home under the ruse that a confidential tip was received that the suspect is harboring a weapon or drug. Point 9(h).

The Judges, who sign these warrants, do so totally oblivious to the impact on the person's liberty and the invasion of privacy. The police then use the computers to map out the human scene, extract internet codes, and enter email accounts and web sites to collect more information.

The use of computer seizures as a fishing expedition to frame the suspect, or frame others, is widespread in Israel. All the prosecution needs to do is search the internet for something that can be interpreted both ways, and seek a warrant, which is judicially rubber stamped. This practice has to be outlawed. Point 9(c).

In addition, warrants to seize computers can be avoided by issuing subpoenas to the phone/internet providers, but if it is absolutely necessary, warrants to seize computers should spell out exactly what files are being searched, whether permission to access emails and web sites via extracted codes, restrictions on use of files for unintended purposes, and destructions of the copied hard disks in case the criminal case does not proceed. Point 9(b).

3. Scope of police interrogation

Activists have been called to the police to be interrogated on what they publish, or about conduct during demonstrations. If the language is slightly “unclean” or the caricature slightly blunt, the police presents it to the court as a “criminal threat” on some official. At the precinct, the person is then asked about completely irrelevant matters, such as names of friends and associates, personal email codes, Admin codes for web site, their facebook and twitter accounts and those of others. Interrogations should therefore be limited to the stated charge being investigated. The charge itself should be clearly spelled out, and not just an obfuscated one sentence disclosure. Point 15 (c).

4. Identity of the Complainant and Favoritism

When the Administration of Courts, or Courts’ Security Unit is filing a complaint on behalf of a family judge and the police brings the detention hearing in a criminal court in the same building, the risks of favoritism are high, and the criminal court judge cannot be neutral. In one case, it took us 20 days to transfer to another District (from Haifa to Nazareth), while the suspect remained in detention. One judge recused herself admitting she is a “close friend” with the complaining judge. Detention hearings should therefore be brought in neutral districts, where there is no “behind the scenes” influence of the complainant. Moreover, the use of Administration of the Court, as a third party complainant should be forbidden, because the complaining judge therefore escapes interrogation, which leads to insufficient evidence for detention.

5. Inadequate quality of evidence to justify detention.

There are two types of detention hearings here. The first is detention for purposes of investigation, and the second is detention after arraignment. The first type is where many

violations exist. The Government wants to lock up a person, to extract a coerced confession from him, or to deter him from further acts of protest.

It works like this: A person is called to the police for interrogation. He is asked a few general questions, usually innocent questions that are harmless. The police then declare that the subject "associated himself with the offense", by giving some innocent "yes" answers to some loose questions. He is then taken to a judge for a detention hearing. There, the police prosecutor regurgitates boiler plate language that the suspect "associated himself with the offense", the offense is inherently dangerous, and a "secret report" is presented to the judge containing anything that the police dig from the internet on the suspect.

Thus, the quality of the evidence required here is merely that "the suspect associates himself with the offense", not that there is a "likelihood that the suspect committed the offense", and not that there is evidence "beyond a reasonable doubt". These standards are insufficient.

6. Use of "Confidential Police Report" to Justify Pre-Arraignment Detention

Suspects are brought before judges for detention for investigation purposes. The prosecution submits to the Judge a "secret report" containing a laundry list of future investigation steps, and the police prosecutor claims that for purposes of the investigation, the suspect must remain in custody, "so as not to obstruct the investigation". Point 14(c).

The suspect does not even know what these investigative steps are, or what conduct the police claims that he intends to do, or to "sabotage" the investigation. The suspect cannot refute secret reports that he has no idea what they are, and the judges are quick to order 5 days detentions or

house arrests in these circumstances. Use of secret reports in detentions that pose no national security issues should be banned. Points 14 and 15.

7. Use of internet or Google material to justify “dangerous propensity”.

Again, the police collect from the internet, blogs, or Facebook groups various tidbits of information, and package them in a “Secret Report“ to justify the claim that the suspect is inherently dangerous and must remain locked behind bars. Clear criteria for “dangerous propensity” justifying a detention pending investigation should be delineated.

In addition, participation in legal police-approved vigil protests is also used in “ Secret Reports” as grounds to hold suspects in detention for purposes of investigation.

8. Use of “Obstruction of investigation” as grounds “for pre-arraignment detention.

At detention hearings in Israel, the prosecution often claims that there is a danger that the suspect will obstruct the investigation (“anticipatory obstruction”), and is therefore at risk of committing the crime of obstruction of justice or tampering with evidence” in relation to the crime being investigated.

This is an amorphous claim, because the suspect has no idea who the claimant is, and who the witnesses are, whose future testimony the police deems at risk of being obstructed or tampered with. This kind of argument causes prolongation of detention periods, and it prevents the defense from collecting exculpatory evidence, because the suspect is precluded from contacting independently anybody whose testimony may exculpate him. It is therefore suggested to add comments that “obstruction of an

investigation" ground for detention is incompatible with Art. 9.

9. Ability of Defense to Obtain Exculpatory Material.

Since most suspects are brought in for detention on the claim that they may "obstruct an investigation", when they are released they are prevented from contacting the same witnesses that can exculpate them, or from collecting evidence at the scene of a crime, for fear it would constitute obstruction. For example, Dominique Strauss-Kahn, if prosecuted in Israel, would have never been acquitted, because his house arrest condition, in Israel would include instructions "not to obstruct", i.e. not to contact any potential witnesses and not to approach the scene, himself or via agents, including lawyers.

10. Child support detentions and arrests.

Israel is the only Western country that assesses child support regardless of income, or ability to pay. The levels of child support in Israel are 3-4 times higher that USA, Canada, Australia or France (where child support is tax deductible) , and women are exempt from child support, even if they are non-custodian. Almost 80% to 90% of child support cases eventually end up in collections, because the levels of child support are unconscionable and unaffordable. The woman then files for child support collection, where draconian ex parte measures are granted without a right to defend against them, including revocation of driving license, revocation of professional licenses, garnishment of 100% of the salary, automatic inability to travel out of the country (ne exeat), and orders of arrests.

When a woman seeks to arrest her former husband, and the former husband cannot afford a lawyer, the Government refuses to appoint legal aid counsel to fathers facing arrest on non-payment of child support. There is also no right to a

hearing on the financial ability to pay. The "hearing" is a sham hearing limited to the question of whether all child support is up to date, and if it is not, than the woman's application is automatically granted to arrest the ex spouse. As a result, the men are arrested, usually for 2 weeks every three months, with no right to appointed counsel, and no hearing on the ability to pay. Point 49(a).

11. Police Orders of Removal from Home.

Israel's Violence against Women laws (VAWA) are the most draconian in the world. The presumption of innocence is nonexistent. They are based on the assumption that Israeli men are the most violent in the world. VAWA offenses require no supporting evidence, nor do they require conduct. They are mostly allegation-based offenses that enable women to trigger the full powers of the police to expel the husband from the home for at least 30 days, without permission to take a single item from home.

Women's organizations in Israel distribute booklets advising women exactly what to tell the police when fabricating a domestic violence complaint. The woman picks up the phone, calls the police and tells them that the man "threatened to kill her "or that "he demanded sex against her will". The police arrive and eject the man from his home for 30 days without access to his money, credit cards, documents and records and clothing. In the entire State of Israel there are only two apartments for removed husbands (housing 7 men each), but a condition to accommodation is that the man admit his violence (before any guilt was found), and agree to participate in violence therapy.

12. Gender Based Immunity from Prosecution on False Report.

Israel affords women immunity from prosecution on false domestic violence charges. This violates the general rule

that all men and women are equal vis a vis law enforcement. It also creates an influx of false arrests of men, because of the financial incentive to the women who make strategic false complaints as a pre-text to the divorce. Usually, a polygraph can root out false complaints, but the Israeli police refuse to implement any screening tests to false domestic violence complaints. This artificially inflates the domestic violence rates in Israel and the spiraling numbers are then justified to add more strict treatment of the domestic violence suspects, especially during their arrest and detention hearings.

Men are forbidden to sue the women or the police for just compensation for the malicious prosecution, defamation, time away from home, time in detention or house arrest, loss of work or loss of contact with the children.

13. Felony Augmentation Programs

Often, police uses “Felony Augmentation Programs” to elevate petty offenses into major crimes. It involves creative “case-building”, surveillance, entrapment and assignment to Major Crimes squads such as Major Frauds, VIP Protection, and Computer Frauds. Suspects have no idea that the investigation is a product of deliberate augmentation of charges. It should be a good practice to disclose this, and the reasons for augmentation, at detention hearings to the Court and the suspect’s lawyers.

14. Suspect’s right to address the Court.

Detention hearings, especially for investigation purposes occur quickly and with minimum knowledge of what police is contemplating. Most times the suspect has no time to “teach” his lawyers the elements necessary for release. It should be good practices for a judge to allow the suspect to speak directly to the Court on the allegations presented by the police against his release from custody, even if a lawyer

is assigned. A simple “anything you wish to add to the record?”, will do. Point 30(a).

15. Religious Courts Powers to Arrest

It should clearly be emphasized that religious tribunals should be stripped of powers to detain litigants, or curtail their liberties. In Israel, men and women are coerced to surrender to jurisdiction of religious courts (rabbinical Court, for Jews) in divorce, even if they married civilly overseas. These Courts have powers to arrest non-obedient spouses, and issue orders curtailing civil liberties both inside Israel, and overseas, by seeking assistance of cooperating religious courts abroad.

In Israel religious courts have the powers to detain a man, but not a woman, for failure to voluntarily agree to a religious divorce for an indefinite period. The order can be issued instantaneously and even ex parte, and the person can sit in jail even 10 years.

Another power of the religious courts is to issue a detention order for up to three months, as a sanction for conduct inside the religious court, which is either, violent, intimidating, disorderly or disgraceful, noisemaking or other disruption. These powers are incompatible with Art. 9, and are incompatible with the right to be free from religion. Point 41.

We have reports that family courts also have powers to arrest, even without evidence, based on the words of the complaining woman alone, and also to seize computers.

16. Time from Interrogation to Filing Indictments

Israel has no limit on the length of investigations. Persons can be called for interrogation, and then left for years

without knowing if the investigation would yield an indictment. An open case keeps an open stain on the person's criminal record, prejudices employability, and causes undue anxiety.

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