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29 September 2008

Simon Murdoch
Secretary of Foreign Affairs and Trade
Ministry of Foreign Affairs and Trade
Private Bag 18 901
Wellington
New Zealand
Email: enquiries@mfat.govt.nz

Dear Mr Murdoch,

Both as a New Zealand citizen and an official representative of the International Solidarity Movement (hereinafter “ISM”) for the present purposes, I hereby lay a formal complaint before the New Zealand Ministry of Foreign Affairs against the Government of the State of Israel for committing human rights violations against me, a human rights defender¹, and by extension ISM, between 14 and 18 June 2008 in the course of denying me entry to the Occupied Palestinian Territory. This letter describes the specific nature of those violations, the various legal instruments that apply and my requests for action. I have submitted a similar complaint to the Canadian Government and the Office of the United Nations High Commissioner for Human Rights. Various organisations are to receive a copy of this letter, including Amnesty International and Human Rights Watch.

¹ There is no specific definition of who is or can be a “human rights defender”. The Declaration on Human Rights Defenders refers to “individuals, groups and associations...contributing to...the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” (fourth preambular paragraph).

A. Overview

At approximately 06:00hrs on 14 June 2008, I arrived at Ben-Gurion International Airport, Tel Aviv, Israel on Ethiopian Airlines flight ET404. I stated that the purposes of my visit to Israel were humanitarian work in the Occupied Palestinian Territory as a volunteer for ISM and tourism (for example, visiting Yad Vashem).

I was taken into custody immediately upon disembarking from the aircraft. After 7 hours of intermittent questioning, I was informed by an official from the Israeli Ministry of Interior that I had been denied entry to Israel on the basis of being “a threat to the security of the State of Israel”—an unexplained and unsubstantiated allegation. I was photographed and fingerprinted, and then transferred to the Ben-Gurion Airport immigration detention facility to await deportation.

Upon learning that a deportation order had been issued for my removal from Israel, I informed the Israeli authorities of my wish to appeal it. I was permitted to make only one telephone call which I used to contact ISM in order to arrange for legal representation. My lawyer, Mr [REDACTED] [REDACTED], returned my call that afternoon but was forbidden to speak to me. For the entire duration of my detention, I was prohibited from contacting anyone, including my lawyer and New Zealand consular officials.

At approximately 00:00hrs on 15 June, I was notified that my deportation order was to be executed within the hour. In contravention of Israeli law, Israeli authorities attempted to deport me without allowing me to contact my lawyer or exercise my right to appeal the deportation order. At no time was I shown my deportation order or informed that I was under arrest. I was put onto a bus with approximately 15 other deportees and driven from the immigration detention facility to an awaiting aircraft bound for Ethiopia.

In the vicinity of the aircraft, I informed the officers that I did not wish to board the flight, that my deportation was unlawful and that I would leave voluntarily only after receiving due process of law. The Israeli officers immediately resorted to the use of force. I was dragged off the bus onto the airport tarmac. Having no other recourse to protest my unlawful and extra-judicial deportation, I briefly refused to co-operate by clinging onto any fixed or immovable objects within my reach. I received several blows to my arms and twice my spectacles were knocked off my face. I was then dragged through the passenger boarding bridge in a hold designed to cause considerable pain.

Instances of assault upon my person occurred near the entrance of and later in the aircraft. While I was being forced onto the aircraft against my will and being physically assaulted, an officer operating a video camera mocked, verbally abused and threatened me. I informed the captain and cabin crew that I was being deported unlawfully and did not wish to fly. Nevertheless, the Israeli authorities dragged me to the back of the aircraft and held me there until all the passengers had boarded. I was then removed from the plane and forced to carry all my luggage with my hands and feet shackled—an action not warranted by the circumstances (please refer to Section D.6 for further details). I understand that the captain of the flight refused to depart with a passenger being forced to fly against his will.

Upon being returned to the immigration detention facility, still in shackles, I was incarcerated in solitary confinement for three days and subjected to psychological abuse. At approximately 01:00hrs on 18 June, I was deported.

I have never on any occasion violated or intended to violate Israel's laws and regulations. Yet I was unlawfully detained for four days, held incommunicado, threatened, assaulted, injured and deported by the Israeli authorities.

B. Background: the International Solidarity Movement and the Situation of Human Rights Defenders in Israel and the Occupied Palestinian Territory

[Section B has been removed for the purpose of succinctness.]

C. Legal Considerations

[Section C has been removed for the purpose of succinctness.]

D. Violations against a Human Rights Defender

In my view the following rights and prohibitions were violated by the Israeli authorities:

D.1. The prohibition on arbitrary arrest and detention

I was taken into custody and detained unlawfully.

[Text has been deleted for the purpose of succinctness.]

D.2. The right to know the reasons for arrest

I was not provided with official reasons for why I was taken into custody or with an explanation of my rights as prescribed by Israeli and international law.

[Text has been deleted for the purpose of succinctness.]

D.3. The right to legal counsel

I was denied access to my lawyer (and I was not apprised of my right to contact a lawyer). I was therefore unable to take up the right of appeal in an Israeli court of law.

[Text has been deleted for the purpose of succinctness.]

D.4. The right to challenge the lawfulness of detention and deportation without delay

I was denied the right to appeal my deportation order in an Israeli court of law and the right to a bail hearing.

[Text has been deleted for the purpose of succinctness.]

Though aware of the above rights, I was not apprised of them and was denied legal representation in order to exercise them.

D.5. The prohibition on incommunicado detention

I was denied my right communicate with my family, a doctor, my lawyer and consular staff.

[Text has been deleted for the purpose of succinctness.]

D.6. The right to humane conditions during detention

I was assaulted by the Israeli authorities. The instances of assault mostly took place at the ingress to the aircraft (in the cab of the passenger boarding bridge) and in the aircraft itself on 15 June 2008 between 00:00 and 02:00hrs at Ben-Gurion International Airport, Tel-Aviv on Ethiopian Airlines Flight ET404. By assault I refer to actions of the Israeli authorities that caused me to apprehend immediate and personal violence—violence that was in no way justified for the purpose of

discharging their official duties (i.e. the execution of the deportation order). The particulars of the assault are as follows:

- sustained and repeated manipulation of my left arm into an extreme and unnatural position, inflicting debilitating pain for the sole purpose of frightening me into leaving Israel, and increasing the level of pain whenever I requested legal representation in response to the question, “Are you going to leave?”;
- steadily compressing my trachea with the thumb, causing me, in the words of the perpetrating official, to “stop speaking”;
- dumping me on the floor of aircraft aisle and then attempting to lift me from a seated position by grasping my ears and head, and then by the hair;
- striking me in the abdomen in order to make me sit;
- threats of harm to my well-being, including allusions to torture at the hands of Ethiopian police.²

This ill-treatment was compounded by the following acts:

- the videotaping of the first deportation attempt in a manner designed to intimidate, humiliate and degrade (the operator of the video camera filmed me in an aggressive manner bringing the camera within 12 inches of my face while shouting threats and abuse);
- frequent episodes of yelling and verbal abuse, and on occasion racist comments (“Fuck you”; “Who the fuck do you think you are?”; “*Sharmuta*” [“Whore”]; “You are a criminal—we will show everyone you are a criminal”; “No one will know where you are”; in a mocking tone followed by laughter: “Are you an Arab?”; etc.)
- threats to place me on the “No-Fly” list;³
- being forced to carry all my luggage (two backpacks) while handcuffed and shackled at the feet for the sole purpose of degrading me;
- being held in solitary confinement in order to punish me and to prevent other deportees from alerting the outside world on my behalf;
- threats to deprive me entirely of human contact while in custody in order to drive me “crazy”;
- being denied access to my reading materials, my writing implements and paper, my timepiece and, for a number of days, my toothbrush;
- not being permitted to bathe or change clothes;
- being provided only dirty blankets;
- being subjected at times to bright lighting and uncomfortable levels of cold and heat (the air conditioner was sometimes left on at night and turned off during the day);
- being held in a cell infested with mosquitoes (the window in my cell did not have a window pane).

Eyewitnesses to the mistreatment of my person (the Ethiopian Airlines flight crew including Captain [REDACTED], First Officer [REDACTED], and cabin crew members [REDACTED], [REDACTED] and [REDACTED]) may be reached at

² Anthony Mitchell, “U.S. Agents Visit Ethiopian Secret Jails”, *The Associated Press*, 3 April 2007, URL: http://www.washingtonpost.com/wp-dyn/content/article/2007/04/03/AR2007040301042_pf.html.

³ “Secure Flight”, Transport Security Administration, United States Department of Homeland Security, Government of the United States, accessed: 18 August 2008, URL: http://www.tsa.gov/approach/secure_flight.shtm.

[REDACTED] or [REDACTED]. Upon the advice of Amnesty International, I refer you to the enclosed photographs depicting contusions, taken between four and twelve days after the event in question, and a copy of recent medical documentation recording unhealed injuries (a partially torn tendon and swelling in my left shoulder) that I sustained as a result of the actions of the Israeli authorities and the prescribed treatment.

[Text has been deleted for the purpose of succinctness.]

D.7. The right to promote and protect human rights, the right to participate in peaceful activities publicising human rights violations,, the right to freedom of assembly and association

I was prevented from working as a human rights defender, travelling to the Occupied Palestinian Territory and associating with ISM. Deportations are having a detrimental effect on ISM's ability to resist and report human rights violations, and on the fundamental rights of Palestinians and the security of Israeli citizens.

[Text has been deleted for the purpose of succinctness.]

Requests for Action

In light of the obligations under the human rights treaties to which Israel and New Zealand are a party, the norms of customary international law, and Israel's domestic law, I call upon the New Zealand Government to address the violations described in Section D by investigating this case thoroughly and to:

- E.1. make a formal protest to the Government of Israel for denying me consular access.
- E.2. request a full explanation from the Government of Israel as to why I was refused entry.
- E.3. make representations on my behalf to the Israeli Interior Minister, calling for the cancellation of the deportation order issued against me.
- E.4. request written authorisation from the Israeli Ministry of Interior that I will be permitted to enter Israel; request advance clearance for my entry into the Occupied Palestinian Territory from the Coordinator of Government Activities in the Territories (CoGAT).
- E.5. seek accountability for the excessive use of force by the Israeli authorities against me and request that the Israeli Ministry of Justice initiate an investigation through the Department for Investigation of Police Misconduct (DIPM) or any other department that has authority over investigations of suspected wrongdoing by personnel in the Israel Police (including the Border Police and Immigration Police) and the Israel Security Agency.
- E.6. determine precisely what personal data relating to me or obtained from me (e.g. personal data relating to other ISM members, former and current) is held or has been processed by the Government of Israel and whether this data was collected lawfully; seek assurances that this data will be deleted as required by law and in any case will not be used for unlawful purpose, and that the privacy rights of those to whom the data pertains are maintained.
- E.7. condemn any unfounded allegations against myself, ISM or any other legitimate human rights organisations. For example, the "Special Representative recalls a statement made on 21 May 2003 by the Israeli Minister for Foreign Affairs, Silvan Shalom, to the Knesset's Foreign Affairs and Defense Committee, accusing 'most human rights offices in the West Bank and Gaza Strip of providing shelter to terrorists'. In her communication to the Government of Israel regarding this matter, she pointed out that such general statements against human rights organizations were contrary to the spirit of the Declaration on Human Rights Defenders. She also registered her concern that such public accusations, without presenting any evidence to that effect, can be prejudicial to the safety of all defenders in the context of the conflict and tensions in the region. She received no response to this communication from the Government." The Special Representative requests that the Israeli "Government...refrain from making statements alleging wrongdoing against human rights or humanitarian operations...[and] establish

its good faith in voicing any suspicions by producing unequivocal evidence to that effect.” According to International Human Rights Groups, Mr Shalom’s “comment has no basis in fact and constitutes a further threat to the work of independent human rights organizations and workers in the Occupied Palestinian Territories” and “such unsupported allegations are intended to intimidate local and international human rights defenders, and to prevent them from carrying out their daily work”.

- E.8. secure agreement from the Government of Israel that humanitarian workers performing legitimate humanitarian work will not be denied access to Israel and the Occupied Palestinian Territory; request, as per the recommendations of International Human Rights Groups, that the Government of Israel “[i]mmediately...facilitate development work, humanitarian aid and human rights monitoring by providing full and unrestricted access to all” legitimate human rights defenders; request, as per the recommendations of the Special Representative, that the “Israeli authorities...refrain from imposing restrictions on travel of human rights defenders to or from Israel and the Occupied Palestinian Territory”, ensure “access of defenders in order to carry out their work” and adopt measures “in consultation with human rights organizations both in the Occupied Palestinian Territory and Israel, to facilitate the movement of defenders.”
- E.9. make representations to the Government of Israel regarding the poor treatment of myself and other human rights defenders whose work is being interfered with on a daily basis; request, as per the recommendations of International Human Rights Groups, that the Government of Israel “[p]ut an end to harassment, intimidation, threats, and deliberate attacks on human rights defenders”, and “cease arbitrarily arresting human rights defenders and foreign nationals”; request, as per the recommendations of the Special Representative, “that the Government of Israel...ensure that all peaceful activities for the defence of human rights violated or threatened by the occupation are allowed to be conducted free of fear and risk” and “give serious consideration to the incorporation of the principles set out in the Declaration [on Human Rights Defenders] to ensure protection of human rights defenders and strict accountability for violation of their right to defend human rights”; seek assurances from the Government of Israel that persons wishing to enter Israel will be treated with dignity and respect; request that the Government of Israel cease the use of ill-treatment, whether physical or psychological, upon any detainee in its custody.
- E.10. request, as per the recommendations of the Special Representative, that the Government of Israel (under the obligation of Article 2 of the Declaration on Human Rights Defenders) “adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed”, and “refrain from taking action that obstructs or punishes the exercising of the freedom of assembly, and the right to protest or resist violations”; request that the Israeli Ministry of Interior ensures all internal security officials, including the police, receive human rights training and that they are supportive of the role of human rights

defenders and of the rights and responsibilities defined in the Declaration on Human Rights Defenders.

- E.11. hold Ethiopian Airlines accountable for knowingly participating in the violation of the rights of a human rights defender; commend the captain and cabin crew of Ethiopian Airlines flight ET404 (of 15 June 2008) for their refusal to participate in an unlawful deportation.
- E.12. review the role of the Ministry of Foreign Affairs and Trade in promoting human rights overseas and ensure that the concerns of human rights defenders working in other countries are better reflected in the New Zealand Government's foreign policy and international trade actions.
- E.13. provide me, if necessary, under the *Privacy Act* (1993) or *Official Information Act* (1982) or both, with all official information held by the New Zealand Government related to this case; keep me apprised of any future developments.

The Ministry of Foreign Affairs declares that it “is charged by Government to ensure that New Zealand’s voice is heard abroad, that our security...interests are advanced, and that the rights and safety of New Zealanders abroad are protected”, and to “strengthen New Zealand contributions to international peace and security as well as...conflict resolution and peace support initiatives”. This mandate is consistent with New Zealand’s commitment “to the protection and promotion of international human rights, as embodied in the Universal Declaration on Human Rights and in the six core human rights treaties” and “the advancement and implementation of human rights internationally and at home”. As a legitimate human rights defender, I should not have been denied entry to the Occupied Palestinian Territory—an unlawful action which encompasses all of the mistreatment that followed, namely being detained incommunicado, prevented from doing humanitarian work, assaulted, injured and deported. As a citizen and resident of New Zealand, I request that the New Zealand Government bring this matter before the Government of Israel.

If you require further information, please do not hesitate to contact me. I thank you in advance for your assistance and look forward to hearing from you.

Yours sincerely,

Harmeet Singh Sooden, P.Eng.

Harmeet Singh Sooden, P.Eng.
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20 October 2008

Lucy Richardson
Legal Advisor
Ministry of Foreign Affairs and Trade
195 Lambton Quay
Private Bag 18901
Wellington 5045
New Zealand

Dear Ms Richardson,

I refer to your letter dated 20 October 2008.

Thank you for your response regarding my 'Request for Action E.13.' and providing me with all official information currently held by the New Zealand Government related to this case. I would be grateful if you could keep me apprised of any future developments, including all internal and external communiqués.

My responses to your questions are as follows:

1. *Did you enter Israel on your New Zealand passport?*

I entered Israel on my Canadian passport.

2. *Did you request consular assistance and, if so, at what point?*

I did not make a verbal request for consular assistance because I was subjected to intimidation of such severity that I believed recourse to consular assistance was not an option available to me.

Upon learning that I had been denied entry, my priority was to arrange for legal representation to contest this decision. The Israeli authorities endeavoured to deport me forthwith, denying me the right to appeal my deportation order. They prevented my lawyer (provided by the International Solidarity Movement) from speaking to me. I was physically assaulted during the first deportation attempt (please refer to Section D.6. in the letter of complaint). Subsequently, I was placed in solitary confinement. I was told that I could not contact anyone. I was also told that no one would know my whereabouts. The Israeli authorities threatened to hand me over to Ethiopian police (accompanied by statements like: "Ethiopia is not a democratic country like Israel"; "Who knows what they will do to you"). I took these threats seriously, given:

- the manner in which I was assaulted;
- Israel’s poor human rights record;
- that the Israeli authorities were in violation of international and domestic law;
- that I had been designated a “threat to the security of the State of Israel”;
- Ethiopia is a country “notorious for torture and abuse” (please refer to the credible reports of victims of ‘extraordinary rendition’ held in secret prisons in Ethiopia in the attached *Washington Post* article);
- and that a friend of mine, Maher Arar, was subjected to the process of ‘extraordinary rendition’ and tortured in the period 2002-3 (please refer to the attached press statement from the Arar Commission).

Under the aforementioned conditions, I considered my right to consular assistance to have been de facto denied—a charge far more serious than a straightforward denial of a request for consular assistance.

Article 36 of the Vienna Convention on Consular Relations requires that foreign nationals who are arrested or detained be given notice “without delay” of their right to have their embassy or consulate notified of their arrest or detention. The Israeli authorities did not apprise me of this right, indicating further their disregard for the Convention in this particular case.

I thank you in advance for your consideration.

Yours sincerely,

Harmeet Singh Sooden, P.Eng.
encl.

cc: The Right Honourable Helen Clark, Prime Minister and (Acting) Minister of Foreign Affairs
Mr Keith Locke, MP
Ms Margaret Sekaggya, Special Rapporteur on the Situation of Human Rights Defenders
Ms Margaret Taylor, Manager, Amnesty International Aotearoa New Zealand