

Mr. Yehuda Weinstein
Attorney General

URGENT: BY FAX

11 July 2013

Dear Sir,

RE: Additional Prisoner X – improper sweeping blackout and solitary confinement

1. We write to you following reports over the past few days in the media of the existence of another “Prisoner X” in Israel, held for years in prison – in absolute solitary confinement – without any public knowledge of his existence.
2. As reported in yesterday’s Haaretz newspaper, the prisoner is being held in a cell without windows and does not come into contact with other prisoners or guards – who don’t even know who he is or what he is accused of. Aside from a short daily walk in a segregated adjacent yard, he has not left his cell for a number of years.
3. As we made clear in our letter to you on June 16, 2010, with regard to the case of the late Ben Zygier, a situation in which a prisoner is held for a period of time in total solitary confinement is a very dangerous one. In a report from published in 1996 on the subject of solitary confinement, a joint committee comprising of members of the Israel Prison Services and the Ministry for Internal Security described the dangers associated with this type of comprehensive isolation;

“Research on this subject is unequivocal and teaches that solitary confinement results in wide-ranging psychotic symptoms, including: hallucinations (visual and acoustic), distorted body perceptions, feelings of strangulation and mental confusion, memory loss, difficulty concentrating, obsessiveness, paranoid episodes and more. These are in addition to physical consequences resulting from the anxiety caused by solitary confinement. This means that there is a direct correlation flowing from the period of time a prisoner is kept in isolation to the side effects of the solitary confinement, such that a one day solitary confinement is incomparable to a confined period of ten weeks, months or years. There is no doubt that there is a borderline period of time after which most people will feel that the solitary confinement is insufferable, and will suffer, as a result, long term symptoms.” (Page 11 of the report)

4. In recognition of the irreversible damage likely to befall a prisoner held in isolation, the report reached several recommendations leading to the amendment of the law several years ago. New arrangements were reached that sought to balance between the need to occasionally use solitary confinement measures, and the human rights of the prisoner. The guiding principle in the arrangement that

was reached is that solitary confinement should be a last resort, used only if there is no other way to deal with a concrete danger arising to or from the prisoner. Oversight procedures should exist to ensure that these problematic instruments are not used more than necessary. Even when it is indeed necessary to place a prisoner in solitary confinement, everything must be done to ensure that complete isolation, consisting of zero human contact, is not put into practice. We hope that the reports, according to which the prisoner receives visits from his family and attorney, are correct. Nevertheless, everything possible should be done to ensure that the prisoner comes into daily contact with other people, whether by means of placing another prisoner with a solitary confinement order into his cell, or by any other means.

5. Once again we are witnessing an extremely concerning phenomenon, where a complete and sweeping gag order has been imposed on a person's arrest and trial. Secret arrests and trials are unacceptable in a free democratic state; they substantially threaten the rule of law and severely harm the public's faith in the legal system. While extraordinary circumstances may exist that justify the imposition of a gag order during investigations for a set period of time, from the moment that someone is placed under arrest – and certainly from the moment that he is tried – there can be no justification for such all-encompassing secrecy. Even if a justification does exist for continued secrecy about certain details due to vital security considerations, such basic details as the existence of the prisoner and the fact of his trial; the court before which he is being tried; the terms of his sentence; and more, can not be hidden.
6. There is no need to elaborate on the significance of the principle behind holding a public trial and of the right of the public to be aware of the proceedings. Openness is vital for ensuring free public oversight over the system of law enforcement and of the legal system itself. It ensures transparency in the considerations made by the state in deciding to put someone on trial, and serves as the central guarantee against the abuse of the investigatory agencies' vast powers. Just as “the light of day is the most effective cleansing agent” – so darkness and secrecy provide a fertile ground for arbitrary governance and unjustifiable harm to human rights.
7. In light of everything conveyed above, we request your immediate intervention to look into this matter and adopt the necessary steps to put an end to the complete and dangerous isolation of this prisoner. Furthermore, we request that you act to remove the sweeping gag order surrounding this case and establish clear guidelines so that cases like this do not arise in the future. We additionally ask to be made aware if there are other cases of prisoners being held in isolation under an assumed name whose arrest is not a matter of public record.

Yours sincerely,
Attorney Lila Margalit