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Date: 28 January 2009

Brigadier General Avichai Mendelblit Military Advocate General Via Registered Mail and fax: 02-6467001	Mr. Meni Mazuz Attorney General of Israel Via Registered Mail and fax: 03-5694526
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Dear Sirs,

Re: **Holding Conditions of Detainees from the Gaza Strip – Degrading and Inhuman Treatment**

References: our letter dated 8 January 2009
The MAG's response dated 19 January 2009

Following our appeal of 8 January 2009 and the response of the Military Advocate General (MAG) of 19 January 2009 (copies enclosed), we appeal to you again on behalf of the **Association for Civil Rights in Israel, the Public Committee Against Torture in Israel (PCATI), HaMoked: Center for Defence of the Individual founded by Dr. Lotte Salzberger, Physicians for Human Rights, B'Tselem, Yesh Din and Adalah, to protest the appalling conditions in which Palestinians arrested during the fighting in Gaza were held, and the humiliating and inhuman treatment to which they were subjected from the time of their arrest until their transfer to the custody of the Israel Prison Service, all of which contradict the statements made in the MAG's response referenced herein** . This complaint is based on information we have received, including detainee testimonies taken by attorneys for PCATI, as well as a testimony taken by HaMoked.

As we shall specify below, these testimonies are only the tip of the iceberg: the information that we are only beginning to receive unfortunately provides a harsh and saddening portrayal of the inhuman treatment of detainees arrested by the army during the fighting in Gaza. This portrayal further strengthens the urgent need, which we addressed in our letter, for suitable supervision over the incarceration conditions of detainees arrested by the military, particularly during fighting.

In our appeal which is referenced herein we cautioned against the increased danger of offences being committed against the dignity and bodily integrity of detainees held by the military outside recognized facilities, without effective supervision over incarceration conditions and the treatment of the prisoners. Indeed, in stark contradiction to article 3 of the response referenced herein, **the testimonies in our possession provide a shocking portrayal of the harsh, inhuman and degrading conditions in which Palestinian detainees were held during the initial days of their incarceration**, including testimonies of violence used by soldiers and interrogators, regarding which complaints will be submitted separately.

Thus for example, **many detainees were held in pits**¹ two to three meters deep which were apparently dug by the army. **They were held inside these pits, adults and minors alike, for hours and days** (in many cases for two full days, in some cases even more), **exposed to the bitter cold and harsh weather conditions, handcuffed and sometimes also blindfolded. These pits lacked basic sanitary conditions which would allow the detainees appropriate toilet facilities, while food and blankets, when provided, were limited, and the detainees suffered hunger.** Worse yet, some of the detainees were held near tanks and in what are clearly combat zones, in gross violation of international humanitarian law which prohibits holding detainees and captives in areas exposed to danger.² Information we have received indicates that each of these pits held approximately 70 people, such that in total it would appear that dozens, perhaps hundreds of people were exposed to these appalling conditions.

Inappropriate treatment of the detainees continued after they were removed from the pits. For example: one detainee describes how he was forced to spend an entire night in a truck, handcuffed, with dozens of others, with one blanket for every two people; another detainee says he was held for a considerable period of time outside in the rain; yet another speaks of the many days he was exposed to harsh weather, without blankets, food or water. Many detainees tell of extreme violence and humiliation they suffered at the hands of the soldiers.

In "less severe" cases, dozens of detainees were held, handcuffed, in a room inside one of the houses in the neighborhood, sometimes also blindfolded, in the bathroom or shower, for hours or even days.³

At one point, after the detainees were subjected to a long, humiliating journey on the ground, they were transferred to an army camp inside Israel, whose name and location they were not told. We estimate that this was the Sdeh Tayman base. There, the detainees were examined by medical personnel, photographed and interrogated. All of the detainees were initially held in a large hall in slightly better conditions than those which they suffered in the field (for instance: they were given blankets and thin mattresses). Then, some were placed in solitary confinement or in trailers, where they were again held in degrading conditions – without a toilet or shower. One detainee says he was ordered to leave the thin mattress and blanket he was given in the large hall, and forbidden to take them with him when he was transferred to a cell.

¹ Referred to in Arabic as “Jora”.

² See for example, 4th Geneva Convention, Article 49 and 3rd Geneva Convention, Article 19.

³ As recounted, for example, in a complaint filed by PCATI on behalf of Mr. Muhammad Kasab of 19 January 2009, enclosed.

The harsh descriptions included in this letter – indicating that the lessons of the past have not been duly learned – necessitate **an independent, comprehensive and impartial investigation, to ensure that such treatment of detainees is not repeated. We call upon you to order such an investigation.**

Furthermore, the response we received failed to address most of the issues we raised in our original appeal. We ask again to receive the same information we sought previously, and a response to our detailed requests, including the request to allow representatives from human rights organizations to visit Sdeh Tayman and any other facility where detainees from Gaza are being held.

Detainee Testimonies

The testimony of Samir ‘Ali Muhammad ‘Attar:⁴

Mr. Samir ‘Ali Muhammad ‘Attar, ID No. 957464365, was born in 1971, and resides in the Al ‘Atatra neighborhood, Beit Lahya, in the Gaza Strip. Samir works as a driver for Dr. Kamal Alsharafī, a human rights consultant to the Palestinian President. Samir ‘Attar was arrested on Monday morning, 5 January 2009, in his home, together with his 14 year old son and many of his neighbors. This is how he describes the **process of his arrest** and the **appalling conditions in which he was held in a pit** (emphasis added):

On Monday, 5 January 2009, in the morning, I was with my family inside the house when we heard a lot of shelling and gunfire around us. Then the Israeli troops began firing at my house, and my family and I went outside. My wife was raising a white flag and I was holding my two young children.

Outside, there were many Israeli soldiers – about 50 or 60 of them. They ordered us to raise our hands, and I let my children down. They searched me and then handcuffed me and my 14 year old son, Hussein together. The same thing happened with my neighbors – the army arrested ten of them [...] and we were led to the home of Khalil Misbah Al ‘Attar, which is about 50 meters from my house [...] the soldiers treated us well when we were in the house, **but did not provide food or water, and only allowed us to go to the bathroom once.**

At around 5:00 PM, **we were all transferred, handcuffed in the front. My son’s hand was tied to mine. We were taken to the area where the tanks were stationed, about a kilometer from my house. We got there on foot.** We arrived to where the tanks were. At that time the tanks were firing shells at Beit Lahya. Where the tanks were, the military had prepared a large piece of land of about two dunams, which was dug up to create a **pit surrounded by a wall of sand, about two meters high. The soldiers ordered us to climb down the sand walls into the pit, while still handcuffed. We were held there, in the open air for two days,** until Wednesday afternoon.

The soldiers left us exposed to the bitter cold. Only on Tuesday morning did they give every pair of us a blanket. We were handcuffed

⁴ Testimony of Samir ‘Ali Muhammad ‘Attar, resident of Beit Lahya, collected in an affidavit by Adv. Maher Talahmy on behalf of PCATI. Talahmy visited the detainee, who was held in the Ketziot prison pursuant to the Incarceration of Unlawful Combatants Law, on 14 January 2009.

and slept in the sand during this whole time. The soldiers would give us **food once or twice a day**, and as for water, we would ask them and they would sometimes provide it, late. **There were no toilets in the place and we were not given hygienic items like toilet paper. I was held inside the pit along with about 70 other civilians, most of them I know from my neighborhood.**

This is how Samir ‘Attar described the conditions in which he was held while being transferred to Israel, and afterwards, inside Israel:

On Wednesday, we were all put on a truck, blindfolded, and traveled, with a tank driving ahead of us, to an outpost by the sea which was built after Israel's disengagement from Gaza. This outpost was about five kilometers from where we were held previously. My son, Hussein, was left in the pit and I don't know what happened to him. At the outpost, the soldiers got us off the truck. They sat us on the ground and began taking us, one by one, to an interrogation by the trees.

After an interrogation which continued for some two hours intermittently and was conducted by several investigators, Mr. ‘Attar was told that he had been initially suspected of "membership in Hamas," but that after an examination, it was discovered this was a case of mistaken identity. Despite this, he was not released, but held at the outpost and then transferred to Israel, to a camp. He was not told the name and location of this camp:

At the outpost, we were held outside, in the open air, in the bitter cold and rain, until midnight. At midnight, the plastic restraints were replaced with iron handcuffs, we were put on buses and taken, blindfolded, somewhere else. We were not told the name or the location.

At this camp, the name of which was never disclosed to Mr. ‘Attar, he was photographed with a computer camera, electronically fingerprinted, and then a man in a military uniform who identified himself as a doctor questioned him about his health. This is how he describes the conditions in which he was held during this stage of his incarceration (emphasis added):

Afterwards [after the identification, medical examination and initial interrogation B.S.B.] I was transferred to the "Brex," a 300 meter room, divided into two sections, A and B, where about 80 more civilians were held. **The soldiers gave us mattresses and blankets. After about an hour, I was transferred to a holding cell, where I was held for one night, alone. They wouldn't let me take the mattress and blanket with me, so I slept on the floor, and the cell had no toilet or running water. I was given only one meal.**

On Friday, at around 11:00 AM, Mr. ‘Attar was taken to a small room and an officer "with two mulberry leaves on his shoulder" asked him about his name, place of employment, and whether he had any links to terrorist organizations. Mr. ‘Attar replied in the negative. He was asked if he wanted to go home, and replied that he did. Once he answered affirmatively, he was asked to sign a document, the content of

which not explained to him. **The officer did not inform him that he was under arrest nor tell him what the legal basis for his detention was.** On Saturday, at around 3:00 PM, Mr. ‘Attar was taken on a bus, along with other detainees, to Ketziot prison. It was not until he met with an attorney from PCATI, on 14 January 2009, **ten days after his arrest**, that Mr. ‘Attar realized he was being held on the claim that he is an "unlawful combatant".

The testimony of Khalil Misbah ‘Awad ‘Attar:⁵

Mr. Khalil Misbah ‘Awad ‘Attar, ID No. 925852535, was born in 1953 and resides in the Al ‘Atatra neighborhood, Beit Lahya. Khalil ‘Attar was arrested on Tuesday, 6 January 2009, in his home, after the army had shelled his home and destroyed the second story of the two story building. According to his statement, after the shelling, soldiers stormed into the house and despite his pleading, destroyed the inside of the house and removed all the tenants – about twenty members of his extended family. The soldiers dragged Mr. ‘Attar outside, while swearing at him. Outside, they arrested him and instructed the other tenants to go to Jabalya . This is how he describes his **arrest and transfer to a pit** (emphasis added):

The soldiers tied my wrists with plastic restraints (in the front), blindfolded me, two soldiers grabbed me by both arms and **led me to a pit about 500 meters from the house. The pit was about one to two dunams in size, surrounded by a wall of sand about two meters high.** I was held in the pit for about two hours and there were about 90 other civilians there. Then I was **blindfolded again and transferred, with the rest of the detainees, in a truck, to another pit by the sea, in Israel's territory.** This pit measured about half a dunam. **Some of us were held in the pit and some of us on the sand. We were not allowed to raise our heads.** When I was in the pit, **it started raining.** They brought us blankets, and 15 minutes later they put us on buses. On the bus, I was blindfolded. We traveled for about two hours. We were let out in the courtyard of an **army camp**, given blankets and water and after two hours we were placed in solitary confinement cells, each of us was placed, alone, in confinement [apparently, he meant to say "cell"], to the best of my knowledge. I think the camp is in the Negev.

At the army camp, Mr. ‘Attar was interrogated, and an officer, probably a Lieutenant Colonel, promised him that he would be released. However, he was held alone in the cell in the camp for two more days, and then transferred to Ketziot. On 15 January 2009 – **ten days after his arrest** – he was finally released during the judicial review.

The testimony of Hamed ‘Adnan Rajab ‘Attar:⁶

⁵ Testimony of Khalil Misbah ‘Awad ‘Attar, resident of Beit Lahya, collected in an affidavit by Adv. Maher Talahmy on behalf of PCATI. Talahmy visited the detainee on 14 January 2009. On 15 January 2009, **ten days after his arrest**, Mr. Khalil ‘Attar was taken for his first judicial review, during which the Honorable Judge Pilpel ordered to delete the motion for arrest (submitted by counsel for the State) and release Mr. Khalil ‘Attar. The protocol of the hearing is enclosed.

⁶ Testimony of Hamed ‘Adnan Rajab ‘Attar, resident of Beit Lahya, collected in an affidavit by Adv. Maher Talahmy on behalf of PCATI. Talahmy visited the detainee in the Ketziot prison on 14 January 2009.

Mr. Hamed ‘Adnan Rajab ‘Attar, ID No. 946684016, was born in 1983 and resides in Beit Lahya. Hamed is blind in his right eye, and works for the Al Nur organization for the disabled. In the early morning hours of Sunday, 4 January 2009, he was arrested in his home, on the first floor of a three story building. At the time, the building was housing 43 people, who were all staying on the first floor, after a shell had hit the building. The soldiers stormed his house using gunfire, sound and stun grenades. They searched the men in the house and then transferred them, on foot – handcuffed and blindfolded – to another house about 600 meters away, where they were held for a day and a half, along with most of the men from the neighborhood. From there, **the detainees were transferred to a pit and from the pit to a truck, where Mr. ‘Attar spent the night in appalling conditions, and was also subjected to physical violence:**

On Sunday, at around 5:00 AM, while the children were asleep, the soldiers launched sound and stun grenades at the house, and then they came inside. The soldiers fired inside the house in every direction. Then they searched us and arrested me along with my brothers, ‘Adnan, Marwan, Hassan, Muhammad, and my father, and they led us outside, where they searched us. They brought us back inside and held us in a room, separate from the women and children, along with my uncle (mother's brother), his (two) children and my grandfather. We were held in the house for about an hour and afterwards, they handcuffed us in the front with plastic restraints, covered our eyes and led us to another house in the neighborhood, about 600 meters away, where we were held in the yard along with most of the men from the neighborhood. At night, they put us in one of the rooms in this house, about 12 meters in size, and kept us there with about 50 other civilians. During the night, we could hear explosions and gunfire around us. The next day, at around 4:00 PM, they took us to an open space near the house, about 100 meters away and **put us in a big pit, with a wall of sand around it, where the tanks were stationed. They divided us into two groups. One group, of about 30 people, was put on the truck. The weather was very cold and we had to sleep in the truck, handcuffed and blindfolded. The other group was left in the pit. The soldiers gave some blankets to the civilians, but not enough, maybe a blanket for every two people. We were kept in the truck until 12:30 PM the next day. If someone needed to go to the toilet, he went behind the truck. The soldiers forbade us to speak, and anyone who spoke was beaten.**

After two nights of incarceration in temporary facilities, Mr. Hamed ‘Attar was driven, along with the other detainees who had been held with him in the truck, to an open space close to the sea (a drive which took about 30 minutes, at around 12:30 PM, on 6 January 2009). **There he was held in the bitter cold, out in the open, in a large pit dug in the ground, surrounded by sand:**

When we arrived at the pit, they undid our handcuffs and removed the blindfolds, but about two hours later they handcuffed and blindfolded us again. **We asked for blankets but they did not provide them and I couldn't sleep all night because of the cold and the harsh conditions. We were also not given any food.**

After three nights (and about four days) of exposure to the cold, suffering and humiliation – first at one of the houses, then on the truck, and finally in the "pit" – Hamed ‘Attar’s humiliating journey continued, at another temporary holding facility close to the border. This is how he describes what happened to him:

The next day [probably 7 January 2009] I was transferred along with the rest of the detainees to a location close to the border and the sea. Trailers and bulldozers were stationed there. **We were group-searched and ordered to remove all our clothes and remain in our underwear. Then they held us on the gravel, out in the open.**

After two brief interrogations which took place in different areas of the same "temporary camp," it began to rain, and at one point the soldiers put the detainees on buses and transferred them to a camp inside Israel, about a 45 minutes drive from the previous location. The detainee was not told the name and location of this camp. At this location, the detainees were fingerprinted and photographed, underwent a medical examination, placed in a hall and given blankets and thin mattresses. They were held in this hall for another night, this time without handcuffs or blindfolds. From there, Mr. Hamed ‘Attar was taken to an interrogation, which lasted an hour and a half, during which he was tied to a chair, with his hands cuffed behind him. From the interrogation room he was transferred to a cell, without a shower or toilet, where he was held in isolation for two nights. On Friday, 9 January 2009, an army officer informed him that he was suspected of membership in a hostile organization, and ordered him to sign a Hebrew document, which he could not understand. **However, he was not officially informed that he was under arrest, nor was he told pursuant to which law he was being held.** On Saturday he was transferred to Ketziot.

The testimony of Majdi Muhammad ‘Eid Al ‘Attar:⁷

Mr. Majdi Muhammad ‘Eid Al ‘Attar, ID No.902990381, was born in 1966 and resides in the Al ‘Atatra neighborhood. He was arrested on 5 January 2009, in his home. His story highlights not only the disgraceful incarceration conditions, but also **the violence soldiers directed towards anyone who dared to ask for food or other basic necessities:**

On 4 January the military entered Gaza and began shelling the neighborhood. My brothers and I live in the same area. The soldiers began firing at my house which is a four story building, and also launched sonic bombs. My neighbor's house was burned to the ground, as was my brother's home. My neighbor and my brother came to my house. We were 22 people in the house [...]

The next morning, the soldiers banged on the door and I continued to shout at them not to shoot. They separated the men from the women and children. The women and children were told to go to Jabalya. They blindfolded and handcuffed me and my three children, my brother, his four children and my brother in law. They put us in a ditch about three meters deep and there were around 70 other people there. We were there for two

⁷ Testimony given to Soud Jamal, an employee of HaMoked: Center for the Defence of the Individual on 14 January 2009, via telephone.

days, without food, without blankets and without water. They also didn't allow us to go to the bathroom. No one spoke to us and the whole time, the shelling continued. Our location was close to the American University – near the entrance to Dugit. Afterwards, they loaded us onto trucks. It felt like the trucks were taking us through rural areas and we were thrown from our seats and bruised and beaten from constantly falling. They brought us to another ditch, close to Zikim. We stayed there three days without food, water or blankets. It was freezing, and the whole time I was handcuffed and blindfolded. **Even when we asked to go to the bathroom, no one listened to us and the whole time the soldiers beat up anyone who asked anything.**

In the evening, we were loaded onto trucks and taken inside Zikim. There was an interrogation facility there. They interrogated us, one by one, for about an hour. The interrogator spoke Arabic. They asked us if we knew anything about Hamas, the tunnels, the rocket launchers; if we had any connection with them. Then they took every 20-25 people to a bus, still blindfolded and handcuffed. They took us to a huge shipping container near Beer Sheva.

The testimony of Ahmad Shehadeh Abu Salah:⁸

Mr. Ahmad Shehadeh Abu Salah, ID No. 801017195, was born in 1985 and resides in Beit Hanun in the Gaza Strip. He was arrested on Sunday (probably 4 January 2009) from his father in law's house in Beit Lahya, at around 9:00 AM. According to his statement, the soldiers surrounded the house, placed a huge dog inside and then ordered all the residents to exit. Outside, the soldiers arrested Mr. Ahmad Abu Salah, along with his father in law and his children, and they were transferred on foot to another house, about a 30 minute walk away, where they were held in the yard with many other detainees. **When he tried to sit down, several soldiers attacked and beat him.** At around 8:00 PM, they were taken inside the house where they remained until the following day, handcuffed in the front and blindfolded. The next day, Ahmad was transferred to **a large hall made of "zinco"** [probably corrugated iron] **where he was held with about 60 other detainees for four days, then transferred to Ketziot.**

The obligation to inform the family and attorney of a detainee of his whereabouts:

In our appeal referenced herein we sought to ensure that information regarding the whereabouts of detainees be made available to family members and human rights organizations immediately. Yet this obligation was not fulfilled. As early as 7 January 2009, HaMoked appealed to the Military Prisoner Control Center, requesting to trace dozens of Palestinians from Gaza. On 8 January 2009, HaMoked was told that the Control Center was not permitted to provide any information concerning these individuals. That same day, HaMoked filed a petition for *habeas corpus*. Only after the petition was submitted did the army provide information about the petitioners and other detainees (HCJ 289/09 **Habib 'Attar v. the IDF**). Following this petition, the State announced in its response of 11 January 2009, that "As long as the fighting in the Gaza Strip continues, the IDF may apprehend additional Palestinian residents. The

⁸ Testimony of Ahmad Shehadeh Abu Salah, of Beit Hanun, collected in an affidavit by Adv. Maher Talahmy on behalf of PCATI. Talahmy visited the detainee in the Ketziot prison on 14 January 2009.

names of those apprehended will be submitted to the Military Police Prisoner Control Center. Every effort will be made to submit these names to the Control Center within 48 hours of the detainees' transfer to Israel. It will be possible to address the Control Center in the matter of specific detainees, in accordance with existing Control Center procedures."

The response referenced herein did not address this important issue – ensuring the availability of information regarding the whereabouts of detainees from the moment of their arrest – which constitutes a vital guarantee of a prisoner's rights from the moment of his arrest, of effective supervision over the legality of his arrest and of preventing disappearances. This oversight must also be investigated.

Worse yet, detainees who asked to know what happened to their family members, particularly their children who were arrested with them but who were not brought with them into Israel, received no response. Thus, for instance, Mr. Samir 'Attar did not know what became of his son Hussein, the 14 year old who was arrested with him and handcuffed to him for over two days. Mr. Khalil 'Attar was also unable to find out what happened to his son Ahmad, who was arrested a day before him.

Conclusion

As previously stated, the testimonies presented above are only the tip of the iceberg in regards to information which is beginning to surface about the treatment of Palestinian detainees from Gaza – the conditions of their incarceration, their arrest and interrogation during the fighting. **These testimonies leave no room for doubt as to the gross violation of the obligation to ensure that a person – any person – is detained in appropriate conditions, his dignity and bodily integrity respected, and while appropriate external supervision of his treatment is carried out in order to ensure he is not exposed to torture or to cruel, inhuman or degrading treatment or punishment.** These obligations are absolute and must not be derogated even during conflict. They are entrenched in the basic principles of Israeli constitutional law and international law, both customary and treaty law, which are incumbent upon Israel.

In our letter, we pointed to the need for prompt judicial review of the arrest of individuals – even those arrested during fighting. Indeed, these testimonies demonstrate the grave injury to human rights, caused by the significant delay in conducting such reviews. In the absence of external, individual supervision of a person's detention, it is impossible for him to complain about the conditions in which he is held and the manner in which he is treated. Such a state of affairs gives rise to violations of the detainee's rights and his improper treatment. Furthermore, the fact that some of these detainees – in whose cases there was ultimately no justification for prolonging the arrest – were released without charge after many days in appalling incarceration conditions – also attests to the grave injury caused by delaying the necessary review.

In light of all of the above we appeal to you in an urgent request to order an independent, comprehensive and impartial investigation of this complaint.

Additionally, we repeat our request, which was not addressed in the response we received, to allow representatives from human rights organizations to visit Sdeh

Tayman and any other facility in which detainees arrested during the fighting are being held.

We also repeat our requests as detailed in our original letter, among them:

- We demand to receive information regarding detainees arrested in Gaza during the fighting. How many were arrested? How many are currently being held by the army?
- We demand to receive information regarding the incarceration facilities in which the detainees are being held. Where are they being held? Which facilities, besides "Sdeh Tayman", are currently being used for holding these detainees? How many detainees are held in each facility? We also **request to receive a copy of the regulations mentioned in article 3 of the MAG's response which regulate the manner in which the military makes its arrests.**
- We ask to ensure that due notice is given to the International Committee of the Red Cross (ICRC) as well as to the relatives of the detainees and/or their attorneys or the Public Defender's Office. The response stated that information regarding the detainees was provided to the ICRC and that the organization was permitted to visit Sdeh Tayman. This in itself, is commendable, yet it does not render redundant the need to ensure a mechanism for providing immediate notification to the relatives of detainees, their attorneys and/or the Public Defender.
- We request that measures be taken for the establishment of an advisory committee, such as the one suggested by the Court in the case of the Ofer Camp (we expanded upon this issue in our original letter, HCJ 3278/02 HaMoked: Center for Defence of the Individual v. Commander of the IDF Forces in the West Bank. *Piskei Din* 57(1) 385 (2002)), which will routinely supervise conditions of incarceration in every facility run by the military, including Sdeh Tayman.

Sincerely,

Bana Shoughry-Badarne, Adv. Head of Legal Department The Public Committee Against Torture in Israel	Abeerr Jubran Dakwar, Adv. Legal Department Coordinator HaMoked: Center for Defence of the Individual	Lila Margalit, Adv. The Association for Civil Rights in Israel
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cc:

The Honorable Justice (retired) Micha Lindenstauss, State Comptroller and Ombudsman
Inbal Rubinstein, Adv., Chief Public Defender

The Constitution, Law and Justice Committee