

**Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of  
opinion and expression**

REFERENCE:  
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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 25/2.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the retaliations against, criminal prosecution and conviction of Mr. **Rafi Rotem**, a government employee, due to his whistle-blowing on cases of corruption in the Tax Authority of Israel.

Mr. Rafi Rotem was employed since 1984 as an Intelligence Officer in the National Customs and VAT Investigations Unit in Israel. Following his whistle-blowing, Mr. Rotem has suffered harassment, intimidation and retaliation, including the loss of his home and job and detention on fifteen occasions.

The Israeli State Ombudsman has, on the basis of the information exposed by Mr. Rotem, recommended that the Tax Authority in consultation with the Ministry of Justice and State Service Authority should review the decisions taken in the Customs and VAT Division during the relevant period.

According to the information received:

Starting in 2003, Mr. Rotem began to file complaints of corruption at the highest levels in the Tax Authority where he was employed. The corruption exposed by Mr. Rotem included tax breaks to tycoons and crime figures related business, sex bribes and murder of an informant.

In 2003, Mr. Rotem approached his supervisors on his suspicions of corruption in the Tax Authority National Investigations Division. There were no internal actions taken. The same year, Mr. Rotem approached the Tel Aviv Fraud Division of the Israel Police, and the Israel State Ombudsman. At the same time, the Director of the Customs and VAT National Investigations Unit initiated retaliation against Mr. Rotem by asking him to stop the referral of investigation files and urged Mr. Rotem's colleagues to boycott his actions. The Director of the Customs and VAT National Investigations Unit also referred Mr. Rotem for psychiatric evaluation.

Following this incident, the first detention and investigation of Mr. Rotem was initiated by the Israel Police on suspicion of Mr. Rotem burning a door.

On 6 June 2004, the Director of the Customs and VAT National Investigations Unit and a second senior Tax Authority officer were detained by the Israel Police and suspended for two months. The file was eventually closed by the State Prosecution and the Director of the Customs and VAT National Investigations Unit returned to his job.

Later in 2004, Mr. Rotem approached the National Fraud Division of the Israel Police and began forwarding them evidence of corruption. He was promised protection by representatives of the police and Israel State Prosecution.

The same year, Mr. Rotem was demoted from the National Investigation Unit and transferred to a lower position in the Ramleh VAT office.

In 2005, Mr. Rotem filed a complaint with the Tel Aviv Labor Court, relative to his demotion. The trial is reported to have contained a number of irregularities, including a lack of cross interrogation and fictitious complaints against Mr. Rotem. Moreover, the judge failed to recuse herself, despite being the spouse of one of the lawyers of the business owners that Mr. Rotem had accused of corruption. Mr. Rotem was furthermore reprimanded for having recorded his phone conversations, despite this having previously been instructed by the Israel Police. In March 2006, judgment was rendered, which ignored the testimony of 10 VAT investigators in favor of Mr. Rotem. Mr Rotem's appeal was denied by the National Labor Court.

Since 2005, Mr. Rotem has received no pay and no retirement benefits.

Also in 2005, Mr. Rotem exposed tax evasion in the renovation of the Yad Eliyahu stadium. The Director of the Tax Authority closed the file and later received long-term free admission to the stadium by the owners of the corporation. By mid-2005 one of the informants of Mr. Rotem considered himself under threat and sought protective custody. He was later found murdered in a Tel Aviv hotel. Israel Police Investigation determined it was a suicide despite reported evidence of violence on the body.

In February 2007, 15 senior investigators of the Tax Authority sent a letter to the State Ombudsman, asking for investigation of corruption of the Income Tax Authority. The same year, in a newspaper interview, the Attorney General referred to "organized crime in the Tax Authority".

In 2007, the Director of the Tax Authority was detained by the Israel Police. He was represented by a lawyer who was later appointed Attorney General.

In 2008, following lengthy legal procedures, Mr. Rotem lost his home and was repeatedly detained.

The same year, the State Ombudsman issued a report against the Director of the Tax Authority relative to the corruption case exposed by Mr. Rotem. In

conclusion, the Ombudsman wrote that *“The Tax Authority in consultation with the Ministry of Justice and State Service Authority should consider review of the decisions that were taken in the Customs and VAT Division during the relevant period, in matters related to sports, basketball, and financial and commercial entities related to them, and business persons, who are members of the related institutions.”*

In 2009, the Israeli Supreme Court denied Mr. Rotem’s petition relative to the retaliation against him, following his exposure of corruption and the refusal to provide him protection. One of the judges in this decision was the brother of an employee working for the Tax Authority.

In 2009, one of the judges in one of Mr. Rotem’s repeat detention cases who had reprimanded the Israel Police in that case, was forced to resign after his son was investigated by the Tax Authority, purportedly following random income tax check.

The same year, the Israel State Prosecution issued a recommendation to prosecute the Director of the Tax Authority. The criminal prosecution file was closed the same year by the new Attorney General who previously had been the lawyer of the Director of the Tax Authority.

In October 2013, Mr. Rotem was charged with thirty counts of threats, harassment, violation of Telecommunications Act, relative to sending faxes to various State officers. On 25 October 2013, he was detained for having sent a fax to a police officer in the National Investigations Unit.

On 29 April 2014, the Israeli Ombudsman’s office started a process to restore Mr. Rotem’s financial rights as a wrongfully terminated State employee.

On 28 November 2016, Mr. Rotem was convicted on 28 charges and sentenced to 9 months’ probation for three years. The charges consists of 15 charges for “insulting a public official”, in respect of messages and faxes to officials in the police and prosecution in which he accused them of covering up complaints and investigations of corruption in the Tax Authority. Ten of the charges concerned “harassment by means of communication device”. Three of the charges concern “breach of legal order”. It has been reported that despite the Criminal Procedure Act, no public defender was lawfully appointed for Mr. Rotem in this case.

I express serious concern at the retaliations, the repeated criminal persecutions, and the recent conviction of Mr. Rotem, which all appear to be directly related to his whistle-blowing activities. I express concern at the lack of protection for Mr. Rotem and at the use of the justice system to prosecute, instead of promote, his efforts to share information on a matter of public concern.

In this regard, I would like to underline that whistle-blower protection rest upon the core right to freedom of expression. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Israel on 3 October 1991, guarantees the right to

seek, receive and impart information and ideas of all kinds, and through any media regardless of frontiers. Whistle-blowers enjoy the right to impart information, but their legal protection when publicly disclosing information rests especially on the public's right to receive it (see my report to the General Assembly A/70/361). As indicated by the Human Rights Committee in its General Comment no. 34, freedom of opinion and expression extends to information held by all public bodies, whether legislative, executive or judicial, and it applies to other entities when they are carrying out public functions.

As I state in my report to the General Assembly, whistle-blowers must be protected against coercion or harassment, job loss, suspension or demotion, disciplinary penalty, blacklisting or prosecution on grounds of breach of secrecy laws, libel or defamation (see A/70/361).

Without a legal system and an official culture that effectively protect the communication of information that is hidden, authorities will not be held accountable and individuals will not be able to make informed decisions about matters that may affect them. The protection of whistle-blowers and the public's right to receive information also requires an independent judiciary and legal profession, and basic law enforcement capacity and willingness to confront intimidation. Impunity for reprisals sends a message that there is a lack of commitment to whistle-blowers' protection (see A/70/361).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention. I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the use of libel charges in the conviction of Mr. Rotem's whistle-blowing activities and explain how this is compatible with Israel's obligations under international human rights law, in particular with article 19(3) of the ICCPR.
3. Please provide information about the justifications for the continuous legal harassment and criminal prosecution of Mr. Rotem, and explain how this is compatible with international human rights law. In particular, please explain how his actions amount to "breach of legal order".
4. Please provide information about measures taken following the State Ombudsman's determination that Mr. Rotem termination as a State employee was wrongful.

5. Please provide information about measures taken to hold those involved in the harassment and retaliations against Mr. Rotem accountable for their actions.

6. Please provide information about the allegations that the information exposed by Mr. Rotem was willfully withheld from investigation.

I would appreciate receiving a response within 60 days.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

**Annex**  
**Reference to international human rights law**

While I do not wish to prejudge the accuracy of the allegations mentioned above, I would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

I reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions on freedom of expression which are not consistent with paragraph 19 (3) of the ICCPR; including on government activities and corruption in government.

I moreover would like to draw the attention of your Excellency's Government to my report to the General Assembly in 2015 on whistle-blower protection (A/70/361), in which I urge States to ensure that the national legal framework protects whistle-blowers in addition to several other recommendations that I wish to highlight:

State law should protect any person who discloses information that he reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as abuse of authority and fraud. Upon disclosure, authorities should investigate and redress the alleged wrongdoing without any exception based on the presumed motivations of the person disclosing the information (paragraph 63).

Internal and external oversight mechanisms should, moreover, provide effective and protective channels for whistle-blowers to motivate remedial action (paragraph 64).

Protections against retaliation should apply in all public institutions. Given that prosecutions generally deter whistle-blowing, States should avoid them. Acts of reprisals and other attacks against whistle-blowers must be thoroughly investigated and those responsible for those acts held accountable (paragraph 65).

When the attacks are condoned or perpetrated by authorities in leadership positions, they consolidate a culture of silence, secrecy and fear within institutions and beyond, deterring future disclosures (paragraph 66).

Law enforcement and justice officials must be trained to ensure that adequate implementation of standards establishing protection of the right to access information and the consequent protections of confidentiality of sources and whistle-blowers. Authorities in leadership positions should publicly recognize the contribution whistle-blowers make by sharing information of public relevance and should condemn attacks against them (paragraph 67).