At the Supreme Court **HCJ 8092/20**
Sitting as the High Court of Justice

In the matter of:

1. **_____ Bajawi,** Resident of the Occupied Territories
2. **_____ Qatnani,** Resident of the Occupied Territories
3. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA 580163517**

All represented by counsel, Adv. Nadia Daqqa (Lic. No. 66713) and/or Adv. Daniel Shenhar (Lic. No. 41065) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Adv. Aaron Miles Kurman (Lic. No. 78484) and/or Tehila Meir (Lic. No. 71836) and/or Maisa Abu Saleh-Abu Akar (Lic. No. 52763)

Of HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Military Commander in the Occupied Territories**
2. **Military Advocate General**
3. **Israel Police**

Represented by the State Attorney's Office,
Ministry of Justice
29 Salah a-Din Street, Jerusalem
Tel: 02-6466590; Fax: 02-6467011

The Respondents

Petition for Order Nisi

Petition for order *nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause:

a. Why they should not arrange the practice of arresting Palestinian minors in the occupied territories such that the summoning of minors through their parents or legal guardian in

charge of them shall be the primary method, while night arrests shall be reserved for particularly exceptional and severe cases.

b. Why detention practices and procedures of minors in the occupied territories should not be changed according to the principle of the child's best interest and in the spirit of the Youth Law (Trial, Punishment and Modes of Treatment)(Amendment No. 14), 5768-2008 (hereinafter: the **Youth Law**).

The grounds for the petition are as follows

1. Every year hundreds of Palestinian minors, residents of the West Bank, are arrested by the Israeli security forces. In the vast majority of cases, the minors are arrested by the military in the middle of the night and are taken directly from their beds for an unsettling ride throughout the West Bank, before they are brought to one of the Israel Police stations deployed therein or sometimes even to an Israel Security Agency (ISA) interrogation facility, where they are interrogated.

2. After their arrest, in the dead of night, the terrified minors are taken for a grueling night journey, being often exposed to violence by the security forces and to a long series of violations of their rights while in detention and interrogation. The minors are brought to the interrogation terrified and exhausted, and often after they were denied any food or drink for long hours, and even from having access to the toilet.

3. The vast majority of the interrogations are conducted without giving the minors the opportunity to consult with legal counsel, and even in the few cases in which they are given the opportunity to do so, the consultation is not substantial. The minors are not allowed to contact their parents before the interrogation and the parents are not provided with any information regarding their whereabouts. Hence, the minors face their interrogators alone, exhausted and traumatized.

4. The military routinely makes arrests in the West Bank of both adults and minors late at nights, regardless of the gravity of the deed attributed to the suspect. The possibility of summoning the minors for interrogation is not at all considered and the examination of the matter has actually stopped after it had been conducted in an improper and negligent manner by the respondents.

5. The practice of making the arrests in the middle of the night causes the arrests to be a very traumatic affair, not only for the minor being arrested who opens his eyes to find himself surrounded by a large group of soldiers above his head, but also for the entire family. The parents and siblings of the teenagers, often minors themselves, are also awoken in the middle of the night, frightened from the sudden presence of armed soldiers in their home. Said method is also applied in cases in which it is clear that the offenses they are suspected of are not serious and therefore there is no need to make the arrest in such an extreme manner.

6. The night invasions are liable to have severe mental ramifications on the family life and may have a significant traumatic potential not only for the detained minor but also for all family members. The above, due to the fact that in said invasions foreign armed forces forcefully barge into the private space of the family members, while sleeping in their beds safely and peacefully. They instantaneously become extremely vulnerable -

mentally and physically. They lose control over their home and are placed under threat and fear of physical injury.

7. The above is true in general, while the ramifications are more severe when minors are concerned, whether the minors are those being detained or those who witness the arrest. Hence, the sense of personal security of all household members, particularly the minor ones, is severely harmed, since 'a man's home is his castle'. In addition, said incidents may also have an extremely negative effect on the relations between the family members, mainly due to the injury inflicted on the parental authority and functionality that in the invasion of armed forces into their home and loss of control have also lost the ability to protect their children.

8. In addition to the above, said night invasions have direct and severe ramifications on the minor's detention and interrogation proceedings. Unlike a minor who was summoned for interrogation and appears thereto mentally prepared, minors arrested in this manner are brought to the interrogation facilities terrified, hungry and exhausted, some even injured. In addition, in many cases they are not given the opportunity to say goodbye to their parents or to dress properly and put on weather-appropriate clothes. At times they are not allowed to take essential articles such as eye-glasses or medications.

9. According to data collected by the petitioner in the framework of requests received by it to locate the whereabouts of detainees, in 2018, the requests to locate minors who were arrested late at night (between 23:00 and 05:00)(hereinafter: **late at night**) constituted approximately 52% of all requests to locate detainees under 18 years of age, and in 2019 approximately 60%.

10. In addition, from 81 affidavits collected by the petitioner from minors who were arrested between August 2018 and December 2019, 58 (about 72%) 58 were arrested at home late at night. Said data and more collected by the petitioner, as shall be specified below, indicate that almost all pre-planned arrests of minors at home are carried out late at night.

11. The policy of night arrests of minors as a measure of first resort, arising from the routine practice of minors' arrests, is contrary to international law and to the principles of the child's best interest which were embodied in Israeli legislation in the context of the Youth Law, and even in the guidelines set out in police ordinance 14.01.05 (hereinafter: the police ordinance). It should be pointed out that the Youth Law does not apply in the West Bank (other than to the residents of the settlements and the residents of annexed East Jerusalem).

12. It should be pointed out here that the governing principle embodied in Israeli legislation and in international law – from which respondent 1 imbibes his powers and authorities – is that a minor's arrest shall be used by the authority as a measure of last resort and only after it was unable to otherwise achieve the purpose of the arrest.

13. In 2014, after respondents' night arrests practices were scathingly criticized by international institutions, respondent 2 declared, in collaboration with respondent 4, that it had launched a pilot program in the framework of which minors, residents of the West Bank, would be summoned for interrogation instead of arresting them at night, to check whether said measure could be used instead of night arrests (hereinafter: the **pilot**).

14. However, very quickly the petitioner realized that said pilot is barely implemented. Moreover, all attempts to receive any data regarding the scope of the pilot – from the date it was first launched and more than six years thereafter – have proved fruitless. The respondents have even expressly declared that they did not monitor its implementation and did not have any quantitative data on summons. With the passage of time, the formal scope of the pilot has also been reduced.

15. More than six years have passed from the initiation of the pilot by the respondents, and their recurring declarations regarding absence of comprehensive data attest to the fact that the pilot is not properly and substantially implemented and that the respondents have no intention of taking any minimal effort to stop or reduce in any significant manner the harmful practice of pre-planned night arrests of minors.

16. The affidavits collected by HaMoked indicate that the military continues to sweepingly implement the practice of night arrests of minors without making any attempt to summon them beforehand, the above contrary to the declaration made in the framework of the pilot program that, as a general rule, summoning minors to interrogation shall be taken as a measure of first resort instead of pre-planned night arrests from the home.

17. Accordingly, hundreds of minor Palestinians continue to experience every year traumatic incidents of night invasions to their homes without any one of the respondents deigning to examine the alternative of a summons in a bid to change this harsh and unbearable reality. Hence the petition.

The Factual Background

The Parties

18. **Petitioner 1** is the father of the minor _____, who was 15 years old when he was arrested, residing in Ya'abed in the Jenin district. Petitioner 1 wishes to petition against the practice of night arrests applied by the respondents, being a harmful practice which injures both the minors against whom it is applied like his son, and the family members who experience the invasion into their home in the middle of the night, and instantaneously lose their control over their safe place and family.

19. **Petitioner 2** is the mother of the 17 years old minor _____, residing in the Askar refugee camp in Nablus. Petitioner 2 also wishes to petition against respondents' practice of the night arrests as a victim of said practice together with her family members.

20. **Petitioner 3,** is a not-for profit human rights association which assists, for many years, Palestinians, residents of the occupied territories, who fell victim to abuse or deprivation by state authorities.

21. **Respondent 1** replaces the sovereign of the area prior to the occupation of the West Bank by the military in 1967. According to the international law of occupation, said respondent was vested, subject to certain limitations, with the management, administration and legislation powers and authorities in the territory held by Israel under belligerent occupation and it is incumbent upon him to restore security and order to the West Bank and protect its protected persons and their rights.

22. **Respondent 2**, the Military Advocate General, is the most senior military legal authority acting both as the head of the military law enforcement system and as the highest legal advisor to respondent 1. By virtue of his position and duties the Military Advocate General directs and advises different military bodies of their duties and authorities according to international humanitarian law which applies to the West Bank.

23. **Respondent 3,** Israel Police, is the body in charge of law enforcement, and in the case at hand, the body in charge of summoning Palestinian minors to interrogations.

24. The son of petitioner 1 was arrested in September 2019, on or about 02:00 at night. When the household members were sleeping, armed soldiers barged in, woke everyone with laser lighting and instructed them not to move. The household members were yelling in panic and the soldiers responded with verbal violence. They cursed the household members and even threatened to physically injure them.

25. The soldiers wanted to take _____ without letting him change his clothes and only after petitioner 1's insistence they allowed him to get dressed. To petitioner's knowledge, and as he was told by his son, _____ was taken by the soldiers who put him in a caravan in the settlement of Dotan where he waited until 06:00 in the morning without food or water, at which time border police forces arrived and transferred him to the Salem crossing area. After a few hours' wait in Salem, he was transferred again to Kishon detention facility for interrogation which continued for several days.

26. According to petitioner 1, if you wake up before the soldiers break into the house you are lucky, otherwise "you wake up with many soldiers in the house and it takes a while to understand what is happening. It is a very frightening incident, particularly for the young ones, women and children, let alone the damage caused to property, like blasted doors. The soldiers curse and use foul language in the house".

27. An equally frightening scenario is described by petitioner 2. Her son _____ was arrested in August 2020, while a group of 20 soldiers jumped from the roof into the house accompanied by dogs. Petitioner 2 describes the frightening feeling that she felt after her house was invaded: "I still remember the voices and noises of the soldiers jumping from the roof to the courtyard. These frightening noises woke me up and I found 20 soldiers with dogs in my house. I have a younger 13 year-old son who was very scared and was unable to calm him down. He still keeps talking about that night. What scared me was that the soldiers did not wear masks and they also wanted to take _____ without a mask. I insisted on giving him one".

28. The above are short descriptions of the severe events experienced by the petitioners, parents of children against whom said harmful night arrest practices were used. As shall be broadly described below, the above descriptions reflect a routine practice of arrests in Palestinian towns and villages applied by Israel, inter alia, against minors, paying no consideration to their rights as minors and to the rights of their family members who are also directly victimized by said practice.

Exhaustion of remedies

29. As aforesaid, in 2014 respondent 1 declared that a pilot program was launched in the framework of which minors would be summoned instead of pre-planned arrests in the

middle of the night. On May 7, 2014, HaMoked approached the IDF Spokesperson and submitted a Freedom of Information request concerning the arrests of minors in the West Bank. In the request HaMoked wanted to understand which alternative ways were used by the respondents in an attempt to avoid pre-planned night arrests of minors.

A copy of HaMoked's application dated May 7, 2014, is attached and marked **P/1**.

30. On December 9, 2014, a response to the Freedom of Information request was received by HaMoked from the IDF Spokesperson. The response stated that minors were summoned in the framework of a pilot "constituting an integral part of law enforcement activities in the area, forming part of a new policy, which is currently undergoing planning and formulation."

31. In addition, in said response, data was received for the first time regarding the implementation of the pilot. It was accordingly informed that from January 1, 2014 through September 30, 2014, 63 minors were summoned for interrogation, forty of whom were arrested after having failed to appear to the interrogation. Said summons were carried out by phone or in writing. In addition, it was informed that "From its commencement orderly procedures for the implementation of the pilot were established." Said procedures were attached to the response and included a document titled "Briefing for Commanders and Soldiers – Detention of Minors".

A copy of the response sent by IDF Spokesperson dated December 8, 2014, is attached and marked **P/2**.

32. On January 21, 2015, another Freedom of Information request was submitted by HaMoked to the IDF Spokesperson's Unit, to receive information regarding the pilot and its implementation, as well as to receive information regarding its underlying guiding principles.

A copy of the Freedom of Information application dated January 21, 2015, is attached and marked **P/3**.

33. On July 5, 2017 a response was received. According to the IDF Spokesperson, more than a year after the pilot was launched, they did not have data regarding the number of minors who were summoned and appeared to the interrogation and regarding the number of minors who were arrested after having failed to appear to the interrogation, although said data constituted the core of the pilot.

34. The IDF Spokesperson's Unit informed in said response that the implementation of the pilot continued and that during 2014, 68 minors were summoned out of whom only nine were summoned in the second half of the year. The response stated that additional children might have been summoned whose summons were not documented. The military has also informed that respondent 1 directed to scale up the pilot from the Etzion (Bethlehem) sector, the single zone in which it was carried out at that time, and to apply it throughout the "Judea and Samaria area", and that the summoning of minors procedure was an operational procedure issued by the central command which applied to the West Bank in its entirety.

A copy of the response sent by IDF Spokesperson dated June 30, 2015, is attached and marked **P/4**.

35. Following the two applications and the responses thereto, HaMoked approached the Military Advocate General on August 3, 2015, regarding the "implantation in the West Bank of the pilot to summon minors instead of arresting them". In its letter HaMoked pointed at the small number of minors who were summoned for interrogation, since in that year many hundreds of minors were arrested, while only 68 were summoned for interrogation.

36. In that letter, HaMoked pointed at the indications which arose from the responses that there was no monitoring and no lessons were drawn from the implementation of the pilot. From the picture which arose from the responses which had been received it was unclear how the nature of a new and experimental way designed to bring minors to interrogations could be evaluated in the absence of information and data concerning the level of success or failure in its implementation.

A copy of HaMoked's letter dated June 30, 2015, is attached and marked **P/5**.

37. In the absence of response for a prolonged period of time, on October 6, 2015, HaMoked wrote again to the Military Advocate General and sent him a reminder. Another reminder was sent on December 9, 2015. Neither the original letter nor the reminders have received any answer.

A copy of HaMoked's reminders dated October 6, 2015 and December 9, 2015 is attached and marked **P/6**.

38. On April 25, 2016, a third Freedom of Information request was submitted by HaMoked to the IDF Spokesperson in which the latter was requested to provide information regarding the implementation of the pilot and its scope for the years 2015-2016. In addition, the IDF Spokesperson was requested to provide the procedures regulating the summoning of minors to interrogation and additional details regarding the policy, whether it was established and had any lessons been drawn from it.

A copy of HaMoked's Freedom of Information application dated April 25, 2016, is attached and marked **P/7**.

39. On June 23, 2016, a response was received from the IDF Spokesperson providing some details, including, inter alia, confirmation that the "temporary procedure for the summoning of Palestinian minors for interrogation" continued to exist in the years 2015-2016, but was temporarily discontinued due to escalation in the security situation.

40. According to the data provided, in the first half of 2015 only 29 minors were summoned from three different areas. With respect to the second half of 2015 no data were located on the number of summons since they were lost in a fire. Of the 29 minors which were summoned for interrogation in 2015, the appearance of only three minors to the interrogation was documented.

41. In addition, it was informed that in the first half of 2016 only 13 minors were summoned in one area –apparently the Bethlehem area. Said summons were made by phone, in writing and by personal delivery. Documents were attached to the response, including

the format of the summons by phone evidencing that minors over 16 years of age were summoned directly rather than through their parents or legal guardian.

A copy of the response sent by IDF Spokesperson dated June 21, 2016, is attached and marked **P/8**.

42. According to the above, after more than two years have passed from respondent 1's declaration that the pilot was launched, the improper documentation and inconsistent implementation thereof clearly attest to the unwillingness to implement the pilot as is required for an efficient and serious examination of the issue at hand.

43. On September 29, 2016, HaMoked wrote to the Military Advocate General and requested to discontinue the practice of night arrests of minors and use other more proportionate alternatives, like summoning them for interrogation. In its letter HaMoked noted that it found the way the pilot was conducted odd, since it was unclear how the effectiveness of the summons for interrogation instead of night arrests was examined by the Military Advocate General, without any data in that respect. It was further noted that the repeated letters sent to the Military Advocate General remained unanswered.

44. HaMoked clarified in its letter that during the years in which the respondents claimed that the pilot was implemented, the number of summons which were sent out was very low and that throughout said period soldiers kept coming to the homes of hundreds of minors every year, regularly and routinely, late at night, frightening them and their family members.

45. In said letter reference was made by HaMoked to police ordinance 14.01.05 titled "Police Work with Minors" (hereinafter: the "**ordinance**"). The rules as they appear in the ordinance were established in view of the principle of the child's best interest including their mental and physical wellbeing, and therefore there is no justification for a systematic and blatant violation of said fundamental principles when Palestinian minors are concerned.

46. HaMoked concluded the letter by repeating its demand: that the practice of night arrests implemented by default would be discontinued; that the respondents shall act according to the rules set out in the ordinance also in the context of Palestinian minors; that the respondents shall summon minors for interrogation as a measure of first resort and see to it that they are summoned through their parents including when the minor is older than 16; and that the respondents shall avoid night arrests when the arrests are pre-planned. In addition, HaMoked requested to receive a copy of the temporary procedure of the pilot, and an explanation for the small number of summons.

A copy of HaMoked's letter to the Military Advocate General dated September 29, 2016, is attached and marked **P/9**.

47. On December 6, 2016, a letter was received from the chief assistant to the Military Advocate General. In his response he wrote that according to the pilot summoning minors for interrogation was given preference over pre-planned arrest and that it may prevent a possible harm to minors on the one hand, while reducing the risk with which the soldiers are faced when making night arrests, on the other. Anyway, it was explained in the letter that the reason for the continuing practice of night arrests arose "from certain

circumstances involving the **protection of the security of the area**" without specifying the reasons justifying the exclusion of the vast majority of cases from the rule.

48. In addition, and in response to the request to apply the child's best interest as was done in the police ordinance in connection with the arrest of minors, it was explained that the police ordinance applied to the arrest of minors within the state of Israel and did not apply in the West Bank, without providing any explanation for the absence of rules securing compliance with the principle of the child's best interest according to the Convention on the Rights of the Child obligating the respondents in the occupied territories.

49. A copy of the temporary procedure governing the pilot program requested in said letter has not been received. It was explained that the procedure cannot be forwarded since its disclosure may interfere with the authority's enforcement actions and interrogation procedures. Said answer was received about three years after the commencement of the pilot, the conclusion of which was unknown. Notwithstanding the above the assistant Military Advocate General emphasized that steps would be taken to improve the monitoring and supervision of the implementation of the pilot.

A copy of the response of the assistant Military Advocate General dated November 6, 2016, is attached and marked **P/10**.

50. On August 13, 2017, in an attempt to learn of the status of the pilot, after promises were made to improve the monitoring of its implementation, HaMoked sent another Freedom of Information request to the IDF Spokesperson regarding the implementation of the pilot in the years 2016-2017.

A copy of HaMoked's letter dated August 13, 2017, is attached and marked **P/11**.

51. After a delay significantly deviating from the response timetable established by law, a response was received from the IDF Spokesperson only on January 30, 2018. In his response the IDF Spokesperson notified again that they were unable to locate information regarding the number of summons sent to minors. Namely, the application was denied by virtue of section 8(3) to the Freedom of Information Law, 5758-1988.

52. Among the few things provided in said response, it was informed that in the first half of 2016, 13 summons were sent (information which had already been received in response to a previous Freedom of Information request), and that their number in the second half of that year was "small". No data were given with respect to 2017. In addition, the IDF Spokesperson notified that the reasons for the limited use of the procedure and its future implementation were under review.

A copy of IDF Spokesperson's response dated January 30, 2018, is attached and marked **P/12**.

53. Following the improper conduct, disregarding such a sensitive and important issue, HaMoked sent another scathing letter to the Military Advocate General on February 25, 2018, in which it protested against the sweeping and illegal use made by the respondents of night arrests of minors in the West Bank. In its letter HaMoked reiterated the demand to change the arrest procedures of minors in the West Bank according to the principle of

the child's best interest pursuant to international law, in the spirit of the principles of the Youth Law and the directives of the police ordinance.

54. According to the information provided to HaMoked by that time, the pilot was still implemented in a very partial manner. According to the answers received by HaMoked the number of cases in which minors were summoned for interrogation was very low compared to hundreds of pre-planned arrests which were carried out every year. It also became clear that the pilot was not monitored and that for different reasons no data have been collected, and obviously, no data analysis was made to examine the effectiveness of the measure of summons for investigation.

55. HaMoked made it clear that the decision to launch the pilot was adopted in 2014. Accordingly, the respondents had a long period available to them in which a comprehensive pilot of summons could have been implemented from which conclusions and lessons could have been drawn regarding the proper implementation and summons criteria replacing night arrests as a primary measure. Instead, the respondents refrained from taking any actual steps to implement the pilot in a manner that would change the current situation and put an end to the severe and sweeping violation of minors' rights which has been documented for years in the occupied territories. In its letter HaMoked demanded again that the illegal practice of night arrests implemented as a measure of first resort be stopped forthwith, and that summons for interrogation shall be used as a primary measure to bring minors to interrogation.

A copy of HaMoked's letter dated February 25, 2018, is attached and marked **P/13**.

56. On May 22 2018, a letter was received by HaMoked from the offices of the Military Advocate General in response to the letter dated February 25, 2018, explaining that the implementation of the pilot "encounters significant problems" and that a decision was made to implement it at that stage only in the Bethlehem area to formulate insights that would enable broader and more effective implementation.

A copy of the letter received from the office of the Military Advocate General dated May 21, 2018, is attached and marked **P/14**.

57. On October 11, 2018 HaMoked sent again a Freedom of Information request to the IDF Spokesperson in which it requested to receive information regarding the implementation of the pilot during 2018 by the date of the response.

A copy of the Freedom of Information application dated October 11, 2018, is attached and marked **P/15**.

58. After more than five months had passed and since no answer had been received in the framework of the timetable established for that purpose by the law, HaMoked had no alternative but to file an administrative petition (AP 52827-03-19 **HaMoked Center for the Defence of the Individual v. IDF Spokesperson**) with the district court in Tel Aviv to obligate the IDF Spokesperson to answer the application.

A copy of the first page of AP 52827-03-19, is attached and marked **P/16**.

59. Shortly before the date scheduled for a hearing in the petition, on June 10, 2019, the IDF Spokesperson's response was received stating that the pilot was implemented in 2018,

and was applied throughout the West Bank with respect to minors under the age of 16, with the exception of the Bethlehem area where it was also implemented for minors between the ages of 16 and 18. With respect to the data, it was stated that following attempts to locate them, the data were found to be in the possession of the Israel Police which is in charge of summoning minors for interrogation according to the pilot. It was further informed that the military was making an effort to collect information concerning the implementation of the pilot.

A copy of the response received from IDF Spokesperson dated June 6, 2019, is attached and marked **P/17**.

60. Following the above, on July 14, 2019, HaMoked sent to respondent 4 a Freedom of Information request and requested to receive information regarding the implementation of the pilot in the years 2018-2019, since according to the IDF Spokesperson said information was in its possession.

A copy of HaMoked's Freedom of Information application dated July 14, 2019, is attached and marked **P/18**.

61. On September 22, 2019, a letter was received from respondent 4 giving a very partial answer to the application. The response stated that the Israel Police did not have quantitative data regarding summons, and that the summoning was partly executed by the military. In addition, it was stated that there were no written conclusions or lessons drawn from the pilot – which at that time had already been implemented for more than five years.

A copy of respondent 4's response dated September 22, 2019, is attached and marked **P/19**.

62. Following the previous correspondences described above, HaMoked wrote again, on November 20, 2019, to the Military Advocate General on the sweeping use of night arrests against Palestinian minors. In its letter, HaMoked presented the insufficient answer received from the IDF Spokesperson on June 10, 2019, which stated that data on the summons were in the possession of the Israel Police, and that thereafter and based on said answer a Freedom of Information request was sent to respondent 4, the answer to which was also far from satisfactory.

63. HaMoked clarified that according to the data collected by it the so called "pilot" as it is referred to by the military, was very poorly implemented. According to the answers received by it there was no monitoring, supervision or control over the implementation, no quantitative data were collected, no conclusions were drawn and it was obvious that there was no real intention to act towards changing the policy based on said lacking data base. HaMoked also presented the updated data which came to its possession, not from the respondents, according to which in 2019 only 9% of the minors who were detained had been summoned for interrogation, but said summons were on occasion handed over during said night invasions. It is therefore unclear what the point of this is.

A copy of HaMoked's letter dated November 20, 2019, is attached and marked **P/20**.

64. On April 6, 2020 a response was received from the legal advisor for the West Bank area. The response stated, inter alia, that the temporary procedure for the implementation of the pilot was revised in 2019 and certain adjustments and amendments were made therein. In addition, the demand to strictly comply with the manner by which summons to interrogation should be documented was clarified and ways to improve it were examined.

65. Surprisingly, and without any legal basis, the legal advisor for the West Bank emphasized that the vast majority of minors' arrests did not meet the criteria established in the pilot since the concerned minors were between the ages of 16 and 18. In addition, according to the data provided to them – data which they themselves admit are very partial – only less than half of the minors who were summoned for interrogation in 2019 showed up voluntarily.

A copy of the response of the legal advisor for the West Bank dated April 5, 2020, is attached and marked **P/21**.

66. On May 18, 2020, a response letter was sent by HaMoked to the Military Advocate General. In its response letter HaMoked specified the numerous questions arising from the response. Firstly, HaMoked emphasized that the grounds for a minor's arrest should not be used as a reason for the violation of their rights. In addition, and since according to the military lessons were drawn in 2019, HaMoked requested to receive data on the number of minors which were summoned for interrogation in 2019 instead of invading their houses as a measure of first resort for their interrogation; how many interrogations were conducted by phone, in writing or otherwise; and how many of the children who were summoned have actually showed up for the examination.

67. In its response, HaMoked pointed at the problems embedded in the direction whereby, by default, minors over 16 years of age are arrested by way of night invasion rather than in the framework of the pilot. Consequently, they are regarded as adults for the purpose of detention procedures. In addition, the distinction between severe and non-severe offenses is not clear, as it is well known that the vast majority of the minors are detained, adjudicated and sentenced for relatively light offenses. Said datum is relevant only in the context of the criminal proceeding and the punishment, while the detention proceeding should not be of a punitive or vindictive nature.

A copy of HaMoked's letter dated May 18, 2020, is attached and marked **P/22**.

68. On June 22, 2020, a letter was received from the legal advisor for the West Bank notifying that "due to the unique and complex security circumstances in the area" the use of night arrests cannot be stopped altogether. In addition, it was informed that during March through December 2019, 18 minors were summoned, eight of whom showed up for the interrogation. The letter repeated the same arguments which had been raised in the letter attached as P/21.

A copy of respondent's response dated June 22, 2020, is attached and marked **P/23**.

69. Even recently, on November 11, 2020 a letter was received from the IDF Spokesperson in response to a Freedom of Information request regarding arrests of Palestinians in general for the years 2018-2019. In the response, and among other things, the IDF

Spokesperson stated that "all pre-planned arrests carried out by the IDF in 2019, in which minors were arrested, were made late at night".

70. The IDF Spokesperson reiterated that the information in its possession was partial and that parts of the information were not in its possession but rather in the possession of respondent 3. It was accordingly informed, for instance, that they had partial information regarding minors who were arrested in 2018, and that according to said information 145 minors were arrested late at night. It should be pointed out that said information was received in the framework of a petition (AP 53345-07-20) which HaMoked had to file due to the IDF Spokesperson's failure to respond for an extended period of time.

A copy of the relevant part from IDF Spokesperson's response dated November 11, 2020, is attached and marked **P/24**.

71. Six years have passed since the respondents made a public announcement to the press and international organizations that it was launching a pilot program to summon minors to interrogation instead of night arrests. Since then, as was described in length above, HaMoked has been trying to monitor the implementation of the pilot and data collection, but presently, many years after it was launched, the situation has not changed even slightly, and it also seems that the data collection work and implementation of the pilot were carried out negligently, to say the least.

72. The implementation of the pilot as it had been ostensibly implemented during the last six years, did not lead to the necessary conclusion that summoning minors to interrogation should be the primary method in arresting minors, rather than a negligible program which does not replace the practice of house invasions in the middle of the night, and which apparently, has no intention of achieving any real purpose other than making false representations and public relations to appease the criticism against the cruel practice of pulling minors out of their beds in the middle of night as conducted by the respondents.

The Legal Argument

> I was arrested at home at 3:00 a.m. I was asleep. I heard loud knocking on the front door. I woke up. I stepped out of my room to see what was going on. I saw a lot of soldiers in the house. I saw one of them talking to my father. They said I was causing trouble and that they wanted to arrest me. They didn't say where they were taking me. I didn't get any summons [for an interrogation] before that. If they had summoned me, I would have gone […] I have two sisters and two brothers. Two of them are young – one and three years old. The little ones started crying. They were scared. The soldiers put the whole family in one room. They shut them in. I heard the little ones crying. My father stayed with me.[1]

> I was woken by the sound of the door being blasted open. I went into the living room and saw dozens of soldiers. One of them immediately

[1] Excerpt from the affidavit of H.N. who was 15 when he was arrested. The affidavit was taken on November 29, 2018.

> led me into a room, made me lie face down on the floor and started hitting me. There were two of them. They both hit me with their hands and feet all over my body, pinning me to the floor. While they were beating me, they asked my name […]. While we were going down [the steps to the house], the soldier held his rifle to the back of my head and said that if anything happened, if anyone threw stones, he'd shoot me.[2]

> I was asleep. I woke up suddenly with a soldier holding my arm. I opened my eyes and saw a lot of soldiers – six or seven. A soldier pulled me out of bed, just like that, with no warning. He took me outside right away, through the living room. No one from my family was in the living room.[3]

Preface

73. The occupied territories are under belligerent occupation. The collection of laws obligating the occupying power are international humanitarian law including the laws of occupation, international human rights law and principles of administrative law and to a certain extent Israeli constitutional law.

74. Article 43 of the Regulations annexed to the Hague Convention establish the general framework within which the occupying power can act, and it grants the occupying military powers and governmental authorities and outlines the main purpose for their implementation, namely, ensuring public order and safety in the occupied territory. This means that the military is obligated to restore and ensure the continued existence of public order and safety, to enforce law and order and to ensure the safety of all persons living in the occupied territories (see HCJ 393/82 **Jam'iat Iscan Al-Ma'almoun v. Commander of IDF Forces**, IsrSC 37(4), pages 794-797 (hereinafter: **Jam'iat Iscan**)).

75. In Jam'iat Iscan the court clarified that ensuring public order and safety should be interpreted as a duty to ensure all aspects of public order and safety not only security matters, but also, and even mainly, civilian, social and economic issues:

> What is ensuring public order and safety? The obvious answer is: implementing good governance, encompassing all its agencies practiced in a civilized country in our day and age, including security, health, education, welfare, but also including quality of life and transportation. (HCJ 202/81 **Tabib v. Minister of Defense**, IsrSC 36(2) 622, 629).

76. We learn from the above that the obligation to ensure order and safety entails the obligation to protect rather than to infringe the fundamental rights of the occupied population. Night invasions into houses to arrest minors in their beds, most of whom are

[2] Excerpt from the affidavit of Y.S. who was 17 when he was arrested. The affidavit was taken on July 4, 2019.
[3] Excerpt from the affidavit of A.S. who was 16 when he was arrested. The affidavit was taken on October 28, 2019.

not "ticking bombs", while the option to summon minors for interrogation is not properly examined, do not reconcile with the obligation to protect and maintain the fundamental rights of the occupied population. In the absence of a mechanism ensuring that the harm caused to said minors is proportionate rather than arbitrary, the continuing practice of night arrests constitutes a brazen violation of the obligation to maintain public life and safety in the occupied territory as interpreted by the honorable court.

77. The above is reinforced by the distinction drawn by the honorable court between a short term belligerent occupation and a long term belligerent occupation, while examining the meaning of "ensuring public order and safety" and balancing between military needs and the needs of the protected persons. The longer the belligerent occupation, the greater and more comprehensive becomes the obligation of the occupying power to protect and maintain the needs of the occupied population – and the minors in particular (see Jam'iat Iscan, pages 800-802).

The rights of the child according to international law

78. The Convention on the Rights of the Child (hereinafter: the **Convention**) which was adopted by the UN in 1989 and ratified by Israel in 1991 is the main document entrenching the rights of children in international law.

79. The Convention recognizes that major differences exist between adults and children and includes comprehensive provisions relating to all aspects of the child's life. According to the Convention, children are entitled to special protections due to the fact that they are in a state of development. Bearing that in mind, their fundamental rights and desires should be taken into account and in any decision concerning a child their age and developmental level shall constitute a major consideration.

80. In the same manner the Convention recognizes the need to give different treatment to children in criminal proceedings. Among other things, the Convention stresses that the arrest, detention or imprisonment of a child shall always be used as a measure of last resort and should only be used in the absence of more effective alternatives

> ***Article 37***
>
> States Parties shall ensure that:
>
> (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
>
> (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
>
> (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults

unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

81. If, nevertheless, a decision is made to deprive the child of their liberty, they should be provided with prompt access to legal assistance and support and the ability to maintain continuous contact with their family members. They should be treated with dignity in a manner which does not prejudice their sense of self-worth.

82. In 1985 the "United Nations Standard Minimum Rules for the Administration of Juvenile Justice" known as the "Beijing Rules" were adopted. In December 1990 the General Assembly of the United Nations adopted the "Rules for the Protection of Juveniles Deprived of their Liberty" known as the "Havana Rules", which rely on the "Beijing Rules".

83. These two sets of rules stress the importance of the child's best interest which constitutes a guiding principle in light of which children should be treated in the criminal proceeding. According to these rules the circumstances of the offense and the child's life should be taken into consideration throughout the entire proceeding until sentencing. The incarceration of the child shall be used as a measure of last resort for the shortest possible period of time. In addition, detention pending trial should be avoided to the maximum extent possible. **The rules provide further that state parties should establish special legislative systems for juveniles, ensure that they are treated by qualified personnel and adapt the incarceration facilities to the special needs of the juvenile**.

84. The Convention on the Rights of the Child applies to Israel and binds it also in the occupied territories. The UN Committee supervising the implementation of the Convention on the Rights of the Child confirms the above and does not accept the argument that the Convention does not apply there. The UN Committee supervising the implementation of the optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts demanded that reports be submitted to it by Israel specifying the steps taken by it to implement the international standards to Palestinian minors, residents of the occupied territories, when detained and interrogated.[4]

85. In fact, Israel violates the Convention on the Rights of the Child with respect to Palestinian minors residents of the West Bank, since most such minors are arrested by pre-planned night arrests, taken from their homes and their beds. In this context attention should also be drawn to the prohibition established in international law against the use of cruel, inhuman or degrading treatment intended to apply pressure on suspects causing them to confess to acts attributed to them. The above prohibition is entrenched in the UN

[4] United Nations Committee on the rights of the Child, Consideration of Reports Submitted by States Parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, 4 March 2010, section 4.

Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984) which was ratified by Israel in 1991.

86. In response to international criticism of systemic violations of minors' rights by the military system, the Israeli military established in 2009 the Military Juvenile Court, in an attempt to demonstrate the moral obligation to minors and their rights. Notwithstanding the above, the changes introduced by this court are very marginal, coming nowhere close to any proper juvenile court, including its parallel in Israel. The existence of a separate juvenile court system does not necessarily protect their rights. The powers of authorities of the juvenile military court are limited to the legal proceeding itself, leaving the entire arrest and detention procedure in the hands of the regular military system.

87. Following the establishment of the juvenile military court, the military declared that it had launched a pilot program to summon minors for interrogation as an alternative to night arrests. However, contrary to the juvenile military court where efforts are evidently made to adapt the procedural standards to the requirements of international law, the issue of detentions and arrests remained totally unregulated, with said pilot constituting, at best, nothing more than a thin cover, leaving the actual reality on the ground unchanged.

The Military Law

88. The military law which applies to arrests and interrogations of Palestinian minors in the West Bank is a rigid military law which fails to recognize the effect that a child's age has on the way they experience arrest or interrogation, and fails to provide them with adequate protections as such are established in both Israeli and international law. Other than a few exceptions, children are treated like adults according to military legislation.

89. The treatment of minors in criminal proceedings is governed by military legislation and more particularly the Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009. Contrary to Israeli law concerning minors, military legislation is not based on the concept that criminal procedural provisions should be adapted to minors' unique circumstances and does not include a special order specifying the legal provisions applicable to Palestinian minors throughout the different stages of the arrest and the criminal proceeding.

90. For almost forty years of military rule, the only protections enjoyed by Palestinian minors in the occupied territories were certain limitations on the period of their incarceration and considering their age for sentencing purposes. Many minors did not even enjoy these few protections due to the fact that until 2011 a person was treated as a minor only under the age of 16.

91. In addition, until 2009 Palestinian minors were adjudicated by the ordinary military court system like adults since until that time the military legislation did not define the term 'minor'. On July 29, 2009, the Juvenile Military Court was established by virtue of a temporary order, order No. 1644 to the Order regarding Security Provisions (Temporary Order)(Amendment No. 109). The temporary order was extended each year until it became permanent in 2013.

92. Although in recent years several revisions were made in military legislation with respect to minors, a comparison of several major principles and arrangements in Israeli law and military law shows that the underlying concepts relating to treatment of minors in these two systems are still far from one another and that the protections given to minors in the context of military legislation and the practices deriving therefrom are considerably inferior to those granted to minors under Israeli law.

93. This fact did not escape the military court judges, who have decided more than once to expand the protections given to minors in the framework of the criminal proceeding in the occupied territories by applying the "spirit" of the Israeli Youth Law to certain areas in which the military legislation is lacking (see for instance AP (Judea and Samaria) 2919/09 **Military Prosecution v. Abu Rahma** (reported in Nevo, August 31, 2009)).

94. The trend of expanding the protections given to minors in the framework of criminal proceedings in the occupied territories by the judgments of the military courts creates a growing gap between military law and judicial precedent created by the courts which are responsible for the implementation of said law. Legally it is not a desirable situation since it leaves the application of the few protections which do exist and are available to minors to the discretion of the court, thus undermining the judicial certainty of minors.

95. The changes in the military orders in this context focused mainly on judicial procedures relating to the legal proceedings themselves and less on the stages of the arrest and the interrogation. The main changes relate to the length of the detention periods in all stages which were shortened and to minority age which was raised.

96. The above changes do not have a material effect on the initial stage of the arrest, which is critical, and in most cases, the minor's fate depends on it. It should also be pointed out that the judges' ability to examine the matter at this stage and to apply at least some of the protections given by the Youth Law, is extremely limited.

The best interest of the minor detainees as a major consideration in respondents' conduct

97. As aforesaid, the state of Israel is a party to the Convention on the Rights of the Child which was ratified in 1991, and one of the underlying ideas of which is that in all actions concerning children by the administrative authority the best interest of the child shall be a primary consideration. In the framework of Israeli legislation the principles of the Convention are entrenched in the Youth Law which provides that the incarceration of minors shall be used only as a measure of last resort and that an order to do so shall be given only in the absence of alternatives. **To the extent incarceration is required it shall be done in a manner which protects their dignity, giving proper weight to considerations of rehabilitation, treatment, and integration in society, all of the above given their age and maturity**. The convention also obligates Israel while acting in the occupied territories, including, inter alia, in East Jerusalem. However, in fact, it does not happen.

98. International law recognizes the increased susceptibility of minors compared to adults, and the long term ramifications which they may suffer as a result of traumatic experiences. It is recognized that the age of minors affects not only their criminal liability but also the manner by which they experience detention, interrogation and incarceration.

Due to said susceptibility, most justice systems in the world recognize the need to provide additional protections to minors, which take their vulnerability into account.

99. If, nevertheless, a decision is made to deprive them of their liberty, they should be given prompt access to legal assistance and support and the ability to maintain continuous contact with their family members. They should be treated with dignity in a manner which does not prejudice their sense of self-worth.

100. According to the principle of the child's best interest, in all actions concerning children, whether undertaken by the courts, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.

101. In Israeli law the principle of the child's best interest is a fundamental and well-entrenched principle. Accordingly, for instance, in CA 2266/93 A v A, IsrSC 49(1) 221, it was held by the Honorable Justice Shamgar that the state should interfere to protect the child's rights.

102. Beyond that, the principle of the child's best interest was recognized in many judgments as a guiding principle in any situation in which balancing of rights should be made. As stressed in CA 549/75 **A v. Attorney General**, IsrSC 30(1), 459, pages 465-466:

> "There is no judicial matter concerning minors in which the minors' best interest is not a primary consideration".

103. Disregarding the ramifications of night arrests on Palestinian minors attests, in and of itself, to the disproportionality and unreasonableness of the policy implemented by the respondents jointly and severally. It should be remembered that Israeli minors residing in the occupied territories are subordinated to Israeli civil legislation, namely, the Youth Law. Consequently, the violation of the fundamental rights of said minors is unconstitutional, discriminating and disproportionate.

104. These children are taken from their families in the middle of the night. In some cases the arrests involve violence. The soldiers wake up all household members including other children, and in some cases cause damage to property as well as physical and mental damage to the household members since the entry of soldiers in the middle of the night into a family's home and the arrest of one of its sons is a traumatic and frightening event which terrifies minors and adults alike.

105. Following the arrest these minors are thrown into prison without any assistance, support or social services of any kind. The arrest itself is very traumatic for them. In a collection of testimonies, minors described severe physical violence which was used against them while in custody which, in some cases, amounted to torture. Beyond violence, the arrest and interrogation involve systemic and conscious violation of the law.

106. In fact, Israel breaches the Convention on the Rights of the Child by its treatment of Palestinian minors, residents of the West Bank, who do not receive the protections specified in the Convention and in the Israeli Youth Law.

107. Amendment No. 14, which was passed by the Knesset in July 2008, entrenched the rules of international law on minors' rights in custody and in the criminal proceeding. Accordingly, as aforesaid, section 10A provides that the incarceration of minors shall be

the measure of last resort which may be ordered only in the absence of alternatives. In addition, the incarceration of minors under the age of 14 is totally prohibited, with the rational underlying said prohibition being as presented by the Honorable Justice (as then titled) Beinisch in Capp 1463/09 **State of Israel v. A** (reported in Nevo June 15, 2009):

> Putting minors under the age of 14 in prison may potentially cause them disproportionate harm. Sending a minor who is nearly a child to prison may harm him in a more severe manner compared to an adult sent to prison. This result is patently undesirable, and perhaps even unjust.

108. As aforesaid, minors constitute an extremely vulnerable and sensitive group and therefore they receive special protections both according to the principles of Israeli law as well as under International law. Said protections also apply to the West Bank. The respondents should carefully assimilate these principles in all matters relating to minors, regardless of the fact that they are residents of the occupied territories, and put the principle of the child's best interest at the center of their practices and procedures. Relevant to this matter are the words of the Honorable Justice Aharon Mishniot, President of the Military Court of Appeals (as then titled):

> Although the provisions of Amendment No. 14 to the Youth Law do not apply in the Area, one cannot disregard the sprit arising therefrom, and its underlying principles, according to which protection is given to minors' rights even if they are suspected of committing offenses, and dominant weight is attributed to the governing principle of the child's best interest, as stated in the bill. Eventually **a minor is a minor is a minor** (emphasis appears in the original), regardless of whether they live in a jurisdiction in which Israeli law fully applies to them or whether they live in another jurisdiction in which Israeli law does not fully apply, but is nevertheless substantially affected by the Israeli legal system.
>
> The connection between the law in Israel and the law in the Area is well known and does not require proof and is also manifested in legislation […] and in judicial precedence. See for instance things said in this court in A 3748/06 '**Amar Mussa**: **"…indeed, Israeli law does not apply directly in the Area, but there are many connections between the law in the Area and Israeli law and the judicial systems in both places…"** (emphases appear in the original).
>
> Amendment No. 14 as aforesaid also includes limitations on the interrogation of minors. These are limitations which should be implemented, in principle, in any modern legal system, even if not expressly entrenched in legislation… (AA (Judea and Samaria Area) 2912/09 **Military Prosecution v. Nashmi Muhamad Ibrahim Abu Rahma**, reported in Nevo (August 31, 2009)).

109. The amendment to the Youth Law was made in view of the provisions of the international Convention on the Rights of the Child and the Basic Law: Human Dignity and Liberty

according to which the rights of minors suspected of committing offenses should be protected, considering the governing principle of the child's best interest.

110. The Police Ordinance also implements the above principles incorporated in the Convention and in the Youth Law concerning minors' arrests wherever they may be and is not limited only to minors who are Israeli residents and citizens. The purpose of the ordinance is to maintain the child's best interest and dignity. Therefore, also according to the Ordinance, the main road is to summon the minor for interrogation through their parents and/or legal guardian, other than in exceptional cases. The purpose of the Ordinance is to establish clear rules to the manner by which minors should be arrested, considering their vulnerable circumstances and the need to protect their right to due process.

111. In addition, according to the advisory opinion of the international court in The Hague regarding the separation barrier dated July 9, 2004, it was expressly determined that the Convention on the Rights of the Child applies in the occupied territories and not only in the territory of Israel (see paragraphs 102-113 to the opinion).

112. The Convention provides that in all actions undertaken by governmental institutions or authorities, the best interests of the child shall be a primary consideration (see Article 3 to the Convention). It is incumbent upon the respondents not only to consider the minors' best interests upon their arrest, but also to ensure the minors' proper and natural development and secure their survival, also when Palestinian minors are concerned (see Article 6 to the Convention).

113. In addition, the Convention expressly emphasizes that states parties, including the state of Israel, should not deprive a child of his or her liberty arbitrarily and that the child's arrest should be used only as a measure of last resort and for the shortest appropriate period of time (see Article 37 to the Convention).

114. Said rules which were established in both Israeli and international law recognizing the need to protect all minors, wherever they may be, and ensure their proper development, are blatantly crushed by the respondents only due to the fact that they are Palestinian minors, residents of the occupied territories. With respect to said minors the measure of last resort instead became the most preferable and default measure used by the military whenever a Palestinian minor is wanted for interrogation. The arrests are carried out late at night, violence is used and the ramifications of the arrest on the minor's physical and mental health are not considered.

115. The factual situation described above necessarily leads us to the inevitable conclusion that the minors are interrogated by the police after a traumatic experience of arrest in the dead of night, after a sleepless night, separated from their parents, scared, hungry, tired and humiliated, a situation casting a shadow, to say the least, on the legality of the interrogation, since it is questionable whether in such circumstances a minor can stand for their rights in the interrogation and their rights to due process.

116. Respondents' willingness to conduct the pilot attests to the recognition of the fact that the sweeping use of night arrests with respect to Palestinian minors residents of the West Bank – regardless of the circumstances, the age and the gravity of the offense, as alleged by the respondents – is illegal and cannot stand.

117. The fact that the pilot regarding which public declarations were made in the media and to international organizations has not been actually realized and has never been seriously and systematically implemented, despite the passage of years, attests to the fact that beyond declarations and public relations there was no real intention to reduce, ever so slightly, the harm inflicted on the rights of minors wanted for interrogation in the West Bank. Even if one can accept respondents' argument that caution should be exercised in view of the security situation requiring things to be examined before systemic changes are made, there is no justification for the delay and inaction demonstrated in connection with the implementation of the pilot.

Violation of minors' fundamental rights

118. The practice of night arrests applied by the respondents severely violates the fundamental rights of Palestinian minors, residents of the West Bank. Said violation of a host of fundamental rights is the result of a legal void created by respondents in complete disregard of the rules of international law applicable to the West Bank without promoting military legislation to ensure that the rights of minors residing in the occupied territory are maintained.

119. First and foremost, violent arrests (by their nature) in the dead of night, in which minors are pulled out of their beds directly to the hands of the security forces which invaded their homes, severely harm the dignity of the detained minors as well as the dignity of their family members, who witness the arrest and are also subjected to the violence of the troops. The hard core of the right to dignity is violated, a fundamental right of every person, particularly persons under military occupation. It is a right that the respondents are obligated to protect, particularly when minors are arrested, as provided in Article 37C of the Convention on the Rights of the Child:

> Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

120. Furthermore. The right of hundreds of Palestinian minors to liberty and their right to be free from arbitrary arrests are violated. The practice of pre-planned arrests in the middle of the night as the default method causes many minors to go through the traumatic experience of the arrest which could have been avoided had the minor been summoned for the interrogation. Hence, many minors are released immediately after the interrogation, but have nevertheless experienced a severe and violent arrest as if they were posing an immediate risk. Relevant to this matter are the words of the Honorable President (as then titled) A. Barak in HCJ 3239/02 **Iyad Marab v. The Military Commander**, IsrSC 57(2) 349 (reported in Nevo February 5, 2003):

> Detentions which are not based on the concern that the detainee threatens or may threaten public safety and security are arbitrary, and the military commander is not vested with the authority to issue an order in that regard (Ibid., paragraph 22).

121. In circumstances in which minors are not summoned for interrogation and no minimal effort is made to refrain from invading their homes, it seems that their mere arrest exceeds authority. The above is based on the fact that in most cases charges are brought against

minors for light offenses, attesting to the fact that no actual threat is posed by them to public safety and security. The huge number of pre-planned night arrests of minors leads to the unavoidable conclusion that the above statement is interpreted by the military commander very broadly, to the point that it is applied by him to all cases. Consequently, the right of said minors to liberty is systematically violated. Relevant to the above are the words of the honorable court in HCJ 10271/02 **Ibrahim Farid v. Israel Police Jerusalem District**, IsrSC 62(1) 106 (2006):

> Naturally, criminal proceedings often entail severe limitations on the rights of the person against whom they are pending. Accordingly, for instance, summoning a person for interrogation at the police **and even more so their arrest for that purpose**, limit their liberty and even considerably (paragraph 1 to the judgment of the Honorable Justice Levy).

122. In addition to the above, the minors' right to due process is violated. The violation of this right is crucial. The respondents keep using pre-planned night arrests of minors as a measure of first resort for bringing minors in for interrogation although it is an offensive and traumatic measure, scarring the minor's soul, leaving them broken in body and soul while thwarting the possibility of a fair interrogation and almost guaranteeing conviction, improper and severe.

123. The illegality of the practice of night arrests is coupled by additional aspects relating to the violent and abusive treatment to which the minors are exposed while being arrested and transported to the interrogation facility. In this state of extreme helplessness, many minors suffer real violence at the hands of the soldiers. Accordingly, for instance, the vast majority of minors reported that they were blindfolded throughout the journey, their hands were tied behind their backs, and they were forced to kneel on the floor of the military vehicle with their heads down while being transferred to the interrogation facility. In addition, minors reported that they were not given access to food, drink and to the toilet.

124. The physical and verbal violence often amount to inhuman, cruel and degrading treatment that contravenes the Convention against Torture. Being exposed to this treatment the minors arrive to the interrogation scared and terrified and their ability to demand that their rights in the interrogation be upheld is severely undermined. Parents are not allowed to be present in these interrogations and in a considerable number of cases the parents are not informed of the whereabouts of their children. In addition, the minor does not receive any explanation or receives a twisted explanation of the right to be silent and is deprived of the possibility to consult with legal counsel in an effective and proper manner before the interrogation.

125. There is a huge difference between a minor who is pulled out of bed while sleeping by dozens of armed soldiers who broke into their home and who arrives to the interrogation after a long journey of violence and humiliations, and a minor who is summoned for the interrogation and arrives mentally prepared after having had the opportunity to receive adequate consultation from legal counsel, and does not depend on the good will of their interrogators.

126. The petitioners shall argue that the blanket implementation of night arrests necessarily violates the right to due process and undermines minors' ability to receive the protections customarily provided by every proper legal system during and after the interrogation.

127. The right to due process has long been recognized by judicial precedent as an inherent part of the right to dignity. As such, it is entrenched in the Basic Law: Human Dignity and Liberty. Relevant to the above are the words of the Honorable Justice Dorner:

> The Basic Law: Human Dignity and Liberty (hereinafter: the Basic Law), which was passed in 1992, gave a person's right to due criminal process the status of a fundamental constitutional right, mainly by virtue of section 5 to the Basic Law establishing the right to dignity, and by virtue of sections 2 and 4 to the Basic Law establishing the right to human dignity. In section 11 the Basic Law obligates all governmental authorities – the legislative authority, the executive authority and the judicial authority – to respect the rights established therein.
>
> (FH 3032/99 **Baranes v. State of Israel**, IsrSC 56(3) 354, 375 (2002)).

128. Under these circumstances, the minor, including a Palestinian minor, has the right to be summoned for interrogation and to be protected against arbitrary and violent arrests, in the dead of night, without need. Violation of the rights of Palestinian minors in the process of the arrest become a dead letter and hence, their fundamental and constitutional right to due process is severely violated.

The practice of night arrests of minors as a primary method constitutes cruel and inhuman treatment

129. Article 1 to the Convention against Torture, which was signed and ratified by the State of Israel, defines torture as follows:

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

130. There is no dispute that Israeli law, and all the more so after the enactment of the Basic Law: Human Dignity and Liberty, and following the precedential judgment of this honorable court in HCJ 5100/94 **The Public Committee against Torture in Israel v. The Government of Israel**, IsrSC 53(4) 817 (hereinafter: the **Torture Judgment**), recognized the absolute prohibition against torture and/or cruel and/or inhuman treatment against detainees, and the detainee's absolute right to be protected against such actions. Said right derives from the detainee's constitutional right for physical and mental

integrity, and from their right to dignity. It was held by the honorable court in this regard as follows:

> Indeed, violence directed at a suspect's body or spirit does not constitute a reasonable interrogation practice. **The use violence during the interrogation may impose on the interrogator criminal and disciplinary liability** (The Torture Judgment, page 836).

131. This honorable court has reiterated the absolute nature of the prohibition against torture or any other cruel or inhuman treatment against detainees, and particularly the absolute prohibition imposed on the arresting authorities, to maintain detainee's dignity during the interrogation. It was so held by the Honorable Justice Procaccia in HCJ 7195/08 **Abu Rahma v. Military Advocate General**, TakSP 2009(3) 357, in paragraph 42 of her judgment:

> During the interrogation it is prohibited to use torture, it is prohibited to treat detainees in a cruel and degrading manner, and maintaining human dignity is a guiding principle in any interrogation of any kind and nature whatsoever. **The prohibition against physical or mental acts of violence is absolute**.

132. In the Torture Judgment, standards were established which should be met by the interrogators to prevent a situation in which a suspect is subjected to a prohibited interrogation, consisting of torture or any other cruel treatment. It was held there that:

> The use of torture or cruel and inhuman treatment against a suspect during interrogation is absolutely prohibited. A reasonable interrogation is likely to cause discomfort and the conditions under which it is conducted may be unpleasant. Within the confines of the law, it is permitted to resort to certain tricks and sophisticated techniques. However, an effective interrogation may also be conducted without violence… methods such as shaking the suspect, sitting them in a painful position, putting a sack over their head or deprivation of sleep for prolonged periods of time, are not necessary to the interrogation and violate the human dignity of the suspect. Therefore, these methods should not be used during interrogation (page 836, The **Torture Judgment**).

133. Moreover. In matters concerning minors the prohibition should be even stricter; when a minor is brought to the interrogation facility scared, exhausted, hungry, thirty, after having been denied access to the toilet for several hours, no special effort is needed to break them physically and mentally, making it difficult for them to protect their rights in the interrogation. All of the above necessarily quickly leads to self-incrimination having extreme ramifications. The above is intensified when the minor is held in total isolation, disconnected from the world, having to face alone and for a long period of time a whole system of pressures and threats.

134. In addition, beyond the state in which the minors arrive to the interrogation, the current practice does not satisfy the requirements of international law. Being pulled out of bed in the middle of the night by armed soldiers who invaded their home, they are exposed to states of stress, fear, despair and panic which intensify the risk of deep mental and psycho-social harm.

135. It is clear that ensuring the granting of protections, even minimal ones, as established in the Youth Law and in the International Convention on the Rights of the Child, which was signed and ratified by Israel in 1991, may improve the condition of minors and to better protect their fundamental rights as human beings.

Israeli Administrative Law

136. As aforesaid, the acts of the governmental bodies of the occupying power in the occupied territories are subordinated, inter alia, to the principles of Israeli administrative law and possibly Israeli constitutional law. It was held more than once by the Supreme Court that the fundamental principles of administrative law shall also apply to the acts to the state authorities acting on its behalf in the territories (see HCJ 7015/02 **Ajouri v. Military Commander in the West Bank**, TakSC 2002(3), 1021, 1025 (2005)).

137. Although the status of the Basic Law: Human Dignity and Liberty, giving constitutional status to the "recognition of the value man, the sanctity of his life and his being a free man", as granting direct protection to Palestinians, was left under advisement in HCJ 1661/05 **Hof Aza Regional Council v. The Knesset** (reported in Nevo June 9, 2005), it seems that in a reality of occupation which has been continuing for more than fifty years, it is difficult to disregard the need to give said protection to all Palestinian residents.

138. Regardless of the applicability or inapplicability of the Basic Law in the territories of the West Bank, Israeli administrative law obligates the Israeli authorities to protect human rights by demanding that prejudicial administrative actions be subject to due process, satisfying the rules of natural justice including the prohibition against discrimination, and the standards of reasonableness and proportionality.

139. We shall examine below whether the sweeping practice of minors' night arrests from their homes satisfies the principles established by judicial precedent with respect to proportionality.

The harm caused to the Palestinian Minors who are arrested is not proportionate

140. According to the principle of proportionality, a protected human right may be violated only to the least extent required to achieve the objective for which said right is being violated. The respondent must exercise his discretion "in a manner that will not, inter alia, violate the right other than to the least extent required, and in a manner that the relation between the damage caused as a result of the violation of the right and the possible advantage which may arise from the achievement of the objective will be reasonable (HCJ 6226/01 **Indor v. Mayor of Jerusalem**, IsrSC 57(2) 157, 164).

141. This honorable court laid down the foundations, according to which the proportionality of the violation of a human right is examined. A violation of a right will be proportionate if it satisfies three cumulative subtests: the rational connection test (which examines the correlation between the means used and the realization of the objective underlying respondent's policy); the least injurious means test (which examines whether the objective could have been achieved by another means, which violates the human right to a lesser extent); and the test of proportionality in the narrow sense (according to this test, even if the means used leads to the realization of the objective, and even if it is the least injurious means for the realization thereof, the damage caused to a protected human right by the

means used must be of proper proportion to the gain brought about by that means)(see HCJ 5016/96 **Horev v. Minister of Transportation**, IsrSC 41(4)1, 53- 54; **Stamka** above, page 777).

142. In view of the limitation clauses in the Basic Laws, the proportionality principle was adopted as a means for the examination of the lawfulness of laws, and hence, it is used as a condition for the lawfulness of any administrative act (HCJ 987/94 **Euronet Kavei Zahav (1992) v. Minister of Communications**, IsrSC 48(5) 412, 453). The proportionality of the violation of the rights of minor Palestinian detainees, will be examined taking into consideration the severity of the infringement, and in view of the superior status of the right to dignity, particularly since minors are involved and based on the principle of the child's best interest: "All three subtests… should be applied and implemented taking into consideration the nature of the violated right" (HCJ 1715/97 **Israel Investment Managers Association v. Minister of Finance**, IsrSC 51(4) 367, 420).

143. **The first subtest: the rational connection** – the first stage in the examination of the proportionality of respondent's practice concerns the question of whether a rational connection exists between the objective of safeguarding security and the offensive means of minors' pre-planned night arrests.

144. In view of the severity of the violation inflicted by respondent's policy on the right of detainees who are Palestinian minors, and in view of the negligent implementation of the pilot, a clear, significant and proved connection must exist between said policy and the realization of the objective of safeguarding security.

145. Case law provides that an administrative authority must lay down an appropriate factual infrastructure to substantiate its decisions. Said infrastructure must be based, inter alia, on the gathering of substantial data and evidence. Said ruling has an even greater effect and importance when the substantiation of measures which violate a fundamental right is concerned. In the absence of data and factual infrastructure there is no basis for the alleged connection between the means and the objective:

> When a denial of fundamental rights is concerned, it is not sufficient to present equivocal evidence … I am of the opinion that the evidence required to convince a statutory authority that there is justification for the denial of a fundamental right, must be clear, unequivocal and convincing… the greater the right the stronger the evidence which should serve as the basis for the decision concerning the reduction of the right (EA 2/84 **Neiman v. Chairman of Central Elections Committee**, IsrSC 39(2) 225, 249-250).

146. Namely, the respondent must show that his sweeping practice of pre-planned night arrests of Palestinian minors instead of summoning them for interrogation is based on data and evidence which can prove that the objective is achieved precisely by said practice. In the absence of such factual infrastructure, respondent's practice will not satisfy the rational connection test. A thorough review of respondents' responses to our applications over the last six years shows that the last thing they seem to have for the purpose of formulating a

practice is an updated and comprehensive data base. It seems that the practice of night arrests continues to be implemented by default and by force of inertia.

147. **The second subtest: the least injurious means** - the least injurious means test concerns the question of whether the desired objective may be realized in a different way, which will injure the fundamental rights of the minors to the minimum extent possible.

148. The practice of pre-planned night arrests as described above not only fails to satisfy this test, but also and mainly, the respondents proved that they have not examined other less injurious alternatives while, at the same time, acknowledging the importance of the pilot based on the recognition that it may bring about changes in the current practice. At the end of the day, this is a sweeping practice, which exposes an entire group of minors – together with their family members – to a "different treatment" solely because they are Palestinians, residents of the West Bank, since the argument that there is justification for the arrest of the vast majority of Palestinian minors by violent arrests as described above, is implausible.

149. This honorable court has held more than once that sweeping arrangements as opposed to arrangements which are based on a specific-individual examination are disproportionate measures, which injure the individual beyond need (HCJ 3477/95 **Ben Atiya v. Minister of Education**, IsrSC 49(5)1, 15).

150. In **Saif** (HCJ 5627/02 **Saif v. Government Press Office**, IsrSC 58(5) 70, hereinafter: **Saif**) the honorable court examined the lawfulness of the decision of the Government Press Office, according to which the Office would stop issuing journalist certificates to Palestinian journalists, including those who were holding entry permits into Israel, and would not extend the validity of certificates which were issued in the past. The grounds given by the state to its sweeping refusal were its concern that government officials in Israel would be injured in press conferences or in government offices, in view of the fact that a journalist certificate facilitated the access to said places. According to the state, an individual security check cannot eradicate the risk posed by an OPT resident, since such risk derives from the fact of the residency.

151. The judgment, which rejected the state's arguments, provides that security considerations are not an absolute value and that "balancing is required between the interest of safeguarding security and other opposing protected rights and interests." (**Saif**, paragraph 6 of the judgment of Justice Dorner). It was further held that "the total refusal to issue journalist certificates to Palestinian residents of the Area – including those holding entry and work permits in Israel – indicates that no balancing whatsoever was made between the considerations of freedom of speech and information and security considerations, and in any event, the balancing which was made was not proper" (paragraph 7 of the judgment of Justice Dorner).

152. And it was so held on this issue by President Barak, in his judgment in **Adalah** (paragraph 69 of his judgment):

> **The need to adopt the least harmful measure often prevents the use of a flat ban**. The reason for this is that in many cases the use of an individual examination achieves the proper purpose by employing a measure that violates the human right to a lesser degree. This principle

is acceptable in the case law of the Supreme Court. As noted above, the respondents must show that the limitation imposed on the issue of entry permits into Israel to family members of prisoners affiliated with certain organizations, is based on firm grounds of evidence and data.

153. The implementation of the above in our case indicates that the respondents chose the "easy path": continue with the sweeping practice of night arrests without seriously examining the alternative of summoning minors for interrogation. The respondents choose to sweepingly refrain from examining the possibility of summoning minors for interrogation, in a manner which stains the practice with lack of proportionality.

154. **The third subtest: proportion between the means and the objective** – the third proportionality test concerns the question of whether the scope of injury inflicted on human right, as a result of respondent's practice, is proportionate to the objective the realization of which is sought.

155. According to the third subtest, if the gain brought about as a result of the policy is considerable, the violated right will be defeated by it. The nature of said subtest is different from that of its two predecessors, as it focuses on the violation of the human right which is caused as a result of the realization of the objective underlying the practice. It embodies the idea according to which "there is a moral barrier, which cannot be surmounted by democracy, even if the objective to be realized is proper" (President Barak HCJ 8276/05 **Adalah v. Minister of Defence**, TakSC 2006(4) 3675, 3689).

156. In the case at hand, said practice severely violates very fundamental rights, primarily the right to dignity, the right to due process, the principle of the child's best interest, while the respondents refrain from providing information regarding the examination of the less injurious alternative. Justification for the violation of said right, if any, should serve a public interest of the first degree.

157. Nevertheless, the objective of safeguarding security, if it is indeed the objective of the practice, as proper and important as it may be, is not an absolute value and does not justify every violation of human rights. The security justification is not absolute, and it must be balanced against other needs. Accordingly, for instance, in **Saif** the court emphasized that a theoretical security risk posed by a journalist, who holds entry permits into Israel, does not justify an inevitable violation of protected rights and discrimination between foreign Palestinian journalists and all other foreign journalists. Security is never absolute and it may be defeated by other rights HCJ 5100/94 **The Public Committee against Torture in Israel v. The Government of Israel**, IsrSC 53(4) 817).

158. The heavy price paid by Palestinian minors who are arrested, as a result of the implementation of respondent's practice, is exaggerated and excessive. The speculative security advantage– if any – which arises from this practice, is not proportionate when balanced against the severity of the violation of the rights of said minors.

159. Even if the respondents have justifications for limiting the rights of Palestinian minors (and the rights of their family members), by virtue of their power to secure proper action, they are not exempt of the obligation to make proper balancing of interests, namely, the competing pertinent considerations in each case. It is clear that for balancing purposes

there is a difference between a situation in which the threat to state security is small and remote and a situation in which the threat is close and real.

160. It is clear that there are less injurious measures that the respondent could have taken, such as summoning the minors for interrogation as a primary method. Having failed to do so for many years, in view of its implied recognition of the need to effect a significant change in the practice, without making an effort to promote such change, it decided to choose the means which critically violates human rights of Palestinian minors thus creating inequality between them and other minors.

161. The high numbers of minors being arrested each year aggravates once again the severity of the harm caused by the current practice to human rights and tips the scale towards the inevitable conclusion that the practice is disproportionate. The prevalent use of night arrests among minors makes it no longer possible to regard this fact as an exceptional phenomenon relating to a specific group but rather as a rule which applies to the vast majority of the Palestinian minors being arrested. The respondent is requested to examine the exercise of their rights on the one hand and their exposure to injuries and risks as a result of this practice, on the other.

Prohibited Discrimination

162. As aforesaid, the way governmental authorities treat Palestinian minors is significantly different from the way they treat Israeli residents of the territories. In fact, as a result of this wide gap, Palestinian residents of the occupied territories are exposed to serious and severe violation of their fundamental rights due to their national affiliation.

163. Said distinction in the context of arrests and the criminal proceeding applies also to minors and severely and gravely harms the right of Palestinian minors to dignity and equality.

164. Given the state's decision to settle its citizens in an occupied territory – contrary to the rules of international humanitarian law (Article 49 to the Geneva Convention) – it is unacceptable that fundamental rights which are granted to these two populations, are arbitrarily different and that the protected Palestinian residents are discriminated against. The different treatment of Palestinian residents in military legislation in this context reflects a discriminatory disregard to the importance of their right to liberty and dignity.

165. Applying different norms to different people in the same geographic area based on nationality, causes yet another violation beyond the violations of dignity, liberty and the child's best interest – prohibited discrimination.

166. This discrimination stands in clear contrast with the basic principles of Israeli public law applicable to state authorities wherever they operate, with the laws of belligerent occupation and with human rights law which also applies in the occupied territories.

167. The Fourth Geneva Convention establishes the obligation of the military commander to treat the civil population without any discrimination. According to Article 3 to the Convention, the prohibition against discrimination is one of the basic principles of the laws of war. Article 27(3) to the same convention provides, inter alia, that the occupying

power should treat the protected persons without any adverse discrimination based, in particular, on religion or race.

168. Human rights conventions to which Israel is a party also entrench the non-discrimination principle. Article 26 to the Covenant on Civil and Political Rights (which was ratified by Israel in 1991 and entered into force in 1992) clarifies that:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

169. Article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination – which was ratified in 1979 – defines "racial discrimination" as: "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

170. Article 3 to the Convention provides:

> States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

171. Article 5 to the Convention clarifies the states' obligation to guarantee equality before the law and to prohibit discrimination in the realization of other fundamental rights, including the right to equal treatment before the courts and any other organ administering justice; the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

172. The prohibition against discrimination entrenched in these articles of humanitarian law and human rights law reflects a basic norm of international customary law which is not even subordinated to the principle of proportionality (see general recommendation No. 30 of the ICERD Committee; and also Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001)).

173. It should be pointed out that the right to equality also constitutes a basic superior-principle in Israeli public law. This honorable court stressed the importance and status of the right to equality in a host of judgments. It was so emphasized in HCJ 6698/95 **Ka'adan v. Israel Land Administration**, IsrSC 54(1) 258, 273, 275 (2000)(hereinafter: **Ka'adan**).

174. It should be pointed out in this context that in matters concerning discrimination, its existence is determined by the discriminating result rather than by the motive. Even if the respondents argue that the different detention arrangements applicable to Palestinians and Israelis residing in the territories were not intended to discriminate against the Palestinians on the basis of national affiliation, then:

> The result (the "'effect") of the separation policy as practiced today is discriminatory, even if the motive for the separation is not the desire to discriminate. The existence of discrimination is determined, *inter alia*, by the effect of the decision or policy, and the effect of the policy in the case before us is discriminatory." (Ka'adan, paragraph 30 to the judgment of the Honorable President (retired) A. Barak)

175. The *a-priori* determination that Palestinian minors, residents of the territories may be pulled from their beds in the dead of night and be subjected to dramatic arrests, more so than Israelis living in settlements, is a determination which deeply violates not only their right to equality, but primarily, their right to dignity. Said determination is premised on an illegal assumption that they are less worthy than other people to have their right to dignity, physical and mental integrity and due process strictly maintained. Said argument suffices to lead us to the conclusion that the current situation is affected by blatant illegality and should be invalidated.

Conclusion

176. The decision to launch the pilot was made in 2014. Accordingly, the respondents could have conducted a comprehensive pilot of summons over a long time and draw from it lessons and conclusions regarding the proper manner for its implementation and the criteria for issuing summons to interrogation *in lieu* of night arrests. Instead, the respondents refrained from taking any real step to implement the pilot in a manner which would change the current situation and put an end to the severe and sweeping violation of minors' rights which has been documented for years in the occupied territories.

177. The fact that the pilot, of which public declarations were made in the media and before international organizations, has not been actually realized and has not been implemented in a serious and systematic manner, after so many years, shows that behind the declarations and public relations there existed no real intention to reduce, even slightly, the infringement inflicted on the rights of minors wanted for interrogation in the West Bank. Even if there is logic in respondents' argument that caution should be exercised in view of the security situation requiring things to be examined before systemic changes are made, there is no justification for the delay and inaction demonstrated in connection with the implementation of the pilot.

178. Alongside respondents' exceptional delay, IDF soldiers continued to invade homes in Palestinian cities and villages, in the middle of the night, in pre-planned operations, to wake entire families, to sow fear and terror among household members, to pull children out of bed and drag them from home, humiliated and terrified, in view of their helpless parents, who have instantaneously lost control over their home and family and the ability to protect their children.

179. All of the above with severe and blatant violation of a complex system of laws which applies to the West Bank, and in particular, respondent 1's obligation to preserve and maintain the public life and safety of protected persons in the occupied territory, including, inter alia, the obligation to protect the fundamental rights of any person, and the obligation to protect the child's best interest.

180. With the declaration of the pilot the respondents acknowledged the severe nature of their practices and in response to international criticism created a pretense of legal practice, in the form of a pilot, which as we have demonstrated above, has never been seriously implemented. The respondents refuse to take responsibility by clinging to a declared pilot which has barely been implemented.

181. However behind this façade, for more than fifty years, thousands of minors are governed by a regime which violates their rights severely and violently. Hundreds of Palestinian minors are arrested in their homes, every year, in the dead of night, and then taken to interrogation. Their rights are systematically violated and the traumatic effects of the arrests are suffered by them and by their family members, including their younger siblings.

182. The military should therefore immediately stop the harmful and unlawful practice of night arrests of Palestinian minors as its first course of action. Instead, sending a summons for interrogation must be the primary method whenever a Palestinian minor is wanted for interrogation, whatever their age may be, because:

“There are no bad children, there are children who are treated badly”

Janusz Korczak

This petition is supported by the affidavits of petitioners 1-2.

In view of all of the above, the honorable court is requested to issue an order nisi as requested and after hearing respondents' response, make it absolute. In addition the court is requested to direct the respondents to pay petitioners' costs and attorneys' fees.

November 22, 2020

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