

State Attorney's Office and petitions on behalf of detainees barred from meeting with their attorneys, petitions to stop torture of detainees as well as intervention on behalf of detainees detained in inhuman conditions. This interim report endeavors to provide a short survey of some of the aspects of this project.

Prevention of Meeting with Attorney

During the last three months, HaMoked advocated on behalf of 37 detainees who were held incommunicado. HaMoked filed 19 petitions to the High Court on behalf of 21 detainees, and directed 16 cases to the State Attorney's Office. In two cases, HaMoked appealed a Jerusalem District Court decision to the High Court concerning incommunicado detention. In all of these cases, HaMoked and the detainees were represented by attorney Andre Rosenthal.

The right to meet with an attorney is one of a detainee's basic rights. It ensures that the detainee obtains legal advice as to his rights and obligations during detention and interrogation, and provides the attorney with information necessary for the representation of the client in legal proceedings.¹ The meeting also facilitates outside supervision of the conditions of detention and of the interrogation methods to which the detainee is subjected; such supervision is especially crucial when torture is routine. Incommunicado detention is therefore an additional means of pressure on the interrogee, who is thus totally isolated from the outside world.

Military law in the territories allows GSS interrogators to issue an order for incommunicado detention with no legal process involved, for cumulative periods of up to 30 days (this period may be prolonged through legal proceedings). Although this law is only applicable in the occupied territories, it is being applied to residents of the territories detained in detention facilities inside Israel. In High Court petition 1622/96, Abdel Rahman al-Ahmar and HaMoked: Center for the Defense of the Individual vs. General Security Services (unpublished), attorney Rosenthal argued on behalf of HaMoked that the application of the military law of the region to detainees being held in Israel is illegal, since it is incompatible with paragraph 29 of the Law of Criminal Procedure, which provides a special provision for incommunicado detention of detainees transferred from the territories to Israel. In a decision given on 3.3.96 by Justice Barak, the Court rejected this argument, asserting that paragraph 29 relates only to cases where the arrest warrant was based on Israeli law; in cases where the arrest warrant was based on the law in force in the territories, the order for incommunicado detention shall also be based on the same law.

In another petition to the High Court (petition 2962/96 Muhamad Munasra et al vs. the State of Israel), attorney Rosenthal argued on behalf of HaMoked against the extension of the petitioners' detention in Israel by judges appointed on the basis of military law in the territories and of the basic law in force there. This represents, Rosenthal argued in the petition, a breach of the territorial jurisdiction of the judges in question and the hearing of cases in Israel by someone not authorized to do so by law - in contravention of paragraph 1 of the Basic Law: the Judiciary. If the extensions of detention are invalid, since they should have been based on Israeli law,

¹ All the Palestinians arrested following the suicide bombings were male. While there are a number of Palestinian women imprisoned in Israel, all the cases in HaMoked's detainee rights project have involved men.

then incommunicado detention orders are similarly invalid, since these also should have been based on Israeli law. The petition was heard in the High Court on May 8, yet in spite of its urgency, a verdict has not yet been pronounced.

Israeli internal law also allows for an administrative order for incommunicado detention, yet for a maximum period of 15 days from the date of arrest. Afterwards, a court order is required. Such an order was issued in two cases which were registered by HaMoked; cases of detainees who are residents of East Jerusalem and thus fall under the jurisdiction of Israeli law. They were detained on March 27 and 28 and since then, they have been prevented from meeting with an attorney by administrative order. On April 9, the order was extended by Judge Naor of the Jerusalem District Court, until April 23, i.e. 27 and 28 days from the date of arrest. The order was issued (as the law permits) without allowing either the detainees or their attorneys to have their arguments heard. The decision was appealed to the High Court on 15.4.96 and was withdrawn on 21.4, as the State announced that it would not seek another extension.

HaMoked's experience with incommunicado detention indicates that it is standard GSS practice to issue incommunicado detention orders for set periods of time, which are then extended until they accumulate into a prolonged period: most of the detainees who have petitioned the High Court in this matter were detained incommunicado for over 20 days. Only in the two cases mentioned above of Jerusalem residents, however, did HaMoked encounter a GSS application for a court order to extend detention.

Attorneys of the detainees are not being informed of prevention extensions, even in cases where the GSS knows who the attorney is. The existence of prevention orders and their periodic extensions can only be verified by phone enquiries to the detention facilities or when an attorney arrives at the facility to visit a detainee. The State Attorney's Office has passed on information concerning incommunicado detainees, when it was requested to do so. To the best of our knowledge, detainees are not being informed of the fact that they are held incommunicado and are therefore unaware of the efforts expended in this matter and the proceedings on their behalf.

In no case did the High Court intervene in GSS considerations for the incommunicado detention. However, a number of petitions did succeed in shortening the time period of the order; in these cases a meeting with an attorney was often allowed on the day of the High Court hearing, thus preempting the petition.

In many cases, following the lifting of the prevention order and a visit to the detainee by HaMoked's attorney, it became apparent that during the incommunicado period, the detainee was severely tortured. Incommunicado detention prevented the attorney from knowing about the torture and therefore from turning to the court to prevent it. Therefore, incommunicado detention also prevents judicial oversight of interrogation.

Incommunicado Detention: The Case of Bassem Nairuch

Bassem Nairuch, 23 years old, was arrested at his home in Hebron at midnight, March 4, 96. The family was not informed of the place of detention and during the morning hours of March 10 they turned to HaMoked. Inquiries with the authorities as to the place of detention produced contradictory responses: the IDF Control Center reported that he was transferred

on March 5 from Hebron to the Kishon detention facility. At the Kishon facility, it was reported that he had been transferred to the Sharon facility. This information was confirmed by the National Police Headquarters and finally in the afternoon by the IDF Control Center as well.

In response to phone inquiries with the Sharon facility, it was reported that Mr. Nairuch was detained incommunicado by order valid until March 18. On the morning of March 19, HaMoked was informed in response to its inquiry that the order was extended until March 27.

On March 19, attorney Andre Rosenthal filed a High Court petition on behalf of HaMoked (petition 2149/96, Bassam Nairuch and HaMoked vs. General Security Service). The petition asks the High Court to examine the motives which prompted the GSS to issue the prevention orders and to consider whether GSS interests were properly balanced (as required by law) with the detainee's fundamental rights.

On March 21, following an in-camera session with the State Attorney's Office and the GSS, High Court Justices Bach, Zamir and Dorner decided to reject Nairuch's petition, as well as the petitions of five other detainees. Two other petitions, heard by the same bench, were withdrawn, following the State's announcement that the incommunicado detention orders were cancelled.

After the rejection of Nairuch's petition, the prevention order was once again extended, this time until April 2, i.e. 29 days after the date of arrest. The first day of the Passover holiday began on the evening of April 3 and ended the evening of April 4, followed by the weekend. Thus, for all intents and purposes, the prevention order lasted an additional four days. During the week of Passover, administrative and judicial authorities worked on a reduced schedule.

On March 29, attorney Rosenthal turned on behalf of HaMoked to the High Court Division of the State Attorney's office, investigating the possibility of curtailing the prevention order. On March 31, the State answered that at this stage, it was not possible to allow Nairuch to meet with his attorney.

Bassam Nairuch related his experience in detention to attorney Thabet Beidusi, who visited him at the Kishon detention facility (to where he was returned on March 31) after the lifting of the prevention order. The following are excerpts from his affidavit:

"...I was held at the Sharon facility for 28 days, during which time my interrogators used severe methods of torture against me, including shaking and tight shackling of my hands and feet to the point of cutting off circulation.

In addition, my interrogators have beaten me all over, especially in the genital area.

My interrogators at Sharon did not let me sleep for about 6 days in a row - during my 28-day detention there, they let me sleep three times, each time I slept for 12 hours.

Here is my left hand. I think that the little finger is broken as a result of the beatings. It pulsates all the time and it hurts a lot. I have asked my interrogators to call a doctor to treat me, but they refuse.

I fear that my finger is broken because of the swelling and the excruciating pain - and I need immediate treatment.

The conditions in the cell are very hard, there is no ventilation at all. There are no openings in the cell and often I am held there alone.

In addition, the food they give me is of low quality and of the minutest quantity. I am always hungry..."

On April 15, a petition was submitted to the High Court against the continued torture of Bassam Nairuch (petition 2709/96, Bassam Nairuch and HaMoked vs. GSS). A visit to the detainee after filing the petition revealed that his detention conditions had improved. On April 21, the State agreed to the issuance of an *order nisi* injunction (a show cause order) and an interim injunction preventing use of the interrogation methods described in the petition until the petition is heard.

In spite of the fact that the *order nisi* gave the State 12 days to respond to the petition, no response has been given. In the meantime, Mr. Nairuch has been transferred to the Meggido detention facility.

Torture

The interrogation methods described in Bassam Nairuch's affidavit are not exceptional. These and other methods, no less severe, were used against many of the detainees visited by HaMoked attorneys. The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment bans categorically the use of torture. Article 2 of the Convention emphasizes that

no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Article 1 defines torture in the following manner:

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 party information or a confession, punishing him for an act he or a third party has committed or is suspected of having committed, or intimidating or coercing him or a third person ...

The Convention was signed by Israel on 22.10.86, ratified on 4.8.91 and entered into force on 22.11.91.

The convention is one - though not the only - source for the prohibition on the Israeli authorities from using torture in interrogations. In addition, the Israeli Penal Code, as well as customary international law, absolutely prohibit the use of torture.

Torture is among the most grave violations possible of human rights and dignity. The means described below are intended to break the person physically and mentally and to leave him