



Deportation

“... deportations of protected persons from occupied territory... to that of any other country, occupied or not, are prohibited, regardless of their motive.”

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), Article 49

The Deportation to Gaza

In the last week of June, as the IDF's third invasion of the territory of the PA was underway, Israel's Security Cabinet decided to prepare for the deportation of relatives of those individuals who were suspected of being involved in terrorist activity against Israel and relatives of suicide bombers. The official motivation for this policy was deterrence.⁷ A think tank discussed the ways to implement this decision, and the Attorney General's Office prepared the legal arguments to justify it. Against this backdrop, HaMoked contacted the military legal advisor in charge of the West Bank and demanded that before any such move was implemented, individuals earmarked for

deportation should first be given the right to be heard and allowed time to take their case to the HCJ.

During the night between July 18 and July 19, Israeli forces entered the homes of six families in the Nablus area and detained 21 members of these families, including teenagers and the elderly. The homes of two of these families were demolished that same night. The press reported the intention to deport the detained family members to the Gaza Strip. Within hours HaMoked dispatched urgent letters to the various Israeli authorities, demanding that if deportation

⁷ Haaretz, August 13, 2002, p. A1.

be approved, then, as the families' proxy, HaMoked should be given prior notice so that steps could be taken to prevent the deportation. The State's response indicated that it did not feel bound to inform HaMoked ahead of time, and in the afternoon the media reported that the Attorney General had agreed to deport family members to the Gaza Strip under certain conditions. HaMoked therefore immediately filed two petitions to the HCJ against the deportation of the family members.



M.S., 62, married and the father of nine, was apprehended with four of his sons at 11 PM, July 18. IDF soldiers entered his home, pushing a local resident in front of them as a "human shield", instructed the inhabitants to leave the house and blew it up, without giving the family time to take their belongings. One of the sons who was not detained that night, was suspected of being involved in shooting attacks. M.A., a 60-year-old retired school principal and the father of 11 children, was arrested with five of his sons at midnight at their house in the village of Tell. His health is poor and he was never arrested before. One of his sons, who was not detained that night, was suspected of being involved in a terror attack. S.G., a director in the Palestinian Ministry of Education and also a resident of Tell, was detained along with one of his sons. Another one of his sons is suspected of being involved in a terror attack. M.B., whose son was suspected of taking part in a terror attack in Tel Aviv that week, was apprehended with two of his other sons. He is 72 and has a herniated disc, high blood pressure and heart problems.

That very same night the IDF blew up the three-story house in which M.B. and his 25 family members reside. On July 19, HaMoked petitioned the HCJ on behalf of these four men and their 12 sons who had been arrested.

Nablus resident A.H. was apprehended on July 18 by IDF soldiers who entered his house using a neighbor as a "human shield". A.H. is a retired 62-year-old veterinarian, who has diabetes and chairs the charity committee in his city. His son is wanted by the IDF. Four brothers from another family, S., were also detained that night. The soldiers who apprehended them pushed a neighbor in front as a "human shield", ordered the inhabitants of the house to leave, separated the men from the women and babies, and searched the house, turning it upside down. On Sunday, July 21, HaMoked petitioned the HCJ against the expected deportation of A.H. and the four brothers.

(Cases 17914 through 17933)

The petitions forced the State to undertake that it would not deport the detainees to the Gaza Strip without giving them an interval of at least 12 hours to take legal steps to stop the deportation. In view of this undertaking, HaMoked withdrew the HCJ petitions and continued to represent the potential deportees in the military courts. On July 26, HaMoked filed five petitions to the HCJ demanding that it enable the detainees to meet with their counsels. In three of the petitions, injunctions prohibiting such meetings were lifted one day before the hearing, but in the case of two of the families the court allowed the injunctions to stand. Three

members of these families, siblings of wanted individuals, faced deportation a week later. On July 31 the Security Cabinet decided to implement its previous decision on the matter. On August 1 the IDF Commander in the West Bank amended the "Order regarding Security Instructions" so as to allow the deportation of West Bank residents to the Gaza Strip, and signed deportation orders against two of the detained family members immediately thereafter. The official name of these orders, "Orders Assigning Residence," was given in order to circumvent the strict prohibition in the Geneva Convention of forcible transfers and deportation from occupied territories.⁸ Shortly after that, it was decided to deport another family member, this time a woman. HaMoked represented all three before the advisory committee of the IDF Commander in the West Bank – which recommended that the deportation orders be upheld – and before the HCJ, which addressed the petitions on this matter.



HCJ

At 11 PM, August 1, HaMoked received the deportation orders issued against Kifah Ajouri, a 28-year-old resident of the Askar Camp outside Nablus, married and the father of three boys, one of whom was born when he was already held in detention, and against Abed Alnasser Asida, resident of Tell, father of four daughters and a baby boy who was born a few months earlier. Both were detained on the night between July 18 and 19 along with their fathers and brothers, and their homes were demolished. Each has a brother suspected of being involved in terror attacks, and each has "confessed" in his

questioning to "assisting" his brother. It is based on this "assistance" that the deportation orders were issued. When the deportation orders came in, HaMoked was also informed that an advisory committee would be convening at 11 AM the following morning in order to hear the arguments of the potential deportees. HaMoked's attorneys demanded copies of the investigation material and insisted that the hearings of the committee should be open to the public, so that, among other things, their families could attend. The request to make the hearing public was denied. HaMoked petitioned the HCJ against this decision; the Court ordered that all committee hearings, except those in which confidential material is being discussed, should be open to the public. The fact that the hearings were opened to the public, combined with HaMoked's efforts to secure permits that would allow family members to travel within the Territories to attend these hearings, enabled the Ajouri and Asida families to be at the hearings on August 8 and meet with their relatives, for the first time since the detention.

A third deportation order was issued on August 4, against Intissar Ajouri, Kifah Ajouri's sister, 34 and a pharmacist

8 While the prohibition in Article 49 of the **Geneva Convention Relative to the Protection of Civilian Persons in Time of War** (1949) is sweeping, and any violation of this article constitutes a grave breach of the Convention, Article 78 of the Convention stipulates that: "If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment."

by training. Ms. Ajouri was held in administrative detention since the beginning of June, when HaMoked traced her through a habeas corpus petition to the HCJ. The deportation order was based on suspicion that at the request of her brother, who was wanted by the IDF, she had sewn a belt that was later used to carry explosives for a suicide bombing. On the night between August 5 and 6, Intissar and Kifah Ajouri's brother was assassinated. Word of his assassination was brought to HaMoked's attorneys and from them to the brother and sister only a few minutes before the August 6th committee meeting was set to begin. Despite objections by the IDF prosecutor, the committee conceded HaMoked's request to postpone the hearings by two days in order to allow the brother and sister time to mourn and to give the attorneys an interval in which to appeal to the authorities to revoke their deportation orders in view of the changed circumstances. But that same afternoon the IDF Legal Advisor in charge of West Bank met with the committee members, in the absence of the attorneys representing the potential deportees, explained the position of the government and military commander, and insisted that the proceedings must be continued without delay. The decision that was reached only that morning was revoked, and another meeting of the committee was scheduled for the very next morning. To protest this flawed procedure, the attorneys representing the potential deportees absented themselves from the meeting, and the committee decided to reconvene on August 8, as scheduled originally.

Concurrently, HaMoked endeavored to improve the detention conditions of the two male potential deportees. Since their detention, the two were being held in solitary confinement at the General Security Services (GSS) interrogation facility at the Russian Compound in Jerusalem, and were not even given fresh clothes. HaMoked's efforts were successful, and the two were relocated to Ofer Camp, where their conditions were the same as those of administrative detainees.

In the committee's last meeting, on August 8, testimonies were heard from the three potential deportees, their families and an employee of a humanitarian organization in the Gaza Strip, who described the living conditions that the three would encounter in this region, which are even harsher than in the West Bank. On August 12, a few hours after the written summations were submitted, the committee recommended that the deportation orders be upheld, but also recommended a reexamination of the term of Asida's deportation, since the allegations against him were not so severe. The IDF Commander of the West Bank disregarded this last recommendation, and ordered the deportation of the three individuals at 2 PM the next day. The following morning two petitions against the deportation were filed with the HCJ. One was submitted by HaMoked, on behalf of Kifah Ajouri and Abed Alnasser Asida, and the other by HaMoked and ACRI on behalf of Intissar Ajouri.

Despite the pressure applied by the defense establishment and the government through the Attorney General's Office to lift the injunction

prohibiting deportation until after the hearing and to expedite the hearing and push up the ruling, the Court decided to assign a special panel of nine Justices to hear the case on August 26. Opinions of two experts in international law that HaMoked and ACRI attached to their petitions, explained that deportation of family members constitutes a serious violation of the Fourth Geneva Convention, a crime of war and even a crime against humanity, which imposes individual liability on the perpetrators. **(Case 17942)**

At the hearing it was argued on behalf of the three potential deportees that they should not be forcibly deported to Gaza because of their brothers' actions for the sole purpose of deterrence, while the State supported the "assignment" of their residence as part of an "infrastructure of deterrence" against terror, and maintained that the three individuals "present a danger" to the security of the region. On September 3 the HCJ found that the deportation to Gaza indeed constituted "assignment of residence", but said that deterrence alone was not a sufficient cause to implement this measure, especially when it meant that individuals would be penalized for deeds performed by others. The Court said that a person's residence can only be "assigned" if that person presents a substantial danger himself. The nature of this danger was not specified. The Court approved the deportation of the siblings Kifah and Intissar Ajouri, and forbade that of Asida. In interviews after the ruling was handed down, sources in the defense establishment were quoted as saying that "the entire process went amiss and was

diverted from its main objective ... [which was] to create deterrence."⁹ Although there was talk of more possible deportations, as of the time that this report was compiled, no other deportation orders have been issued. HaMoked has addressed the military legal advisor in charge of the West Bank with a demand that in case such orders are issued, time should be given to the potential deportees to argue against them.

Intissar and Kifah Ajouri were moved to the IDF base at Beit El, where they were held until their deportation on September 4. HaMoked endeavored to enable their families to see them before they were deported to Gaza, and a meeting was indeed arranged for the morning of the deportation. In a diversion operation that the IDF held for some obscure reason, the brother and sister were taken by an armored vehicle to a vineyard in one of the most dangerous areas in the outskirts of the city of Gaza. The owners of the vineyard, who accidentally bumped into them, took them in, and after they contacted HaMoked by phone, transportation to Gaza was arranged by employees of the Palestinian Human Rights Center - Gaza. In Gaza, the brother and sister decided to stay at the compound of the International Committee of the Red Cross (ICRC), which they believed to be responsible for their well being as victims of war crimes under the Fourth Geneva Convention. HaMoked maintains contact with the deportees and their families and continues to represent them vis-à-vis the authorities

⁹ Haaretz, September 4, 2002, p. A3.

in connection with the rights to which they are entitled as persons whose place of residence has been “assigned”. Since the end of December, HaMoked has been trying to get the authorities to allow the families from the West Bank to visit their deported relatives in Gaza. Only two and half months after the deportation did the IDF allow the visit to go through. Countless coordination efforts by HaMoked during the week preceding the visit, between the IDF, the family and taxi drivers, helped the visit take place on December 16. On December 18 HaMoked registered a demand with the military legal advisor in charge of the West Bank to authorize and enable longer and more frequent visits in the immediate future.

Concurrently, HaMoked has been pushing to obligate the IDF to ensure the support of the deportees and their dependent family members.¹⁰ The dire economic situation in Gaza makes it impossible for the deportees to find jobs and support themselves. Until his arrest, Kifah Ajouri supported his wife, children and parents, who are now without any source of income. Ms. Ajouri was

tending to her infirm parents. All of the family’s property was destroyed when their home was demolished by the IDF, and the family was forced to rent an apartment. Since October, HaMoked has been trying to get the Israeli authorities to pay around NIS 5,000 a month to the deported brother and sister in Gaza and about NIS 8,800 to their families in the Askar Camp. To date, the authorities have not even responded to the demand. **(Case 17942)**

Immediately after the HCJ prohibited his deportation, the IDF prosecutor filed an indictment against Abed Alnasser Asida for the “assistance” he had lent to his brother. Before the HCJ ruling, there was no need even to present such an indictment. HaMoked has provided an attorney to represent Asida in his military trial. Despite the prosecution’s demand to hold Asida in custody until the trial is over and although this demand was received by the lower court, HaMoked’s appeal was granted and Asida was released on bail until a verdict is handed down. On October 8 he was reunited with his wife and children. **(Case 17920)**

Repatriation of Deportees

HaMoked has continued to handle applications of residents of the Territories who were deported in the past and now seek to be reunited with their families in the Territories. The matter of Palestinians

who were deported in the first decade of occupation without any deportation order and without being allowed to contest their deportation was covered in the previous activity report.¹¹



T.T., who was born and raised in Hebron, took part in the terror attack at Beit Hadassa in Hebron in 1980, and was sentenced by the military court to life imprisonment. In 1983 he was deported to Algeria in compliance with an agreement between Israel and the PLO, without T.T. consenting to this deportation. T.T. moved to Jordan, where he was joined by his wife and daughter, who are also residents of the Territories. His parents and six brothers stayed in Hebron. In the summer of 1997, when T.T. already had seven children, HaMoked asked the IDF commander in the West Bank to allow T.T. to return to his hometown. This request was denied without any explanation in February 1998. Following HaMoked's advice, T.T.'s wife submitted a request to the PA to be allowed to unite the family. In December that year T.T. was allowed back into the West Bank for three days, in order to enable him, as a member of the Palestinian National Council, to attend the Council meeting in which the deletion of those articles in the Palestinian Charter that call for the destruction of Israel was to be

discussed. T.T.'s wife and children came along. T.T. and his family stayed in Hebron, and HaMoked once again turned to the authorities with a request to reconsider his repatriation. About 10 months later, a response was given, instructing T.T. to leave the West Bank and resubmit his request.

On July 11, 2002, after Hebron was occupied by the IDF, T.T. was apprehended and an order for his deportation was issued. HaMoked appealed to the authorities to revoke the order. T.T. was held at Ofer Camp for three months before a reply was provided: the request to revoke the order, as well as that to allow the families to unite in Hebron, were denied, although this rejection contradicted the announcement that the IDF had previously made, according to which all requests to unite families were being put on hold. In the end of October HaMoked petitioned the HCJ to revoke the deportation order and approve the request to unite the family. The petition was denied, but T.T.'s deportation is being delayed, since Jordan has not yet agreed to let him in. **(Case 11404)**

Deportation of “Illegal Aliens”

HaMoked has also handled appeals for help by Palestinians who have no legal status in the Territories, and who were apprehended at random in the massive IDF arrests and against whom deportation orders have been issued. In some cases,

their illegal stay was the result of Israel's

10 This obligation emerges from articles 39 and 78 of The **Geneva Convention Relative to the Protection of Civilian Persons in Time of War** (1949), under which the brothers were deported.

11 HaMoked, **Semi-Annual Report: January-June 2002**, p. 38.