

Having been forced by the HCJ to pay court expenses, the State has improved its tracing mechanism. The HCJ ruling concerning detention conditions at Ofer Camp has obligated the State to uphold criteria set by International Law; and individual petitions

regarding detention conditions have led to an improvement in the conditions of those detainees on whose behalf the petitions were filed. HaMoked's petitions concerning family visits at Ket'ziot Prison have led to partial resumption of such visits.

## Detainee Tracing

Notice of a person's arrest and place of detention are a basic right of both the detainee and his or her family. Detainees' rights to legal representation and adequate detention conditions depend on such notice. Detainees' families are entitled to know what has become of their loved ones and need to know these details so that they can lend them the assistance they need to protect their freedom. Under the law that prevails in the Territories, the authorities are obligated to notify a family of the arrest of a relative and of the place of detention "without delay". The IDF has never met this obligation, nor has it complied with the commitment it made to the HCJ in petitions that were filed by HaMoked and the ACRI in 1995.<sup>59</sup> In this petition, an arrangement was set up by which on the one hand the authorities were bound to inform the families of detainees and their attorneys of the arrest and place of detention, and on the other to forward this information to public organizations and lawyers, through the "control center" at Military Police Headquarters, which is supposed to receive updates from the IDF, the police, the Prison Service and the GSS. Throughout the years, only the latter part

of this arrangement has been observed, but even this compliance collapsed in March, with the first wave of massive arrests. This collapse and the efforts made by HaMoked to rectify it were detailed in the semiannual activity report.<sup>60</sup> While HaMoked's operations in the first six months of the year have led to some improvement in the performance of the authorities, they were still far from satisfying the minimal requirement of accurate answers in reasonable time. HaMoked's general and individual appeals to the control center revealed problems in the work methods of the military system, which were the cause of many days of delay in providing answers – which are supposed to be given within 24 hours, and of errors in the information provided about detainees' place of detention. These delays heightened the families' uncertainty regarding the fate that has befallen their loved ones. Furthermore,

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58 Around 1,800 Palestinians were arrested between September and December. **Haaretz**, December 26, 2002, p. A10.

59 HCJ 6757/95, **Hirbawi and others v. IDF Commander in Judea and Samaria**, not published.

60 HaMoked, **Semi-Annual Report: January-June 2002**, pp. 9-11.

combined with the erroneous information that was eventually provided, these delays have violated the right of these detainees to adequate legal representation and have made it impossible to protect their rights as detainees. Because of these systemic failures, in many cases HaMoked decided to inquire directly to the detention facilities.

A.S., a 17-year-old resident of Tubas, was arrested with his two brothers at 3 AM on November 19. HaMoked contacted the control center that same day in order to trace his place of detention, but the answer – that A.S. has not been traced – was only received on November 27. HaMoked finally traced A.S. at a GSS interrogation facility. **(Tracing 23577)**

N.H. was picked up at his home in Nablus at 3 AM on November 3. His family contacted HaMoked that same day, and on November 6 the control center informed HaMoked that N.H. had not been traced. HaMoked managed to trace him at a GSS interrogation facility. Another tracing request was placed with the control center on November 17. Three days later, the control center replied that N.H. was not in any facility of the military, the Prison Service or the GSS. Once again, HaMoked checked directly with the interrogation facility, and found that N.H. was still there. **(Tracing 23245)**

But neither HaMoked's communications with the control center and the Attorney General's Office, nor its petitions to the HCJ, yielded the desired change. By July, HaMoked had filed 14 petitions with the

HCJ to trace the whereabouts of 54 detainees. Thanks to these petitions, most of the 54 detainees were indeed located, and the petitions were withdrawn. But while April's petitions led to an improvement in the performance of the authorities, after May they fell back to their old habits, even though the petitions specifically noted that the failures addressed in them were just the tip of the iceberg. Consequently, in July HaMoked asked the HCJ to make the State pay all trial costs, even if the detainee is traced after the petition is filed. The objective was to convey a message to the authorities from the HCJ that they must improve their tracing mechanism.

At first, the State objected to paying these costs, arguing that the tracing errors were in good faith, and were the outcome of the workload with which they were faced. The authorities explained that since thousands were being detained, the control center had to deal with 140 requests daily, and that the main concern of the forces on the ground, which were charged with forwarding information about detainees to the control center, was to fight and curb terror attacks. The HCJ rejected these explanations, held they do not justify erroneous answers, and ordered the State to cover trial costs.<sup>61</sup>



HCJ

L.B., a 26-year-old resident of Nablus, was staying at her sister's place on July 1. In the early hours of the morning, IDF soldiers and GSS personnel came to the house, ordered everyone out and arrested L.B. That same day HaMoked contacted the control center, and was told that there was no record of L.B. being held anywhere. HaMoked's inquiries with the police and

the Prison Service, and another call to the control center, yielded no results. On July 4, HaMoked petitioned the HCJ, demanding to trace L.B.'s whereabouts. The State responded that L.B. was being held at the Neve Tirtza Prison. On July 17, HaMoked asked to withdraw the petition, as it had practiced so far, but to compel the State to pay the trial costs. Despite objections by the State, the HCJ ordered the State to pay NIS 5,000 in costs. **(Case 17880)**

In other petitions in which HaMoked tried to force the State to cover expenses that resulted from the State's own flawed performance, which has led to infringement of the rights of detainees and their families, the State argued that despite the enormous workload, the mechanism has improved and is functioning well, and "in the overwhelming majority of cases, applicants are provided with accurate, satisfactory responses within 24 hours."<sup>62</sup> HaMoked then monitored the tracing requests it submitted to the control center during the first half of November, and presented the data to the HCJ: of around 200 queries, more than one third were not answered within 24 hours, and in at least 12% of the cases, the answer provided by the control center was incorrect. HaMoked argued that because of the serious implications, mistakes in the tracing of detainees must be limited to rare, inevitable circumstances. Even in such isolated cases, HaMoked maintained, thorough investigations must be held so that such mishaps do not recur. HaMoked's data showed an entirely different picture. The HCJ endorsed HaMoked's arguments, compelled the State to cover trial costs, and said:

"Providing information about the arrest and the whereabouts of the detainee is a cornerstone of the right to due process ... Provision of information is a means of control and supervision, but also has significance, in human terms, for the detainee, who at once loses control over his or her life ... To the family, whose relative disappears 'with no explanation' ... the power of the State, no matter how honest its intentions, is enormous. Without such reports, this power might spin out of control ... The authority is therefore required to be particularly meticulous whenever it exercises its power to detain, and must provide immediate reports of the arrest itself.

"The difficulties faced by the control center are understandable. It is also understandable that with such an enormous number of detainees, the work of the control center is very hard. However, each detainee is an individual human being. Infringement of the rights of one detainee is not mitigated by violation of the rights of others. Moreover, the large number of detainees is not new, and the authorities charged with providing information must prepare ahead of time to be able to comply with their obligation to provide such data ... It is inconceivable that bureaucracy should hinder provision of information about persons detained by

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61 HCJ 5829a/02, **Albukhari and others v. IDF Commander in the West Bank**, not published.

62 Response of the State Attorney's Office to the petitioner's request for trial costs, paragraph 7, HCJ Petition 7368/02, **Khaled and others v. IDF Commander in the West Bank**, not published

the security forces. If the large number of arrests requires more preparations that would involve additional costs for the system – so be it.”<sup>63</sup>

These rulings of the HCJ started to sink in, and as of the time that this report was compiled, the authorities’ tracing mechanism has, generally, improved, and individual problems are investigated and rectified. In petitions filed toward the end of the year, the State Attorney’s Office often provided information about the place of detention on the very day that the petitions were filed, and promised that steps had been taken within the military to discover the source of the mishaps and prevent their recurrence.

As mentioned, the purpose of seeking trial costs was to force the authorities to acknowledge their duties and make them accountable when they fail to comply with these duties. Therefore, in view of the intervention of the State Attorney’s Office in the performance of the tracing mechanism, HaMoked has decided to demand costs in petitions on this matter only as a last resort. In the special cases in which HaMoked did file for costs, the State no longer objected, and left the matter to the discretion of the HCJ, which often authorized payment.

The implications of the failure of the authorities to meet their obligation to provide quick and accurate information about arrests and about the place where detainees were being held, were made evident when it transpired that detainees were being kept in illegal detention facilities. In September and October the control center started answering increasingly often that the persons on whose behalf HaMoked

had inquired could not be found, even though these individuals were seen being picked up by IDF soldiers. Concurrently, HaMoked received information from freed detainees indicating that they had been held in the Shomron and Salem detention facilities in the northern West Bank. Until then, there was no knowledge that detainees were being held there: Shomron was in use until it was closed for renovations in the beginning of the summer, and according to the IDF spokesman it was still closed and no detainees were being held there in October either; Salem was never pronounced to be a detention facility as required by law.

A.A., a 17-year-old from Jenin, was arrested at his home in the early hours of October 3. His family contacted HaMoked on October 5. For four days, HaMoked was unable to trace him, despite communications with the control center, the detention facilities in the Territories and the GSS’s interrogation facilities. On October 9, HaMoked contacted the military court in Salem, which referred HaMoked to the operations room of the Border Police at the nearby roadblock. The operations room referred it to the Border Police battalion in charge of detainees, which confirmed that A.A. was indeed being held at Salem. The next day, A.A. was transferred to a recognized detention facility. **(Tracing 22889)**

Since the control center did not even know about these facilities, naturally there was no possibility of tracing detainees that were being kept there. On October 13 HaMoked provided the Military Attorney General,

examples of names of detainees who were held in these facilities, specified the rights that had been violated and explained the illegality in holding them there. The Military Attorney General did not respond. Even when, in answer to a petition that HaMoked had filed with the HCJ in an attempt to trace a certain detainee, the State Attorney's Office named one of these unrecognized facilities as the place where he was being held, HaMoked's demands for explanations were still ignored.

Detention in illegal facilities has violated the right of detainees and their families to be informed of the arrest and of the place of detention, and led to concomitant infringement of other basic rights. When a person's arrest and place of detention are not reported, that person disappears and his captors are not obligated to comply with the law. Testimonies provided by detainees released from these facilities portrayed harsh detention conditions (see the section about detention conditions, below); some of the detainees were being held there without any arrest warrant and without being brought before a judge, as required by law.



HCJ

B.M. was with his mother in an olive grove when soldiers picked him up on November 12. The next day, his family called HaMoked, which contacted the control center. The latter only provided an answer on November 17: B.M. has not been traced. Concurrently, his family got word that he was being held at the Salem facility. On November 18, HaMoked petitioned the HCJ, pointing to the fact that holding detainees at the Salem facility was against the law. The answer that the State

submitted on November 20, traced B.M. to another IDF facility, although inquiries made directly with this facility before the petition was filed, indicated that B.M. was not being held there. Moreover, the arrest warrant issued against B.M. and submitted to the Court, at HaMoked's insistence, indicated that B.M.'s detention began on November 12, when he was picked up by the soldiers. However, it also indicated that the warrant was only issued on the day that the petition was filed – six days after his detention actually began. By the time that the warrant was issued, the four days that the authorities are allowed, under the Detention Ordinance, before bringing a detainee before a judge, had elapsed. HaMoked drew the attention of the HCJ and the State Attorney's Office to this fact, and B.M. was released the very same day. **(Case 23605)**

On December 2, the Military Attorney General responded to HaMoked's query of October 13, saying that in both sites the renovation and construction of permanent facilities, which provide adequate conditions, has been completed, and that routine transfer of lists of detainees held in these facilities to the control center had been arranged. Indeed, many of the detainees who could previously not be traced, were now found to be in these facilities, and the number of cases in which the control center said it could not trace detainees has dropped.

Alongside the discovery of unknown and unreported detention facilities in the

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63 HCJ Petition 9332/02, **Gerarr and HaMoked: Center for the Defence of the Individual v. IDF Commander in the West Bank**, not published.

Territories, in October HaMoked revealed the existence of a secret GSS interrogation facility inside Israel. No information as to the location of this facility, the conditions in it and the activities that take place there could be obtained. This revelation was made through a petition that HaMoked filed with the HCJ on behalf of a missing resident of the Territories whom the authorities were unable to trace.



M.S. was picked up at his home at 2 AM on October 5. HaMoked contacted the control center the next morning. On October 10, the control center responded that M.S. could not be traced. The same day, HaMoked filed a petition with the HCJ, demanding that his whereabouts be traced. The response provided by the State did not specify where he was being held; it only stated that he was being interrogated by the GSS, and that questions pertaining to this detainee should be directed to a specific officer at the Kishon detention facility. After several unsuccessful attempts to contact this officer, HaMoked finally managed to reach him on October 14. The officer said that M.S. was being held at a secret facility. Again, HaMoked petitioned the HCJ, asking to compel the State to explain to the HCJ which facility this was and what the legal basis was for holding detainees in it. A hearing was scheduled for October 20. Four days before the set date, the State Attorney's Office announced that M.S. had been handed over to the Rosh Pina police, and asked to strike the petition. HaMoked confirmed with the Rosh Pina police that M.S. was there, and refused to strike the

petition, demanding a discussion of the very existence of a secret facility. A hearing has been set for April 2003. (Case 22988)

Information about the detainees that were being held in this secret facility could only be obtained from the officer whose name had been given to HaMoked. In talks with this officer, it turned out that administratively, the facility was part of Kishon detention facility, that the GSS was in charge, and that detainees held there were not allowed to see their lawyers. It further transpired that **the names of detainees held in this facility appeared in no official record that was accessible to the State authorities charged with tracing detainees.** Apart from the fact that under the law, the name of any facility in which detainees are held must be announced by the Minister of Internal Security and published in Reshumot, the official State gazette, without information about the location of the detention facility, neither the State authorities in charge, nor any outside organization, can monitor the detention conditions and the legality of what goes on inside.

While HaMoked's petitions concerning the tracing mechanism and the unrecognized facilities in the Territories yielded positive results, HaMoked's petitions in this case have yet to remove the veil of secrecy from the GSS facility. Information about the location of this facility, the number of detainees held there, detention conditions and official acknowledgement of this facility as one that is used for interrogation or detention, have so far not been provided.



B.G. and M.G. are cousins. Both are merchants who live in Nablus. On November 22 they were

returning from Jordan via the Allenby Bridge. Before crossing, they called their families and informed them they would be coming home shortly, but were never seen again. The next day, the family contacted HaMoked. On November 25, the authorities answered that both were being held at a GSS interrogation facility in Petah Tikva, but inquiries by HaMoked revealed that they were not there and that they were not listed in any official record. In view of what had happened with M.S. (see above), HaMoked contacted the officer in charge of the secret facility, who on December 4 confirmed that the two were being held there. The officer said that their

detention had been extended, as was the ban on a meeting with a lawyer. On December 5, HaMoked petitioned the HCJ, asking to instruct the authorities to reveal where the brothers were being held. The HCJ ordered the State to comply, but the answer provided no detail as to the location of the facility, except that administratively it belongs to Kishon detention facility. HaMoked was not satisfied by this answer, and asked the HCJ to hold a discussion about the principle underlying the existence of a secret facility where detainees were being held. As of the end of December, the whereabouts of B.G. and M.G. were still not known. **(Case 24034)**

## Administrative Detention

At the end of 2001, the total number of administrative detainees was 36. In 2002, and particularly after March, hundreds of administrative detention orders were issued, and by the beginning of 2003 there were 1,007 Palestinian administrative detainees.<sup>64</sup> Developments over the first six months of 2002 were described in HaMoked's previous activity report.<sup>65</sup> Administrative detention denies a person his or her freedom, and seriously violates their basic right to due process. Administrative detention violates this right by its very definition, since it is not ordered by judges but by military commanders, without an indictment or a trial, and is based on confidential material to which the detainee has no access. Not only

does the detainee have no knowledge of the allegations against him and can therefore not defend himself, he also does not know when he will be released, since in most cases, when the original administrative detention order expires, the military commander issues a new one extending it by another six months. International Law and Israeli law both require some sort of review, judicial or administrative, of the administrative detention order, as soon as possible after such an order is issued.<sup>66</sup>

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64 Based on data that the IDF gave Hamoked on January 14, 2003.

65 HaMoked, *Semi-Annual Report: January-June 2002*, pp.11-13.

66 *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (1949), Articles 43 and 78; *Basic Law: Human Dignity and Liberty*, and numerous decisions handed down by the HCJ.