

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.⁶⁴ Developments over the first six months of 2002 were described in HaMoked's previous activity report.⁶⁵ 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.⁶⁶

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.

The ordinance governing administrative detentions in the Territories was amended several times this year. As of the date of this report, judicial review, conducted by a military judge, must take place within 12 days of the administrative detention order (on top of the 12 days that the authorities are allowed until they issue an order after the arrest), and within 18 days of any extension. This judicial decision can be appealed before the military court of appeals. HaMoked advocate Tamar Pelleg-Sryck represented administrative detainees in more than 150 hearings in 2002 before the military court – both in judicial review hearings and in appeals challenging the decisions made there, and in many hearings which the detainees' lawyers were unable to attend because of the situation in the Territories. Generally, military judges uphold the warrants, and appeals challenging these decisions are denied. There are nevertheless cases in which appeals are granted and the detainee is released.

A.G. was arrested on August 21 and was held for questioning until September 24, when a six-month administrative detention order was issued against him since he was “a threat to the security of the region.” On October 23, a military judge upheld the warrant, after he was convinced, based on the confidential material presented by the GSS, that A.G. was “involved in current military operations against the security of the region and the public, and that his release would endanger the security of the area,”⁶⁷ but deducted the days of interrogation from the total term

of administrative detention. The judge emphasized that the term was shortened based on technical rather than substantive reasons, and left it to the military commander to decide whether to extend the order when it expires on February 11. HaMoked challenged this decision, arguing, inter alia, that A.G. had a clean record and that the investigative material submitted to his attorney, at her request and as instructed by the court, gave rise to concerns that he was only arrested because of his brother-in-law, who was suspected of being a member of a terror organization. The decision handed down by the military court of appeals on December 18 held: “... it is hard to point to any substantial and likely danger that his release might cause to security in the area.” The court ordered A.G. to be released the following day, and established that in this case, the term of the order was shortened based on substantive reasons, and that without any new information or circumstances, the order could not be extended. A.G. was released on December 19.

There are some cases in which even a decision by the military court to release a detainee is not enough. The ease with which a person can be apprehended through an administrative detention order sometimes seems to tempt the military to go on ordering a person's arrest despite explicit court orders.

An administrative detention order was issued against A.S. on January 2. On June 20, a military commander in the West Bank issued an administrative detention

order extending his detention by another six months, until December 25. In the judicial review hearing, the military judge decided to cut the extension by two months, so that A.S. would be released on October 25. The military prosecution appealed this decision, but on October 21 the military court of appeals rejected the appeal and affirmed the term set by the lower court. Four days later, on the date set for A.S.'s release, a new six-month administrative detention order was issued against A.S., in complete violation of a ruling handed down by the HCJ on the matter, which stipulated that only if new information or circumstances emerge, may a military commander extend a detention term that has been shortened by a judge.⁶⁸ The military judge who was to approve the new administrative detention order, sided with A.S.'s counsel, established that the military commander cannot override the decisions of the court of appeals and ordered the immediate release of A.S.

The IDF had obviously not prepared for the workload created by hundreds of administrative detention orders, and did not amend the numerous flaws that were revealed in the detention process itself, in the issue of administrative detention orders, in their extension and in the judicial review thereof. Because of this chaos, a person may be unlawfully held even more than once during their detention, without any judicial review and without a valid detention order. In the appeals submitted by HaMoked in such cases, the military court of appeals has determined that detention without a legally-issued order cannot, in and of itself,

serve as grounds for releasing the detainee, but will nevertheless play a significant role in the deliberations of the court. The heavy workload has also made judicial review ever more crucial – the larger the load, the greater the probability of mistakes that only proper judicial review can rule out. In reality, however, judicial review did not provide the protection that it should have.



HCJ

W.M., a reporter who lives in Ramallah, was apprehended on April 4. For 23 days he was not brought before a judge and was not allowed to meet his lawyer. At the time, the maximum legal length of detention without judicial review, during which detainees were also denied the right to legal counsel, was 18 days. On April 26, a three-month detention order was issued against W.M., and was later upheld in the judicial review process. W.M.'s appeal, contesting the administrative detention order, was rejected, even though he had been held unlawfully for several days; however, his detention term was shortened, and he was scheduled for release on July 2. On June 27, his administrative detention order was extended by another six months, until January 1, 2003. The judicial review session for this extension was set for July 15, but no notice was given to W.M.'s lawyer, and when he did not show up, the hearing was rescheduled for three days later. This hearing did not take place. W.M. was not brought before a judge until September 30 – roughly

⁶⁷ ADA1960/02, dated December 18, 2002.

⁶⁸ HCJ Petition 2320/98, *Al Amaleh v. IDF Commander*, *Court Rulings* [PADJ] 45(3) 675.

three months after the extension. At this hearing W.M.'s appeal was addressed, but the judge and W.M., now represented by a new attorney on behalf of HaMoked, also discovered that no judicial review had taken place in connection with the extension of the order. The appellate judge ordered a judicial review to take place the next day, and instructed that the long time that W.M. had to wait for his case to be heard by a judge during his three months in administrative detention should to be taken into account. In the judicial review on October 1, the judge decided to release W.M., but – in violation of the law – delayed his release by three days, to enable the military prosecution to appeal this decision. On October 3, the prosecution submitted its appeal, and W.M.'s detention was extended until October 9. But justice was delayed ever further: the appeal was not heard on October 9, and W.M. was detained without any legal order until the next day, when the appellate judge sided with the prosecution and upheld the administrative detention order until January 1. On October 23, HaMoked petitioned the HCJ, demanding to end W.M.'s administrative detention, which had become unlawful several months before, after reasonable time had passed since his administrative detention order was extended. In view of the serious defects in W.M.'s detention process, as explained in the petition, the State agreed to shorten his detention and release him on December 15, before the case was addressed by the HCJ. **(Case 21220.2)**

orders grew, the process of issuance and extension of orders by the military became increasingly more mechanical, and efforts were made to streamline and shorten the time needed to process each order. Military prosecution offered some administrative detainees, including a few who were not represented by counsel, "bargains" of shorter administrative detention. However, these shortened terms, which were endorsed by the court, were just technical, so that military commanders were still able to extend detention in these cases without any new evidence or change in circumstance. The IDF took advantage of this and extended shortened detention orders before they expired, in violation of a ruling handed down by the HCJ (see the case of A.S. above). Consent of the detainees in these cases spared the prosecutor the processes of a hearing and an appeal, and improved the authorities' statistics, which now indicated many shortened detentions. In July, HaMoked contacted the Military Attorney General and pointed out the illegality of such "bargains". Information obtained by HaMoked indicates that "bargains" of this kind have been disallowed.

The quicker processing of administrative detention orders also has an effect on the discretion that the military commander who signs them must exercise. In one of the appeals submitted by HaMoked, the military prosecutor admitted that: "military commanders sign administrative [detention] orders in the field, not in the office, under immense pressure that has to do with the very nature of their operations." Namely, the fate of hundreds of human beings who are already being held in detention without due process, is determined in passing, because

As the number of administrative detention

of the pressure under which commanders are operating. The limited commitment of the authorities to upholding the rights of individuals who are about to be detained for a period that is in fact unlimited, has shrunk even further. This also has bearing on the way that administrative detention orders are being signed. Until the summer, the name, rank and position of the commander signing an administrative detention order were specified alongside his signature. Since then, orders have contained nothing but a signature – in which no first or family name are decipherable and which the military court of appeals has referred to as ‘scribbles’. The only identifying piece of information in detention orders nowadays is: “military commander in charge of Judea and Samaria.” This way, not only military commanders, as required by law, but also any common soldier can sign an order that denies a person his freedom for another six months. When the military court of appeals kept rejecting appeals on these matters, HaMoked petitioned the HCJ.



HCJ

N.N., a 37-year-old resident of Qalqiliya, was apprehended on October 17, 2001, for interrogation. On December 5, 2001, an administrative detention order was issued against him. This order was extended three times, and as of the date of this report, was still valid until February 20, 2003. In the third and last extension order so far, issued on August 14, the cause of detention was changed to a more serious one: until then, it was that N.N. was “affiliated with military Hamas activists,” but the third detention order states that “he is a Hamas activist,” even though the order was based

on the same privileged information as the first and second orders. The third extension order also contained another change: apart from the signature, in which no first or family name could be discerned, there was no other identifying detail except “military commander in charge of Judea and Samaria.” In the judicial review hearing in which the third extension order was approved, N.N. was not represented by an attorney. N.N., through HaMoked, appealed the approval of this order, but the appeal was denied. On October 16 HaMoked petitioned the HCJ, demanding to release N.N. and another administrative detainee whose arrest order bore no detail of the person who had signed it; both orders were unlawful, HaMoked maintained. (Case 23062)

In its reply, the State undertook that as of now all those authorized to sign administrative detention orders would be instructed to add their name and details next to their signature. The HCJ accepted this undertaking, and although it rejected HaMoked’s argument that the way and circumstances in which orders were being signed, as they appeared from the statements of the military prosecutor, indicated that the military commanders had failed to exercise due discretion, the HCJ nevertheless held that it would be appropriate to define procedures by which information should be brought before the military commander when he is to decide whether to sign administrative detention orders.⁶⁹ Since

⁶⁹ HCJ Petition 8834/02, *Nadal and others v. IDF Commander in Judea and Military Judge Col. Moshe Tirosh*, not published.

then, administrative detention orders have also been stamped with the seal containing the details of the military commander who signs them.

In another appeal HaMoked had filed regarding the approval of an administrative detention order, the military court of appeals has held that in compliance with the law and with HCJ rulings on the matter, the place of detention must be noted on the detention order, and that detainees must not be held anywhere but in the place stipulated in the order. The judge

ordered his instruction to be disseminated to the relevant entities, after various cases in which administrative detainees were being held in detention facilities other than those specified in their detention orders. In response, and after the vice president of the military court of appeals had stipulated that this condition was not substantive, the IDF Commander in the West Bank amended the ordinance governing administrative detentions, so that the place of detention no longer has to be specified in the administrative detention order.

Conditions of Detention



Many Palestinians who were arrested in the West Bank since the first HCJ IDF invasion of the PA in March have been transferred to Ofer Camp, west of Ramallah.⁷⁰ Some have been kept there and some were relocated to GSS interrogation facilities, Ket'ziot and other detention facilities in Israel. Once information about the harsh detention conditions at Ofer Camp started to come in, HaMoked, together with other human rights organizations, took measures to improve the situation. First of all, HaMoked endeavored to enable attorneys and representatives of human rights organizations to visit the camp; next, HaMoked collected testimonies from released detainees, and based on these testimonies, petitioned the HCJ on April 18, on behalf of HaMoked and six other Israeli and Palestinian organizations, demanding that humane, dignified and suitable detention conditions be maintained at Ofer Camp

and at the facilities in which detainees are gathered before being transferred there. In addition, HaMoked has filed individual petitions pertaining to the detention conditions at Ofer Camp and to meetings with attorneys. These activities were detailed in the previous activity report.⁷¹

Hearings on the general petition continued, but at around the same time that the individual petitions were filed and before the HCJ handed down a decision on the general petition, detention conditions at Ofer Camp gradually started to improve. With the general petition underway, HaMoked continued to monitor these conditions: HaMoked's lawyers visited the site, and attorneys representing detainees provided additional information. Testimonies of detainees indicated that the improvement was marginal, and in some aspects things had even gotten worse: overcrowding in some of the tents had grown; the sleeping