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## Detainee Rights

**“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”** (Article 5)

**“No one shall be subjected to arbitrary arrest, detention or exile.”** (Article 9)

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During its invasion of the PA territories, the IDF detained over 7,000 Palestinians, most of them innocent, and imprisoned them in inhumane and degrading conditions. Information as to their place of detention was not transmitted to the families, detainees were forbidden under a sweeping order to meet with attorneys for the first 18 days of their detention, and administrative detention orders were issued by the hundreds. HaMoked appealed to the High Court of Justice (HCJ) to improve the insufferable conditions of imprisonment and to lift the prohibition on meeting with attorneys, processed thousands of requests from families and other organizations to locate missing persons, and represented dozens of administrative detainees in the various legal appearances.

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### The Ofer Camp

Most of the Palestinians detained in the West Bank since the first IDF invasion of the PA territories were transferred to the Ofer Camp. Some of them remained there and some were transferred to General Security Services (GSS) interrogation facilities, to the Ketziot Camp, and to other prison facilities in Israel. The camp is located west of Ramallah and served until March as an emergency military storage site. During the first IDF invasion the camp became a temporary prison facility. It was opened on 10 March, two days after the mass arrests undertaken by the IDF in the Nur a-Shams refugee camp near Tulkarem. Some ten days later, with the release of the last detainees from this invasion, the camp was closed, only to reopen on 30 March, with the onset of the wave of detentions from the second invasion. Upon receiving preliminary information regarding the insufferable conditions in which detainees were being held in the camp, HaMoked, in conjunction with other human rights organizations, began working to improve them. First, HaMoked attempted to enable visits by attorneys and representatives of the organizations in the camp in order to evaluate the situation there. After the HCJ rejected the petition dealing with visitation, a process of collecting testimonies from those released from the camp was begun as preparation for an additional petition demanding immediate improvement of the detention conditions in the camp. When the hearings for this petition were prolonged, HaMoked began submitting individual petitions pertaining to conditions of imprisonment.

#### Attempts to Visit the Camp

HaMoked learned of the disgraceful conditions suffered by the detainees at the Ofer Camp on 4 April, when telephone contact was made from one of the first persons released, in continuation of the process of locating of missing persons. The conversations painted a picture of a particularly grave situation with sub-human conditions that violated human dignity and endangered the health of the detainees. On that same day, HaMoked contacted the IDF and the State Attorney's Office, demanding that appropriate conditions of detention be implemented in the Ofer Camp, that proper medical care be arranged for detainees, and that the entrance of attorneys and representatives from human rights organizations be arranged in order to evaluate the conditions of detention. Testimonies received by other human rights organizations completed the difficult picture, with descriptions of violence and a severe lack of food. This brought into focus the need for detainees to meet the attorneys as a tool for improving their conditions of detention. Such a meeting would lessen detainees' feeling of isolation and despair, would enable the collection of reliable testimonies regarding the situation, and would require those responsible for the camp to improve the conditions there.



HCJ

On 5 April, after no official response was received from the IDF, HaMoked appealed to the HCJ, demanding to enable detainees at the Ofer Camp to meet with their lawyers. On Friday night, after the petition was submitted, the IDF sent HaMoked a copy of Order 1500. The order, issued that day by the IDF commander of the West Bank, gave every officer from the rank of captain the authority to arrest any person in the West Bank for 18 days, during which meeting with an attorney is prohibited. Only after these 18 days would the detainee be brought before a judge. The order applied to everyone detained since 29 March, the beginning of Operation Defensive Shield. Thus were thousands of detainees “legally” isolated from the outside world, left to the mercy of prison wardens subject to no oversight or outside scrutiny, legal or public. The State defended the sweeping prevention of the meetings, invoking the need to identify hundreds of detainees and sort them into those who are suspects of one sort or another whose detention would be extended, and the innocent, who would be released. The State's claim was that meeting with an attorney might foil the clarification and sorting, thus interfering with the investigation and compromising security. On 7 April, the HCJ rejected the petition of the organizations. However, the court insinuated that

within a short period, the conditions enabling a consideration of the particular circumstances of each detainee would become ripe, and then it was likely that a sweeping order would no longer be valid. After a short hiatus, HaMoked began operating in this direction.

### Collection of Testimony

Immediately following the HCJ ruling, HaMoked began searching for detainees regarding whom Order 1500 did not apply, and thus were eligible to meet with an attorney. The process of locating detainees revealed that some of those detained in military detention facilities in the West Bank before 29 March had been transferred to the Ofer Camp. Together with attorneys from Addameer, on 8 April HaMoked requested from the commander of the Ofer Camp to arrange meetings with those detainees. Shortly after the request, those detainees were transferred from Ofer to other detention facilities, and their attorneys were permitted to visit them. This added weight to the assumption that the IDF is not interested in exposing the conditions of detention in the Ofer camp to outside scrutiny.

With the channel of attorney meetings now blocked, detailed testimony was taken from those who had been released and whose families had been in contact with HaMoked as part of the location process. As these testimonies – indicating a continuation of the insufferable situation – accumulated, HaMoked reiterated its demand that the IDF institute suitable conditions of detention in the camp and arrange for visits by representatives of human rights organizations in order to evaluate the conditions, a type of visit not prohibited under Order 1500. At the same time, it became known that among the dozens of released detainees staying in Qalandiya were those who were prepared to give a signed deposition regarding what had happened to them from the day of their arrest. On 13 April, after HaMoked conducted tedious contacts with the Civil Administration, attorneys from HaMoked and from other organizations were permitted to arrive at the site to take depositions.

The next day, immediately after HaMoked announced its intention to submit a petition on the matter to the HCJ, the IDF's response to HaMoked's previous requests was received. It claimed that suitable conditions had existed in the Ofer Camp since it first began operating as a prison facility. This response completely contradicted testimonies taken a day earlier in Qalandiya. These testimonies painted an intolerable situation: terrible crowding in torn tents, each housing 60 men, and under awnings perforated with holes, under each of which 300 men were crammed. A constant feeling of hunger resulted from the scant quantity of food, which included a container of cheese and a container of humous for every six detainees, one piece of fruit or one vegetable, a frozen cutlet and three pieces of matza per day – and with no plates or utensils. Exposure to disease due to deteriorated hygienic conditions, with no change of clothes, no toilet paper, no hot water, soap or personal towel, and no possibility of cleaning the filthy bathrooms. Medical care, apart from pain relief pills, was not provided, even in the case of wounds.

### General Petition – Conditions of Detention



HCJ

On 18 April, HaMoked submitted in its name and on the behalf of six additional Israeli and Palestinian human rights organizations, a petition to the HCJ demanding that minimum humane, appropriate and dignified conditions of imprisonment be provided for detainees in the Ofer Camp and in areas where they are concentrated prior to being transported there. In addition, the petition required that representatives from human rights organizations be enabled to enter the camp, in order to assess the conditions of imprisonment there. Included in the petition were testimonies and depositions taken at Qalandiya and over the telephone that offered a detailed picture of the detention process and the stay at Ofer. The deposition of Ramzi a-Nabrisi, age 24, detained on 30 March in Ramallah, was one of those appended to the petition. At the end of his testimony, in which he described the period of his detention in great detail, he added:

This is without a doubt the most difficult period of my life. I have never felt so humiliated or insulted. Entire days of feeling cold and hungry, dirty clothes, a lack of basic medical care – all these planted in me a difficult feeling, that I'm not being treated like a human being. This kind of treatment is not suitable even for animals... to this day I don't understand why I was arrested in the first place, and why they had to keep me in detention for 10 days.

Approximately one week after the petition was submitted, a hearing was held in the court. The State claimed that while during the first days there were problems in some of the areas raised in the petition, brought about by the large number of detainees, the situation had been quickly rectified and the conditions of imprisonment in the camp had been astoundingly improved. In response, HaMoked presented a deposition, taken on 21 April from an administrative detainee staying in the camp, testifying to a negligible improvement in the conditions, which remained harsh and insufferable. The taking of the deposition had

been made possible on 20 April when attorneys were allowed for the first time to enter the Ofer Camp in order to meet with and represent detainees to whom Order 1500 no longer applied, since administrative detention orders had been issued for them. The Court stipulated that five representatives of the human rights organizations who had submitted the petition would be permitted to visit the Ofer Camp, and submit their impressions to the court, which would receive the State's response and only then rule on the matter.

The visit took place on 22 May, after the State capitulated on its refusal to allow a meeting between representatives of the prisoners and representatives of the organizations. During the visit, which was limited in time and confined to a small area of the camp, representatives of the organizations witnessed the difficult conditions present at the time in the camp: crowding, intolerable heat, lack of medical care for the chronically ill, insufficient quantity and sub-standard quality of food, and the total lack of activity forced on the detainees. From short discussions with two of the detainees, it became apparent that this situation was considered an improvement relative to the conditions in the camp prior to submission of the petition and prior to the visit. After the visit, the media reported on the existence of an internal report prepared by the State Attorney's office in preparation for a response to the HCJ petition. This report, according to the media, confirms one-by-one the facts presented by the organizations in the petition, and requires the camp administration to quickly improve the conditions therein, by the time of the first hearing for the petition.<sup>7</sup> This provided an example of the relative power of HCJ petitions. The very act of submitting them requires the State to investigate its acts and improve them before passing through the courthouse gates.

Following the visit, an agreement was made between the organizations and the State to attempt to solve the problem of the difficult conditions without court intervention, in order to shorten the process for the benefit of the detainees. HaMoked prepared a list of demands for improvement of the conditions of imprisonment in the Ofer Camp which included: reducing the number of detainees held in each tent, installation of fans to relieve the overbearing heat, provision of appropriate clothing and personal hygiene products, granting suitable medical care for the chronically ill, improving the number and quality of toilets and showers, and providing the possibility of receiving school books so that the students among the detainees can take exams then scheduled for the near future. The list was sent to the State Attorney's Office, which passed it on to the army. The State claimed in court that since this was no longer a case of substandard and inhumane conditions, the petition should be annulled, but the HCJ decided to continue discussing it and a ruling is forthcoming.

### Individual Petitions – Conditions of Detention and Meeting with an Attorney

Parallel to the general petition, HaMoked began operating on the individual level as well and submitted a number of petitions to the HCJ on behalf of individual detainees, attacking the conditions of imprisonment in the camp, with the goal of obligating the State to improve those conditions for all of the detainees.



HCJ

On 30 April, at around 5 AM, N.N., a 45-year-old resident of Hebron, was arrested in his home, wearing only pajamas and a jacket. From the day of his arrest and for some two weeks that followed, N.N. received neither clothing nor change of underwear. After an administrative detention order was issued for him, his attorney brought him a change of clothes. IDF soldiers forbade the transfer of clothes, and even an appeal to the West Bank legal advisor and his assistants who were on site at the time, was to no avail. The following day, HaMoked submitted a petition to the HCJ demanding that the IDF fulfill its obligation to distribute a change of clothes to detainees or alternatively to allow the supply of clothes from the outside. In response to the petition, the State promised to provide a change of clothes to the detainees. **(File 17831)**

Besides the detention conditions, HaMoked took action to enable detainees to meet with their attorneys at the earliest possible date, in order to reduce the suffering of the innocent. HaMoked participated in the petition to the HCJ submitted by ACRI, attacking the legality of Order 1500 as violating the rights to personal freedom and due process, and the right of a detainee to meet with attorney. In addition, after the reasonable time period stipulated in the HCJ ruling in HaMoked's petition had passed, HaMoked acted independently to remove the prohibition against meeting with an attorney for those detainees arrested under Order 1500.



HCJ

T.H., age 38 and the father of nine, was detained on 2 May. N. S., age 37 and father of three, was detained on 26 June. Their arrests were made on the authority of Order 1500, and they were therefore prohibited from meeting with a lawyer. After each of them was located in the Ofer Camp, HaMoked submitted a petition to the HCJ on their behalf, in order to remove the prohibition on meeting with an attorney. One day after submitting the petition in the name of T.H., the State permitted him to meet with his attorney in the

<sup>7</sup> Uri Blau, *Kol Ha'Ir*, 24.5.02.

Jerusalem detention center. One day after submission of the petition in the name of N.S., it was related that in effect, the prohibition on the meeting between him and his attorney had been annulled, and that the information regarding validity of the prohibition had been based in error. HaMoked asked the HCJ to impose costs on the State following its error, which required submission of a petition, and the HCJ accommodated the request. **(Files 17830, 17896)**

Even when detainees in the Ofer Camp were permitted to meet with their attorneys, the meeting was conducted under unreasonable conditions. HaMoked petitioned the HCJ on an individual basis also regarding this matter.



HCJ

At the end of April, M.Q. was arrested in his house in Hebron, and placed in administrative detention for three months. On 13 June, his attorney met with him at the Ofer Camp. During the meeting, M.Q. wore plastic handcuffs, and the soldier who accompanied him to the tent where the meeting took place sat at a distance of about two meters from the table. The legal advisor of the Ofer Camp claimed that she was aware of the matter regarding conditions of the visit, and commented "that's what we've got." About one month earlier, a request had already been put in to the West Bank legal advisor on this matter, that was left unanswered. HaMoked petitioned the HCJ against the handcuffing of M.Q. during the meeting with his lawyer as constituting an unnecessary violation of his dignity, and against the excessively close presence of the soldier, that made it impossible to carry out a private meeting, as required by law. The petition has not yet been heard. **(File 17894)**

### Release from Detention

The hardships suffered by detainees in the Ofer Camp did not end once they were released. The release process itself was, in most cases, long and humiliating.



HCJ

A.B., age 15, was arrested at his family's home in Qalqilya on 5 April. He was located by HaMoked in the Ofer Camp, but later disappeared from there, and was not located elsewhere. On 19 April HaMoked petitioned the HCJ on his behalf. In its response to the petition, the State related that A.B. was detained in the Ofer Camp but was to be released the following day. The following day, HaMoked maintained contact with A.B.'s family, but by evening he still had not returned. After a number of inquiries with the authorities, it was ultimately relayed that A.B. had been released at 5 PM., but he arrived home only at 3 AM. From his story it emerged that from 9:00 AM, when those released were called to alight on the buses, and until 23:00, the released detainees were on the bus, in handcuffs, without water or food. During that time, they were called one by one to the GSS interrogations room in the camp, in order to confirm that their identity was indeed correct. At 23:00 the bus left the Ofer Camp and, with the 50 detainees on it, arrived at the outskirts of Qalqilya after midnight. A.B. lives at the other end of the city, and since he feared that soldiers would shoot him, he sneaked slowly towards his house, and reached his destination at 3:00 AM. On the same bus that released the detainees in Qalqilya were many who are not from the area, and they arrived home only several days later. **(File 17772)**

The army released many detainees at points far away from their homes. These released detainees spent many days in unfamiliar places and endangered themselves in journeys the length of the West Bank, which was divided up with roadblocks. Some 130 Palestinians, released from the Ofer Camp on the nights between 3-6 April, were released near Qalandya. Residents of Ramallah and al-Bireh succeeded in getting home on foot, but those whose homes were in other places could not return home, and remained in a local community center. Attempts by HaMoked and al-Haq to organize private buses that would transport them home failed.

The personal possessions of many released detainees were taken from them at the time of arrest or when they were taken into the Ofer Camp, and were not returned to them upon release. Identity cards, other official documents, money and cellular telephones, were confiscated by soldiers, and no one knows where they are and if they will be returned. HaMoked approached the IDF demanding the return of the detainees' items at the end of the detention, and since there has been an improvement in the situation.

A.A. is a photographic journalist who works for Israeli and foreign networks. On 2 April he was arrested in Ramallah by IDF soldiers who took all his equipment from him. This equipment included a camera, a bulletproof vest, a wallet, and two cellular telephones. A.A. was held in Ofer until 25 April, without any steps being taken against him. At the time he was released, not a single item from the equipment taken from him was returned. After he contacted HaMoked, a letter was sent to the West Bank legal advisor, demanding that A.A.'s stolen property be returned to him. **(File 17812)**

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## Detainee Tracing

“The obligation to make this announcement [regarding arrest and place of detention] is a direct result of the fundamental right granted a person who has been detained... this right is a natural right, and derives from human dignity and general principles of justice...” (HCJ 670/89).<sup>8</sup>

Legislation regarding the Occupied Territories requires the authorities to inform the family “without delay” the fact of a person’s arrest and his or her place of detention. This announcement is important both so that the family members know what happened to their relation, whether he has been detained or, heaven forbid, is dead, and so that the family can obtain the necessary help in order to defend his freedom. The IDF has never fulfilled this obligation. In the petition to the HCJ submitted by HaMoked and ACRI in 1995,<sup>9</sup> an arrangement was stipulated requiring the authorities, on one hand, to tell the detainee’s family and his attorney regarding the place of his detention, whether by telephone or through a postcard, and on the other hand, to convey updated information regarding the location of every detainee to public organizations and attorneys, through the military police administrative control center, which supposedly is updated by the IDF, the police, the Israel Prison Service, and the GSS.

These arrangements, which existed over the years in only partial fashion (only in exceptional cases the family received some kind of announcement regarding the arrest of a family member) collapsed with the first IDF invasion. Some 1,700 Palestinians were arrested in the West Bank during this invasion. HaMoked received requests to locate 500 of them. The hundreds of detainees held at the Ofer Camp, opened as a prison facility during the invasion, could not be located, since the IDF did not make preparations for conveying information about them, even to the administrative control center. A list of some 100 names of detainees that HaMoked did not succeed in locating was sent to the State Attorney’s Office on 14 March, in order to draw attention to the severity of the problem and to obligate those responsible for the Ofer Camp to remedy the families’ lack of certainty. Since almost all of the detainees were released a number of days after their arrest, there was no longer a need to locate them.

At the beginning of Operation Defensive Shield, HaMoked faced a broken-down system. The delay of over a week in the administrative control center’s responses regarding place of location, and their incorrect or obsolete answers, were a result of the IDF’s lack of preparedness for mass detentions. Despite the bitter experience from the wave of arrests during the first invasion, it appeared that not a single lesson had been learned. In the schoolyards, commons, and fenced-in areas where thousands were held in the first hours and days of their detention, no records were usually taken. When the detainees were transferred to the Ofer camp, a number of days passed until their details were conveyed to the administrative control center. Registration was negligent and the names or identity card numbers of a significant number of detainees were erroneous. A lack of manpower at the administrative control center and the reduced functioning of the authorities according to holiday protocol due to the Passover holiday also added to the chaos that reigned at the beginning of the operation. All this occurred at a time when the urgency of transferring information was greater than during normal times, due to the expansive military operation. Families whose relatives disappeared did not know with any certainty whether they were detained, injured, or had been killed in the exchanges of fire.

In order to bring about an improvement in the situation, HaMoked, on 1 April, submitted a request to the State Attorney’s office protesting the ineptitude of the army authorities in all that related to the transfer of information regarding places where detainees were being held. This request led to no change whatsoever in the IDF’s functioning. The individual requests submitted to the State Attorney’s Office were also not answered. At the same time, HaMoked changed the way in which it operated in order to deal with the thousands of requests to locate over 2,000 missing persons, received during the month of April. A special staff was established to organize the matter, the computer system was overhauled, volunteers were recruited, and new work procedures were adopted. Due to the inactivity of the State Attorney’s Office, HaMoked decided to relinquish its usual procedure of turning to the State Attorney’s Office after receiving a negative answer from the administrative control center, and only then submitting a petition to the HCJ. Instead, it was decided to petition directly to the court in order to obligate the State to respond. Every petition to the HCJ necessitates on the one hand a clarification of exact details regarding the missing person and the circumstances under which s/he disappeared, which in the field conditions at the time was almost completely impossible, and on the other hand a comprehensive clarification with the authorities regarding

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<sup>8</sup> HCJ 670/89, Odeh et al v. Commander of IDF Forces in Judea and Samaria, PD 43(4) 515, p. 517.

<sup>9</sup> HCJ 6757/95, Hirbawi et al v. Commander of IDF Forces in Judea and Samaria, pending publication.

location, including, in addition to the cross-check with the administrative control center, submission of inquiries to possible places of detention.

On 4 April HaMoked petitioned the HCJ. This petition had two aspects, one of which was a principle demand: the request to grant an order nisi obligating the authorities to prepare appropriately to uphold their obligation to convey information to families of detainees without delay. The second, a personal aspect, was a request for a writ of habeas corpus regarding two missing persons, that would require the IDF to immediately announce whether and where they were detained.



HCJ

On 1 April the IDF began shelling the a-Ramoni building in Ramallah, where A.J. was located at the time. When he tried to flee through the window, he fell and was injured. A medical staff arrived at the site and began administering care, but IDF soldiers arrested him and took him with them. Since until 4 April the administrative control center had been unable to locate him, HaMoked submitted a petition to the HCJ on his behalf and on behalf of a second missing person. The State's response was that A.J. was not in its custody. Parallel to submitting the petition, HaMoked continued its efforts to locate A.J. in the hospitals, and ultimately he was located in one of them, where a soldier who did not permit HaMoked's attorney to visit him in order to check up on his situation and speak with him was guarding him. HaMoked continued to follow up on A.J.'s place of detention. Despite no improvement in the state of his health, he was transferred to the Ofer Camp. HaMoked intervened and he was re-hospitalized. This time, an attorney from HaMoked was permitted to meet with him. A.J. was given an operation, from which he is recovering. **(File 17761)**

Following this petition, the military police administrative control center was reorganized, greatly improving its functioning, but the information it received remained partial, faulty, and not updated. The continuing problems and the lack of cooperation on the part of the State Attorney's Office regarding HaMoked's request on one hand, and the growing importance of accurate information regarding the detainees' place of imprisonment so that he can be represented by an attorney in legal proceedings relating to extension of his detention, approval of an administrative detention order issued against him, or conditions of detention on the other hand, led HaMoked to again turn to the HCJ at the end of April. Three petitions were submitted on behalf of 21 people. Following these petitions, the authorities acted at the beginning of May to update the details of detainees at the Ofer Camp, and so was it possible to convey to many additional families information regarding the location of their loved ones, whose whereabouts until this point had been unknown to them.

The petitions to the HCJ did not always lead the State to invest maximum efforts into finding the detainee, and only after the strenuous work of HaMoked could the worried family be informed of the place of detention.



HCJ

W.A., age 22 from Dura in the Hebron district, was arrested at his home on 24 May in the early hours of the morning. On that day, he succeeded in contacting his mother and told her that he was at a detention facility of the Judea regional brigade and asked for attorney representation. When the attorney tried to visit the facility, W.A. was no longer there. His family contacted HaMoked, but there was only one answer to repeated inquiries: not found. On 6 June HaMoked submitted a petition to the HCJ on his behalf and on behalf of three other missing persons. The place of detention of two of the petitioners was provided, but it was claimed that there was no information indicating that the security forces detained W.A.. Since he had been arrested at his home, and had announced that he was being held at a military facility, HaMoked continued its efforts to locate him. On 20 June HaMoked received information that W.A. was probably being held at the GSS interrogation facility in the Ashkelon prison, but under a different surname. The information was immediately conveyed to the State Attorney's Office in order to receive a clear and official response as to whether it was the same person. But the State, on its part, did find the detainee even under the new name. On 1 July HaMoked's attorney went to the Ashkelon prison and met with W.A., who not only had been there since 25 May, the day following his arrest, but had even had his detention extended twice by a judge. An announcement regarding his place of detention was immediately conveyed to the family, and the HCJ was asked to impose the legal expenses on the State since it had provided erroneous information. **(File 17855)**

On the other hand, the petition to the HCJ sometimes brought about a reevaluation of the detainee's detention and his release. Ten of thirty-seven missing persons located by the state following HaMoked's submission of a petition on their behalf, were released once they were located.



HCJ

H.R. was arrested at his home in Ramallah on 1 April. His family requested assistance from HaMoked and he was located at the Ofer Camp. After approximately two weeks, H.R. disappeared from the Ofer Camp

and the military administrative control center was unable to locate him in the various prison facilities in Israel and in the Occupied Territories. In the State's response to the HCJ petition submitted on behalf of him and seven other missing persons on 1 May, it was stated that on 15 April a three-month administrative detention order had been issued for H.R., some ten days later an additional three-month administrative detention order was erroneously issued for him, but on the day the response was given, he could not be located. The day after this information was conveyed, H.R. was located in the Ofer Camp, and he was granted a hearing before a judge who ordered his release. H.R. was released on 7 May 2002. **(File 17793)**

Since Operation Defensive Shield, the number of mass detentions undertaken by the IDF has decreased. While the drop in the number of detainees every day has reduced the extent of problems created by the authorities' malfunctioning, the delays in conveying information and the incomplete nature of the information continue to bring hardship to detainees and their families. HaMoked, which since the conclusion of Operation Defensive Shield and through the end of June, received 1,400 location requests, continues its work vis-à-vis the IDF, State Attorney's Office and the courts in order to solve these problems.

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## Deportation

Among the thousands of Palestinians detained since the IDF invasion of the PA territories, many did not have legal status to reside in the West Bank, some of them are from families in the Occupied Territories whose request for family reunification or extension of a visitor's permit was not addressed since the beginning of the Intifada as part of the Israeli policy of freezing all handling of these issues. Despite the randomness of their arrest, and although most of them were not involved in any security or political activity, their status made them candidates for deportation. The attempts to locate them were met with many difficulties since they have no identity number based on which a search in the prison facilities can be conducted. Some 30 detainees whom HaMoked attempted to locate were deported before they could be located. Regarding matter of those whom HaMoked succeeded in locating prior to deportation, an urgent request was submitted to the IDF to delay their deportation. Regarding two, petitions were even submitted to the HCJ. The petition of one of the detainees is still being heard, while the second was released to his home in the West Bank.



HCJ

M.M. arrived to the West Bank with his mother in 1993, just a few days after the death of his father. At that time, M.M. was 11 years old. HaMoked has been assisting in his mother's request for family reunification since 1994, when, in keeping with an Islamic precept, she married her husband's brother, a resident of the West Bank. The mother's request for family reunification was approved only in 2000, and when she received an identity card from the PA, she registered her children in the PA population registry. M.M. was at that time already 18 years old, and therefore could not register. He was required to submit a separate request for family reunification. But at that time, the Intifada began and his request was not processed. In June of this year, M.M. was arrested, detained at the Ofer Camp, and was slated for deportation to Jordan. Immediately upon learning of this, on 19 June, HaMoked contacted the West Bank legal advisor demanding that his deportation be delayed for 72 hours. The extension granted was ultimately only 48 hours, during which time HaMoked submitted a petition to the HCJ against the intention to deport M.M. Within just a few hours after the petition was submitted, HaMoked was informed that the IDF intended to release him, and indeed, on 23 June M.M. returned to his family. **(File 17898)**

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## Administrative Detainees

Three processes that occurred simultaneously during the last half year, and particularly since the IDF incursions, worsened the violation of the right to individual freedom and to due process of Palestinian residents of the Occupied Territories: the sharp increase in the number of administrative detainees held for unlimited periods with no charges submitted against them; frequent legislative changes made to cover, like layers of patchwork, the defects left by previous laws; and the military legal system's capitulation to security considerations and gave wholesale approval both to administrative detention orders and to legislative changes. To these processes was added the chaos that reigned in the detention camps and military courts and led to the non-representation of many detainees and to red tape in the case of others. HaMoked, through attorney Tamar Pelleg Sryck continued to represent administrative detainees in the military courts in the judicial review of detention orders and in the appeals against their approval.

At the end of 2001, the number of administrative detainees was 36. By March of this year, it had risen to 70, and by the end of June, over 900 Palestinians were being detained under administrative detention order

in the Ofer Camp and in Ketziot, which was opened on 13 April.<sup>10</sup> This is the largest number of administrative detainees since the end of the 1980s, during the first Intifada. Attorney Tamar Pelleg Sryck, who works on behalf of HaMoked, represented dozens of them, and appeared in the trials of many whose lawyers could not appear due to the situation in the Occupied Territories. According to the authorities, the widespread use of this tool was necessary due to the great load placed on the interrogators with the waves of mass arrests and the need to complete the interrogations, but even before the first IDF invasion, administrative detention orders were issued for the sake of holding an individual for interrogation. In a number of appeals against detention orders of this type, HaMoked charged that this act was in violation of the Supreme Court ruling stipulating that administrative detention is intended solely to prevent a risk arising from the detainee, and when there is no other way to prevent this risk. Technical difficulties cannot justify violating basic rights. But the president of the military appeals court determined that a person's right to personal freedom could be violated through administrative detention even if the reason was technical difficulties that were delaying the process. This situation – in which the GSS's claims that a detainee requires interrogation, and that due to a lack of resources there is no possibility of interrogating him immediately, is sufficient to bring about the approval of an administrative detention order – 'excused' the security authorities from having to interrogate immediately detained individuals and made it easy for them to carry out mass arrests during the IDF invasion.

In addition, the authorities have used administrative detention orders in order to legalize defects in their functioning. Detention orders were issued retroactively, after the detainees apprehended under Order 1500 were not brought before a judge after the first 18 days had passed.

After 18 days had passed following the arrest of R.J. under order 1500, he was not brought for a judicial review, as this order requires. Despite this, he was issued an administrative detention order four days later, four days during which he was under illegal detention. In the petition against his detention, HaMoked charged that issuing an administrative detention order after the period of a person's legal detention has expired does not legalize the illegal period of his detention. R.J. was released, as were other detainees in a similar situation. But the detention orders of other detainees, whose detention was illegal but whose release the GSS opposed, were approved despite this.

Cases of illegal imprisonment through use of an administrative detention order have occurred in the past. One of them was subject of a civil suit, submitted by HaMoked, which ended this year with a compensation for the days of illegal detention.



Civil

In October 1997, A.A., from Beit Ula in the Hebron district, was placed in administrative detention for six months. In the appeal against his administrative detention order, in which A.A. was represented by HaMoked, the president of the military appeals court shortened the detention order by two weeks. The day before A.A.'s intended release, the IDF commander of the West Bank signed an administrative detention order that increased the period of his detention by four months, without presenting any new testimony. In so doing, the military commander turned himself into the appeals judge's superior. HaMoked submitted a petition in A.A.'s name to the HCJ, which accepted the petition and ruled that the IDF commander had not been authorized to extend the detention in this case.<sup>11</sup> A.A. remained imprisoned for 69 days after the date when he was supposed to have been released according to the judge's directive. HaMoked's demand that the IDF compensate him for his pointless imprisonment was rejected. In September 2000 HaMoked sued for compensation on A.A.'s behalf. In January of this year a compromise agreement was signed, which achieved the order of a ruling, leading to the State's compensation of A.A. with NIS 20,000 for the days during which he had been illegally imprisoned. **(File 8146)**

Since the beginning of April, the legislation relating to administrative detentions in the Occupied Territories has been changed a number of times. The goal of these changes has been to make easier the labor of issuing orders by dropping the requirement of a periodic review, which contributes an additional judicial review to the administrative detention order. This was to have carried out three months after the order was first approved in the initial judicial review. This easing of conditions resulted in the fact that most detainees arrested during Operation Defensive Shield and not released after the 18 days of detention stated in Order 1500, remained in administrative detention. Even those released after being arrested by this order were not immune to administrative detention.



HCJ

H.Q. was arrested at the beginning of Operation Defensive Shield and taken into GSS interrogation. On 24 April, a day before the trial requesting a re-review of the decision to extend his detention, H.Q. was released at the recommendation of the GSS. But he was released to Tarqumiyya near Hebron, while his

<sup>10</sup> Statistics from B'Tselem, [www.btselem.org](http://www.btselem.org).

<sup>11</sup> HCJ 2320/98, al-A'maleh et al v IDF Commander of Judea and Samaria et al, P.D. NB (3) 346.

home is in al-Bireh. One day later, when he tried to return home, he was arrested at one of the roadblocks and taken to prison, despite the permit he carried from the Prison Service stating that he had been released. Following exhausting clarifications, it became clear that a three-month administrative detention order had been issued against H.Q. for “being a Hamas activist,” a fact that H.Q. adamantly denies. In the judicial review of his detention, the military court decided that the classified information submitted for approval of the administrative detention was insufficient, and ruled to release him. This, however, was not the end of H.Q.’s suffering, and the military prosecutor’s appeal against this release was accepted, even though there had been no significant change in the classified information regarding him. On 6 May HaMoked petitioned the HCJ, demanding that the administrative detention order be cancelled. One day before the trial, the State agreed to shorten the period of detention. H.Q. was released on 3 June and returned home. (File 17801)

In mid-April, it became known that dozens of administrative detention orders had been issued for detainees in the Ofer Camp, and that judicial reviews of these orders were being held. This information was first used to make possible attorney visits to the Ofer Camp. The first appeals submitted were regarding orders approved during the first judicial reviews, before the attorneys were permitted to enter the Ofer Camp.

The petition of Dr. B.K., a physician from Ramallah, was heard on 25 April at the Erez Military Court. Following negotiations, the prosecution agreed to release him in five days, claiming that the GSS would probably be interested in taking him into interrogation. The judge accepted the prosecutor’s position and only after those days of uncertainty was Dr. B.K. released.

Subsequently, with the cooperation of attorneys from Addameer, appeals were submitted against decisions of approval for administrative detention orders issued later. During the appeals, the helplessness and negligence of the authorities was evident. Reliable information regarding the place of detention of administrative detainees was not conveyed, preventing their attorneys from meeting with them. Difficulties facing attorneys at the entrances to the Ofer and Ketziot camps accumulated, appeals submitted received no hearing date, and detainees were not delivered to appeals that had been scheduled. All this detracted from the basic right of every detainee to representation. In light of this difficult reality, the military appeals court president decided to release 11 of the administrative detainees since they were not brought, like many others, to the hearing. In response, the commander of IDF forces in the West Bank submitted a petition to the HCJ against the decision to release them. HaMoked and the Public Committee Against Torture in Israel represented these eleven detainees. The HCJ accepted the IDF’s claims and returned the hearing regarding them to the military appeals court. In addition to these violations, the military appeals court granted an exemption to the GSS representative from appearing at the hearings, and stipulated that he would have to hear only new legal arguments. Thus was the way blocked for the detainee, his attorney and the judge to examine the GSS witness, on whose recommendation the administrative order was issued, resulting in a violation of an administrative detainee’s right to have all of his legal and factual arguments, new and those heard in the first round, heard in an appeal; a right that derives from the Supreme Court ruling that recognizes the unique role of the appeal.

As a rule, the military justices approve the administrative detention orders and appeals are routinely rejected. The central defect, however, lies not with the number of such orders approved, but, mainly, in the way in which the military courts relate to the obligation towards a balance between the rule of law and security. This gives great weight to the claims of the GSS, unavailable to the detainee, as opposed to the instructions of the law.

Administrative detention orders issued against two detainees from Gaza were approved by a person who is not a judge, in contravention to the law, and therefore the authorities were obligated to release them at the conclusion of 18 days’ detention, as stipulated in Order 1500. Although during the appeal the prosecutor acknowledged this fact, the appeals judge rejected the appeal on the grounds that the argument of lack of authority does not stand up to the factual situation presented by the GSS.