

HaMoked, in addition to the other public petitioners in this case, firmly maintain the position that bodily harm to an interrogee is a complete taboo not permitted under any circumstances. According to the international convention against torture, which Israel has ratified, no emergency situation justifies the use of torture. The UN committee which acts under this convention concluded in 1997 that the GSS interrogation methods meet the definition of torture, and reiterated this conclusion in 1998.

Administrative Detention

The first six months of 1997 were characterised by the struggle of administrative detainees to achieve recognition of their rights by prisons, to where 140 of them were transferred from the Megiddo military prison. HaMoked aided them in this struggle with legal advice and instructed them concerning their legal rights. During this period there were approximately 400 administrative detainees.

Only toward the end of 1997 did the administrative detainees recommence their appeal of detention orders, an action they refrained from taking for over a year. The collective decision to refrain from filing appeals resulted from a feeling of extended frustration. Appeals were almost always denied and the detentions of the few who were shortened were then extended once again by the military commander.

With the recommencement of the appeals and throughout this reporting period, these appeals comprised the major part of HaMoked's activities in this area.

The first half of 1998 was characterised by a drastic decrease in the number of administrative detainees. As of the end of June there were 22 administrative detainees held in the Sharon prison, the majority detained for at least two years. In the Megiddo prison there are no more than 75 detainees, some of them detained for over a year and others for several months. Twenty persons were detained on 22 May, the majority of them from Jerusalem and the surrounding area.

The drastic drop in the number of detainees may be undoubtedly attributed to the extensive public actions against administrative detentions, centered around the activities of "Open Doors," a voluntary group established in September 1997. The activities of this group are supported by HaMoked, the Association for Civil Rights in Israel (ACRI) and B'Tselem. On the initiative of Open Doors, articles and advertisements were published in newspapers, two television programs on this issue were aired and a theatrical event took place.

There is no doubt that the involvement of HaMoked in this issue, especially the legal representative of so many detainees in appeals, was an important factor in the numerical decrease of this phenomenon.

These activities met with fertile ground. With the fading of the Oslo peace process, it appears the GSS concluded there is no longer any point in detaining so many objectors to the Oslo process for long periods of time. The aforementioned public pressure assisted the GSS in arriving at this conclusion.

Additionally, there was a change among the detainees themselves, who were influenced by the emerging attitude in Palestinian society and the long years of detention.

Finally, hundreds of persons suspected of belonging to the Hamas were detained in prisons of the PA, many of whom are still detained.

Appeals of Detention

As previously noted, appeals on behalf of administrative detainees stood at the center of HaMoked's activities during this reporting period. Attorney Tamar Pelleg Sryck of HaMoked currently represents the vast majority of administrative detainees in their appeals.

The appeals take place before a military judge at the prisons in which the detainees are held. The law stipulates that the authorities hold the appeal no more than three weeks after it was filed. However, the court secretariat did not function as required and many appeals were set for later dates, cancelled or not held as scheduled. Under these circumstances, much advocacy with the secretariat was required in procedural matters.

- * During 1998 Attorney Pelleg Sryck appeared in 210 appeals.
- * Of these, 107 appeals resulted in the shortening of the detention period.
- * In 49 of these 107 appeals, the detention period was shortened from one to three months.
- * In one appeal a decision was not given.

It should be noted that a relatively low percentage of appeals were accepted in the months July-September while the number rose toward the end of 1998. Reasons for this include the attacks, the River Whye agreement which resulted in detentions and the change in the opinion of the judges.

It should further be noted that the percentage of appeals accepted varies from 0-50%, depending on the judge.

Judicial Decisions with a Principled Character

* A judge recommended that the authorities return to the legal arrangement, similar to that existing in Israeli law, which was in practice prior to the Intifada and which guarantees judicial review of detentions with no need for the detainee to file appeals of his detention.

* The definition of "open material" which the GSS must reveal to the appellant was expanded.

* The right to request and receive open material prior to the appeal was recognised.

* Criminal records of the appellant must now be revealed to him and his legal representative prior to the hearing of his appeal.

HaMoked repeatedly contended that the judges must rule in accordance with the laws of evidence. This contention was rejected due to the existence of a contrary High Court decision (given in once instance and by one judge only). However, the judges expressed sympathy with this legal argument.

HaMoked conducted extensive correspondence with both the chief military attorney and president of the military court of appeals. Among other issues this correspondence dealt with the right of the appellant to receive all unclassified material ahead of time and not during the appeal itself, the necessity of holding the appeal hearings as scheduled and to receive judicial decisions within a reasonable period of time.

Advocacy with Additional Legal Channels

In January 1998, HaMoked submitted a petition to the regional court against the prison services in order to permit the passage of books to a detainee from his attorney. The petition became irrelevant with the release of the detainee and on a practical level thanks to Open Doors, whose activists went to the prisons on visiting days and gave the visiting family members books to be given to the detainees.

In April, HaMoked submitted a High Court petition on behalf of an administrative detainee whose detention was extended although it had been shortened by a judge in an appeal. The petition was submitted when it became clear that the extension was done on the basis of material which had been before the appeals court. Under these circumstances HaMoked saw the extension as an illegal act done by administrative authorities. The detainee was released on the eve of the hearing, but the High Court responded to HaMoked's request to discuss the petition owing to its principled legal nature. In July the High Court accepted the petition and ruled that administrative detention cannot be extended further after a judge has shortened it. The High Court noted that an exception to this rule may be made if new material or circumstances drastically change the situation.

The appeal of the longest-serving administrative detainee, Ussama Barham, held almost continuously since 8 September 1993, was held in June. His appeal was denied. On 1 September the High Court heard the petition of Ussama, who argued that the judge hearing his appeal must act according to accepted laws of evidence. In other words, the judge must not accept the hearsay testimony of the GSS representative, but summon the intelligence sources and hear them firsthand. The petition was in principle rejected. With this, the High Court declared that a judge may directly investigate the intelligence sources "in exceptional cases which will be determined according to the discretion of the judge, in accordance with the balance between vital security needs and the fundamental rights to freedom and a proper hearing."

An additional petition, which was submitted in the beginning of 1999, concerns Saleh Shehade, a detainee from the Gaza Strip whose detention appeal was rejected. In September, on the eve of his release from prison after a ten year sentence, Shehade received an order for a six month administrative detention. This petition was submitted in cooperation with ACRI and LAW.