Detainee Rights

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
No one shall be subjected to arbitrary arrest, detention or exile."

Universal Declaration of Human Rights, Articles 5 and 9

Family Visitation

"The right to hold family visits at detention facilities is a basic right, both of the detainees and of their families. This basic right arises from the understanding of man as a social being who lives within the family and the community. It also arises from the concept that the detention or arrest in and of themselves should not deny the detainee of his or her basic rights: prison walls limit his freedom of movement, but must not deprive him of his other basic rights…".[37]

Prohibition of Entry into Israel

The Israeli authorities do not allow residents of the Territories to enter Israel independently to visit relatives who are imprisoned there. All family visits take place through the auspices of the International Committee of the Red Cross (ICRC), subject to the approval of the military and coordination with it, the Prison Service and the police. In order to visit their imprisoned relatives, Palestinian residents of the Territories must apply to the military for a permit.[38] Applications are filed with the ICRC, which transfers them to the military. The Red Cross informs the families whether the applications are granted or denied, and implements the visits. The ICRC organizes shuttles which take families from city centers in the West Bank and the Gaza Strip to the various prisons where Palestinians are held. In violation of international law, most of these facilities are inside Israel.[39] In Israel, the ICRC shuttles are always accompanied by police cars.

Not all relatives are allowed to visit. The criteria for such visits have changed over the years. To date, the military allows parents, grandparents and spouses to visit. Children and siblings may visit except for those between 16 and 46 years of age. Relatives who meet these criteria and whom the military has not found to be a security threat, receive three-month visitation permits. During this period, they may visit their imprisoned relatives whenever the ICRC organizes a visitation from their area. After the three months, they must apply for a new permit. From time to time, when the military tightens the closure imposed on the Territories, no family visits are allowed at all.

In October 2000, the military stopped issuing visitation permits. Following HaMoked's intervention, visitation was gradually resumed as of March 2003.[40] After the renewal of family visits HaMoked received dozens of calls from relatives who had been turned down. In December 2003, following a petition that HaMoked filed on behalf of 21 refused relatives, the military stated it would relax its policy.[41] In reality, however, no real change could be seen. The petitioners, except one, received permits, but others, who under the relaxed policy were told that in principle they would be allowed to visit, did not receive the permits. Dozens of new requests that HaMoked forwarded to the military Legal Advisor for the West Bank, did not even receive a response.

In answer to HaMoked's inquiries, the military said that permits and responses were delayed because an arrangement had not yet been found for those who in the past were barred from visiting. The military was working on such an arrangement, they said. In August 2004, after no progress was made for more than eight months, HaMoked filed 11 petitions on behalf of applicants who had not received any response. In September, the State Attorney's Office announced that temporary arrangements have finally been made. All persons who challenged refusals predating the December 2003 announcement, and in whose case a specific examination yielded that visits could be allowed, were to receive 21-day permits. In this 21-day period, only one visit would be allowed. Although the State Attorney's Office said that the arrangement would apply to all Palestinians who had applied before September 2004, in effect no one who applied after June 2004 received a permit, except one woman. Only some of the dozens of applications forwarded to the military prior to June 2004 were granted and most of these were for persons who were mentioned in pre-petitions or petitions before the High Court of Justice (HCJ). The vast majority of all other applications received no response at all.

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37 From HaMoked's petition: HCJ Petition 7512/04, **Dar Ziada v. Military Commander in the West Bank**.

38 Residents of East Jerusalem do not need a permit.

39 Article 49 of the **Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949)** provides: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive." All the detention facilities where Palestinian detainees and prisoners are allowed to receive visitors are in Israeli territory, except for the Ofer facility in the West Bank. The temporary detention facilities are in the West Bank too, but no family visits are allowed there at all.

40 HCJ Petition 11198/02, **Diria et al. V. Commander of Ofer Military Detention Facility et al**.

41 HCJ Petition 8851/03, **Nahleh et al. v. IDF Commander in the West Bank**.

At the end of October, the State notified HaMoked that a permanent arrangement had been reached. From now on, anyone whom the military turns down because his entrance to Israel would, according to the military, be a security threat, can reapply; the application will be examined individually, and if it is found that the applicant can be allowed into Israel with the ICRC shuttles for the purpose of visiting an imprisoned relative, the applicant will receive a 45-day permit for a single visit. Once the permit holder visits the relative, the permit expires. Applicants will then have to reapply according to the same procedure. The military announced that the new procedure would go into effect at the end of November 2004.

There were several problems in the proposed arrangement. Because so many entities were involved in each application, the process would be cumbersome and long and, inevitably, enable very infrequent visits. Also, the procedure offered no solution for Palestinians wishing to visit several relatives.

HaMoked nevertheless decided to wait and put the new arrangement to the test. However, very few people received permits after the effective date in November 2004 and these too, only after intervention by HaMoked on a case-to-case basis. The military only started implementing the procedure in April 2005. HaMoked will continue to monitor implementation.

L.N. has been unable to visit her sons, who were imprisoned in Israel, for nearly two years. This, despite the fact that she applied for a permit immediately when visitation was resumed in March 2003 and even though the military never claimed she could not enter Israel because she was a security threat. The only reason for the military's refusal to let L.N. visit her sons was that she did not live where the records said she did.

In 1967, immediately after the Israeli occupation, L.N. and her husband moved from the Gaza Strip to the West Bank. Although they notified the authorities of their change of address several times, the records were never updated. When L.N. applied for a permit to visit her sons, in March 2003, the ICRC told her that her application had been denied because her registered address was in the Gaza Strip.

L.N. contacted HaMoked for help. Three months after HaMoked applied to the State Attorney in Charge of the West Bank, the following response was received: "We are unable to process L.N.'s application because she is a resident of Deir al Balah."[42] HaMoked sent a sharp response, explaining that clerical errors cannot relieve the military of its duty to let L.N. exercise her right to visit her imprisoned sons, and demanding a response. A year went by, and despite several reminders from HaMoked, no answer was received.

In July 2004, HaMoked petitioned the HCJ jointly on behalf of L.N. and M.G., another woman who lives in the West Bank but is registered in the Gaza Strip, demanding that they be allowed to visit their sons. The petition read: "The respondent only invokes this argument when the petitioners' basic rights are at stake. For the purpose of arresting and trying their sons and demolishing the petitioners' homes, it did not matter that they were registered as residents of the Gaza Strip.

But where the exercise of constitutional basic rights is concerned, suddenly the issue of old records becomes a wall separating between the respondent and the petitioners."[43]

In September 2004, the State Attorney's Office announced it would expand the new visitation arrangement to apply to residents of the West Bank who are registered in the Gaza Strip. In January 2005, nearly two years after first applying to the ICRC, L.N. finally received a 45-day permit. **(Case 25758)**

Prevention of Family Visits by Prison Authorities

The Prison Service Regulations stipulate that no visits are allowed from convicted former prisoners, except subject to approval by the Commissioner.[44] This regulation is all-embracing and applies to all former inmates, regardless of the crime for which they were incarcerated, the duration of their prison sentence or the time that has passed since their release.

Although the authority to lift the prohibition is expressly granted to the Commissioner, the Prison Service orders provide that this power is vested in the Section Chief and enumerate the criteria to be weighed.[45]

HaMoked handles many cases of former convicts whose applications to visit their imprisoned relatives are denied. These efforts are often successful, but the process is long and the procedures that the Prison Service employs in these cases are not transparent.

HaMoked addresses the applications to the Prison Service Commissioner. In accordance with the Prison Service orders but in violation of the Prison Service Regulations, answers are provided by the Section Commanders. If the Section Commander denies visitation, there is no appeal. Most of HaMoked's applications to the legal advisor of the Prison Service to reconsider rejections received no response at all. In some cases, where no response was received for a very long time, only a petition to the HCJ got the State Attorney's Office to intervene, and visitation was finally permitted.

But even when visitation is permitted, the situation is unclear. In most cases, the permit only states that the person "is not barred" or that he has received "permission" to visit. It frequently happens that a former convict who has received a permit and visited with his relative for months, arrives at the prison gate and is suddenly told he is barred from visiting or that his permit is "old" and must be renewed. Only rarely do the permits state an expiration date. Most permits do not stipulate any such date, and bearers have no way of telling whether or when they expire.

Furthermore, since permits are issued by Section Chiefs, they are only valid for that specific section. If a detainee is transferred to a facility in another section, the permit no longer holds. Permits do not state that they are section-specific. The existence of this limitation was inferred after visitors had been told that their permits did not apply at the new prison to which their relatives had been transferred.

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42 Letter to HaMoked from Captain Tsurit Fahima, Head of Legal Section, on behalf of the Military Legal Advisor for the West Bank, July 13, 2003.

43 HCJ Petition 6855/04, **Naji v. Military Commander in the West Bank**.

44 Prison Service Regulations, 1978, Article 30.

45 Commission Order 04.42.00 – "Visitation", Article 15.

Whether the permit is invalid because it has allegedly expired or because the detainee has been transferred, the visitor has no choice but to reapply. Regardless of the reason why the permit is no longer valid, it generally takes very long – three to five months – to get a response, whether positive or negative. All these delays are in violation of the Prison Service orders regarding security prisoners, which provide that responses must be given within two weeks.[46]

Although there are explicit criteria that section commanders must follow when considering former prisoners' visitation applications, rejections are never explained. Under the Prison Service orders, the relevant elements are whether the applicant is a relative and how closely related he is to the detainee; whether the detainee receives any family visits; whether the applicant is still involved in any criminal activity; and when he was last released from prison. The orders expressly state that a former convict should be allowed to visit, unless there is intelligence that he has criminal ties with the detainee and there are concerns that the meeting would be abused or would pose a threat to State security.[47] The fact that responses are not explained gives rise to concern that denial is arbitrary and that the mandatory criteria are not even weighed.

R.A. was arrested in August 2000. Two months later he was sentenced to life plus five years. In the first two months after his arrest, his father, Z.A., visited him three times. When Z.A. arrived at the gates of Shata Prison for a fourth visit, he was not allowed in.

Nearly 20 years earlier, Z.A. served four months in prison for polygamy. The Prison Service speedily granted HaMoked's application to lift the bar against Z.A., and for a year and a half the visits went smoothly.

When Z.A. tried to see his son in June 2004, the Prison authorities refused to let him in, arguing that he was a former convict. HaMoked once again contacted the Prison Service Commissioner's office on his behalf. At first, the office said the prohibition would not be lifted because of security reasons.[48] HaMoked applied again, demanding a detailed explanation, based on the fact that a previous rejection had already been withdrawn. The Prison Service then approved visitation, and Z.A. could once again see his son.

Toward the end of 2004, Z.A.'s son was transferred from Nafha Prison, which is in the northern section, to Ramla Prison, in the central section. When Z.A. first wanted to visit him there, he was refused again. For the third time, HaMoked applied to the Prison Service to lift the prohibition. Only three months later was Z.A. allowed to visit his son.

(Case 15326)

J.M. was born in 1986. He was three months old when his father was sentenced to life. At the age of 14, J.M. himself was arrested under suspicion of throwing stones at soldiers. He was sentenced to four months in prison. Until his arrest and for some time after his release, J.M. visited his father regularly. When he turned 16, he received an ID card, as required by law. From that age on, the Prison Service would not permit him to visit his father.

In December 2002, HaMoked applied to the Prison Service on behalf of J.M.,

seeking to lift the prohibition on his visits as a former convict. Within a month, the Prisoner Liaison Officer for the southern section said he could not visit his father "because of security/intelligence reasons."[49] HaMoked appealed the decision to the legal advisor of the Prison Service, but despite repeated reminders, received no response.
After more than a year and a half of silence, in October 2004 HaMoked turned to the State Attorney's office demanding its intervention. One month later, the Prisoner Liaison Officer for the southern section notified that J.M. would be allowed to visit his father.

The first time he tried to exercise his permit, the authorities at the Eshel Prison, to which J.M.'s father had been transferred, refused to let him in, because of his record as a former convict. J.M. insisted and told them that the previous prohibition in his case had been lifted. Indeed, another computer search immediately revealed that he should be allowed to visit.
J.M.'s permit did not specify any specific expiration date. As of January 2005, J.M. has already managed to visit his father around three times – after more than two years in which they had not seen each other.
(Case 24340)

Administrative Detention

Administrative detention is detention without a charge sheet or a trial. Security legislation in the Occupied Territories authorizes the military commander to issue administrative detention orders effective for six months, and extend them indefinitely.[50] A military commander issues administrative detention orders based on a summary of confidential intelligence from the General Security Services (GSS). This information is supposed to be compelling evidence of the threat represented by the individual, to the extent that his administrative detention is required. The information is not revealed to the detainee or the attorney representing him or her in the judicial review performed by a military judge. In these circumstances, not only must the detainee's counsel grope in the dark, but also the judge's ability to uncover the truth is very limited. The detainee may appeal the decision of the lower court to a military court of appeals,[51] but in the vast majority of the cases, the order is sustained. The detainee can still petition the High Court of Justice (HCJ), but thousands of cases already addressed by the HCJ indicate that there is little hope for their release.

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46 Commission Order 03.02.00 – "Rules Relating to Security Prisoners", article 9.

47 Commission Order 04.42.00 – "Visitation", article 15.

48 Letter to HaMoked from Major Leah Sosel, Information Control Documentation Officer, September 6, 2004.

49 Letter to HaMoked from Lt. Col. Geula Eliezer, Prisoner Liaison for the southern section, January 30, 2003.

50 In the West Bank: Order Regarding Administrative Detention (Interim Order), Order No. 1226, 1998; In the Gaza Strip: Order Regarding Administrative Detention (Interim Order), Order No. 941, 1998. The orders are almost identical.

51 Ibid.

The mechanism of administrative detention exists inside Israel as well, by force of a law passed by the Knesset. In Israel, the authority to issue an administrative detention order is vested in the Minister of Defense. The judicial review is performed by the president of the District Court, whose decision can be appealed to the Supreme Court. The appeal is presided over by a single judge, in a procedure similar to that of military court.

In 2004, HaMoked's attorney who represents administrative detainees appeared in 142 military court hearings. In most of the cases, the judges sustained the detention orders. Even when they held that the orders could not be extended any further, the military commander issued an extension order, claiming that new information has come to light. There were only 11 cases in which detainees were released following a judge's decision.

In the beginning of 2005, R.Q. had been held longer than any other administrative detainee in custody at the time. R.Q has been in administrative detention for nearly four years, since July 2001. Over the years, military judges instructed to end his detention three different times. But on each, the detention was extended under the pretext of "new intelligence."

In 2003, an appellate judge sustained the fifth administrative detention order against R.Q., which was to expire at the end of October 2003, but stated that his detention must not be extended beyond that date.[52] But when R.Q. was to be released at the end of this term, more than two years after his arrest, the military issued a new, sixth, order, extending his detention by another four months. The appellate judge cut the term by two months and held that only new and significant information would justify another extension.[53]

When the detention was to end under a judge's decision, the military issued an order assigning R.Q.'s residence to the Gaza Strip. The order was never carried out, because the military issued a seventh administrative detention order instead. Later on, the military admitted it had started the process for R.Q.'s forced relocation to Gaza because of the judge's instruction that new intelligence would be required to extend the order, and that when such intelligence was compiled, an administrative detention order was issued instead.[54]

On July 3, 2004, the eighth administrative detention order against R.Q. was issued. The judge shortened this order by two months as well,[55] but it was followed by another order, number nine.

In December 2004, one month after the ninth order was issued, R.Q. petitioned the HCJ through HaMoked, demanding that the military revoke the order against him or launch a systematic, vigorous investigation of the suspicions that led to his administrative detention, and put him to trial – or release him.

In his petition, R.Q. described what he was going through:

"I repeatedly asked my judges to order an investigation of the suspicions underlying my arrest. I want to stand trial, because in a fair criminal proceeding I will be able to defend myself, while in the administrative detention proceeding I feel helpless against the evidence, which is all confidential.

"Of all my judges, there was one who dared to question the confidential material, and on two separate occasions ordered my release. But the prosecution later argued that there was 'new intelligence' which was so incriminating that the commander could extend my detention despite these decisions … Sometimes I see in my judges' eyes or hear in their words or between the lines, a hint of hesitation, an inclination to end my detention. But they decide differently. It seems only natural to me that it would be difficult for a judge who only gets evidence from one side while I cannot respond, to make an independent, objective decision …".

Having reviewed the confidential material, the HCJ sided with the State, sustaining the administrative detention order against R.Q.[56] That order expired on March 1, 2005. R.Q.'s detention was then extended by another three months. **(Case 36309)**

M.N. was arrested in November 2002, at the age of 15. Five days later, a six-month administrative detention order was issued against him. At first, he was held in the Etzion temporary detention facility. He was denied many of the rights granted to detainees under military law: he did not receive adequate medical treatment; he was not allowed a daily walk in an open courtyard; and he was not allowed any family visits. However, the authorities strictly upheld the provision that minors must be held separately from adults. In order to adhere to this requirement, they kept M.N. in absolute isolation for 45 days. His isolation ended on his sixteenth birthday, when, under military law, which applies in the Territories, he became an adult. M.N. was then transferred from the Etzion facility to Ofer Prison and from there to Ketziot Prison. The appeal HaMoked's counsel filed on his behalf was denied.

In January 2003, M.N. was transferred to Ofer for questioning. He denied the suspicions against him and the investigation file was closed shortly after, because the evidence was insufficient. Toward the end of his detention, he was taken to Ofer for questioning once again. When the interrogator realized that the material in front of him was the same material about which M.N. had been questioned back in January 2003, he decided not to question him again. M.N. was returned to Ketziot, and a second six-month administrative detention order was issued.

In the judicial review, HaMoked's counsel argued that the intelligence on which the order was based was outdated and that this was the same material that led to M.N.'s arrest in November 2002. Although the military prosecutor did not deny this, the military judge nevertheless sustained the order. The appeal was also denied.

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52 Administrative Detention Appeal, 1111/03, **Qadri v. Military Prosecutor**.

53 Administrative Detention Appeal 1777/03, **Qadri v. Military Prosecutor**.

54 Response of Respondent No. 1, HCJ Petition 11006/04, **Qadri v. IDF Commander in the West Bank et al**, December 9, 2004.

55 Administrative Detention, 1750/04, Judicial Review, July 12, 2004.

56 HCJ Petition 11006/04, **Qadri v. IDF Commander in the West Bank et al**.

A year later, the military commander issued another order extending M.N.'s arrest by another six months. HaMoked's counsel argued, among other things, that the court should consider his young age and the fact that a long time had passed since his arrest and should therefore order his release. Disregarding these arguments and despite the fact that the order again relied on the same old intelligence that led to M.N.'s arrest a year earlier, the military judge approved the extension order, but shortened it by three months. The judge stressed that he was cutting the order shorter only so that the detention can be reconsidered at an earlier time, but added that "unless substantial new intelligence is compiled and should the relative calm on the ground continue… it will be hard to justify detaining M.N. any longer."[57]

When these three months ended, the military sought to extend M.N.'s detention by another three months. The military prosecutor admitted that no new material had been compiled, and based its entire argument on the fact that in M.N.'s area of residence, the situation had not calmed down. The military judges who adjudicated the extension, both in the judicial review stage and in the appeal, accepted the prosecutor's position and upheld the order.[58]

For a year and a half the military judges ignored M.N.'s young age, the fact he had not been given the opportunity to graduate high school, that the investigation file had been closed because of insufficient evidence, that his father was willing to vouch for his not engaging in any activity and that M.N. repeatedly stated that he had no intention of harming Israelis and that all he wanted was to go back to school and to his mother.

A year and a half after his arrest, the military commander sought to extend M.N.'s detention for the fourth time, by another three months. Responding to a question from HaMoked's attorney, the military prosecutor said there was no new evidence this time either and that M.N. was not suspected of belonging to any organization. All the prosecution had to say in open court was that if M.N. were released, he would "fall like a ripe fruit" into the hands of organizations wishing to harm Israel.[59]

Although all the extension orders against M.N. were based on the same intelligence that led to his arrest in November 2002 and no new information was ever presented, the judge who presided over this judicial review explained that "since there is no current information" the order should be cut shorter by one month. The judge stipulated that without new material, M.N.'s detention must not be extended again and the military would have to release him once this order expired, in July 2004.[60]

When the fifth detention order expired, the military did not seek an extension. M.N. was released, finished high school and started studying psychology at the university.

Under the Fourth Geneva Convention, the occupying power may use internment, but only when necessary for imperative reasons of security. In any case, the internee must be allowed to appeal his arrest.[61] Israeli law recognizes that administrative detention is a radical measure and because of its serious infringement on the detainee's rights, stipulates that it must only be used under special or unusual circumstances.[62]

Israel ignores these principles and uses administrative detention extensively. In 2004, at any given moment, 657 to 863 administrative detainees were held in military facilities and by the Prison Service.[63] Also, in 2004 the military issued administrative detention orders against at least three people who engaged in non-violent political activity. These three detainees are from the village of Budrus and are key activists in the the Popular Committee against the Apartheid Wall. HaMoked's attorney took part in representing two of them.

In January 2004, administrative detention orders were issued against A.M. and N.M., two brothers from the village of Budrus, who are active against the separation wall. They were brought before the same military judge. A.M. was released since the judge was convinced his detention was motivated entirely by his activity against the wall. In his decision, the judge wrote that "the military commander may not use his power to order a man's administrative detention only because he was involved in activity of this kind." Despite the similar circumstances, the judge decided to sustain N.M.'s detention. Explaining his decision, he said that the intelligence pertaining to N.M. indicated "activities supporting terrorism" in association with the Tanzim.[64]

HaMoked's counsel, who represented N.M. in his appeal, argued that N.M. was arrested only because of his activities against the wall and that, as held in his brother's case, this was not sufficient grounds for administrative detention.

The prosecutor argued that N.M. was not being detained because of his activities against the fence but because of his ties with Tanzim.

The appellate judge, like his colleague before him, also reviewed the intelligence. In his decision, he commented on the confidential material and the conduct of the military prosecution and the GSS: "The material indicates that there is indeed information linking the appellant with Tanzim. However, this evidence spans several years … The recent evidence, however, pertains specifically to his protest activity against the fence. I therefore asked the prosecution why the appellant was arrested only now, although his connection with Tanzim has been known for years...".

The judge's question was forwarded to the GSS, and then – as the judge put it – "the truth came to light and I was told

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57 Decision, Administrative Detention Appeal 2313/03, **Commander of IDF Forces in the West Bank v. Alnajar**, December 2, 2003.

58 Administrative Detention 275/04, **Commander of IDF Forces in the West Bank v. Alnajar**, Administrative Detention Appeal 349/04, **Alnajar v. Commander of IDF Forces in the West Bank**.

59 Hearing of Administrative Detention 1424/04, **Commander of IDF Forces in the West Bank v. Alnajar**, May 24, 2004.

60 Ibid, decision.

61 **Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949)**, Article 78.

62 For example, Administrative Detention Appeal 4/94, **Ben Horin v. State of Israel**, Court Decisions [PD] 38(5) 329, 334; Criminal Rehearing 7048/97, **Doe I et al v. Minister of Defense**, Court Decisions [PD] 44(1) 721, 740-741; Administrative Detention Appeal 8607/04, **Fahima v. State of Israel** (not published), paragraph 8; Administrative Detention Appeal 2/86 **Doe v. Minister of Defense**, Court Decisions [PD] 31(2) 508, 513.

63 According to B'Tselem: http://www.btselem.org/English/Administrative_Detention/Statistics.asp, last visited July 21, 2005.

64 Decision, Administrative Detention Appeal 188/04, **Morar v. Military Prosecutor**, February 2, 2004.

that the timing of the arrest was indeed related to disturbances associated with the construction of the fence…" The judge further noted that the military prosecution misled the lower court into believing there were other reasons for the arrest. The judge held that the reason for N.M.'s arrest was indeed his activity against the wall, and therefore ordered his immediate release.[65]

A.A., also a resident of Budrus and a key activist against the wall, was arrested eight months after N.M.'s release. The judicial review in his case was held by the same judge who sustained the order against N.M. but released his brother. In answer to questions presented by HaMoked's counsel, the military prosecutor confirmed that no violent activity was attributed to A.A. and that some of the evidence related to his activity against the wall.

A.A. did not deny his activities against the wall, and explained to the court that he believed in a non-violent struggle. His statement was supported by an affidavit from A.M., who stated that among the Budrus members of the Popular Committee against the Apartheid Wall, it was A.A. who always advocated restraint during demonstrations and urged others not to use force.[66]

Having reviewed the confidential material, the judge held that the main cause for the administrative detention order against A.A. was his activity against the wall and therefore ordered his immediate release.[67] The military prosecution appealed the decision. As in the case of N.M., the prosecution argued that A.A. was arrested because of other activities. At the hearings, A.A. reiterated that his was a non-violent campaign. The appellate military judge held that the evidence did include some information that was not related to A.A.'s activities against the wall, and that this evidence indicated a future threat, which was the cause for the detention. The judge did not disclose any of this evidence, but held that it did not justify four months of detention, and cut the term by half.[68]

The Secret Detention Facility

Israel maintains a secret detention and interrogation facility whose location has never been disclosed officially. Its existence was exposed in habeas corpus petitions HaMoked filed with the High Court of Justice (HCJ) in 2002, seeking to reveal the whereabouts of three Palestinians who had disappeared and all attempts to trace them through the regular channels failed.[69]

Detainees are held at the secret facility in harsh physical conditions. They are not told where they are being held and no one else is informed of their whereabouts. At first the State tried to continue hiding the existence of this facility, but eventually it admitted its existence and provided a few details about it, including that it is in a secret military base under the code name "Facility 1391".

In December 2003, HaMoked petitioned the HCJ against the existence of this secret detention facility. HaMoked argued that concealing the location of a detention facility is in violation of Israeli law, including military law, and of international law, all of which require that the authorities to give notice as to "the arrest and place of detention."[70]

HaMoked's petition included affidavits by detainees who had been held in the secret facility, which generated a bleak picture of the physical conditions and interrogation methods practiced there. Individuals were held in atrocious conditions of sensory deprivation, including frequent and long periods of isolation. They were denied basic sanitary conditions and subjected to torture, including abuse and sexual humiliation. When they asked where they were, their jailers said they were on the moon, in a different country, or other such answers. HaMoked's petition also included a psychiatric evaluation asserting that the secrecy shrouding the facility's location was part of a method designed to induce disorientation among the detainees as the first step toward breaking their spirit.

In the first hearing in November 2003, the HCJ announced it would only address the lawfulness of the existence of a secret facility. As for the physical conditions and methods of interrogation, HaMoked was instructed to first exhaust all remedies vis-à-vis the relevant authorities.[71]

The State submitted its statement of defense in May 2004, in which it repeated facts and arguments it had previously raised. The State claimed the location of "Facility 1391" was classified not for the purpose of violating detainees' rights but for security reasons. The State, however, refused to publicly enumerate these "security reasons." The State also claimed Facility 1391 is not a detention facility but an interrogation facility. It is designed for "special cases", mainly foreigners; most internees are not kept there for long periods of time and are transferred once their questioning is completed; Palestinians from the Territories were held there because during the military invasion of the West Bank in the spring of 2002, "Operation Defensive Shield," all the other facilities were in full occupancy; Palestinian internees were detained there until the spring of 2003.[72]

The State argued that the legal duty to give notice as to the arrest and whereabouts of a detainee does not necessarily mean that a specific geographical location must be divulged and that providing the name of the place is sufficient. The State accordingly argued it was fulfilling its legal obligation by informing the families that their relatives were being held at Facility 1391 and providing them with a contact

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65 Ibid.

66 Court transcript, Administrative Detention West Bank 2628/04, **IDF Commander in the West Bank v. Awad**, November 1, 2004.

67 Decision, Administrative Detention West Bank 2628/04, **IDF Commander in the West Bank v. Awad**, November 1, 2004.

68 Decision, Administrative Detention Appeal 2431/04, **Military Prosecutor v. Awad**, November 4, 2004.

69 See: HaMoked, **Annual Report 2002**, pp. 73-75; **Annual Report 2003**, pp. 34-35.

70 In Israeli law: Criminal Procedure Act (Enforcement Authorities – Arrests) 1966, Article 33(a); in military law: Order regarding Security Instructions (Amendment No. 53)(Judea and Samaria)(No. 12220) 1988, Article 3(a).

71 Decision, HCJ Petition 9733/03, **HaMoked v. State of Israel et al.**, December 1, 2003.

72 The State Attorney's response, HCJ Petition 9733/03, **HaMoked v. State of Israel et al.**, May 19, 2004.

address. In this context, it should be noted that the State started notifying families that their relatives were being held at Facility 1391 only after its existence had been exposed. The State further argued that the conditions inside the facility complied with the standards stipulated by law and that its secrecy did not detract from the detainees' rights.[73]

Shortly before a hearing was to be held, HaMoked filed a brief before the HCJ, presenting its main arguments. In the brief, HaMoked emphasized the fact that the secretive nature of the facility and the lack of substantial outside supervision (even the International Committee of the Red Cross is not allowed in) subject internees to potential torture. HaMoked cited the fact that under international law, merely holding a person in a secret location, is considered cruel and inhuman treatment, precisely because of the danger of torture. Where the secret facility in Israel is concerned, the danger is even greater, because of the profile of most of the detainees: foreign residents who are suspected of subversive activity. These detainees are particularly vulnerable to harm in that the soldiers perceive them as "the other" and as "the enemy," and they are cut off from their homeland.[74]

HaMoked explained that the interpretation the State has offered for the duty to reveal the place of detention was illogical. The conclusion this interpretation led to was that, in fact, any person could be detained at a secret facility without anyone knowing where he or she was. The power to hide the location of a person's place of detention is undemocratic. It is a significant step down the slippery slope to totalitarianism.[75]

A hearing in the petition was held in December 2004. The Justices voiced their concern over the fact that Israel has a secret detention facility. The President of the Supreme Court, Justice Aharon Barak, said it seemed there were prisons "somewhere out there" about which no one knew anything, and that this gave rise to an uneasy feeling that there were people who simply vanished. Justice Tirkel criticized the State's interpretation of the law and stated that this reading rendered the legal requirement of publicizing a person's "place of detention" meaningless. President Barak concurred and added that a person has the right to know where he is being held, and that in this respect, the number 1391 is absolutely meaningless.[76]

At the request of the State, the second part of the hearing was held ex parte. The Court offered the State several possible solutions to which it was to relate in its response. In the interim period, the State was to notify the Court (ex parte) of any new detainee being held in the facility, and the Court would react on a case-to-case basis. As at June 2005, around six months after the hearing, the State has not yet filed its response with the HCJ.

Lack of Investigation

In its response to HaMoked's petition regarding the existence of Facility 1391, the State argued that the secrecy of this facility did not undermine detainees' rights: the physical conditions are appropriate, the methods of questioning lawful, the conduct of the staff is impeccable and all the rights to which internees are entitled are upheld.

These arguments are dubious, considering the numerous affidavits collected by HaMoked's attorneys from former detainees These affidavits depict a harsh reality of inadequate physical conditions, humiliating

and inhuman methods of interrogation and even torture.

As noted, the HCJ refused to address the physical conditions and methods of interrogation directing HaMoked to first exhaust all remedies vis-à-vis the relevant authorities. In December 2003, HaMoked contacted the Military Advocate General and the GSS Ombudsman in charge of Detainees' Complaints (via the State Attorney's Office), seeking an investigation of the complaints emerging from the affidavits of 10 persons who had been held at Facility 1391 at different times, and which were attached to the petition.

One of the complaints forwarded to the GSS and the military was that of S.A., who had been held at the secret facility for about a month. In his affidavit, which was attached to HaMoked's petition, S.A. described the conditions in which he was held and the methods of interrogation to which he was subjected. His testimony is consistent with others about this facility: "… They blindfolded me with black cloth and dark sunglasses on top, and put a canvas bag over my head … I asked the policeman who cuffed me where they were taking me, and he said he was not authorized to say and that he did not even know. They made me lie down on the floor of the jeep and covered me with a blanket … We stopped somewhere; they put me in a room and took the blindfold off. It was an empty room. Ten soldiers in regular military uniform came in. They completely stripped and searched me … the soldiers all had clubs … They took me, with my eyes shut, to the cell … the walls were rough, completely black; the door was black too. There was a very dim light, but the kind that got in your eyes whether you were lying down or sitting up, in a way that made it difficult to see … There was a big plastic bin in the cell which was supposed to be used as a toilet. That was terrible for me … the smell whenever I removed the lid was intolerable and it lingered in the room … which had no windows or openings for fresh air … There was no water in the cell. They would give me a bowl/container of water three times a day with my meals, but the water wasn't clean …".

Comments made by S.A.'s interrogators indicated that the physical conditions were part of a system designed to break the detainees' spirit: "From my conversation with the interrogator I understood that this cell was known as 'the tomb' and that if I cooperated with him, they would transfer me to a more comfortable cell."

S.A.'s interrogators used physical violence against him and even methods of torture that the HCJ had prohibited: "In the first three days, the interrogation took place in the same room; they didn't let me sleep; I was tied to the chair in the 'shabah' position [the prisoner's hands and legs are shackled to a small, slanted chair that forces him forward in a painful position]. They sat me on a bench one-meter long, in the corner of the room, so I couldn't lean back. During the questioning, they hit

73 Ibid.

74 Brief, The Petitioner's main arguments, HCJ Petition 9733/03, **HaMoked v. State of Israel et al.**, December 12, 2004.

75 Ibid.

76 The Justices' comments were documented by HaMoked's attorney who was present in the courthouse.

me … The interrogators would put their feet on my private parts … my hands were tied … whenever I gave a 'wrong' answer, they hit me. I often fell off the chair. The beatings were humiliating."
S.A.'s interrogators used the physical conditions and secrecy of the facility to terrorize him: "Throughout my detention there, I was isolated from the world. I saw no other detainees; the only people I saw were my interrogators. The interrogator kept saying that no one knew where I was and that they were free to keep me there as long as they liked … This was very powerful … there were many moments when I feared for my life; I was afraid they would cripple or maim me; I wasn't sure I would get out of there alive."
(Case 36315)

The authorities' reaction reflects their dismissive attitude toward the serious allegations emerging from these statements.
The GSS ombudsman's response revealed that only two of the ten complaints had been looked into. Probes into the other eight commenced only after HaMoked's request in December 2003. Shortly thereafter, the ombudsman announced that three of the complainants were never interrogated by the GSS, and that inquests into the other five complaints have begun.[77] In April 2004, the Deputy Attorney General said that the investigation by the GSS' ombudsman of four complaints is still underway and that HaMoked would be advised of the results.[78] One of these four complaints was S.A.'s. Despite this reassurance and despite HaMoked's repeated reminders, the update never arrived.
The military did not respond to HaMoked's communications on this subject for about one year. When the response of the Chief Military Prosecutor came in, it turned out that the military has not investigated the complaints and had no intention of doing so. In her letter, the Military Prosecutor raised various arguments in answer to all the complaints, without addressing any of them individually. One of her arguments was that the complaints could not be examined because they stretched over more than 10 years and related to dozens of soldiers who could no longer be identified.[79]

In December 2004, given the authorities' continued reluctance to investigate the complaints, HaMoked petitioned the HCJ to instruct them to do so and, if the findings so justified, prosecute the persons responsible for S.A.'s incarceration and interrogation.[80]
In this petition, HaMoked pointed out that one of the arguments the State had used to justify keeping the existence and location of Facility 1391 secret was that this did not jeopardize the wellbeing of detainees. But when the State's position is challenged by the serious allegations made by S.A. and others, the State refuses to conduct a thorough investigation and expects the public and the Court to accept its position without providing any proof.
In its petition, HaMoked listed a number of decisions made by international tribunals stipulating that where torture is suspected, the State is under a special duty to investigate. Under circumstances of this kind, the State is to launch an independent inquest, whether the victims complained or not and investigate the case thoroughly and effectively. In S.A.'s case, the State completely shunted responsibility for looking into the alleged torture, making do with a cursory check.

In its response to the petition, the State Attorney's Office reiterated their claim that no need was established which would justify launching an investigation.[81] At the same time, the State did not bother refuting some of S.A.'s arguments and ignored the fact that his accusations were corroborated by many other affidavits, which, combined, indicated a longstanding tradition of misconduct.

In June 2005, the HCJ rejected the petition filed on S.A.'s behalf and another petition HaMoked had filed, demanding to investigate the allegations of another former internee at the secret facility.[82] The Court laconically stated that the investigation carried out by the authorities was reasonable. The Court thus helped whitewash misconduct in a secret facility whose very existence it had denounced in another hearing only six months before.

Conditions of Detention

Military Temporary Detention Facilities in the West Bank

In May 2003, HaMoked petitioned the High Court of Justice (HCJ) to instruct the military to improve holding conditions in its five temporary detention facilities in the West Bank. These facilities are designed for detainees in transit before they are sent to their permanent detention facilities or released. The petition detailed the harsh physical conditions in these facilities: congestion, no access to medical services, long detention despite the designation of these facilities as temporary, unspeakable sanitary conditions, poor quality of food, violence by the soldiers, and so on.[83]

Shortly after the petition was filed and following a recommendation made by the HCJ in another one of HaMoked's petitions,[84] the Chief of Staff appointed an Advisory Committee that was to examine the physical conditions at the temporary detention facilities and submit recommendations. The Court announced it would monitor the Committee's work and the implementation of its recommendations.

HaMoked continued monitoring the conditions at the temporary facilities and filing affidavits and grievances with both the Court and the Advisory Committee. HaMoked's findings were that any changes that may have occurred thanks to the Committee's work were minor and insufficient and that during 2004, detention conditions at the temporary facilities remained unacceptable:

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77 Letter to HaMoked from Talia Sasson, head of the State Attorney's Special Operations Unit, January 29, 2004.

78 Letter to HaMoked from Malchiel Blas, Deputy Attorney General (Consultant), April 13, 2004.

79 Letter to HaMoked from Col. Einat Ron, Chief Military Prosecutor, December 18, 2004.

80 HCJ Petition 11447/04, **HaMoked v. the Attorney General**.

81 Respondents' response in HCJ Petition 11447/04, **HaMoked v. the Attorney General**, March 31, 2005.

82 Decision, HCJ Petition 11447/04, **HaMoked v. the Attorney General**.

83 HCJ Petition 3985/03, **Badawi et al. v. IDF Commander in the West Bank et al**.

84 HCJ Petition 3278/02, **HaMoked et al. v. IDF Commander in the West Bank**.

- Food was scarce and of low quality. In January 2004, there was not enough bread in four of the five facilities.

- In wintertime, detainees are exposed to the cold. Some of the structures leak and mattresses and blankets get soaked. New detainees often do not get enough blankets and veterans have to share theirs with them. Many detainees are arrested at home, wearing thin clothes that do not protect them against the cold. Supply of clothing at the detention facilities is insufficient.

- Sanitary conditions also leave much to be desired. Detainees do not get enough detergent for the floor and laundry or enough soap. In some facilities, there is no free access to toilets so detainees are forced to use containers, which stay in the crowded cells.

- Although in its petition HaMoked had warned that the medical services at the detention facilities were inadequate, the situation has not changed. Detainees still complain that even in medical emergencies it is very hard to see a doctor.

- Detainees are completely cut off from the outside. Their watches are taken upon their arrest. They have no newspapers, TV or radio sets. The military does not allow family visits or incoming or outgoing letters.

- Toward November 2004, increasingly more complaints came in that detainees were being held for extended periods of time at facilities that were designated as transit facilities. Complaints of congestion amounted as well, despite the. Committee's recommendations for improvements in these two areas.

Even though the Court limited itself to monitoring the Committee's work and the implementation of its recommendations, HaMoked was not allowed to review the Committee's findings and check that they coincide with the picture emerging from statements of detainees or whether its recommendations were indeed being carried out. Despite repeated requests, the State Attorney's Office refused to forward the Committee's reports to HaMoked. Certain details from the Committee's first two reports, submitted in July 2003 and January 2004, could be inferred from the references that the State Attorney's Office made to these reports in its response to the petition. Apparently, many of the Committee's findings confirm the complaints that detainees have lodged with HaMoked, but little has been done to fix the situation.
In February 2004, the State Attorney's Office promised to forward the Committee's third report to HaMoked. It was further agreed that if the need for additional improvements emerges from the report, according to HaMoked's understanding, another Court hearing would be scheduled. As of April 2005, the Committee has not yet submitted the third report.

In November 2004, HaMoked's attorney contacted the Chief of Staff's Advisory Committee directly, regarding the temporary detention facilities. In her letter, she specified details she had learnt from the statement of A.A., an

administrative detainee who had been kept at the Binyamin transit facility for about a month:

When A.A. entered the facility in the end of October 2004, he received only one blanket. It was very cold in the tents, and the veterans shared their blankets with him. When he was picked up, A.A. was wearing only a shirt and a thin sweater. He asked for warmer clothes to protect him against the biting cold, but did not receive any.

A.A. was locked up with 24 other detainees in a tent with only 20 mattresses. The inmates also had to share their eating utensils and food: they only received three food trays for every five people.

The structure which housed the inmates' toilets had no door, only a blanket. A door was installed the day before the Red Cross inspection, a door was finally installed. The toilet seats inside were uncovered, set very close to one another and separated only by half-height thin. There was no separation between the toilet seats and the showers, which only rarely had hot water.

Because of the fierce cold, A.A. suffered protracted pain in his leg, which had been injured in a car accident. The physician who saw him talked to him, but did not examine his leg or give him any treatment.

A.A. went on a hunger strike because of the rough conditions, and because he knew that as an administrative detainee he was entitled to better ones. When the detainee representative informed the sergeant in charge that A.A. had stopped eating, the sergeant said: "I couldn't care less." Two days later, A.A. was transferred to Ketziot military detention facility.

Excerpt from the statement of H.G., who was held at the Salem facility from 5 July, 2004, until 11 August, 2004:

"The conditions in this prison … are disastrous. Inmates are treated like animals: the officer addresses us by shouting, and there were even incidents when inmates were slapped across the face... The detainees suspect that we do not get all the food that is meant for us; cheese, for example. It is the same with the towels and underwear that the [Red] Cross gets us. In my own eyes I saw soldiers opening Red Cross packages, taking out towels, taking them to the shower and returning with them to their rooms.

"In the morning, we get one hour for the toilet, shower, laundry, dishwashing etc., for all 50 of us. There are two toilet stalls and two showers. Only three inmates are allowed to leave the cell at the same time...

"There is a real food shortage – we are hungry all the time. The food we get in the morning includes only soft cheese for seven people and some bread. They give us bread every other day, five or six loaves. In other words, one loaf for seven people... Never during my detention was I as hungry as I was at Salem. I think I must have lost 10 kilograms... Ketziot and Ofer are rough. I was at Ofer for a while and transferred to Ketziot three days ago. But these facilities are nowhere near as bad as Salem, where the conditions are completely inhuman."

(Affidavit made for HCJ Petition 3985/03, **Badawi et al. v. IDF Commander in the West Bank et al.**)

Conditions at the Ofer Detention Facility

In March 2003, HaMoked filed a motion under the Contempt of Court Ordinance, after the military had failed to comply with the instructions it was given by the HCJ in HaMoked's petition concerning the conditions at Ofer Military Prison. The HCJ had instructed the military to provide the inmates with books, games and newspapers, regardless of outside contributions.[85]

In its responses to the March motion and subsequent motions by HaMoked, the military announced that as of April 2003, it would provide inmates with newspapers – one copy for every 20 prisoners, this on top of newspapers supplied by outside contributors. The military named eight Arabic, Hebrew and English language newspapers and magazines that would be allowed. Additionally, the military said it would allow books, except books about chemistry and physics, and that games were already being provided.

During 2004, HaMoked monitored the military's compliance with HCJ's and with its own promises. While the supply of newspapers has improved, the military has not complied with its own commitment and only provides one copy for every 30 inmates, rather than for every 20. It also provides only two of the eight publications it had named, and only in Hebrew. Detainees do receive other newspapers, including one in Arabic, but only via donations. As noted, under the Court's instructions and the military's own promises, the military is to supply the required amount of newspapers without relying on outside help.

While detainees have indeed received games, as the army maintains, these were supplied by the Red Cross exclusively, not by the prison authorities. Also, the military does not replace these games once they wear out, nor does it provide conditions that would enable inmates to maintain them longer.

Although the military acknowledges its duty to supply inmates with books, it has refrained from doing so. All the books at Ofer Prison were brought in by families and donors such as the city of Al Bireh and the Red Cross. The military has not even complied with its own obligation to let in books (other than those on chemistry and physics) from outside donors. In July 2004, 250 of the 500 books and magazines HaMoked sent to the prisoners at Ofer were returned; none of these was about chemistry or physics. The returned publications were said to be "inflammatory". These were books about Israeli politics and social affairs, as well as all of B'Tselem's reports and joint reports published by HaMoked and B'Tselem, dealing with violation of human rights of Palestinians in the Territories. Only in March 2005, after direct communications with a new Prison Commander, did HaMoked manage to get the rejected reports and books in.

In addition to this monitoring effort, HaMoked also cautioned the military about the poor sanitary conditions at Ofer Prison and about the fact that at least in the last seven months of 2004, occupancy exceeded capacity by far.

HaMoked's arguments concerning the supply of books, newspapers, games, sanitary conditions and overcrowding, were confirmed, in part, by the Chief of Staff's Advisory Committee for the Ofer Facility. This Committee was set up following the HCJ's recommendation in the same petition in which it enumerated

the duties of the military toward detainees at Ofer Prison.[86] In addition to the findings mentioned above, the Committee criticized the serious restrictions that the General Security Service imposed on family visits at Ofer Prison and the fact that the prison authorities do not allow any physical contact between inmates and their visiting relatives, including young children. The Committee also recommended extensive improvements in sanitary and medical services.[87] In a meeting between the Prison Commander and an attorney for HaMoked, the Commander promised to improve these services. HaMoked is monitoring implementation.

Detainee Tracing

Under International Law detainees and prisoners are entitled to rights, such as adequate prison conditions, legal representation and fair trial. Obviously, detainees' rights can be upheld only if their arrest and place of detention are known. This way, relatives, attorneys, or human rights organizations can lend the help necessary. Military legislation also provides that the army must deliver notice regarding a person's arrest and whereabouts "without delay".[88] In reality, however, the military gives the families of Palestinian detainees no notice at all.

Given this, and in the absence of any official agency to which the relatives of detainees can turn, one of the most important services HaMoked provides is tracing detainees.

In 2004, HaMoked received 5,484 new requests to trace detainees. Compared to previous years, there has been considerable improvement in the military's documentation and follow-up of the whereabouts of detainees and prisoners. While in the previous two years HaMoked filed 43 habeas corpus petitions (33 in 2003 and 10 in 2002),[89] in 2004 there was no need for court intervention in tracing detainees.

According to military procedures, information about the whereabouts of detainees and prisoners is to be provided to HaMoked by a control center which operates out of the Military Police headquarters. The control center collects information about the location of detainees from all the agencies involved: the military, the Prison Service and the police.

Although by and large, the information provided by the control center is reliable, sometimes it is unable to trace a person. In these instances, the families do not know where their loved ones are being held for many days, and cannot lend them any assistance. When

85 HCJ Petition 3278/02, **HaMoked et al. v. IDF Commander in the West Bank**.

86 Ibid.

87 The Chief of Staff's Advisory Committee for the Ofer Facility, **Periodic Report**, July 29, 2004.

88 Order Regarding Security Procedures (Judea and Samarea) (No. 378), 1970, Article 78b, Amendment 53.

89 HaMoked, **Annual Report 2003**, pp. 44-45, **Annual Report 2002**, pp. 69-75, **Semi-Annual Report January – June 2002**, pp. 9-10.

this happens, HaMoked sometimes contacts the forces on the ground directly.

On June 20, 2004, M.B. asked HaMoked to retrace his son. The son, A.B., was arrested two months earlier, and HaMoked's inquiries yielded that he was being held at the police station at the Russian Compound in Jerusalem. Following the father's request and HaMoked's subsequent probe, the control center reported that A.B. was released on May 17 from Ohalei Kedar Prison. HaMoked forwarded this information to A.B.'s parents, who said that their son had not been released and to the best of their knowledge had been kept all this time at the Russian Compound. HaMoked contacted the police station directly, and found out that A.B. had been transferred to Ohalei Kedar Prison on June 20. HaMoked confirmed this with the Prison, and relayed the information to the family. **(Tracing 32209)**

S.A. was arrested on March 4, 2004. Three days later, his family asked HaMoked to trace him. HaMoked found out that S.A. was being held at the Binyamin temporary holding facility. A month later HaMoked discovered that S.A. was no longer there, and asked the control center to retrace him. The control center said that S.A. was released on April 2, 2004. However, the family said that he never came home, and that they had been told he was incarcerated somewhere in the Negev, but had not been given any specific details. HaMoked contacted the control center again, which this time replied that S.A. had been transferred to Ket'ziot Prison. **(Tracing 31309)**