At the Supreme Court **HCJ 2280/20**
Sitting as the High Court of Justice

In the matter of:

1. **____ Ghanem, ID No. _____**
2. **____ Bajawi, ID No. _____**
3. **____ Nafe'a, ID No. _____**
4. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA 580163517**
5. **Public Committee Against Torture in Israel, RA 580168854**
6. **Parents Against Child Detention**
7. **Association for Civil Rights in Israel, RA 580011567**
8. **Physicians for Human Rights, RA 580142214**
9. **Al Mezan – Center for Human Rights**
10. **Adalah – The Legal Center for Arab Minority Rights in Israel, RA 580312247**
11. **Addameer – Prisoner Support and Human Rights Association**

All represented by counsel, Adv. Nadia Daqqa (Lic. No. 66713) and/or Daniel Shenhar (Lic. No. 41065) and/or Gaby Lasky (Lic. No. 23604) and/or Efrat Bergman-Sapir (Lic. No. 44019) and/or Tamir Blank (Lic. No. 30016) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Aaron Miles Kurman (Lic. No. 78484) and/or Tehila Meir (Lic. No. 71836) and/or Maisa Abu Saleh-Abu Akar (Lic. No. 52763)

Of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Israel Prison Service**
2. **Minister of Public Security**

Represented by counsel from the State Attorney's Office, Ministry of Justice
29 Salah a-Din St., Jerusalem
Tel.: 02-6466590, Fax: 02-6467011

The Respondents

Amended Petition

According to the decision of the honorable court dated December 1, 2020, an amended petition is hereby filed for an *order nisi* which is directed at the respondents ordering them to appear and show cause:

a. Why an arrangement is not established enabling all Palestinian inmates classified as security inmates to have contact with their family members through technological measures with sufficient frequency, both adults and minors, so long as the Coronavirus pandemic continues in Israel.

b. Why an arrangement is not established enabling inmates diagnosed with Covid-19 or who had contact with a diagnosed patient, to speak with their family members frequently until they recover for the purpose of updating them of their medical condition.

c. Why an arrangement is not established enabling minors in general, and those in isolation in particular, to talk with their family members with reasonable frequency, as is done in the framework of the "pilot" project in Damon prison.

The grounds for the petition are as follows:

> **Holding a person in custody does not automatically revoke all constitutional rights granted to him by virtue of the principles of the Israeli constitutional system,** and they may be impinged upon only to the extent required due to the deprivation of liberty resulting from the incarceration, the needs of the interrogation or trial, or for the purpose of securing a vital public interest, and subject to the provisions of the law (LCA 993/06 **State of Israel v. Mustafa Dib Mar'i Dirani**, TakSC 2011(3) 1298, paragraph 29 of the judgment rendered by Justice Procaccia, hereafter: **Dirani**. Hereinabove and hereinafter all emphases in the petition were added by the undersigned – N.D.).

Factual Background

The Parties and Exhaustion of Remedies

1. **Petitioner 1,** is the spouse of the prisoner ____ Ghanem ID No. _____, currently incarcerated in Damon prison, in a ward in which inmates are not allowed by respondent 1 to have telephone calls with their families.

2. **Petitioner 2**, is the father of the minor ____ Bajawi, ID No. _____, incarcerated in Megido prison, in a ward in which inmates are not allowed by respondent 1 to have telephone calls with their families.

3. **Petitioner 3,** is the mother of the prisoner ___ Nafe'a currently incarcerated in Shaata prison, in a ward in which inmates are not allowed by respondent 1 to have telephone calls with their families.

4. **Petitioner 4,** (hereinafter: the **petitioner** and/or **HaMoked**) is a human rights organization, which assists, for many years, Palestinian prisoners and detainees incarcerated in prisons under respondent's responsibility, to realize their fundamental rights.

5. **Petitioner 5,** the Public Committee against Torture in Israel is a public association registered in Israel, which was established in 1990 with the aim of eliminating torture and cruel and inhuman or degrading treatment of punishments on behalf of law enforcement

authorities against individuals in their custody. The Committee Against Torture protects the rights of detainees and prisoners and among other things fights to secure proper incarceration conditions.

6. **Petitioner 6**, a group of parents against child detention was organized to fight the prevalent phenomenon of child detention in the West Bank and East Jerusalem and to promote the rights of minor Palestinians in criminal proceeding. The group of parents against child detention acts to expose the phenomenon of detention of minor Palestinians and ancillary practices. The organization acts to limit the violent and systematic violation of children's rights in violation of the principle of the child best interest and acts to promote the protections that minors are entitled to according to the principles of the International Convention on the Rights of the Child.

7. **Petitioner 7,** Association for Civil Rights in Israel is the largest and oldest human rights organization in Israel engaged in protecting human rights in general.

8. **Petitioner 8,** Physicians for Human Rights (hereinafter: "**PHR**") is a registered non-for-profit organization of physicians and other health professionals acting to protect human rights, the purpose of which is to act for the protection and promotion of health-related human rights in the territories occupied by the state of Israel, and particularly to promote accessibility to health services and the right to equally receive health services by different groups including prisoners and detainees.

9. **Petitioner 9**, a human rights association from the Gaza Strip which has been assisting for many years Palestinian prisoners/detainees from the Gaza Strip, incarcerated in IPS facilities.

10. **Petitioner 10**, a non-for-profit association registered in Israel and a legal center acting towards protecting and promoting human rights in general and rights of Israeli citizens in particular.

11. **Petitioner 11**, a human rights organization assisting prisoners. It is a Palestinian Non-Governmental Organization headquartered in Ramallah, providing legal assistance to Palestinian prisoners incarcerated in Israel. The organization acts against torture, arbitrary arrests and other violations of human rights of Palestinian prisoners and detainees to secure due and fair process. Petitioners 10-11 were the petitioners in HCJ 2282/20 the hearing of which was joined with this petition. When the decision regarding the filing of amended petitions was received, the petitioners joined the amended petition in HCJ 2280/20.

12. **Respondent 1** (hereinafter: **IPS** or the **respondent**), the Israel Prison Service, is responsible for the protection of the fundamental rights of all prisoners held in incarceration facilities under its control.

13. **Respondent 2**, is the Minister in charge, on behalf of the government of Israel, of the acts and conduct of Respondent 1.

14. When the original petition was filed, petitioner 1 was completely disconnected from her 45 year-old spouse, suffering from complex health problems: arrhythmia, high blood pressure, and thyroid problems. After visits were reinstated she was not able to visit him, aside from one last visit in September. Since than she has not met him again. About a month and a half ago, the prisoner's father was diagnosed with Covid-19 and was consequently hospitalized for a month in severe condition. During the father's hospitalization, there was no way to inform the prisoner of his father's condition. The petitioner should have visited her spouse on December 12, 2020 but a few days before the scheduled visit she was notified by the International Committee of the Red Cross that the visit had been canceled due to high infection rates in her area of residence.

15. Petitioner's spouse is at risk due to different pre-existing conditions from which he suffers. Due to the fact that all contacts were severed and in view of the extremely limited number of visits since the outbreak of the Coronavirus crisis, the petitioner is under stress and worried for the health of her spouse, *inter alia*, in view of the concern that he would not receive the various medical treatments that he needs, due to the limitations imposed by the respondent, *inter alia*, on obtaining medical services during the declaration. Her concerns intensify in view of the irregular visits which immensely encumber inmates' ability to promote health-related issues requiring external monitoring and supervision. If the prisoner could speak on the phone frequently, it would have enabled petitioner 1 to overcome the difficulties caused by the cut-off.

16. Petitioner 2 was also completely disconnected from his minor son, who was at that time held in custody until the termination of proceedings. He was particularly under stress when in March, it was reported that several inmates in Megido prison, where his son was held, had been put in quarantine. The petitioner and his family had no way of finding out what was happening with their minor son.

17. It must be noted, that even before the outbreak of the pandemic crisis, petitioner's son had requested the assistance of petitioner 4 in securing respondent's permission to call his parents in addition to the visits he had received at that time.

18. To demonstrate the importance of the connection with family members, the following is a quote from the minor's statement made on March 8, 2020, reflecting his need for contact with his family: "The visits are very important. It is extremely important to see the parents. But it's not enough particularly not in their current frequency. Phone contact is very important. It can give me the feeling of a continuing connection. I would like to hear my mother in the morning saying good morning and know what she is cooking today, what my father has to tell me today. It gives me the sense that I am not disconnected. These details are important and if I could hear them and know them I could feel that I am still a part of our home and family" (See P/1 in the original petition).

19. Following the original petition his son started receiving phone calls, initially once every two weeks for about 10 minutes. These calls made things easier for the petitioner and his family, but due to the inability to make visits, said calls became the vehicle to communicate the needs of their son and the short time did not make it possible to have proper conversations.

20. It must be noted that during the Coronavirus crisis, namely, during the last nine months, petitioner 2's son received only three visits: in July, September and November. It is a very small number of visits that a minor held in respondent's custody was allowed to receive. It should be emphasized that the son of petitioner 2 received a considerable number of visits relative to other detainees in his situation and relative to the period. Hence, if the format of contact with the family once every two weeks for only ten minutes does not provide a satisfactory solution for a child who "succeeded" to receive three visits in the last nine months, it does not come close to meeting the goal for children who received fewer visits, if any.

21. Petitioner 3 is the mother of an inmate held in Shata prison. The son of petitioner 3 suffers from a severe facial injury, and has no upper jaw. Due to his condition he requires medical treatment which is constantly being delayed. He used to update his family members of the progress – or lack thereof – made in his medical treatment to enable them to communicate with petitioner 8, which manages his medical case *vis-à-vis* respondent 1.

22. Due to restrictions imposed as a result of the Coronavirus crisis, petitioner 3 met her son only in July 2020, after they were unable to communicate with him – not even by phone – for four months due to the restrictions which were imposed on family visits. When the

visits were reinstated, after the second lockdown in Israel, petitioner 3 registered, through the Red Cross Organization, for the November visit which should have taken place on November 4, 2020. A few days before the scheduled visit the Red Cross Organization informed that the visit had been canceled due to the existence of diagnosed inmates in "Gilboa" prison and "Shata" prison.

23. Following the above, the visit was postponed to another day in November 2020, but the Red Cross Organization informed again of its postponement to December, for the same reason. In the beginning of December and after petitioner 3 had tried to register for a visit, she was informed by the Red Cross Organization that at that stage the visits were stopped due to high infection rates in her area of residence. It should be emphasized that petitioner's son did not receive the one-time call which was allowed according to respondent's notice dated May 3, 2020.

24. Petitioner 3's son has also expressed the difficulty of being cut-off and described how said restrictions which cut them off from their families and the outside world in general affected his and the other inmates' daily life. Mr. Nafe'a gave HaMoked an affidavit describing the difficulties suffered by him due to his medical condition.

25. Mr. Nafe'a has been in prison for more than five years without an upper jaw and teeth, which directly affects his eating habits. Due to respondent's negligence he had to approach petitioner 8 as aforesaid, and was assisted by the family visits to promote things. The isolation caused as a result of the emergency regulations delayed the treatments he needs. In the summer of 2020 he was transferred to another hospital for treatments, where he was required to bear some of the costs, which he obviously had to coordinate through his family whom he saw, at best, once every two months.

26. During said months Mr. Nafe'a was informed of happy and less happy developments, concerning his family members through the radio. Accordingly, he was informed of his sister's first pregnancy, of the deteriorating health of his grandmother and that his second grandmother had been diagnosed with Covid-19.

27. Mr. Nafe'a stated that he had no way of receiving any information of his relatives and had only two short visits, the first of his mother and the other of his father, during a period of nine months. Mr. Nafe'a has further informed that his condition was relatively good compared to the other inmates, since most inmates have received no visits at all throughout the entire period.

28. Mr. Nafe'a described the Coronavirus period as a highly stressful period. In the ward in which he was held, one of the inmates was diagnosed with Covid-19 and all inmates had to be held in isolation. According to his description, older inmates were held in the same ward suffering from different pre-existing conditions which intensified his concern for their safety and wellbeing, and he was concerned that things would get out of control. On the other hand, throughout the isolation period, Mr. Nafe'a worried for his family and constantly felt the need to tell them that he was doing okay.

29. Mr. Nafe'a has broadly described in his affidavit the problems which arose as a result of their almost total cut-off from the outside world and summarized it by saying that "this cut-off causes great difficulty not only on the mental level but also in the ability to express the problems which arise in this exceptional period, and accordingly prevents effective treatment of said problems."

    A copy of the affidavit of the inmate ____ Nafe'a dated December 20, 2020, is attached and marked **P/1**.

30. Upon the outbreak of the Coronavirus pandemic in Israel, petitioner 5 wrote on March 17, 2020 to the respondent and requested to receive information on the ways the

respondent was dealing with the Coronavirus and warned against violations of the fundamental rights of the inmates. On March 18, 2020 petitioner 7 wrote to the Attorney General and requested to examine the severe violations caused by the emergency regulations to the population of security inmates (see P/2 and P/3 of the original petition).

31. In addition, on March 19, 2020, HaMoked wrote to the respondent requesting it to re-examine the severe violations caused by the emergency regulations to the rights of inmates classified as security inmates, and to establish a new arrangement that would adjust their incarceration conditions and enable them to have contact with the outside world (see P/4 of the original petition).

32. In the absence of response and against the backdrop of the unprecedented isolation imposed on a large population of inmates, constituting about one third of the entire population of inmates in Israel, on March 26, 2020 the original petition in this proceeding was filed.

The original petition and the chain of events

The first period: the period of respondent 2's declaration of a state of emergency

33. The original petition was filed when Israel was in a state of emergency against the spread of the novel Coronavirus (hereinafter: the **Coronavirus** or **Covid-19**). Based on the state of emergency which had been declared, emergency regulations were promulgated by the government. On March 15, 2020, emergency regulations (preventing the entry of visitors and attorneys to prisons and detention centers), 5781-2020, were published (hereinafter: the **regulations** or the **emergency regulations**), in the context of the measures taken to prevent the outbreak of the Coronavirus pandemic within prisons in Israel. Thereafter, on March 17, 2020 respondent 2 declared that visitors and attorneys were banned from entering detention facilities and prisons in Israel.

34. Section 2 of the regulations prevented entry of visitors into prisons for all inmates. As a result of said restriction, inmates classified as security inmates were denied any contact with the outside world. As is known, in general, the contact of said population with the outside world is very limited and amounts to family visits of two short visits per month, at the most, and mainly attorneys' visits.

35. Already at that time, and when the petition was filed, the petitioners stressed that even in times of crisis not everything is allowed, and that even the fight against the spread of the pandemic should have limits. The petitioners argued that section 12 of the Basic Law: Human Dignity and Freedom provides that "This Basic Law cannot be varied, suspended or made subject to conditions by emergency regulations; notwithstanding, when a state of emergency exists, by virtue of a declaration under section 9 of the Law and Administration Ordinance, 5708-1948, emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than is required".

36. According to the language of the section, even in times of crisis constitutional rights must be protected. Based on the above, as soon as the crisis broke the petitioners demanded that to the extent the regulations required to prevent family visits in prisons, alternatives should be examined enabling the realization of the purpose underlying family visits, in view of the fact that the violation of the right to family life was severe, unreasonable and disproportionate.

37. This is the place to remind that throughout the years the respondent prevented all security inmates from having phone contact, and justified it in that family visits were held with

reasonable frequency. In a situation in which family visits were totally canceled, the regulations created a new situation which does not satisfy the proportionality tests.

38. Immediately upon the outbreak of the crisis, the expectation was that the respondents would act to protect the rights of the inmates classified as security inmates who were most severely harmed by the restrictions imposed as a result of the pandemic. These matters were raised at that time with an emphasis on the condition of about two hundred minor inmates, who were completely disconnected from their parents as a result of the cancelation of the visits, with no attempt on behalf of the respondents to examine other alternatives enabling the minors to have contact with their families.

39. The decision to limit entry of visitors into incarceration facilities under respondent's responsibility, to a certain extent, was understandable and justified, but it was incumbent upon the respondent to specifically examine said decision in relation to the different groups of inmates, avoiding needless violation of fundamental rights.

40. It is particularly important, in times of crisis, to create a mechanism of supervision over the authority's conduct in view of the new circumstances, all the more so when the authority with which we are concerned is in charge of the custody of thousands of inmates, having full control over their lives. If, in normal times, the respondent can use sweeping powers which may violate inmates' dignity and freedom, all the more so in times of crisis.

41. Even in times of crisis, the authority must ensure that the measures taken by it are necessary to achieve the goal. Denying visits and examining the possibility of allowing phone contact to inmates classified as security inmates must be done in view of the entire conditions of their incarceration. The sole contact of said inmates with the outside world is only through visits of immediate family members and attorneys.

42. Completely disconnecting inmates classified as security inmates from their families runs contrary even to respondent's own rules. Section 1 of IPS Commission Order 04.42.00 provides that "Visits are important means of communication between the inmate and his family, friends and acquaintances. Visits may make things easier for the prisoner while in prison and may encourage him in time of crisis". The above is relevant in regular days, regardless of a global health crisis, which only intensifies the importance of the contact with the family.

43. Notwithstanding the above, the respondents were not of the opinion that the complete disconnection of several thousands of inmates from the outside world was inappropriate. At that time the respondents were of the opinion that visits held by the Red Cross Organization were sufficient, although we are concerned with a small number of visits held with one or two prisoners in each incarceration facility, without letters or personal messages.

44. Against the backdrop of all of the above, we wish to emphasize that the original petition – as well as the amended one – are not concerned with the right of inmates classified as security inmates to receive conjugal visits or vacations, nor with the right to general phone contact, but rather with a minimal contact with family members during the Coronavirus crisis and against the backdrop of the cancelation of family visits.

45. In the framework of the original petition the petitioners have broadly discussed the horrible implications of respondents' current policy on minor inmates, having no ability to maintain contact with adults they can trust, in a difficult period in which the pandemic keeps spreading. The sense of threat and undermined experience of existence has acute psychological effects on inmates in general, being unable to take care of themselves independently, all the more so when children are concerned, having no contact with the

persons who should take care of them and provide for their health and wellbeing, namely, their parents. An opinion of mental health experts was attached to the original petition pointing at the harm which may be caused as a result of being disconnected from one's family in pandemic circumstances.

46. In this context too the respondent was initially of the opinion that the fact that minor inmates classified as "security" inmates held in Damon prison were allowed to talk on the phone with their families in the framework of a pilot project conducted in said wards, was sufficient (see paragraph 109 of respondents' response dated April 1, 2020).

47. Thereafter, and before the hearing of the original petition took place, the respondents filed an application to attach a document, announcing a "Temporary Order – IPS Commission Order 03.02.00 Rules concerning Security Prisoners: Supervised Phone Calls for Minors during the State of Emergency" (hereinafter: the "**Temporary Order**"). The Temporary Order allowed phone calls to immediate family members for minor inmates classified as "security" inmates, once every two weeks for tem minutes. The Temporary Order was in force for so long as the declaration of the Minister of Interior of a state of emergency was in force.

48. Due to the vague language of the Temporary Order, according to which the discretion as to whether phone calls shall be allowed is vested with the prison commander, subject to ISA position, the petitioners demanded that the exercise of minors' phone calls would be regulated by procedure. Said demand was manifested in the decision of the honorable court dated April 2, 2020.

49. At that stage the honorable court gave no decision regarding adult inmates classified as "security" inmates. The explanation given therefore in the hearing was that at that early stage of the pandemic, the respondents were unable, logistically, to give phone calls to several thousands of inmates classified as "security" inmates. In addition it was clarified by the court that to the extent the state of emergency continues the expansion of alternatives for contact with family members, should be considered.

50. Needless to point out that at that time, and against the backdrop of the Emergency Regulations (Detention Hearings), 5780-2020 it was held that: "A hearing in a request for extension of detention shall be held without the presence of the detainee but with his participation **through technological devices provided by Israel Prison Service**, all in a manner minimizing to the maximum extent possible the harm caused to the detainee due the fact that the hearing is held in his absence" (emphases added, N.D.). In view of the severe violation in detainees' right to due process the respondent had to allocate technological means, which have not been previously used.

51. Although the declaration of the Minister of Interior was in force for thirty days only, it was repeatedly extended, and the Emergency Regulations remained in force until June 8, 2020, for approximately three consecutive months. Following the first extension of the Minister of Interior's declaration, on April 16, 2020, the petitioners applied again to the honorable court on April 21, 2020 and filed a request for an urgent hearing.

52. In their request the petitioners argued that the Temporary Order concerning supervised calls for minor inmates classified as "security" inmates was provided by the respondent as a "short term" solution. The petitioners argued that after more than a month has passed since the outbreak of the pandemic, it was already clear that its end was not in sight, and since the situation affected such a large population constituting about one third of the entire population of inmates, the severe harm caused by said cut-off could no longer be disregarded and minimal alternatives enabling contact must be found. The petitioners argued further that the solution provided by the Temporary Order in the beginning of the crisis, was insufficient in the long run, since an incarcerated minor must maintain frequent

contact with his family, particularly in times of crisis, and ten minutes once every two weeks, even assuming that they are given regularly, do not provide a sufficient solution.

53. It also became evident, on or about the filing of the request for urgent hearing that as time went by, respondents' argument regarding logistic difficulties was an idle argument, in view of respondents' ability to overcome logistic difficulties in other matters. Accordingly, for instance, in a statement issued by respondent's spokesperson on IPS official website on April 7, 2020, notice was given of the possibility to have video calls between criminal inmates and their family members for the upcoming Passover. The notice states that the frequency of the calls shall correspond to the visitation rights. Hence, it arises from all of the above that even if according to the respondent there are logistic difficulties preventing it from enabling phone calls of inmates classified as "security" inmates with their family members, it seems that compared to the organization of thousands of video calls we are concerned with much less complicated logistics. To the extent the respondent is able to allocate technological means for such a large population of inmates who are not totally disconnected from their families, and who can contact them by phone, there is reason to believe that it cannot also act accordingly when very severe violation is caused to the right to dignity and family life of inmates classified as "security" inmates.

54. At the same time, the month of Ramadan was about to begin. As is known, it is an important month for Muslims religiously, socially and culturally. The vast majority of the population of inmates classified as "security" inmates celebrates the month of Ramadan. To prevent severe harm to approximately 4,000 inmates, and against the extension of the state of emergency, along with the regulations completely cutting them off the outside world, and in view of the beginning of the month of Ramadan, the honorable court was requested to direct the respondents to allow security inmates to have telephone contact with their families.

55. Following said request, on April 22, 2020, a decision was given by the honorable court directing the respondent to inform whether it was possible to arrange a one-time telephone call for all relevant inmates, in cases in which the inmate was put in isolation or was in contact with a verified Covid-19 patient, as well as for the purpose of sending Ramadan wishes.

56. On May 3, 2020, the Respondents informed that "there is no preclusion for allowing security detainees and prisoners held in IPS custody one-time short telephone call with an immediate family member, and for enabling such calls in cases in which the inmate contracted Covid-19 or was put in isolation due to contact with a verified Covid-19 patient, in the absence of any other specific security/individual preclusion, and subject to proper arrangements by IPS of the manner by which the call shall be conducted." Said notice excluded detainees under interrogation, and it was stated that in circumstances in which detainees are diagnosed as Covid-19 verified patients, notice of same shall be given to an immediate family member. In addition, the respondents excluded about 90 inmates, Gaza Strip residents, members of Hamas.

57. Notwithstanding the slight progress which arose from respondent's statement, the petitioners were of the opinion that the passage of time and the continuing Coronavirus crisis, with no end at sight, required an adequate solution beyond a "short" call (the duration of which was unclear). The vague manner by which things were drafted by the respondent raised concern and dissatisfaction, as it has also refrained from advising when such calls would be allowed.

58. The above was said while at the same time it became evident that the respondent was not upholding the Temporary Order with respect to minor security inmates as was notified by it in the hearing held on April 2, 2020. Accordingly, for instance, it became evident in the

framework of four complaints received by HaMoked, that minors held in Megido prison contacted their families on April 8, 2020 but until May 5, 2020, they were not allowed to have another call, although at that time they should have already made their third call, based on the frequency of the calls established by the respondents.

59. In addition, complaints made by parents of children held in Ofer prison revealed that until said date their incarcerated children made no calls. Letters sent by HaMoked to these two incarceration facilities regarding said failure were not answered (copies of the letters were attached to petitioners' response in HCJ 2280/20 from May 5, 2020). It should be noted here that in the context of the proceeding at hand, inquiries sent to the respondents regarding the issues being the subject matter of this petition, have never been answered, and that most of the information in petitioners' knowledge was made available to them by virtue of this proceeding.

60. The failure to implement the Temporary Order and respondents' conduct made it clear that additional clarifications were required regarding the proposed arrangement for adults and the supervision of its implementation along with the Temporary Order pertaining to minor inmates.

61. Two months after the outbreak of the Coronavirus crisis, additional problems started to arise as a result of the disconnection of security inmates from the outside world, and violation of other rights accompanied the violation of the right to family life.

62. In a situation in which a person is cut-off, completely, for about two months from his family members and attorneys, the possibility of receiving a one-time telephone call became an unreasonable solution which does not contribute to the realization of civilized human life, the right to family life and the right to health. Relevant to this matter are the words of the Honorable Justice (retired) H. Cohen in HCJ 221/80 **Darwish v. Israel Prison Service**, IsrSC 35 (1) 536, and his moral stand seems to have been indisputed ever since:

> It is the right of a person in Israel who has been sentenced to prison (or lawfully arrested) to be incarcerated under conditions that permit civilized human life. It means nothing that this right is not expressly established in any statute – it is a fundamental human right, and in a democratic state under the rule of law, it is so obvious that it is as if it were written in a statute. We have already had the opportunity to stress that while arrest – as an unavoidable evil – deprives a person of physical liberty, it is not intended to deprive him of his human character and status.

63. Giving the opportunity for a one-time call to inmates diagnosed as Covid-19 patients or inmates required to be put in isolation due to contact with a verified Covid-19 patient is an insensitive solution which disregards the needs of the inmate and their loved ones for more intensive contact.

64. The above has already been recognized at that time in other countries. Accordingly, for instance, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment published in the beginning of the crisis a statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus (COVID-19) pandemic. In paragraph 8 of the document the Committee referred specifically to inmates in isolation or diagnosed as Covid-19 patients and their need to special treatment in this sensitive situation (the document may be found in the following link: https://rm.coe.int/16809cfa4b). As shall be further described below, inmates diagnosed as Covid-19 patients did not receive special treatment as aforesaid and the respondents have shown no sensitivity to the situation which had been created.

65. As aforesaid, the right to family life was not the only right which was violated. The petitioners presented several examples of cases whereby the cut-off has severely violated the right to health of several inmates. Said examples are included in petitioners' response dated May 5, 2020, and requests in said cases made by petitioner 8, Physicians for Human Rights, to enable telephone calls with inmates suffering severe chronic medical problems, for the purpose of promoting their medical treatment, were either denied, neglected or not answered at all, despite their urgency.

66. Due to all of the above, and against the backdrop of the continuing Coronavirus crisis, the petitioners continued to insist that telephone contact should be allowed to all security inmates, both adults and minors, in reasonable scope and frequency, rather than on a one-time basis. On May 14, 2020, respondent 2 issued a declaration whereby the regulations were extended for an additional ten-day period. On May 19, 2020 a decision was given scheduling a further hearing in the petition for May 27, 2020.

67. In preparation for the hearing, respondent 2 notified that a "memorandum of law - Preventing the Entry of Visitors and Attorneys to Detention Facilities, Police Stations and Prisons, Custody Rooms and Military Prisons (Temporary Order)" aimed at replacing the regulations was distributed to the public for comments. It was further notified that an additional extension of its declaration was examined by respondent 2. The respondents advised that by that time, more than 300 inmates had made phone calls in the one-time call format.

68. Important to note that the intention behind the one-time phone calls arrangement was to send Ramadan wishes. On the date on which the respondents notified that about 300 phone calls had been made, two holidays had already passed: Ramadan and Eid al-Fitr. By then, less than 10% of the inmates had made the call, which strengthened the concerns raised by the petitioners with respect to the vague language of the arrangement which does not establish the time and duration of said calls.

69. Hence, the emergency restrictions started to make their way into legislation, and in other words, the restrictions started to be part of the daily routine which until this day – in this form or another – are still in force. In the memorandum of the law which was presented, the respondents did not arrange the issue of the contact between inmates classified as "security" inmates and their families. The issue, which according to them could not be arranged due to logistic difficulties and the short time in which solution had to be given, was not addressed after several months have passed and in the stage in which the respondents started to arrange the issue in legislation. The above clearly shows that the respondents hid behind arguments of logistics, which they were able to overcome in other contexts, and in fact it seems that they were not interested in arranging the issue, and have accordingly continued to severely and in an unprecedented manner violate the rights of thousands of Palestinian prisoners and detainees.

70. In said hearing, which took place on May 27, 2020, the petitioners showed, through several requests submitted to respondent 1, that the respondents did not stand behind the undertakings given by them before this honorable court. Accordingly, for instance, in response to Petitioners' requests to enable adult inmates to have a one-time call with their relatives they were informed by Megido prison and Eshel prison that they were not aware of any such directive (the above about a month after the respondents had notified the court about the arrangement). Consequently, less than 10% of the inmates had had one call by that time.

71. On that very same day a decision was given by the honorable court directing the respondents to file a supplementary notice referring, inter alia, to the continuing implementation of their declaration concerning telephone contact with minor inmates,

and the implementation of the declaration concerning telephone contact with adult inmates.

72. On June 8, 2020 respondent 2's state of emergency declaration expired.

73. In the new situation, a legal vacuum was created (which to a certain extent continues until this day), since on the one hand no declaration was made reinstating routine visits, while on the other, the Temporary Order concerning telephone contact with minor inmates which was in force by virtue of said regulations had expired together with the expiration of the regulations. Legislation proceedings regarding the matter have commenced without any significant progress.

The second period: The Expiration of the State of Emergency Regulations

74. During the first period, as described above, we have seen how the respondents disregarded the severe violation of the rights of a large group of inmates, and have breached their undertakings to provide minimal things to maintain minimal contact with the outside world. All of the above demonstrated the critical need in having the telephone contact issue arranged, not leaving it vague as if it was an *ex gratia* gesture made by the respondent towards the said inmates.

75. Upon the expiration of the emergency regulations a legislative process was launched in the Knesset promoting the bill "Preventing the Entry of Visitors and Attorneys to Detention Facilities, Police Stations and Prisons, Custody Rooms and Military Prisons (Temporary Order), 5780-2020". With such measures taken it seemed that the emergency regulations, including the restrictions included therein, would stay with us for a while and become part of regular legislation.

76. However, the bill refrained from addressing the issue of contact with the outside world which has been critically harmed as a result of the restrictions. If upon the commencement of the proceeding the court expressed its understanding of the importance of the matter but justified it based on respondents' argument concerning logistic difficulties, given the point in time in which the petition was filed when the crisis was only in its first stages, then, upon the expiration of emergency regulations and the continuing crisis it became clear that the matter must be arranged.

77. In the second half of June 2020 the respondents announced that visits would be gradually reinstated at that time only to Israeli residents. Consequently, the vast majority of security inmates continued to be disconnected from their families.

78. At the same time, on July 6, 2020, petitioners 4 and 5, HaMoked and the Public Committee against Torture, approached the Knesset's Internal Affairs and Environment Committee and presented their position according to which the promotion of the bill should be discontinued, at least as drafted, since in the process of becoming primary legislation it was imperative to properly arrange the right to family life for all inmates, with an emphasis on minor inmates, securing regular contact for security inmates and addressing all implications arising from the severing of contact between inmates and their families and the effect of this on their fundamental rights.

A copy of petitioners 4 and 5 letter dated July 6, 2020 is attached and marked **P/2**.

79. In said letter it was explained that even when restricted family visits were gradually reinstated, most security inmates did not receive family visits due to the fact that the vast majority of their visitors were West Bank and Gaza Strip residents, and in view of the movement restrictions imposed on the residents of the occupied territories as a result of the Coronavirus outbreak, by that time family visits were not reinstated for said group of inmates.

80. It was further clarified that the prevention of family visits for said group of inmates had many additional implications severely affecting the daily life and fundamental rights of said inmates. Accordingly, for instance, many inmates were unable to receive for a long time summer wear and other personal items during said period, things which are usually received from visitors on visitation days. In addition, inmates who residents of the West Bank and Gaza Strip cannot receive money by way of deposit in their canteen accounts, since their visitors used to deposit said amounts while entering prison on visitation days.

81. Petitioners' demand was that to the extent the bill was promoted, it would include provisions entrenching and securing contact with family members through technological measures with regular and sufficient frequency and a systemic solution for all implications arising therefrom.

82. Already in said stages the respondents started to raise the argument whereby, since the emergency regulations have expired, the petition was no longer premised on relevant factual and legal infrastructure and that it should be deleted. The respondents disregarded the fact that **the petition has not requested at any stage to cancel the regulations but rather stressed the need to arrange the issue concerning contact with the outside world while family visits were not allowed due to the Coronavirus crisis**. Namely, the petition was premised on a factual situation which ran contrary to the law, regardless of (or at least not based on) one legal situation or another, the existence of valid regulations or the promotion of regular legislation in the matter, or even practice which is not entrenched in any enactment, to the extent leading to denial of visits due to the Coronavirus outbreak. The argument was that a reasonable solution should be found to the issue of contact of said inmates with the outside world and that said issue should be clearly arranged.

83. When visits were reinstated after the expiration of the emergency regulations, the difficulties pointed out by the petitioners in earlier stages have started to surface. Notwithstanding the notice of the reinstatement of visits from the West Bank, a significant part of the Palestinian prisoners could not receive the visits.

84. According to the new visitation arrangement presented by the International Committee of the Red Cross, security inmates who are residents of the West Bank would receive one visit of a single visitor once every two months, provided that the visitor does not arrive from a "red area". During said period, a considerable part of the family members who registered for the visits received short time notices that the visits would not take place, in some cases since they resided in "red areas" and in others due to the small number of visitors, since the incarceration facility was not interested in engaging a visitation team for a small number of visitors.

85. The respondents did not advise the petitioners of the new visitation arrangement. The recurring attempts to receive explanation and details with respect thereto from respondent 1 were unsuccessful. The petitioners had officially received said information only in the framework of respondents' response dated August 18, 2020. In said response, the respondent notified that the arrangement concerning telephone contact of minor inmates allowing them to speak with their loved ones once every two weeks for ten minutes was re-applied to minors who were not receiving visits, the above by virtue of a "directive" of the Head of the Prisoner Department.

86. Needless to mention that the issue of telephone contact of minor inmates, when arranged by written Temporary Order, was not properly implemented notwithstanding respondent's undertaking given before this honorable court. Therefore, the argument that such a difficult and critical issue is arranged in a "directive" of the Head of the Prisoner Department, without establishing it, at least, in the framework of procedure, is odd.

87. The confirmation that visits had been reinstated was received on July 5, 2020, but already in mid-September the government of Israel announced another lockdown. Consequently, visits were stopped from mid-September until the end of October.

88. Upon the commencement of the proceeding, the petitioners have clarified, more than once, that the petition did not challenge the emergency regulations, based on the understanding that it was a dynamic state of emergency, and that the only thing which was requested therein was that the issue of the disconnection created between security inmates and their family members would be properly addressed. Accordingly, when visits were reinstated for a period of about two months, they took place provided that the visitor did not arrive from an area of high infection rate, and provided further that neither lockdown nor other restrictions were imposed on the entry of Palestinians into Israel. Subject to the satisfaction of all of the above conditions, one person may visit the prisoner once every two months using transportation provided by the Red Cross Organization.

89. As aforesaid, letters sent to bodies involved in the visitation arrangements, in an attempt to find out how things were regulated, remained unanswered. Accordingly, for instance, on June 22, 2020, HaMoked approached respondent 1 in an attempt to clarify the source of the authority by virtue of which said restrictions were imposed on the visits, in view of the fact that the emergency regulations have expired.

    A copy of HaMoked's letter dated June 22, 2020 is attached and marked **P/3**.

90. In the absence of response, a reminder was sent by HaMoked on July 23, 2020 in which it requested to receive the procedure, to the extent any existed, regulating visits, and the source of the authority for the continuing prevention of visits from Gaza. A third letter was sent on August 26, 2020.

    Copies of HaMoked's letters dated July 23, 2020 and August 26, 2020 are attached and marked **P/4**.

91. Needless to note that the provision regarding telephone contact of minor inmates is also unclear. It is unclear whether phone calls are allowed in cases in which the minor continues to be disconnected from his family from the outbreak of the crisis, or whether the phone call replaces situations in which visits are canceled as a result of the Coronavirus crisis, or whether telephone contact is allowed regardless of family visits.

92. In their response dated November 9, 2020, the respondents notified that at that stage there was no longer any need to promote legislation in view of the "continuing visits of attorneys and various visitors subject to health directives". The above, despite the severe harm caused by the regulations which continue to affect the fundamental rights of said group of inmates who, each time upon the re-implementation of the restrictions – without express lawful authorization – lose the single communication channel with their families even in very sensitive situations.

93. With the passage of time, the severity of the harm caused to the fundamental rights of security inmates became clearer and respondent's procrastination which has been continuing (at that stage) for eight months could no longer be tolerated. In the beginning of November, when visits were reinstated, respondent 1 was coping with a mass infection event in Gilboa prison, in which more than one hundred inmates were diagnosed with Covid-19.

94. During the period in which more than one hundred inmates were held in isolation, after having been diagnosed with Covid-19, they were not allowed to have any contact with their families and update them of their condition. According to information received by HaMoked from family members of inmates who were at that time in isolation and were diagnosed with Covid-19, not a single phone call has been received from the respondent

by family members advising them of the condition of their loved ones. The above, contrary to respondent's undertaking which had stated in the beginning of the proceeding (in its notice dated May 3, 2020) that inmates diagnosed with Covid-19 would be allowed to make a phone call. Consequently, hundreds of families remained in a state of complete uncertainty and concern for several weeks, as they had no way of hearing the voice of their loved ones and ensuring that their lives were not at risk. Even in such an extreme and exceptional situation the respondent made no attempt to secure at least the required minimal contact with family members, as he had already undertaken to do in earlier stages of this proceeding.

95. The petitioners wish to point out that they do not know whether the telephone contact directive concerning minor inmates is implemented in Ofer prison. Moreover. Considering the fact that in the beginning of the detention inmates are held in isolation for about two weeks, including minors, the need for telephone contact with family members only increases, particularly in such situations. Even if according to the petitioners holding minors in isolation is regarded as a measure severely affecting their health which was prohibited by the United Nations in the context of the "Standard Minimum Rules for the Treatment of Prisoners" (Mandela Rules), a prohibition also supported by the International Medical Association, the obligation to uphold the provision concerning telephone contact on a daily basis seems to be the required minimum in cases in which the minor is held in isolation. Minors in the above described situation do not receive phone calls, not even in the limited format of which the respondent had advised. The continuing state of disconnect is inconceivable, and the respondents do not make any effort to arrange the issue of telephone contact as an alternative for family visits, which even if reinstated are very limited (one visitor per visit), extremely partial (namely, a considerable part of the inmates do not receive any family visits – either due to the fact that their families arrive from "red areas", or due to movement restrictions imposed on the West Bank) and irregular, and as aforesaid, were not reinstated for a considerable part of the population of inmates.

96. As these lines are being written, a third lockdown was announced by the government effective as of December 27, 2020. Even prior to that, family visits of inmates who are residents of the West Bank were stopped in view of the fact that the West Bank was defined as an area with high infection rates and at this stage also due to the lockdown which was imposed in Israel.

97. As of December 1, 2020, 4,319 inmates classified as "security" inmates are held in prisons in Israel, including about two hundred minors who are also defined as security inmates. All inmates belonging to this group are Palestinian residents of the West Bank, the Gaza Strip and East Jerusalem.

98. **After the passage of more than nine months, currently an arrangement must be established securing regular and frequent telephone contact with family members for all inmates classified as "security" inmates, in any situation in which family visits do not take place as a result of the Coronavirus crisis, or take place intermittently, even in the absence of official restrictions. In addition, all inmates should be allowed to have telephone contact at reasonable frequency, adapted to the circumstances of the inmate, such that minor inmates, inmates in isolation and inmates diagnosed with Covid-19 shall be allowed more frequent telephone contact compared to other inmates, namely, daily contact**.

The phone call pilot project for minor inmates classified as "security" inmates

99. It should be noted that already in July 2019, the respondent declared, in the framework of HCJ 2316/19, the initiation of a pilot examining the possibility of having telephone contact from prison for inmates classified as security inmates. To the best of our

knowledge the "pilot" is implemented in three wards in which adult security inmates are held and in two wards in which minors are held in Damon prison. Based on the above, it seems that the respondent can enable telephone contact even when visits are held, and that it is willing to neutralize the alleged security threat.

100. It is important to point out that in this context, judgment was given by the honorable court on October 20, 2020 in LSA 4557/20 **A v. Israel Prison Service** in which it was emphasized that the pilot in the framework of which three phone calls are allowed per week with immediate family members, 15 minutes per call, is expected to be summarized within a few months. To the extent the respondents internalize the required need of this contact, and at the same time the crucial violation of fundamental rights of such a large group, they shall have to use the pilot and its findings as soon as possible for the purpose of expanding it to all other prisons.

A copy of the judgment in LSA 4557/20 dated October 20, 2020 is attached and marked **P/5**.

101. In view of the above, and since disconnection from the outside world constitutes a severe and sweeping violation of the fundamental rights of inmates classified as "security" inmates, and particularly the minor inmates, while on the other hand the solution of allowing them to have telephone contact does not encumber the respondent and does not veer from security considerations taken into account in connection with family visits, the honorable court is requested to direct the respondent to implement an arrangement securing regular and frequent telephone contact with family members for all inmates classified as "security" inmates, whenever family visits do not take place against the backdrop of the Coronavirus crisis, or take place intermittently, even in the absence of official restrictions. In addition, all inmates should be allowed to have telephone contact at reasonable frequency, adapted to the circumstances of the inmate, such that minor inmates, inmates in isolation and inmates diagnosed with Covid-19 shall be allowed more frequent telephone contact compared to other inmates, namely, daily contact. Hence the amended petition at hand.

Additional Examples of Specific Harms

102. In the framework of their work petitioners 4-11 came across several cases which complete the picture, in the absence of details and information from the respondents, beyond the details received from petitioners 1-3.

103. Accordingly, for instance, Mrs. ___ Halil, the wife of the prisoner ___ Halil, stated in an affidavit given in support of the petitioners and for the purposes of the petition at hand, that she has not met her spouse since February 2020. Her spouse is currently hospitalized in IPS' medical center.

A copy of the affidavit of ___ Halil is attached and marked **P/6**.

104. Upon the outbreak of the Coronavirus crisis, the Red Cross Organization notified that no visits would take place until further notice. When visits were reinstated she requested through the Red Cross Organization to visit her spouse, but was informed again that the visits were stopped due to high infection rates in her area of residence.

105. In the beginning of December Mrs. Halil learnt that on November 26, 2020 her spouse had been transferred to the hospital where he underwent a complicated by-pass surgery. She requested, through petitioner 8, to get permission to speak with her spouse on the

phone, but her request has not yet been answered. Her request to visit him was denied again due to high infection rates in her area of residence.

106. Thereafter, Mrs. Halil learnt that her spouse was put in isolation due to contact with an IPS staff member diagnosed with Covid-19. Until this date Mrs. Halil's request remains unanswered, and an urgent prisoner's petition was filed with the Central District Court with respect to that matter. Mrs. Halil is extremely anxious and worried about her spouse's health, regarding which no information has been officially provided to her, and even the fact that he was in isolation was discovered after petitioner 11's request to visit the inmate.

107. Another case is that of the prisoner N.B. who was arrested in June 2020 and is held in Gilboa prison. Since his arrest, he had a single family visit in September. In said visit, the visitor brought him summer clothes but until this day the family was unable to bring to the prisoner winter clothes. During the month of November, the second visit should have taken place but due to a mass infection event the incarceration facility was closed and family visits were canceled. Since then the respondent has not allowed the visit and the inmate has not been given the opportunity to call his relatives and inform them of his condition. No notice has been received regarding any future visit and as known, against the backdrop of the lockdown imposed by the Israeli government, prison visits shall not be allowed.

108. M.H. is a prisoner, resident of the Gaza Strip, who is not a member of the group excluded by the respondent from the one-time telephone call arrangement, namely, is not affiliated with Hamas. The last time M.H. met his relatives was about a year ago, in January 2020. Since then family visits of Gaza Strip residents have not been reinstated. At the outbreak of the Coronavirus crisis he was given the opportunity to speak with his family for only three minutes.

109. Y.H. is held in administrative detention. He was arrested in the month of November and was diagnosed with Covid-19. Consequently, he was hospitalized in IPS' medical center and has not been given the opportunity to speak with his family nor did he receive any visit.

110. A.A. and R.C. are two inmates held in Gilboa prison. Both were diagnosed with Covid-19in the November infection event. The two inmates were not given the opportunity to speak with their families neither while they were sick nor thereafter. In addition, since that time they have not received any visit.

111. The minor A.K. is held in Ofer prison. Since his arrest in November, he has received no visits and has not been given the opportunity to make telephone calls according to the directive of the Head of the Prisoner Department. In other words, the minor has been completely disconnected from his family since his arrest.

112. Through these examples, the petitioners try to present, in a nutshell, the problems arising as a result of the failure to arrange the telephone contact issue in this difficult and exceptional time. In the beginning of the crisis, the respondents argued that they were having logistic problems. Currently, after nine months have passed and against the difficult and unprecedented situation whereby security inmates are disconnected from the outside world, an increased obligation is imposed on the respondents to overcome the

logistic difficulties, if any still exist, and find a systemic solution for the above diverse cases and many others which were not described herein.

113. Petitioner 11 was requested to handle most cases described in paragraphs 107-111. HaMoked was requested to handle some of them. The cases handled by HaMoked are supported by affidavits attached to the petition. Thereafter the petitioners shall request the permission of the honorable court to file an affidavit supporting the facts specified in this chapter.

The Legal Argument

A Prisoner's Human Rights Remain Intact during his Incarceration

114. The right to family life and contact with the family is also derived from the governing concept, both in international law and Israeli law, that the mere arrest or imprisonment, do not nullify the fundamental rights of the inmate. Prison walls limit the inmate's freedom of movement, with all ensuing consequences, but they do not revoke his or her other fundamental rights, with the exception of those denied in accordance with an explicit provision of the law. The above applies ordinarily and all the more so in times of global pandemic which obviously causes deep anxiety, among the inmates and their families alike:

> It is a **major rule with us that he is entitled to any and all human rights as a human being, even when he is detained or imprisoned, and the imprisonment alone cannot deprive him of any right whatsoever, unless this is mandated by and arises from the deprivation of his right to free movement, or when there is an explicit provision of the law to that effect…** This rule has been rooted in Jewish heritage for ages: As stated in Deuteronomy 25, 3: 'then thy brother should seem vile unto thee', the sages established a major rule in Hebraic penal doctrine: 'when beaten – he is like your brother' (Mishna, Makot, 3, 15). And this major rule is relevant not only after he has completed his sentence but also while serving a sentence, because he is your brother and friend, and he retains and is entitled to his rights and dignity as a human being.
>
> (HCJ 337/84 **Hokma v. Minister of Interior**, IsrSC 38(2) 826, 832; and see also: PPA 4463/94 **Golan v. Israel Prison Service**, IsrSC 50(4), 136, 152-153; PPA 4/82 **State of Israel v. Tamir**, IsrSC 37(3) 201, 207; HCJ 114/86 **Weil v. State of Israel,** IsrSC 41(3) 477, 490).

115. And it was so held in the comprehensive judgment of Justice Danziger in **Maher,** in paragraph 36, there:

> The approach of Israeli jurisprudence concerning the purpose of a person's incarceration is that it is exhausted by the deprivation of the individual's personal liberty, by way of limiting his right to free movement. According to this approach, even when a person is incarcerated, he continues to retain all human rights afforded to him. Indeed, "when admitted into prison a person loses his liberty but he does not lose his dignity."

116. The same applies to international law. Article 10(1) of the Covenant on Civil and Political Rights, 1966, which was ratified by the state of Israel in 1991, provides that:

> All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

117. This Article was interpreted by the UN Human Rights Committee, the body responsible for the implementation of the Covenant, in CCPR General Comment No. 21 dated April 10, 1992, in a very broad manner:

> [R]espect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.

118. The principle under which prisoners are entitled to all human rights other than those nullified by the mere fact of the incarceration, was also established in Articles 1 and 5 of the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly of the UN (in resolution 45/111 dated December 14, 1990). Article 1 provides that:

> All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

119. And according to Article 5:

> Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

The right to family life

120. The denial of telephone contact with family members in circumstances in which visits are either denied altogether or take place in a very limited and partial format, for all security inmates including minor security inmates, severely violates the fundamental right to family life of the inmates and their family members. The right to family life is and has always been regarded by society, at all times and in all cultures, as a superior value.

121. The Supreme Court has emphasized time and again the great importance of the right to family life in many judgments, and especially in **Adalah** (HCJ 7052/03 **Adalah v. Minister of Interior**, TakSC 2006(2), 1754).

122. Accordingly, for instance the Honorable President (*emeritus*) Barak writes in paragraph 25 of his judgment:

> It is our main and basic duty to preserve, nurture and protect **the most basic and ancient family unit in the history of mankind, which was, is and will be the element that preserves and ensures the existence of the human race, namely the natural family…**
>
> The family relationship… lies at the basis of Israeli jurisprudence. The family has an essential and central role in the life of the individual and in the life of society. Family relationships, which the law protects and which it seeks to develop, are some of the strongest and most significant in a person's life.

123. And in HCJ 2245/06 **Dobrin v. Israel Prison Service**, the Honorable Justice Procaccia writes (in paragraph 12 of her judgment):

> In the hierarchy of constitutional human rights, **after the protection of the right to life and bodily integrity, comes the constitutional protection of the right to parenthood and family**. The purpose of the right to bodily integrity is to protect life; the right to family gives life meaning and reason…
>
> **This right is therefore situated on a high level in the hierarchy of constitutional human rights. It takes precedence over the right to property, freedom of occupation and even the right to privacy. 'It embodies the essence of a person's being and the realization of his self'**.

124. Family rights are also recognized and protected by international public law. Article 46 of the Hague Regulations provides:

> **Family honor and rights**, a person's life, personal property as well as religious faiths and worship customs **must be respected**.

125. And in **Stamka** it was held that:

> Israel is obligated to protect the family unit under international treaties (HCJ 3648/97 **Stamka et al. v. Minister of Interior**, IsrSC 53(2) 728, 787).

126. And see also: Articles 17 and 23 of the Convention on Civil and Political Rights, 1966; Article 12 and Article 16(3) of the Universal Declaration of Human Rights, 1948; Article 12 of the European Convention on Human Rights; Article 27 of the Geneva Convention; Article 10(1) of the International Convention on Economic, Social and Cultural Rights of 1966; The preamble of the Convention on the Rights of the Child, 1989.

<u>The contact with the family is essential for minors</u>

127. This petition concerns telephone contact for all inmates classified as security inmates. However, in this section we shall stress the special importance of the opportunity given to minor inmates classified as security inmates to maintain frequent contact with their families. It is clear that in times of global pandemic, minors and their family members, who are completely disconnected from each other, desperately need a certain degree of certainty with respect to their condition. In the absence of regular visits at high frequency, the need to establish an alternative regular contact is imperative.

128. The UN Convention on the Rights of the Child from 1989, acknowledged the rights of children worldwide. Said legal framework grants support to any person under the age of 18 acknowledging the fact that children require special treatment in view of their age and developmental needs.

129. It is for good reason that the convention expressly refers in Article 37(b) to children in custody according to the law emphasizing that the best interest of the child shall be the main consideration. Accordingly, children are customarily regarded as persons who have not yet reached sufficient developmental level and mental maturity, compared to adults, enabling them to control their moods, impulses and behavior. Hence, minors in general, and in incarceration facilities in particular, become more vulnerable.

130. Palestinian minors incarcerated in Israel are between 14-18 years of age. It is a very sensitive period due to physical and functional changes they undergo. It is a critical period

for them, since at that stage in their life their social autonomy is established. Their incarceration in harsh conditions of complete disconnection, exactly like the adults, delays their development and affects their social interaction and ability to integrate in society.

131. The mere incarceration of a minor is accompanied by a sensation of abandonment. The minor's parents cannot reach out, help and support them, particularly in such a difficult period of global contagious pandemic. They are prevented from having any contact. Said disconnection, in such a difficult period which may be accompanied by post-traumatic symptoms, intensifies the minor's sense of detachment and may affect the minor's social connections in general, and their relations with their parents, in particular. This situation may obviously have severe implications on their mental health in the future including after their release from prison.

132. The mere incarceration, as aforesaid, has negative effects on the social relations of minors. Their separation from their environment may cause irreparable damage in view of the critical period of their social development. Social relations for minors in general and incarcerated minors in particular, are of great concern, and their disconnection from meaningful persons in their lives such as family members and friends, under circumstances of imprisonment in extremely restrictive conditions, may lead to mental stress.

133. Telephone contact with family members, particularly parents, provides critical social support for minors, particularly in the current circumstances. The accumulation of geographic and social disconnection may potentially lead to the weakening of the family relations of minor inmates due to the loss of actual sense of support nurturing these relations.

134. According to an American study from 2004 (Cauffman, E. (2004). A statewide screening of mental health symptoms among juvenile offenders in detention. Journal of the American Academy of Child and Adolescent Psychiatry) family relations of minor inmates are associated with better mental health. Accordingly, the better the contact between the incarcerated minor and their parents is maintained, either by way of visits or by telephone contact, the more protected the minor shall be from mental problems, which are naturally intensified in this difficult period.

135. If the experience of imprisonment is associated with a feeling of abandonment among minors, all the more so in circumstances of a spreading pandemic while the respondent decides to contemporaneously completely isolate them from their parents. When they need, more than anything else, to strengthen their sense of belonging and safety, the respondent decides to completely disconnect them from those who may provide them with same, namely, their parents.

136. This conduct, in the framework of which severe measures are taken against the minors drastically changing their routine, without giving them the opportunity to speak about it with their parents, may give them the feeling that the situation is dangerous, thus intensifying their fear and anxiety. In the absence of information or in the absence of ongoing and constant information from sources they trust, namely, their parents, they may develop imaginary thoughts, much more frightening than actual reality.

The best interest of incarcerated minors as a major consideration in respondent's conduct

137. The state of Israel is a party to the Convention on the Rights of the Child, which was ratified in 1991. One of the underlying principles of the convention is that protection of children from harm shall be a primary consideration in any action taken by the administrative authority. The principles of the convention are entrenched in Israeli

legislation in the Youth (Trial, Punishment and Modes of Treatment) Law, 5731-197, providing that incarceration of minors shall be used only as a measure of last resort and only in the absence of alternatives. To the extent **incarceration is required, it shall be carried out with due respect to the minor's dignity, giving proper weight to considerations of rehabilitation, treatment and integration in society, taking into account the child's age and maturity level**. The convention also applies to Israel's actions in the occupied territories, including, *inter alia*, East Jerusalem, but in fact it does not happen.

138. International law acknowledges the elevated vulnerability of minors compared to adults, and the long term implications which they may suffer as a result of traumatic experiences. Particularly, it is acknowledged that the age of the child does not only affect their criminal liability, but also the manner by which they experience detention, interrogation and imprisonment. In view of said sensitivity, most judicial systems in the world, acknowledge the need to give minors additional protections, taking into account their vulnerability.

139. If, nevertheless, a decision is made to deprive minors of their liberty, they must be allowed prompt access to legal support and continuous contact with their families. They must be treated with respect, in a manner which does not violate their sense of dignity and worth.

140. According to the principle of the child's best interest, in all actions concerning children, either by the courts, administrative authorities or legislative bodies, the child's best interest shall be a primary consideration.

141. In Israeli jurisprudence the principle of the child's best interest is a fundamental and well rooted principle. Accordingly, in CA 2266/93 A v. A, IsrSC 49(1) 221, it was held by the Honorable Justice Shamgar that it is incumbent on the state to interfere in order to protect a child from having their rights violated.

142. In addition, the principle of the child's best interest was recognized in numerous judgments as a guiding principle whenever balancing of rights is required. As stated in CA 549/75 **A v. The Attorney General**, IsrSC 30(1), 459, pages 465-466:

> **There is no judicial matter pertaining to children, in which the child's best interest is not the primary and main consideration**".

143. The convention also includes a host of provisions requiring that the family unit and the right of the child to family life be protected, and particularly in Article 3 providing that the best interest of the child shall be taken into account as primary consideration in any governmental action. It arises from the above that any enactment or policy should be interpreted in a manner enabling the protection of the child's best interest.

144. Disregarding the ramifications of the imprisonment along with the almost complete disconnection from the outside world, for the group of minor inmates classified as security inmates, attests to the disproportionality and unreasonableness embedded in the imposition of extreme and sweeping restrictions without considering other alternatives. In addition, it should be remembered that the violation is caused by virtue of an administrative directive classifying them as security inmates and prohibiting them from having telephone contact in the ordinary state of affairs. Hence, the violation of the fundamental rights of said minor inmates is unconstitutional, discriminatory and disproportionate.

145. These children are taken from their families and are thrown into the void of a prison space without any support services and social support services of any kind. The incarceration itself is traumatic for them. A host of testimonies of minors describe severe physical violence used against them during interrogation and while in detention amounting in some

cases to torture. Other than the violence, detentions and interrogations are conducted with systematic and willful violation of the law.

146. In fact, Israel breaches the Convention on the Child's Best Interest by the way it treats minor Palestinian residents of the West Bank, including minor residents of East Jerusalem, who do not receive the protections specified in the convention, and in the Israeli Youth law. Said breach is intensified by the restrictions imposed on visits and the failure to provide visits on a regular basis without an alternative in the form of regular telephone contact, while refusing to take into account the vulnerability of the minors and prohibiting them from having regular and reasonable contact with their families through orderly telephone calls, a critical measure to protect their physical and mental health and wellbeing in this difficult period.

Preventing an inmate from having contact with their family members constitutes cruel and inhuman treatment

147. As specified above, inmates' right to maintain contact with their family members is well entrenched both in international law and customary standard rules for the treatment of prisoners. Accordingly, for instance, Article 58 of the Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules") provides as follows:

> "Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals:
>
> (a) By corresponding in writing and using, where available, telecommunication electronic, digital and other means; and
>
> (b) By receiving visits.

148. And more forcefully, with respect to minor inmates, the international standards provide that all measures should be taken to secure proper communication between the minors and the outside world, frequent visits and communication in writing or by telephone calls at least twice a week (see: United Nations Rules for Protection of Juveniles Deprived of Their Liberty, 14 December 1990, articles 59-61).

149. Preventing contact between inmates and their family members actually prevents them from having any contact with the outside world amounting therefore to incarceration in inhuman conditions which are prohibited according to international law. The prohibition against cruel and inhuman treatment or punishments constitutes customary law and is entrenched in a large number of international legal sources including: Article 5 of the Universal Declaration on Human Rights (1948), Article 7 of the International Covenant on Civil and Political Rights (1966) which was ratified by the state of Israel in 1991, Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), ratified by Israel in 1991, and Article 3 common to the Geneva Conventions of 1949, which is relevant to the case at hand since the minor Palestinian inmates are protected residents according to the Fourth Geneva Convention.

150. It should be emphasized that the prohibition against cruel and inhuman treatment or punishments is an absolute prohibition which should not be violated due to exceptional circumstances or state of emergency (see for instance Article 4 of the International Covenant on Civil and Political Rights).

151. Needless to point out that this honorable court has acknowledged the fact that the conditions of imprisonment are also examined from the perspective of the prohibition of cruel, inhuman or degrading punishment:

> "International law also examines the conditions of imprisonment from the perspective of the prohibition of cruel, inhuman or degrading punishment. This prohibition, while worded in a general manner, is anchored in Article 5 of the International Covenant on Civil and Political Rights, and in Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, ratified by Israel in 1991."
>
> See: HCJ 1892/14 **Association for Civil Rights v. Minister of Public Security** (reported in the Judicial Authority Website, June 13, 2017, para 51).

152. Finally, we would like to emphasize that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment published, when the Coronavirus crisis broke out, a statement of principles relating to the treatment of persons deprived of their liberty in the context of the Coronavirus pandemic. In its statement the Committee notes that while it is legitimate to suspend nonessential activities, the fundamental rights of detained persons during the pandemic must be fully respected. With respect to contact with the outside world, the Committee expressly states that any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone communication):

> 7) While it is legitimate to suspend nonessential activities, the fundamental rights of detained persons during the pandemic must be fully respected… Further, any restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication (such as telephone or Voice-overInternet-Protocol communication):

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Statement of principles relating to the treatment of persons deprived of their liberty in the context of the Coronavirus disease (COVID-19) pandemic, 20 March 2020, Article 7. Available at: http://rm.coe.int/16809cfa4b

The violation of the right of inmates classified as security inmates is not proportionate

153. According to the principle of proportionality, a protected human right may be violated only to the least extent required to achieve the objective, for which said right is being violated. The respondents must exercise their discretion "in a manner that will not, inter alia, violate the right beyond the least extent required, and in a manner that the relation between the damage caused as a result of the violation of the right and the possible advantage which may arise from the achievement of the objective will be reasonable (HCJ 6226/01 **Indor v. Mayor of Jerusalem**, IsrSC 57(2) 157, 164).

154. This honorable court laid down the foundations, according to which the proportionality of the violation of a human right is examined. A violation of a right will be proportionate if it satisfies three cumulative subtests: the rational connection test (which examines the correlation between the means used and the realization of the objective underlying respondents' policy); the least injurious means test (which examines whether the objective could have been achieved by another means, which violates the human right to a lesser extent); and the test of proportionality in the narrow sense (according to this test, even if the means used leads to the realization of the objective, and even if it is the least injurious means for the realization thereof, the damage caused to a protected human right by the means used must be of proper proportion to the gain brought about by that means)(see HCJ 5016/96 **Horev v. Minister of Transportation**, IsrSC 41(4)1, 53- 54; **Stamka** above, page 777).

155. In view of the limitation clauses in the Basic Laws, the proportionality principle was adopted as a means for the examination of the lawfulness of laws, and hence, it is used as a condition for the lawfulness of any administrative act (HCJ 987/94 **Euronet Kavei Zahav (1992) v. Minister of Communications**, IsrSC 48(5) 412, 453). The proportionality of the violation of the rights of minor Palestinian prisoners and their family members, will be examined taking into consideration the severity of the infringement, and in view of the superior status of the right to family life, particularly since minors are involved: "All three subtests… should be applied and implemented taking into consideration the nature of the violated right" (HCJ 1715/97 **Israel Investment Managers Association v. Minister of Finance**, IsrSC 51(4) 367, 420).

156. Before discussing the disproportionality of said policy it should be remembered that it is an offensive policy which is not entrenched in any law, regulation or procedure, namely, is devoid of any legal authorization. Relevant to this matter are the words of the Honorable Justice (retired) Danziger in HCJ 4466/16 '**Alian v. The Military Commander**) reported in Nevo) (July 14, 2017):

> Any administrative organ must operate within the confines of the authority granted it by law. This principle is the cornerstone of administrative law. It makes it incumbent upon administrative agencies to act according to the law, thus limiting the power of government and ensuring individual liberties. The administrative obligation that applies to the Military Commander to act by authority applies regardless of the nature and wisdom of his decision. Even "good" administrative action or action arising out of an "administrative need" can be found to be illegal in the absence of a source of authority (LCA 2558/16 A. v. Pensions Officer – Ministry of Defence [reported in Nevo], para. 37; CA 7368/06 Luxury Apartments Ltd. v. Mayor of Yavneh [reported in Nevo], para. 33; HCJ 1640/95 Ilanot Hakirya (Israel) Ltd. v. Mayor of Holon [IsrSC 49(5) 582, 587 (1996); Daphna Barak-Erez, Administrative Law, vol. I, 97-98 (2010) (Hebrew); Baruch Bracha, Administrative Law vol. I, 35 (1987) (Hebrew); Yitzhak Zamir, Administrative Authority, vol. I, 74-76 (2nd ed., 2010) (Hebrew) (hereinafter: Zamir, Administrative Authority).
>
> When the administrative act infringes human rights, not only is the administrative entity required to point to a source of authority for its action, but the enabling provision must meet constitutional requirements. Inter alia, it must be anchored in primary legislation, in a special provision of law intended to permit the violation of the fundamental right. In addition, it must be clear, specific and explicit. This is what this Court has long held, and this principle was eventually even anchored in sec. 8 of Basic Law: Human Dignity and Liberty, which provides that a violation of basic rights protected under the law shall only be permitted "by virtue of express authorization in such law" (see: HCJ 6824/07 Manaa v Israel Tax Authority [IsrSC 64(2) 479 (2010)]; HCJFH 9411/07 Arco Electric Industries Ltd. v. Mayor of Rishon LeZion [Reported in Nevo] (October 19, 2009); HCJ 1437/02 Association for Civil Rights in Israel v. Minister of Public Security, IsrSC 58(2) 746, 762 (2004), 762; HCJ 5100/94 Public Committee Against Torture in Israel v. State of Israel, IsrSC 53(4) 817, 831 (September 6, 1999 (hereinafter: the Public Committee case); HCJ 5128/94 Federman v. Minister of Police, IsrSC 48(5) 647, 653 (1995); HCJ 355/79 Katlan v. Israel Prison Service, IsrSC 34(3) 294 (1980); CrimA 40/58 Attorney General v. Ziad, IsrSC 12 1358 (1958)) (Emphases in the original)

157. **The first subtest: the rational connection** – the first stage in the examination of the proportionality of respondents' policy concerns the question of whether a rational connection exists between the objective of safeguarding security and the means of the imposition of a sweeping limitation on the right of security inmates in general and the minor security inmates in particular, to have telephone contact with their family members.

158. In view of the severity of the violation inflicted by respondents' policy on the right of the security inmates, and in view of the restrictions imposed on family visits in the context of the Coronavirus crisis, a clear, significant and proved connection must exist between said policy and the realization of the objective of safeguarding security.

159. Case law provides that an administrative authority must lay down an appropriate factual infrastructure to substantiate its decisions. Said infrastructure must be based, inter alia, on the gathering of substantial data and evidence. Said ruling has an even greater effect and importance when the substantiation of measures which violate a fundamental right is concerned. In the absence of data and factual infrastructure there is no basis for the alleged connection between the means and the objective:

> When a denial of fundamental rights is concerned, it is not sufficient to present equivocal evidence … I am of the opinion that the evidence required to convince a statutory authority that there is justification for the denial of a fundamental right, must be clear, unequivocal and convincing… the greater the right the stronger the evidence which should serve as the basis for the decision concerning the reduction of the right (EA 2/84 **Neiman v. Chairman of Central Elections Committee**, IsrSC 39(2) 225, 249-250).

160. Namely, the respondents must show that their sweeping policy which denies all security inmates their right to maintain family relations with their loved ones through telephone contact, as an alternative to family visits which were denied, is based on data and evidence, according to which it is indeed capable of preventing harm to security. In the absence of such factual infrastructure, respondents' policy will not satisfy the rational connection test. The above is more forcefully said in view of the fact that the above infringement has been continuing for more than nine months.

161. **The second subtest: the least injurious means -** the least injurious means test concerns the question of whether the security objective may be realized in a different way, which will injure the fundamental rights of the inmates to the minimum extent possible.

162. The severe limitation imposed on the right of the security inmates to have telephone contact with their family members after having been denied the possibility of receiving family visits altogether or in reasonable frequency, does not satisfy this test. It is a sweeping arrangement, which puts an entire population group under suspicion, and exposes it to a "different treatment" solely due to respondents' administrative classification, causing it to be completely disconnected from the outside world under the current circumstances.

163. This honorable court has held more than once that sweeping arrangements as opposed to arrangements which are based on a specific-individual examination, are disproportionate measures, which injure the individual beyond need (HCJ 3477/95 **Ben Atiya v. Minister of Education**, IsrSC 49(5)1, 15).

164. In **Saif** (HCJ 5627/02 **Saif v. Government Press Office**, IsrSC 58(5) 70, hereinafter: **Saif**) the honorable court examined the lawfulness of the decision of the Government Press Office, according to which the Office would stop issuing journalist certificates to Palestinian journalists, including those who were holding entry permits into Israel, and

would not extend the validity of certificates which were issued in the past. The grounds given by the state to its sweeping refusal were its concern that government officials in Israel would be injured in press conferences or in government offices, in view of the fact that a journalist certificate facilitated the access to said places. According to the state, an individual security check cannot obliterate the risk posed by an OPT resident, since such risk derives from the mere residency.

165. The judgment, which rejected the state's arguments, provides that security considerations are not an absolute value and that "balancing is required between the interest of safeguarding security and other opposing protected rights and interests." (**Saif**, paragraph 6 of the judgment of Justice Dorner). It was further held that "the total refusal to issue journalist certificates to Palestinian residents of the Area – including those holding entry and work permits in Israel – indicates that no balancing whatsoever was made between the considerations of freedom of speech and information and security considerations, and in any event, the balancing which was made was not proper" (paragraph 7 of the judgment of Justice Dorner).

166. And it was so held on this issue by President Barak, in his judgment in **Adalah** (paragraph 69 of his judgment):

> **The need to adopt the least harmful measure often prevents the use of a flat ban**. The reason for this is that in many cases the use of an individual examination achieves the proper purpose by employing a measure that violates the human right to a lesser degree. This principle is acceptable in the case law of the Supreme Court. As noted above the respondents must show that the limitation imposed on the issue of entry permits into Israel to family members of prisoners affiliated with certain organizations, is based on firm grounds of evidence and data.

167. Moreover, the fact that other classes of inmates routinely receive the right to telephone contact and in these days in an increased scope and by additional technological measures, and this is denied only to a small part of those inmates only when based on an individual examination, raises a heavy concern that the failure to conduct an individual examination when it comes to security inmates, does not derive from security considerations necessarily. Hence, President Barak continues to state, in paragraph 69 of his judgment in **Adalah** as follows:

> There may be cases in which the individual consideration will not realize the proper purpose of the law, and a flat ban should be adopted. However, before reaching this conclusion, **we must be persuaded, on the basis of proper data, that there is no alternative to the flat ban**. Sometimes the choice of the flat ban results from a failure to determine the form of the individual consideration and not because such a consideration is ineffective. In Stamka, Justice M. Cheshin held — with regard to the policy of the Ministry of the Interior that required the foreign spouse who was staying in Israel to leave it for a period until his application for a status in Israel was examined — that: 'The clear impression is that **the weakness in the supervision of the Ministry of the Interior** was one of the main factors… for the creation of the new policy; and instead of strengthening the effectiveness of the supervision, the Ministry of the Interior took the easy path of demanding that the foreign spouse leave Israel'

168. The implementation of the above in our case indicates that the respondents chose the "easy path": a flat ban on the possibility that all security inmates would be allowed to have telephone contact with their family members on a regular basis, in the absence of

any other way to maintain contact. The fact that individual examinations are conducted to other populations of inmates only increases the concern that the flat ban has no basis. The respondent chooses to sweepingly refrain from examining the possibility of implementing an arrangement allowing regular telephone contact and from the possibility of carrying out an individual examination and making an individual decision with respect to each individual, according to their personal details, in a manner which stains the policy with lack of proportionality.

169. The third subtest: proportion between the means and the objective – the third proportionality test concerns the question of whether the scope of injury inflicted on human right, as a result of respondent's policy, is proportionate to the objective the realization of which is sought.

170. According to the third subtest, if the gain brought about as a result of the policy is considerable, the violated right will be defeated by it. The nature of said subtest is different from that of its two predecessors, as it focuses on the violation of the human right which is caused as a result of the realization of the objective underlying the policy. It embodies the idea according to which "there is a moral barrier, which cannot be surmounted by democracy, even if the objective to be realized is proper" (President Barak HCJ 8276/05 **Adalah v. Minister of Defence**, TakSC 2006(4) 3675, 3689).

171. In the case at hand, said policy severely violates a very fundamental right, primarily the right to family life, with said violation occurring in particularly harsh circumstances of a spreading pandemic. Justification for the violation of said right, if any, should serve a public interest of the first degree. This fundamental right is accompanied by other fundamental rights such as the right to dignity and the right to health.

172. Nevertheless, the objective of safeguarding security, if it is indeed the objective of the policy, as proper and important as it may be, is not an absolute value and does not justify every violation of human rights. The security justification is not absolute, and it must be balanced against other needs. Accordingly, for instance, in **Saif** the court emphasized that a theoretical security risk posed by a journalist, who holds entry permits into Israel, does not justify an inevitable violation of protected rights and discrimination between foreign Palestinian journalists and all other foreign journalists. Security is never absolute and it may be defeated by other rights HCJ 5100/94 **The Public Committee against Torture in Israel v. The Government of Israel**, IsrSC 53(4) 817).

173. The heavy price paid by the security inmates in general, and by such minor inmates in particular, as a result of the implementation of respondent's policy, is exaggerated and excessive. The speculative security advantage which arises – if any – of this policy, which refrains from arranging the issue of telephone contact, is not proportionate to the severity of the violation of inmates' right to maintain family relations.

174. Even if the respondent has justifications for limiting the right to contact with family members, by virtue of its power to secure proper action, it is not exempt of the obligation to make proper balancing of interests, namely, the competing pertinent considerations in each case. It is clear that for balancing purposes there is a difference between a situation in which the threat to state security is small and distanced and a situation in which the threat is close and real. The overwhelming majority of the inmates received family visits up until the outbreak of the Coronavirus crisis, which means that the threat to security has already been examined as far as they are concerned. The chance of harm to state security by phone calls held between them and their family members as an alternative for visits which are not held on a regular basis, calls which shall be made through the respondent and under its supervision, is miniscule compared to meetings between them in the framework of visits.

175. It is clear that there are less injurious measures that the respondent could have taken, such as supervising the security inmates' phone calls to prevent prohibited activity, to the extent this is the concern. It is obligated to do so in view of the fact that the more "efficient" measure of the flat ban is a measure which critically violates human rights of security inmates and creates, as aforesaid, inequality between them and the criminal inmates, both minors and adults.

176. In this context, the words of the Honorable Justice (retired) Mazza in AAA 4463/94 **Golan v. Israel Prison Service**, in paragraph 19 of the judgment (things which are also quoted in Kuntar, paragraph 12) should be noted, manifesting one of the most basic guiding rules regarding Israel Security Agency's activity:

> "The authority must satisfy the proportionality test and it must not violate the rights of the prisoner unless and to the extent required to prevent the risk".

177. The mere size of the population of security inmates increases, once again, the severity of the harm inflicted by the current policy on human rights and tips the scale towards the inevitable decision that it is a disproportionate policy. In view of the high rate of security inmates out of the entire population of prisoners, their incarceration conditions may no longer be regarded as an exceptional matter pertaining to a specific group of prisoners, but rather as a rule which applies to about one third of all prisoners, which should be treated like any other prisoner. The respondent is required to examine the realization of their rights on the one hand, and their exposure to risks and harms on the other, as a result of said policy.

178. The inaccessibility of telephone calls also critically affects the accessibility of security inmates to the most sacred fundamental rights in Israeli jurisprudence, in addition to and as an ancillary result of the violation of the right to family life, including the right to legal representation and the right to health. The above is true in general and in a period of spreading pandemic, *a fortiori*.

179. In addition, minors, unlike adults, cannot handle their affairs and the inaccessibility of their family members may prevent them from reporting in real time, or as soon as possible, occurrences requiring legal attention and from updating them on whatever may be needed for proper representation. A bi-monthly visit cannot satisfy this need.

180. The right of inmates to health is also violated in the same manner, when they are prevented from directly contacting their families or physicians outside the IPS and exercise their rights by, *inter alia*, reporting through family members to physicians outside the IPS of their condition for treatment purposes as well as for the purpose of taking preventive measures and for the purpose of informing human rights organizations of right violations.

181. It is a sweeping policy which violates the fundamental rights of security inmates in general and minors in particular, beyond need and in a disproportionate manner. This honorable court has repeatedly stated that flat bans without an individual examination, are inacceptable. Accordingly, it was held in HCJ 2028/05 **Amara v. Minister of Interior** (July 10, 2006) as follows:

> "The measure of specific, individual examination of those involved is undoubtedly a proper and proportionate measure. The individual examination is aimed at locating a potential risk posed by a certain individual, to remove, to the maximum extent possible, potential risks to state security and public safety."

182. And it was further held in Kuntar:

> "Indeed, some security prisoners have committed horrendous and atrocious crimes. For this they were penalized by a court of law and sentenced to serve time in prison, each one according to his crime. The IPS may not add a punishment of its own, due to the severity of the crime, to the punishment which had already been imposed by a court of law. Indeed, different incarceration conditions should be applied to different prisoners, but only according to security and order considerations or other pertinent considerations, and only to the extent required according to said considerations."

183. The policy causing an almost complete cut-off from the outside world is therefore disproportionate, since it affects all security inmates including, *inter alia*, minors, inflicting a severe harm, disproportionate to the gain arising from its objective, namely, security considerations. Supervising telephone calls for security purposes can be satisfied by the arrangement established in the telephone contact order for criminal prisoners or by other proportionate measures, including an individual examination and other measures supervising the frequency, duration and addressees of the calls, presence of warden and so forth and so on. These least injurious measures still make it possible to uphold the fundamental rights of security inmates. On the other hand, denying phone calls, in advance, from all security inmates is a disproportionate measure exceeding reasonableness in general and particularly when visits are denied due to the spread of the Coronavirus pandemic.

Prohibited Discrimination

184. Since there is no pertinent justification for the sweeping nature of the critical injury or denial of contact with the outside world from thousands of inmates only due to their classification as security inmates, the vast majority of whom are Palestinians, we are concerned with prohibited discrimination as well as unconstitutional violation of their rights. Due to the sweeping nature of the violation of the right to the point of its total denial it becomes, in the vast majority of the cases, inappropriate and discriminating.

185. The regulations bring about an improper result requiring immediate repair particularly in view of the current situation and in view of the fact that this situation has been continuing for more than nine months. We are not concerned with an equal distribution of a privilege among all inmates, but rather with an alternative enabling maintaining contact with a group consisting of thousands of inmates, including minors and persons with pre-existing medical conditions. The magnitude of the harm arising from an unequal and unreasonable distribution of the right to telephone contact with the outside world is obvious since, as aforesaid, the possibility to have telephone contact crucially affects the ability to realize constitutional rights.

186. As aforesaid, the discrimination created by the order along with the reality of disrupted visits, between inmates classified as security inmates and others is not premised only on "relevant difference" between the populations of the inmates and does not satisfy the criteria of reasonableness, fairness and proportionality imposed on the administrative authority; and anyway risk cannot be attributed to such a large group of people without an individual examination. What can be sweepingly established with respect to such a large group is the special need and justification for the entire population of security inmates to have such contact, particularly in the context of the harsh circumstances of the spreading pandemic and due to the fact that this group is at risk.

187. The argument that security risk is posed by inmates classified as security inmates without an individual examination of said risk is premised on an implied assumption that the population of security inmates is monolithic. Needless to remind that a considerable part of said group received regular family visits until the outbreak of the pandemic – and a

few visits thereafter – following individual security examination. It is therefore unclear why in the context of telephone contact a similar examination cannot be done - even if logistic considerations were used to explain said difficulty in the beginning of the Coronavirus crisis, said explanation is no longer acceptable after the elapse of nine months during which the respondents had to take action to find satisfactory solution as requested in the petition. Other than Jewish security prisoners – the IPS Commission Order attributes the same ostensible elevated risk level to all security inmates without any distinction and disregards the fact that this large group is composed of sub-groups different and distinct from one another. Accordingly, a person who threw a rock at a soldier in his teens (an offense which is undoubtedly not as severe as some of the offenses committed by criminal prisoners) potentially poses, according to IPS Commission Order, risk identical in magnitude to that posed by the person who murdered the prime minister.

188. Therefore, respondent's policy is discriminatory and violates the principle of equality without any justification substantiating it, in its sweeping form, as proper distinction.

Conclusion

189. In view of the fact that nine months after the outbreak of the Coronavirus pandemic the emergency situation is still ongoing along with the harm to inmates' ability to receive family visits, a desperate need arises to arrange the issue of telephone contact of inmates classified as security inmates so long as the visit routine is disrupted against the backdrop of the Coronavirus crisis, by virtue of the Emergency Regulations as well as by virtue of restrictions arising from general governmental directives or non-official instructions.

190. The ongoing emergency situation brought about severe changes critically violating the constitutional rights of inmates and the principle of the child's best interest. Precisely in this difficult period, and after the time has passed to get organized and overcome logistical difficulties, the need increases to maintain contact with family members who are looking out for them in the form of a clear and permanent arrangement which shall enable contact with the families, as presented in the beginning of the petition.

This petition is supported by the affidavits of petitioners 1-3.

In view of all of the above, the honorable court is requested to issue an order nisi as requested and after hearing respondents' response, make it absolute. In addition the court is requested to direct the respondents to pay petitioners' costs and attorneys' fees.

December 30, 2020

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