

In the matter of:

1. _____ Al-Haj, ID No. _____
2. _____ Abu Srur, ID No. _____
3. _____ 'Arfah, ID No. _____
4. **HaMoked - Center for the Defence of the Individual founded by
Dr. Lotte Salzberger - Registered Association No. 580163517**

Represented by counsel, Adv. Nadia Daqqa (Lic. No. 66713) and/or Nadine Abu 'Arfah (Lic. No. 89020) and/or Daniel Shenhar (Lic. No. 41065) 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) and/or Alma Elimelech (Lic. No. 82867)

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 Internal Security**

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

The Respondents

Petition for Order *Nisi* and Request for an Urgent Hearing

Petition for order *nisi* is hereby filed which is directed at the Respondents ordering them to appear and show cause why they would not retract the directive limiting the access to showers of detainees classified as security detainees which is implemented only in two wings of Nafha prison.

In addition, and due to the urgency of the matter, the Honorable Court is requested to schedule an urgent hearing in the petition.

The grounds for the petition are as follows

1. The courts have often emphasized the importance of ensuring the suitable detention conditions of detainees. The Honorable Justice (*retired*) Procaccia stressed that the

detention conditions of detainees should not be made harsher as a retaliatory action or as an act of revenge for the offenses for which they were imprisoned, by stating as follows:

The constitutional outlook that gives human rights a supreme normative status also has ramifications on the human rights of a prisoner, and his ability to realize these rights when he is in prison. The constitutional system in Israel is based on the presumption that a person's basic rights should not be denied or restricted unless there is a recognized conflicting interest, whether private or public, that is of sufficient weight to justify this. The same presumption also applies to sentences that are handed down to offenders. Its significance is that the protection of human rights is extended to prisoners even after they have been sentenced, and a violation of their rights is possible only where a conflicting public interest of great significance justifies it. Such a violation is recognized only to the extent necessary in order to achieve the conflicting interest, but no more.,, **It should be emphasized that the restrictions on human rights that are imposed by the public authority were not intended to add an additional sanction to the sentence that was handed down. Their inherent purpose is not to increase the severity of the sentence that was handed down to the prisoner. Their purpose is not to punish the prisoner for his crimes, for which he has been sentenced to imprisonment, or to make the conditions of his imprisonment more difficult as recompense for his despicable acts. Where this is the purpose of the restrictions, they are likely to fail the constitutional test, since this is not a proper purpose. A restriction that is not required by the realization of the purposes of imprisonment or that is not required by another legitimate public purpose constitutes, de facto, the imposition of an additional sentence on the prisoner for the offence of which he was convicted.** Such a restriction that adds to the sentence imposed on the prisoner falls outside the scope of the power to limit the rights of prisoners that is granted to the Israel Prison Service. It is a departure from the principles of criminal sentencing, and especially from the principle of legality... according to which there are no offences or sanctions unless they are prescribed in statute or pursuant thereto (HCJ 2245/06 **Dobrin v. Israel Prison Service** (Decision dated June 13, 2006) paragraphs 13-14 (Reported in Nevo)) [Emphases were added, N.D.).

2. Similar to the above quote, numerous judgments on detention conditions have reiterated and emphasized that the purposes of punishment should not be achieved by violating the detainees' dignity and their human rights.
3. Based on these fundamental principles, back in 1999, the Minister of Internal Security (as then titled) authorized the members of the Public Defender's Office to act as official visitors to the various incarceration facilities for the purpose of examining the incarceration conditions of prisoners and detainees. Monitoring the incarceration conditions of prisoners and detainees is of great importance, not only due to the

importance in guaranteeing and protecting the rights of those who have been placed behind bars, but rather, the strict protection of the rights and dignity of these people, whose freedom has been denied according to the law, is one of the main means for maintaining human rights in Israel.

4. The reports of the Public Defender's Office throughout the years pointed and continue to point at a number of failures and deficiencies that the Respondents do not strictly comply with and which ultimately, severely and seriously affect the incarceration conditions of inmates. The findings of the visits which are transferred to the relevant authorities, may lead to the correction of many deficiencies in a manner which may improve the incarceration and living conditions of inmates.
5. The aforementioned reports did not disregard the issue of inmates' access to showers and their right to maintain personal hygiene which, at the same time, is also an obligation imposed on the inmates. Where the showers are placed outside the cells, it was often recommended to expand the access to those showers in terms of time and space, either by adding shower stalls or by increasing the times inmates may use the bathrooms, all of the above in view of the clear understanding that adequate access to showers is critical to maintaining the inmates' hygiene and dignity.
6. Although the issue of access to showers was raised as aforesaid in the reports of the Public Defender's Office and until now the approach was to expand, to the maximum extent possible, the times inmates may use the bathrooms, recently Respondent 2 ordered, by an order which was published only in the media – and for which until recently no official reason or explanation was presented – to limit the shower time allotted to each inmate to 4 minutes. This rule concerns only prisoners classified as security prisoners, and was issued following the deteriorating security situation at the time of its publication.
7. The order referred to two wings in Nafha prison where it is possible to limit the water flow to the showers, and in fact it was decided that running water for showers in said wings will only be allowed for one hour a day. This is a decision that stems from a strong and clear desire to take revenge on prisoners classified as security prisoners, as one of the numerous steps declared by Respondent 2 aimed at aggravating the incarceration conditions of all the prisoners classified as security prisoners, seeking to punish them.
8. Respondent 2's policy is contrary to the extensive case law on incarceration conditions of inmates, is contrary to the Prisons [Consolidated Version] Ordinance, 5732-1971, and is contrary to the Prisons (Detention Conditions) Regulations, 5770-2010, and its sole purpose is to use the incarceration conditions of the prisoners classified as security prisoners to punish them further, on the collective level, without any purpose.
9. It should be noted that the wings in which the order which had been issued by Respondent 2 was implemented, are wings which have been recently prepared, as part of the implementation of the judgment concerning the expansion of living space, for the purpose of resolving the severe overcrowding problem in prisons in Israel (see HCJ 1892/14 **Association for Human Rights in Israel v. Minister of Internal Security** (Reported in Nevo) (hereinafter: the **Living Space Judgment**)). Respondent 2's order returned the above overcrowding to the bathroom area, and instead of expanding inmates'

living space, thereby improving their conditions, the Respondents decided to abuse the implementation of the judgment in a manner adversely affecting their ability to take a shower, creating inhuman overcrowding in the bathrooms, since 200 inmates will have to take a shower in the limited time in which running water shall be provided to the wing.

10. Respondent 2's orders constitute a brazen interference with the implementation of a policy which is under the authority of the professional bodies, namely, Respondent 1. Respondent 1's adherence to this order increased the tension in all prisons, and even led to the announcement of a hunger strike by the prisoners. The strike should have started in the beginning of the month of Ramadan, but following agreements the details of which were not precisely published, and without an explicit undertaking on behalf of Respondent 1, the prisoners retraced their intention to go on a hunger strike. However, the hours of running water, which were partially expanded, continue to adversely affect the inmates' incarceration conditions, an impact which has no purpose and is not required for their incarceration.

The parties to the petition and exhaustion of remedies

11. **Petitioner 1**, a Palestinian prisoner classified as a security prisoner and held in Nafha prison. Petitioner 1 is a 36-year-old resident of Nablus, who was detained in January 2006 and was sentenced to 33 years in prison.
12. **Petitioner 2**, a Palestinian prisoner classified as a security prisoner and held in Nafha prison. Petitioner 2 is a 53-year-old resident of the Aida refugee camp in the Bethlehem district who was arrested in January 1993 and sentenced to life imprisonment.
13. **Petitioner 3**, a Palestinian prisoner classified as a security prisoner and held in Nafha prison. Petitioner 3 is a 36-years-old resident of East Jerusalem, who was arrested in August 2011 and sentenced to life imprisonment plus another 60 years.
14. **Petitioner 4**, (hereinafter: **HaMoked**) is a human rights association, which has provided assistance for many years to Palestinian prisoners and detainees, incarcerated in prisons under the responsibility of the Respondent, in order to ensure their basic rights.
15. **Respondent 1** (hereinafter: **Israel Prison Service**), Israel's national incarceration authority, is the entity responsible for protecting the basic rights of prisoners held in the correctional facilities under its responsibility.
16. **Respondent 2** is the Minister responsible in the government of Israel for the acts and operations of Respondent 1.
17. Following the publication of Respondent 2's order to limit the shower time for prisoners classified as security prisoners, apparently as a response to events from that period, and after HaMoked verified that the order was implemented in some of the wings of Nafha prison, the latter contacted Respondent 1 on February 14, 2023 and requested that it retract the implementation of Respondent 2's illegal decision and allow the inmates in the relevant wings, reasonable access to showers as was customarily done until that time.

A copy of HaMoked's letter dated February 14, 2023 is attached and marked **P/1**.

18. Given the prolonged absence of a response, on March 16, 2023, the undersigned went to visit Petitioners 1-3 in order to clearly understand the situation. The Petitioners stated that prior to Respondent 2's decision, access to the two shower rooms was allowed during

the times in which the wing was open – about ten hours every day – and that the decision to limit access to the showers seriously violated their right to dignity alongside a host of rights deriving therefrom. The petitioners explained that prior to Respondent 2's order, the access to the showers was not ideal, and as known, according to Respondent 1's rules, a shower should be located within the cell, providing a daily shower to each prisoner according to their needs.

19. According to Petitioners' descriptions, the order is not regulated in a procedure, and is implemented arbitrarily to the dismay of the prison's administration. Consequently, for about a month from the implementation of Respondent 2's order, water flowed in the showers for no more than 3 hours per day, and occasionally less than that, as decided by the prison staff on that day.
20. According to the petitioners, said decision severely affects their daily routine. Accordingly, for instance, in the absence of ventilation or air conditioning systems, inmates are forced to take more showers because they may sweat more and it is also the only way to cool the body on hot summer days; Also, the shower is necessary after inmates get their hair cut, which may occur outside of the hours in which the water flows to the wing; In addition, the decision affects the ability to observe religious obligations which require maintenance of hygiene. Today, most prayers are held outside the hours in which access to the showers is made possible, and in certain circumstances, the religious obligation requires a person to take a shower before praying; Furthermore, in certain cases the prison management decides to conduct searches and drills precisely at the time in which showers are available, thus preventing the prisoners from reaching the showers at the designated time. Added to that is the fact that inmates lead a daily routine in prison. Accordingly, some prisoners work in the wing, others are held in detention and must therefore attend hearings, and even convicted prisoners may file legal proceedings requiring their appearance in the various courts. Others suffer from chronic diseases and go for medical treatments, and even healthy prisoners or detainees may undergo medical procedures outside the prison. Hence, upon their return to the correctional facility, a situation may arise in which they shall not be able to take a shower on that day due to the restrictions imposed on inmates' access to showers in the wing.
21. Following the above, and in view of the serious violation of the rights of the Petitioners as well as about 200 other prisoners in their condition, and given the enormous harm which is expected to be caused as this order is extended to all other prisons, and in the absence of any response on behalf of Respondent 1 to HaMoked's letter concerning the shower restrictions, on March 20, 2023 HaMoked sent to the Respondents another letter requesting them to retract the decision and its implementation, due to the severe violation of the rights, physical health and mental health of the inmates and due to the fact that it is unlawful.

A copy of HaMoked's letter dated March 20, 2023 is attached and marked **P/2**.

22. Meanwhile, the prisoners classified as security prisoners launched protests against a series of decisions made by the Respondents, who decided to use the incarceration conditions as a tool to punish them. These protest measures intensified and an announcement was made of the intention to start a group hunger strike, which was

expected to commence at the beginning of the month of Ramadan, as the only way available to them to obtain more reasonable incarceration conditions. On the eve of the month of Ramadan the representatives of the prisoners and Respondent 1 reached a temporary agreement, according to which they will not start the hunger strike and at the same time Israel Prison Service shall undertake to maintain the *status quo*. Among their other demands, the representatives of the prisoners addressed the limitations imposed on inmates' access to showers, which so far has only been implemented in two wings in Nafha prison. Following the agreements which were reached, Respondent 1 decided to expand the access times to the showers, without explicitly determining the times in which access to the showers would be allowed. However, the expansion did not restore the situation to its previous condition, and the Petitioners along with the other inmates continue to suffer from these restrictions.

23. It should be noted that the above agreements were reached between the representatives of the prisoners classified as security prisoners and the representatives of Respondent 1, but it was not stated that they were binding and made with the consent and agreement of Respondent 2, as shall be shown in the petition below. In the context of the inmates' access to showers, the matter remains vague.
24. On April 20, 2023 a letter from Respondent 2 was received in HaMoked's offices. The letter stated in response to HaMoked's letter dated March 20, 2023 that due to the data received from Respondent 1, according to which the water consumption in the correctional facilities in which the prisoners classified as security prisoners were held "continues to be high" compared to the average consumption in the correctional facilities in which criminal prisoners are held, action should be taken to stop the exceptional water consumption by limiting the shower time. According to Respondent 2 the order is not aimed at infringing "access to bathrooms and running water for the purpose of maintaining personal hygiene according to the provisions of the law in a manner enabling a daily hot water shower". In addition, Respondent 2 mentioned in his letter that his above order was in conformity with the recommendations of the "Committee for the examination of the conditions of the security prisoners held by Israel Prison Service" from 2018 according to which "the then-Minister of Internal Security, Mr. Gilad Erdan, instructed to act to reduce the high water consumption with an emphasis on facilities in which security prisoners are held". It emerges from the response that Respondent 2 chose not to present things as they really are, as the declared purpose of the committee to which reference was made by him was to tighten the incarceration conditions of prisoners classified as security prisoners, and Respondent 1 together with the Israel Security Agency (ISA) refused to uphold its recommendations as stated by Mr. Gilad Erdan himself, the then-Minister of Internal Security who had established the committee, as was stated recently in the framework of his testimony before the governmental committee for the examination of the escape from the Gilboa prison.

A copy of Respondent 2's letter dated April 20, 2023 is attached and marked **P/3**.

<https://www.haaretz.co.il/news/politics/2022-02-02/ty-article/.premium/0000017f-f8b7-d2d5-a9ff-f8bf5a250000>

25. It should be pointed out that the details of the report remained privileged. Hence, the Petitioners reserve their right to add arguments with respect to the recommendations of the report, if additional details in that matter are revealed. It should be emphasized that no response was received from Respondent 1 until the date hereof.
26. Following the aforesaid, on April 27, 2023, some of the Petitioners were visited again to apprise them of the content of the above letter and to receive an update of the current factual situation, after it was published that Respondent 1 and the prisoners' representatives had reached agreements which included, *inter alia*, the showers issue.
27. In said visit, Petitioners 2-3 informed that from the beginning of the month of Ramadan, Respondent 1 started to open one of the shower rooms during the hours in which the wing is open, while the other shower room remained closed all day long and to the extent a decision is made to open it, it is opened only for about half an hour before the wing is closed. As described, although the access times to the shower were expanded compared to the situation which existed prior to the month of Ramadan, the Petitioners and the other prisoners continue to suffer from the above limitation since the expansion does not guarantee that every prisoner shall have access to the shower at least once a day. In addition, the Petitioners emphasized again that the needs of the prisoners change according to their situation, and as was described in detail above, other than the prisoners who are unable to use the showers at all due to the limitations, there are prisoners who need to use the showers more than once a day but are unable to do so.
28. They emphasized that these limitations are regarded as yet another way to use their incarceration conditions to punish them, and as an attempt to tighten their incarceration conditions without a proper purpose, and that these limitations continue to infringe many of their basic rights and disrupt the daily routine in the wing. The Petitioners explained that as a result of the limitations inmates are forced to wash themselves in the toilettes or to simply do without a shower. Consequently their rights to dignity and civilized human life are violated as well as their rights to health and freedom of religion. The above may also adversely affect their health and public health, particularly in view of the fact that it is an incarceration facility where people may be more vulnerable and susceptible to hygiene and sanitary deficiencies compared to other places.

The Legal Argument

Detainees' human rights stand during their incarceration

29. A prisoner's right to dignity and adequate living conditions also stems from the prevailing approach, both in Israeli law and in international law, that the very act of arrest or imprisonment does not deprive the detainee of their basic rights. Prison walls limit the detainee's freedom of movement, with all ensuing consequences, but they do not deprive them of their other basic rights, excluding those of which they were expressly denied by law:

It is a fundamental principle that every right of a person, as a person, is retained even when they are under arrest or imprisoned, and the fact of the imprisonment alone is insufficient to deprive them of any right, except when necessary and deriving from the

very fact of the deprivation of their freedom of movement, or when there is an express legal provision in that regard... this rule is rooted in the heritage of Israel from ancient times: according to the words of Deuteronomy 25:3: 'and your brother will be beaten before your eyes', the sages established an important rule in Hebrew penal law: "once beaten – he is like your brother" (Mishna, Makot, 3, 15). And this important rule stands not only after they have served their sentence but also while serving their sentence, since they are your brother and neighbor, and their rights and dignity as a person are retained and respected.

(HCJ 337/84 **Hokma v. Minister of Interior**, IsrSC 38(2) 826, 832; and see also: ADA 4463/94 **Golan v. Israel Prison Service**, IsrSC 50(4) 136, 152-153; ADA 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).

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

The approach of Israeli jurisprudence to the purpose underlying a person's incarceration is that it essentially deprives a person of their personal liberty, limiting their freedom of movement. According to this approach, when a person is incarcerated all of their human rights still stand. Indeed, "when a person is imprisoned they are deprived of their liberty but they are not deprived of their dignity."

31. The same applies to international law. Article 10(1) of the Covenant on Civil and Political Rights from 1966 which was ratified by the state of Israel in 1991 states as follows:

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

32. This Article was interpreted by the Human Rights Committee, the body in charge of the implementation of the Covenant, in General CCPR, Comment No. 21, dated April 10, 1992, in the broadest 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.

33. Also, in the framework of sections 1 and 5 of Basic Principles for the Treatment of Prisoners which were adopted by the UN General Assembly (Resolution 45/111 dated December 14, 1990) the principle was established according to which prisoners are entitled to all human rights other than those which are deprived by the mere fact of the incarceration. Section 1 provides that:

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

34. And according to section 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 International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.

The right to appropriate living conditions as a derivative of the right to dignity

35. As aforesaid depriving a person of their liberty and limiting their freedom of movement in prison does not allow the violation of their dignity as a human being: "The walls of the prison do not separate the detainee from human dignity" (HCJ 355/79 **Katlan v. Israel Prison Service**, IsrSC 34(3) 294, 298). It was further held that as part of the duty to safeguard the detainee's dignity, the state is obligated to ensure that they are provided with appropriate incarceration conditions – "they shall not be degraded and they shall not be subjected to sub-human detention conditions of the sort likely to harm their health and potentially their dignity." (MApp 7223/95 **State of Israel v. Rotenstein** (not reported) – quoted in HCJ 5100/94 **Public Committee Against Torture in Israel v. Government of Israel** (1999)(Reported in Nevo).

36. The right to proper incarceration conditions, deriving from the right to dignity, is a basic right and it includes the right to be incarcerated in conditions allowing civilized human life. It was so held by the Honorable Justice (as then titled) Alon:

Every prisoner and detainee, even when lawfully deprived of their freedom of movement and behind bars, are entitled to minimal and fundamental human needs. **These needs include not only the mere need to eat, drink and sleep to physically sustain their body but also the minimal human civilized ways by which said needs are satisfied to maintain their dignity as a person from a mental point of view.** (MApp 3732/94 **State of Israel v. Azazmi**, IsrSC 46(5) 72, 84 (1992) (emphases added, N.D.)

37. The restrictions imposed on the Petitioners, as described in the factual part above, are far from allowing them to maintain "human civilized ways". Prisoners who are forced to arrange their daily routine, every day, around their ability to access the showers – if at all – and to keep their body clean, when it adversely affects, among other things, the routine of prayers, the ability to participate in sports activities, the ability to get a haircut and shave and more – since the ability to take a shower shortly thereafter is not guaranteed – cannot maintain their dignity neither mentally nor physically.

38. It was also recognized by this honorable court that harsh detention conditions should be taken into account by the court as one of the considerations while discussing a person's detention, and that sometimes this consideration will lead to their release from detention. The court has not only recognized prisoners' right to adequate living conditions, but has also demanded that Respondent 1 adopt standards for the realization of these conditions and invest the necessary resources to implement them. Therefore, the honorable court reiterated in its rulings the importance of establishing minimum standards to ensure conditions allowing civilized human life while incarcerated. Accordingly, it was held that:

The principle that obligates to provide to every person minimal human needs, both physical and mental-spiritual, even when they are deprived of their personal liberty is a well-known and indisputable value. **The actual realization of this principle should be regarded as a supreme duty which should be given top priority.** (MApp 7053/01 **A v. State of Israel**, IsrSC 56(1) 504, 516 (2001) (emphases added, N.D.)).

39. Hence, limiting the access of inmates classified as security detainees to showers does not constitute a restriction deriving from the very nature of the incarceration, and the right to shower and maintain personal hygiene is one of the rights requiring Respondent 1 to invest resources and ensure that they are realized, to prevent a severe infringement of the dignity of the Petitioners and all other prisoners.

The right to adequate living conditions and the right to bodily integrity

40. The right to adequate living conditions and the right to the integrity of the body are among the rights that cannot be denied even during imprisonment. The Covenant on Economic, Social and Cultural Rights (1966), which was ratified by Israel in 1991, states in Article 12 that states parties to the Covenant recognize the right of every person to enjoy the highest attainable standard of physical and mental health.
41. Within the framework of said Article, the Covenant states that, among other measures guaranteeing the full realization of the right to health, steps should be taken to prevent, treat and control infectious diseases.
42. The Basic Law: Human Dignity and Liberty also entrenches in Section 4 thereof a person's right to the integrity of their body. Accordingly, the Respondents are obliged to provide persons in their custody incarceration conditions which shall not adversely affect their health. In circumstances in which prisoners are kept in overcrowded conditions that fail to meet the international standard – and in most correctional facilities, fail to meet Respondent 1's own standard, the chances of infection in poor sanitary conditions and lack of hygiene increase. Hence the need to use all measures available to Respondent 1 to reduce the harm inflicted on the incarcerated population and the violation of their basic rights, and to obviously avoid arbitrary harm to the existing minimum conditions. Restricting access to showers, which is currently implemented in only two wings, but which according to Respondent 2's statements, is to be expanded to the other wings, does not serve the above stated purpose, but rather increases the chances of contracting diseases.

43. Respondent 1 has also recognized this right in the framework of the Prisons Ordinance (Amendment No. 42), 5772, stating as part of Section 11B thereof, that it is Respondent's obligation to maintain adequate incarceration conditions and safeguard the health of the prisoner. The Criminal Procedure (Enforcement Powers – Arrests) Law, 5756-1996 states that "A detainee shall be held in adequate conditions which shall not adversely affect their health and dignity".
44. Similar to the importance of expanding the living space of the inmates as stipulated in the Living Space Judgment, increasing the density in specific areas and in the shower for that matter, by way of limiting inmates' access to the showers translates into daily distress which is expressed, *inter alia*, in constant friction with the other prisoners in the wing, in the complete absence of privacy, in an increase in the spread of diseases (both due to the congestion in the showers and due to poorer hygiene), and in the increase of mental stress. These things seriously affect the prisoner's life, and their physical and mental health.
45. Imposing restrictions on the access of prisoners to showers, and impairing the ability to maintain proper hygiene, may cause diseases, including skin diseases which are common among prisoners, due to the conditions in which they are held, the exposure to weather conditions – especially hot weather – and in the absence of air conditioning, prisoners need to access showers more frequently than the average person, as a way to cool the body and in an attempt to prevent skin problems and diseases, as explained above. The above is true in normal circumstances and may intensify with the tightening of the access conditions to the showers. The Respondents are well aware of the importance of having access to water and of maintaining personal hygiene and the cleanliness of the cells in view of recent past experience, and especially following the outbreak of the coronavirus, which forced the Respondents to ensure the supply of cleaning supplies and access to water in a sufficient and exceptional manner (compared to the average person) for the purpose of maintaining cleanliness to prevent, or reduce, the risk of contracting the disease or other diseases.
46. Creating congestion in the showers also affects the ability to keep the shower stalls clean, since the limited time requires intensive and non-stop use of the shower stalls. The inability to clean the showers after an increased use turns the shower stalls into a place with significant hygienic deficiencies. Added to that is the fact that the use of showers by several prisoners at the same time creates constant physical friction between the prisoners, which may cause tensions and fights, in addition to the severe violation of privacy.
47. Tightening the access conditions to the showers constitutes a brazen and intentional violation of Respondent's basic duty to provide the prisoners with their minimum needs and to allocate the necessary resources for this purpose.
48. It should be pointed out that according to international customary law, incarceration in overcrowded conditions constitutes a violation of the prohibition on inhuman and cruel treatment and punishment. The honorable court has already held, in the framework of the Living Space Judgment that the overcrowded conditions in the correctional facilities in

Israel are not adequate. Even if in the case at hand we are concerned with a wing which has been recently erected as part of the implementation of the Living Space Judgment, the preservation of the overcrowding aspects in part of the wing, namely, in the showers, knowingly and deliberately, constitutes an intentional and conscious violation of the aforementioned prohibition.

49. It was recognized by this honorable court that the incarceration conditions of prisoners are also examined through the prism of the prohibition on cruel, inhuman and degrading punishment:

The incarceration conditions of prisoners are also examined, from the international aspect, through the prism of the prohibition on cruel, inhuman or degrading punishment. This prohibition, which is also drafted in a general manner, is entrenched in Article 7 of the Covenant on Civil and Political Rights as well as in Article 16 of the Covenant Against Torture and Cruel, Inhuman or Degrading Treatment and Punishment from 1984, which was ratified by Israel in 1999. See: HCJ 1892 /14 **The Association for Civil Rights v. The Minister of Internal Security** (Reported in the Judicial Authority Website, June 13, 2017, paragraph 51).

50. The UN Standard Minimum Rules for the Treatment of Prisoners (1955), known as the Mandela Rules (hereinafter: the **Mandela Rules**) emphasize the obligation imposed on States to provide detainees the same standard of health care which is available in the community. This obligation stems from the fact that detainees lose their autonomy with their incarceration and are dependent on the prison authorities for the fulfillment of all of their basic needs. Rule 24 of the Mandela Rules stipulates as follows:

The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

The right to access showers

51. The difficulty in justifying the severe violation of the access right to the showers arises, inter alia, from the fact that the Respondents themselves have attributed until recently great importance to this issue, separate and apart from the clear violation of the rights of the Petitioners and other detainees in their condition.
52. The above limitation stands in direct conflict with the Prisons [Consolidated Version] Ordinance, 5732-1971 (hereinafter: the **Prisons Ordinance**) and the Prisons (Imprisonment Conditions) Regulations, 5770-2010 (hereinafter: the **Prisons Regulations**) entrenching the importance of maintaining sanitary conditions in prison and the inmate's personal hygiene.
53. According to Section 11B(c)(1) of the Prisons Ordinance, a prisoner shall be held in adequate conditions which shall not adversely affect their health and dignity, **it being**

expressly clarified that they are entitled to adequate sanitary conditions **enabling them to maintain their personal hygiene**. Section 2(c) of the Prisons Regulations expressly emphasizes the importance of access to showers stipulating: "If there is no shower in the cell, **the incarceration facility shall consist of an adequate number of showers enabling the prisoners to realize their right to a hot shower on a daily basis.**" (emphases added, N.D.).

54. Detainees' right to adequate access to showers is recognized on a universal level and as a minimal international standard. The Mandela Rules also regulate the detainee's right to shower and stipulate, *inter alia*, that every detainee should be given the opportunity to exercise their right to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region. The same rules also regulate the provision of cleaning and toilet supplies to ensure that every detainee shall be able to fulfill their obligation (parallel to their right) to maintain their personal hygiene.

55. The European Prison Rules also attach great importance to this issue which strengthens the universal nature of this right. According to Section 18.1 of said Rules:

The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

56. The American correctional system also recognizes the importance of access to showers to secure adequate living conditions to inmates. According to the standards of the American Correctional Association, inmates' access to showers must be guaranteed in a manner enabling them to shower on a daily basis to maintain reasonable personal hygiene. According to the standard at least one shower stall must be made available to no more than eight detainees during the day. This standard is far from the current reality.

57. It should be noted that these rules establish minimal standards and there is no preclusion and it is even desirable to provide more adequate incarceration conditions than the minimal standard to the extent possible. As described above the Respondents apparently do not only limit access to the showers although they are not precluded from allowing it, but rather, inflict harm which falls below the minimal international standards.

Violation of the right to privacy

58. In the described circumstances, the Respondents severely violate prisoners' right to privacy and individual modesty entrenched in Section 7(a) of the Basic Law: Human Dignity and Liberty. Indeed, prison inmates' right to privacy is relatively reduced, however it is not completely revoked. The intolerable overcrowding, caused by the Respondents knowingly and intentionally, severely violates the prisoner's privacy in one of the few places in which the Respondents are obligated to ensure that their privacy is maintained, namely the shower.

59. The right to privacy is defined, *inter alia*, as a person's control of a certain private physical space in which "the individual is left to themselves, for the development of their own "self", without the involvement of others" (HCJ 2481/93 **Dayan v. Commander of the Jerusalem District**, IsrSC 48(2) 456, 471 (1994)). Even if this space is limited by the very fact of the incarceration, it must be provided in the prison's showers and toilets, where the existence of which is clearly needed to make sure that the prisoner's dignity as a human being is maintained on the most basic level.
60. It is the right of every prisoner, not to be exposed to other prisoners, in a way that would harm their dignity and privacy, and it is Respondents' obligation to actively prevent such a severe violation of the inmate's basic rights, and to refrain from contributing to its infliction. By implementing the restrictions on the access to the showers, Respondent 1 causes inhuman overcrowding in the showers of the wing, inevitably resulting in the invasion of one prisoner's privacy by another prisoner while using the bathroom, either while taking a shower or while getting organized before or after the shower. These restrictions do not leave the minimal, clear and most basic living space that the inmate is left with in prison, where they perform the most basic and private actions which are required to preserve their dignity as human beings.

Violation of inmates' right to freedom of religion

61. As described in the factual part of this Petition, the violation of the right to freedom of religion of the prisoners is one of the consequences of Respondent 2's order to limit their access to the showers. As is known, the vast majority of the members of the group of prisoners classified as security prisoners are Muslims.
62. A significant number of those inmates are considered observant, and are required according to their religion to hold five daily prayers which require strict hygiene and personal cleanliness before each prayer. This requires extended access to showers. Depriving prisoners from accessing the shower, in certain circumstances, shall adversely affect their ability to perform the prayer. Even if Respondent 2's order is not aimed at violating freedom of religion, there is no doubt that in fact, his order severely and seriously violates Petitioners' freedom of religion.
63. Freedom of religion was promised already by Article 83 of the Palestine Order in Council of 1922 according to which: "All persons in Palestine shall enjoy full liberty of conscience, and the free exercise of their forms of worship subject only to the maintenance of public order and morals."
64. In this regard Prof. A. Rubinstein writes in his book "**The Constitutional Law of the State of Israel**" (Fifth Edition) Volume B page 176): "Freedom of religion, conscience and faith were recognized by case law as basic human rights".
65. In HCJ 6111/94 **Committee for the Preservers of Tradition v. Chief Rabbinical Council of Israel**, IsrSC 49(5), 94 it was held that "**The protected right of human dignity and liberty also includes freedom of conscience, faith and religion.**"
66. The above is doubly important when we are concerned with detainees who are held in correctional facilities in Israel, contrary to the rules of international law prohibiting the

transfer of population under occupation to the territories of the occupying power. The above, in and of itself requires the adaptation of their incarceration conditions to the cultural and religious aspects of the specific population of inmates. The (Third) Geneva Convention regarding the Treatment of Prisoners of War (1949) has also recognized the importance of respecting the religion of prisoners of war in incarceration, and the obligation to enable them to observe their religion.

67. It is for good reason that the "Mandela Rules", as a basic minimal standard, regulates detainees' right to freedom of religion. According to said rules the prison authorities are obligated to respect the religious beliefs of the detainees and allow them to observe their religious practices and rituals.
68. In a manner consistent with the aforesaid, Respondent 1 regulated in Commission Order 04.55.01 "**Religious rights of prisoners who are not members of the Jewish religion**", stating that the rule is to allow prisoners who are not members of the Jewish religion to observe the practices and rituals of their religion.
69. In view of the above, it emerges that Respondent 2's order seriously harms the ability of the Petitioners and other prisoners in their condition to observe the practices and rituals of their religion, without justification, and contrary to the law.

The decision exceeds Respondent 2's power

70. The unacceptable decision to limit the access of the Petitioners and about 200 other prisoners was made by Respondent 2, with the timing of the decision indicating extraneous considerations lead to its adoption, in addition to the mere fact that the decision was made in excess of his authority, interfering with and giving particular instructions on the manner of the implementation of the policy, matters which are at Respondent 2's discretion which is the professional body entrusted with the custody and management of prisoners.
71. Limiting prisoners' access to showers under the reasoning, which was not sufficiently substantiated, of excessive consumption of water by prisoners classified as security prisoners, is a decision made in excess of Respondent 2's authority and a clear interference on his part in the discretion of Respondent 1.
72. The above is explained by the mere fact that to date Respondent 1 has not responded to the letters and requests submitted to it concerning the matter underlying this petition, and has not presented the explanation of abnormal water consumption as the reason which led to the implementation of Respondent 2's order. Beyond need! As stated in the factual part above, Respondent 1 partially accepted the inmates' demands before the beginning of the "hunger strike" and has partially extended the access time to the showers.
73. Moreover. Respondent 2 ostensibly relies on the argument that this order was issued following the findings of the "Committee for the examination of the conditions of the security prisoners held by Israel Prison Service" from 2018, pointing at abnormal water consumption by prisoners classified as security prisoners, recommendations which according to the person who established the committee, and as described above, were not accepted at that time by Respondent 1 and the ISA, attesting to the interference in the

discretion of Respondent 1. In view of the fact that the findings of the committee and the above report are confidential, the Petitioners cannot address the aforementioned findings, and at this stage they are satisfied with the above said and will reserve their right to add to their arguments if and to the extent additional details are disclosed.

The restriction is unreasonable

74. This decision is not based on reasonable and objective standards. Respondent 2's conduct, which has recently repeated itself in an essentially similar context, and which has also been severely criticized by this honorable court (See, HCJ 8987/22 **The Movement for the Quality of Government in Israel v. the Knesset**, (Reported in the Judicial Authority's Website) (March 19, 2023)), adversely affects the functioning of Respondent 1 and prevents it from acting reasonably and professionally.
75. As is well known, the decision of the administrative authority should be within the realm of reasonableness. For a decision to be within the realm of reasonableness, proper weight should be given and proper balancing should be made between the different considerations which to be taken into account (See HCJ 341/18 **Moshav Beit Oved v. Commissioner of Transportation** (IsrSC 36(3) 349, 354 (1982))).
76. Furthermore. The factual basis presented by Respondent 2 in his response is vague and ambiguous and cannot serve as a basis for such an offensive decision. It is well known that when we are concerned with violation of human rights, the violation shall meet the requirements of the law only if it satisfies the test of reasonableness and only if proper balancing was made between the violated right and other interests entrusted to the authority. **The more important and central the violated right, the greater the weight which shall be given to it within the framework in the balancing between said right and the conflicting interests of the authority** (ADA 4463/94, LHCJA 4409/94 **Golan v. Israel Prison Service**, IsrSC 50(4) 136, 156). The required weight of the evidence on which the administrative decision is based depends on the nature of the decision. **The weight of the evidence must reflect the importance of the right or interest affected by the decision and the intensity of the violation** (See EA 2/84 **Neiman v. The Central Election Commission**, IsrSC 39(2) 225, 249-250).
77. *[left blank in the original]*
78. The relevant realm of reasonableness varies from one decision to another, and is determined, *inter alia*, according to the extent of the impact of the decision on human rights (See, Eliezer Sharga and Roi Shagar, **Administrative Law** (Grounds for Intervention) (Shesh Publishing, 2008, page 282)).
79. Accordingly, Respondents' decision suffers from an extreme unreasonableness which extends to the root of the matter, severely violating basic human rights and public interests. The Respondents deviated from the considerations that a reasonable administrative authority should consider, while maintaining the rules of natural justice, and the "solution" which was presented falls outside the range of solutions that a reasonable authority would have presented. Respondents' decision creates inequality between the prisoners while depriving and discriminating against them. The Respondents

strayed from their duty to act fairly and reasonably. Hence, their decision is illegal and unreasonable and must be annulled.

The violation of prisoners' rights is disproportionate

80. According to the principle of proportionality, a protected human right will be violated to an extent that does not exceed what is required for the purpose of realizing the purpose for which the right is violated. The Respondent must exercise its discretion "in a manner which, *inter alia*, will not violate the right other than to the minimum extent required, such that the relation between the damage caused by the violation of the right and the possible benefit from the realization of the purpose will be reasonable" (HCJ 6226/01 **Indore v. Mayor of Jerusalem**, IsrSC 57(2) 157, 164).
81. This honorable court established the principles according to which the proportionality of the violation of human rights is examined. The violation of the right shall be proportionate, if it meets three cumulative sub-tests: the rational connection test (examining the correlation between the measure which was chosen and the purpose underlying Respondent's policy); The least injurious measure test (examining whether the purpose could have been achieved by another measure harming the human right to a lesser extent); and the test of proportionality in the narrow sense (according to this test, the measure which was chosen, even if it is suitable for achieving the purpose, and even if there is no other less injurious measure for achieving it, a proper relation should exist between the benefit arising therefrom and the harm inflicted by it on the protected human right) (see HCJ 5016/96 **Horev v. Minister of Transportation**, IsrSC 51(4)1, 53-54).
82. In view of the limitation clause in the basic laws, the proportionality principle was adopted as a measure for examining the lawfulness of laws, and it is also used as a condition for the lawfulness of any administrative act (HCJ 987/94 **Euronet Golden Lines (1992) Ltd. v. Minister of Communications**, IsrSC 48(5) 412, 453). The proportionality of the violation of prisoners' rights, their dignity, health and physical integrity shall be examined considering the severity of the harm and the superior status of these rights "all of these three sub tests... should be applied and implemented considering the nature of the violated right at hand" (HCJ 1715/97 **Israel Investment Managers Association v. Minister of Finance**, IsrSC 51(4) 367, 420).
83. **The first sub test: the rational connection** – the first stage in examining whether Respondent's policy is proportionate examines whether there is a rational connection between the stated purpose underlying Respondent 2's order and the measure of limiting the prisoners' access to the showers.
84. As aforesaid, Respondent 2 based his order on the recommendations of the "Committee for the examination of the conditions of the security prisoners held by Israel Prison Service" from 2018, which suggested that among the prisoners classified as security prisoners there is exceptional consumption of water. In other words, Respondent 2 presented his decision as motivated by budgetary considerations. It should be reminded that the findings of the committee (which are confidential) were formulated more than five years ago, and its recommendations were not approved and were not implemented by Respondent 1 and the ISA.

85. Respondent 1, as the professional body authorized to hold detainees and prisoners and manage them, did not consider the aforementioned recommendations, including a general restriction on water consumption among prisoners classified as security prisoners, as justifying a change of reality, despite the budgetary argument.
86. In any event, even if one accepts the allegation that the purpose of the order is to reduce the water consumption of the prisoners classified as security prisoner, the Respondents did not show that it has indeed affected water consumption, since prisoners are forced to find alternative ways to maintain their personal hygiene, including water consumption from other sources, such as tap water that can be heated in an electric kettle. Therefore, it is not clear whether this has affected water consumption, and if so, whether this effect is manifested on a scale which justifies such a severe violation of their basic rights, in a manner greatly weakening the rational connection between the means and the purpose.
87. The above is true assuming that the reasoning presented by Respondent 2 is the only reason underlying the order. However, to the extent that the order is motivated by the desire to harshen the incarceration conditions of the prisoners as an additional tool to punish them, then there is no dispute that this purpose unequivocally fails to meet this test, and its extreme unreasonableness is more than obvious.
88. The existence of a rational connection is not determined on the basis of a technical causal connection but also on the basis of fairness, decency and lack of arbitrariness. Accordingly, for instance, in H CJ 9593/04 **Morar v. the Military Commander**, IsrSC 61(1) 844 (2006) it was held that:

The emphasis in the rational connection test is whether the connection is rational. This means, *inter alia* that an arbitrary, unfair or illogical measure should not be taken...

89. According to case law, an administrative authority must lay down a proper factual infrastructure to substantiate its decisions. This infrastructure should include the substantial data and evidence. This rule applies more forcefully when it comes to substantiating decisions which violate basic rights. In the absence of data and factual infrastructure, there is no basis for the alleged connection between the means and the end:

For the purpose of denying basic rights evidence which are open to different interpretations do not suffice... I am of the opinion that the evidence required to convince a statutory authority that there is justification for denying a basic right must be clear, unequivocal and convincing... the weightier the right the weightier the evidence underlying the decision diminishing the right (EA 2/84 **Neiman v. The Central Election Commission**, IsrSC 39(2) 225, 249-250).

90. Namely, the Respondents must show that Respondent 2's order according to which the access of about two hundred inmates to the showers will be limited for the purpose of reducing water consumption, is based on data and evidence, and that it promotes a worthy

purpose, if any. In the absence of such a factual infrastructure, Respondents' decision will not satisfy the rational connection test.

91. Even if it is assumed that the purpose of reducing water consumption does exist, which the order to limit access to the showers is meant to promote, then the allegation that it affects exceptional water consumption is arbitrary and devoid of any logic when it is applied to only some two hundred prisoners out of a total number of about 4,500 prisoners classified as security prisoners, and given the fact that the order causes these prisoners to use water from other sources.
92. It should be further noted that the above order, as presented in detail above, is contrary to the law and to specific and explicit rules of Respondent 1, and its implementation despite the alleged budgetary purpose, constitutes a deviation from the law and causes severe violation of the basic rights of the prisoners.
93. The implementation of the above leads us to the conclusion that Respondent's decision undermines the main purpose of the law which is the obligation to maintain the prisoners' right to dignity and adequate living conditions allowing, inter alia, maintenance of personal hygiene. Hence, the order does not satisfy the causal connection test between the means and the end.
94. **The second sub test: the least injurious measure** – the question according to the least injurious measure test is whether the stated purpose may be achieved in a different way which shall violate the basic rights of the prisoners to a lesser extent.
95. To the extent that Respondent 2's order is based on budgetary considerations, he should have examined other alternatives to reduce the water consumption among the population of the inmates classified as security prisoners without severely violating their basic rights. As aforesaid, this order was not based on open data and findings, and in the absence of clear information which may explain the need to issue the order, the Petitioners face a substantial difficulty dealing with it. It should be remembered that the Respondents are obligated to generally consider the incarceration conditions of inmates classified as security prisoners, which may explain this unusual consumption, and its justification. Only then will the Petitioners be able to present other, more specific, alternatives.
96. In the absence of a clear factual basis, the petitioners will be satisfied with the allegation that the Respondents did not try to solve the alleged problem by other less injurious measures, communicating with them, and chose to take the extreme step of severely restricting their access to the showers. Choosing to take the most extreme step without any attempt on their part to solve the alleged problem in a more balanced manner, they failed to meet the test of the least injurious measure.
97. It should be noted that Respondent 2 announced the intention to expand the implementation of the order to all wings. For this purpose adjustments will be required to create a mechanism which will enable Respondent 1 to control the flow of the water in the showers. To take such extensive measures, which in and of themselves raise budgetary questions, the Respondents must show that the tool under consideration

reduces not only the intensity of the violation of basic rights but also the scope of those harmed by it.

98. Respondent's decision is in fact an arbitrary and sweeping decision, which unnecessarily and without any justification harms the population of prisoners living in severe overcrowding conditions. This conduct leads to the conclusion that the second test is not met as well.
99. **The third sub test: proportion between the means and the end** – the third sub test of proportionality examines the question of whether the extent of the harm inflicted on the human right arising from Respondents' decision, stand in proportion to the purpose it wishes to achieve.
100. According to the third sub-test, if the benefit arising from the policy is substantial it shall prevail over the violated right. This sub test is of a different nature compared to the other two sub tests. It focuses on the violation of the human right that is caused as a result of realizing the purposes underlying the policy. It is an expression of the concept that "there is an ethical barrier that democracy cannot pass, even if the purpose that is being sought is a proper one" (President Barak in H CJ 8276/05 **Adalah v. Minister of Defense**, Tak-SC 2006(4) 3675, 3689).
101. In the case at hand, the Respondent did not give any explanation for his failure to examine other alternatives, he did not present the data underlying his decision to impose the severe restrictions on the access of approximately two hundred inmates to the showers, nor did he show how and to what extent this order may affect the budgetary purpose. At the same time, the Petitioners presented in detail the particularly severe violation of the most basic rights, primarily the right to dignity, health, the integrity of the body, access to showers, privacy and freedom of religion.
102. The justification of the violation of these rights must serve a public interest of the first degree. In the case at hand, the Respondent did not properly substantiate the important public interest underlying his decision to limit the access of approximately two hundred prisoners to the showers, despite the severe harm caused thereby, both to the prisoners and to Respondent 1 itself, since it is also in its interest that the prisoners keep their personal hygiene and maintain their dignity in a way that reduces the chance for unnecessary friction and tension.
103. In these circumstances, there is reason to argue that Respondents' decision is not based on pertinent considerations, and it even seems that there is no real necessity or benefit arising from this decision. At the same time, even assuming that there is some benefit, it becomes negligible compared to the severe harm caused to the population of prisoners by this decision.
104. As important and worthy the purpose for which the order issued by Respondent 2 may be, it does not justify violating a host of basic rights of such a large group of people, and it must be balanced against other needs.
105. The heavy price paid by the prisoners as a result of the implementation of Respondent 2's order, is excessive and disproportionate. The speculative benefit arising – if any –

from this order is not comparable to the severity of the violation of the rights of the prisoners.

106. Even if the Respondent has reasons justifying his decision, by virtue of his authority to ensure proper action, he is not exempt from his duty to properly balance the interests, namely, to make a decision based on all of the pertinent considerations, which are relevant to each case.
107. Attention is drawn in this context to the words of the Honorable Justice (retired) Maza in ADA 4463/94 **Golan v. Israel Israel Prison Service**, in paragraph 19 of the judgment (as also quoted in **Qantar**, paragraph 12) expressing one of the most basic guidelines concerning the activities of the Israel Prison Service:

It is incumbent on the authority to meet the test of proportionality, and it must not violate the prisoner's right to a greater extent than that which is necessary to prevent the risk.

108. The mere size of the population of prisoners exacerbates the impact of Respondent 2's order on human rights and tips the scale towards the inevitable conclusion that it is a disproportionate order. Accordingly, the harm expected to be caused by Respondent 2's order is enormous and affects a large number of people. The Respondent is required to examine the exercise of their rights on the one hand, and their exposure to impairments and risks on the other, as a result of this order.

Prohibited discrimination

109. Since there is no pertinent justification for the implementation of Respondent 2's order and since this order is directed at a specific population of about 4,500 inmates, namely, the security prisoners, the vast majority of whom are Palestinians, which at this stage is applied to about 200 of them, we are concerned with prohibited discrimination, as well as with unconstitutional violation of their rights.
110. The Respondents did not deign to explain why it is necessary to impose the above limitations only on the entire population of inmates classified as security prisoners. In addition, Respondent 2 did not try to explain why he had already decided to implement the limitation at this stage although he cannot implement it in the other wings, and in other words, he cannot apply a uniform even if discriminating policy.
111. As aforesaid, the discrimination created by Respondents' conduct, between inmates classified as security prisoners and others, is not based on a "relevant difference" between the populations of prisoners and does not meet the criteria of reasonableness, fairness and proportionality imposed on the administrative authority. In any case, it cannot be established that all inmates classified as security prisoners consume water excessively in a manner justifying to impose collective limitations as a group, which in itself points at the existence of hidden, extraneous considerations. It can however be sweepingly determined with respect to such a large group of the entire population of prisoners that this restriction severely violates the basic rights of the entire group.

112. Therefore, Respondent's policy discriminates and violates the principle of equality without justification to substantiate it in a sweeping manner and without it being clear whether there is a permissible distinction according to the law.

Summary

113. It emerges from this Petition that a drastic and unprecedented step was taken against a large population of incarcerated people in a manner severely violating a range of basic rights. The violation is contrary to the law, to rulings of the honorable court and to recognized international standards.

114. Impairing the ability of about two hundred prisoners to shower every day and as a matter of routine and without turning a basic and obvious act of this kind into an issue accompanied by distress, is the right thing to do, and more precisely, that should have been maintained by the Respondents.

115. The Petitioners proved how this order affects their daily life and they have presented a significant part of their basic rights which were consequently violated. So long as the Respondents continue to disregard or refrain from canceling the order, they will continue to violate the duty imposed on them to protect the lives, health and dignity of the prisoners.

116. The Respondents continue to do so although it is an extremely unreasonable decision, which does not meet the proportionality tests and which is tainted by prohibited discrimination, despite the fact that the decision is not required by virtue of security considerations, and despite the fact that Respondent 1 did not agree to implement it until recently. On the contrary, by cancelling the order the Respondents shall fulfill the duty imposed on them to protect and safeguard the population of prisoners, including, among others, those classified as security prisoners.

This petition is supported by the duly signed affidavits of the Petitioners.

In view of all of the above said, the honorable court is requested to issue an order *nisi* as requested, and after hearing Respondents' response, to make it absolute. The court is also requested to obligate the Respondents to pay Petitioners' expenses and attorney's fees.

May 24, 2023
Jerusalem

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