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At the Supreme Court
Sitting as the High Court of Justice

HCJ 7984/11

In the matter of:

**HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger**

all represented by counsel, Adv. Daniel Shenhar (Lic. No. 41065) and/or Sigi Ben Ari (Lic. No. 37566), and/or Elad Cahana (Lic. No. 49009) Ido Blum (Lic. No. 44538) and/or Hava Matras-Irton (Lic. No. 35174) and/or Noa Diamond (Lic. No. 54665) and/or Nimrod Avigal (Lic. No. 51583) and/or Benjamin Agsteribbe (Lic. No. 58008)

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 Petitioner

v.

Israel Prison Service

The Respondent

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the Respondent ordering him to appear and show cause as follows:

- a. Why it should not improve holding conditions at the Petah Tikva detention facility which is under its responsibility so that they are compatible with the lawful rights of the individuals incarcerated therein;
- b. Alternatively, why he should not order detainees held at the Petah Tikva detention facility be transferred to a facility which offers reasonable and lawful holding conditions.
- c. At minimum, why he should not order the detainees be transferred to a holding facility which offers conditions that meet legal standards as early as possible following the conclusion of their interrogation.

Following are the reasons for the petition

Indeed, the nature of detention necessitates the denial of liberty. Even so, this does not justify the violation of human dignity. **It is possible to detain persons in a manner which preserves their human dignity...** Prisoners should not be crammed like animals into inadequate spaces. Even those suspected of terrorist activity of the worst kind are entitled to conditions of detention which satisfy minimal standards of humane treatment and ensure basic human necessities. How could we consider ourselves civilized if we did not guarantee civilized standards to those in our custody? ... Such is the duty of the Israeli government, in accord with its fundamental character: Jewish, democratic and humane.

(Remarks of President Barak in HCI 3278/02 HaMoked: Center for the Defence of the Individual et al. v. Military Commander in the Area, IsrSC 57(1)385, para. 24, hereinafter: **HaMoked**, all emphases in the petition have been added).

1. The petition concerns the conditions in which Palestinian detainees, residents of the Occupied Palestinian Territories (OPT) are held in the Petah Tikva detention facility (hereinafter: **the facility**). These conditions are unacceptable and they violate the detainee's legal rights. The petition also concerns the practice of holding Palestinian detainees in the facility long after their interrogation is concluded, which is particularly alarming considering the inhuman holding conditions.
2. The holding conditions in the facility are unbearable. They fall far short of minimum international standards and fail to meet the standards required under Israeli law. As detailed below, these conditions do not meet the basic needs of civilized people and severely violate the human dignity of the individuals held in the facility. Holding detainees under such conditions manifests the Respondent's blatant disregard for their most basic human needs.
3. HaMoked: Center for the Defence of the Individual (hereinafter: **HaMoked**), the Petitioner, represents many prisoners and former prisoners who have complained, among others things, about the harsh conditions inside the facility, where they were held initially. The accounts given by the complainants are very similar. As part of the process of providing assistance to these individuals, the Petitioner contacted the Respondent in an attempt to have it take action and improve the conditions. However, **it seems that no action has been taken**. Testimonies from detainees who were held in the facility recently, more than a year and a half after the Petitioner first contacted the Respondent with respect to this issue, indicate that nothing has changed. The chilling accounts are repeated.
4. The complainants at issue were arrested by Israeli security forces beginning in late 2008, and transferred to the Petah Tikva facility for interrogation. The complainants have claimed that while held in the facility, they were subjected to disgraceful holding conditions. Moreover – many of the complainants were held in the facility for significant periods of time and long after their interrogation concluded.
5. Different testimonies given over an extended period of time and until very recent months, include the same disturbing descriptions. The overall picture is quite harsh, yet, given its conduct, it appears that the Respondent is unperturbed by the holding conditions in the facility.

The parties

6. The Petitioner is a human rights organization which has been assisting Palestinian prisoners and detainees held in Israeli prisons fight for their basic rights for many years.
7. The Respondent, Israel's national prison authority, is the agency responsible for safeguarding the dignity and welfare of the detainees held in the detention facilities under its responsibility. The Respondent is responsible, *inter alia*, for upholding detainees' basic rights, including those detainees who were held at the Petah Tikva detention facility and whose affidavits form the basis for this petition.

Holding conditions at the Petah Tikva detention facility

8. The description of the harsh holding conditions at the facility is based on approximately 100 affidavits given to lawyers working on behalf of the Petitioner between 2009 and 2011. Six affidavits from four different time periods are attached to this petition. They prove, *inter alia*, that holding conditions in the facility have not improved at all over time, despite the Petitioner's communications on this matter.

9. The following affidavits are attached to the petition:

The affidavit of Mr. _____ Hamad (ID No. _____), of Nablus, given on May 10, 2009. Mr. Hamad was held in the facility from mid-February 2009 to late April 2009;

The affidavit of Mr. _____ Qut (ID No. _____), of Nablus, given on December 27, 2009. Mr. Qut was held in the facility from late September 2009 to mid-November 2009;

The affidavit of Mr. _____ Sarakji (ID No. _____), of Nablus, given on August 9, 2010. Mr. Sarakji was held in the facility from early June 2010 to late July 2010;

The affidavit of Mr. _____ Sarakji (ID No. _____), of Nablus, given on August 23, 2010. Mr. Sarakji was held in the facility from early May 2010 to late June 2010;

The affidavit of Mr. _____ Shbaro (ID No. _____), of Nablus, given on August 23, 2010. Mr. Shbaro was held in the facility from late April 2010 to late June 2010;

The affidavit of Mr. _____ Usta (ID No. _____), of Nablus, given on February 2, 2011. Mr. Usta was held in the facility in January of 2011.

A copy of the affidavit of Mr. Hamad is attached hereto and marked **P/1**; a copy of the affidavit of Mr. Qut is attached hereto and marked **P/2**; a copy of the affidavit of Mr. Mu'ad Sarakji is attached hereto and marked **P/3**; a copy of the affidavit of Mr. Nahed Sarakji is attached hereto and marked **P/4**; a copy of the affidavit of Mr. Shbaro is attached hereto and marked **P/5**, a copy of the affidavit of Mr. Usta is attached hereto and marked **P/6**.

10. As indicated by the affidavits, as well as by many other testimonies as mentioned, the facility has 15 cells used for holding detainees who are under ISA interrogation. The first cells (numbers 1 to 10) received the most chilling accounts. The last cells (numbers 11 to 15) are normally used for holding a number of detainees toward the end of their detention in the facility (though there are many cases of detainees who were held in the first, more "problematic" cells until the last day of their detention in the facility).
11. The following account was given in the affidavit of Mr. _____ Hamad:

Solitary confinement was disgusting. It is a small space with a toilet inside. There is a constant stench; a foul smell from the blanket and the

mattress... there is no basic hygiene. Sometimes, some food or tea would spill on top of the filth that was already on the blanket. They would not change it. Sometimes I covered the toilet, to separate it from the cell, and the blanket got even dirtier, but they did not think this was reason enough to change it... There was a red light on all the time. It hurt my eyes and gave me nightmares...

12. The conditions in the holding cells fail to meet the minimum standards set in Israeli law, as well as the standards set in international law, which results in a substantive and severe violation of the detainee's dignity and physical integrity. This is exacerbated by the fact that the detainees are held in these conditions for extended periods of time, far outlasting their interrogations. The following account was given in the affidavit of Mr. _____ Qut:

I was not transferred for 15 days after my last interrogation session ended... I asked to be transferred from Petah Tikva and received no response... I nagged and received no response. I had to go on a hunger strike for seven days... Finally, the officer in charge arrived and promised I would be transferred within two to three days if I stopped the strike. I agreed... They did not transfer me. They lied and I stayed for 29 more days... According to my calculation, by the time I left Petah Tikva, I had been there for about 62 days.

13. As indicated by the affidavits, the cells are filthy and unsanitary: the cesspit, which serves as the toilet is not separated from the holding cell, resulting in permanent stench inside the cell; the blankets and mattresses supplied to the detainees are also dirty and malodorous. The detainees are not given a change of clothes and they are not given the opportunity to shower frequently enough, which results in them remaining filthy throughout the day. As for the shower itself – it consists of a pipe that lets out above the cesspit which is used as a toilet, so that even when a detainee does take a shower, the water from the shower gets mixed with the sewage. This is the description Mr. _____ Sarkaji gave in his affidavit:

The cell is about three steps wide by three steps long. The toilet is uncovered inside this room. The trouble was when they brought another person in with me, because then it was hard to use the toilet. The walls were very rough and it was obvious that the purpose was to affect the prisoner's state of mind. You get depressed.... I did have showers, but it was really an open toilet with a spout that lets water out into the toilet.

14. The affidavits also indicate that there is no opening allowing sunlight into the cells and that instead, there are light bulbs which emit a yellowish-reddish light 24 hours a day. Many detainees have suffered a great deal as a result of this. The light interferes with sleep and causes headaches and a loss of sense of time. As for ventilation – it appears that the cells have an opening that lets air in. The opening cannot be covered and the air that flows in is frosty. Many detainees complained of severe cold in the cells, which made some of them sick. Additionally, they had no way of keeping warm – the wardens in the facility refused to raise the temperature on the air conditioning system and the blankets provided to the detainees were thin and insufficient. Mr. _____, above, says on this issue in his affidavit:

There was a red light on all the time. It made the eyes hurt. When I tried to cover the light with a towel, they refused and took it off. There

is a vent that sucks the air out of the cell and another that let air in. Sometimes the air that came in was very cold and I don't know whether it was intentional or just the way things are... The cell had mattresses which were very very dirty and disgusting. The blankets also had a foul smell. They were wet and dirty beyond description. I can't get the state of the mattress out of my head. Sometimes I would tell myself that I could hold on and not rest my body on it. Eventually, I was so tired that I broke down and slept on the disgusting mattress.

15. As we have seen, there is no **separation between the toilet and the rest of the cell**. The “toilet” is a cesspit inside the cell (which is already very small), so that there is a foul stench in the cell constantly. Additionally, it appears that in many cases, the cesspits get backed up and then overflow, resulting in the cells flooding with sewage. This is a severe sanitary issue. It is all the more serious when the tiny cells are used for holding two detainees, as they have no privacy when using the toilet. This is an intolerable situation which severely violates the detainees’ dignity.
16. Most of the detainees complained that in their first few days at the facility (sometimes up to ten days), they were given no opportunity to shower. Even after one shower, the frequency with which they showered was low, sometimes only once a week. This is in addition to the account given in para. 12 above which demonstrates that the shower itself was not hygienic, but rather a health hazard by its own right. On this issue, Mr. _____ Hamad says in his affidavit:

They did not let me shower in the first week. After about six days, the interrogators told me I smelled awful. I told them that if it bothered them, they should let me have a shower... Even after that they hardly let me...
17. From all the affidavits given to the Petitioner put together, it appears that cells 1 to 10 are very small. Their estimated size is approximately 1.5 meters by 1.5 meters. Many detainees called these cells “coffins”. Sometimes, two detainees were held together inside these “coffins”.
18. The affidavits also paint a harsh picture with regards to the state of the walls in the cells. The detainees reported that the walls are rough, and even spiky. They are painted a yellowish gray and are full of water stains. It seems that it has been a long time since the cells were last painted. This has an adverse affect on the already deficient sanitary conditions in the cells.
19. The affidavits paint a harsh picture with respect to the bedding provided to the detainees. The mattress is very thin (just a few centimeters, according to some affidavits); both the mattress and the blankets are filthy and foul smelling. Many reported that they were under the impression that the bedding had never been washed. In addition, detainees who asked the wardens for clean blankets or to have their blankets washed were always met with refusal. There were some cases in which detainees spent a night on the cell’s bare floor just to avoid touching the bedding.
20. Palestinian residents of the West Bank who are arrested are most often taken from their homes in the middle of the night and are not allowed to receive visitors in the facility. As such, they normally have no way of obtaining a change of clothes or underwear. However, the affidavits indicate that the detainees are not provided with a change of clothes, and in that in isolated cases, they receive a pair of underwear after being held in detention for a long period of time. Many were lucky enough to receive a change of clothes only after a visit by a representative of the International Committee of the Red Cross. Mr. _____ Shbaro stated in his affidavit of August 23, 2010:

They did not provide underwear or clothes during the interrogation at all. A week before I left (I was there for 55 days), after the Red Cross visit, they provided one pair of underwear and that was that.

21. The affidavits indicate that many of the detainees who are brought to the facility for ISA interrogations remain there long after the interrogation is completed. These are significant periods of time ranging between a week and more than a month. During this time, the detainees continue to be held in harsh conditions for no apparent reason. One should add at this point that this serious aspect of the facility's holding conditions is expressly indicated in the inspection report penned by a representative from the Ministry of Justice who visited the facility in March 2009. A censored copy of the report was provided to the Petitioner by the Respondent, as detailed below.

A copy of the relevant section of the inspection report is attached hereto and marked **P/7**.

Exhaustion of remedies

22. On July 13, 2009, the Petitioner contacted Colonel Ketty Peri, Head of the Respondent's Prisoner Division (at the time), demanding that a number of cases in which detainees were held in the facility long after their interrogation ended be reviewed and that this practice be stopped immediately. Additionally, on July 14, 2009, the Petitioner also sent a detailed letter regarding holding conditions in the facility, as indicated by the affidavits, to Major Eran Fayer, the facility's commander. The letter included a clear demand to rectify the severe deficiencies found in the facility and bring holding conditions up to par with minimum humanitarian standards, as required by law.

A copy of HaMoked's letter to Colonel Peri is attached hereto and marked **P/8**; a copy of HaMoked's letter to Major Fayer is attached hereto and marked **P/9**.

23. On August 27, 2009, the Petitioner received two responses from the Respondent.
24. One response stated that "the findings of the examination do not point to any delay in transferring detainees whose interrogation has been completed". Needless to say, the response included no details of any examination procedure nor any reference to the many cases presented by the Petitioner in which detainees were held in the facility for no reason. It included only vague and general statements.

A copy of the letter of Major Ayelet Wirtzer dated August 27, 2009, is attached hereto and marked **P/10**.

25. The second response listed the "improvements" which were alleged to have been introduced to the facility "recently" (as in the original) including in the areas of personal hygiene, clothing for inmates, toilets, showers etc.

A copy of the letter of Lieutenant Colonel Gila Shbiro dated August 27, 2009, is attached hereto and marked **P/11**.

26. On September 8, 2009, the Petitioner sent its response on the issue of needlessly continuing to hold detainees in the facility. In this letter, the Petitioner requested a list of all the cases examined by the Respondent that provided the basis for its unequivocal response indicating that there was no common practice of needlessly holding detainees in the facility.

A copy of the Petitioner's response dated September 8, 2009, is attached hereto and marked **P/12**.

27. On September 13, 2009, the Petitioner sent its response to Lieutenant Colonel Shbiro with respect to holding conditions in the facility. In its response, HaMoked emphasized that the allegations were based on many affidavits that contained recurring descriptions of the holding conditions. In light thereof, the Petitioner demanded the Respondent provide it with findings of periodic inspections by **independent committees** which support its response regarding the alleged improvements made to holding conditions.

A copy of the Petitioner's response dated September 13, 2009, is attached hereto and marked **P/13**.

28. On November 2, 2009, the Petitioner sent another letter to the legal advisor for the Respondent regarding the practice of holding detainees in the facility after their interrogation is completed. In this letter, HaMoked mentioned two more cases of individuals who were kept in the facility which occurred subsequent to receiving the Respondent's first reply. These two cases joined the 19 detailed in the first letter.

A copy of the Petitioner's letter dated November 2, 2009, is attached hereto and marked **P/14**.

29. On November 9, 2009, the Petitioner sent another letter to the legal advisor to the Respondent regarding holding conditions in the facility.

A copy of the Petitioner's letter dated November 9, 2009, is attached hereto and marked **P/15**.

30. Considering the fact that no response was received on either of the issues, two more letters were sent, one on each issue, on March 15, 2010.

A copy of the further letter regarding holding detainees after their interrogation has ended is attached hereto and marked **P/16**; a copy of the letter regarding holding conditions in the facility is attached hereto and marked **P/17**.

31. On April 2, 2010, the response of the Assistant Legal Advisor to the IPS was received. The letter included a censored copy of a periodic inspection report issued by a Ministry of Justice team following a March 2009 inspection of the facility (attached hereto as exhibit P/7 above). The Petitioner was unable to find references to many of the points it raised in its letters to the Respondent.

It is interesting to note that on one central issue, the report corroborates the Petitioner's allegations – the fact that there is a reprehensible practice of holding detainees in the facility long after their interrogation ends.

32. As stated, since then, more affidavits were given by detainees held in the facility during 2010 and early 2011. These affidavits formed the basis of a report published by the Petitioner with B'Tselem in early 2011. The joint report addresses what transpires behind the walls of the Petah Tikva detention facility, including holding conditions. The response to the report provided by the Ministry of Justice indicates that the facility is subjected to periodic inspections which are intended to ascertain minimum living conditions are provided. However, the letter does not divulge who the "inspectors" are or when the most recent inspections were held.

33. On February 8, 2011, a copy of the report and the response of the Ministry of Justice were sent to the Respondent's legal advisor. In this letter, the Respondent was requested to specify when the most recent inspections of the facility were held, the findings of these inspections and whether or not any improvements were made in the facility following the inspections.

A copy of the Petitioner's letter is attached hereto and marked **P/18**.

Despite repeated reminders, the Respondent chose not to respond to HaMoked's communications. In view of the affidavits in its possession and the Respondent's protracted failure to provide a pertinent response to the Petitioner's communications, **the Petitioner has no recourse but to turn to this Honorable Court.**

The Legal Argument

The normative framework – conditions in the facility vis. Israeli standards for holding condition

34. The law applicable to required holding conditions in prisons and detention facilities in Israel is the Criminal Procedure Code (Enforcement Powers – Detention) 5756-1996 (hereinafter: **the Code**) and the Criminal Procedure Regulations (Enforcement Powers – Detention) (Detention Holding Conditions) 5756-1997 (hereinafter: **the Regulations**).
35. It should be noted at this point that the standards for detaining individuals suspected of security offences **are lower than the minimum holding conditions applicable to convicted prisoners**. As such, the fact that holding conditions in the facility, which are harsh in and of themselves, fail to meet even the lower minimum standard makes matters worse.

Adequate holding conditions

36. The foremost principle on this issue is established in Section 9(a) of the Code which sets forth: "a detainee shall be held in adequate conditions which shall not harm his health or violate his dignity". As indicated by the affidavits, the conditions in which the detainees are held are far from "adequate" and they severely harm their health and violate their dignity.
37. Section 9(b)(1) of the Code sets forth that a detainee shall be entitled to adequate sanitary conditions and to conditions allowing him to maintain his personal hygiene. As the affidavits indicate, the conditions in the facility entirely fail to meet this basic standard; the facility's cells have severely deficient sanitary conditions. Wallowing in mire hardly meets any sanitation standard, as minimal as it may be.

Lighting and ventilation

38. Section 9(b)(4) of the Code sets forth that a detainee shall have reasonable lighting and ventilation in his cell. The descriptions provided in the affidavits are inconsistent with the provisions of this Section.
39. All the detainees complained that there was no opening that let sunshine into the cells. Instead, the cells have light bulbs which are kept on **24 hours a day** and emit a yellowish-reddish light. Many detainees have suffered a great deal as a result of this. The light interferes with sleep and causes headaches and a loss of sense of time.
40. The situation is no different with regards to ventilation – the cells have an opening, that lets air conditioning in. Many detainees complained of severe cold in the cells, which made some of them sick. Additionally, they had no way of keeping warm – the wardens in the facility refused to raise the temperature on the air conditioning system and the blankets provided to the detainees were thin and insufficient.
41. Section 3(a) of the Regulations stipulates that detainee cells must have a window with access to outside air. The Section stipulates that if this is not possible, the cell must at least be fitted with a **reasonable** alternative means of ventilation. It is clear that frosty air conditioning which makes

the detainees feel extremely cold and contract illnesses is not a reasonable alternative for outside air. **Freezing detainees in their cells amounts to wrongful inhuman treatment.**

Toilets and hygiene

42. Section 3(b) of the Regulations sets forth that **there should be a separation between the toilet and the rest of the holding cell.** There is no separation between the toilet and the rest of the cell at the facility. In the case at hand, the word “toilet” stands for a cesspit located inside the cell (which is already very small). One can only imagine the constant stench inside the holding cell. Additionally, many of the affidavits indicate that the cesspits often get backed up and then overflow, flooding the cell with sewage. This is a severe health hazard. These are patently improper holding conditions. Moreover, the detainees’ dignity is trampled underfoot by the fact that the cell also serves as the toilet. Wardens occasionally open the cell door only to find that the inmate is using the toilet. When two inmates are held in the cell together, the result is a severe violation of privacy.
43. Section 3(c) of the Regulations sets forth that a detainee has a **right to a daily hot shower.** There is nothing of the kind at the Petah Tikva facility. Most detainees complained that they **were not allowed to shower at all** during their first days in the facility. Detainees who were held in the facility for a month or longer received very few showers, in most cases just two or three. In all these cases, this was not a hot shower, but a pipe which spouts cold water on top of the cesspit used as a toilet.
44. Section 6(d) also sets forth that a detainee must have a hot shower once a day. An exception to this stipulation is that a shower may be delayed if the interrogation so requires, but in these cases too, it may not be delayed for more than three days. The detainees in the Petah Tikva facility are denied showers for much longer durations. This is an intolerable situation which has a detrimental impact on their health, dignity and sanitary conditions.

Cell size and maintenance

45. Section 3(e)(3) sets forth that every detainee has a right to a minimum of 4.5 square meters of living space inside the cell. The affidavits we have obtained indicate that the conditions in the facility do not meet this standard. Many of the detainees describe tiny cells with an estimated size of 1.5 meters by 1.5 meters. Some have stated that they were unable to stretch their legs out or stand fully erect.
46. Section 4(a) of the Regulations sets forth that the detention cells must be painted twice a year. Section 22(b)(3), which provides exemptions in cases of individuals detained on suspicion of security offences, instructs that the cells must be painted at least once a year. However, the affidavits paint a sordid picture when it comes to the state of the walls inside the cells. The detainees reported that the walls are rough to the touch. They are a grayish-brown color and have many water stains. It seems that these cells have not been painted for a long period of time and as such they have an adverse affect on the sanitary conditions in the facility, which are deficient to begin with.

Bedding and extra clothes

47. Under both Section 6(a) and Section 22(b)(3), which provides exemptions for cases of individuals detained on security suspicions, the detention facility must provide detainees with a clean mattress and clean blankets. The affidavits paint a grim picture with respect to the bedding provided to the detainees. The mattresses are very thin (some four centimeters thick, according to some affidavits) and both the mattresses and the blankets are dirty and foul smelling. Many

reported that it seems as though they had never been washed (!). There were detainees who stated they spent a night on the cell's bare floor.

48. Section 6(b) provides that the detention facility authorities must wash and clean the blankets that are given to detainees as necessary. All of the detainees complained in their affidavits that the blankets were so foul-smelling that it seemed they had never been washed, or, were washed long ago. Additionally, detainees who asked the wardens for clean blankets or to have their blankets washed were always given a negative response, and were thus forced to remain in the facility in inadequate, unsanitary and humiliating conditions.
49. Section 6(e) stipulates that if a detainee has no access to a change of clothes, the detention facility must supply the clothes to him. Palestinian residents of the West Bank who are taken from their homes in the middle of the night and are denied prison visits clearly have no way of obtaining extra clothes. Despite this, they are not provided with **any** clothes, or, in a few isolated cases, they were provided only with underwear but no clothes.

A fundamental principle in Israeli law – a detainee's human rights are to be maintained during arrest and detention

50. The right to adequate and humane holding conditions, to which the detainees at the Petah Tikva facility are entitled, stems from the commonly held view under both Israeli and international law, that the mere fact that a person has been arrested or jailed does not negate his basic rights. It is common knowledge that prison walls deny the inmate's freedom of movement, with everything that this entails, but they do not negate his other basic rights, other than those denied by statutory provision:

It is a firmly established rule that every single one of a person's human rights remains intact even when he is under arrest or in prison. His imprisonment does not mean that any of his other rights may be denied, except when such is necessary and derived of the denial of freedom of movement, or when an express statutory provision so instructs... This rule is rooted in ancient times, as stated in Deuteronomy 25:3 "Then thy brother should seem vile unto thee". The sages have established a great rule in Hebraic punishment: "Once he has been rendered vile, he is thy brother." (Mishna, Makkot, 3:15). **This great rule is valid not only after a person has served his sentence but also while he serves his sentence, as he is thy brother and thy friend and he is entitled to his rights and dignity as a human being.**

(HCJ 337/84 **Hokma v. Minister of Interior**, IsrSC 38(2) 826, 832).

51. On this issue, see also the comprehensive judgment of Justice Danziger in LHCJA 6956/09 **Maher Yunes et al. v. Israel Prison Service**, TakSC 2010(4) 189, para. 36:

Israeli law's approach to incarceration is that its purpose is solely denying the incarcerated person's personal liberty, while restricting his freedom of movement. According to this view, **even when a person is incarcerated, he maintains all of his human rights, indeed "when entering the prison, a person loses his liberty, but not his dignity"**.

52. Article 10(1) of the International Covenant on Civil and Political Rights sets forth:

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

This Article has been interpreted very broadly by the UN Human Rights Committee in CCPR General Comment No. 21 dated April 10, 1992:

[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.

53. Articles 1 and 5 of the Basic Principles for the Treatment of Prisoners, adopted by the UN General Assembly (in Resolution 45/111, dated December 14, 1990), stipulate the principle that prisoners are entitled to all human rights except those denied as an inherent result of the incarceration itself.

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

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 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.

54. The remarks of Honorable President Barak in **HaMoked** are valid with respect to the Respondent's obligation to maintain holding conditions which are adequate for human beings, as reflected in international law:

These specific provisions [provisions regarding holding conditions in military holding facilities – D.S.] are subject to the general principles of customary international law. They are also subject to the directives regarding detention conditions set out in the Geneva Convention Relative to the Protection of Civilian Persons in Time of War-1949 [hereinafter, the Fourth Geneva Convention]. As is well-known, Israel considers itself bound by the humanitarian directives of this Convention. The respondent reiterated this commitment while in his response to the petition before us. The directives of the Geneva Convention regarding detention conditions are clearly of a humanitarian nature; therefore they should be adhered to. The question of whether or not the Basic Law: Human Dignity and Liberty applies to detention conditions in the area need not be answered here. The general principles of administrative law, which apply to Israeli soldiers in the area, are sufficient for this matter. See H CJ 393/82 **Jamait Askan v. IDF Commander in Judea and Samaria**, IsrSC 37(4) 785. According to these principles, the army must act, inter alia, reasonably and proportionately, while striking a proper balance between the liberty of the individual and the needs of the public. One may learn about the proper

standards of reasonableness and proportionality from the Standard Minimum Rules for Treatment of Prisoners. These standards were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955, and were ratified by the United Nations in 1957 and in 1977. See HCJ 221/80 **Darvish v. The Prison Service, IsrSC 35(1) 536, 539-40**, [hereinafter Darvish]; HCJ 540-546/86 **Yosef v. Administrator of the Central Prison in Judea and Samaria**, IsrSC 40(1) 567, 573, [hereinafter Yosef]; HCJ 253/88 **Sajadia v. The Minister of Defense**, IsrSC 42(3) 801, 832, [hereinafter Sajadia]. These standards apply to all imprisoned persons, including detainees.

55. It follows that if these orders apply to the military in its capacity as the military commander of an occupied territory, then the humanitarian provisions mentioned by Barak are all the more applicable to the Respondent when detaining Palestinian residents of the OPT on Israeli soil.
56. The following has been held with respect to the application of international legal principles to the holding conditions of Palestinian detainees who are held inside Israel in the judgment of President Beinisch in HCJ 2690/09 **Yesh Din et al. v. Military Commander et al.** (not yet reported) (para. 7):

This Court has often addressed the question of securing appropriate holding conditions, according to the substantive criteria set in international conventions, for Palestinian detainees, whether they are detained in Israel or at the Ofer camp. Thus, the Court has insisted on the duty to uphold international standards for detainees according to the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (1988), which were passed by the UN General Assembly in 1988, and of course, under the Geneva Convention, and has also applied the principles established in the provisions of Article 10(1) of the International Convention on Civil and Political Rights, 1966...Judicial review in judgments regarding detainee rights and holding conditions has thus focused on upholding the substantive provisions set forth in international law

57. As such, the holding conditions in the facility, which severely violate the dignity and humanity of detainees, constitute a clear and severe breach of the provisions enshrined in Israel's basic laws and administrative law, as well as international law, on which we elaborate below.

Adequate holding conditions under public international law

58. Public international law specifies, in detail, the conditions under which detainees may be held pending trial. The rules applicable to detainees depend on their status: combatants, who are entitled to the status of prisoner of war (POW), enjoy the protections provided by the Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949. The rights of detained civilians are enshrined in the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949 (hereinafter: **the Geneva Convention**). **There is no situation in which a detainee comes under neither of these definitions:**

Every person in enemy hands must have some status under international law: he is either a prisoner of war and, as such, covered by the Third Convention, a civilian covered by the Fourth Convention, or again, a member of the medical personnel of the armed forces who is covered by the First Convention. There is no intermediate status; nobody in enemy hands

can be outside the law (Jean S. Pictet (ed.), **Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War**, (Geneva, ICRC 1958, p. 51).

59. Since Israel does not grant Palestinian detainees POW status, one needs to examine the protections afforded to detainees under the provisions of, *inter alia*, the Fourth Geneva Convention. Sixty-three articles, about a third of the entire Convention, are dedicated to detainees' rights and holding conditions.
60. Article 85 of the Geneva Convention stipulates that the place of detention must enable basic conditions for safeguarding the detainees' health and dignity. It must be protected from the "rigours of the climate" and from dampness. It must be heated if necessary and properly ventilated. The detainees must be provided with appropriate bedding and enough blankets, commensurate with their age and health. The detaining authorities must also provide basic conditions for maintaining hygiene, including clean showers and toilets and toiletries.
61. Article 90 of the Geneva Convention stipulates that detainees must be allowed to take a change of clothes with them prior to their arrest. If they are unable to procure clothes, the detaining authorities must supply them with a change of clothes, taking climate into consideration.
62. Article 100 of the Geneva Convention stipulates that detainees must not be held in conditions that present a danger to their health or that require physical exertion on their part, or conditions that constitute physical or mental degradation.
63. As noted, in addition to the Geneva Convention, the United Nations Standard Minimum Rules for the Treatment of Prisoners, established in 1955, also provide rules regarding detainees' holding conditions. In section 47 of the petition, we noted the two articles that set down the principles for these guidelines. However, in addition to these, the Rules include a long list of articles with specific and detailed requirements for minimum holding conditions.
64. Articles 9 to 14 stipulate that the place of detention must meet minimum requirements for ensuring the detainees' health, including ventilation, minimal sleeping quarters, appropriate lighting, heating, sanitary supplies sufficient to meet all needs, including toilets and showers with hot water. The toilets and showers must be clean and hygienic, in order to maintain the detainees' health.
65. Articles 15 to 21 stipulate that living conditions in the detention facility must allow detainees to maintain their basic dignity and therefore, among other things, the detainees must be allowed to shower and wash their clothes. The detaining authorities must provide detainees who do not have clothes of their own with a change of clothes. Each detainee must be given his own bed and enough room for sleeping.
66. If we compare the conditions at the Petah Tikva detention facility, as these emerge from affidavits given by individuals who were held in the facility, to international legal rules on minimal holding conditions, we will see that the Respondent has no consideration for Israel's duty to meet these standards. It is safe to say that the Respondent blatantly ignores them, in defiance of the judgments of this Honorable Court.

Conclusion

67. In conclusion, the law requires the Respondent to provide conditions which are adequate for human beings and which meet the minimum standards set in Israeli and international law in the Petah Tikva detention facility which is under its responsibility.

68. In contravention of these obligations, the Respondent has been systematically evading the law on minimum holding conditions when it comes to the Petah Tikva detention facility. This conduct has persisted despite repeated complaints on this issue. The affidavits attached to this petition illustrate the extent to which the holding conditions at the facility are inhuman and intolerable.
69. The question is why the Respondent refuses to carry out its legal obligation to rectify the many deficiencies at the facility and bring them up to the minimum required for a detention facility in Israel. At best, if he is unable to rectify the deficiencies and bring the Petah Tikva facility up to the minimum standard, he should immediately cease to use it as a detention facility and certainly refrain from holding detainees there after their interrogation is concluded.
70. In these circumstances, it seems that only intervention by this Honorable Court can bring about a change in the situation, a change which should have occurred long ago.

In light of all the above, the Honorable Court is requested to issue an order nisi as sought and, after hearing the Respondent's response, render it absolute. The Court is also requested to instruct the Respondent to pay the Petitioner's costs and legal fees.

Jerusalem, 31 October 2011

Daniel Shenhar, Adv.
Counsel to the Petitioner

(File number: 61344, 61346)