**At the Jerusalem District Court**
**Sitting as the Court for Administrative Affairs** **AP 35570-10-11**

In the matter of: 1. ____ al-'Aziz, ID No. _____, _____

2. HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA

Represented by Counsel, Adv. Daniel Shenhar (Lic. No. 41065) and/or Sigi Ben Ari (Lic. No. 37566) and/or Hava Matras-Irron (Lic. No. 35174) and/or Ido Blum (Lic. No. 44538) and/or Elad Cahana (Lic. No. 49009) 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.

**Commander of the Military Forces in the West Bank**

Represented by the Jerusalem District Attorney

**The Respondent**

## Administrative Petition

The honorable court is hereby requested to order the respondent as follows:

a. To enable petitioner 1 (hereinafter: the **petitioner**) to visit his brother, who is incarcerated in Israel, by giving him a multiple entry permit to Israel, valid for one year, for that purpose; This, instead of the single entry permit, given to the petitioner once annually only;

b. To uphold his undertaking before the High Court of Justice to respond within two to two and-a-half months to applications submitted to him as part of the

arrangement he had established for prison visits by residents of the Occupied Palestinian Territories (OPT) whose entry into Israel is otherwise prohibited.

**The grounds for the petition are as follows:**

> The first principle concerns the obligation to ensure that a person's fundamental human rights are not violated due to his incarceration or detention other than to the extent necessary for fulfilling the public interest underlying the purpose of the custody, or another vital interest of great importance. Incarceration and detention naturally involve a limitation of an individual's personal liberty and a restriction of his freedom of movement. These limitations give way to a violation of additional rights, the exercise of which depends upon a person's liberty. However, **holding a person in custody does not automatically revoke all constitutional rights granted to him by virtue of the principles of the Israeli constitutional system**, and they may be impinged upon only to the extent required due to the deprivation of liberty resulting from the incarceration, the needs of the interrogation or trial, or for the purpose of securing a vital public interest, and subject to the provisions of the law (LCA 993/06 **State of Israel v. Mustafa Dib Mar'i Dirani**, TakSC 2011(3) 1298, paragraph 29 of the judgment rendered by Justice Procaccia, hereafter: **Dirani**. All emphases were added – D.S.).

1. This petition concerns the violation of respondent's undertaking to enable Palestinian prisoners to maintain a reasonable family relationship with their family members, in accordance with the law.

2. Applications submitted by residents of the OPT to respondent for the purpose of receiving an entry permit to Israel for prison visits are made within the framework of a procedure which has turned into practice during the last few years.

   On February 16, 2006, in his response in HCJ 10898/05 **Fatafta v. Commander of Military Forces in the West Bank** (not published; hereinafter: **Fatafta**) the respondent notified that applications submitted by Palestinians who are prohibited from entering Israel for security reasons but are not precluded from taking part in prison visits in Israel, would be processed within two to two and-a-half months. In his notice dated February 26, 2008 in HCJ 7615/07 **Barghouti v. Commander of Military Forces in the West Bank** (not published; hereinafter: **Barghouti**) the respondent

admitted that "an examination indicated that **a delay occurred in many applications wherein processing was not completed within a time period of between two and two and-a-half months**." In that notice, the respondent undertook to rectify the situation and wrote that he had implemented a new work procedure and that "the relevant parties are of the opinion that **the implementation of the new work procedure is expected to ensure that the Civil Administration completes the processing of applications to visit incarcerated persons as stated in the State's response in the matter of Nahil Fatafta, meaning, within a time period of between two and two and-a-half months** from the date the applications are transferred to the Civil Administration by the Red Cross".

3. This fact emphasizes the importance attributed by the court to conducting family visits on a regular basis, both for the prisoners and their family members. Nevertheless, respondent's conduct shows his disrespect for the right of petitioner, and others in his situation, to maintain family relationships.

## Background

4. From the commencement of the second intifada, in October 2000 and until March 2003, Israel prevented West Bank residents from visiting their family members in Israeli prisons; in prisons located within the territory of Israel and in incarceration facilities located in the West Bank. Following a petition filed by petitioner 2 (hereinafter: **HaMoked**), HCJ 11198/02 **Diriyah v. Commander of the Military Incarceration Facility Ofer** (not published; hereinafter: **Diriyah**), the respondent commenced gradually allowing family members to visit their incarcerated relatives.

5. The respondent initially allowed visits only from the districts of Ramallah, Jericho and Qalqiliya. Subsequently, the arrangement was expanded to include the districts of Bethlehem, Tulkarem and Salfit. The visitation arrangement currently includes all districts.

6. The respondent has also established narrow criteria defining who is eligible to visit: spouses, parents and grandparents, as well as brothers, sisters, sons and daughters under the age of 16 or over the age of 46 only. In July 2005, the respondent expanded these criteria and determined that sisters and daughters may visit their loved ones in prison without age limitation. Later, the respondent determined that **sons and brothers between the ages of 16 and 35 would be able to visit their incarcerated loved one once a year only**.

7. The respondent does not allow residents of the West Bank to arrive to visits on their own and does not organize any visitation arrangements of his own.

The visits are organized exclusively by the International Committee of the ICRC (hereinafter: the **ICRC**). Visit applications are filed by the residents at the offices of the ICRC in their places of residence and the latter delivers them to the respondent. The respondent delivers his response to the ICRC, which informs the applicant thereof. The ICRC also organizes the actual transportation - at its own expense, in coordination with the respondent and along with strict security arrangements.

8. According to the regular procedure, when a prison visit application is approved, the applicant receives a one-year permit from the respondent. The permit is valid for ICRC prison visit shuttles. The permit enables its recipient to visit prison without limitation, inasmuch as ICRC shuttles are available to them (usually, twice a month).

9. Family members who are classified by the respondent as "precluded from entering Israel" receive single entry permits to Israel, which are valid for 45 days. The procedure for issuance of such a permits is protracted and involves many parties (submission of an appropriate application to the ICRC, examination by the Civil Administration and an individual security screening by the ISA), so that the frequency with which "precluded persons" receive permits is very low. **Of 277 "precluded" family members** of prisoners, who sought assistance from HaMoked and received permits from the beginning of 2011 until September 18, 2011, **only three received more than two permits in one year**.

**Processing of Applications for Family Visits in Prison by the Civil Administration**

10. If the delays experienced by applicants wishing to receive prison visit permits were not enough, on October 11, 2009, respondent's legal counsel informed HaMoked that he would no longer handle applications referred to him concerning prison visits, and that the handling of such applications had been transferred to the public liaison officer at the Civil Administration (hereinafter: " **liaison officer**").

    A copy of the letter of respondent's legal counsel dated October 11, 2009 is attached as exhibit **P/1**.

11. Following the transition to working *vis-à-vis* the Civil Administration, HaMoked became concerned that its applications would not be handled properly, which would cause delays and complications in the processing of the large number of applicants wishing to visit their loved ones in prison. In order to clarify the matter with the relevant officials at the Civil Administration, on November 2, 209, HaMoked contacted Lieutenant Colonel Sharon Biton, Branch Head, Operations Division at the Civil Administration, (directly in charge of the civil administration public liaison officer) with a request that the office of the public liaison officer make preparations for the expected increase in the number of applications transferred to it by HaMoked.

In this letter, HaMoked also pointed out that since the transition to working vis-à-vis the civil administration public liaison officer, about 60 unanswered applications had been gathered on her desk.

A copy of the letter is attached and marked **P/2**.

12. In view of the fact that no one at the Civil Administration bothered to respond to this letter, an additional letter was sent, this time to the Head of the Civil Administration. The letter emphasized that since HaMoked started to work with the civil administration public liaison officer, 95 applications had been sent to her, **none of which had been answered**! In view of these problematic figures, HaMoked expressed its hope that Civil Administration officials would make the necessary preparations and start performing, namely, responding to letters.

    A copy of the letter dated November 25, 2009 is attached and marked **P/3**.

13. Indeed, after this letter was sent, HaMoked began receiving answers from the respondent, but these arrived in dribs and drabs, failing to keep up with the applications submitted. Furthermore, a response letter to the two main letters which were sent has not been received. This outrageous disrespect caused HaMoked to send two additional letters to the Head of the Civil Administration. In these letters too, HaMoked complained of the manner in which officials at the Civil Administration had treated its letters, the unbearable delay in responding to these letters and warned that such negligent treatment would lead to many court actions.

    Copies of the letters to the Head of the Civil Administration dated January 18, 2010 and February 24, 2010 are attached and marked **P/4** and **P/5**, respectively.

14. HaMoked was occasionally forced to write again to the Civil Administration but its requests were shamelessly ignored. Accordingly, on July 24, 2011 a letter was sent to Lieutenant Colonel Avi Shalev, Branch Head, International Organizations Division, at the Civil Administration. In this letter HaMoked complained that dozens of applications sent to the division had not been answered, despite repeated reminders from HaMoked representatives, and that such sweeping failure to respond would inevitably result in the submission of petitions to the courts. **This petition, now pending before the honorable court, constitutes a living example of the consequences of respondent's inaction.**

    A copy of the letter dated July 24, 2011 is attached and marked **P/6**.

**The Parties and Exhaustion of Remedies**

15. The petitioner, born in 1977, is a father of three from the town of _____ in the district of _____, who has never been arrested or interrogated.

16. Petitioner's brother, prisoner _____A, ID No. _____, was detained in November 2007 and sentenced to life imprisonment. He is presently held in the Gilboa prison.

17. HaMoked: Center for the Defence of the Individual is a human rights organization that, for many years, has been assisting Palestinian residents of the West Bank to exercise their right to visit their relatives incarcerated in prisons in Israel.

18. The respondent has been holding the territories of the West Bank under military occupation for forty four years and it is his responsibility that West Bank residents lead normal lives. He is the one who incarcerated petitioner's brother, and he is the one who requires the petitioner to obtain a permit from him for the purpose of making a prison visit. By virtue of his position, the respondent should make sure that the rights of the residents of the occupied territory under his responsibility are realized, including their right to family visits in prisons, as part of the realization of their right to family life. This is in accordance with Israeli constitutional and administrative law, international humanitarian law and international human rights law.

19. The petitioner has not seen his brother since he visited him in prison in March 2011, more than seven months ago, by virtue of a 45-day permit. This is the place to point out that **it was only the second time that petitioner had seen his brother who has been incarcerated from the date of his detention in 2007**. This is the result of both respondent's delays in processing petitioner's permit applications, which either receive very late responses or no response at all and respondent's policy of granting brothers of prisoners who are between the ages of 16 and 35 only a single permit for 45 days, once a year.

20. This is one aspect of the issue. The other aspect is the severe distress experienced by the prisoner in connection with exercising his right to maintain relationships with his family members. Due to the fact that all other family members of the prisoner reside in the Gaza strip, they do not visit him – the State of Israel prohibits residents of the Gaza strip from entering Israel for the purpose of making prison visits. Therefore, **the result is that since his detention almost four years ago, the prisoner has had only two visits, both made by the petitioner**.

21. This hardship of the two brothers caused the petitioner to request the assistance of HaMoked. HaMoked first sought to find out whether the petitioner was classified by the respondent as "precluded from entering Israel", which would make it difficult for him to receive a multiple entry permit to Israel, valid for one year. Therefore, HaMoked, in accordance with the Freedom of Information Act, 5758-1998, wrote, on petitioner's behalf, to the Coordinator of Government Activities in the Territories, in order to find out what his "security status" was.

    A copy of HaMoked's letter dated May 23, 2011 is attached and marked **P/7**.

22. HaMoked then wrote to respondent's legal advisor and requested him to start giving the petitioner multiple entry permits to Israel, valid for one year. The request specified the humanitarian circumstances that make the case special and justify excluding the petitioner from the arrangement applied by the respondent to brothers and sons of prisoners who are between 16 and 35 years of age whereby they receive only one permit per year.

    A copy of HaMoked's letter dated July 14, 2011 is attached and marked **P/8**.

23. Since the letter to respondent's legal advisor had not been answered, HaMoked wrote to him again on this matter, in view of the increasing distress of the petitioner and his incarcerated brother.

    A copy of HaMoked's letter dated August 23, 2011 is attached and marked **P/9**.

24. On September 8, 2011, HaMoked received the response of the Coordinator of Government Activities in the Territories that **the petitioner was not precluded from entering Israel**. This gives rise to the conclusion that there is no security preclusion preventing the respondent from giving the petitioner a multiple entry permit to Israel, valid for one year, and that it is only respondent's incompetence which prevents the petitioner and his brother from meeting regularly and in a reasonable manner.

    A copy of the response of the Coordinator of Government Activities in the Territories is attached and marked **P/10**.

25. Respondent's legal advisor did not bother to respond to HaMoked's requests concerning petitioner's matter. In view of this fact, and as things presently stand, the petitioner will not be able to see his brother until the summer of 2012, since he will be able to submit a new permit application only a year after being given the previous permit. The petitioners cannot agree to this state of affairs. Therefore, they have no alternative but to request remedy from the honorable court.

**Therefore, the petitioner, who has not seen his brother for almost seven months; and who will not be able to see his brother for many more months, leaving the prisoner without any family visits all this time, has no alternative but to turn to this honorable court**.

**<u>The Legal Aspect</u>**

> There is no dispute that the approval of prison visit applications submitted by family members is an expectation which should be recognized by the competent authority in Israel, as part of the realization of the right to family life… **The obligation of the commander of the Area within the scope of his powers is to make sure that the well-being and welfare of the residents of the Area are maintained, including the realization of their family relationships with their loved ones who are far away**, and to provide

proper protection for constitutional human rights (see the above **Barghouti**, paragraph 12 of the judgment of Justice Procaccia dated May 26, 2009).

**The Right to Prison Visits by Relatives and the Respondent's Obligation to Arrange them**

26. The right to family visits in incarceration facilities is a fundamental right, both of the prisoners and of their family members. This is a fundamental right premised on the perception of the individual as a social being, living within the framework of family and community. The right to family visits is rooted in a number of Israeli and international legal sources. Among these sources, one may mention the Fourth Geneva Convention (which provides in article 116 that "Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible."), Section 47 of the Prisons Ordinance [New Version], 5732-1971 and the Prison Service Commission Order 04.42.00, entitled "Prisoner Visitation Arrangements", providing in section 1 that:

> **The visit is one of the important means of communication between the prisoner and his family, friends and acquaintances**. The visit may help the prisoner while in prison and encourage him in times of crisis.

27. And it was so held in this regard in the judgment of Justice Procaccia in LHCJA 6956/09 **Maher Ynis et al. v. Israel Prison Service**, TakSC 2010(4), 189 (hereinafter: **Maher**)**,** in paragraph 8, there:

> Indeed, prison leaves and visits may also be regarded as part of the human rights to which they are entitled also while in prison, and which are not necessarily nullified merely due to the deprivation of liberty resulting from the incarceration, fruit of the penal sanction. **Leaves and family visits are some of the means of communication between a person-prisoner and the world and his close vicinity. He needs them by virtue of his nature. They are part of his self as a human being; They are part of his human dignity. They make an important contribution to his welfare and rehabilitation during his incarceration.**

28. The UN minimum standard for the treatment of prisoners (Standard Minimum Rules for the Treatment of Prisoners, 1955) provides, in rule 37:

> Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

29. A comprehensive study conducted by the ICRC regarding customary international humanitarian law, provides that **the right of detainees and**

**prisoners to receive visits is a right recognized by customary international humanitarian law**:

> **Rule 126. Civilian internees and persons deprived of their liberty in connection with a non-international armed conflict must be allowed to receive visitors, especially near relatives, to the degree practicable**.
>
> …In a resolution adopted in 1999, the UN General Assembly demanded that Yugoslavia respect the requirement to allow detainees to receive family visits in the context of the conflict in Kosovo (UNGA Res.54/183). In the **Greek case** in 1969, the European Court of Human Rights condemned the severe limitations on family visits to detainees. In 1993, the Inter-American Commission on Human Rights recommended that Peru allow relatives to visit prisoners belonging to the Tupac Amaru Revolutionary Movement.
>
> (JM Henckaerts, L. Doswald-Beck, **Customary International Humanitarian Law** p. 448-449 (Volume I: Rules. 2005)).

30. Furthermore. The visitation right is not only the right of the prisoner himself. It is also recognized by international law as the right of the family members of the prisoner, whose contact with him was severed upon his incarceration. This is summarized by one of the scholars as follows:

> People who are sent to prison lose the right to free movement but retain other rights as human beings. One of the most important of these is the right to contact with their families. **As well as being a right for the prisoner, it is equally a right for the family members who are not in prison**. They retain the right of contact with their father or mother, son or daughter, brother or sister who has been sent to prison. Prison administrations have a responsibility to ensure that these relationships can be maintained and developed. Provision for all levels of communication with immediate family members should be based on this principle. It follows that the loss or restriction of family visits should not be used as a punishment under any circumstances.
>
> (Coyle A. **A Human Rights Approach to Prison Management: a Handbook for Prison Staff** International Centre for Prison Studies (King's College, University of London and the UK Foreign and Commonwealth Office) 2002. P 95).

**A Prisoner's Human Rights are Maintained during his Incarceration**

31. The right to family visits in incarceration facilities is also derived from the governing concept, both in international law and Israeli law, that mere arrest or imprisonment do not nullify the fundamental rights of the prisoner. Prison

walls limit the prisoner's freedom of movement, with all ensuing consequences, but they do not nullify his other fundamental rights, excluding those denied him in accordance with an explicit provision of the law:

> It is a major rule with us that he is entitled to any and all human rights as a human being, even when he is detained or imprisoned, and the imprisonment alone cannot deprive him of any right whatsoever, unless this is mandated by and arises from the deprivation of his right to free movement, or when there is an explicit provision of the law to that effect… This rule has been rooted in Jewish heritage for ages: As stated in Deuteronomy 25, 3: 'then thy brother should seem vile unto thee', the sages established a major rule in Hebraic penal doctrine: 'when beaten – he is like your brother' (Mishna, Makot, 3, 15). **And this major rule is relevant not only after he has completed his sentence but also while serving a sentence, because he is your brother and friend, and he retains and is entitled to his rights and dignity as a human being**.
>
> (HCJ 337/84 **Hokma v. Minister of Interior**, IsrSC 38(2) 826, 832; and see also: **Dovrin**, paragraph 14 of the judgment rendered by Justice Procaccia; PPA 4463/94 **Golan v.** IPS; PPA 4/82 **State of Israel v. Tamir**, IsrSC 37(3) 201, 207; HCJ 114/86 **Weil v. State of Israel**, IsrSC 41(3) 477, 490).

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

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

33. Justice Procaccia as well, explicitly states in paragraph 29 of her judgment in **Dirani** that:

> The second principle… concerns the overall responsibility of the state towards those in its custody and care. The governmental power involved in holding people in custody, be it detention or imprisonment, **imposes upon the state the obligation to maintain the well-being of those held in its custody**, both physically and mentally, and to ensure that all of their rights are protected; it must provide for their health and basic needs as human beings; it must provide them with reasonable accommodations, adequate nourishment, and

> physical and mental medical treatment as may be required; it must respect the constitutional rights of the persons held in custody to life, dignity and protection of the body… **the realization of the above responsibility of the state does not concern the detainee or prisoner only; it concerns society as a whole. The violation of the fundamental rights of those held in state custody, injures not only these individuals but also harms society's character and its commitment to the principles of democracy and the rule of law**. The prevention of such injury, therefore, concerns the entire society, which is committed to norms of human rights, morals and ethics.

34. Article 10(1) of the Covenant on Civil and Political Rights provides that:

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

This Article was interpreted by the human rights committee, the body responsible for the implementation of the covenant, in CCPR General Comment No. 21 dated April 10, 1992, in a very broad manner:

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

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

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

And according to article 5:

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

36. The various provisions concerning the right to prison visits enable the imposition of limitations on this right, including, *inter alia*, for security

reasons. However, as with any limitation on a fundamental right, such limitations must be imposed within the framework of the principles of reasonableness and proportionality, giving weight to the importance of the fundamental right being violated.

## The Right to Family Life

37. Preventing family members from visiting their incarcerated loved ones, severely violates the fundamental right of the family members as well of the prisoners to family life. The right to family life is and has always been regarded by society, at all times and in all cultures, as a supreme value.

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

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

> It is our main and basic duty to preserve, nurture and protect **the most basic and ancient family unit in the history of mankind, which was, is and will be the element that preserves and ensures the existence of the human race, namely the natural family**…

And in **Dovrin**, Honorable Justice Procaccia writes (in paragraph 12 of her judgment):

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

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

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

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

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

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

## The Duty to Respond within Reasonable Time

40. One of the basic premises underlying administrative law is the duty of the administrative authority to respond to applications submitted to it within reasonable time. Quick and efficient processing of applications is one of the foundations of good governance. The respondent must handle applications submitted to him fairly, reasonably and expeditiously.

> A competent authority must act reasonably. Reasonableness also means complying with a reasonable schedule (HCJ 6300/93 **Institute for the Training of Women Rabbinical Advocates v. Minister of Religious Affairs**, IsrSC 48(4) 441, 451).

41. This duty is also entrenched in section 11 of the Interpretation Law, 5741-1981, and in section 5 of the Order concerning Interpretation (West Bank Area)(No. 130), 5727-1967, which provides:

> An action, for the execution of which no time frame was set or established by security legislation, must be carried out expeditiously and must be re-executed whenever the circumstances promulgated for its execution occur.

42. According to section 2(a) of the Administrative Procedure Amendment (Statement of Reasons) Law, 5719-1958, a public servant must respond to a request to exercise a power granted by law within 45 days from the date of receipt of the request.

43. The words of Justice Procaccia in the abovementioned **Barguti**, a judgment which directly discusses the issue discussed herein, in paragraphs 12-13 of her judgment, are relevant to the matter at hand:

> There is also no dispute, that applications for visit permits must be reviewed and examined within a reasonable time period, and even if their number keeps growing, a proper mechanism should be established for coping with the current scope of

> applications and responding to applicants within a reasonable time period… the time period indicated by the respondent as an optimal time period for having an application processed – between two to two and-a-half months – sounds reasonable under the circumstances, **provided that the individuals in charge of processing make an attempt to abide by it, to the extent possible**.

44. In our case, the respondent has breached all possible norms concerning reasonable response time – both under administrative law and under military legislation. **Some three months have elapsed from the date HaMoked applied to the respondent in petitioner's matter, and nevertheless, the respondent has not bothered to respond to the application**.

45. Respondent's failure to respond causes agony to the petitioner and violates, as aforesaid, his fundamental rights as well as those of his incarcerated brother. Respondent's failure to respond, which has forced the petitioners to seek remedy from this honorable court is a waste of the precious judicial time of the court and causes a loss of many work hours, both of HaMoked's staff and of the district attorneys.

## Conclusion

46. In summary, the petitioners have shown that the respondent has a duty to enable and organize family visits in prison, and that the right to family life is a constitutional right, situated on a high level in the hierarchy of constitutional human rights.

47. Furthermore, the petitioners have shown that the respondent has a duty to enable and organize family visits in prison and that he nevertheless fails to uphold his obligation to respond to prison visit applications within a reasonable period of time.

48. Due to the restrictions on movement between the OPT and Israel, petitioner's affidavit was signed before a lawyers in his place of residence. The affidavit and power of attorney were sent to the offices of HaMoked by fax. They are attached to the petition in this form.

**Therefore, the honorable court is hereby requested to order the respondent as requested in the beginning of the petition and order him to pay legal fees and trial costs**.

Jerusalem, October 23, 2011

Daniel Shenhar, Advocate

Counsel to the petitioners

(File No. 68327)