At the Jerusalem District Court **AP 38446-11-12**
Sitting as the Court for Administrative Affairs

In the matter of:

1. **N. al-'Abayat, ID No. _____, Bethlehem**
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – Registered Association**

all 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 Noa Diamond (Lic. No. 54665) and/or Nimrod Avigal (Lic. No. 51583) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Bilal Sbihat (Lic. No. 49838) and/or Tal Steiner (Lic. No. 62448)

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.

Military Commander of the West Bank
Represented by the Jerusalem District Attorney's Office

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 her son, who is incarcerated in Israel, by giving her a multiple entry permit to Israel, valid for one year, for that purpose; This, instead of the single entry permit, given to the petitioner on very seldom occassions.

b. To establish a procedure for the submission and review of applications of family members, who make prison visits by virtue of single entry permits, to receive multiple entry permits.

c. Alternatively, to enable family members of prisoners, who are classified as "precluded", to apply to the respondent for the removal of the preclusion, so as to enable them to receive multiple entry permits.

The grounds for the petition are as follows:

> **Holding a person in custody does not automatically revoke all constitutional rights granted to him by virtue of the principles of the Israeli constitutional system**, and they may be impinged upon only to the extent required due to the deprivation of liberty resulting from the incarceration, the needs of the interrogation or trial, or for the purpose of securing a vital public interest, and subject to the provisions of the law (LCA 993/06 **State of Israel v. Mustafa Dib Mar'i Dirani**, TakSC 2011(3) 1298, paragraph 29 of the judgment rendered by Justice Procaccia, hereafter: **Dirani**. 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 statement, which was made before the Supreme Court of the State of Israel, demonstrates 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 her 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** or **HaMoked for the Defence of the Individual**), 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 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 when brothers are concerned and twice a year when sons are concerned.

6. 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 Red Cross (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.

7. 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 only. The permit enables its recipient to visit prison without limitation, inasmuch as ICRC shuttles are available to them (usually, twice a month).

Visit arrangements for individuals who are "Precluded from entering Israel"

8. Since the renewal of the visits, in March 2003, it became evident that in many cases the respondent refused to allow family members to visit prisoners, for "security reasons". This concerned a very large sector of the Area's population, which was classified by the respondent as "precluded from entering Israel".

9. By the end of 2003 and following petitions filed by HaMoked, the respondent changed his said policy and determined, in principle, that persons precluded from entering Israel would also be able to participate in prison visits, organized by the ICRC, in the absence of a special preclusion (HCJ 8851/03 **Nahleh v. Commander of IDF Forces in Judea and Samaria** and HCJ 11193/03 **Nazal v. IDF Commander in the West Bank**).

10. Within the framework of **Barghouti,** the respondent advised the court that the working procedures concerning the issuance of entry permits into Israel for the purpose of prison visits have considerably improved, and that this improvement "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**…" (paragraph 14 to the notice).

A copy of respondent's notice dated February 26, 2008 is attached and marked **P/1**.

Respondent's processing of applications to entry permits of "precluded" persons

11. The question arises, whether the improvement in the working procedures, as specified in respondent's above notice, has indeed improved respondent's response time to the applications delivered to him. Regretfully, **the answer to this question is negative**.

12. The data gathered from all files handled by HaMoked concerning applications to enter Israel for the purpose of prison visits, submitted by persons precluded from entering Israel, reveals an irritating situation: of 367 applications which were handled by HaMoked over the course of 2011, only 8(!) received an answer – about two percent – within the prescribed period of time, i.e., within two and-a-half months. 164 applications, about fifty percent, received an answer only after the elapse of 6-8 months following the submission of the application. **The above facts speak for themselves with respect to respondent's compliance with the time table undertaken by him in the above HCJ**.

13. It should be emphasized, that also in the rare cases in which permit was given within two and-a-half months, as undertaken by the respondent, **the maximum number of times which a visitor, who is precluded from entering Israel, can visit his incarcerated family member, amounts to three times per year only**, since, as is recalled, during the period the visitor has a permit, he is limited to one visit only during the 45 days in which the permit is in force. After the visit, the visitor may apply for another permit. So that even if the permit is issued after two and-a-half months, as undertaken by the respondent, four months pass from the issuance of one permit until the receipt of the other permit (45 days during which the permit is in force + two and-a-half months processing time), during which the visitor is limited as aforesaid to one visit only.

14. Again, it should be emphasized that several visits per year by single entry permits is a completely theoretical matter. As indicated by the above data, family members who receive single entry permits **are mostly allowed to make one visit per year only, if any**. The reason being – respondent's disregard for his undertaking to process applications within two to two and-a-half months. Respondent's disregard for this undertaking, and the poor and disrespectful manner by which he processes applications for permits to visit incarcerated persons, are outrageous. The family members are left completely helpless, and they have no alternative but to turn to this honorable court for relief.

15. In the past, petitions of this type were heard by the Supreme Court sitting as the High Court of Justice. In those years the *modus operandi* which should have been undertaken by the respondent in his processing of permit applications has been established, with the court's guidance. When the respondent failed to abide by his undertaking to process the application and issue a permit within two to two and-a-half months, and a petition in that regard was filed with the court, the respondent was ordered to pay the costs of the petitions (see, for instance, HCJ 7681/04 **'Abed al-Haj v. Commander of the Military Forces in the West Bank** and nine additional petitions dated December 22, 2005; HCJ 10428/05 **'Aliwa v. Commander of IDF Forces in the West Bank** and four additional petitions dated July 16, 2006).

16. As a result of the imposition of the costs of trial on the respondent, whose malfunctions and omissions lead to the filing of many petitions with the Supreme Court, the permits' issuance process has improved, although the improvement was slow. However, in recent years a regression in respondent's functioning in this regard is noticeable. Attesting to that is the increasing number of petitions filed with the honorable court: 49 petitions in 2010, 55 in 2011 and 61 petitions which were filed by the end of June 2012.

17. Hence, when the respondent classifies a person as "precluded from entering Israel", as the petitioner has been classified for years, her basic right to maintain reasonable family relations with her incarcerated husband [*sic*] is immediately violated.

The parties and exhaustion of remedies

18. The petitioner, born in 1969, is the mother of seven from Bethlehem, who has never been arrested or interrogated.

19. Petitioner's son, the prisoner S. al-'Abayat, ID No. _____, was arrested in February 2008 and sentenced to imprisonment of twelve and a-half years. He is presently held in the Ramon prison.

20. 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.

21. The respondent has been holding the territories of the West Bank under military occupation for forty five years and it is his responsibility that West Bank residents lead normal lives. He is the one who incarcerated petitioner's son, 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 ensure 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.

22. The petitioner has not seen her son since she visited him in prison in June 2012, by virtue of a 45-day permit. This is the place to point out that **it was only the sixth time that the petitioner had seen her son since his arrest in 2008**, as a result of respondent's delays in processing petitioner's permit applications, which either received very late response or no response at all.

23. This is only one aspect of the issue. The other aspect is the severe distress experienced by the petitioner who is a sick woman; she suffers from diabetes, a heart disease, and has even been recently diagnosed as having cancer. Notwithstanding the above, she receives 45 day permits. Hence, due to respondent's ill treatment of her permit applications, the petitioner manages to seldom visit her son. In view of petitioner's poor health, every visit is important, and there is no need to say more.

    Copies the medical records concerning the diabetes, heart disease and cancer are attached and marked **P/2a**, **P/2b** and **P/2c**, respectively.

24. In view of the above, the petitioner wanted to change the arbitrary status of "precluded from entering Israel" imposed upon her by the respondent, which prevents her from receiving one year permits and from visiting her son frequently, and has therefore turned to HaMoked, for its assistance.

25. Firstly, HaMoked referred the petitioner to the DCO near her place of residence for the purpose of submitting an application for the "removal of a general preclusion to enter Israel." Petitioner's referral to the DCO was made following a recommendation to that effect which was obtained from the legal advisor for the respondent (the legal advisor stated in his letter that the removal of the preclusion for the purpose of prison visits only could not be made, and that an application for "a general removal of the preclusion to enter Israel" should be submitted). However, nobody at the DCO knew anything about it, and the petitioner, who is a sick woman as specified above, was sent back home empty handed.

26. In view of the severe agony which was caused to the petitioner, HaMoked wrote again to the legal advisor for the respondent. HaMoked described the case to the legal advisor and demanded to receive a detailed explanation of the manner by which the preclusion imposed by him on the petitioner and which prevented her from receiving one year permits, may be removed.

    A copy of HaMoked's letter dated August 18, 2011 is attached and marked **P/4**.

27. Since the legal advisor for the respondent did not bother to respond to said letter, HaMoked was forced to write to him again so that he starts 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 category of persons who are "precluded from entering Israel", which will enable her to receive a multiple entry permit.

    A copy of HaMoked's letter dated November 7, 2011 is attached and marked **P/5**.

28. Captain Noa Shafrir, who responded on behalf of the legal advisor, wrote on November 27, 2011 that the legal advisor did not see any reason to change his policy concerning the issuance of entry permits into Israel to "precluded" persons. She also added that if HaMoked had "individual cases", it should turn in this matter to the international organizations branch at the civil administration.

    A copy of the legal advisor's response is attached and marked **P/6**.

29. In view of the legal advisor's response, HaMoked had to write to the head of international organizations branch at the civil administration, concerning petitioner's matter.

    A copy of HaMoked's letter to the head of international organizations branch dated December 8, 2011 is attached and marked **P/7**.

30. Due to the fact that no response was received from the civil administration, HaMoked sent another letter concerning petitioner's matter and emphasized her request to receive a multiple entry permit to Israel. The civil administration did not bother to respond to this letter either.

    A copy of HaMoked's letter dated April 29, 2012 is attached and marked **P/8**.

Therefore, the petitioner, who rarely sees her son due to her classification as "precluded from entering Israel", notwithstanding her difficult medical condition, has no alternative but to turn to this honorable court.

The Legal Aspect

> 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

31. 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 close 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.

32. And it was so held in this regard by Justice Procaccia in her judgment in LHCJA 6956/09 **Maher Yunis 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.**

33. 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.

34. 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)).

35. 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

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

37. 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."

38. 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 the 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.

39. 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**.

40. 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.

41. 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.

<u>The Right to Family Life</u>

42. 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.

43. 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'**.

44. 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

45. 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).

46. 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.

47. 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. The words of Justice Procaccia in the

abovementioned **Barghouti**, a judgment which discusses directly the issue adjudicated 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**.

48. In our case, the respondent has breached all possible norms concerning reasonable response time – both under administrative law and under military legislation. **A whole year has elapsed from the date HaMoked initially applied to the respondent in petitioner's matter, and nevertheless, no progress has been made in the processing of the application.** Respondent's failure to respond causes the petitioner agony and violates, as aforesaid, her basic rights as well as those of her incarcerated son.

Conclusion

49. 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.

50. Furthermore, the petitioners have shown that the respondent has a duty to enable and organize family visits in prison and that nevertheless he fails to uphold his said obligation.

51. Due to the restrictions on movement between the OPT and Israel, petitioner's affidavit was signed before a lawyer in her 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, November 20, 2012

_____

Daniel Shenhar, Advocate
Counsel to the petitioners

(file number 65599)