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At the Supreme Court
Sitting as the High Court of Justice

HCJ 6392/15

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 Hava Matras-Irion (Lic. No. 35174) and/or Benjamin Agsteribbe (Lic. No. 58008) and/or Bilal Sbeihat (Lic. No. 49838) and/or Anat Gonen (Lic. No. 28359) and/or Abir Joubran-Dakwar (Lic. No. 44346) and/or Nasser Odeh (Lic. No. 68398)
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

Represented by
The State Attorney's Office
Ministry of Justice, Jerusalem

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 Israel Security Agency interrogation ward at the Shikma prison, which is under its responsibility, such that they are compatible with the lawful rights of the individuals incarcerated therein;
- b. Alternatively, and pending such improvement, why he should not order detainees held at the interrogation ward at the Shikma prison be transferred to a facility which offers reasonable and lawful holding conditions.

The grounds for the petition

Indeed, the nature of detention necessitates the denial of liberty. Even so, this does not justify the violation of human dignity. **Detentions can be made in a manner that maintains national security and public safety, while preserving the detainees' human dignity**... Prisoners should not be crammed like animals into inadequate spaces. Even those suspected of the most abhorrent acts of terrorism are entitled to conditions of detention which satisfy minimal standards of humane treatment and ensure basic human necessities. We cannot consider ourselves civilized if we do not guarantee civilized standards to those in our custody... Such is the duty of the Israeli government, in keeping with its fundamental, Jewish-humane, democratic character.

(Remarks of President Barak in HCJ 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 D.S).

1. The petition concerns the substandard conditions in which Palestinian detainees, residents of the Occupied Palestinian Territories (OPT) are held in the Israel Security Agency (ISA) interrogation ward at the Shikma prison (hereinafter: also **the ward, or the ISA interrogation ward**), in violation of their lawful rights.
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 ward. 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 in the ward, 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**. The Respondent has ignored HaMoked's repeated communications on the matter.
4. At this point, we note that on October 31, 2011, HaMoked filed a petition, HCJ 7984/11 **HaMoked: Center for the Defence of the Individual v. Israel Prison Service**, with respect to the appalling holding conditions at the ISA interrogation facility in Petah Tikva. The petition included a number of testimonies provided by detainees who had been held in the facility and resulted in a substantive change in holding conditions there. This issue will be discussed below.
5. The complainants referred to in this petition were arrested by Israeli security forces between August 2013 and May 2014, and transferred to the ISA ward at the Shikma prison for interrogation. The complainants have claimed that while held in the ward, they were subjected to disgraceful holding conditions..
6. 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

7. 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.
8. 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 detainees held at the ISA ward in Shikma and whose affidavits form the basis for this petition.

Holding conditions in the ward

9. The description of the harsh holding conditions in the ward is based on approximately 100 affidavits given to a lawyer working on behalf of the Petitioner between 2013 and 2014. The petition herein encloses seven affidavits attesting to humiliating holding conditions over a period of approximately eight months.
10. The following affidavits are attached to the petition:

The affidavit of Mr. _____ Qafishah (ID No. _____), of Hebron, given on November 18, 2013. Mr. Qafishah was held in the ward from mid-September 2013 to mid-October 2013;

The affidavit of Mr. _____ Alian (ID No. _____), of the village of Rantis in the Ramallah district, given on November 14, 2013. Mr. Alian was held in the ward from early October 2013 to early November 2013;

The affidavit of Mr. _____ Sid Ahmad (ID No. _____), of the village of Zeita in the Tulkarm district, given on November 24, 2013. Mr. Sid Ahmad was held in the ward from mid-October 2013 to mid-November 2013;

The affidavit of Mr. _____ a-Titi (ID No. _____), of al-'Arrub Refugee Camp, given on November 27, 2013. Mr. a-Titi was held in the ward from mid-October 2013 to mid-November 2013;

The affidavit of Mr. _____ Kilbawi (ID No. _____), of Nablus, given on September 1, 2014. Mr. Kilbawi was held in the ward from early December 2013 to late December 2013;

The affidavit of Mr. _____ Masaq (ID No. _____), of Hebron, given on March 9, 2014. Mr. Masaq was held in the ward from late January 2014 to late February 2014;

The affidavit of Mr. _____ al-Hajuj (ID No. _____), of the town of Bani Na'im in the Hebron district, given on April 24, 2014. Mr. al-Hajuj was held in the ward from mid-March 2014 to mid-April 2014;

A copy of the affidavit of Mr. Qafishah is attached hereto and marked **P/1**; **a copy of the affidavit of Mr. Alian** is attached hereto and marked **P/2**; a copy of the affidavit of Mr. Sid Ahmad is attached hereto and marked **P/3**; a copy of the affidavit of Mr. a-Titi is attached hereto and marked P/4; a copy of the affidavit of Mr. Kilbawi is attached hereto and marked P/5, a copy of the affidavit of Mr. Masaq is attached hereto and marked P/6, a copy of the affidavit of Mr. al-Hajuj is attached hereto and marked P/7.

11. As indicated by the affidavits, as well as by many other testimonies as mentioned, the ward has several cells used for holding detainees who are under ISA interrogation. The solitary confinement cells where detainees are held while under ISA interrogation received the most chilling accounts. Conditions in the cells where the detainees are held after the interrogation ends, pending transfer to another facility, are more humane.

12. The following account was given in the affidavit of Mr. Qafishah:

Solitary is a grave. It's a small place. You can't see anything. Nothing happens. You only see a blinding, yellow light. The toilet is inside. There is a bad smell. The blankets are very dirty with tons of dust. The mattress is uncomfortable. It's very thin, and it's on the floor and has a very bad smell. The worst thing is that the light is on all the time.

13. The conditions in the solitary confinement 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, one month on average.

14. 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. The shower itself is a cold water shower, which is torture by its own right when the detainees are held in the freezing solitary cells through the winter.

15. The following account was given in the affidavit of Mr. Sid Ahmad:

Solitary is like being buried alive. You don't know what time it is. The walls are rough and gray and give you the feeling you're not in a room, but that you're in a cave, underground. You call the warden and no one answers. You feel buried... They wouldn't let me have a shower for a whole week. They didn't give me clothes or undergarments. After about 20 days, they let me try to find used undergarments. The towel they gave me was dirty. It wasn't personal. It was as if they had washed but didn't manage to.

16. 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.

17. 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. Alian spoke of this issue in his affidavit:

This solitary cell is 1 by 2 meters. The toilet is inside and it always smells bad. The light, which is red, is on all the time. This light weakens vision... The cell ceiling is low. You can touch it when you put your hands up... They let me shower for the first time after a week. I didn't ask to before because the water could give you fungus, because there's no sunlight. After that, I avoided showering. I agreed to do it only once a week, so long as there was nothing to dry with or clothes to change into.... All solitary cells had an AC opening with very cold air... I asked for two extra blankets and they gave them to me. I tried to keep my body heat. The blankets were dirty but that's all there was. The mattresses were about ten years old. They hadn't seen air or sun. Every single mattress was dirty and smelled bad.

18. 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, in addition to the possibility that a warden might open the cell door just as a detainee is using the toilet. This is an intolerable situation which severely violates the detainees' dignity. Mr. Masaq said in his affidavit that "The toilet is visible from the door, and have a foul smell".

19. Most of the detainees complained that in their first few days in the ward (sometimes up to ten days, and sometimes more, as seen below), 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. 14 above which demonstrates that the shower itself was not hygienic, but rather a health hazard by its own right. On this issue, Mr. a-Titi says in his affidavit:

I constantly asked to shower and they didn't let me. They let me have a shower only after 17 days. They didn't give clothes or undergarments, just a foul smelling towel. I got dirty undergarments only on the 23rd day.

20. From all the affidavits given to the Petitioner put together, it appears that the cells used for holding interrogatees were extremely small. Their estimated size is approximately 1.5 meters by 1.5 meters. Many detainees called these cells "graves" or "coffins". Sometimes, two detainees were held together inside these "coffins".

21. The affidavits also present a dismal account 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 gray-black color 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.

22. 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. Mr. al-Hajuj spoke of this in his testimony:

The mattress is very thin. You feel like you're sleeping on the floor... There are two blankets. I used one as a pillow and covered myself with the other. The cleanliness of the blankets wasn't reasonable. I tried to clean them myself, but they didn't provide soap or anything to clean with. I felt cold all the time.

23. 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 undergarments. However, the affidavits indicate that the detainees are not provided with a change of clothes, and in that in isolated cases, they receive a single 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. Masaq stated in his affidavit:

The shower was always cold. I got a hot shower only after I complained to the Red Cross. At first they didn't give undergarments or a change of clothes. They did only after I complained to the Red Cross... They didn't provide a towel. I used my clothes to dry off.

24. The affidavits indicate that many of the interrogatees suffered from hunger while held in the ward's solitary confinement cells. Most stated that the food they were given was of very poor quality – to the point of being inedible - and that they ate it simply to survive. Mr. Kilbawi addressed this issue in his affidavit:

I didn't eat, because the food wasn't clean. There was hair in the plate. It was disgusting. Uncooked food. I ate only when there was fruit. They sometimes brought me a container of hummus with an old date, expired. I didn't eat. I lost 10 kg during the interrogation.

25. Thus, the affidavits present a horrifying account of the holding conditions in the solitary confinement cells in the Shikma prison interrogation ward. The cells are extremely small. They are filthy, particularly given that there is no separation between the cesspit used as a toilet and the rest of the cell. Detainees sleep on a very thin mattress. The few blankets they receive are insufficient to keep them warm, because the air-conditioning in the cells is too cold. The cells, which have no natural light or an opening to let fresh air in, are lit around the clock with a dim

reddish-yellowish light which causes detainees great suffering. The cell walls are dark and rough, making it difficult to lean on them. The detainees do not receive a change of clothes and in many cases receive no showers. They are not given enough food and the quality of the food they are given is poor.

26. On the whole, the effect being held in the solitary confinement cells had on the detainees was extremely harsh. Most spoke of a sense of helplessness, despair and despondency, which caused some of them to threaten suicide. These are inhuman, humiliating holding conditions which are fatal to the human dignity of those subjected to them. Mr. Kilbawi said in his affidavit:

I threatened once that I would kill myself if they didn't take me out of solitary because I was sick of the isolation. They brought a psychiatrist to the cell and took me to the cell door. She didn't speak Arabic. Someone translated for her. She asked questions and filled out a form. I told her I was suffering from the cold and from loneliness in the cell. She said I'd be out in a few days...

Exhaustion of remedies

27. HaMoked's first communication with respect to the appalling holding conditions in the interrogation ward at the Shikma prison was marked urgent. Many testimonies received by HaMoked at the time indicated that hygiene conditions in the ward were so poor that they presented a risk to detainees' health. The communication referred to cases of detainees who had developed various skin conditions and fungi in different parts of their bodies. HaMoked noted that it was not clear whether the skin conditions were caused by the extremely poor sanitary conditions in the cells or by the dirty towels and lack of extra clothes. In any event, the communication clarified that the prevalence of these conditions required an urgent change in the ward's sanitation procedures. The urgent communication was sent to the commander of the Shikma prison and the IPS chief medical officer, but received no pertinent response. The only response given was a comment made over the telephone that the "is under review".

A copy of HaMoked's communication dated June 12, 2014 is attached hereto and marked **P/8**.

28. On September 15, 2014, HaMoked issued a long, detailed letter, informing the competent officials of the facts surrounding the harsh holding conditions in the solitary confinement cells in the interrogation ward in the Shikma prison, based on 105 affidavits given by detainees who had been held in the ward between August 2013 and May 2014.
29. The letter presented the normative framework by which the Respondent is bound with respect to detainees' holding conditions. The letter juxtaposed the duties against the violations – extremely small, dark, unpainted confinement cells with rough walls, sleeping on thin mattresses which is akin to sleeping on the floor, without sufficient or clean bedding; poor hygiene and sanitary conditions (including filth due to lack of separation between the toilet and the cell); no exposure to sunlight, coupled with the use of dim lighting 24 hours a day; lack of fresh air, exposure to extreme cold; poor, moldy, rotten food which made detainees feel constantly hungry – all of which, HaMoked argued, required serious

attention by the authorities, including a complete renovation of the ward such that it meets legal requirements. HaMoked also demanded that no detainees be held in the ward pending such renovations. The letter was addressed to the commander of the Shikma prison and copies were sent to the IPS commissioner, the IPS legal advisor and the inspector of interrogees' complaints.

A copy of HaMoked's communication is attached hereto and marked **P/9**.

30. No written response was received. Therefore, the undersigned telephoned Shikma Prison Headquarter on October 30, 2014. The prison commander's office stated that HaMoked's communication was "under review". The undersigned contacted the prisoner liaison officer at the prison to receive more information regarding said review. The prisoner liaison officer confirmed that HaMoked's communication was under review and said she would call back with more information. She made no further communication to the undersigned on the subject.

31. In light thereof, on November 26, 2014, HaMoked sent another letter regarding holding conditions in the interrogation ward to the commander of the prison, enclosing the original communication of September 15, 2014.

A copy of HaMoked's communication is attached hereto and marked **P/10**.

32. Given that no competent official from the Respondent's office replied to HaMoked's communications, another letter on this matter was sent on January 25, 2015. The undersigned attempted to contact the Shikma prison commander on the next day, but to no avail (the response was that he was "busy"). All officials at the commander's office could say was that HaMoked's communications had been received and were under review. An attempt to obtain a response from the office of the IPS legal advisor was unsuccessful as the response was that the matter was being addressed by the responsible parties at the Shikma prison.

A copy of HaMoked's communication dated January 25, 2015 is attached hereto and marked **P/11**.

33. Months went by, and no response was forthcoming. HaMoked was therefore compelled to contact Shikma prison once more, in an attempt to receive a response.

A copy of HaMoked's communication dated April 15, 2015 is attached hereto and marked **P/12**.

Despite the repeated reminders, the Respondent, and its various officials, have chosen not to respond to HaMoked's communication. In view of the affidavits in its possession and the Respondent's protracted failure to provide a response to HaMoked'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 detainees who are not suspected of security offences**. 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 than they appear from the descriptions of the conditions.

Adequate holding and sanitary 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 solitary confinement 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 solitary confinement cells have an opening that lets air conditioning in and cannot be covered. 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 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 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 the **toilet should be separated from the rest of the holding cell.** There is no separation between the toilet and the rest of the cell in the solitary confinement cells in the ward. 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 solitary confinement cells. 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 in the ward. Most detainees complained that **they were not allowed to shower at all** during their first days in the ward at the Shikma prison. Detainees who were held in the ward 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.
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 ward 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 ward where the interogatees are held 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 effect 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 double 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), such that it likely fails to meet the standard of a “double mattress”. Both the mattresses and the blankets are dirty and foul smelling. Many reported that it seems as though they had never been washed (!).
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 undergarments but no clothes.

Food

50. Regulation 8(a) sets forth that detainees are entitled to receive the quantity and composition of food necessary for maintaining their health. In this respect, holding conditions in the ward trample the regulation under foot. The detainees receive little food and the quality of the food supplied is so poor that many detainees reported that it was inedible. A great many detainees reported that they had lost weight while held at the Shikma interrogation ward. Some lost 5, 7, 10 and even more kg. It is horrifying to think that people are held in conditions of hunger in an interrogation ward in the State of Israel.

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

51. The right to adequate and humane holding conditions, to which the detainees at the Shikma prison interrogation ward 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).

52. 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"**.

53. 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, the body charged with the implementation of the Convention, 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.

54. 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. Article 1 stipulates:

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.

55. 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 H CJ 221/80 **Darvish v. The Prison Service**, IsrSC 35(1) 536, 539-40, [hereinafter **Darvish**]; H CJ 540-546/86 **Yosef v. Administrator of the Central Prison in Judea and Samaria**, IsrSC 40(1) 567, 573, [hereinafter **Yosef**]; H CJ 253/88 **Sajadia v. The Minister of Defense**, IsrSC 42(3) 801, 832, [hereinafter **Sajadia**]. These standards apply to all imprisoned persons, including detainees.

56. 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 of international law mentioned by Barak are all the more applicable to the Respondent when detaining Palestinian residents of the OPT on Israeli soil, in contravention of international law.
57. 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 H CJ 2690/09 **Yesh Din et al. v. Military Commander et al.** (not yet reported, judgment rendered on March 28, 2010) (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.

58. As such, holding conditions 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

59. 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).

60. 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.
61. 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 the climate and the detainees' age and health. The detaining authorities must also provide basic conditions for maintaining hygiene, including clean showers and toilets and toiletries.

62. 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 weather conditions into consideration.
63. 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 abuse.
64. 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 50 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.
65. 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.
66. 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.
67. If we compare the conditions at the Shikma prison interrogation ward, as these emerge from affidavits given by individuals who were held in the ward, 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.

Conditions in the ward – a breach of the prohibition on cruel, inhuman or degrading treatment or punishment

68. Holding individuals in the conditions described above amounts to cruel, inhuman and degrading punishment which is prohibited under international law. As proven above, holding conditions in the ward fail to meet the standard required under Israeli law, which is lower than the international bar required in order to avoid cruel, inhuman and degrading punishment.
69. Section 7 of the ICCPR prohibits cruel, inhuman or degrading treatment or punishment. Article 4 of the Convention stipulates that Article 7 cannot be derogated from even in a state of emergency. A similar provision is contained in Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: **Convention against Torture**), which was ratified by Israel in 1991. There is no dispute that these provisions constitute customary international law.

70. The Committee against Torture, established under the Convention against Torture and provides binding interpretation for the Convention has addressed holding conditions at length in its various country reports. So, for instance, in its recent concluding observations with respect to Estonia, published on June 17, 2013:

The Committee is concerned by information suggesting that conditions in some prisons and police arrest houses do not meet international standards, including with regard to infrastructure, hygiene and sanitary conditions, hot water, heating, windows, ventilation, lighting, furniture and living space (UN Committee Against Torture (CAT), **Concluding observations on the 5th periodic report of Estonia**, Committee Against Torture, par.17. CAT/C/EST/CO/5.

71. The European Court of Human Rights emphasized on a number of occasions, that states have an obligation to see to it that detainees' right to dignity is secured within their incarceration systems, regardless of the economic situation of the country or logistical difficulties (**Arefiev v. Russia**, no. 29464/03, par. 60, 4.11.10; **Mamedova v. Russia**, no. 7064/05, par. 63, 1.6.06).

HaMoked's petition regarding holding conditions in the Petah Tikva interrogation facility

72. On December 29, 2014, this Honorable Court issued its judgment in HCJ 7984/11 **HaMoked v. IPS**, (unreported) (hereinafter: **Petah Tikva**). The petition was filed in October 2011. It was preceded by failed attempts to have the Respondent bring holding conditions in the Petah Tikva interrogation facility, which, like the ward in Shikma, is also used for holding ISA interogatees, up to legal standards.
73. In the three years during which the **Petah Tikva** case was pending before the Court, the Respondent made significant changes to the holding conditions in that facility. In a statement dated July 24, 2014, the Respondent stated:

[I]n accordance with the declaration of the Respondent and the Israel Security Agency (ISA), at this time, the detention facility that is the subject of the petition is undergoing renovation which will continue for several months. Said renovation will include the improvement of the infrastructure at the facility including the installation of an air conditioning system in all of the cells, the renovation of the plumbing system, the installation of new sanitary fixtures, painting the cells and more. It must be indicated that during said renovation, detainees are not held at the detention facility that is the subject of the petition.

74. The Respondent conducted the thorough renovation of the Petah Tikva facility over the course of 2012 and 2013. The Honorable Court kept the **Petah Tikva** case pending, at the Petitioner's request, until the renovation was completed. Once the renovation was completed, Ministry of Justice officials conducted two official inspections in the facility, on September 17, 2013 and on July 13, 2014. On December 4, 2014, the Respondent presented the Court with the inspection reports. All the above indicates that the Respondent did not dispute the fact that the conditions in the Petah Tikva facility prior to the renovation failed to meet legal standards for detainee holding conditions.

75. Thus, the **Petah Tikva** petition was successful: the little light that was shed on the Petah Tikva facility thanks to the petition led to the necessary changes in holding conditions there. The same should occur with the petition at hand, which concerns another site where Palestinian detainees are interrogated by ISA personnel, while held in inhuman conditions.

Conclusion

76. 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 Shikma prison interrogation ward, which is under its responsibility.
77. In contravention of these obligations, the Respondent has been systematically evading the law on minimum holding conditions when it comes to the Shikma prison interrogation ward. 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 ward are inhuman and intolerable.
78. The question is why the Respondent refuses to carry out its legal obligation to rectify the many deficiencies at the ward and bring them up to the minimum required for a detention facility in Israel. At best, if the Respondent is unable to rectify the deficiencies and bring the ward up to the minimum standard, it should immediately cease to use it as a detention facility and refrain from holding detainees there.
79. 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, 21 September 2015

Daniel Shenhar, Adv.
Counsel to the Petitioner

(File number: 78563)