At the Supreme Court **HCJ 6392/15**
Sitting as the High Court of Justice

In the matter of: **HaMoked: Center for the Defence of the Individual**
Represented by counsel, Adv. Daniel Shenhar
of HaMoked: Center for the Defence of the
Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem 97200
Tel: 02-6283555, 052-3778372, Fax: 02-6276317 **The Petitioner**

v.

Israel Prison Service
Represented by Adv. Meital Buchman Schindel
State Attorney's Office
Ministry of Justice
Jerusalem **The Respondent**

Response on behalf of the Petitioner to the Response of the State

In accordance with the decision of the Honorable Court dated January 25, 2016, the Petitioner hereby respectfully submits the following response to the Response of the Respondent:

1. This is a petition for an Order Nisi to order the Respondent to improve the harsh holding conditions in the ISA interrogatee wing at Shikma Prison in Ashkelon (hereinafter: **the wing**), in order to bring them in line with the requirements of the law. Alternatively, pending improvement in holding conditions, the Respondent will be required to move the individuals held in the facility to another facility with humane conditions.

2. On January 19, 2016, the Respondent filed his response to the petition. In the response, the Respondent asks the Honorable Court to dismiss the petition in limine, and on its merits.

3. We first wish to address the Respondent's request to have the petition dismissed in limine. Following these preliminary arguments, we wish to respond to the request for dismissal of the petition on its merits, demonstrating that the response itself indicates that judicial intervention is required in order to bring holding conditions in the wing in line with legal requirements.

Regarding alleged causes for dismissal in limine

4. The Respondent maintains that the Honorable Court must dismiss the petition as there is an alternative remedy in the form of a prisoner petition concerning holding conditions.

5. With due respect, this "cause" is vacuous and the Court must not accept it.

6. The persons concerned are, in the vast majority of cases, Palestinian detainees who are taken from their homes in the dead of night, and brought to the Shikma interrogation facility for an ISA interrogation. It is well known, and no further details are required, that these interrogations are particularly intense, and the interrogatees are put under a tremendous amount of mental pressure during same.

7. In addition, given the unbearable holding conditions in the wing, and the fact that the interrogatees hardly sleep, they are in a state of significant physical distress. This is supported by the affidavits appended to the petition (though the matter is self-evident regardless of the affidavits).

8. Is it possible to expect a reasonable person who is suffering great physical and mental distress to hasten to file a prisoner petition specifically about the conditions in which he is being held? A person undergoing a stressful and intense interrogation, who is concerned for his liberty and his fate, cannot be expected to attend to various legal proceedings (incidental to the denial of liberty itself).

9. Moreover, it is well known that a large proportion of these interrogatees are denied meetings with counsel, including during remand hearings at the military court. In addition, the interrogatees are held in complete isolation, with no connection to anyone but their interrogators and prison guards. Can a person who is held in isolation and receives no legal counsel whatsoever be expected to be able to pursue his rights in the shape of taking legal action in the competent court with respect to his holding conditions? The answer seems clear.

10. A review of the inspection report appended to Respondent's response and marked **R/3,** p. 7, notes that "Facility officials have all said **that they had hardly ever come across prisoner petitions from detainees held in the facility on security offenses**" (emphasis added, D.S). The complete absence of prisoner petitions shows, in fact, that this is not a realistic option for persons held in the facility. A general petition is the only way to challenge the inhumane holding conditions in the wing.

11. In light of the above, this cause for dismissal in limine is rendered null and void.

12. Another cause for dismissal in limine suggested by the Respondent is the allegation that the affidavits on which the petition relies are flawed, and therefore, the Honorable Court must not consider the petition.

13. This is a serious, outrageous, non-collegial charge against the Petitioner, a well-known and well established human rights organization that has been involved in litigation to protect the rights of Palestinians living under occupation for nearly three decades. No such allegation has ever been made against the Petitioner, and the Respondent should not have raised the issue in this manner.

14. Given this and prior to addressing the matter on its merits, **we wish to strongly protest the very act of making this impudent allegation** (we note that the allegation was first made as part of the response. One might have expected the allegation, if made at all, to be brought to the Petitioner's attention prior to presenting it to the Honorable Court).

15. The Respondent claims that the lawyer working on behalf of the petitioner did not visit the Respondent's facilities on the dates marked on the affidavits appended to the petition (though it admits that the detainees whose affidavits were appended were in fact held in the facility on those dates). The

Respondent bases this outrageous allegation on what appears to be a print out of some sort of computerized records it keeps, which ostensibly attests to the veracity of the allegation.

16. First, a cursory review of the print out shows perplexing inaccuracies and inexplicable "gaps": One part of the table notes counsel's license number as 37126, and another as 39126 (the correct number is 39126). There are almost no records of visits in 2013, some of the entries are complete and some are partial.

17. Second, based on the undersigned's years of experience, registration of visitors at the prison entrance is conducted manually, in a visitor's log book, by the prison guard staffing the entrance. The guards enter (or fail to enter) the information into the computerized system only after the visitor enters. With due respect, a system that is managed in such a haphazard way without supervision cannot be relied upon to defame the Petitioner as the Respondent has.

18. Third, to demonstrate: In LHCJA 769/14 **'Ahed Jolama v. IPS** (unreported), Mr. Jolama asked the Honorable Court to intervene in the Respondent's decision to prevent his wife from visiting him in prison. In the response to the application (on which the Honorable Court relied when dismissing it), the Respondent argued that the Applicant did not tell the court that his wife had, in fact, visited him in prison, contrary to what he had said. <u>This perplexing argument was made based on the same (extremely accurate, as we shall see) record keeping system the Respondent is seeking to rely on herein.</u>

19. And indeed, the same applicant reached out to HaMoked: Center for the Defence of the Individual (the Petitioner herein), asking for help with correcting the error and obtaining a permit for his wife to visit him in prison.

20. The Petitioner had to contact the Respondent's Chief Prisoner Wing Officer, demanding the records be examined, and the grievous error due to which the applicant has been said to be a liar corrected.

21. On January 28, 2016, the Petitioner received a letter from the IPS Central District Incarceration Officer, indicating that **an error had indeed been made in the records** (the applicant's wife had been registered as the visitor instead of her children, who were the ones visiting their imprisoned father).

22. It appears, therefore, that the Respondent's record keeping system is, to understate, inaccurate and prone to many a-human-error, and cannot be relied on as conclusive evidence for any purpose whatsoever. This is particularly true when the allegation is made in a bid to defame a human rights organization.

    A copy of the letter from the Central District Incarceration Officer is attached hereto and marked **P/13**.

23. Fourth, it is known that any communication from counsel wishing to visit a prisoner held on security charges must be made in writing, in addition to the manual entry in the visitor log, as described above. In light of this, should the Respondent wish to thoroughly investigate the issue (and it is a pity that so many resources are dedicated to this end rather than to improving holding conditions in the wing), it is welcome to conduct such an investigation and present to the court the findings that indicate no communications were made in writing from Petitioner's counsel, and no manual records of her entry to the prison on the cited dates have been found.

24. To conclude on this regrettable issue, the Respondent would have done wisely to avoid raising this defamatory and injurious "cause". The Petitioner asks, with all due respect, that the Honorable Court order the Respondent to apologize to the Petitioner for making the allegation in the first place.

On the merits

25. The Respondent claims to dispute the Petitioner's position that holding conditions in the wing are harsh. To support this assertion, the Respondent relies on three reports regarding inspections made in the wing, appended to the response. However, a close review of the reports raises some serious issues with respect to holding conditions in the wing, which are not what is purported in the response.

26. This is the time to note, as an aside that is significant for the matter at hand, that a review of the reports indicates that these were not spot checks, but rather, coordinated visits to the facility. It further appears that the visitors do not select which cells to inspect, but are taken to the cells by their escorts. It is also apparent that the visitors do not select which detainees they will interview (through an interpreter supplied by the Respondent), but the detainees are chosen by the escorts.

27. And so, not only are these official inspection reports, and therefore presumably cautiously worded, but, what can be observed in such a situation is limited to begin with.

28. Moreover, every such visit was conducted with ISA escorts, though they should, in theory have nothing to do with holding conditions in the wing, which is entirely the purview of the Respondent.

29. The fact that even with these basic parameters, the inspection reports still raise so many problems supports the statements contained in the petition and the appended affidavit and requires attention.

30. Furthermore, the statements contained in the response itself also indicate that the Respondent himself admits that there are extremely troubling elements to the holding conditions in the facility, which require attention. We elaborate:

Separation between the toilet and the cell

31. The Respondent notes in his response that he has begun a pilot for installing a partition between the location of the cesspit (or squat toilet) and the remainder of the cell. This evinces the Respondent's recognition that the current situation, where detainees are held in a very small cell, where their body is in contact with the squat toilet.

32. The current situation fails to meet legal standards, as holding detainees under such conditions constitutes a severe violation of their most basic dignity, amounting to a breach, on the part of the Respondent, of the absolute prohibition on cruel, inhuman and degrading treatment, by which Israel is bound under the Convention Against Torture (see, Secs. 68-71 of the petition).

33. In his response, the Respondent notes that efforts will be made to complete the partition installation pilot by the end of the current year (2016). The Petitioner believe this is not enough, and that the Honorable Court should order the Respondent to complete the installation of these partitions within a set period of time. This is clearly a humanitarian issue.

Review of lighting

34. The Respondent notes in its response that it is conducting a review of the lighting in the cells, which is on 24 hours a day.

35. The individuals held in the facility complain that the dim yellow-orange lighting disturbs them (during what little rest they get), impedes them from sleeping and causes headaches and even hallucinations. Attempts made by detainees to cover the source of the lighting with improvised materials are derailed the prison guards (the official inspectors saw for themselves that there is an acute problem with respect to lighting).

36. It appears that the Respondent acknowledges that leaving the lights on 24 hours a day is problematic, and therefore, has informed the court that the policy on this issue is under review, and that it is searching for a technological solution that would allow dimming the light so that detainees held in the cells can distinguish between night and day.

37. We recall that the detainees are held in cells that have no outside lighting, in prolonged sensory deprivation. Add to that the fact that the light in their cell is on 24 hours a day, in conjunction with the long hours during which the detainees are under intense, harsh interrogation, the result is severe, inhuman holding conditions which fail to comply with both Israeli and international law.

38. In light thereof, the Respondent's vague pledge to review the issue cannot suffice. The Petitioner asks the Honorable Court to order the Respondent to set a timeframe for completing the review, and thereafter clarify what solution is offered for the lighting issue.

The issues arising from the inspection reports

39. Beyond these two points, the Respondent's response states that holding conditions in the wing are completely up to standard, however, a careful review of the inspection reports indicates that there are further disturbing aspects the Respondent must attend to in order to have holding conditions in the wing considered humane, and compliant with legal standards.

40. The size of the cell: this is a very important issue which is crucial to the Respondent's compliance (or lack thereof) with legal standards.

41. Detainees held in the wing attest that the cells are extremely small, and that when two detainees are held in one cell, there is not enough space for both to sleep on the cell floor. As detailed in the petition itself (sec. 45), the average size of the cell, according to the detainees' estimates, is 2.25 m^2.

42. The Respondent notes, in sec. 45 of the response, that the average size of the cells is at least 4.5 m^2. However, the inspection reports indicate that this is not so.

43. One recommendation made by the official inspectors on December 22, 2013, was to put beds in the cells, subject to security consideration. The ISA (why the ISA and not the Respondent?) responded that **it is not possible to put beds in the cells as they are too small** (p. 7 of the report).

44. Additionally, the table on p. 3 of the December 22, 2013 inspection report notes "no exact figures were obtained or received with respect to the size of the cells, however, **the impression drawn is that the cells are extremely small given their expected occupancy**" (emphasis added, D.S.).

45. The table on p. 3 of the January 22, 2015 inspection report notes, with respect to cell size: "… no exact information was received. The cells we saw seemed small…".

46. The table on p. 8 of the December 6, 2015 inspection report notes: "… **we have requested, but have yet to receive from either the ISA or the IPS, figures on the exact size of the cell**, and given the time that has elapsed from the date of the visit, we distribute this report without this exact figure" (emphasis added, D.S.).

47. Thus, the basis for the Respondent's assertion that the size of the cells in the wing is at least 4.5 m^2 is unclear. The inspection reports themselves indicate otherwise. At the very least, they indicate that the Respondent (and the ISA?) are avoiding providing exact figures on the size of the cells. With due caution, it appears that this avoidance is not random. It suggests that the cells are far from the legal standard of 4.5 m^2 per prisoner.

48. Not only does the Respondent evade providing exact figures on the size of the cells, it explicitly states that it is not subject to the legal standard, according to the transitional provisions stipulated in the Regulations of Criminal Procedure (enforcement powers – arrests) (holding conditions) 5757-1997, cells built prior to the commencement date of the procedures are exempt from the minimum standards.

49. With due respect, this argument can no longer be acceptable. Almost twenty years have passed since the regulations were enacted. The Respondent can no longer hide behind the transitional provisions whilst people in its custody are held in subhuman, appallingly confined conditions.

50. On this issue, the Honorable Court issued an Order Nisi on January 25, 2016, in response to HCJ 1892/14 **The Association for Civil Rights in Israel v. Minister of Public Security**, wherein it orders the Respondent to explain why it should not guarantee every inmate an adequate living space within a reasonable amount of time and take steps toward implementing same (including determining the adequate living space for an inmate, drawing plans for achieving adequate living space for an inmate and establishing a reasonable timetable for executing the plan). The Respondent is also ordered to explain why it should not immediately take the necessary steps to guarantee each inmate a living space of 4 m^2 (excluding the bathroom and shower area) required to prevent cruel, inhuman or degrading punishment.

51. The Respondent herein, and the remaining Respondents named in the above petition were given 120 days to comply with the order.

    A copy of the decision and the Order Nisi is attached hereto and marked, **P/14**.

52. The aforementioned with respect to the size of the cells seems to indicate that the Respondent's response, as presented in the preliminary response, is, at best, evasive and at worst misleading. The Honorable Court itself addressed this in the above noted proceeding. The issue in the case herein is more acute as these are detainees who are under ISA interrogation, such that holding them in inhumanly confining conditions which constitute cruel and inhuman treatment, exacerbates their already difficult situation and interferes with their right to due process as well.

53. The Respondent cannot simply be absolved of any need to respond on this issue, and must be ordered by the Honorable Court to address it.

54. Cell sanitation: In sec. 38 of the response, the Respondent claims that the cells are cleaned on a daily basis by a sanitation worker.

55. However, a review of the December 6, 2015 inspection report indicates otherwise. On p. 6 of the report, it is noted that the cell is cleaned by a sanitation worker when it is vacated. But what happens when the cell is not vacated? The implication is that a sanitary worker does not clean the cell. Additionally, detainees are not provided with cleaning materials to clean the cells themselves.

56. It appears, then, that there is a sanitation issue in the cells (exacerbated by the fact that the cesspit used as a toilet is not separated from the rest of the cell), and the Respondent must address this issue.

57. Change of clothes. In sec. 47 of the response, the Respondent himself implies that there are issues with the detainees' clothing supply.

58. A careful review of the inspection reports attached hereto indicates that there is indeed an issue, and it was documented by the inspectors. On p. 6 of the December 22, 2013 report, it is stated that one of the inmates that had been interviewed complained that he had not changed his clothes (including undergarments) for days.

59. Pages 5-6 of the January 22, 2015 report note that two inmates interviewed by the inspectors complained that they had not received a change of clothes (neither undergarments nor clothes).

60. On p. 10 of the most recent report dated December 6, 015, it is noted that the prisoner who was interviewed said he had been wearing the same undershirt for two weeks, and that he was not provided with another undershirt, despite requesting same.

61. Thus, it appears that the issue of personal hygiene and a change of clothes is an issue that arises at each official inspection, and seems not to be addressed. Therefore, the Honorable Court must instruct the Respondent to address the issue urgently, given the serious, ongoing violation of the dignity of individuals held in the wing.

62. Food. The affidavits appended to the petition paint an extremely grave picture with respect to the quality of the food supplied to the detainees in the wing. The affiants note that they had lost a significant amount of weight while held in the wing, which indicates woefully poor nutrition.

63. The Respondent attached to its response what appears to be a daily menu, but there seems to be no connection between what is written in the menu and what the detainees eat in the wing in reality. The title of the document is "Week 2, Criminal", whilst, the petition herein concerns detainees classified as "security". The menu contains items that might appear on a restaurant menu. The connection between these items and what detainees have reported eating is entirely unclear.

64. In addition, a review of the inspection report indicates that the inspectors only heard from one or two prisoners. They did not visit the wing kitchen, did not request to see a sample of a meal, and did not visit the facility when a meal was provided. This is a serious flaw in the report, since food is a basic necessity and when the food provided is neither sufficient nor of reasonable quality, the dignity and the health of the inmates are violated, and their ability to withstand intense interrogation is severely compromised. The Respondent must address this issue.

Conclusion

65. This petition concerns an acute, humanitarian issue of the first degree. Beyond the serious injury to the basic dignity of the persons held in the wing due to the living conditions there, the same holding conditions violate their right to due process. No one can be expected to withstand an ISA interrogation while held in subhuman conditions.

66. Additionally, holding conditions in the wing constitute cruel, inhuman and degrading treatment, which is prohibited under the Convention against Torture, which Israel has signed and which is incumbent upon it.

67. The Respondent askes the Honorable Court to dismiss the petition in limine for two reasons, one is baseless (the unrealistic expectation that detainees file prisoner petitions regarding their holding conditions), the other is outrageous and should not have been made.

68. The Respondent seemingly understood that these would not suffice in the circumstances, and proceeded to detail the factual situation, as perceived by it, enclosing recent official inspection reports.

69. As demonstrated above, the response itself (despite the attempt to create a better appearance) raises issues that require further, in-depth treatment (particularly the issue of partitioning off the cesspits used as toilets in the cells and the lighting therein).

70. We further demonstrated that a review of the inspection reports (which are in and of themselves problematic) raises many additional troubling issues that are not addressed by the Respondent and

violate the fundamental rights of the individuals held in the wing (the size of the cells, sanitary conditions in them, inmates' personal hygiene and nutrition).

71. The most recent inspection report dated December 6, 2015, explicitly notes (p. 3 therein) that the wing has not been renovated since it was built in the early 1990s. Given all the above, and the findings presented, it seems that the time has come for the Respondent to take matters into its hand and conduct a thorough renovation of the wing instead of finding patchwork solutions. This would the Respondent into compliance with legal standards and end the serious violation of the rights of the detainees held in the facility (the Respondent has undertaken a similar solution in the interrogation facility in Petah Tikva, see sec. 72-75 of the petition).

72. The Petitioner further asks the Honorable Court, as requested in the petition, to issue an Order Nisi instructing the Respondent to improve holding conditions in the wing as detailed above, and refrain from holding inmates therein pending the completion of renovations.

Jerusalem, February 4, 2016

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Daniel Shenhar, Adv.
Counsel for the Petitioner

(File No. 88915).