At the Supreme Court **HCJ 3214/07**
Sitting as the High Court of Justice

In the matter of:

1. **_____Garuf**
   ID number _____ of Jericho
2. **HaMoked: Center for the Defence of the Individual**,
   founded by Dr. Lotte Salzberger

represented by Adv. Sigi Ben Ari (Lic. no. 37566) and/or Yossi Wolfson (Lic. no. 26174) and/or Yotam Ben-Hillel (Lic. no. 35418) and/or Hava Matras-Irron (Lic. no. 35174) and/or Abeer Jubran (Lic. no. 44346) and/or Anat Kidron (Lic. no. 37665) and/or Ido Blum (Lic. no. 44538)
of HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger
4 Abu Obeidah Street, Jerusalem 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

The Commander of the Army Forces in the West Bank

The Respondent

Petition for Order Nisi

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

1. Why Petitioner 1 should not be allowed to visit his brother, who is imprisoned in Israel;

2. Why he will not update the computer system under his control to reflect the family relationship between the Petitioner and his brother, which has already been proven, so that he may issue him visitor permits on a regular basis.

Request for Urgent Hearing

This court is moved to set the dates and a hearing for this petition urgently, owing to the harsh outcome that has ensued from the Respondent's denial of the Petitioner's request to allow him to visit his imprisoned brother.

The grounds for the petition are as follows

1. This petition is concerned with the right of the Petitioner (hereinafter: the petitioner), who is a resident of the West Bank, to visit his brother who is imprisoned in Israel, and with the negligent treatment of the applications of relatives, residents of the territories, to visit their imprisoned relatives, in cases where the Respondent demands proof of a family relationship with the prisoner. This involves cases, including this case of the Petitioner's, where first degree family relatives who apply to the Respondent, through the Red Cross, to visit their imprisoned loved ones, are furnished after many months of waiting with a negative response, owing to the absence of a family relationship to the prisoner. The delivery, through the Red Cross, of documents attesting to a relationship between the applicant and the prisoner, has been of no aid in these cases. Only after an application is made by Petitioner 2 (hereinafter: "HaMoked" or "Center for the Defence of the Individual") to the office of the legal adviser of the Respondent, enclosing the documents, is a permit issued, however it appears that the family relationship between the Petitioner and the prisoner is not updated in the computer system which is used by the Respondent, since the next time a relative asks to visit his loved one in prison,

he is again furnished with a negative response because of the absence of a family relationship and so on and so forth. Thus the result is that the applicant is forced time after time to prove his family relationship to the prisoner and the issuance of a permit for him becomes a superfluous and inordinately prolonged procedure.

Background

2. Over a prolonged period until March 2003, West Bank residents were completely disallowed from making family visits to their loved ones in Israeli prisons; this applied to prisons located in Israeli territory as well as to detention facilities in the West Bank territories. As a result of HCJ 11198/02, *Diriyya et al. v. Commander of Ofer Military Detention Facility et al.*, the Respondent has gradually begun to allow family members to visit their imprisoned relatives. At first the Respondent would allow visits from the districts of Ramallah, Jericho and Qalqiliya exclusively. During the second stage the arrangement was broadened to include the districts of Bethlehem, Tulkarem and Salfit. Nowadays the arrangement has come to include all districts. The Respondent has also determined narrow and unlawful criteria that define who are eligible to visit: spouses, parents and grandparents, as well as brothers, sisters, sons and daughters, all of whom must be under the age of sixteen or over the age of forty-six. During the month of July 2005 the Respondent removed the age restrictions for sisters and for daughters who are eligible to visit. Later on the Respondent determined that boys between the ages 16-46 would be able to visit their imprisoned fathers twice a year, and brothers in this age category would be able to visit only once a year.

3. The Respondent does not allow West Bank residents to make their visit on their own steam and does not even concern itself with making any type of arrangements for these visits. The visits are organized exclusively by the International Red Cross organization (hereinafter: the Red Cross).

Applications for a visit are filed by the residents at the offices of the Red Cross, the latter delivers the same to the Respondent, and the Respondent [in turn] delivers his reply to the Red Cross, who informs the applicant of the response. The Red Cross also organizes the actual transport, at its own expense, in coordination with the Respondent and with heavy security arrangements.

4. According to the regular procedure, where there are no security impediments in relation to the applicant, he is issued with a permit to visit the prison, which is valid for a period of three months. The permit is only valid within the framework of Red Cross transports and over the course of the three months of its validity one may have unrestricted access to the prison, as much as is possible through the Red Cross transport arrangements.

The Facts

The parties and exhaustion of proceedings

5. Petitioner 1, born in 1977, is a resident of Jericho.

6. The younger brother of Petitioner 1, _____Garuf (ID number. _____) is now imprisoned in Shikma prison, where he is serving a 15-year prison sentence.

7. The Petitioner and his brother are orphans with no mother or father. Their grandfathers and grandmothers have also passed away. The imprisoned brother is a bachelor, and thus has no spouse that would visit him in prison. The Petitioner is able, and willing to visit his younger brother, who has been imprisoned for many years, and he is the closest of kin to the prisoner who is able to do so.

8. Petitioner 2 is a registered non-profit association operating as a human rights organization and for many years has been involved in the matter of visits by

residents of the Occupied Territories with prisoners who are held in prisons in Israel and in the Occupied Territories.

9. The Respondent occupies the territories of the West Bank under belligerent occupation. It is he who has imprisoned the Petitioner's brother and it is he who obliges the Petitioner to be equipped with permits issued by him for the purposes of visiting the prison. By virtue of his position, it is upon the Respondent to realize the rights of residents of the occupied territory under his command, including the rights to family visits and to leading normal lives, as stipulated by international humanitarian law, international human rights law and Israeli constitutional and administrative law.

10. Upon the renewal of visiting arrangements at the Jericho district prison, the Petitioner applied to the Respondent through the Red Cross with the request that he may visit his imprisoned brother. He was not answered over the course of approximately a year and a half, and in August 2004 HaMoked filed a petition in this matter (HCJ 7871/04).

11. As a result of the filing of this petition the Petitioner was issued in October 2004 with a permit, valid for three months, to visit his imprisoned brother. Upon expiration of this permit, he was issued with an additional permit.

12. In April 2005 the Petitioner applied for a permit to visit his brother, and since then a full year passed before his application was answered with a negative response, the objection being that there was no family relationship between him and the prisoner. This, as stated above, was after the Respondent had already issued the Petitioner with two permits to visit his imprisoned brother. The Petitioner even delivered to the Respondent, through the Red Cross, documents attesting to a family relationship, but these did not help him with the issuing of a permit.

13. Following this rejection, the Center for the Defense of the Individual applied in the name of the Petitioner to the office of the legal adviser, enclosing documents attesting to a family relationship between the Petitioner and his imprisoned brother, with the request for the arrangement of the Petitioner's visits.

    A copy of the latter to the legal adviser, dated 22 May 2005 is attached hereto as Appendix P/1

14. Following HaMoked's application a permit, valid for three months was issued to the Petitioner in June 2006 to visit his imprisoned brother.

15. Upon expiry of the permit, in September, 2006 the Petitioner applied to the Respondent with the request that he renew the permit, and was again answered with a negative response, because of an absence of a family relationship.

16. On 18 March 2007 HaMoked applied to the office of the legal adviser of the Respondent with a request to arrange for the Petitioner to visit his brother in prison and to update the relevant computerized system to reflect the family relationship between the two. We asked that we receive the Respondent's reply within two weeks.

    A copy of the letter to the legal adviser dated 18 March 2007 is attached hereto as Appendix P/2.

17. No response has been received thus far.

The Respondent's reckless treatment of visitors who are required to prove a family relationship

18. Petitioner 2 has been forced to deal with many applications by family relatives for a prison visit, which had been rejected with the claim that there was an absence of a family relationship between those applying for a visit and the

prisoner. In most of the cases, it appears that the Respondent does not bother to undertake a thorough investigation and punctiliously to inspect the documents before him. Instead of doing so, he avoids furnishing the applicant with any response whatsoever and only after an extended period of time will he answer the application with a refusal, claiming an absence of a family relationship. In many cases, as in the case of the Petitioner the refusal to issue a permit with the claim of an absence of a family relationship comes after the Respondent has already issued one permit, or even a number of permits to the applicant, and/ or after he has already been persuaded of the existence of a family relationship.

19. Below are a number of examples that illustrates the conduct of the Respondent:

The case of Mrs. _____ Halabi (ID number: _____) mother of prisoners _____ and _____ Halabi, illustrates more than anything else the reckless and degrading treatment of the factors involved. Four times Mrs. Halabi received the response that there was no family relationship between her and her son and three times she was forced to send documents in order to prove the relationship, after this had already been proven.

For a period of two years, until April, 2004 Mrs. Halabi had visited her two imprisoned sons, within the framework of a three month visitor's permit, without any problem. When she applied to renew the last permit that was given to her she received the response, through the Red Cross that her application would be refused because there was no family relationship between her and her imprisoned sons. Following HaMoked's application to the legal adviser of the Respondent, attaching documents attesting to a family relationship, permits were issued to the Petitioner to visit her sons. When she applied to renew these permits, she was once again furnished with a response that there was an absence of a family relationship. HaMoked once again

applied to the office of the legal adviser of the Respondent, attaching the relevant documents, while pointing to the fact that a relationship has already been proven in the past. After some time had passed an additional three month permit was issued to the Petitioner to visit her sons. In January 2006 Mrs. Halabi once again applied to HaMoked because of a refusal to allow her to visit her son (her other son had already been released) with the explanation that there was an absence of a family relationship. .For a third time HaMoked applied to the office of the legal adviser of the Respondent requesting for an arrangement to be made for Mrs. Halabi to visit her son. In its reply dated 23 February 2006 it was once again alleged that there was no family relationship between Mrs. Halabi and her son despite the fact that documents proving the relationship had been sent twice before. **The documents were sent for a third time** to the office of the legal adviser of the Respondent and Mrs. Halabi was issued with a permit to visit her son. Upon the permit's expiry, Mrs. Halabi applied to renew it, but was not answered for a period of three months. In the response to her application of September last year, the office of the legal adviser wrote that there **is no family relationship between Mrs. Halabi and her son and the application should be (re-)sent enclosing all the relevant documents.** Only in February, five months after the application, did Mrs. Halabi receive a permit to visit her son.

The last letter to the legal adviser of the Respondent in the matter of Mrs. Halabi is attached hereto as Appendix p/3.

Mrs. _____ Ma'ruf (ID number: _____) is the grandmother of the prisoner _____ Ma'ruf. She filed an application to visit the prison but she was answered with a refusal because of an absence of a family relationship. She applied to HaMoked who in turn applied in her name to the office of the legal adviser to the Respondent, enclosing documents that attest to a family relationship, and after that she was issued with a permit valid for three months. Upon expiry of the permit she filed an application to renew it

and she was again answered with a negative response, because of an absence of a family relationship. Once again HaMoked was forced to apply in her name to the legal adviser of the Respondent and to attach for a second time documents that attested to the family relationship. It was only after that, that an additional permit was issued to Mrs. Ma'ruf.

The last letter to the legal adviser of the Respondent in the matter of Mrs. Maaruf is attached hereto as Appendix p/4.

Mrs._____ Hjja (ID number: _____) is the wife of the prisoner _____Al-Qadir (Hajja). Mrs. Hajja filed an application to visit her husband, which was enclosed with the documents attesting to their marriage. Only after 14 months and after an application by HaMoked to the legal adviser of the Respondent, was she answered with a negative response with the allegation that the documents did not prove a family relationship. . Only after an additional application by HaMoked was the Petitioner issued with a permit, valid for three months to visit her husband. Upon expiry of the permit the Petitioner applied to the Respondent with a request to renew the permit, but was not answered. Even an application by HaMoked to the legal adviser of the Respondent and its request to update the computers with the information of the family relationship was left unanswered. Therefore, HaMoked was forced to file a petition in the matter of Mrs. Hajja. (HCJ 2747/07)

20. Following these cases and others HaMoked applied on 5 October 2006 to the office of the legal adviser of the Respondent with a letter headlined "**Degrading and reckless treatment of applications for prison visits by West Bank residents who are required to prove a family relationship to the prisoner"** which includes cases that demonstrate in detail this problematical situation. Among other things the following is written in the application:

Lately we have encountered a serious phenomenon that demonstrates reckless and degrading, not to mention scandalous treatment of applications by family members to visit prison. We are speaking of West Bank residents who have applied to you in the past, through our offices, in order to prove a family relationship to the prisoner whom they wish to visit, and who have enclosed documents attesting to a relationship, who have been answered in the affirmative, and who have received a permit and have visited their loved ones. And yet, the moment they have applied to renew the permit they again receive a response that there is no family relationship between them and the prisoner.

In all six cases noted above, we are speaking of family members who do not receive a response to their applications for a prison visit for many months. Only after a long wait it turns out that that they still have to prove their relationship to the prisoner. In most cases, the delivery of documents through the Red Cross does not solve the problem and they are forced to approach HaMoked who makes an application in their name to your office, while enclosing the necessary documentation. The whole procedure takes a very long time and the family members must wait months and even years for the long-awaited permit. And even so, this does not put an end to their sufferings. When they apply to renew the permit that they received, they again receive the response that there is no family relationship between them and the prisoner and they have to repeat the whole procedure. It bears noting that in all these cases… we are speaking about

family members who themselves do not pose a security risk and who (eventually) receive a permit valid for three months.

It appears to me that there is no need to be overly wordy to make it understood that the treatment in these cases and the like fall within the realms of the absurd, they show recklessness and express a contemptuous attitude towards the applicant. How is it possible that a person must wait many months only to receive the reply that he needs to prove a family relationship to the loved one that he wishes to visit? How is it possible that even after he has delivered the necessary documentation he receives no pertinent acknowledgement and is forced to avail himself of HaMoked or of a private attorney? But worst of all, how is it possible that every time a person wishes to visit his loved one he must undergo a Sisyphean procedure consisting of an application, a negative response, delivery of documents attesting to a relationship, and an extended period of waiting for the longed-for permit?

In light of the above I request from you to ensure that applications to visit prison to which have been appended documents attesting to a family relationship between the applicant and the prisoner be seriously, punctiliously and expeditiously investigated. No less importantly, after the factors have become convinced of a family relationship and have therefore issued a permit, the whole system be updated to include all those involved in the matter reflecting the existence of that relationship in order that in the future the applicant will be able to receive permits regularly and in an orderly fashion.

A copy of the letter dated 5 October 2006 is attached hereto as Appendix P/5.

21. On 7 November 2006 HaMoked sent a memorandum to the office of the legal adviser.

A copy of the memorandum dated 7 November 2006 is attached hereto as Appendix P/6.

22. An additional letter in a similar matter was sent on 13 November 2006. .

A copy of the letter dated 13 November 2006 is attached hereto and marked annexure P/7.

23. No response has been received thus far.

The Legal Argument

The right to a family life and to visits by relatives in prison

24. The right to family visits in the detention facilities is a fundamental right, both of the detainees and of their family members. This is a basic right that flows from the conception of man as a social being, who exists within the framework of a family and of a community. It also flows from the conception that the mere fact of detention or imprisonment are not in and of themselves enough to negate the fundamental rights of the prisoner; the prison walls restrict the prisoner's freedom of movement, and everything that flows from that, but it does not deprive him of any of his other fundamental rights, excluding those rights that have been specifically denied him by an explicit judgment order. (See for example PPA 4463/94, PPA 4409/94, *Golan v. Prison Security Service*, *Piskei Din* 50 (4) 136; PPA 4/82 *The State of Israel v. Tamir, Piskei Din* 37(3) 201; HCJ 114/86 *Weil v. The State of Israel, Piskei Din* 41(3) 477).

25. The right to a prison visit is enshrined in the Geneva Convention (which determines in Article 116 that "every detainee shall be allowed to receive

visitors, especially close family members, at regular intervals and as frequently as possible"). The right is also incorporated in a series of military legislation and in Israeli legislation applying to prisoners who are residents of the Occupied Territories.

26. The United Nations' Standard Minimum Rules for the Treatment of Prisoners, 1955 declares (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.**

27. The various provisions concerning the right to prison visits permit restrictions on this right, also for security reasons. However, like any restriction on a fundamental right, these restrictions must be reasonable and proportionate, and must take into account the importance of the fundamental right being violated.

28. Denying detainees or prisoners family visits gravely harm their and their families' fundamental right to family life. Society has ascribed the right to family life, at all times and in all cultures, a paramount value. In a long line of judgments this honorable court has made a point of the supreme social importance of the family unit (CFH 2401/95, *Nahmani v. Nahmani, Piskei Din* 50 (4) 661; CA 5587/93*, Nahmani v. Nahmani, Piskei Din* 49 (1) 485, 500; CA 488/77, *John Doe et al. v. Attorney General, Piskei Din* 32 (3) 421, 434; CA 232/85, *John Doe v. Attorney General, Piskei Din* 40 (1) 1, 5; HCJ 693/91*, Efrat v. Director of the Population Registry in the Ministry of the Interior et al., Piskei Din* 47 (1) 749, 783).

29. The right to family life and all its concomitant aspects is also protected by the Basic Law: Human Dignity and Liberty (see CA 7155/96, *John Doe v. Attorney General, Piskei Din* 51 (1) 160, 175). The majority of judges in the

HCJ bench in 7052/03 *Adalah v. The Attorney General* held that the right to family life was a constitutional right deriving from the right to human dignity.

30. The rights of the family are also recognized and protected by Public International Law (see, Articles 12 and 16 (3) to the Universal Declaration on Civil and Political Rights, of 1948; Article 10 (1) of the International Covenant on Economic, Social and Cultural Rights, 1966, Articles 17 and 23 (1) to the International Covenant on Civil and Political Rights, 1966). These conventions form part of customary international law, in that they have become enshrined in general practice, that have received the status of law as well as arising out of a general principle of justice that is recognized by all cultured nations. Therefore, the state's obligation to ensure the maximum degree of the family experience that is possible within the circumstances of the case is a legal duty.

The Respondent's duty to organize the Petitioner's visits to his brother

31. The obligation to arrange family visits in prison falls on the shoulders of the Respondent as part of his duty to ensure the exercise of the constitutional human rights of residents of occupied territory:

> **Along with the regional commander's responsibility for ensuring the safety of the military forces under his command, he must ensure the safety, security, and welfare of the residents of the region… The commander's obligation to ensure proper living conditions in the region covers all aspects of life … As part of his responsibility for the welfare of the region's residents, the commander must also act to provide proper protection of the constitutional human rights of the local residents…** (HCJ 10356/02, *Hass et al. v.*

Commander of IDF Forces in the West Bank, Takdin Elyon 2004 (1) 2072, Paragraph 14).

And see also: HCJ 940/04 *Abu Tir v. The Military Commander in the Judea and Samaria Area, Piskei Din* 59(2) 320, paragraph 10.

32. The Respondent's obligation to protect the rights of residents of the Occupied Territories who want to visit their loved ones in prison is an active, "positive," obligation (HCJ 4764/04, *Physicians for Human Rights et al. v. Commander of IDF Forces in Gaza, Takdin Elyon* 2183 (2)2004).

This fact aggravates the severity of the actions taken by the Respondent, who has not even met his "negative" obligation not to prevent visits, in that all the technical arrangements and necessary effort to achieve it have already been done by the Red Cross

The violation of the principles of administrative law

33. When exercising his authority the regional military commander must comply with the principles of Israeli administrative law, which covers the utilization of governmental authority by a public official (HCJ 2056/04 *The Bet Surik Village Council et al v. The State of Israel et al, Takdin Elyon* 2004 (2) 3035, 3044, paragraph 23 ff.; HCJ 3278/02 *The Center for the Defense of the Individual v. The Commander of the IDF Forces in the West Bank, Piskei Din* 56 (1) 386, paragraph 23; HCJ 392/82 *Jam'iyyat Askan Al-Mu'allimin v. The Commander of the IDF Forces in Judea and Samaria, Piskei Din* 37(4)785, 792- 793; Y Zamir, *The Administrative Authority*, Nevo Publications, Jerusalem, 1996, volume 2, 897- 898).

34. The Respondent must deal with applications that he receives with fairness, with reasonableness and with the appropriate speed:

A cornerstone of public administrative law is that the administrative organ, inasmuch as it is loyal to the public,

> **must act with fairness… the duty of fairness applies to the administrative process, that is to say, to the way in which the administrative organ exercises its authority toward the citizen. This finds expression in various obligations, for example, the duty to conduct a reasonable investigation into the circumstances of the case, to lend an ear to the citizen's complaints, to allow him to study documents that concern him, and to justify a decision. The common denominator to all these duties is: the duty to act in a proper manner towards the citizen** (HCJ 164/97 *Conterm Ltd. v. Ministry of Finance - the Department of Customs and Value Added Tax, Piskei Din* 52 (1), 289, 332-333, 356).

35. The Respondent breached his duty to act in an expeditious manner:

> **The obligation to use reasonable speed, that is incumbent upon the administrative body, is merely part of the obligation of reasonable behavior**.
>
> HCJ 7198/93 *Mitrael Ltd. v. Ministry of Industry and Trade Piskei Din* 48(2) 844, 853;
>
> CApp 4809/91, *Local Planning and Building Committee, Jerusalem v. Kehati et al., Piskei Din* 48 (2) 190, 219.
>
> HCJ 5931/04 *Haggai Mazuraski et al v. State of Israel- The Ministry of Education, Takdin Elyon* 2004(4), 2154.

36. This obligation is also enshrined in article 11 of Hok HaParshanut [the Interpretations (of Statutes) Law], 5741-1981, and in article 5 of Tsav Bidvar Parshanut [the Order Regarding Interpretation (West Bank Region)] (No. 130), 5727–1967, which states:

An act whose time for performance has not been set, or cannot be set, in defense legislation, shall be done with due dispatch and should be performed again at such time that the circumstances set for its performance exist.

37. According to Hok LeTikun Sidrey HaMinhal (Hahlatot VeHanmakot) [the Amendment of Administrative Arrangements (Decisions and Reasons) Law], 5719–1958, a public official must respond to a request to exercise authority pursuant to law within forty-five days of receiving the request.

38. In addition the Respondent has declared within the context of HCJ 10898/05 *Nahil Fatafita v. Commander of the Military Forces in the West Bank* that there would be a reasonable time schedule for processing applications of family members to visit prison. In a supplementary reply from 16 February 2006 the Respondent declared (in paragraph 18 of his reply) that "**the time required to deal with the aforementioned applications, from the moment they reach the [responsible] factors in the army, is approximately two to two and a half months**".

This declaration reflects the basic position of the Respondent with respect to the reasonable time schedule for issuing a reply to an application of this type.

A copy of the relevant section of the supplementary reply on behalf of the Respondent from 16 February 2006 is attached hereto as Appendix P/8.

39. In our case, the Respondent breached all the possible norms as regards giving response within a reasonable time – both those norms set forth in general administrative law, and those found in the military legislation, as well as those included in the commitment made before this Honorable Court. Ten months have passed and the Petitioner has not been dignified with any response from the Respondent.

40. "From the perspective of a person in need of the authority's decision, a delay in reaching such decision is bound to cause grave damage… a positive answer [delivered] after the allotted time is equivalent to a negative answer. It is even possible that a delay could be worse than a negative answer. Among other things, a negative answer may immediately be challenged in court, to examine whether it was lawfully given, and to require the authority to take action if indeed it was given unlawfully. But what is a person to do when he needs the administrative authority, which does not answer him negatively, but informs him that it is dealing with, examining, and weighing up his case over and over again?"

Y. Zamir *The Administrative Duty* (volume 2, Jerusalem, 5756- 1996), page 705.

41. An administration that neglects the treatment of applications, is a substandard administration, it is an administration that is alien to the population it serves, an administration that instead of serving the public and fulfilling its obligations has become a callous tyrant that tramples upon the rights of those that depend on it and crushes them in a bureaucratic maze.

42. The breach of the duty to exercise authority within a reasonable time is sufficient cause for judicial review, and there must be consequences to the delay in furnishing a response. One possible consequence is the issuing of an Order Nisi and the transfer of the burden of proving the reasonableness of his conduct onto the shoulders of the Respondent.

Y. Zamir, *ibid.* at pages 716 and 726- 727.

43. In his conduct towards the Petitioner, the responded has acted at variance with his obligation to treat applications that reach him in a fair and reasonable manner. Firstly, the Petitioner waited a year and a half for a reply and only

after HaMoked filed a petition in his name, was he issued with a permit to visit his brother.

Secondly, despite the Respondent having apparently been persuaded of the family relationship between the Petitioner and his imprisoned brother, and having issued him with two visiting permits, from the time the Petitioner applied to renew the permit he was left unanswered for a full year. It was only after the passing of a year that he received a negative response, on the grounds that there was no family relationship between him and the prisoner. The delivery of documents attesting to a family relationship and sent through the Red Cross was of no avail.

Only after HaMoked's application to the legal adviser of the Respondent was the Petitioner issued with an additional permit. However when the Petitioner applied to renew the permit which had expired he was answered in the negative, once again on the grounds that there was an absence of a family relationship between him and his imprisoned brother.

The Petitioners' general complaints with respect to the Respondent's reckless and degrading treatment towards relatives who are required to prove a family relationship has as of this date not been answered- after a period of more than five months.

44. Therefore the Respondent has breached his obligation to treat requests addressed to him in a fair and reasonable manner (that is, his obligation to act in accordance with proper administration)and his obligation to ensure the exercise of the human rights of residents of the Occupied Territories (that is, his obligation under substantive constitutional law and international law).

45. Because of the restrictions on movement between the territories and Israel the Petitioners' affidavit and power of attorney has been signed in front of a lawyer at his place of residence and have been sent by fax to the offices of The

Center of the Defence of the Individual. It is in this form that they are attached to this petition.

For all these reasons, the honorable court is requested to issue an order nisi as requested at the beginning of this petition, and after receiving the Respondent's response, make it absolute, and to order the Respondent to pay the Petitioners' costs and attorney fees.

Jerusalem, 11 April 2007

Sigi Ben Ari
Counsel for the Petitioners
(T. S. 27046)

Translation of Affidavit

I the undersigned, _____ Garuf, ID number _____, after being warned that I must tell the truth, and that I shall be subject to statutory punishment if I do not do so, hereby declare in writing as follows:

1. I make this affidavit in support of the petition to the HCJ in the matter of a visit to my imprisoned brother.

2. The chapter "the parties and the exhaustion of proceedings" has been translated for me into Arabic and it states the truth. With respect to the correspondence from the Center for the Defence of the Individual, these things are true as has been reported to me from HaMoked.

3. I declare that this is my name, this is my signature, and that the contents of this affidavit that have been translated for me into Arabic are true

_____

The Affiant

I hereby certify that on 9 April 2007 the aforesaid appeared before attorney Amar Aloda'ath from Jericho, identifying himself by his ID number. _____, and after I warned him that he must tell the truth and that he is subject to statutory punishment if he does not do so, he confirmed the accuracy of his affidavit and signed it.

_____

Attorney's signature