At the Supreme Court **HCJ 2747/07**
Sitting as the High Court of Justice

In the matter of:

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

Represented by attorneys 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. 35714) and/or Abeer Jubran (Lic. No. 44346) and/or Anat Kidron (Lic. No. 37665) and/or Ido Bloom (Lic. No. 44538) from HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger whose address for service of process is:
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555; Fax 02-6283555

The Petitioners

v.

The Commander of the Military Forces in the West Bank

The Respondent

Petition for an Order Nisi

A petition is hereby filed for an order nisi, which is directed at the respondents, and orders them to appear and to show cause:

1. Why he will not allow petitioner 1 to visit her imprisoned spouse in Israel

2. Why he will not update the computer system under his control with the details of the family relationship between the petitioner and her spouse, which has already been proven, so that he can issue her with visitor's permits on a regular basis.

Request for Urgent Hearing

The court is requested to set a date for a hearing on this petition urgently, because of the harsh results in a non response by the respondent to the petitioner's application, to allow her to visit her imprisoned spouse.

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 her spouse who is imprisoned in Israel, and with the negligent treatment of the applications of relatives, residents of the West Bank, 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. 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, *Dirriya 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, Tul Karem 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 16 or over the age of 46. 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, and 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 Factual Argument

The parties and exhaustion of proceedings

5. The petitioner is a female, born in 1979 and resident of Dura, District of Hebron.

6. The petitioner's husband is Raid _____ Alkader (Haja), who holds a Jordanian passport number _____, and who has lived in the West Bank from August 1995. He was arrested in December, 2004 and sentenced to three years imprisonment, which is currently being served in Eshel Prison. The prisoner number that was assigned to him by the Prison Services is _____.

A copy of the passport of the petitioner's spouse is attached as Appendix P/1.

A copy of the petitioner's identity document is attached and marked as appendix p/2

A copy of the marriage certificate of the spouses, dated 1 August, 1999 is translated and attached as Appendix p/3.

A copy of the birth certificate of the son _____ is translated and attached as appendix p/4.

7. The petitioner and her spouse gave birth to three children. Two of them died from an infection of the brain membrane. The third child, _____ is 5 years old.

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 imprisoned the petitioner's spouse 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 the respondent's responsibility to ensure the realization of the rights of residents of the occupied territory under his command, which include the rights to family visits and to leading normal lives. This must accord with international humanitarian law, international human rights law and Israeli constitutional and administrative law.

10. The petitioner has never been detained or under investigation.

11. Aside from the petitioner there is no one else who will visit the prisoner since his other family relatives are Jordanian. His son was approximately one year old when his father was arrested and the prevention of the petitioner from visiting her spouse has also prevented the son from seeing his father.

12. Upon the arrest of her spouse, the petitioner applied a number of times to the offices of the Red Cross with the request to organize visits to her spouse in prison.

13. On 20 October, 2005 <u>after 10 months during which the petitioner received no reply from the respondent</u> .The Center for the Defense of the Individual applied to the office

of the legal adviser of the respondent with the request for the arrangement of the petitioner's visits to her spouse. The letter enclosed documents attesting to the marriage of the petitioner and her spouse.

A copy of the letter dated 20 October, 2005 is attached as appendix **p/5**.

14. On 22 December, 2005 the Center for the Defense of the Individual sent a reminder on the petitioner's case.

A copy of the letter dated 22 December, 2005 is attached as appendix **p/6.**

15. On 16 February, after 14 months of no response the legal adviser's reply was given stating that the documents proving the name of the petitioner had to be sent since the petitioner's surname as it appeared on her identity document (Haja) was not the same as the surname that appeared on the marriage certificate. (Alkamiri). A representative of Hamoked was also informed telephonically by Mrs. Dana Hersh from the office of the legal adviser of the respondent that in light of this, doubt had been cast on the marriage of the petitioner to the prisoner.

A copy of the letter dated 16 February, 2006 is attached as appendix **p/7.**

16. On 23 February, 2006 the undersigned addressed to the office of the legal adviser trying once more to explain the situation to the respondent:

> **…as is customary in marriage contracts the woman's maiden name is stated and not her new surname which is the surname of the man whom she is marrying. Thus, in Mrs. Haja's marriage contract of 1999 the surname that is noted is that of her maiden name before she was married- Kamiri. In contrast to this, in her identity document that was issued after her marriage, in 2002 her married surname- Haja- is stated.**
>
> **In addition it should be emphasized that even Mrs. Haja's identity document notes her previous surname, Kamiri (marked with a yellow marker on the enclosed copy).**
>
> **Not only did Mrs. Haja have to wait such a long time to receive a response but it became clear that this did not put an end to her**

> **suffering and she is now being asked to send documents that match her name- something that already has been done.**
>
> **This is not the first time that we have encountered negligent and degrading treatment by the employees of the legal office towards the various applications that are addressed to them. In the area of visits to jail, negligent examinations such as these result in a reply that there is no family relationship between the applicant for a visit and the prisoner. It would be appropriate if the employees of the legal office invested a bit more effort before replying and if they bothered to examine the matter satisfactorily. In the case of Mrs. Haja all that was required was to read Mrs. Haja's maiden name that appeared on her identity document.**

The petitioners' representatives also requested in light of the negligent treatment that had thus far been meted out in the matter of the petitioner, that they receive the respondent's reply within two weeks.

A copy of the letter dated 23 February, 2006 is attached as appendix **p/8.**

17. On 9 March, 2006 the legal adviser's response was received in terms of which she had been issued with a permit valid for three months to visit her husband, from 7 March, 2006 to 7 June , 2006.

18. Over the course of those three months the petitioner visited her spouse 4 times.

19. Upon expiry of the permit, at the beginning of June 2006 the petitioner applied to the respondent through the Red Cross with an application for renewing the permit.

20. On 6 September, 2006 three months after there was no reply Hamoked approached the legal adviser of the respondent in order to arrange a visitor's permit for the petitioner. They also noted the following:

> **You have been requested to verify that the relationship between Mrs. Haja and her husband has been updated in your computer system and that you will regularly issue her with permits without the necessity of our intervention whenever she reapplies to you and**

[without the need] of enclosing documents that have already been delivered to you in the past.

A copy of the letter dated 6 September, 2006 is attached as appendix **P/5.**

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

21. 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 to punctiliously inspect the documents before him. Instead of doing so, he avoids furnishing the applicant with any response whatsoever and he only answers the application after an extended period of time 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.

22. Below are a number of examples that illustrates the conduct of the respondent:

_____ Gruf (ID No. _____) is the brother of the prisoner _____ Gruf – orphaned from their father and mother. In August 2004 Hamoked filed a petition in the case of _____ Gruf (HCJ 7871/04) after the respondent did not respond for over a year to the application for a visit to his brother. As a result of the petition, he was issued with a permit to visit his brother that was valid for three months. Mr. Gruf then received an additional permit that was valid until May, 2005. After that, when he reapplied for a permit it was refused with the claim that there was an absence of a family relationship. After a year of Mr. Gruf not visiting his brother, Hamoked applied in his name to the office of the legal adviser of the respondent, and only as a result of this application was Mr. Gruf issued with an additional permit to visit his brother that was valid 3 months until September 2006. From then on Mr. Gruf has not visited his brother since the respondent has once again refused his application with the claim of an absence of a family relationship.

A copy of the last letter sent to the legal adviser in the case of Mr. Gruf dated 18 March, 2007 is attached as appendix **p/10.**

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 had 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 that an arrangement 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 case of Mrs. Halabi, dated 5 September, 2006 is attached as appendix **p/11**.

Mrs. _____ Ma`aruf (ID number: _____) is the grandmother of the prisoner _____ Ma`aruf. 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`aruf.

A copy of the last letter to the legal adviser of the respondent in the case of Mrs. Ma`aruf is attached as appendix **p/12**

23. Following these cases and others Hamoked applied on October 5, 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 <u>family members who themselves do not pose a security risk</u> 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, <u>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.</u>**

A copy of the letter dated 5 October, 2006 is attached hereto as appendix **p/13**.

24. 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 as appendix **p/14.**

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

A copy of the letter dated 13 November, 2006 is attached as appendix p/15.

26. No response has been received thus far.

27. The petitioner has not received a response to her application to visit her husband since June 2006.

The Legal Argumentation

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

28. 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. Prisons Service, Piskei Din* 50 (4) 136; PPA 4/82 *State of Israel v Tamir* Piskei Din 37(3) 201; HCJ 114/86 *Weil v State of Israel Piskei Din* 41(3) 477).

29. 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.

30. 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.**

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

32. Denying detainees or prisoners family visits gravely harm their and their families' fundamental right to a family life. Society's attitude toward the right to a family life was and is, at all times and in all cultures, a paramount value. In a long line of judgments this honorable court has stood for 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, *Anonymous 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).

33. The right to a family life and all its concomitant aspects are 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 a family life was a constitutional right that derived from the right to human dignity.

34. 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 provisions form part of customary international law, in that they have become enshrined in general practice, they 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.

35. In preventing the petitioner's visit to her husband the respondent is also preventing the minor child from seeing his imprisoned father and is thus acting contrary to the welfare of the child.

The **child's welfare is a** decisive factor in all administrative decisions where there is an impact on the rights and physical and mental health of children.

> **It is well known that in any matter relating to a minor, the minor's best interests are a primary concern among the considerations according to which his case must be decided** (CA 10280/01 Dr. *Yaros-Hakak v. The Attorney General* decision dated 10 January, 2005, paragraph 14).

See also in this regard Article 3(1) of the Convention on the Rights of the Child, 1989.

The respondent's duty to organize the petitioner's visits to her spouse

36. 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 the territories:

> **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 *Abed Elrahaman Ibrahim Abu Tir and 10 others v Military Commander for the Region of Judea and Samaria Piskei Din* 59(2) 320, paragraph 10.

37. 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).

The violation of the principles of administrative law

38. 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 *Bet Sourik Village Council et al v 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 Iskan Al-Mualiman v. Commander of the IDF Forces in Judea and Samaria Piske Din* 37(4)785, 792- 793; Y Zamir, *HaSamkhut HaMinhalit* [The Administrative Authority], Nevo Publications, Jerusalem, 1996, volume 2, 897- 898).

39. 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 The Finance Ministry- the Department of Customs and Value Added Tax Piskei Din* 52 (1), 289, 332-333, 356).

40. 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.

41. This obligation is also enshrined in section 11 of the Interpretations (of Statutes) Law, 5741- 1981, and in section 5 of the Order Regarding Interoperation (West Bank Region) (No. 130), 5727 – 1967, which states::

> **An act whose time for performance is not 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**

42. According to 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.

43. In addition the respondent has declared within the context of HCJ 10898/05 *Nahil Peta'petah v The 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 period of 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 as appendix p/16.

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

45. "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 tantamount 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, *HaSamkhut HaMinhalit* [The Administrative Authority] (volume 2, Jerusalem, 5756- 1996), 705.

46. 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

47. 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 716 and 726- 727.

48. In his conduct towards the petitioner, the respondent has acted at variance with his obligation to treat applications that reach him in a fair and reasonable manner.

At first, the petitioner waited ten months for the respondent's reply. When she was not answered she applied to the Center for the Defence of the Individual.

Hamoked's application to the office of the legal adviser enclosing documents attesting to the marriage of the petitioner to her imprisoned husband was answered four months later.

From the respondent's reply it emerges that the documents that were sent to him were recklessly examined and therefore her application was answered in the negative with the claim of an absence of a family relationship. This despite the fact that the documents clearly attested to a family relationship between the petitioner and the prisoner, as had been made clear in petitioner 2's letter dated 23 February, 2006 (appendix p/8).

The longed-for permit was eventually issued after more than a 14 month wait.

Despite the respondent having apparently been persuaded of the family relationship between the petitioner and the prisoner and having issued her with a visitor's permit, when the petitioner reapplied for a permit she was left unanswered.

The application by the Center for the Defence of the Individual to issue the petitioner with a visitor's permit and to update the system with the details of the family relationship between the petitioner and her husband has of this date not been answered- for a period of half a year.

Petitioner 2's 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.

49. 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).

50. Because of the restrictions on movement between the territories and Israel the petitioners' affidavit and power of attorney have been signed in front of a lawyer at her 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, 25 March, 2007

_____

Sigi Ben-Ari
Counsel for the Petitioners

(T. S. 39633)

Translation of Affidavit

I the undersigned, _____ Haja , 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 spouse

2. I am petitioner 1.

3. 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.

4. 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 21 March, 2007 the aforesaid appeared before attorney Muhammad Salam Sheayu from Hebron, identifying herself by her ID number. 904505070, and after I warned her that she must tell the truth and that she is subject to statutory punishment if she does not do so, she confirmed the accuracy of the above affidavit and signed it.

_____

Attorney's signature