HCJ 50338-11-25

1. **---- Katzrawi**
2. **---- Shaker**
3. **---- Hasna'li**
4. **---- Jaradat**
5. **---- Kawasmi**
6. **---- Musheh**
7. **---- Musheh**
8. **HaMoked: Center for the Defense of the Individual**
9. **The Association for Civil Rights in Israel**
10. **The Public Committee Against Torture in Israel**

The Petitioners

Vs.

1. **The Minister for Public Security**
2. **Prison Service Commissioner**
3. **Military Commander in the West Bank**

The Respondents

Petition for an Order Nisi

A petition is hereby submitted for the issuance of an **order nisi**, directed to the Respondents and instructing them to appear and show cause, as follows:

a. Why they should not permit Petitioners 1–7 (hereinafter: *the Petitioners*) to visit their loved ones incarcerated in Israel.

b. Why they should not permit all family members of Palestinian prisoners incarcerated in Israel, who are residents of the West Bank and East Jerusalem, to visit their loved ones in prison.

And these are the grounds for the petition:

The isolation of a prisoner from society in order to fulfill the purposes of punishment necessarily entails family isolation from one's spouse, children, and wider family circle. **However, even given this inherent limitation of imprisonment, the existence of the human right to family life and parenthood requires that any infringement of this right be minimized to the greatest extent possible, and confined only to what is strictly necessary—such as through the granting of controlled permits for family visits to prisoners,** furloughs under defined conditions, the provision of means enabling conjugal visits between spouses, and similar measures. **In this way, the proportionality of the infringement upon the**

> **human right—an infringement structurally inherent in the deprivation of liberty accompanying imprisonment—is preserved** (HCJ 2245/06 **Dovrin v. Israel Prison Service**, Tak-Al 2006(2) 3564, para. 15 of Justice Procaccia's opinion; hereinafter: *Dovrin*. All emphasis in this petition is mine – D.S.).

This petition concerns the right of residents of the Occupied Territories to maintain family ties with their loved ones incarcerated in Israel. Not only are Palestinian detainees held within the territory of the State of Israel in violation of international law, but the Respondents are now infringing the basic right of these prisoners and of their family members to maintain family relations. This fundamental right—of both the prisoners and their relatives—is harmed by the Respondents, since, from the outbreak of the brutal and bloody war following the Hamas attack of 7 October 2023—i.e., for more than two years—the Respondents have not permitted family members of Palestinian prisoners classified as "security prisoners" to enter Israel in order to visit their loved ones.

On Saturday, 7 October 2023, the holiday of *Simchat Torah*, Hamas launched a war against Israel by attacking the civilian population. More than 1,200 men, women, elderly persons and children were killed. Hundreds of people—including women, elderly persons, and children—were abducted to the Gaza Strip. Thousands more were wounded and displaced from their homes. This was the context in which the initial decisions of October 2023 were taken. On 7 October 2023 itself, the Commissioner of Prisons and the Minister of National Security issued an announcement stating that "all prisons shall enter a state of emergency" (Moran Azulai, *Ben-Gvir declares civil emergency in Israel*, Ynet (7.10.2023)). Following this initial declaration—which placed Israel's prisons into a quasi-siege, with no entry or exit—the then-Commissioner of Prisons issued a Temporary Order dated 16 October 2023, instructing, pursuant to sections 80 and 80A(b) of the Prisons Ordinance [New Version], 5732-1971, that "notwithstanding the provisions of any Commissioner's Orders, all routine activities conducted in normal times in the prisons shall be minimized or cancelled entirely, subject to the provisions of law." It was determined that directives regarding the continuation or cancellation of routine activities would be updated from time to time in accordance with situational assessments. As of today, the validity of the Temporary Order has been extended until 31 July 2026.
A copy of the Law Amending the Prisons Ordinance (No. 64 – Temporary Order – Iron Swords) (Prison Emergency) (Amendment No. 4), 5785-2025, is attached and marked **P/1**.

As of 2 November 2025, **9,206 security prisoners** are held by the Israel Prison Service (IPS). This petition focuses on prisoners held for security-related reasons, due to the harsh conditions under which they are incarcerated. The massive increase in the number of security prisoners since the outbreak of the war has led to an unavoidable deterioration in their conditions of confinement. Prisoners held in IPS facilities are held in severe overcrowding (90% in living space of less than 3 m²), and thousands sleep on the floor. In addition, since the outbreak of the war, there has been a significant worsening of conditions for security prisoners as part of the IPS's official policy of reducing their conditions and movement to the minimum. Access to medical services has likewise been restricted. As emerges from numerous legal proceedings handled and still pending before this Honorable Court, security prisoners are held in harsh conditions and, according to testimony, experience severe violence and humiliation. Reports indicate that dozens of prisoners have even died while in custody. This is an unprecedented number of prisoner deaths in IPS custody in such a short period of time, raising grave concerns regarding the conditions of incarceration and the treatment of security prisoners.

As if this were not enough, among the additional infringements imposed under the Temporary Order is the **complete elimination** of contact between Palestinian prisoners classified as "security prisoners" and the outside world, aside from sporadic attorney visits, which themselves are severely restricted. Since these prisoners also have no possibility of telephone contact with their families, they have been **entirely cut off** from their relatives for two years. Given that family members are aware of the grave conditions prevailing in the prisons, and of the cruel treatment their loved ones receive, it is clear that this policy is especially harmful. Beyond the direct infringement of the Petitioners' right to family life—and that of many others—it also contains severe elements of discrimination against a very large group of prisoners and amounts to collective punishment of individuals who have committed no wrong. For all these reasons, such a sweeping policy cannot be allowed to persist unchanged.

This demand becomes even more urgent in light of the change in circumstances since the ceasefire between Israel and Hamas entered into force in early October and the beginning of the implementation of the agreement for the release of hostages and prisoners. Despite the reasonable expectation that, following this substantial change in circumstances, the Respondents would modify their policy, revoke the Temporary Order intended for emergency conditions, and restore prison administration to a more routine footing, this hope has thus far been disappointed. The war has subsided, but the harmful policy remains in place, without any adequate explanation. Hence this petition, and the request that this Honorable Court intervene.

This petition is brought before this Honorable Court because it is suited for adjudication as a **public petition**, and is not suited to individual prisoner petitions. It joins a series of petitions submitted in recent years—and some currently pending before this Court—by human rights organizations concerning the rights of prisoners. Among these are HCJ 6409/14 **Hanan Malitat v. Government of Israel** (29.3.2017); HCJ 1829/14 **Association for Civil Rights in Israel v. Minister of Public Security** (13.6.2017); HCJ 523/22 **Physicians for Human Rights v. Minister of Health** (4.4.2023); HCJ 158/21 **Physicians for Human Rights v. Minister of Public Security** (31.1.2021); HCJ 7236/18 **Physicians for Human Rights v. IPS** (8.6.2020); HCJ 4268/24 **ACRI v. Minister of Defense** (18.9.2024); and HCJ 2858/24 **ACRI v. Minister of National Security** (pending).

This petition concerns the rights and conditions of all Palestinian prisoners whose relatives reside in the West Bank and East Jerusalem and who are held in IPS custody. It concerns the duty to adopt appropriate policy and allocate adequate resources to ensure the realization of prisoners' right to minimal family life. It does not challenge any specific administrative decision; rather, it is a "broad petition concerning prisoners' rights" (HCJ 1143/22 **Dror for the Family v. Minister of Public Security** (14.4.2022); HCJ 6109/12 **Malka v. Attorney General** (25.12.2012)). There is no other suitable avenue for hearing this matter, particularly given that the visitation arrangements for West Bank residents visiting imprisoned relatives in Israel have been shaped over the years through litigation before this Honorable Court. This will be detailed below.

Background: Family Visits by Palestinian Relatives Prior to the Outbreak of the War

1. From the beginning of the Second Intifada in October 2000 until March 2003, the Military Commander in the West Bank prevented West Bank residents from visiting their relatives in Israeli prisons—both in prisons located in Israel and in detention facilities

within the West Bank. Following proceedings in HCJ 11198/02 **Diria v. Commander, Ofer Military Detention Facility**, Tak-Al 2003(3) 2099, the Military Commander began, gradually, to permit family visits.

2. Initially, visits were permitted only from the districts of Ramallah, Jericho, and Qalqilya. Subsequently, the arrangement was expanded to the districts of Bethlehem, Tulkarm, and Salfit. Later, all districts were included. The Military Commander also established narrow criteria defining those eligible to visit: spouses, parents, grandparents, and siblings, as well as sons and daughters under age 16 or over age 46. In July 2005, the criteria were expanded to allow sisters and daughters, without age restriction, to visit their relatives in prison. Later, it was determined that sons and brothers aged 16–35 could visit a limited number of times per year. In HCJ 4048/13 **Arshid Arshid v. Military Commander** (unpublished; hereinafter: *Arshid*), certain limits on the number of visits permitted to brothers and sons in these age groups were struck down.

3. The Military Commander does not allow West Bank residents to reach prison visits independently, nor does he arrange visitation directly. Visits are organized solely by the International Committee of the Red Cross (hereinafter: *the ICRC*). Requests for visits are submitted by residents at ICRC offices, which transfer them to the Military Commander. The Commander's response is transmitted back to the ICRC, which notifies the applicant. The ICRC also organizes the transportation—at its expense, in coordination with the Respondents, and with strict security arrangements.

4. Under the regular procedure, once a request for a prison visit is approved, the visitor receives a permit from the Military Commander valid for one year. The permit is valid only within the framework of ICRC transportation and allows the holder to visit the prison without limitation, subject to ICRC transport availability (typically twice a month). This arrangement, which developed into established practice in the years prior to the war, was instituted in late 2004, following a series of petitions filed by Petitioner 8 (hereinafter: *HaMoked* or *HaMoked: Center for the Defence of the Individual*) on behalf of family members who were classified as "barred" and thus denied the ability to visit their relatives.

5. Before the outbreak of the war, West Bank residents seeking a permit to enter Israel for prison visits applied pursuant to a procedure formulated during the *Arshid* litigation. The procedure sets out, inter alia, the method for submitting permit applications, the types of permits, eligibility criteria, timelines for processing requests, the authorities responsible for handling them, and the channels through which applicants could inquire about the status of a pending request.

The Parties and Exhaustion of Remedies

6. Petitioner 1, Ms. Katzrawi, is the sister of the prisoner ----- Katzrawi. Ms. Katzrawi was born in 1988 in Jenin and has never been arrested or interrogated. Prior to the outbreak of the war, she regularly visited her brother in prison approximately once every two weeks. Her brother, detainee ----- Katzrawi, I.D. No. ---------, was arrested in 2023 and has not yet been tried. He is currently held in Megiddo Prison. His sister has not seen him since the war began.

7. Petitioner 2, Mr. Shaker, I.D. No. ---------, is the father of the prisoner ----- Shaker. Mr. Shaker was born in 1968 in East Jerusalem. He was detained for several hours at the outset of the Second Intifada and released. Mr. Shaker was interrogated following his son's arrest. The prisoner, ----- Shaker, I.D. No. ---------, was arrested in 2024 and is serving a four-and-a-half-year prison sentence. He is currently held in Ketziot Prison. His father has not seen him since his arrest.

8. Petitioner 3, Mrs. Hasna'li, I.D. No. ---------, is the wife of the prisoner ----- Hasna'li. Ms. Hasna'li was born in 1997 in the village of Dhanaabeh, in the Tulkarm district, and has never been arrested or interrogated. The prisoner, -----, I.D. No. ---------, was arrested at the beginning of 2025 and imprisoned pursuant to an administrative detention order. He is currently held in Megiddo Prison. His wife has not seen him since his arrest.

9. Petitioner 4, Mr. Gradat, I.D. No. ---------, is the brother of the prisoner ----- Gradat. Mr. Gradat was born in 1980 in the town of Silat al-Harithiya, in the Jenin district. Although Mr. Gradat is a former prisoner, prior to the outbreak of the war he received permits to visit his brother in prison without difficulty. The prisoner, ------ Gradat, I.D. No. ---------, was arrested in 2003 and sentenced to life imprisonment plus an additional 35 years. He is currently held in Ganot Prison. Mr. Gradat has not seen his brother since the war began.

10. Petitioner 5, Mr. Qawasmeh, I.D. No. ---------, is the son of the prisoner ------ Qawasmeh. Mr. Qawasmeh was born in 1994 in Hebron. He was held in administrative detention between 2015–2017, yet this did not prevent him from regularly obtaining permits to visit his father in prison. The father, prisoner ------ Qawasmeh, I.D. No. --------, was arrested in 2011 and sentenced to life imprisonment plus an additional 60 years. He is currently held in Ganot Prison. His son has not seen him since the war began.

11. Petitioners 6 and 7, Ms. Musheh, I.D. No. ---------, born in 1974, and her sister Ms. Musheh, I.D. No. ---------, born in 1969, are both residents of the Balata Refugee Camp in Nablus. The Musheh sisters are the sisters of the prisoner ------ Abu Sarris. Neither has ever been arrested or interrogated. The prisoner, ------ Abu Sarris, I.D. No. ---------, was arrested in 2006 and sentenced to life imprisonment. He is currently held in Ganot Prison. His sisters have not seen him since the war began.

12. Petitioner 8, HaMoked: Center for the Defence of the Individual, is a human-rights organization that has for many years assisted Palestinians residing in the West Bank in exercising their right to visit their family members imprisoned in Israel.

13. Petitioner 9, the Association for Civil Rights in Israel (ACRI), is a human-rights organization working across the full spectrum of human rights, including the rights of Palestinian prisoners held by Israel.

14. Petitioner 10 is the Public Committee Against Torture in Israel, a human rights organization conducting legal and public advocacy against torture and cruel and inhuman treatment or punishment.

15. Respondent 1, the Minister of National Security, is responsible, inter alia, for the Israel Prison Service (IPS).

16. Respondent 2, the Commissioner of the IPS, is responsible for the welfare and protection of the rights of all Palestinian prisoners—both those classified as "security" prisoners and those classified as "criminal" prisoners—held in the prisons under his authority.

17. Respondent 3, the Military Commander, has maintained a belligerent occupation of the West Bank for fifty-eight years. He is responsible for maintaining normal life for the population of the West Bank. He ordered the imprisonment of the petitioners' relatives and requires the petitioners to obtain permits from him in order to visit their relatives in prison.

18. By virtue of their authority, the Respondents must ensure the realization of the rights of the residents of the occupied territory, including their right to family visits in prisons, as part of their fundamental right to family life. This obligation arises under Israeli constitutional and administrative law, international humanitarian law, and international human rights law.

19. As noted above, following the Hamas attack of 7 October 2023 and the ensuing war, the then-Commissioner of the IPS declared a state of emergency in the prisons. This state of emergency remains in force to this day, and at the time of filing this petition, its validity has been extended until 31 July 2026.
A copy of the order extending the prison emergency is attached and marked Exhibit P/1.

20. The normative basis for the current situation was described by the Honorable Judge D. Arad-Ayalon in his judgment in APPA 31985-02-25 Weiss v. IPS (Nevo, 23 April 2025):

> On 4 February 2024, the emergency order was partially extended with respect to security prisoners only: "Routine activities in criminal prisons shall, as a rule, continue as usual…," whereas "Routine activities in security prisons shall be reduced to the minimum required, subject to the provisions of the law and in consideration of the positions of the Operations Division and the Intelligence Division, according to the current situation assessment…."
> The extension of the emergency order was based on intelligence and operational assessments presented to the IPS Commissioner, which indicated "a substantial danger currently posed by security prisoners, in light of their conduct, threats, intentions, and actions." The order was extended from time to time (the most recent extension presented in the petition is from 13 February 2025 until 14 March 2025).
> The term "routine activities" in the order was not defined, and despite multiple extensions, no details were provided as to which activities were cancelled or restricted, or to what extent. The causal link between the intelligence assessments underlying the extension of the order and the imposition of any particular restriction was not explained. Nor was it specified which IPS regulations were suspended by virtue of the order and which remained in force. The phrase "reduced to the minimum" was likewise undefined. While the reduction of routine activities to a minimum initially applied to all prisoners, it later applied only to security prisoners. In other words, the definition of the prisoner

population subject to the minimum-conditions regime was narrowed, but the substantive content of the restrictions was not heightened nor were the conditions further reduced.

21. As part of the ongoing prison emergency, all contact between detainees and prisoners and their family members outside the prison has been entirely prevented. Both the prisoners and their families waited patiently for the wartime situation to subside and for a return to normalcy, which came only after two extremely difficult and bloody years. During this time, the basic right to maintain minimal family contact has been severely harmed—an injury that deepens with the passage of time and whose end is nowhere in sight.
Accordingly, and after conducting dozens of prison visits over the past two years and speaking by telephone with thousands of family members, HaMoked, which has represented this population for many years, concluded that the continued absolute severance of family contact could no longer be tolerated, particularly given the harsh conditions faced by the prisoners.

22. HaMoked therefore wrote to the IPS Commissioner on 23 January 2025, demanding the gradual renewal of family visits in prisons. In its letter, HaMoked detailed the severe consequences of the continued suspension of visits—both for the prisoners and for their families—and laid out the legal framework requiring the renewal of visits.
A copy of HaMoked's letter dated 23 January 2025 is attached and marked Exhibit P/2.

23. On 13 February 2025, the IPS responded. In its letter, the IPS rejected the demand to renew visits entirely. After a lengthy description of the security circumstances leading to the initial suspension of visits, the IPS asserted that it possessed security assessments indicating that renewing visits would pose a danger, and therefore the Commissioner relied on these assessments and saw no grounds for resuming visits. The response also claimed, in relation to the legal arguments supporting the renewal of visits, that the Commissioner's decision of 16 October 2023 superseded any rule derived from international law, since under Israeli law, "a domestic legal norm" prevails over a rule of international law.
A copy of the IPS response is attached and marked Exhibit P/3.

24. On 25 February 2025, a reply was sent to the IPS (and, as with the first letter, copies were sent to the Attorney General and to the Coordinator of Government Activities in the Territories). In its reply, the Center again demanded that the IPS consider the gradual renewal of family visits, even in light of the emergency situation that still prevails in many respects throughout the country. The response referred both to the need to take human-rights considerations into account even during times of emergency—particularly given the protracted nature of the situation—and to the requirement that administrative decisions comply with the applicable legal standards, both Israeli and international.
A copy of the reply sent to the IPS is attached and marked A/4.

25. On 10 April 2025, the IPS responded to the Center's reply. In its response, the IPS reiterated its position that the continued complete suspension of family visits is justified and that it has no intention of altering its policy.
A copy of the IPS response dated 10 April 2025 is attached and marked A/5.

26. As noted, at the beginning of October a ceasefire was finally reached, and the war subsided. Nevertheless, the decision to prevent family contact between Palestinian prisoners from the territories and their relatives has remained in force. Accordingly, the Center contacted the Respondents again, demanding that the change in circumstances be taken into account and that the family-visit framework be gradually reinstated, after two long years of total disconnection between prisoners and their loved ones. Since this additional communication from HaMoked, no further response has been received from the authorities.
A copy of HaMoked's letter dated 25 October 2025 is attached and marked A/6.

27. It is clear that the situation in which no visits—or any other form of contact—occur between prisoners and their families continues, as is evident from visits conducted by HaMoked attorneys to Palestinian prisoners and detainees classified as "security prisoners," including minors.

28. In light of all the above, the Petitioners have no choice but to turn to this Honorable Court, requesting an order instructing the Respondents to cease the ongoing violation—now persisting for more than two years—of the basic rights of both the prisoners and their family members.

The Legal Argument

> **Detention does not, in itself, strip a person of the full spectrum of constitutional human rights to which they are entitled under the foundations of Israel's constitutional order;** such rights may be infringed only to the extent strictly necessitated by the deprivation of liberty inherent to imprisonment, for investigative or trial needs, or for the fulfillment of an essential public interest, and always subject to the law
> (CA 993/06 State of Israel v. Mustafa Dib Mar'i Dirani, Tak-Al 2011(3) 1298, para. 29 of Justice Procaccia's judgment, hereinafter: *Dirani*).

The Incarceration of Palestinian Prisoners Inside Israel

28. Israel's policy of holding Palestinian prisoners inside Israel is grounded in the Emergency Regulations (Judea and Samaria and the Gaza Strip – Adjudication of Offenses and Legal Assistance), 1967, enacted immediately after the 1967 occupation of the territories. Their validity has since been extended through primary legislation and is currently in force pursuant to section 1 of the Law Extending the Validity of the Emergency Regulations (Judea and Samaria and the Gaza Strip – Adjudication of Offenses and Legal Assistance), 2007. A parallel provision appears in sections 265(a) and 266(a) of the Order Concerning Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 2009.

29. This practice directly contradicts three unequivocal provisions of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949 (hereinafter: *Geneva Convention*). Pursuant to Article 76 of the Convention, the detention of residents of occupied territory who are suspected of offenses must take place within the occupied territory. Moreover, service of a prison sentence following conviction must likewise be carried out exclusively within the occupied territory. The text of the Article is not open to interpretation:

> Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences there."

The transfer of a detainee or prisoner to the territory of the occupying power constitutes "deportation" or, at minimum, "forcible transfer." Both deportation and forcible transfer of protected persons from occupied territory to the territory of the occupying power or to the territory of any other state—occupied or not—are absolutely prohibited, without exceptions, under Article 49(1) of the Convention:

> Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

30. Violations of these provisions constitute grave breaches of the Convention under Article 147. As noted by Yutaka Arai-Takahashi in his treatise on the law of occupation:

> The peremptory nature of the prohibition of deportation or forcible transfer can be confirmed by its incorporation into core crimes under international criminal law. Both GCIV and API classify deportation or forcible transfer within the meaning of Article 49(1) GCIV as a grave breach."
> (Yutaka Arai-Takahashi, *The Law of Occupation*, Martinus Nijhoff, 2009, p. 476)

31. Israel's policy of incarcerating Palestinian prisoners inside Israel was reviewed and upheld by the Supreme Court in HCJ 2690/09 *Yesh Din v. Commander of IDF Forces in the West Bank* (unpublished, judgment of 28 March 2010). HaMoked was among the petitioners. The Court nevertheless emphasized that the legality of holding Palestinian prisoners in Israel does not diminish the military commander's obligations toward the protected population in general, and toward Palestinian prisoners in particular; the Court's underlying assumption was that the policy complies with Israeli and international law because the military commander adheres to the standards established in international law. As President (then Justice) Beinisch wrote in paras. 6–8:

> The purposive interpretation that adapts the provisions of the Convention to the Israeli reality and to the conditions of the region requires, first and foremost, giving substantial weight to the rights of the protected population, including detainees. This Court has repeatedly addressed the need to ensure proper conditions for Palestinian detainees… according to the substantive standards set in the international conventions… The prison authorities are obligated to comply with international law and the standards it sets for detention and imprisonment conditions in general, and for detainees who are protected persons in particular.

Regarding the duty to ensure family contact through prison visits, she added (para. 9):

> Arrangements for entry into Israel for visits necessarily involve coordination and transportation, and this matter has come before us more than once, in recognition of the importance of family visits as part of the right to family

> life… The accessibility of family members to visit their detained relatives may require improvement and adjustment of existing arrangements.

32. Thus, the Court held that holding Palestinian prisoners in Israel is permissible **only** so long as the Respondents comply with their obligations under international law. Yet, as demonstrated in the factual section above, the Respondents are **breaching** these obligations: they are knowingly restricting, through an open-ended bureaucratic measure, the right to family visits for a large group of prisoners and their families.
33. This is a vivid example of how the incarceration of Palestinian prisoners inside Israel leads easily to severe violations of protected rights. A single administrative decision by one of the Respondents can, with the stroke of a pen, violate the right to family life of thousands of prisoners and tens of thousands of family members. This harmful policy cannot stand.

34. Moreover, most prisoners classified as "security prisoners" are "protected persons" under international humanitarian law. Article 4 of the Fourth Geneva Convention defines "protected persons" as those who find themselves, in case of conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals.

35. A basic principle of international law is the distinction between combatants—who benefit from the protections of the Third Geneva Convention—and civilians, who fall under the protections of the Fourth Geneva Convention.

36. For detainees from the West Bank, there is no doubt that the Fourth Geneva Convention applies to them as "protected persons" under the law of belligerent occupation (see HCJ 10190/17 *Commander of IDF Forces in the West Bank v. Muhammad Alyan* (9.9.2019); HCJ 1308/17 *Silwad Municipality v. Knesset* (9.6.2020)).

37. As explained, the Respondents have acknowledged their obligation, rooted in international humanitarian law, to allow family visits for Palestinian prisoners since 1969. For example, in litigation concerning conditions at the Ofer detention facility during Operation Defensive Shield, the Court stated:

> Israel regards itself as bound by the humanitarian provisions of the Convention. Counsel for the Respondent reiterated this commitment before us. Clearly, the provisions of the Fourth Geneva Convention regarding conditions of detention are humanitarian in character and must therefore be adhered to. (HCJ 3278/02 HaMoked v. Commander of IDF Forces in the West Bank, para. 23 of President Barak's judgment (18.12.2002), hereinafter*:* Ofer Facility*).*

38. Israel's recognition of its duty to inform families of arrests led the military commander to codify this duty in regulations. In HCJ 670/89 *Ouda v. Commander of IDF Forces in Judea and Samaria* (21.11.1989), the authorities had difficulty meeting the notification requirement due to the First Intifada. Accordingly, detailed procedures were instituted to ensure compliance with international law: *"To fulfill more precisely the Respondents' duty of notification and to ensure that its contents reach the detainees' relatives, detailed procedural directives were issued concerning 'Notification of Arrest to the Families of Detainees and to the Red Cross.'"* (para. 3)

39. It must also be emphasized that reciprocity is **not** a condition for compliance with humanitarian provisions of the Convention. Violations by one party to the conflict do not entitle the other to violate the Convention (HCJ 5100/94 *Public Committee Against Torture in Israel v. Government of Israel*, PD 53(4), 817, 845 (1999); see also Article 58(1) of Additional Protocol I). Statements by the IPS Commissioner and the Minister of National Security regarding the declared "prison emergency" indicate that the suspension of family visits was imposed as a sanction in response to Hamas' abduction of 240 children, women, and men and the prevention of access to them. But these obligations are **not** reciprocal; Hamas's violations do not free Israel from its own duties.

The Right to Family Visits in Prison and the Respondents' Duty to Facilitate Them

40. We now turn to the right of prisoners and their families to family visits. This is a fundamental right belonging to both prisoners and their relatives. It derives from the understanding of human beings as social creatures embedded in family and community. The right is grounded in numerous Israeli and international legal sources, including Article 116 of the Fourth Geneva Convention ("Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible"), section 47 of the Prisons Ordinance (New Version), 1971, and IPS Commissioner's Directive 04.42.00, "Arrangements for Visits to Prisoners," which provides in section 1:

> Visits are one of the most important means of maintaining contact between the prisoner and his family, friends, and acquaintances. Visits may ease the prisoner's time in prison and encourage him in difficult moments.

41. The right to family visits also applies to those defined as "security" inmates. In the Israel Prison Service Commissioner's Order No. 03.02.22, entitled "Rules Regarding Security Prisoners," Section 17 provides:

> **17. (a)** (1) Pursuant to Article 116 of the Fourth Geneva Convention, as a rule, prisoners shall be permitted to receive family visits from first-degree relatives only, in accordance with the rules set out in this Section below. For the purposes of this Section, "first-degree relatives" include: parents, spouse, children, siblings, and grandparents.
>
> (2) Admission of a visitor who is a resident of Judea and Samaria or of the Area (including Palestinian Authority territories) is contingent upon presentation of a lawful entry permit into Israel for the purpose of visiting that prisoner in the prison facility. For the avoidance of doubt, this provision shall not apply to a visitor who is an Israeli resident, including a resident of East Jerusalem.

42. Similarly, section 2(a) of the Military Commander's Procedure on Prison Visits provides:

> Prisons in the State of Israel hold many Palestinian prisoners. In recognition of the importance of family visits, and subject to security considerations,

> Palestinian residents whose relatives are imprisoned in Israel shall be permitted to enter Israel for purposes of such visits…

43. The same principle was articulated by Justice Procaccia in RA 6956/09 *Maher Younis et al. v. IPS* (Tak-Al 2010(4) 189) (hereinafter: *Maher*), para. 8:

> Indeed, furloughs and family visits may be viewed as part of the human rights retained by prisoners even during incarceration, rights that do not necessarily vanish as a result of the deprivation of liberty. Family visits form part of the individual-prisoner's connection to the world and to his close environment. He needs them by his very nature; they are part of his humanity, part of his human dignity, and they contribute meaningfully to his welfare and rehabilitation during imprisonment.

44. The UN **Standard Minimum Rules for the Treatment of Prisoners** (1955) provide, Rule 37:

> Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and (b) By receiving visits.

45. The ICRC study on customary international humanitarian law also recognizes the right of detainees and prisoners to receive visits as a rule of customary law:

> **Rule 126. Civilian internees and persons deprived of their liberty in connection with a non-international armed conflict must be allowed to receive visitors, especially near relatives, to the degree practicable.**
> …In a resolution adopted in 1999, the UN General Assembly demanded that Yugoslavia respect the requirement to allow detainees to receive family visits in the context of the conflict in Kosovo (UNGA Res.54/183). In the **Greek case** in 1969, the European Court of Human Rights condemned the severe limitations on family visits to detainees. In 1993, the Inter-American Commission on Human Rights recommended that Peru allow relatives to visit prisoners belonging to the Tupac Amaru Revolutionary Movement. (J.M. Henckaerts, L. Doswald-Beck, **Customary International Humanitarian Law** p. 448-449 (Volume I: Rules. 2005)).

46. Moreover, the right to visits is not solely the prisoner's right. It is equally a recognized right of the prisoner's family, whose relationships are severed by imprisonment. As summarized by one scholar:

> People who are sent to prison lose the right to free movement but retain other rights as human beings. One of the most important of

> these is the right to contact with their families. **As well as being a right for the prisoner, it is equally a right for the family members who are not in prison.** They retain the right of contact with their father or mother, son or daughter, brother or sister who has been sent to prison. Prison administrations have a responsibility to ensure that these relationships can be maintained and developed. Provision for all levels of communication with immediate family members should be based on this principle. **It follows that the loss or restriction of family visits should not be used as a punishment under any circumstances.** (Coyle A. **A Human Rights Approach to Prison Management: a Handbook for Prison Staff** International Centre for Prison Studies (King's College, University of London and the UK Foreign and Commonwealth Office) 2002. p 95).

Human Rights of Prisoners Continue During Incarceration

47. The right to family visits is also rooted in the prevailing principle—under both international and Israeli law—that imprisonment does not divest a person of their fundamental rights. Prison walls restrict liberty but do not nullify other rights unless expressly prescribed by law:

> A great rule in our hands is that every right from all the human rights remains with a person even when detained or imprisoned, and imprisonment alone does not strip him of any right except that which necessarily flows from the deprivation of liberty or is expressly removed by law… The root of this rule is in the Jewish heritage from ancient times: According to the words of Deuteronomy 25:3, "and your brother shall be degraded before your eyes," the Sages established a fundamental principle in Hebrew penal law: "Once he has been flogged, he is once again your brother" (Mishnah, Makkot 3:15). **This important principle applies not only after a person has completed serving his sentence, but also during the period of incarceration itself: he remains your brother and your fellow, and his human rights and dignity remain with him and must be upheld.** (HCJ 337/84 *Hokma v. Minister of the Interior*, PD 38(2) 826, 832; see also CA 4463/94 *Golan v. Israel Prison Service*, PD 50(4) 136, 152–153; CA 4/82 *State of Israel v. Tamir*, PD 37(3) 201, 207; HCJ 114/86 *Weil v. State of Israel*, PD 41(3) 477, 490.)

Justice Danziger similarly wrote in *Maher*, para. 36:

> The approach of the Israeli legal system regarding the purpose of imprisonment is that it consists of deprivation of personal liberty, while restricting his movement. According to this approach, even when a person is imprisoned, he retains every human right afforded to him. "Upon entering prison, a person forfeits his liberty but not his dignity."

48. Article 10(1) of the International Covenant on Civil and Political Rights (ratified by Israel in 1991) provides:

> All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

This article was interpreted broadly by the Human Rights Committee, the body responsible for implementation of the Covenant, in CCPR General Comment No. 21 (10.4.1992):

> [R]espect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. **Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.**

50. According to the Mandela Principles as well, it was established that the principle according to which prisoners are entitled to all human rights except those denied from the imprisonment itself. Principle 1 states that:

> All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. …

And according to Principle 3:

> Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

Security Considerations Are Relative, Not Absolute

51. The Respondents rely on security considerations to justify completely eliminating the ability of prisoners and families to maintain contact. While the state may, of course, consider security needs, security is not absolute and must be balanced against competing protected interests. As held in HCJ 5672/02 *Saif v. Government Press Office*:

> Security is a fundamental value in our society… but, like human rights, no value is absolute. A balance must be struck between the interest of safeguarding security and other rights and protected interests which conflict with it.

52 Similarly, Justice Cheshin gives an example in HCJ 188/53 *Abu Ghosh*):

> There is no magic in the words “security reasons” and “security situation” and all similar phrases, in order to justify the actions of the authorized authority and to prevent this court from insisting on the justness of things and action. … If the Court finds they are used as a pretext for arbitrariness or improper purposes, it will not hesitate to say so clearly, in the name of truth, so that justice will be done for the citizen wrongly harmed.

53. Also according to Principle 43(3) of the Mandela Principles, limitation on family visits can be legitimate only if it is proportionate and limited in time:

> Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

54. Certainly a total ban on any contact, even indirect, between a prisoner and their family, especially in light of the harsh conditions in Israeli prisons, represents an improper and disproportionate balancing between security considerations and other considerations and cannot stand.

Infringement of Prisoners' Rights in Times of Emergency

55. Emergencies are regrettably familiar in Israel. Unfortunately, there is a recurring pattern of invoking emergencies to unjustifiably curtail human rights, particularly the rights of marginalized groups with little political representation. In fact, the state itself claims that security instability is chronic (see: Yoffi Tirosh, Ticking Times: Judicial Approaches of National Time and Their Impact on Human Rights in Israel, Law, Minority and National Conflict 12 (291-334) (2017)). Therefore, "state of emergency" must not become a formula that nullifies legality, proportionality, and fairness. Otherwise, the rule of law and human rights become hollow. This is especially true now that a ceasefire has been reached, yet the restrictive policies remain unchanged.
56. Emergency rhetoric often centralizes decision-making and bypasses proper administrative procedures. Frequently, there is no substantive connection between the emergency and the rights restrictions imposed on vulnerable groups, yet the sense of national shock and urgency leads to unjustified measures. The state has previously argued that security or criminal circumstances justify infringing even the minimal needs of prisoners (HCJ 4634/04 *Physicians for Human Rights v. Minister of Public Security*, 62(1) 76 (2007)).
57. The Supreme Court has recognized that restrictions on prisoners' rights may be imposed only in rare cases arising directly from emergency circumstances and only when:

> the purpose of the infringement is never to add to the punishment… its legitimacy depends on whether it necessarily flows from the deprivation of liberty or is required for an essential public interest recognized by law.

In that case, the Court addressed the obligation to provide each prisoner with a bed—even during spikes in crime or security events—and emphasized that only in unavoidable circumstances, and pursuant to explicit legal authority, could minimal rights be restricted.

58. Thus, for example, during the COVID-19 crisis—which affected every aspect of daily life in Israel and worldwide, and created a grave concern of widespread, life-threatening infection within detention facilities—the courts insisted that conditions of imprisonment and detention remain subject to the protections enshrined in law. In accordance with the IPS's declaration, this Honorable Court found that "the Israel Prison Service has prepared for the situation and formulated detailed and orderly

guidelines and rules, which it is implementing in practice. This, in consultation with the relevant officials at the Ministry of Health. Likewise, Emergency Regulations (Coronavirus) were enacted on various matters relevant to the group of prisoners and detainees… It appears that both thought and care were devoted to these arrangements." (HCJ 2234/20 Israel Bar Association v. Minister of Public Security (6.4.2020)).

None of this occurred in the present matter, not even superficially. The decisions and policies challenged in this petition were adopted immediately and arbitrarily upon the outbreak of hostilities. Even after the fighting subsided, there is no sign of any change.

59. The harm to detainees' rights in this case—grave as it is—was and continues to be inflicted with recklessness and arbitrariness. It grossly exceeds the bounds of reasonableness and proportionality, and there is a serious concern that extraneous considerations tainted its adoption.

No room for double punishment: deprivation of liberty and harsh holding conditions

60. The fact that the detainees are almost completely cut off from the outside world in general, and from their families in particular, constitutes an additional punishment imposed without any individualized administrative decision. It should be recalled that a significant portion of these detainees have never been tried or convicted, and are held under administrative detention.
61. In this regard, the words of Justice Solberg in HCJ 158/21 Physicians for Human Rights v. Minister of Public Security (31.1.21), concerning COVID-19 vaccinations for prisoners, are apt:

> It is written in the Torah: 'If there is a dispute between men, they shall approach the court, and they shall judge them; they shall acquit the innocent and convict the guilty. And it shall be, if the guilty one is to be flogged, the judge shall make him lie down and flog him before him, according to his guilt, by number. Forty he shall flog him, he shall not add—lest he add and flog him beyond these, a great blow, and your brother be degraded before your eyes' (Deuteronomy 25:1–3).
>
> And the Sifrei teaches (Finkelstein edition, para. 304): 'Rabbi Hananiah ben Gamliel says: All day, Scripture calls him "wicked," as it is stated: '…the guilty one'… but once he has been flogged, Scripture calls him "your brother."'
>
> '"And your brother be degraded before your eyes"—once he has been punished, he is your brother' (Mishnah, Makkot 3:15).
>
> Thus Jewish law instructs us to relate to the offender—after he has been punished—as a brother: 'This great principle applies not only after he has completed his sentence, but also while he is serving it, for he is your brother and your companion, and his rights and human dignity remain with him.'"

62. Also relevant are the words of this Court in HCJ 2245/06 Duvrin v. Israel Prison Service (13.6.06):

> It is not within the authority of the Prison Service to punish the prisoner beyond the punishment imposed upon him by law by restricting the human

rights granted to him even as a prisoner. The moral condemnation of the crime he committed does not provide justification for doing so.

The Right to Family Life

63. The absolute denial of any possibility for family members of prisoners to see their loved ones in detention constitutes a severe infringement of the fundamental right of both the detainees and their families to family life. Across eras and cultures, society has regarded the right to family life as a supreme value.
64. The Supreme Court has repeatedly emphasized the great importance of the right to family life in numerous decisions, especially in the *Adalah* case (HCJ 7052/03 Adalah v. Minister of the Interior, Tak-Al 2006(2), 1754).

    Thus, for example, President (then) Barak wrote in paragraph 25 of his judgment:

    > Our primary and basic duty is to sustain, nurture, and preserve the fundamental and ancient social unit in human history, which has been and remains the foundation ensuring the existence of human society—the natural family…
    > Family ties lie at the heart of Israeli law. The family plays a vital and central role in the life of the individual and in the life of society. The familial bonds that the law protects and seeks to develop are among the strongest and most meaningful in a person's life.

    And in *Duvrin*, Justice Procaccia wrote (para. 12 of her opinion):

    > In the hierarchy of constitutional human rights, following the protection of the right to life and bodily integrity comes the constitutional protection of the right to parenthood and family. The right to bodily integrity protects life; the right to family gives life meaning and purpose…
    > This right therefore occupies a lofty position among constitutional human rights. It precedes in importance the rights to property, occupational freedom, and even privacy. 'It reflects the essence of human existence and the realization of one's self.'

65. Family rights are also recognized and protected under public international law. Hague Regulation 46 provides:

    > The honor and rights of the family, the lives of persons, private property, and religious convictions and practices must be respected.

    And in *Stamka* it was held:

    > Israel is obligated to protect the family unit by virtue of international conventions." (HCJ 3648/97 Stamka v. Minister of the Interior, PD 53(2) 728, 787).

See also Articles 17 and 23 of the ICCPR (1966); Articles 12 and 16(3) of the Universal Declaration of Human Rights (1948); Article 12 of the European Convention on Human Rights; Article 27 of the Geneva Convention; Article 10(1) of the ICESCR (1966); and the preamble to the Convention on the Rights of the Child (1989).

The Infringement of the Right of Families and Prisoners Is Disproportionate

66. Under the principle of proportionality, an infringement of a protected human right must not exceed what is necessary to achieve the purpose for which the right is restricted. The respondents must exercise their discretion "such that the right is infringed only to the minimal extent required, and so that the relationship between the harm caused and the benefit expected from achieving the objective is reasonable" (HCJ 6226/01 Indor v. Mayor of Jerusalem, PD 57(2) 157, 164).
67. This Court has established the criteria by which the proportionality of an infringement of human rights is examined. To be proportionate, the infringement must meet three cumulative sub-tests: **Rational Connection (**the means chosen must contribute to achieving the legitimate purpose); **Less Harmful Means (**if alternative means exist that achieve the purpose while infringing the right to a lesser degree, they must be chosen); **Proportionality in the Narrow Sense (**even if the means is rational and no less harmful alternative exists, the benefit gained must justify the harm caused) (see HCJ 5016/96 *Horev v. Minister of Transport*, PD 51(4) 1, 53–54; *Stamka*, at 777).
68. With the adoption of the Limitation Clauses in the Basic Laws, the proportionality doctrine was adopted for judicial review of legislation, and consequently applies also to all administrative action (HCJ 987/94 *Euro-Internet Golden Lines (1992) v. Minister of Communications*, PD 48(5) 412, 453). The proportionality of the infringement of the rights of Palestinian prisoners and their families must therefore be assessed in light of the severity of the infringement and the elevated status of the right to family life: "It is appropriate that all three sub-tests… be applied in light of the nature of the right at stake" (HCJ 1715/97 *Investment Managers Association v. Minister of Finance*, PD 51(4) 367, 420).
69. **First Sub-test: Rational Connection**—The first question is whether there is a rational connection between the stated security objective and the sweeping restriction on the right of families of prisoners designated as "security prisoners" to meet their loved ones.
70. Given the severity of the harm caused to the petitioners and many others like them, a clear, proven, and compelling connection between the policy and the stated security objective is required.
71. It is well-established that a public authority must base its decisions on an adequate factual foundation, including the collection of material data and evidence. This requirement is heightened when the decision infringes a fundamental right. In the absence of such evidence, the claim of a rational connection collapses:

> Regarding the deprivation of fundamental rights, ambiguous or equivocal evidence does not suffice… The evidence required to persuade a statutory authority of the justification for infringing a fundamental right must be clear, unequivocal, and convincing… As great as the right is, so too must be the strength of the evidence supporting a decision to diminish it. (EA 2/84 *Neiman v. Central Elections Committee*, PD 39(2) 225, 249–250).

72. Thus, the respondents must demonstrate that their sweeping policy of denying the petitioners and other family members of Palestinian prisoners classified as "security prisoners" any family contact is grounded in data and proof showing that it prevents harm to security. Absent such a factual basis, the policy fails the rational-connection test.
73. **Second Sub-test: Less Harmful Means**—This test examines whether the security objective could have been achieved by less harmful means.
74. The severe restriction on prison visits of family members fails this requirement. It is a blanket policy that casts suspicion on an entire population who are subject to "different treatment" solely based on the geographic origin of the prisoners whom family members wish to visit.
75. This Court has repeatedly held that sweeping arrangements, as opposed to individualized assessments, are disproportionate and infringe rights more than necessary (HCJ 3477/95 *Ben Atia v. Minister of Education*, PD 49(5) 1, 15).
76. In *Saif* (HCJ 5627/02 *Saif v. Government Press Office*, PD 58(5) 70), the Court considered the legality of the GPO's decision to cease issuing press cards to Palestinian journalists, even those with Israeli entry permits. The State argued that individualized security checks could not eliminate the risk posed by residents of the Territories.
77. The Court rejected this argument, holding that security considerations are not absolute and must be balanced against other protected interests:

> The total refusal to issue press cards to Palestinian journalists—even those holding permits to enter and work in Israel—demonstrates that the balancing between freedom of expression and information, on the one hand, and security considerations, on the other, was not conducted at all, or at any rate was not conducted lawfully.

78. President Barak similarly stated in *Adalah* (para. 69):

> The requirement to use the least harmful means often precludes the use of a flat ban, since in many cases an individualized examination will achieve the legitimate purpose while infringing the right to a lesser degree.

79. As noted, the respondents must demonstrate that restricting entry permits to family members of security prisoners is supported by solid evidence.
80. However, since permits are already issued following individualized checks, the refusal to conduct such checks raises a serious concern that the policy is not genuinely based on security needs. As President Barak went on to rule in *Adalah*:

> There may be situations in which individualized examination does not achieve the proper purpose… Yet before reaching such a conclusion, the authority must be persuaded—on the basis of adequate data—that no proper alternative exists. Sometimes the adoption of a flat ban stems from failure in designing individualized checks rather than from their ineffectiveness.

81. Applying these principles here, it is clear that the respondents chose the "easy path": a sweeping ban on visits for all family members of all security prisoners. The fact that individualized checks are routinely conducted when issuing permits demonstrates that

such examination is feasible. The respondents' choice to avoid individualized decisions renders the policy disproportionate.

82. **Third Sub-test: Proportionality in the Narrow Sense**—This test evaluates whether the severity of the infringement is justified by the benefit derived from the policy.
83. Under this test, if the benefit of the policy is significant, the right may give way. However, the test focuses on the extent of the harm caused and expresses the principle that "there exists an ethical barrier that democracy cannot cross, even if the purpose pursued is legitimate" (President Barak in HCJ 8276/05 *Adalah v. Minister of Defense*, Tak-Al 2006(4) 3675, 3689).
84. Here, the policy severely infringes one of the most fundamental rights—the right to family life. Any justification for such a harm must serve an overriding public interest.
85. However, even if the purpose is security, important and legitimate as it may be, it is not absolute and cannot justify any and all infringements. The security justification is not everything and must be balanced against other needs. Thus, in *Saif*, the Court held that a theoretical security risk cannot justify certain and severe harm to protected rights.
86. The heavy price borne by the petitioners and others like them due to the ban on prison visits is certain, excessive, and extreme. The speculative security benefit—if any—cannot outweigh the severe harm to their right to family contact.

Unlawful Discrimination

87. The respondents' decision to bar the petitioners and others like them from visiting their incarcerated relatives constitutes unlawful discrimination. This policy worsens the conditions of imprisonment for all prisoners designated as "security prisoners," compared with criminal prisoners, solely due to this classification.
88. It is a well-established principle of Israeli law that equality is a paramount legal value. With the enactment of the Basic Law: Human Dignity and Liberty, the right to equality was recognized as integral to human dignity—not only discrimination involving humiliation but also discrimination closely tied to human dignity (see Justice Dorner in HCJ 4541/94 *Miller v. Minister of Defense*, PD 49(4) 94).
89. The duty not to discriminate—corresponding to the individual's right to equality—is imposed first and foremost on governmental authorities. "A public authority is prohibited from discrimination, meaning unequal and unfair treatment of equals" (HCJ 1703/92 *K.A.L. Airlines v. Prime Minister*, PD 52(4) 193, 204).
90. In *Kfar Vradim*, the Court held that equals must be treated equally and unequals differently in proportion to their differences. Therefore, singling out one category of prisoners based solely on an internal IPS classification constitutes prima facie unlawful discrimination. President Barak cited Justice Haim Cohen:

> The dignity protected from infringement includes not only a person's good name, but also his status as an equal among equals. The violation of dignity lies not only in defamation or insults, but also in discrimination and deprivation, favoritism and racist or degrading treatment.

91. This form of discrimination is also strictly prohibited by international law. Article 14 of the European Convention on Human Rights states:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour,

> language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

92. Similarly, Article 26 of the ICCPR provides:
    All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

    This article was interpreted thus by the Human Rights Committee General Comment No 21:

> This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

93. Regarding the distinction between security and criminal prisoners, this Court has repeatedly held that the distinction is justified only where necessary due to the unique nature of terrorism-related offenses and the risk they pose—and only to the extent required by such considerations (RA 4779/17 *Abu-Tzaluk v. IPS* (22.3.2020); HCJ 204/13 *Salah v. IPS* (14.4.2015)).
94. The Court has emphasized that restrictions not required by security considerations but stemming from punitive objectives or vindictiveness are impermissible (CA 1076/95 *State of Israel v. Kuntar*, DP 50(4) 492).
95. In the case of denying academic studies to security prisoners, the Court accepted that the decision was based on security reasons, yet stressed that any special restrictions must meet the tests of reasonableness and proportionality and may be imposed only to the extent truly required.
96. The conclusion is clear: discriminatory harm to one group of prisoners based solely on internal IPS classification rooted in their national origin cannot stand.

The Prohibition on Collective Punishment

97. The respondents' decision to sever the petitioners and all other family members of prisoners classified as "security prisoners" from any contact with their incarcerated loved ones constitutes collective punishment of both the prisoners and their families. It is a penalty imposed on an entire group of tens of thousands of people without individualized examination.
98. Collective punishment is prohibited under international humanitarian law and international human rights law. The prohibition on arbitrary and sweeping punitive measures is a fundamental rule of customary international law binding on Israel.
99. Because the prisoners and their families are residents of occupied territories and considered "protected persons," Hague Regulation 50 applies:

> No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of acts of individuals for which they cannot be regarded as jointly and severally responsible.

    Similarly, Article 33 of the Fourth Geneva Convention states:

> No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited.

100. The ICRC Commentary explains that the difference between the provisions of the Hague Regulations and those of the Fourth Geneva Convention lies, inter alia, in the fact that:

> The Provision is very clear. If it is compared with Article 50 of the Hague Regulations, it will be noted that that Article could be interpreted as not expressly ruling out the idea that the community might bear at least a passive responsibility.
>
> Thus, a great step forward has been taken. **Responsibility is personal and it will no longer be possible to inflict penalties on persons who have themselves not committed the acts complained of** (J.S. Pictet, **Commentary: IV Geneva Convention – Relative to the Protection of Civilian Persons in Time of War**, p. 225 (Geneva, 1958)).

101. It is interesting how the Pictet interprets for the reason for the prohibition on measures of intimidation or of terrorism, not only as protecting those protected under occupation, but as a prohibition that accords with the interest of the occupying side:

> During past conflicts, the infliction of collective penalties has been intended to forestall breaches of the law rather than to repress them; in resorting to intimidatory measures to terrorise the population, the belligerents hoped to prevent hostile acts. **Far from achieving the desired effect, however, such practices, by reason of their excessive severity and cruelty, kept alive and strengthened the spirit of resistance**. **They strike at guilty and innocent alike. They are opposed to all principles based on humanity and justice and it is for that reason that the prohibition of collective penalties is followed formally by the prohibition of all measures of intimidation or terrorism with regard to protected persons, wherever they may be** (Pictet, Commentary p. 225-226).

102. In addition, (d)(2)75 to the First Additional Protocol to the Geneva Convention states that:

> (2) The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents…
>
> **(d) collective punishments**

The ICRC commentary to this article clarifies that:

> 3055. **The concept of collective punishment must be understood in the broadest sense: it covers not only legal sentences but sanctions and harassment of any sort, administrative, by police action or otherwise** (**Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949**. p. 874 (Yves Sandoz, Christophe Swinarski, Bruno Zimmermann, Eds. ICRC, Geneva, 1987)).

103. Rules 37 and 39 to the Mandela Principles for the Treatment of Prisoners, dealing with discipline and punishment, categorically states that a prisoner can only be punished according to law, and on the basis of an act for which the prisoner themselves is responsible:

> **Rule 37: The following shall always be subject to authorization by law or by the regulation of the competent administrative authority: (a) Conduct constituting a disciplinary offence; (b) The types and duration of sanctions that may be imposed; (c) The authority competent to impose such sanctions; (d) Any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation.**
>
> **Rule 39: 1. No prisoner shall be sanctioned except in accordance with the terms of the law or regualation referred to in rule 37 and the principles of fairness and due process. A prisoner shall never be sanctioned twice for the same act or offence.**

Collective punishment is expressly prohibited. Rule 43 states:

> Rule 43: 1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement; (c) Placement of a prisoner in a dark or constantly lit cell; (d) Corporal punishment or the reduction of a prisoner's diet or drinking water; (e) Collective punishment.

105. Thus, the aggravation of the already harsh imprisonment conditions of Palestinian "security" prisoners, manifested in their complete disconnection from tens of thousands of family members, constitutes unlawful collective punishment. It is evident that this

collective worsening of conditions was not intended to address a specific security need related to each individual prisoner.

Use of Prisoners and Their Families as "Bargaining Chips"

106. As noted above, the initial reason for halting family visits to prisons was the outbreak of war and the state of emergency prevailing in the country. Months and even years have since passed, the war has ended, and—as reflected in correspondence with the Prison Service—there is no intention to alter this policy in the foreseeable future. Since the declaration of the state of emergency, and based on the Prison Service's responses, it is clear that the central rationale underlying the policy has undergone a transformation: it is no longer rooted solely in concrete security risks, but has become part of the pressure exerted on Hamas. Denying fundamental rights to individuals collectively, for punitive purposes unrelated to the conduct of the punished themselves, is not among the permissible measures in a law-abiding state (see HCJ 3390/16 Adalah v. The Knesset (8.7.2021)).

107. The denial of visits—or of other rights, for that matter—effectively amounts to using the families of Palestinian prisoners, such as the petitioners, and the prisoners themselves, as "bargaining chips," with the aim of pressuring organizations external to the prisoners and their families. The use of human beings as bargaining chips for such purposes has been unequivocally rejected by the Supreme Court, as President Barak wrote, in words equally applicable here:

> I am aware of the suffering of the families of IDF captives and the missing. It is immense, like a stone. The passage of years and the uncertainty wound the human spirit. Even more painful is the plight of the captive, held secretly and in hiding, torn from his home and homeland. Indeed, this pain, alongside the paramount interest of the State of Israel in returning its sons to their borders, has not escaped my attention. It did not leave my heart when I rendered my decision in CrimApp 10/94. It has not diminished since then. The human and social tragedy of captivity and disappearance weighs upon us daily. Yet, however important the goal of releasing captives and the missing, it does not—within the legal framework before us—justify all means. One cannot, under the law at issue, remedy injustice with injustice. I am confident that the State of Israel will not rest until it finds a solution to this painful issue. As a state and as a society, our consolation must be that the path to resolution will accord with our fundamental values.(CrimFH 7048/97 Anonymous v. Minister of Defense, PD 54(1) 721, 744).

108. It is important to note that under the Fourth Geneva Convention, a violation of the Convention by one party must not affect the obligation of the other party to respect its provisions. The commitments undertaken by Israel when it ratified the Fourth Geneva Convention are not contingent upon the other party's compliance. As Pictet wrote:

> It (the Fourth Geneva Convention) is not an engagement concluded on a basis of reciprocity, binding each party to the contract only insofar as the other party observes its obligations. (Pictet, Commentary, p.15).

109. This principle has also been recognized in Israeli jurisprudence. As the Supreme Court stated:

> One may ask: are the petitioners entitled to have humanitarian considerations weighed in their case? They are members of terrorist organizations, far removed from humanity, whose attacks on innocent people are their daily bread… Our answer is this: The State of Israel is a state governed by law; it is a democracy that respects human rights and seriously considers humanitarian concerns. We weigh these considerations because compassion and humanity are embedded in our character as a Jewish and democratic state; we weigh them because the dignity of every person is precious to us, even if he is among our enemies… We are aware that this approach seemingly grants a 'benefit' to terrorist organizations devoid of humanity. But this is a fleeting 'benefit.' Our moral stance, our humanity, and the rule of law that guides us—all these are vital components of our security and strength. Ultimately, this is our true advantage. (HCJ 794/98 Obeid v. Minister of Defense, PD 55(5) 769, 775).

110. In light of all the above, it is clear why the respondents' policy, which prevents the petitioners and others like them from maintaining family ties with their imprisoned loved ones solely on the basis of their classification as "security" prisoners, cannot stand.

Summary

111. On October 7, 2023, the face of this land changed irrevocably following Hamas's brutal attack on the region adjacent to the Gaza Strip. The war that broke out has since ended, though its scars remain. Yet it is unacceptable that its harmful effects should persist unnecessarily after the fighting has ceased. With the ceasefire now in effect, the respondents must adapt their conduct to the new reality in compliance with the law. It is impermissible, under the guise of an endless state of emergency, to indefinitely deny fundamental rights to thousands of prisoners held under Israel's custody, and to tens of thousands of their family members, toward whom Israel bears legal obligations both as the detaining power and as the occupying power. Among those denied contact with the outside world are many who were imprisoned before the war began; numerous minors; women; and detainees who have never been tried and are held under administrative detention. Their prison conditions have already been deliberately worsened since the war's outbreak, but the continued severance from the outside world is a cruel measure with severe consequences, which must be brought to an end with the passage of time. Intervention by this Honorable Court is therefore required.

112. Due to restrictions on movement between the Territories and Israel, the petitioners' affidavits were signed before an attorney in their place of residence. The affidavits and powers of attorney were transmitted to the offices of HaMoked: Center for the Defence of the Individual via the "WhatsApp" application. They are thus attached to this petition.

Accordingly, the Honorable Court is requested to order the respondents as sought at the outset of the petition and to require them to pay court costs and attorney's fees.

Jerusalem, 17 November 2025

Daniel Shenar,

Adv. Counsel for the Petitioners