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At the Supreme Court

Sitting as the High Court of Justice

HCJ 9169/07

- Re:
1. _____ **Takataka.**
 2. _____ **Abu Srur.**
 3. _____ **Takataka.**
 4. _____ **Hanebali.**
 5. _____ **Altalahmah.**
 6. _____ **Takataka.**
 7. _____ **Eldikh.**
 8. _____ **Habas.**
 9. _____ **Hamis.**
 10. _____ **Iyat.**
 11. _____ **Shahadah.**
 12. _____ **Meryam.**
 13. _____ **Tahah.**
 14. _____ **Zabadi.**
 15. _____ **Salaman.**
 16. _____ **Veloyel.**
 17. **HaMoked: Center for the Defence of the Individual founded by Dr. Lute Salzberger - registered non profit organization**

Represented by attorneys Sigi Ben-Ari (lic. no. 37566) and/or Yadin Elam (lic. no 39475) and/or Yossi Wolfson (lic. no. 26174) and/or Hava Matras-Iron (lic. no 35174) and/or Yotam Ben Hillel (lic. no. 35418) and/or Abeer Jubran (lic. No. 44346) and/or Ido Blum (lic. No. 44538)
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The Petitioners

v.

1. **Commander of the Army Forces in the West Bank.**
2. **Commander of the Etzion Detention Facility, IDF.**
3. **Commander of the Samaria Detention Facility, IDF.**
4. **Israel Prison Services.**

The Respondents

Petition for an Order Nisi

The honorable court is requested to order the respondents to appear and show cause as following:

- A. For respondents 1 and 2 – why they are detaining petitioners 1-6 at the Etzion Detention Facility, where their rights under the law are being violated, and which situation continues after more than 21 days
- B. For respondents 1 and 3 – why they are detaining petitioners 7-16 at the Samaria Detention Facility, where their rights under the law are being violated, and which situation continues after more than 34 days.
- C. For respondents 4 – why he did not allocate places for the petitioners at the prisons under his command.
- D. For respondents 1-4: why they have not committed themselves to a maximum time period within which they can detain prisoners at the temporary detention facilities in Etzion and Samaria, until their transfer to the jails of the prison services.

Request for an Urgent Hearing

The court is requested to determine the time and hearing on this petition using the emergency procedure. The petitioners, some of whom are administrative detainees and some of whom are detained until the end of the proceedings, are being held for many days, varying from 42 days (petitioner 7) to 21 days (petitioner 6), in the Etzion and Samarian detention facilities, in gross violation of their rights under the law. The honorable court is requested to grant their application in order to prevent the continuing violation of the petitioner's rights as early as possible.

The grounds for the petition are as follows

The background for the petition

1. The petition concerns the holding of the detainees, residents of the territories, in military temporary detention facilities, Etzion and Samaria, facilities which are located in the main bases of the Merhavia divisions in the West Bank, and which are intended for holding security prisoners shortly after their arrest until they are transferred to an orderly prison. Holding detainees in these facilities for more than a few days constitutes a gross violation of their rights under the law

2. The conditions that exist in these temporary detention facilities are very harsh. They are far below minimum international standards, and fail to meet the obligations within the framework of security legislation. They do not fulfill the basic needs of a civilized person and harm human dignity.
3. As a result of a previous petition that was filed by HaMoked: The Center for the Defence of the Individual, which touched upon the detention conditions in five temporary detention facilities that operated at that time – H CJ 3985/03 **Amar Bedawi v. Commander of the IDF Army Forces in the Judea and Samaria Region** (hereinafter: the “**Bedawi case**”) – the “Advisory Committee to the Chief of Staff in the matter of Divisional Detention Facilities in the Judea and Samaria Region” (hereinafter : the “**Committee**”) was set up, with the goal of regularly examining the confinement conditions in the detention facilities and sending the Chief of Staff a periodical report on its findings and recommendations.

A copy of the letter with information about the establishment of the Committee dated 9 June, 2003 is attached as appendix **p/1**.

The letter of appointment of the Committee dated 3 July, 2007 is attached as appendix **p/2**.

4. The first report of the Committee was filed in July, 2003 and parts of it were incorporated into the supplementary note dated 9 October 2003 and filed on behalf of the State attorney's office within the framework of the Bedawi case. With regard to the period for holding detainees in temporary detention facility the following (paragraph 11 onwards) was stated:

The Committee has thus established that despite the fact that the facilities were intended for holding detainees for relatively few days, until their transfer to the central prison facilities... it was discovered that in practice all the facilities had detainees who had stayed there for periods that far exceeded the norm...

As stated the main criticism that has been leveled by the Committee was in reference to the over crowdedness in the facilities... and to the fact that so many detainees stayed in the facility for relatively long periods.

A copy of the relevant section in the supplementary note dated 9 October 2003 is attached as appendix p/3.

5. In the second Committee Report that was filed in January, 2004 it was stated that changes had been implemented since the first report was issued. In the supplementary note on behalf of the State Attorney's office dated 3 February, 2004 it was stated that within the framework of the Report "The maximum period of stay was defined..." (Paragraph 13 f). With regard to the Etzion holding facility "it was reported that if a detainee has passed his 21st day in the facility, efforts are made to transfer him."

A copy of the relevant section in the Supplementary Notice dated 3 February, 2004 is attached as p/4.

6. In the third report, which was presented to the Chief of Staff in the month of November, 2005, the following is written:

Since the publication of the previous report the Committee has taken note that the situation in the facilities has once again worsened. At the end of 2004 and at the beginning of 2005 most of the facilities were, routinely, occupied beyond capacity. The periods of stay were also very long... the over crowdedness and the continuing periods of incarceration have returned and they foresee the same problems which they had previously expected to have disappeared from this world – lack of clothing, food, eating utensils, infrastructure problems that have not been dealt with in a proper manner and anything to do with matters that concern the regular and daily functioning of the facilities and the basic living conditions that have been provided to the detainees (paragraph 5),

It goes without say that even when the security detainees are non-Israeli citizens, the State and its institutions must treat detainees in a worthy manner, provide their living necessities and maintain their dignity. A deviation from the accepted standards of living conditions (clothing, food, living space, hygiene, and appropriate sanitation) cannot be tolerated and cannot be allowed (emphasis original, S. B. A)... a general overview of things points to the fact that the army as an

organization does not see any real importance in scrupulously maintaining proper living conditions in the facilities and it does not invest appropriate effort for its correct management...in the end, as has been clarified above, the picture that has been painted is intolerable and totally unacceptable (paragraph 8).

Within the framework of the recommendations the following was written:

The Committee is of the opinion that if the army wishes to continue operating the holding facilities, while recognizing the operational need for their permanent existence, it must systematically take into consideration the question of the way they are managed and they have to make radical changes.. the Committee is aware that from the long-term perspective, the IDF in its current management structure of the facilities has not been successful in maintaining proper incarceration conditions, in a stable and consistent manner, in the divisional detention facilities (paragraph 13).

A copy of the relevant sections of the Committee's Third Report of November, 2005 is attached as appendix p/5.

7. As opposed to the situation at the time of writing the committee's third report, nowadays there are only two military temporary holding facilities – Etzion and Samaria. Another difference is that the military jails, Ofer and Ketziot, which at that time was run by the army, have recently been transferred to the Prison Services.
8. This petition deals with one aspect of the incarceration conditions – the time for holding detainees in the temporary facilities. All the petitioners, some of whom are detained until the end of the proceedings, while others are administrative detainees, have been held in detention facilities for over 21 days. Petitioner 7 has been held in Samaria for over 40 days. In addition to the petitioners, Etzion and Samaria contain other detainees who have been held there for more than 21 days. The fact that the detention conditions under which the detainees are held does not comply with the requirements of the law and do not withstand the minimum required standards, makes the respondents' failure to transfer them to orderly prisons ten times worse.

The parties

9. Petitioner 1, detained until the end of proceedings, has been held in the Etzion detention facility since his arrest on 30 September, 2007.

Petitioner 1's affidavit is attached as appendix **p/6**.

10. Petitioner 2, an administrative detainee, is held in the Etzion detention facility since his arrest on 30 September, 2007.

Petitioner 2's affidavit is attached **p/7**.

11. Petitioner 3, detained until the end of the proceedings, has been held in the Etzion detention facility since his arrest on 30 September, 2007.

Petitioner 3's affidavit is attached as appendix **p/8**.

12. Petitioner 4, detained until the end of the proceedings, has been held in the Etzion detention facility since his arrest on 1 October, 2007.

Petitioner 4's affidavit is attached as appendix **p/9**.

13. Petitioner 5, detained until the end of the proceedings, has been held in the Etzion detention facility since his arrest on 3 October, 2007.

Petitioner 4's affidavit is attached as appendix **p/10**.

14. Petitioner 6, detained until the end of the proceedings, has been held in the Etzion detention facility since his arrest on 8 October, 2007.

Petitioner 6's affidavit is attached as appendix **p/11**.

15. Petitioner 7, detained until the end of the proceedings, has been held in the Etzion detention facility since his arrest on 1 October, 2007.

Petitioner 7's affidavit is attached as appendix **p/12**.

16. Petitioner 8, whose detention was extended by the judge, has been held in the Samaria detention facility ever since his arrest on 20 September, 2007.

Petitioner 8's affidavit is attached as appendix **p/13**.

17. Petitioner 9, an administrative detainee, is held in the Etzion detention facility since his arrest on 20 September, 2007.

Petitioner 9's affidavit is attached **p/14**.

18. Petitioner 10, an administrative detainee, is held in the Etzion detention facility since his arrest on 20 September, 2007.

Petitioner 10's affidavit is attached **p/15**.

19. Petitioner 11, whose detention was extended by the judge, has been held in the Samaria detention facility ever since his arrest on 20 September, 2007.

Petitioner 11's affidavit is attached as appendix **p/16**.

20. Petitioner 12, whose detention was extended by the judge, has been held in the Samaria detention facility ever since his arrest on 20 September, 2007.

Petitioner 12's affidavit is attached as appendix **p/17**.

21. Petitioner 13, an administrative detainee, is held in the Samaria detention facility since his arrest on 20 September, 2007.

Petitioner 13's affidavit is attached **p/18**.

22. Petitioner 14, whose detention was extended by the judge, has been held in the Samaria detention facility ever since his arrest on 20 September, 2007.

Petitioner 14's affidavit is attached as appendix **p/19**.

23. Petitioner 15, detained until the end of the proceedings, has been held in the Samaria detention facility since his arrest on 21 September, 2007.

Petitioner 15's affidavit is attached as appendix **p/20**.

24. Petitioner 16, detained until the end of the proceedings, has been held in the Samaria detention facility since his arrest on 25 September, 2007.

Petitioner 16's affidavit is attached as appendix **p/21**.

25. Petitioner 17 (hereinafter **HaMoked** or **HaMoked: Center for the Defence of the Individual**) is a registered non profit organization, which operates as a human rights organization, which aims to assist residents of the territories whose rights have been violated.

26. Respondent 1 occupies the territories of the West Bank under belligerent occupation. It detained the petitioners, holds them under its custody and is responsible for the realization of their rights as detainees. This, in accordance with international humanitarian law, international human rights law, and Israeli constitutional and administrative law.

27. Respondent 2 is the commander of the Etzion holding facility. He holds petitioners 1-6 under his custody and is responsible for the realization of their rights in accordance with the law. Respondent 3 is the commander of the Samaria

holding facility. He holds petitioners 7-16 under his custody and is responsible for the realization of their rights in accordance with the law.

28. Respondent 4 is the national prison authority which maintains and manages prisons across Israel. This authority must allocate places for detainees from the territories and must receive them under its custody after transferring them from the Etzion and Samaria temporary holding facilities.

Exhaustion of Proceedings

29. On 15 April, 2007 HaMoked: Center for the Defence of the Individual approached the Headquarters of the Chief Military Police Officer, in light of the ever lengthening periods of stay of detainees in temporary facilities, wishing to know what the maximum time period was for holding detainees at the Etzion and Samaria facilities and what was being done in order to avoid a period of stay for detainees which exceeds this time.

A copy of the letter to the Department Head of Imprisonments dated 15 April, 2007 is attached as appendix **p/ 22**.

30. On 22 April, 2007 a response was provided by the Military Police Central Command, which stated that until October 2006 the Ofer holding facility was under the IDF's responsibility and any detainee who stayed in the temporary holding facility for over 21 days was transferred to the Ofer prison. After Ofer prison was transferred to the Israel Prison Services (IPS), the transfer of a detainee was done with the coordination of the Control Center of the IPS. It is also noted that the convention between the IDF and the IPS determines that any detainee who stays longer than 8 days in a divisional incarceration facility shall be transferred to an IPS prison facility but in practice they receive a negative answer from the IPS with regard to the matter of imprisonment places.

A copy of the military police's response dated 22 April, 2007 is attached as appendix **p/23**.

31. On 2 September, 2007 HaMoked: Center for the Defence of the Individual approached the Military Police Central Command with regard to 13 detainees from the Samaria temporary holding facilities, who have been held in that facility for more than 21 days and requested that they act immediately to transfer them to an orderly detention facility where they could realize their rights to which they are entitled. After this application the detainees were transferred to IPS facilities.

A copy of HaMoked's application dated 2 September, 2007 is attached as appendix p/24.

32. On 15 October, 2007 HaMoked: Center for the Defence of the Individual approached the Military Police Central Command with regard to 18 detainees from the Samaria temporary holding facilities, which have been held in that facility for more than 21 days and requested that they act immediately to transfer them to an orderly detention facility where they could realize their rights.

A copy of HaMoked's application dated 15 October, 2007 is attached as appendix p/25.

33. On 25 October, 2007 HaMoked: Center for the Defence of the Individual approached the Military Police Central Command with regard to 18 detainees from the Etzion holding facilities, who have been held in that facility for more than 21 days and requested that they act immediately to transfer them to an orderly detention facility where they could realize their rights.

A copy of HaMoked's application dated 25 October, 2007 is attached as appendix p/26.

34. No response whatsoever was received.

Detention conditions in the Etzion holding facility

35. A description of the detention conditions are based on the affidavit made by Mr. _____ Mejahad on 22 October, 2007 in front of an attorney acting on behalf of HaMoked: Center for the Defence of the Individual. Mr. Mejahad was detained in a facility from 30 September, 2007 until 25 October, 2007, after which he was transferred to the Ofer prison.

Mr. Mejahad's affidavit dated 22 October, 2007 is attached as appendix p/27.

36. In this facility there are six cells. Two large cells (approximately 3 x 5 meters) where 12 detainees are held and four smaller cells (approximately 3 x 3 meters) where 6 detainees are held. The living space for each detainee is very small. On 22 October, 2007 the facility contained 46 detainees.
37. In each cell there is a small window (approximately 30 x 70 cm) whose exterior side is covered by a metal grid which blocks the light from entering.
38. The detainees sleep on mattresses that are 2cm thick, and which have been placed on the floor.

39. There is no hot water and the detainees wash themselves in cold water. There is a shortage of toilet paper and cleaning detergents. There is no supply of soap or towels.
40. Going to the toilet is only permitted at certain times – during meal time and during the time when going out to the yard. At other times the detainees must relieve themselves in bottles.
41. The detainees are locked up in their rooms from 22:00 in the evening until 8:00 in the morning.
42. The detainees do not receive any clothing that they may change into. They only receive these from Red Cross representatives, if and when they visit the facilities.
43. A medic arrives once every two days. The doctor arrives, if at all, only during emergencies.
44. The food is minimal and does not satisfy. The detainees' requests to receive more food are not answered.
45. Any time one is taken out of the facility (to be investigated by the general Security Service (GSS), the police, or the court) it is done in a humiliating and insulting manner, with legs tightly cuffed together, sometimes blindfolded and sometimes while being shoved.
46. The detainees do not receive family visits.
47. The detainees have no means by which they may pass their time – there is no television, radio, newspapers, or books.

Detention conditions in the Etzion holding facility

48. A description of the detention conditions are based on the affidavit made by petitioner 7 on 23 October, 2007 in front of an attorney acting on behalf of HaMoked: Center for the Defence of the Individual. Petitioner 7 was detained in a facility from 17 September, 2007, meaning a period of more than 40 days.
49. At the facility there are 12 cells, approximately the size of 3 x 3 meters. Each cell holds six or seven detainees. The living space for each detainee is tiny. On 23 October, 2007 there were 76 detainees.
50. Each cell has one window approximately the size of 80 x 40 cm.
51. There is a shortage of toilet paper, soap and detergents. There is no provision of clothes and towels.

52. The detainees go out to the courtyard 3 times a day.
53. The food is not of sufficient volume.
54. The soldier's act in a degrading manner towards the detainees.
55. The detainee's requests for a doctor remain unanswered. Only a medic comes to the place and he hands out a paracetamol drug to anyone who complains.
56. There are no family visits to the facility and there is no possibility of receiving or sending letters.
57. The detainees have no access to television, radio, newspapers, or any other means of passing the time.
58. The toilets are substandard and sewage water drips into the courtyard.
59. The food that the petitioners receive is insufficient, both in its quantity and its quality.

The legal argumentation

60. The law that applies to the Etzion and Samaria facilities which are situated in the territories is the relevant provisions of security legislation, international humanitarian and customary law, and the principles of Israeli constitutional and administrative law, as has been determined by the Supreme Court's judgments.
61. The petitioners argue that these principles are frequently violated in the Samaria and Etzion temporary holding facilities, while harming the rights and dignity of the detainees held there. Therefore, and at the very least, detainees should not be held there for more than a few days.
62. Imprisonment conditions in the territories are first and foremost laid down in the Incarceration Facility Operation (West Bank) Order (No. 29) 5727-1967 (hereinafter, the "**Imprisonment Order**"). This Order determines the provisions for imprisonment conditions in the West Bank (HCJ 3278/02 **HaMoked: Center for the Defence of the Individual v. Commander of the IDF Forces in the West Bank** *Piskei Din* 57(1) 385, paragraph 22), (hereinafter : "**Center for the Defence of the Individual Case**")
63. The relevant provisions in the Imprisonment Order for our case are:

Section 4 determines that prisoners will be given food sufficient to ensure the preservation of their health.

Section 9 determines that prisoners shall be permitted to send and receive letters and postcards, and shall be permitted to receive personal parcels or packages of food, clothing, medical supplies, books, and religious requirements.

Section 12a determines that a prisoner shall be allowed to receive a visit from a family member.

64. These provisions are being systematically violated at the Etzion and Samaria detention facilities. The prisoners do not receive sufficient food both quantitatively and qualitatively, they do not receive suitable medical care, they do not receive or send mail, they have no supply of books, religious trappings etc., and they do not receive family visits.
65. The Administrative Detention Regulations (holding conditions in administrative detention) are also relevant to our case, since there are administrative prisoners in the detention facilities, including petitioners 2, 9, and 10. The regulations that are detailed above are systematically being violated in the Etzion and Samaria detention facilities:

Section 4(4) determines that a prisoner held in a military facility shall wear clothes that have been issued to him by the commander.

Section 6 determines that a prisoner will be given a medical examination once a month by a physician appointed by the commander, as well as any other time where there is a need and the detainee shall be entitled to receive medical treatment and medical equipment as is required from his health condition.

Section 8 determines that a prisoner is entitled to receive cleaning and washing utensils that are required for his use and is entitled to reading material such as newspapers and books as shall be determined by the commander.

Section 11 determines that a prisoner shall be allowed to receive visitors.

Section 14(c) determines that a prisoner shall be allowed to send... four letters and four postcards by mail every month.

Section 14(f) determines that a prisoner shall be allowed to receive letters sent to him from outside his place of detention.

66. In addition to security legislation, the respondents are obligated to abide by the provisions and principles of customary international law (**The Center for the Defence of the Individual case**, paragraph 23) and particularly the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of

War, 1949 (hereinafter: the “**Geneva Convention**”) and the Standard Minimum Rules for the Treatment of Prisoners which was adopted by the United Nations in 1955 and was most recently ratified in 1977 (hereinafter: the “**Minimum Rules**”).

67. The conditions of the prisoner in the Etzion and Samaria holding facilities do not withstand the standards that are determined by international law. So that with regard to the provisions dealing with the **residence and hygienic and living conditions** of the prisoners (section 9 – 11, 15- 16 of the Minimum Rules, section 85 of the Geneva Convention), with the **right to clean clothing and bed sheets** (section 17-19 of the Minimum Rules, section 90 of the Geneva Convention) with the **right to a shower and toilets** (section 12, 13 of the Minimum Rules, section 85 of the Geneva Convention) **access to food** (section 20 of the minimum rules , section 87, 89 of the Geneva Convention) **medical treatment** (section 22, 24-26 of the minimum rules, section 91, 92 of the Geneva Convention), **family visits and the receipt of mail** (section 37 of the Minimum Rules, section 107, 116 of the Geneva Convention) **a link to the outside world, education, entertainment and sport** (section 21, 39-40 of the Minimum Rules, section 93-94 of the Geneva Convention).
68. In addition to the security legislation and to international law, imprisonment conditions at the Etzion and Samaria holding facilities must also comply with the general principles of administrative law, by which every Israeli soldier is bound. According to these principles the army must act, among other things with reasonableness and proportionality, while finding a suitable balance between freedom of the individual and the needs of the general public (**The Center for the Defence of the Individual case**, paragraph 23).
69. And thus wrote the then Chief Justice Aaron Barak, in **The Center for the Defence of the Individual case**:

Indeed detention, by its very nature demands the negation of freedom. Nevertheless, it is not enough to justify, by its very nature, harm to human dignity. It is possible to perform a detention and to ensure the security of the State and the welfare of the public in a way that maintains the human dignity of the prisoner. Prison cell space is not a cage for crowding wild animals together. Even those suspected of the worst terrorist acts are entitled to detention which is on a

minimum humanitarian level, which ensures basic humanitarian needs. We ourselves would not be human if we did not ensure a humanitarian level for prisoners under our custody. This is the duty of a regional commander according to international law, and this is also his duty per the fundamental principles of our own administrative law. This is a genuine Israeli obligation in accordance with its Jewish-humanitarian and democratic nature (*ibid.* paragraph 24).

70. Already in the month of December, 2002 the then Chief Justice Barak said that one should do everything to preserve the minimal demands for prison conditions, and this was not being done when detaining people in the temporary facilities, and at the same time violating the provisions of the Imprisonment Order, the principles of international law which apply to the region, and the fundamental principles of Israeli administrative law (*ibid.* paragraph 26). It appears that these words have been forgotten completely by the respondents.

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 respondents' reply to make the order absolute, and to order the respondent to pay the petitioners' costs and attorney fees.

29 October 2007

(T.S. 52738)

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