

Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **HaMoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact site@hamoked.org.il**

At the Supreme Court
Sitting as the High Court of Justice

HCJ 4884/02

In the matter of:

1. _____ 'Ajuri
(ID No. _____)
2. _____ 'Issa
3. _____ Abu al-'Ein
(ID No. _____)
4. _____ Mateir
(ID No. _____)
5. **HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger**

All represented by counsel, Adv. Tarek Ibrahim (Lic. No. 31081) and/or Yossi Wolfson (Lic. No. 26174) and/or Hisham Shabaita (Lic. No. 17362) and/or Adi Landau (Lic. No. 29189) and/or Tamir Blank (Lic. No. 30016) Of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

**Commander of the Israeli Military Forces in the West
Bank**

Represented by the State Attorney's Office,
Ministry of Justice, Jerusalem

The Respondent

Petition for Writ of Habeas Corpus

A petition for an *order nisi* is hereby filed which is directed at the respondent ordering it to appear and show cause why he does not notify the families of petitioners 1-4 what happened to petitioners 1-4, who were detained by Israeli security forces: if they are being held by him or by anyone acting on his behalf – where they are being held and pursuant to which law; and if they were released or transferred to another

agency – when, where, to whom, and what he knows about their current location. To the extent that the petitioner is being unlawfully held by an Israeli authority, the court is requested to order his release.

Request for Urgent Hearing

This petition concerns detainees who were detained by soldiers or other Israeli security forces while operating in the West Bank. Since their detention their whereabouts are unknown. Petitioner 5's attempts to locate them are unsuccessful. The family's uncertainty, concern and anxiety grow with the passage of time and no answers are provided as to their whereabouts. If the petitioners are still in the hands of state authorities, the families are entitled, by law, to know *immediately* where they are being held and to appoint an attorney to represent them in the detention proceedings. If they are no longer in state hands, the state must *urgently* provide any information that will assist in locating and protecting them, if necessary.

Therefore, the honorable court is requested to schedule an urgent hearing in the petition, in view of its nature and urgency.

The grounds for the petition are as follows:

Background

1. From March 29, 2002 the IDF has been conducting an intensive military operation in the West Bank areas. Over the course of the operation the IDF has detained thousands of Palestinian residents. The respondent did not make preparations in advance for such massive detentions, and during the first week of the operations the systems which should have provided information to the families of their sons' whereabouts, have failed. On April 4, 2002 a petition (HCJ 2892/02) was filed to this honorable court by petitioner 5, in which it has requested that efficient arrangements be enforced by the respondent, which would secure delivery of information to the families of the detainees concerning the detention and the detainees' detention place. The petition was also filed on behalf of two detainees the location of whom was not known. Following the filing of the petition, commencing from April 6, 2002, the IDF reporting system regarding detainees has improved, including the computerized system. One of the detainees on whose behalf the petition was filed, was located by the respondent, whereas the other detainee was located by petitioner 5 in a hospital in Jerusalem where he was placed under guard. Under these circumstances the honorable court has rejected the petition in a hearing which was held on April 14, 2002, without derogating from the right of petitioner 5 to apply to the court again, if and to the extent a cause therefore may arise.

Attached:

A copy of the petition in HCJ 2892/02 (without its exhibits) is attached and marked **P/1**;

A copy of respondent's notice in the above HCJ is attached and marked **P/2**;

A copy of petitioners' notice in the above HCJ is attached and marked **P/3**;

2. On April 16, 2002, advocate Yossi Wolfson wrote on behalf of petitioner 5, to the HCJ department at the state attorney's office. In his letter advocate Wolfson specified a number of problems which still existed in the location and reporting system of detainees. The letter indicates that the control center at the headquarters of the Chief Military Police Officer, which should gather the information and transfer it to organizations and attorneys, acts with great diligence to transfer the information, however, the information which the control center receives is partial, inaccurate and not always updated.

A copy of advocate Wolfson's letter is attached and marked **P/4**;

3. A response to this letter has not yet been received. Nevertheless, the control center has commenced (after the letter was sent to it) to transfer information which also concerns injured Palestinians who were brought by the respondent to Israeli hospitals for hospitalization purposes, as required in section 5(d) of the letter. Other problems were not solved. The control center does not have information of the whereabouts of many detainees. With respect to other detainees, the information continues to turn out, from time to time, as incorrect, which puts in doubt the credibility of the information provided with respect to all detainees.

Petitioners' Matter

4. Petitioner 1, 34 years old and a resident of the 'Askar refugee camp, was arrested in her home on June 4, 2002. On June 6, 2002 a response was received from the Military Police control center that she has not been located by them. The family has heard nothing from her.
5. Petitioner 2, 22 years old, a resident of Dura, Hebron, has neither an identification number nor a passport since he and his family have entered the territory of the Palestinian Authority from Jordan in 1996 when he was a minor (he accompanied his mother and entered under her name) and an identification card has not been issued to him. He was arrested in his home on May 24, 2002. On June 2, 2002 and on June 4, 2002 a response was received from the Military Police control center that he has not been located by them. The family has heard nothing from him.
6. Petitioner 3, 26 years old, a resident of 'Anabta – Tulkarm, was detained on June 1, 2002 together with his friend in 'Anabta while they were driving a car. His friend was released after a while whereas petitioner 3 has not been released. On June 4, 2002 and June 5, 2002 a response was received from the Military Police control center that he has not been located by them. The family has heard nothing from him.
7. Petitioner 4, 22 years old, a resident of the Qalandiya refugee camp, was detained in the past and released on May 9, 2002. On May 16, 2002 he left his home, and has disappeared without a trace. On May 20, 2002 a response was received from the Military Police control center that he was held in the Abu Kabir detention facility. On May 28, 2002 a response was received from the control center that he was held in the Shata prison, but an inquiry made by petitioner 5 with the Shata prison indicated that this information was outdated and that according to the records he had been released from the Shata prison on May 9, 2002. On May 29, 2002 a response was received from the control center that he was not located by them. On June 2, 2002 a response was received from the control center that he was held in the Shata prison but again this information proved to be outdated. On June 4, 2002 and June 5, 2002 a response was received from the control center that he has not been located by them. The family has heard nothing from him.
8. Petitioner 5 is a human rights organization which assists Palestinian residents of the Occupied Territories whose rights were violated by the respondent. Its activities involve, *inter alia*, providing assistance in locating detainees detained by Israeli security forces.

Legal Argument

9. The right to be notified of a detention of an individual and of his whereabouts cannot be overstated. This is a fundamental right - both of the detainee and of his family. It constitutes a

part of the fundamental right to human dignity. A regime that does not strictly enforce it, but rather conceals persons in its custody from their relatives for substantial periods of time acts cruelly and severely injures the very humanity of the detainee and his family. As stated by Vice-President, M. Elon in H CJ 670/89 **Odeh et al. v. Commander of IDF Forces in Judea and Samaria**, IsrSC 43(4) 515, 517:

"The obligation to give such notification stems from the fundamental right afforded to a person who has been lawfully detained by the competent authorities, to have these authorities inform his relatives of his detention, so that they know what happened to their detained relative and how they can provide him with the necessary assistance he requires in order to protect his liberty. This is a natural right, deriving from human dignity and general principles of justice, and is afforded both to the detainee himself and to his relatives".

10. This fundamental right is heightened under the current circumstances, when many people are missing and their families do not know whether they are safe and sound but detained by the respondent, or whether they were injured or even killed in the fighting which took place in the heart of the civilian cities. The right is further heightened in view of the fact that the detainees include people who are not involved in any belligerent activity (probably most of the detainees), who were arrested only for the purpose of sorting and locating, out of all detainees, the ones against whom charges exist (paragraphs 8 and 9 of P/2).
11. The obligation of the appropriate authorities to provide the detainee and his family members such information stems from this fundamental right. This obligation is also entrenched in the law and case law. Section 78A(b) of the Order Regarding Defense Regulations (Amendment No. 53) (Judea and Samaria) (No. 1220), 5748-1988, which amended the Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730-1970, states that:

"Where a person is detained, notification of his arrest and whereabouts shall be given without delay to his relative, unless the detainee requests that such notification not be given." (all emphases were added – T.I.)

In H CJ 6757/95 **Hirbawi et al. v. Commander of IDF Forces in Judea and Samaria**, (reported in TakSC 96(1), 103), the honorable court gave the effect of a judgment to an arrangement reached by the parties, according to which:

"a) Upon the detention of a person who is a resident of the Area, notification of his detention and place of detention will be delivered without delay by telephone to a telephone number provided to the detaining official by the detainee.

The detaining official will give such telephone notification, and will record, in a form prepared for this purpose, the details of the notification he has given and the details of the person who received the notification.

In the event that the detainee so requests, notification by telephone will also be given to an attorney whose name and details will be provided by the detainee. The detaining official will inform the detainee of his above right.

Where the detainee requests that notification by telephone or otherwise not be given, the request shall be recorded on the form.

b) The IDF control center (be it the control center or another body) will receive from all bodies (the IDF, the Israel Police, the Israel Prison Service) updated information regarding the detention and place of detention of a detainee, once daily, so that the detainee may be located in response to a written request from an external person or body.

c) The IDF control center will provide details from said information in response to written requests submitted by public organizations dealing with such matters and/or in response to written requests submitted by counsel to the detainee or his family.

Following delivery of a written request, the requesting party may obtain the information by telephone.

d) IDF officials will check with officials of the Palestinian Authority the possibility of providing said information to the District Coordination Office (D.C.O.) too, so that said information may also be delivered by them.”

12. Thus, the authority which detains a person who is a resident of the Area is obligated to provide the detainee's family a notification, either by telephone or otherwise, of his detention and whereabouts. In support of this obligation, a mechanism was established to enable the families to turn to organizations such as petitioner 5 and attorneys, in order to receive updated information regarding the place of detention of their loved ones through the IDF Control Center.
13. There is also no dispute that the state is obligated to assist in the location of a detainee, to the extent it has information that will enable to find out what happened to him. The most fundamental rights of a person to liberty, life and completeness of the body are at stake here. The rights to life and completeness of the body have a special constitutional status, since the state is obligated, pursuant to the Basic Law: Human Dignity and Liberty, not only to refrain from violating them, but rather, to actively protect them.
14. When a person has last been seen under the state's custody, these obligations become even more important. A democratic state can not accept the fact that people are detained by it and disappear without a trace.
15. Due to its nature, this petition is not supported by an affidavit and power of attorney given by the petitioners, with the exclusion of an affidavit and power of attorney given on behalf of petitioner 5 relating to the receipt of information regarding the petitioners in its office and to the actions that it has taken concerning this matter and the 'Background' part of this petition.

For the above reasons, the honorable court is requested to urgently issue a **Habias Corpus** order as requested in the beginning of this petition, and after receiving respondent's reply, to make the order absolute, and to order the respondent to pay trial costs and attorneys' fees.

Jerusalem, June 6, 2002

Tarek Ibrahim, Adv.
Counsel to the Petitioners