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**At the Supreme Court**  
**Sitting as the High Court of Justice**

**HCJ 5226/14**

- In the matter of:
1. \_\_\_\_\_ **Abu Rida**, ID No. \_\_\_\_\_, from Khuza'ah
  2. \_\_\_\_\_ **al-Aqr'a**, ID No. \_\_\_\_\_, from Khuza'ah
  3. \_\_\_\_\_ **al- Qa'id**, ID No. \_\_\_\_\_, from Abassan
  4. \_\_\_\_\_ **Abu a-Taima**, ID No. \_\_\_\_\_, from al-Wasta
  5. \_\_\_\_\_ **al-Aqr'a**, ID No. \_\_\_\_\_, from Khuza'ah
  6. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger**, A.R. 580163517
  7. **Physicians for Human Rights – Israel**, R.A. 580142214

all represented by counsel, Adv. Daniel Shenhar (Lic. No. 41065) and/or Sigi Ben Ari (Lic. No. 37566) and/or Hava Matras-Irron (Lic. No. 35174) and/or Noa Diamond (Lic. No. 54665) and/or Benjaim Estejriba (Lic. No. 58088) and/or Bilal Sbeihat (Lic. No. 49838) and/or Tal Steiner (Lic. No. 62448) and/or Anat Gonen (Lic. No. 28359) and/or Abir Joubran-Dakwar (Lic. No. 44346)

Of HaMoked Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger  
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**The Petitioners**

v.

1. **Israel Defense Forces**
2. **Chief Military Police Officer**
3. **Israel Prison Service Commissioner**
4. **West Bank Military Commander**  
represented by the State Attorney's Office  
29 Salah a-Din St., Jerusalem , 91010

**The Respondent**

## Petition for a writ of Habeas Corpus

A petition for a writ of Habeas Corpus is hereby filed which is directed at the Respondents ordering them to appear and show cause why:

- a. Respondent 1 should not notify the relatives of Petitioners 1 – 5 (hereinafter: **the Petitioners**) what happened to the Petitioners who went missing during the fighting in Gaza on 25 and 26 July and may have been detained by Israeli security forces, and whose present whereabouts are unknown, whether it is holding or whether anyone else is holding them on its behalf, where they are being held and pursuant to what law, and, if released or transferred to another body – when, where, to whom and what it knows about their current whereabouts. Inasmuch as the Petitioners are being unlawfully held by an Israeli authority, the Honorable Court is requested to order their release.
- b. Respondent 2 – why he does not maintain updated information on the detention and whereabouts of each detained resident of the Gaza Strip who has been detained during the fighting in the Gaza Strip and is held by any state authority.
- c. Respondents 3 and 4 – if the Petitioners are held by any of them – why they should not record, as required by law, the place of detention of the detainees in real time.

## Request for Urgent Hearing

**The Honorable Court is requested to schedule an urgent hearing of the petition.**

This petition concerns the most fundamental right of every detainee detained by Israeli soldiers or other Israeli security forces, to have his detention and whereabouts known. This right is a condition for exercising the detainee's other rights - the right to legal counsel, the right to challenge the conditions of his detention, etc. The detainee's family also has the right to know what has happened to him and where he is being held.

The law prescribes that notification of the place of detention of a detainee shall be given to a person related to him **without delay**. No information was given to Petitioners' family since their disappearance. The family's uncertainty, concern, and anxiety grow with the passage of time. The passing time also frustrates – minute by minute – the exercise of the most fundamental rights of detainees who are in custody, unable to protect their interests by themselves.

If the Petitioners are still in the hands of state authorities, the families are entitled, by law, to be informed **immediately** of their whereabouts and to appoint counsel 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.

As the Gaza Strip is in a state of chaos, many families still do not know whether their loved ones have been incarcerated, become refugees or are buried under the rubble. Reliable information about the identity of the individuals detained by Israel would help alleviate some the anxiety and uncertainty felt by the families, quite aside from the fact that once information is provided about the detention and whereabouts of the Petitioners, it would be possible to appoint counsel to represent them in detention proceedings. Hence the urgency in obtaining the information.

In a number of petitions for writs of Habeas Corpus submitted to this Honorable Court by Petitioner 6, with respect to residents of the Occupied Palestinian Territories detained by Israeli soldiers or other security forces, the Court instructed the Respondent to respond **within 24 hours**. So, for example, in HCF 2878/13 **Nasser et al. v. IDF Commander in the West Bank**.

## **The Grounds for the Petition**

### **The Petitioners' Matter**

1. Petitioner 1 is 27 years old, a resident of the village of Khuza'ah, near Khan Yunis.
2. On the morning of July 27, 2014, the wife of Petitioner 1 contacted Petitioner 6 (hereinafter: **HaMoked**), asking for help in locating him, after she was told on July 23, 2014 by relatives (who were detained with him and later released) that he had been taken from his village by the soldiers of Respondent 1. Immediately after receiving the family's request, HaMoked contacted the control center operated by Respondent 2. **At the time of submission, no response has been received.**
3. On July 27, 2014, Petitioner 7 (hereinafter: **PHR**) received requests from the families of Petitioners 2-5. According to the relatives, Petitioner 2, from Khuza'ah, disappeared, and was likely detained on July 25, 2014; Petitioner 3, from Abasan, disappeared and was likely detained on July 26, 2014, Petitioner 4, from al-Wasta disappeared and was likely detained on July 26, 2014; Petitioner 5, an 80-year-old woman from Khuza'ah disappeared on July 25, 2014. PHR made inquiries with respect to Petitioners 2-5 both with the control center run by Respondent 2 and with the prison control center run by Respondent 3 on July 27, 2014. Respondent 3 responded that Petitioners 2-5 had not been located. Respondent 2 has not yet responded.
4. HaMoked is a human rights organization that provides assistance to Palestinians whose rights were violated by the Respondent. Its activities involve, inter alia, providing assistance in locating detainees detained by Israeli security forces.
5. PHR is a registered non-profit association of physicians and medical practitioners whose goal is to advance and protect health related human rights in areas controlled by the State of Israel. The association is often contacted by detainees and prisoners, searching for assistance in exercising their rights and improving their incarceration conditions and the medical care they receive.

## **The Legal Argument**

### **Notification of Place of Detention – Obligations of Respondent 1 and 2**

6. The right to be notified of an individual's detention and whereabouts cannot be overstated. This is a fundamental right - both of the detainee and of his family. It is 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 callously and severely injures the very humanity of the detainee and his family.
7. Section 53(A) of the Order regarding Security Provisions [Consolidated Version] (Judea and Samaria Area) (No. 1651) 5770 – 2009 states that:

**Where a person is arrested, notice of his arrest and whereabouts shall be given without delay to a person related to him**, unless the detainee requested that such notice not be given. (all emphases in the petition have been added – D. S.).

8. The aforesaid right to receive notification has also been recognized as a fundamental right in the jurisprudence of this Honorable Court. As stated by Vice-President, M. Elon in HCJ 670/89 **Odeh et al. v. Commander of IDF Forces in Judea and Samaria**, IsrSC 43(4) 515, p. 517:

The obligation to give such notification stems from the fundamental right a person who has been lawfully detained by the competent authorities has 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 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.**

9. In 1995, after the control center failed to fulfill its obligations, HaMoked filed a petition to the High Court of Justice (HCJ 6757/95 **Hirbawi et al. v. Commander of IDF Forces in Judea and Samaria**, (not reported, hereinafter: **Hirbawi**)). Within the framework of these proceedings, the Supreme Court gave the effect of a judgment to an arrangement reached by the parties, as follows:

- 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 a lawyer whose name and details will be provided by the detainee.** The detaining official will inform the detainee of his above right...

- b. **The IDF control center** (be it the control center or another body) **will receive from all bodies... 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.

10. In HCJ 8435/12, **Mahmoud Abu Sal v. Military Commander** (judgment dated August 22, 2013, hereinafter: **Abu Sal**), the Respondents (the same Respondents herein) said that work protocols at the control center have been revised to prevent situations in which detainees disappear. The new protocols are cited in Paragraph 4 of the Respondent's Response dated February 25, 2013:

**First**, it has been ordered that when a detainee has not been found to be in the custody of the IPS, the Israel Police or the command temporary holding facilities in the Judea and Samaria Area, inquiries will be made with the seven regional brigades in charge of the different sectors in the Judea and Samaria Area,. These brigades oversee the operation of the detaining military forces in the Judea and Samaria Area. Such inquiries will be made in order to ascertain whether the detainee had been detained by any of the regional brigades and has not yet been transferred to the agencies charged with holding detainees in the Judea and Samaria Area.

**Second**, following inquiries with the regional brigades, and if the detainee was not found to be held by one of them, inquiries will be made with military police officials in IDF commands (North, South and Central) to ascertain whether the detainee has been evacuated to a hospital in the sector overseen by one of the commands.

11. The Court made another determination in **Abu Sal**, expressed by Honorable Justice Arbel in Paragraph 7 of her opinion:

There is no doubt that the error that led to the “disappearance” of a detainee must be thoroughly investigated. **The State, having detained a person by law, must notify his relatives of the fact that he was detained and where he is held**, so that the family knows that their relative has been detained and where he is held and may provide him with the assistance necessary to protect his liberty (para. 17).

12. Thus, it is the duty of Respondent 1 to notify the detainee’s family of his detention and place of detention, whether by telephone or by any other means. It is the duty of Respondent 2 to maintain updated information concerning the detention and place of detention of each and every detainee. In support of this obligation, a mechanism was established to enable families to turn to organizations like HaMoked and PHR, as well as lawyers, in order to obtain updated information regarding the whereabouts of their loved ones through the control center.
13. The issue of detainee tracing and the functioning of the control center was also discussed in the decision of Honorable Registrar Boaz Okon in HCJ 9332/02 **Jarar v. Commander of IDF Forces**. In his decision, the Honorable Registrar writes:

The provision of information serves as a means of monitoring and control, but for a detainee, who, all of a sudden loses control of his life, it also has a humane significance. **The importance of the notification for the family whose relative disappeared "without explanation" cannot be overstated. Ensuring detention is public guarantees that the power to detain is not abused and prevents uncontrolled use of such power.** Indeed, the power of the state is immense, be its intentions as benevolent as they may be. Without notification, this power may go unchecked, even if its use is supported by security reasons. There are obvious risks attached to concessions or flexibility. Experience shows that excessive use of power, which is not uprooted promptly, creates a new reality. Power, unlike a boomerang, does not return once it is released. Therefore, the authority should exercise utmost diligence where the exercise of detention powers is

concerned. **This diligence requires immediate notification of the detention.**

14. Hence, the first two remedies sought herein, involving the Respondents' duty to give notification of the detention and whereabouts of a person and the duty of Respondent 2, through the control center, to maintain updated information concerning the detention and place of detention of each and every detainee held by any state authorities.

#### **Keeping Record of the Petitioners in the Place of Detention**

15. It is self-evident that each and every detainee has the right to have his place of detention clearly known to all. Recording the detainee's presence in the place of detention is essential for exercising his rights. Only this allows his family and counsel to check with officials in charge of the place of detention on his status, medical condition, detention conditions, if and when he can be visited, etc. Only this allows them to act to ensure his rights as a detainee are upheld. The right of a detainee to be present during legal proceedings against him also depends on proper registration at the place of detention.
16. The failure to keep proper record of a detainee in the place of detention severely infringes upon his and his family's fundamental rights. A state authority which fails to strictly comply with the requirement to keep record of a detainee in the place of detention and to provide updated information based on such records, does not fulfill its obligations and abuses its power.
17. The obligation to keep a proper record of detainees is mandated by statute both with respect to detainees held by Respondent 3 and detainees held by Respondent 4.

#### **Keeping Record of Detainees Held by Respondent 3**

18. Due to the utmost importance attributed to the requirement to a keep record of a detainee in his place of detention, this obligation was established in primary legislation. Section 4 of the Prison Ordinance (New Version) 5732-1971 provides that:

Upon admission of any person to prison, the chief warden shall have the prescribed particulars pertaining to such person recorded.

19. Chapter 5 of the Israel Prison Service Provisions (Section 5.06) provides:

**An updated and precise record shall be kept in prison with respect to each prisoner held therein...**

#### **Keeping Record of Detainees Held by Respondent 4**

20. The provisions concerning the obligation to keep record of detainees held by Respondent 4 are stricter and farther reaching than those applicable to detainees held by Respondent 3. Section 3A(2) of the National Headquarters Orders March 12, 2001 entitled "Handling Detainees in the Detention Facility" provides:

**A person shall not be held in a detention facility before the person in charge of the investigation or the detention notifies his family** of the detention, and before an officer interviews him and advises him of his right to contact a lawyer.

21. Hence, the third remedy sought herein, concerning drawing conclusions from the case at hand, **which is not the first case in which HaMoked has encountered a failure on the part of the Respondents to comply with the procedures set forth in the law**, and strict compliance with procedures that will prevent the disappearance of detainees, such as the Petitioners herein.

Due to its nature, this petition is not supported by an affidavit and power of attorney given by the Petitioners. Attached hereto is an affidavit and power of attorney given on behalf of HaMoked relating to the receipt of information regarding the Petitioners and to the actions HaMoked and PHR have taken in this matter.

**For the above reasons, the Honorable Court is requested to urgently issue an order nisi as sought, and after receiving Respondents' response, make the order absolute and order the Respondents to pay for trial costs and legal fees.**

Jerusalem, July 28, 2014

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Daniel Shenhar, Adv.  
Counsel for the Petitioners

(Our file, 83748)