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

**H CJ 3348/15**

In the matter of:

1. \_\_\_\_\_ **Badir, ID No. \_\_\_\_\_**
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA 580163517**

All represented by counsel, Adv. Nasser Odeh (Lic. No. 68398) and/or Bilal Sbihat (Lic. No. 49838) and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben Ari (Lic. No. 37566) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Abir Jubran-Dakawar (Lic. No. 44346)

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.

1. **Military Commander of the West Bank**
2. **Minister of Defense**
3. **State of Israel**

Represented by the State Attorney's Office, Ministry of Defense  
29 Salah a-Din Street, Jerusalem  
Tel: 02-6466590; Fax: 02-6466711

**The Respondents**

## Petition for *Order Nisi*

A petition for an *order nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause, why they should not hand over the body of the deceased, \_\_\_\_ Badir, the son of petitioner 1, to his family, for burial in a cemetery in the area in which they live, according to their creed and religion.

### The Factual Infrastructure

#### The Petition

1. This petition concerns respondents' failure to return to petitioner 1, for thirteen years, the body of her son, so as to eventually enable his family to bury it according to their tradition and religious beliefs, mourn his death and proceed with their lives.

#### The Parties

2. Petitioner 1 (hereinafter: the **petitioner**), born in 1954, is the mother of the deceased, \_\_\_\_ Badir, ID No. \_\_\_\_\_, who lost his life in May 2002, and whose body has been held, since then, by the respondents.
3. Petitioner 2 (hereinafter: **HaMoked**) is a registered not-for-profit association located in Jerusalem, which acts to promote the human rights of Palestinians in the Occupied Palestinian Territories (OPT).
4. Respondent 1, the military commander of the West Bank Area, holds the West Bank under belligerent occupation. He is in charge of the realization of the human rights of the residents of the occupied territory under his control according to humanitarian international law, international human rights law and Israeli constitutional and administrative law.
5. As is known, on November 29, 2012, the General Assembly of the United Nations decided to give Palestine a non-member observer state status in the United Nations (Resolution No. A/RES/67/19). It is clear that also after the resolution of the General Assembly the military commander continues to bear all duties and obligations imposed on him by international law, as the occupying power which controls the Area.
6. Respondents 2-3, the Minister of Defense and the State of Israel, are responsible for the establishment of the policy according to which the military commander acts in connection with the return of Palestinian bodies held in his possession to their families.

#### The Factual Background

7. \_\_\_\_ Badir, the son of petitioner 1, born in 1985, was killed in a terror attack in which he was involved in Rishon LeZion on May 22, 2002. Since then his body has been held by Israel (hereinafter: the **deceased**).
8. The family heard of his death through the media. They have never been contacted by anyone in connection with the return of the body.

9. On August 13, 2002, the military demolished the home of the deceased's family.
10. On July 3, 2002, MK Ahmed Tibi, wrote to the Minister of Defense, Mr. Binyamin Ben Eliezer, on behalf of the deceased's family, and requested that the body of their son, \_\_\_\_\_ Badir, would be returned to his family.
11. In August 2002, a reply was given by the Minister of Defense at that time – Mr. Binyamin Ben Eliezer, in which he advised that the body of the deceased has not yet been identified, and that following the request of MK Tibi, the Central Command was acting for the transfer of the body to the family, for burial.

A copy of the letter of the Minister of Defense dated August 2002 is attached and marked **P/1**.

12. More than twelve years have elapsed from the date of the first request concerning the return of the deceased's body, but contrary to the state's undertaking, his body has not yet been returned.
13. It should be noted that in May 2012, Israel transferred to the Palestinian Authority 91 Palestinian bodies that were held in its possession, as a gesture of good will, including bodies of Hamas members.
14. Moreover. During the first half of 2014, Israel returned 26 Palestinian bodies that were held in its possession to their families, following requests and petitions filed by HaMoked for the return of the bodies and their burial according to their tradition and religion.

### **Exhaustion of Remedies**

15. On March 2, 2014, HaMoked wrote to the office of the legal advisor of respondent 1, Colonel Doron Ben Barak, and requested to return the deceased's body to his family.

A copy of HaMoked's letter to the legal advisor of respondent 1 dated March 2, 2014, is attached and marked **P/2**.

16. One year passed from the HaMoked's first request - but no reply has been received thereto. In view of the above, on March 1, 2015, HaMoked turned again to the legal advisor of respondent 1, and requested again that the deceased's body would be returned to his family.

A copy of HaMoked's letter to the legal advisor of respondent 1 dated March 1, 2015, is attached and marked **P/3**.

17. About a month and a half passed from HaMoked's said letter – but no pertinent reply has been received thereto. In view of the above, on April 14, 2015, HaMoked wrote, for the third time to the legal advisor of respondent 1, Colonel Doron Ben Barak, and requested that the deceased's body would be returned to his family. HaMoked also requested to receive an answer without delay so that it would be able to consider its steps.

A copy of HaMoked's letter to the legal advisor of respondent 1 dated April 14, 2015, is attached and marked **P/4**.

18. No reply has been received. The petitioners have therefore no alternative but to turn to this honorable court.

### **The Humanitarian Argument – Until When?**

19. Petitioner 1, the deceased's mother, and his relatives, have been waiting for thirteen years to receive the body of their loved one, to pay their respects to their son and bury him according to their creed and religion.
20. Until when should they wait? What should be done to cause the respondents to satisfy said initial and fundamental need of the family to bury its son in a respectable and dignified manner?
21. Until when will the respondents continue to hold the body of petitioner's son, contrary to the undertaking of the Minister of Defense included in his letter of 2002 (the above mentioned **P/1**), in which he stated that the Central Command was acting for the transfer of the body to the family, for burial?
22. The following is an extract from petitioner's affidavit attached to this petition:

**My husband, Mr. Abed Rabu Badir, is blind and suffers from a severe illness. Six months ago the father had a stroke, as a result of which he became paralyzed. It affected his ability to speak and eat and he is being fed intravenously. He hopes to live to bury his young son.**

**Whenever other bodies are handed over I suffer great pain and remember my son whose body we have not been able to receive until this date. When we receive the body will have a respectable funeral and a mourning tent and we will then feel that our son was buried in a dignified manner according to Islamic tradition.**

**My son is dear to me. It is natural and it is the right of every mother to have the body of her son returned to her so that she would be able to bury him near her. I want to have a grave for my son which I will be able to visit every morning, to ease my prolonged pain. There is no mother in the world that would have wanted her son to be buried in a strange place with unknown numbers. It is a punishment for me and my family.**

(Unofficial translation of an affidavit from Arabic to Hebrew made by HaMoked's representative; S.G.)

### **The Legal Argument**

#### **Human Dignity, Respect for the Dead and Dignity of the Deceased's Family**

23. This honorable court said, with respect to the value of the dignity of the dead, as follows:

This value crosses oceans and continents, and was enshrined in different social, religious and legal traditions as part of the social ethos of both eastern and western world cultures.

(HCJ 52/06 **Al Aqsa Association for the Development of the Assets of the Muslim Waqf in the Land of Israel v. Simon Wiesenthal Center Museum Corp.**, published in Nevo, paragraph 135 of the judgment of the Honorable Justice Procaccia. hereinafter: **Al Aqsa**).

24. The Supreme Court reiterates that the constitutional right of human dignity consists of the dignity of the deceased person as well as the dignity of the deceased person's family, which are intertwined and inseparable:

The value of the dignity of a deceased person constitutes part of human dignity, and is afforded constitutional protection in our legal system. It merges with the value of human dignity of a person when alive, and constitutes an integral part thereof. It applies not only to the dignity of the deceased person himself but also projects on the dignity of his loved ones and family members. It relates to the public at large, whose obligation to protect this value characterizes its particular moral and ethical position (**Al Aqsa**, paragraph 156 of the judgment of the Honorable Justice Procaccia).

And it was further stated:

Human dignity is not limited to the dignity of a person during his lifetime. It also refers to dignity after death, and the dignity of his loved ones who cherish his memory in their hearts. This dignity is expressed, *inter alia*, by placing the gravestone, visiting the cemetery on memorial days and public ceremonies, and caring for the gravesite. It is the same relationship - at times rational and at times irrational - between the living and the dead, which establishes the human being within us, and which gives expression to the yearnings of the soul. It is the "hand" that the living extend to the dead. It is the external expression that reflects the internal relationship between the generations (CA 294/91 **GHSHA Burial Society "Jerusalem Community" v. Kastenbaum**, IsrSC 46(2) 464, page 523. Hereinafter: **Kastenbaum**).

In the same vein, the Deputy President, the late Justice Elon, stated:

It is, too, the case law, that human dignity in our matter means, first and foremost, the dignity of the deceased, namely, the express or assumed wish of the deceased, and the dignity of the living, namely, the wish of the family of the deceased, the persons he loved and those who loved him, who wish to respect the memory of the deceased (CA 1482/92, **A. Hagggar v. H. Hagggar et al.**, IsrSC 47 (2) 793, at pages 801-802).

25. This Honorable Court was presented more than once with the question concerning the right of the deceased's family to remember the deceased and respect him as they seem appropriate and bury him according to their religion and customs:

The relatives of the deceased have the right and liberty that the memory of their loved one be respected as they see fit, and that they be given the opportunity to express their feelings toward him as they deem appropriate. (**Kastenbaum**, paragraph 6 of the words of Justice Barak).

And it was also stated:

There is no dispute that every person has the right to honor, in a proper way, the memory of his loved ones who passed away, in accordance with his customs and traditions as long as it does not hurt the feelings or legitimate interests of others. It is also clear that "a cemetery is a place not

only for burial of the dead, but also for the expression of the love and respect that the living have for the dead..." (The words of Justice Etzioni in CA 280/71, **Gidon v. GHSHA Burial Society et al.**, IsrSC 27(1) 10, 23).

#### **Burial in a recognized cemetery according to the religion and tradition**

26. The great importance of having a tombstone placed for the deceased in a recognized cemetery, of conducting a burial ceremony and visiting the gravesite, is discussed in length by the Honorable Justice Procaccia in **Al Aqsa**:

...the burial ceremony, the gravesite and tombstone placed thereon, the memorial ceremonies and the ability to be with the deceased, also realize the interest of the family in cherishing the memory of the deceased, which forms part of their own dignity. Justice M. Cheshin wrote about the gravesite as follows: "A person has a right – his right during his lifetime and the right of his family members, relatives and friends and of the society at large after his death – to receive after his death a gravesite, a burial place and a tombstone on his grave. This is human dignity, the dignity of the dead, the dignity of the living who bears the dignity of the dead... a person's grave is a place where his loved ones and friends cherish his memory; a place where his family members, relatives and friends gather and remember him, mention his name, speak of him, respect him, love him... indeed it is a deep psychological need – a psychological need which we all share – that we do our best to respect the dead and his memory (The words of the Honorable Justice Procaccia, paragraph 149 and onwards).

27. The Honorable Justice Arbel also referred to this matter by saying:

The dignity of the dead forms part of the principle of human dignity... as such, its realization sometimes requires the infringement of other interests... the principle of respect for the dead, not only as a religious commandment but also a social norm and duty, also concerns the grant of the opportunity to the living – his relatives, descendants, friends and loved ones – to respect his memory and be with him in the place in which he was brought to a final resting place. It is an issue which involves special personal and 'emotional' sensitivity... (HCJ 4638/07 **Al-Aqsa Al-Mubarak Co. Ltd. v. Israel Electric Corp. et al.**, reported in Nevo, paragraph 1 of the words of the Honorable Justice Arbel).

#### **Even if the deceased is a despicable murderer his dignity and the dignity of his living relatives should not be violated**

28. In the context of upholding the rights of the deceased's family to bury and respect the deceased, the question who was deceased and what were his actions during his lifetime is not relevant.
29. The **Prohibition of Erecting Monuments in Memory of the Perpetrators of Terror Law, 5758-1998**, provides that the right to a grave and a tombstone may not be revoked, even if the deceased committed an act of terror. The law prohibits the erection of monuments in memory of perpetrators of terror and orders that any such monuments shall be removed. However, the provisions of the law do not apply to the grave and the tombstone placed thereon.

30. In this spirit, the Honorable Justice Cheshin draws a distinction between a memorial monument and a grave, in the judgment given by him in the petition which was filed by the family of the deceased Baruch Goldstein against the military commander who wanted to demolish the memorial monument which was erected around the grave:

Indeed, human dignity – the dignity of the living and the dignity of the dead – are fundamental principles in our legal system, and both the law and case law acknowledged – time and time again – the categorical obligation imposed on us to recognize them as valid and enforceable principles under applicable law. This applies to the Basic law: Human Dignity and Liberty as well as to case law... even the law itself acknowledges the dignity of the dead, by providing – explicitly – that a "memorial monument" will be removed and that a "memorial monument" does not include "the grave and the tombstone placed thereon". The law prohibits the erection of a monument in memory of a perpetrator of an act of terror – and provides that such a monument shall be removed, but it does not prohibit the erection of a grave and the placement of a tombstone on the grave. Is it a fundamental human right to have a monument-of-honor placed on a person's grave, to be remembered by a fancy monument? The members of the Knesset also referred to this issue - explicitly – in the discussion which took place in the Knesset. Thus, for instance, MK Ran Chen, who initiated the law, said the following when he introduced the bill to the Knesset (Knesset meeting dated March 25, 1997), and we have already read these things earlier: Chairman, Sir, I want it to be clear. I said it and I say it again: **each person, even a despicable murderer, deserves to have a grave, and every family of a murderer deserves to have a grave which it will be able to visit.** (HCJ 6195/98 **Goldstein v. GOC Central Command**, IsrSC 53(5) 317; Emphases added by the undersigned).

31. The Honorable Justice Beinisch also said the following in this context:

This prohibition (established in section 172 of the Penal Law regarding interference or violation of feelings in a place of worship or in a burial place – the undersigned) goes hand in hand with the concept concerning the importance of maintaining the dignity of the dead by securing a proper burial, which arises from additional enactments and provisions of our laws and from the judgments of this court... the position of the legislator is therefore that **the identity of the deceased and the nature of the actions committed by them during their lifetime do not grant permission to desecrate their graves and turn them into a no-man's land...** The right to condemn actions committed by the deceased during his lifetime and protest against them is a recognized right forming part of the freedom of speech afforded to all persons. **However, it should not be confused with the fundamental right for burial and for having the burial place respected which derives from human dignity and is afforded to each and every person whoever he may be** (CrimApp 3338/99 **Demian Pakowitz v. State of Israel**, IsrSC 53(5) 317, paragraph 16 of the judgment of the Honorable Justice Beinisch; emphases added by the undersigned).

### Dignity of the dead in International law

32. As to the obligation to respect the dead and his family under international law, it is sufficient to quote the words of the Honorable Justice Procaccia in **Al-Aqsa**:

Article 27 of the Fourth Geneva Convention, Convention IV Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, establishes the duty to protect the dignity of the local inhabitants. In its judgments, this court ruled that said provision applied not only to the protection of the dignity of the living but also to the dignity of the dead: "The premise is that the basic principle enshrined in Article 27 of the Fourth Geneva Convention, according to which the dignity of the local inhabitants must be protected, applies not only to the local inhabitants who are alive, but also to the dead... Human dignity is the dignity of the living and the dignity of the dead..." (HCJ 4764/04 **Physicians for Human Rights v. IDF Commander in Gaza**, IsrSC 58(5) 385 (2004), paragraph 27 of the judgment of the President (*emeritus*) Barak).

Article 30 of the Fourth Geneva Convention specifically addresses the dignity of the dead as follows: "The detaining authorities shall ensure that internees who die while interned are honorably buried, if possible according to the rites of the religion to which they belonged and that their graves are respected, properly maintained, and marked in such a way that they can always be recognized. The scholar Pictet wrote on this issue as follows: "Respect for the dead is one of the most ancient ideas of civilization/" (J.S. Pictet, Commentary IV Geneva Convention – Relative to the Protection of Civilian Persons in Time of War (1958), 506) (paragraph 1990 and onwards of her judgment).

### The Authority of the Military Commander and the manner by which it is exercised

33. Regulation 133(3) of the **Defence (Emergency) Regulations, 1945**, provides as follows:

Notwithstanding anything contained in any law, it shall be lawful for a Military Commander to order that the dead body of any person shall be buried in such place as the Military Commander may direct. The Military Commander may by such order direct to whom and at what hour said body shall be buried. Said order shall be full and sufficient authority for the burial of said body, and any person who contravenes or obstructs such order shall be guilty of an offence against these Regulations.

Regulation 4(6) of the **Defence (Emergency) Regulations, 1945**, confers upon the Military Commander the authority to change any order or directive given by virtue of the Regulations.

34. The principle of the return of bodies is well known to the respondents as indicated by section 42-44 of **General Staff Order No. 38.0109 – dead members of enemy armed forces – procedure for identification, handling of belongings, reporting and burial during combat**. According to said provisions, dead members of enemy armed forces should be handed over to the enemy armed forces. This principle should also apply to dead members of other entities, and not only to dead members of "enemy armed forces".

A copy of the relevant part of the General Staff Order No. 38.01.09 dead members of enemy armed forces – procedure for identification, handling of belongings, reporting and burial during combat – is attached and marked **P/5**.

35. The body of petitioner 1's son has been held by the respondents for thirteen whole years. The family members have neither a death certificate nor a grave. Such a severe violation of the dignity of the dead and the dignity of his family must be justified by weighty considerations. In the context of the Defence Regulations, security considerations and considerations pertaining to public order are concerned.
36. In HCJ 3933/92 **Barakeh v. GOC Central Command**, IsrSC 46(5) 1 (hereinafter: **Barakeh**) the court discusses the considerations that the military commander must take into account while establishing conditions regarding the burial of a Palestinian whose body is about to be returned to his family by Israel:

What is the normative framework within which the military commander should exercise his discretion? The military commander must take into account, on the one hand, considerations pertaining to human dignity. It is a twofold consideration which applies to the dignity of the deceased as well as to the dignity of his family. The proper and dignified burial of a deceased upholds the dignity of the dead as well as the dignity of the living (paragraph 11 of the judgment of the Honorable Justice Barak).

37. Thereafter the Honorable Justice Barak addresses the balancing which the military commander should make between human dignity and security considerations:

In a "head-on" collision between these contradicting considerations – the dignity of the dead and his family on the one hand, and security, order and public safety in the Area on the other – the considerations of security and order take precedence. This arises from the powers vested in the military commander of the Area. However, not every consideration of security and order can justify a limitation or violation of the dignity of the dead and his family. Indeed, proper balancing must be made between considerations pertaining to the dignity of the dead and his family on the one hand, and considerations pertaining to the security and order in the Area on the other. Said balancing acknowledges the superiority of the security consideration, but it establishes standards for situations in which such superiority actually takes place. Said balancing involves mainly two questions: firstly – what is the probability that security, peace and public order will be injured if the consideration concerning the dignity of the dead and his family is fully recognized; and secondly – what is the extent of the injury to security, peace and public order which justifies the limitation or restriction of the consideration pertaining to the dignity of the dead and his family.

38. In **Barakeh** the respondent presented a risk, based on past experience and intelligence information, of riots and violence, blockage of roads and collisions with IDF forces which could injure the security. The risk posed was of an immediate certainty, and the anticipated injury to security and public order was substantial, significant and material. On the other hand, the violation of the dignity of the dead and his family was not absolute: the burial of the dead was not prevented, the presence of the family members was not prevented and the funeral and burial were conducted according to the traditional rules. Under these circumstances the court decided that respondent's

decision, according to which the burial would take place at night, with the participation of the family members only, was reasonable and should not be interfered with.

39. The circumstances of the case at hand are different: in this case the violation of the dignity of the dead and his family members is absolute and extends over a very long period and the state does not raise any opposing security considerations.

### **Purposefulness and Proportionality**

40. All legal norms, including the Defence (Emergency) Regulations, 1945, should be examined and construed in light of the basic laws concerning human rights and the tests established in connection therewith:

Upon the enactment of the basic laws concerning human rights a material change took place in the Israeli legal field. Each legal plant in this field is affected by said change. It is the only way to obtain harmony and uniformity in Israeli law. The law is a system of connected vessels. A change in one of these vessels affects all other vessels. The basic laws affect the construction of old laws and new laws with no distinction. Indeed, any administrative discretion granted under the old law should be exercised in the spirit of the basic laws; any judicial discretion under the old law should be exercised in the spirit of the basic laws; and in general, the construction of all enacted norms should be inspired by the basic law (the Honorable Justice Barak in CrimFH 2316/95 **Ganimat v. State of Israel**, IsrSC 49(4) 589, page 653).

41. A violation of the dignity of the dead and his family members must comply with the conditions of the limitation clause:

Israeli jurisprudence recognizes the value of the respect for the dead as a constitutional right which deserves protection on different levels. The right for the dignity of the dead constitutes an integral part of the fundamental right for human dignity, which was constitutionally and statutorily enshrined in the Basic Law: Human Dignity and Liberty. However, the right for the dignity of the dead is not absolute, and its violation, be it by a governmental authority or by an act of an individual, must satisfy the conditions of the limitation clause so as to be valid. (**Al-Aqsa**, paragraph 187)

42. The purposefulness and proportionality tests apply also to the military commander who must satisfy them while acting according to the Defence Regulations:

The power granted by the Defence (Emergency) Regulations should be construed in the spirit of the provisions of the Basic Law: Human Dignity and Liberty... therefore, before the empowered person exercises the power vested in him under Regulation 119 of the Defence (Emergency) Regulations, he must strive to achieve a proper objective... the empowered person must "act in a manner which does not exceed that which is required". This is the test of proportionality. The means taken must rationally lead to the realization of the proper objective; the means taken to achieve the objective must violate the protected human right... to the least extent possible... the means taken must stand in proper relation to

the proper objective (see CA 6821/93, LCA 3363,1908/94 **United Mizrahi Bank Ltd. et al., v. Migdal, community village et al.**). This is the interpretive inspiration arising from the Basic Law (HCJFH 2161/96 **Sharif v. GOC Home Front Command**, IsrSC 50(4) 485, page 488, words of the Honorable President (*emeritus*) Barak).

43. Hence, the first question that should be asked within the framework of the proportionality tests is whether the respondent, who has been holding the body of petitioner's son for thirteen years, and who refrains from returning it to the family, satisfies the proper objective test.
44. Should the respondent argue that his continued holding of the body is required to achieve a political purpose related to the exertion of pressure on the Palestinian Authority, or obtaining its security cooperation, or other similar interests *vis-à-vis* the Authority, evidently it is not a proper objective.
45. The honorable court reiterated and emphasized in its judgments that the military commander **was not entitled to take into consideration the political considerations of his country** as well as its national, economic and social interests:

The considerations of the military commander concern securing his security interests in the Area, on the one hand, and securing the interests of the civil population in the Area, on the other. All of the above considerations are directed at the Area. The military commander is not entitled to take into consideration the national, economic, social interests of his country in as much as they do not affect his security interest in the Area or the interest of the local population. Even the needs of the army are its military needs rather than the national security needs in its broad sense... (HCJ 393/82 **Jamiat Iscan v. Military Commander**, IsrSC 37(4) 785, pages 794-795).

And as further stated by the Honorable President (*emeritus*) Barak:

The military commander of a territory held under belligerent occupation must balance between the needs of the army on the one hand, and the needs of the local inhabitants on the other. In the framework of this delicate balance, there is no room for an additional system of considerations involving political considerations...

(HCJ 2056/04 **Beit Sourik Village Council v. Government of Israel**, IsrSC 58(5) 807, page 830).

And see also HCJ 10356/02 **Hess v. The Military Commander** and HCJ 2150/07 **Head of Beit Sira Village Council v. Minister of Defense** (reported in Nevo).

46. For the purpose of continuing the discussion of the proportionality tests we assume that the objective for which the respondent acts, an objective which, as aforesaid, is unknown to the petitioners, is a proper objective.
47. However, even if the respondents had presented a proper objective, it would not have been sufficient to justify the severe injury caused to the petitioners. According to the proportionality tests, a rational connection must exist between the violation of the rights and said objective. It is also required that the infliction of a lesser injury will not suffice for the purpose of achieving the objective. In addition – respondent's decision must satisfy the proportionality test in its narrow

sense, namely, the benefit arising from the continued holding of the body by the respondent must be of proper proportion to the severe injury caused to petitioner's dignity.

48. It is hard to imagine that the severe and prolonged injury inflicted on the petitioners can indeed satisfy the above demands.

### **Conclusion**

49. When King Saul was killed in the Gilboa, he was decapitated by the Philistines who presented his head for show all over the country, while his body was put on the Beit Shean wall. The people of Yavesh-Gilad went to Beit Shean under the cover of night, took the body of Saul and the bodies of his sons and buried them.

50. King Saul went after David and tried to kill him more than once. Saul forced David to flee the country, hide in deserts, and Michal, David's wife, was given by him to another.

51. Nevertheless, we read in the book of Shmuel: "And David sent messengers unto the men of Yavesh-Gilad, and said unto them: 'Blessed be ye of the LORD, that ye have shown this kindness unto your lord, unto Saul, and have buried him. And now the LORD show kindness and truth unto you; and I also will requite you this kindness, because ye have done this thing.'" (2 Shmuel, chapter 2, 5-6).

52. The deceased acted as he acted. But revenge is not taken from a dead body. The deceased's family wishes to bury him. The respondents cannot prevent it from doing so.

53. In view of all of the above, the honorable court is requested to issue an order nisi as requested, and after hearing respondents' response, make it absolute. In addition the court is requested to order the respondents to pay petitioners' costs and attorney's fees.

May 14, 2015.

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Nasser Odeh, Advocate  
Counsel to the Petitioners

[File No. 81582]