At the Supreme Court in Jerusalem
Sitting as the High Court of Justice

HCJ 6757/95

In the matter of:

1. **A minor boy**
   resident of Hebron
2. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (Reg. Assoc.)**
3. **The Association for Civil Rights in Israel**

all represented by attorneys Eliahu Abram and/or Netta Ziv and/or Dan Yakir and/or Dana Alexander and/or Yehuda Ben-Dor and/or Hadas Tagri and/or Becky Cohen Keshet and/or Hassan Jabareen and/or Rinat Kitai, whose address for the purpose of service of court documents is The Association for Civil Rights in Israel, 29B Keren Hayesod Street, PO Box 8273, Jerusalem 91082, Tel. 02-243984, Fax. 02.248910

The Petitioners

v.

: **Commander of IDF Forces in Judea and Samaria**
at Central Command Headquarters, IDF

The Respondent

Petition for Writ of Habeas Corpus and for Order Nisi

A. A petition is hereby filed for habeas corpus, to order the Respondent to bring before this Honorable Court Petitioner 1 – whose whereabouts is unknown to his family, but is apparently being detained by the Respondent – such for the purpose of effectuating his release.

B. Furthermore, a petition is hereby filed for an order nisi, ordering the Respondent to appear and show cause:

1. Why he does not order that notification of the arrest and the place of detention of a detainee, detained pursuant to the defence legislation in the region of Judea and Samaria (hereinafter: the region), be provided by telephone to a relative of the detainee, in every case in which there is a

telephone number at which it is possible to transmit information to a relative of the detainee;

2. Why the Respondent does not institute efficient procedures that ensure that such notification is personally conveyed rapidly to a relative of the detainee, when notification cannot be given by telephone;

3. Why the Respondent does not order that a person detained pursuant to the defence legislation in the region will not be detained in a detention facility before the official responsible for the detention or the interrogation conveyed the aforesaid notification, either by telephone or by personal delivery;

4. Why the Respondent does not order that the aforesaid rapid notification be given by telephone also to the attorney whose name is given by the detainee;

5. Why the Respondent does not appoint an authority that is empowered to locate detainees and why he does not require it to inform Petitioners 2 and 3 and the attorneys about the arrest and place of detention of every detainee who is detained pursuant to the defence legislation in the region, regardless of the place of detention, within a reasonable time that shall not exceed four hours from the time that the Petitioners or the attorney make a request to the authority in the matter of the specific detainee.

The grounds for the petition are as follows:

1. This petition deals with the continuing failure of the Respondent and the security authorities operating on his behalf to provide relatives of detainees notification of the arrest and the place where the detainee is being held. The duty to provide notification without delay to a relative of the detainee is required by the defence legislation in the region. Its importance is undisputed. Nevertheless, the Respondent is not meeting this obligation, and he has refrained from correcting the fundamental flaws in the existing procedures about which Petitioners 2 and 3 have been warning the IDF authorities for ten months. As a result, detainees disappear from their families, who fail in their prolonged efforts to determine what befell them, whether or not they were arrested, and where they are being held.

   The case of Petitioner 1, a minor who disappeared after IDF soldiers took him from his home and is presumed missing for four days now, there being no possibility of locating him and providing him with counsel to defend him, is illustrative of dozens of cases that occur each month.

2. <u>Petitioner 1, his seizure, and his disappearance</u>

A. Petitioner 1, a minor born in 1978 and resident of Hebron, works in silver craft in his family's jewelry shop. He lives in the home of his parents, D. H. and M. H., in the city's Namra neighborhood.

B. On 26 October 1995, at 1:30 A.M., soldiers entered the house. With them was a person dressed in civilian clothes who introduced himself as Captain Jawda. Petitioner 1's brother was in the house at the time. After the males were removed from the house, Captain Jawda demanded that the youngest brother, Petitioner 1, be woken and taken from the house. When the Petitioner left the house, the soldiers ordered him to keep his hands over his head. He asked them why they were shouting. In response, about ten soldiers beat him with force and kicked him all over his body for about seven minutes. When the Petitioner collapsed onto the ground, the soldiers saw that he had apparently fainted, and they spilled water on him. Then the soldiers took Petitioner 1 away in an army vehicle, with his hands bound and dressed only in pajamas and slippers.

The soldiers and Captain Jawda did not inform the parents and siblings of Petitioner 1 whether or not they were detaining him, whether there were grounds for his detention and what the grounds were, where he was being taken, and where he would be held.

The relatives of Petitioner 1 fear that the soldiers' blows caused him injury to his face and front part of his body.

C. The house of Petitioner 1's family and the family's shop have telephones in working order, whose numbers Petitioner 1 knows well. Nobody called the family to inform the family that Petitioner 1 was being detained and where he was being held. As of the time of the filing of this petition, no information on the detention and whereabouts of the Petitioner has been given to the parents in another manner.

D. For three days, from 26 – 28 October, Petitioner 1's brother searched for him in the holding facility near the military administration building in Hebron. The soldiers at the gate told him to ask the police. At the police station, the police officers told him to check with the soldiers in the holding facility. When he returned to the holding facility, the soldier told him that Petitioner 1 was not there; he added that nothing was known about the person who was brought to the facility by the General Security Service.

E. On the morning of 29 October, contacted the offices of Petitioner 2 and requested assistance in locating his brother, Petitioner 1. As of the time of the filing of this petition, the staff of Petitioner 2 has been unable to locate Petitioner 1, as will be described in Section 6 below.

F. Another of Petitioner 1's brothers, M. B., went to the Civil Administration in Hebron at 3:00 P.M. on 29 October, and examined the lists of detainees posted there. The name of Petitioner 1 was not among the names.

The affidavit of Petitioner 1's brother confirming the said facts is attached hereto and marked P/1.

3. Case of disappearance of minor for six days

The case of Petitioner 1 is representative of many cases. The following is the chronology of events regarding a youth whom the Petitioners also intended to include as a petitioner in this petition. The youth was located on 30 October, six days after he was taken from his home, and before this petition was filed.

A. The youth, a minor, was born on 15 September 1978, and is a resident of Hebron. He had never been arrested or tried in the past. He installs carpets and curtains for a living. He lives in the home of his parents, M. A. M. and F. A. M..

B. At 11:30 P.M. on 24 October 1995, IDF soldiers, together with a person in civilian clothes who introduced himself as Captain Erez, took him from his parents' home. His parents and his brother, N. A. M., were in the house at the time. The soldiers and Captain Erez did not state, in the presence of the minor's parents, whether they were detaining the minor, whether they had a basis for detaining him and, if so, the said basis, where they were taking him, and where he would be held.

C. The minor's brother's shop, as well as the house of his sister, who lives near his parents, have telephones in working order. The minor knows these telephone numbers. Nobody called his brother or sister to inform the family that he was in detention and to tell them where he was being held. The youth's name was not on the lists of detainees at the Civil Administration, which his brother checked.

D. On 27 October 1995, at 10:00 A.M., the minor's brother called Petitioner 2 and requested its assistance in locating his brother. Staff members of Petitioner 2 immediately contacted the Central Command's control center

for detainees and provided details about the youth. It also sought to locate him through the Prisons Service and the national headquarters of the Israel Police Force. It took the Control Center three days, until 30 October, to reply that the youth was being held in the IDF's detention facility in Dahariya.

The affidavit of the youth's brother, A., supporting the above facts, is attached hereto and marked P/2.

4. Petitioner 2 and its actions to locate detainees

A. Petitioner 2, HaMoked: Center for the Defence of the Individual, is a non-profit association that assists residents of the region from its offices in East Jerusalem. Its purposes include assisting persons whose rights have been denied by state authorities, particularly those persons needing assistance in filing complaints with these authorities, and protecting their rights.

B. Since its founding, in 1989, Petitioner 2 has increasingly been involved in handling requests from residents of the region to locate their relatives who had been arrested or had disappeared, and the Respondent failed to provide information regarding their whereabouts. Attorneys and other organizations, among them Petitioner 3, request Petitioner 2 to locate for them persons from the region who have been detained. These requests are made because of Petitioner 2's expertise on this subject, and because of the special arrangements that have been established between it and IDF authorities, as set forth in Section 5 below.

C. Petitioner 2 receives dozens of requests weekly from residents of the Occupied Territories requesting its help in locating relatives who have been detained or who have disappeared. These requests entail the lion's share of requests that Petitioner 2 handles. The number of requests to locate individuals has grown yearly, and exceeds one thousand requests to locate residents of the region who have been detained in the first half of 1995.

D. Most of the requests to locate individuals are made to Petitioner 2 more than twenty-four hours following the arrest, and usually several days following the arrest or disappearance of the individual. Despite this, the IDF does not provide, in most cases, an immediate answer to the question of Petitioner 2 as to whether a particular individual is being detained and where he is being held. Petitioner 2's efforts entail sending inquiry after inquiry to the IDF and other authorities, and to detention facilities, until the detainee is located.

E. In expending its resources and personnel to locate detainees whose location is unknown, and to inform relatives about the arrest of their loved ones and the place where they are being held, Petitioner 2 fulfills the duty placed by law on the Respondent. Petitioner 2's activities in this area are necessary only because the Respondent has failed to meet the obligation imposed on him by the defence legislation.

5. Arrangement giving Petitioner 2 sole access to the Central Command's Control Center for Detainees

A. In light of the necessary role that Petitioner 2 plays for the military system, and to solve a pressing problem of thousands of residents of the Occupied Territories who are not notified of the detention of their relatives, an arrangement was reached between Petitioner 2 and the commander of the Central Command's Control Center for Detainees (hereinafter: the Control Center), which operates on behalf of the Respondent.

B. The arrangement is expressed in the exchange of correspondence of 11 and 15 November 1993 between Petitioner 2 and the commander of the Control Center. According to the arrangement, Control Center personnel are to provide clear replies to questions of staff members of Petitioner 2 regarding the location of a persons being detained by the military, or regarding his transfer to another detention system; however, the Control Center is not responsible for information provided regarding a person in another system. The replies are to be provided, according to the arrangement, the same day on which Petitioner 2 requests the Control Center to locate an individual.

C. Direct telephone access for information held by the Control Center is provided only to the staff of Petitioner 2.

6. Attempts made by Petitioner 2 to locate Petitioner 1

A. On 29 October 1995, at 10:15 A.M., a staff member of Petitioner contacted the Central Command's Control Center and provided the particulars and time of seizure of Petitioner 1 to a soldier working in the Control Center. At 10:40 A.M., Petitioner 2's employee contacted the information center of the Prisons Service, and at 11:20 A.M. the national headquarters of the Israel Police Force. All these bodies stated that Petitioner 1 was not listed as being held by them.

B. As of the time of the filing of the petition herein, more than twenty-four hours after it submitted its request to the Control Center, Petitioner 2 has not received any further reply from the Control Center, even though, under the circumstances, Petitioner 2 believes that Petitioner 1 is being held in an IDF detention facility in the region.

7. Petitioner 3

A. Petitioner 3, The Association for Civil Rights in Israel (hereinafter: ACRI), is a non-profit association whose purpose is to promote, preserve, and protect human rights in Israel and in areas under its control.

B. In the past, ACRI handled dozens of requests from families to locate their relatives who were being detained. In recent years, in light of the sole access to the Central Command's Control Center given to Petitioner 2, ACRI requests the assistance of Petitioner 2 in locating detainees.

C. In HCJ 670/89, *Odeh et al. v. Commander of IDF Forces in Judea and Samaria et al., Piskei Din* 43 (4) 515, ACRI petitioned this Honorable Court, together with the relatives of detainees whose location was unknown, to order the Respondent to provide information on the detention of every person who is detained. Following the filing of the petition, the Respondent instituted new procedures for providing information to relatives, and this method was acceptable to the Honorable Court. However, it was held (at page 522), that if, "after some time has passed, it is found that the matter has not been corrected and a proper solution was not reached, and the conditions so justify, the door will be open for a new petition to be filed, based on the conditions at that time."

Flaws in implementing the existing procedures for providing notification and the failure of the procedures to meet the situation on the ground

8. Over the past six months, ACRI has examined the degree to which the notification procedures instituted by the Respondent have been applied and their effectiveness in providing information to the detainee's family in practice. The main examination took place in the various Civil Administration districts and was conducted by ACRI's coordinator for Occupied Territories matters on 23 April, 30 April, 1 May, 2 May, 31 May, 11 June, 15 June, 11 September, and 20 September, all 1995. Simultaneously, checks were made with the relatives of detainees regarding the question whether they received a postcard or other notification regarding the detainee's whereabouts.

The principal findings are set forth in sections 10-12 below.

The affidavit of Mr. A. M., ACRI's coordinator for Occupied Territories matters, which confirms these findings, is attached hereto and marked P/3.

9. Postcards

A. According to the Respondent's procedures, every detainee is to receive a postcard at the time of his intake as a detainee, on which he is to write himself to his relatives about his detention and his whereabouts. The postcard is sent by the detaining facility by regular mail to the addressee.

B. In every case that was checked, except for one, the relatives did not receive a postcard from the detainee, even after three weeks had passed from the time of the detention until the date of the examination. Of the eleven cases checked on 8 June, only one family reported that it had received a postcard, which was sent two days after the detention began, and was received by the family fourteen days into the detainee's detention.

C. In one case, in which the individual was detained pursuant to the Order Regarding Defence Regulations and was held in a police detention facility within Israel, the detainee declared that he requested that a postcard be sent to his parents but that his request was denied.

The affidavit of the detainee, Z. N., is attached hereto and marked P/4.

D. Throughout the handling of cases in which Petitioners 2 and 3 assisted relatives of detainees, a total of thousands of cases, these Petitioners are not aware of one case in which a postcard sent by the detainee was received within a reasonable time of a few days. Because detainees are moved many times, occasionally frequently, from one detention facility to another, notification sent by postcard that states that the detainee was being held two weeks or more before in a specific facility does not ensure that he was still being held in that facility.

10. Lists of detainees

A. According to the procedures instituted by the Respondent, every Civil Administration district is to post lists of detainees being held in the district's holding facilities, and of detainees from the district who are being held in holding facilities of another district, and separate lists of detainees who were transferred from the district to other detention facilities.

B. All the checks made by Petitioner 3 in the Civil Administration buildings in the districts reveal that the lists are not complete. The lists of detainees that were posed on bulletin boards were missing names of detainees who had been detained in the district on the relevant dates. To the best of ACRI's knowledge, the lack of completeness is not accidental, and does not result from negligent preparation of the lists, but from the fixed procedure to include only detainees held in IDF holding facilities adjoining the administration's buildings. The lists do not include the names of detainees from the district who are held in another district or in a permanent detention facility within the same district. They do not include detainees who are being held in police facilities or in facilities of the Prisons Service. Detainees held in Israel are not included.

C. There is no list of detainees who were transferred (or are being transferred) from a holding facility to another detention facility.

D. The lists of detainees are only accessible on the days and times that the building is open to the public. On the Sabbath and holidays, the buildings are closed. In several districts, access to lists inside the building entails a wait of many hours.

E. In March and May 1995, the lists of detainees were updated in a grossly deficient manner, and were negligently displayed and maintained. These flaws were corrected, but the lists were extremely incomplete as regards the number of detainees mentioned.

11. <u>Notification by telephone</u>

A. The only case known to Petitioners 2 and 3 in which direct telephone notification was given to relatives of a detainee involved Harizat. After he was transferred to the police detention facility in the Russian Compound to Hadassah Hospital, and before he died from being shaken during interrogation, telephone notification was given to his family that he had been hospitalized.

B. In most cases in which Petitioner 2 submits a request to locate a detainee, the detainee's house or his parents' or spouse's house has a telephone, or there is a telephone in the home of other relatives, by which it is possible to directly inform the family about the detention. In other cases, there is almost always another person who has a telephone through whom notification can be given to the family.

C. F. N. testified to the family's suffering resulting from the failure to provide notification by telephone. His son, a student at Bir Zeit University, was detained pursuant to the Order Regarding Defence Regulations, and forty days passed before his family, which lives in the Gaza Strip and has a telephone in their home, learned what had happened to him. The father stated:

> **My wife and I and Z.'s** [the son who was detained] **grandmother, and all the thirteen children in the house have been living in constant fear, like mourning, throughout the period of his disappearance. I could accept the fact that my son had been detained, but I could not sleep or live with the lack of information on his whereabouts and what befell him.**

The father's affidavit is attached hereto and marked P/5.

12. Failure to provide notification to attorneys

Detention facility officials do not notify attorneys about the location of detainees shortly after they are detained. To the best of Petitioner 2's knowledge, of the thousands of cases in which it has been involved in locating detainees, not once was the place of detention of a detainee provided by giving direct notification to an attorney shortly after the detention occurred. To the best of Petitioner 2's knowledge, this situation results, inter alia, from the refusal of the IDF and of other detention facility authorities to provide information by telephone directly to an attorney when the detainee requests that the attorney be so notified.

13. The Control Center

Lacking direct delivery of notification to the detainee's relatives and lacking thorough and accessible lists on the location of detainees, the solution – which does not meet the obligation to provide notification – is to enable access to the competent source to supply centralized and updated information regarding where the detainees are being held. The Central Command's Control Center is supposed to fill this role, and to supply the information for relatives through Petitioner 2. However, operation of the Control Center is extremely flawed.

A. Transfer to the Israel Police Force and to the Prisons Service

The Control Center does not supply information about detainees who are located in detention centers operated by the Police or by the Prisons Service.

A substantial portion of the detainees, who are interrogated by the G.S.S., are held in Police facilities in Israel or in the region; clearly, all the requisite information about these detainees is readily available at all times. A substantial portion of the detainees are transferred or will be transferred to Police and Prisons Services facilities in Israel when many detention facilities in the region are evacuated. Both the Police and the Prisons Service have a computerized system for monitoring detainees, and to the best of Petitioner 2's knowledge, the Control Center is able to link up to these information sources.

It should be mentioned that, in the past, the Southern Command's Control Center supplied Petitioner 2 with information about every detainee from the Gaza Strip, and did so with great efficiency, even in cases in which the detainee was being held by the Police or the Prisons Service.

B. Failure to update information

In most, if not all, cases, the family contacts Petitioner 2 a day after the detention, and generally later than that. Petitioner 2 does not request the Control Center to provide information about a person who has just been arrested, in which instance it may not yet have been possible to report the information on the detention and intake of the detainee. The person about whom the question is raised has already been detained for twenty-four hours. The Control Center is unable to locate the detainee even three, four, or five days after he was detained. This problem does not exist in the computerized systems maintained by the national headquarters of the Israel Police Force and by the Prisons Service.

The Control Center's computer is not automatically updated regarding detainees held in temporary detention centers, and generally is not updated regarding the status of detainees in the permanent detention facilities. Transfers of detainees from one facility to another are not reported, and in most cases, are not set forth as updated information on the Control Center's computer.

A statistical review conducted by Petitioner 2 regarding the requests it submitted to the Control Center revealed as follows: in seventeen percent of all the cases from January to April 1995 in which the detainees were ultimately located in IDF facilities in the region, no response was received from the Control Center and the detainees were located by direct contact with

the detention facilities or through the State Attorney's Office; in five percent of the cases, the Control Center responded only after two to three days passed from the time that Petitioner 2 submitted its request for information.

C. Waiting twenty-four hours to receive a reply

The soldiers working in the Control Center adopted a rule by which they operate: they are allowed to delay responding to Petitioner 2's requests for a period of twenty-four hours. Insofar as the requests for information are made, as stated, at least one day following the detention, there is no substantive justification for delaying the search for the information and its delivery.

D. Limited work days

On Fridays and the eves of holidays, and on Saturdays and holidays, the Control Center's computers are not staffed. War-room personnel are on duty at the Control Center, but they generally are not willing to locate detainees; at the most, they agree to check if the person is listed on the computer as a detainee. No alternative system exists to locate a person in an urgent situation. Officials at detention facilities in the region also refuse on Fridays, Saturdays, and holidays, to indicate whether a detainee is being held in their facility.

E. Mistakes in identity card numbers

The Control Center's computer is unable to detect mistakes in identity card numbers being checked. In other systems, such as that of the legal advisor for the region and of the Police, it is possible to detect mistakes in ID numbers, which hastens the provision of information on detainees. In requests submitted to the Control Center, this is not the case.

F. Exclusivity of the Control Center

The failure of the Control Center to provide a response, or its failure to provide a response within a reasonable time, makes it necessary to contact the army detention facilities directly. Of the 280 detainees who were ultimately located in the army detention system between January and April 1995, Petitioner 2 encountered fifteen cases in which officials at the detention facilities in Dahariya, Ketziot, and the temporary detention facility in Bethlehem refused to provide Petitioner 2 information directly. Their refusal was based on a clear directive they had received from the Control Center.

Detention facilities generally refuse to provide information about their detainees in response to telephone requests of other organizations and of Palestinian attorneys. The officials charged with registration in the army detention facilities occasionally demand that attorneys who seek information on whether a detainee is being held in the facility appear at the facility if he wishes to confirm that the detainee is located there.

In the past, the army's legal systems – the legal advisor for the region and the international law division of the Judge Advocate General's Office – served as an extremely efficient source for locating detainees who were not located through the Control Center. These legal systems now refuse to respond to Petitioner 2's requests to locate detainees. The State Attorney's Office refers Petitioner 2 to these bodies, but the referral does not convince them to provide a response.

G. Exclusivity of Petitioner 2

The Control Center provides information only to HaMoked: Center for the Defence of the Individual, Petitioner 2. Other organizations, such as Petitioner 3, attorneys in private practice, and relatives are unable to obtain assistance from the Control Center or from an alternative source in locating detainees. This situation places an enormous burden on HaMoked, which serves as the intermediary for everyone. Furthermore, persons who do not know about the services provided by HaMoked are left without any solution to their problem.

H. Lack of a central, authorized source

The limitations in the operation of the Control Center create a need for an alternative source empowered to provide urgent information on the location of detainees, at least in those cases in which the information is not attainable through the Control Center. Indeed, when Petitioner 2 is allowed to submit requests to the office of the legal advisor of the region or to the international law division in the Judge Advocate's Office, it usually receives a rapid reply indicating where a particular detainee is being held. This fact proves that the difficulty in locating detainees through the Control Center results from the limitations of the Control Center and from the lack of authority of its staff, and not from the objective inability to locate detainees. Officials of the International Law Division recently indicated that it is not willing to locate detainees at Petitioner 2's request. Also, as will be shown below, the office of the legal advisor of the region refuses to accept urgent telephone requests

from Petitioner 2 to locate detainees whom Petitioner 2 was unable to locate through the Control Center.

14. Requests of Petitioners 2 and 3 to the IDF

For six months, from February to August 1995, Petitioners 2 and 3 sought to impress upon IDF authorities the gravity of the problem of failing to notify relatives about the arrest and place of detention of detainees and of the malfunctioning of the Control Center, and to motivate them to find effective solutions to the problem. The relevant correspondence on this point is as follows.

A. On 19 February 1995, the executive director of Petitioner 2 wrote to the legal administrator section in the office of the legal advisor of the region, and warned about the "ineffectiveness of the Control Center in providing accurate information within a reasonable time," and on the Control Center's practice of not providing a response to requests regarding the location of a detainee within twenty-four hours.

A copy of the letter is attached hereto and marked P/6.

Petitioner 2 did not receive a reply to the letter.

B. On 5 March 1995, the executive director of Petitioner 2 wrote to the assistant to the judge advocate general for international law and informed him that, "in recent months, the Central Command's mechanism for providing information on Palestinian detainees has collapsed." She further noted that the legal officials are passing the responsibility for the matter from one to the other.

A copy of the letter is attached hereto and marked P/7.

Petitioner 2 did not receive a reply to this letter either.

C. On 25 April 1995, counsel for the Petitioners wrote to the head of prosecutions in the region. The letter dealt with the failure to provide notice to relatives of a detainee who had been detained pursuant to the Order Regarding Defence Regulations in Judea and Samaria, and his relatives in the Gaza Strip did not receive any notification regarding him for forty days. The head of prosecutions was asked to respond as to whether there was legal grounds for preventing the giving of notification.

A copy of the letter is attached hereto and marked P/8.

In his response, of 30 April 1995, the head of prosecutions did not respond to the aforesaid question. He mentioned that, "officials in the office of military prosecutions are not among the officials required to give notification of the detention of a person; the obligation rests with officials charged with the investigation (i.e., the Police) and for the detention (i.e., the relevant detaining authorities), and particularly in a case such as the present case, in which a person is being held in detention within the State of Israel."

The reply of the head of prosecutions in the region is attached hereto and marked P/9.

D. On 3 May 1995, counsel for the Petitioners wrote to the legal advisor of the region and alerted him that officials in the region were not complying with their obligation to notify without delay a detainee's relative about the arrest and the place where the detainee was being held. The letter summarized the primary flaws in the existing procedures and in application of the procedures. The legal advisor was requested to indicate how and when the right to delivery of notification would be provided in practice.

A copy of the letter is attached hereto and marked P/10.

The deputy legal advisor of the region responded on 9 May 1995 that, "it is obvious that the importance [of this problem] cannot be disputed." However, he mentioned that only specific cases would enable him "to locate the flaws," and that, in the meantime, he would direct the officials to ensure that the existing directives are implemented.

A copy of the letter of the deputy legal advisor is attached hereto and marked P/11.

E. On 18 May 1995, Petitioner 3's coordinator for Occupied Territories matters provided to the deputy legal advisor of the region details on specific cases in which notification was not given to the detainee's relatives.

The letter is attached hereto and marked P/12.

F. On 1 June 1995, the deputy legal advisor of the region informed Petitioners 2 and 3 that, "we clarified the relevant directives to prevent failures in the future." He referred to improvements in the Control Center's mechanism to locate detainees, and to the directive to ensure that updated lists of detainees are posted in Civil Administration districts. He did not relate to the other

contentions and suggestions raised by Petitioners 2 and 3, among them notifying the relatives by telephone.

The letter is attached hereto and marked P/13.

G. On 18 June 1995, counsel for Petitioners sent a detailed letter to the deputy legal advisor of the region. The letter set forth dozens of concrete examples to prove that the major flaws had not been rectified at all. Counsel for the Petitioners offered specific suggestions to remedy the situation, including a requirement that notification by telephone be given, the preparation of lists of detainees who were transferred to another detention facility, and the appointment of a locating officer as a central source authorized to obtain immediate information from all the officials and bodies and to provide it immediately to persons trying to locate an individual.

The letter is attached hereto and marked P/14.

The head of prosecutions responded, on 26 June 1995, "We intend to raise the problem in all its gravity before the top echelon of the Central Command so that we can achieve a thorough resolution of the problems mentioned in your letter."

The letter of the head of prosecutions is attached hereto and marked P/15.

H. Petitioner 2 also wrote to the deputy legal advisor, setting forth sample cases that showed that the Control Center was still unable to solve significant problems in locating detainees.

This letter, dated 2 July 1995, is attached hereto and marked P/16.

I. On 8 August 1995, the head of prosecutions wrote to counsel for Petitioners. This letter, which was a final response of IDF officials to all the prior correspondence sent by the Petitioners, stated that the highest echelon in the Central Command established "appropriate directives to the relevant officials, both regarding delivery of notification on detention and regarding the handling of requests to locate individuals." No hint is given as to the contents of these directives. The letter further stated that the only body given the function and responsibility for handling requests to locate detainees was the Control Center for Detentions, and that, therefore, requests for locating detainees were to be directed only to the Control Center. From the beginning of August 1995, the head of prosecutions continued, lists of names should be provided to him in the event that the procedure breaks down.

The letter of the head of prosecutions is attached hereto and marked P/17.

J. Unfortunately, Petitioners 2 and 3 did not note any substantial change following the making of the new procedures that were to have been instituted in early August. In letters to the OC Central Command, of 13 August and 28 August 1995, and in a detailed letter to the head of prosecutions, of 1 October 1995, Petitioner 2 set forth twenty-three cases in which it had been impossible to locate detainees within a reasonable time by means of the Control Center, or had been impossible to locate them at all by means of the Control Center. Petitioner 2 did not receive any reply to these detailed lists, which conformed to the instruction given by the head of prosecutions in his letter P/17.

15. Correspondence with the State Attorney's Office

A. In light of army's inability to change meaningfully the procedures for notifying relatives and for locating detainees, on the one hand, and the refusal of legal authorities in the military to assist in locating detainees as a result of the exclusivity given to the Control Center in handling the subject commencing in August 1995, on the other hand, Petitioner 2 was compelled to turn to the State Attorney's Office to locate detainees.

B. In September 1995 alone, Petitioner 2 submitted eleven requests to the State Attorney's Office. Each request related to a person whose relatives had not received notification of where he was being held, and requests by Petitioner 2 to the Control Center to locate him had not been responded to within forty-eight hours from the time the request was made. The requests submitted to the State Attorney's Office were made a few days after the individual disappeared. Each request to the State Attorney's Office resulted in the person being located immediately, within several hours.

C. On 29 September 1995, attorney Andre Rosenthal wrote on behalf of Petitioner 2 to attorney Shai Nitzan, of the State Attorney's Office, that the existing situation was unacceptable, whereby information on the whereabouts of a detainee is not given immediately to his relatives.

The letter is attached hereto and marked P/18.

Legal argument

Obligation to give notification in the defence legislation

16. The Order Regarding Defence Regulations (Judea and Samaria) (No. 378). 5730 – 1970 (hereinafter: the Order Regarding Defence Regulations), as amended by Order Regarding Defence Regulations (Amendment No. 53) (Judea and Samaria) (No. 1220), 5748 – 1988, states in Section 78A, as follows:

> **(One) For the purpose of this chapter, "detention facility" has the same meaning given the term in the Order Regarding Operation of a Detention Facility (West Bank Region) (No. 29), 5727 – 1967.**
>
> **(Two) Where a person is detained, notification of his arrest and whereabouts shall be made without delay to a relative, unless the detainee requests that such notification not be given.**
>
> **(Three) At the detainees request, notification as stated in subsection (b) will be given also to the attorney whose name is provided by the detainee.**
>
> **(Four) Where a person is arrested and brought to a detention facility, the commander of the facility will inform him, close to the time of his arrival in the facility, of his rights set forth in subsections (b) and (c).**

17. Sections 78 to 78D of the Order Regarding Defence Regulations state the general detention powers of the Respondent and of officials acting on his behalf, and the rights of every persons who is detained pursuant to the defence legislation in the region. Thus, the obligation set forth in Section 78A(b) of the order, which requires that notification be given without delay to the relative of a person who is detained, is a general obligation, applying to the defence authorities where a person is detained pursuant to the defence legislation. This obligation applies regardless of whether the body investigating the detainee is the IDF, the Israeli Police Force, or the G.S.S. The place of residence of the detainee is irrelevant, provided that he is detained pursuant to the defence legislation in the region.

18. The Respondent is required to give notification whether the detainee is held in an IDF detention facility in the region or in another detention site. Detention effected pursuant to the defence legislation, and not the kind of detention facility in which the detainee is held or its location, creates the obligation to give notification in accordance with Section 78A(b) of the order.

According to Section 40(a) of the Order Regarding Defence Regulations, "a detainee pursuant to this order will be held in a place determined by the military commander." It should be mentioned that all the Prisons Service's facilities and Israel Police Force's facilities are established by the regional commander as places to detain or imprison persons, such pursuant to the Order Regarding Prisons (West Bank Region) (No. 43), 5727 – 1967, as amended from time to time. The same is true for a person who is detained in Israel. Section 6 to the addendum of the said order defines the places in which detainees will be held as "any detention facility in Israel of the Israel Police Force and of the Prisons Service, that operates according to Israeli law." Therefore, the Respondent's duty to give notification about the detention without delay to the detainee's relatives applies also when the detainee, who is detained pursuant to the defence legislation in the region, is transferred to a detention facility in Israel.

19. Treatment of a detainee from the region who is transferred to a detention facility in Israel

A. Where a detainee who is detained pursuant to the defence legislation in the region is transferred to a detention facility in Israel, the duties imposed by Section 78A of the Order Regarding Defence Regulations on the commander of the region continue to apply, as explained above. However, he is also subject, at the same time, to Israeli law regarding the rights of detainees.

B. Section 28(a) of the Criminal Procedure Law [Consolidated Version], 5752 – 1982, provides a duty identical to that set forth in Section 78A(b) of the Order Regarding Defence Regulations: "Where a person is detained, notification of his arrest and whereabouts shall be made without delay to a relative, if the whereabouts of the said person is known, unless the detainee requests that such notification not be given."

Where a minor is detained, the commander of the police station is required, pursuant to Section 11 of the Youth (Adjudication, Punishment, and Methods of Treatment) Law, 5731 – 1971, to give notification of the detention as soon as possible to one of the minor's parents.

C. To meet the duty imposed on the police by Section 28(a) of the Criminal Procedure Law [Consolidated Version], directives regarding implementation of the provisions are set forth in Police Command No. 12.03.01 regarding the handling of detentions in a house of detention (*Yalkut Pirsumim* 4230 [5754], at page 4228). Section 3(a)(2) of this command states:

> ***A person shall not be detained in a house of detention*** **before the person in charge of the interrogation or of the detention gives notification of the detention to the detainee's relatives, and before an officer spoke with him and informed him of his right to contact an attorney. Where the detainee waived these rights, the fact shall be mentioned in the detention record.** (emphasis in original)

Section 2(e) of Police Procedures No. 90-920-60 states:

> **Where a detainee is transferred from one house of detention to another house of detention, for whatever reason, notification of the transfer will be delivered to his relatives or to his attorney at his request.**

20. The Respondent is not allowed to delay the giving of notification to the relative of a detainee, even for a period of twenty-four hours, except in the circumstances set forth in Section 78D of the Order Regards Defence Regulations. According to Section 78D(b)(1), the head of the G.S.S. interrogation team may order delay in the delivery of information on the detention of a person for a period that does not exceed twenty-four hours from the time of detention if he believes that security needs so dictate. According to Section 78D(b)(2) and (6), a law-trained military judge may allow delivery of notification of the detention of an individual to be postponed for a period that does not exceed twelve days if he is convinced that the security of the region or needs of interrogation so require. According to Section 78(a)(1) and (2), if a suspect is arrested for am offense that is not set forth in the addendum to the order, only a law-trained military judge may postpone delivery of the notification, and that for a period that does not exceed ninety-six hours each time, and for a total period that does not exceed eight days.

These directives indicate that, in every other case, notification must be given immediately, and notification of the detention and the place where the detainee is

being held must be given forthwith, at least within twenty-four hours from the time that the person is detained.

21. The obligation to deliver notification of the detention, as set forth in Section 78A(b) of the Order Regarding Defence Regulations is a "binding order, and the Pespondents [the regional commanders] must act in accordance therewith," in the words of the Honorable Justice Or in HCJ 670/89, *Odeh et al. v. Commander of IDF Forces in Judea and Samaria et al., Piskei Din* 43 (4) 515, 522. The regional commander and the detention authorities acting on his behalf must take reasonable measures to ensure that the notification is in fact delivered without delay to a relative of the detainee (*Ibid.*).

Fundamental right to notification of detention

22. The right to receive notification of the detention of an individual and the place he is being held is a fundamental right of the detainee and of his family. This right is encompassed within the right to human dignity. A regime that does not strictly ensure this right, but conceals persons in its custody from their relatives for substantial periods of time, is cruel and inhumane to the detainees, their parents, siblings, children, and spouses. In the words of Vice-President Elon in HCJ 670/89, cited above, at page 517:

> **The obligation to give such notification stems from a fundamental right accorded to a person who is lawfully arrested by the competent authorities, to inform his relatives of his arrest and his place of detention so that they will be apprised of what befell their detained relative, and how they are able to proffer him the assistance he requires to safeguard his liberty. This is a natural right derived from human dignity and general principles of justice, and accrues both to the detainee himself and to his relatives.**

23. The right to notification of relatives of the detainee is closely linked to the fundamental right of every detainee to meet with an attorney, which is a vital means to exercise the fundamental right to personal liberty. Upon being detained, the detainee's relatives become the link between him and the external world. In the absence of information on the fact of the detention and place of the detention, the relatives are unable to provide him with an attorney, and an attorney is unable to meet with him and safeguard his liberty. In the words of Vice-president Elon in HCJ 3412/91, *Sufian v. Commander of IDF Forces in the Gaza Strip et al., Piskei Din* 47

(2) 843, 847, in relating to the detention of an individual pursuant to the Order Regarding Defence Regulations (in effect in the Gaza Strip):

> **The right of a detainee to meet with an attorney is his fundamental right. This right is derived from the individual's right to liberty (see Section 5 of the Basic Law: Human Dignity and Liberty)…**

24. Insofar as the right to notification of the detention is incorporated within the fundamental rights to human dignity and liberty, every governmental agency – and the Respondent among them – must respect this right and safeguard it (sections 4 and 11 of the Basic Law: Human Dignity and liberty). The same rules that were deemed sufficient in the past to safeguard the right, prior to the right to dignity and liberty being given constitutional status, no longer necessarily conform with the demands of the Basic Law. Just as the Basic Law requires a new and literal construction of the provisions of a statute that violate a person's liberty, such that "… exercise of governmental discretion, enshrined in the old law, is given new weight and defined in accordance with the constitutional nature of the human rights enshrined in the Basic Law" (comments of Vice-President (as his title was at the time) Justice Barak in Misc. Crim. App 537/95, *Ghaneimat v. the State of Israel* (not yet published), at page 64 of the judgment).

25. The effect of the Basic Law on the old law is especially presumed in the criminal area, and in the laws of detention in particular, because of the close connection to the individual's personal liberty (Misc. Crim. App. 537/95, at pages 79-80 of the vice-president's opinion). In the words of the Honorable Justice Dorner (*Ibid.* at page 56):

> **Indeed, the enactment of the Basic Law: Human Dignity and Liberty requires us to reexamine our common law in the filed of criminal law, and first and foremost the laws dealing with detention…**

26. In light of the new status of the basic rights to dignity and liberty, and from the experience accumulated in the Respondent's implementation of the procedures in giving notification to relatives of detainees, the Honorable Court is requested to reexamine these procedures. The Honorable Court is requested to hold that the customary procedures do not meet the requirement to give notice without delay to a relative of the detainee, and that the procedures breach the fundamental rights of the detainees and their relatives on a daily basis. The judgment in HCJ 670/89 was given before enactment of the Basic Law: Human Dignity and Liberty, and, in any event,

consideration was not given to the new and increased consideration given to the detainee's rights. In the judgment, the Honorable Justice Or observed (at page 522) that, "if, after some time has passed, it is found that the matter has not been corrected and a proper solution has not been reached, and the conditions so justify, the door will be open for a new petition to be filed, based on the conditions at that time."

The method being employed does not fulfill the basic right and does not conform to the current circumstances

27. The postcard-delivery method

A. When the postcard arrangement was discussed in *Odeh* (HCJ 670/89), Section 78 of the Order Regarding Defence Regulations still allowed a person to be detained for eighteen days before he had to be brought before a judge to extend his detention. The hearing on extending detention at the expiration of the eighteen-day period was the rule. Now, in accordance with the Order Regarding Defence Regulations (Amendment No. 70) (Judea and Samaria) (No. 1391), 5753 – 1993 (which took effect on 1 April 1993), and in accordance with the Order Regarding Defence Regulations (Amendment No. 70) (Judea and Samaria) (No. 1413), 5754 – 1994 (which took effect on 18 July 1994), a detainee must be brought before a judge within eight days from the day he was detained, except where the detainee is an adult who is alleged to have committed a serious crime, who may be held for eleven days without a judicial order having been attained. If in the past there was reason to hope that a postcard would reach the relative before hearing on the extension of detention, and thus enable the relatives to provide the detainee with an attorney prior to the hearing, the situation is now different. The Petitioners are not aware of an instance in which the postcard reached the detainee's family within eight days. For this reason, giving notification by postcard is not a mans that protects the detainee's fundamental right to meet with an attorney.

B. To the best of Petitioners' knowledge, postcards are not sent to families in the region as part of the detainee intake process, as part of the defence legislation, in Prisons Service and Israel Police Force facilities. One can say that the postcard procedure is not employed at all for an increasing umber of detainees from the region. In IDF detention facilities, in which postcards apparently are still being sent, strict compliance with the procedure is

lacking, and the time that it takes for the postcards to reach their destination makes the arrangement meaningless.

C. The Honorable Justice Or stated in HCJ 670/89, at page 522, that:

> **The detaining authorities must… also take additional; reasonable steps to ensure that, in those cases in which there is a fear that sending the postcard is not itself sufficient to guarantee delivery of the notification about the detention, notification is in fact delivered to the detainee's relative …**

The facts indicate that the fear that the sending of postcards is insufficient has been proved in each case. The arrangement does not give rapid notification to relatives even when the postcard is sent. For this reason, the Respondent must give actual notification at his initiative to a relative of the detainee.

28. Posting lists of detainees

A. According to the procedure, as presented to the Court in HCJ 670/89, at page 519, two daily lists of detainees were to be posted at all times on the bulletin board in the Civil Administration building in each district. The first list was to contain the names of the detainees held in IDF holding facilities near the Civil Administration's building and the names of detainees from the district held in holding facilities in another district. The second list was to contain all the names of detainees who were transferred from one detention facility to another.

B. In practice, the directive regarding the lists of detainees has not been complied with in full. The only list posted in the districts' buildings is a list of detainees located in the nearby holding facility. The list does not contain the names of detainees from the district who are being held in facilities in other districts, and there is no list of detainees who were transferred from one facility to another.

C. From the start, the posting of lists did not meet the duty to provide notification to the detainee's relatives. The posting method was intended to serve as a substitute means, necessitated by the circumstances, to take action to give notification personally to the detainees' relatives, as required by Section 78A(b) of the Order Regarding Defence Regulations. The lists as posted in fact do not even provide a partial alternative in meeting the

obligation to give notification. The holding facilities alongside the districts are intended to hold detainees temporarily until they are transferred to permanent detention facilities. Without a list of transferees, it is impossible to locate a detainee. Also, these lists do not contain the names of the growing number of detainees who are sometimes held in Police and Prisons Service facilities in the region and in Israel.

D. The posting-of-lists method became outdated with the signing of the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip, of 28 September 1995 ("Oslo 2 agreement"). First, according to the agreement, the IDF will redeploy from all cities in which the district Civil Administration buildings and adjoining IDF holding facilities are located. The Jenin District building has already been vacated. The Civil Administration will be dismantled. Therefore, the group of detainees who until now has been included in the lists posted in the districts will no longer exist, and even the place on which the lists were posted for public perusal will disappear. Second, most of the other detention facilities in the region are being evacuated, and to the best of Petitioners' knowledge, many detainees will be moved to deportation facilities in Israel. The detainees held in Israel have never been included in the lists of detainees.

E. The number of detainees has greatly declined since *Odeh.* The number is likely to fall further following the transfer to the Palestinian Authority of powers over public order in the region's population centers, in accordance with the Oslo 2 agreement. The constraints in the past procedures no longer exist, so there is no justification today to replace the delivery of direct, immediate notification to the detainee's relatives about his arrest and whereabouts.

29. Notification by telephone

A. According to the procedure instituted by the Respondent, only exceptional cases (such as where the detainee requires special medication) warrant notification by telephone to the detainee's relative regarding the arrest and location of the detainee. The Petitioner do not know if this directive is in fact implemented in exceptional cases. The inclusion of this directive in the procedures indicates that the Respondent recognizes that, in most cases, it is possible to give telephone notification and thereby provide immediate notification to the detainee's relative.

B. As a rule, the authorities operating on behalf of the Respondent do not notify relatives via telephone about the arrest of the detainee and his whereabouts, even though giving notification by telephone is an efficient, available, and desirable method, among the possible methods, in most cases. As far back as HCJ 670/89, the Honorable Justice Or , joined by the Honorable Justice Matza, recommended that notification be given by telephone. In his words, at page 522:

> **The obligation to notify a detainee's relative must be carried out "without delay," as stated in the said Section 87A(b). It seems to me that under normal circumstances, when it is possible and does not entail limitations or difficulties – whether technical or security-related – the obligation should be executed by means of notification by telephone to a relative of the detainee, thereby avoiding unnecessary delay in conveying the information.**

C. Upon the redeployment of IDF forces from the city centers in the region, in accordance with the Oslo 2 agreement, notification by telephone will be the only means to give direct, personal notification to the detainee's relative who lives in one of these cities. It should be mentioned that it is precisely in the cities that telephone lines are particularly widespread.

30. Notification of attorney and need for notification by telephone

A. The fundamental right to notification also encompasses the right of the detainee to choose that notification on his detention and on the place where he is being held be provided to an attorney. In this manner, too, the right to notification comports with human dignity, so that the detainee does not disappear and his welfare is not forsaken in those cases in which he does not have a relative to whom he wishes the notification to be sent. In this way, the detainee himself is also able to exercise his fundamental right to meet with and be assisted by an attorney, without being dependent on his relatives for this purpose. This right is set forth in Section 78A(c) of the Order Regarding Defence Regulations.

B. Just as the time for granting a detainee's request to meet with an attorney is not given to the unlimited discretion of the official in charge of the detention site, but must be granted as soon as possible (Crim. App. 533/82, *Zakai v. the State of Israel, Piskei Din* 38 (3) 57, 65), even more so is the right to give

notification to an attorney about the arrest and the detainee's whereabouts a right whose exercise must not be delayed (except in the cases enumerated in Section 78D of the Order Regarding Defence Regulations). Therefore, it is proper that notification be given to the attorney in the natural and rapid way – by telephone.

31. The Control Center

Because of its basic flaws and the scope of data banks available to it, the Control Center does not compensate for the failure giving the families direct notification. However, a central entity empowered to supply authoritative information from all the data banks on detainees is vital as long there are not efficient and certain arrangements for giving immediate notification to relatives of every individual who is detained. The Respondent has the authority to appoint an entity to locate detainees who were detained pursuant to the defence legislation, and past experience with both the Control Center of the Southern Command and with the requests to the international law division of the Judge Advocate's Office prove that it is possible in practice to give such efficient and rapid notification.

32. Need for judicial intervention

The Petitioners acted to the best of their ability to get the Respondent's representatives to establish new procedures that will ensure that, in the region, the fundamental right whereby the detainee's relatives are given notification of his arrest and of the place in which he is being held is granted. The Respondent's representatives agreed with the Petitioners about the importance of the right and the severity of the problem, but failed to institute the necessary rules. Therefore, it is vital that the Honorable Court intervene in this matter.

Therefore, the Honorable Court is requested to issue a writ of habeas corpus and an order nisi as requested in the beginning of this petition, and, after receiving the Respondent's response to the order nisi, to make it absolute, and to order the Respondent to pay the Petitioner's costs herein, including attorneys' fees.

Today, 6 Heshvan 5756 (30 October 1995)

[signed]

Eliahu Abram, Attorney

Counsel for Petitioners